

# New Jersey's Gold Coast: Revisiting Public Access and the Hudson River Waterfront Walkway

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Once written off by the public, the environmental quality and economic potential of the Hudson River waterfront has become a centerpiece of New Jersey's public policy debate in recent years. Over the last decade, the shoreline of the Hudson River, stretching 18 miles from the George Washington Bridge to Bayonne and crossing nine densely developed municipalities, has undergone significant redevelopment. Formerly the domain of heavy industry, warehousing and shipping, the waterfront has long been all but inaccessible to the general public. With the implementation of a state walkway plan and procedures over the last decade, the public is for the first time gaining direct access to the water's edge.

## The Hudson River Waterfront Conservancy

In 1988, The Trust for Public Land (TPL), a national, nonprofit land conservation organization, created the Hudson River Waterfront Conservancy (HRWC), a multi-jurisdictional nonprofit organization. HRWC works to ensure the physical accessibility of the riverfront and actively supports educational programs designed to inform the public about the Hudson River and the cultural and

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*The Trust for Public Land is a national, nonprofit land conservation organization dedicated to the protection of public access and open space. Since its founding in 1973, TPL has protected over 600,000 acres of scenic, recreational, urban, rural and wilderness land in 38 states and Canada. TPL is headquartered in San Francisco, CA.*

historic heritage of the waterfront communities. A primary component of this work is to facilitate the implementation and management of the Hudson River walkway. As presently constituted, the HRWC's board of trustees is composed of landowners, developers, public agencies, citizens and nonprofit organizations in the nine waterfront communities. The responsibilities of the HRWC include walkway planning, monitoring of development permits, assisting in the acquisition of new public access points along the waterfront (fee or easement), and the monitoring and enforcement of walkway easements.

## Walkway History

The Hudson River Walkway (hereinafter referred to as the "walkway") is designed as a continuous pedestrian route providing direct public access to and along the water's edge. The walkway--which is less than 20 percent complete today--is intended to run approximately 18 miles, from its intersection with the Palisades Interstate Park/George Washington Bridge in the north to its southern terminus at Bayonne's Constable Hook. The proposed route brackets the most densely populated region of New Jersey, which is also the densest portion of the New York metropolitan area. From any point along the walkway the visitor enjoys spectacular views of Manhattan, located on the opposite bank of the Hudson River.

The planned walkway route is intended to link existing parks along the waterfront. Connections to paths above and below the famed Palisades Cliffs will eventually be developed to take better advantage of the region's open spaces. Once complete, the walkway will be an important transportation corridor linking all nine municipalities along a continuous pedestrian spine.

The walkway concept has existed for several decades and has followed its own quirky and circuitous path to

the present. The walkway was first proposed in the Regional Plan Association's visionary 1966 study, *The Lower Hudson*. Nearly twenty years later, the concept was refined in the 1983 report of the New Jersey Waterfront Study, a legislatively sanctioned body. The plan, then as now, required developers to build a public walkway in exchange for the right to build office, commercial and residential projects on land touched by the tides that legally belongs to the state (See, Sidebar: The Public Trust Doctrine). Following the Commission's report, the walkway received state agency support through reference in the 1984 New Jersey State Outdoor Recreation Plan, published by the New Jersey Department of Environmental Protection and Energy (DEPE). In the same year, DEPE, assisted by the Philadelphia-based planning and design firm, Wallace, Roberts and Todd, created the plan and design guidelines that form the basis for the walkway's present development.

Throughout all of this planning activity, it was clear that the state's interest lay in getting the walkway built via regulation--in this case a permit condition or exaction, depending on one's perspective--rather than through direct state acquisition. Over ninety percent of the walkway's planned 18-mile length will be constructed over private property presently or formerly flowed by the tides, and thus subject to the state's regulatory interest.

Since the early 1970s, New Jersey's coastal zone management guidelines have imposed on all waterfront development a dual level of permit review and approval. In addition to the ordinary municipal planning board review, the DEPE's Division of Coastal Resources is vested with the power to issue a Waterfront Development Permit to all commercial, office, industrial or residential projects (the latter must exceed a density of 24 dwelling units) that fall within 1,000 feet or the first major public highway or built structure that parallels the water's edge. In recent years, various legislative enactments and administrative rulemaking procedures have resulted in a substantial expansion of DEPE's review and policymaking role under the Waterfront Development Permit process. One such expansion includes the definition of the Hudson River waterfront as an area of "special state concern," thereby triggering the public access and waterfront requirement.

About the time the Waterfront Study and Planning Commission released its 1983 report, the DEPE expanded the range of its Waterfront Development Permit to include the Hudson River waterfront. The expansion of state regulatory power was particularly timely in light of recent changes in ownership and land use along portions of the waterfront. The vast yard belonging to the Jersey Central Railroad, which had carried immigrants west following their discharge from nearby Ellis Island, had been abandoned in the early 1970s and numerous factories closed over the last two to three

## The Public Trust Doctrine

The guiding force behind the walkway plan and regulations is a unique and well-articulated legal concept known as the "public trust doctrine." Recognizing the special environmental and economic value of tidally-flowed land, the courts of this country, in upholding English common law, have determined that states claim legal title to the land as "trustees" for the public. In *Illinois Central Railroad Company v. People of State of Illinois* (146 U.S. 387, 1892), the Supreme Court stated that: "It is the settled law of this country that the ownership and dominion and sovereignty over lands covered by tide waters ... belong to the respective States within which they are found, with the consequent right to use or dispose of any portion thereof, when that can be done without substantial impairment of the interest of the public." It was the original purpose of the public trust doctrine to preserve, for all, such essential waterborne uses as fishing, navigation, commerce and recreation.

It is safe to say that the scope and limitations of the public trust doctrine have never been precisely defined. The Supreme Court left it to individual states to legislate and statutorily articulate the limits of the public trust doctrine. Each state maintains the right to sell, lease and regulate private use of tidally-flowed lands or activities occurring on filled lands that were once tidally flowed. Naturally, the interpretation of the public trust varies by state. Each state, however, is required to perform a regulatory balancing act whereby some uses must be substantially advanced without other uses being substantially impaired.

This balancing act is apparent in the case of the Hudson River Walkway. Through its power to review and issue waterfront development permits, the New Jersey DEPE has required that Hudson River developers donate a thirty-foot-wide pedestrian easement along the entire length of their property, in addition to constructing and maintaining the actual footpath. This requirement forms the basis of and is the essential genius behind the waterfront walkway.

decades. As a result of technological change favoring mechanized container operations, bulk cargo facilities along the lower waterfront had become obsolete for industrial use. In the mid-1970s, cargo operations that had once flourished in places like Weehawken, Hoboken and Jersey City moved south to large, new facilities financed and operated by the Port Authority of New Jersey and New York at Ports Newark and Elizabeth.

By the early 1980s, loss of traditional waterfront manufacturing employment was greeted by the rapid expansion of the New York region's service sector, as typified by the geographic leapfrogging of Wall Street's famed "back office" computer operations. The changing economic climate likewise fed on an increase in the rate



of new household formation and a net regional immigration. Given the availability and affordability of large waterfront building tracts, coupled with ready construction capital, the waterfront was rather swiftly opened to new development and redevelopment opportunities. Obsolete land uses coupled with the easily-available capital of the 1980's swiftly opened vast areas of the waterfront to development and redevelopment. Regional developers responded to the new demographics with large-scale planning and construction of office, commercial and residential space along the waterfront. Currently, over 17 million square feet of commercial/office space and 15,000 residential units along the waterfront are in various stages of planning approval, with approximately 10-15 percent presently under construction or occupied.

The DEPE, recognizing a rare opportunity, recently completed a conversion of the former Jersey Central freightyard into the State's premier urban park on 800 acres just across from the Statue of Liberty. The DEPE worked closely with waterfront residents, local, state and federal politicians as well as regional public interest groups who had been pushing for a comprehensive solution to the freightyard abandonment as well as a county-wide system of public parks, walkways and access to fishing piers along the Hudson River.

### Walkway Management and Use

While the DEPE has not been flooded with permit applications over the last two or three years, the agency has been increasingly confronted with management-related issues, reflecting the hybrid nature of the walkway. It is a park which runs through multiple land uses and hundreds of private ownerships across nine municipalities, with limited access points. Overseeing a partially-built, publicly-accessible, privately-managed walkway has become one of the State's most difficult challenges. Located as it is in a heavily urban environment, sections of the walkway have suffered substantial amounts of vandalism and graffiti. Park benches have been ripped out and tossed in the river, lights shattered and the remains of drug activity strewn about. In desperation, a limited number of private landowners have appealed and won relief from the DEPE policy of 24-hour public access. Recognizing the vulnerability of some isolated walkway sections, the DEPE has granted exceptions to the 24-hour rule for owners able to demonstrate hardship. In these cases, the State Park System's own dawn-to-dusk rules have been applied.

The intent of the DEPE's 24-hour access policy is to enable the public to enjoy the walkway, as they would a waterfront sidewalk, at all times. The questions raised by the 24-hour policy, however, are complex. Isolated walkway sections have tended to attract undesirable activi-



*Underdeveloped Hudson River waterfront consists of rotting pier pilings and a soft edge.*

ties, while other sections--planned and designed more like backyards than public promenades or sidewalks--intrude on the privacy of homeowners. Newer sections of the walkway have benefitted from the lessons of the past decade, as the DEPE refined its policy to reflect the realities of a privately-managed urban walkway.

### Waterfront Walkway Design Issues

In 1989, new design guidelines for the walkway were incorporated into DEPE's original 1984 document *Walkway Planning and Design Guidelines*. While advisory in nature, the new guidelines have assisted DEPE in its review of Waterfront Development Permit applications. They have also been used by developers and waterfront officials for site planning and public access purposes. The guidelines establish dimensional, locational and overall requirements for the walkway. The dimensional requirements call for a minimum thirty-foot-wide public easement the water's edge, including a pavement width of sixteen feet. The walkway must be located as close to the water's edge as possible and include connecting walkways to furnish perpendicular waterfront access from the first public road inland from the river. Specific exceptions to these dimensional requirements are established for environmentally sensitive areas, industrial areas and narrow waterfront sites, including development on waterfront piers.

In August, 1990, this easement requirement was adopted by DEPE in regulatory form, requiring that:

All waterfront development along the Hudson River shall develop, maintain and manage a section of the Hudson Waterfront Walkway coincident with the shoreline of the development property. The developer shall by appropriate instrument of conveyance create a conservation easement in favor of the Department. The conservation easement shall define the physical parameters of the walkway and the allowable uses, address the maintenance and management duties and identify the responsible party. Development of each project's public access system shall conform to ... the Hudson Waterfront Walkway Planning and Design Guidelines (1984) and the Hudson Waterfront Walkway Design Standards (1989). (N.J.A.C. 7:7E-3.48(e))

To facilitate compliance with the easement requirement, The Trust for Public Land, in conjunction with DEPE, developed a model walkway easement which permits the agency, as grantee of waterfront easements, to transfer the easement to a qualified, charitable land conservancy (also known as a land trust).

There are numerous advantages to this type of arrangement. For one, local land trust monitoring and enforcement of conservation and public access easements--especially easements that involve multiple land-

### Whose Walkway Is It Anyway?

Public spaces that are managed and paid for by private dollars have an intrinsic problem: Both users and owner/managers want control. Across the river from the Hudson Walkway, Battery Park City (BPC) in lower Manhattan is one of the best-maintained and most successful public waterfronts. Its high maintenance costs are heavily subsidized by the surrounding residential developments as part of their common charges. The BPC Parks Corporation, the park's manager, has had to balance the demands of its residents with those of the park users. As owner assessments increase with escalating costs, this task has become more difficult.

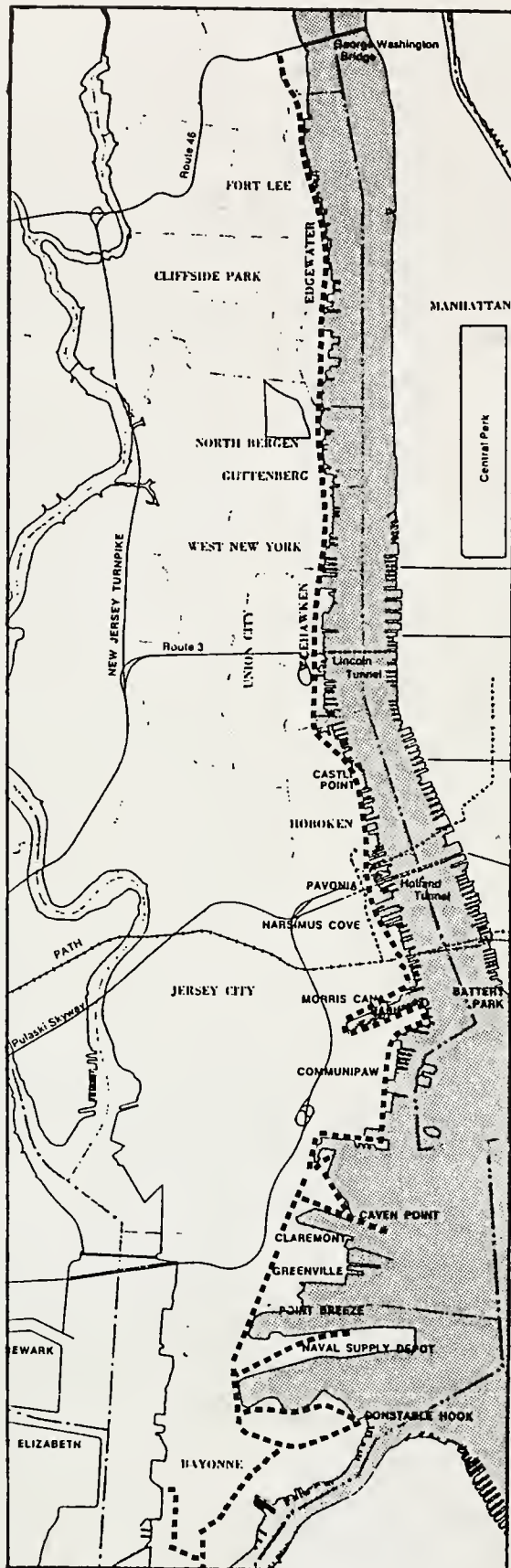
BPC residents, for the most part, have made it clear that they resent the use of the park by non-residents. Many residents believe that the park's rules don't apply to them, and have flagrantly disregarded security guards trying to enforce regulations. There are instances of owners purposefully lifting their dogs over fences onto ornamental flower beds, of residents informing users that the park is private, and arguments over park use with security guards that have culminated in violence. Despite the residents' stance, the Parks Corporation's current Executive Director, Tessa Huxley, continues to plan activities for a broad, citywide audience. A change in leadership, however, could quickly eliminate those programs and confine the Corporation to an agenda narrowly focused on the interests of the residents.

owners and political jurisdictions--is apt to be more responsive and flexible than parallel monitoring by a government agency. While this is not always the case, it is worth considering that, due to the project's urban context, current walkway easements contain numerous affirmative measures (such as the allowance of demolition, redesign and construction of adjacent built areas) which mandate systematic and adaptable monitoring and enforcement. This easement technique is a departure from standard rural easements, consisting principally of references to prohibited activities.

### The NIMBY Syndrome in Waterfront Housing Developments

In its current form, DEPE's *Walkway Plan and Design Guidelines* fails to address adequately the relationship between the walkway and the range of public and private land use along the water's edge. For example, commercial and office projects that aggressively seek to attract the public to their sites are typically more committed to public waterfront access than are owners of small scale, semi-attached luxury homes. For instance, developers of some office and commercial projects have incorporated the walkway requirements into the preliminary design phase. This resulted in more integrated sections of the walkway, and, on two occasions, the voluntary doubling of gross area dedicated to public use.





Map of the Hudson Waterfront Walkway.

From the beginning, housing developers and homeowners' associations have viewed the walkway as an intrusion and a heavy burden. A number of residential walkway sections reflect this attitude in their planning and design. Instead of acknowledging the presence of a public walkway, the majority of residential walkway sections appear to deny its existence. In many instances, the separation between walkway and residences is obscured, with inadequate transition zones between publicly-accessible and private lands. In contrast to other successful urban waterfront walkways (See sidebar, "Whose Walkway Is It Anyway?"), the walkways have been enveloped by the residential development as an extension of its front- or backyard. Frequently, the walkway segments along residential developments are designed with the express purpose of discouraging public access: signage is nonexistent and public access to the walkway is difficult to locate. Waterfront developers often market exclusivity; although open space and the esplanade are used in advertising brochures to attract homebuyers, mention of a public walkway can only be found buried in the legal prospectus.

To those who bought homes believing the walkway was private, the public's right to access is considered an untenable intrusion, an infringement of property rights that places an unfair liability and financial burden on homeowners. Homeowners' associations have reacted to DEPE's access policy in differing ways. Perhaps the most extreme example is that of one association in the Boro of Edgewater, which erected a "No Trespassing" sign attached to a heavily padlocked fence with barbed wire. Notified by outraged users, DEPE issued stiff fines for the blatant violation. The homeowners' association responded by initiating legal action against the State for requiring public access in the first place. The case, the state's first effort to enforce the developer permit conditions, represents a direct challenge to the walkway criteria under the public trust doctrine. The suit is expected to be settled out of court within the next few months.

Over the years, developers have urged the DEPE to reconsider its walkway and open space requirements along developable piers in the Hudson River. One proposed project includes the designation of an entire pier as open space to facilitate the transfer of development potential to adjacent piers. Other pier projects accept the public access and walkway policy grudgingly. In Weehawken, the most recently built pier development is Riva Pointe, a luxury residential project. Riva Pointe has been not so subtly designed to discourage public access. The entrance to Riva Pointe is up one flight of stairs through a large ornamental gate. There are, of course, no signs stating that the walkway, which runs along the center of the pier, is open to the public. Every indication is that the pier is private.

One last problem specific to residential sections of the walkway concerns the public's right to gain perpendicular access to the water's edge, frequently by walking through a site from the nearest public road. Portions of the waterfront are accessible to the public at present, although access to many of the privately owned parcels is difficult or non-existent. The Port Authority Trans-Hudson (PATH) rail system provides immediate access to the waterfront at several points. Some bus service is available, but for the most part the waterfront is currently accessible only by car. Parking along the waterfront can be difficult, particularly near PATH stations. The case for perpendicular access is made more compelling when considering large, but isolated waterfront parcels, where the walkway ends abruptly, with no connection to other segments of the walkway. On several occasions, representatives of the DEPE, Trust for Public Land and the Hudson River Waterfront Conservancy attempted to gain access to these walkway sections. They were turned back repeatedly by security staff, who were often ill-informed about the access requirements. Where alternate access to the walkway was available, more often than not it was by an unmarked and thoughtfully disguised route.

### **A Public Purpose, Privately-Implemented Walkway**

With assistance from the Hudson River Waterfront Conservancy, the walkway has emerged, section by section, in one of the nation's most urban and densely-populated areas. In its policymaking role, the DEPE continues to face new challenges. Developing an 18-mile linear waterfront park plan across nine municipalities represents the first, and arguably least difficult, step towards realizing the vision that was originally promoted almost thirty years ago. The walkway's completion and ultimate success as a public amenity hinges on several additional factors, including a sound real estate market and supportive policies relating to walkway use, management and enforcement.

The DEPE's 1984 walkway plan reflected the heady times and optimism of a period marked by development activity and public-private partnerships--a time when government regulators enjoyed substantial leverage over waterfront projects and permit applications. Today, with development along the "Gold Coast" down to a trickle, with foreclosures and auctions dotting the shore, progress on the walkway has come to a virtual halt, held hostage by the recession.



*Grundy Park in Jersey City offers fine views of Manhattan's Financial Center.*

In its present incarnation, the walkway is almost entirely the product of private development activity, lacking the continuity and financial strength of a government-sponsored project. Because DEPE's walkway requirement is triggered by a change in land use, parcels without development plans may remain without a walkway for years. Conversely, isolated parcels that have been developed under the walkway requirement have, in some instances, created parks plagued by management problems. The image of a continuous "string of pearls" is powerful indeed, but today that image must acknowledge current market realities.

### **Management and Security**

Although the walkway was planned as one continuous park, no mechanism currently exists to ensure consistent management and security along the waterfront. One owner may fail to provide even minimal maintenance, while another, seeking to encourage public access, may have an expensive management program. Commercial owners typically prefer to retain control and responsibility for the management of the walkway (i.e., public security as well as maintenance of the walkway, street furniture, plants and lighting fixtures) to ensure a standard of quality consistent with their development.

Recognizing the state's limited powers to monitor and enforce public access and management of the walkway, the Trust for Public Land, in conjunction with the HRWC and under contract to the DEPE, drafted a set of proposed management guidelines for the walkway in 1991. These guidelines set forth explicit standards that all walkway owners must follow. The guidelines will be incorporated into the walkway plan and can be used as a reference in easements conveyed to DEPE. The report





*A walkway section of the Lincoln Harbor mixed-use redevelopment area in Weehawken.*

accompanying the guidelines strongly recommends the establishment of penalties for non-performance of management duties, with the Conservancy monitoring all walkway easements.

Given the multiple political jurisdictions and relative youth of the walkway, it comes as no surprise that a recognizable system of police authority and response has yet to develop. A strong local police presence along the walkway could limit liability and costs assumed by owners, while also protecting the rights of users in sections where private security forces may seek to prevent or unreasonably restrict use. With each walkway owner and municipality struggling to oversee its own lands, and little or no coordination of security, the question of adequate security along the waterfront remains unresolved.

### **Liability**

Under DEPE's walkway requirement, liability is retained by the landowner. This is not as heavy a burden for office and commercial projects, which carry comprehensive liability policies, as it is for residential projects and waterfront condominium homeowners' associations. For the homeowners' associations, liability insurance is typically one of the larger expenses. As one would expect, many residential projects have sought to control their liability costs by limiting or excluding the public from walkway use. In an unusually effective countermeasure, the State recently enacted the Public Access Liability Law (P.L. 1989 c. 172). The law states that, for

landowners whose property is freely accessible by the public, liability is limited to cases of gross negligence. This statute is expected to reduce liability litigation and, consequently, landowner insurance costs.

### **Conclusion**

From both a planning and implementation standpoint, the objective of constructing a continuous pedestrian walkway along the water's edge--through nine separate political jurisdictions and hundreds of private land ownerships--is nothing short of breathtaking and groundbreaking. While the formal DEPE walkway effort is just short of its tenth birthday and less than twenty percent complete (thus

leading one to project its build-out at fifty years), it remains proof positive that the walkway is currently under construction. Triggered solely by regulatory requirements, the walkway stands as testimony to the delicate balance between a publicly conceived and fostered amenity that is built, managed and insured by myriad private interests.

A number of walkway observers have asked the question whether it would be possible to accelerate the completion of the walkway through direct state purchase or funding of sections. Others have wondered whether a 50-year buildout is satisfactory. Regrettably, it was the initial policy of DEPE and other government decision-makers to build the walkway principally through the process of regulatory exaction. From the vantage point of the 1980s, this position seemed eminently reasonable. Of late, however, walkway planners, local citizens and their elected representatives have begun to press for direct public expenditure for acquisition of needed walkway sections. Several groups have gone public with proposals for purchase of specific "gap sites" or promenade areas that can better link existing walkway sections. With last year's reauthorization of the federal Surface Transportation Act, walkway planners and advocates are hoping to secure a significant portion of the \$71 million available to New Jersey over the next five years for qualifying pedestrian and alternative transportation projects. There is no question that when it comes to the Hudson River walkway, hope springs eternal. CP