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PUBLIC NOTICE

ENVIRONMENTAL PROTECTION

OFFICE OF LEGAL AFFAIRS

Notice of Receipt of Petition for Rulemaking

Petition to Adopt Rules Limiting or Prohibiting Development in Certain Wildfire Hazard Areas; Mandating Retrofit of State-of-the-Art Fire Prevention Practices on Existing Development in Certain Wildfire Hazard Areas; and Requiring Monitoring and Reporting of Emissions of Air Pollutants from Wildfires and Prescribed Burns

N.J.A.C. 7:7, 7A, 13, 27, 38, and 50

Petitioner: Bill Wolfe

Take notice that on March 9, 2022, the Department of Environmental Protection (Department) received a petition for rulemaking from Bill Wolfe (Petitioner). Petitioner did not comply with N.J.A.C. 7:1D-1.1, Procedure to petition for a rule, which the Department promulgated in accordance with the N.J.S.A. 52:14B-4(f) of the Administrative Procedure Act. The Department's rules state that petitions for the promulgation, amendment, or repeal of a rule by the Department shall be sent electronically to the dedicated email address identified in the rule, or in hard copy to the Office of Legal Affairs at the provided address. N.J.A.C. 7:1D-4.1(c). Petitioner did neither. Rather, Petitioner emailed the petition to various Department employees (including the Commissioner), individuals associated with the Pinelands Commission, as well as to two State Senators and other individuals outside of the three agencies to which he directs the petition.

Despite these procedural flaws, the Department is acknowledging receipt of the petition for rulemaking. As discussed below, the Department does not and cannot acknowledge the petition on behalf of the Pinelands Commission or the Highlands Water Protection and Planning Council (Highlands Council), to the extent the petition asks for relief that is within the sole jurisdiction of either entity.

The Petitioner requests that the Department, Pinelands Commission, and Highlands Council amend the agencies' rules, the Pinelands Comprehensive Management Plan, and the Highlands Regional Master Plan to:

- Ban new development in mapped "extreme" wildfire hazard areas;
- Restrict new development in mapped "very high" and "high" wildfire hazard areas;
- Mandate retrofit of state-of-the-art fire prevention practices on existing development in mapped "extreme," "very high," and "high" wildfire hazard areas;
- Prohibit reconstruction of fire-damaged properties in mapped "extreme," "very high," and "high" wildfire hazard areas; and
- Monitor, quantify, and publicly report in the State's State Implementation Plan (SIP) under the Federal Clean Air Act all air pollution emissions, including greenhouse gas emissions and fine particulate matter (including very fine particulates less than PM10), and impacts of wildfires and prescribed burns.

In support of the petition, Petitioner cites to the authority of the Highlands Water Protection and Planning Act (N.J.S.A. 13:20-1 et seq.), the Pinelands Protection Act (N.J.S.A. 13:18A-1 et seq.), the Coastal Area Facilities Review Act (N.J.S.A. 13:19-1 et seq.), the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.), the Air Pollution Control Act (N.J.S.A. 26:2C-1 et seq.),

the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.), the Endangered and Nongame Species Conservation Act (N.J.S.A. 23:2A-1 et seq.), the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.), and the general powers of the Department (N.J.A.C. 13:1D-1 et seq.). As justification for the need for the requested action, Petitioner cites to the February 10, 2022, testimony of Commissioner Shawn M. LaTourette before the New Jersey Senate Environmental Committee, in which the Commissioner noted the number of wildfires in the State in 2021, and stated that the best available Department science indicates that wildfire risks and impacts are projected to increase due to climate change. Petitioner also refers to the 2019 New Jersey Hazard Mitigation Plan (2019), in particular Section 5.12, Wildfire (https://nj.gov/njoem/mitigation/pdf/2019/mit2019_section5-12_Wildfire.pdf), which assesses the risk and likely impact of wildfires in various regions of the State.

According to Petitioner, the State's land use planning and regulatory framework are seriously flawed and are incapable of preventing and reducing wildfire risks and impacts. Consequently, new and more stringent measures are necessary to prevent and reduce such risks and impacts. Petitioner states that he makes his petition "to protect people and property from current and projected wildfire risks and impacts; to protect ecosystems, natural resources, air quality, water quality, wildlife, vegetation, and public health from current and projected risks and impacts of wildfire; to mitigate the risks and impacts of climate change; and to reduce the occurrence and damages from wildfire disasters and the disbursements of [F]ederal and [S]tate taxpayer funded disaster assistance and response programs."

The Pinelands Protection Act gives the Pinelands Council the sole authority to amend the Pinelands Comprehensive Management Plan. N.J.S.A. 13:18A-6. Similarly, although the

Highlands Water Protection and Planning Act requires the Highlands Council to consult with the Department and other State agencies during the preparation of or revisions to the Highlands Regional Master Plan, the statute gives the Highlands Council sole authority to prepare, adopt, and amend the regional master plan, and to promulgate regulations to exercise its powers and perform its duties and responsibilities under the Highlands Water Protection and Planning Act. N.J.S.A. 13:20-6, -8 and -9. Accordingly, the Department does not acknowledge receipt of the petition to the extent that Petitioner requests amendments to the Pinelands Comprehensive Management Plan and the Highlands Regional Master Plan, or otherwise seeks relief that is beyond the Department's authority.

This notice and the full text of the petition filed in this matter are available on the Department's website at <http://www.nj.gov/dep/rules/petition.html>.

In accordance with N.J.A.C. 1:30-4.2, the Department will subsequently mail to the Petitioner and file with the Office of Administrative Law a notice of action on the petition.