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Highlands Council

Legal Department

Notice of Action on 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 the New Jersey Highlands Water Protection and Planning Council (Highlands Council) has determined to deny a petition for rulemaking received on March 9, 2022, from Bill Wolfe (Petitioner). Additionally, as discussed below, the Highlands Council does not and cannot respond to the petition on behalf of the New Jersey Department of Environmental Protection (DEP) or the New Jersey Pinelands Commission (Pinelands Commission) to the extent Petitioner asks for relief that is within the sole jurisdiction of either entity.

The Petition

The Petitioner requests that the Highlands Council, DEP and the Pinelands Commission amend the Highlands Regional Master Plan, DEP's regulations, and the Pinelands Comprehensive Management 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 wildfire 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. 58:16A50 et seq.), and the general powers of DEP (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

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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 Highlands Council Response to the Petition

The Highlands Council has determined to deny this petition for rulemaking. The Highlands Council agrees with Petitioner that wildfire prevention, combating climate change and protection of the natural resources in the Highlands Region are essential actions; however, the Highlands Council has determined that a rule change is unnecessary at this time. As outlined below, notwithstanding Petitioner's Petition for Rulemaking, the Highlands Council has strong protections in place to address the aforementioned issues.

The Highlands Council encourages a comprehensive regional approach to implementing the 2004 Highlands Water Protection and Planning Act (the Highlands Act) (N.J.S.A. 13:20-14 and 15). The Highlands Act established the Highlands Council and charged it with the creation and adoption of the Highlands Regional Master Plan (RMP) to protect and enhance the natural resources within the New Jersey Highlands. Many of the "extreme" wildfire hazard areas – areas where Petitioner would like to see development banned - are located in the Preservation areas of the New Jersey Highlands; in accordance with the Highlands Act and the RMP, strong restrictions on development are already in place in these areas. Additionally, the Highlands Act requires the Highlands Council to review and update the RMP every six years, after public hearings. The Highlands Act contemplates that amendments to the RMP will arise principally out of this six-year reexamination. Accordingly, the Highlands Council follows this outlined structure to review and update the RMP in a manner that is consistent with the Highlands Act and ensures robust public participation. The RMP was most recently amended in 2019; a public comment period was held from March 27 through May 28, 2019, and the Highlands Council held six public hearings in locations throughout the state to solicit public comment. Petitioner is encouraged to comment on the Highlands Council's next RMP amendment which will take place in 2024.

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. The DEP has the sole authority to amend the various rules implicated by this petition. Accordingly, the Highlands Council does

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not and cannot respond to the petition to the extent that Petitioner requests amendments to the Pinelands Comprehensive Management Plan and any DEP regulations, or otherwise seeks relief that is beyond the Highlands Council's authority.

This notice and the full text of the petition filed in this matter are available on the Highlands Council's website at www.nj.gov/njhighlands/act/#rules. Additionally, the notice of receipt of petition was published in the April 18, 2022 New Jersey Register (54 N.J.R.728(a)).

In accordance with N.J.A.C. 1:30-4.2, the Highlands Council will mail to Petitioner and file with the Office of Administrative Law for publication in the next New Jersey Register, a notice of action on the petition.

5/3/2022

Date



Lisa J. Plevin
Executive Director