



STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

Ten Franklin Square, New Britain, CT 06051

Phone: (860) 827-2935 Fax: (860) 827-2950

E-Mail: siting.council@ct.gov

Web Site: portal.ct.gov/csc

PARTY STATUS REQUEST FORM

Docket/Petition No.

509

Town/City

New Canaan

Date

5/9/2022

Name:

New Canaan Neighbors

Street Address:

60 Squires Ln.

City, State, Zip:

New Canaan, CT 06840

Contact Number:

(510) 913-3476

E-mail:

Justin.Nishioka@gmail.com

1. Manner in which party's legal rights, duties, or privileges will be specifically affected by the agency's decision in this contested case:

Please see attached verified petition.

2. Manner and extent to which party proposes to participate:

Please see attached verified petition.

3. Statutory authority for party status request:

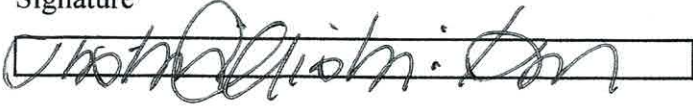
C.G.S. § 27a-19

4. Nature of evidence that the party intends to present:

Please see attached verified petition.

Copies of this request are required to be electronically mailed to all participants on the service list of a **pending** matter, which can be found on our website in Pending Matters under the appropriate docket or petition number.

Signature



Date

5/9/2022

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE: :
: :
APPLICATION OF HOMELAND TOWERS, : DOCKET NO. 509
LLC FOR A CERTIFICATE OF :
ENVIRONMENTAL COMPATIBILITY AND :
PUBLIC NEED FOR THE :
CONSTRUCTION, MAINTENANCE AND :
OPERATION OF A :
TELECOMMUNICATIONS FACILITY AT :
1837 PONUS RIDGE ROAD, NEW :
CANAAN, CONNECTICUT : MAY 9, 2022

**VERIFIED PETITION TO INTERVENE AS PARTY UNDER CEPA,
GENERAL STATUTES § 22a-19, §4-177a AND §16-50n**

New Canaan Neighbors (“NCN”), a group of New Canaan residents who reside near 1837 Ponus Ridge Road in New Canaan, Connecticut, including three families, one of which abuts 1837 Ponus Ridge Road (59 Squires Lane), hereby intervene in the above-captioned matter pursuant to C.G.S. §22a-19 and applicable law.

All members of NCN have homes within the visual corridor of the facilities proposed in this proceeding. Their property and personal interests may be materially impacted by these proceedings in that NCN’s members enjoy the unspoiled nature of the area and specifically located to the Lost District region of New Canaan to avoid industrial and commercial infrastructure.

NCN hereby moves and petitions the Connecticut Siting Council (“the Council”) to become a party intervenor in so that it may submit evidence and have it considered by the

Council. The purpose of the intervention is to participate in these proceedings to prevent unreasonable impact to the natural resources of the State including impacts to scenic resources and the scenic vistas surrounding the hilltops overlooking the Laurel Reservoir, Dantown archeological and historical sites, and the Ponus Ridge Road corridor, and numerous other natural undisturbed areas, so many so that the impact to scenic resources may be unprecedented in the siting of a single facility.

Pursuant to Conn.Gen.Stat. §22a-19 (“CEPA”), §16-50n and §4-177a, NCN seeks party status as an entity which has a direct interest in the proceedings which will be specifically and substantially affected as it its members own, use and enjoy the land surrounding the proposed facilities being considered by the Council.

NCN seeks party status in the above proceedings for the purpose of submitting testimony, briefs and other evidence relevant to the consideration of the application under consideration; including the mitigation of environmental impact to scenic and natural resources.

NCN’s participation will be in the interests of justice and is proper under CEPA in that the evidence and testimony to be given will tend to show that the proposed activity for which Applicant seeks permission is likely to unreasonably harm the public trust in the air, water or other natural resources of the State of Connecticut in that, if granted, the proposed facility will, *inter alia*, unreasonably impair the visual quality of pristine scenic vistas where there are feasible and prudent alternatives to the coverage using alternative locations

and/or smaller facilities that do not impair the scenic views.

In support of this application, the movant states the following:

1. The Connecticut Siting Council is the agency with jurisdiction over applications for Certificates of Environmental Compatibility and Public Need for the construction, maintenance and operation of telecommunications facilities in the State of Connecticut pursuant to C.G.S. §§ 16-50g, et seq.
2. By application dated April 13, 2022, Homeland Towers, LLC made application to the Connecticut Siting Council for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance and operation of telecommunication facilities on property at 1837 Ponus Ridge Road, New Canaan, Connecticut.
3. The Connecticut Siting Council accepted the application, known as Docket No. 509, and must make a decision on the application on or before September 10, 2022.
4. NCN states that the activities proposed by the applicant, Homelands Towers, LLC, and which are the subject of its application are reasonably likely to have the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of this state in that:
 - a. The applicant, Homeland Towers, LLC, has failed to provide the Connecticut Siting Council with sufficient information to allow it properly to evaluate the environmental impact of the proposed cellular communications tower on the wetlands and watercourses on and adjacent to the proposed cellular communications tower site,

both with respect to the identification and delineation of the wetlands and their characteristics and functions.

- b. The construction and operation of the proposed cellular communications tower which is the subject of the Homeland Towers, LLC application is reasonably likely to result in a significant adverse impact to avian populations, particularly migrating songbirds and waterfowl, and to listed species reported in the area and their habitat.
 - c. The topography of the proposed location of the cellular communications tower site is steep, vulnerable to erosion, and in close proximity to the Laurel Reservoir, a high-quality public water supply source recognized by the Connecticut Department of Public Health pursuant to C.G.S. § 25-33q, and the construction, maintenance and use of the tower is reasonably likely to adversely affect the water quality of Laurel Reservoir.
 - d. As proposed, the tower will be visible from Wren Knolls, large portions of Centennial Watershed State Forest, and properties along the shore of Laurel Reservoir, and will have a significant adverse visual impact due to the topography of the location.
 - e. The applicant has failed to propose alternatives to the currently proposed location for the cellular communications tower which is the subject of its application that would have lesser adverse impact on the natural resources identified above.
5. General Statutes §22a-19 (a) authorizes any person who files a verified petition as described in the statute to intervene in any administrative, licensing or other

proceeding and in any judicial review thereof made available by law. The words “in any administrative, licensing or other proceeding” in General Statutes § 22a-19 (a) have been construed to include intervention in pending Connecticut Siting Council proceedings. See, e.g., Connecticut Coalition Against Millstone v. Connecticut Siting Council, 286 Conn. 57, 942 A.2d 345 (2008).

6. NCN intends to submit evidence to the record which will assist the Council in assessing whether 1837 Ponus Ridge Road is a suitable site for a telecommunications facility as proposed by the Applicant.

DISCUSSION OF LAW

The Council must be mindful of the statutory requirements which apply to interventions under CEPA. The bar is quite low for filing an intervention and thus §22a-19 applications should not be lightly rejected. *Finley v. Town of Orange*, 289 Conn. 12 (2008) (an application need only allege a colorable claim to survive a motion to dismiss) citing *Windels v. Environmental Protection Commission*, 284 Conn. 268 (2007).

CEPA clearly and in the broadest terms indicates that any legal entity may intervene. This includes municipal officials, *Avalon Bay Communities v. Zoning Commission*, 87 Conn. App. 537, 867 A.2d 37 (2005).

An allegation of facts that the proposed activity at issue in the proceeding is likely to unreasonably impair the public trust in natural resources of the State is sufficient. See,

Cannata v. Dept. Of Environmental Protection, et al, 239 Conn. 124 (1996)(alleging harm to floodplain forest resources).

The Connecticut Appellate Court has noted that statutes "such as the EPA are remedial in nature and should be liberally construed to accomplish their purpose." *Avalon Bay Communities, Inc. v. Zoning Commission of the Town of Stratford*, 87 Conn.App.537 (2005); *Keeney v. Fairfield Resources, Inc.*, 41 Conn. App. 120, 132-33, 674 A.2d1349 (1996). In *Red Hill Coalition, Inc. V. Town Planning & Zoning Commission*, 212 Conn. 7272, 734, 563 A.2d 1347 (1989) ("section 22a-19[a]makes intervention a matter of right once a verified pleading is filed complying with the statute, whether or not those allegations ultimately prove to be unfounded"); *Polymer Resources, Ltd. v. Keeney*, 32 Conn. App. 340, 348-49, 629 A.2d 447 (1993) ("[Section] 22a-19[a] compels a trial court to permit intervention in an administrative proceeding or judicial review of such a proceeding by a party seeking to raise environmental issues upon the filing of a verified complaint. The statute is therefore not discretionary.") See Also, *Connecticut Fund for the Environment, Inc. v. Stamford*, 192 Conn. 247, 248 n.2, 470 A.2d 1214 (1984).

In *Mystic Marinelife Aquarium v. Gill*, 175 Conn. 483, 490, 400 A.2d 726 (1978), the Supreme Court concluded that one who filed a verified pleading under § 22a-19 became a party to an administrative proceeding upon doing so and had "statutory standing to appeal for the limited purpose of raising environmental issues." "It is clear that one basic purpose of the act is to give persons standing to bring actions to protect the environment." *Belford v.*

New Haven, 170 Conn. 46, 53-54, 364 A.2d 194 (1975).

The Intervenor is entitled to participate as a §22a-19 intervenor which allows for a right of appeal under that statute. *Committee to Save Guilford Shoreline, Inc. v. Guilford Planning & Zoning Commission*, 48 Conn. Sup. 594, 853 A.2d 654(2004) once any entity has filed for intervention in an administrative proceeding, it has established the right to appeal from that decision independent of any other party. *Mystic Marinelife Aquarium v. Gill*, 175 Conn. 483 (1978) stated quite clearly that "one who files a §22a-19 application becomes a party with statutory standing to appeal." *Branhaven Plaza, LLC v Inland Wetlands Commission of the Town of Branford*, 251 Conn. 269, 276, n.9 (1999) held that a party who intervenes in a municipal land use proceeding pursuant to §22a-19 has standing to appeal the administrative agency's decision to the Superior Court. The Court cited as support for this proposition, *Red Hill Coalition, Inc. v. Conservation Commission*, 212 Conn. 710, 715, 563 A.2d 1339 (1989)("because the [appellants] filed a notice of intervention at the commission hearing in accordance with §22a-19(a), it doubtless had statutory standing to appeal from the commission's decision for that limited purpose.")

In *Keiser v. Zoning Commission*, 62 Conn. App. 600, 603-604 (2001) our Appellate Court stated that the *Branhaven Plaza* case is directly on point and held "the plaintiff in the present case properly filed a notice of intervention at the zoning commission hearing in accordance with §22a-19(a). Accordingly, we conclude that he has standing to appeal environmental issues related to the zoning commission's decision."

The rights conveyed by CEPA are so important and fundamental to matters of public trust that the denial of a 22a-19 intervention itself is appealable. See, *CT Post Limited Partnership v. New Haven City Planning Commission*, 2000 WL 1161131 Conn. Super. (Hodgson, J. 2000)(§22a-19 intervenors may file an original appeal for improper denial of intervenor status).

NCN's application for intervenor status should be granted so that it may participate by presenting evidence for the record and meaningfully assist the Council in reaching a decision which minimizes impact to natural resources of the state while balancing the public need for responsible telecommunications facilities siting as required under the Council's enabling legislation.

VERIFICATION

The undersigned, Justin Nishioka, duly authorized member of New Canaan Neighbors, duly sworn, hereby verifies that the above application is true and accurate to the best of his knowledge and belief.



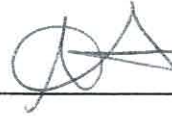
Justin Nishioka
Date: May 9, 2022

STATE OF CONNECTICUT)
COUNTY OF Fairfield) ss. _____

Before me, the undersigned, this 9th day of May, 2022, personally appeared

Justin Nishioka, intervenor in the above-captioned administrative proceeding, who, being duly sworn, made oath to the facts stated in the foregoing intervention petition, to the best of his knowledge, information and belief.

In Witness Whereof, I hereunto set my hand.



Notary Public
My Commission Expires: 8-31-2023
Commissioner of the Superior Court



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was electronically mailed to the following service list on May 9, 2022.

Attorney Lucia Chiochio
Attorney Kristel Motel
Cuddy & Feder LLP
445 Hamilton Avenue, 14th Floor
White Plains, NY 10601
LChiochio@cuddyfeder.com
KMotel@cuddyfeder.com

Raymond Vergati
Manuel Vicente
Homeland Towers, LLC
9 Harmony Street, 2nd Floor
Danbury, CT 06810
rv@homelandtowers.us
mv@homelandtowers.us

Brian Leyden
Harry Carey
AT&T
84 Deerfield Lane
Meriden, CT 06067
b15326@att.com
hc3635@att.com

Attorney Kenneth C. Baldwin
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597
(860) 275-8200
KBALDWIN@rc.com


Justin Nishioka