

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL  
MINUTES OF THE MEETING OF NOVEMBER 12, 2009

**PRESENT**

JOHN WEINGART	)	CHAIRMAN
KURT ALSTEDE	)	COUNCIL MEMBERS
MIMI LETTS	)	
MICHAEL FRANCIS	)	
ERIK PETERSON	)	
TRACY CARLUCCIO	)	
JANICE KOVACH	)	
JACK SCHRIER	)	
BILL COGGER	)	
TAHESHA WAY	)	
SCOTT WHITENACK	)	

**ABSENT**

GLEN VETRANO	)
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**CALL TO ORDER**

The Chairman of the Council, John Weingart, called the 89<sup>th</sup> meeting of the New Jersey Highlands Water Protection and Planning Council to order at 1:12 pm.

**ROLL CALL**

The members introduced themselves.

**OPEN PUBLIC MEETINGS ACT**

Chairman Weingart announced that the meeting was called in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6, and that the Highlands Council had sent written notice of the time, date, and location of this meeting to pertinent newspapers or circulation throughout the State and posted on the Highlands Council website.

**PLEDGE OF ALLEGIANCE** was then recited.

**APPROVAL OF MINUTES OF October 15, 2009**

*Mr. Schrier introduced a motion to approve the minutes. Ms. Kovach seconded it. Messrs. Peterson and Vetrano were absent. All other members present voted to approve. The minutes were APPROVED.*

**CHAIRMAN'S REPORT**

Chairman Weingart congratulated Mr. Peterson on his election to the Assembly and expressed regret that Ms. Way had lost her race for freeholder. He introduced Ms. Swan to give her report.

## **EXECUTIVE DIRECTOR'S REPORT**

Ms. Swan indicated that she would use a power point to give an update on: Plan Conformance, the Highlands TDR Program, Tennessee Gas Project Review and RMP Implementation. She reminded the Council of the December 8, 2009 deadline for Preservation Area municipalities to submit their petitions and that she and Mr. Borden had continued their evening informational meetings. She mentioned that she expected an extremely busy time ahead with documentation review for Plan Conformance.

Ms. Letts asked what had to be submitted for the December 8<sup>th</sup> deadline for Plan Conformance. Ms. Swan responded that information should be submitted in response to the seven modules. Most of the 1<sup>st</sup> and 2<sup>nd</sup> modules were complete resulting in the issuance, by the Highlands Council, of Highlands Municipal Build-Out Reports. Under the 3<sup>rd</sup> module, Housing Elements and Fair Share Plans, required information is limited to: a consistency report on sites under prior rounds, revised municipal affordable projections as a result of the Highlands Municipal Build-Out Reports and any interest in the transfer program as a sending or receiving area for affordable housing transfers. The deadline for Fair Share Plans for towns that had received an extension from COAH was further extended to June 2010. Ms. Swan mentioned that the staff would be looking for a draft plan by March 1, 2010 in order to determine consistency with the RMP. Planning Areas therefore, have an extension of time to decide whether to conform to the RMP if they wish to take advantage of the adjust growth projections.

For the 4<sup>th</sup> module, the Environmental Resource Inventory, towns had been supplied with a template to be completed and submitted in draft either as a standalone document or supplement to an existing ERI. For the 5<sup>th</sup> module, the Highlands Master Plan Element, a template had been provided to the towns and they are required to have a public meeting to discuss the Master Plan Element prior to December 8<sup>th</sup> with the Element to be submitted in draft. She continued with the 7<sup>th</sup> module which is the Petition for Plan Conformance, template documents have been provided and a Resolution is due with the Petition by December 8<sup>th</sup>.

### **HDC Estimator Tool**

Ms. Swan announced that the Highlands Development Credit (HDC) Estimator Tool is now available on the Council's website giving landowners the ability to see the potential range of development credits that their property might generate and mentioned that there had been a significant number of hits on the site.

*Mr. Peterson joined the meeting. Ms Swan stated that she would provide the Council with an overview of the Tennessee Gas Pipeline 300 Line Project and Ms. Carluccio recused herself from the Tennessee Gas discussion based upon her agency's involvement in the project.*

### **Tennessee Gas Pipeline 300 Line Project**

Ms. Swan began noting that there was a resolution on this project on the agenda for consideration of the Council and she would review the timing of the project and discuss the consistency determination prepared by staff.

Ms. Swan began by describing the existing line as a 24 inch natural gas pipeline system that traverses northern Pennsylvania and northwestern New Jersey in a 50 foot right of way (ROW) built in the 1950's. The proposed project upgrade is a pipeline loop (known as the 325 loop segment) that would be located at a maximum 25 foot offset from the existing line for a 75 foot wide permanent



ROW. There will be three Highlands municipalities affected by the expanded ROW: Vernon (8.7 miles), West Milford (6.7 miles), and Ringwood (0.6 miles) representing 16 miles in the Highlands Region, with 11 miles in the Preservation Area and 5 miles in the Planning Area. She mentioned that the application is for this specific route and not any alternative route that has been studied by Tennessee Gas in response to FERC.

She showed additional slides detailing the line and its location in the Highlands Region for Vernon Township, West Milford and Ringwood. She reviewed the proposed construction details - there would be a temporary construction workspace which is an additional 25 ROW for a typical 100 foot wide construction ROW, a pipe/equipment storage yard in 35 acres of previously disturbed area in West Milford that will be used during construction, access road that will consist of existing public roads and six existing private roads that will require minor improvement (regrading and vegetation trimming), a pig receiver to be temporarily constructed for removing an inline inspection tool from a pressurized pipeline, and main line valves that will require tie-in valves at the beginning and end of the loop and three main line vales along the pipeline.

She discussed the determination of need which unlike PSE&G where the Board of Public Utilities determines need, in this case, it will be the Federal Energy Regulatory Commission (FERC) that is currently reviewing this application and, if approved, will issue a Certificate of Public Convenience and Necessity, and the application for provisions of the Natural Gas Act and FERC regulations.

She then showed some aerials to illustrate the existing line and the existing vegetation break in the forested area as well as the site for equipment storage and staging area that would be restored to existing conditions after completion of the project. The next slide showed the Monksville Reservoir where the line crosses under the reservoir and she noted that horizontal directional drilling would be used in this area.

This application is for Exemption #11 from the Highlands Act and has been submitted to NJDEP that has dual jurisdiction with the Highlands Council in the Preservation Area and the Highlands Council which has jurisdiction in the Planning Area. She quoted from the Highlands Act that exemption 11 involves *"the routine maintenance and operations, rehabilitation, preservation, reconstruction, repair, or upgrade of public utility lines, rights of way, or systems, by a public utility, provided that the activity is consistent with the goals and purposes of this act."* An exemption determination would exempt the Project from: the Highlands Act, the Highlands Regional Master Plan, NJDEP Preservation Area Rules and any conforming municipal or county regulations. If the project is not deemed exempt, then Tennessee Gas Project would proceed with a Highlands Preservation Area Approval (HPAA) from NJDEP. She noted that consistent with the RMP (Objective 7F1f) the Highlands Council assesses the Project against the Highlands Act, the Regional Master Plan and NJDEP's Preservation Area rules at N.J.A.C. 7:38 to determine whether the project is consistent with the goals and purposes of the Highlands Act and therefore should be deemed exempt. She concluded by saying that complete consistency with the RMP is not required by the Highlands Act as the exemption standard is consistency with the goals and purposes of the Highlands Act.

She reviewed a timeline beginning in March 6, 2009 when Tennessee Gas submitted an Exemption application for the Preservation Area to NJDEP. On May 11, 2009 - Highlands Council staff issued a Draft Consistency Determination which determined the Project was inconsistent. A public comment period was provided through June 29. On September 10, 2009 in response to Council and public comments, Tennessee Gas amended the Project to include the Planning Area, they also



included a Comprehensive Mitigation Plan to address the inconsistencies for the Preservation and Planning Areas. On September 16, 2009, the Highlands Council staff Amended Draft Consistency Determination was posted on Council's website for public comment and that 2<sup>nd</sup> public comment period closed on October 9, 2009 resulting in a Revised Consistency Determination with track changes and public comment response documents posted on November 6, 2009.

She reiterated that the amended application was for both the Preservation and Planning Areas providing an opportunity to ensure consistency with the goals and purposes of the Highlands Act for a 16 mile route in contrast to the original exemption application or potential HPAA which would only cover the 11 miles in the Preservation Area. She also noted that Tennessee Gas had amended the application following the guidance provided in the Highlands Consistency Determination Report, using the RMP, to address all the inconsistencies. Their approach was to examine each issue and avoid, minimize or mitigate so as to be consistent with the goals and purposes of the Act.

Ms. Swan continued with a discussion of the proposed project beginning with **Temporary impacts** that will be mitigated through planning and coordination with, and critical review by, the Highlands Council; **Routine post-construction repair and maintenance** which is included in the application of Exemption #11 to address post-construction repair and maintenance activities (e.g., pipeline inspections, correction and repairs, ROW maintenance); a **Comprehensive Mitigation Plan (CMP)** which will be prepared consistent with the RMP using the approach of avoid, minimize and mitigate. She noted that the applicant commits to implementation of the CMP to achieve no net loss of Highlands Resources where avoidance and minimization are not sufficient and for **Land Acquisition and Stewardship** which will be a part of the CMP, there will be approximately 75 to 80 acres of undeveloped, environmentally sensitive lands to be acquired. The applicant has made a commitment to coordinate with the Highlands Council regarding the management and stewardship of this land.

Ms. Swan acknowledged Council Member Cogger's question on acreage affected and she reviewed the Existing ROW and Proposed New Disturbance. The existing pipeline ROW in the Highlands Region consists of approximately 103 acres; the proposed land disturbance would consist of approximately 230 acres (approximately 82 acres within the existing ROW and approximately 148 acres outside of the existing ROW). Of the 148 acres of new disturbance outside of the existing ROW, there would be approximately 39 acres of permanent land disturbance.

The next topic was the specifics of the concept plans for the Comprehensive Mitigation Plan which include: a Forest Management Plan, Open Waters and Riparian Areas Plan, Steep Slope Construction Plan, Critical Habitat Mitigation Plan, Carbonate Rock Plan, Water Resources Quantity Protection Plan, Water Quality Protection Plan, as well as a Historic, Cultural, Archaeological and Scenic Resources Plan. The applicant will monitor restoration efforts annually for the first three years after construction or until wetland revegetation is successful and there will be annual reporting to Highlands Council.

Ms. Swan continued with the Land Acquisition and Protection for Unavoidable Impacts to address impacts to forests - the applicant included a commitment for the acquisition and preservation of mature forest land to mitigate for unavoidable forest impacts. She noted that the site under consideration contains over 55 acres of mature upland forest located within the Forest Resource Area (mapped as high forest integrity value); Special Environmental Zone and Prime Ground Water Recharge Areas - a commitment to the acquisition and preservation of land (20-25 acres) located



within a Special Environmental Zone and that features substantial Prime Ground Water Recharge Area, to mitigate for unavoidable impacts to these resources; and a commitment to coordinate with the Highlands Council regarding the management and stewardship of this land.

She said that the applicant has developed an Environmental Construction Plan (ECP) specifically for the project, in accordance with FERC requirements and defined that plan as the environmental construction techniques that will be implemented during and following construction to protect environment and that the specifications in the ECP are based on procedures successfully used in constructing transmission systems throughout US and on guidelines from US Army Corps of Engineers and Natural Resource Conservation Service (NRCS).

Lastly, if the exemption #11 is granted, construction of project and implementation of CMP is contingent upon FERC approval for the project.; Following FERC issuance of certificate the applicant will file the Implementation Plan with FERC, the Implementation Plan includes all construction, restoration, and monitoring requirements including requirements of CMP and ECP; and Compliance with Implementation Plan will be monitored by FERC environmental inspectors also.

She concluded the presentation with the Staff Recommendation for the Highlands Council to approve the Highlands Act exemption application with conditions: that the applicant incorporates its findings and commitments regarding Prime Ground Water Recharge Areas; the applicant addresses short-term impacts of construction activities on rare, threatened and endangered species; the applicant provides to Highlands Council the qualifications of all Environmental Inspectors (other than FERC) prior to commencement of any on-site activity; and the applicant coordinates with the Highlands Council regarding the management and stewardship of lands acquired for preservation.

She also noted that there were some comments received after the end of the comment period but they had been considered by staff. Also a template form letter objecting to the project had been emailed out by the NJ Sierra Club which resulted in 206 form letters being received. Ms. Way asked how many miles were affected in West Milford and Ms. Swan replied 6.7 miles.

## **I. CONSIDERATION OF RESOLUTION – TENNESSEE GAS PIPELINE COMPANY 300 LINE PROJECT HIGHLANDS ACT EXEMPTION AND CONSISTENCY DETERMINATION – (voting matter with public comment)**

*Mr. Schrier introduced a motion to approve the resolution. Mr. Whitenack seconded it. Chairman Weingart asked for public comment on the resolution.*

### **PUBLIC COMMENT ON THIS RESOLUTION**

#### **Jeff Tittel, Director NJ Sierra Club**

He acknowledged that he had sent out a form letter to his members. He expressed concern about the proposed project and asked the Council to vote against it. He maintained that one cannot mitigate drilling through rock and that the water ways would be affected. He believes that there will be direct impact to the Monksville Reservoir and that buying land for mitigation is unacceptable – that restoration is the way to proceed. He also believes that this project is new, not an upgrade and

that an independent consultant was needed to identify endangered species. He urged the Council to reject the application.

**Eliot Ruga, New Jersey Highlands Coalition**

Mr. Ruga submitted his comments for the record. He believes that there is a lack of information that has been made available to the public in order to evaluate the project. He expressed concern that the Comprehensive Mitigation Plan was final and not a work in progress. He also had issues with the use of horizontal directional drilling and the qualifications of the Environmental Inspectors.

**John Galandak, President Commerce and Industry Association of New Jersey**

He submitted comments for the record and read his statement which supported the Council passing the exemption request application from Tennessee Gas.

**David Shope, Long Valley**

He supports the project and believes that compensation for landowners would be helpful. He compared the public ownership of national parks with private ownership of the Highlands Region.

**Wilma Frey, New Jersey Highlands Coalition**

She spoke to the mandate of the Highlands Act that was passed to protect the region and create a decision making structure to carry out that mandate. She is concerned that passing this application is just like "business as usual" and that the forest fragmentation is understated. She urged the Council to vote no.

**Kate Millsaps, New Jersey Highlands Coalition**

She spoke to the need for the project not being determined by FERC as yet. She spoke against the project stating that the Comprehensive Mitigation Plan was weak in the approach for transporting rare plants off site and cited an expert that she had consulted with at NY Botanical Garden who agreed with this assessment. She also did not agree that horizontal directional drilling was appropriate under the reservoir.

**Julia Somers, New Jersey Highlands Coalition**

She believes that the project is inappropriate and will endanger the water supply. She suggested that there be several, not just one, environmental inspectors with expertise in the areas required and have the Highlands Council not Tennessee Gas be the supervisor. She cited Governor elect Christie's criticism of Governor Corzine for not vetoing minutes of the meeting where PSE&G was granted an exemption. She recommended that the Council deny the project.

**Edward J. Murphy, VP Director-Pipeline Henkels and McCoy, Inc.**

His company has been awarded the contract for this project and he spoke to the extensive experience of his crews and that the first two crews would be environmental. He cited his company's sales as 1.2 -1.5 billion per year with 400 employees. He described the site preparation with silt fences and that the water will be protected. He also spoke to the spending of the crews assigned to the project as a source of economic stimulus for the area buying lodging, food and entertainment as well as the black top lumber and fuel for equipment. He mentioned that his company had previous experience in New Jersey and had been the recipient of environmental awards.

**John Walsh Local Union 825 International Union of Operating Engineers, AFL-CIO**



He spoke in support of the project and to the professional expertise of Tennessee Gas as evidenced on other projects in 2001 and its concern for the environment.

**Charles Moser, Vice President Heavy and General Construction Laborers' Local Union No. 472**

He supported the project on behalf of his members and spoke to the positive impact on jobs as well as the good working relationship they had with both Henkels and McCoy and Tennessee Gas.

**Dave Peifer, ANJEC**

He does not support the project and asked the Council to vote against it saying that the basic framework for review needs work and there should be time for rulemaking on how to deal with the Exemption #11. He expressed concern with the weight of evidence vs. precautionary measure approach. He does not believe that the mitigation offsets have a lesser value in the Highlands and that the entire project should be approved by FERC prior to action by the Highlands Council. He also had concerns about whether FERC would follow the guidelines that the Highlands Council was proposing. He asked why there was no provision for a performance bond on a three year construction project. He urged the Council to reject the application.

Chairman Weingart closed the public comment period on this resolution and asked if Council members had any comments. Council Member Way expressed concern about the impacts on the Monksville Reservoir. She also asked why the Council was being asked to vote on this exemption before the need had been established by FERC. She also spoke to the State Energy Plan advocating more Green Technology and said that she could not support this application.

Council Member Cogger asked whether the additional capacity was for storage or delivery of more gas. Ms. Swan replied that it was to supply more gas.

Mark Hamarich, Engineering Consultant, Tennessee Gas Pipeline, responded on the increase of 35% in capacity and also spoke to the use of hydraulic pressure to provide the additional gas through the "loop" lines.

Ms. Letts asked about whether the Highlands Council could ask for a bond. Mr. Borden explained that the difference between this application and PSE&G was that in this case FERC was approving and that this approval would require FERC compliance and enforcement which would take the place of a bond. There was additional discussion about whether this application would be the 2<sup>nd</sup> of many and also whether there was an alternative route. Ms. Swan commented that the alternative route that had been examined by Tennessee Gas would result in a greater impact to the Preservation Area. If the route were to be considered it would come before the Council for a Consistency Determination. She reiterated that if the an exemption were not approved then NJDEP would have jurisdiction under a HPAA for the Preservation Area and the Planning Area lands would not be afforded the protections afforded in the CMP. Mr. Alstede spoke to what he described as the simple task at hand as he believes that the legislators foresaw the need for additional upgrades and thus created the Exemption #11 process. Mr. Weingart asked what the consequences would be of requesting a performance bond. Mr. Borden explained that as a condition of approval FERC makes the applicant adhere to certain conditions and that FERC has far reaching enforcement powers. Additional discussion with respect to the advantages and disadvantages of approval at this stage ensued.

Ms. Letts introduced a motion to amend the resolution to include a performance bond and Ms. Kovach seconded it. The members approved the amendment of the resolution and Chairman Weingart sought a roll call vote on the amended resolution.

*Mr. Vetrano was absent. Ms. Carluccio had recused herself and Mr. Cogger and Ms. Way voted no. All other members voted to approve 8-2. The resolution as amended was APPROVED.*

Susan King from El Paso Corp. thanked the Council and praised the Council staff on behalf of the corporation.

Ms. Carluccio rejoined the meeting.

Chairman Weingart introduced the next resolution saying that staff would be working with 88 municipalities throughout the Plan Conformance process and he had asked staff for a proposal on how to delegate authority to handle that work load for a six month trial period. He asked Ms. Swan to discuss the resolution.

She noted that the Council has discussed this issue previously. In the case of Exemptions 9 and 11, she explained that staff has been proceeding and then reporting out to the Council except when they brought the matter before the Council as was the case for the application from Tennessee Gas She noted that WQMP's had been handled similarly. She asked members to look at the first *Now therefore* section. She reviewed that final Council actions listed in the resolution would be decisions of Council. Advice to other agencies would be for staff delegation such as exemptions and WQMPs. In the case of HDC allocation determinations, the Executive Director would review and issue HDC Allocation Determinations. RMP Updates would continue to be handled by staff and reported out to Council as had been the practice established. Ms. Letts asked whether no. 7 in the resolution applies to all above. Mr. Borden said it was intended to apply to numbers 1-5 in the second section.

## **II. CONSIDERATION OF RESOLUTION – AUTHORITY FOR HIGHLANDS PLAN CONFORMANCE AND HIGHLANDS PROJECT REVIEW – (voting matter with public comment)**

Mr. Schrier introduced a motion to approve the resolution and then amended it to include that a reassessment can be suggested at any time. Mr. Cogger seconded it.

Mr. Alstede asked if there could be a monthly report provided by the Executive Director that the Highlands Council would vote on. Mr. Weingart commented that members would not have the opportunity to be comfortable with the background of the actions taken with a monthly report. There was additional discussion that centered on the timing of the issues that would be held up while waiting for the vote. Ms. Swan noted that she could create a separate part of her Executive Director's report to highlight these actions.

Ms. Carluccio commented that the list comprises actions where policies have already been established by the RMP and suggested that staff and Executive Director should handle. She supported the amendment proposed.

## **PUBLIC COMMENT ON THIS RESOLUTION**



**Eliot Ruga, New Jersey Highlands Coalition**

He noted that the resolution being debated was not posted on the website prior to the meeting and he had not had an opportunity to study it. He asked that the Council vote at the next meeting.

**Julia Somers, New Jersey Highlands Coalition**

She expressed concern about item # 3 for federal, State and regional agency coordination with respect to consistency determinations. She believes that the public should be involved in the process for the Council actions to be transparent.

**Helen Heinrich, New Jersey Farm Bureau**

She asked that the resolution be tabled. She commented that the farm community is wondering how towns will make changes to the master plan and when will they see how the towns are managing changes to their master plans. She believes that the list, if added to Executive Director's report, should be made public. She asked what #5 means in the resolution.

**David Shope, Long Valley**

He commented that Exemption #1 is simple to do and he quoted from an opinion from Senator Littell which he provided for the record. He also commented that the exemptions 2, 3, and 4 were up to an applicant contacting the town building departments and that the Council should not be involved.

Ms. Swan commented on the public process referred to in the resolution noting that the actions on Plan Conformance were final Highlands Council actions and Municipalities are also required to have public hearings before making changes to their master plan or adopting the Highlands Master Plan Element.

Mr. Alstede made a motion to table this resolution and there was no second.

*Chairman Weingart asked for a roll call vote. Mr. Alstede voted no. Mr. Vetrano was absent. All other members voted to approve 10-1. The resolution was APPROVED as amended.*

**CHAIRMAN'S REPORT**

Chairman Weingart reviewed the current membership level of the 15 member Council authorized by the Highlands Act. Of the existing membership, there are three vacancies, nine members are in expired terms and three are in current terms (Ms. Way, Mr. Francis and Mr. Alstede). He commented that the Highlands Act specifies that members can serve until they are replaced and also that the membership requirements are intricate. He noted that the Governor's Appointment Office is in charge of the process and maintaining records but the current status (advisory as it is the best information available to the Council) is on the Highlands Council website. He announced that his term had expired on October 15, 2009 and that he had made the decision prior to the election not to seek another term. He advised the Council that he will continue to serve until he is replaced. He read a portion of the letter that he had sent to the Governor commenting on the professionalism and civility of the members. The Council members thanked him for his leadership of the Highlands Council.

**GENERAL PUBLIC COMMENT****Julia Somers, New Jersey Highlands Coalition**

She complimented Mr. Weingart for his fortitude and his service and thanked Mr. Peterson as well.

**David Shope, Long Valley**

He noted that three members were absent for his public comments and voted on the resolution without hearing his comments. He noted that as head of volunteer groups that when one's term is expired, he believes it is time to move on. He complimented the Chair for his efforts.

Chairman Weingart announced that the next Highlands Council meeting will be December 17<sup>th</sup> at 1 pm.

Mr. Alstede asked with respect to the Deeds of Easement for the TDR program whether the Highlands Council would be ultimately approving those documents by resolution. Ms. Swan replied that those Deeds of Easement are under review by the Attorney General's office and once that review is complete that the deeds are considered approved. Mr. Alstede believed that the Highlands Council should have the opportunity to give final approval due to the contentious nature of the process. Ms. Swan commented that they were provided at the last meeting and Council Members were asked if there were any other changes and hearing none, the Deeds were submitted to the Attorney General's office for Final Review. Mr. Alstede did not recall that the deeds were being sent for final review. Mr. Whitenack spoke to support Ms. Swan's statement that the deeds had been discussed as the final review. Ms. Swan also noted that there had been five iterations of the deeds. Both Chairman Weingart and Ms. Swan commented that changes could still be made at any time by Council Members. Chairman Weingart asked that the Deeds of Easement be circulated prior to the next Council Meeting.

Mr. Alstede asked if there was any new update on a definition of landowner for Exemption #1 and #2 from NJDEP. Mr. Borden said that there is no final determination from NJDEP and it was pending at the Attorney General's office. Mr. Alstede commented that he would keep asking to illustrate how long it was taking for a simple decision to be made by NJDEP.

*The meeting was adjourned at 3:15 pm.*

**CERTIFICATION**

I hereby certify that the foregoing is a true copy of the minutes of the meeting of the Highlands Water Protection and Planning Council.

Date: 12/17/09

Name: Paula M. Dees  
Paula M. Dees, Executive Assistant

**TRUE COPY**



<u>Vote on the Approval of these Minutes</u>		<u>Motion</u>		<u>Second</u>		<u>Yes</u>		<u>No</u>		<u>Abstain</u>		<u>Absent</u>
Councilmember Alstede						✓						
Councilmember Carluccio						✓						
Councilmember Cogger						✓						
Councilmember Francis						✓						
Councilmember Kovach						✓						
Councilmember Holtaway										✓		
Councilmember Letts				✓		✓						
Councilmember Schrier		✓				✓						
Councilmember Vetrano												✓
Councilmember Way						✓						
Councilmember Whitenack												✓
Councilmember Weingart						✓						

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MEMORANDUM

TO: Honorable Robert E. Littell

FROM: Carrie Anne Calvo-Hahn  
Senior Research Analyst

DATE: May 3, 2007

SUBJECT: HIGHLANDS' EXEMPTIONS FOR SINGLE FAMILY DWELLINGS

In response to Jeff Spatola's request on your behalf, I offer the following information regarding the exemptions for single family dwellings contained in the "Highlands Water Protection and Planning Act," P.L.2004, c.120 (N.J.S.A.13:20-1 et al.) ("the act").

Section 30 of the act (N.J.S.A.13:20-28) provides 17 exemptions from the provisions of the act, the regional master plan, any rules or regulations adopted by the Department of Environmental Protection (DEP) pursuant to the act, or any amendments to a master plan, development regulations, or other regulations adopted by a local government unit to specifically conform them with the regional master plan. Three of these exemptions are specifically for single family dwellings: two are for construction of new single family dwellings, and one is for improvements to single family dwellings in existence on the date of enactment of the act into law, i.e. August 10, 2004.

First, the act provides an exemption for the construction of a single family dwelling, for an individual's own use or the use of an immediate family member, on a lot owned by the individual on August 10, 2004 or on a lot for which the individual has on or before May 17, 2004 entered into a binding contract of sale to purchase that lot. Of the three exemptions provided for single family dwellings, only this one is limited based on ownership of the lot on the date of enactment of the act or a binding contract of sale as of May 17, 2004.



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Second, the act provides an exemption for the construction of a single family dwelling on a lot in existence on August 10, 2004, provided that the construction does not result in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by one-quarter acre or more. This exemption does not place any limitation on ownership of the lot. The exemption is specific to the size of the allowable construction based on the existence of the lot on August 10, 2004.

Third, the act provides an exemption for any improvement to a single family dwelling in existence on August 10, 2004, including but not limited to an addition, garage, shed, driveway, porch, deck, patio, swimming pool, or septic system. This exemption runs with the single family dwelling. It is not tied to the owner of the property as of the date of enactment. Provided the single family dwelling was in existence prior to the date of enactment of the act, any improvements to it are exempt regardless of the ownership of the property; restrictions are not placed on future owners of the dwelling.

The DEP's rules and regulations implementing the act contain this latter exemption as follows:

Any improvement to a lawfully existing single-family dwelling in existence on August 10, 2004, including but not limited to an addition, garage, shed, driveway, porch, deck, patio, swimming pool, or septic system as long as the improvement maintains the use as a single-family dwelling as defined by code or ordinance in the municipality in which the dwelling is located and does not permit use of the structure as a multiple unit dwelling.

This additional language in the DEP's rules and regulations specifies that the improvement must maintain the use of the home as a single family dwelling, but it does not add any conditions that would limit any improvement only to those made by the owner on or before the date of enactment of the act. The DEP's rules and regulations further clarify the exemption to apply to a "lawfully existing" single family dwelling, and define "lawfully existing" to mean that the dwelling "was constructed, or impervious surface placed, in accordance with all applicable State and federal environmental land use and water permits and valid municipal approvals, including building permits, septic system approval, limitations on lot coverage and, where applicable, certificates of occupancy." The addition of the word "lawfully" does not place a restriction on improvements by future owners of the dwelling, unless the dwelling was not constructed in accordance with all required permits and approvals.

I hope this information satisfactorily responds to your request. If I may be of additional assistance, please do not hesitate to contact me at (609) 292-7676.

tg



Would just like to underscore need has not been determined yet  
Kate Millsaps, NJ Highlands Coalition

Comments for NJ Highlands Council Meetings on November 12,  
RE: Tennessee Gas Pipeline Consistency Determination

Comments submitted at Highlands Council  
Meeting on November 12, 2009 by Kate Millsaps.  
Page 1 of 2.

I want to thank the Council staff for reviewing our comments on the Consistency Determination, however the New Jersey Highlands Coalition continues to find major discrepancies with this project and the goals and purposes of the Highlands Act.

1. The Standard of Review

The project is being reviewed to qualify for exemption 11, which would require that it is consistent with the goals and purposes of the Highlands Act. The Council staff is setting a dangerous precedent in this consistency determination by completely ignoring the Regional Master Plan and its Objective 7F1f which requires that a determination of being in line with the goals and purposes of the Act to qualify for exemption 11 is only granted upon a review finding that the proposed activities are consistent with Highlands Act, the RMP, and any rules or regulations adopted by the NJDEP pursuant to the Highlands Act. *This is the master plan that the Council worked for four years to create and adopted! And now it is being ignored.*

The Council staff have set a standard that "complete consistency with each individual requirement of the RMP is not required" but there are whole subsections in the RMP Consistency Determination for this project that continue to be inconsistent, such as Land Preservation and Stewardship, and others that I cannot see how the Staff decided it was consistent. These include sustainable economic activity. Importing gas from the Marcellus Shale which Tennessee Gas has clearly stated it plans to use the line to do, is NOT sustainable economic activity. A few temporary construction jobs in exchange for devastating destruction of mature upland forest, prime ground water recharge areas and Special Environmental Zones and importation of a hydrocarbon mixture fuel source is unacceptable in such a highly protected region of the state and contrary to our state's Energy Master Plan that calls for more renewable energy sources.

2. Plants

The mitigation plan for plant species continues to be dismal. The goals and purposes of the Act are to protect every rare, threatened, and endangered species in the Highlands, but a mitigation plan that includes the transport of these species to a nursery and to be replanted later ensures the destruction of seasonal herbaceous plants. I spoke with Natalia Pabon-Mora, PH.D candidate and research assistant at the New York Botanical Gardens, about the project and she said that seasonal herbaceous plants won't make it as they are sensitive to transplanting or can be destroyed without even realizing it because they are not in bloom. She noted that taking out the endangered, threatened, and rare populations will open the area up to opportunistic invasive species. She also stressed the importance of biodiversity in preventing invasive encroachment which will be lost in these areas if the plants are being transported and the CMP has no language to address these issues, only guarantying surveying until the area has vegetative cover similar to the surrounding area. By that point the whole ~~thing~~ <sup>surrounding area</sup> will be invasive species and the purpose of plant mitigation defeated. This lack of planning is especially distressing as the ROW traverses ~~several~~ <sup>5895</sup> Natural Heritage Priority Sites. Again destroying the rare, threatened and endangered plant communities of the Highlands is in direct opposition to the goals and purposes of the Act.

3. Water resources



The main goal of the Act is to protect the drinking water for over 5.4 million New Jerseyans. I cannot see how allowing drilling under the Monksville reservoir that provides drinking water for 2,448,310 people is consistent with the goals and purposes of the Act. Jeopardizing our water supply for the economic gain of one company is not consistent with the Highlands Act.

As the body charged with protecting the water, natural, and economic resources of the Highlands please deny this destruction, which will only benefit Tennessee Gas and not Highlands residents, from occurring. This project continues to be inconsistent with the goals and policies of the Highlands Act and should not be granted an exemption.

Comments to the NJ Highlands Council  
Consistency Determination Review, Tennessee Gas Pipeline Company 300 Line Project  
Thursday, November 10, 2009

In the Council's responses to comments received during the public comment period that ended October 9, 2009, the Council identifies a common theme, "that there is a lack of information of sufficient detail by which to evaluate the proposed project and that the Comprehensive Mitigation Plan lacks details and does not fully address impacts." Actually, Tennessee has provided a great deal of information. The CMP, the Environmental Construction Plan, the 13-volume Resource Report and the associated appendices are voluminous, detailed and comprehensive.

That the Council will continue to develop all elements of the project and the CMP at a future date in coordination with all pertinent agencies and then make them public, does little to reveal what, if any, elements of the CMP the Council has found deficient. The Comprehensive Mitigation Plan for the Highlands Region, dated September 2009, submitted to the Highlands Council, DEP and the US Fish and Wildlife Service, appears to be final—there are no references to previous versions or that it is a draft. It details the procedures Tennessee proposes to employ in the construction of the pipeline loop segment in the Highlands region with respect to the goals, policies and objectives of the Highlands Regional Master Plan and the proposed mitigation for the temporary and permanent disturbances of Highlands resources. Of all the documents provided by Tennessee to the Council as components of the Highlands Applicability Determination, it is the CMP that provides the basis for a determination of consistency. The New Jersey Highlands Coalition and the thirteen organizations that signed-on to our comprehensive and detailed comments are left without any understanding as to which, if any, of our concerns about the CMP are to be addressed.

To make a consistency determination and to do so in a manner that is truly transparent, the Council must have a final draft CMP that both the applicant and the Council agree is a final draft, not a document that the Council accepts as a work in progress. The final draft document must then be made available for public comment. Only after a final CMP is submitted can the Highlands Council make an informed and credible finding of consistency.

Elliott Ruga  
NJ Highlands Coalition





Commerce and Industry Association of New Jersey

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TO: Eileen Swan, Executive Director, New Jersey Highlands Council

FROM: John Galandak, President, CIANJ

DATE: Thursday, November 12, 2009

**SUBJECT:** *CIANJ Support for El Paso - Tennessee Gas "300 Line Project"*

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### *Introduction*

Thank you for taking the time to consider CIANJ's perspective on the El Paso Corporation - Tennessee Gas Pipeline Company 300-Line Project. On behalf of the members of the Commerce and Industry Association of New Jersey (CIANJ), who represent many of the ratepayers and consumers that need efficient energy delivery to grow and create jobs, I am proud to support this important and timely initiative.

The demand for natural gas in New Jersey is increasing, and as the demand curve quickly approaches a shrinking supply line, the 300-Line Project offers a partial solution that will help contain energy prices and increase reliability. The Project has also proposed extensive steps to minimize environmental impact, and deserves this Council's support.

### *The Need for Added Capacity*

The Northeast in general, and New Jersey in particular, have their natural gas importation constrained during peak heating times because of limited delivery systems. In 2008 there was 70 days during which shippers could not send all of the natural gas desired because of various chokepoints in the pipeline. That trend will only grow, as the ICF International analysis predicts a 1.3% per year demand increase in natural gas for New Jersey between 2005 and 2015. The market demand for New Jersey is forecast to be higher than anywhere else in the region, including New York City.

This natural increase in demand will put added strain on the existing delivery infrastructure. That strain is exacerbated when one considers declining Canadian exports of natural gas. Reduced production in Canada, combined with increased domestic consumption has led to a 20% drop in exports to the United States in the last three years. The factors affecting that decline will not change in the foreseeable future, which is why most analysts agree Canadian exports will continue to decline. This puts an even greater emphasis on the need to transport natural gas from points such as the Gulf Coast and Rockies. The 300 Line Project helps satisfy that demand.

### ***Consistency with Existing Public Policy***

In 2007, New Jersey completed an exhaustive review of the state's Energy Master Plan (EMP). The EMP correctly highlighted significant points, including (1) the advanced age of New Jersey's existing power plants and (2) the need to move toward an energy plan that better meets the state's environmental needs and reduces carbon emissions. This project is consistent with those goals as it will increase the reliability of natural gas, and help contain costs by increasing price competition among suppliers. Existing public policy for New Jersey and the United States also stresses the need to move away from imported energy. The 300 Line Project will help advance that existing policy goal by increasing the amount of domestically produced energy used within New Jersey's borders.

### ***Minimizing Environmental Impact***

Finally, CIANJ supports this project because of the substantial steps Tennessee Gas Pipeline Company and El Paso Energy Corporation have taken to minimize environmental impact. The companies deserve to be applauded for the thoughtful steps they have taken, and their demonstrated desire to work with New Jersey's environmental community, which can be seen in the Consistency Determination Review as Revised November 6, 2009.

The Project has developed a construction plan that would rely mainly on existing infrastructure, and minimize temporary Right of Way footprint in sensitive areas such as wetlands, steep slopes and stream crossings. They have agreed to increase the acquired mature forested parcel to 75-80 acres to be permanently protected to offset the 31 acres permanently impacted by construction, and to exceed the Council's 125% water recharge volume requirement. In addition, the company has a long history of responsible service to the region. All of this indicates a company that will work toward the protection of New Jersey's environment and ecosphere.

### ***Conclusion***

The 300 Line Project is a needed addition to New Jersey's energy infrastructure. It will help create and secure jobs, and ensure the reliable delivery of a clean energy source to New Jersey homes and businesses. The Project is consistent with the public policy goals of New Jersey, and has taken all reasonable steps to protect New Jersey's environment and to mitigate any impact to the Highland Region's forest and species. CIANJ is proud to endorse The Project and urges this Council to approve it today.

As always, CIANJ welcomes the opportunity to continue to work with this Council. If you have any questions or concerns, please do not hesitate to contact me at 201.368.2100 or [jgalandak@cianj.org](mailto:jgalandak@cianj.org)

Thank you for your time and consideration.