

**DRAFT – FOR CONSIDERATION AT THE NOVEMBER 12, 2009
MEETING OF THE HIGHLANDS COUNCIL**

Public Comments Received on the Highlands Water Protection and Planning Council Staff Draft Consistency Determination for Tennessee Gas Pipeline 300 Line Project (Comment Period of September 19 – October 9, 2009):

- Attorney on behalf of Tennessee Gas Pipeline Company
- New Jersey Highlands Coalition
- New Jersey Public Employees for Environmental Responsibility
- Utility and Transportation Contractors Association of New Jersey
- Private citizens

Public Comment Summary

The public comments received include statements both supporting and opposing the proposed project. Some comments received address the Highlands Applicability Determination (HAD) application including both the Comprehensive Mitigation Plan and the Environmental Construction Plan, and some are specific regarding the Highlands Council’s Draft Consistency Determination (CD). The public comments also include comments from the applicant’s attorney. In summary, the comments address the following issues:

Supportive Comments

- Believes that anti-business attitudes are not productive. Feels that denying an existing utility that serves our local public the ability to upgrade their infrastructure is not appropriate and not in the spirit of the Highlands Act.
- States that some of the pipelines date from the 1950s and believes that a high pressure gas pipeline and “aging infrastructure” do not mix well and can result in disaster. Concerned that aging pipeline could fail in the coldest winter months.
- Appreciates the opportunity to support the project. Believes that this project will help boost New Jersey’s economy, and will provide meaningful improvements to this critical infrastructure.
- Believes that the need for this project is substantial. Feels that the decline of gas supplies available from Canada, coupled with a movement away from foreign energy imports, has increased the need for smarter and more efficient domestic production and delivery of natural gas. Feels that the limitations hampering the current pipeline severely constrain the movement of domestic supplies from western locations to this Region, leading to higher prices and the potential for shortages in the near future.
- Believes that the applicant will deliver on their promise to improve the state’s access to a clean and reliable gas supply, while upholding the highest standards of environmental preservation in the process.

Opposition Comments

- Opposes the project because of its inconsistencies with the Highlands Act, the Highlands Regional Plan and NJDEP’s Highlands Rules. Specifically, states that Objective 7F1f requires consistency with the Regional Master Plan (RMP), NJDEP rules and local requirements, not just with the goals and purposes of the Act. Further, states that the need for this project has not yet been determined by the

DRAFT – FOR CONSIDERATION AT THE NOVEMBER 12, 2009
MEETING OF THE HIGHLANDS COUNCIL

sole agency in the state of New Jersey with the authority to make that determination, the New Jersey Board of Public Utilities.

- Feels that this project will have severe impacts on the Wallkill National Wildlife Refuge, which is under the jurisdiction of the US Fish and Wildlife Service and is not subject to the proposed CMP.
- Believes that this pipeline will have dire consequences to local habitats, wildlife and residential communities.
- Believes that there is no need for more natural gas in the Highlands Region or the Northeast region. Feels that the reasoning based in the applicant’s “needs statements” for more natural gas is flawed and lacks any scientific merit or sources.
- Feels that the preservation of our public land and wildlife is the most important need in the community, not lower gas prices.
- States that the New Jersey Energy Plan anticipates that New Jersey will rely on the development of more green technology for our future. Is dismayed because it appears that the Highlands Act has not been as effective as intended. Requests that this project be rejected.
- Feels that the Council staff has legally abandoned the entire RMP and allowed wholesale and discretionary case by case bargaining to determine project review outcomes.

Comments About Application Including the Comprehensive Mitigation Plan and Environmental Construction Plan¹

- Feels that the maps provided by the Council and the applicant regarding the pipeline do not sufficiently inform regarding the pipeline location.
- With respect to the applicant’s proposed horizontal directional drilling (HDD), feels that an “approved alternate crossing method” should be detailed for the public. Further, feels that the applicant must be required to list the components of the non-primary ingredients of the drilling fluid and their potential affects upon the integrity of drinking water and the possible effects on aquatic life. Also, states that per the HDD Contingency Plan, a notification procedure is in place in the event that unintended releases of drilling fluid are detected due to fracturing of rock or other failures. The notification list includes USACE and USFWS, NJDEP, and FERC. Feels that the Highlands Council should be on the notification list as well.
- States that six unnamed private roads of an unspecified total length are mentioned. States that the lengths of the roads, their current conditions including absence or presence of forest canopy, proposed improvements in order to accommodate the intended construction vehicle traffic, and a tree removal inventory all must be specified in order that the applicant may accomplish its commitment to the restoration and mitigation activities associated with access roads.
- States that the CMP estimates that a total of approximately 230 acres of Highlands Resources will be affected by the project (permanent and temporary). States that this estimate includes temporary workspaces, but excludes the 10,533 linear feet of the project area where impacts are avoided

¹ Note: Some of the issues in this section may have applicability in part to the Consistency Determination, and are also addressed there.

DRAFT – FOR CONSIDERATION AT THE NOVEMBER 12, 2009
MEETING OF THE HIGHLANDS COUNCIL

through the use of HDD. Believes that because the estimated impacts were factored into the proposed mitigation plan, if an “approved alternate crossing method” is utilized due to HDD failure, any new disturbance must be added to the amount of mitigation.

- States that the applicant proposes to drill a maximum depth of 220 feet below the ground surface in order to extend the loop segment underneath the Monksville Reservoir and the steep slope topography of Long Pond Ironworks State Park, west of the reservoir. Notes that three abandoned mine openings are mapped on the NJDEP Geology iMap; approximately 1,000 feet west of the HDD exit point, 1,700 feet west of the exit point, and 1,400 feet north of the entry point. States that the direction of these abandoned mines, their extent, and vertical depths are unknown. Is concerned that penetration into a mineshaft will result in infiltration of HDD fluid into ground water supplies, or a subsidence that may result in a critical outflow of reservoir water, or an unexpected failure of HDD. It is noted that particular caution must be exercised by the applicant when drilling within the vicinity of a known abandoned mine, and procedures must be addressed in the CMP.
- With regard to the Steep Slope Construction Plan in the CMP, believes that the applicant should justify why the location of temporary and additional workspaces in steep slopes and forested areas is necessary.
- With respect to the General Rare Species Mitigation section of the CMP, believes that at a minimum, the applicant should not merely advise the Highlands Council of its choice for an Environmental Inspector (EI), but should be required to accept recommendations of the Council for qualified specialists who have familiarity with the Highlands Region. Believes that ideally, the EI should have no ties to the applicant. Feels that an EI, working in the best interests of preserving Highlands resources, should be hired by the Council and paid by the Council from a fund established by the applicant.
- Feels that impact mitigation measures regarding Cooper’s hawk must be provided to the Highlands Council in advance of a Consistency Determination.
- With respect to the Rare Plants section of the CMP, states that no procedures are provided if rare plants are discovered during construction. Feels that the statements regarding the removal of plants to an approved nursery is vague. Would like to know who would approve the nursery . Also, requests evidence from the applicant regarding the survival rates for twice-replanted wild rare plant species, and asks what mitigation does the applicant propose if the replanted species do not survive replanting.
- With regard to the Water Resources Quantity Protection Plan in the CMP, believes that the applicant should demonstrate that the site of the proposed mitigation with respect to Prime Ground Water Recharge Areas is an interrelated HUC14 subwatershed and that this should be approved by the Highlands Council.
- With respect to the Environmental Construction Plan in the application, states that the applicant acknowledges that “under extreme circumstances, such as working on steep slopes in slippery conditions, while grading on steep slopes, some inadvertent off-ROW disturbances may occur.” Suggests that perhaps the applicant should halt work in slippery conditions on steep slopes. States that if a disturbance were to occur, the Environmental Construction Plan indicates that the

**DRAFT – FOR CONSIDERATION AT THE NOVEMBER 12, 2009
MEETING OF THE HIGHLANDS COUNCIL**

Environmental Inspector and the applicant are only required to notify affected landowners and FERC. Believes that the applicant should also notify the Highlands Council.

- With respect to the Environmental Construction Plan in the application, states that the applicant has identified 26 potential blasting areas within the Highlands portion of the project area and of those, nine sites are located within mapped Carbonate Rock Areas. States that the applicant acknowledges the possibility of temporary or substantial impairments to ground water that may occur as a result of blasting activities, and proposes to compensate landowners for such impairments including the drilling of new wells. Believes that in order to ensure the integrity of Highlands water quality, the applicant must also commit to do the following: 1) notify the Highlands Council of scheduled blasting activity in advance; 2) monitor nearby ground water sources to determine if any impairment has occurred; 3) if impairment has been discovered, determine the extent of the impairment within the entirety of the HUC-14; 4) agree to appropriate mitigation measures prior to the construction phase of the project; and 5) develop particular procedures that consider the instability of any disturbances, including blasting activities, within carbonate rock areas.

Comments Regarding Consistency Determination

- States that in order to qualify for Exemption #11, the project must be “consistent with the goals and purposes of this act.” Feels that the standard of review set forth by the Council staff in the second Highlands RMP Consistency Determination (9/16/09) for this project sets an unfortunate precedent for future projects seeking an exemption under Exemption # 9 or 11. Believes that the Consistency Determination review process must be modified to require consistency with the Regional Master Plan, as the goals and purposes of the Act are incorporated into the RMP, creation of which was mandated under the Act.
- Notes that the Comprehensive Mitigation Plan (CMP) proposes offsetting forest resource impacts in part by purchasing a 55-acre tract of mature upland forest. States that the Highlands Consistency Determination indicates that this will result in no net loss of forest resources since the purchase is to offset 31 acres of permanent forest impact. However, states that the project will affect over 190 acres of Forest Resource Protection Area, with 161 acres claimed as temporary impacts. The 161 acres in the temporary workspace will not be able to perform the ecosystem services of a mature upland forest for many decades, even if Tennessee Gas implements the re-vegetation program outlined in the CMP.
- Feels that the expansion of the ROW will create further fragmentation of the forest, allowing edge and invasive species to encroach deeper into the Forest Resource Area.
- Believes that the applicant should be required to replace forest areas in the Preservation Area at a 2: 1 ratio (as generally required by the NJDEP with respect to freshwater wetland mitigation), with a minimum of 380 acres of replacement mature forest to ensure there is no net loss of forest resources or forest ecosystem integrity, to remain consistent with the goals and purposes of the Act.
- Feels that the project is inconsistent with Objective 1F6b (Prohibit indirect impacts from activity that is off-site, adjacent to, or within Critical Habitat that will jeopardize the continued existence of, or result in the likelihood of the destruction or adverse modification of Critical Habitat, except as permitted through the issuance of a waiver...). The critical habitat mitigation plan does not address the effects of “temporary” factors related to the construction such as noise, increased diesel emissions, or dislocation from habitat.

DRAFT – FOR CONSIDERATION AT THE NOVEMBER 12, 2009
MEETING OF THE HIGHLANDS COUNCIL

- Believes that the applicant should be required to employ a professional landscape ecologist directly after construction to re-establish the lost vegetative community and to ensure invasive species do not encroach following the disturbance of the area. Feels that vegetative replanting with native species should be required immediately after construction to achieve a 100 percent cover, within three years, of native species of the type, density, and distribution that occur locally in the vicinity of the construction area.
- States that the Highlands Consistency Determination finds that the project remains inconsistent with Policy IH7 and Objective IH7c concerning Land Preservation and Stewardship in Special Environmental Zones, but claims that “the linear nature of the project and the existing ROW make this incursion necessary.” States that no alternatives analysis is provided in the CMP except for an avoidance evaluation that looks at a route that avoids the Highlands Region entirely. Believes that an alternatives analysis needs to be conducted for the three Special Environmental Zone parcels adjacent to the proposed and existing ROW. States that RMP Objective 1H7c requires that the “State or local government unit has exhausted all means for the permanent preservation of these lands” before an exemption is granted.
- States that the Highlands Consistency Determination indicates that the project remains inconsistent with Objective 2D4b (Any development activity approved to occur in a Prime Ground Water Recharge Area shall provide an equivalent of 125% of pre-construction recharge volumes for the affected Prime Ground Water Recharge Area of the site...). Feels that this is clearly outlined in the RMP, so asks why it is not addressed in the CMP to be made consistent. Believes that the applicant should first outline how it will achieve mitigation provided for in the RMP.
- States that the revised Consistency Determination considers the subpart on Land Use Capability Zones to now be non-applicable to the project although the original Determination found policies in the subpart to be inconsistent. Policies 6C1, 6C2, and 6F3 are all applicable to the project as the project runs through the Protection Zone and the Existing Community Zone. The Council staff states in the Consistency Determination that the CMP makes the project consistent with this subsection in the comments, even though the RMP goals, policies and objectives which apply here are all marked non-applicable.
- States that in consideration of the environmental protections proposed in the CMP, the Council staff now finds the project consistent with Policy 8A1: “To maintain and expand the existing job and economic base by promoting appropriate, sustainable, and environmentally compatible economic development throughout the Highlands Region.” Notes that the Consistency Determination notes that only temporary construction jobs will result from the project. Also, believes that the importation of more natural gas supplies is not consistent with environmentally compatible economic development nor with a sustainable energy future for the Highlands Region.
- Believes that at minimum, the mitigation parcels should be selected before the project can begin to ensure that the properties do, in fact, contain valuable resources proportionate to those lost by the expanded ROW. Feels that by identifying parcels beforehand, in a transparent process that elicits the public’s confidence, the Highlands Council can ensure that adequate and appropriate mitigation opportunities exist before resources are affected.

**DRAFT – FOR CONSIDERATION AT THE NOVEMBER 12, 2009
MEETING OF THE HIGHLANDS COUNCIL**

- Urges the Highlands Council, as the body charged with protecting Highlands resources, to find the project inconsistent. Tennessee should be required to comply with all aspects of the Highlands Act, the NJDEP rules, and the RMP.

Applicant's Comments

- The applicant requested clarifying text changes in the Project Description section of the Consistency Determination.
- The applicant feels that the proposed action is not inconsistent with Objective 1D5a. States that due to the linear nature and size of the proposed project, it is not feasible at this stage of the project to provide site specific drawings of all of the Riparian Areas and buffer zones to be affected by the project.
- The applicant states that on Page 11 of Subpart D, Part 1 of the Consistency Statement, there is a statement that that “The ROW traverses a . . . vernal pool.” The applicant would like to clarify that the project workspace does not traverse any vernal pools, but only the 1,000-foot vernal pool buffer zone.
- The applicant states that on Page 11 of the Consistency Determination, it is stated “While the CMP does not specifically mention rare species, the applicant will be required to revise the CMP to explicitly include rare species.” The applicant notes that it did modify Section 2.4 of the CMP to specifically include rare species and identified impact avoidance, minimization and mitigation measures. Therefore, the applicant believes that revision of the CMP relative to rare species is not warranted.
- The applicant notes that on page 19 of Subpart B, Part 2 of the Consistency Determination, it states that Tennessee is in the process of calculating Prime Ground Water Recharge Areas (“PGWRA”) volumes relative to the project impacts. The applicant notes that its consultant, AECOM Inc., provided spreadsheets detailing the PGWRA volume calculations to Highland’s staff on September 17, 2009.
- With respect to water quality, the applicant requests text changes with regard to page 21; Subpart C, Part 2 of the Consistency Determination. The applicant would like this text to be revised to reflect that all avoidance, minimization and mitigation measures relative to water quality have been identified in the CMP and that in addition, the applicant will comply with permit conditions, as issued by NJDEP, pertaining to water quality protection.
- With respect to historic resources (page 27, Part 4 of the Consistency Determination), the applicant would like the text to be revised to reflect that the applicant will provide a courtesy copy of all SHPO correspondence to the Highlands Council, but that Section 106 jurisdiction lies with the SHPO office.

General Responses and Highlands Council Consistency Determination Edits

The numerous comments received that stated support or opposition for the proposed project were read carefully by Council staff and are summarized above. As the majority of those opinions do not directly relate to the policies and objectives listed in the Consistency Determination template, they are not reflected in the Consistency Determination. As one general response, the Highlands Council will defer to the Federal Energy

**DRAFT – FOR CONSIDERATION AT THE NOVEMBER 12, 2009
MEETING OF THE HIGHLANDS COUNCIL**

Regulatory Commission (FERC) regarding a determination as to whether this project is needed for the integrity of New Jersey’s energy system. If the FERC determines that the project is not needed, then any Highlands Council actions will be considered moot. FERC has jurisdiction over the needs analysis for this pipeline project, not the New Jersey Board of Public Utilities. In addition, FERC has responsibility for project impacts in federal lands, such as the Wallkill National Wildlife Refuge.

A general theme emerges from those comments that express opposition to the proposed project – that there is a lack of information of sufficient detail by which to evaluate the proposed project and that the Comprehensive Mitigation Plan (CMP) lacks details and does not fully address impacts. By way of a general response, the development of all elements of the proposed project and the CMP (including construction and mitigation elements) will be performed in coordination with the Highlands Council and the NJDEP. Site plans, mitigation plans, and habitat plans will be reviewed and approved by all pertinent agencies (the Highlands Council, NJDEP, Soil Conservation Districts, and US Fish and Wildlife Service) as appropriate to each CMP component and will be made available to the public. Many of the more detailed opposing comments regarding specific components of the CMP will be addressed through this process. The CMP will require professional and qualified Environmental Inspectors to be on-site during construction and to carefully monitor all construction activities to ensure avoidance and minimization of impacts to resources. In consideration of each of these elements, the proposed project, as amended and viewed as a whole (with minimization of environmental impacts and the development of the Comprehensive Mitigation Plan), is found by the Highlands Council staff to be made consistent with the goals and purposes of the Act.

Following is a description of specific edits that were made to the Draft Consistency Determination (in track changes in the document) to address pertinent comments:

- Text was added to the Project Description section of the Consistency Determination indicating that the applicant amended the application to extend the Exemption #11 request to include routine, post-construction repair and maintenance of the Tennessee Gas Pipeline 300 Line. Text was added to the Conclusions section that indicated that as a condition of this Consistency Determination, the applicant is required to submit a report to the Highlands Council and the NJDEP each time a proposed post-construction repair or maintenance activity is planned, prior to the implementation of the activity.
- At the request of the applicant, text pertaining to the “Main Line Valves” in the Project Description section was edited.
- Text was added that the Highlands Council would require that the applicant provide the qualifications of all Environmental Inspectors (EIs) that would work on the project site prior to commencement of any on-site activity.
- Further details regarding the applicant’s proposed forest restoration and mitigation plan were added regarding the key elements of the applicant’s reforestation plan. Text was also added which notes that while the Council staff recognizes the identified reforestation measures, the results will not replace the functions and values of a mature forest in the short-term. It is anticipated that these measures, coordinated with the Council staff, NJDEP, and other agencies, and monitored over time until a viable and sustainable community is established, will ensure successful long-term forest restoration. Further, in addition to referencing the 55-acre mature forest parcel for acquisition as part of forest mitigation, the 20-25 acre forested site identified for compensation regarding the Special Environmental Zone was also referenced.

DRAFT – FOR CONSIDERATION AT THE NOVEMBER 12, 2009
MEETING OF THE HIGHLANDS COUNCIL

- The determination for Objective 1D5a was changed from Inconsistent to Consistent. Text was added to the comments that stated the applicant has noted that due to the linear nature and size of the project, it is not feasible to provide site specific drawings at this project stage of all of the Riparian Areas and buffer zones to be impacted by the project (the Council staff concurs, in consideration of the project stage). Text was added that the applicant has committed to provide site specific mapping as it becomes available during the progression of the project (and as will be required by NJDEP in its permitting process) and that commitment will be required to be added to the Open Waters and Riparian Areas Plan of the CMP to be consistent with the RMP.
- Text was added to the Critical Habitat comments that states that while the CMP does not specifically address the effects of temporary factors related to construction such as noise, increased air emissions, etc., the applicant will be required to revise the CMP to explicitly address such impacts and measures to address potential impacts to rare, threatened and endangered species.
- In the Protection of Water Resources and Quantity section, Objectives 2D4b and 2D4d were changed from Inconsistent to Consistent. Text was added to the comments that stated that the applicant calculated the ground water recharge volumes in mapped Prime Ground Water Recharge Areas crossed by the project as well as those associated with potential mitigation properties. The applicant submitted these to the Council along with an assessment and justification for the use of preserved lands to mitigate for the additional 25% recharge volume requirement. The Council staff deemed the calculations and analysis to be complete and appropriate and thus the project was found to be made consistent with Objectives 2D4b and 2D4d.
- Text was added to the Water Quality comments that stated that avoidance, minimization and mitigation measures relative to water quality are identified in the CMP and that the applicant will comply with permit conditions as issued by NJDEP.
- With respect to the Land Use Capability Zones section, three N/A determinations were changed to Consistent. Policy 6C1 states “to limit new human development in the Protection Zone to redevelopment, *exempt activities* [emphasis added], and environmentally-compatible low density new land uses...” The purpose of this review is to determine if the proposed project is consistent with the goals of the Act in order to be eligible for Exemption #11. The conclusion of the Consistency Determination is that the proposed project, as amended and viewed as a whole (with minimization of environmental impacts and the development of the Comprehensive Mitigation Plan), is found to be made consistent with the goals and purposes of the Act (thus, exempt). Thus, staff determined it was more appropriate for the determinations to be Consistent, versus N/A.
- With respect to the standard of review for this exemption request, the Highlands Act specifies that an activity is exempt “provided that the activity is consistent with the goals and purposes of” the Highlands Act. As made clear in the Consistency Determination – “The Highlands Council uses the resource policies, objectives and requirements of the Regional Master Plan as a general measure of whether a project meets this threshold, applying a weight of evidence approach. Broad and extensive consistency with the substantive requirements as a whole must be found, but complete consistency with each individual requirement of the RMP is not required. This standard of review is based on the Act’s reference to the goals and purposes of the Act rather than consistency with the RMP itself.” The RMP, in Objective 7F1f, specifies that the RMP is used to determine whether an activity is consistent with the goals and purposes of the Highlands Act; this provision does not, however, change the standard of review for the statutory exemption.