



State of New Jersey

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June 8, 2010

Ms. Terry Pilawski
Chief, Bureau of Watershed Regulation
New Jersey Department of Environmental Protection
P.O. Box 418
401 E. State Street
Trenton, NJ 08625

Re: Highlands Council Consistency Determination
NJDEP Amended Decision: JCP&L Califon Substation Landscape Plan
Block: 17, Lot: 2
Fox Hill Road
Tewksbury Township, Hunterdon County
Upper Raritan Water Quality Management Plan (WQMP)
Program Interest No.: 435434
Activity No.: CSD070030

Dear Ms. Pilawski:

On behalf of the Highlands Water Protection and Planning Council (Highlands Council), please accept the following review of the proposed Jersey Central Power and Light (JCP&L) Califon electric substation landscape plan (Landscape Plan). The proposed JCP&L electric substation (Project) was the subject of a July 15, 2009 Amended Decision issued by the New Jersey Department of Environmental Protection (NJDEP). This Amended Decision constituted a conditional Highlands Applicability Determination (HAD) and Water Quality Management Plan Consistency Determination pursuant to N.J.A.C. 7:38-2.4(a).

In the HAD, NJDEP determined that the project was exempt under Exemption #11 of the Highlands Act pursuant to N.J.S.A. 13:20-28.a.11; however, the exemption was subject to compliance with the following condition which the NJDEP deemed necessary for the project to achieve consistency with the goals of the Highlands Act:

Prior to construction, JCP&L shall submit to the Highlands Council for review and approval an extensive landscape plan, using native plant species, to screen the substation from adjacent homes and roadways and complement the character of the existing historic district. Failure to implement the approved landscape plan shall constitute a violation of this exemption and the Highlands Act.

This decision document constitutes the Highlands Council review of, and a determination regarding the suitability of the Landscape Plan to effectively screen the proposed substation from adjacent homes and roadways and to complement the character of the existing historic district. A project history and description is provided, followed by an analysis of the consistency of the project with the Highlands Act and the Highlands Regional Master Plan's (RMP) historic and scenic resources goals, policies and objectives, followed by the conclusions reached.

Procedural History

JCP&L submitted an application for a HAD to NJDEP on October 11, 2007 that included a request for an Exemption 11 (upgrade of existing public utility system, provided that the activity is consistent with the goals and purposes of the Highlands Act.) Notice of this administratively complete HAD application was published in the November 21, 2007 NJDEP Bulletin and the NJDEP received several public comments. Following analysis of the application, the public comments, and consultation with the Highlands Council, NJDEP requested JCP&L, by letter dated August 28, 2008, to evaluate alternative locations for the project and to analyze their compliance with the objectives of the Highlands Act. On September 25, 2008, the applicant responded to the NJDEP request by submitting several materials including an Alternative Site Analysis and Site Selection Criteria and environmental analyses. Additionally, JCP&L submitted a revised site plan that reduced the amount of disturbance, avoided wetlands of exceptional resource value, and reduced the disturbance of wetlands transition area.

On November 6, 2008, the NJDEP issued a HAD making the finding that the project was conditionally exempt under Exemption #11 of the Highlands Act. By letter dated November 11, 2008, the Friends of Fairmount Historic District requested an administrative hearing to challenge the HAD. Among other things, the group alleged that there was no factual basis underlying the HAD. By order dated June 17, 2009, Commissioner Mark N. Mauriello denied the objector's request for a hearing, stayed the November 6, 2008 exemption, and remanded it to the NJDEP Bureau of Watershed Regulation for fourteen days to reconsider the application and articulate findings to support its final decision. At the agency's request, the Commissioner subsequently extended the date for reconsideration by an additional fourteen days to July 15, 2009. The July 15, 2009 HAD decision found that the project was exempt under Exemption #11 of the Highlands Act pursuant to N.J.S.A. 13:20-28.a.11 but was subject to compliance with several conditions including the condition quoted above regarding the Highlands Council's review and approval of the Landscape Plan.

In the evaluation of Exemption #11 under the Highlands Act, the exemption contains two components. The activity must: 1) constitute an upgrade of public utility lines, rights of way, or systems, by a public utility, and 2) be consistent with the goals and purposes of the Highlands Act, N.J.S.A. 13:20-28.a.11. In NJDEP's conditional HAD, NJDEP determined that the JCP&L project met the first component as an upgrade of a public utility system. With respect to the consistency of the project with the goals and purposes of the Highlands Act, NJDEP's conditional determination required that JCP&L submit to the Highlands Council the Landscape Plan for review and approval as this is "necessary for the project to achieve consistency with the goals of the Highlands Act."

On December 18, 2009, JCP&L submitted the Landscape Plan application package to the Highlands Council for its review. JCP&L indicated that it had submitted the materials to be consistent with the exemption condition and to be responsive to the Highlands Council's request for specific materials including: 1) a narrative timeline of meetings, events, and actions involving JCP&L, the Township, and Friends of Fairmount Historic District (FFHD) since the issuance of the Board of Public

Utilities Order; 2) section elevations of the proposed Landscape Plan, which are stated to incorporate input received from FFHD; 3) a formal Landscape Plan prepared by a certified landscape architect that is intended to reflect input from surrounding residents; 4) a depiction of a screening wall that was requested by Tewksbury Township; 5) photographs of existing substations that have characteristics comparable to those of the proposed substation; and 6) explanation of the restrictions that prevent construction of an enclosure or barn-type structure over and around the proposed substation.

The purpose of the Highlands Council review is not to reconsider the entire substation plan. The entire plan has received a thorough review by both the Board of Public Utilities and NJDEP. The Board of Public Utilities determined the need for the project and the acceptability of this site for utility purposes, and NJDEP determined the applicability of Exemption #11 with specific conditions. Accordingly, as specified in NJDEP's conditional HAD, the scope of the Highlands Council's review is specifically limited to a determination whether the landscape plan properly screens "the substation from adjacent homes and roadways and complement the character of the existing historic district" and whether the project is consistent with the goals and purposes of the Highlands Act as they relate to historic and scenic resource protection. NJDEP determined that the project is consistent with the goals and purposes of the Highlands Act as they relate to other Highlands resources.

During its review of the Landscape Plan, the Highlands Council solicited and considered written comments from the public and interested parties including JCP&L. The Highlands Council provided public notice, posted relevant materials on the Council's website, attended a public hearing in Tewksbury Township and held the public comment period from March 29, 2010 through April 19, 2010. In response, the Highlands Council staff prepared a Public Comment/Response Document, which is attached to this correspondence.

Description of Project and Proposed Landscape Plan

JCP&L has proposed to locate an electrical substation on an undeveloped parcel on Fox Hill Road in Tewksbury Township. The substation would consist of a 19-foot high transformer unit, a 65-foot tower pole, control cabinets, and switches mounted on concrete pads. It would be connected to the existing 230 kilovolt (kV) transmission lines located directly overhead and to existing distribution lines along County Route 517. A 100-foot gravel driveway would provide access to the substation. The total area of disturbance would be 1.46 acres, including a total of 0.81 acres of vegetation to be cleared. Wetlands have been identified and delineated through a Letter of Interpretation. No structures (other than mentioned above), water or wastewater infrastructure are being proposed as part of the project.

The Landscape Plan was created by a New Jersey licensed Certified Landscape Architect with input from JCP&L's professional engineers. The Landscape Plan intends to provide a four-season buffer along the perimeter of the substation boundaries with the purpose to screen the proposed substation with native (primarily) plant species, while conforming to the legally mandated height restrictions due to the transmission lines located over the northern portion of the site. A goal of the Landscape Plan is to establish a diverse mix of deciduous trees, evergreen trees and shrubs intended to visually screen the eye-level views from the traffic on Fox Hill Road and the adjacent residential properties. The Landscape Plan also features a screening wall, as was requested by Tewksbury Township officials. As depicted on the plan, the screening wall would be fashioned with a crumbling façade.

Standard of Review – Consistency with the Goals and Purposes of the Highlands Act

In the evaluation of Exemption #11 under the Highlands Act, the activity must be “consistent with the goals and purposes of the act.” In accordance with the RMP at Objective 7F1f, the Highlands Council assesses the latter requirement against the Highlands Act, the RMP, and NJDEP’s Preservation Area rules at N.J.A.C. 7:38 to determine whether the nature of any inconsistencies are sufficient to find that the project is consistent with the goals and purposes of the Highlands Act and therefore should be deemed exempt. The Highlands Council uses the resource policies, objectives and requirements of the RMP as a general measure of whether a project meets the threshold for consistency with the goals and purposes of the Highlands Act. This approach is applied to this particular case only with respect to the historic and scenic policies and objectives consistent with the limited scope of NJDEP’s conditional HAD determination. 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 as the standard of review is based on the Highlands Act’s reference to the goals and purposes of the Act rather than consistency with the RMP itself.

The intent of the goals, policies, objectives, and programs of the RMP as related to historic and scenic resources is to provide for their protection, preservation, and enhancement consistent with the Highlands Act. As established by the specific goals of the Highlands Act, the RMP follows the directive to “protect and enhance the significant values of the resources” of the Highlands Region, to “protect the natural, scenic, and other resources of the Highlands Region,” and to “preserve ... historic sites and other historic resources.” N.J.S.A. 13:20-10.a and 10.b. The relevant historic and scenic goals, policies, objectives, and programs of the RMP provide for implementation of the mandates as laid out in the Highlands Act. Specifically, Policies 4A3 and 4B3 identify the need for development review to ensure, to the maximum extent practicable, that “human development does not adversely affect the character or value” of those resources which are listed on the Highlands Historic and Cultural Resource Inventory. In addition, Policy 4A5 specifies the use the United States Secretary of the Interior’s Standards for the Treatment of Historic Properties as guidance for historic and cultural preservation review. The RMP specifically defines the “Highlands Historic and Cultural Resource Inventory” to include “the listing of historic, archaeological and cultural resources within the Highlands Region, including but not limited to: 1) all properties listed on the New Jersey or National Register of Historic Places; 2) all properties which have been deemed eligible for listing on the New Jersey or National Register of Historic Places; and 3) all properties for which a formal opinion of the State Historic Preservation Office (SHPO) has been issued.”¹

In accordance with the RMP at Objective 7F1f, NJDEP’s rules for the Preservation Area at N.J.A.C. 7:38 are also examined to determine whether the nature of any inconsistencies are sufficient to find that the project is consistent with the goals and purposes of the Highlands Act. The requirements of N.J.A.C. 7:38-3.10(f) specifies that “[a] proposed regulated activity shall be deemed to not have an impact to an historic property if the Department determines the regulated activity conforms with the Secretary of the Interior’s Standards for the Treatment of Historic Properties. Moreover, N.J.A.C. 7:38-3.10(h) specifies that “[i]f the Department determines that a proposed regulated activity will have an impact on historic or archaeological properties, the Department shall not issue an HPAA

¹ The RMP includes a baseline Scenic Resource Inventory which includes 131 publicly-owned potential scenic resources. This baseline inventory does not include the any resources adjacent to the proposed JCP&L project; accordingly, the policies of the RMP pertaining to the Scenic Resource Inventory are not presently applicable to this project.

unless the applicant demonstrates that the proposed regulated activity would result in minimal practicable degradation of the historic or archaeological property.”

Fairmount Historic District

In Tewksbury, the Fairmount Historic District was listed on the State and National Register of Historic Places in 1996. Accordingly, the Fairmount Historic District is afforded special protection under the Highlands Act, the RMP and the rules at N.J.A.C. 7:38. Divided into “Lower Fairmount” and “Upper Fairmount,” the Fairmount Historic District is a rural community with strong evidence of its settlement history. The proposed JCP&L substation site is located in the Lower Fairmount District.

In order to evaluate the Landscape Plan and its ability to complement the historic character of the Fairmount Historic District, it is necessary to examine the district in the context of the Highlands Act goal to protect, preserve and enhance Highlands resources such as historic sites and districts. As described in the National Register nomination, “The historically dispersed settlement lies partly in the narrow valley cut by Rockaway Creek, a Raritan River tributary, but mostly on the uplands to the east and stretches along about two miles of an old turnpike, now County Route 517, with off shoots on several side roads. Water-powered industries and crossroad stores, no longer in operation, provided focal points for Lower Fairmount, the larger, southern portion of the community; two churches and their attendant cemeteries still dominate Upper Fairmount to the north. Except for these institutional uses, Fairmount is largely residential. The surrounding landscape is a mix of wooded and open land, with low density modern residential development interspersed with scattered farmsteads. Modern residential development occupies what was agricultural land between Upper and Lower Fairmount, thus necessitating the division of the district into two sections.”

The District’s historic resources include 73 properties, comprised of mostly 19th century buildings, 5 structures, 9 sites, and one object, a stone hitching post located at 9 Fox Hill Road. The nomination considers these all to be “contributing” to the district’s historical significance. Of those properties listed as contributing to the district’s historical significance, six are within 930 feet of the proposed substation. See Figure 1 entitled *JCP&L Proposed Califon Substation – Proximity to Contributing Historic Properties*.

Directly adjacent to the proposed substation at 2 Fox Hill Road is the complex of buildings referred to as property #33 built circa 1810-1830. The main house is a Federal style, frame, two-story, gable-roofed dwelling. Outbuildings include a stone bank barn built in the mid-19th century and converted into a dwelling in the mid- to late-20th century.

Southeast along Fox Hill Road, and on the opposite side of the road from the proposed substation, is 9 Fox Hill Road. This Gothic Revival with Queen Anne influences dwelling (#31) was built circa 1870-1890 and is a frame, two-story, gable-roofed dwelling. This property also contains the cut stone hitching post with chamfered corner and iron ring from the late 19th century. Outbuildings include a frame privy (late 19th early 20th c), a one-story gable-roofed structure with a “shop front” (19th c), and a stone bank barn foundation (19th c). To the northwest Fox Hill Road intersects with Apple Lane. The property at 2 Apple Lane (#34) includes a Greek Revival with Italianate influences frame, two-story, gable-roofed dwelling built in the mid-19th century. A low stone retaining wall delineates the front door yard. South of the proposed substation site, and intersecting with Fox Hill Road to the southeast, is Hollow Brook Road. Three contributing properties are located along this

scenic byway. The property at 5 Hollow Brook Road (#20) includes a frame, two-story, gable-roofed dwelling built circa 1860-1865. The dwelling at 3 Hollow Brook Road (#21) is a Colonial Revival embellishment built in the mid- to late-19th century. The dwelling at 1 Hollow Brook Road (#22) is a frame, two-story, gable-roofed structure built circa 1860-1865.

Analysis of Consistency

The description above of the Fairmount Historic District and its contributing historic homes reveals that the area has retained much of its original rural character and historic integrity. Figure 2, *Rural Character and Historic Integrity*, provides photos of several of the contributing historic homes as well as renderings of views of the proposed substation both with the landscape at installation and with a mature landscape. Review of Figure 2, coupled with the fact that six of the contributing historic homes are within 875 feet of the proposed substation (Figure 1) renders the conclusion that the proposed Landscape Plan cannot effectively screen the proposed substation, with its 19-foot transformer unit and 65-foot tower poles, from the nearby historic homes; therefore, the proposed project with the Landscape Plan does not complement the character of the existing historic district. Further, although the Landscape Plan does include a wall intended to help screen the substation location, it does not adequately block views into the site from adjacent roadways. Thus, the Landscape Plan does not meet the condition of the exemption to “screen the substation from adjacent homes and roadways and complement the character of the existing historic district.”

Furthermore, as part of its review, the Highlands Council considered a memorandum from the New Jersey Historic Preservation Office dated March 17, 2009 to the NJDEP Freshwater Wetlands Land Use Program regarding the proposed substation project. Prior to issuing the appropriate permit(s), the Freshwater Wetlands Land Use Program sought comments from the Historic Preservation Office. The memorandum states that the proposed site is in the Fairmount Historic District, which is listed on the New Jersey and National Registers of Historic Places and that the “proposed project will have an adverse effect on the Fairmount Historic District.” It further states an alternatives analysis should be done pursuant to Freshwater Wetland Rules in accordance with N.J.A.C. 7:4-8.8 to analyze whether an alternative to the proposed undertaking is available which would result in lesser impacts to buildings. Because the Landscape Plan does not adequately buffer the historic district from the substation, the adverse effect anticipated by the Historic Preservation Office would be realized. Therefore, the condition of the exemption requiring JCP&L to develop a Landscape Plan to “complement the character of the existing historic district” has not been met.

With respect to the NJDEP Preservation Area rules standard of review for historic areas at N.J.A.C. 7:38-3.10, the Landscape Plan does not form an adequate buffer between the substation structure and the historic district and historic properties. Further, the New Jersey Historic Preservation Office found that the “proposed project will have an adverse effect on the Fairmount Historic District.” Because the Landscape Plan does not adequately buffer the historic district from the substation, the adverse effect anticipated by the Historic Preservation Office would be realized. Thus, implementation of the proposed project with Landscape Plan would not conform with the Secretary of the Interior’s Standards for the Treatment of Historic Properties as per N.J.A.C. 7:38-3.10(f) and would result in more than “minimal practicable degradation” of historic properties (N.J.A.C. 7:38-3.10(h)).

Despite the efforts of JCP&L to provide an acceptable plan to screen the proposed facility from the Fairmount Historic District and roadways, the Landscape Plan does not form an adequate buffer between the substation structure and the surrounding community, including the historic district and

historic properties, and is therefore inconsistent with historic and scenic goals, policies, and objectives of the RMP and the standard of review in N.J.A.C. 7:38-3.10. The proposed JCP&L substation, as designed and sited within the Fairmount Historic District, does not serve to protect, preserve, or enhance Highlands resources. This finding is significant enough to support a determination that the Landscape Plan is not sufficient to ensure that the project as a whole is consistent with the goals and purposes of the Highlands Act.

Conclusion

In the evaluation of Exemption #11 under the Highlands Act, the activity must be “consistent with the goals and purposes of the act.” The Highlands Council assesses the latter requirement against the Highlands Act, the RMP, and NJDEP’s Preservation Area rules at N.J.A.C. 7:38 to determine whether the nature of any inconsistencies are sufficient to find that the project is not consistent with the goals and purposes of the Highlands Act and therefore should not be exempt. Non-exempt projects, to the extent that they are inconsistent with the Highlands Act, must either address those inconsistencies or apply to the NJDEP for a Highlands Preservation Area Approval (HPAA) with appropriate waivers that address the inconsistencies.

Based on the review of this project and in consideration of comments received and the standards for Exemption #11 review, the Highlands Council finds that the Landscape Plan submitted by JCP&L will not adequately “screen the substation from adjacent homes and roadways and complement the character of the existing historic district” as required by NJDEP’s conditional HAD and is also not consistent with the goals and purposes of the Highlands Act. Accordingly, the Highlands Council does not approve the submitted Landscape Plan. It is the recommendation of Highlands Council that the submitted Landscape Plan be found to not satisfy the condition of the NJDEP exemption #11 and that the proposal is not consistent with the goals and purposes of the Highlands Act.

Yours sincerely,



Eileen Swan
Executive Director

c: Service List (Attached)
Encl: Figures 1 and 2
Public comment/response document