

**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 May 11 – June 29, 2009):

- Attorney on behalf of Tennessee Gas Pipeline Company
- Township of West Milford
- Township of Vernon
- New Jersey Conservation Foundation
- The Association of New Jersey Environmental Commissions (ANJEC)
- Private citizens

Public Comment Summary

The public comments received included statements both supporting and opposing the proposed project, and also included comments from the applicant’s attorney. Some comments included specific comments on the Highlands Council’s Draft Consistency Determination (CD), while others were general comments on the project. In summary, the comments address the following issues:

Supportive Comments

- Believes that the project should be granted an exemption through Exemption # 11 as it is consistent with the goals and purposes of the Highlands Act. Understands that the majority of the upgrade project is on Tennessee’s existing, previously disturbed easement and that it would be constructed utilizing federally approved best management practices and the applicable state agency permitting processes.
- Feels that the proposed project would not cause additional local development and yet, believes that the project has already provided additional revenue to existing local businesses. Feels that there is the potential to draw from the local workforce during construction, as well as to provide revenue to local businesses and additional sales tax to the state.
- Feels that it would be wrong for the state to deny Tennessee Gas Company the right to expand their existing network. States that having hiked in all of the parks that the gas line goes through, is well aware of what the pipeline right-of-way looks like and what doubling its width would look like. But feels that reliability of natural gas supply is critical. Believes that the only way the state can remain such a comfortable and competitive place to live and do business in, is if we let energy companies such as this one improve their infrastructure.

Opposition Comments

- Is against the extension of the gas pipeline through the Highlands Region. Feels that there must be a solution that would allow the pipeline to be extended, but not cut into such a large area of such sensitive land.
- Believes that the applicant has not demonstrated the “avoid, minimize, mitigate” strategy threshold mandated by the Highlands Regional Master Plan, and thus feels that the project is inconsistent with the goals of the Act and should not be granted an Exemption 11.

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- Feels that the amount of environmental damage that will be done if this project goes through will be tremendous. States that in addition to the removal of the trees themselves, that there will be serious additional damage from the heavy equipment used. Feels that there will have to be construction roads built, job site trailers set on site, and very heavy trucks tearing up the local roads. Feels that this project will be damaging to watersheds and aquifers.
- Believes that the removal of trees would contribute to the degradation of the quality of the water supply because of increased soil erosion. States that this would cause increased runoff. Further, states that since trees act to filter out pollutants from the air, that the removal of many trees could cause air quality to decline.
- Feels that there are serious concerns about safety and security. Stated that while accidents are rare, that they do happen and there was a gas pipe incident in Edison, New Jersey a few years ago.
- Is concerned that one of the last green spaces in northern New Jersey could be altered. States that the beauty of the Highlands is a gift that needs to be carefully tended to.
- Feels that other existing pipelines can be upgraded, or less sensitive routes can be chosen. States that while the proposed route may be the least expensive, with savings that may be passed on to rate-payers, this is not a reason to damage the Highlands Region.
- Would like to know the exact locations of the two candidate sites that would serve as the pipe and equipment storage yards. Potential adverse impacts of such activities at either location may include, but would not be limited to, dust, noise and visual impairment to surrounding properties. Believes that traffic safety and environmental controls during both construction activities, and through implementation of post-construction site restoration plans, should be subject to local review and comment.

General Comments About Proposed Project and/or Application¹

- Requests a more detailed analysis of the project's impact to specific properties in their municipality.
- Requests a more detailed analysis of the project's impact to the Carbonate Rock Area within the path of the proposed line.
- Requests to review the applicant's fiscal impact analysis to evaluate the claim of potential tax revenues to be generated by this project.
- Believes that other lines, operated by other carriers, exist outside of the Highlands Region that are capable of bringing an equal amount of gas to New Jersey without affecting Highlands Resources. Feels that the applicant should conduct an objective alternatives analysis that considers such alternatives.
- Believes that the applicant should be asked to move the loop westward, toward the pumping station in Wantage Township, to minimize the length of the loop to be constructed within the Highlands Region in general, and in the Preservation Area in particular.

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

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- Feels that diversions of existing preserved open space should be avoided or minimized. Believes that if it is determined that such diversions are unavoidable, it should be required that, at a minimum, Green Acres diversion requirements be followed and that replacement lands should be targeted to the Confidential Preservation Priority property list within the same HUC14 subwatershed if possible.
- Notes that in some cases, the applicant has proposed segregating excavated soils and replacing them in their original order. Requests that this be made as an overall condition throughout the entire Highlands Region.
- Feels that allowing cleared temporary workspace to naturally revert to forest is not an acceptable strategy. Believes that deer competition and the difficult conditions at many locations along the line reduce the chance of a satisfactory result. Believes that where clearing has occurred along existing forest, impacts will project into the former forest interior. Suggests numerous specific methods for tree protection and re-vegetation. Believes survival rates of newly planted vegetation should be monitored for a minimum of five years and, in areas of failure, re-planting should be carried out.
- Believes that a complete design for all access roads should be required and that access should be limited to existing roadways wherever feasible. Feels that stormwater, erosion control and restoration plans should be provided.
- Recognizes that areas such as pipe equipment and storage yards are necessary for the project. However, believes that the location of the two possible storage yards should be provided and checked against Highlands Council resource mapping. Feels that areas of high impervious cover or existing bare and barren land, within feasible distances and at appropriate locations, should be preferred over other land cover types.
- Is not familiar with the following documents referred to by the applicant “FERC-Approved Upland Erosion Control, Revegetation and Maintenance Plan,” “FERC-Approved Wetlands and Waterbodies Construction and Mitigation Procedures,” and “Tennessee Gas’s Construction Best Management Practices.” Suggests that the Highlands Council staff should review these reports and compare those to provisions of the RMP, and require the more stringent practices.
- Notes that the applicant furnished an electronic copy of the “Draft Environmental Report,” which is a compendium of 13 draft resource reports filed with FERC in March 2009. Requests that this report be posted on the Council’s website.
- Notes that the project will require the movement of heavy equipment on a poorly developed road network. Notes that the project will cross roads and one out-of-service rail line. Believes that road crossings and rail crossings should be required to be done by tunneling. Feels that the rail line should remain available for re-activation. Believes that load limits should be respected on the Region’s bridges and that any damage to the roadways should be paid to the local or county authority.
- As a general comment, feels that the Council’s review and policy framework is inadequate to support the required analyses that must not only meet the Council’s own requirements but also must provide guidance to the NJDEP in its HAD review process. Has suggestions about how to improve the decision making process on this current review and future HAD Exemption 11 reviews; these were submitted in a separate document.

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Comments Regarding Consistency Determination

- Supports the recommendation of the Highlands Council staff that this project be deemed not eligible for a Highlands exemption as requested by the applicant due to overwhelming inconsistencies with the Regional Master Plan's policies and objectives.
- Notes that the Council staff identified only one instance of consistency with the Highlands Regional Master Plan, versus 74 instances of inconsistency with goals, standards and objectives of the Act incorporated in the RMP.
- Concurs with the Council staff findings for Forest Resources, Highlands Open Waters and Riparian Areas, Steep Slopes, Critical Habitat, Land Preservation and Stewardship, Carbonate Rock, Protection of Water Resources Quantity, Water Quality, and Agricultural Resources and submitted specific suggestions for each resource category to maximize protection.
- Notes that in some cases, the applicant has proposed segregating excavated soils and replacing them in their original order. Requests that this be made as an overall condition throughout the entire Highlands Region.
- Feels that allowing cleared temporary workspace to naturally revert to forest is not an acceptable strategy. Believes that deer competition and the difficult conditions at many locations along the line reduce the chance of a satisfactory result. Believes that where clearing has occurred along existing forest, impacts will project into the former forest interior. Suggests numerous specific methods for tree protection and re-vegetation. Believes survival rates of newly planted vegetation should be monitored for a minimum of five years and, in areas of failure, re-planting should be carried out.
- Believes that a complete design for all access roads should be required and that access should be limited to existing roadways wherever feasible. Feels that stormwater, erosion control and restoration plans should be provided.
- Recognizes that areas such as pipe equipment and storage yards are necessary for the project. However, believes that the location of the two possible storage yards should be provided and checked against Highlands Council resource mapping. Feels that areas of high impervious cover or existing bare and barren land, within feasible distances and at appropriate locations, should be preferred over other land cover types.
- Notes that the Consistency Determination indicates the presence of archaeological grids and Highlands historic property points. Believes that as a federally-licensed project, a full Section 106 review should be performed for cultural resources, including below ground archaeological sites. Notes that scenic impact from the Pipe Equipment Storage Yards could be considered temporary, but only if a restoration plan was a part of the project. Suggests that some form of mitigation (e.g., improvement of scenic views elsewhere) might be provided.
- Concurs with Council staff findings regarding the Consistency Determination sections on Regional Guidance for Development and Redevelopment, Smart Growth, Housing and Community Facilities, and Sustainable Economic Development.

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- With respect to the Landowner Equity section of the Consistency Determination, believes that if additional areas are to be taken for the pipeline right-of-way, that these areas should not remain eligible for Highlands Development Credits.
- Sees no assessment of ambient air quality, air quality impacts from dust or construction vehicle emissions, or proposals to reduce same.
- States that impacts from noise and light have not been addressed by the applicant and is not considered in the Consistency Determination.

Applicant's Comments

- The applicant (Tennessee) states that the Consistency Determination indicates that the Highlands Council reviewed the Planning Area portion of the proposed project. Tennessee does not intend to seek an exemption for the activities proposed within the Planning Area associated with the project at this time. Tennessee has limited its exemption request to those facilities located within the Preservation Area because the NJDEP jurisdiction extends only to the Preservation Area. Additionally, Vernon Township, where the portion of the pipeline project is located within the Planning Area, has not yet conformed with the Regional Master Plan.
- The applicant notes that its project must obtain numerous approvals from other regulatory agencies, including the Federal Energy Regulatory Commission, the NJDEP, the U.S. Fish & Wildlife Service, etc. The applicant notes that most of these other regulatory approvals cover the same subject matter as is noted in the draft Consistency Determination Review. In addition, notwithstanding its legal position with respect to the Highlands Exemption criteria, the applicant states that it has endeavored to provide detailed responses to all of the Inconsistent Determinations in the draft Consistency Determination Review.
- With respect to forests, the applicant acknowledges impacts to forested land use cover types (both forested wetlands and upland forests) within the Highlands Preservation Area. The applicant indicates that it is required to obtain permits from NJDEP for impacts to forested wetlands and must comply with the Federal Energy Regulatory Commission (“FERC”) Wetland and Waterbody Construction and Mitigation Procedures (FERC Mitigation Procedures) for pipeline construction and operation through forested wetland areas. The applicant further notes that it will consult and coordinate with various regulatory agencies to formulate upland forested restoration or impact mitigation plans for any temporary or permanent forest impacts on state or other public lands and will also work directly with affected landowners to formulate upland forested restoration or compensation forested impacts on private properties. The applicant provided excerpts from its Draft Environmental Report, which provide details regarding the measures it shall implement to minimize impacts to forest resources.
- The applicant acknowledges impacts to Highlands Open Waters and Riparian Areas in the Highlands Preservation Area. It indicates that it is required to obtain permits from NJDEP for impacts to open waters, wetlands, and riparian areas and therefore, oversight of proposed activities within these resources will be comprehensive. Further, the applicant indicates that it must comply with the FERC Mitigation Procedures for pipeline construction and operation through open waters, wetland areas, and riparian areas, and which also provides for long-term monitoring of wetland restoration efforts

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to ensure that there is no long-term adverse effect from construction of the pipeline. The applicant provided excerpts from its Draft Environmental Report, which provide details regarding the measures it shall implement to minimize impacts to wetlands and open waters, as well as the specific measures to be implemented by Tennessee during the construction to minimize impacts to these resources.

- The applicant acknowledges impacts to Steep Slopes in the Highlands Preservation Area. It indicates that it has incorporated specialized construction techniques and restoration measures to ensure that these areas do not pose additional erosion risk post-construction. The applicant provided excerpts from its Draft Environmental Report which includes details regarding the specialized construction and restoration techniques that will be utilized with respect to steep slopes.
- The applicant acknowledges impacts to Critical Habitat in the Highlands Preservation Area. The applicant states that it has initiated consultations with the U.S. Fish and Wildlife Service, NJDEP Division of Fish and Wildlife, and NJDEP Division of Parks and Forestry to identify significant wildlife habitats and wildlife managed lands. The applicant notes that the NJDEP has been consulted and identified Federal and state-listed plant and animal species potentially present in the project area, as well as vegetative communities of special concern in the vicinity of the project area. The applicant states that a mitigation plan will be prepared, should the need be identified through agency consultations. Further, the applicant states that it is in the process of conducting species-specific surveys to identify rare species that may be present within the project area and will develop impact avoidance and mitigation plans to ensure that there are no long-term effects on the species or their habitats. The applicant also states that the post-construction restored right-of-way and workspace will be substantially equivalent to the existing field conditions, given the existing pipeline and maintained easement present. The applicant provided excerpts from its Draft Environmental Report which provide details regarding the measures it shall implement to minimize and mitigate impacts to Critical Habitat.
- The applicant acknowledges that the project crosses Highlands Council designated Special Environmental Zones. The applicant notes, however, that the installation and operation of the pipeline will not have an adverse effect on the ability of the Highlands Council to implement its RMP to promote the goals and objectives associated with Special Environmental Zones. The applicant notes that it currently has an existing pipeline and associated ROW through the identified Special Environmental Zones. The applicant states that the installation and operation of a second pipeline within or adjacent to the existing ROW would not materially affect the land use or the ability to protect the interests of the RMP. The applicant states that the easements associated with the pipeline may be expanded in some areas, however, they would not prohibit future land acquisition and would eliminate potential development based on the limitations on encroachments into Tennessee's easements.
- The applicant acknowledges that the project crosses Carbonate Rock Areas. It states, however, that specific construction and protection measures will be implemented to prevent adverse impacts to environmental resources characteristic to karst, including, but not limited to, springs and other ground water considerations. The applicant provided excerpts from its Draft Environmental Report which provide details regarding the measures it shall implement to minimize and mitigate potential impacts to karst features.

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- The applicant acknowledges that the project crosses Prime Ground Water Recharge Areas. It states, however, that because the pipeline project will not result in any new impervious areas, there will be no temporary or permanent impacts on any Prime Groundwater Recharge Areas in the Highlands.
- The applicant notes that the Consistency Determination includes a finding of “Inconsistent” with Policies and Objectives with respect to Water Quality. The applicant notes that it will obtain a 401 Water Quality Certification, through the NJDEP Land Use Regulation Program; a Clean Water Assurance Form from the NJDEP; and a NJPDES Hydrostatic Test Water Discharge Permit from the NJDEP Division of Water Quality. The applicant states that construction of the pipeline will not adversely impact the water quality of any ground or surface water resources of the Highlands Region. It notes that these resources, including wetlands, watercourses, ground water aquifers, and surface water reservoirs, will be protected during construction of the project. The applicant provided excerpts from its Draft Environmental Report, which provide details regarding the measures it shall implement to ensure water quality protection measures.
- The applicant states that the potential indirect effects of the project on historic or scenic resources are visual in nature and may result from the clearing of trees and other vegetation required for the pipeline replacement. The applicant indicates that the pipeline replacement itself would not be visible because of its location below ground, but the visual effects of tree and vegetation clearing during project implementation could affect the surrounding landscape and setting of historic properties within or adjacent to the Area of Potential Effects (APE). The applicant notes that since the pipeline will be co-located in existing clear-cut corridors, indirect effects will not be created. The applicant states that review of websites provided by the National Park Service (NPS) has indicated that the project does not cross any areas designated by the NPS as a National Scenic Trail. The applicant notes that the project is being reviewed under Section 106 of the National Historic Preservation Act. The applicant also notes that its cultural resource consultant is preparing technical survey reports for both the archaeological and historic architectural properties identification survey work and that these reports will be submitted to the NJ SHPO who will, in turn, review the reports and provide requests for additional information or determine that the project demonstrates Section 106 compliance.
- The applicant notes that the Consistency Determination includes a finding of “Inconsistent” with respect to Land Use Capability Zones, namely due to the impact of sensitive environmental lands within the Protection and Conservation Zones. The applicant states that it has prepared, and will comply with, a 300 Line Project Environmental Construction Plan (ECP) which incorporates all of the Best Management Practices to be implemented for the proposed project. The applicant notes that the ECP has been prepared to ensure that the project complies with FERC’s Upland Erosion and Sediment Control Plan and Wetland and Waterbody Construction and Mitigation Procedures as well as all other federal, state, and local permits and clearances to ensure the protection of land and water resources. The applicant also notes that the ECP includes a Spill Prevention, Control and Countermeasure Plan, a Waste Management Plan, and an Unanticipated Discovery Plan for cultural resources.
- The applicant stated that pursuant to the Highlands Council staff’s request, it analyzed whether the proposed pipeline project would be subject to the Statewide Nonresidential Development Fee Act (Act), N.J.S.A. 40:55D-8.1 thru-8.7, signed into law on July 17, 2008 as part of Bill A500. In analyzing the issue, the applicant reviewed the Act, Council on Affordable Housing regulations, and Bill A500 and its legislative history. Based upon this analysis, it is the opinion of the applicant that the

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proposed pipeline project is not subject to the Act and does not have to pay the non-residential development fee.

- The applicant notes that the Consistency Determination includes a finding of “Inconsistent” with respect to Smart Growth. The applicant states that because the principles of Smart Growth cannot be universally applied to all activities, and even Low Impact Development (LID) techniques inherently involve some degree of “impact” to available resources, it is difficult to label the proposed project as “inconsistent” with the Council’s policies and objectives as they pertain to Smart Growth. The applicant states that the project itself does not constitute or promote urban sprawl or any of the associated negative impacts, including increased vehicular traffic, increased impervious surfaces and stormwater runoff management issues, etc. The applicant also notes that construction of the project does not prevent or preclude the Council from implementing its policies and objectives for smart growth within the Highlands Region. Further, the applicant states that FERC has been imposing what are essentially “low impact development” techniques and concepts on the interstate natural gas transmission industry for decades.
- The applicant notes that the Consistency Determination includes a finding of “Inconsistent” with respect to Landowner Equity. The applicant states that the Consistency Determination does not include a substantive explanation in support of this conclusion and instead contains a blanket statement that, to demonstrate consistency with the goals of the Highlands Act, the project is subject to review not only under the goals and purposes of the Highlands Act, but also under the goals, policies and objectives of the RMP and NJDEP’s Preservation Area Rules at N.J.A.C. The applicant disagrees with the Highlands Council’s interpretation of the exemption provisions of the Highlands Act. The applicant states that with respect to substantive issues related to Land Owner Equity, that it currently maintains an existing easement, lease or license agreement for the real property where the pipeline project is proposed and will purchase additional permanent or temporary easements for those portions of the pipeline where such rights have not already been acquired. The applicant states that it intends to pay fair market value for such rights, and intends to compensate land owners for any surface damages that may result in connection with the construction activities associated with the project.
- With respect to Sustainable Economic Development, the applicant notes that in addition to the information it had previously provided, additional economic information includes the hiring of approximately 200 local, temporary workers for a period of roughly 24 weeks for pipeline work. The applicant states that workers are expected to be paid approximately \$40/hour for a 60 hour work week, or \$2,400 week/worker. Therefore, the applicant states that local workers are expected to be paid an estimated total of \$11,520,000 for work on the pipeline. The applicant also notes that all non-local workers and some local workers are expected to spend \$700 to \$800/week for living expenses to include hotels, meals, groceries, gasoline, entertainment, etc. for the duration of the project. The applicant notes that local expenditures are expected to total more than \$3,300,000 for the New Jersey portion of the project.
- The applicant notes that the Consistency Determination includes a finding of “Inconsistent” with respect to Air Quality. The applicant states that air quality impacts associated with construction and installation of the proposed pipeline loops will include emissions from fossil-fueled construction equipment, commuter vehicles, and fugitive dust. According to the applicant, such air quality impacts however, would generally be temporary, localized, and minimal. Large earth-moving equipment and

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other mobile sources may be powered by diesel or gasoline engines and are sources of combustion emissions. The applicant notes that air pollutants from construction equipment would be limited to the immediate vicinity of the construction area and would be temporary.

Highlands Council Consistency Determination Edits – Post May-June 2009 Comment Period

The 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.

Since the end of the May-June 2009 public comment period, and based upon the findings of the Highlands Council staff draft Consistency Determination, further input from the Highlands Council staff, NJDEP, the public and other agencies, the applicant revised the proposed project (submitted on September 10, 2009) to reduce the environmental impacts. Specifically, the revised project:

- Includes those portions of the proposed project located within the Planning Area (the original submittal had excluded the Planning Area);
- Includes the development of a Comprehensive Mitigation Plan that will be designed to avoid, minimize and mitigate adverse impacts to Highlands Region resources;
- Commits to implementation of the Comprehensive Mitigation Plan to achieve no net loss of Highlands resources where avoidance and minimization are not sufficient to avoid impacts;
- Includes the provision that the applicant will coordinate with the Highlands Council throughout the construction phase of the project. Further, the applicant committed to providing the Council with an annual monitoring report for three years following construction or until such time as all restoration efforts are deemed successful by the Highlands Council.
- Includes extending Exemption #11 of the Act to include routine, post construction repair and maintenance on the Tennessee Gas Pipeline Company 300 Line.

The applicant's revisions to the application to reduce the environmental impacts are substantial. Therefore, the Highlands Council developed a revised Draft Consistency Determination and solicited a second round of public comments on that document. The public comments to the revised Consistency Determination are reflected in a separate public comment/response document.