

Public Comments Received on the Highlands Water Protection and Planning Council Draft Consistency Determination (Exemption #11) - Tennessee Gas Northeast Upgrade Project – Loop Within Highlands Region (Comment Period of December 21, 2011 – January 6, 2012):

Written comments regarding the Highlands Council Draft Consistency Determination (Exemption #11) for the proposed Tennessee Gas Northeast Upgrade Project – Loop Within Highlands Region were accepted by the Highlands Council through the close of the Public Comment period on January 6, 2012. Comments were provided by the following individuals/entities:

- Judith Sullivan, Ramapough Conservancy and, on behalf of Ramapough Lenape Indian Nation
- Erika Van Auken, NJ Highlands Coalition in coordination with the NJ Chapter of the Sierra Club, Association of NJ Environmental Commissions, and Food and Water Watch
- Wilma Frey, New Jersey Conservation Foundation
- Margaret Wood
- Jean Public
- Members of New Jersey Sierra Club (138 e-mails received during Public Comment Period)

PUBLIC COMMENTS

The written public comments have been organized by general topic to help the public and the Highlands Council easily review the nature of the comments on each topic and the extent to which they differ or provide similar recommendations.

Consistency with Highlands Act/ Exemption #11

- Believes that the Northeast Upgrade Project will destroy some of our most sensitive resources in the Highlands Preservation Area. Feels that this project is not consistent with the goals and purposes of the Highlands Act and should be denied, not granted an exemption from the protective standards of the legislation.
- Is of the opinion that both pipeline projects (both the 300 Line Project and the Northeast Upgrade Project) through the Highlands Region do not fulfill the goals and purposes of the Highlands Water Protection and Planning Act and the Highlands Regional Master Plan.
- States that would like to better understand the process used to determine when a project is eligible or ineligible for Exemption #11. For instance, how many aspects of a project would need to be inconsistent with the RMP for the Highlands Council to deny an exemption? Are some aspects of the RMP weighted differently so that the Council would consider some sections more important than others? Believes that every project should be held to the strictest standards set forth by the RMP, but it is clear that the Highlands Council does not consider the same standards for Exemption #11 when determining approvals. Currently, the decision-making process of the Highlands Council contradicts the standards set forth in the RMP. This Consistency Determination for the Northeast Upgrade Project is clearly inconsistent with the guidance set forth in the RMP Objective 7F1f.

- Believes that the project’s inconsistencies with the Highlands Regional Master Plan and lack of proposed mitigation must be addressed before any approvals can be granted for this project. Urges the Highlands Council, as the body charged with protecting the resources of the Preservation Area, to declare the project inconsistent. Requests that the Highlands Council take all of the concerns expressed into consideration and deny Tennessee Gas Pipeline Company any approvals or exemptions, and require Tennessee Gas to comply with all aspects of the Highlands Act and the RMP before they can move forward with this project.
- Feels that increasing capacity was and is not an allowable exemption under exemption 11. Highlands Act Exemption (#11) states: “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 the Highlands Act.” Believes that this construction definitely is not maintenance. It is not rehabilitation. The old pipeline is not being decommissioned. It is definitely not preservation, since it destroys our preserved natural forests and waters. It is not reconstruction, since it is new construction. It is not repair, since the old pipeline is not being replaced. Increasing capacity is not synonymous with upgrade. Feels that this fossil-fuel, toxic gas pipeline is not consistent at all with the goals and purposes of the Highlands Water Protection and Planning Act.
- Feels that approvals of large-scale linear projects, based on what is believed to be an insufficient method for determining consistency, will have a chilling effect on municipalities looking to the Council to protect their natural resources through the conformance process. To date, thirty-seven towns have been approved by the Highlands Council for basic conformance and they should be assured that their hard work completing the process will not be undermined by unwanted development projects, such as pipeline construction, through their municipalities and their region.

Mitigation

- States that the majority of pipeline right-of-way is in critical wildlife habitat and the applicant is claiming these impacts will be offset by their mitigation land purchases, but we do not know what or where those tracts will be or what type of habitat values they will have.
- States that the applicant cannot adequately mitigate for the destruction of Highlands Forest Resource Areas, Open Waters and Buffers, high and moderate integrity riparian areas and critical habitat because these lands cannot be replaced. States that there is nothing else like these lands in the state and buying other pieces of properties that are forested helps protect those tracts but does not make up for the natural resource values being destroyed along the pipeline. In order to make up for these inadequacies, replacement should be considered only at a minimum of a seven to one ratio of lands acquired to lands degraded.
- States recognition that the applicant has attempted to address “improbable but foreseeable” weather events and has planned what is believed to be inadequate mitigation in the form of replacement lands. However, replacement land agreements must be finalized and compensation parcels selected before this project is considered by the Council in order to ensure the best mitigation possible.

- Feels that it is inappropriate for the Highlands Council to review the applicant's "Comprehensive Mitigation Plan" when the basis on which it has been developed is up for review with FERC. Is of the opinion that it has been consistently clear that the applicant does not fully recognize the impacts of the project on the natural or cultural environment. Feels that it is not possible to develop an appropriate mitigation plan for a project when the projects' impacts are not understood and recognized by the applicant and are therefore minimized in its submissions to the Highlands Council.
- States that with respect to the previous 300 Line project, that the Highlands Council permitted the applicant to cap the amount of money the company may spend on mitigation lands. For that project, the commentor states that the applicant negotiated with the Council to spend no more than \$7500 an acre on replacement land and could cash out at \$7,500 an acre if land is not purchased within 2-3 years of the company's lease agreement. Notes that recent Green Acres purchases in the area of the project have cost well over \$7,500 an acre. States that the Woggish parcel next to the pipeline and Long Pond Ironworks State Park was purchased for \$41,000 per acre in 2009. Urges the Highlands Council to remove such a monetary cap from mitigation commitments and require the company to identify parcels for purchase prior to Council's consideration of this project. The Council needs the information on the mitigation lands proposed if it is to determine if those lands will truly compensate for the destruction that will be caused by the project, and to assess whether the mitigation proposed could potentially bring the project into compliance with the Act.
- States that the Ramapough Conservancy asked Tennessee Gas for replacement forested lands and was refused. Notes that the Conservancy asked for these lands to be purchased as part of a county response to their taking request. Would like to submit Ramapough Conservancy as the accepting conservation organization and would like to provide a confidential list of properties that have been analyzed for contiguous and buffer benefit. Would like to supply these properties in confidence in order to prevent pillage to the lands in question, as many of them serve as important Native American burial grounds/ancient sites.

Past Performance

- States that it is known that the mitigation measures proposed by this company are inadequate as we have watched them destroy Lake Lookover and we have seen increased flooding along the right-of-way. Believes that the company should not be allowed to harm Highlands resources again.
- Reports from residents near the 300 Line 325 Loop of first-hand accounts of damage to forests and steep slopes and impacts to water quality from severe erosion along the pipeline route.
- Believes that an applicant's past record should be taken into consideration when determining whether or not an exemption will be granted. In this case, the Highlands Council should review the multitude of well-documented problems this applicant created in 2011 while constructing pipeline segments in the Highlands. There have been major erosion and sedimentation issues impacting waterways along the construction route of the most recent project, the 300 Line Project. Erosion problems are mounting at Lake Lookover in West Milford, which was heavily polluted after erosion

control mechanisms failed during Hurricane Irene. The applicant claims to be doing its best to address the problems, but they are so severe that no mitigation or restoration has been possible.

- Asks how this Comprehensive Mitigation Plan's "Water Resources Quality Protection Plan" is an improvement on or any different from the previous plan that has resulted in the devastation of Lake Lookover. Asks if any changes were made in the Plan and why were they not clearly outlined, considering the major water quality issues that resulted from the company's last project in the region.
- Notes that in New York, when Iroquois Gas Transmission Company built its gas transmission pipeline, tremendous damage to the environment resulted. The commentor states that the company was subjected to heavy court imposed damages, which according to the commentor, did not really compensate for the lasting damage that was done.

Water Quality (Hydraulic fracturing impacts and other)

- Expresses concern about drilling in Marcellus Shale and the fracking (hydraulic fracturing) procedure to extract gas from shale.
- States that there has been new proof that gas produced during fracturing is extremely toxic in all phases including drilling, pipeline delivery, and its end use by the consumer. States that these facts have either been hidden from our governmental officials or ignored by those government officials who stand to profit from their support of this industry. In the two years that have passed since the Highlands Council first thought that they wanted to approve this pipeline, they may have learned about these toxins. They may have changed their minds based on the new information. The Council should reverse their earlier decision based on the new information that reveals the deadly effects of this industry, and its damage to the Highlands water. The commentor presented a sampling of the referenced new data.
- States that incidents of water contamination resulting from fracking are not rare. They are common, costly in damages, and deadly to life. There should not be a fixed, predetermined dollar amount specified in the agreement, for damages. The reparations for damages must be assessed for each separate incident, based on the cost of repairs as well as legal fees, or the value of justice needed. The people expect El Paso to pay for all of the damages that it creates.
- States that these pipes carry an extremely toxic gas through our waters. Feels that they pose a great risk to polluting these waters, rendering them toxic and undrinkable. Expanding the capacity increases the risk to our water. It undermines the protection of the water. Therefore the new pipeline loop is inconsistent with the goal of water protection which is stated in the title of The Highlands Water Protection and Planning Act.
- Opines that clearly a mistake was made in allowing additional pipeline loops to be built through the Highlands Region. Feels that now the Council has the opportunity to reevaluate that decision and change it. New information regarding the detrimental effects of the pipeline on the Highlands water is now available. Believes that the council must change its decision, and disallow the addition of

pipeline loops, based on this new information. Believes that the Council should reverse the initial decision that allowed the Tennessee 300 Pipeline Project and deny the building of the Tennessee Northeast Upgrade Project.

- Expresses concern that vast portions of the pipeline are in steep slope areas where erosion is hardest to control. Best Management Practices established by the Soil Conservation District only cut erosion impacts by 50% on flat land, and this percentage declines as the terrain becomes steeper. States that siltation entering our water is the single largest source of the parasite *Cryptosporidium* in water supplies, and the Northeast Upgrade Project is proposing to go under the Monksville Reservoir on steep slopes. Believes that this could result in serious, widespread public health problems, as the parasite causes intestinal infections and has resulted in deaths.

Cultural Resources

- States that the applicant has not completed its cultural resource investigation for Loop 325 and further, has rejected all efforts by the Ramapough Lenape Indian Nation to be heard on this issue. Applicant rejected arguments by eminent volunteer archaeologist Edward J. Lenik. Rejects conclusion of the Council that the applicant has completed work sufficient to protect archaeological resources.
- Believes that the applicant missed several historic resources in its cultural resources survey, including homes and roads, and or mischaracterized potential impacts to these resources (specific names of these resources and brief descriptions are provided in the comment). Of particular note, the commentor highlights White's Road; notes that the federally required review of cumulative impact to this road is noticeably absent from the application. States that another gas transmission company (Spectra), also plans on using this road and notes that Spectra's consultant recently stated that the road should not be used due to archaeological concerns. States awareness that the applicant and Spectra share information and requests that the Council review Spectra's report.

Other Resource Issues

- Expresses concern regarding potential impacts to the wild and scenic upper reaches of the Delaware River, to the Monksville Reservoir, and to several parks that are precious to the economy of New Jersey for their preserved natural state.
- Notes that the applicant will be excavating in an area in Ringwood that is subject to sinkholes. States that Environmental Assessment for the proposed project indicates that 82% of the pipeline's construction would require blasting. States that with the Ringwood Superfund site constantly on the mind of the Ramapough Lenape Indian Nation, sinkholes are a major worry and concern for them.

Administrative Issues

- Believes that the Tennessee Gas Pipeline Company Northeast Upgrade Project should not be considered for review and decision by the Highlands Council at this time. Requests that consideration of this project be tabled by the Council at its next meeting.
- With regard to the Ursus Major Natural Heritage Program Site (along Bear Swamp Road), the commentor is of the opinion that the applicant does not have a clear legal right to use this road and approvals should not be given until such time as their right is settled.
- States that the Environmental Law Clinic of Columbia University Law School has filed comments on behalf of the New Jersey Highlands Coalition, the New Jersey Chapter of the Sierra Club, and the Delaware Riverkeeper Network requesting that the Federal Energy Regulatory Commission (FERC) require that the applicant conduct a full Environmental Impact Statement instead of the Environmental Assessment that was released. Believes that it is illogical for the Highlands Council to review a project that has not been fully vetted.
- States that the Environmental Law Clinic of Columbia University Law School has provided some analysis of the deficiencies of the Tennessee Gas Pipeline Company submissions.
- Notes that the New Jersey Conservation Foundation sent comments to Green Acres in September 2011 that describe the lack of consideration by the applicant of impacts outside and beyond the construction site itself, as well as serious long-term and permanent impacts of what are deemed by the applicant to be “temporary” access roads, construction sites and impacts, which should all require mitigation.

Miscellaneous

- Notes that FERC has not approved this project and states that demand in natural gas markets either remains flat or is decreasing. States that the U.S. Energy Information Administration found that, between 1999 and 2009, total natural gas consumption for all sectors decreased by 13.3% in New Jersey and 10.4% in New York. Believes that this project is being pushed by gas drillers in the Marcellus Shale to carry the glut of natural gas produced through hydraulic fracturing (or fracking) from Pennsylvania to eastern markets. Believes that this project is not necessary to meet consumer demand and is therefore not in the public need - it provides no public benefit.
- States that in every other decision made by the Highlands Council, increased capacity has never been allowed as a reason for an exemption under the Highlands Water Protection and Planning Act. When property owners wanted to increase the capacity of their dwellings in the Preservation Area, that was not allowed. When builders wanted to increase the capacity of the town to house people by building new dwellings in the Preservation Area, that was not allowed. The idea that increased capacity of the gas company should be allowed through the Preservation Area is contrary to precedent.

- States opposition to the proposed project and feels that an exemption should not be issued. Feels that it does nothing for New Jersey except destroy it.
- Is of the opinion that as a society, we would do better to focus on developing green technologies that reduce our usage of fossil fuels, rather than using dangerous extracting methods.

HIGHLANDS COUNCIL RESPONSES AND EDITS TO HIGHLANDS COUNCIL CONSISTENCY DETERMINATION

The numerous comments received were read carefully by Highlands Council staff and are presented above. As the majority of those comments express opposition to the project generally and do not directly relate to the policies and objectives listed in the Consistency Determination template, they are not reflected in the Final Draft Consistency Determination. As one general response, the Highlands Council will defer to the Federal Energy Regulatory Commission (FERC) regarding a determination as to whether this project is needed for the integrity of New Jersey's or the region's energy system. If the FERC determines that the project is not needed, then any Highlands Council (and NJDEP) actions regarding Exemption #11 and permit reviews will be considered moot. FERC has sole jurisdiction over the needs analysis for this pipeline project.

Responses to Public Comments

Following are Highlands Council staff responses to various issues raised:

Consistency with Highlands Act/ Exemption #11

With respect to the issue of Exemption #11 and consistency with the Highlands Act, this project review is in support of coordinated decision making by the Highlands Council and NJDEP regarding whether this application meets the standard of eligibility for Exemption #11 of the Highlands Act (“the ... upgrade of public utility lines, rights of way, or systems, by a public utility...), which mandates that a Highlands Act exemption is only to be granted “provided that the activity is consistent with the goals and purposes of” the Highlands Act. 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. Projects that are found to be non-exempt, to the extent that they are inconsistent with the Highlands Act, the RMP or the Preservation Area rules, must either address those inconsistencies or apply to the Highlands Council (for the Planning Area) or NJDEP (for the Preservation Area – Highlands Preservation Area Approval). As a “weight of evidence” approach, no specific formula exists for deciding whether a project meets the goals and purposes of the Highlands Act. Rather, the scope and severity of each inconsistency is weighed against the proposed mitigation requiring that inconsistency, and the net result is weighed against the goal and policy statements of the Highlands Act to determine whether, taken as a whole, the project meets the requirement of Exemption #11. The project-specific nature of this process does not allow for a formulaic approach, and therefore the Highlands Council uses the Consistency Determination template as the basis for transparent and holistic consideration of the project.

Mitigation

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. 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, US Fish and Wildlife Service, State Historic Preservation Office and potentially others) as appropriate to each CMP component and will be made available to the public through the processes appropriate to each decision-making process. Many of the more detailed opposing comments regarding specific components of the CMP will be addressed through this process. The CMP will require that professional and qualified Environmental Inspectors be on-site during construction and carefully monitor all construction activities to ensure avoidance and minimization (and where necessary, mitigation) of impacts to resources.

With regard to the comment that the applicant negotiated with the Council to spend no more than \$7,500 an acre on replacement land, this cost per acre was based on Highlands Council data with land transactions in the area of the 300 Line project. Not all parcels would be available at such rates. Further, if the applicant cannot find suitable lands to purchase, the Highlands Council will attempt to find suitable and available parcels for the applicant to purchase, before agreeing to accept monetary compensation. Finally, regarding monetary compensation for this Northeast Upgrade Project, there has been no agreed upon per acre cost for purchase of replacement land at this time, assuming monetary compensation became necessary. This project is to the east of the 300 Line project and may have different comparable land values. The Consistency Determination simply notes that for the 300 Line project previously approved by the Highlands Council, the agreed upon price per acre was \$7,500, as reflecting land values in that area of the Highlands Region (it was an agreed upon price per acre – not a “cap” per se). Again, the important point is that if the applicant cannot find suitable lands to purchase, the Highlands Council will attempt to do so before agreeing to accept monetary compensation.

With respect to the comment that states that the Ramapough Conservancy asked Tennessee Gas for replacement forested lands and was refused, the Highlands Council contacted the applicant who stated that they are working directly with Bergen County (the “County”) regarding impacts to County-owned park land that will be crossed by the proposed NEUP. According to the applicant, the compensation package, which was negotiated with and accepted by the County, is in accordance with the Green Acres regulations. The applicant states that the County’s preference and plan of action is to secure a parcel of land that will meet the Green Acres minimum replacement requirements (for land and trees). According to the applicant, the selection and management of the replacement lands purchased by the County will be determined by the County. The applicant states that the balance of the funds will be placed in a dedicated trust fund and used for long-term conservation of Bergen County lands.

The applicant notes that by way of background, in the summer of 2009, the County of Bergen launched a planning process to develop a Ramapo Mountains Management Plan for the 4,500 acres contained under the stewardship of the County. After years of successfully acquiring lands for preservation, the applicant states that the County is now dedicating efforts to ensure the long-term conservation of these lands by performing diverse park improvement projects. The balance of the compensation will be used by the County for this

effort. Specifically, the County can use the funds for Natural Resource Program and Projects, Forest Management Plan, Boundary Maintenance Program, Trail Protection, Cultural Resource Program and Projects, Geographic Information System (GIS) and Information Management and Capital Program.

Past Performance

With respect to the issue raised that an applicant's past record should be taken into consideration when determining whether or not an exemption will be granted, it should be noted that the Highlands Council added as a condition of approval of the exemption that the applicant shall assess the potential impacts of foreseeable but low-probability events, such as major weather or other catastrophic events, including but not limited to impacts such as slope failure, failure of sediment and erosion control measures, and silt and mud deposition into lakes and other waterbodies. In addition, as a condition of approval, the CMP shall include a contingency plan to address such foreseeable but low-probability events and their impacts, including pre-planning, event management and restoration. These requirements were not a component of the consistency determination for the 300 Line project, and are a direct response to the problems resulting from the major storms of 2011.

Water Quality (hydraulic fracturing)

With respect to the comments received regarding the risks of fracking, the proposed project that is before the Highlands Council is the construction of approximately 7.6 miles of new underground natural gas pipeline to provide additional natural gas transmission capacity. The extraction of natural gas is not a proposed project element, nor does the applicant engage in such extraction. Rather, the applicant is an interstate carrier. It is recognized that extraction is a related component with a potential for impacts at the site of extraction – such impacts are under the jurisdiction of other agencies such as the USEPA (which is engaged in a study of hydraulic fracturing impacts), the State of Pennsylvania, and the Delaware River Basin Commission (which has imposed a moratorium pending adoption of new regulations). The Highlands Council has no jurisdiction beyond consideration of the Exemption. Any approval of an exemption for this project will be conditioned upon approval of the pipeline itself by FERC, which may impose additional requirements to ensure that environmental requirements are met. The Highlands Council must rely upon determinations by FERC and other agencies regarding this issue, as both the impacts of extraction and the impacts of natural gas use occur in areas other than the Highlands.

Water Quality (other)

As noted above, the staff recommendations include a new requirement for the Comprehensive Mitigation Plan that the applicant shall assess the potential impacts of foreseeable but low-probability events, such as major weather or other catastrophic events, including but not limited to impacts such as slope failure, failure of sediment and erosion control measures, and silt and mud deposition into lakes and other waterbodies. In addition, as a condition of approval, the CMP shall include a contingency plan to address such foreseeable but low-probability events and their impacts, including pre-planning, event management and restoration. These requirements address concerns regarding steep slopes in particular.

The pipeline will traverse the area under the Monksville Reservoir using Horizontal Directional Drilling, which is far less disruptive of the reservoir than trenching through the reservoir bottom. The objective will be placement of the pipeline without discharge to, or disruption of, the reservoir itself. NJDEP will have direct permitting responsibility for this phase of the project.

Cultural Resources

With respect to the comment that the applicant has not completed its cultural resource investigation for Loop 325, the Highlands Council investigated this with the applicant. The applicant expresses confidence that a thorough cultural resource investigation has been conducted for the current Project Area of Potential Effects (APE) to date. The applicant states that the Section 106 review of this Project has not been concluded, i.e. a Phase II survey is currently planned at the Mahwah Meter Station and that the Phase II survey result reports for the remaining APE in New Jersey have yet to receive final review from the State Historic Preservation Office (SHPO). The applicant states, and the Highlands Council condition any determination on this commitment, that its consultants will continue to address any comments received from the SHPO in the review stages of the Project.

The applicant states that they have made several requests to the Ramapough Lenape Indian Nation to identify potential cultural resources sites within the Project APE and have encouraged the tribe to provide relevant information to the FERC and SHPO. The applicant states that they have made several attempts to set up a site visit with the tribe and tribal representatives have declined to participate to date. According to the applicant, they plan to make an additional attempt to set up a site visit. The Highlands Council determination on this project is conditioned upon satisfaction of SHPO requirements.

With regard to names of roads, the applicant states that the road names they used in text and mapping filed in the Certificate Application with the FERC and cultural resource reporting filed with other federal and state agencies since the commencement of the Project have been consistent. The applicant states that if a road is “misnamed”, it nonetheless has been clearly identified in text and mapping and should be recognizable when viewed in the cultural resource report. Regarding “Shepard Lake”, the applicant notes that the United States Geological Survey uses the name Sheppard Pond on the 1910 Ramapo 15” Quadrangle and the 1955 Ramsey, NY-NJ 7.5” Quadrangle. Sheppard Pond is located north of L5 AR 50 and the pipeline.

With respect to the statement that the commentor rejects the conclusion of the Council that the applicant has completed work sufficient to protect archaeological resources, it should be noted that the Consistency Determination describes the continued work to be done, and the on-going coordination with the State Historic Preservation Office and the Highlands Council regarding archaeological resources. The Highlands Council notes correspondence dated December 29, 2011 from SHPO to FERC, which indicates that revised methodology, testing, and reporting is necessary with respect to identifying all archaeological resources within the project’s area of potential effects. Further, the correspondence notes that, based on blasting, the project’s area of potential effect needs to be revised and defined. Thus, the applicant must continue to coordinate with SHPO and the Highlands Council regarding the identification of archaeological resources.

Other Resource Issues

Regarding impacts to the Delaware River, the Northeast Upgrade Project and the modifications to 300 Line project within the Highlands Region are not within the Delaware River Basin. Effects on New Jersey’s parks system are being addressed by the NJDEP Green Acres Program working with the State House Commission. Regarding sinkholes, FERC review will include, among many other issues, design of the pipeline for safety purposes to minimize the risk for line breaks. This issue is not within Highlands Council jurisdiction, as the sinkhole areas are not in Carbonate Rock Areas.

Administrative Issues

With regard to the request that consideration of this project should be tabled by the Highlands Council, that request may be made verbally to the Council at the scheduled meeting.

With respect to the comment regarding the applicant's legal right to use Bear Swamp Road, the Highlands Council contacted the applicant to investigate. According to the applicant, they state that they continue to provide supporting evidence for their historic and pre-existing right to use of Bear Swamp Road. The applicant notes that they will work directly with the affected surface landowners, including the County, to resolve any outstanding access issues.

The Highlands Council staff acknowledges the Environmental Law Clinic of Columbia University Law School request of FERC that the applicant conduct a full Environmental Impact Statement instead of the Environmental Assessment that was released. The Highlands Council is in receipt of, and has reviewed the letter that the New Jersey Conservation Foundation sent to Green Acres in September 2011. In each case, jurisdiction over these issues remains with those agencies, which could result in a negative decision that renders the Highlands Council Consistency Determination as moot. The Highlands Council mitigation plans are to ensure consistency with the goals and purposes of the Highlands Act in order to enhance protection of the environment if the project is approved by FERC.

Miscellaneous

The Highlands Council acknowledges each of the comments that we have characterized as miscellaneous:

- That FERC has not approved this project and is of the opinion that demand in natural gas markets either remains flat or is decreasing. As stated above, the Highlands Council will defer to FERC regarding a determination as to whether this project is needed for the integrity of New Jersey's or the region's energy system. If the FERC determines that the project is not needed, then any Highlands Council actions will be considered moot.
- That in every other decision made by the Highlands Council, increased capacity has never been allowed as a reason for an exemption under the Highlands Water Protection and Planning Act. The idea that increased capacity of the gas company should be allowed through the Preservation Area is contrary to precedent. As shown by the previous decisions, both the Highlands Council and the NJDEP believe that energy transmission capacity can be considered an upgrade under Exemption #11. The parameters for exemptions to the Highlands Act for the expansion of homes and other impervious surfaces are addressed specifically by the Act. For example, Exemptions #1 and #2 do in fact allow the development of single homes on an undeveloped parcel, while Exemption #4 allows for limited expansion of non-residential uses and Exemption #5 allows for unlimited expansion of existing homes as of the date of the Act. The capacity statements regarding Highlands Act limitations for these uses are not correct.
- Statements of opposition to the proposed project as it does nothing for New Jersey except destroy it. The Highlands Council review does not address the issue of project need, as noted above. The Highlands Council's decision is not to support or oppose the project but ensure consistency with the goals and purposes of the Highlands Act to best protect resources if the project is approved by FERC. The applicant may apply for permits if an exemption is not granted.
- That as a society, we would do better to focus on developing green technologies that reduce our usage of fossil fuels, rather than using dangerous extracting methods. The Highlands Council does not have jurisdiction over this issue.

Edits Made to the Draft Consistency Determination Following Public Comment Period

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:

- *General Statement Regarding Basis for Review:* The Consistency Determination has been modified to clarify that all reviews are based on the project as proposed and the information available at the time of review. It is acknowledged that additional fieldwork and agency reviews of project design may result in alterations to the details of the project, which may result in either greater or lesser impacts to Highlands Resources. The Highlands Council will address the effects of emergent information to modify the mitigation requirements appropriately to ensure no net loss of resource value, based on the same methods provided in the Consistency Determination.
- *Upland Forest Mitigation Text:* Text was added to the Forest Resources section of the Consistency Determination to explain the enhanced forest mitigation in the form of land acquisition that was determined using the Highlands Council Habitat Mitigation Ratio Determinations document. That document had been, and continues to be attached to the Consistency Determination, and was used to calculate the impact to mitigation ratio. With respect to reforestation, the Consistency Determination was updated to reflect that the restoration planting densities which were presented in the applicant's October 2011 Comprehensive Mitigation Plan are appropriate in tandem with the upland forest mitigation in the form of land acquisition required by the Highlands Council. These densities are not equivalent to those of the State's Forest No Net Loss program for State lands, but are deemed sufficient for mitigation purposes in consideration of the enhanced mitigation for temporary impacts in the form of land acquisition, and so long as the long-term monitoring of reforestation confirms the establishment of forest habitat of sufficient integrity and stem survival.
- *Prime Ground Water Recharge Areas:* Acreages of temporary and permanent disturbance of Prime Ground Water Recharge Areas was provided.
- *State Historic Preservation Office Letter to FERC December 29, 2011:* The Consistency Determination has been modified to include new text in Part 4 (Historic, Cultural, Archaeological, and Scenic Resources) that notes correspondence dated December 29, 2011 from SHPO to FERC, which indicates that revised methodology, testing and reporting is necessary with respect to identifying all archaeological resources within the project's area of potential effects. Further, the correspondence notes that, based on blasting, the project's area of potential effect needs to be revised and defined. Thus, the applicant must continue to coordinate with SHPO and the Highlands Council regarding the identification of archaeological resources. The continued coordination with SHPO and the Highlands Council regarding the identification of archaeological resources was added as a condition of approval in the Conclusions section of the Consistency Determination.
- *Dates Corrected:* Dates were corrected in the Consistency Determination. The date that the Highlands Council approved Resolution #2009-56 (page 1 of the Consistency Determination) was corrected to November 12, 2009. Also, given that construction is anticipated in 2013, the dates of plantings for forest restoration were updated to 2013 and 2014 (if necessary if actual construction timeframes do not accommodate a fall 2013 planting schedule).