



JON S. CORZINE  
Governor

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JOHN R. WEINGART  
Chairman

EILEEN SWAN  
Executive Director

## MEETING AGENDA

*Thursday, November 12, 2009 - 1:00 p.m.*

1. CALL TO ORDER
2. ROLL CALL
3. OPEN PUBLIC MEETINGS ACT
4. PLEDGE OF ALLEGIANCE
5. APPROVAL OF MINUTES – October 15, 2009
6. CHAIRMAN'S REPORT (and Council Member Reports)
7. EXECUTIVE DIRECTOR'S REPORT
  - a. Update on Highlands Plan Conformance
  - b. Update on 2009 Plan Conformance Grant Program
  - c. Update on Highlands TDR Program
8. CONSIDERATION OF RESOLUTION – *Approval of Certain Planning Assistance Grants* - (voting matter with public comment)
9. CONSIDERATION OF RESOLUTION – *Highlands Act Exemption application from Tennessee Gas Pipeline Company, 300 Line Project, Passaic and Sussex Counties* - (voting matter with public comment)
10. CONSIDERATION OF RESOLUTION – *Authority regarding Highlands Plan Conformance and Highlands Project Review* - (voting matter with public comment)
11. PUBLIC COMMENTS (*please note – the Council requests that public comments be limited to three (3) minutes per person. Questions raised in this period will not be responded to at this time but, where feasible, will be followed up by the Council and its staff.*)
12. EXECUTIVE SESSION (if deemed necessary)
13. ADJOURN

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

**PRESENT**

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

**ABSENT**

GLEN VETRANO	)
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**CALL TO ORDER**

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

**ROLL CALL**

The members introduced themselves.

**OPEN PUBLIC MEETINGS ACT**

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

**PLEDGE OF ALLEGIANCE** was then recited.

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

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

**CHAIRMAN'S REPORT**

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

## **EXECUTIVE DIRECTOR'S REPORT**

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

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

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

### **HDC Estimator Tool**

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

## **PUBLIC COMMENT ON THIS RESOLUTION**

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

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



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

**Eliot Ruga, New Jersey Highlands Coalition**

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

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

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

**David Shope, Long Valley**

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

**Wilma Frey, New Jersey Highlands Coalition**

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

**Kate Millsaps, New Jersey Highlands Coalition**

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

**Julia Somers, New Jersey Highlands Coalition**

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

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

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

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

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

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

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

**Dave Peifer, ANJEC**

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

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

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

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

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



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

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

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

Ms. Carluccio rejoined the meeting.

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

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

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

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

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

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

## **PUBLIC COMMENT ON THIS RESOLUTION**

**Eliot Ruga, New Jersey Highlands Coalition**

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

**Julia Somers, New Jersey Highlands Coalition**

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

**Helen Heinrich, New Jersey Farm Bureau**

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

**David Shope, Long Valley**

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

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

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

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

**CHAIRMAN'S REPORT**

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

**GENERAL PUBLIC COMMENT**

**Julia Somers, New Jersey Highlands Coalition**

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



**David Shope, Long Valley**

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

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

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

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

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

**CERTIFICATION**

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

Date: 12/17/09

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

**TRUE COPY**

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



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MEMORANDUM

TO: Honorable Robert E. Littell

FROM: Carrie Anne Calvo-Hahn  
Senior Research Analyst

DATE: May 3, 2007

SUBJECT: HIGHLANDS' EXEMPTIONS FOR SINGLE FAMILY DWELLINGS

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

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

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

## HIGHLANDS' EXEMPTIONS FOR SINGLE FAMILY DWELLINGS

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May 3, 2007

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

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

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

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

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

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

tg



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

Comments for NJ Highlands Council Meetings on November 12,

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

RE: Tennessee Gas Pipeline Consistency Determination

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

1. The Standard of Review

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

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

2. Plants

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

3. Water resources

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

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



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

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

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

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

Elliott Ruga  
NJ Highlands Coalition



Commerce and Industry Association of New Jersey

South 61 Paramus Road, Mack-Cali Centre IV, Paramus, New Jersey 07652  
201-368-2100 Fax 201-368-3438 [www.cianj.org](http://www.cianj.org)

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

FROM: John Galandak, President, CIANJ

DATE: Thursday, November 12, 2009

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

---

### *Introduction*

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

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

### *The Need for Added Capacity*

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

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



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

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

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

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

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

### ***Conclusion***

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

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

Thank you for your time and consideration.

HIGHLANDS REGIONAL



MASTER PLAN  
2008

# Highlands Council Meeting

November 12, 2009





# Executive Director's Report

- Plan Conformance Update
- Highlands TDR Program
- Tennessee Gas Project Review
- RMP Implementation

# Highlands Exemption and Consistency Determination

## Tennessee Gas Pipeline Company 300 Line Project



# Tennessee Gas Pipeline 300 Line Project Overview

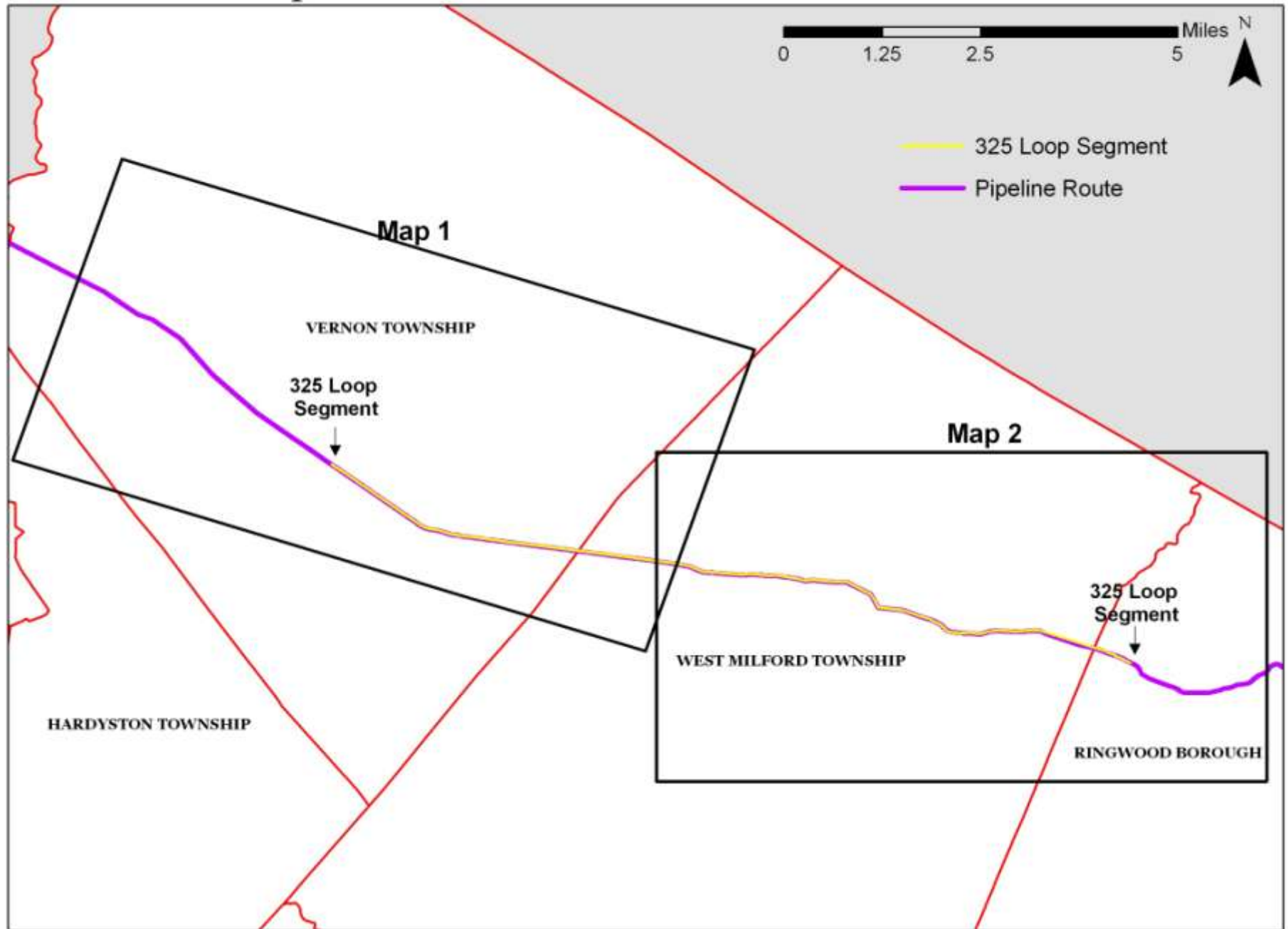
- Existing Line – 24-inch underground natural gas pipeline system that traverses northern Pennsylvania and northwestern New Jersey in a 50-foot right-of-way (ROW); built in the 1950s.
- Proposed Project Upgrade – proposed pipeline loop (325 Loop Segment) located at a maximum 25-foot offset from existing line for a 75-foot wide permanent ROW.
- Highlands Region - 16 miles in the Highlands Region with 11 miles in the Preservation Area and 5 miles in the Planning Area.
- Municipalities - The ROW goes through three Highlands municipalities: Vernon (8.7 miles), West Milford (6.7 miles), and Ringwood (0.6 miles).

- Additional 59,200 hp (from Sta. 219 to Sta. 325), including two midpoints
- 128 miles of 30" looping between Sta. 313 and Mahwah, NJ in existing corridor





# Tennessee Gas Pipeline

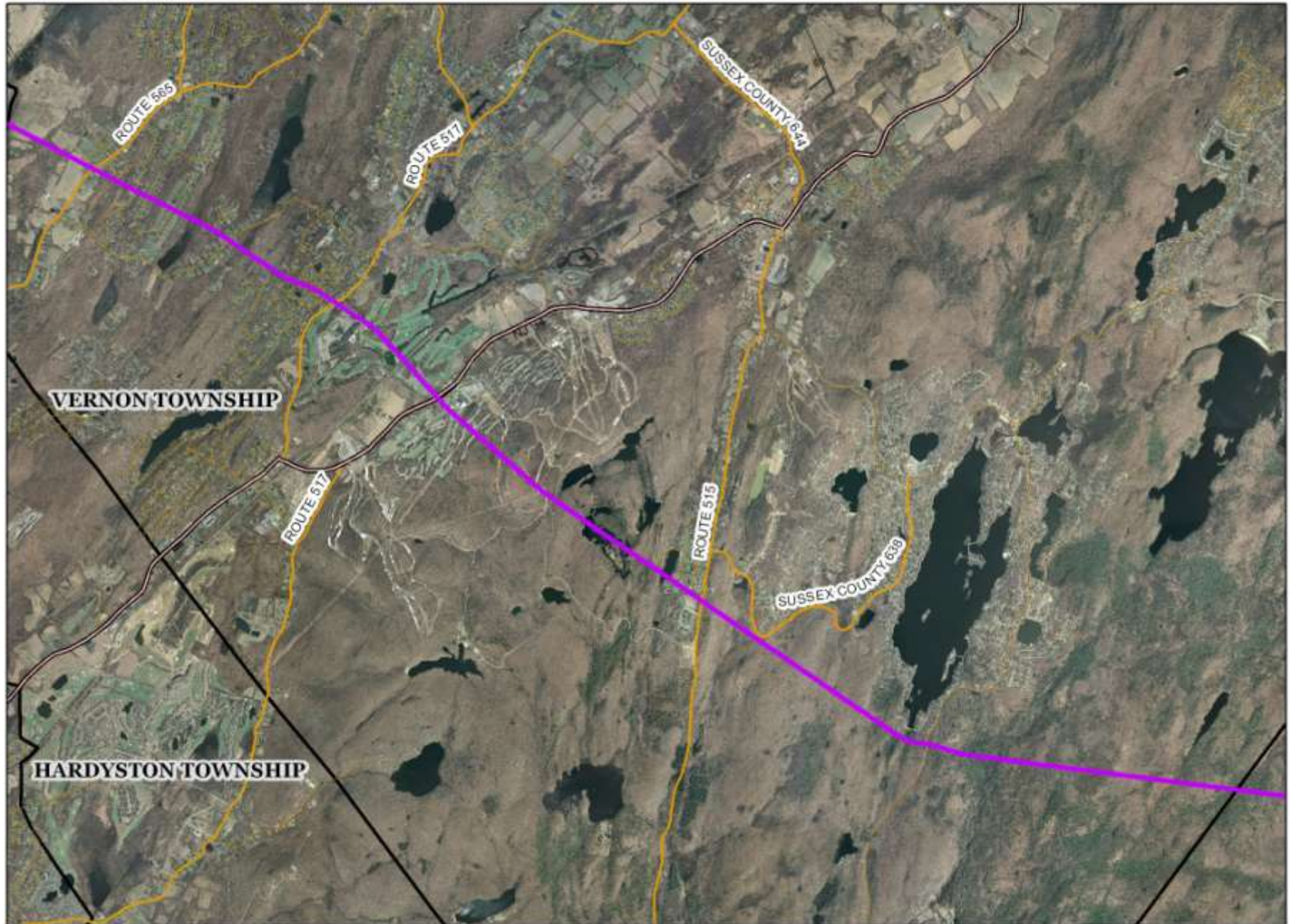


# Tennessee Gas Pipeline



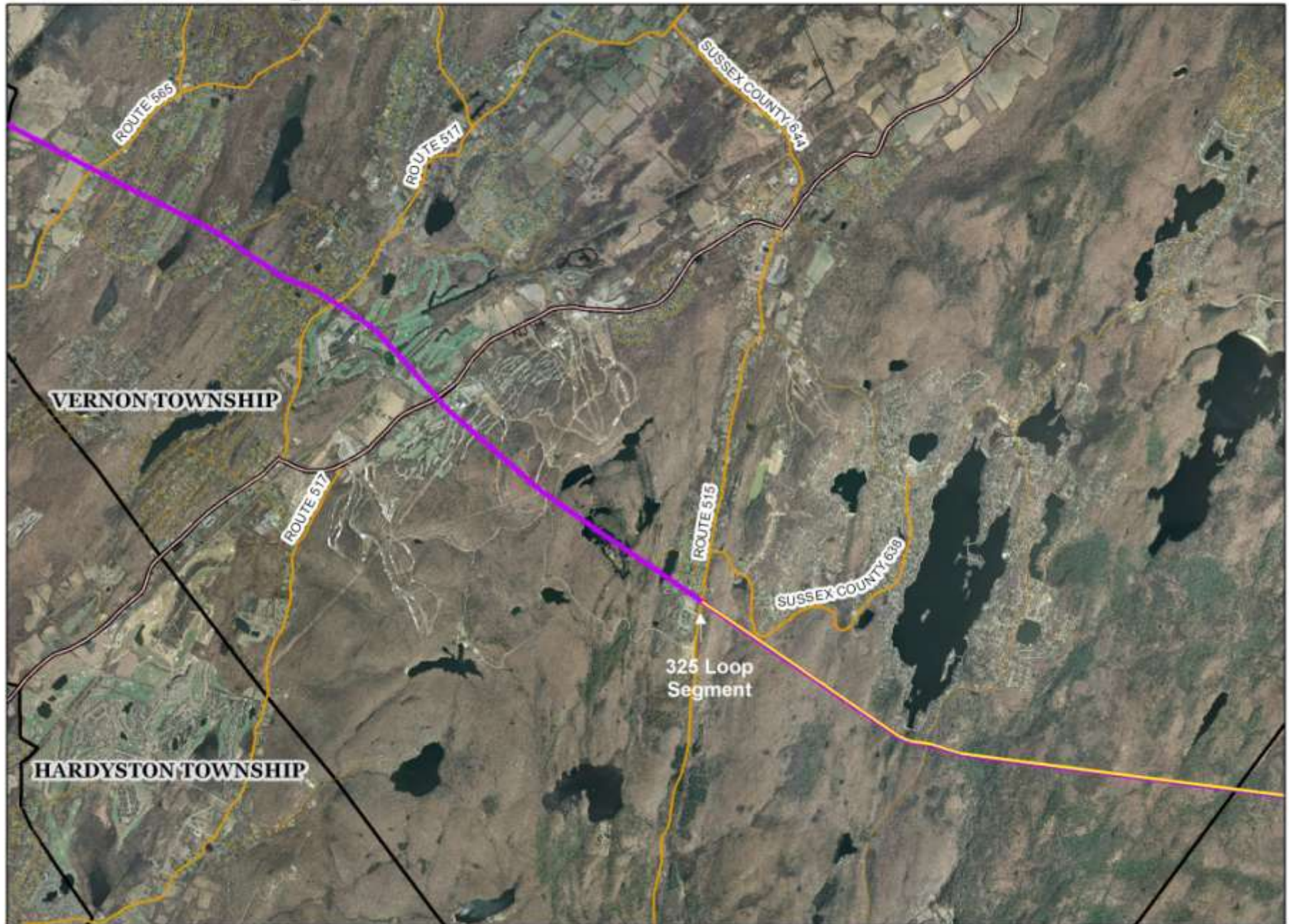


# Tennessee Gas Pipeline





# Tennessee Gas Pipeline





# Tennessee Gas Pipeline





# Tennessee Gas Pipeline





# Tennessee Gas Pipeline



# Tennessee Gas Proposed Action

- **Pipeline/ROW** – proposed 325 Loop Segment located at 25-ft offset from existing 50-ft ROW; 75-ft permanent ROW.
- **Temporary Construction Workspace** – additional 25-ROW for “typical 100-ft wide construction ROW.”
- **Pipe/Equipment Storage Yard** – 35 acres of previously disturbed area in West Milford to be used during construction.
- **Access Roads** – existing public roads and six existing private roads – minor improvements (re-grading and vegetation trimming).
- **“Pig Receiver”** – pipeline component to be temporarily constructed in previously disturbed area (0.60 acres in Ringwood).
- **Main Line Valves** – tie-in valves at beginning and end of loop and three main line valves along the pipeline.



# Need for Tennessee Gas Project to be determined by FERC

- Federal Energy Regulatory Commission (FERC) is currently reviewing the application for a certificate of public convenience and necessity.
- FERC is reviewing certificate application pursuant to the applicable provisions of the Natural Gas Act and FERC regulations.







Ski run built over the  
line



Under this ridge-  
top wetland  
system







Line + existing vegetation  
break



**Closest view of ROW**





## Equipment storage and staging area





The line crosses this reservoir





# Tennessee Gas Application for an Exemption (#11) from the Highlands Act

## Exemption from the Highlands Act:

(11) the routine maintenance and operations, rehabilitation, preservation, reconstruction, repair, or upgrade of public utility lines, rights of way, or systems, by a public utility, provided that the activity is consistent with the goals and purposes of this act.

Affirmative determination would exempt the Project from:

- The Highlands Act
- Highlands Regional Master Plan
- NJDEP Preservation Area Rules and
- Any conforming municipal or county regulations.

Consistent with the RMP (Objective 7F1f ), the Highlands Council assesses the project against the Highlands Act, the Regional Master Plan and NJDEP's Preservation Area rules at N.J.A.C. 7:38 to determine whether the project is consistent with the goals and purposes of the Highlands Act and therefore should be deemed exempt. **Complete consistency with the RMP not required by the Highlands Act.**

# Tennessee Gas Application - Highlands Council Review Process

- March 6, 2009 – Tennessee Gas submits Exemption application for the Preservation Area to NJDEP
- May 11, 2009 - Highlands Council staff issues a Draft Consistency Determination which determined the Project was inconsistent for exemption #11 (public comment period provided through June 29)
- September 10, 2009 – In response to Council and public comments, Tennessee Gas amended the Project to include a Comprehensive Mitigation Plan and application for the Planning Area
- September 16, 2009 – Highlands Council Amended Draft Consistency Determination posted on Council's website for public comment
- October 9, 2009 – 2<sup>nd</sup> Public Comment Period closes
- November 6, 2009 – Revised Consistency Determination with track changes and public comment response documents posted



# Tennessee Gas Amended Exemption Application

- Preservation Area and Planning Area – Tennessee Gas submitted an amended application for Preservation and Planning Area, providing an opportunity to ensure protections for 16 mile route. (*Original exemption application or potential HPAA with waiver would only cover 11 mile Preservation Area*)
- Use of RMP to judge consistency – Tennessee Gas amended the application following the guidance provided in the Highlands Consistency Determination Report, using the RMP, to address the inconsistencies. The approach was to examine each issue and avoid, minimize or mitigate (in that order) so as to be consistent with the goals and purposes of the Act.

# Tennessee Gas Amended Exemption Application

- **Temporary impacts** – Mitigated through planning and coordination with, and critical review by, the Highlands Council.
- **Routine post-construction repair and maintenance** - Includes application of Exemption #11 to include post-construction repair and maintenance activities (e.g., pipeline inspections, correction and repairs, ROW maintenance)
- **Comprehensive Mitigation Plan** – A CMP will be prepared consistent with the RMP using the approach of avoid, minimize and mitigate. Applicant commits to implementation of the CMP to achieve no net loss of Highlands Resources where avoidance and minimization are not sufficient.
- **Land Acquisition and Stewardship** - As part of the CMP, approximately 75 to 80 acres of undeveloped, environmentally sensitive lands to be acquired. Commitment to coordinate with the Highlands Council regarding the management and stewardship of this land.



# Existing ROW and Proposed New Disturbance

- The existing pipeline ROW in the Highlands Region consists of approximately 103 acres.
- The proposed land disturbance would consist of approximately 230 acres (approximately 82 acres within the existing ROW and approximately 148 acres outside of the existing ROW).
- Of the 148 acres of new disturbance outside of the existing ROW, there would be approximately 39 acres of permanent land disturbance.

# Concept Plans for Comprehensive Mitigation Plan

- Key CMP Concept Plans:
  - Forest Management Plan
  - Open Waters and Riparian Areas Plan
  - Steep Slope Construction Plan
  - Critical Habitat Mitigation Plan
  - Carbonate Rock Plan
  - Water Resources Quantity Protection Plan
  - Water Quality Protection Plan
  - Historic, Cultural, Archaeological and Scenic Resources Plan
- Applicant will monitor restoration efforts annually for the first three years after construction or until wetland revegetation is successful. Annual reporting to Highlands Council.



# Land Acquisition and Protection for Unavoidable Impacts

- **Forests** - Commitment to the acquisition and preservation of mature forest land to mitigate for unavoidable forest impacts. Site under consideration contains over 55 acres of mature upland forest located within the Forest Resource Area and is of high forest integrity value.
- **Special Environmental Zone and Prime Ground Water Recharge Areas** - Commitment to the acquisition and preservation of land (20-25 acres) located within a Special Environmental Zone and that features substantial Prime Ground Water Recharge Area, to mitigate for unavoidable impacts to these resources.
- Commitment to coordinate with the Highlands Council regarding the management and stewardship of this land.

# Environmental Construction Plan

- Applicant has developed an Environmental Construction Plan (ECP) specifically for project, per FERC requirements.
- ECP describes the environmental construction techniques that will be implemented during and following construction to protect environment.
- Specifications in ECP based on procedures successfully used in constructing transmission systems throughout US and on guidelines from US Army Corps of Engineers and Natural Resource Conservation Service (NRCS).



# Implementation Plan

- Construction of project and implementation of CMP contingent upon FERC approval.
- Following FERC issuance of certificate of order, applicant will file Implementation Plan with FERC.
- Implementation Plan includes all construction, restoration, and monitoring requirements including requirements of CMP and ECP.
- Compliance with Implementation Plan will be monitored by FERC environmental inspectors also.

# Staff Recommendations

Recommendation for Highlands Council approval of Highlands Act exemption application with conditions:

- Applicant incorporates its findings and commitments regarding Prime Ground Water Recharge Areas;
- Applicant addresses short-term impacts of construction activities (noise, emissions) on rare, threatened and endangered species;
- Applicant provides to Highlands Council the qualifications of all Environmental Inspectors (other than FERC) prior to commencement of any on-site activity; and
- Applicant coordinates with the Highlands Council regarding the management and stewardship of lands acquired for preservation.



HIGHLANDS REGIONAL



MASTER PLAN  
2008

# Highlands Council Meeting

November 12, 2009





**State of New Jersey**  
 Highlands Water Protection and Planning Council  
 100 North Road (Route 513)  
 Chester, New Jersey 07930-2322  
 (908) 879-6737  
 (908) 879-4205 (fax)  
 www.highlands.state.nj.us



## HIGHLANDS RMP CONSISTENCY DETERMINATION REVIEW (REVISED)

PROJECT INFORMATION			
<b>Project Name:</b> Tennessee Gas Pipeline Company 300 Line Project		<b>Date:</b> November 6, 2009	
<b>Name of Applicant:</b> Tennessee Gas Pipeline Company			
<b>Areawide WQMP:</b> No		<b>WMP:</b> No	
<b>Municipality:</b> Vernon and West Milford Townships and Ringwood Borough		<b>County:</b> Sussex and Passaic	
<b>Exempt project?</b> Subject of this review	<b>Project specific amendment?</b> No		<b>WMP review?</b> No
<b>NJDEP Activity #:</b>		<b>HPAA#:</b> N/A - HAD Exemption #11 application is subject of review.	
<b>Lot and Block, if applicable:</b> Numerous			
<b>Sewer Service Area/WWTP Facility:</b> N/A			
<b>Sewer Service Area/WWTP Facility:</b> New <input type="checkbox"/> Existing <input type="checkbox"/> <i>If existing provide the following:</i>			
<b>Proposed Change in Service Area or Wastewater Flow?:</b> No			
<b>NJPDES #:</b>		<b>Permit Discharge (MGD):</b>	
<b>Type of Discharge:</b> GW <input type="checkbox"/> SW <input type="checkbox"/>		<b>Total Proposed Service Area (acres):</b>	
<b>Total Existing Service Area (acres):</b> N/A			
<p><b>Description of Project:</b> The existing Tennessee Gas Pipeline Company's "300 Line" is a 24-inch underground natural gas pipeline system that traverses northern Pennsylvania and northwestern New Jersey. The existing maintained right-of-way (ROW) is 50-feet in width in the New Jersey segment. The specific portion of the proposed project in New Jersey would include increasing the capacity of the existing natural gas pipeline system through construction of approximately 17 miles of new 30-inch underground natural gas pipeline, which Tennessee Gas is proposing constitutes an upgrade under Exemption #11 of the Highlands Water Protection and Planning Act (Highlands Act). The proposed pipeline loop in New Jersey is known as "the 325 Loop Segment" (the term "loop" refers to a segment of pipeline installed adjacent to an existing pipeline and connecting to it at both ends). Approximately 16 miles of the 325 Loop Segment would be located in the Highlands Region (approximately 11 miles in the Preservation Area and five miles in the Planning Area). The proposed 325 Loop Section would commence in Wantage Township (outside of the Highlands Region) and extend into the Highlands Region through Vernon (8.7 miles) and West Milford (6.7 mile) Townships, terminating in Ringwood Borough (0.6 miles). <u>Much but not all of the 325 Loop Segment would be within the existing pipeline ROW. The existing pipeline ROW in the Highlands Region consists of approximately 103 acres. The new proposed land disturbance would consist of approximately 230 acres (approximately 82 acres within the existing ROW and approximately 148 acres outside of the existing ROW). Of the 148 acres of new disturbance outside of the ROW, there would be approximately 39 acres of permanent land disturbance.</u></p> <p>The project has been submitted to the Federal Energy Regulatory Commission (FERC) for review. This project review is in support of decision making by both the Highlands Council (in the Planning Area) and NJDEP (in the Preservation Area in consultation with the Highlands Council) regarding whether this application meets the standard of eligibility for Exemption #11 of the Highlands Act (<u>"the ... upgrade of public utility lines, rights of way, or systems, by a public utility..."</u>), 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</p>			

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



Project Name: Tennessee Gas Pipeline Company 300 Line Project  
Name of Applicant: Tennessee Gas Pipeline Company

Date: November 6, 2009  
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with the RMP itself.

The applicant had originally submitted a Highlands Applicability Determination (HAD) for Exemption #11 on March 6, 2009 to the NJDEP and copied the Highlands Council. The Highlands Council released a staff draft Consistency Determination for public review and comment on May 11, 2009 with an ultimate close of public comments on June 29, 2009. Since that original submittal, 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 has revised the proposed project (submitted on September 10, 2009) to reduce the environmental impacts. The Highlands Council is addressing this revised proposal as an amended submittal and is soliciting further public input in accordance with the established protocols for Consistency Determination review, due to the significant changes subsequent to the close of public comments on the original application. Specifically, the revised application:

- 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 application of Exemption #11 of the Highlands Act to include routine post-construction repair and maintenance on the Tennessee Gas Pipeline Company 300 Line. These repair and maintenance activities include, but are not limited to, pipeline inspections, correction and repairs of anomalies, hydrostatic tests, excavation for external inspections, replacement of pipeline coating, replacement of pipeline segments, installation and maintenance of cathodic (i.e., metal corrosion) protection, maintenance of mainline valves, maintenance of pig launchers and receivers, and mowing and clearing of the ROW. Such activities are required to adhere to the FERC's maintenance requirements in Section 380.15 of the FERC regulations.

Following is a brief description of the proposed project elements:

- **Pipeline Facilities** – The proposed 325 Loop Segment would be located at a maximum 25-foot offset from the existing 300 Line pipeline within the existing ROW where feasible. ~~Some a~~Additional new permanent ROW would be required (see below – Existing and Proposed Permanent ROW) along with temporary workspace to facilitate construction of the pipeline.
- **Existing and Proposed Permanent ROW** – The existing 300 Line pipeline is situated within a 50-foot permanent ROW. The applicant proposes to maintain a maximum 25-foot separation between the existing pipeline and the proposed 325 Loop segment where feasible. This would result in a 75-foot wide permanent easement. Discussions with landowners are in progress, including governmental agencies regarding preserved open space along the pipeline ROW.
- **Temporary Construction Workspace** – The applicant is proposing to add an additional 50 feet of temporary ROW for temporary construction workspace, which would result in a “typical 100-foot wide construction ROW.” The applicant indicates that construction ROW width would be reduced in wetland areas, steep slopes, stream crossings and in some residential areas to reduce impacts and may be extended to 125 feet in agricultural areas to facilitate topsoil segregation. In addition to the typical 100-foot wide construction ROW, the applicant states that additional temporary workspace areas would be required to facilitate construction in areas that feature wetlands, steep slopes and bedrock outcroppings as well as road, railroad and utility crossings. The applicant indicates that these additional temporary workspaces would be required to support specialized construction techniques such as drilling or boring. According to the applicant, these workspaces would typically range from 25 to 100 feet depending on existing conditions. The applicant indicates that

Project Name: Tennessee Gas Pipeline Company 300 Line Project  
Name of Applicant: Tennessee Gas Pipeline Company

Date: **November 6, 2009**  
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disturbed areas would be restored to pre-construction conditions upon completion of construction activities, in compliance with FERC requirements.

- **Access Roads** – Access roads would be required during construction for movement of personnel, equipment and material to the pipeline ROW. The applicant states that it will be capable of constructing the project using existing public roads and six existing private roads (two in Preservation Area and four in Planning Area) and that minor improvements such as re-grading and vegetation trimming will be required.
- **Pipe and Equipment Storage Yard** – The applicant states that it would utilize one area, approximately 35 acres in size, for pipe storage and staging areas during construction. It is stated that two possible locations have been identified (Area A and Area B). Area A is located off Burnt Meadow Road in the Hewitt village area of West Milford and is within the confines of a previously disturbed quarry. Area B is located off Greenwood Lake Turnpike in West Milford and is also located within a previously disturbed area. Upon completion of construction activities, the applicant states that the selected site would be restored to pre-construction conditions.
- **Pig Receiver** – The applicant proposes to construct a “pig receiver” (i.e., a pipeline component used for removing an inline inspection tool or other device from a pressurized pipeline) in a previously disturbed area in Ringwood. The area would require a temporary workspace area of approximately 0.60 acres. Following construction, the pig receiver would lie within the permanent ROW easement.
- **Main Line Valves** – The applicant proposes to install tie-in valves at the beginning and the end of the pipeline loop, and install three main line valves along the pipeline as referenced in the Project Narrative in the HAD application. ~~proposes to install tie-in valve assemblies at each end of the pipeline loop segment to integrate the loop sections into the existing system.~~

In addition to the construction elements discussed above, the amended proposed project integrates a **Comprehensive Mitigation Plan (CMP)**. The purpose of the CMP is to set forth a plan of construction and restoration by which project implementation would avoid, minimize and mitigate any impacts to Highlands Resources so that there will be no net loss of such resources, consistent with the Highlands Regional Master Plan (RMP). It will provide an approach and process for identifying the specific resource issues, the means to avoid and minimize the specific impact, and ultimately, the ability to define ways that would help mitigate unavoidable environmental impacts. The combined effect of these plans is intended to effectively deal with the proposed project as a whole unit. The applicant also indicates that Environmental Inspectors (EIs) would be on-site during construction activities to ensure compliance with the CMP, as well as requirements of all applicable federal, State and local environmental permits and approvals

The applicant will provide a copy of this CMP to the FERC. The FERC is currently reviewing the application for a certificate of public convenience and necessity for the proposed project and the FERC is reviewing that certificate application pursuant to the applicable provisions of the Natural Gas Act and the FERC's regulations. Construction of the project and the implementation of the CMP are contingent upon issuance by the FERC of the requested certificate of public convenience and necessity for the project. Following FERC issuance of a certificate order authorizing the project, the applicant will file with the FERC an Implementation Plan for the Project, which will include all applicable construction, restoration and monitoring requirements, techniques, and standards, including the requirements of the referenced CMP. Once the Implementation Plan for the project is approved by the FERC, the applicant will be required to comply with all provisions of that Implementation Plan, as well as with all requirements and conditions of the certificate order. Compliance with the Implementation Plan will be monitored by environmental inspectors from the FERC, as well as the applicant's EIs.

The applicant filed a “Final Environmental Report” with FERC in July 2009. This report is a compendium of 13 resource reports that describe existing conditions/resources of the existing and proposed ROW. Appendix O of the report provides the alignment sheets for all the project lines including the proposed 325 Loop Section that is the subject of this review. Appendix D of the Environmental Report conceptually describes the “Environmental Construction Plan” (ECP) that the applicant developed specifically for this project. The ECP describes the basic environmental construction techniques that Tennessee Gas (and its contractors) will implement during and following



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construction and maintenance to protect the environment and to minimize potential effects of the pipeline construction and maintenance. According to the applicant, it has based the specifications in the ECP on procedures successfully used in constructing, operating and maintaining transmission systems throughout the United States, and on guidelines and recommendations from the U.S. Army Corps of Engineers, the U.S. Department of Agriculture, the Natural Resources Conservation Service ("NRCS"), and the FERC. The Final Environmental Report filed with FERC is available on-line at: [http://www.elpaso.com/tgp300lineproject/certificate\\_application.shtm](http://www.elpaso.com/tgp300lineproject/certificate_application.shtm) (additional information regarding the project may be found at <http://www.elpaso.com/tgp300lineproject/>). The Final Environmental Report may also be downloaded from the FERC website at: [www.ferc.gov](http://www.ferc.gov) (Docket No.CP09-444). The Highlands Council has also posted on its website for public review other GIS and text materials as provided by Tennessee Gas.

## PRESERVATION AND PLANNING AREAS AND LAND USE CAPABILITY ZONES

**Project Area located in which Highlands Act Area?** (Check all that apply.):

**Preservation Area** ☒ **If yes, percentage?** 70 % **Planning Area** ☒ **If yes, percentage?** 30%

**Project Area within which Land Use Capability Zone or Sub-Zone?** (check all that apply):

Protection Zone ☒ Conservation Zone ☐ Existing Community Zone ☒

Conservation – Environmentally Constrained Sub-Zone ☐ Existing Community – Environmentally Constrained Sub-Zone ☒

Lake Community Sub-Zone ☐ Wildlife Management Sub-Zone ☒

The review below is organized by Regional Master Plan Goals, Policies and Objectives for each resource and smart growth category; C stands for Consistent, I for Inconsistent, and N/A means the goal, policy, or objective is not applicable. Project specific reviews are based on the application of these Policies and Objectives to the project site, and do not require the adoption of municipal ordinances. Documents reviewed for this analysis include all appropriate documents submitted to the NJDEP, Highlands Council GIS data and technical reports, and documents related to the State Planning Commission Plan Endorsement process where applicable.

## PART 1 NATURAL RESOURCES

### SUBPART A FOREST RESOURCES

**Project Area within Forest Resource Area?** Yes

**If yes to above, is there Encroachment into a Forest within Forest Resource Area?** Yes

**Forest Integrity Value (check one):** High ☒ Medium ☐ Low ☐

**Regional Master Plan Goals, Policies, and Objectives:**

	<b>C</b>	<b>I</b>	<b>N/A</b>
<b>Policy 1A2:</b> To limit human development in the Forest Resource Area in the Preservation Area in order to protect and enhance forest resources, forest ecosystem integrity, Critical Habitat, and the quantity and quality of water resources.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 1A2c:</b> To prohibit through local development review and Highlands Project Review the deforestation of lands within the Forest Resource Area of the Preservation Area for human development except where authorized as an exemption by the Highlands Act, or is an agricultural or horticultural development as defined at N.J.S.A. 13:20-31 and meets the requirement of that provision of the Highlands Act, or if qualifying as a major Highlands Development, the project must, at a minimum, be in conformance with the NJDEP Preservation Area Rules at N.J.A.C. 7:38-3.9.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 1A2d:</b> To prohibit through Plan Conformance, local development review and Highlands Project Review the expansion or creation of public water supply systems or public wastewater collection and treatment systems or community-based on-site wastewater facilities into forested areas of the Forest Resource Area within the Planning Area except as provided for in Policy 2J4 with Objectives 2J4a through 2J4d, and Policy 2K3 with Objectives 2K3a through 2K3e, and within the Preservation Area except as provided for in Policy 2I1 and Objectives 2I1a and 2I1b.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 1A2e:</b> To require through local development review and Highlands Project Review that projects qualifying as major Highlands Developments, affecting or potentially affecting forests outside the Forest Resource Area in the Preservation Area, comply with the NJDEP Preservation Area Rules at N.J.A.C. 7:38-3.9. All projects in the Preservation Area that are not major Highlands Developments shall comply with Policies 1A1 and 1A2.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Policy 1A5:</b> To prohibit through local development review and Highlands Project Review forest clear-cutting within the Forest Resource Area except in accordance with a Forest Management Plan approved by the State Forester.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Policy 1B2:</b> To limit through local development review and Highlands Project Review human development of forests to low impact residential development in the Protection Zone and the Conservation Zone in the Planning Area.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 1B3:</b> To limit through local development review and Highlands Project Review deforestation in the Forest Resource Area and forested lands within High Integrity Forest Subwatersheds within the Existing Community Zone to maximum extent practicable.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 1B3a:</b> Implementation through Plan Conformance of regulations, which limit the clearing of trees in conjunction with human development to circumstances where the clearing will not diminish the integrity of forest resources.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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<b>Policy 1B5:</b> To ensure that forest resources are protected on a site specific basis during local development review and Highlands Project Review.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 1B5a:</b> Applications for local development review and Highlands Project Review require identification of any forest area on and adjacent to a site in accordance with the Highlands Council's Method for Identifying Upland Forest Areas in the Highlands Region.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Policy 1B7:</b> To prohibit clear-cutting of forest lands except pursuant to an approved Forest Management Plan approved by the State Forester.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Policy 1C1:</b> To require that conforming municipalities and counties address the protection of forested portions of Forest Resource Areas and High Integrity Forest Subwatersheds in their master plans and development regulations.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 1C3:</b> To require that conforming municipalities adopt a tree clearing ordinance consistent with an approved community forestry plan under the New Jersey Forest Service Community Forestry Program as part of the municipal master plan and local development regulations.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Comments:** The applicant is currently authorized and required to conduct vegetative clearing within the existing ROW, which includes the removal of trees and tall growing saplings and shrubs, to ensure that the ROW is maintained for access, visibility, and safety, pursuant to FERC rules governing natural gas transmission lines. Thus, the applicant notes that the majority of vegetative communities located within the existing ROW are not forested, which is consistent with the Highlands Council GIS forest data layer.

The expansion of the permanent ROW by 25 feet to 50 feet, the additional 50 feet of temporary expansion for a "typical" 100-foot wide construction ROW, improvements to existing access roads, and construction of other temporary workspaces would require removal of forests in a Forest Resource Area in both the Preservation and Planning Areas. The applicant indicates that it is required to obtain permits from NJDEP for impacts to forested wetlands and must comply with FERC Wetland and Waterbody Construction and Mitigation Procedures (FERC Mitigation Procedures) for pipeline construction and operation through forested wetland areas. Appendix C of the CMP contains a copy of the FERC Mitigation Procedures.

A key component of the CMP is a proposed Forest Management Plan. According to the applicant, the goal of the Forest Management Plan is minimizing the initial impacts to and restoring forests directly impacted by the proposed project, as well as improving forest habitats on parcels acquired to compensate for unavoidable forest impacts. The applicant indicates that as part of this plan, all Highlands forests will be identified in accordance with the Council's *Method for Identifying Upland Forests in the Highlands Region*. Further, the applicant notes that the Forest Management Plan would be designed to enhance the functional values of the forest habitat under the control of Tennessee Gas outside of the ROW. The plan would identify the specific forest habitat to be affected and would be designed to demonstrate that there is no net loss of forest habitat and function.

The applicant states that the plan will address construction-related mitigation for the improvement of access roads and creation of new permanent easement to include the following key elements:

- Identification of a route that results in the least disturbance to existing forest resources, including locating the proposed Loop 325 within and adjacent to the existing 300 Line easement;
- Identification and avoidance, as practical, of large specimen trees or den trees;
- Where appropriate, replanting restored temporary access and staging areas using native deer resistant species of shrubs, sub-canopy trees and canopy trees; and
- Identification of locations where the planting of shrubs and sub-canopy trees and canopy trees will help restore vertical structure to forested areas harmed by deer browsing. Plant species will be selected from the native species on either side of the ROW/access roads to be restored, and all planted species will be protected with deer fencing.

With respect specifically to upland forest restoration and mitigation, the applicant notes that the approach involves a combination of impact minimization during construction and vegetation re-establishment involving natural, successional processes as a key component. It is stated that that this approach will best minimize the long-term impacts to forested uplands and will facilitate the development of an upland forest with a vegetation community composed of species best suited for the site and successional stage. The applicant states that its reforestation plan is based upon principles outlined within the *No Net Loss Reforestation Act* (P.L. 1993, c 106, N.J.S.A.13:1L-14.2) and shall be limited to those forested upland areas within designated temporary workspace. Following is a summary of the key elements of the



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applicant's reforestation plan:

- Re-establishment of forest will be performed using a combination of plantings and natural, successional processes.
- Restoration planting densities of 600 plants-per-acre within upland forests, 400 of which shall consist of tree species. Tree species will consist of four to six foot whip-sized individuals in a variety of native upland species obtained from a reputable plant nursery. No cultivars or other ornamental sub-species will be allowed as substitutes. Alternatively, reforestation planting may consist of 800 to 1,000 seedlings per acre.
- Planting will be conducted by a qualified and reputable landscape contractor contracted by the applicant to provide oversight of the restoration activities. The landscape contractor will be provided a copy of the CMP and will be apprised of applicant's obligations under the plan.
- Spacing of individual plants (typically six to ten feet on center) will be conducted so as to maintain consistent areal canopy coverage and adequate sun exposure as the plantings grow and mature.
- Plantings will be accomplished through the use of plant stocks chosen for their compatibility with the local environment. Commercially available plants and seeds will be utilized to accomplish this goal. The planting plan has been designed to provide a variety of plant species to promote species richness, enhance wildlife habitat, and help to "jump start" restoration of the forest community within the temporary workspace impacted during construction activities.
- Specifications for species, planting stock size and quality, stem quantity and spacing, and planting method will be developed for review by the Highlands Council and NJDEP, and other agencies as appropriate.
- The applicant will conduct post-construction monitoring of all forested areas affected by construction for a minimum of three years to assess the condition of vegetation and the success of restoration.
- Restoration shall be considered successful if upon visual survey the density and cover of non-nuisance vegetation are similar in density and cover to adjacent undisturbed land. Yearly monitoring reports shall be submitted to the Highlands Council at the end of each growing season. These success criteria will identify quantities of native woody species that would be considered necessary to ensure successful forested restoration. If actual field stem counts fall short of the pre-determined threshold values, the applicant will develop and implement supplemental plans in conjunction with the appropriate State and federal agencies.

While the Highlands Council staff recognizes the value of these reforestation measures, it acknowledges that the results will not replace the functions and values of a mature forest in the short-term. It is anticipated that these measures will ensure successful long-term forest restoration, as coordinated with the Council staff, NJDEP and other agencies, and monitored over time until a viable and sustainable community is established.

In addition to reforestation, the applicant notes its commitment to the acquisition of land, which shall also mitigate for the temporal loss of forest. The site currently under consideration contains over 55 acres of mature upland forest located within the Forest Resource Area and is designated by the Highlands RMP as having a high forest integrity value. In addition, as discussed in the Special Environmental Zone section of the CMP, the applicant also plans on acquiring an additional mature forested parcel (approximately 20-25 acres) for a total 75-80 acres of forest acquisition and permanent protection.

The applicant has stated its goal of avoidance, minimization and mitigation of unavoidable loss of forest (acquisition of ~~55~~75-80 acres of mature ~~upland~~ forest to offset 31 acres of permanent forest impact and implementation of a forest restoration and mitigation plan to compensate for temporary forest impacts). With the consideration that development of the Forest Management Plan will be coordinated with the Highlands Council and other resource agencies to ensure no net loss of forest habitat and function, the proposed project, as amended, is found to be made sufficiently consistent with ~~nearly all of~~ the RMP goals, policies and objectives and NJDEP Preservation Area rules related to forest protection, ~~sufficient~~ to be considered consistent with the goals and purposes of the Highlands Act regarding this resource.

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<b>SUBPART B HIGHLANDS OPEN WATERS AND RIPARIAN AREAS</b>			
<b>Project Area includes Highlands Open Waters Buffer?</b> Yes			
<b>Highlands Open Waters Affected:</b> Streams <input checked="" type="checkbox"/> Lakes & Ponds <input checked="" type="checkbox"/> Wetlands <input checked="" type="checkbox"/>			
<b>Highlands Open Waters in Preservation Area:</b> Yes			
<b>Watershed Value</b> (Check one): High <input checked="" type="checkbox"/> Medium <input type="checkbox"/> Low <input type="checkbox"/>			
<b>Area includes Riparian Area?</b> Yes <i>If No, disregard remainder of Riparian Area checklist.</i>			
<b>Specific Riparian Area Features</b> (Check all that apply.): Flood Prone Areas <input checked="" type="checkbox"/> Lakes & Ponds <input type="checkbox"/> Riparian Soils <input checked="" type="checkbox"/> Wetlands <input checked="" type="checkbox"/> Wildlife Corridor <input checked="" type="checkbox"/> Streams <input checked="" type="checkbox"/>			
<b>Riparian Integrity Value</b> (Check one per HUC14): High <input checked="" type="checkbox"/> Medium <input type="checkbox"/> Low <input type="checkbox"/> HUC14: High <input type="checkbox"/> Medium <input type="checkbox"/> Low <input type="checkbox"/> HUC14: High <input type="checkbox"/> Medium <input type="checkbox"/> Low <input type="checkbox"/> HUC14:			
<b>Regional Master Plan Goals, Policies, and Objectives:</b>	<b>C</b>	<b>I</b>	<b>N/A</b>
<b>Policy 1D4:</b> Highlands Open Waters shall include a protection buffer of 300 feet from the edge of the discernable bank of the Highlands Open Waters feature, or from the centerline where no discernable bank exists. With respect to wetlands and other Highlands Open Waters features (e.g., seeps, springs, etc.), the feature shall include a protection buffer of 300 feet from the delineated Letter of Interpretation (LOI) line issued by the NJDEP for wetlands, or from a field-delineated boundary for other features. In areas where existing development or land uses within the protection buffers have reduced or impaired the functional values of the buffers, the Council will seek opportunities to restore the buffer and its functions. Any proposed disturbance shall, through local development review and Highlands Project Review, comply with Highlands Open Waters buffer standards. The protection buffer width for Category 2 streams in the Planning Area may be modified through a Stream Corridor Protection/Restoration Plan, as specified in Objective 1D4i. In approved Redevelopment Areas, the Council may, at its discretion, modify the required buffer, upon a showing of no alternatives, no impact to the functional value of the buffer, and provision of alternative approaches to enhancing or protecting Highlands Open Waters and resources of the buffer area.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Objective 1D4a:</b> Require that all applications for approval through local development review and Highlands Project Review include the identification and mapping of Highlands Open Waters.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 1D4b:</b> Preservation Area buffers for Highlands Open Waters shall comply with the Highlands Preservation Area rules at N.J.A.C. 7:38, which provide that all major Highlands developments are prohibited within Highlands Open Waters and its adjacent 300 foot buffer in the Preservation Area except for linear development, which may be permitted provided that there is no feasible alternative for the linear development outside Highlands Open Waters or its buffer. Structures or other land improvements existing within Highlands Open Waters buffer in the Preservation Area on August 10, 2004 may remain, provided that the area of disturbance is not increased other than through a HPAA. For purposes of this Objective when considering land for conversion to non-agricultural land uses, historic or current agricultural land uses shall not be considered "land improvements," "development," "land disturbances," or "land uses."	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 1D4c:</b> Require that proposed development within all Highlands Open Waters buffers (Preservation and Planning Areas) conforms through local development review and Highlands Project Review with the buffer requirements of N.J.A.C. 7:8 (Stormwater Management Rules), N.J.A.C. 7:13 (Flood Hazard Area Rules), and N.J.A.C. 7:7 (Freshwater Wetland Rules), and with any applicable requirements of a Regional Stormwater Plan adopted pursuant to N.J.A.C. 7:8 (Stormwater Management Rules).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 1D4d:</b> Structures or other land improvements existing within a Highlands Open Waters buffer of the Planning Area on August 10, 2004 may remain, provided that the area of disturbance shall not be increased unless approved through local development review or Highlands Project Review in compliance with RMP policies and objectives. For purposes of this Objective when considering land for conversion to non-agricultural land uses, historic or current agricultural land uses shall not be considered "land improvements," "development," "land disturbances," or "land uses."	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 1D4e:</b> In the Protection and Conservation Zones of the Planning Area, proposed disturbances of Highlands Open Waters buffers shall only occur in previously disturbed areas, unless a waiver is granted by the Highlands Council under Policy 7G2. For purposes of this Objective when considering land for conversion to non-agricultural land uses, historic or current agricultural land uses shall not be considered "land improvements," "development," "land disturbances," or "land uses." Such proposed disturbances must demonstrate full utilization of the following performance standards in the listed order, to demonstrate the necessity of an encroachment into Highlands Open Waters buffers: 1) avoid the disturbance of Highlands Open Waters buffers; 2) minimize impacts to Highlands Open Waters buffers; and 3) mitigate all adverse impacts to Highlands Open Waters buffers so that there is no net loss of the functional value of the buffer, in compliance with Objective 1D4h. Minimization and mitigation opportunities shall be considered only upon a clear and convincing demonstration by the applicant that the protection buffer cannot be avoided and in no case shall the remaining buffer be reduced to less than 150 feet from the edge of Highlands Open Waters, unless a waiver is granted by the Highlands Council under Policy 7G2 and the proposed disturbance complies with Objective 1D4c.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Objective 1D4f:</b> In the Existing Community Zone of the Planning Area, proposed disturbances of Highlands Open Waters buffers shall only occur in previously disturbed areas, unless a waiver is granted by the Highlands Council under Policy 7G2 and the proposed disturbance complies with Objective 1D4c. For purposes of this Objective when considering land for conversion to non-agricultural land uses, historic or current agricultural land uses shall not be considered "land improvements," "development," "land disturbances," or "land uses." Such disturbances shall employ performance standards such that all proposed disturbances of Highlands Open Waters buffers shall employ Low Impact Development Best Management Practices to mitigate all adverse modification to Highlands Open Waters buffers so that there is no net loss of the functional value of the buffer, in compliance with	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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Objective 1D4h.			
<p><b>Objective 1D4i:</b> Develop through Plan Conformance and implement stream corridor or subwatershed-based Stream Corridor Protection/Restoration Plans which shall include Steps 1, 2, and 3, and may include Steps 4 and 5:</p> <p>1. Identify areas where existing development, land disturbances, or land uses are within Highlands Open Waters buffers have removed or substantially impaired natural vegetation communities, and have significantly reduced or impaired the functional values of Highlands Open Waters buffers. For purposes of this Objective when considering land for conversion to non-agricultural land uses, historic or current agricultural land uses shall not be considered "land improvements," "development," "land disturbances," or "land uses";</p> <p>2. Identify and require opportunities for restoration of areas identified in Step 1 as part of mitigation requirements under a Highlands Act waiver or Objectives 1D4e and 1D4f, and public or nongovernmental restoration/stabilization projects;</p> <p>3. Identify the extent of stream corridor features that are critical to supporting the functions of a healthy Highlands Open Waters buffer and that extend beyond the buffers required by Objectives 1D4b and 1D4c. The 300 foot buffer in these areas may be expanded to be most protective of these features which may include, but are not limited to, Critical Habitat, pollutant source areas identified through scientific techniques, and steep slopes;</p> <p>4. Where Highlands Open Waters buffers include areas identified in Step 1, regarding Category 2 surface waters in the Planning Area only, the Stream Corridor Protection/Restoration Plan may identify where, based on scientific analysis of site-specific conditions (e.g., topography, vegetation cover type, habitat, soil type, upstream land uses and pollution inputs, width of floodplain, rate and volume of run-off), a buffer of less than the full 300 feet (but including the undisturbed buffer area at a minimum) is sufficient to maintain or improve the protection of Highlands Open Waters and Riparian Areas. The plan must identify alternative buffers that provide functional buffer values at least equivalent to existing conditions and are no less than 150 feet or no less than the extent allowed in State or municipal regulation (including Objectives 1D4b and 1D4c), whichever is greater. Further, the plan shall include a functional value assessment to ensure that there is no net loss in the overall functional value of the subwatershed's stream buffers. Buffers established through this process shall be determined based on site conditions rather than fixed distances, reflecting findings of the scientific analysis, and shall be used in the site design and development review process regarding determinations of restoration, continued use, or increased use of the disturbed buffer area. Buffer averaging for the purpose of accommodating development proposals is deemed not to meet the requirements of this provision; and</p> <p>5. Where a proposed Highlands Redevelopment Area would not meet, in full, Objectives 1D4b through 1D4h but affects an undisturbed buffer area determined to not be necessary for the protection of the functional values for Highlands Open Waters buffer (as determined through scientific analysis of site-specific conditions), modification of the undisturbed buffer may be allowed to no less than the extent allowed in State or municipal regulation. However the Council shall first determine that there is no alternative to the proposed reduction of the buffer, and require a showing of no impact to the functional values of the buffer and provision of alternative approaches to enhancing or protecting the Highlands Open Waters and resources of the buffer area. Restoration or enhancement of buffer functional values shall be provided on-site or within the same stream reach to achieve a net improvement of existing buffer functional values.</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Objective 1D4j:</b> The Highlands Council may require on a case-by-case basis, through Highlands Project Review, an expansion of the 300 foot buffer to protect the habitat of a water or wetlands-dependant rare, threatened or endangered species, to the minimum expansion necessary to achieve protection of that species.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 1D5:</b> Protect the integrity of the Riparian Areas through the application of RMP standards during local development review and Highlands Project Review.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Objective 1D5a:</b> Require that all applications for approval through local development review and Highlands Project Review include the identification and mapping of Highlands Riparian Areas, including those identified by the Highlands Council and by site-specific analysis.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Objective 1D5b:</b> Limit disturbance of existing natural vegetation or increases in impervious area within High and Moderate Integrity Riparian Areas in any Land Use Capability Zone to the minimum alteration feasible in areas beyond Highlands Open Waters buffer requirements; protect the water quality of adjacent Highlands Open Waters; and maintain or restore habitat value of the Riparian Area.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Objective 1D5c:</b> Prohibit modifications to Riparian Areas in the Protection Zone except where a waiver is approved by the NJDEP or the Highlands Council under Policy 7G1 or 7G2.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Objective 1D5d:</b> Restrict modifications to Riparian Areas in the Existing Community Zone, other than those addressed by Objective 1D5b, that would alter or be detrimental to the water quality and habitat value of a Riparian Area.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Objective 1D5e:</b> Implement Low Impact Development Best Management Practices for any development activity proposed within a Riparian Area, which minimize both alterations of natural vegetation and increases in impervious area, in compliance with Policies 6N3 and 6N4 and provide for mitigation through restoration of impaired Riparian Areas in the same HUC14 subwatershed.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 1D5f:</b> Require that development within Riparian Areas conforms through local development review and Highlands Project Review to any applicable requirements of a Regional Stormwater Plan adopted pursuant to N.J.A.C. 7:8 (Stormwater Management Rules).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 1D5g:</b> Require identification and implementation of opportunities where the restoration and enhancement of previously impaired Riparian Areas are feasible and appropriate as mitigation to any allowable modification to Riparian Area requirements.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p><b>Comments:</b> Highlands Open Waters and Riparian Areas are located extensively throughout the existing and proposed ROW. It is noted that this project may meet the definition of "linear development" (as determined by NJDEP) and that the Preservation Area rules at N.J.A.C. 7:38-3.6 permit linear development within a Highlands Open Waters buffer provided that there is no feasible alternative for the linear development outside the Highlands Open Water or Highlands Open Water buffer. N.J.A.C. 7:38-6 also requires an applicant to provide mitigation in accordance with</p>			

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N.J.A.C. 7:7A for each NJDEP-approved linear development proposed within a Highlands Open Water that is also a freshwater wetland or State open water, as defined in the Freshwater Wetlands Protection Act rules. N.J.A.C. 7:7 states that mitigation shall, at a minimum, fully compensate for the loss of ecological value caused by a disturbance, by replacing any freshwater wetlands and State open waters values and functions lost or disturbed with equal values and functions.

The applicant indicated that it would coordinate with NJDEP regarding open water crossings regulated by NJDEP under the Flood Hazard Area Control Act and implementing regulations. The applicant also indicated that it would coordinate with NJDEP regarding wetlands and wetlands transition areas regulated by NJDEP under the Freshwater Wetlands statute and regulations and with respect to critical habitat within wetlands, NJDEP-regulated transition areas under the Freshwater Wetlands Protection Act and implementing regulations, Green Acres under the Green Acres Act and regulations and water crossings under the Flood Hazard Area Control Act, Freshwater Wetlands Protection Act, and implementing regulations. However, in recognition that the Highlands RMP requirements for all Highlands Open Waters, the applicant also notes that the CMP calls for the protection of all 300-foot Highlands Open Water buffer areas including those areas that are located outside of NJDEP wetland or flood hazard area jurisdiction.

The applicant states that it would implement a variety of measures to protect surface waters and wetlands. It would implement water body and wetland construction procedures described within the FERC-approved Plan and Procedures (Appendix C of the CMP) and would utilize Best Management Practices (BMPs) to minimize potential impacts.

With respect specifically to streams, the applicant states that it would install specified erosion controls at all drainage channels prior to the commencement of crossing activities. If found necessary, the applicant states that the pipe used for stream crossings and in floodplains would be weighted to prevent floatation. The pipe would be welded together in staging areas and then carried or floated along the ROW into place. After the pipe is lowered into the trench, previously excavated material would be returned to the trench line for backfill. The applicant indicates that stream flow would be maintained at all stream crossings, and no alteration of the stream capacity would result from pipeline construction. Stream crossings would be perpendicular to the flow to the extent practical. The applicant states that temporary erosion control measures would be implemented as necessary to prevent downstream impacts. After the completion of construction, streambeds would be restored to their pre-construction elevation, bed material composition and grades. The applicant states that spoil, debris, piling, cofferdams, construction materials, and any other obstructions resulting from or used during construction of the pipeline would be removed to prevent interference with normal stream flow.

With respect specifically to wetlands, the applicant states that the width of the temporary construction ROW would be reduced to 75 feet in wetland areas to reduce potential temporary construction impacts. The applicant states that it would expedite construction in and around wetlands to minimize potential adverse impacts by restoring wetlands to original configuration and contour, segregating topsoil during excavation, permanently stabilizing upland areas near wetlands as soon as possible after backfilling, conducting scheduled ROW inspections during and after construction, and repairing any erosion control or restoration features until permanent re-vegetation is successful. The applicant states that it would comply with applicable permit conditions issued by federal, State and local permitting agencies.

The applicant has identified numerous measures to protect surface waters and wetlands in its Narrative Report attached to the HAD application, Final Resource Reports, and the CMP. Further, the applicant has stated that it will monitor buffer revegetation efforts annually for the first three years after construction or until wetland revegetation is successful. The applicant states that it will file an annual report with the Highlands Council identifying the status of the open water buffer revegetation efforts. The report will include the percent cover achieved and problem areas. An annual report will be filed until buffer revegetation is successful. The applicant notes that revegetation will be considered successful if the cover of herbaceous and/or woody species is at least 75 percent of the type, density and distribution of the vegetation in adjacent buffer areas that were not disturbed by construction. If the area is not showing signs of re-establishing native vegetation during the third growing season following construction, the applicant will develop and implement (in consultation with a professional landscape ecologist and other State and federal regulatory agencies, as needed) a plan to revegetate the buffer with native species. Revegetation efforts will continue until revegetation is successful. A copy of the monitoring report will be provided to the Council at the end of each



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growing season until revegetation is successful.

The applicant has stated its goal of avoidance, minimization and mitigation of unavoidable impacts of Highlands Open Waters and Riparian Areas. With the consideration that development and implementation of the stream, riparian and wetland restoration mitigation plans will be coordinated with the NJDEP and the Highlands Council to ensure no net loss of Highlands Open Waters and Riparian Areas functional value, the proposed project, as amended, is found to be made sufficiently consistent with ~~nearly all of~~ the relevant RMP goals, policies, and objectives and NJDEP Preservation Area rules ~~sufficient~~ to be considered consistent with the goals and purposes of the Highlands Act regarding this resource. The project is found to be inconsistent with With respect to Objective 1D5a, the applicant has noted that due to the linear nature and size of the project, it is not feasible to provide site-specific drawings at this project stage of all of the Riparian Areas and buffer zones to be affected by the project. The Council staff concurs, in consideration of the project stage. The applicant has committed to provide site-specific mapping as it is generated during the progression of the project (and as will be required by NJDEP in its permitting process). That commitment will be required to be added to the Open Waters and Riparian Areas Plan to be consistent with the RMP.

### SUBPART C STEEP SLOPES

**Project Area includes: Steep Slopes >20% in Any Areas (severely constrained)?** Yes

**Steep Slopes >15% in Forested Areas (severely constrained)?** Yes

**Steep Slopes >10% in Riparian Area in Undeveloped Lands (moderately constrained)?** Yes

#### Regional Master Plan Goals, Policies, and Objectives:

	<u>C</u>	<u>I</u>	<u>N/A</u>
<b>Policy 1E6:</b> To require through local development review and Highlands Project Review that applications for development include topographic information identifying the location of any Steep Slope Protection Areas located on the parcel proposed for development.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Policy 1E7:</b> To require through local development review and Highlands Project Review that applications for development involving parcels of land with slopes of 10% or greater include identification of forested lands, areas which are highly susceptible to erosion, depth to bedrock and Soil Capability Classes.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Policy 1E8:</b> To prohibit through local development review and Highlands Project Review land disturbance within areas which are Severely Constrained Slopes and Moderately Constrained Slopes, except for linear development in both the Preservation and Planning Areas that meets the requirements of N.J.A.C. 7:38-3.8(c)1-4.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Policy 1E9:</b> To require through local development review and Highlands Project Review the use of Low Impact Best Development Practices for any land disturbance or human development within areas, which are Constrained or Limited Constrained Slopes, or that involves an approved disturbance of a Severely Constrained or Moderately Constrained Slope.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Policy 1E10:</b> To require that conforming municipalities and counties implement the steep slope protection provisions of Policies 1E2 through 1E9 through master plans and development regulations.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Comments:** The proposed project would require disturbance of areas that are Severely Constrained Slopes and Moderately Constrained Slopes in both the Preservation and Planning Areas. It is noted that this project may meet the definition of "linear development" (as determined by NJDEP and the Highlands Council) and that the Preservation Area rules at N.J.A.C. 7:38-3.6 and RMP Policy 1E8 permit linear development within a steep slope provided that there is no feasible alternative for the linear development outside the steep slope.

A key component of the CMP is a Steep Slope Construction Plan, which includes a soil erosion and sediment control plan developed for the project in accordance with N.J.A.C. 2.90-1. The applicant states that this plan will be submitted to the Sussex and Passaic County Soil Conservation Districts for review and approval. The plan covers all areas of construction, including the ROW, access roads, staging areas, and additional temporary workspace. It also identifies locations for the placement of silt fence, construction staging, gravel tracking pads, and other requirements of the applicable County Soil Conservation District.

The applicant states that the Loop 325 project has been designed to avoid steep slopes where possible and has minimized workspace areas within steep slope areas to the extent practicable to allow for safe working conditions during construction. It is stated that in areas where steep slopes are unavoidable, specialized construction techniques would include the following:

- Identification by milepost of areas with steep slopes (greater than 24 degrees) prior to commencement of construction.

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- During grade restoration, the spoil will be placed back in the cut and compacted. Any springs or seeps found in the cut will be carried down-slope through PVC pipe or gravel French drains installed as part of the cut restoration.
- In the areas of construction where the slope exceeds 24 degrees or more, a special means of manipulating the construction equipment will be utilized. The preferred method will be "winching" the equipment. This process consists of placing and anchoring a tractor at the top of the slope and using a winch to manipulate the equipment up and down the slope.
- Use of advanced techniques in silt fencing and strong materials to avoid undercutting, toppling or splitting of the fence.
- When impacts to steep slopes are unavoidable, emphasize disruption of the least sloped areas over the more steeply sloped areas.
- Minimize length of traverse across steep slopes while controlling erosion/disruption potential (i.e., having a short traverse down a severe slope may be more disruptive than a longer traverse that avoids the steep slope).
- Strictly limit vegetation removal on either side of access roads in steep slope areas.
- Diffusion of stormwater flow in sloped areas should be emphasized using measures appropriate to rural areas, such as slope intercepts and off-flow points and swales.
- In areas of rugged topography, ROW restoration will begin within 10 days of final pipeline installation to minimize potential erosion and sedimentation control problems.

The applicant states that post-construction mitigation would include installation of permanent trench or slope breakers, revegetation, and monitoring to ensure stabilization of the site. Slope breakers would be installed to slow down the flow of water and increase stormwater infiltration. Swales lined with grass and shrubs may also be designed so as to trap sediment as it comes down the slope.

With the consideration that development of the Steep Slope Construction Plan will be coordinated with the Highlands Council and Sussex and Passaic County Soil Conservation Districts, and that the project is being designed to avoid, minimize and mitigate impacts to steep slopes, the proposed project, as amended, is found to be made consistent with the RMP goals, policies and objectives and NJDEP Preservation Area rules related to steep slopes sufficient to be considered consistent with the goals and purposes of the Highlands Act regarding this resource.

#### SUBPART D CRITICAL HABITAT

<b>Project Area includes:</b>		<b>Critical Wildlife Habitat?</b> Yes		<b>Significant Natural Area(s)?</b> Yes		<b>Vernal Pool(s) +1,000 ft?</b> Yes		
<b>Species of Concern (Landscape Rank)</b>	Great Blue Heron Forage (2)	Sedge Wren (4)	Wood Turtle (3)	Bobcat (4)	Barred Owl (3)	Red-shouldered Hawk (4)	Cooper's Hawk (3)	
Bog Turtle (5)	Northern Goshawk (4)	Brook Snaketail (2)	Timber Rattlesnake (4)	New England Bluet (2)				
<b>Regional Master Plan Goals, Policies, and Objectives:</b>						<b>C</b>	<b>I</b>	<b>N/A</b>
<b>Policy 1F2:</b> To prohibit through Plan Conformance, local development review and Highlands Project Review the direct impact of new human development or expansion or increased intensity of existing development within Critical Habitat.						<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Policy 1F5:</b> To establish a Habitat Conservation and Management Program, including minimum performance standards and criteria for the protection, enhancement, and restoration of lands within Critical Habitat.						<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Policy 1F6:</b> To require that applications for any local development review and Highlands Project Review for Critical Habitat be subject to minimum standards and criteria outlined in the Habitat Conservation and Management Plan.						<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 1F6a:</b> Prohibit direct impacts from new development or expansion or increased intensity of existing development that will jeopardize the continued existence of, or result in the likelihood of the destruction or adverse modification of Critical Habitat, except as permitted through the issuance of a waiver under Policy 7G1 or 7G2.						<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 1F6b:</b> Prohibit indirect impacts from activity that is off-site, adjacent to, or within Critical Habitat that will jeopardize the						<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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continued existence of, or result in the likelihood of the destruction or adverse modification of Critical Habitat, except as permitted through the issuance of a waiver under Policy 7G1 or 7G2.			
<b>Objective 1F6c:</b> Waiver applications under Policy 7G2 for local development in a municipality with a Council-approved Critical Habitat Conservation and Management Plan shall be subject to the minimum standards and criteria for waiver provisions as set forth in the plan, to the maximum extent practicable.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 1F6d:</b> Waiver applications under Policy 7G2 for development in a municipality without a Council-approved Critical Habitat Conservation and Management Plan shall be subject to the Low Impact Development Best Management Practices required in Objective 1F5b.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 1F6e:</b> A vernal pools protection buffer may be reduced only if an applicant can demonstrate, to the satisfaction of the Highlands Council in coordination with the NJDEP's Endangered and Nongame Species Program, that the reduction is the minimum feasible and that: <ul style="list-style-type: none"> <li>In an undisturbed wetland, documented and field-determined vernal pool-breeding wildlife require a smaller protective buffer, as documented in scientific literature; or</li> <li>Existing land uses present a significant, insurmountable and permanent barrier to the migration or viability of vernal pool-breeding wildlife that is infeasible to mitigate.</li> </ul> Requirements for demonstrating the above criteria shall be included in the Critical Habitat Conservation and Management Plan.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 1F6f:</b> A Critical Wildlife Habitat area or Significant Natural Area delineation may be modified if an applicant can demonstrate, to the satisfaction of the Highlands Council in coordination with the NJDEP's Endangered and Nongame Species Program or Natural Heritage Program, that: <ul style="list-style-type: none"> <li>The nature of the site is such that it does not provide habitat for species of concern;</li> <li>The species of concern are not present on the site during any critical part of their life cycle, do not depend upon the site for food, shelter or breeding, and the habitat; on the site is either unsuitable or not critical to species' recovery in the Region; or</li> <li>Existing land uses present a human, natural or development barrier to the use of the site by species of concern.</li> </ul> Requirements for demonstrating the above criteria shall be included in the Critical Habitat Conservation and Management Plan.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 1F7:</b> To require through local development review and Highlands Project Review that projects qualifying as major Highlands Developments, affecting or potentially affecting Critical Habitat in the Preservation Area, comply with the NJDEP Preservation Area Rules at N.J.A.C. 7:38-3.11 and with the minimum standards and criteria outlined in the Critical Habitat Conservation and Management Plan. All projects in the Preservation Area that are not major Highlands Developments shall comply with Policies 1F1 through 1F6.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Comments:** The vast majority of the existing and proposed ROW is mapped as Critical Habitat. The ROW traverses a Significant Natural Area (Wawayanda Macrosite in Vernon) and a vernal pool (in the Planning Area).

Preparation and implementation of a Critical Habitat Mitigation Plan is a key element of the CMP. As part of the on-going and continued development of that plan, field surveys of the project area were conducted by qualified biologists and botanists during the fall of 2008, and continue to progress through the spring and summer of 2009. According to the applicant, survey results and biological assessments will be submitted when all field surveys have been completed. On-going coordination with the Natural Heritage Program (NHP) and the Endangered and Non-Game Program biologists within NJDEP, the Highlands Council, and the US Fish and Wildlife Service (USFWS) will continue through the permitting and construction of the project to avoid, minimize and mitigate for impacts on sensitive species including rare, threatened or endangered species.

The applicant has initiated consultations with the USFWS, NJDEP Division of Fish and Wildlife – Bureau of Land Management, NJDEP Division of Parks and Forestry, and NJDEP Division of Fish and Wildlife to identify significant wildlife habitats and wildlife managed lands. 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 NJDEP has identified three Natural Heritage Priority sites within the vicinity of Loop 325; however Loop 325 only crosses one of the three priority sites (the Wawayanda Macrosite in Vernon, the Highlands Council identified Significant Natural Area). The applicant states that the species-specific approach that it is ~~taking toward during the~~ surveying of the project area will identify any occurrences of federal and state-listed species present. Based upon the results of these field surveys, the applicant will work cooperatively with the Highlands Council, USFWS and the NJDEP to develop impact avoidance and mitigation measures for federal species and those state species with habitats located in wetlands, transition areas and flood hazard areas. It is the opinion of the applicant that the post-construction restored ROW and workspace will be substantially equivalent to the existing field conditions given the existing pipeline and maintained easement present.

The applicant provided general rare species mitigation measures as well as some species-specific measures in the CMP. With respect to the general measures, the applicant provided the following:

- The Environmental Inspector (EI) job responsibilities will include understanding and implementing the

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components of the federal and state-listed threatened and endangered species mitigation measures. While the CMP does not specifically mention rare species, the applicant will be required to revise the CMP to explicitly include rare species.

- Before being allowed to conduct work on the project site, all field personnel including all construction contractors and subcontractors will be required to complete an environmental training session during which they will be advised on the potential presence of applicable species, specified habitats where they are likely to be found, visual or other identifying features, and specific activity protocols to be followed in the event that a species is encountered.
- Signage will be posted at applicable locations in the field along the ROW alerting personnel to the potential presence of rare species, including representative color photographs of the species, and notification protocols and contact information for EI personnel or dedicated rare species monitors.
- The applicant will provide mitigation for each species' habitat that is permanently disturbed through construction activities. Mitigation will be four-part and account for no net loss of habitat value in terms of quality, quantity, type and function, and is not injurious to occurrences of rare plant species or rare ecological communities. With respect to temporary impacts, it is the opinion of the applicant that the post-construction restored ROW and workspace will be substantially equivalent to the existing field conditions given the existing pipeline and maintained easement present. It is the opinion of Highlands Council staff that restoration of forest to pre-disturbed conditions will not be accomplished in a short period. However, the applicant has committed to acquire and preserve 55 acres of mature upland forest to offset impacts to this habitat.
- A field survey of the project area, which includes an inventory of rare plant species (in cooperation with NJDEP's NHP) shall be conducted. The inventory shall include a description of the survey method, all vegetation communities, and occurrences of rare, threatened and endangered species within the project areas to the extent physically or visually accessible. The inventory shall include a map depicting surveyed species and associated habitat. The applicant notes that if found to be present during field surveys, mitigation would include avoidance and fencing of known populations of these plant species, removal and replanting of the population outside of the construction workspace area or removal, translocation to an approved plant nursery during construction, and replanting during restoration (all of these activities shall be coordinated with NJDEP's NHP).
- While the CMP does not specifically address the effects of temporary factors related to construction such as noise, increased air emissions, etc., the applicant will be required to revise the CMP to explicitly address such impacts and measures to address potential impacts to rare, threatened and endangered species.

With respect to the vernal pool habitat that the ROW traverses, the applicant is of the opinion that there will be no direct impacts on the vernal pool or associated wetland. The applicant states that potential project-related impacts will be limited to the upland dispersal habitat potentially used by obligate and facultative vernal pool species such as wood frogs (*Rana sylvatica*) and mole salamanders (*Ambystoma sp.*). These areas are within the 1,000-foot vernal pond buffer, and are considered by the applicant to be an unavoidable impact to the buffer (i.e., the applicant states that the proposed project activities are located close to the limits of the dispersal habitat (800 to 1,000 feet from the vernal pool. EI inspectors as well as inspectors from FERC, the NJDEP, and the Highlands Council shall confirm this in the field and shall ensure that the mitigation measures below are implemented). To avoid impacts to these species, the applicant proposed the following measures to be implemented during construction:

- Installation of silt fence along the southern limit of temporary workspace to prevent dispersal of individuals into the construction area.
- Installation of signage along the ROW to identify the area as vernal pool habitat.
- Daily sweeps of the construction workspace by the EI to identify and remove any individual frogs or salamanders that may be located within the workspace.
- Specialized environmental training for contractor personnel to identify species of concern and protocol for contacting the EI, should an individual animal be found within the workspace during active construction.
- Placement of wood debris on the ground within the restored temporary workspace to provide for escape cover and overwintering habitat post-construction.

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With the consideration that development of the Critical Habitat Management Plan will be coordinated with the Highlands Council, NJDEP and the USFWS and that the project is being designed to avoid, minimize and mitigate impacts to Critical Habitats, the proposed project, as amended, is found to be made consistent with the RMP goals, policies and objectives and NJDEP Preservation Area rules related to Critical Habitat sufficient to be considered consistent with the goals and purposes of the Highlands Act regarding this resource.

### SUBPART E LAND PRESERVATION AND STEWARDSHIP

**Project Area within Conservation Priority Area?** Yes **If yes, percentage?** Almost the entire ROW traverses

**Project Area within Special Environmental Zone?** Yes **If yes, identify properties (B/L)** (see comments)

**Project Area includes preserved land?** Yes **If yes, identify properties (B/L):** (see comments)

#### Regional Master Plan Goals, Policies, and Objectives:

	<u>C</u>	<u>I</u>	<u>N/A</u>
<b>Policy 1H7:</b> To identify and designate a Special Environmental Zone in the Preservation Area where development shall not occur in order to protect water resources and environmentally sensitive lands and which shall be permanently preserved through use of a variety of tools including, but not limited to, fee simple acquisition, easement acquisition, transfer of development rights programs, and development regulations.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Objective 1H7b:</b> Adopt and enforce development regulations which prohibit the development of those portions of a parcel of land which are located within a Special Environmental Zone.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 1H7c:</b> Require through Plan Conformance, local development review, Highlands Project Review, and NJDEP review under N.J.A.C. 7:38 that development shall not occur within a Special Environmental Zone. In any Special Environmental Zone, any exemption identified through Policy 7F1 or waiver issued under the Highlands Act under Policy 7G1 or 7G2 shall be conditioned upon a determination that the State or local government unit has exhausted all means for the permanent preservation of these lands through use of preservation tools including, but not limited to, fee simple acquisition, easement acquisition, and transfer of development rights.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Policy 1I3:</b> To require conforming municipalities and counties to require conservation or land stewardship easements, enforceable by the Highlands Council and at least one of the following: the appropriate municipality, the County Agriculture Development Board, the SADC, Green Acres, or a non-profit land trust organized pursuant to § 501 (c)(3) of the federal tax code and engaged in the protection of land for the purpose of providing long-term stewardship of important resources as a condition of development approval for lands within parcels proposed for development that are identified for preservation on a proposed site plan or subdivision plat.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Comments:** The existing and proposed ROW traverse three parcels identified as part of the Special Environmental Zone in the Preservation Area. All three parcels are contiguous and are located in West Milford (Block 6902 Lot 32 – 110 acres, Block 6402 Lot 5 – 82 acres, and Block 6402 Lot 7 – 17 acres). The existing and proposed ROW traverse numerous parcels identified as Preserved Open Space as well as numerous parcels within the Conservation Priority Area (High and Moderate Conservation Priority Area). Some level of impacts to these properties from the expanded ROW is considered unavoidable.

A critical element of the CMP is the development of a plan that will protect environmentally sensitive lands in the vicinity of the project area. Through the use of Geographic Information Systems (GIS) technology and collaboration with federal, state and local conservation agencies and organizations, the applicant stated that it will identify lands in the vicinity of the project located within Special Environmental Zones that are particularly vulnerable to development and preserve the undeveloped parcel(s)-through any number of conservation mechanisms, including but not limited to fee acquisition, purchase of development rights and recording of a conservation easement on the title or deed, or donations to third party conservation organizations whose mission is to preserve natural/undeveloped lands.

To implement this component, in coordination with the Highlands Council, the applicant states that it has identified potential parcel(s) for preservation that contain similar functions and values to those that will be permanently affected during operation of the proposed project facilities, at least one of which is designated as a Special Environmental Zone. The applicant indicated that ideally, the preserved parcel(s) will be located within the same watershed as those lands with permanent impacts from project construction, and to preserve the functions and values of impacted lands, Tennessee Gas will prioritize acquisition of properties containing environmental resources, such as upland forest, forested wetlands, streams, 100-year floodplain, vernal pools, and rare species habitats. Acreage of mitigation parcel(s) is currently estimated between 20 and 25 acres. The applicant states that it will also prioritize parcels that are located within Council-mapped Conservation Priority Areas ~~or Special Environmental Zones~~. The applicant states that lands within the Special Environmental Zone would be specifically targeted for acquisition as these areas have already been identified by the Council for preservation according to their specific environmental functions including Conservation

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Priority Area rank, and the potential to a) protect water supply reservoirs and other critical water features, b) create large contiguous areas of environmentally sensitive lands, c) create habitat corridors, and d) connect existing preserved open space. As potential properties are identified for mitigation purposes, the applicant notes that it will continue to collaborate with the Council and other regulatory agencies and organizations for evaluation and approval of the mitigation parcels. Further, if the lands include impervious surfaces, the applicant has committed to removal of those surfaces and ecological restoration to mitigate both impacts under this category of RMP policies and objectives and impacts to Prime Ground Water Recharge Areas (see below).

Once adequate parcels have been approved for mitigation use, the applicant proposes to permanently preserve the properties by either donating the parcels to an appropriate conservation trust or government agency (e.g., USFWS, NJDEP) or by placing the parcels in a permanent conservation easement. To facilitate this process, the applicant has committed to utilize the Highlands Council's Land Preservation Program and model conservation easement language. The fee titles for the properties or a conservation easement will be conveyed or transferred to a government agency or other accepting conservation land trust or appropriate conservation organization for management of the land, including stewardship. The applicant has committed to coordinate with the Highlands Council regarding the management and stewardship of this land. If any identified parcels are within proximity to sites known or suspected to have contamination issues, the applicant has committed to conduct a review of relevant databases that catalog all reported incidences of oil or other hazardous materials spills or releases.

Though inconsistent with Policy 1H7 and Objective 1H7c, as the proposed project represents development in a Special Environmental Zone, the linear nature of the project and the existing ROW make this incursion necessary. However, the proposed mitigation enhances the project goals such that the project, as amended, is consistent with the goals and purposes of the Highlands Act regarding this resource.

#### SUBPART F CARBONATE ROCK (KARST) TOPOGRAPHY

**Project Area within or contributing to Carbonate Rock Area? Yes**

**Regional Master Plan Goals, Policies, and Objectives:**

	<b>C</b>	<b>I</b>	<b>N/A</b>
<b>Policy 1K2:</b> To identify and delineate through local development review and Highlands Project Review land areas that drain surface water into the Carbonate Rock Area, as changes in the quantity, quality and rate of discharge of surface water runoff from upslope lands can impair ground water resources in the Carbonate Rock Area.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Policy 1K4:</b> To ensure through Plan Conformance that municipalities in, or within subwatersheds draining directly to, the Carbonate Rock Area protect public health and safety and the quality of ground waters from inappropriate land uses and pollutant discharges.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 1K4b:</b> Applications for site plan or subdivision approval will include a multi-phased geotechnical site investigation (e.g., test borings, test pits) to locate any potential karst features and potential hazards to public health and safety, structures and ground water quality.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 1K4c:</b> Local development reviews and Highlands Project Reviews and requirements shall ensure that all potential hazards to public health and safety, structures and ground water quality, including but not limited to concentrated surface water flows that dissolve carbonate rock, are fully addressed and mitigated in the construction plans and subsequent approval process, with the maximum emphasis on nonstructural measures, including, but not limited to, avoidance of modifications to the karst features.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 1K4d:</b> Public works projects, including but not limited to water supply, sewerage, stormwater and transportation facilities, shall be constructed and maintained such that the potential for damage from karst features and the contamination of ground water are avoided.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 1K4e:</b> Highlands Project Reviews and requirements and local development reviews (where applicable) shall prohibit new land uses and facilities that constitute unacceptable risks of discharge due to karst topography where karst features have been identified, including but not limited to: Underground storage tanks; Solid waste landfills; Hazardous waste storage and disposal; and Hazardous materials storage and handling.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Comments:** The existing and proposed ROW traverse a small portion of a Carbonate Rock Area in Vernon (in the Planning Area) and a narrow strip of Carbonate Rock Area in West Milford (Preservation Area). The applicant notes that due to the specialized nature of pipeline construction and in consideration that only a relatively minor amount of the required construction workspace will be trenched, a full scale geotechnical subsurface exploration program for the project area is not necessary for the planning, design or construction phases of the project. However, it is noted the presence of karst features will be determined during the ditch excavation. During trenching activities, the applicant states that mitigation measures include, but are not limited to, grouting, regrouting and backfilling with supportive fill material. The applicant states that stormwater control measures will be implemented to limit surface water runoff

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within known karst features. If voids are encountered, then the ditch may be grouted or impermeable plugs may be installed to minimize adverse impacts to karst features from ground water. Additionally, the applicant states that it will not release hydrostatic testing wastewater volumes within those areas identified ~~above~~ as Karst, as they are susceptible to sinkhole development unless a dewatering structure or energy dissipating device will be used to prevent scouring or erosion. The intent of this program is achieve the equivalent of RMP requirements for a Phase II investigation.

With the consideration that development of the Carbonate Rock Plan will be coordinated with the Highlands Council, and that the project is being designed to avoid, minimize and mitigate impacts to Carbonate Rock Areas, the proposed project, as amended, is found to be made consistent with the RMP goals, policies and objectives related to Carbonate Rock sufficient to be considered consistent with the goals and purposes of the Highlands Act regarding this resource.

### SUBPART G LAKE MANAGEMENT

**Project Area within Lake Management Area?** Yes *If No, disregard remainder of Lake Management checklist.*

**If yes, which Tier:** Shoreland Protection Tier Yes Water Quality Management Tier Yes

Scenic Resources Tier Yes Lake Watershed Tier Yes

**Project Area within Lake Community Sub-Zone?** No

**If yes, which Tier:** Shoreland Protection Tier No Water Quality Management Tier No

Scenic Resources Tier No Lake Watershed Tier No

#### Regional Master Plan Goals, Policies, and Objectives:

	<b>C</b>	<b>I</b>	<b>N/A</b>
<b>Policy 1L2:</b> To establish tiers of lake management appropriate to management strategies that help protect lake water quality and community value from the impacts of present and future development.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 1L2a:</b> Lake management programs shall use the following management tiers around all Highlands Region lakes of greater than ten acres in size: <ul style="list-style-type: none"> <li>A Shoreland Protection Tier consisting of an area measured 300 foot or the first property line perpendicular from the shoreline of the lake;</li> <li>A Water Quality Management Tier consisting of an area measured 1,000 foot perpendicular from the shoreline of the lake, including the shoreland protection tier;</li> <li>A Scenic Resources Tier consisting of an area measured 300 to 1,000 foot perpendicular from the shoreline of the lake, scaled based upon the view distance from the opposite shoreline, and determined through the size and layout of the lake, with wider portions of lakes having longer view distances; and</li> <li>A Lake Watershed Tier consisting of the entire land area draining to the lake, through the evaluation of drainage areas using LiDAR topographic analyses or other topographic data where LiDAR data are not available.</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 1L3:</b> To establish unique standards (as compared to lakes within the Protection and Conservation Zones) for the Lake Community Sub-Zone within the Existing Community Zone within 1,000 feet of lakes, particularly with respect to the Shoreline Protection Tier, to prevent degradation of water quality, harm to lake ecosystems, and promote aesthetic values within the Existing Community Zone.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 1L4:</b> To establish and implement management strategies to help protect lake water quality and ecosystem values from the impacts of present and future development for all lakes.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 1L4a:</b> Implementation of standards through Plan Conformance regarding lake ecosystem and water quality in the Shoreland Protection Tier to address direct and proximate impacts upon the lake, including but not limited to shoreline modification and development (including limits to the hardscaping of shorelines using bulkheads, rip-rap and walls), docks, piers, boathouses, dredging, vegetation removal, and increased impervious cover. Pollutant discharges shall also be addressed, including the potential for contamination from septic systems, cesspools and other wastewater management systems within the tier that are failing or are inadequately designed and constructed. As such systems fail, landowners should be required to provide upgraded treatment (whether on-site or through public or community systems) to minimize pollutant movement to the lake. Standards for the Lake Community Sub-Zone and for the Protection and Conservation Zones may be distinct to the extent necessary to recognize the existence of significant development within the Lake Community Sub-Zone.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 1L4b:</b> Implementation of standards through Plan Conformance regarding land use compatibility and water quality in the Water Quality Management Tier, to prevent or minimize continuous pollutant sources that can contribute pollutants overland or through ground water to the lake from greater distances than the Shoreland Protection Tier.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 1L4c:</b> Implementation of standards through Plan Conformance regarding the protection of visual and scenic resources in the Scenic Resources Tier, including but not limited to requirements for vegetative screening of buildings, building height limitations, and limits on tree and understory removal for reasons other than public health and safety or as the minimum necessary to make reasonable use of the designated building envelope for the parcel proposed for development. Standards for the Lake Community Sub-Zone and for the Protection and Conservation Zones may be distinct to the extent necessary to recognize the existence of significant development within the Lake Community Sub-Zone.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 1L5:</b> To require that conforming municipalities adopt and implement for all lakes the standards applicable to the Shoreland Protection and Water Quality Management Tiers; the standards applicable to the scenic resources tier shall be adopted and implemented for all public lakes (i.e., with shorelines that are not entirely privately-held and managed through a lake association),	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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and for privately-held lakes to the extent feasible under law, recognizing the existence of previously approved lake community development plans.			
<b>Objective 1L5a:</b> Shoreland Protection and Water Quality Management Tier requirements shall apply to all new development, regardless of lake ownership.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 1L5b:</b> Scenic Resource Tier requirements shall apply to all lakes with public access and to lakes with no public access that are not entirely managed by a single homeowner or lake community association. For lakes that are privately-held and managed by a single homeowner or lake community association, the scenic resource tier requirements shall be voluntary.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 1L6:</b> To require that conforming municipalities develop and adopt lake restoration plans, with sufficient input from lake community residents and landowners, for each of the municipality's developed lakes that has been identified as water quality impaired, to include watershed delineation, description of point and nonpoint sources of pollution in the watershed, lake monitoring schedules, existing and proposed in-lake management techniques, and recommended watershed best management practices. TMDLs adopted by the NJDEP to address known pollution problems may be used as lake restoration plans. For lakes that are privately-held and managed by a single homeowners or lake community association, the municipality may require that the association share in or assume the costs of developing such plans.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 1M4:</b> To establish and implement performance and development standards through local development review and Highlands Project Review for shoreline uses which achieve compatibility among shoreline activities and nearby neighborhoods.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Comments:** To ensure that water quality within Lake Management Areas is protected, the applicant has indicated that it will construct the project facilities in accordance with its ECP as well as all applicable regulatory approvals. The applicant notes that standard construction techniques, such as use of erosion and sedimentation controls, dewatering structures, trench plugs and water bars, will ensure that both stormwater and ground water are managed in a manner that minimizes the potential for adverse impacts on water quality. Where the pipeline will be below a lake, the applicant states that directional drilling will be used to avoid trenching and disruption within the lake itself.

With consideration that the ECP will be developed and implemented with the Highlands Council and other regulatory agencies, and that it will include measures to ensure that water resources are protected, the proposed project, as amended, is found to be made consistent with the RMP goals, policies and objectives related to water quality and shoreline protection for Highlands lakes, and the goals and purposes of the Highlands Act regarding this resource.

## PART 2 WATER RESOURCES AND WATER UTILITIES

### SUBPART A WATER RESOURCES AVAILABILITY

Source HUC14(s):	Net Availability (MGD):	HUC14 Constraint - Current Deficit Area (Y/N):	HUC14 Constraint - Existing Constrained Area (Y/N):	Conditional Availability (MGD):
1.				
<b>Regional Master Plan Goals, Policies, and Objectives:</b>				<b>C</b> <b>I</b> <b>N/A</b>
<b>Policy 2B4:</b> To strictly limit consumptive and depletive water uses to the water availability in each HUC14 subwatershed and to establish priorities for water uses that implement the policies and objectives of the RMP.				<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>
<b>Objective 2B4a:</b> Give highest priority for the use of non-agricultural Net Water Availability or Conditional Water Availability within Protection Zone and Conservation Zone subwatersheds, through a Water Use and Conservation Plan developed under Objective 2B8c, local development review, and Highlands Project review: 1. To address a documented existing or imminent threat to public health and safety from contaminated domestic and other on-site water supplies that is of sufficient scale to justify a public water supply and where no alternative is feasible that would sufficiently assure long-term protection of public health and safety. Such needs shall have highest priority for Net Water Availability; 2. To serve a designated Highlands Redevelopment Area; 3. To serve a cluster development that complies with Objective 2J4b; and 4. To serve affordable housing projects where at least 10% of the units are affordable.				<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>
<b>Objective 2B4b:</b> The highest priority for use of Net Water Availability or Conditional Water Availability within Existing Community Zone subwatersheds, through a Water Use and Conservation Plan developed under Objective 2B8c, local development review and Highlands Project review to serve documented threats to public health and safety from contaminated water supplies, designated TDR Receiving Zones, infill development, designated Highlands Redevelopment Area, affordable housing projects where at least 10% of the units are affordable, or new areas for development that meet all other requirements of the RMP.				<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>
<b>Objective 2B4c:</b> Establish and implement mandatory stormwater reuse for recreational and other non-agricultural irrigation, as well as other non-potable water purposes to minimize both the volume of stormwater discharges and water withdrawals for these purposes.				<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>
<b>Objective 2B4d:</b> The highest priority for agricultural water uses in the Conservation Zone shall be those Preservation Area uses that promote agricultural and horticultural uses and opportunities that are compatible with protection of the Highlands environment, and those Planning Area uses that promote the continuation and expansion of agricultural, horticultural, recreational, and cultural uses and opportunities. Compatible agricultural and horticultural uses shall minimize consumptive water uses through efficiency measures.				<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>
<b>Policy 2B5:</b> To require, through Plan Conformance (including through a Water Use and Conservation Plan developed under Objective 2B8c), local development review, and Highlands Project Review, the use of water conservation, recycling and reuse methods (where appropriate) and devices for any redevelopment or development activity, including renovations to existing				<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>

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residential, institutional, commercial or industrial buildings, to minimize consumptive water use tailored to meet the resource protection and other goals for each Zone and considering subwatershed-specific conditions and Net Water Availability status.			
<b>Policy 2B6:</b> To require through Plan Conformance (including through a Water Use and Conservation Plan developed under Objective 2B8c), local development review, Highlands Project Review, and interagency coordination that proposed public water supply and wastewater service areas, new or increased water allocations and bulk water purchases will not directly or indirectly cause or contribute to a Net Water Availability deficit, and where feasible will help mitigate any existing deficit.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2B6a:</b> Areawide Water Quality Management Plans, Wastewater Management Plans or their amendments shall ensure that the proposed service area will not directly or indirectly cause or contribute to a Net Water Availability deficit, and shall be in conformance with any Water Use and Conservation Plan developed under Objective 2B8c.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2B6b:</b> NJDEP Water Allocation decisions and Highlands Project Reviews shall ensure that any new or increased water allocation permits within the Highlands Region are in conformance with the policies and objectives of the RMP and do not result in significant reductions in safe yields for any water supply facility with an existing water allocation permit and the NJDEP-approved safe yield.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 2B7:</b> To ensure through Plan Conformance (including through a Water Use and Conservation Plan developed under Objective 2B8c), local development review, and Highlands Project Review that the use of Net Water Availability and Conditional Water Availability within each subwatershed supports development patterns that are in conformance with RMP policies and objectives.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 2B8:</b> To require through Plan Conformance, local development review, and Highlands Project Review the efficient and effective use of water availability, the planning for future water needs, the reduction and elimination of water deficits, and the mitigation of new consumptive or depletive use in any Current Deficit Areas or subwatersheds that could become deficit areas based on projected development and water uses, to ensure sustainable water supply, water resource and ecological values in conformance with RMP policies and objectives.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2B8a:</b> Prevent net increases in consumptive or depletive water uses in Current Water Deficit Areas to prevent exacerbation of and help reduce or eliminate the deficit to ensure sustainable water supply, water resource and ecological values, emphasizing techniques including, but not limited to water reuse, recycling and conservation.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2B8b:</b> Proposed new consumptive or depletive water uses within a Current Deficit Area shall only occur under the auspices of a Water Use and Conservation Management Plan approved under Objective 2B8c or through mitigation of the proposed consumptive or depletive use within the same HUC14 subwatershed through: a permanent reduction of existing consumptive and depletive water uses; ground water recharge in excess of the requirements of N.J.A.C. 7:8 (Stormwater Management Rules); or other permanent means. Where a Water Use and Conservation Management Plan has not been approved: 1. Each project shall achieve mitigation ranging from 125% to 200%, based on the severity of the Current Deficit and the amount of consumptive or depletive water use proposed; 2. Total consumptive and depletive water uses from any single project and all projects combined are not to exceed the Conditional Water Availability of Objectives 2B3a or 2B3b for any HUC14 subwatershed; 3. Mitigation shall be successfully completed prior to initiation of the water use, except as required by #4, below. Mitigation may be phased in keeping with project development; 4. For water uses where the combination of proposed consumptive and depletive water uses and current subwatershed deficit is high, according to a schedule established by the Highlands Council, off-site mitigation shall be successfully completed prior to any on-site construction. On-site mitigation shall be successfully completed prior to initiation of the water use but may be implemented concurrent with on-site construction. Mitigation may be phased in keeping with the level of consumptive or depletive water uses; and Mitigation plans for a project shall include: specific objectives for each mitigation component; monitoring and reporting requirements; methods by which shortfalls in meeting the mitigation objectives shall be addressed through additional action; and be guaranteed through performance bonds.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2B8c:</b> Water Use and Conservation Management Plans shall be required through municipal Plan Conformance for all subwatersheds to meet the policies and objectives of Goal 2B, to ensure efficient use of water through water conservation and Low Impact Development Best Management Practices, and to avoid the creation of new deficits in Net Water Availability. Where developed for Current Deficit Areas, the plans shall include provisions to reduce or manage consumptive and depletive uses of ground and surface waters as necessary to reduce or eliminate deficits in Net Water Availability, or to ensure continued stream flows to downstream Current Deficit Areas from Existing Constrained Areas, to the maximum extent practicable within each HUC14 subwatershed. Water Use and Conservation Management Plans shall demonstrate through a detailed implementation plan and schedule how and when the current deficit will be resolved in a subwatershed prior to approval for new water uses in the subwatersheds with the most severe deficits (i.e., in excess of 0.25 million gallons per day), and the plan shall be implemented prior to initiation of new water uses.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2B8d:</b> All water users within a Current Deficit Area shall seek funding and opportunities to meet the intent of Objective 2B4b.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2B8e:</b> Allow water resource transfers between or from Highlands subwatersheds only when there is no other viable alternative and where such transfers would demonstrably not result in impairment of resources in any subwatershed. Potential effects on upstream and downstream subwatersheds should be included in any such evaluation.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Comments:</b> N/A. The proposed project would not result in the expansion or creation of a public water supply system, public wastewater collection and treatment system or a community on-site treatment facility. In addition, the proposed project would not result in the generation of wastewater nor require a permanent water source. Temporary water sources will be required for hydrostatic testing of the pipeline, and will be withdrawn in compliance with NJDEP water allocation rules and temporary use permits, which must be consistent with the RMP. The applicant will place a priority on withdrawing temporary water supplies from either a reservoir or from high-flow skimming of non-Category			

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1 streams to minimize or avoid impacts, and will place a priority on replacing flows to the original source. The applicant has stated that it will consult with the Highlands Council regarding the temporary water source. However, temporary water uses do not affect water availability as defined and measured by the RMP.

### SUBPART B PROTECTION OF WATER RESOURCES QUANTITY

**Project Area includes Prime Ground Water Recharge Area?** Yes

#### Regional Master Plan Goals, Policies, and Objectives:

	<b>C</b>	<b>I</b>	<b>N/A</b>
<b>Policy 2D3:</b> To protect, enhance, and restore the quantity and quality of Prime Ground Water Recharge Areas.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 2D3c:</b> Implement master plans and development review ordinances through Plan Conformance that protect Prime Ground Water Recharge Areas and minimize the potential for disruption of recharge in such areas by development.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2D3g:</b> Require through Plan Conformance and local health ordinances, that existing land uses that have a significant potential to result in major discharges of pollutants to ground water or to the land surface (including but not limited to non-sanitary wastewater effluent and any major sources of potential discharges such as spills and leaks), such that they may degrade ground water quality within a Prime Ground Water Recharge Area, shall incorporate ongoing management of toxic chemical sources and prohibition of unregulated discharges, so that the potential for ground water contamination is minimized and the opportunity for discharge discovery and control is maximized.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 2D4:</b> To apply standards through Plan Conformance, local development review and Highlands Project Review to protect, restore and enhance the functionality and the water resource value of Prime Ground Water Recharge Areas by restricting development and uses of land within a Prime Ground Water Recharge Area that reduce natural ground water recharge volumes or may directly or indirectly contribute to or result in water quality degradation.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2D4a:</b> Development shall not occur in Prime Ground Water Recharge Areas unless necessary to avoid Critical Habitat, Highlands Open Waters Buffers and Moderately and Severely Constrained Steep Slopes.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 2D4b:</b> Any development activity approved to occur in a Prime Ground Water Recharge Area shall provide an equivalent of 125% of pre-construction recharge volumes for the affected Prime Ground Water Recharge Area of the site within the following areas, in order of priority: (1) the same development site where feasible; (2) the same HUC14 subwatershed, or (3) an interrelated HUC14 subwatershed as approved by the Highlands Council where no feasible option exists in the same HUC14 subwatershed. This requirement shall apply to all portions of the Prime Ground Water Recharge Area where the recharge is disrupted through impervious surfaces, routing of stormwater runoff and recharge from natural flow paths, and other similar changes.	<input checked="" type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Objective 2D4c:</b> Require through Plan Conformance, local development review and Highlands Project Review that the disruption of Prime Ground Water Recharge Area shall be minimized through the implementation of Low Impact Development Best Management Practices meeting the requirements of Objective 2D3a.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 2D4d:</b> Require through Plan Conformance, local development review and Highlands Project Review that the disruption of Prime Ground Water Recharge Area, after conformance with Objectives 2D4a, 2D4b and 2D4c is achieved, shall be limited to no greater than 15% of the Prime Ground Water Recharge Area on the site and shall be preferentially be sited on that portion of the Prime Ground Water Recharge Area that has the lowest ground water recharge rates and the lowest potential for aquifer recharge.	<input checked="" type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Objective 2D4e:</b> Prohibit through Plan Conformance, local development review and Highlands Project Review the expansion or creation of public water supply systems or public wastewater collection and treatment systems or community-based on-site wastewater facilities into a Prime Ground Water Recharge Area within the Protection or Conservation Zone within the Planning Area except as provided for in Policy 2J4 with Objectives 2J4a through 2J4d, and Policy 2K3 with Objectives 2K3a through 2K3e, and within the Preservation Area except as provided for in Policy 2I1 and Objectives 2I1a and 2I1b.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2D4f:</b> Prohibit through Plan Conformance, local development review and Highlands Project Review new land uses, including those identified through Objective 2D3d, that have a significant potential to result in the discharge of persistent organic chemicals sources (including but not limited to existing discharges of industrial or other non-sanitary wastewater effluent) to ground water or to the land surface within a Prime Ground Water Recharge Area, such that they may degrade or contribute to the degradation of ground water quality.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 2D4g:</b> Require conformance with applicable components of regional stormwater management plans, where applicable, as a mandatory requirement for any site plan application.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 2D4h:</b> Achieve a net improvement in ground water recharge volume and maintenance of water quality as required through compliance with and implementation of any related provisions of an adopted regional stormwater plan.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 2D4i:</b> Achieve a net improvement in ground water volume and maintenance of water quality through redevelopment, enhanced infiltration, pretreatment or other means where feasible.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Comments:** Much of the existing and proposed ROW is mapped as Prime Ground Water Recharge Area. The applicant states that since there is no new impervious area associated with the proposed project, and all disturbed areas will be revegetated or restored upon completion of construction, there will be no permanent decrease in the ground water recharge area. With respect to potential temporary impacts, the applicant proposes a Water Resources Quantity Protection Plan as part of the CMP. This plan will incorporate measures into the project design to ensure protection of ground water recharge volume, which include:

- Restoration of the site to maintain pre-construction hydrology.



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- Use of slope and trench breakers to slow down the flow of water and increase stormwater infiltration.
- The topsoil and subsoil shall be tested for compaction by a third-party monitor within each segment of Prime Ground Water Recharge Area crossed by the project. Tests shall be conducted at intervals sufficient to determine the need for decompaction.
- If necessary, soil shall be decompacted. The subsoil shall be decompacted prior to final restoration of the pre-construction contours and shall be consistent with adjacent soils at the limits of the ROW. Test results will be provided to the Council.

To mitigate for the additional 25% of recharge volume as required by the RMP, the applicant is proposing to acquire and to protect an area of land within a designated Prime Ground Water Recharge Area. By protecting the property against development, the applicant states that it will be preventing potential impacts to ground water recharge. Additionally, the applicant notes that should the property acquired contain previous development such as a residence or impervious area, it will remove all structures, driveways, parking areas and lawns and replace them with grassland or forest to provide a significant increase in the recharge volume than the current condition of such property. The applicant will be coordinating with the Highlands Council to ensure that the selected parcel provides significant additional ground water recharge volume.

The applicant ~~states that it is currently in the process of calculating~~ the ground water recharge volumes in mapped Prime Ground Water Recharge Areas crossed by the project as well as those associated with potential mitigation properties. ~~Upon completion of the calculations, they~~ The applicant will be submitted ~~these~~ to the Council ~~along with that will include~~ an assessment and justification for the use of preserved lands to mitigate for the additional 25% recharge volume requirement. The applicant found that the recharge volume within the Prime Ground Water Recharge Area affected by the project is approximately 20.5 million gallons per year. The recharge volume within the Prime Ground Water Recharge Area in the proposed mitigation area is approximately 7.7 million gallons per year which, when combined with the 100% recharge in the project area represents an overall recharge volume of 137.5%. Based on this result, the applicant states that, by implementing the measures detailed within the CMP and protecting the additional recharge volume within the Prime Ground Water Recharge Area of the proposed mitigation parcel, the project meets the 125% recharge volume requirement detailed within the RMP. The Council staff deemed the calculations and analysis to be complete and appropriate and thus the project was found to be made consistent with Objectives 2D4b and 2D4d. For this reason, the application is currently inconsistent with Objectives 2D4b and 2D4d.

With consideration that the Water Resources Quantity Protection Plan will be developed and implemented in coordination with the Highlands Council and other regulatory agencies, and that it will include measures to protect ground water resources, the proposed project, as amended, is found to be made sufficiently consistent with nearly all the RMP goals, policies and objectives related to ground water, and the goals and purposes of the Highlands Act regarding this resource.

### SUBPART C WATER QUALITY

**Project Area within Wellhead Protection Area?** Yes

**If yes to above, check all that apply:** Tier 1 ☒ Tier 2 ☒ Tier 3 ☒

**Name of Nearest Waterway(s) (1000 feet of Project Area):** Numerous waterways

**SWQS Classification:**

**Description of Impairments, or TMDL:**

Regional Master Plan Goals, Policies, and Objectives:	C	I	N/A
<b>Policy 2G2:</b> To reduce or avoid water quality impacts using requirements for water quality protection measures for new land uses through local development review and Highlands Project Review.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Policy 2G3:</b> To adopt and implement water quality protections through Plan Conformance, local development review and Highlands Project Review.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 2G3a:</b> Prohibit land uses that would increase pollutant loadings to waters for which TMDLs have been adopted by the NJDEP unless in compliance with the relevant TMDL.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2G3b:</b> Ensure that new land uses draining to a stream designated as impaired but lacking a TMDL (i.e., Sublist 5) avoid increased pollutant loadings for the parameter or parameters for which a TMDL is required.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 2G3c:</b> Water Quality Management Plans, Wastewater Management Plans or amendments shall demonstrate that the	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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proposed service area will not directly or indirectly support development that would be in violation of an adopted TMDL.			
<b>Policy 2G5:</b> To adopt and implement stormwater management controls through Plan Conformance, local development review and Highlands Project Review.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 2G5a:</b> Require recharge of clean stormwater rather than contaminated stormwater wherever feasible to meet stormwater management requirements, and to pretreat contaminated stormwater wherever its recharge is required.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 2G5b:</b> Require Low Impact Development and other Best Management Practices standards for stormwater management to minimize the discharge of stormwater-entrained pollutants to ground and surface waters.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 2G5c:</b> Implement agricultural best management practices for water conservation, water reuse, nutrient and pesticide application, animal waste management, environmental restoration, pollution assessment and prevention, and irrigation efficiency in farm operations for the protection of ground and surface water quality.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2G6c:</b> Require conforming municipal and county master plans and development regulations to incorporate relevant TMDLs, additional water quality protection measures and wellhead protection for public water supply wells and nitrate standards as development standards.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 2H2:</b> To develop and implement, through Plan Conformance, local development review and Highlands Project Review, resource protection measures to protect and enhance ground water and water supply resources within Wellhead Protection Areas consistent with the source water assessments for each water supply source.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 2H2a:</b> Prohibit land uses that have a significant potential to result in the discharge of pathogens (including, but not limited to, septic systems and engineered stormwater infiltration from surfaces with significant potential for contact with pathogenic contaminants) to ground water or to the land surface within a designated Tier 1 Wellhead Protection Area, such that they may degrade or contribute to the degradation of ground water quality. Require that the construction of sewer lines within Tier 1 of a Well Head Protection Area prevent seepage of untreated sewage into ground water.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2H2b:</b> Prohibit land uses that have a significant potential to result in the discharge of persistent organic or toxic chemicals sources (including but not limited to existing discharges of industrial or other non-sanitary wastewater effluent) to ground water or to the land surface within a designated Tier 2 Wellhead Protection Area, such that they may degrade or contribute to the degradation of ground water quality.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2H2c:</b> Require that land uses that have a significant potential to result in major discharges of persistent organic or toxic pollutants to ground water or to the land surface (including but not limited to non-sanitary wastewater effluent and any major sources of potential discharges such as spills and leaks), such that they may degrade ground water quality within a designated Tier 3 Wellhead Protection Area, shall incorporate ongoing management of toxic chemical sources and prohibition of unregulated discharges, so that the potential for ground water contamination is minimized and the opportunity for discharge discovery and control is maximized.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2H4a:</b> Require site specific and municipal stormwater management plans to address wellhead protection requirements.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Policy 2H5:</b> To require that conforming municipalities revise master plans and development regulations to address wellhead protection requirements.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2H5b:</b> Restrict development activities that pose threats to the water quality of public water supply wells.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2H5c:</b> Ensure that development activities and existing land use activities implement best management practices to protect the quality of ground water within Wellhead Protection Areas.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 2H5d:</b> Amend Areawide Water Quality Management Plans or Wastewater Management Plans for conforming municipalities and counties to ensure that any activity associated with the proposed service area will not adversely affect a Wellhead Protection Area.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p><b>Comments:</b> Portions of the project area are located within areas mapped as Wellhead Protection Areas (Tiers 1, 2 and 3, with 2, 5 and 12 year times of travel to the well, respectively). With respect to wellhead protection, the applicant states that the project is not anticipated to adversely affect ground water quality and supply. The applicant proposes to implement construction practices designed to reduce and mitigate potential impacts on ground water during construction as detailed within the ECP. Tennessee Gas and its contractors will adhere to these practices related to ground water protection including specifications for trench breakers and dewatering as well as restrictions on refueling and storage of hazardous substances. The applicant states that Environmental Inspectors (EIs) will be on-site during construction activities to ensure compliance with the FERC-approved Plan and Procedures and Tennessee Gas's BMPs, as well as requirements of all applicable federal, State and local environmental permits and approvals.</p> <p>During the initial landowner contacts for survey permission, the applicant's land representatives requested information on the location of wells and septic systems from landowners whose residences were in close proximity to the proposed pipeline loops and work spaces. In many locations, this information was used to reduce work areas or re-align the pipeline route to avoid impacts to these structures. The applicant notes that owners of wells identified that are within 150 feet of the construction work area shall be offered pre- and post construction well testing.</p> <p>The applicant states that all equipment used in construction of the pipeline will be refueled and lubricated within the limits of the ROW at a minimum distance of 100 feet from all wetlands and waterbodies. The applicant further notes</p>			



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that auxiliary fuel tanks will be used to reduce the frequency of refueling operations. Also, the applicant states that the proposed impact minimization measures will prevent the discharge of hydraulic fluids or fuels from leaving the ROW or leaching into the ground water.

With respect to stormwater management, the applicant notes that its ECP incorporates, as one document, an Erosion and Sediment Control Plan, Wetland and Waterbody Crossing Plan, and Spill Prevention and Control Plan. By incorporating the above plans into one concise document and adding site specific information, the applicant states that it was able to tailor the ECP to the requirements of the Storm Water Pollution Prevention Plan required under the US Environmental Protection Agency storm water permit or equivalent state program.

The applicant states that its ECP has been modified since the prior submittal to the Highlands Council to include additional requirements that have been imposed by the NJDEP, NRCS Soil and Water Conservation Districts, County Soil Conservation Districts, the US Army Corps of Engineers, and other federal, state, and local agencies. More specifically, the applicant states that the ECP was modified to include the additional requirements of the Standards for Soil Erosion and Sediment Control in New Jersey. The applicant states that this combined approach will allow contractors and Environmental Inspectors to reference all environmental conditions in one document.

The applicant states that the ECP will be included as part of the construction contract. Its objective is to minimize the potential for erosion and sedimentation during pipeline construction, and to effectively restore the ROW and other disturbed areas. The applicant states that it will meet these objectives by employing erosion and sediment control measures including:

- minimizing the quantity and duration of soil exposure;
- protecting critical areas during construction by reducing the velocity of and redirecting runoff;
- installing and maintaining erosion and sediment control measures during construction;
- establishing vegetation as soon as possible following final grading; and
- inspecting the ROW and maintaining erosion and sediment controls as necessary until final stabilization is achieved.

The applicant states that the EIs will be the primary responsible parties for ensuring that its contractors implement and maintain erosion and sediment control measures on a daily basis during the construction phase. By implementing the measures detailed in the ECP, the applicant states that it will meet the objectives of the RMP with respect to stormwater management.

With consideration that ~~the Water Quality Protection Plan will be developed~~ avoidance, minimization and mitigation measures relative to water quality are identified in the CMP and will be implemented in coordination with the Highlands Council and other regulatory agencies, and that, in addition, the applicant will comply with permit conditions, as issued by NJDEP, it will include measures to ensure the protection of water quality, the proposed project, as amended, is found to be made consistent with the RMP goals, policies and objectives related to water quality, and the goals and purposes of the Highlands Act regarding this resource.

## SUBPART D SUSTAINABLE DEVELOPMENT AND WATER RESOURCES

### WATER UTILITY

<b>Potable Water Supply?</b> NA	<b>Domestic?</b> NA									
<b>Source Water HUC(s):</b> NA										
<b>Public Community Water System?</b> Yes	<b>If PCWS, Name of Facility:</b>									
<b>PCWS ID No:</b>	<b>Total Projected Water Demand of Project (MGD):</b>									
<b>Regional Master Plan Goals, Policies, and Objectives:</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 33%;"><u>C</u></th> <th style="width: 33%;"><u>I</u></th> <th style="width: 33%;"><u>N/A</u></th> </tr> <tr> <td><b>Policy 21I:</b> To prohibit the expansion or creation of public water supply systems, public wastewater collection and treatment systems and community on-site treatment facilities in the Preservation Area unless approved through a Highlands Applicability Determination (HAD) or a HPAA with waiver pursuant to N.J.A.C. 7:38 and Policy 7G1.</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> </tr> <tr> <td><b>Objective 21Ib:</b> The expansion or creation of public water supply systems, public wastewater collection and treatment systems and community on-site treatment facilities in the Preservation Area as approved through a HPAA with waiver pursuant to N.J.A.C. 7:38 and Policy 7G1 shall maximize the protection of sensitive environmental resources including avoidance of Highlands Open Waters buffer areas, Riparian Areas, the forested portion of the Forest Resource Area, agricultural lands of Agricultural Resource Areas,</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> </tr> </table>	<u>C</u>	<u>I</u>	<u>N/A</u>	<b>Policy 21I:</b> To prohibit the expansion or creation of public water supply systems, public wastewater collection and treatment systems and community on-site treatment facilities in the Preservation Area unless approved through a Highlands Applicability Determination (HAD) or a HPAA with waiver pursuant to N.J.A.C. 7:38 and Policy 7G1.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<b>Objective 21Ib:</b> The expansion or creation of public water supply systems, public wastewater collection and treatment systems and community on-site treatment facilities in the Preservation Area as approved through a HPAA with waiver pursuant to N.J.A.C. 7:38 and Policy 7G1 shall maximize the protection of sensitive environmental resources including avoidance of Highlands Open Waters buffer areas, Riparian Areas, the forested portion of the Forest Resource Area, agricultural lands of Agricultural Resource Areas,	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<u>C</u>	<u>I</u>	<u>N/A</u>								
<b>Policy 21I:</b> To prohibit the expansion or creation of public water supply systems, public wastewater collection and treatment systems and community on-site treatment facilities in the Preservation Area unless approved through a Highlands Applicability Determination (HAD) or a HPAA with waiver pursuant to N.J.A.C. 7:38 and Policy 7G1.	<input type="checkbox"/>	<input checked="" type="checkbox"/>								
<b>Objective 21Ib:</b> The expansion or creation of public water supply systems, public wastewater collection and treatment systems and community on-site treatment facilities in the Preservation Area as approved through a HPAA with waiver pursuant to N.J.A.C. 7:38 and Policy 7G1 shall maximize the protection of sensitive environmental resources including avoidance of Highlands Open Waters buffer areas, Riparian Areas, the forested portion of the Forest Resource Area, agricultural lands of Agricultural Resource Areas,	<input type="checkbox"/>	<input checked="" type="checkbox"/>								

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Steep Slopes, Prime Ground Water Recharge Areas, and Critical Habitat.			
<b>Policy 2J2:</b> To ensure, through Plan Conformance and Highlands Project Review, that Highlands Public Community Water Systems conform with Policy 2B6.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2J2a:</b> Limit future water system demand and reduce existing demand where feasible by water systems that are dependent on Current Deficit Areas or Existing Constrained Areas as a source of water.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2J2b:</b> Limit future water system demands to levels that will not create a Current Deficit Area where one does not currently exist.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 2J3:</b> To identify, through Plan Conformance, the RMP Water Resources Science Agenda and other means, areas of the Highlands Region with existing or imminent threats to public health and safety from contaminated domestic and other on-site water supplies that are of sufficient scale to potentially justify the extension or creation of a public water supply.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 2J4:</b> To minimize, through Plan Conformance, local development review and Highlands Project Review, the creation or extension of public water supply systems within the Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-zones of the Planning Area, and to allow for the creation or extension of public water supply systems where appropriate within the Existing Community Zone.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2J4a:</b> Prohibit new, expanded or extended public water systems within the Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-zones of the Planning Area unless they are shown to be necessary for and are approved by the Highlands Council for one or more of the purposes listed below. For approvals regarding parts 1, 2, and 3, the project must maximize the protection of sensitive environmental resources such as Highlands Open Waters buffer areas, Riparian Areas, the forested portion of the Forest Resource Area, agricultural lands of Agricultural Resource Areas, Steep Slopes, Prime Ground Water Recharge Areas and Critical Habitat. For approvals regarding part 3, the project must avoid disturbance of Highlands Open Waters buffer areas, Riparian Areas, Steep Slopes and Critical Habitat, and must minimize disturbance of the forested portion of the Forest Resource Area, agricultural lands of Agricultural Resource Areas, and Prime Ground Water Recharge Areas. The extension or creation of systems shall follow the requirements in Objective 2J4b (parts 2 and 3). The applicable purposes are: 1. To address through a waiver under Policy 7G1 or 7G2 a documented existing or imminent threat to public health and safety from contaminated domestic and other on-site water supplies that is of sufficient scale to justify a public water supply and where no alternative is feasible that would sufficiently assure long-term protection of public health and safety. Such needs shall have highest priority for allocation of existing system capacity; 2. To address development permitted through a Highlands Redevelopment Area or takings waiver under Policy 7G1 or 7G2; or 3. To serve a cluster development that meets all requirements of Objective 2J4b.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2J4b:</b> Clustered development served by public water supply within the Protection Zone, the Conservation Zone, and the Environmentally-Constrained Sub-zones of the Planning Area shall be approved only if the following conditions are met: 1. The development impacts are otherwise consistent with the requirements of the RMP, including provisions for mandatory clustering in Agricultural Resource Areas pursuant to Policy 3A5; 2. Extension of an existing public water system will occur only where the cluster development is within or immediately adjacent to an Existing Area Served with available capacity; 3. Creation of a new public water system will occur only where such development is not within or immediately adjacent to an Existing Area Served with available capacity; 4. The clustered development preserves at least 80% of the cluster project area in perpetuity for environmental protection or agricultural purposes. To the maximum extent feasible the developed portion (i.e., not including wetlands, Highlands Open Waters buffers, and recreational lands) occupies no more than 10% of the cluster project area if served by a public or community on-site wastewater system; and 5. Where the preserved land in the cluster project area is dedicated to agricultural purposes, the cluster development ordinance and an Agriculture Retention/Farmland Preservation Plan supports continued agricultural viability of the agricultural land and requires the implementation of best management practices, including development and implementation of a Farm Conservation Plan that addresses the protection of water and soil resources prepared by the USDA Natural Resources Conservation Service (NRCS), Technical Service Provider (TSP), appropriate agent or NJDA staff, and approved by the local Soil Conservation District (SCD).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2J4c:</b> Allow the expansion or creation of public water systems within the Existing Community Zone of the Planning Area, other than the Environmentally-Constrained Sub-zone, to serve lands which are appropriate for designated TDR Receiving Zones, infill or redevelopment, to meet needs and protection requirements equivalent to Objective 2J4a within the Existing Community Zone, or to serve new areas for development that meet all other requirements of the RMP. TDR Receiving Zones, affordable housing projects (where the affordable units exceed 10% of the total units), infill and redevelopment shall have higher priority for capacity than expansion of public water service areas within this Zone.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2J4d:</b> All development within the Highlands Region, in areas that are not served by public water systems, shall be at a density that can be supported by on-site wells. Where cluster development in the Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-zones of the Planning Area will be served by on-site wells, the undeveloped land is preserved for agricultural purposes in perpetuity, the cluster development in combination with the Agriculture Retention/Farmland Preservation Plan required by Objective 2J4b shall provide for best management practices that protect the on-site wells from contamination resulting from agricultural practices and shall include provisions to minimize or reduce net pollutant loadings from the total cluster project area including the preserved agricultural lands.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 2J5:</b> To prohibit, through local development review and Highlands Project Review, new or increased water resource transfers between subwatersheds unless it is demonstrated that no other option exists to meet public health, safety and welfare objectives and where such transfers do not result in impairment of resources in the subwatershed from which water is proposed to be transferred.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 2J7:</b> To require water resource management for all development in the Highlands Region, through local development review and Highlands Project Review.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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<b>Objective 2J7a:</b> Require the maximum feasible water conservation and recycling for any redevelopment or development activity, including renovations to existing single family residences and commercial/industrial buildings.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2J7b:</b> Require consideration of and the cost-effective use of recycled or re-used water rather than potable public water for non-potable purposes such as fountains, and nonessential uses such as golf courses, certain recreational, commercial, or agricultural uses.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2J7c:</b> Require that new residential development served by public community water systems, be except where also served by septic systems, at a minimum density of 1/2 acre per dwelling unit for the developed part of the site (e.g., not including wetlands, Highlands Open Waters buffers, recreational space), to ensure cost-effective utility service.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2J7d:</b> Require that new non-residential development served by public water systems, except where also served by septic systems, be designed to target a floor area ratio (FAR) of 0.84 for the developed part of the site (e.g., not including wetlands, Highlands Open Waters buffers, recreational lands) to the maximum extent feasible, as a means to maximize parking and employment efficiency and compact development.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Comments:</b> N/A. The proposed project would not result in the expansion or creation of a public water supply system, public wastewater collection and treatment system or a community on-site treatment facility. In addition, the proposed project would not result in the generation of wastewater nor require a permanent water source.			
<b>WASTEWATER UTILITY</b>			
<b>NJPDES Permit Number:</b> NA		<b>Projected Flow of Project (GPD):</b> NA	
<b>HDSF Facility?</b> NA		<b>HDSF Available Capacity (MGD):</b> NA	
<b>Subject to Allocation Agreement?</b> NA		<b>Capacity Allocated from HDSF (MGD):</b> NA	
<b>Extent of HDSF Service Area Included in WMP:</b> Full <input type="checkbox"/> Partial <input type="checkbox"/>			
<b>Wastewater Treatment Facility:</b> NA			
<b>Service Area:</b>		<b>Wastewater Discharge Flow (MGD):</b>	
<b>NJPDES-DGW:</b>	Existing <input type="checkbox"/> Proposed <input type="checkbox"/>	Existing:	Increase:
<b>NJPDES-DSW:</b>	Existing <input type="checkbox"/> Proposed <input type="checkbox"/>	Existing:	Increase:
<b>Regional Master Plan Goals, Policies, and Objectives:</b>		<b>C</b>	<b>I</b>
<b>Policy 2I1:</b> To prohibit the expansion or creation of public water supply systems, public wastewater collection and treatment systems and community on-site treatment facilities in the Preservation Area unless approved through a Highlands Applicability Determination (HAD) or a HPAA with waiver pursuant to N.J.A.C. 7:38 and Policy 7G1.		<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2IIa:</b> Designated sewer service areas in the Preservation Area shall be restricted to the Existing Area Served as of August 10, 2004, except to serve development that is approved through a HAD or a HPAA with waiver pursuant to N.J.A.C. 7:38 and Policy 7G1.		<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2IIb:</b> The expansion or creation of public water supply systems, public wastewater collection and treatment systems and community on-site treatment facilities in the Preservation Area as approved through a HPAA with waiver pursuant to N.J.A.C. 7:38 and Policy 7G1 shall maximize the protection of sensitive environmental resources including avoidance of Highlands Open Waters buffer areas, Riparian Areas, the forested portion of the Forest Resource Area, agricultural lands of Agricultural Resource Areas, Steep Slopes, Prime Ground Water Recharge Areas, and Critical Habitat.		<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 2K2:</b> To base projected demand for current needs, appropriate economic revitalization and opportunities for designated TDR Receiving Zones within Existing Areas Served on existing maximum three month demands plus an estimate of redevelopment needs based on either Highlands Council regional analyses or more detailed local analyses, to assess whether there is adequate treatment capacity to encourage redevelopment.		<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 2K3:</b> To provide adequate, appropriate, efficient and cost-effective wastewater management to all development in the Highlands Region, through Plan Conformance, local development review and Highlands Project Review.		<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2K3b:</b> Existing wastewater collection and treatments systems which are non-compliant with state water quality standards for wastewater treatment and effluent discharge shall be prohibited from collecting and treating additional wastewater until the treatment systems are fully compliant with State permit requirements.		<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2K3c:</b> Prohibit new, expanded or extended public wastewater collection and treatment systems and community on-site treatment facilities within the Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-zones of the Planning Area unless they are shown to be necessary for and are approved by the Highlands Council for one or more of the purposes listed below. For approvals regarding parts 1, 2, and 3, the project must maximize the protection of sensitive environmental resources such as Highlands Open Waters buffer areas, Riparian Areas, the forested portion of the Forest Resource Area, agricultural lands of Agricultural Resource Areas, Steep Slopes, Prime Ground Water Recharge Areas and Critical Habitat. For approvals regarding part 3, the project must avoid disturbance of Highlands Open Waters buffer areas, Riparian Areas, Steep Slopes and Critical Habitat, and must minimize disturbance of the forested portion of the Forest Resource Area, agricultural lands of Agricultural Resource Areas, and Prime Ground Water Recharge Areas. The choice of extension or creation of systems shall follow the requirements in Objective 2K3d (2 and 3). The applicable purposes are: 1. To address through a waiver under Policy 7G1 or 7G2 a documented existing or imminent threat to public health and safety from a pattern of failing septic systems (where the failing systems cannot reasonably be addressed through rehabilitation or replacement) or highly concentrated septic systems, where the threat is of sufficient scale to justify a public wastewater collection and treatment system or community on-site treatment facility and where no alternative is feasible that would sufficiently assure long-term protection of public health and safety. To address other issues of public health and safety, such needs shall have highest		<input type="checkbox"/>	<input checked="" type="checkbox"/>

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priority for allocation of existing system capacity; 2. To address development permitted through a Highlands Redevelopment Area or takings waiver under Policy 7G1 or 7G2; or 3. To serve a cluster development that meets all requirements of Objective 2K3d.			
<b>Objective 2K3d:</b> Clustered development served by a public wastewater collection and treatment system or community on-site treatment facility within the Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-zones of the Planning Area shall be approved only if the following conditions are met: 1. The development impacts are otherwise consistent with the requirements of the RMP, including provisions for mandatory clustering in Agricultural Resource Areas; 2. Extension of an existing public wastewater collection and treatment system will occur only where the cluster development is within or immediately adjacent to an Existing Area Served with available capacity; 3. Creation of a community on-site treatment facility will occur only where such development is not within or immediately adjacent to an Existing Area Served with available capacity, where the proposed system is designed, permitted, and constructed at a capacity limited to the needs of the clustered development, and where the system does not create the potential for future expansion into areas that are not the subject of cluster developments immediately adjacent to the initial cluster served; 4. The cluster development preserves at least 80% of the cluster project area in perpetuity for environmental protection or agriculture purposes. To the maximum extent feasible the developed portion of the project area (e.g., not including wetlands, Highlands Open Waters buffers, and recreational lands) occupies no more than 10% of the cluster project area if served by a public or community on-site wastewater system; and 5. Where the preserved land in the cluster project area is dedicated to agricultural purposes, the cluster development ordinance and an Agriculture Retention/Farmland Preservation Plan supports continued agricultural viability of the agricultural land and requires the implementation of best management practices, including development and implementation of a Farm Conservation Plan that addresses the protection of water and soil resources prepared by the USDA Natural Resources Conservation Service (NRCS), Technical Service Provider (TSP), appropriate agent or NJDA staff, and approved by the local Soil Conservation District (SCD).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2K3e:</b> Allow the expansion or creation of wastewater collection systems within the Existing Community Zone of the Planning Area, other than the Environmentally-Constrained Sub-zone, to serve lands which are appropriate for designated TDR Receiving Zones, infill or redevelopment, to meet needs and protection requirements equivalent to those provided at Objective 2K3c within the Existing Community Zone, or to serve new areas for development that meet all other requirements of the RMP. The highest priority for allocation of excess or additional wastewater treatment capacity is to areas where there are clusters of failed septic systems that are located within or adjacent to Existing Areas Served. TDR Receiving Areas, where designated, affordable housing projects (where the affordable units exceed 10% of the total units), infill and redevelopment shall have higher priority for capacity than other developments requiring expansion of sewer service areas.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2K3f:</b> All development within the Highlands Region, in areas which are not served by public wastewater collection and treatment system or community on-site treatment facility, shall be at a density that can be supported by septic systems under Goal 2L. Where cluster development in the Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-Zones of the Planning Area shall be served by on-site wells, and the undeveloped land is preserved for agricultural purposes in perpetuity, the cluster development and the Agriculture Retention/Farmland Preservation Plan required by Objective 2K3d in combination shall include provisions for best management practices that protect the on-site wells from contamination resulting from agricultural practices and shall include provisions to minimize or reduce net pollutant loadings from the total cluster project area including the preserved agricultural lands.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 2K4:</b> To ensure the efficiency and cost-effectiveness of public wastewater collection and treatment systems, through Plan Conformance, local development review and Highlands Project Review.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2K4a:</b> Require that new residential development served by public wastewater collection and treatment systems be at a minimum density of 1/2 acre per dwelling unit for the developed part of the site (e.g., not including wetlands, Highlands Open Waters buffers, and recreational space) to ensure cost-effective utility service.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2K4b:</b> Require that new non-residential development served by public wastewater collection and treatment systems be designed to target a floor area ratio (FAR) of 0.84 for the developed part of the site (e.g., not including wetlands, Highlands Open Waters buffers, recreational space) to the maximum extent feasible, as a means to maximize parking and employment efficiency and compact development.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 2K4c:</b> Require the use of recycled or re-used water wherever possible including aesthetic purposes and non-potable purposes such as fountains, golf courses, and other recreational, commercial or agricultural uses.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Comments:</b> N/A. The proposed project would not result in the expansion or creation of a public water supply system, public wastewater collection and treatment system or a community on-site treatment facility. In addition, the proposed project would not result in the generation of wastewater nor require a permanent water source.			



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<b>SEPTIC SYSTEM YIELD</b>			
<b>Proposed Nitrate Target(s) (mg/l):</b> NA		<b>Annual Recharge Rate Used:</b> Drought <input type="checkbox"/> Average <input type="checkbox"/>	
	<b>Protection Zone</b>	<b>Conservation Zone</b>	<b>Existing Community Zone</b>
<b>Municipal Septic System Density (acre/unit)</b>			
<b>HC Septic System Density (acre/unit)</b>			
<b>Municipal Septic System Yield (units)</b>			
<b>HC Septic System Yield (units)</b>			
<b>Regional Master Plan Goals, Policies, and Objectives:</b>			
<b>Policy 2L2:</b> To use the median background nitrate concentrations in ground water in the Highlands Region as a basis for establishing on-site wastewater treatment densities through Plan Conformance, local development review, and Highlands Project Review.			<b>C</b> <input type="checkbox"/>
<b>Objective 2L2a:</b> Use the median concentrations of nitrate in ground water for Planning Area HUC14 subwatersheds where the Protection Zone is predominant as the nitrate target for new development reliant on septic systems within the Protection Zone. The median is 0.72 mg/L.			<b>I</b> <input type="checkbox"/>
<b>Objective 2L2b:</b> Use the median concentrations of nitrate in ground water for Planning Area HUC14 subwatersheds where the Conservation Zone is predominant as the nitrate target for new development reliant on septic systems within the Conservation Zone. The median is 1.87 mg/L.			<b>N/A</b> <input checked="" type="checkbox"/>
<b>Objective 2L2c:</b> Use the NJDEP Highlands Preservation Area rules and nitrate thresholds for the Preservation Area.			<input type="checkbox"/>
<b>Objective 2L2d:</b> Use a nitrate target of 2 mg/L for the Existing Community Zone within Planning Area, on a project-by-project basis, where new development will rely on septic systems.			<input type="checkbox"/>
<b>Objective 2L2e:</b> New residential development using septic systems where clustering or conservation design techniques are employed shall have a gross density (for all parcels involved in the development proposal) based on the nitrate dilution target appropriate for the Land Use Capability Zone, but with the density for the developed portion of the site based on a nitrate dilution target not to exceed 10 mg/L or any more stringent requirement as required by N.J.A.C. 7:15.			<input type="checkbox"/>
<b>Objective 2L3f:</b> Carrying capacity shall be documented through the Land Use Capability Septic System Yield Map as the number of allowable septic systems per Conservation and Protection Zone for each HUC14 subwatershed, taking into account the nitrate target, the HUC14 subwatershed drought ground water recharge, and the acreage that is privately owned, undeveloped or underdeveloped, and not preserved.			<input type="checkbox"/>
<b>Objective 2L2g:</b> New residential development utilizing septic systems shall be designed in a manner that ensures that the untreated well water meets the State drinking water quality standards and that minimizes the risk of well contamination due to the flow of septic system plumes within or between developed lots, addressing general ground water flow patterns, major fracture systems and other appropriate geological, geophysical and hydrogeological issues.			<input type="checkbox"/>
<b>Comments:</b> NA. Septic System Yields are not applicable.			
<b>PART 3 AGRICULTURAL RESOURCES</b>			
<b>Area within Agricultural Resource Area?</b> No		<b>Area within Agricultural Priority Area?</b> No	
<b>If yes, percentage?</b> %		<b>If yes, percentage?</b> %	
<b>Project Area includes preserved farmland?</b> No <b>If yes, identify properties (B/L):</b>			
<b>Affects Farm Unit &gt;250 acres?</b> No		<b>Includes Important Farmland Soils?</b> Yes	
<b>Agricultural Uses?</b> No			
<b>Regional Master Plan Goals, Policies, and Objectives:</b>			
<b>Policy 3A5:</b> Where it is not feasible to preserve agricultural lands within the ARA by such methods as fee simple acquisition, easement acquisition, or a TDR Program, require mandatory clustering through Municipal Plan Conformance, local development review and Highlands Project Review for residential development in an ARA. Cluster development within the Planning Area that incorporates public or community on-site wastewater utilities shall meet the requirements of Policy 2J4 with Objectives 2J4a through 2J4d, and Policy 2K3 with Objectives 2K3a through 2K3e, and within the Preservation Area shall meet the requirements of Policy 2I1 and Objectives 2I1a and 2I1b, and where reliant on septic systems shall meet the requirements of Objective 6I1a.			<b>C</b> <input type="checkbox"/>
<b>Objective 3A5a:</b> Implement regulations requiring that cluster or conservation design development proposed within an Agricultural Resource Area support the preservation of farmland, avoid conflicts with agriculture, maintain and enhance the sustainability and continued viability of the agricultural industry, protect Important Farmland Soils, and meet resource management and protection requirements of the RMP.			<b>I</b> <input type="checkbox"/>
<b>Objective 3A5b:</b> Implement regulations requiring that all cluster or conservation design development proposed in an Agricultural Resource Area be buffered appropriately with existing natural resources, such as hedgerows or trees, or with new buffers to avoid conflicts between non-agricultural development and agricultural activities, and to protect existing agricultural uses and sensitive environmental resources.			<b>N/A</b> <input checked="" type="checkbox"/>

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<b>Objective 3A5c:</b> Implement regulations requiring that all land preserved in perpetuity for environmental protection or agricultural purposes as a result of clustering be subject to a conservation easement enforceable by the Highlands Council and at least one of the following: the appropriate municipality, for agricultural purposes the County Agriculture Development Board or the SADC and for environmental purposes Green Acres or a qualified land trust non-profit organization.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 3A5d:</b> Where the preserved land in the cluster project area is dedicated to agricultural purposes support continued agricultural viability of the agricultural land, encourage that the original or new farmstead remain attached to the preserved land wherever feasible, and require the implementation of best management practices through the cluster development ordinance and an Agriculture Retention/Farmland Preservation Plan, including development and implementation of a Farm Conservation Plan that addresses the protection of water and soil resources prepared by the USDA NRCS, Technical Service Provider (TSP), appropriate agent or NJDA staff, and approved by the local Soil Conservation District (SCD).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 3A6:</b> To permit through local development review and Highlands Project Review limited development, including family and farm labor housing in Agricultural Resource Areas which are necessary to support the viability of the agricultural operation, in coordination with the NJDA and the SADC, and subject to compliance with the resource management and protection requirements of the RMP.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 3A6a:</b> Implement regulations allowing for construction of ancillary structures and family and farm labor housing that is necessary to support the viability of the agricultural operation, upon a demonstration that the proposed development is consistent with the resource management and protection requirements of the RMP.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 3C1:</b> To prohibit through Plan Conformance, local development review and Highlands Project Review the development of additional water and wastewater infrastructure in a Agricultural Resource Area (ARA) within the Conservation and Protection Zones of the Planning Area, unless they meet the requirements of Policy 2J4 with Objectives 2J4a through 2J4d, and Policy 2K3 with Objectives 2K3a through 2K3e, and will maximize the preservation of agricultural lands within the ARA.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 3D2:</b> To require any agricultural or horticultural development in the Preservation Area and the Planning Area which involves new agricultural impervious cover, since enactment of the Highlands Act, to the total land area of a Farm Management Unit (either individually or cumulatively) of greater than 3% but less than 9%, to develop and implement a Farm Conservation Plan prepared by the USDA NRCS, TSP, appropriate agent, or NJDA staff, and approved by the local SCD.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 3D3:</b> To require any agricultural or horticultural development in the Preservation Area and the Planning Area which involves new agricultural impervious cover, since enactment of the Highlands Act, to the total land area of a Farm Management Unit (either individually or cumulatively) of 9% or greater to develop and implement a Resource Management System Plan prepared by the USDA NRCS, TSP, appropriate agent, or NJDA staff, and approved by the local SCD.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 3D6:</b> To identify subwatersheds with elevated nitrate levels and develop and implement management plans to enhance water quality in these subwatersheds while maintaining and enhancing agricultural viability.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 3E3:</b> To require conforming municipalities and counties, with farmland preservation programs or a significant agricultural land base, to incorporate Right to Farm provisions, in accordance with N.J.S.A. 4:1C-1 et seq. and N.J.A.C. 2:76-2, in their master plans and development regulations.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 3E4:</b> To address agricultural or horticultural development and agricultural or horticultural use through Plan Conformance in accordance with the Right to Farm Act, N.J.S.A. 4:1C-1, and in coordination with the NJDA, the SADC, and the County Agriculture Development Boards (CADB).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Comments:</b> While the existing ROW traverses small pockets of Important Farmland Soils, there are no Agricultural Resource Areas within the project area, and the Agricultural Resources policies and objectives are not applicable to the proposed project.			
<b>PART 4 HISTORIC, CULTURAL, ARCHAEOLOGICAL, AND SCENIC RESOURCES</b>			
<b>Presence of Resources:</b> Yes	<b>Highlands Historic District Polygons</b> Absence		
<b>Highlands Historic Properties Polygons</b> Absence	<b>Highlands Historic Property Points</b> Presence		
<b>Archaeological Grids</b> Presence	<b>Highlands Scenic Resource Inventory</b> Presence		
<b>Description of Resources:</b> The existing and proposed ROW traverses four archaeological grids (two in Vernon and two in West Milford) and one Historic Property Point in Ringwood. It also traverses several parcels that are listed in the Highlands Scenic Resource Inventory.			
<b>Regional Master Plan Goals, Policies, and Objectives:</b>	<b>C</b>	<b>I</b>	<b>N/A</b>
<b>Policy 4A3:</b> To ensure through local development review, where a municipality has adopted an historic preservation ordinance under Policy 4C2, that human development does not adversely affect the character or value of resources which are listed on the Highlands Historic and Cultural Resource Inventory to the maximum extent practicable.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 4A3a:</b> All development and redevelopment applications shall include submission of a report identifying potential historic, cultural and/or archaeological resources on the subject property or immediately adjacent properties.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Policy 4A4:</b> To require that the impact of proposed human development on the historic and cultural resources of the Highlands Region be addressed during local development review and Highlands Project Review and approval.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 4A4a:</b> All applications for site plan or subdivision approval shall include identification of any cultural, historic or archaeological resources in the Highlands Region, which are listed on the Highlands Historic and Cultural Resource Inventory and may be affected by the proposed development.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>



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<b>Objective 4A4b:</b> Where a municipality has adopted an historic preservation ordinance under Policy 4C2, all development which affects identified cultural, historic sites/districts, or archaeological resources shall comply with minimum standards for the preservation of the affected resources.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 4B3:</b> To ensure that human development does not adversely affect the character or value of resources which are listed on the Highlands Scenic Resources Inventory.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Policy 4B5:</b> To require that the impact of proposed human development on the scenic resources of the Highlands Region be addressed during local development review and Highlands Project Review and approval.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 4B5a:</b> All development applications shall include identification of any scenic resources in the Highlands Region that are listed on the Highlands Scenic Resources Inventory and may be affected by the proposed development.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 4B5b:</b> All development which affects identified scenic resources shall comply with minimum standards for the preservation of the affected resources.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 4B5c:</b> Any proposed action that requires federal permits, involves federal grants, or involves other federal actions that may impact the resource values of the Musconetcong National Scenic and Recreational River and the Lower Delaware National Scenic and Recreational River, pursuant to section 10(a) of the National Wild and Scenic Rivers Act, shall require review by the National Park Service, National Wild and Scenic Rivers Program.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Comments:** According to the Highlands Council GIS mapping, the existing and proposed ROW traverse four archaeological grids (two in Vernon and two in West Milford) and one Historic Property Point in Ringwood. It also traverses several parcels that are listed in the Highlands Scenic Resource Inventory.

The applicant notes that in addition to Section 106 requirements, cultural resources investigations were conducted for the project in accordance with the FERC's Office of Energy Project's Guidelines for Reporting on Cultural Resources Investigations, and the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation. The applicant states that it has conducted consultations with all applicable federal, state and tribal agencies relative to the potential presence of sensitive cultural or archaeological resources and that it has conducted field investigations of the Loop 325 Segment survey corridor. The applicant identified one location within the project area with potentially sensitive or significant cultural resource value. It is noted that the privileged and confidential nature of potentially significant cultural resources prevents detailed discussion in the CMP, however, the results of the investigations have been ~~conferred~~ referred to the State Historic Preservation Office (SHPO) for concurrence. As mitigation, the applicant has committed to avoidance of this site and will fence the area during construction to prevent inadvertent impacts related to project activities. If project-related circumstances arise that prevent avoidance of this resource, the applicant notes that additional SHPO consultation and concurrence would be required, as well as Phase II cultural resource investigations to fully determine the extent and significance of the site.

The applicant acknowledges that cultural resource deposits could be discovered during project construction or maintenance activities, particularly during excavation. Thus, the applicant has prepared and submitted to SHPO for approval and concurrence a document titled "Procedures Guiding the Discovery of Unanticipated Cultural Resources and Human Remains." This document details specific procedures that must be followed in the case of an unanticipated discovery to maintain compliance with all applicable federal and state laws governing cultural resources. These procedures include the immediate suspension of all activities at the discovery site, agency notification requirements including applicable contact information, and additional assessments of the discovered materials by a qualified cultural resources expert. That document has been incorporated into the applicant's construction conditions and procedures proposed for the project and will be implemented during project construction upon final review and approval by the applicable federal and state regulatory agencies. The applicant notes that all additional correspondence between Tennessee and SHPO shall be provided to the Highlands Council for review and comment.

With respect to scenic resources, the applicant notes that permanent visual impacts associated with installation of the pipeline loop will not occur within non-forested areas; however, tree clearing for construction and maintenance of the permanent ROW in forested areas may result in temporary visual impacts. To minimize this potential, the applicant has sited the proposed loop segment adjacent to the existing 300 Line corridor to the greatest extent possible to limit the amount of tree clearing. This also concentrates utilities in existing areas and reduces the degree of disturbance within previously undisturbed areas. The applicant states that temporary impacts of limited duration will be mitigated through restoration practices to revegetate the ROW in a timely manner in accordance with the measures identified within the CMP.

In consideration of the work done to date in coordination with SHPO, the implementation of the described mitigation measures, and the commitment to coordinate with the Highlands Council, the proposed project, as amended, is

**DRAFT – FOR CONSIDERATION AT THE NOVEMBER 12, 2009**  
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sufficient to be found consistent with the goals and purposes of the Highlands Act regarding historic, cultural, archaeological and scenic resources.

## PART 5 TRANSPORTATION

**Project supports local transportation/transit infrastructure?** NA

### Regional Master Plan Goals, Policies, and Objectives:

	<b>C</b>	<b>I</b>	<b>N/A</b>
<b>Policy 5B2:</b> To require through Plan Conformance and Highlands Project Review an evaluation of potential growth inducing effects such as substantial new land use, new residents, or new employment that could occur as a result of road improvements for increased motorized vehicle traffic capacity.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 5B3:</b> To prohibit through Plan Conformance and Highlands Project Review road improvements in the Highlands Region in areas for which a Growth Inducing Study demonstrates that proposed improvements do not support the RMP resource protection and smart growth policies and are likely to be growth-inducing for lands with limited or no capacity to support human development without an adverse impact on the Highlands ecosystem.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 5C3:</b> To limit road improvements through local development review and Highlands Project Review where roads are constrained by topography, forested lands or the community character of land uses fronting on the road.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Comments:** NA. Transportation issues are not applicable.

## PART 6 FUTURE LAND USE

### SUBPART A LAND USE CAPABILITY ZONES

**Project Area within which Land Use Capability Zone or Sub-Zone?** (check all that apply):

Protection Zone ☒ Conservation Zone ☐ Existing Community Zone ☒  
 Conservation – Environmentally Constrained Sub-Zone ☐ Existing Community – Environmentally Constrained Sub-Zone ☒  
 Lake Community Sub-Zone ☐ Wildlife Management Sub-Zone ☒

### Regional Master Plan Goals, Policies, and Objectives:

	<b>C</b>	<b>I</b>	<b>N/A</b>
<b>Policy 6C1:</b> To limit new human development in the Protection Zone to redevelopment, exempt activities, and environmentally-compatible low density new land uses, in accordance with RMP resource protection needs and water quality and quantity capacity constraints and to ensure that the impacts of development using exemptions under the Highlands Act (see Policy 7F1) are considered in regional protection measures.	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
<b>Objective 6C1a:</b> Centers in the Protection Zone, potentially including clustered development, shall be at densities appropriate to the Zone, the community character, the State Development and Redevelopment Plan, and the use of septic systems or community wastewater systems.	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
<b>Policy 6C2:</b> To ensure through Plan Conformance, local development review and Highlands Project Review that any future development or redevelopment which does occur in a Protection Zone is subject to standards and criteria which protect the land and water resources of the Protection Zone from any potential adverse impact to the maximum extent possible.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 6D3:</b> To limit through Plan Conformance, local development review and Highlands Project Review the use and development of lands within the Conservation Zone to agriculture use and development, including ancillary and support uses, redevelopment of existing developed areas, and environmentally-compatible low density land uses that are to the maximum extent possible achieved in compact development patterns, to be designed and developed in a manner which is compatible with the long term use of adjacent land for agricultural purposes.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 6D3b:</b> Centers in the Conservation Zone, potentially including clustered development, shall be at densities appropriate to the Zone, the community character, the State Development and Redevelopment Plan, and the use of septic systems or community wastewater systems.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 6F3:</b> To ensure that development activities within the Existing Community Zone are subject to standards and criteria which ensure that development and redevelopment incorporate smart growth principles and do not adversely affect natural resources.	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>
<b>Policy 6F4:</b> To ensure that development and redevelopment within the Existing Community Zone are served by adequate public facilities including water supply, wastewater treatment, transportation, educational and community facilities.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 6F5:</b> To ensure that development and redevelopment in the Existing Community Zone are compatible with existing community character.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 6F6a:</b> Center based development initiatives shall be planned within the Existing Community Zone at densities appropriate to the Zone, the community character, the State Development and Redevelopment Plan. Densities of five dwelling units and above are encouraged, and are required in areas designated as voluntary TDR Receiving Zones where TDR benefits are sought under the Highlands Act.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Comments:** Much of the existing and proposed ROW traverses the Protection Zone in the Preservation Area. Policy 6C1 states “to limit new human development in the Protection Zone to redevelopment, *exempt activities* [emphasis added], and environmentally-compatible low density new land uses...” The purpose of this review is to determine if the proposed project is consistent with the goals of the Act in order to be eligible for Exemption #11. The second part of Policy 6C1 states “...to ensure that the impacts of development using exemptions under the Highlands Act (see Policy



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7F1) are considered in regional protection measures.”

The amended proposed project integrates a Comprehensive Mitigation Plan (CMP) for both the Planning Area and Preservation Area. The CMP will be prepared consistent with the Highlands Regional Master Plan (RMP) using the approach of avoid, minimize and mitigate and providing a mechanism, in the form of a plan, for identifying the specific resource issues, the means to avoid and minimize the specific impact, and ultimately the ability to define ways that would help mitigate unavoidable environmental impacts. The development and implementation of the CMP, in coordination with the various regulatory agencies, renders the proposed project consistent with the RMP goals, policies and objectives related to Land Use Capability Zones, and the with the goals and purposes of the Act.

### SUBPART C REGIONAL GUIDANCE FOR DEVELOPMENT AND REDEVELOPMENT

Regional Master Plan Goals, Policies, and Objectives: (it is important to note the policy regarding discretionary growth - Policy 6H7 Provisions and standards relating to regional growth activities which increase the intensity of development shall be discretionary for conforming municipalities and counties):	C	I	N/A
<b>Policy 6H1:</b> To protect, restore, or enhance sensitive environmental resources of the Highlands Region, including but not limited to Forests, Critical Habitat, Highlands Open Waters and their buffers, Riparian Areas, Steep Slopes, Prime Ground Water Recharge Areas, Wellhead Protection Areas, and Agricultural Resource Areas.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 6H1b:</b> Prevent the extension or creation of water and wastewater utility services in the Protection Zone, Conservation Zone and Environmentally Constrained Sub-Zones of the Planning Area, unless they meet the requirements of Policy 2J4 with Objectives 2J4a through 2J4d, and Policy 2K3 with Objectives 2K3a through 2K3e, and will maximize the protection of agricultural and environmentally sensitive resources.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 6H1d:</b> Cluster and conservation design development plans and regulations shall consider existing community character, incorporate smart growth design principles, and require Low Impact Development including but not limited to: locating development adjacent to existing infrastructure such as water, wastewater, transportation, and public facilities to limit the degree of new impervious surface, and permitting smaller residential lots in order to incorporate community open space and existing natural resources into the design.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 6H3:</b> To require conforming municipalities to include site development programs, such as clustering and lot averaging, to protect natural and agriculture resources.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 6H6:</b> To integrate public parks and green spaces into development and redevelopment projects and ensure restoration of impaired natural resources to the extent required by law, at a minimum, and where feasible to a greater extent to maximize long term value of the project.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 6H7:</b> Provisions and standards relating to regional growth activities which increase the intensity of development shall be discretionary for conforming municipalities and counties.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 6H8:</b> Regional growth, where accepted through local planning and regulations, should identify opportunities to maximize land use intensity while protecting natural features and community character.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 6H8a:</b> Development and redevelopment initiatives shall encourage the use of Highlands Development Credits as a means to enhance the existing or adjacent community while protecting local and regional natural resources.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 6H8b:</b> Preparation and implementation of standards ensuring that development protects environmentally sensitive resources in all Land Use Capability Zones and Sub-Zones.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 6H9:</b> To incorporate smart growth principles and green building design and technology in development and redevelopment initiatives.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Comments:** The proposed project, as amended, is being designed such that its implementation will be protective of Forests, Critical Habitat, Highlands Open Waters and their buffers, Riparian Areas, Steep Slopes, Prime Ground Water Recharge Areas, and Wellhead Protection Areas.

### SUBPART D REDEVELOPMENT

**Locally Designated Redevelopment Area?** No If yes, name of site(s):

**Highlands Designated Redevelopment Area?** No If yes, name of site(s):

**Highlands Contaminated Site Inventory Tier 1 or Tier 2 Site(s)?** No If yes, name of site(s):

Regional Master Plan Goals, Policies, and Objectives:	C	I	N/A
<b>Policy 6J1:</b> To encourage Preservation Area redevelopment of sites with 70% or greater impervious surfaces or a brownfield in areas designated by the Highlands Council as Highlands Redevelopment Areas in accordance with N.J.A.C 7:38-6.6 and 6.7.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 6J2:</b> To encourage redevelopment in the Existing Community Zone in the Planning Area of brownfields, grayfields, and other previously developed areas that have adequate water, wastewater, transportation capacity, and are appropriate for increased land use intensity or conversion to greenfields, as approved through Plan Conformance or the Highlands Redevelopment Area Designation process.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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<b>Policy 6J3:</b> To encourage redevelopment in the Conservation and Protection Zones in the Planning Area of brownfields and grayfields that have adequate water, wastewater, transportation capacity, and are appropriate for increased land use intensity or conversion to greenfields, as approved through Plan Conformance or the Highlands Redevelopment Area Designation process.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 6L1:</b> To require that conforming municipalities identify any development, redevelopment, and brownfield opportunities in the local land use plan element of their master plans, as appropriate.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 6L2:</b> To require that conforming municipalities amend development regulations and zoning to enable project implementation of local redevelopment initiatives that are identified under Policy 6L1 and locally endorsed through Plan Conformance.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 6L2a:</b> Municipal review of local redevelopment projects consistent with RMP smart growth and Low Impact Development policies and objectives.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Comments:</b> N/A. Redevelopment issues are not applicable.			
<b>SUBPART E SMART GROWTH</b>			
<b>Is the municipality involved in the State Planning Commission Plan Endorsement (PE) process?</b> No			
<b>If yes, status of PE process:</b>			
<b>Does the project area include a State Planning Commission designated or expired center?</b> No			
<b>If yes, center expiration date:</b> 00/00/0000			
<b>Regional Master Plan Goals, Policies, and Objectives:</b>	<b>C</b>	<b>I</b>	<b>N/A</b>
<b>Policy 6N2:</b> To require municipalities and counties to adopt stormwater management Low Impact Development standards to preserve or mimic the natural hydrologic features and characteristics of the land.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 6N2a:</b> Implementation of on-site stormwater management features that maintain, restore and enhance the pre-existing natural drainage patterns of the site.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 6N2b:</b> Limitations on the amount of impervious cover allowed on a site as a means to protect and increase stormwater infiltration and reduce stormwater runoff.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 6N2c:</b> Minimum requirements for site-specific hydrologic studies during local development review and Highlands Project Review which identify the velocity, volume and pattern of water flow into, through, and off of the parcel proposed for development.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 6N2d:</b> Minimum requirements that stormwater management systems employ a "design with nature" approach.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 6N2e:</b> Minimum requirements for use of grass channels, dry swales, wet swales, infiltration basins, bio-swales and water gardens, green roofs, and other low impact approaches to attenuate and control stormwater and provide multiple environmental benefits.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Policy 6N3:</b> To require through Plan Conformance that municipalities and counties adopt Low Impact Development practices to minimize land disturbance during construction activities.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 6N4:</b> To require through Plan Conformance that municipalities and counties adopt LID best management practices where disturbance of Highlands resources is proposed, including but not limited to Steep Slopes, forest resources, Critical Habitat, Highlands Open Waters and Riparian Areas, and Prime Ground Water Recharge Areas.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 6N5:</b> To require through Plan Conformance that municipalities and counties incorporate programs for community and neighborhood design that support a variety of housing options, mixed uses, redevelopment, adaptive re-use of historic sites and structures, and infill development in their master plans and development regulations.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p><b>General Comments:</b> The applicant indicates that that its ECP incorporates, as one document, an Erosion and Sediment Control Plan, Wetland and Waterbody Crossing Plan, and Spill Prevention and Control Plan. By incorporating the above plans into one concise document and adding site specific information, the applicant states that it was able to tailor the ECP to the requirements of the Storm Water Pollution Prevention Plan required under the US Environmental Protection Agency storm water permit or equivalent state program. The applicant states that its objective is to minimize the potential for erosion and sedimentation during pipeline construction, and to effectively restore the ROW and other disturbed areas. The applicant states that it will meet these objectives by employing erosion and sediment control measures and best management practices.</p> <p>With consideration of: 1) the development and implementation of an Erosion and Sediment Control Plan, Wetland and Waterbody Crossing Plan, and Spill Prevention and Control Plan which will be coordinated with the various resource agencies; and 2) the ROW management plan will improve the ecological benefits of the ROW in keeping with a "design with nature" approach, the proposed project, as amended, is found to be made consistent with the RMP goals, policies and objectives related to smart growth, and the goals and purposes of the Highlands Act regarding this issue.</p>			

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<b>SUBPART F HOUSING AND COMMUNITY FACILITIES</b>			
<b>Does the project area include an affordable housing site? No</b>		<b>3<sup>rd</sup> Round Status: NA</b>	
<b>Regional Master Plan Goals, Policies, and Objectives:</b>	<b>C</b>	<b>I</b>	<b>N/A</b>
<b>Policy 607:</b> To require that conforming municipalities implement both the resource protection requirements of the RMP along with the New Jersey Supreme Court's doctrine, in its Mount Laurel decisions, that every municipality in a "growth area" has a constitutional obligation to provide through its land use regulations, sound land use, and long range planning, a realistic opportunity for a fair share of its region's present and prospective needs for housing for low and moderate income families.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 608:</b> To require that conforming municipalities update and adopt a housing element, fair share plan, and implementing ordinance(s) to reflect current conditions and resource protection requirements of the RMP.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 608a:</b> Conforming municipalities, through housing plans, will evaluate and provide for alternate mechanisms to address affordable housing obligations where RMP resource protection standards restrict the ability of planned but not built sites to be developed for affordable housing.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>General Comments:</b> The proposed project is exempt from the provisions of the Council on Affordable Housing since it is public utility. The applicant shall provide a Non-Residential Development Fee Certification/Exemption form to verify the exempt status of the project.			
<b>PART 7 LANDOWNER EQUITY</b>			
<b>Is the project exempt from the Highlands Act?</b> Subject of this review			
<b>Does the project support the use of Highlands Development Credits?</b> NA			
<b>Regional Master Plan Goals, Policies, and Objectives:</b>	<b>C</b>	<b>I</b>	<b>N/A</b>
<b>Objective 7F1c:</b> Preservation Area exemptions issued by the NJDEP in accordance with N.J.A.C. 7:38, shall be required, where appropriate, prior to consideration of a local development review or a Highlands Project Review. Guidance shall specify the exceptions where a review may proceed absent an exemption determination from the NJDEP.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 7F1d:</b> Planning Area exemptions, issued by the Highlands Council, shall be required, where appropriate, prior to consideration of a local development review or a Highlands Project Review. Guidance shall specify the exceptions where a review may proceed absent such an exemption determination. Applications for exemptions submitted to the Highlands Council shall be based upon the application requirements exemptions codified in N.J.A.C. 7:38.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Objective 7F1f:</b> Activities authorized under exemptions #9 and #11, which require a finding that the activity is consistent with the goals and purposes of the Highlands Act, shall be based upon a finding that the proposed activities are consistent with Highlands Act, the RMP, any rules or regulations adopted by the NJDEP pursuant to the Highlands Act, or any amendments to a master plan, development regulations, or other regulations adopted by a local government unit specifically to conform them with the RMP.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Policy 7G1:</b> For the Preservation Area, coordinate with NJDEP during Highlands permit review for any major Highlands development including the review of waivers on a case-by-case basis: 1) if determined to be necessary in order to protect public health and safety; 2) for redevelopment in certain previously developed areas as identified by the Highlands Council, or 3) in order to avoid the taking of property without just compensation.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 7G2:</b> For both the Preservation Area and the Planning Area, a waiver may be issued by the Highlands Council on a case-by-case basis from the requirements of the RMP or any amendments to a master plan, development regulations, or other regulations adopted by a local government unit specifically to conform them with the RMP: 1) if determined to be necessary in order to protect public health and safety; 2) for redevelopment in certain previously developed areas as identified by the Highlands Council, or 3) in order to avoid the taking of property without just compensation. Any waiver issued shall be conditioned upon a determination that the proposed development meets the requirements prescribed for a finding as listed in Section 36.a of the Highlands Act to the maximum extent possible.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 7G3:</b> For both the Preservation Area and the Planning Area during local development review, any variance or exception issued shall be conditioned upon a written determination, specifically included in an approving resolution, that the proposed development meets the requirements prescribed for a finding as listed in Section 36.a of the Highlands Act to the maximum extent possible.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Comments:</b> Objective 7F1c is under consideration by NJDEP, with consultation by the Highlands Council, for the Preservation Area and Objective 7F1d is under consideration by the Highlands Council for the Planning Area. Both are the subject of this review.			
<b>PART 8 SUSTAINABLE ECONOMIC DEVELOPMENT</b>			
<b>Regional Master Plan Goals, Policies, and Objectives:</b>	<b>C</b>	<b>I</b>	<b>N/A</b>
<b>Policy 8A1:</b> To maintain and expand the existing job and economic base by promoting appropriate, sustainable, and environmentally compatible economic development throughout the Highlands Region.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Policy 8A2:</b> To preserve the high quality of life in the Highlands Region through economic planning of the RMP.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 8A3:</b> To identify and pursue state and federal programs that offer financial and/or technical assistance for sustainable economic development in the Highlands Region.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 8A5:</b> To advocate for appropriate public investment in the Highlands Region through the strategic location of public facilities and institutions that will spur sustainable and appropriate economic activity.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Objective 8A6a:</b> Coordinate with municipalities and counties as local and regional strategies are developed to improve the tax base	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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and to create jobs and economic opportunities consistent with the policies and objectives of the RMP.			
<b>Policy 8C1:</b> To promote recreation and tourism based economic initiatives, which derive economic benefit from sustainable use of the natural resources of the Highlands Region.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Comments:</b> The applicant states that the proposed project would generate several hundred temporary construction-related jobs. The applicant also states that the project would generate a substantial increase in tax dollars for the host municipalities, estimated to be in an aggregate range of \$1,500,000 to \$2,000,000 per year.			
<b>PART 9 AIR QUALITY</b>			
<b>Regional Master Plan Goals, Policies, and Objectives:</b>	<b>C</b>	<b>I</b>	<b>N/A</b>
<b>Policy 9A1:</b> To encourage capital facility development and redevelopment that leads to attainment of the National Ambient Air Quality Standards (NAAQS).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Policy 9A2:</b> To support continued, consistent and thorough air quality monitoring and assessment programs as a means of evaluating and managing major air toxic point sources that affect the Region.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 9A3:</b> To encourage land use development and redevelopment practices that promote center-based growth and mixed-use development and offer alternative modes of transportation as a means to reduce automobile dependency, vehicle miles traveled, vehicle trip length, and duration, for the reduction of local and regional air pollutants and of carbon dioxide emissions linked to global warming.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 9A4:</b> To encourage and support state and federal air quality monitoring for the Highlands Region and regulatory action to reduce levels of air pollutants including but not limited to: ozone, carbon dioxide, sulfur compounds, volatile organic compounds, methane, and fine particulate matter pollutants in the Highlands Region.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Policy 9A5:</b> To encourage energy efficient design and green building practices in support of regional resource protection and smart growth planning policies.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Policy 9A6:</b> To support State and federal initiatives that will reduce air pollution emanating from power plants, incinerators and landfills within and affecting the Highlands Region and particularly in Warren County due to out-of-State power plant air pollution.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p><b>Comments:</b> The applicant states that air quality impacts associated with construction and installation of Loop 325 in the Highlands Region will include emissions from fossil-fueled construction equipment and fugitive dust. Such air quality impacts, however, will generally be temporary, localized and insignificant. Large earth-moving equipment and other mobile sources may be powered by diesel or gasoline engines and are sources of combustion-related emissions. However, the applicant notes that air pollutants from construction equipment will be limited to the immediate vicinity of the construction area and will be temporary. The applicant states that the majority of air emissions produced during construction activities will be particulate matter (PM10 and PM2.5) in the form of fugitive dust. Fugitive dust will result from land clearing, grading, excavation, concrete work, and vehicle traffic on paved and unpaved roads. The applicant states that the amount of dust generated will be a function of construction activities, soil type, moisture content, wind speed, frequency of precipitation, vehicle traffic, vehicle types, and roadway characteristics. The applicant notes that it will comply fully with state regulations that address fugitive dust impacts from construction activities.</p> <p>The applicant calculated the total emissions from construction activities and determined that all site locations where construction will take place are in attainment for CO, SO<sub>2</sub>, PM10, and PM2.5; therefore, demonstration of compliance to the General Conformity thresholds for these “attainment” pollutants is not required.</p> <p>The applicant notes that the natural gas provided through this project will be used primarily in the northeast region, providing lower emissions than other fuel sources that might be used for the same purposes.</p>			
<b>CONCLUSION</b>			
<p>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, 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) for waivers that address the inconsistencies.</p> <p>In evaluating the proposed Tennessee Gas Pipeline 300 Line Project, as amended, the Highlands Council staff analyzed, as a whole project, the required construction elements as well as the integrated Comprehensive Mitigation Plan. As described by the applicant, the Comprehensive Mitigation Plan will be prepared consistent with the Highlands Regional Master Plan to use the approach of <i>avoid, minimize and mitigate</i>. It provides an approach and process for identifying the specific resource issues, the means to avoid and minimize the specific impact, and ultimately, the ability to define ways that would help to mitigate unavoidable environmental impacts.</p>			

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For the reasons set forth throughout this Draft Consistency Determination, the project, as proposed, is consistent with many of the RMP goals, policies and objectives but remains inconsistent in various areas. However, the Comprehensive Mitigation Plan addresses those inconsistencies in nearly all cases. The linear nature of the project, and the necessity of using the existing ROW for the proposed pipeline loop, results in unavoidable inconsistencies, but the Comprehensive Mitigation Plan would mitigate those inconsistencies sufficiently that the proposed project, as amended and viewed as a whole (with minimization of environmental impacts and the development of the Comprehensive Mitigation Plan), is found to be made consistent with the goals and purposes of the Act. This finding is based upon the Comprehensive Mitigation Plan as submitted, with the following conditions:

1. That the applicant incorporate its findings and commitments regarding Prime Ground Water Recharge Areas;
2. That the applicant address short-term impacts of construction activities on rare, threatened and endangered species;
3. That the applicant provide to the Highlands Council the qualifications of all Environmental Inspectors that would work on the project site prior to commencement of any on-site activity.
4. That the applicant coordinate with the Highlands Council to identify lands in the vicinity of the project located within Special Environmental Zones that are particularly vulnerable to development and preserve the undeveloped parcel(s) through any number of conservation mechanisms. Further, that the applicant coordinate with the Highlands Council regarding the management and stewardship of these lands.

The amended project includes application of Exemption #11 of the Act to include routine post-construction repair and maintenance of the Tennessee Gas Pipeline 300 Line. As a condition of this Consistency Determination, the applicant is required to submit a report to the Highlands Council and the NJDEP each time a proposed post construction repair or maintenance activity is planned, prior to the implementation of the activity.

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**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 Application<sup>1</sup>

- 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.

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<sup>1</sup> 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.

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

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

**Public Comment Summary**

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

Supportive Comments

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

Opposition Comments

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



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

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

Comments About Application Including the Comprehensive Mitigation Plan and Environmental Construction Plan<sup>1</sup>

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

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<sup>1</sup> 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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through the use of HDD. Believes that because the estimated impacts were factored into the proposed mitigation plan, if an “approved alternate crossing method” is utilized due to HDD failure, any new disturbance must be added to the amount of mitigation.

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

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

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

Comments Regarding Consistency Determination

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



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

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

Applicant's Comments

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

**General Responses and Highlands Council Consistency Determination Edits**

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

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

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

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

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



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

**RESOLUTION 2009-56**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**TENNESSEE GAS PIPELINE COMPANY 300 LINE PROJECT**  
**HIGHLANDS ACT EXEMPTION AND CONSISTENCY DETERMINATION**

**WHEREAS**, the Highlands Water Protection and Planning Act (Highlands Act) has created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (Highlands Council); and

**WHEREAS**, in Section 2 of the Highlands Act, the Legislature declared that the protection of the New Jersey Highlands, because of its vital link to the future of the State's drinking water supplies and other key natural resources, is an issue of State level importance;

**WHEREAS**, in Section 2 of the Highlands Act, the Legislature further recognized that the Highlands Region is an essential source of drinking water, provides clean and plentiful drinking water for one-half of the State's population, contains other exceptional natural resources such as clean air, contiguous forest lands, wetlands, pristine watersheds, and habitat for fauna and flora, includes many sites of historic significance, and provides abundant recreational opportunities for the citizens of the State; and

**WHEREAS**, the Highlands Act creates two areas within the Highlands Region – the Preservation Area, an area of the New Jersey Highlands with exceptional natural resource value that should be subject to stringent water and natural resource protection standards, policies, planning and regulation and the Planning Area, the area outside of the Preservation Area that should be part of a comprehensive planning approach that serves to protect the water and other significant resources of the entire Highlands Region while also accommodating appropriate patterns of development, redevelopment and economic growth; and

**WHEREAS**, the Highlands Act created the Highlands Council as a regional planning and protection entity, to develop, adopt and periodically revise a Regional Master Plan, with a primary goal of protecting and enhancing the significant values of the resources of the Highlands Region; and

**WHEREAS**, the Highlands Act required that the New Jersey Department of Environmental Protection (NJDEP) adopt stringent water and natural resource protection standards governing major development in the Preservation Area;

**WHEREAS**, NJDEP has adopted Preservation Area rules at N.J.A.C. 7:38-1.1 et seq. governing the NJDEP's review of projects in the Highlands Region; and

**WHEREAS**, Section 30 of the Highlands Act includes seventeen exemptions (N.J.S.A. 13:20-28) and qualification under this section specifies that the project or activity is exempt from the provisions of the Highlands Act, the Regional Master Plan (RMP), any rules or regulations adopted by NJDEP pursuant to the Act, or any amendments to a master plan, development regulations, or other regulations adopted by a local government unit to specifically conform with the RMP; and



## RESOLUTION 2009-56

### NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL TENNESSEE GAS PIPELINE COMPANY 300 LINE PROJECT HIGHLANDS ACT EXEMPTION AND CONSISTENCY DETERMINATION

**WHEREAS**, exemption #11 in Section 30 (N.J.S.A. 13:20-28.a (11)) specifies that the following activity is exempt from the Highlands Act: “(11) the routine maintenance and operations, rehabilitation, preservation, reconstruction, repair, or upgrade of public utility lines, rights of way, or systems, by a public utility, provided that the activity is consistent with the goals and purposes of this act”; and

**WHEREAS**, NJDEP has adopted rules at N.J.A.C. 7:38-2.3 governing the NJDEP’s review of exemption determinations in the Preservation Area; and

**WHEREAS**, the Highlands Council has adopted Objective 7F1d in the RMP which specifies that the Highlands Council shall issue exemption determinations in the Planning Area; and

**WHEREAS**, the Highlands Council has adopted Objective 7F1f in the RMP which specifies that “[a]ctivities authorized under exemptions #9 and #11, which require a finding that the activity is consistent with the goals and purposes of the Highlands Act, shall be based upon a finding that the proposed activities are consistent with Highlands Act, the RMP, any rules or regulations adopted by the NJDEP pursuant to the Highlands Act, or any amendments to a master plan, development regulations, or other regulations adopted by a local government unit specifically to conform them with the RMP”; and

**WHEREAS**, Tennessee Gas Pipeline Company (TGPC) submitted an application for a Highlands Applicability Determination for Exemption #11 on March 6, 2009 to NJDEP, with a copy to Highlands Council, for TGPC’s proposed project to increase the capacity of the existing natural gas pipeline system through construction of approximately 17 miles of new 30-inch underground natural gas pipeline (Project), portions of which are located in the Highlands Region in both the Preservation and Planning Areas; and

**WHEREAS**, the Highlands Council and NJDEP initiated a coordinated review of the Project due to the fact the Project is proposed to traverse 16 miles through the Highlands Region with 11 miles in the Preservation Area and 5 miles in the Planning Area; and

**WHEREAS**, the Highlands Council released a staff draft Consistency Determination for public review and comment on May 11, 2009 with an ultimate close of public comments on June 29, 2009; since that original submittal, 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, TGPC revised the proposed project to avoid, minimize and mitigate the impacts to Highlands resources, to address ongoing maintenance, to include the Planning Area in the application, and to commit to the implementation of a Comprehensive Mitigation Plan; and

**WHEREAS**, the Highlands Council determined that the revised proposal should be addressed as an amended submittal, with further public input in accordance with the established protocols for Consistency Determination review, due to the significant changes subsequent to the close of public comments on the original application; and

**WHEREAS**, on September 16, 2009, the Highlands Council completed an analysis of the Project



## RESOLUTION 2009-56

### NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL TENNESSEE GAS PIPELINE COMPANY 300 LINE PROJECT HIGHLANDS ACT EXEMPTION AND CONSISTENCY DETERMINATION

using a Highlands RMP Consistency Determination (CD) template as a tool to examine whether the Project is consistent with the goals and purposes of the Highlands Act as required by N.J.S.A. 13:20-28.a.(11) and in accordance with Objective 7F1f; and

**WHEREAS**, on September 16, 2009, the Highlands Council posted its draft CD for the proposed Project on its website for public comment, extending the original public comment period through October 9, 2009; and

**WHEREAS**, the Highlands Council staff analyzed the revised Project and the extensive public comments received during the two public comment periods and, on November 6, 2009, posted the following documents on the Council's website for the regularly scheduled November 12, 2009 Highlands Council meeting: 1) the November 6, 2009 CD showing changes made in response to public comment, 2) Summary of and responses to public comments received during comment period ending June 29, 2009, and, 3) Summary and responses to public comments received during comment period ending October 9, 2009; and

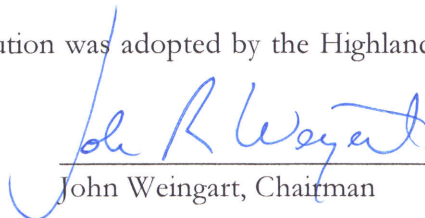
**WHEREAS**, the Highlands Council has duly considered TGPC's revised Project, the Highlands Council staff draft CD, staff summaries and responses to public comments, all testimony and comment at Council meetings.

**NOW, THEREFORE, BE IT RESOLVED** the Highlands Council hereby finds that the revised Project, including specifically the Comprehensive Mitigation Plan, constitutes "routine maintenance and operations, rehabilitation, preservation, reconstruction, repair, or upgrade of public utility lines, rights of way, or systems, by a public utility" and that the proposed Project in both the Planning Area and Preservation Area "is consistent with the goals and purposes" of the Highlands Act;

**NOW, THEREFORE, BE IT FURTHER RESOLVED** by the Highlands Council that the Executive Director is hereby authorized, consistent with the Council's deliberations, to: 1) issue a final RMP Consistency Determination for this Project; 2) issue a Highlands Act exemption determination with appropriate conditions including a performance bond; and 3) enter into any agreements necessary to implement these determinations.

#### CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its meeting held on the 12<sup>th</sup> day of November, 2009.

  
John Weingart, Chairman

## RESOLUTION 2009-56

### NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL TENNESSEE GAS PIPELINE COMPANY 300 LINE PROJECT HIGHLANDS ACT EXEMPTION AND CONSISTENCY DETERMINATION

#### Vote on the Approval of this Resolution

	<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Alstede			✓			
Councilmember Carluccio					✓	
Councilmember Cogger				✓		
Councilmember Francis			✓			
Councilmember Kovach			✓			
Councilmember Letts			✓			
Councilmember Peterson			✓			
Councilmember Schrier	✓		✓			
Councilmember Vetrano						✓
Councilmember Way				✓		
Councilmember Whitenack		✓	✓			
Councilmember Weingart			✓			

**RESOLUTION 2009-57**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**AUTHORITY FOR HIGHLANDS PLAN CONFORMANCE AND**  
**HIGHLANDS PROJECT REVIEW**

**WHEREAS**, the Highlands Water Protection and Planning Act (Highlands Act) has created a public body corporate and politic with corporate succession known as the Highlands Water Protection and Planning Council (Highlands Council); and

**WHEREAS**, the Highlands Act created the Highlands Council as a regional planning and protection entity, to develop, adopt and periodically revise a Regional Master Plan, with a primary goal of protecting and enhancing the significant values of the resources of the Highlands Region; and

**WHEREAS**, the Highlands Council adopted the Regional Master Plan (RMP) on July 17, 2008 and, as a result of Executive Order 114 (2008), the RMP has an effective date of September 8, 2009; and

**WHEREAS**, Section 14 of the Highlands Act requires that within nine to 15 months after the effective date of the Regional Master Plan, each municipality located wholly or partially in the Preservation Area shall submit revisions to the municipal master plan, development regulations and other regulations, as applicable to the development and use of land in the Preservation Area, as may be necessary to conform them with the goals, requirements and provisions of the RMP (Plan Conformance); and

**WHEREAS**, Section 15 of the Highlands Act states that for any municipality located wholly in the Planning Area or for the portion of a municipality lying within the Planning Area, the municipality may, by ordinance, petition the Highlands Council of its intention to revise its master plan, development regulations and other regulations, as applicable to the development and use of land in the Planning Area, to conform them with the goals, requirements and provisions of the RMP; and

**WHEREAS**, the Highlands Council prepared and distributed to the Highlands municipalities and counties Plan Conformance Guidelines outlining the process and procedures for petitioning the Highlands Council for Plan Conformance; and

**WHEREAS**, Section 13 of the Highlands Act requires the Highlands Council to create a regional transfer of development rights (TDR) program for the Highlands Region which includes a program for voluntary TDR receiving zones for any municipality within the seven Highlands Counties and sending zones for the preservation of lands to protect Highlands resources; and

**WHEREAS**, Section 11.a.4 of the Highlands Act requires a coordination and consistency component which details the ways in which local, State, and federal programs and policies may best be coordinated to promote the goals, purposes, policies, and provisions of the RMP; and

**WHEREAS**, Sections 38 through 82 of the Highlands Act amends numerous statutes of State agencies to specifically require coordinated action to implement the RMP and requires consultation between the Highlands Council and State agencies to ensure that the RMP is considered prior to State agency action; and



**RESOLUTION 2009-57**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**AUTHORITY FOR HIGHLANDS PLAN CONFORMANCE AND**  
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**WHEREAS**, Sections 16 and 17 of the Highlands Act respectively authorize the Highlands Council to review capital or other project proposed to be undertaken by any State entity or local government unit and to review a final local government unit approval, rejection, or approval with conditions; and

**WHEREAS**, the Highlands Council desires to establish a process to implement the Highlands Act and the RMP in an orderly fashion through Plan Conformance and Highlands Project Review and to ensure that the Highlands Council retains authority to review and approve certain matters and to delegate authority to the Executive Director to review and approve others matters.

**NOW, THEREFORE, BE IT RESOLVED** by the Highlands Council shall hereby take the following actions to implement the Highlands Regional Master Plan:

1. For municipal and county Plan Conformance, review and issue final determinations on all Petitions for Plan Conformance including, but not limited to, any related conditions, grant allocations, resource management plans, Map Adjustments in accordance with the Regional Master Plan and the Plan Conformance Guidelines;
2. For the Highlands TDR Program, designate voluntary TDR Receiving Zones based upon municipal petitions and review and, where direct Council action is recommended by the Executive Director, issue HDC Allocation Determinations and execute any related documents and deeds of easement;
3. For federal, State, and regional agency coordination, review and issue determinations on all requests for consultation, coordination, recommendation or consistency determinations where direct Council action is recommended by the Executive Director;
4. For Highlands Act exemption determinations, review and issue exemption determinations where direct Council action is recommended by the Executive Director; and
5. For the adoption of any master plan, development regulation, or other regulation by a local government unit not in Plan Conformance, development applications submitted to and approved by local government units, the call-up of local government unit approvals, and capital and other projects of State entities and local government units, review and issue comments or determinations on these matters on a case-by-case basis where the Highlands Council determines that Council action is required.

**THEREFORE, BE IT FURTHER RESOLVED** by the Highlands Council that the Executive Director is hereby delegated the authority to take the following final agency actions on behalf of the Council:

1. For municipal and county Plan Conformance, provide recommendations and take actions pursuant to the Plan Conformance Guidelines and review and issue determinations on all requests for an RMP Update to verify updated, relevant factual information;
2. For the Highlands TDR Program, review and issue HDC Allocation Determinations and execute any related documents and deeds of easement;

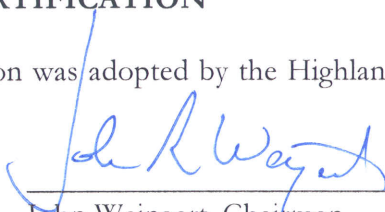
**RESOLUTION 2009-57**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**AUTHORITY FOR HIGHLANDS PLAN CONFORMANCE AND**  
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3. For federal, State, and regional agency coordination, review and issue determinations on all requests for consultation, coordination, recommendation or consistency determinations;
4. For Highlands Act exemption determinations, review and issue exemption determinations;
5. For the adoption of any master plan, development regulation, or other regulation by a local government unit not in Plan Conformance, development applications submitted to and approved by local government units, the call-up of local government unit approvals, and capital and other projects of State entities and local government units, review and issue comments or determinations on these matters unless Council review is required by the Council;
6. For all of the above, the Executive Director may make a recommendation, based upon the potential impact on Highlands resources, that final agency action be taken by the Highlands Council; and
7. For all of the above, the Executive Director shall provide reports to the Highlands Council of all actions and determinations on a regular basis.

**THEREFORE, BE IT FURTHER RESOLVED** by the Highlands Council shall reassess this Resolution on or before July 1, 2010 and annually thereafter or may, at any time, determine that a reassessment should take place.

**CERTIFICATION**

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its meeting held on the 12<sup>th</sup> day of November, 2009.

  
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John Weingart, Chairman

**RESOLUTION 2009-57**  
**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL**  
**AUTHORITY FOR HIGHLANDS PLAN CONFORMANCE AND**  
**HIGHLANDS PROJECT REVIEW**

**Vote on the Approval of**  
**this Resolution**

	<u>Motion</u>	<u>Second</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Councilmember Alstede				✓		
Councilmember Carluccio			✓			
Councilmember Cogger		✓	✓			
Councilmember Francis			✓			
Councilmember Kovach			✓			
Councilmember Letts			✓			
Councilmember Peterson			✓			
Councilmember Schrier	✓		✓			
Councilmember Vetrano						✓
Councilmember Way			✓			
Councilmember Whitenack			✓			
Councilmember Weingart			✓			