

RESOLUTION 2012-7
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
AMENDED 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

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

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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 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

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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 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 and determined by Resolution 2009-56 on November 12, 2009 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; and

WHEREAS, on July 8, 2011, TGPC submitted an application for an amendment to the existing Highlands Applicability Determination (HAD) for the 300 Line Project issued by NJDEP for the Preservation Area, and to the exemption determination issued by the Highlands Council for the Planning Area that had been approved by Highlands Council Resolution 2009-56; and

WHEREAS, the proposed modifications to the 300-Line Project within the Highlands Region are:

- TGPC has modified portions of the workspace along Loop 325, the majority of which resulted in a reduction of the length of Loop 325 for the 300 Line Project by 1.29 miles and removes the horizontal directional drill under the Monksville Reservoir;
- After TGPC performed a constructability analysis and based on constraints associated with wetlands, rare species habitat and topography, an additional 16 private access roads were added and one original was removed, totaling 21 private access roads identified for use during construction of the 325 Loop Segment., most of which will require minimal or no modification for access;
- A pipeline route modification to avoid two timber rattlesnake dens; and

WHEREAS, the Highlands Council and NJDEP initiated a coordinated review of the proposed Project due to the fact the Project is proposed to traverse through the Preservation Area and the Planning Area; and

WHEREAS, on December 21, 2011, the Highlands Council completed an analysis of the proposed Project using a Highlands 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

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accordance with Objective 7F1f; and

WHEREAS, on December 21, 2011, the Highlands Council posted its draft CD for the proposed Project on its website for public comment period through January 6, 2012; and

WHEREAS, the Highlands Council staff analyzed the amended Project and the extensive public comments received during the public comment periods and, on January 17, 2012, posted the following documents on the Council's website for the regularly scheduled January 19, 2012 Highlands Council meeting: 1) the December 21, 2011 CD showing changes made in response to public comment, and 2) a summary of and responses to public comments received during comment period ending January 6, 2012; and

WHEREAS, the Highlands Council, at the meeting of January 19, 2012, heard extensive public comments, discussed the amended Project, and decided to postpone a vote on the matter until the February 16, 2012 regularly scheduled meeting of the Highlands Council; and

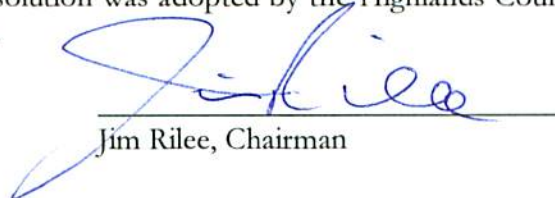
WHEREAS, the Highlands Council staff, on February 13, 2012, posted the following documents on the Council's website for the regularly scheduled February 16, 2012 Highlands Council meeting: 1) a summary of and responses to public comments and Council Member comments received during the Council meeting on January 19, 2012; and 2) the December 21, 2011 CD showing changes made since the January 17, 2012 version; and

NOW, THEREFORE, BE IT RESOLVED the Highlands Council duly considered the amended Project, the Highlands Council staff draft CD, staff summaries and responses to comments, all testimony and comment at Council meetings and determined that the Project 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;

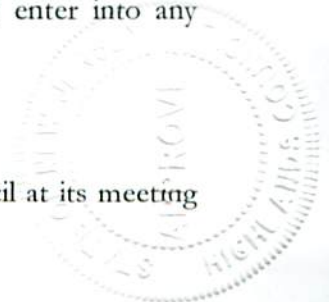
NOW, THEREFORE, BE IT FURTHER RESOLVED by the Highlands Council that the Executive Director is hereby authorized, consistent with the Council's deliberations, to: 1) issue a final RMP Consistency Determination for this Project; 2) issue a Highlands Act exemption determination with appropriate conditions 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 16th day of February, 2012.



Jim Rilee, Chairman



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Vote on the Approval of This Resolution	Motion	Second	Yes	No	Abstain	Absent
Councilmember Alstede			✓			
Councilmember Carluccio					✓	
Councilmember Dougherty			✓			
Councilmember Dressler			✓			
Councilmember Francis	✓		✓			
Councilmember Holtaway		✓	✓			
Councilmember James					✓	
Councilmember Mengucci			✓			
Councilmember Richko				✓		
Councilmember Sebetich				✓		
Councilmember Tfanck			✓			
Councilmember Visioli						✓
Councilmember Vohden			✓			
Councilmember Walton			✓			
Chairman Rilee			✓			