



NEW JERSEY HIGHLANDS COALITION

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Commissioner Robert Martin
Department of Environmental Protection
P.O. Box 402
Trenton, NJ 08625-0402

Re: AMENDED DECISION: JCP&L Califon Substation
Block: 17, Lot: 2 Fox Hill Road
Tewksbury Township, Hunterdon County
Upper Raritan Water Quality Management Plan (WQMP)
Program Interest No.: 435434
Activity No.: CSD070030

Dear Commissioner Martin,

On July 15, 2009, NJDEP issued an Amended Decision regarding the above referenced activity, in which was stated, "Prior to construction, JCP&L shall submit to the Highlands Council for review and approval an extensive landscape plan, using native plant species, to screen the substation from adjacent homes and roadways and complement the character of the existing historic district. *Failure to implement the approved landscape plan shall constitute a violation of this exemption and the Highlands Act.*" (emphasis added)

Acting on the conditions of the Department's Amended Decision, on June 8, 2010, the New Jersey Highlands Council issued a Consistency Determination on the landscape plan element of JCP&L's Exemption #11 HAD application for the proposed Califon Substation, as ordered by NJDEP. The Highlands Council found that, "the Landscape Plan submitted by JCP&L will not 'adequately screen the substation from adjacent homes and roadways and complement the character of the existing historic district' as required by NJDEP's conditional HAD and is also not consistent with the goals and purposes of the Highlands Act. 'Accordingly, the Highlands Council does not approve the submitted Landscape Plan. It is the recommendation of Highlands Council that the submitted Landscape Plan be found to not satisfy the condition of the NJDEP exemption #11 and that the proposal is not consistent with the goals and purposes of the Highlands Act.'"

As of this writing, NJDEP has not issued a final decision on JCP&L's HAD application. However, your office had issued an Order to the Friends of Fairmount Historic District (FFHD) on June 10, 2010, denying FFHD's July 11, 2008 request for an administrative hearing on the earlier November 2008 HAD. The Order states, "...Nor has FFHD ever documented its claim that the FFHD members' houses adjacent to the proposal are designated historic sites subject to special protection."

The Highlands Council's June 8, 2010 Consistency Determination (CD) specifically cites that, "the proposed JCP&L substation site is located in the Lower Fairmount District...(which) was listed on the

State and National Register (sic) of Historic Places in 1996,” and “the Historic Preservation Office...states that the proposed site is in the Fairmount Historic District, which is listed on the New Jersey and National Registers of Historic Places and that the ‘proposed project will have an adverse impact on the Fairmount Historic District’.”

The historic designation of the substation site is substantiated. Yet your Order contradicts the findings of the State Historic Preservation Office, an office of NJDEP, which had issued its own determination of adverse impacts upon the historic resources in the vicinity of the substation site in its March 17, 2009 memorandum to the Fresh Water Wetlands Land Use Program and referred to above by the Highlands Council.

We recognize that your Order only addresses the request by FFHD for an administrative hearing. However, since NJDEP’s final decision on JCP&L’s HAD application has not been issued, we are concerned in light of your Order, that the site’s historic designation, and the implications of its historical resource value vis-à-vis the 2004 Highlands Act, might not be acknowledged.

In addition, we echo the clearly stated concerns of FFHD, as stated in their July 1, 2010 letter in response to your Order:

- a. The NJDEP June 9 Final Decision fails to address the Department’s safety protection responsibilities under the Highlands Act,
- b. JCP&L provided inaccurate information in its HAD request and permit applications to the NJDEP,
- c. JCP&L’s Environmental Impact Statement submitted to JCP&L failed to identify Fox Hill Road and Hollowbrook Road as Scenic Roads,
- d. JCP&L’s Environmental Impact Statement submitted to NJDEP is inaccurate concerning impacts on Scenic and Historic Resources,
- e. JCP&L’s November 2007 Compliance Statement to the NJDEP Land Use Regulation Program does not accurately address impacts on Historic Resources,
- f. JCP&L failed to follow the JCP&L Substation Siting Guidelines it submitted to NJDEP as part of its HAD Exemption request.

The concerns raised in the letter by FFHD are substantiated with specific references to the Highlands Act, the Highlands Regional Master Plan, NJDEP Highlands Rules and other appropriate source material, which we won’t cite here. FFHD’s concerns are significant, and as matters of record, they should be addressed by the Department in its final decision on JCP&L’s HAD application.

In addition, the Department must respect the findings of the Highlands Council’s Consistency Determination—not only because of the Council’s mandated authority to implement the Highlands Regional Master Plan, but also because the Department’s July 15, 2009 Amended Decision included the condition that JCP&L “submit to the Highlands Council for review and approval an extensive landscape

plan...” and that , “failure to implement the approved landscape plan shall constitute a violation of this exemption and the Highlands Act.”

The New Jersey Highlands Coalition does not dispute the need for existing infrastructure maintenance, rehabilitation and upgrades in the Highlands Preservation Area. However, the Highlands Act requires that such activity be consistent with the goals and purposes of the Act. The proposed Califon Substation plan is alarmingly inconsistent. FFHD has presented to NJDEP and JCP&L an apparently suitable alternative site—the Combe Landfill South in Chester Township—using JCP&L’s own selection criteria with respect to technical requirements, health and safety concerns and having minimal regulatory issues. FFHD has additionally determined that the landowner would be a willing seller. Neither NJDEP nor JCP&L have provided any indication that this site has been considered. Shouldn’t NJDEP consider all possible solutions in order to satisfy the stated need for the upgrade, legitimate health and safety concerns and the requirements of the Highlands Act? As is stated in the “NJDEP 2010 Vision Statement”:

“A critical component of the Department’s decision making process must include flexibility in implementing regulations while ensuring a net environmental gain to the state. The DEP must put in place a sustainable structure that enhances the environment and natural resources of the state.”

We assume that “flexibility” means being creative in finding solutions and not in the sense of bending the rules or sacrificing resources in order to approve a proposed regulated activity. Are citizens groups considered stakeholders at NJDEP? If citizens provide an applicant with a reasonable alternative to what they (and others) consider an egregious proposal, shouldn’t it be considered? Perhaps here is where “flexibility” might be most helpful.

Finally, we would like to put our concerns and those expressed by FFHD in the context of the 2010 Vision Statement:

“NJDEP’s core mission is and will continue to be the protection of the air, waters, land, and natural and historic resources of the State to ensure continued public benefit. The Department’s mission is advanced through effective and balanced implementation and enforcement of environmental laws to protect these resources and the health and safety of our residents.”

It is our hope that the Department will be guided by its core mission statement in its deliberations prior to issuing a final decision on the JCP&L Califon Substation HAD Application.

Sincerely,



Elliott Ruga

cc: Terry Pilawski, Chief, NJDEP Bureau of Watershed Management
Ray Cantor, NJDEP, Chief Advisor

Lou Cattuna, NJDEP, Bureau of Inland Regulation
Barry Miller, NJDEP, Bureau of Watershed Regulation
Jennifer Desmond, NJDEP, Bureau of Watershed Regulation
Janis Hoagland, Director NJDEP Office of Legal Affairs
Daniel Saunders, NJDEP, Historic Preservation Office
Eileen Swan, Executive Director, NJ Highlands Council
Tewksbury Township Committee
Shana Goodchild, Land Use Administrator, Tewksbury Township
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