

## Appendix 1: Highlands Council Consistency Review Comments

*The following goals, policies and objectives should be changed to inconsistent. See “comment” for a narrative explanation.*

**Objective 1D4c:** 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 Wetlands Rules), and with any applicable requirements of a Regional Stormwater Plan adopted pursuant to N.J.A.C. 7:8 (Stormwater Management Rules)

AND

**Objective 1D5f:** 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).

**Comment:** *The project is inconsistent with both of these objectives. The staff finding should reflect that the project is inconsistent with Objective 1D4c and Objective 1D5f.* Pursuant to a Regional Stormwater Plan under N.J.A.C. 7:8, Jefferson Township has adopted applicable Stormwater Management ordinances (Adopted by the Township Council of the Township of Jefferson 6-5-1991 by Ord. No. 11-91; amended in its entirety 3-1-2006 by Ord. No. 6-06.) These codes are published in Section 439 of the Jefferson Code Book. Consistent with the Regional Stormwater Management Plan, the Township of Jefferson requires that all applicants proposing a project which disturbs one acre or more (definition of a Major Development), shall incorporate structural and non-structural stormwater designs as well as maintenance plans for those stormwater facilities into the site plans when seeking approvals.

The HAD application submitted by PSE&G does not include any stormwater designs for the proposed Jefferson Switching Station site plan, which will require the disturbance of a 300' Highlands Open Water Buffer and Riparian Area as mapped and acknowledged by the applicant. The applicant admits in the application that stormwater designs have not been engineered nor have they submitted any stormwater plans to the NJDEP for their review. On page IV-3 of the HAD application, the applicant states, “Site plans, signed and sealed by a licensed New Jersey Professional Engineer, showing the existing and proposed public utility lines, ROW and switching station are included in Appendix G.” The applicant states that site plans have been included in the HAD application for the Jefferson Switching Station, but yet those site plans do not include any stormwater controls or maintenance plans for those stormwater facilities. Until such time as stormwater controls are designed and included in the site plan, the HAD applicant should be found inconsistent with Objective 1D4c and Objective 1D5f.

Additionally, the applicant states on Page IV-4 of the HAD application:

“The requirements and the capability of meeting the above requirements (NJDEP Stormwater Management Rules) will be discussed in the Flood Hazard Area Individual Permit Application Engineering Report, which will be submitted to the NJDEP for review in the upcoming months.”

The applicant acknowledges that they have submitted site plans in the HAD application that do not include any stormwater controls and that those stormwater plans will be submitted at a future date for “NJDEP review.” Until such time as the applicant submits complete site plans that include stormwater controls consistent with local development review and a Regional Stormwater Management Plan pursuant to N.J.A.C. 7:8 and approved by the NJDEP, the project must be considered inconsistent with Objective 1D4c and Objective 1D5f.

As a precedent setting application impacting some 520 acres of Highlands lands, the proposed PSE&G project will have considerable environmental impacts and must be carefully reviewed. All engineering controls to avoid, minimize and mitigate potential impacts, consistent with the goals, policies and objectives of the RMP must be provided within the HAD application. If such plans are not provided the Council must find the project inconsistent in these areas. For example, in the WQMP consistent determination for the Hamptons at Pohatcong from September 11, 2008, the staff explains why the proposed project is consistent with Objective 1D4c:

“Proposed disturbances to the HOW buffer for the stream include footpath and footbridge construction, construction of two utility lines that cross the stream, and construction of two stormwater detention basins within the buffer. NJDEP reviewed the disturbances under the Flood Hazard Area Act and Stormwater Management rules and determined that the disturbances were unavoidable and subject to a hardship waiver due to site-specific issues, and that the SWRPA functional values were maintained to the maximum extent practicable. NJDEP issued a stream encroachment permit and a Freshwater Wetlands permit on March 10, 2008, conditioned upon adoption of this amendment to the above referenced WQMP, documenting consistence with Objective 1D4c.”

The proposed project, Hamptons at Pohatcong, submitted the necessary materials to the NJDEP to be found consistent with Objective 1D4c before seeking Highlands Council approval. It would be precedent setting for the Highlands Council to change its protocol now, finding PSE&G’s proposed project consistent with Objective 1D4c before they the applicant has submitted stormwater plans to the NJDEP for review in reference to consistency with the Flood Hazard Area Rules and the Stormwater Management Rules.

Therefore the Highlands Council should find PSE&G’s proposed HAD application inconsistent with Objective 1D4c and Objective 1D5f. As the applicant clearly states in the HAD application, there are currently no engineered stormwater controls for the

Jefferson Switching Station site. Incomplete site plans and an applicant's promise of future engineering plans to address RMP requirements is not sufficient for making legally defensible permitting decisions. It is not prudent to find the project consistent with the goals, policies and objectives of the RMP based solely on an applicant's promise.

**Objective 1L5a:** Shoreland Protection and Water Quality Management Tier requirements shall apply to all new development, regardless of lake ownership.

**Comment:** The staff concludes that the project is consistent with Objective 1L5a because, "The applicant does state that stormwater management measures would be employed during construction to control soil erosion and stormwater runoff and that emphasis would be places on ensuring that sediments are prevented from entering adjacent watercourses." The staff should find the proposed project inconsistent with Objective 1L5a.

The applicant has not submitted stormwater management plans to the NJDEP for their review, therefore, it must be concluded that runoff and sediment controls cannot and will not be met by the applicant until such time as the NJDEP approves the applicant stormwater plans. The applicant states that these controls will be designed, but again as we have seen with the Hamptons at Pohatcong WQMP consistency determination, an applicant must have their stormwater controls approved by the NJDEP before the Highlands Council can find those plans consistent with the Goals, Policies and Objectives of the RMP. It would be precedent setting for the Highlands Council to assume that erosions and sediment controls can be met before the applicant has designed such measures and worked with the NJDEP to ensure that they can be constructed and maintained, consistent with a Regional Stormwater Plan and the relevant municipal stormwater ordinances.

Therefore the proposed project is inconsistent with Objective 1L5a. The finding should be changed to inconsistent until the NJDEP has approved all stormwater controls for the entire project, ensuring that indeed soil erosion and sediment will be properly controlled.

**Objective 2D4g:** Require conformance with applicable components of regional stormwater management plans, where applicable, as a mandatory requirement for any site plan application.

**Comment:** The applicant has only stated that they will be in conformance with an applicable regional stormwater management plan in a few months, once they have engineered their stormwater controls and sent those plans to the NJDEP.

What if the NJDEP does not approve PSE&G's future stormwater management plans? Will the project still be found consistent by the Highlands Council even though the NJDEP has determined it to be inconsistent? What future input will the Highlands Council have on PSE&G's site plans if the Council has already found the

project's stormwater plans to be consistent, based solely on the applicant's promise? The only prudent approach is to judge an application based on what the applicant has engineered to do and has included within their application. A regulatory agency cannot judge a project on what the applicant promises or plans to do dependent on the decisions of a different regulatory agency. The outcome of these potential scenarios is uncertain and can lead to potential interagency conflict if the NJDEP finds PSE&G's stormwater plans inconsistent with N.J.A.C. 7:8 and local development review.

The site plan application provided by PSE&G does not demonstrate conformance with an applicable regional stormwater management plan. The applicant admits this fact. Therefore, the project is inconsistent with Objective 2D4g. Until such time as the NJDEP has approved PSE&G stormwater plans, the proposed project is inconsistent with the requirements of Objective 2D4g

**Policy 2G2:** 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.

**Comment:** The proposed project does not attempt to reduce or avoid water quality impacts, therefore, the project is inconsistent with Policy 2G2. The applicant states on Page IV-4, "Unavoidable impacts to surface water, including all Highlands open waters and regulated riparian areas, would be mitigated..." Through the applicants own admission within Section 3.1 of the HAD application, they will not be attempting to reduce or avoid water quality impacts. According to the goals, policies and objectives of the RMP, mitigation shall only be a last resort, when an applicant has demonstrated that avoidance and minimization strategies have been employed to the full extent feasible.

For example, the proposed Jefferson Switching Station is proposed to be located on a piece of property surrounded on nearly all four sides by existing open space, totaling nearly 7,700 contiguous acres. The site contains steep slope protection areas, riparian areas, wetlands, Highlands open water buffers, critical habitat, etc. The applicant could have avoided impacts to this critical piece of property by relocating the proposed Jefferson Switching Station to a nearby quarry site in Hopatcong Borough (Block 70001, Lot 00001) The quarry site contains no critical environmental features and development of a Switching Station would not increase the impervious surfaces on site, thereby degrading water quality. This demonstrates that the applicant has not pursued any avoidance options for feasibility.

The project is inconsistent with local development review in the Township of Jefferson, which requires the submission of stormwater plans with site plan applications. The applicant has not submitted any stormwater plans in accordance with the Township of Jefferson's local development review ordinances. The applicant admits that stormwater plans have not been designed for the Jefferson Switching Station site and access roads.

The project is inconsistent with Highlands Project Review because the applicant has not submitted stormwater plans and has therefore not demonstrated consistency with the requirements set forth in the RMP. The applicant's admission of "unavoidable impacts" demonstrates inconsistency with the RMP's avoidance, minimization and mitigation approach.

**Objective 2G3b:** 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.

**Comment:** The applicant has not designed stormwater controls for the Jefferson Switching Station or access roads. The NJDEP must approve all stormwater plans before an applicant can be found consistent with Objective 2G3b. The HAD application, as submitted, is inconsistent with Objective 2G3b.

**Policy 2G5a:** To adopt and implement stormwater management controls through Plan Conformance, local development review and Highlands Project Review.

**Comment:** The Township of Jefferson has stormwater ordinances in place, yet the Highlands Council has found the HAD application consistent with Policy 2G5a. Stormwater management control ordinances, implemented through local development review in the Township of Jefferson, are undermined by the current staff finding of consistency. The Township of Jefferson's ordinances require the submission of stormwater controls with site plan applications impacting an acre or more of land. Without the submission of stormwater plans and stormwater maintenance plans for the Jefferson Switching Station site, the applicant is inconsistent with local development review ordinances in the Township of Jefferson and therefore inconsistent with Policy 2G5a.

**Objective 2G5a:** 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.

**Comment:** The applicant does not acknowledge any impacts to groundwater recharge areas. The Highlands Council notes that recharge areas will be impacted, especially at the Jefferson Switching Station site, therefore the project is inconsistent with Objective 2G5a. The applicant states, "In addition, the proposed project will not impact the regenerative capacity of aquifers or surface or ground water supplies (Page IV-4)". Again, the applicant states on Page IV-13, "The project will not interrupt groundwater recharge or affect water quality either during or after construction..." The Council has refuted this statement because the proposed Jefferson Switching Station is located on a Prime Ground Water Recharge Area and will consist of 20.4 acres of new impervious surface.

Since the applicant states that the project will not impact groundwater recharge capabilities, it can be assumed that the applicant's future stormwater plans will not adequately address the proposed impervious surface additions at the Jefferson Switching Station site and the related recharge impacts. The proposed Jefferson Switching Station is almost entirely Prime Groundwater Recharge Area (PGWRA). The mapped PGRWA's are available on the Highlands Council's website, which the public has access to and the applicant has chosen to neglect. The application is inconsistent with Objective 2G5a because the applicant does not acknowledge the Jefferson Switching Station's impacts on PRWRA's and does not plan to meet the recharge requirements of the RMP. The applicant has also not designed any stormwater controls for the project, therefore it must be assumed that contaminated groundwater may ultimately be recharged on or near the Jefferson Switching Station site.

**Objective 2G5b:** 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.

**Comment:** The applicant has not designed any stormwater controls for the project. The applicant only states that Low Impact Development and other Best Management Practices will be employed. An applicant must demonstrate that these standards will be employed rather than just make promises. As proposed, lacking any stormwater controls, the proposed project may lead to the discharge of pollutants into ground and surface waters. Until such time as the applicant designs and has approved stormwater controls and explains what Best Management Practices will be employed, the project is inconsistent with Objective 2G5b.

**Objective 2H4a:** Require site specific and municipal stormwater management plans to address wellhead protection requirements.

**Comment:** The Highlands Council should find the project inconsistent with Objective 2H4a because the applicant has not even acknowledged that proposed access roads (which are defined as impervious surfaces by the Highlands Council) will run through Wellhead protection areas and Prime Ground Water Recharge Areas that serve those wells. The applicant has not designed any stormwater controls and does not state in the application that future stormwater plans will specifically address concerns related to wellhead protection areas. The applicant also believes that no recharge areas will be impacted by the project, despite the Council's finding that there will be impacts to recharge areas. It must be assumed that the applicant's future stormwater plans will not respect recharge areas and will not include the required mitigation under the RMP. Therefore the project is inconsistent with Objective 2H4a.

**Objective 2H5c:** Ensure that development activities and existing land use activities implement best management practices to protect the quality of ground water within Wellhead Protection Areas.

**Comment:** The applicant has not demonstrated that Best Management Practices will be employed. Therefore, the Council cannot ensure that such practices will be used until such time as the applicant explains what practices will be employed for the Council's consideration. Therefore the project is inconsistent with Objective 2H5c.