

Public Comments Received on the Highlands Water Protection and Planning Council Draft Consistency Determination and Staff Recommendation Report for the Former Fenimore Sanitary Landfill - Roxbury Block 7404, Lot 1, Proposed Highlands Redevelopment Area Designation (Comment Period of September 23 – October 7, 2011):

Written comments regarding the proposed Highlands Redevelopment Area Designation for the Former Fenimore Sanitary Landfill were accepted by the Highlands Council through the close of the Public Comment period on October 7, 2011. Comments were provided by the following individuals/entities:

1. Russell Stern, Director of Planning, Township of Roxbury

Roxbury Township provided numerous comments regarding a variety of topics. For the purpose of this Comments/Response document, the Highlands Council staff grouped the comments and responses by general subject area to include: 1) Project Jurisdiction; 2) Sufficiency of Application; 3) Visual and Other Project Impacts 4) Economics; 5) Scheduling and Phasing; and 6) Miscellaneous. The comments are summarized within and responses provided.

PROJECT JURISDICTION

- a. **Comment:** Roxbury Township noted that the New Jersey Department of Environmental Protection (NJDEP) had previously responded to questions from the Township regarding municipal jurisdiction of the former landfill and noted that NJDEP indicated that under the Solid Waste Management Act, the Legislature determined it was necessary for landfill closure activities to be conducted in a consistent fashion Statewide, and thus, that NJDEP's implementation of its authority over landfill closure should preempt local authority. The Township asked if the Highlands Council is of the opinion that the proposed solar facility is not considered a "closure" or "post-closure" activity and that by the New Jersey Municipal Land Use Law the municipality has jurisdiction through its local ordinances and land development regulations and if the Highlands Council will condition Highlands Redevelopment Area Designation approval with the requirement to obtain municipal approvals.

Response: There are two aspects of jurisdiction that must be clarified in this matter. The first is the jurisdiction of the Highlands Council to review this matter. The Highlands Act includes an exemption for the remediation of any contaminated site (Exemption #15). Accordingly, the Highlands Council is not reviewing the aspects of the landfill closure or any post closure activities directly related to the remediation, as identified in the closure plan. The Highlands Council is authorized to designate an area for possible redevelopment for a brownfield site designated by NJDEP. Accordingly, the Highlands Council is reviewing any development of the brownfield site above and beyond the remedial activities on the landfill, specifically the designation of a Highlands Redevelopment Area (if the Highlands Council believes the area to be appropriate for such designation) the maximum extent of which shall be the delineated Brownfield. Similarly, the Solid Waste Management Act provides authority to NJDEP to oversee the remedial activities on landfills and such authority preempts local zoning that hinders such remediation. However, the Highlands Council is of the opinion that construction of solar facilities on the NJDEP-approved brownfield portion of the landfill (i.e., the Highlands Redevelopment Area Designation) is not considered a "closure" or "post-closure" activity and thus, is not exempt from the Highlands Council authority to consider designation of a Highlands Redevelopment Area and any conditions the Council may impose. Such activities are considered

“major Highlands developments” pursuant to the Highlands Act and require a Highlands Preservation Area Approval (HPAA) with redevelopment waiver, which in turn requires Highlands Council designation of a Highlands Redevelopment Area. Under the New Jersey Municipal Land Use Law, Roxbury Township has jurisdiction through its local ordinances and land development regulations with respect to the construction and maintenance of redevelopment activities, in this case, the proposed solar facility.

- b. **Comment:**The Township assumes that NJDEP will be the authority that oversees the landfill capping and makes the determination of project completion and asks what entity will determine project completion of the solar facility and will they continue their authority after project completion or will responsibility fall on the back of the Township.

Response: On October 6, 2011, NJDEP issued an Administrative Consent Order which includes a Landfill Closure Plan Approval. Through these documents, NJDEP will oversee the landfill capping and make the determination of project completion. The Highlands Council determines any or all of the brownfield delineated area is appropriate to be approved and designated as a Highlands Redevelopment Area to allow for the proposed solar array construction, and lists conditions of that approval. If that approval occurs, the project comes before the NJDEP for a HPAA with Redevelopment waiver. The NJDEP, in consultation with the Highlands Council, reviews the HPAA application. If NJDEP approves the HPAA with any further conditions, the NJDEP, in consultation with the Highlands Council will ensure conditions of both NJDEP and the Council are met during and post construction. As discussed above, the Highlands Council is of the opinion that the Municipal Land Use Law provides the municipality with jurisdiction through its local ordinances and land development regulations with respect to the construction and maintenance of the proposed solar facility.

- c. **Comment:**The Township asks what actions are required by NJDEP, Highlands Council, Morris County Soil Conservation District, Roxbury Township, Strategic Environmental Partners, and any other entities before further landfill closures activities are permitted on the property.

Response: NJDEP is the authority that oversees the landfill capping and makes the determination of satisfactory project completion. The Administrative Consent Order and Landfill Closure Plan Approval set forth the numerous actions that are required for landfill closure. No further State approvals are necessary to begin landfill closure activities. However, one condition of the Landfill Closure Plan is approval of a soil erosion and sediment control plan by the Morris County Soil Conservation District. Other conditions must also be met by Strategic Environmental Partners to allow for closure activities. The Highlands Council jurisdiction relates to redevelopment subsequent to closure, to determine if the solar array construction on the NJDEP-approved brownfield is appropriate to be approved and designated as a Highlands Redevelopment Area and the landfill closure activities are exempt from the Highlands Act.

- d. **Comment:**The Township asked if the Highlands Council will require performance and maintenance bonds for the solar facility.

Response: The Highlands Council is not requiring any performance and maintenance bonds for the solar facility.

- e. **Comment:**The Township asked if the Highlands Council has jurisdiction over grading, leachate basins, and stream relocation which are located outside of the limit of landfill activity.

Response: As discussed above, all remedial activities regarding the landfill closure, including grading, leachate basins, and stream relocation are exempt under Exemption #15 in the Highlands Act. The Highlands Council jurisdiction is over the construction of the solar array on the Highlands Redevelopment Area on all or some of the NJDEP-approved brownfield of the capped landfill. In addition, the Highlands Council has jurisdiction relating to the remainder of the parcel should any conditions of the proposed solar array, such as viewshed buffers are required by the Highlands Council.

SUFFICIENCY OF APPLICATION

- f. **Comment:**The Township stated that upon inspection of the application documents at the Highlands Council office, it is noted that out of 23 documents listed on NJDEP's undated draft Closure and Post Closure Landfill Plan Approval, that a significant number were not provided for the Highlands Council's or Township's review. The Township asked if the Council needs these documents to make an informed decision on the request for a Highlands Redevelopment Area Designation.

Response: The documents identified that were not provided to the Highlands Council are in regard to the remediation and closure activities which are not under the purview of the Highlands Council. There were several documents that were not originally submitted to the Highlands Council, which the staff subsequently requested and received. There was sufficient information available to make an informed recommendation to the Highlands Council for decision.

- g. **Comment:**The Township stated that the NJDEP undated draft Closure and Post-Closure Landfill Plan Approval indicates that a number of outstanding documents are needed which they will defer to a later date after Plan Approval. Should the Highlands Council review these documents prior to acting on the request for Highlands Redevelopment Area Designation.

Response: Given that remediation and closure activities are not under the purview of the Highlands Council, staff is of the opinion that there is sufficient information available to make an informed recommendation to the Highlands Council for decision.

- h. **Comment:**The Township noted that on August 31, 2011, Strategic Environmental Partners LLC submitted correspondence and documents to the Highlands Council as a formal request for a Highlands Redevelopment Area Designation. Included as part of the submission is undated drawing RD-1 – by Matrix New World (Highlands application document) which shows the proposed “Redevelopment Plan”. It was noted that the quantity and location of solar panels on this plan to the Highlands Council is much greater than that depicted on the NJDEP Disruption/Closure Plan application (updated sheet 3 prepared by Matrix New World).

Response: The plan provided to the Highlands Council (which shows greater extent of solar panels than what is depicted on the plan submitted to NJDEP) is the focus of review by the Highlands Council.

- i. **Comment:**The Township noted that in comparing RD-1 and sheet 3 (as referenced above), sheet 3 provides greater setbacks of the solar panels from adjoining properties and Mountain Road. It was noted that this affords the opportunity for greater buffering to the neighborhood and reduces the amount of capped steep slope surfaces. It was also noted that comparatively, sheet 3 helps to lessen impacts to the viewshed. The Township asked if the Highlands Council has the ability to take these factors into their consideration of the Highlands Redevelopment Area Designation.

Response: Recognizing the potential for aesthetic impacts from the proposed solar array on nearby residents, the Draft Consistency Determination and Staff Recommendation Report included as a condition that the solar array shall be screened from the viewshed of adjacent public roads and private development through an area of dense vegetated cover, with a minimum of 75 feet on any sight line from a residence or public road. It is recognized that trees cannot be planted within the landfill cap (roots would compromise the integrity of the cap), and that in the area along Mountain Road, in the vicinity of Lookout Drive, that the designated Highlands Brownfield directly abuts Mountain Road (with solar panels proposed right to the edge of the brownfield). The Final Consistency Determination and Final Staff Recommendation Report include the statement that as a condition of this approval, the applicant shall establish an earthen berm sufficient to create a visual barrier along Mountain Road, which shall be seeded and planted with native herbaceous species. The Final Consistency Determination and Staff Recommendation Reports, include the statement that the applicant shall provide a site plan for review and approval by the Highlands Council prior to any solar work in the vicinity of Mountain Road and the intersection of Lookout Drive and Vanover Drive, which shall provide effective screening of the solar panels from all public roads and private residences in the area.

- j. **Comment:**The Township noted that the documents submitted to NJDEP for the Landfill Closure and Post-Closure Plan Approval, as well as documents provided to the Highlands Council for Highlands Redevelopment Area Designation does not provide any information or details of the design and construction of solar panels. Nothing has been provided to address the overall height of the solar panels or how they will be installed without penetrating the landfill cap. The Township asks if the Highlands Council will require this information to make an informed decision before voting on the application.

Response:Detailed site plans are submitted as part of the HPAA application to NJDEP. The Highlands Redevelopment Area Designation procedures require a conceptual plan view and a description of the proposed redevelopment project to be located within the proposed Highlands Redevelopment Area. Staff is of the opinion that there is sufficient information available to make an informed recommendation to the Highlands Council for decision. Please see the response to Comment 1.i, regarding the condition that the solar array shall be screened from the viewshed of adjacent public roads and private development. Further, a condition was added to the Final Consistency Determination and Final Staff Recommendation Report that states that the applicant must demonstrate that the solar panels can be installed without compromising the integrity of the landfill cap and will meet the conditions of the Landfill Closure Plan.

- k. **Comment:**The Township stated that the application documents do not provide details or information on the drawings that depict the location of power lines serving the solar facility, inverters and other equipment needed for the site. The Township asked from what adjoining

properties the power lines will be routed. The Township is of the opinion that to make an informed decision, the Highlands Council should require this information before taking action on the application.

Response: Detailed site plans are submitted as part of the HPAA application to NJDEP. The Highlands Redevelopment Area Designation procedures require a conceptual plan view and a description of the proposed redevelopment project to be located within the proposed Highlands Redevelopment Area. Staff is of the opinion that there is sufficient information available to make an informed recommendation to the Highlands Council for decision regarding approval of the proposed Highlands Redevelopment Area Designation. The Highlands Council recognizes that power line access will be critical for success of the solar project but that impacts must be addressed; the Final Staff Recommendation Report recommends a condition requiring mitigation regarding any impacts on Highlands Resources.

1. **Comment:** The Township stated that it is their understanding that the Highlands Council is not in receipt of methane gas venting system drawings, including information of the backup generator. This aspect of the landfill closure will impact the layout of the solar facility. The venting system and backup generator should be located and screened from adjoining properties and streets. The backup generator should also be located a substantial distance from adjoining homes to minimize noise impacts. The Township asked if the generator is tested/cycled monthly or less, and how long will it run. The Township asked if the Highlands Council will require this information prior to action before voting on the application.

Response: The methane gas venting system is a component of the remediation and closure activities which are not under the purview of the Highlands Council.

VISUAL AND OTHER PROJECT IMPACTS

- m. **Comment:** The Township stated that the visual environment of the residential property owners in the immediate area and the motoring public on Mountain Road will be substantially impacted by the solar energy structures and a recycled concrete surface layer covering the landfill. Along with heavy landscape buffering and greater setbacks for the solar panels, will the Highlands Council work with NJDEP to require a vegetated soil cap of the landfill where it is most visible to Mountain Road and adjoining residential properties. Noted that the September 23 Highlands Council Staff Draft Recommendation Report, Requirement 5, notes that a screening buffer is necessary to protect the local neighborhoods. As a critical element, states that the buffer design should be provided before action is taken by the Highlands Council.

Response: A vegetated soil cap of the landfill involving any vegetation with deep or extensive roots, such as trees or shrubs, is not possible. In order to maintain cap integrity, roots from vegetation cannot penetrate the cap. NJDEP does permit the use of grasses or non-vegetated caps. With respect to the condition of the Staff Draft Recommendation Report and Consistency Determination requiring a screening buffer, the Final Recommendation Report and Consistency Determination states that the applicant shall provide a screening plan for review and approval by the Highlands Council prior to any solar work in the vicinity of Mountain Road and the intersection of Lookout Drive and Vanover Drive. The response to Comment 1.i addresses the proposed condition for visual screening.

- n. **Comment:**The Township asked that to help promote the objectives and policies of the Highlands Regional Master Plan and provide wildlife habitat, will the reconstructed and relocated stream be constructed with vegetated side slopes. The Township further asked that where feasible, will buffers or modified buffers be provided along impacted streams and wetlands.

Response:During the staff's initial analysis and preparation of the Draft Consistency Determination and Draft Staff Recommendation report, it was understood that the reconstructed and relocated stream is part of the remediation and closure activities (exempt activities) which is not under Highlands Council jurisdiction. Nonetheless, Highlands Council staff did inquire at that time if a vegetative buffer could be utilized instead of the proposed rip-rap material. The engineer for the project indicated that due to the high runoff volume and velocity, the use of rip-rap is necessary to prevent erosion of the stream channel; this was confirmed through review of the plan by the Highlands staff engineer. However, after reviewing public comments during the comment period and through further consideration by staff, it was determined that the proposed solar array could potentially affect the water quality and habitat of the relocated stream. The proposed solar array is under the jurisdiction of the Highlands Council; thus, it was determined that the Highlands Council has the jurisdiction to comment on the solar panels' potential impact on the relocated stream and potential enhancement measures. The Final Consistency Determination and Staff Recommendation Report were revised to state that to limit potential impacts from the solar array on the relocated stream's water quality and habitat, a condition of this approval is the establishment and maintenance of a vegetated buffer along the edge of the rip-rap, outside of the designated Highlands Brownfield. Site-appropriate native species from a local nursery should be utilized. By providing vegetation along the rip-rap stream bank, the functional value of the stream buffer will be enhanced. Establishment and maintenance of the vegetated buffer shall be addressed through the HPAA with redevelopment waiver permit process.

- o. **Comment:**The Township noted that Condition 1 of the Staff Draft Report should state that the vegetated buffer between the stream reach and the project "is" required instead of "should be" required.

Response:Each condition of approval, including this one, is part of the NJDEP's HPAA approval process (in consultation with the Highlands Council). Highlands Council staff is recommending to NJDEP that this condition should be required.

- p. **Comment:**The Township asked if the landfill closure will require dynamic compaction. Followed with the question that if so, is it needed across the entire landfill area or to a limited area setback from adjoining residential properties and Mountain Avenue. The Township asked will the Township and area residents be notified in advance of compaction activity.

Response:This activity (dynamic compaction), if required, is part of the remediation and closure activities (exempt activities) which are not under Highlands Council jurisdiction.

- q. **Comment:**The Township noted that the venting system and backup generator should be located and screened from adjoining properties and streets. The backup generator should also be located a substantial distance from adjoining homes to minimize noise impacts. Asked if the generator will be tested/cycled monthly or less, and how long will it run. The Township asked

will the Highlands Council require this information prior to action before voting on the application.

Response: This activity (venting system and backup generator) is part of the remediation and closure activities (exempt activities) which are not under Highlands Council jurisdiction.

- r. **Comment:** The Township asked how the Highlands Redevelopment Area Designation will address the impacts to municipal roads by over 150,000 total truck trips (in/out) needed to transport the 1.2 million cubic yards of fill and recycled material for the landfill cap.

Response: The truck trips needed to transport the 1.2 million cubic yards of fill and recycled material for the landfill cap are part of the remediation and closure activities (exempt activities) which are not under Highlands Council jurisdiction.

- s. **Comment:** The Township asked at what point will the Highlands Council review detailed stormwater management plans to insure the protection of downstream properties.

Response: Condition 7 of the Final Staff Recommendation Report and Consistency Determination states that the stormwater regulations must be followed in the project design through the HPAA with redevelopment waiver, as part of the NJDEP permitting process. The Highlands Council expects that under the NJDEP waiver, the applicant shall supply a stormwater management plan and a construction implementation plan that minimizes disturbance during and after construction.

- t. **Comment:** The Township asked that although a relatively temporary activity, will the 150,000+ total truck trips (in/out) concentrated on Mountain Road and impacting area residents constitute an inconsistency with Highlands Regional Master Plan air quality policies.

Response: The truck trips needed to transport the 1.2 million cubic yards of fill and recycled material for the landfill cap are part of the remediation and closure activities (exempt activities) which are not under Highlands Council jurisdiction.

- u. **Comment:** The Township asked that with over 150,000+ total truck trips needed for landfill cap, have provisions been established to regulate the route, frequency, idling, or hours of truck traffic. The Township asks will hours of operation be prohibited on weekends and State and Federal holidays.

Response: The truck trips needed for the landfill cap are part of the remediation and closure activities (exempt activities) which are not under Highlands Council jurisdiction. NJDEP's Administrative Consent Order and Landfill Closure Plan Approval address these issues.

ECONOMICS

- v. **Comment:** The Township asked has the Highlands Council reviewed the applicant's Financial Plan which was submitted to NJDEP as a part the Landfill Closure Plan. The Township asked that in order to be classified as a sustainable economic development, should not the Highlands

Council review the Financial Plan. States that the Township has not received a copy of this document.

Response: The Financial Plan is part of the remediation and closure activities (exempt activities) which are not under Highlands Council jurisdiction. NJDEP's Administrative Consent Order and Landfill Closure Plan Approval address these issues. However, staff is of the opinion that there is sufficient information available to make an informed recommendation to the Highlands Council for decision regarding approval of the proposed Highlands Redevelopment Area Designation. By reusing and redeveloping a previously disturbed area (i.e., the landfill), economic investment and community development within the framework of smart growth is assured.

- w. **Comment:** The Township asked will the Highlands Regional Master Plan consistency determination review take into account the loss of property value and economic impacts to area residential properties that will be subject to an undetermined number of years where over 150,000 total truck trips (in/out) will be bringing in 1.2 million cubic yards of recycled concrete material to create a landfill cap covered with solar panels, setback 20 feet from Mountain Road, without the benefit of a landscape buffer. Asked does this impact to existing residential properties meet the policy for sustainable economic activity.

Response: As already discussed, the truck trips needed to transport the 1.2 million cubic yards of fill and recycled material for the landfill cap are part of the remediation and closure activities (exempt activities) which are not under Highlands Council jurisdiction. With regard to the proposed solar facility which is under Highlands Council review authority, Condition #6 in both the Final Consistency Determination and Staff Recommendation Report addresses the issue of screening, as discussed in detail above, in the response to Comment 1.i. It should also be noted that as previously addressed, by reusing and redeveloping a previously disturbed area (i.e., the landfill), economic investment and community development within the framework of smart growth is assured. The proposed project is the placement of photovoltaic panels, which has been defined in the Municipal Land Use Law as an inherently beneficial use.

SCHEDULING AND PHASING

- x. **Comment:** The Township noted that the documents submitted to the Highlands Council do not address the phasing of landfill capping and solar development. Asked will the entire landfill be capped and then the solar facility constructed, or will it be phased where small areas are capped and solar panels installed as they concurrently move to the capping of other portions of the landfill. The Township asked will the development proceed east to west or west to east. Asked has the Highlands Council reviewed the Proposed Closure Schedule and Fill Phasing Plan that was part of the Landfill Closure Plan.

Response: NJDEP's Administrative Consent Order and Landfill Closure Plan Approval address the various phases of the landfill closure. The Highlands Council's approval of a Highlands Redevelopment Area provides the ability for NJDEP to issue a HPAA which should address how construction will be phased where small areas are capped and solar panels installed as the applicant concurrently moves to the capping of other portions of the landfill.

- y. **Comment:**The Township asked what measures will be taken by the Highlands Council to maintain an organized and orderly development of the site considering that the capping and solar installation can take many years due to the magnitude of material and as the availability of fill material including recycled concrete is dependent upon the economy. The Township noted that Condition 38 of the draft Landfill Plan Approval authorizes the acceptance of approximately 1.2 million cubic yards of recyclable materials for use in the grading and shaping layer of the site prior to construction of landfill cap. The Township noted that the import of this tremendous amount of material will take years. The Township asked how the State will regulate this on-going activity to minimize the physical and visual impacts on the community.

Response:NJDEP's Administrative Consent Order and Landfill Closure Plan Approval includes specific deadlines for the orderly closure of the landfill. The remediation and closure activities (exempt activities) are not under Highlands Council jurisdiction.

- z. **Comment:** The Township noted that Condition 47 of the draft Landfill Closure Plan Approval allows the stockpiling of "beneficial use and recyclable material" subject to NJDEP approval. The Township asked if the Highlands Council will establish a maximum time period maintaining stockpiles, as well as a maximum stockpile height, quantity and minimum setback from adjoining properties and streets to reduce impacts upon the community and to ensure a timely development of the solar facility, or is it the intent to allow a phased and simultaneous capping and solar development. The Township asked what is NJDEP's definition of "beneficial use."

Response:NJDEP's Administrative Consent Order and Landfill Closure Plan Approval includes procedures for the types and storage of materials on the landfill. The remediation and closure activities (exempt activities) are not under Highlands Council jurisdiction.

- aa. **Comment:**The Township asked that due to the magnitude of accepting 1.2 million cubic yards of recycled material for the landfill cap, does the closure require Morris County approval prior to Council approval of the Highlands Redevelopment Area Designation.

Response:NJDEP's Administrative Consent Order and Landfill Closure Plan Approval includes a requirement for Morris County Soil Conservation District (SCD) approval regarding the soil erosion and sediment control plan. However, approval by Morris County SCD is not required prior to Council approval of the Highlands Redevelopment Area Designation

MISCELLANEOUS

- bb. **Comment:**The Township noted that NJDEP will obtain a tipping fee from the revenue generated by the acceptance of 1.2 million cubic yards of beneficial use and recyclable material. The Township asked if the NJDEP will allocate any of this money to the maintenance and repair of municipal roads accessing the landfill.

Response:The Highlands Council acknowledges the comment and notes that it is directed at NJDEP.

- cc. **Comment:**The Township asked if the 1.2 million cubic yards of fill and recycled masonry will come from individual job sites and then be inspected at the property. The Township asked if an

office trailer will be needed to monitor and administer the acceptance of imported fill material coming from tens of thousands of trucks. The Township asked if lighting and bathrooms will be needed, if trucks will be queued in long lines waiting to be processed before unloading, if this material will be accepted while the installation of solar panels is ongoing. The Township asked if the Highlands Council will request a narrative explaining this process, as well as a site plan of this area which depicts truck stacking and if portable toilets will be adequate to service the drivers of this heavy truck use or will a septic system in conformance with the Highlands RMP be required.

Response: As already discussed, the truck trips needed to transport the material for the landfill cap are part of the remediation and closure activities (exempt activities) which are not under Highlands Council jurisdiction. Some of these issues are raised in NJDEP's Administrative Consent Order and Landfill Closure Plan Approval

- dd. **Comment:** The Township asked if the Highlands Council has reviewed a long term maintenance plan of the site as a solar facility and noted that maintenance of a site as capped landfill will differ from a site developed as a solar facility, as maintenance will be impeded by the non-penetrating solar foundations.

Response: The long term maintenance of the landfill is required by NJDEP's Administrative Consent Order and Landfill Closure Plan Approval and a plan for the solar facility may be considered addressed as part of the HPAA review.

2. Jeff Tittel, Director. New Jersey Sierra Club

- a. **Comment:** The Sierra Club supports the application to remediate and properly close the former Fenimore Municipal Landfill and support plans proposed by Strategic Green Energy to transform that site into a solar farm. This is better than turning a lemon into lemonade. Landfills like Fenimore are polluting the environment. By putting solar farms on them, we'll take an environmental blight and turn it into a positive for the people of New Jersey.

Response: The Highlands Council acknowledges the Sierra Club's support for the remediation of the former landfill and the redevelopment of the site with solar arrays.

- b. **Comment:** The Solar farms on landfills will have many environmental benefits. First, the cap placed over the landfills would help stop leaking and public health hazards. Second, by generating solar energy, New Jersey will be producing clean electricity and promoting green jobs. This is why the Sierra Club endorsed a bill that allows and encourages solar farms to be put on closed landfills. The bill has criteria to require environmental standards and protection in the development of these solar farms on landfills. To do nothing would continually allow these sites to leach toxins into our groundwater and environment. The bill is awaiting the Governor's signature.

Response: The Highlands Council acknowledges the Sierra Club's support for the environmental and economic benefits that are anticipated through the redevelopment of the site.

- c. **Comment:** There are several reasons the Club supports this bill and the Roxbury project:

* Landfills need to be capped to prevent leachate and toxins from getting into our groundwater and streams. Capping will prevent methane from getting into our air. Methane at landfills is one of the largest emitters of greenhouse gasses.

* A cap is a good place for a solar farm since it is impervious and not a good medium to grow trees. Furthermore, vegetation on uncapped landfills draw toxics from the landfill and respire those toxins through the roots and out the leaves.

* The Fenimore Landfill will never return to a natural state because it has been so negatively impacted by man and dumping.

* The implementation of solar on landfills around New Jersey could be a significant source of clean energy during times of peak load.

In Roxbury, Strategic Clean Energy is under the strict supervision of NJDEP to properly close this site. In addition to remediation, the site must be properly buffered and screened so as not to be an eyesore to local residents.

Response: The Highlands Council acknowledges the Sierra Club's support for the remediation of the former landfill and the redevelopment of the site with solar arrays.

- d. **Comment:** While it is in the Highlands Preservation Area, which restricts development, its transformation into a solar farm is allowed under the Highlands Act and is appropriate for this site. Further, the site will be deed restricted from any other future use. When the solar farm is no longer in use this site will be restored to a natural state and the panels removed. In short, the 103-acre site will remain undeveloped open space in perpetuity.

Response: The Highlands Council acknowledges the Sierra Club's support for the Highlands Redevelopment Area designation which the Highlands Act specifically provides for development of brownfield sites in the Preservation Area. This site will be deed restricted by NJDEP through the landfill closure as well as through the issuance of a HPAA. However, please note that the site will be significantly disturbed by the landfill closure and accordingly will not be undeveloped open space.

3. Erica Van Auken, Campaign and Grassroots Coordinator, New Jersey Highlands Coalition

- a. **Comment:** The New Jersey Highlands Coalition supports the concept of redevelopment and solar projects in the Highlands; however, we will only support such initiatives when they are designed within the goals and purposes of the Regional Master Plan. The former Fenimore Sanitary Landfill has the potential to become a model brownfield redevelopment site, but first it needs to become a brownfield. Any concerns we have regarding the building of a solar field are eclipsed by our primary concern: the proper closing of this hazardous landfill. We are concerned that the opportunity to redevelop a site for solar in the Highlands will shortcut the remediation process and as a result the task will not be properly completed. We need assurance that the landfill will be fully remediated and capped before any steps are taken to redevelop the site. We recognize that this activity will fall to the NJDEP, but it is our hope that the Council will be involved in the cleanup process and make every effort to ensure its successful remediation. This site should not even be considered for a Redevelopment Area Designation until it has been properly remediated. We do not support this site's designation as a

redevelopment site until plans are proposed and made available for public review regarding the remediation and capping of the existing landfill.

Response: The site is a Landfill and appropriately designated a Track One Brownfield by NJDEP on August 18, 2011. The Highlands Act specifically includes a waiver provision for brownfield redevelopment in the Preservation Area in order to encourage the redevelopment of contaminated sites. The construction of the solar facilities will likely occur in phases as the various phases of the capping of the landfill are completed. NJDEP's Administrative Consent Order and Landfill Closure Plan Approval includes procedures for the successful remediation of the landfill. The remediation and closure activities (exempt activities) are not under Highlands Council jurisdiction.

- b. **Comment:** The New Jersey Highlands Coalition is concerned in regards to the potential redevelopment once this parcel has reached that phase. In its current state, this landfill could not be considered environmentally valuable; however it is within the Protection Zone in the Preservation Area and has significant environmental resources (steep slopes, wetlands, high forest integrity and watershed values, critical wildlife habitat, etc.). It also abuts Morris Canal Park and is in proximity to many historically significant places. It is for these reasons, among many others, that this site should not necessarily be considered for redevelopment, but instead, should be considered for preservation.

Response: NJDEP's Administrative Consent Order and Landfill Closure Plan Approval include procedures for the remediation of the landfill through which the landfill area will be capped and treated through a leachate collection system. This process will protect the environment from the pollutants associated with the existing unremediated former landfill. Steep slopes on site were mainly the result of the landfill and will now be subject to grading and capping, the wetlands have been polluted and will now be capped with the stream relocated in certain areas, and the forests have been cut in order to remediate the site and cannot be replanted as the roots would penetrate the cap. Thus, the capping of the landfill will preclude the restoration of the site to a site with onsite Highlands Resources. The sole jurisdiction of the Highlands Council is with regard to the proposed Highlands Redevelopment Area designation, which may be for part or all of the brownfield area, but may not extend beyond that area. Therefore, certain portions of the larger property are conditioned for conservation easements and viewshed buffers and berms to ensure protection of Highlands resources and neighboring properties, including but not limited to the Morris Canal Park.

4. **David Peifer, Highlands Project Director**
The Association of N.J. Environmental Commissions (ANJEC)

- a. **Comment:** The Association strongly supports the redevelopment of Brownfields in the Highlands Preservation Area. In this case we support the redevelopment area designation but wish to convey to the Council our reservations about the potential environmental impacts of the current proposal. We suggest that the Council convey its concerns about impacts to Highlands Resources to the applicant and to the NJDEP and consider revising portions of the RMP in the required upcoming review.

Response: The Highlands Council acknowledges ANJEC's support for the Highlands Redevelopment Area designation for this site.

- b. **Comment:** It is not correct to refer to this facility as a "landfill". The facility is in no way a landfill as currently defined. Rather it is a long abandoned dump that was created without regard for environmental protection. There is no liner of any type. There is no leachate collection system, apart from an abandoned lagoon from which contaminated leachate was pumped and sprayed on the surface. There is no gas collection system. There are, to our knowledge, no monitoring wells.

The nature and extent of contamination remains undefined. Leachate continues to escape from the facility flowing downstream toward Ledgewood Park and ultimately to Drakes Brook. The orange staining from iron fixing bacteria is clearly visible on the Highlands aerial photographs as is the turbid condition of the former leachate pond. To our knowledge, the leachate has not been characterized (as surface water) nor has the extent or character of groundwater contamination been evaluated. To our knowledge there has been no evaluation of methane generation or other outgassing.

The site is located in a sensitive hydrologic position. Uncharacterized solid waste was deposited in what appears to have been a forested wetland area probably underlain by California soils. These soils readily develop wetland conditions due to a discontinuous restrictive horizon known as a fragipan. Often beneath this layer are extremely permeable sandy loam soils that allow downward movement of water and pollutants. Such layers cannot be relied upon to contain leachate. The site contains two first order tributaries classified as Category One, Trout Production (Ledgewood Brook) waters. The more southerly tributary has been moved, and now flows outside of its original channel. This water body is heavily disturbed. The more northerly tributary flows near the toe of the filled area but remains largely in its original condition although it too is impacted by leachate and an upstream detention basin facility in an adjoining residential subdivision.

The nature of the filling methods used and the waste composition remain unknown. It is unclear how waste was actually deposited, compacted or covered during the filling operations. The nature of the materials deposited remains unknown. Due to the age of the facility, it is possible that materials now prohibited from landfills, including toxic, chemical, and or drummed wastes could have been deposited.

The physical configuration of the facility raises concerns about grading and other earth disturbance required for proper closure. Extremely steep slopes are located directly adjacent to surface waters. These slopes will require substantial grading to install a membrane cap and even more to use a constructed earthen cap. How this is to be accomplished without severe impacts to Ledgewood Brook and downstream municipal parkland remains unclear. The abandoned water filled leachate lagoon is not a properly constructed water impoundment, has no formal spillway and is located on or beyond the property boundary with municipal parkland.

Road access is limited. Mountain road is a narrow, two lane facility traversing substantial grades in a residential district. Repeated heavy truck and equipment movements necessary to close and cap the facility is a safety concern and may impact the structural integrity of the roadway.

An effectively capped landfill is essentially 100% impervious. Controlling stormwater to match the previous heavily disturbed condition will not be adequate to protect the downstream stream channels. To do so will require designing a control facility to approximate post construction run-off equal to that which would result from “forest in good condition”. Additionally this extensive control facility will need to be installed within the existing filled area with proper side slopes established. This will necessitate further disturbing unknown fill material.

Response: The entire purpose of NJDEP’s Administrative Consent Order and Landfill Closure Plan Approval is to require that the former landfill be closed with the necessary elements to properly close, treat and monitor the landfill. These requirements are part of the remediation and closure activities (exempt activities) which is not under Highlands Council jurisdiction.

- c. **Comment:** It appears that the applicant proposes to access the power lines approximately 1,350 feet northeast of the property boundary. Creation of an overhead transmission line will entail clearing of additional forest outside the proposed redevelopment area. It would appear from the PJM connection response that reaching the proposed location will entail clearing and crossing of municipal land listed on the Recreational Open Space Inventory.

Response: Detailed site plans are submitted as part of the HPAA application to NJDEP. The Highlands Redevelopment Area Designation procedures require a conceptual plan view and a description of the proposed redevelopment project to be located within the proposed Highlands Redevelopment Area. Accordingly, such issues will be reviewed during the HPAA process. The Staff Recommendation Report includes a condition for mitigation of any impacts to Highlands resources associated with the transmission line, whether overhead or in-ground.

- d. **Comment:** We understand that the consistency review was performed assuming a satisfactorily remediated condition. However, we strongly suggest that the Council communicate its concerns directly to the applicant and, most importantly to NJDEP, to assure that the clean-up design respects, protects and restores Highlands Resources to the maximum degree practicable.

Response: NJDEP’s Administrative Consent Order and Landfill Closure Plan Approval will ensure that the former landfill be closed with the necessary conditions. These requirements are part of the remediation and closure activities (exempt activities) which is not under Highlands Council jurisdiction.

- e. **Comment:** We believe that the RMP’s policies, goals and objectives should be reviewed to more adequately address redevelopment area designations for brownfield in the Preservation Area. Such sites should be reviewed in advance of specific applications. Allowing redevelopment decisions to be driven by private applicants is contrary to the concept of comprehensive regional planning and is likely to result in uncoordinated, unwise and possibly incomplete projects scattered throughout the Highlands Region. Due to the region’s long history of industrial development and the generously vague definition of “Brownfield”, (“A brownfield is defined under NJ state law (N.J.S.A. 58:10B-23.d) as “any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant.”). Such sites may be found in the Protection Zone or the Conservation Zone. This particular site is located in the Protection Zone. It is also equally clear that redevelopment can include a “brownfield to greenfield” approach that results in natural resource restoration and the provision of open space. We suggest that the Council could

develop a system to review existing known brownfields within the Protection Zone, the Conservation Zone, the Lake Management Zone and the environmentally constrained sub-zones for redevelopment as greenfields. Issues such as surrounding watershed quality, forest integrity, degree of contamination, location in relation to existing preserved lands, local recreational need and desires and historic value could be considered among others. Recognizing that the Council is currently fully occupied with the conformance process we suggest that such changes be considered for the required RMP review in 2012.

Response: The Highlands Council appreciates ANJEC's suggestions regarding the Highlands Regional Master Plan and further assures ANJEC that the considerations urged are addressed in the RMP (though the Council may wish to consider this issue further for the Reexamination of 2014). Each Highlands Redevelopment Area is examined on its own merits and in relationship to the Region and thus the Highlands Council may or choose not to designate based on consistency with the goals and purposes of the Highlands Act. The existing conditions of the potential site and its surrounds and the sustainability and appropriateness of the site for redevelopment determine the outcome.