



# State of New Jersey

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## Highlands Council Staff Draft Recommendation Report Proposed Highlands Redevelopment Area Designation Former Fenimore Sanitary Landfill - Roxbury Block 7404, Lot 1

Date: September 23, 2011

Re: Application Type:	<i>Proposed Highlands Redevelopment Area Designation</i>
Name:	<i>Strategic Environmental Partners, L.L.C.</i>
Municipality:	<i>Roxbury</i>
County:	<i>Morris</i>
Highlands Act Area:	<i>Preservation Area</i>
LUCM Location:	<i>Protection Zone</i>
Property:	<i>Block 7400 Lot 1</i>
Proposed Use:	<i>Placement of photovoltaic panels on top of constructed landfill cap</i>

### 1.0 PROJECT DESCRIPTION

Strategic Environmental Partners, L.L.C. has petitioned for Highlands Council designation of a Highlands Redevelopment Area for a brownfield site, to allow the construction of a solar energy array. The proposed project is the redevelopment of the Former Fenimore Sanitary Landfill, located in Roxbury Township. The property that contains the landfill (Block 7404 Lot 1) encompasses approximately 102 acres, of which approximately 60 acres had been utilized for landfilling activities from the early 1950s to the late 1970s. The property is bounded by the Morris Canal Park to the north and northeast, housing developments to the northwest and west, Mountain Road to the south, and Ledgewood Park to the east. The NJDEP has determined that the property contains a sanitary landfill facility as defined in the Solid Waste Management Act and therefore qualifies for a Highlands Brownfield Designation under Track One at N.J.A.C. 7:38-6.6(b)1. In accordance with N.J.A.C. 7:38-6.6(c), a Track One Highlands Brownfield consists of the limit of waste and those areas that were legally disturbed as of August 10, 2004. The NJDEP approved the Highlands Brownfield Designation on August 18, 2011, as depicted on the plan titled "Former Fenimore Sanitary Landfill, Block 7404 Lot 1, Roxbury Township, Morris County, New Jersey" Sheet No. BD-1, dated July 27, 2011, last revised August 17, 2011, and prepared by Matrix New World Engineering. The issuance of the Highlands Brownfield Designation by the NJDEP allowed the applicant to petition the Highlands Council for a Highlands Redevelopment Area Designation for the designated brownfield site.

The proposed solar energy project will be preceded by the capping and final closure of the landfill, which did not occur in 1979 when operations ceased. The final closure work qualifies for Exemption #15 under the

Highlands Act and is not addressed by this review and recommendation report. Following the proper closure of the landfill, the applicant proposes to redevelop the landfill (i.e., the area designated as the Highlands Brownfield, which in this case is coterminous with the proposed Highlands Redevelopment Area) by placing photovoltaic panels on top of the constructed landfill cap using non-penetrating structures to maintain cap integrity. According to the applicant, the photovoltaic system would be capable of generating 10 megawatts of electrical power and would encompass approximately 50 acres (almost the entire area of the Highlands Brownfield). This review is only for the proposed redevelopment on top of the constructed landfill cap. Thus, the “initial condition” for this review is the closed and capped landfill (i.e., the area designated as the Highlands Brownfield). The verification that the landfill has been properly closed and capped would occur through NJDEP Landfill Closure approval and the Highlands Preservation Area Approval (HPAA process). Redevelopment activities may only commence upon issuance of an HPAA. Highlands resources that are to be removed by the final closure process are not considered in this review. However, Highlands Resources to be created through NJDEP requirements as part of the final closure process (which for this project includes a portion of a stream corridor relocation that traverses the Highlands Brownfield) are considered.

## **2.0 ADMINISTRATIVE PROCESS**

The Fenimore Landfill Site operated as a landfill from the early 1950s to the late 1970s. The NJDEP ordered the landfill closed in April 1977 after the owner failed to meet the engineering control requirements for leachate collection and containment. Since the operation of the landfill ceased prior to the enactment of current solid waste regulations and NJDEP found the original closure plan unacceptable, the landfill was never properly closed. The site was listed on the NJDEP’s statewide landfill clean-up initiative list in 2000. Ownership of the landfill has changed several times since 1981 and the property is currently owned by Strategic Environmental Partners, L.L.C.

The applicant met with Highlands Council staff on November 2, 2009 to discuss the procedures for the ultimate redevelopment of the landfill site for a solar array (i.e., a sequence of actions requiring NJDEP brownfield designation, Highlands Redevelopment Area Designation by the Highlands Council, and NJDEP Highlands Preservation Area Approval [HPAA] with Redevelopment Waiver). The applicant then pursued designation of the Highlands Brownfield with NJDEP. In a letter dated August 18, 2011, the NJDEP determined that the Former Fenimore Sanitary Landfill property contains a sanitary landfill facility as defined in the Solid Waste Management Act and therefore qualifies for a Highlands Brownfield Designation under Track One at N.J.A.C. 7:38-6.6(b)1. As previously noted, the NJDEP approved the Highlands Brownfield Designation as depicted on the plan titled “Former Fenimore Sanitary Landfill, Block 7404 Lot 1, Roxbury Township, Morris County, New Jersey” Sheet No. BD-1, dated July 27, 2011, last revised August 17, 2011. Via letter dated August 31, 2011, the applicant submitted a formal Petition for Highlands Redevelopment Area Designation for the NJDEP-approved Highlands brownfield site. The Highlands Council staff determined that the application materials submitted were sufficient for the staff to commence a technical review. This technical review has been completed and is contained in the Consistency Determination, included by reference in this review and recommendations report. Please note, the NJDEP has not approved a landfill closure plan as of the date of this Report, and therefore the Highlands Council may modify the conclusions of both the Consistency Determination and this Report based on the results of that approval, if relevant to the designation and conditions of a Highlands Redevelopment Area. The Consistency Determination and this Report are posted on the Highlands Council web site along with relevant site maps. However, there are also paper files submitted to the Highlands Council that are part of the public record. As is the case for all Highlands Council staff project reviews, members of the public are invited to make an appointment with Council staff to review project files and all application materials.

### 3.0 SMART GROWTH AND SUSTAINABLE ECONOMIC DEVELOPMENT CONSIDERATIONS

Redevelopment opportunities will be a major vehicle for economic development within the Highlands Region, particularly within the Preservation Area. Redevelopment policies and objectives within the Highlands Regional Master Plan (RMP) envision the conversion of underutilized, previously disturbed lands into new economic contributors to the Region's fiscal health. As stated in the RMP, "Redevelopment will help to meet the Region's growth needs by optimizing the efficient use of previously settled areas with existing communities and available infrastructure, thus conserving natural resources." These formerly developed sites provide the base where economic activity may continue to flourish and regional growth needs may be accommodated.

Given that redevelopment is one of the major opportunities for sustainable economic development and smart growth in the Highlands Region, the proposed redevelopment project was reviewed for policies and objectives relevant to smart growth and sustainable economic development. The RMP calls for economic development that is "sustainable over time," and not dependent on "development of undeveloped lands." The Highlands Act calls for the RMP to "promote compatible...uses and opportunities within the framework of protecting the Highlands environment."

The subject proposal entails the installation of a solar array on a capped landfill. It represents the conversion of previously disturbed lands (formerly uncapped, unclosed landfill) into a green energy initiative. The RMP specifically encourages green energy redevelopment of brownfield sites as follows: "Objective 6M1b. Evaluate mechanisms for remedial activities that apply resource protection, enhancement, and restoration approaches that allow for a minimal redevelopment footprint, encourage "brownfields to greenfields" approaches, and include green energy and building concepts." In addition, the RMP recognizes the importance of the State Energy Master Plan in which solar energy generated via solar panels is strongly encouraged as one of the most sustainable means of generating energy. The Highlands Council through its RMP Air Quality Program encourages the use of renewable energies. However, the siting of such facilities must ensure that Highlands resources, including scenic viewsheds, are not impaired.

### 4.0 FINDINGS AND RECOMMENDATIONS

Council staff reviewed the application materials. Findings include:

- **Brownfield Requirement:** The NJDEP approved the Highlands Brownfield Designation as depicted on the plan titled "Former Fenimore Sanitary Landfill, Block 7404 Lot 1, Roxbury Township, Morris County, New Jersey" Sheet No. BD-1, dated July 27, 2011, last revised August 17, 2011. The applicant provided to the Highlands Council a copy of this plan and a copy of the August 18, 2011 NJDEP determination letter, thus satisfying this requirement.
- **Resource Assessment:** The installation of the photovoltaic panels on top of the constructed landfill cap would result in the encroachment of the 300-foot Highlands Open Waters buffers for off-site streams. However, it is recognized that the buffers in the project area are entirely disturbed (capped landfill) and that the photovoltaic project will have a *de minimis* impact on quality or integrity of the buffer area subsequent to landfill final closure. However, to the extent feasible, as a condition of this approval, establishment and maintenance of a vegetated buffer between the stream reach and the project area should be required. The Highlands Council GIS data indicate that some areas on the parcel outside of the designated Highlands Brownfield site are mapped as Critical Wildlife Habitat. No change is proposed to these areas.

- Smart Growth and Sustainable Economic Development:** The proposal is consistent with the RMP regarding redevelopment of contaminated sites, smart growth and sustainable economic development as the installation of a solar array on a capped landfill represents the conversion of previously disturbed lands (formerly uncapped, unclosed landfill) into a green energy initiative. Solar energy generated via solar panels is one of the most sustainable means of generating energy. The Highlands Council through its RMP Air Quality Program encourages the use of renewable energies.

The Highlands Act allows a waiver of any provision of a Highlands permitting review on a case-by-case basis for a redevelopment proposal, conditioned upon the finding by NJDEP that it meets the requirements of the narrative criteria described in Section 36 of the Act (N.J.S.A. 13:20-34). To assist NJDEP, the Council staff concludes that the proposed project meets the waiver criteria, which are addressed as follows:

Requirement	Staff Analysis
1) would have a de minimis impact on water resources and would not cause or contribute to a significant degradation of surface or ground waters;	There would be no new water/wastewater requirements. No expansion of a public water supply system is proposed, and no expansion of the existing sewer service area is proposed. As the capped landfill would already constitute impervious surface, the proposed project would not be adding new impervious surface and thus, no additional stormwater would be generated.
2) would cause minimal feasible interference with the natural functioning of animal, plant and other natural resources;	The capped landfill will feature no vegetation or natural resources. Installation of the proposed solar array would result in minimal interference with the natural functioning of animal, plant and other natural resources.
3) will result in minimum feasible alteration or impairment of the aquatic ecosystem;	The proposed project entails encroachment into a Highlands Open Waters buffer that will be in a completely disturbed condition (capped landfill). Stormwater regulations must be followed in the project design upon permitting (see response to #7).
4) will not jeopardize the continued existence of endangered animal or plant species;	See response to #2
5) is located or constructed as to neither endanger human life or property nor otherwise impair public health, safety and welfare;	The proposed Highlands Redevelopment Area is compatible with existing municipal zoning. A screening buffer is necessary to protect the local neighborhoods.
6) would result in minimal practicable degradation of unique or irreplaceable land types, historical or archaeological areas, and existing public scenic attributes; and	No resources of this type are known to be affected by the project.
7) meets all other applicable NJDEP standards, rules, and regulations and State laws.	Compliance with all remaining NJDEP standards will be addressed through the HPAA with redevelopment waiver permit process.

It is the Highlands Council staff's draft recommendation that the Highlands Council approve the proposed Highlands Redevelopment Area designation with the conditions that:

1. The encroachment into a Highlands Open Waters buffer shall be entirely within a previously disturbed area, which would not result in a net impact to the functional value of the buffer (in conformance with Policy 1D4) and therefore qualifies for a waiver. However, to the extent feasible, as a condition of this approval, establishment and maintenance of a vegetated buffer between the stream reach and the project area should be required;
2. The remainder of the property outside of the proposed Highlands Redevelopment Area shall be protected through a conservation restriction, specifically authorizing ecological restoration and maintenance, with recognition of any existing utility structures such as storm sewers and drainage basins that may periodically need maintenance or replacement;
3. 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. Berms may be used to supplement the vegetated buffer, but structures such as fences shall not substitute for the vegetated buffer. The applicant shall provide a site plan with a viewshed screening plan for review and approval by the Highlands Council prior to the submission of an application for an HPAA; and
4. 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.

#### Attachments

- Consistency Determination