



State of New Jersey

Highlands Water Protection and Planning Council
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

JIM RILEE
Chairman

EILEEN SWAN
Executive Director

October 17, 2011

Richard Bernardi
Strategic Environmental Partners, L.L.C.
P.O. Box 356
Clarksburg, NJ 08510

Re: Highlands Redevelopment Area Designation
Former Fenimore Sanitary Landfill
Block 7404 Lot 1
Township of Roxbury, Morris County

Dear Mr. Bernardi:

On behalf of the Highlands Water Protection and Planning Council (Highlands Council), I am pleased to provide you with a copy of the Highlands Council's resolution of October 13, 2011, approving the Highlands Redevelopment Area Designation for the Former Fenimore Sanitary Landfill, with supporting materials. This approval is a necessary prerequisite for a Highlands Preservation Area Approval (HPAA) with Redevelopment Waiver from the New Jersey Department of Environmental Protection (NJDEP). Please note that this resolution is subject to a Governor's review period.

The Highlands Council staff has also prepared a matrix of checklist items regarding HPAA with Redevelopment Waiver submittal requirements, which provides advisory information to both the applicant and the NJDEP. The matrix notes those items we feel have already been addressed by the Highlands Council review, and those remaining items that need to be provided to the NJDEP by Strategic Environmental Partners, L.L.C. Please find enclosed the matrix for the Former Fenimore Sanitary Landfill redevelopment project.

While we will be forwarding the attached matrix directly to NJDEP, we recommend that you also submit a copy as part of your HPAA application package. Please be advised that the matrix is provided for advisory purposes only; it is recognized that NJDEP may require additional information from you as part of their review of the HPAA application. It is our expectation that

this matrix will assist the NJDEP staff in their review of your HPAA application package, and will facilitate an efficient review by identifying required application items that have already been fulfilled by the analysis prepared by the Highlands Council. As mentioned at the Highlands Council meeting, please feel free to contact me if Highlands Council representation is desired for any meeting with NJDEP regarding this issue. Please be advised that in accordance with the Highlands Act, the Highlands Council's resolution of this matter shall have no force and effect until the end of the Governor's ten business day review period after receipt of the Council's meeting minutes.

If you have my questions, please do not hesitate to contact me directly or you may also contact my Executive Assistant, Annette Tagliareni, at (908) 879-6737 ext. 111, or you may reach her via e-mail at annette.tagliareni@highlands.state.nj.us.

Yours sincerely,



Eileen Swan
Executive Director

Enclosures -

- Highlands Council Resolution
- Consistency Determination
- Staff Recommendation Report
- Public Comment Summary and Responses
- Highlands Preservation Area Approval Application Checklist Items

c: Jim Rilee, Mayor of Roxbury Township (no enclosures)
Russell Stern, Director of Planning, Roxbury Township
Thomas DeMichele, Project Manager (Matrix New World Engineering, Inc.)

RESOLUTION 2011-35
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
DESIGNATION OF HIGHLANDS REDEVELOPMENT AREA
FOR THE FORMER FENIMORE SANITARY LANDFILL, BLOCK 7404, LOT 1,
ROXBURY TOWNSHIP, MORRIS COUNTY

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, Section 9 and 11 of the Highlands Act, N.J.S.A. 13:20-9.b. and N.J.S.A. 13:20-11.a.(6)(h), specifies that in preparing the Highlands Regional Master Plan (RMP), the Highlands Council may, in conjunction with municipalities in the Preservation Area, identify areas in which redevelopment shall be encouraged and shall identify areas appropriate for redevelopment in order to promote the economic well-being of the municipality, provided that the redevelopment conforms with the goals of the Preservation Area and the Highlands Act, with the rules and regulations adopted by the Department of Environmental Protection (NJDEP), and any area so identified for possible redevelopment shall be either a brownfield site designated by the NJDEP or a site at which at least 70% of the area thereof is covered with impervious surface; and

WHEREAS, Section 35 of the Highlands Act, N.J.S.A. 13:20-33.b.(2), authorized NJDEP to grant a waiver of any provision of a Highlands permitting review on a case-by-case basis for redevelopment in certain previously developed areas in the Preservation Areas identified by the Highlands Council pursuant to Section 9.b. or Section 11.a.(6)(h); and

WHEREAS, the NJDEP had adopted rules at N.J.A.C. 7:38-1.1 et seq. (Highlands Rules) governing the NJDEP's review of projects in the Highlands Region; and

WHEREAS, the Highlands Rules, at N.J.A.C. 7:38-6.4, specifies that as provided for in Highlands Act, the NJDEP may waive any provision of the rules for redevelopment in certain previously developed areas in the Preservation Area identified by the Highlands Council pursuant to the Highlands Act; and

WHEREAS, the Highlands Council prepared and adopted Procedures for Highlands Redevelopment Areas Designation (Procedures) by Resolution 2008-43 dated October 30, 2008; and

WHEREAS, the Applicant, Strategic Environmental Partners, L.L.C., submitted a Petition for Highlands Redevelopment Area Determination for Roxbury, Morris County, Block 7404 Lot 1; and

WHEREAS, the Highlands Council released the Highlands Council Staff Draft Recommendation Report dated September 23, 2011 for public comment; and

WHEREAS, the Highlands Council held a public comment period concerning the proposed Highlands Redevelopment Area Designation commencing September 23, 2011 and ending October 7, 2011; and

WHEREAS, the Highlands Council duly considered the Draft Recommendation Report and all public comments on the proposed Highlands Redevelopment Area Designation; and

RESOLUTION 2011-35

NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL DESIGNATION OF HIGHLANDS REDEVELOPMENT AREA FOR FORMER FENIMORE SANITARY LANDFILL, BLOCK 7404, LOT 1, ROXBURY TOWNSHIP, MORRIS COUNTY

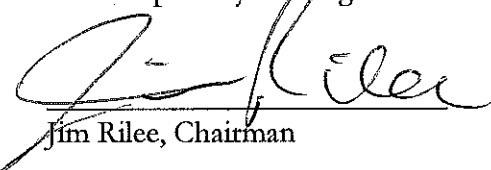
WHEREAS, after Highlands Council staff review, staff recommended that the Highlands Council approve the proposed Highlands Redevelopment Area Designation with conditions set forth in the Highlands Council Staff Final Recommendation Report dated October 11, 2011; and

WHEREAS, pursuant to N.J.S.A. 13:20-5.j, no action authorized by the Highlands Council shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Council has been delivered to the Governor for review, unless prior to expiration of the review period the Governor shall approve same, in which case the action shall become effective upon such approval.

NOW, THEREFORE, BE IT RESOLVED, the Highlands Council hereby approves of the former Fenimore Sanitary Landfill, Block 7404, Lot 1, Roxbury Township, Morris County Highlands Redevelopment Area Designation with conditions as set forth in the Final Recommendation Report and authorizes the Executive Director to prepare a document so informing the NJDEP of the Highlands Redevelopment Area Designation.

CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Highlands Council at its meeting held on the 13th day of October, 2011.


 Jim Rilee, Chairman

| Vote of 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 Schrier | | | ✓ | | | |
| Councilmember Visioli | | | | | | ✓ |
| Councilmember Walton | | | ✓ | | | |
| Chairman Rilee | | | | | ✓ | |



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HIGHLANDS RMP CONSISTENCY DETERMINATION REVIEW

| PROJECT INFORMATION | | |
|--|---|-------------------------------|
| Project Name: Former Fenimore Sanitary Landfill Highlands Redevelopment Area | | Date: October 14, 2011 |
| Name of Applicant: Strategic Environmental Partners, L.L.C. | | |
| Areawide WQMP: N/A | WMP: N/A | |
| Municipality: Roxbury Township | County: Morris County | |
| Exempt project? No | Project specific amendment? No | WMP review? No |
| NJDEP Activity #: NJDEP Facility ID # 132518 | HPAA#: To follow designation | |
| Lot and Block, if applicable: Block 7404 Lot 1 | | |
| Sewer Service Area/WWTP Facility: N/A | | |
| Sewer Service Area/WWTP Facility: New <input type="checkbox"/> Existing <input type="checkbox"/> <i>If existing provide the following:</i> | | |
| Proposed Change in Service Area or Wastewater Flow?: No | | |
| NJPDES #: | Permit Discharge (MGD): | |
| Type of Discharge: GW <input type="checkbox"/> SW <input type="checkbox"/> | Total Proposed Service Area (acres): No change | |
| Total Existing Service Area (acres): No change | | |
| <p>Description of Project: 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.</p> <p>The proposed solar energy project will be preceded by closure of the landfill, which did not occur in 1979 when operations ceased. The closure of the landfill qualifies for Exemption #15 under the Highlands Act and is not addressed by this Consistency Determination. Following the proper closure of the landfill in various phases, 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 up to approximately 50 acres (almost the entire area of the Highlands Brownfield). This Highlands Council Consistency Determination 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). Note that the NJDEP's Administrative Consent Order and Landfill Closure Plan Approval (both issued on October 6, 2011) 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 Highlands Preservation Area Approval</p> | | |

(HPAA), which will have to address how construction will 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 verification that the landfill has been properly closed and capped would occur through NJDEP Landfill Closure approval and the HPAA process. Redevelopment activities in any area so designated by the Highlands Council as a Highlands Redevelopment Area and subject to any approvals required by the municipality pursuant to MLUL 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 Consistency Determination. 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 brownfield) are considered.

PRESERVATION AND PLANNING AREAS AND LAND USE CAPABILITY ZONES

Project Area located in which Highlands Act Area? (Check all that apply):

Preservation Area **If yes, percentage?** 100 % **Planning Area** **If yes, percentage?** %

Project Area within which Land Use Capability Zone or Sub-Zone? (check all that apply):

Protection Zone Conservation Zone Existing Community Zone
 Conservation – Environmentally Constrained Sub-Zone Existing Community – Environmentally Constrained Sub-Zone
 Lake Community Sub-Zone Wildlife Management Sub-Zone

The review below is organized by Regional Master Plan Goals, Policies and Objectives for each resource and smart growth category; C stands for Consistent, I for Inconsistent, and N/A means the goal, policy, or objective is not applicable. Project specific reviews are based on the application of these Policies and Objectives to the project site, and do not require the adoption of municipal ordinances. Documents reviewed for this analysis include all appropriate documents submitted to the NJDEP, Highlands Council GIS data and technical reports, and documents related to the State Planning Commission Plan Endorsement process where applicable.

PART 1 NATURAL RESOURCES

SUBPART A FOREST RESOURCES

Project Area within Forest Resource Area? Yes

If yes to above, is there Encroachment into a Forest within Forest Resource Area? No

Forest Integrity Value (check one): High Medium Low

Comments: The capped landfill will not feature forested areas. Construction of the photovoltaic panels on top of the constructed landfill cap will not affect forested areas. As the remainder of the property outside of the proposed Highlands Redevelopment Area (other than disturbance required by the remedial actions) shall be protected through a conservation restriction, forest resources located outside of the Highlands Redevelopment Area shall be protected. Any impacts to forested areas for access to transmission lines and stream relocation outside of the delineated Brownfield will require mitigation to be approved by Highlands Council through the HPAA process.

SUBPART B HIGHLANDS OPEN WATERS AND RIPARIAN AREAS

Project Area includes Highlands Open Waters Buffer? Yes

Highlands Open Waters Affected: Streams Lakes & Ponds Wetlands

Highlands Open Waters in Preservation Area: Yes

Watershed Value (Check one): High Medium Low

Area includes Riparian Area? No *If No, disregard remainder of Riparian Area checklist.*

Specific Riparian Area Features (Check all that apply): Flood Prone Areas Lakes & Ponds

Riparian Soils Wetlands Wildlife Corridor Streams

Riparian Integrity Value (Check one per HUC14): High Medium Low HUC14:
 High Medium Low HUC14:
 High Medium Low HUC14:

Regional Master Plan Goals, Policies, and Objectives:

| | C | I | N/A |
|--|--------------------------|-------------------------------------|--------------------------|
| Policy 1D4: Highlands Open Waters shall include a protection buffer of 300 feet from the edge of the discernable bank of the Highlands Open Waters feature, or from the centerline where no discernable bank exists. With respect to wetlands and other | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

| | | | |
|---|-------------------------------------|-------------------------------------|-------------------------------------|
| <p>Highlands Open Waters features (e.g., seeps, springs, etc.), the feature shall include a protection buffer of 300 feet from the delineated Letter of Interpretation (LOI) line issued by the NJDEP for wetlands, or from a field-delineated boundary for other features. In areas where existing development or land uses within the protection buffers have reduced or impaired the functional values of the buffers, the Council will seek opportunities to restore the buffer and its functions. Any proposed disturbance shall, through local development review and Highlands Project Review, comply with Highlands Open Waters buffer standards. The protection buffer width for Category 2 streams in the Planning Area may be modified through a Stream Corridor Protection/Restoration Plan, as specified in Objective 1D4i. In approved Redevelopment Areas, the Council may, at its discretion, modify the required buffer, upon a showing of no alternatives, no impact to the functional value of the buffer, and provision of alternative approaches to enhancing or protecting Highlands Open Waters and resources of the buffer area.</p> | | | |
| <p>Objective 1D4a: Require that all applications for approval through local development review and Highlands Project Review include the identification and mapping of Highlands Open Waters.</p> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <p>Objective 1D4b: Preservation Area buffers for Highlands Open Waters shall comply with the Highlands Preservation Area rules at N.J.A.C. 7:38, which provide that all major Highlands developments are prohibited within Highlands Open Waters and its adjacent 300 foot buffer in the Preservation Area except for linear development, which may be permitted provided that there is no feasible alternative for the linear development outside Highlands Open Waters or its buffer. Structures or other land improvements existing within Highlands Open Waters buffer in the Preservation Area on August 10, 2004 may remain, provided that the area of disturbance is not increased other than through a HPAA. For purposes of this Objective when considering land for conversion to non-agricultural land uses, historic or current agricultural land uses shall not be considered "land improvements," "development," "land disturbances," or "land uses."</p> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>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 Wetland Rules), and with any applicable requirements of a Regional Stormwater Plan adopted pursuant to N.J.A.C. 7:8 (Stormwater Management Rules).</p> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <p>Objective 1D4d: Structures or other land improvements existing within a Highlands Open Waters buffer of the Planning Area on August 10, 2004 may remain, provided that the area of disturbance shall not be increased unless approved through local development review or Highlands Project Review in compliance with RMP policies and objectives. For purposes of this Objective when considering land for conversion to non-agricultural land uses, historic or current agricultural land uses shall not be considered "land improvements," "development," "land disturbances," or "land uses."</p> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>Objective 1D4e: In the Protection and Conservation Zones of the Planning Area, proposed disturbances of Highlands Open Waters buffers shall only occur in previously disturbed areas, unless a waiver is granted by the Highlands Council under Policy 7G2. For purposes of this Objective when considering land for conversion to non-agricultural land uses, historic or current agricultural land uses shall not be considered "land improvements," "development," "land disturbances," or "land uses." Such proposed disturbances must demonstrate full utilization of the following performance standards in the listed order, to demonstrate the necessity of an encroachment into Highlands Open Waters buffers: 1) avoid the disturbance of Highlands Open Waters buffers; 2) minimize impacts to Highlands Open Waters buffers; and 3) mitigate all adverse impacts to Highlands Open Waters buffers so that there is no net loss of the functional value of the buffer, in compliance with Objective 1D4h. Minimization and mitigation opportunities shall be considered only upon a clear and convincing demonstration by the applicant that the protection buffer cannot be avoided and in no case shall the remaining buffer be reduced to less than 150 feet from the edge of Highlands Open Waters, unless a waiver is granted by the Highlands Council under Policy 7G2 and the proposed disturbance complies with Objective 1D4c.</p> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>Objective 1D4f: In the Existing Community Zone of the Planning Area, proposed disturbances of Highlands Open Waters buffers shall only occur in previously disturbed areas, unless a waiver is granted by the Highlands Council under Policy 7G2 and the proposed disturbance complies with Objective 1D4c. For purposes of this Objective when considering land for conversion to non-agricultural land uses, historic or current agricultural land uses shall not be considered "land improvements," "development," "land disturbances," or "land uses." Such disturbances shall employ performance standards such that all proposed disturbances of Highlands Open Waters buffers shall employ Low Impact Development Best Management Practices to mitigate all adverse modification to Highlands Open Waters buffers so that there is no net loss of the functional value of the buffer, in compliance with Objective 1D4h.</p> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>Objective 1D4i: Develop through Plan Conformance and implement stream corridor or subwatershed-based Stream Corridor Protection/Restoration Plans which shall include Steps 1, 2, and 3, and may include Steps 4 and 5: 1. Identify areas where existing development, land disturbances, or land uses are within Highlands Open Waters buffers have removed or substantially impaired natural vegetation communities, and have significantly reduced or impaired the functional values of Highlands Open Waters buffers. For purposes of this Objective when considering land for conversion to non-agricultural land uses, historic or current agricultural land uses shall not be considered "land improvements," "development," "land disturbances," or "land uses"; 2. Identify and require opportunities for restoration of areas identified in Step 1 as part of mitigation requirements under a Highlands Act waiver or Objectives 1D4e and 1D4f, and public or nongovernmental restoration/stabilization projects; 3. Identify the extent of stream corridor features that are critical to supporting the functions of a healthy Highlands Open Waters buffer and that extend beyond the buffers required by Objectives 1D4b and 1D4c. The 300 foot buffer in these areas may be expanded to be most protective of these features which may include, but are not limited to, Critical Habitat, pollutant source areas identified through scientific techniques, and steep slopes; 4. Where Highlands Open Waters buffers include areas identified in Step 1, regarding Category 2 surface waters in the Planning Area only, the Stream Corridor Protection/Restoration Plan may identify where, based on scientific analysis of site-specific conditions (e.g., topography, vegetation cover type, habitat, soil type, upstream land uses and pollution inputs, width of floodplain, rate and volume of run-off), a buffer of less than the full 300 feet (but including the undisturbed buffer area at a minimum) is sufficient to maintain or improve the protection of Highlands Open Waters and Riparian Areas. The plan must identify alternative buffers that provide functional buffer values at least equivalent to existing conditions and are no less than 150 feet or no less than the extent allowed in State or municipal regulation (including Objectives 1D4b and 1D4c), whichever is greater. Further, the plan shall include a functional value assessment to ensure that there is no net loss in the overall functional value of the subwatershed's</p> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

| | | | |
|--|-------------------------------------|--------------------------|-------------------------------------|
| stream buffers. Buffers established through this process shall be determined based on site conditions rather than fixed distances, reflecting findings of the scientific analysis, and shall be used in the site design and development review process regarding determinations of restoration, continued use, or increased use of the disturbed buffer area. Buffer averaging for the purpose of accommodating development proposals is deemed not to meet the requirements of this provision; and 5. Where a proposed Highlands Redevelopment Area would not meet, in full, Objectives 1D4b through 1D4h but affects an undisturbed buffer area determined to not be necessary for the protection of the functional values for Highlands Open Waters buffer (as determined through scientific analysis of site-specific conditions), modification of the undisturbed buffer may be allowed to no less than the extent allowed in State or municipal regulation. However the Council shall first determine that there is no alternative to the proposed reduction of the buffer, and require a showing of no impact to the functional values of the buffer and provision of alternative approaches to enhancing or protecting the Highlands Open Waters and resources of the buffer area. Restoration or enhancement of buffer functional values shall be provided on-site or within the same stream reach to achieve a net improvement of existing buffer functional values. | | | |
| Objective 1D4j: The Highlands Council may require on a case-by-case basis, through Highlands Project Review, an expansion of the 300 foot buffer to protect the habitat of a water or wetlands-dependant rare, threatened or endangered species, to the minimum expansion necessary to achieve protection of that species. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Policy 1D5: Protect the integrity of the Riparian Areas through the application of RMP standards during local development review and Highlands Project Review. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Objective 1D5a: Require that all applications for approval through local development review and Highlands Project Review include the identification and mapping of Highlands Riparian Areas, including those identified by the Highlands Council and by site-specific analysis. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Objective 1D5b: Limit disturbance of existing natural vegetation or increases in impervious area within High and Moderate Integrity Riparian Areas in any Land Use Capability Zone to the minimum alteration feasible in areas beyond Highlands Open Waters buffer requirements; protect the water quality of adjacent Highlands Open Waters; and maintain or restore habitat value of the Riparian Area. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Objective 1D5c: Prohibit modifications to Riparian Areas in the Protection Zone except where a waiver is approved by the NJDEP or the Highlands Council under Policy 7G1 or 7G2. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Objective 1D5d: Restrict modifications to Riparian Areas in the Existing Community Zone, other than those addressed by Objective 1D5b, that would alter or be detrimental to the water quality and habitat value of a Riparian Area. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Objective 1D5e: Implement Low Impact Development Best Management Practices for any development activity proposed within a Riparian Area, which minimize both alterations of natural vegetation and increases in impervious area, in compliance with Policies 6N3 and 6N4 and provide for mitigation through restoration of impaired Riparian Areas in the same HUC14 subwatershed. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 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). | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Objective 1D5g: Require identification and implementation of opportunities where the restoration and enhancement of previously impaired Riparian Areas are feasible and appropriate as mitigation to any allowable modification to Riparian Area requirements. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>Comments: There are two unnamed tributaries that traverse the property. The two tributaries converge outside and east of the landfill forming a tributary of Ledgewood Brook. Ledgewood Brook is classified by the State of New Jersey as a FW2 – Trout Production (IP) stream (Category 1). 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 no effect on 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. Management of stormwater shall be addressed through the HPAAs with redevelopment waiver permit process.</p> <p>A component of the remediation activities is the re-routing of the stream that exists within the southeastern portion of the parcel. The stream will be relocated to the south, but still on the parcel. To prevent bank erosion from stormwater runoff of high quantity and volume, rip-rap will be utilized to stabilize the stream bank. To minimize potential impacts from the solar array on stream 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 will require Highlands Council approval and shall be addressed through the HPAAs with redevelopment waiver permit process. The above conditions shall be addressed through a minimum 50-foot vegetated buffer consisting of layered woody and herbaceous species, except the buffer may be smaller where it would impede the proper closure of the landfill under NJDEP's Administrative Consent Order and Landfill Closure Plan Approval.</p> | | | |

| SUBPART C STEEP SLOPES | | |
|--|--|-------------------------------------|
| Project Area includes: Steep Slopes >20% in Any Areas (severely constrained)? Yes | | |
| Steep Slopes >15% in Forested Areas (severely constrained)? No | | |
| Steep Slopes >10% in Riparian Area in Undeveloped Lands (moderately constrained)? No | | |
| <p>Comments: As part of remediation activities the landfill will be graded and capped. Construction of the photovoltaic panels on top of the constructed landfill cap is not expected to affect steep slopes. However, the northeastern border of the constructed landfill cap will be sloping and is adjacent to a steep ridge. As a condition of this approval, the applicant must demonstrate that the solar panels can be effectively constructed to be stable and maintained in this portion of the landfill cap, consistent with NJDEP's Administrative Consent Order and the Landfill Closure Plan or, that the placement of solar panels in this portion of the landfill will be avoided. This condition shall require Highlands Council approval and be addressed through the HPAA with redevelopment waiver permit process.</p> | | |
| SUBPART D CRITICAL HABITAT | | |
| Project Area includes: | | |
| Critical Wildlife Habitat? No | Significant Natural Area(s)? No | Vernal Pool(s) +1,000 ft? No |
| <p>Comments: The capped landfill will not feature Critical Wildlife Habitat. Construction of the photovoltaic panels on top of the constructed landfill cap will not affect Critical Wildlife Habitat. 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. As the remainder of the property outside of the proposed Highlands Redevelopment Area shall be protected through a conservation restriction, Critical Wildlife Habitat located outside of the Highlands Redevelopment Area shall be protected. Any disturbances for access to transmission lines will require mitigation to be approved by Highlands Council through HPAA process.</p> | | |
| SUBPART E LAND PRESERVATION AND STEWARDSHIP | | |
| Project Area within Conservation Priority Area? Yes If yes, percentage? 20 % | | |
| Project Area within Special Environmental Zone? No If yes, identify properties (B/L): | | |
| Project Area includes preserved land? No If yes, identify properties (B/L): | | |
| <p>Comments: Portions of the designated Highlands Brownfield Area are mapped as Conservation Priority Area – Moderate. The property does not lie within a Special Environmental Zone and it does not include preserved land. No construction activity will occur outside the Highlands Brownfield Area. The remainder of the property outside of the proposed Highlands Redevelopment Area shall be protected through a conservation restriction. A management plan shall be developed and implemented by the applicant to protect Highlands resources within the conservation restriction lands. It shall address especially the control of invasive species, the introduction or growth of which may be encouraged through any necessary disturbance, such as disturbances for access to transmission lines.</p> | | |
| SUBPART F CARBONATE ROCK (KARST) TOPOGRAPHY | | |
| Project Area within or contributing to Carbonate Rock Area? No | | |
| Comments: Based on review of the Highlands Council GIS data, the property is not located in a Carbonate Rock Area. | | |
| SUBPART G LAKE MANAGEMENT | | |
| Project Area within Lake Management Area? No <i>If No, disregard remainder of Lake Management checklist.</i> | | |
| If yes, which Tier: Shoreland Protection Tier No | Water Quality Management Tier No | |
| Scenic Resources Tier No | Lake Watershed Tier No | |
| Project Area within Lake Community Sub-Zone? No | | |
| If yes, which Tier: Shoreland Protection Tier No | Water Quality Management Tier No | |
| Scenic Resources Tier No | Lake Watershed Tier No | |
| Comments: The parcel does not lie within a Lake Management Area or a Lake Community Sub-Zone. | | |

| | |
|---|--|
| PART 2 WATER RESOURCES AND WATER UTILITIES | |
| SUBPART A WATER RESOURCES AVAILABILITY | |
| Comments: The proposed project is the placement of photovoltaic panels on top of the constructed landfill cap. There would be no new water/wastewater requirements. | |
| SUBPART B PROTECTION OF WATER RESOURCES QUANTITY | |
| Project Area includes Prime Ground Water Recharge Area? No | |
| Comments: The capped landfill will not feature Prime Ground Water Recharge Areas. Construction of the photovoltaic panels on top of the constructed landfill cap will not affect any Prime Ground Water Recharge Area. The Highlands Council GIS data indicates that there is a small area of Prime Ground Water Recharge Area at the southeastern tip of the property but no change is proposed to this area. The remainder of the property outside of the proposed Highlands Redevelopment Area shall be protected through a conservation restriction. | |
| SUBPART C WATER QUALITY | |
| Project Area within Wellhead Protection Area? No | |
| Comments: The capped landfill is not within any Wellhead Protection Areas. Construction of the photovoltaic panels on top of the constructed landfill cap will not affect any Wellhead Protection Areas. | |
| SUBPART D SUSTAINABLE DEVELOPMENT AND WATER RESOURCES | |
| WATER UTILITY | |
| Comments: The proposed project is the placement of photovoltaic panels on top of the constructed landfill cap. There would be no new water/wastewater requirements. | |
| WASTEWATER UTILITY | |
| Comments: The proposed project is the placement of photovoltaic panels on top of the constructed landfill cap. There would be no new water/wastewater requirements. | |
| SEPTIC SYSTEM YIELD | |
| Comments: The proposed project is the placement of photovoltaic panels on top of the constructed landfill cap. There would be no septic system requirement. | |
| PART 3 AGRICULTURAL RESOURCES | |
| Area within Agricultural Resource Area? No If yes, percentage? % | Area within Agricultural Priority Area? No If yes, percentage? % |
| Project Area includes preserved farmland? No If yes, identify properties (B/L): | |
| Affects Farm Unit >250 acres? No | Includes Important Farmland Soils? No |
| Agricultural Uses? No | |
| Comments: There are no Agricultural Resource Areas within the project area, and the Agricultural Resources policies and objectives are not applicable to the proposed project. | |
| PART 4 HISTORIC, CULTURAL, ARCHAEOLOGICAL, AND SCENIC RESOURCES | |
| Presence of Resources: No | Highlands Historic District Polygons Absence |
| Highlands Historic Properties Polygons Absence | Highlands Historic Property Points Absence |
| Archaeological Grids Absence | Highlands Scenic Resource Inventory Absence |
| Comments: There are no Historic, Cultural, Archaeological, and Scenic Resources within the property, and those relevant policies and objectives are not applicable to the proposed project. However, scenic viewsheds from adjacent public roads and private development may be negatively affected, and therefore a dense vegetated buffer shall be preserved or created by the applicant to protect against such scenic impairment. 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). As a condition of this approval, the solar array shall be screened from the viewshed of adjacent public roads and private development through a minimum 75 feet of either | |

dense vegetated cover or the construction of an earthen berm, which shall be seeded and planted with native herbaceous species. This area is included within the Highlands Redevelopment Area specifically to allow for potential construction of a berm; otherwise the visual buffer area would be excluded. Note that the Landfill Closure Plan Approval allows for the use of soil/vegetative cover, which should be used to mitigate damage to viewsheds. The applicant shall provide a screening plan for review and approval by the Highlands Council prior to any solar project work in the vicinity of Mountain Road and the intersection of Lookout Drive and Vanover Drive. The Screening Plan shall provide screening of the solar panels from all public roads and private residences in the area to the fullest extent possible.

PART 5 TRANSPORTATION

Project supports local transportation/transit infrastructure? No

Comments: The project does not include or require any road improvements.

PART 6 FUTURE LAND USE

SUBPART A LAND USE CAPABILITY ZONES

Project Area within which Land Use Capability Zone or Sub-Zone? (check all that apply):

Protection Zone Conservation Zone Existing Community Zone
 Conservation – Environmentally Constrained Sub-Zone Existing Community – Environmentally Constrained Sub-Zone
 Lake Community Sub-Zone Wildlife Management Sub-Zone

Comments: The designated Highlands Brownfield site is located in the Protection Zone (the southeastern end of the parcel outside of the designated Highlands Brownfield site is in the Existing Community Environmentally Constrained Sub-Zone.) The placement of photovoltaic panels on top of the constructed landfill cap would not adversely affect natural resources. Management of stormwater shall be addressed through the HPAA with redevelopment waiver permit process, to be consistent with Policy 2G5 and 6N2.

SUBPART C REGIONAL GUIDANCE FOR DEVELOPMENT AND REDEVELOPMENT

| Regional Master Plan Goals, Policies, and Objectives: (it is important to note the policy regarding discretionary growth - Policy 6H7 Provisions and standards relating to regional growth activities which increase the intensity of development shall be discretionary for conforming municipalities and counties): | C | I | N/A |
|--|-------------------------------------|--------------------------|-------------------------------------|
| Policy 6H1: To protect, restore, or enhance sensitive environmental resources of the Highlands Region, including but not limited to Forests, Critical Habitat, Highlands Open Waters and their buffers, Riparian Areas, Steep Slopes, Prime Ground Water Recharge Areas, Wellhead Protection Areas, and Agricultural Resource Areas. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Objective 6H1b: Prevent the extension or creation of water and wastewater utility services in the Protection Zone, Conservation Zone and Environmentally Constrained Sub-Zones of the Planning Area, unless they meet the requirements of Policy 2J4 with Objectives 2J4a through 2J4d, and Policy 2K3 with Objectives 2K3a through 2K3e, and will maximize the protection of agricultural and environmentally sensitive resources. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Objective 6H1d: Cluster and conservation design development plans and regulations shall consider existing community character, incorporate smart growth design principles, and require Low Impact Development including but not limited to: locating development adjacent to existing infrastructure such as water, wastewater, transportation, and public facilities to limit the degree of new impervious surface, and permitting smaller residential lots in order to incorporate community open space and existing natural resources into the design. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Policy 6H3: To require conforming municipalities to include site development programs, such as clustering and lot averaging, to protect natural and agriculture resources. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Policy 6H6: To integrate public parks and green spaces into development and redevelopment projects and ensure restoration of impaired natural resources to the extent required by law, at a minimum, and where feasible to a greater extent to maximize long term value of the project. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Policy 6H7: Provisions and standards relating to regional growth activities which increase the intensity of development shall be discretionary for conforming municipalities and counties. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Policy 6H8: Regional growth, where accepted through local planning and regulations, should identify opportunities to maximize land use intensity while protecting natural features and community character. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Objective 6H8a: Development and redevelopment initiatives shall encourage the use of Highlands Development Credits as a means to enhance the existing or adjacent community while protecting local and regional natural resources. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Objective 6H8b: Preparation and implementation of standards ensuring that development protects environmentally sensitive resources in all Land Use Capability Zones and Sub-Zones. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Policy 6H9: To incorporate smart growth principles and green building design and technology in development and redevelopment initiatives. | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Comments: Management of stormwater from the project area shall be addressed through the HPAA with

redevelopment waiver permitting process. Any disturbance and construction activities should be managed to minimize impacts to the surrounding environment. 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. Screening of the views into the site is necessary to maintain the character of the surrounding residential community, which will benefit from landfill closure. The proposed project is the placement of photovoltaic panels, which has been defined in the Municipal Land Use Law as an inherently beneficial use.

SUBPART D REDEVELOPMENT

Locally Designated Redevelopment Area? No **If yes, name of site(s):**

Highlands Designated Redevelopment Area? No **If yes, name of site(s):**

Highlands Contaminated Site Inventory Tier 1 or Tier 2 Site(s)? No **If yes, name of site(s):**

Regional Master Plan Goals, Policies, and Objectives:

| | <u>C</u> | <u>I</u> | <u>N/A</u> |
|--|-------------------------------------|--------------------------|-------------------------------------|
| Policy 6J1: To encourage Preservation Area redevelopment of sites with 70% or greater impervious surfaces or a brownfield in areas designated by the Highlands Council as Highlands Redevelopment Areas in accordance with N.J.A.C 7:38-6.6 and 6.7. | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Policy 6J2: To encourage redevelopment in the Existing Community Zone in the Planning Area of brownfields, grayfields, and other previously developed areas that have adequate water, wastewater, transportation capacity, and are appropriate for increased land use intensity or conversion to greenfields, as approved through Plan Conformance or the Highlands Redevelopment Area Designation process. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Policy 6J3: To encourage redevelopment in the Conservation and Protection Zones in the Planning Area of brownfields and grayfields that have adequate water, wastewater, transportation capacity, and are appropriate for increased land use intensity or conversion to greenfields, as approved through Plan Conformance or the Highlands Redevelopment Area Designation process. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Policy 6L1: To require that conforming municipalities identify any development, redevelopment, and brownfield opportunities in the local land use plan element of their master plans, as appropriate. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Policy 6L2: To require that conforming municipalities amend development regulations and zoning to enable project implementation of local redevelopment initiatives that are identified under Policy 6L1 and locally endorsed through Plan Conformance. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Objective 6L2a: Municipal review of local redevelopment projects consistent with RMP smart growth and Low Impact Development policies and objectives. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 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. | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Comments: This proposal directly addresses the purpose of Policy 6J1 as it is the redevelopment of a brownfield site. It also directly addresses Objective 6M1b in that the landfill is being remediated and includes a green energy initiative. Management of stormwater from the project area shall be addressed through the HPAA with redevelopment waiver permitting process. Any disturbance and construction activities should be managed to minimize impacts to the surrounding environment.

SUBPART F SMART GROWTH

Is the municipality involved in the State Planning Commission Plan Endorsement (PE) process? No

If yes, status of PE process:

Does the project area include a State Planning Commission designated or expired center? No

Comments: Management of stormwater shall be addressed through the HPAA with redevelopment waiver permit process. Any construction activities should be managed to minimize impacts to the surrounding environment. As a condition of this approval, during the HPAA with redevelopment waiver permit process, the applicant must demonstrate that the solar panels can be constructed effectively while maintaining the integrity of the proposed stormwater management features (e.g., the proposed forebay swales) and be consistent with the Landfill Closure Plan.

SUBPART G HOUSING AND COMMUNITY FACILITIES

Does the project area include an affordable housing site? No **3rd Round Status:** NA

Comments: N/A – The proposed project is the placement of photovoltaic panels on top of the constructed landfill cap.

| PART 7 LANDOWNER EQUITY | | | |
|--|-------------------------------------|--------------------------|-------------------------------------|
| Is the project exempt from the Highlands Act? No | | | |
| Does the project support the use of Highlands Development Credits? No | | | |
| Policy 7G1: For the Preservation Area, coordinate with NJDEP during Highlands permit review for any major Highlands development including the review of waivers on a case-by-case basis: 1) if determined to be necessary in order to protect public health and safety; 2) for redevelopment in certain previously developed areas as identified by the Highlands Council, or 3) in order to avoid the taking of property without just compensation. | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Policy 7G2: For both the Preservation Area and the Planning Area, a waiver may be issued by the Highlands Council on a case-by-case basis from the requirements of the RMP 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: 1) if determined to be necessary in order to protect public health and safety; 2) for redevelopment in certain previously developed areas as identified by the Highlands Council, or 3) in order to avoid the taking of property without just compensation. Any waiver issued shall be conditioned upon a determination that the proposed development meets the requirements prescribed for a finding as listed in Section 36.a of the Highlands Act to the maximum extent possible. | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Policy 7G3: For both the Preservation Area and the Planning Area during local development review, any variance or exception issued shall be conditioned upon a written determination, specifically included in an approving resolution, that the proposed development meets the requirements prescribed for a finding as listed in Section 36.a of the Highlands Act to the maximum extent possible. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: The applicant is applying to the Highlands Council for a Highlands Redevelopment Area designation in a previously developed area (landfill), and will then seek an HPAA with redevelopment waiver from NJDEP, consistent with Policies 7G1 and 7G2. Impacts on adjacent properties should be minimized through the use of a dense vegetated buffer. | | | |
| PART 8 SUSTAINABLE ECONOMIC DEVELOPMENT | | | |
| Regional Master Plan Goals, Policies, and Objectives: | C | I | N/A |
| Policy 8A1: To maintain and expand the existing job and economic base by promoting appropriate, sustainable, and environmentally compatible economic development throughout the Highlands Region. | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Policy 8A2: To preserve the high quality of life in the Highlands Region through economic planning of the RMP. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Policy 8A3: To identify and pursue state and federal programs that offer financial and/or technical assistance for sustainable economic development in the Highlands Region. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Policy 8A5: To advocate for appropriate public investment in the Highlands Region through the strategic location of public facilities and institutions that will spur sustainable and appropriate economic activity. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Objective 8A6a: Coordinate with municipalities and counties as local and regional strategies are developed to improve the tax base and to create jobs and economic opportunities consistent with the policies and objectives of the RMP. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Policy 8C1: To promote recreation and tourism based economic initiatives, which derive economic benefit from sustainable use of the natural resources of the Highlands Region. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: The proposed project is the placement of photovoltaic panels, which has been defined in the Municipal Land Use Law as an inherently beneficial use. | | | |
| PART 9 AIR QUALITY | | | |
| Regional Master Plan Goals, Policies, and Objectives: | C | I | N/A |
| Policy 9A1: To encourage capital facility development and redevelopment that leads to attainment of the National Ambient Air Quality Standards (NAAQS). | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Policy 9A2: To support continued, consistent and thorough air quality monitoring and assessment programs as a means of evaluating and managing major air toxic point sources that affect the Region. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Policy 9A3: To encourage land use development and redevelopment practices that promote center-based growth and mixed-use development and offer alternative modes of transportation as a means to reduce automobile dependency, vehicle miles traveled, vehicle trip length, and duration, for the reduction of local and regional air pollutants and of carbon dioxide emissions linked to global warming. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Policy 9A4: To encourage and support state and federal air quality monitoring for the Highlands Region and regulatory action to reduce levels of air pollutants including but not limited to: ozone, carbon dioxide, sulfur compounds, volatile organic compounds, methane, and fine particulate matter pollutants in the Highlands Region. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Policy 9A5: To encourage energy efficient design and green building practices in support of regional resource protection and smart growth planning policies. | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Policy 9A6: To support State and federal initiatives that will reduce air pollution emanating from power plants, incinerators and landfills within and affecting the Highlands Region and particularly in Warren County due to out-of-State power plant air pollution. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Comments: The Highlands Council is supportive of green energy initiatives such as the proposed photovoltaic system in appropriate locations. The Regional Master Plan's Air Quality Program encourages the use of renewable energies. | | | |

CONCLUSION

This application is for a Highlands Redevelopment Area Designation wherein the Highlands Council designates an area for redevelopment activities with conditions and waivers as appropriate from the RMP; the second part of the process is that the applicant requests waivers from NJDEP regarding unavoidable impacts to resources affected by the proposal in order to retain economic viability.

The proposed project is consistent with the Highlands Act and Highlands Council procedures regarding designation of a Highlands Redevelopment Area in an area, or part thereof, that the NJDEP has determined qualifies for a Highlands Brownfield Designation. It is nominally inconsistent with Policy 1D4 and Objective 1D4b as it entails encroachment into a Highlands Open Water buffer. However, it is recognized that the affected buffer areas are entirely disturbed (capped landfill). As encroachment into the buffer is required for the project, a waiver of this requirement by NJDEP would be required and would be appropriate, for the reason stated above.

It is the Highlands Council staff's recommendation that the Highlands Council approve the proposed Highlands Redevelopment Area designation for the full area of the NJDEP Brownfield Designation, with the conditions that through the HPAA process except to the extent that these conditions are demonstrated to impede the proper closure of the landfill under NJDEP's Administrative Consent Order and Landfill Closure Plan Approval:

1. The application for a HPAA must address how solar panel and related construction will be phased, consistent with the Landfill Closure Plan, where certain areas are capped and solar panels installed as the applicant concurrently moves to the capping of other portions of the landfill;
2. 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 will be required;
3. To minimize potential impacts from the solar array on stream water quality and habitat, a condition of this approval is the establishment and maintenance of a vegetated buffer along the edge of the relocated stream including any rip-rap, outside of the designated Highlands Brownfield. This condition shall be addressed through a minimum 50-foot vegetated buffer consisting of layered woody and herbaceous species, except the buffer may be smaller where it would conflict with NJDEP's Administrative Consent Order and Landfill Closure Plan Approval;
4. It must be demonstrated that solar panels can be effectively constructed and maintained (consistent with the Landfill Closure Plan) along the northeastern border of the constructed landfill cap; this area will be sloping and is adjacent to a steep ridge;
5. 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 may periodically need maintenance or replacement. If any disturbance of the area outside of the Brownfield is required for access to the transmission grid, mitigation will be required by the Highlands Council before any such disturbance occurs;
6. The solar array shall be screened from the viewshed along Mountain Road and along all existing private development through a minimum of 75 feet of dense vegetated cover. Berms may be used to supplement the vegetated buffer, but structures such as fences shall not substitute for the vegetated buffer. It is recognized that trees and other woody species 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, the designated Highlands Brownfield directly abuts Mountain Road. As a condition of this approval, the applicant shall establish an earthen berm to screen the viewshed along Mountain Road (in a manner consistent with the Landfill Closure Plan) which shall be seeded and planted with native herbaceous species. 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;
7. 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. As a condition of this approval, the applicant shall demonstrate that the solar panels can be constructed effectively while maintaining the integrity of the proposed stormwater management features (e.g., the proposed forebay swales) and be consistent with the Landfill Closure Plan; and

8. 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.



State of New Jersey

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Governor

JIM RILEE
Chairman

KIM GUADAGNO
Lt. Governor

EILEEN SWAN
Executive Director

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

Date: October 14, 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 7404 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 closure of the landfill, which did not occur in 1979 when operations ceased. The closure of the landfill qualifies for Exemption #15 under the Highlands Act and is not addressed by this Consistency Determination. Following the proper closure of the landfill in various phases, 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). Note that the NJDEP’s Administrative Consent Order and Landfill Closure Plan Approval (both issued on October 6, 2011) 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 Highlands Preservation Area Approval (HPAA) which will have to address how construction will be phased where specific areas are capped and solar panels installed as they concurrently move to the capping of other portions of the landfill. Please note that the Highlands Act provides that the Highlands Council may designate all or a portion of a NJDEP-designated Brownfield as a Highlands Redevelopment Area. The specific delineation is case-specific, reflecting the need to protect on-site Highlands resources, neighboring properties and Highlands resources, and the objectives of the Regional Master Plan, relative to the land area and development concepts of the proposed redevelopment action.

The verification that the landfill has been properly closed and capped would occur through NJDEP Landfill Closure approval and the 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. The NJDEP approved a landfill closure plan and Administrative Consent Order on October 6, 2011. 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. The latter is addressed by the Highlands Council through mitigation requirements so as to protect economic values of surrounding residential development.

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 other than access to the transmission grid which will require mitigation.

Scenic viewsheds from adjacent public roads and private development may be damaged, and therefore a dense vegetated buffer should be preserved or created to protect against such scenic impairment. It is recognized that trees and other woody species 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, the designated Highlands Brownfield directly abuts Mountain Road (with solar panels proposed right to the edge of the brownfield). As a condition of this approval, the solar array shall be screened from the viewshed of adjacent public roads and private development through a minimum 75 feet of either dense vegetated cover or the construction of an earthen berm which shall be seeded and planted with native herbaceous species. Note that the Landfill Closure Plan Approval allows for the use of soil/vegetative cover which should be used to mitigate damage to viewsheds. The applicant shall provide a screening plan for review and approval by the Highlands Council prior to any solar project work in the vicinity of Mountain Road and the intersection of Lookout Drive and Vanover Drive. The Screening Plan shall provide screening of the solar panels from all public roads and private residences in the area to the fullest extent possible.

- 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 other than required screening 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 |

| Requirement | Staff Analysis |
|--|---|
| | 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 recommendation that the Highlands Council approve the proposed Highlands Redevelopment Area designation for the full area of the NJDEP Brownfield Designation, with the conditions that through the HPAA process except to the extent that these conditions are demonstrated to impede the proper closure of the landfill under NJDEP's Administrative Consent Order and Landfill Closure Plan Approval:

1. The application for a HPAA must address how solar panel and related construction will be phased, consistent with the Landfill Closure Plan, where certain areas are capped and solar panels installed as the applicant concurrently moves to the capping of other portions of the landfill;
2. 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 will be required;
3. To minimize potential impacts from the solar array on stream 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. This condition shall be addressed through a minimum 50-foot vegetated buffer consisting of layered woody and herbaceous species, except the buffer may be smaller where it would conflict with NJDEP's Administrative Consent Order and Landfill Closure Plan Approval;
4. It must be demonstrated that solar panels can be effectively constructed and maintained (consistent with the Landfill Closure Plan) along the northeastern border of the constructed landfill cap; this area will be sloping and is adjacent to a steep ridge;
5. 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 may periodically need maintenance or replacement. If any disturbance of the area outside of the Brownfield is required for access to the transmission grid, mitigation will be required by the Highlands Council before any such disturbance occurs;
6. The solar array shall be screened from the viewshed along Mountain Road and along all existing private development through a minimum of 75 feet of dense vegetated cover. Berms may be used to supplement the vegetated buffer, but structures such as fences shall not substitute for the vegetated buffer. It is recognized that trees and other woody species 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, the designated Highlands Brownfield directly abuts Mountain Road. As a condition of this approval, the applicant shall establish an earthen berm to screen the viewshed along Mountain Road (in a manner consistent with the Landfill Closure Plan) which shall be seeded and planted with native herbaceous species. 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;

7. 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. As a condition of this approval, the applicant shall demonstrate that the solar panels can be constructed effectively while maintaining the integrity of the proposed stormwater management features (e.g., the proposed forebay swales) and be consistent with the Landfill Closure Plan; and
8. During the HPAA with redevelopment waiver permit process, the applicant must demonstrate that the solar panels can be installed without compromising the integrity of the landfill cap and to meet the conditions of the Landfill Closure Plan.

Attachments

- Consistency Determination

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.

**Highlands Preservation Area Approval Application Checklist Items for
HPAA with Redevelopment Waiver
Former Fenimore Sanitary Landfill - Block 7404, Lot 1, Township of Roxbury
See Highlands Council Review at: <http://www.highlands.state.nj.us/njhighlands/projectreview/>**

****For advisory purposes only – please be advised that this checklist provides information to both the applicant and NJDEP from the analysis prepared by the Highlands Council. NJDEP may require additional information be required as part of the review of the HPAA application. ****

October 2011

| HPAA Checklist Item <i>(All of the information required in N.J.A.C. 7:38-9.5)</i> Items deemed unnecessary highlighted | Submittal Status/ Highlands Council Analysis | Comments and Action Items Items in green, Strategic Environmental Partners L.L.C. (SEP) needs to supply |
|--|--|--|
| 1. A completed copy of the HPAA checklist | Applicant will submit | Applicant to provide. |
| 2. A LURP-2 application form, completed in accordance with the directions on the form; | ALREADY COMPLETED FOR HIGHLANDS RESOURCE AREA DETERMINATION (HRAD) APPLICATION (APPENDIX A) – MET HIGHLANDS REDEVELOPMENT AREA DESIGNATION APPLICATION REQUIREMENTS | Applicant already completed LURP-2 application as part of HRAD application - also required for Highlands Council Redevelopment Area Designation Petition. Applicant to include copy in NJDEP submittal package. |
| 3. The appropriate fee, indicated in the Highlands Preservation Area Approval fee table, which can be found at www.state.nj.us/dep/highlands | Applicant will submit | Applicant to provide. The base fee for the review of a HPAA with a completed HRAD shall be \$2,500 plus \$50.00 per acre, or any fraction thereof of Highlands resource areas to be affected (Highlands Council contends that its Consistency Determination and Recommendation Report serve as functional equivalent for HRAD.) For all projects requiring review of stormwater calculations: \$2,000 |
| 4. Proof that the public notice requirements below have been met. (Note: To prove that an item has been sent to a person, submit either the white postal receipt you receive when you send the item by certified mail, or the green certified mail return receipt card.) Entire application must be sent to municipal clerk and Highlands Council. Notice letters to | Applicant will submit | Applicant to provide notice. |

| HPAA Checklist Item <i>(All of the information required in N.J.A.C. 7:38-9.5)</i> Items deemed unnecessary highlighted | Submittal Status/ Highlands Council Analysis | Comments and Action Items Items in green, Strategic Environmental Partners L.L.C. (SEP) needs to supply |
|---|---|--|
| environmental commission, municipal planning board and construction official, county planning board, county environmental commission, all landowners within 200 feet of boundary of site | | |
| 5. The approximate boundaries the project or activities clearly delineated on a USGS quadrangle Map | ALREADY COMPLETED FOR HRAD APPLICATION (APPENDIX D) – MET HIGHLANDS REDEVELOPMENT AREA DESIGNATION APPLICATION REQUIREMENTS | Applicant to include copies in NJDEP submittal package. |
| 6. Two copies of a recent county road map or local street map, with the site clearly marked | ALREADY COMPLETED FOR HRAD APPLICATION (APPENDIX E) – MET HIGHLANDS REDEVELOPMENT AREA DESIGNATION APPLICATION REQUIREMENTS | Applicant to include copies in NJDEP submittal package. |
| 7. Two sets of original color photographs, mounted on 8½ by 11 inch paper, sufficient to show the conditions on the site, and immediately surrounding areas, as well as the area of disturbance for the proposed activities. A minimum of ten photographs is required | ALREADY COMPLETED FOR HRAD APPLICATION (APPENDIX G) – MET HIGHLANDS REDEVELOPMENT AREA DESIGNATION APPLICATION REQUIREMENTS. Note: The project site can be readily viewed and analyzed using the Highlands Council interactive mapping with <i>3-D Birds Eye View</i> at http://maps.njhighlands.us/hgis/ | Applicant to include copies in NJDEP submittal package. |
| 8. A copy of a Municipal tax map(s) delineation the project or activity site by lot(s) and block(s) | ALREADY COMPLETED FOR HRAD APPLICATION (APPENDIX F) – MET HIGHLANDS REDEVELOPMENT AREA DESIGNATION APPLICATION REQUIREMENTS | Applicant to include copies in NJDEP submittal package. |
| 9. A copy of the Highlands Applicability Determination issued by the Department, or, in the case where an applicant does not have an applicability determination because he or she stipulated under N.J.A.C. 7:38-2.4(a) that the proposed activity is subject to the Highlands Act, the information required at N.J.A.C. 7:38-9.2(b)3 and 4, and 9.2(c) | N/A – Applicant did not and is not applying for a Highlands Applicability Determination. | |
| 10. If the proposed project or activity requires new or modified water supply allocation permits please visit the Highlands website for the checklists to apply for these permits | N/A. No additional water supply demands. | |

| HPAA Checklist Item <i>(All of the information required in N.J.A.C. 7:38-9.5)</i> Items deemed unnecessary highlighted | Submittal Status/ Highlands Council Analysis | Comments and Action Items Items in green, Strategic Environmental Partners L.L.C. (SEP) needs to supply |
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| 11. Information and/or certifications regarding the presence or absence of rare, threatened or endangered species habitat, ecological communities, historic or archaeological resources, or other features on the site relevant to determining compliance with the requirements of this chapter. This information shall include but not be limited to a letter from the Natural Heritage Program indicating the presence or absence of any rare, threatened or endangered species or ecological communities listed in the Natural Heritage Database on or near the site | ALREADY COMPLETED FOR HRAD APPLICATION (APPENDIX H) – MET HIGHLANDS REDEVELOPMENT AREA DESIGNATION APPLICATION REQUIREMENTS | Applicant to include copy in NJDEP submittal package. |
| 12. When an applicant intends to rebut the presumption of rare, threatened or endangered species habitat on the applicant's site as set forth at N.J.A.C. 7:38-5.1(a), all habitat evaluation information pursuant to N.J.A.C. 7:38-5.1(b) | N/A | |
| 13. Any other information not listed herein, that the applicant or the Department deems necessary to demonstrate compliance with this rule or the Federal rules governing the Department's assumption of the Federal 404 program. In addition, the Department may require any information necessary to clarify whether an application meets State and/or Federal standards | Applicant already provided data sheets documenting the location of the wetlands/waters boundaries in the HRAD application (Appendix J) | Applicant to include copy in NJDEP submittal package. |
| 14. The following information on the location of special Highlands resources on the site: A. A Highlands Area Resource Determination (HRAD) if one has been issued for the site; or B. If no Highlands LOI has been issued, and the site is larger than one acre, the application must include all of the information required for an application for a line verification HRAD. A formal delineation report is not required. However, the application must include the data sheets and supporting | Applicant already submitted HRAD application (dated July 2011). Further, Highlands CD and Recommendation Report are the functional equivalent of HRAD – meeting requirements at N.J.A.C. 7:38-9.2(b)3 and 4, and 9.2(c) | Applicant to include a copy of the HRAD application. |

| HPAA Checklist Item <i>(All of the information required in N.J.A.C. 7:38-9.5)</i> Items deemed unnecessary highlighted | Submittal Status/ Highlands Council Analysis | Comments and Action Items Items in green, Strategic Environmental Partners L.L.C. (SEP) needs to supply |
|---|---|--|
| <p>information used to record the information on soils and vegetation which formed the basis for the boundary determination;</p> <p>C. If the applicant has a currently valid approved Freshwater Wetlands letter of interpretation (LOI), issued by the Department for the site under N.J.A.C. 7:7A-3, this may be submitted instead of an HRAD so long as the applicant also provides information regarding any additional HRAs not previously identified in the LOI;</p> <p>D. If no Freshwater wetlands LOI or HRAD has been issued and the site does not contain Highlands open waters, no delineation or other information is required;</p> <p>E. If no Freshwater or HRAD has been issued, and the site is one acre or smaller, no delineation or other information is required, except if indicated otherwise in this checklist</p> | | |
| <p>15. Six copies of a detailed project description including:</p> <p>A. The purpose and intended use of the proposed project;</p> <p>B. A description of the regulated activities necessary to complete and operate or occupy the proposed project;</p> <p>C. A description of any structures to be erected, and how they will be used;</p> <p>D. A schedule for the progress and completion of the proposed project;</p> <p>E. The total area of Highlands open waters and Highlands open water buffers proposed to be disturbed (if any);</p> <p>F. The total area of upland forest area on the site and the total area of upland forest area that will be disturbed</p> <p>G. The amount of pre-development impervious coverage on the site and the total aggregate impervious coverage on the</p> | <p>The Highlands Council CD and Recommendation Report fulfill this requirement. See Highlands Council project review at: http://www.highlands.state.nj.us/njhighlands/projectreview/</p> <p>The Highlands Council has provided copies to NJDEP.</p> <p>A. See Recommendation Report – Section 1. Project Description</p> <p>B. See Recommendation Report – Section 4. Findings and Recommendations – Resource Assessment</p> <p>C. See Recommendation Report – Section 1. Project Description</p> <p>D. Schedule – phasing of landfill capping and solar array construction to be provided during HPAA process, as per Condition #1 of Highlands Redevelopment Area</p> | <p>.</p> |

| HPAA Checklist Item <i>(All of the information required in N.J.A.C. 7:38-9.5)</i> Items deemed unnecessary highlighted | Submittal Status/ Highlands Council Analysis | Comments and Action Items Items in green, Strategic Environmental Partners L.L.C. (SEP) needs to supply |
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| site following completion of the proposed project; H. A description of slopes between 10% and 20% and 20% or greater that are present on the site I. An evaluation of whether and how rare, threatened or endangered animals or plant species or ecological communities will be affected by the proposed activities; J. An architectural or Phase I archaeological survey for the applicants proposing work that will impact historic structures or archaeological resources K. A Phase II archaeological survey for applicants that discover archaeological features resources as a result of the Phase I archaeological survey L. The names, addresses and professional qualifications of those used to prepare the detailed project description M. If any or all of the proposed project or activity is in a flood hazard area N. Source of floodplain data | Designation Approval. E. See Recommendation Report – Section 4. Findings and Recommendations – Resource Assessment and Consistency Determination – Comments for Part 1 Subpart B – Highlands Open Waters and Riparian Areas F. See Consistency Determination – Comments for Part 1 Subpart A – Forest Resources G. Site is an NJDEP approved brownfield. Impervious surface coverage not applicable. H. See Consistency Determination – Comments for Part 1 Subpart C – Steep Slopes I. See Consistency Determination – Comments for Part 1 Subpart D – Critical Habitat J. See Consistency Determination – Comments for Part 4 Historic, Cultural, Archaeological, and Scenic Resources K. See Consistency Determination – Comments for Part 4 Historic, Cultural, Archaeological, and Scenic Resources L. Applicant to provide M. Applicant has already submitted to NJDEP an Engineering Report for Flood Hazard Area Individual Permit report – applicant to supply additional copy as part of HPAA application N. See report described in item M above. | |
| 16. Six folded copies of a site plan or subdivision map, signed and sealed by a NJ licensed professional surveyor and, where appropriate, a NJ licensed professional engineer, showing the entire site and indicating the following: A. All existing structures on the site and on all immediately adjacent lots; B. All proposed structures, disturbances, and activities; C. Distances and dimensions of areas, structures and lots, | Applicant will submit | Applicant to provide |

| HPAA Checklist Item <i>(All of the information required in N.J.A.C. 7:38-9.5)</i> Items deemed unnecessary highlighted | Submittal Status/ Highlands Council Analysis | Comments and Action Items Items in green, Strategic Environmental Partners L.L.C. (SEP) needs to supply |
|---|--|--|
| <p>including the boundaries of freshwater wetlands, state open waters, flood hazard areas, uplands, roads, and utility lines;</p> <p>D. A complete delineation of the boundaries of all Highlands open waters, transition areas, forest and slopes 10% to 20% and slopes greater than 20%, HRAD issued by the Department that shows the Highlands open water boundary, forest boundary slopes 10% to 20% and slopes greater than 20% may be submitted to satisfy this requirement. Include a copy of a map or plan, which depicts the approved lines;</p> <p>E. A calculation of total existing and proposed percent impervious surface for the entire site</p> <p>F. The area which will be used for the proposed activity or discharge;</p> <p>G. The location of the site in relation to development in the region;</p> <p>H. The scale of the plan and a north arrow;</p> <p>I. Soil erosion/sediment control details;</p> <p>J. The name of all persons who prepared the plan and the date of preparation;</p> <p>K. The name of the applicant, and municipal lot(s) and block number(s) of the project site;</p> <p>L. For projects in a flood hazard area plans must also:</p> <ol style="list-style-type: none"> 1. Reference 1929 NGVD; 2. Provide all cross sections, profiles and all relevant details referenced in the engineering report. | | |
| <p>17. A mitigation proposal for all disturbances to Highlands open waters shall be submitted.</p> | <p>Mitigation measures shall be provided pursuant to Conditions of approval (Conditions # 2 and 3) in Highlands Council Consistency Determination and Staff Recommendation Report.</p> | |

| HPAA Checklist Item <i>(All of the information required in N.J.A.C. 7:38-9.5)</i> Items deemed unnecessary highlighted | Submittal Status/ Highlands Council Analysis | Comments and Action Items Items in green, Strategic Environmental Partners L.L.C. (SEP) needs to supply |
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| 18. If the site is located in an area designated a Wild and Scenic River, or under study for such designation, this approval will not be granted until a letter is received from the National Park Service | N/A | |
| 19. Stormwater management calculations in accordance with the Stormwater Management rules must be provided for all major developments | Applicant will submit. **Note – there should be a coordinated review of the stormwater plan between the Highlands Council and the NJDEP to ensure that the conditions of the Highlands Council’s recommendation are met. Related to stormwater is the condition that the applicant shall supply a stormwater management plan that incorporates low impact development techniques and a construction implementation plan that minimizes disturbance during and after construction. | Applicant will provide |
| 20. A copy of all past Department approvals for activities on the site; | Applicant will provide HAD, HRAD, and any other Department approvals | Applicant will provide a copy of all NJDEP approvals. |
| 21. The names and addresses of all consultants, engineers, and other persons providing technical assistance in preparing the application; | Applicant to provide. | Applicant to include copies in NJDEP submittal package. |
| Remainder of the checklist is to be used for any project that proposes activities regulated pursuant to the Flood Hazard Area Control Act rules at N.J.A.C. 7:13., and thus, NA | N/A | |

7:38-9.6 ADDITIONAL APPLICATION REQUIREMENTS FOR A HIGHLANDS PRESERVATION AREA APPROVAL WITH WAIVER

An administratively complete application for an HPAA with waiver shall contain:

1. All of the information required in N.J.A.C. 7:38-9.5:

Response: See checklist items above

2. An analysis describing all alternatives to the proposed project which would reduce each impact of the project as listed in N.J.A.C. 7:38-6.2(a) and the reasons the applicant did not adopt that alternative

Response: Applicant to provide.

3. A description of the source of water or waste water disposal that would be used by development if the waiver is granted

Response: There would be no new water/wastewater requirements. Proposal is for a solar array on a capped landfill.

4. A request for a specific waiver in accordance with N.J.A.C. 7:38-6.4(a)

Response: Consistent with N.J.A.C. 7:38-6.4(a), is seeking a waiver from the Department under N.J.A.C. 7:38-6.4(a)2 regarding Highlands Open Water buffers. Redevelopment in a previously developed area in the Preservation Area identified by the Highlands Council pursuant to N.J.S.A. 13:20-9b or N.J.S.A 13:20-11

5. A detailed explanation why the proposed activity meets the criteria for a waiver in N.J.A.C. 7:38-6.4(a);

Response: The Highlands Council has issued a Highlands Redevelopment Area Designation pursuant to N.J.S.A. 13:20-9b and N.J.S.A 13:20-11

6. A detailed description of the specific HPAA requirement for which a waiver is sought, and a comparison of the HPAA standard with the level of compliance the proposed development provides (for example, "N.J.A.C. 7:38-3.5 limits a development to a maximum of three percent impervious coverage whereas the proposed project requires a total of four percent");

Response: One HPAA standard:

1. N.J.A.C. 7:38-3.6 states that there shall be a 300-foot buffer adjacent to Highlands open waters in which no disturbance is permitted, except as provided in this chapter. 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. 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 to mitigate impacts from the solar panels themselves.

7. An explanation how the proposed activity satisfies each of the remaining HPAA standards at N.J.A.C. 7:38-3

Response: The Highlands Council approval of this Highlands Redevelopment Area demonstrates that the proposed activity satisfies each of the remaining HPAA standards at N.J.A.C. 7:38-3. The Highlands Council approval process includes: 1) A pre-application and application to the Highlands Council; 2) A Consistency Determination, a Staff Recommendation Report, and Mapping of Highlands resources; 3) A Public Notice, public comment period, and a Comments Summary and Response document; 4) A Public meeting held by the Highlands Council with additional opportunity for public comment and a vote by Council on a Resolution. Given this extensive process, the NJDEP should be able to rely upon the analysis and conclusions of the Highlands Council in considering an HPAA application for a redevelopment area waiver in accordance with NJDEP's Preservation Area rules at N.J.A.C. 7:38-1.1

8. A detailed explanation why the proposed activity satisfies the standards at N.J.A.C. 7:38-6.2(a);

Response: That explanation can be found in the Highlands Council Recommendation Report (table that begins on page 4).

9. Documents showing the conclusion of an applicant's legal challenges, if any, to the Department's decision on the application for an HPAA under the rules as strictly applied,

Response: N/A

****Note – there shall be a coordinated review of the HPAA with redevelopment waiver application between the Highlands Council and the NJDEP to ensure that the conditions of the Highlands Council's recommendation are met as follows:**

1. The application for a HPAA must address how solar panel and related construction will be phased, consistent with the Landfill Closure Plan, where certain areas are capped and solar panels installed as the applicant concurrently moves to the capping of other portions of the landfill;
2. 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 will be required;
3. To minimize potential impacts from the solar array on stream 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. This condition shall be addressed through a minimum 50-foot vegetated buffer consisting of layered woody and herbaceous species, except the buffer may be smaller where it would conflict with NJDEP's Administrative Consent Order and Landfill Closure Plan Approval.
4. It must be demonstrated that solar panels can be effectively constructed and maintained (consistent with the Landfill Closure Plan) along the northeastern border of the constructed landfill cap; this area will be sloping and is adjacent to a steep ridge.
5. 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. If any disturbance of the area outside of the Brownfield is required for access to the transmission grid, mitigation will be required by the Highlands Council before any such disturbance occurs;

6. The solar array shall be screened from the viewshed along Mountain Road of adjacent public roads and along all existing private development through a minimum of 75 feet of dense vegetated cover. Berms may be used to supplement the vegetated buffer, but structures such as fences shall not substitute for the vegetated buffer. It is recognized that trees and other woody species 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, the designated Highlands Brownfield directly abuts Mountain Road. As a condition of this approval, the applicant shall establish an earthen berm to screen the viewshed along Mountain Road (in a manner consistent with the Landfill Closure Plan) which shall be seeded and planted with native herbaceous species. The applicant shall provide a site plan with a viewshed 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, prior to the submission of an application for an HPAA;
7. 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. As a condition of this approval, the applicant shall demonstrate that the solar panels can be constructed effectively while maintaining the integrity of the proposed stormwater management features (e.g., the proposed forebay swales) and be consistent with the Landfill Closure Plan; and
8. During the HPAA with redevelopment waiver permit process, the applicant must demonstrate that the solar panels can be installed without compromising the integrity of the landfill cap and to meet the conditions of the Landfill Closure Plan.