

3. Is designed to comply with all of the preservation area standards contained at N.J.A.C. 7:38-3 to the maximum extent feasible while still addressing the identified health and safety need; and

4. Has been designed to meet the requirements at N.J.A.C. 7:38-6.2 to the maximum extent possible.

(e) In addition to meeting the requirements at (a) through (d) above, an applicant proposing a regulated activity within a Highlands open water that is also a freshwater wetland or State open water, as defined in the Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A-1.4, shall provide mitigation in accordance with N.J.A.C. 7:7A in order to compensate for impacts to a freshwater wetland or State open water resulting from the approval of a waiver under this section.

7:38-6.6 Waiver for redevelopment in certain previously developed areas in the Highlands preservation area: Department-designated Highlands Brownfields

(a) In accordance with N.J.S.A. 13:20-33b(2), the Department may, on a case by case basis, waive any of the provisions for a HPAA if such waiver is necessary for redevelopment of certain previously developed areas in the preservation area identified by the Council pursuant to N.J.S.A. 13:20-9b and N.J.S.A. 13:20-11a(6)(h). A waiver under this section shall apply only to Department-designated Highlands brownfield sites designated pursuant to (b) below, and identified as an area appropriate for redevelopment by the Council. For the purposes of this section only, "site" means a parcel designated by a block and lot, or several contiguous parcels if owned or controlled by the applicant so long as all parcels meet the criteria in (b) below.

(b) For the purposes of this section, a site that meets the criteria in one of the following three Tracks is eligible for designation by the Department as a Highlands brownfield, provided that the contamination onsite is not the result of a current or previous agricultural use:

1. Track One: A sanitary landfill facility;
2. Track Two: A former or current commercial or industrial site for which:
 - i. Prior to the issuance of a final remediation document, a remedial action report was completed confirming the presence of contamination onsite, and documenting the current or previous use as a commercial or industrial site;
 - ii. The Department or a licensed site remediation professional has issued a final remediation document for the entire site for which the brownfield designation is sought as of July 1, 1993, or later, pursuant to N.J.A.C. 7:26C-6; and

iii. No discharge of a contaminant has occurred on the site since the date of the final remediation document. Sites where a discharge of a contaminant has occurred on the site since the Department or a licensed site remediation professional has issued a final remediation document must apply for designation through Track Three; or

3. Track Three: A former or current commercial or industrial site with suspected or confirmed contamination onsite for which neither the Department nor a licensed site remediation professional has issued a final remediation document.

(c) For a Track One site, the Department may designate as a Highlands brownfield:

1. The limit of the waste; or
2. Areas legally disturbed as of August 10, 2004.

(d) For a Track Two site, the Department may designate as a Highlands brownfield only that portion of a site that meets one or both of the following:

1. Areas on which remediation has been approved by either the Department or a licensed site remediation professional and for which the Department or a licensed site remediation professional has issued a final remediation document; or
2. Areas legally disturbed as of August 10, 2004.

(e) For a Track Three site for which only a Preliminary Assessment and Site Investigation have been completed confirming the suspected existence of contamination onsite, the Department may designate as a Highlands brownfield only that portion of the site legally disturbed as of August 10, 2004.

(f) For a Track Three site for which remedial activity, in addition to a Preliminary Assessment and Site Investigation confirming the existence of contamination onsite has occurred, the Department may designate as a Highlands brownfield only that portion of a site that meets one or more of the following:

1. Areas for which a Department-approved or licensed site remediation professional-approved delineation of soil contamination has been completed, pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E;
2. Areas legally disturbed as of August 10, 2004; or
3. Areas disturbed for remediation activities, (but not new residential, commercial or industrial development), in accordance with a Department or licensed site remediation professional approved Remedial Action Workplan, pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-6.

(g) The Department shall not include a Highlands open water in a Highlands brownfield designation.

(h) A person seeking the designation of a site as a Highlands brownfield shall submit to the Department documentation that the site meets the criteria for the applicable track at (b) above, using the appropriate Department application form, accompanied by the fee set forth at N.J.A.C. 7:38-10.

(i) The Department may modify a Highlands brownfield designation to include an area identified by the Council after notice and public comment and submittal to the Department for consideration, provided the documentation and public record developed by the Council is sufficient for the Department to conclude that such modification will not result in a significant impact to any Highlands resource area.

(j) The Department may expand the area included in a Highlands brownfield designation at any time based upon new information obtained during remediation that was not available during the designation process.

(k) Once the Department designates a site as a Highlands brownfield, and the Council has identified all or part of the brownfield as appropriate for redevelopment in accordance with N.J.S.A. 13:20-9b and 13:20-11a(6)(h), an applicant shall be eligible for a HPAA with a waiver for redevelopment under this section if the applicant demonstrates that:

1. The proposed redevelopment meets the requirements at N.J.A.C. 7:38-6.2 to the maximum extent possible, taking into consideration cost and existing technology;

2. The remediation conducted onsite is in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E;

3. For a Track One Highlands brownfield:

i. As of May 9, 2005, the applicant is or was remediating or closing, or has completed remediation or closure of a landfill that ceased operation before January 1, 1982 in accordance with:

(1) A Closure Plan approved by the Department, and issued pursuant to the Solid Waste rules, N.J.A.C. 7:26-2A.9; and

(2) A Remedial Action Workplan approved by the Department or by a licensed site remediation professional, and pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-6; or

ii. The applicant is currently implementing an approved Closure and Post-Closure Care Plan, or has completed an approved Closure and Post-Closure Care Plan, for a landfill that ceased operation on January 1, 1982, or later, pursuant to the Solid Waste Rules, N.J.A.C. 7:26-2A.9;

4. For a Track Two Highlands brownfield, the applicant demonstrates that no discharge of a contaminant has occurred on the site since the final remediation document was issued;

5. For a Track Three Highlands brownfield, the applicant is remediating the site pursuant to the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C, or the Industrial Site Recovery Act rules, N.J.A.C. 7:26B, as applicable;

6. The proposed redevelopment satisfies the requirements in (c), (d), (e) or (f) above as applicable, and:

i. If the redevelopment is located in the footprint of existing impervious surface, the existing stormwater treatment system removes 50 percent or greater total suspended solid (TSS). If the existing system removes less than 50 percent TSS or there is no existing treatment system, the existing system is upgraded to remove at least 50 percent TSS or a new stormwater treatment system that removes at least 50 percent TSS is installed; or

ii. If the proposed redevelopment is located outside the footprint of existing impervious surface, a new stormwater treatment system that removes at least 80 percent TSS is installed;

7. The proposed redevelopment includes, wherever feasible, the removal of impervious surfaces not used for the redevelopment project and the planting of indigenous vegetation that is beneficial for the protection of water quality, and the recording of a binding conservation restriction preserving the newly revegetated area from future development; and

8. The proposed redevelopment includes mitigation in accordance with N.J.A.C. 7:7A for any activity proposed within a Highlands open water that is also a freshwater wetland or State open water, as defined in the Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A-1.4.

(l) Any waiver approved in accordance with this section shall be conditioned upon the receipt of a final remediation document, or equivalent approval for sanitary landfills issued by the Department with respect to the area of the site designated as a Highlands brownfield and identified by the Council as appropriate for redevelopment.

Amended by R.2006 d.420, effective December 4, 2006.

See: 37 N.J.R. 4767(a), 38 N.J.R. 5011(a).

Section was "Waiver for redevelopment in certain previously developed areas in the Highlands Preservation Area: Department-designated Highlands Brownfields". Rewrote the section.

Special Amendment, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).

See: 41 N.J.R. 4467(a).

Rewrote (b)2 and (d)1; in (f)1 and (f)3, inserted "or licensed site remediation professional-approved"; in (k)3i(2), inserted "or by a licensed site remediation professional" and deleted "issued" preceding "pursuant"; in (k)4, substituted "final remediation document" for "NFA letter"; in (k)5, substituted "is remediating the site pursuant to the Administrative Requirements for" for "has obtained an Oversight Document pursuant to the Department Oversight of"; and in (l), substituted "a final remediation document" for "an NFA letter".