

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 921

STATE OF NEW JERSEY
214th LEGISLATURE

ADOPTED FEBRUARY 8, 2010

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator JENNIFER BECK

District 12 (Mercer and Monmouth)

Senator JAMES BEACH

District 6 (Camden)

Senator CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

Assemblyman UPENDRA J. CHIVUKULA

District 17 (Middlesex and Somerset)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblyman JOHN F. MCKEON

District 27 (Essex)

Co-Sponsored by:

Assemblymen Peterson, O'Scanlon, Johnson and DeAngelo

SYNOPSIS

Exempts solar panels from impervious surface or impervious cover designation.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Environment and Energy Committee.

(Sponsorship Updated As Of: 3/23/2010)

1 AN ACT concerning solar panels and impervious surfaces, and
2 amending and supplementing various parts of the statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. R.S.12:5-3 is amended to read as follows:

8 12:5-3. a. All plans for the development of any waterfront upon
9 any navigable water or stream of this State or bounding thereon,
10 which is contemplated by any person or municipality, in the nature
11 of individual improvement or development or as a part of a general
12 plan which involves the construction or alteration of a dock, wharf,
13 pier, bulkhead, bridge, pipeline, cable, or any other similar or
14 dissimilar waterfront development shall be first submitted to the
15 Department of Environmental Protection **[and Energy]** . No such
16 development or improvement shall be commenced or executed
17 without the approval of the Department of Environmental
18 Protection **[and Energy]** first had and received, or as hereinafter in
19 this chapter provided.

20 b. The following are exempt from the provisions of subsection
21 a. of this section:

22 (1) The repair, replacement or renovation of a permanent dock,
23 wharf, pier, bulkhead or building existing prior to January 1, 1981,
24 provided the repair, replacement or renovation does not increase the
25 size of the structure and the structure is used solely for residential
26 purposes or the docking or servicing of pleasure vessels;

27 (2) The repair, replacement or renovation of a floating dock,
28 mooring raft or similar temporary or seasonal improvement or
29 structure, provided the improvement or structure does not exceed in
30 length the waterfront frontage of the parcel of real property to
31 which it is attached and is used solely for the docking or servicing
32 of pleasure vessels; and

33 (3) Development in the coastal area, as defined in section 4 of
34 P.L.1973, c.185 (C.13:19-4), landward of the mean high water line
35 of any tidal waters.

36 c. Notwithstanding the provisions of any law, rule, or
37 regulation to the contrary, the Department of Environmental
38 Protection shall not, as a condition of approval required pursuant to
39 subsection a. of this section, include solar panels in any calculation
40 of impervious surface or impervious cover.

41 As used in this subsection, "solar panel" means an elevated panel
42 or plate, or a canopy or array thereof, that captures and converts
43 solar radiation to produce power, and includes flat plate, focusing
44 solar collectors, or photovoltaic solar cells and excludes the base or
45 foundation of the panel, plate, canopy, or array.

46 (cf: P.L.1993, c.190, s.18)

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 2. (New section) Notwithstanding the provisions of the
2 comprehensive management plan or any rule or regulation to the
3 contrary, the commission shall not include solar panels in any
4 calculation of impervious surface or impervious cover that may be
5 required for an application for development in the pinelands area.

6 As used in this section, "solar panel" means an elevated panel or
7 plate, or a canopy or array thereof, that captures and converts solar
8 radiation to produce power, and includes flat plate, focusing solar
9 collectors, or photovoltaic solar cells and excludes the base or
10 foundation of the panel, plate, canopy, or array.

11

12 3. Section 3 of P.L.1973, c.185 (C.13:19-3) is amended to read
13 as follows:

14 3. As used in this act:

15 "Beach" means a gently sloping unvegetated area of sand or
16 other unconsolidated material found on tidal shorelines, including
17 ocean, inlet, bay and river shorelines, and that extends landward
18 from the mean high water line to either: the vegetation line; a man-
19 made feature generally parallel to the ocean, inlet, bay or river
20 waters such as a retaining structure, seawall, bulkhead, road or
21 boardwalk, except that sandy areas that extend fully under and
22 landward of an elevated boardwalk are considered to be beach
23 areas; or the seaward or bayward foot of dunes, whichever is closest
24 to the ocean, inlet, bay or river waters;

25 "Commercial development" means a development designed,
26 constructed or intended to accommodate commercial or office uses.
27 "Commercial development" shall include, but need not be limited
28 to, any establishment used for the wholesale or retail sale of food or
29 other merchandise, or any establishment used for providing
30 professional, financial, or other commercial services;

31 "Commissioner" means the Commissioner of Environmental
32 Protection **[and Energy]** ;

33 "Department" means the Department of Environmental
34 Protection **[and Energy]** ;

35 "Development" means the construction, relocation, or
36 enlargement of any building or structure and all site preparation
37 therefor, the grading, excavation or filling on beaches or dunes, and
38 shall include residential development, commercial development,
39 industrial development, and public development;

40 "Dune" means a wind- or wave-deposited or man-made
41 formation of vegetated sand that lies generally parallel to and
42 landward of the beach, and between the upland limit of the beach
43 and the foot of the most inland slope of the dune. Dune includes
44 the foredune, secondary and tertiary dune ridges, as well as man-
45 made dunes, where they exist;

46 "Dwelling unit" means a house, townhouse, apartment,
47 cooperative, condominium, cabana, hotel or motel room, a room in

1 a hospital, nursing home or other residential institution, mobile
2 home, campsite for a tent or recreational vehicle or any other
3 habitable structure of similar size and potential environmental
4 impact, except that dwelling unit shall not mean a vessel as defined
5 in section 2 of P.L.1962, c.73 (C.12:7-34.37);

6 "Governmental agency" means the Government of the United
7 States, the State of New Jersey, or any other state, or a political
8 subdivision, authority, agency or instrumentality thereof, and shall
9 include any interstate agency or authority;

10 "Industrial development" means a development that involves a
11 manufacturing or industrial process, and shall include, but need not
12 be limited to, electric power production, food and food by-product
13 processing, paper production, agri-chemical production, chemical
14 processes, storage facilities, metallurgical processes, mining and
15 excavation processes, and processes utilizing mineral products;

16 "Person" means any individual, corporation, company,
17 association, society, firm, partnership, joint stock company, or
18 governmental agency;

19 "Public development" means a solid waste facility, including an
20 incinerator and landfill, wastewater treatment plant, public
21 highway, airport, an above or underground pipeline designed to
22 transport petroleum, natural gas, or sanitary sewage, and a public
23 facility, and shall not mean a seasonal or temporary structure
24 related to the tourism industry, an educational facility or power
25 lines;

26 "Public highway" means a public highway as defined in section 3
27 of P.L.1984, c.73 (C.27:1B-3);

28 "Reconstruction" means the repair or replacement of a building,
29 structure, or other part of a development;

30 "Residential development" means a development that provides
31 one or more dwelling units ; and

32 "Solar panel" means an elevated panel or plate, or a canopy or
33 array thereof, that captures and converts solar radiation to produce
34 power, and includes flat plate, focusing solar collectors, or
35 photovoltaic solar cells and excludes the base or foundation of the
36 panel, plate, canopy, or array .

37 (cf: P.L.1993, c.190, s.3)

38

39 4. (New section) Notwithstanding the provisions of any rule or
40 regulation to the contrary, the department shall not include solar
41 panels in any calculation of impervious surface or impervious cover
42 that may be required as a condition of approval of an application to
43 construct or undertake a development in the coastal area, pursuant
44 to the provisions of P.L.1973, c.185 (C.13:19-1 et seq.).

45 As used in this section, "solar panel" means an elevated panel or
46 plate, or a canopy or array thereof, that captures and converts solar
47 radiation to produce power, and includes flat plate, focusing solar

1 collectors, or photovoltaic solar cells and excludes the base or
2 foundation of the panel, plate, canopy, or array.

3

4 5. Section 3 of P.L.2004, c.120 (C.13:20-3) is amended to read
5 as follows:

6 3. As used in this act:

7 "Agricultural or horticultural development" means construction
8 for the purposes of supporting common farmsite activities,
9 including but not limited to: the production, harvesting, storage,
10 grading, packaging, processing, and the wholesale and retail
11 marketing of crops, plants, animals, and other related commodities
12 and the use and application of techniques and methods of soil
13 preparation and management, fertilization, weed, disease, and pest
14 control, disposal of farm waste, irrigation, drainage and water
15 management, and grazing;

16 "Agricultural impervious cover" means agricultural or
17 horticultural buildings, structures, or facilities with or without
18 flooring, residential buildings, and paved areas, but shall not mean
19 temporary coverings;

20 "Agricultural or horticultural use" means the use of land for
21 common farmsite activities, including but not limited to: the
22 production, harvesting, storage, grading, packaging, processing, and
23 the wholesale and retail marketing of crops, plants, animals, and
24 other related commodities and the use and application of techniques
25 and methods of soil preparation and management, fertilization,
26 weed, disease, and pest control, disposal of farm waste, irrigation,
27 drainage and water management, and grazing;

28 "Application for development" means the application form and
29 all accompanying documents required for approval of a subdivision
30 plat, site plan, planned development, conditional use, zoning
31 variance, or direction of the issuance of a permit pursuant to the
32 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.)
33 or R.S.40:27-1 et seq., for any use, development, or construction;

34 "Capital improvement" means any facility for the provision of
35 public services with a life expectancy of three or more years, owned
36 and operated by or on behalf of the State or a political subdivision
37 thereof;

38 "Construction beyond site preparation" means having completed
39 the foundation for a building or structure, and does not include the
40 clearing, cutting, or removing of vegetation, bringing construction
41 materials to the site, or site grading or other earth work associated
42 with preparing a site for construction;

43 "Construction materials facility" means any facility or land upon
44 which the activities of production of ready mix concrete,
45 bituminous concrete, or class B recycling occurs;

46 "Council" means the Highlands Water Protection and Planning
47 Council established by section 4 of this act;

1 "Department" means the Department of Environmental
2 Protection;

3 "Development" means the same as that term is defined in section
4 3.1 of P.L.1975, c.291 (C.40:55D-4);

5 "Development regulation" means the same as that term is defined
6 in section 3.1 of P.L.1975, c.291 (C.40:55D-4);

7 "Disturbance" means the placement of impervious surface, the
8 exposure or movement of soil or bedrock, or the clearing, cutting,
9 or removing of vegetation;

10 "Environmental land use or water permit" means a permit,
11 approval, or other authorization issued by the Department of
12 Environmental Protection pursuant to the "Freshwater Wetlands
13 Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.), the "Water
14 Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et seq.), the
15 "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.),
16 "The Realty Improvement Sewerage and Facilities Act (1954),"
17 P.L.1954, c.199 (C.58:11-23 et seq.), the "Water Quality Planning
18 Act," P.L.1977, c.75 (C.58:11A-1 et seq.), the "Safe Drinking
19 Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.), or the "Flood
20 Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.);

21 "Facility expansion" means the expansion of the capacity of an
22 existing capital improvement in order that the improvement may
23 serve new development;

24 "Farm conservation plan" means a site specific plan that
25 prescribes needed land treatment and related conservation and
26 natural resource management measures, including forest
27 management practices, that are determined to be practical and
28 reasonable for the conservation, protection, and development of
29 natural resources, the maintenance and enhancement of agricultural
30 or horticultural productivity, and the control and prevention of
31 nonpoint source pollution;

32 "Farm management unit" means a parcel or parcels of land,
33 whether contiguous or noncontiguous, together with agricultural or
34 horticultural buildings, structures and facilities, producing
35 agricultural or horticultural products, and operated as a single
36 enterprise;

37 "Highlands open waters" means all springs, streams including
38 intermittent streams, wetlands, and bodies of surface water, whether
39 natural or artificial, located wholly or partially within the
40 boundaries of the Highlands Region, but shall not mean swimming
41 pools;

42 "Highlands Region" means that region so designated by
43 subsection a. of section 7 of this act;

44 "Immediate family member" means spouse, child, parent, sibling,
45 aunt, uncle, niece, nephew, first cousin, grandparent, grandchild,
46 father-in-law, mother-in-law, son-in-law, daughter-in-law,
47 stepparent, stepchild, stepbrother, stepsister, half brother, or half

1 sister, whether the individual is related by blood, marriage, or
2 adoption;

3 "Impact fee" means cash or in-kind payments required to be paid
4 by a developer as a condition for approval of a major subdivision or
5 major site plan for the developer's proportional share of the cost of
6 providing new or expanded reasonable and necessary public
7 improvements located outside the property limits of the subdivision
8 or development but reasonably related to the subdivision or
9 development based upon the need for the improvement created by,
10 and the benefits conferred upon, the subdivision or development;

11 "Impervious surface" means any structure, surface, or
12 improvement that reduces or prevents absorption of stormwater into
13 land, and includes porous paving, paver blocks, gravel, crushed
14 stone, decks, patios, elevated structures, and other similar
15 structures, surfaces, or improvements;

16 "Individual unit of development" means a dwelling unit in the
17 case of a residential development, a square foot in the case of a non-
18 residential development, or any other standard employed by a
19 municipality for different categories of development as a basis upon
20 which to establish a service unit;

21 "Local government unit" means a municipality, county, or other
22 political subdivision of the State, or any agency, board,
23 commission, utilities authority or other authority, or other entity
24 thereof;

25 "Major Highlands development" means, except as otherwise
26 provided pursuant to subsection a. of section 30 of this act, (1) any
27 non-residential development in the preservation area; (2) any
28 residential development in the preservation area that requires an
29 environmental land use or water permit or that results in the
30 ultimate disturbance of one acre or more of land or a cumulative
31 increase in impervious surface by one-quarter acre or more; (3) any
32 activity undertaken or engaged in the preservation area that is not a
33 development but results in the ultimate disturbance of one-quarter
34 acre or more of forested area or that results in a cumulative increase
35 in impervious surface by one-quarter acre or more on a lot; or (4)
36 any capital or other project of a State entity or local government
37 unit in the preservation area that requires an environmental land use
38 or water permit or that results in the ultimate disturbance of one
39 acre or more of land or a cumulative increase in impervious surface
40 by one-quarter acre or more. Major Highlands development shall
41 not mean an agricultural or horticultural development or
42 agricultural or horticultural use in the preservation area . Solar
43 panels shall not be included in any calculation of impervious
44 surface ;

45 "Mine" means any mine, whether on the surface or underground,
46 and any mining plant, material, equipment, or explosives on the
47 surface or underground, which may contribute to the mining or

1 handling of ore or other metalliferous or non-metalliferous
2 products. The term "mine" shall also include a quarry, sand pit,
3 gravel pit, clay pit, or shale pit;

4 "Mine site" means the land upon which a mine, whether active or
5 inactive, is located, for which the Commissioner of Labor and
6 Workforce Development has granted a certificate of registration
7 pursuant to section 4 of P.L.1954, c.197 (C.34:6-98.4) and the
8 boundary of which includes all contiguous parcels, except as
9 provided below, of property under common ownership or
10 management, whether located in one or more municipalities, as
11 such parcels are reflected by lot and block numbers or metes and
12 bounds, including any mining plant, material, or equipment.
13 "Contiguous parcels" as used in this definition of "mine site" shall
14 not include parcels for which mining or quarrying is not a permitted
15 use or for which mining or quarrying is not permitted as a prior
16 nonconforming use under the "Municipal Land Use Law,"
17 P.L.1975, c.291 (C.40:55D-1 et seq.);

18 "Office of Smart Growth" means the Office of State Planning
19 established pursuant to section 6 of P.L.1985, c.398 (C.52:18A-
20 201);

21 "Planning area" means that portion of the Highlands Region not
22 included within the preservation area;

23 "Preservation area" means that portion of the Highlands Region
24 so designated by subsection b. of section 7 of this act;

25 "Public utility" means the same as that term is defined in
26 R.S.48:2-13;

27 "Recreation and conservation purposes" means the same as that
28 term is defined in section 3 of P.L.1999, c.152 (C.13:8C-3);

29 "Regional master plan" means the Highlands regional master
30 plan or any revision thereof adopted by the council pursuant to
31 section 8 of this act;

32 "Resource management systems plan" means a site specific
33 conservation system plan that (1) prescribes needed land treatment
34 and related conservation and natural resource management
35 measures, including forest management practices, for the
36 conservation, protection, and development of natural resources, the
37 maintenance and enhancement of agricultural or horticultural
38 productivity, and the control and prevention of nonpoint source
39 pollution, and (2) establishes criteria for resources sustainability of
40 soil, water, air, plants, and animals;

41 "Service area" means that area to be served by the capital
42 improvement or facility expansion as designated in the capital
43 improvement program adopted by a municipality under section 20
44 of P.L.1975, c.291 (C.40:55D-29);

45 "Service unit" means a standardized measure of consumption,
46 use, generation or discharge attributable to an individual unit of
47 development calculated in accordance with generally accepted

1 engineering or planning standards for a particular category of
2 capital improvements or facility expansions;

3 "Soil conservation district" means the same as that term is
4 defined in R.S. 4:24-2;

5 "Solar panel" means an elevated panel or plate, or a canopy or
6 array thereof, that captures and converts solar radiation to produce
7 power, and includes flat plate, focusing solar collectors, or
8 photovoltaic solar cells and excludes the base or foundation of the
9 panel, plate, canopy, or array;

10 "State Development and Redevelopment Plan" means the State
11 Development and Redevelopment Plan adopted pursuant to
12 P.L.1985, c.398 (C.52:18A-196 et al.);

13 "State entity" means any State department, agency, board,
14 commission, or other entity, district water supply commission,
15 independent State authority or commission, or bi-state entity;

16 "State Soil Conservation Committee" means the State Soil
17 Conservation Committee in the Department of Agriculture
18 established pursuant to R.S. 4:24-3;

19 "Temporary coverings" means permeable, woven and non-woven
20 geotextile fabrics that allow for water infiltration or impermeable
21 materials that are in contact with the soil and are used for no more
22 than two consecutive years; and

23 "Waters of the Highlands" means all springs, streams including
24 intermittent streams, and bodies of surface or ground water, whether
25 natural or artificial, located wholly or partially within the
26 boundaries of the Highlands Region, but shall not mean swimming
27 pools.

28 (cf: P.L.2004, c.120, s.3)

29

30 6. Section 31 of P.L.2004, c.120 (C.13:20-29) is amended to
31 read as follows:

32 31. a. (1) Any agricultural or horticultural development in the
33 preservation area that would result in the increase, after the date of
34 enactment of this act either individually or cumulatively, of
35 agricultural impervious cover by three percent or more of the total
36 land area of a farm management unit in the preservation area shall
37 require the review and approval by the local soil conservation
38 district of a farm conservation plan which shall be prepared and
39 submitted by the owner or operator of the farm management unit.
40 Upon approval of the farm conservation plan by the local soil
41 conservation district, the owner or operator of the farm management
42 unit shall implement the plan on the farm management unit. The
43 local soil conservation district shall transmit a copy of an approved
44 farm conservation plan to the State Soil Conservation Committee,
45 and, if any part of the farm management unit is preserved under any
46 farmland preservation program, to the State Agriculture
47 Development Committee.

1 (2) Any agricultural or horticultural development in the
2 preservation area that would result in the increase, after the date of
3 enactment of this act either individually or cumulatively, of
4 agricultural impervious cover by nine percent or more of the total
5 land area of a farm management unit in the preservation area shall
6 require the review and approval by the local soil conservation
7 district of a resource management systems plan which shall be
8 prepared and submitted by the owner or operator of the farm
9 management unit.

10 Prior to the approval of a resource management systems plan by
11 a local soil conservation district, a copy of the resource
12 management systems plan shall be forwarded by the local soil
13 conservation district to the Department of Environmental Protection
14 for review and approval, with or without conditions, or denial
15 within 60 days after receipt by the department. Upon approval of
16 the resource management systems plan by the local soil
17 conservation district and the Department of Environmental
18 Protection, the owner or operator of the farm management unit shall
19 implement the plan on the farm management unit. The local soil
20 conservation district shall transmit a copy of an approved resource
21 management systems plan to the State Soil Conservation
22 Committee, and, if any part of the farm management unit is
23 preserved under any farmland preservation program, to the State
24 Agriculture Development Committee.

25 (3) A farm conservation plan required pursuant to paragraph (1)
26 of this subsection and a resource management systems plan required
27 pursuant to paragraph (2) of this subsection shall be prepared in
28 accordance with science-based standards, consistent with the goals
29 and purposes of this act, which standards shall be established by the
30 State Board of Agriculture and the Department of Agriculture, in
31 consultation with the Department of Environmental Protection, the
32 State Agriculture Development Committee, Rutgers Cooperative
33 Extension, and the Natural Resources Conservation Service in the
34 United States Department of Agriculture. Within 270 days after the
35 date of enactment of this act, the State Department of Agriculture,
36 in consultation with the Department of Environmental Protection,
37 shall develop and adopt, pursuant to the "Administrative Procedure
38 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), these standards and any
39 other rules and regulations necessary to implement this section.

40 (4) Solar panels shall not be included in any calculation of
41 agricultural impervious cover pursuant to this subsection.

42 b. (1) If any person violates any provision of subsection a. of
43 this section, any rule or regulation adopted pursuant to subsection a.
44 of this section, or a farm conservation plan or a resource
45 management systems plan approved pursuant to subsection a. of this
46 section, the Department of Agriculture or the local soil conservation
47 district may institute a civil action in the Superior Court for

1 injunctive relief to prohibit and prevent the violation or violations
2 and the court may proceed in a summary manner.

3 (2) (a) Any person who violates any provision of subsection a. of
4 this section, any rule or regulation adopted pursuant to subsection a.
5 of this section, or a farm conservation plan or a resource
6 management systems plan approved pursuant to subsection a. of this
7 section shall be liable to a civil administrative penalty of up to
8 \$5,000 for each violation. If the violation is of a continuing nature,
9 each day during which it continues shall constitute an additional,
10 separate, and distinct offense. No assessment shall be levied
11 pursuant to this subsection until after the party has been notified by
12 certified mail or personal service and provided an opportunity for a
13 hearing.

14 (b) Any amount assessed under this subsection shall fall within
15 a range established in a penalty schedule adopted by the Department
16 of Agriculture pursuant to the "Administrative Procedure Act,"
17 which shall take into account the seriousness and duration of the
18 violation and whether the violation involves the failure to prepare or
19 to implement a farm conservation plan or resource management
20 systems plan. The schedule shall also provide for an enhanced
21 penalty if the violation causes an impairment to water quality. Any
22 civil administrative penalty assessed under this subsection may be
23 compromised by the Secretary of Agriculture upon the posting of a
24 performance bond by the violator, or upon such terms and
25 conditions as the secretary may establish by regulation.

26 (c) Any person who fails to pay a civil administrative penalty in
27 full pursuant to this subsection shall be subject, upon order of a
28 court, to a civil penalty of up to \$5,000 for each violation. If the
29 violation is of a continuing nature, each day during which it
30 continues shall constitute an additional, separate, and distinct
31 offense. Any such civil penalty imposed may be collected with
32 costs in a summary proceeding pursuant to the "Penalty
33 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
34 The Superior Court and the municipal court shall have jurisdiction
35 to enforce the provisions of the "Penalty Enforcement Law of 1999"
36 in connection with this subsection.

37 (d) All penalties collected pursuant to this subsection shall
38 either be used, as determined by the council, by the State
39 Agriculture Development Committee for the preservation of
40 farmland in the preservation area or by any development transfer
41 bank used or established by the council to purchase development
42 potential in the preservation area.

43 c. Nothing in this act, the regional master plan, any rules or
44 regulations adopted by the Department of Environmental Protection
45 pursuant to this act, or any amendments to a master plan,
46 development regulations, or other regulations adopted by a local
47 government unit to specifically conform them with the regional

1 master plan shall be construed to alter or compromise the goals,
2 purposes, policies, and provisions of, or lessen the protections
3 afforded to farmers by, the "Right to Farm Act," P.L.1983, c.31
4 (C.4:1C-1 et seq.), and any rules or regulations adopted pursuant
5 thereto.

6 d. The provisions of this section shall not be construed to alter
7 or obviate the requirements of any other applicable State or local
8 laws, rules, regulations, development regulations, or ordinances.
9 (cf: P.L.2004, c.120, s.31)

10

11 7. Section 34 of P.L.2004, c.120 (C.13:20-32) is amended to
12 read as follows:

13 34. The Department of Environmental Protection shall prepare
14 rules and regulations establishing the environmental standards for
15 the preservation area upon which the regional master plan adopted
16 by the council and the Highlands permitting review program
17 administered by the department pursuant to this act shall be based.
18 These rules and regulations shall provide for at least the following:

19 a. a prohibition on major Highlands development within 300
20 feet of any Highlands open waters, and the establishment of a 300-
21 foot buffer adjacent to all Highlands open waters; provided,
22 however, that this buffer shall not extend into the planning area.
23 For the purposes of this subsection, major Highlands development
24 does not include linear development for infrastructure, utilities, and
25 the rights-of-way therefor, provided that there is no other feasible
26 alternative, as determined by the department, for the linear
27 development outside of the buffer. Structures or land uses in the
28 buffer existing on the date of enactment of this act may remain,
29 provided that the area of disturbance shall not be increased. This
30 subsection shall not be construed to limit any authority of the
31 department to establish buffers of any size or any other protections
32 for category one waters designated by the department pursuant to
33 the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et
34 seq.), or any other law, or any rule or regulation adopted pursuant
35 thereto, for major Highlands development or for other development
36 that does not qualify as major Highlands development;

37 b. measures to ensure that existing water quality shall be
38 maintained, restored, or enhanced, as required pursuant to the
39 "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.)
40 or the "Water Quality Planning Act," P.L.1977, c.75 (C.58:11A-1 et
41 seq.), or any rule or regulation adopted pursuant thereto, in all
42 Highlands open waters and waters of the Highlands, and to provide
43 that any new or expanded point source discharge, except discharges
44 from water supply facilities, shall not degrade existing water
45 quality. In the case of water supply facilities, all reasonable
46 measures shall be taken to eliminate or minimize water quality
47 impacts;

- 1 c. notwithstanding the provisions of section 23 of P.L.1987,
2 c.156 (C.13:9B-23), or any rule or regulation adopted pursuant
3 thereto, to the contrary, the criteria for the type of activity or
4 activities eligible for the use of a general permit for any portion of
5 an activity located within a freshwater wetland or freshwater
6 wetland transition area located in the preservation area, provided
7 that these criteria are at least as protective as those provided in
8 section 23 of P.L.1987, c.156 (C.13:9B-23);
- 9 d. notwithstanding the provisions of subsection a. of section 5
10 of P.L.1981, c.262 (C.58:1A-5), or any rule or regulation adopted
11 pursuant thereto, to the contrary, a system for the regulation of any
12 diversion of more than 50,000 gallons per day, and multiple
13 diversions by the same or related entities for the same or related
14 projects or developments of more than 50,000 gallons per day, of
15 waters of the Highlands pursuant to the "Water Supply Management
16 Act," P.L.1981, c.262 (C.58:1A-1 et seq.), and any permit issued
17 pursuant thereto shall be based on consideration of individual and
18 cumulative impacts of multiple diversions, maintenance of stream
19 base flows, minimization of depletive use, maintenance of existing
20 water quality, and protection of ecological uses. Any new or
21 increased diversion for nonpotable purposes that is more than 50%
22 consumptive shall require an equivalent reduction in water demand
23 within the same subdrainage area through such means as
24 groundwater recharge of stormwater or reuse. Existing unused
25 allocation or allocations used for nonpotable purposes may be
26 revoked by the department where measures to the maximum extent
27 practicable are not implemented to reduce demand. All new or
28 increased diversions shall be required to implement water
29 conservation measures to the maximum extent practicable;
- 30 e. a septic system density standard established at a level to
31 prevent the degradation of water quality, or to require the
32 restoration of water quality, and to protect ecological uses from
33 individual, secondary, and cumulative impacts, in consideration of
34 deep aquifer recharge available for dilution;
- 35 f. a zero net fill requirement for flood hazard areas pursuant to
36 the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50
37 et seq.);
- 38 g. the antidegradation provisions of the surface water quality
39 standards and the stormwater regulations applicable to category one
40 waters to be applied to Highlands open waters;
- 41 h. a prohibition on impervious surfaces of greater than three
42 percent of the land area, except that Highlands open waters shall not
43 be included in the calculation of that land area , and solar panels
44 shall not be included any the calculation of impervious surface ;
- 45 i. notwithstanding the provisions of the "Safe Drinking Water
46 Act," P.L.1977, c.224 (C.58:12A-1 et seq.), or any rule or
47 regulation adopted pursuant thereto, to the contrary, a limitation or

1 prohibition on the construction of new public water systems or the
2 extension of existing public water systems to serve development in
3 the preservation area, except in the case of a demonstrated need to
4 protect public health and safety;

5 j. a prohibition on development, except linear development for
6 infrastructure, utilities, and the rights-of-way therefor, provided that
7 no other feasible alternative, as determined by the department,
8 exists for the linear development, on steep slopes in the
9 preservation area with a grade of 20% or greater, and standards for
10 development on slopes in the preservation area exhibiting a grade of
11 between 10% and 20%. The standards shall assure that
12 developments on slopes exhibiting a grade of between 10% and
13 20% preserve and protect steep slopes from the negative
14 consequences of development on the site and the cumulative impact
15 in the Highlands Region. The standards shall be developed to
16 prevent soil erosion and sedimentation, protect water quality,
17 prevent stormwater runoff, protect threatened and endangered
18 animal and plant species sites and designated habitats, provide for
19 minimal practicable degradation of unique or irreplaceable land
20 types, historical or archeological areas, and existing scenic
21 attributes at the site and within the surrounding area, protect upland
22 forest, and restrict impervious surface; and shall take into
23 consideration differing soil types, soil erodability, topography,
24 hydrology, geology, and vegetation types; and

25 k. a prohibition on development that disturbs upland forested
26 areas, in order to prevent soil erosion and sedimentation, protect
27 water quality, prevent stormwater runoff, and protect threatened and
28 endangered animal and plant species sites and designated habitats;
29 and standards to protect upland forested areas that require all
30 appropriate measures be taken to avoid impacts or disturbance to
31 upland forested areas, and where avoidance is not possible that all
32 appropriate measures have been taken to minimize and mitigate
33 impacts to upland forested areas and to prevent soil erosion and
34 sedimentation, protect water quality, prevent stormwater runoff, and
35 protect threatened and endangered animal and plant species sites
36 and designated habitats.

37 (cf: P.L.2004, c.120, s.34)

38

39 8. Section 8 of P.L.1968, c.285 (C.40:27-6.6) is amended to
40 read as follows:

41 8. The governing body of any county having a county planning
42 board may provide for the review of site plans for land development
43 along county roads or affecting county drainage facilities as
44 provided in subsection e. of this section and for the approval of
45 such development as hereinafter set forth and limited for the
46 purpose of assuring a safe and efficient county road system. Such
47 review and approval shall be in conformance with procedures and

1 standards adopted by resolution or ordinance as appropriate of the
2 governing body. Notice of the public hearing on a proposed
3 resolution or ordinance of the governing body establishing
4 procedures and standards to govern the review and regulation of
5 land development along county roads or affecting county drainage
6 facilities as provided in subsection e. of this section, and a copy of
7 such resolution or ordinance, shall be given by delivery or by
8 certified mail to the municipal clerk, secretary of the planning
9 board and secretary of the board of adjustment of each municipality
10 in the county at least 10 days prior to such hearing. These
11 procedures and standards shall be limited to:

12 a. The submission of a site plan, prior to the issuance of a
13 municipal building permit, drawn in accordance with standards in
14 the resolution or ordinance for any proposed land development,
15 excluding single family residential development but including
16 proposed commercial, industrial, multifamily structures containing
17 five or more units, or any other land development requiring off-
18 street parking area or producing surface runoff in excess of
19 standards set forth in the site plan review and approval resolution or
20 ordinance of the governing body.

21 b. The requirement of dedication of additional right-of-way in
22 accordance with the county master plan adopted by the county
23 planning board or an official county map adopted by the governing
24 body. Where by reason of special or unusual conditions said total
25 additional right-of-way is to be secured from just one side of an
26 existing road, only one-half of the additional right-of-way may be
27 required to be dedicated.

28 c. The requirement of physical improvements subject to
29 recommendations of the county engineer relating to the safety and
30 convenience of the traveling public, including drainage facilities, or
31 other highway and traffic design features as may be deemed
32 necessary on such county road or roads in accordance with the
33 engineering and planning standards established in the site plan
34 review and approval resolution or ordinance of the governing body.

35 d. The requirement of performance and payment guarantees
36 and procedures for the release of same, maintenance bonds of not
37 more than 2 years' duration from the date of acceptance of
38 improvements, cash contributions, and agreements specifying
39 minimum standards of construction for required improvements.
40 Procedures for, and limitations on the requirement of such
41 guarantees or cash contributions shall be governed by the provisions
42 of this act.

43 e. The requirement of adequate drainage facilities and
44 easements when, as determined by the county engineer in
45 accordance with county-wide standards, the proposed site plan will
46 cause storm water to drain either directly or indirectly to a county
47 road or through any drainage-way, structure, pipe, culvert or facility

1 for which the county is responsible for the construction,
2 maintenance or proper functioning.

3 Site plans for land development not along a county road that
4 include less than 1 acre of impervious surfaces are exempt from
5 county site plan review.

6 f. For the purposes of any county site plan review, solar panels
7 shall not be included in any calculation of impervious surface or
8 impervious cover.

9 As used in this subsection, “solar panel” means an elevated panel
10 or plate, or a canopy or array thereof, that captures and converts
11 solar radiation to produce power, and includes flat plate, focusing
12 solar collectors, or photovoltaic solar cells and excludes the base or
13 foundation of the panel, plate, canopy, or array.

14 (cf: P.L.1981, c.50, s.1)

15

16 9. (New section) An ordinance requiring approval by the
17 planning board of either subdivisions or site plans, or both, shall not
18 include solar panels in any calculation of impervious surface or
19 impervious cover.

20 As used in this section, “solar panel” means an elevated panel or
21 plate, or a canopy or array thereof, that captures and converts solar
22 radiation to produce power, and includes flat plate, focusing solar
23 collectors, or photovoltaic solar cells and excludes the base or
24 foundation of the panel, plate, canopy, or array.

25

26 10. Section 3 of P.L.1981, c.32 (C.40:55D-95) is amended to
27 read as follows:

28 3. A storm water management plan and a storm water
29 management ordinance or ordinances shall conform to all relevant
30 federal and State statutes, rules and regulations concerning storm
31 water management or flood control and shall be designed: a. to
32 reduce flood damage, including damage to life and property; b. to
33 minimize storm water runoff from any new land development where
34 such runoff will increase flood damage; c. to reduce soil erosion
35 from any development or construction project; d. to assure the
36 adequacy of existing and proposed culverts and bridges; e. to induce
37 water recharge into the ground where practical; f. to prevent, to the
38 greatest extent feasible, an increase in nonpoint pollution; g. to
39 maintain the integrity of stream channels for their biological
40 functions, as well as for drainage; and h. to minimize public safety
41 hazards at any storm water detention facilities constructed as part of
42 a subdivision or pursuant to a site plan. A storm water management
43 plan shall also include such structural changes and such additional
44 nonstructural measures and practices as may be necessary to
45 manage storm water. A storm water management plan and a storm
46 water management ordinance or ordinances shall not be construed
47 to prohibit solar panels to be constructed and installed on a site.

1 Solar panels shall not be included in any calculation of impervious
2 surface or impervious cover.

3 For purposes of this act :

4 **["nonpoint"]** “Nonpoint pollution” means pollution from any
5 source other than from any discernible, confined and discrete
6 conveyance, and shall include, but not be limited to, pollutants from
7 agricultural, silvicultural, mining, construction, subsurface disposal
8 and urban runoff sources.

9 “Solar panel” means an elevated panel or plate, or a canopy or
10 array thereof, that captures and converts solar radiation to produce
11 power, and includes flat plate, focusing solar collectors, or
12 photovoltaic solar cells and excludes the base or foundation of the
13 panel, plate, canopy, or array.

14 (cf: P.L.1991, c.194, s.1)

15

16 11. Section 4 of P.L.2009, c.82 (C.45:22A-46.6) is amended to
17 read as follows:

18 4. a. A developer seeking to change an age-restricted
19 development approval to a converted development approval shall
20 file an application with the approving board seeking an amendment
21 to the previously granted approvals requesting the authority to
22 develop the land as a converted development. At such time, the
23 developer shall also file a copy of said notice with the municipal
24 clerk of the municipality in which the development is located and
25 the developer shall provide notice prior to a hearing on the
26 application in the manner prescribed by section 7.1 of P.L.1975,
27 c.291 (C.40:55D-12).

28 (1) No application for an amended approval seeking the
29 authority to construct a converted development shall be considered
30 a "use variance" or other "'d' variance" application pursuant to
31 subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70). Both
32 planning boards that initially granted approvals for the age-
33 restricted development and zoning boards of adjustment that
34 initially granted approvals for the age-restricted development shall
35 have the legal authority to grant amended approvals for a converted
36 development without the need to seek relief pursuant to subsection
37 d. of section 57 of P.L.1975, c.291 (C.40:55D-70), it being the
38 intent of this act that such converted developments are to be
39 considered permitted uses in the zoning district in which they are
40 located.

41 b. Applications seeking amended approval for a converted
42 development shall include documentation that all of the following
43 site improvement and infrastructure requirements have been met:

44 (1) the site meets the Residential Site Improvement Standards
45 parking requirement for the residential land uses in a converted
46 development as established pursuant to N.J.A.C.5:21-4.14 through -
47 4.16;

1 (2) the recreation improvements and other amenities to be
2 constructed on the site have been revised, as needed, to meet the
3 needs of a converted development;

4 (3) the water supply system is adequate, as determined pursuant
5 to N.J.A.C.5:21-5.1, to meet the needs of a converted development;

6 (4) the capacity of the sanitary sewer system is adequate to meet
7 the projected flow requirements of a converted development
8 pursuant to N.J.A.C.7:14A-23.3;

9 (5) if additional water supply or sewer capacity is needed and
10 the developer is unable to obtain additional supply or capacity, the
11 number of dwelling units in the development has been reduced
12 accordingly;

13 (6) if additional parking is needed, and the developer is unable
14 to provide the required parking, the number of dwelling units in the
15 development has been reduced accordingly; and

16 (7) if additional parking is provided and increases the amount of
17 impervious cover by more than one percent, the storm water system
18 calculations and improvements have been revised accordingly,
19 except that solar panels shall not be included in any calculation of
20 impervious surface or impervious cover. As used in this paragraph,
21 “solar panel” means an elevated panel or plate, or a canopy or array
22 thereof, that captures and converts solar radiation to produce power,
23 and includes flat plate, focusing solar collectors, or photovoltaic
24 solar cells and excludes the base or foundation of the panel, plate,
25 canopy, or array .

26 c. If the approving board determines that the requirements of
27 P.L.2009, c.82 (C.45:22A-46.3 et seq.) have been satisfied, and the
28 conversion can be granted without substantial detriment to the
29 public good and will not substantially impair the intent and purpose
30 of the zone plan and zoning ordinance, the application for the
31 conversion shall be approved.

32 (cf: P.L.2009, c.82, s.4)

33

34 12. This act shall take effect immediately.