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SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 921

STATE OF NEW JERSEY
214th LEGISLATURE

ADOPTED FEBRUARY 8, 2010

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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.

SENATE, No. 921

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JANUARY 19, 2010

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator JENNIFER BECK

District 12 (Mercer and Monmouth)

SYNOPSIS

Exempts solar panels from impervious surface or impervious cover designation.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning solar panels and impervious surfaces, and
2 amending P.L.2004, c.120, P.L.1968, c.285, P.L.1981, c.32, and
3 P.L.2009, c.82, and supplementing P.L.1975, c.291 (C.40:55D-1
4 et seq.).

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

8
9 1. Section 3 of P.L.2004, c.120 (C.13:20-3) is amended to read
10 as follows:

11 3. As used in this act:

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

21 "Agricultural impervious cover" means agricultural or
22 horticultural buildings, structures, or facilities with or without
23 flooring, residential buildings, and paved areas, but shall not mean
24 temporary coverings or solar panels ;

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

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

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

43 "Construction beyond site preparation" means having completed
44 the foundation for a building or structure, and does not include the
45 clearing, cutting, or removing of vegetation, bringing construction

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 materials to the site, or site grading or other earth work associated
2 with preparing a site for construction;

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

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

8 "Department" means the Department of Environmental
9 Protection;

10 "Development" means the same as that term is defined in section
11 3.1 of P.L.1975, c.291 (C.40:55D-4);

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

14 "Disturbance" means the placement of impervious surface, the
15 exposure or movement of soil or bedrock, or the clearing, cutting,
16 or removing of vegetation;

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

28 "Facility expansion" means the expansion of the capacity of an
29 existing capital improvement in order that the improvement may
30 serve new development;

31 "Farm conservation plan" means a site specific plan that
32 prescribes needed land treatment and related conservation and
33 natural resource management measures, including forest
34 management practices, that are determined to be practical and
35 reasonable for the conservation, protection, and development of
36 natural resources, the maintenance and enhancement of agricultural
37 or horticultural productivity, and the control and prevention of
38 nonpoint source pollution;

39 "Farm management unit" means a parcel or parcels of land,
40 whether contiguous or noncontiguous, together with agricultural or
41 horticultural buildings, structures and facilities, producing
42 agricultural or horticultural products, and operated as a single
43 enterprise;

44 "Highlands open waters" means all springs, streams including
45 intermittent streams, wetlands, and bodies of surface water, whether
46 natural or artificial, located wholly or partially within the
47 boundaries of the Highlands Region, but shall not mean swimming
48 pools;

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

3 "Immediate family member" means spouse, child, parent, sibling,
4 aunt, uncle, niece, nephew, first cousin, grandparent, grandchild,
5 father-in-law, mother-in-law, son-in-law, daughter-in-law,
6 stepparent, stepchild, stepbrother, stepsister, half brother, or half
7 sister, whether the individual is related by blood, marriage, or
8 adoption;

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

17 "Impervious surface" means any structure, surface, or
18 improvement that reduces or prevents absorption of stormwater into
19 land, and includes porous paving, paver blocks, gravel, crushed
20 stone, decks, patios, elevated structures, and other similar
21 structures, surfaces, or improvements and excludes solar panels ;

22 "Individual unit of development" means a dwelling unit in the
23 case of a residential development, a square foot in the case of a non-
24 residential development, or any other standard employed by a
25 municipality for different categories of development as a basis upon
26 which to establish a service unit;

27 "Local government unit" means a municipality, county, or other
28 political subdivision of the State, or any agency, board,
29 commission, utilities authority or other authority, or other entity
30 thereof;

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

1 "Mine" means any mine, whether on the surface or underground,
2 and any mining plant, material, equipment, or explosives on the
3 surface or underground, which may contribute to the mining or
4 handling of ore or other metalliferous or non-metalliferous
5 products. The term "mine" shall also include a quarry, sand pit,
6 gravel pit, clay pit, or shale pit;

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

21 "Office of Smart Growth" means the Office of State Planning
22 established pursuant to section 6 of P.L.1985, c.398 (C.52:18A-
23 201);

24 "Planning area" means that portion of the Highlands Region not
25 included within the preservation area;

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

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

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

32 "Regional master plan" means the Highlands regional master
33 plan or any revision thereof adopted by the council pursuant to
34 section 8 of this act;

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

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

1 "Service unit" means a standardized measure of consumption,
2 use, generation or discharge attributable to an individual unit of
3 development calculated in accordance with generally accepted
4 engineering or planning standards for a particular category of
5 capital improvements or facility expansions;

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

8 "Solar panel" means a panel or plate, or a canopy or array
9 thereof, that collects or captures solar energy or radiation to provide
10 energy or power, and includes nocturnal heat radiation, flat plate or
11 focusing solar collectors, or photovoltaic solar cells and excludes
12 the base or foundation of the panel, plate, canopy, or array;

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

16 "State entity" means any State department, agency, board,
17 commission, or other entity, district water supply commission,
18 independent State authority or commission, or bi-state entity;

19 "State Soil Conservation Committee" means the State Soil
20 Conservation Committee in the Department of Agriculture
21 established pursuant to R.S. 4:24-3;

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

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

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

32

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

35 8. The governing body of any county having a county planning
36 board may provide for the review of site plans for land development
37 along county roads or affecting county drainage facilities as
38 provided in subsection e. of this section and for the approval of
39 such development as hereinafter set forth and limited for the
40 purpose of assuring a safe and efficient county road system. Such
41 review and approval shall be in conformance with procedures and
42 standards adopted by resolution or ordinance as appropriate of the
43 governing body. Notice of the public hearing on a proposed
44 resolution or ordinance of the governing body establishing
45 procedures and standards to govern the review and regulation of
46 land development along county roads or affecting county drainage
47 facilities as provided in subsection e. of this section, and a copy of
48 such resolution or ordinance, shall be given by delivery or by

1 certified mail to the municipal clerk, secretary of the planning
2 board and secretary of the board of adjustment of each municipality
3 in the county at least 10 days prior to such hearing. These
4 procedures and standards shall be limited to:

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

14 b. The requirement of dedication of additional right-of-way in
15 accordance with the county master plan adopted by the county
16 planning board or an official county map adopted by the governing
17 body. Where by reason of special or unusual conditions said total
18 additional right-of-way is to be secured from just one side of an
19 existing road, only one-half of the additional right-of-way may be
20 required to be dedicated.

21 c. The requirement of physical improvements subject to
22 recommendations of the county engineer relating to the safety and
23 convenience of the traveling public, including drainage facilities, or
24 other highway and traffic design features as may be deemed
25 necessary on such county road or roads in accordance with the
26 engineering and planning standards established in the site plan
27 review and approval resolution or ordinance of the governing body.

28 d. The requirement of performance and payment guarantees
29 and procedures for the release of same, maintenance bonds of not
30 more than 2 years' duration from the date of acceptance of
31 improvements, cash contributions, and agreements specifying
32 minimum standards of construction for required improvements.
33 Procedures for, and limitations on the requirement of such
34 guarantees or cash contributions shall be governed by the provisions
35 of this act.

36 e. The requirement of adequate drainage facilities and
37 easements when, as determined by the county engineer in
38 accordance with county-wide standards, the proposed site plan will
39 cause storm water to drain either directly or indirectly to a county
40 road or through any drainage-way, structure, pipe, culvert or facility
41 for which the county is responsible for the construction,
42 maintenance or proper functioning.

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

46 f. A site plan for land development that includes solar panels
47 shall not designate or deem, or calculate, solar panels as an

1 impervious surface or impervious cover, for the purposes of any
2 county site plan review.

3 As used in this subsection, “solar panel” means a panel or plate,
4 or a canopy or array thereof, that collects or captures solar energy
5 or radiation to provide energy or power, and includes nocturnal heat
6 radiation, flat plate or focusing solar collectors, and photovoltaic
7 solar cells, and excludes the base or foundation of a panel, plate,
8 canopy, or array.

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

10

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

13 3. A storm water management plan and a storm water
14 management ordinance or ordinances shall conform to all relevant
15 federal and State statutes, rules and regulations concerning storm
16 water management or flood control and shall be designed: a. to
17 reduce flood damage, including damage to life and property; b. to
18 minimize storm water runoff from any new land development where
19 such runoff will increase flood damage; c. to reduce soil erosion
20 from any development or construction project; d. to assure the
21 adequacy of existing and proposed culverts and bridges; e. to induce
22 water recharge into the ground where practical; f. to prevent, to the
23 greatest extent feasible, an increase in nonpoint pollution; g. to
24 maintain the integrity of stream channels for their biological
25 functions, as well as for drainage; and h. to minimize public safety
26 hazards at any storm water detention facilities constructed as part of
27 a subdivision or pursuant to a site plan. A storm water management
28 plan shall also include such structural changes and such additional
29 nonstructural measures and practices as may be necessary to
30 manage storm water. A storm water management plan and a storm
31 water management ordinance or ordinances shall permit solar
32 panels to be constructed and installed on a site. Solar panels shall
33 not be designated as, or determined to be, an impervious surface or
34 impervious cover.

35 For purposes of **[this act]** P.L.1981, c.32 (C.40:55D-93 et seq.):

36 **["nonpoint pollution"]** “Nonpoint pollution” means pollution
37 from any source other than from any discernible, confined and
38 discrete conveyance, and shall include, but not be limited to,
39 pollutants from agricultural, silvicultural, mining, construction,
40 subsurface disposal and urban runoff sources.

41 “Solar panel” means a panel or plate, or a canopy or array
42 thereof, that collects or captures solar energy or radiation to provide
43 energy or power, and includes nocturnal heat radiation, flat plate or
44 focusing solar collectors, and photovoltaic solar cells, and excludes
45 the base or foundation of a panel, plate, canopy, or array.

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

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

3 4. a. A developer seeking to change an age-restricted
4 development approval to a converted development approval shall
5 file an application with the approving board seeking an amendment
6 to the previously granted approvals requesting the authority to
7 develop the land as a converted development. At such time, the
8 developer shall also file a copy of said notice with the municipal
9 clerk of the municipality in which the development is located and
10 the developer shall provide notice prior to a hearing on the
11 application in the manner prescribed by section 7.1 of P.L.1975,
12 c.291 (C.40:55D-12).

13 (1) No application for an amended approval seeking the
14 authority to construct a converted development shall be considered
15 a "use variance" or other "'d' variance" application pursuant to
16 subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70). Both
17 planning boards that initially granted approvals for the age-
18 restricted development and zoning boards of adjustment that
19 initially granted approvals for the age-restricted development shall
20 have the legal authority to grant amended approvals for a converted
21 development without the need to seek relief pursuant to subsection
22 d. of section 57 of P.L.1975, c.291 (C.40:55D-70), it being the
23 intent of this act that such converted developments are to be
24 considered permitted uses in the zoning district in which they are
25 located.

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

29 (1) the site meets the Residential Site Improvement Standards
30 parking requirement for the residential land uses in a converted
31 development as established pursuant to N.J.A.C.5:21-4.14 through -
32 4.16;

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

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

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

41 (5) if additional water supply or sewer capacity is needed and
42 the developer is unable to obtain additional supply or capacity, the
43 number of dwelling units in the development has been reduced
44 accordingly;

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

1 (7) if additional parking is provided and increases the amount of
2 impervious cover excluding solar panels, by more than one
3 percent, the storm water system calculations and improvements
4 have been revised accordingly. As used in this paragraph, “solar
5 panel” means a panel or plate, or a canopy or array thereof, that
6 collects or captures solar energy or radiation to provide energy or
7 power, and includes nocturnal heat radiation, flat plate or focusing
8 solar collectors, and photovoltaic solar cells, and excludes the base
9 or foundation of a panel, plate, canopy, or array.

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

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

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

22 As used in this section, “solar panel” means a panel or plate, or a
23 canopy or array thereof, that collects or captures solar energy or
24 radiation to provide energy or power, and includes nocturnal heat
25 radiation, flat plate or focusing solar collectors, and photovoltaic
26 solar cells, and excludes the base or foundation of a panel, plate,
27 canopy, or array.

28
29 6. This act shall take effect immediately.

30
31
32 STATEMENT

33
34 This bill would exempt solar panels from being designated as an
35 impervious surface or impervious cover, as it applies to the various
36 laws relating to municipal land use, stormwater management, and
37 the Highlands, including agricultural development therein.

38 By exempting solar panels from the definition of an impervious
39 surface, the bill would eliminate certain requirements and would
40 change calculations of impervious surfaces as they apply to various
41 development and management plans.

42 Under the bill, a solar panel is defined as a panel or plate, or a
43 canopy or array thereof, that collects or captures solar energy or
44 radiation to provide energy or power, and includes nocturnal heat
45 radiation, flat plate or focusing solar collectors, and photovoltaic
46 solar cells, and excludes the base or foundation of a panel, plate,
47 canopy, or array.

S921 B. SMITH, BECK

11

1 This bill would amend: (1) P.L.2004, c.120, the “Highlands
2 Water Protection and Planning Act”; (2) P.L.1968, c.285, relating to
3 county site plan reviews; (3) P.L.1981, c.32, relating to storm water
4 management; and (4) P.L.2009, c.82 relating to age-restricted
5 community developments. The bill would additionally supplement
6 the “Municipal Land Use Law,” P.L.1975, c.291, to exclude solar
7 panels from being designated or deemed, or calculated, as
8 impervious surface or impervious cover.

SENATE ENVIRONMENT AND ENERGY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 921**

STATE OF NEW JERSEY

DATED: FEBRUARY 8, 2010

The Senate Environment and Energy Committee favorably reports a Senate Committee Substitute for Senate Bill No. 921.

This committee substitute would exempt solar panels from being calculated as an impervious surface or impervious cover, as it applies to the various laws relating to municipal land use, stormwater management, waterfront and coastal development, the Pinelands, and the Highlands, including agricultural development therein.

By excluding solar panels from the calculation of an impervious surface or impervious cover, the committee substitute would eliminate certain requirements and would change calculations of impervious surfaces or covers as they apply to various development and management plans.

Under the committee substitute, a solar panel is defined as an elevated panel or plate, or a canopy or array thereof, that captures and converts solar radiation to produce power, and includes flat plate, focusing solar collectors, or photovoltaic solar cells and excludes the base or foundation of the panel, plate, canopy, or array.

This committee substitute would amend or supplement: (1) the law concerning waterfront development, R.S.12:5-3; (2) the "Pinelands Protection Act"; (3) the "Coastal Area Facility Review Act," also known as CAFRA; (4) the "Highlands Water Protection and Planning Act"; (5) the law concerning county site plan reviews, P.L.1968, c.285 (C.40:27-6.1 et al.); (6) the "Municipal Land Use Law", (7) the law concerning storm water management plans, P.L.1981, c.32, (C.40:55D-93 et seq.); and (8) the law concerning age-restricted community developments, P.L.2009, c.82 (C.45:22A-46.3 et seq.).

ASSEMBLY TELECOMMUNICATIONS AND UTILITIES
COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 921

STATE OF NEW JERSEY

DATED: MARCH 18, 2010

The Assembly Telecommunications and Utilities Committee reports favorably Senate Bill No. 921 (SCS).

As reported, this bill would exempt solar panels from being calculated as an impervious surface or impervious cover, as it applies to the various laws relating to municipal land use, stormwater management, waterfront and coastal development, the Pinelands, and the Highlands, including agricultural development therein.

By excluding solar panels from the calculation of an impervious surface or impervious cover, the committee substitute would eliminate certain requirements and would change calculations of impervious surfaces or covers as they apply to various development and management plans.

Under the bill, a solar panel is defined as an elevated panel or plate, or a canopy or array thereof, that captures and converts solar radiation to produce power, and includes flat plate, focusing solar collectors, or photovoltaic solar cells and excludes the base or foundation of the panel, plate, canopy, or array.

As reported, this bill would amend or supplement various sections of statutory law as follows:

- 1) section 1 amends the waterfront development law, R.S.12:5-3;
- 2) section 2 supplements the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.);
- 3) section 3 amends the "Coastal Area Facility Review Act," ("CAFRA") P.L.1973, c.185 (C.13:19-1 et seq.);
- 4) section 4 supplements CAFRA;
- 5) sections 5, 6 and 7 amend the "Highlands Water Protection and Planning Act," P.L.2004, c.120 (C.13:20-1 et al.);
- 6) section 8 amends the law concerning county site plan reviews, P.L.1968, c.285 (C.40:27-6.1 et al.);
- 7) section 9 supplements the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.);
- 8) section 10 amends the law concerning storm water management plans, P.L.1981, c.32 (C.40:55D-93 et seq.) ; and

9) section 11 amends the law concerning conversion of age-restricted community developments, P.L.2009, c.82 (C.45:22A-46.3 et seq.).

As reported by the committee, Senate Bill No. 921 (SCS) is identical to Assembly Bill No. 2289 which was also reported by the committee on this date.

ASSEMBLY, No. 2289

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED FEBRUARY 18, 2010

Sponsored by:

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

As introduced.



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

A2289 CHIVUKULA, QUIJANO

2

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
48 a hospital, nursing home or other residential institution, mobile

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

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

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

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

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

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

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

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

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

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

37

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

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

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

3 3. As used in this act:

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

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

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

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

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

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

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

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

45 "Department" means the Department of Environmental
46 Protection;

47 "Development" means the same as that term is defined in section
48 3.1 of P.L.1975, c.291 (C.40:55D-4);

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

3 "Disturbance" means the placement of impervious surface, the
4 exposure or movement of soil or bedrock, or the clearing, cutting,
5 or removing of vegetation;

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

17 "Facility expansion" means the expansion of the capacity of an
18 existing capital improvement in order that the improvement may
19 serve new development;

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

28 "Farm management unit" means a parcel or parcels of land,
29 whether contiguous or noncontiguous, together with agricultural or
30 horticultural buildings, structures and facilities, producing
31 agricultural or horticultural products, and operated as a single
32 enterprise;

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

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

40 "Immediate family member" means spouse, child, parent, sibling,
41 aunt, uncle, niece, nephew, first cousin, grandparent, grandchild,
42 father-in-law, mother-in-law, son-in-law, daughter-in-law,
43 stepparent, stepchild, stepbrother, stepsister, half brother, or half
44 sister, whether the individual is related by blood, marriage, or
45 adoption;

46 "Impact fee" means cash or in-kind payments required to be paid
47 by a developer as a condition for approval of a major subdivision or
48 major site plan for the developer's proportional share of the cost of

1 providing new or expanded reasonable and necessary public
2 improvements located outside the property limits of the subdivision
3 or development but reasonably related to the subdivision or
4 development based upon the need for the improvement created by,
5 and the benefits conferred upon, the subdivision or development;

6 "Impervious surface" means any structure, surface, or
7 improvement that reduces or prevents absorption of stormwater into
8 land, and includes porous paving, paver blocks, gravel, crushed
9 stone, decks, patios, elevated structures, and other similar
10 structures, surfaces, or improvements;

11 "Individual unit of development" means a dwelling unit in the
12 case of a residential development, a square foot in the case of a non-
13 residential development, or any other standard employed by a
14 municipality for different categories of development as a basis upon
15 which to establish a service unit;

16 "Local government unit" means a municipality, county, or other
17 political subdivision of the State, or any agency, board,
18 commission, utilities authority or other authority, or other entity
19 thereof;

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

40 "Mine" means any mine, whether on the surface or underground,
41 and any mining plant, material, equipment, or explosives on the
42 surface or underground, which may contribute to the mining or
43 handling of ore or other metalliferous or non-metalliferous
44 products. The term "mine" shall also include a quarry, sand pit,
45 gravel pit, clay pit, or shale pit;

46 "Mine site" means the land upon which a mine, whether active or
47 inactive, is located, for which the Commissioner of Labor and
48 Workforce Development has granted a certificate of registration

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8

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

12 "Office of Smart Growth" means the Office of State Planning
13 established pursuant to section 6 of P.L.1985, c.398 (C.52:18A-
14 201);

15 "Planning area" means that portion of the Highlands Region not
16 included within the preservation area;

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

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

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

23 "Regional master plan" means the Highlands regional master
24 plan or any revision thereof adopted by the council pursuant to
25 section 8 of this act;

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

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

39 "Service unit" means a standardized measure of consumption,
40 use, generation or discharge attributable to an individual unit of
41 development calculated in accordance with generally accepted
42 engineering or planning standards for a particular category of
43 capital improvements or facility expansions;

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

46 "Solar panel" means an elevated panel or plate, or a canopy or
47 array thereof, that captures and converts solar radiation to produce
48 power, and includes flat plate, focusing solar collectors, or

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

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

6 "State entity" means any State department, agency, board,
7 commission, or other entity, district water supply commission,
8 independent State authority or commission, or bi-state entity;

9 "State Soil Conservation Committee" means the State Soil
10 Conservation Committee in the Department of Agriculture
11 established pursuant to R.S. 4:24-3;

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

16 "Waters of the Highlands" means all springs, streams including
17 intermittent streams, and bodies of surface or ground water, whether
18 natural or artificial, located wholly or partially within the
19 boundaries of the Highlands Region, but shall not mean swimming
20 pools.

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

22

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

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

41 (2) Any agricultural or horticultural development in the
42 preservation area that would result in the increase, after the date of
43 enactment of this act either individually or cumulatively, of
44 agricultural impervious cover by nine percent or more of the total
45 land area of a farm management unit in the preservation area shall
46 require the review and approval by the local soil conservation
47 district of a resource management systems plan which shall be

1 prepared and submitted by the owner or operator of the farm
2 management unit.

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

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

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

35 b. (1) If any person violates any provision of subsection a. of
36 this section, any rule or regulation adopted pursuant to subsection a.
37 of this section, or a farm conservation plan or a resource
38 management systems plan approved pursuant to subsection a. of this
39 section, the Department of Agriculture or the local soil conservation
40 district may institute a civil action in the Superior Court for
41 injunctive relief to prohibit and prevent the violation or violations
42 and the court may proceed in a summary manner.

43 (2) (a) Any person who violates any provision of subsection a.
44 of this section, any rule or regulation adopted pursuant to
45 subsection a. of this section, or a farm conservation plan or a
46 resource management systems plan approved pursuant to subsection
47 a. of this section shall be liable to a civil administrative penalty of
48 up to \$5,000 for each violation. If the violation is of a continuing

1 nature, each day during which it continues shall constitute an
2 additional, separate, and distinct offense. No assessment shall be
3 levied pursuant to this subsection until after the party has been
4 notified by certified mail or personal service and provided an
5 opportunity for a hearing.

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

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

29 (d) All penalties collected pursuant to this subsection shall
30 either be used, as determined by the council, by the State
31 Agriculture Development Committee for the preservation of
32 farmland in the preservation area or by any development transfer
33 bank used or established by the council to purchase development
34 potential in the preservation area.

35 c. Nothing in this act, the regional master plan, any rules or
36 regulations adopted by the Department of Environmental Protection
37 pursuant to this act, or any amendments to a master plan,
38 development regulations, or other regulations adopted by a local
39 government unit to specifically conform them with the regional
40 master plan shall be construed to alter or compromise the goals,
41 purposes, policies, and provisions of, or lessen the protections
42 afforded to farmers by, the "Right to Farm Act," P.L.1983, c.31
43 (C.4:1C-1 et seq.), and any rules or regulations adopted pursuant
44 thereto.

45 d. The provisions of this section shall not be construed to alter
46 or obviate the requirements of any other applicable State or local
47 laws, rules, regulations, development regulations, or ordinances.

48 (cf: P.L.2004, c.120, s.31)

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

3 34. The Department of Environmental Protection shall prepare
4 rules and regulations establishing the environmental standards for
5 the preservation area upon which the regional master plan adopted
6 by the council and the Highlands permitting review program
7 administered by the department pursuant to this act shall be based.
8 These rules and regulations shall provide for at least the following:

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

27 b. measures to ensure that existing water quality shall be
28 maintained, restored, or enhanced, as required pursuant to the
29 "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.)
30 or the "Water Quality Planning Act," P.L.1977, c.75 (C.58:11A-1 et
31 seq.), or any rule or regulation adopted pursuant thereto, in all
32 Highlands open waters and waters of the Highlands, and to provide
33 that any new or expanded point source discharge, except discharges
34 from water supply facilities, shall not degrade existing water
35 quality. In the case of water supply facilities, all reasonable
36 measures shall be taken to eliminate or minimize water quality
37 impacts;

38 c. notwithstanding the provisions of section 23 of P.L.1987,
39 c.156 (C.13:9B-23), or any rule or regulation adopted pursuant
40 thereto, to the contrary, the criteria for the type of activity or
41 activities eligible for the use of a general permit for any portion of
42 an activity located within a freshwater wetland or freshwater
43 wetland transition area located in the preservation area, provided
44 that these criteria are at least as protective as those provided in
45 section 23 of P.L.1987, c.156 (C.13:9B-23);

46 d. notwithstanding the provisions of subsection a. of section 5
47 of P.L.1981, c.262 (C.58:1A-5), or any rule or regulation adopted
48 pursuant thereto, to the contrary, a system for the regulation of any

1 diversion of more than 50,000 gallons per day, and multiple
2 diversions by the same or related entities for the same or related
3 projects or developments of more than 50,000 gallons per day, of
4 waters of the Highlands pursuant to the "Water Supply Management
5 Act," P.L.1981, c.262 (C.58:1A-1 et seq.), and any permit issued
6 pursuant thereto shall be based on consideration of individual and
7 cumulative impacts of multiple diversions, maintenance of stream
8 base flows, minimization of depletive use, maintenance of existing
9 water quality, and protection of ecological uses. Any new or
10 increased diversion for nonpotable purposes that is more than 50%
11 consumptive shall require an equivalent reduction in water demand
12 within the same subdrainage area through such means as
13 groundwater recharge of stormwater or reuse. Existing unused
14 allocation or allocations used for nonpotable purposes may be
15 revoked by the department where measures to the maximum extent
16 practicable are not implemented to reduce demand. All new or
17 increased diversions shall be required to implement water
18 conservation measures to the maximum extent practicable;

19 e. a septic system density standard established at a level to
20 prevent the degradation of water quality, or to require the
21 restoration of water quality, and to protect ecological uses from
22 individual, secondary, and cumulative impacts, in consideration of
23 deep aquifer recharge available for dilution;

24 f. a zero net fill requirement for flood hazard areas pursuant to
25 the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50
26 et seq.);

27 g. the antidegradation provisions of the surface water quality
28 standards and the stormwater regulations applicable to category one
29 waters to be applied to Highlands open waters;

30 h. a prohibition on impervious surfaces of greater than three
31 percent of the land area, except that Highlands open waters shall not
32 be included in the calculation of that land area and solar panels
33 shall not be included any the calculation of impervious surface ;

34 i. notwithstanding the provisions of the "Safe Drinking Water
35 Act," P.L.1977, c.224 (C.58:12A-1 et seq.), or any rule or
36 regulation adopted pursuant thereto, to the contrary, a limitation or
37 prohibition on the construction of new public water systems or the
38 extension of existing public water systems to serve development in
39 the preservation area, except in the case of a demonstrated need to
40 protect public health and safety;

41 j. a prohibition on development, except linear development for
42 infrastructure, utilities, and the rights-of-way therefor, provided that
43 no other feasible alternative, as determined by the department,
44 exists for the linear development, on steep slopes in the
45 preservation area with a grade of 20% or greater, and standards for
46 development on slopes in the preservation area exhibiting a grade of
47 between 10% and 20%. The standards shall assure that
48 developments on slopes exhibiting a grade of between 10% and

1 20% preserve and protect steep slopes from the negative
2 consequences of development on the site and the cumulative impact
3 in the Highlands Region. The standards shall be developed to
4 prevent soil erosion and sedimentation, protect water quality,
5 prevent stormwater runoff, protect threatened and endangered
6 animal and plant species sites and designated habitats, provide for
7 minimal practicable degradation of unique or irreplaceable land
8 types, historical or archeological areas, and existing scenic
9 attributes at the site and within the surrounding area, protect upland
10 forest, and restrict impervious surface; and shall take into
11 consideration differing soil types, soil erodability, topography,
12 hydrology, geology, and vegetation types; and

13 k. a prohibition on development that disturbs upland forested
14 areas, in order to prevent soil erosion and sedimentation, protect
15 water quality, prevent stormwater runoff, and protect threatened and
16 endangered animal and plant species sites and designated habitats;
17 and standards to protect upland forested areas that require all
18 appropriate measures be taken to avoid impacts or disturbance to
19 upland forested areas, and where avoidance is not possible that all
20 appropriate measures have been taken to minimize and mitigate
21 impacts to upland forested areas and to prevent soil erosion and
22 sedimentation, protect water quality, prevent stormwater runoff, and
23 protect threatened and endangered animal and plant species sites
24 and designated habitats.

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

26

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

29 8. The governing body of any county having a county planning
30 board may provide for the review of site plans for land development
31 along county roads or affecting county drainage facilities as
32 provided in subsection e. of this section and for the approval of
33 such development as hereinafter set forth and limited for the
34 purpose of assuring a safe and efficient county road system. Such
35 review and approval shall be in conformance with procedures and
36 standards adopted by resolution or ordinance as appropriate of the
37 governing body. Notice of the public hearing on a proposed
38 resolution or ordinance of the governing body establishing
39 procedures and standards to govern the review and regulation of
40 land development along county roads or affecting county drainage
41 facilities as provided in subsection e. of this section, and a copy of
42 such resolution or ordinance, shall be given by delivery or by
43 certified mail to the municipal clerk, secretary of the planning
44 board and secretary of the board of adjustment of each municipality
45 in the county at least 10 days prior to such hearing. These
46 procedures and standards shall be limited to:

47 a. The submission of a site plan, prior to the issuance of a
48 municipal building permit, drawn in accordance with standards in

1 the resolution or ordinance for any proposed land development,
2 excluding single family residential development but including
3 proposed commercial, industrial, multifamily structures containing
4 five or more units, or any other land development requiring off-
5 street parking area or producing surface runoff in excess of
6 standards set forth in the site plan review and approval resolution or
7 ordinance of the governing body.

8 b. The requirement of dedication of additional right-of-way in
9 accordance with the county master plan adopted by the county
10 planning board or an official county map adopted by the governing
11 body. Where by reason of special or unusual conditions said total
12 additional right-of-way is to be secured from just one side of an
13 existing road, only one-half of the additional right-of-way may be
14 required to be dedicated.

15 c. The requirement of physical improvements subject to
16 recommendations of the county engineer relating to the safety and
17 convenience of the traveling public, including drainage facilities, or
18 other highway and traffic design features as may be deemed
19 necessary on such county road or roads in accordance with the
20 engineering and planning standards established in the site plan
21 review and approval resolution or ordinance of the governing body.

22 d. The requirement of performance and payment guarantees
23 and procedures for the release of same, maintenance bonds of not
24 more than 2 years' duration from the date of acceptance of
25 improvements, cash contributions, and agreements specifying
26 minimum standards of construction for required improvements.
27 Procedures for, and limitations on the requirement of such
28 guarantees or cash contributions shall be governed by the provisions
29 of this act.

30 e. The requirement of adequate drainage facilities and
31 easements when, as determined by the county engineer in
32 accordance with county-wide standards, the proposed site plan will
33 cause storm water to drain either directly or indirectly to a county
34 road or through any drainage-way, structure, pipe, culvert or facility
35 for which the county is responsible for the construction,
36 maintenance or proper functioning.

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

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

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

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

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

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

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

13 3. A storm water management plan and a storm water
14 management ordinance or ordinances shall conform to all relevant
15 federal and State statutes, rules and regulations concerning storm
16 water management or flood control and shall be designed: a. to
17 reduce flood damage, including damage to life and property; b. to
18 minimize storm water runoff from any new land development where
19 such runoff will increase flood damage; c. to reduce soil erosion
20 from any development or construction project; d. to assure the
21 adequacy of existing and proposed culverts and bridges; e. to induce
22 water recharge into the ground where practical; f. to prevent, to the
23 greatest extent feasible, an increase in nonpoint pollution; g. to
24 maintain the integrity of stream channels for their biological
25 functions, as well as for drainage; and h. to minimize public safety
26 hazards at any storm water detention facilities constructed as part of
27 a subdivision or pursuant to a site plan. A storm water management
28 plan shall also include such structural changes and such additional
29 nonstructural measures and practices as may be necessary to
30 manage storm water. A storm water management plan and a storm
31 water management ordinance or ordinances shall not be construed
32 to prohibit solar panels to be constructed and installed on a site.
33 Solar panels shall not be included in any calculation of impervious
34 surface or impervious cover.

35 For purposes of this act :

36 **["nonpoint"]** "Nonpoint pollution" means pollution from any
37 source other than from any discernible, confined and discrete
38 conveyance, and shall include, but not be limited to, pollutants from
39 agricultural, silvicultural, mining, construction, subsurface disposal
40 and urban runoff sources.

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

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

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

3 4. a. A developer seeking to change an age-restricted
4 development approval to a converted development approval shall
5 file an application with the approving board seeking an amendment
6 to the previously granted approvals requesting the authority to
7 develop the land as a converted development. At such time, the
8 developer shall also file a copy of said notice with the municipal
9 clerk of the municipality in which the development is located and
10 the developer shall provide notice prior to a hearing on the
11 application in the manner prescribed by section 7.1 of P.L.1975,
12 c.291 (C.40:55D-12).

13 (1) No application for an amended approval seeking the
14 authority to construct a converted development shall be considered
15 a "use variance" or other "'d' variance" application pursuant to
16 subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70). Both
17 planning boards that initially granted approvals for the age-
18 restricted development and zoning boards of adjustment that
19 initially granted approvals for the age-restricted development shall
20 have the legal authority to grant amended approvals for a converted
21 development without the need to seek relief pursuant to subsection
22 d. of section 57 of P.L.1975, c.291 (C.40:55D-70), it being the
23 intent of this act that such converted developments are to be
24 considered permitted uses in the zoning district in which they are
25 located.

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

29 (1) the site meets the Residential Site Improvement Standards
30 parking requirement for the residential land uses in a converted
31 development as established pursuant to N.J.A.C.5:21-4.14 through -
32 4.16;

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

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

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

41 (5) if additional water supply or sewer capacity is needed and
42 the developer is unable to obtain additional supply or capacity, the
43 number of dwelling units in the development has been reduced
44 accordingly;

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

1 (7) if additional parking is provided and increases the amount of
2 impervious cover by more than one percent, the storm water system
3 calculations and improvements have been revised accordingly,
4 except that solar panels shall not be included in any calculation of
5 impervious surface or impervious cover. As used in this paragraph,
6 “solar panel” means an elevated panel or plate, or a canopy or array
7 thereof, that captures and converts solar radiation to produce power,
8 and includes flat plate, focusing solar collectors, or photovoltaic
9 solar cells and excludes the base or foundation of the panel, plate,
10 canopy, or array .

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

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

18

19 12. This act shall take effect immediately.

20

21

22

STATEMENT

23

24 This bill would exempt solar panels from being calculated as an
25 impervious surface or impervious cover, as it applies to the various
26 laws relating to municipal land use, stormwater management,
27 waterfront and coastal development, the Pinelands, and the
28 Highlands, including agricultural development therein.

29 By excluding solar panels from the calculation of an impervious
30 surface or impervious cover, the bill would eliminate certain
31 requirements and would change calculations of impervious surfaces
32 or covers as they apply to various development and management
33 plans.

34 Under the bill, a solar panel is defined as an elevated panel or
35 plate, or a canopy or array thereof, that captures and converts solar
36 radiation to produce power, and includes flat plate, focusing solar
37 collectors, or photovoltaic solar cells and excludes the base or
38 foundation of the panel, plate, canopy, or array.

39 This bill would amend or supplement: (1) the law concerning
40 waterfront development, R.S.12:5-3; (2) the “Pinelands Protection
41 Act”; (3) the “Coastal Area Facility Review Act,” also known as
42 CAFRA; (4) the “Highlands Water Protection and Planning Act”;
43 (5) the law concerning county site plan reviews, P.L.1968, c.285
44 (C.40:27-6.1 et al.); (6) the “Municipal Land Use Law”, (7) the law
45 concerning storm water management plans, P.L.1981, c.32,
46 (C.40:55D-93 et seq.); and (8) the law concerning age-restricted
47 community developments, P.L.2009, c.82 (C.45:22A-46.3 et seq.).

ASSEMBLY TELECOMMUNICATIONS AND UTILITIES
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2289

STATE OF NEW JERSEY

DATED: MARCH 18, 2010

The Assembly Telecommunications and Utilities Committee reports favorably Assembly Bill No. 2289.

As reported, this bill would exempt solar panels from being calculated as an impervious surface or impervious cover, as it applies to the various laws relating to municipal land use, stormwater management, waterfront and coastal development, the Pinelands, and the Highlands, including agricultural development therein.

By excluding solar panels from the calculation of an impervious surface or impervious cover, the bill would eliminate certain requirements and would change calculations of impervious surfaces or covers as they apply to various development and management plans.

Under the bill, a solar panel is defined as an elevated panel or plate, or a canopy or array thereof, that captures and converts solar radiation to produce power, and includes flat plate, focusing solar collectors, or photovoltaic solar cells and excludes the base or foundation of the panel, plate, canopy, or array.

As reported, this bill would amend or supplement various sections of statutory law as follows:

- 1) section 1 amends the waterfront development law, R.S.12:5-3;
- 2) section 2 supplements the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.);
- 3) section 3 amends the "Coastal Area Facility Review Act," ("CAFRA") P.L.1973, c.185 (C.13:19-1 et seq.);
- 4) section 4 supplements CAFRA;
- 5) sections 5, 6 and 7 amend the "Highlands Water Protection and Planning Act," P.L.2004, c.120 (C.13:20-1 et al.);
- 6) section 8 amends the law concerning county site plan reviews, P.L.1968, c.285 (C.40:27-6.1 et al.);
- 7) section 9 supplements the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.);
- 8) section 10 amends the law concerning storm water management plans, P.L.1981, c.32 (C.40:55D-93 et seq.); and
- 9) section 11 amends the law concerning conversion of age-restricted community developments, P.L.2009, c.82 (C.45:22A-46.3 et seq.).

As reported by the committee, Assembly Bill No. 2289 is identical to Senate Bill No. 921 (SCS) which was also reported by the committee on this date.