

**SENATE, No. 2502**

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**STATE OF NEW JERSEY**  
**210th LEGISLATURE**

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INTRODUCED MAY 15, 2003

**Sponsored by:**  
**Senator JOHN H. ADLER**  
**District 6 (Camden)**

**SYNOPSIS**

The "Smart Growth Tax Credit Act."

**CURRENT VERSION OF TEXT**

As introduced.



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2

1 **AN ACT** providing a corporation business tax credit and a gross  
2 income tax credit for certain smart growth developments, and  
3 supplementing P.L.1945, c.162 (C.54:10A-1 et seq.) and Title 54A  
4 of the New Jersey Statutes.

5

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

8

9 1. This act shall be known and may be cited as the "Smart Growth  
10 Tax Credit Act."

11

12 2. As used in sections 1 through 6 of this act:

13 "Adequate bus transit service" means at least one bus transit stop  
14 within a one-quarter mile radius of the geographic center of the  
15 development, with service of no less than one bus either (1) every 60  
16 minutes, 18 hours per day, seven days per week, or (2) 30 times per  
17 weekday and 15 times per weekend day, provided that there are no  
18 physical impediments that prevent pedestrians from walking from the  
19 development to the transit stop;

20 "Adequate ferry transit service" means at least one ferry transit stop  
21 within a one-half mile radius of the geographic center of the  
22 development, with service of no less than five ferries during weekday  
23 peak periods, provided that there are no physical impediments that  
24 prevent pedestrians from walking from the development to the transit  
25 stop;

26 "Adequate rail transit service" means at least one rail or light rail  
27 transit stop within a one-half mile radius of the geographic center of  
28 the development, with service of no less than five trains during  
29 weekday peak periods, provided that there are no physical  
30 impediments that prevent pedestrians from walking from the  
31 development to the transit stop;

32 "Allowable costs" means amounts properly chargeable to capital  
33 account other than for purchase of land or any remediation costs,  
34 which are paid or incurred for construction or rehabilitation;  
35 commissioning costs; interest paid during the construction or  
36 rehabilitation period; legal, architectural, engineering and other  
37 professional fees allocable to construction or rehabilitation; closing  
38 costs for construction or mortgage loans; recording taxes and filing  
39 fees incurred with respect to construction or rehabilitation; site costs,  
40 such as temporary electric wiring, scaffolding, demolition costs, and  
41 fencing and security facilities; and costs of carpeting, partitions, walls  
42 and wall coverings, ceilings, lighting, plumbing, electrical wiring and  
43 ventilation; provided that such costs shall not include the cost of  
44 telephone systems and computers other than electrical wiring costs and  
45 shall not include the cost of fuel cells or photovoltaic modules  
46 including installation. For commercial space, allowable costs shall not

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1 exceed \$250 per square foot of interior space, except that the  
2 Department of Community Affairs may raise the maximum allowable  
3 costs by up to 10% on each of up to two occasions in the seven-year  
4 period next following the date of enactment of this act. For residential  
5 space, allowable costs shall not exceed 110% of the amount set by the  
6 United States Department of Housing and Urban Development as per  
7 unit limits, codified in 12 U.S.C. s.17151 (d) (3) (ii);

8 "ASHRAE" means the American Society of Heating, Refrigeration,  
9 and Air-Conditioning Engineers;

10 "Brownfield site" means any former or current commercial or  
11 industrial site that is currently vacant or underutilized and on which  
12 there has been, or there is suspected to have been, a discharge of a  
13 hazardous substance as defined pursuant to section 3 of P.L.1976,  
14 c.141 (C.58:10-23.11b), a hazardous waste as defined pursuant to  
15 section 1 of P.L.1976, c.99 (C.13:1E-38), or a pollutant as defined  
16 pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3);

17 "Carpet and Rug Institute Green Label Indoor Air Quality Test  
18 Program" means the testing program developed by the Carpet and Rug  
19 Institute, as recognized by the Department of Environmental  
20 Protection, to aid in the selection of carpet, adhesives, and cushion  
21 materials that minimize adverse impacts to indoor air quality;

22 "Critical habitat" means a biologically diverse area containing  
23 habitats of endangered and threatened animal or plant species, as  
24 determined by the Department of Environmental Protection;

25 "Critical slope area" means an area predominantly characterized by  
26 either an average change in elevation greater than 15 percent of the  
27 corresponding horizontal distance through the slope, otherwise also  
28 referred to as a 15% slope, or by a very high erosion hazard as  
29 indicated by an erodability factor "k" computed by the United States  
30 Department of Agriculture, Natural Resources Conservation Service,  
31 for soils of 0.40 or greater;

32 "Developer" means the legal or beneficial owner or owners of a lot  
33 or of any land proposed to be included in a proposed development,  
34 including the holder of an option or contract to purchase, or other  
35 person having an enforceable proprietary interest in such land;

36 "Development" means the division of a parcel of land into two or  
37 more parcels; the construction, reconstruction, conversion, structural  
38 alteration, relocation, or enlargement of any building or other  
39 structure, or of any mining excavation or landfill; or any use or change  
40 in the use of any building or other structure, or land, or extension of  
41 use of land, for which permission may be required pursuant to the  
42 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.);

43 "Energy Star" means the voluntary labeling program administered  
44 by the United States Environmental Protection Agency designed to  
45 identify and promote energy-efficient products, equipment, and  
46 buildings;

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1 "Forest Stewardship Council" means the international nonprofit  
2 organization founded in 1993 to support environmentally appropriate,  
3 socially beneficial, and economically viable management of the world's  
4 forests;

5 "Highly urbanized area" means (1) an area where 30% of the  
6 ground within 1,000 feet of the perimeter of a development site  
7 consists of impervious surface, or (2) an area located in a  
8 municipality which the Commissioner of Community Affairs has  
9 determined, according to guidelines established by the commissioner,  
10 to be built out;

11 "Impervious surface" means a surface that has been compacted or  
12 covered with a layer of material so that it is highly resistant to  
13 infiltration by water;

14 "Improvement" means any constructed element which becomes part  
15 of, is placed upon, or is affixed to real estate;

16 "LEED Green Building Rating System" means the Leadership in  
17 Energy and Environmental Design green building rating system  
18 developed by the United States Green Building Council;

19 "LEED Residential Green Building Rating System" means the  
20 Leadership in Energy and Environmental Design green building rating  
21 system for residential buildings, as may be developed by the United  
22 States Green Building Council;

23 "Lot" means a designated parcel, tract, or area of land established  
24 by a plat, or otherwise as permitted by law, and to be used, developed,  
25 or built upon as a unit;

26 "Mixed use development" means a development that includes  
27 residential use and no more than 75% by interior square footage of one  
28 or more of the following uses: (1) commercial space; (2) office  
29 space; (3) retail space; or (4) such other nonresidential uses that the  
30 Department of Community Affairs has determined do not pose a public  
31 health threat or nuisance to nearby residential areas;

32 "Old growth timber" means timber of a forest from the late  
33 successional stage of forest development, as defined by the  
34 Department of Environmental Protection;

35 "Pinelands Comprehensive Management Plan" means the  
36 comprehensive management plan for the pinelands area prepared and  
37 adopted pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.);

38 "Pinelands National Reserve" means the "Pinelands National  
39 Reserve" as defined pursuant to section 3 of P.L.1979, c.111  
40 (C.13:18A-3);

41 "Plat" means a map or maps of a subdivision or site plan;

42 "Potentially eligible development" means a residential or mixed use  
43 development or redevelopment project located within the State of New  
44 Jersey;

45 "Residential Site Improvement Standards" means the Statewide site  
46 improvement standards for residential development adopted pursuant

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1 to P.L.1993, c.32 (C.40:55D-40.1 et seq.);

2 "Site improvements" means any construction work on, or  
3 improvement in connection with, a development limited to streets,  
4 roads, parking facilities, sidewalks, drainage structures, and utilities;

5 "Smart growth development" means a potentially eligible  
6 development that meets the criteria set forth in section 6 of this act;

7 "State Plan" means the State Development and Redevelopment Plan  
8 adopted by the State Planning Commission pursuant to the "State  
9 Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.);

10 "Statewide Water Supply Plan" means the New Jersey Statewide  
11 Water Supply Plan adopted by the Department of Environmental  
12 Protection pursuant to section 13 of P.L.1981, c.262 (C.58:1A-13)  
13 and any adopted revisions thereto;

14 "Stormwater management measures" means structural and  
15 nonstructural control of stormwater runoff and nonpoint pollution;

16 "Total cumulative rides available" means the sum of (1) the  
17 number of rides available by bus within a one-half mile radius of the  
18 geographic center of the development, (2) the number of rides  
19 available by rail or light rail within a one-half mile radius of the  
20 geographic center of the development, multiplied by the average  
21 number of cars on each train, and (3) the number of rides available  
22 by ferry within a one-half mile radius of the geographic center of the  
23 development, multiplied by three;

24 "Transit stop" means any stop for a bus, train, or ferry, as the case  
25 may be, which may be along either intercity routes, or intracity routes,  
26 or both. A transit stop serving more than one route, or serving routes  
27 in more than one direction, shall constitute a discrete stop for each  
28 directional route of service; and, if a location has one bus, train, or  
29 ferry, as the case may be, per hour heading in one direction, and one  
30 bus, train, or ferry, as the case may be, available in that same hour  
31 heading in the other direction, this shall constitute one bus, train, or  
32 ferry per hour at two separate stops;

33 "Tropical hardwood" means any hardwood scientifically classified  
34 as an angiosperm which grows in a tropical moist forest, as determined  
35 by the Department of Environmental Protection. "Tropical hardwood"  
36 shall include, but need not be limited to, the following species:

37

38 <u>Scientific Name</u>	<u>Common Name</u>
39 Vouacapous americana	Acapu
40 Pericopsis elata	Afrormosis
41 Shorea almon	Almon
42 Peltogyne spp.	Amaranth
43 Guibourtia ehie	Amazaque
44 Aningeris spp.	Aningeria
45 Dipterocarpus grandiflorus	Apilong
46 Ochroma lagopus	Balsa

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1	<i>Virola</i> spp.	Banak
2	<i>Anisoptera thurifera</i>	Bella Rose
3	<i>Guibourtia arnoldiana</i>	Benge
4	<i>Deterium Senegalese</i>	Boire
5	<i>Priorellopsis copaiifera</i>	Cativo
6	<i>Antiaris africana</i>	Chenchen
7	<i>Dalbergia retusa</i>	Concobola
8	<i>Cordia</i> spp.	Cordia
9	<i>Diospyros</i> spp.	Ebony
10	<i>Aucoumes klaineana</i>	Gaboon
11	<i>Chlorophora excelsa</i>	Iroko
12	<i>Acacia koa</i>	Koa
13	<i>Pterygota macrocarpa</i>	Koto
14	<i>Shorea negrosensis</i>	Red Lauan
15	<i>Pentacme contorta</i>	White Lauan
16	<i>Shorea ploysema</i>	Tanguile
17	<i>Terminalia superba</i>	Limba
18	<i>Aniba duckei</i>	Louro
19	<i>Kyaya ivorensis</i>	Africa Mahogany
20	<i>Swietenia macrophylla</i>	Amer. Mahogany
21	<i>Tieghemella leckellii</i>	Makora
22	<i>Distemonanthus benthamianus</i>	Movingui
23	<i>Pterocarpus soyauxii</i>	African Padauk
24	<i>Pterocarpus angolensis</i>	Angola Padauk
25	<i>Aspidosperma</i> spp.	Peroba
26	<i>Peltogyne</i> spp.	Purpleheart
27	<i>Gonystylus</i> spp.	Ramin
28	<i>Dalbergia</i> spp.	Rosewood
29	<i>Entandrophragma cylindricum</i>	Sapela
30	<i>Shorea philippinensis</i>	Sonora
31	<i>Tectona grandis</i>	Teak
32	<i>Lovoa trichilloides</i>	Tigerwood
33	<i>Milletia laurentii</i>	Wenge
34	<i>Microberlinia brazzavillensis</i>	Zebrawood

35

36 "Weekday peak period" means 5:30 a.m. to 10:30 a.m. and 3:30  
37 p.m. to 8:30 p.m. on a weekday; and

38 "Wetland" means (1) a coastal wetland as defined pursuant to  
39 section 2 of P.L.1970, c.272 (C.13:9A-2) and any rules and  
40 regulations adopted pursuant thereto, or (2) a freshwater wetland as  
41 defined pursuant to section 2 of P.L.1987, c.156 (C.13:9B-3) and any  
42 rules or regulations adopted pursuant thereto.

43

44 3. a. A taxpayer shall be granted a credit, to be computed as  
45 provided in this section, against the tax imposed pursuant to section  
46 5 of P.L.1945, c.162 (C.54:10A-5). The credit shall be an amount

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1 equal to the sum of the following, provided, however, that the amount  
2 shall not exceed the amount set forth in the credit reservation  
3 certificate obtained pursuant to section 4 of this act:

- 4 (1) 4.0% of allowable costs;
- 5 (2) 0.5%, 1.0%, 1.5%, or 2.0% of allowable costs, attributable to  
6 buildings but not to other site improvements, qualifying as Certified,  
7 Silver, Gold, or Platinum status, respectively, under the LEED Green  
8 Building Rating System or the LEED Residential Green Building  
9 Rating System;
- 10 (3) 0.5% of allowable costs for mixed use developments;
- 11 (4) 0.5% of allowable costs for developments located on  
12 brownfield sites;
- 13 (5) 0.1% of allowable costs for developments in which less than  
14 10% of the land of the development, not including shared open spaces,  
15 is devoted to parking areas, garages, and driveways;
- 16 (6) 0.1% of allowable costs for developments with respect to  
17 which variances are secured from the relevant municipalities to permit  
18 50% or less parking than is required by applicable local zoning codes,  
19 and are built in accordance with such variances;
- 20 (7) up to 2.4% of allowable costs for developments with higher  
21 than required residential density, depending on the density level as set  
22 forth below; and

24 Dwelling Units Per	Multiplier Value	Additional Credit,
25 Residential Acre		As Percentage of
26		Allowable Costs
27		
28 7-10	.05	0.2%
29 11-17	.10	0.4%
30 18-29	.30	1.2%
31 30-39	.50	2.0%
32 40 or higher	.60	2.4%

33  
34 (8) up to 1.4% of allowable costs for developments with higher  
35 than required transit service, depending on total cumulative rides  
36 available per weekday as set forth below:

38 Total Cumulative	Multiplier Value	Additional Credit,
39 Rides Available		As Percentage of
40		Allowable Costs
41		
42 60-124	.05	0.2%
43 125-249	.10	0.4%
44 250-499	.15	0.6%
45 500-999	.20	0.8%
46 1,000 or more	.35	1.4%

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1       b. A taxpayer may only apply for a credit under this section with  
2 respect to allowable costs paid or incurred by the taxpayer in  
3 connection with the construction or rehabilitation of a smart growth  
4 development.

5       c. For any taxable year, a taxpayer may apply no more than 20%  
6 of the total amount allowed under subsection a. of this section.

7       d. The amount of tax credit otherwise allowed under this section  
8 which cannot be applied during a tax year may be carried over, if  
9 necessary, to the 15 tax years following a credit's first eligible tax  
10 year.

11       e. If a credit is owed to a building owner under sections 1 through  
12 6 of this act with respect to property, and the property, or an interest  
13 therein, is sold, the credit for the period after the sale which would  
14 have been allowed under sections 1 through 6 of this act to the prior  
15 owner had the property not been sold shall be allowed to the successor  
16 owner if that right is specified in the deed transferring the property.

17       f. For any taxable year, a taxpayer may apply a credit under this  
18 section only if: (1) the taxpayer has, as described in section 4 of this  
19 act, obtained and filed a location certificate, a credit reservation  
20 certificate, and an eligibility certificate; and (2) a certificate of  
21 occupancy, for the building or buildings that is the subject of the  
22 credit, has been issued and the building or buildings remains in service  
23 during that year.

24       g. For each taxpayer who is eligible for a credit under this section,  
25 the Department of Community Affairs shall grant a credit, provided  
26 that the credits, in the aggregate, shall not exceed \$20 million for the  
27 first fiscal year of tax credit availability and, in each of the subsequent  
28 six fiscal years, shall not exceed \$50 million; provided further that any  
29 unused allocable amounts shall roll over to subsequent fiscal years.

30  
31       4. a. Upon application by a taxpayer, the Department of  
32 Environmental Protection, in consultation with the Department of  
33 Community Affairs, shall issue a location certificate with respect to a  
34 specific property, where the taxpayer has shown that the property  
35 meets the location criteria set forth in subsection a. of section 6 of this  
36 act; provided that, in the event that the Department of Environmental  
37 Protection adopts a map designating areas within the State of New  
38 Jersey to which development is best directed, the property shall be  
39 located within those areas and shall not be required to meet the  
40 location criteria set forth in paragraphs (1), (3), and (4) of subsection  
41 a. of section 6 of this act, but shall continue to be required to meet the  
42 location criteria set forth in paragraph (2) of subsection a. of section  
43 6 of this act; and provided further that, in the event that the property  
44 is located in an area designated as a water supply deficit area in the  
45 Statewide Water Supply Plan, the certificate shall so indicate. A  
46 taxpayer's application for a certificate shall include plats, and such

1 other information as the Department of Environmental Protection or  
2 the Department of Community Affairs may require. The Department  
3 of Environmental Protection may issue a location certificate without  
4 presentation by the taxpayer of a deed for the proposed site.

5 b. Upon application by a taxpayer, the Department of Community  
6 Affairs shall issue a credit reservation certificate, where the taxpayer  
7 has filed a copy of a location certificate and has made a showing that  
8 the taxpayer is likely, within a reasonable time, to place in service the  
9 development with respect to which the location certificate was issued,  
10 and that the development qualifies for the allowance of a credit under  
11 sections 1 through 6 of this act. The certificate shall state (1) the  
12 earliest taxable year for which the credit may be applied, (2) the  
13 maximum amount of the total credit allowed and the maximum amount  
14 of credit allowed in any single tax year, (3) an expiration date, and  
15 (4) such other information as the Department of Community Affairs  
16 may prescribe. The certificate shall apply only to the development  
17 placed in service by the specified expiration date. The expiration date  
18 may be extended at the discretion of the Commissioner of Community  
19 Affairs in order to avoid undue hardship. Certificates may be issued  
20 in the first fiscal year following the effective date of sections 1 through  
21 6 of this act, and in each of the six subsequent fiscal years.

22 c. For the first taxable year for which a taxpayer applies a credit  
23 under sections 1 through 6 of this act, the taxpayer shall obtain an  
24 eligibility certificate from an architect or professional engineer licensed  
25 to practice in New Jersey. The certificate shall consist of a  
26 certification, under the seal of the architect or engineer, that, except  
27 for any provision for which the taxpayer has obtained a waiver from  
28 the Department of Community Affairs pursuant to subsection d. of  
29 section 6 of this act, the building or development with respect to  
30 which the credit is applied: (1) meets the neighborhood design  
31 criteria set forth in subsection b. of section 6 of this act; (2) meets  
32 either the green building criteria set forth in subsection c. of section 6  
33 of this act or the criteria required for Certified, Silver, Gold or  
34 Platinum status under the LEED Green Building Rating System or  
35 LEED Residential Green Building Rating System; and (3) if the  
36 building or development is located in an area designated as a water  
37 supply deficit area in the Statewide Water Supply Plan, meets the  
38 criteria set forth in subparagraph (h) of paragraph (3) of subsection a.  
39 of section 6 of this act. The certification shall be made in accordance  
40 with the standards and guidelines in effect at the time the credit  
41 reservation for the development was issued. The certificate shall set  
42 forth the specific findings upon which the certification was based. The  
43 certificate shall include sufficient information to identify each building  
44 or development, and such other information as the Department of  
45 Community Affairs may prescribe. The taxpayer shall file with the  
46 Division of Taxation the eligibility certificate, and the associated

1 location certificate and credit reservation certificate, with the  
2 application for credit and shall file duplicate copies with the  
3 Department of Community Affairs.

4 d. If the Department of Community Affairs has reason to believe  
5 that an architect or professional engineer, in making any certification  
6 under this section, engaged in professional misconduct, the department  
7 shall so inform the State Board of Architects, or the State Board of  
8 Professional Engineers and Land Surveyors, as appropriate, in the  
9 Division of Consumer Affairs of the Department of Law and Public  
10 Safety.

11

12 5. a. Each taxpayer shall, for any taxable year for which a credit  
13 is claimed under sections 1 through 6 of this act, maintain records of  
14 such information as the Department of Community Affairs and the  
15 Division of Taxation shall determine, and report that information to  
16 the Department of Community Affairs and the Division of Taxation in  
17 the form and at the time that the two departments shall determine.

18 b. The Department of Community Affairs, the Department of  
19 Environmental Protection, and the Division of Taxation shall adopt,  
20 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
21 (C.52:14B-1 et seq.), such rules and regulations as may be necessary  
22 to implement sections 1 through 6 of this act. These rules and  
23 regulations shall be designed to encourage the implementation of smart  
24 growth principles and maintain high but commercially reasonable  
25 standards for obtaining tax credits under sections 1 through 6 of this  
26 act. The rules and regulations shall establish a reasonable time for  
27 submission of applications and shall establish a method certifying  
28 proposed locations and allocating credit reservation certificates among  
29 eligible applicants, which shall generally be on a first-come, first-  
30 served basis.

31 c. On or before six years after the effective date of sections 1  
32 through 6 of this act, the Commissioner of Community Affairs, in  
33 consultation with the Commissioner of Environmental Protection and  
34 the Director of the Division of Taxation, shall prepare and submit a  
35 written report regarding the number of certificates and taxpayers  
36 applying the credit provided for under sections 1 through 6 of this act;  
37 the amount of the credits granted, the geographical distribution of the  
38 credits granted, and any other information that the Department of  
39 Community Affairs, the Department of Environmental Protection, or  
40 the Division of Taxation may deem useful or appropriate. A  
41 preliminary draft of the report shall be so issued within the first four  
42 years following the effective date of sections 1 through 6 of this act.  
43 The report shall be submitted to the Governor, the President of the  
44 Senate, and the Speaker of the General Assembly.

45

46 6. Except as set forth in subsection d. of this section, all buildings

1 and developments with respect to which a tax credit is applied  
2 pursuant to sections 1 through 6 of this act shall be considered a smart  
3 growth development if they meet the following standards; provided  
4 that, with respect to residential and tenant space, compliance with  
5 standards set forth in paragraphs (1), (2), (3), (5) and (8) of subsection  
6 c. of this section shall not be required where the taxpayer does not  
7 incur or pay the cost of the equipment, appliances, fixtures, materials,  
8 finishes, furnishings or other items relevant to compliance with the  
9 standard:

10 a. (1) All buildings and developments with respect to which a tax  
11 credit is applied under sections 1 through 6 of this act shall be located  
12 in one of the following areas: (a) Planning Areas 1, 2, or 5b of the  
13 State Plan; (b) centers designated by the State Planning Commission;  
14 or (c) municipalities or portions of municipalities that the New Jersey  
15 Office of Smart Growth has declared as substantially conforming to  
16 the State Plan or to smart growth principles;

17 (2) All buildings and developments with respect to which a tax  
18 credit is applied under sections 1 through 6 of this act shall be served  
19 either by adequate bus transit service, adequate rail transit service, or  
20 adequate ferry transit service;

21 (3) No building or development with respect to which a tax credit  
22 is applied under sections 1 through 6 of this act shall be located: (a)  
23 in the Pinelands National Reserve, unless the site is within a Pinelands  
24 Regional Growth Area or Pinelands Town as designated in the  
25 Pinelands Comprehensive Management Plan; (b) in public parkland;  
26 (c) within 1,000 feet of any critical habitat site within public parkland;  
27 (d) in or within 300 feet of a wetland; (e) in or within 100 feet of a  
28 critical slope area, unless the site is located on a brownfield site or  
29 within a highly urbanized area; (f) within the 100-year floodplain,  
30 unless the site is located on a brownfield site or within a highly  
31 urbanized area; (g) within 1,000 feet of the mean high-water mark for  
32 any saltwater body, unless the site is located on a brownfield site or  
33 within a highly urbanized area; or (h) in an area designated as a water  
34 supply deficit area in the Statewide Water Supply Plan unless the  
35 Department of Environmental Protection has approved a water use  
36 plan for the development or the development includes fewer than 20  
37 residential units and any nonresidential units will cumulatively use  
38 fewer than 10,000 gallons of water per day; and

39 (4) No building or development with respect to which a tax credit  
40 is applied under sections 1 through 6 of this act shall require (a) a  
41 sanitary sewer line extension of 1,000 feet or greater, unless sited in  
42 an area that has been approved for sanitary sewer service prior to the  
43 date of enactment of this act, or (b) a septic system.

44 b. Notwithstanding any provision of the Residential Site  
45 Improvement Standards, within one year after the date of enactment  
46 of this act, the Department of Community Affairs, in consultation with

1 the Department of Environmental Protection, shall adopt, pursuant to  
2 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
3 seq.), standards for the purpose of sections 1 through 6 of this act with  
4 respect to:

5 (1) Land Use. The standards shall require, at a minimum, that  
6 average residential density shall be six or more residential dwelling  
7 units per residential acre. Residential acreage shall be calculated net  
8 of any land on the lot that is used for public open space, public  
9 sidewalks, or public roads. For lots occupied by residential buildings,  
10 residential acres used in the density calculation shall be the footprint  
11 area of buildings, plus any associated driveways, yards, and parking  
12 areas except for on-street parallel parking. For lots occupied by mixed  
13 use buildings, residential acres used in the density calculation shall be  
14 a percentage of the footprint area of building that equals the  
15 percentage of interior space devoted to residential use, plus any  
16 associated driveways, yards, and the percentage of associated parking  
17 areas used by residents;

18 (2) Streets and Sidewalks. The standards shall require, at a  
19 minimum, that if new streets are constructed as part of a development  
20 with respect to which a credit is applied under sections 1 through 6 of  
21 this act, they shall meet the following standards: (a) no more than  
22 one new cul-de-sac shall be constructed for every four new  
23 intersections within the development; (b) at least 50% of any new  
24 intersections and crossings within the development shall be equipped  
25 with traffic controls or such traffic calming measures that the  
26 Department of Community Affairs shall approve, including but not  
27 limited to speed bumps, stop signs and vegetative barriers; (c) the  
28 width of pavement of new streets shall not exceed 42 feet, consisting  
29 of a maximum of 10 feet per lane of motor vehicle traffic, four feet per  
30 bicycle lane, and seven feet per lane designated for on-street parallel  
31 parking. New streets shall not consist of more than two lanes devoted  
32 to motor vehicle traffic, two lanes devoted to bicycle traffic, and two  
33 lanes devoted to on-street parallel parking; and (d) sidewalks of no  
34 less than four feet in width shall be provided along frontage of all  
35 buildings and along all streets that connect buildings within the  
36 development; and

37 (3) Parking. The standards shall require, at a minimum, that the  
38 number of parking spaces associated with the development shall not  
39 exceed the number required by parking ratios specified in applicable  
40 local zoning codes.

41 c. Within one year after the date of enactment of this act, the  
42 Department of Community Affairs, in consultation with the  
43 Department of Environmental Protection, shall adopt, pursuant to the  
44 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
45 seq.), standards for the purpose of sections 1 through 6 of this act, and  
46 shall review and update those standards at least every two years from

1 the date on which they are adopted, with respect to:

2 (1) Energy Efficiency. The standards shall require, at a minimum,  
3 that (a) single family homes comply with the energy standards of the  
4 New Jersey Energy Star Homes program, or, if that program is not in  
5 effect at the time of application, the United States Environmental  
6 Protection Agency Energy Star Homes program; (b) energy use in all  
7 other buildings shall not exceed 65% of the energy use permitted by  
8 the relevant New Jersey energy code; (c) equipment and appliances,  
9 for which Energy Star standards exist, including but not limited to  
10 refrigerators, dishwashers and washing machines, shall meet those  
11 Energy Star standards; and (d) no less than 40% of high-use lighting  
12 fixtures shall meet Energy Star standards;

13 (2) Building Materials. The standards shall, at a minimum, specify  
14 requirements regarding minimum percentages of recycled content and  
15 renewable source material and maximum levels of toxicity and volatile  
16 organic compounds. Standards shall be developed for building  
17 materials, finishes and furnishings, including but not limited to:  
18 concrete and concrete masonry units; millwork substrates; insulation;  
19 ceramic, ceramic/ glass and cementitious tiles; ceiling tiles and panels;  
20 flooring and carpet; paints, coatings sealants and adhesives; and  
21 furniture. The development of the standards shall be informed by the  
22 LEED Green Building Rating System and the LEED Residential Green  
23 Building Rating System;

24 (3) Wood Use. The standards shall, at a minimum, (a) specify  
25 requirements to minimize wood use in wood-framed houses; and (b)  
26 require that old growth timber and tropical hardwood, except recycled  
27 wood and tropical hardwood certified in accordance with the protocol  
28 of the Forest Stewardship Council or, in lieu thereof, of another  
29 organization deemed by the Department of Environmental Protection  
30 to be authorized and capable of providing an equivalent protocol, shall  
31 not be used;

32 (4) Heat Island Reduction. The standards shall require, at a  
33 minimum, that (a) at least 50%, by square footage, of non-roof  
34 impervious surfaces, including driveways, parking areas, walkways and  
35 plazas, be light-colored or covered with specified coatings that  
36 improve reflectance; and (b) roofs shall be composed of Energy Star  
37 labeled roof products, except where solar panels or roof gardens are  
38 installed;

39 (5) Water Efficiency. The standards shall require, at a minimum,  
40 that (a) each showerhead shall not exceed 2.0 gallons per minute; (b)  
41 each faucet shall not exceed 1.0 gallons per minute; (c) toilet flush  
42 volume shall not exceed 1.6 gallons; and (d) for commercial  
43 buildings, the drift rate of any cooling tower shall not exceed 1%;

44 (6) Heating and Cooling. The standards shall require, at a  
45 minimum, that central air conditioning refrigerant charge and air flow  
46 shall be documented to be within 10% of manufacturer

1 recommendations;

2 (7) Durability. The standards shall require, at a minimum, that (a)  
3 roofs shall have a warranty of no less than 40 years; (b) insulated  
4 windows shall have a warranty of no less than 10 years; (c)  
5 overhangs shall include at least 80% of full attic/roof-slope insulation  
6 R-value; and (d) head casing flashing shall be installed for all  
7 windows and exterior doors;

8 (8) Indoor Air Quality. The standards shall require, at a minimum,  
9 that (a) interior paints shall contain no more than 100 grams per liter  
10 of volatile organic compounds; (b) sealants and adhesives used for  
11 interior applications shall contain no more than 250 grams per liter of  
12 volatile organic compounds; (c) carpets, carpet cushions and any  
13 necessary adhesives shall meet the standards set forth in the Carpet  
14 and Rug Institute Green Label Indoor Air Quality Test Program; (d)  
15 carpets shall not be installed in basements, bathrooms, kitchens, or  
16 within a four foot radius of the center of any doorway which leads  
17 outdoors; (e) only direct-vent, closed-combustion, or power vented  
18 space heating and water heating equipment shall be used, and vent-free  
19 space heating or water heating equipment shall not be used; (f) any  
20 wood stoves shall have ducted combustion air; (g) carbon monoxide  
21 detectors shall be installed consistent with Consumer Product Safety  
22 Commission recommendations, and with at least one detector per 500  
23 square feet of interior space; (h) enclosed parking shall be completely  
24 air-sealed from attached indoor spaces; (i) every building shall be  
25 furnished with a ventilation system and for commercial buildings the  
26 sizing of the system shall conform with the ASHRAE standard known  
27 as ASHRAE G2-2001; and (j) foundations of residential units shall  
28 be constructed according to the following requirements, unless the  
29 Department of Community Affairs approves alternative plans to ensure  
30 dry basements: the foundation shall have a continuous footing drain  
31 that is covered with stone, which in turn shall be covered with filter  
32 fabric, and which shall drain either to daylight or to an interior, sealed  
33 sump pump system; the foundation shall have porous backfill material;  
34 the vapor retarder shall be directly under slab; and the exterior of the  
35 below grade foundation shall be waterproofed;

36 (9) Construction Waste. The standards shall require, at a  
37 minimum, development of and adherence to a waste reduction plan  
38 that provides for separation of materials which are reusable or  
39 recyclable, such that a minimum of 30% of waste by volume shall be  
40 diverted from the waste stream; and

41 (10) Stormwater Management. The standards shall require, at a  
42 minimum, that developments on parcels of undeveloped land of four  
43 acres or more shall employ stormwater management measures in order  
44 to meet at least one of the following requirements: (a) post-  
45 development runoff volume of the land area of the development shall  
46 not exceed pre-development runoff volume; where runoff volume is

1 defined as the 1.5 year, 24-hour peak discharge rate; or (b) the first  
2 inch of runoff or 80% of 100-year runoff produced by the impervious  
3 surfaces of the development shall be treated for total suspended solids,  
4 total phosphorous, and total nitrogen.

5 d. Upon application by a taxpayer, the Department of Community  
6 Affairs, in consultation with the Department of Environmental  
7 Protection, may issue a waiver of any regulatory provision adopted  
8 pursuant to subsection a. of this section, where the taxpayer has made  
9 a showing that the development was in compliance with the provision  
10 at the time of the issuance to the taxpayer of a location certificate, and  
11 that the development is no longer in compliance because of  
12 circumstances out of the taxpayer's control; or of any regulatory  
13 provision adopted pursuant to subsections b. or c. of this section,  
14 where the taxpayer has made a showing that compliance with the  
15 provision is impracticable due to unique characteristics of the site, or  
16 that deviation from the provision produces no net negative  
17 environmental impact.

18

19 7. As used in sections 7 through 11 of this act:

20 "Adequate bus transit service" means at least one bus transit stop  
21 within a one-quarter mile radius of the geographic center of the  
22 development, with service of no less than one bus either (1) every 60  
23 minutes, 18 hours per day, seven days per week, or (2) 30 times per  
24 weekday and 15 times per weekend day, provided that there are no  
25 physical impediments that prevent pedestrians from walking from the  
26 development to the transit stop;

27 "Adequate ferry transit service" means at least one ferry transit stop  
28 within a one-half mile radius of the geographic center of the  
29 development, with service of no less than five ferries during weekday  
30 peak periods, provided that there are no physical impediments that  
31 prevent pedestrians from walking from the development to the transit  
32 stop;

33 "Adequate rail transit service" means at least one rail or light rail  
34 transit stop within a one-half mile radius of the geographic center of  
35 the development, with service of no less than five trains during  
36 weekday peak periods, provided that there are no physical  
37 impediments that prevent pedestrians from walking from the  
38 development to the transit stop;

39 "Allowable costs" means amounts properly chargeable to capital  
40 account other than for purchase of land or any remediation costs,  
41 which are paid or incurred for construction or rehabilitation;  
42 commissioning costs; interest paid during the construction or  
43 rehabilitation period; legal, architectural, engineering and other  
44 professional fees allocable to construction or rehabilitation; closing  
45 costs for construction or mortgage loans; recording taxes and filing  
46 fees incurred with respect to construction or rehabilitation; site costs,

1 such as temporary electric wiring, scaffolding, demolition costs, and  
2 fencing and security facilities; and costs of carpeting, partitions, walls  
3 and wall coverings, ceilings, lighting, plumbing, electrical wiring and  
4 ventilation; provided that such costs shall not include the cost of  
5 telephone systems and computers other than electrical wiring costs and  
6 shall not include the cost of fuel cells or photovoltaic modules  
7 including installation. For commercial space, allowable costs shall not  
8 exceed \$250 per square foot of interior space, except that the  
9 Department of Community Affairs may raise the maximum allowable  
10 costs by up to 10% on each of up to two occasions in the seven-year  
11 period next following the date of enactment of this act. For residential  
12 space, allowable costs shall not exceed 110% of the amount set by the  
13 United States Department of Housing and Urban Development as per  
14 unit limits, codified in 12 U.S.C. s.17151 (d) (3) (ii);

15 "ASHRAE" means the American Society of Heating, Refrigeration,  
16 and Air-Conditioning Engineers;

17 "Brownfield site" means any former or current commercial or  
18 industrial site that is currently vacant or underutilized and on which  
19 there has been, or there is suspected to have been, a discharge of a  
20 hazardous substance as defined pursuant to section 3 of P.L.1976,  
21 c.141 (C.58:10-23.11b), a hazardous waste as defined pursuant to  
22 section 1 of P.L.1976, c.99 (C.13:1E-38), or a pollutant as defined  
23 pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3);

24 "Carpet and Rug Institute Green Label Indoor Air Quality Test  
25 Program" means the testing program developed by the Carpet and Rug  
26 Institute, as recognized by the Department of Environmental  
27 Protection, to aid in the selection of carpet, adhesives, and cushion  
28 materials that minimize adverse impacts to indoor air quality;

29 "Critical habitat" means a biologically diverse area containing  
30 habitats of endangered and threatened animal or plant species, as  
31 determined by the Department of Environmental Protection;

32 "Critical slope area" means an area predominantly characterized by  
33 either an average change in elevation greater than 15 percent of the  
34 corresponding horizontal distance through the slope, otherwise also  
35 referred to as a 15% slope, or by a very high erosion hazard as  
36 indicated by an erodability factor "k" computed by the United States  
37 Department of Agriculture, Natural Resources Conservation Service,  
38 for soils of 0.40 or greater;

39 "Developer" means the legal or beneficial owner or owners of a lot  
40 or of any land proposed to be included in a proposed development,  
41 including the holder of an option or contract to purchase, or other  
42 person having an enforceable proprietary interest in such land;

43 "Development" means the division of a parcel of land into two or  
44 more parcels; the construction, reconstruction, conversion, structural  
45 alteration, relocation, or enlargement of any building or other  
46 structure, or of any mining excavation or landfill; or any use or change

1 in the use of any building or other structure, or land, or extension of  
2 use of land, for which permission may be required pursuant to the  
3 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.);

4 "Energy Star" means the voluntary labeling program administered  
5 by the United States Environmental Protection Agency designed to  
6 identify and promote energy-efficient products, equipment, and  
7 buildings;

8 "Forest Stewardship Council" means the international nonprofit  
9 organization founded in 1993 to support environmentally appropriate,  
10 socially beneficial, and economically viable management of the world's  
11 forests;

12 "Highly urbanized area" means (1) an area where 30% of the  
13 ground within 1,000 feet of the perimeter of a development site  
14 consists of impervious surface, or (2) an area located in a  
15 municipality which the Commissioner of Community Affairs has  
16 determined, according to guidelines established by the commissioner,  
17 to be built out;

18 "Impervious surface" means a surface that has been compacted or  
19 covered with a layer of material so that it is highly resistant to  
20 infiltration by water;

21 "Improvement" means any constructed element which becomes part  
22 of, is placed upon, or is affixed to real estate;

23 "LEED Green Building Rating System" means the Leadership in  
24 Energy and Environmental Design green building rating system  
25 developed by the United States Green Building Council;

26 "LEED Residential Green Building Rating System" means the  
27 Leadership in Energy and Environmental Design green building rating  
28 system for residential buildings, as may be developed by the United  
29 States Green Building Council;

30 "Lot" means a designated parcel, tract, or area of land established  
31 by a plat, or otherwise as permitted by law, and to be used, developed,  
32 or built upon as a unit;

33 "Mixed use development" means a development that includes  
34 residential use and no more than 75% by interior square footage of one  
35 or more of the following uses: (1) commercial space; (2) office  
36 space; (3) retail space; or (4) such other nonresidential uses that the  
37 Department of Community Affairs has determined do not pose a public  
38 health threat or nuisance to nearby residential areas;

39 "Old growth timber" means timber of a forest from the late  
40 successional stage of forest development, as defined by the  
41 Department of Environmental Protection;

42 "Pinelands Comprehensive Management Plan" means the  
43 comprehensive management plan for the pinelands area prepared and  
44 adopted pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.);

45 "Pinelands National Reserve" means the "Pinelands National  
46 Reserve" as defined pursuant to section 3 of P.L.1979, c.111

1 (C.13:18A-3);

2 "Plat" means a map or maps of a subdivision or site plan;

3 "Potentially eligible development" means a residential or mixed use  
4 development or redevelopment project located within the State of New  
5 Jersey;

6 "Residential Site Improvement Standards" means the Statewide site  
7 improvement standards for residential development adopted pursuant  
8 to P.L.1993, c.32 (C.40:55D-40.1 et seq.);

9 "Site improvements" means any construction work on, or  
10 improvement in connection with, a development limited to streets,  
11 roads, parking facilities, sidewalks, drainage structures, and utilities;

12 "Smart growth development" means a potentially eligible  
13 development that meets the criteria set forth in section 11 of this act;

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

17 "Statewide Water Supply Plan" means the New Jersey Statewide  
18 Water Supply Plan adopted by the Department of Environmental  
19 Protection pursuant to section 13 of P.L.1981, c.262 (C.58:1A-13)  
20 and any adopted revisions thereto;

21 "Stormwater management measures" means structural and  
22 nonstructural control of stormwater runoff and nonpoint pollution;

23 "Total cumulative rides available" means the sum of (1) the  
24 number of rides available by bus within a one-half mile radius of the  
25 geographic center of the development, (2) the number of rides  
26 available by rail or light rail within a one-half mile radius of the  
27 geographic center of the development, multiplied by the average  
28 number of cars on each train, and (3) the number of rides available  
29 by ferry within a one-half mile radius of the geographic center of the  
30 development, multiplied by three;

31 "Transit stop" means any stop for a bus, train, or ferry, as the case  
32 may be, which may be along either intercity routes, or intracity routes,  
33 or both. A transit stop serving more than one route, or serving routes  
34 in more than one direction, shall constitute a discrete stop for each  
35 directional route of service; and, if a location has one bus, train, or  
36 ferry, as the case may be, per hour heading in one direction, and one  
37 bus, train, or ferry, as the case may be, available in that same hour  
38 heading in the other direction, this shall constitute one bus, train, or  
39 ferry per hour at two separate stops;

40 "Tropical hardwood" means any hardwood scientifically classified  
41 as an angiosperm which grows in a tropical moist forest, as determined  
42 by the Department of Environmental Protection. "Tropical hardwood"  
43 shall include, but need not be limited to, the following species:

44

45 Scientific Name

Common Name

46 Vouacapous americana

Acapu

**S2502 ADLER**

19

1	<i>Pericopsis elata</i>	Afrormosis
2	<i>Shorea almon</i>	Almon
3	<i>Peltogyne</i> spp.	Amaranth
4	<i>Guibourtia ehie</i>	Amazaque
5	<i>Aningeris</i> spp.	Aningeria
6	<i>Dipterocarpus grandiflorus</i>	Apilong
7	<i>Ochroma lagopus</i>	Balsa
8	<i>Virola</i> spp.	Banak
9	<i>Anisoptera thurifera</i>	Bella Rose
10	<i>Guibourtia arnoldiana</i>	Benge
11	<i>Deterium Senegalese</i>	Boire
12	<i>Priora copaifera</i>	Cativo
13	<i>Antiaris africana</i>	Chenchen
14	<i>Dalbergia retusa</i>	Concobola
15	<i>Cordia</i> spp.	Cordia
16	<i>Diospyros</i> spp.	Ebony
17	<i>Aucoumes klaineana</i>	Gaboon
18	<i>Chlorophors excelsa</i>	Iroko
19	<i>Acacia koa</i>	Koa
20	<i>Pterygota macrocarpa</i>	Koto
21	<i>Shorea negrosensis</i>	Red Lauan
22	<i>Pentacme contorta</i>	White Lauan
23	<i>Shores ploysprma</i>	Tanguile
24	<i>Terminalia superba</i>	Limba
25	<i>Aniba duckei</i>	Louro
26	<i>Kyaya ivorensis</i>	Africa Mahogany
27	<i>Swletenia macrophylla</i>	Amer. Mahogany
28	<i>Tieghemella leckellii</i>	Makora
29	<i>Distemonanthus benthamianus</i>	Movingui
30	<i>Pterocarpus soyauxii</i>	African Padauk
31	<i>Pterocarpus angolensis</i>	Angola Padauk
32	<i>Aspidosperma</i> spp.	Peroba
33	<i>Peltogyne</i> spp.	Purpleheart
34	<i>Gonystylus</i> spp.	Ramin
35	<i>Dalbergia</i> spp.	Rosewood
36	<i>Entandrophragm a cylindricum</i>	Sapela
37	<i>Shores phillippinensis</i>	Sonora
38	<i>Tectona grandis</i>	Teak
39	<i>Lovoa trichilloides</i>	Tigerwood
40	<i>Millettia laurentii</i>	Wenge
41	<i>Microberlinia brazzavillensis</i>	Zebrawood

42

43 "Weekday peak period" means 5:30 a.m. to 10:30 a.m. and 3:30  
44 p.m. to 8:30 p.m. on a weekday; and

45 "Wetland" means (1) a coastal wetland as defined pursuant to  
46 section 2 of P.L.1970, c.272 (C.13:9A-2) and any rules and



**S2502 ADLER**

1	Total Cumulative	Multiplier Value	Additional Credit,
2	Rides Available		As Percentage of
3			Allowable Costs
4			
5	60-124	.05	0.2%
6	125-249	.10	0.4%
7	250-499	.15	0.6%
8	500-999	.20	0.8%
9	1,000 or more	.35	1.4%

10

11       b. A taxpayer may only apply for a credit under this section with  
12 respect to allowable costs paid or incurred by the taxpayer in  
13 connection with the construction or rehabilitation of a smart growth  
14 development.

15       c. For any taxable year, a taxpayer may apply no more than 20%  
16 of the total amount allowed under subsection a. of this section.

17       d. The amount of tax credit otherwise allowed under this section  
18 which cannot be applied during a tax year may be carried over, if  
19 necessary, to the 15 tax years following a credit's first eligible tax  
20 year.

21       e. If a credit is owed to a building owner under sections 7 through  
22 11 of this act with respect to property, and the property, or an interest  
23 therein, is sold, the credit for the period after the sale which would  
24 have been allowed under sections 7 through 11 of this act to the prior  
25 owner had the property not been sold shall be allowed to the successor  
26 owner if that right is specified in the deed transferring the property.

27       f. For any taxable year, a taxpayer may apply a credit under this  
28 section only if: (1) the taxpayer has, as described in section 9 of this  
29 act, obtained and filed a location certificate, a credit reservation  
30 certificate, and an eligibility certificate; and (2) a certificate of  
31 occupancy, for the building or buildings that is the subject of the  
32 credit, has been issued and the building or buildings remains in service  
33 during that year.

34       g. For each taxpayer who is eligible for a credit under this section,  
35 the Department of Community Affairs shall grant a credit, provided  
36 that the credits, in the aggregate, shall not exceed \$20 million for the  
37 first fiscal year of tax credit availability and, in each of the subsequent  
38 six fiscal years, shall not exceed \$50 million; provided further that any  
39 unused allocable amounts shall roll over to subsequent fiscal years.

40

41       9. a. Upon application by a taxpayer, the Department of  
42 Environmental Protection, in consultation with the Department of  
43 Community Affairs, shall issue a location certificate with respect to a  
44 specific property, where the taxpayer has shown that the property  
45 meets the location criteria set forth in subsection a. of section 11 of  
46 this act; provided that, in the event that the Department of

1 Environmental Protection adopts a map designating areas within the  
2 State of New Jersey to which development is best directed, the  
3 property shall be located within those areas and shall not be required  
4 to meet the location criteria set forth in paragraphs (1), (3), and (4) of  
5 subsection a. of section 11 of this act, but shall continue to be required  
6 to meet the location criteria set forth in paragraph (2) of subsection a.  
7 of section 11 of this act; and provided further that, in the event that  
8 the property is located in an area designated as a water supply deficit  
9 area in the Statewide Water Supply Plan, the certificate shall so  
10 indicate. A taxpayer's application for a certificate shall include plats,  
11 and such other information as the Department of Environmental  
12 Protection or the Department of Community Affairs may require. The  
13 Department of Environmental Protection may issue a location  
14 certificate without presentation by the taxpayer of a deed for the  
15 proposed site.

16 b. Upon application by a taxpayer, the Department of Community  
17 Affairs shall issue a credit reservation certificate, where the taxpayer  
18 has filed a copy of a location certificate and has made a showing that  
19 the taxpayer is likely, within a reasonable time, to place in service the  
20 development with respect to which the location certificate was issued,  
21 and that the development qualifies for the allowance of a credit under  
22 sections 7 through 11 of this act. The certificate shall state (1) the  
23 earliest taxable year for which the credit may be applied, (2) the  
24 maximum amount of the total credit allowed and the maximum amount  
25 of credit allowed in any single tax year, (3) an expiration date, and  
26 (4) such other information as the Department of Community Affairs  
27 may prescribe. The certificate shall apply only to the development  
28 placed in service by the specified expiration date. The expiration date  
29 may be extended at the discretion of the Commissioner of Community  
30 Affairs in order to avoid undue hardship. Certificates may be issued  
31 in the first fiscal year following the effective date of sections 7 through  
32 11 of this act, and in each of the six subsequent fiscal years.

33 c. For the first taxable year for which a taxpayer applies a credit  
34 under sections 7 through 11 of this act, the taxpayer shall obtain an  
35 eligibility certificate from an architect or professional engineer licensed  
36 to practice in New Jersey. The certificate shall consist of a  
37 certification, under the seal of the architect or engineer, that, except  
38 for any provision for which the taxpayer has obtained a waiver from  
39 the Department of Community Affairs pursuant to subsection d. of  
40 section 11 of this act, the building or development with respect to  
41 which the credit is applied: (1) meets the neighborhood design  
42 criteria set forth in subsection b. of section 11 of this act; (2) meets  
43 either the green building criteria set forth in subsection c. of section 11  
44 of this act or the criteria required for Certified, Silver, Gold or  
45 Platinum status under the LEED Green Building Rating System or  
46 LEED Residential Green Building Rating System; and (3) if the

1 building or development is located in an area designated as a water  
2 supply deficit area in the Statewide Water Supply Plan, meets the  
3 criteria set forth in subparagraph (h) of paragraph (3) of subsection a.  
4 of section 11 of this act. The certification shall be made in accordance  
5 with the standards and guidelines in effect at the time the credit  
6 reservation for the development was issued. The certificate shall set  
7 forth the specific findings upon which the certification was based. The  
8 certificate shall include sufficient information to identify each building  
9 or development, and such other information as the Department of  
10 Community Affairs may prescribe. The taxpayer shall file with the  
11 Division of Taxation the eligibility certificate, and the associated  
12 location certificate and credit reservation certificate, with the  
13 application for credit and shall file duplicate copies with the  
14 Department of Community Affairs.

15 d. If the Department of Community Affairs has reason to believe  
16 that an architect or professional engineer, in making any certification  
17 under this section, engaged in professional misconduct, the department  
18 shall so inform the State Board of Architects, or the State Board of  
19 Professional Engineers and Land Surveyors, as appropriate, in the  
20 Division of Consumer Affairs of the Department of Law and Public  
21 Safety.

22

23 10. a. Each taxpayer shall, for any taxable year for which a credit  
24 is claimed under sections 7 through 11 of this act, maintain records of  
25 such information as the Department of Community Affairs and the  
26 Division of Taxation shall determine, and report that information to  
27 the Department of Community Affairs and the Division of Taxation in  
28 the form and at the time that the two departments shall determine.

29 b. The Department of Community Affairs, the Department of  
30 Environmental Protection, and the Division of Taxation shall adopt,  
31 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
32 (C.52:14B-1 et seq.), such rules and regulations as may be necessary  
33 to implement sections 7 through 11 of this act. These rules and  
34 regulations shall be designed to encourage the implementation of smart  
35 growth principles and maintain high but commercially reasonable  
36 standards for obtaining tax credits under sections 7 through 11 of this  
37 act. The rules and regulations shall establish a reasonable time for  
38 submission of applications and shall establish a method certifying  
39 proposed locations and allocating credit reservation certificates among  
40 eligible applicants, which shall generally be on a first-come, first-  
41 served basis.

42 c. On or before six years after the effective date of sections 7  
43 through 11 of this act, the Commissioner of Community Affairs, in  
44 consultation with the Commissioner of Environmental Protection and  
45 the Director of the Division of Taxation, shall prepare and submit a  
46 written report regarding the number of certificates and taxpayers

1 applying the credit provided for under sections 7 through 11 of this  
2 act; the amount of the credits granted, the geographical distribution of  
3 the credits granted, and any other information that the Department of  
4 Community Affairs, the Department of Environmental Protection, or  
5 the Division of Taxation may deem useful or appropriate. A  
6 preliminary draft of the report shall be so issued within the first four  
7 years following the effective date of sections 7 through 11 of this act.  
8 The report shall be submitted to the Governor, the President of the  
9 Senate, and the Speaker of the General Assembly.

10

11 11. Except as set forth in subsection d. of this section, all buildings  
12 and developments with respect to which a tax credit is applied  
13 pursuant to sections 7 through 11 of this act shall be considered a  
14 smart growth development if they meet the following standards;  
15 provided that, with respect to residential and tenant space, compliance  
16 with standards set forth in paragraphs (1), (2), (3), (5) and (8) of  
17 subsection c. of this section shall not be required where the taxpayer  
18 does not incur or pay the cost of the equipment, appliances, fixtures,  
19 materials, finishes, furnishings or other items relevant to compliance  
20 with the standard:

21 a. (1) All buildings and developments with respect to which a tax  
22 credit is applied under sections 7 through 11 of this act shall be  
23 located in one of the following areas: (a) Planning Areas 1, 2, or 5b  
24 of the State Plan; (b) centers designated by the State Planning  
25 Commission; or (c) municipalities or portions of municipalities that  
26 the New Jersey Office of Smart Growth has declared as substantially  
27 conforming to the State Plan or to smart growth principles;

28 (2) All buildings and developments with respect to which a tax  
29 credit is applied under sections 7 through 11 of this act shall be served  
30 either by adequate bus transit service, adequate rail transit service, or  
31 adequate ferry transit service;

32 (3) No building or development with respect to which a tax credit  
33 is applied under sections 7 through 11 of this act shall be located: (a)  
34 in the Pinelands National Reserve, unless the site is within a Pinelands  
35 Regional Growth Area or Pinelands Town as designated in the  
36 Pinelands Comprehensive Management Plan; (b) in public parkland;  
37 (c) within 1,000 feet of any critical habitat site within public parkland;  
38 (d) in or within 300 feet of a wetland; (e) in or within 100 feet of a  
39 critical slope area, unless the site is located on a brownfield site or  
40 within a highly urbanized area; (f) within the 100-year floodplain,  
41 unless the site is located on a brownfield site or within a highly  
42 urbanized area; (g) within 1,000 feet of the mean high-water mark for  
43 any saltwater body, unless the site is located on a brownfield site or  
44 within a highly urbanized area; or (h) in an area designated as a water  
45 supply deficit area in the Statewide Water Supply Plan unless the  
46 Department of Environmental Protection has approved a water use

1 plan for the development or the development includes fewer than 20  
2 residential units and any nonresidential units will cumulatively use  
3 fewer than 10,000 gallons of water per day; and

4 (4) No building or development with respect to which a tax credit  
5 is applied under sections 7 through 11 of this act shall require (a) a  
6 sanitary sewer line extension of 1,000 feet or greater, unless sited in  
7 an area that has been approved for sanitary sewer service prior to the  
8 date of enactment of this act, or (b) a septic system.

9 b. Notwithstanding any provision of the Residential Site  
10 Improvement Standards, within one year after the date of enactment  
11 of this act, the Department of Community Affairs, in consultation with  
12 the Department of Environmental Protection, shall adopt, pursuant to  
13 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
14 seq.), standards for the purpose of sections 7 through 11 of this act  
15 with respect to:

16 (1) Land Use. The standards shall require, at a minimum, that  
17 average residential density shall be six or more residential dwelling  
18 units per residential acre. Residential acreage shall be calculated net  
19 of any land on the lot that is used for public open space, public  
20 sidewalks, or public roads. For lots occupied by residential buildings,  
21 residential acres used in the density calculation shall be the footprint  
22 area of buildings, plus any associated driveways, yards, and parking  
23 areas except for on-street parallel parking. For lots occupied by mixed  
24 use buildings, residential acres used in the density calculation shall be  
25 a percentage of the footprint area of building that equals the  
26 percentage of interior space devoted to residential use, plus any  
27 associated driveways, yards, and the percentage of associated parking  
28 areas used by residents;

29 (2) Streets and Sidewalks. The standards shall require, at a  
30 minimum, that if new streets are constructed as part of a development  
31 with respect to which a credit is applied under sections 7 through 11  
32 of this act, they shall meet the following standards: (a) no more than  
33 one new cul-de-sac shall be constructed for every four new  
34 intersections within the development; (b) at least 50% of any new  
35 intersections and crossings within the development shall be equipped  
36 with traffic controls or such traffic calming measures that the  
37 Department of Community Affairs shall approve, including but not  
38 limited to speed bumps, stop signs and vegetative barriers; (c) the  
39 width of pavement of new streets shall not exceed 42 feet, consisting  
40 of a maximum of 10 feet per lane of motor vehicle traffic, four feet per  
41 bicycle lane, and seven feet per lane designated for on-street parallel  
42 parking. New streets shall not consist of more than two lanes devoted  
43 to motor vehicle traffic, two lanes devoted to bicycle traffic, and two  
44 lanes devoted to on-street parallel parking; and (d) sidewalks of no  
45 less than four feet in width shall be provided along frontage of all  
46 buildings and along all streets that connect buildings within the

1 development; and

2 (3) Parking. The standards shall require, at a minimum, that the  
3 number of parking spaces associated with the development shall not  
4 exceed the number required by parking ratios specified in applicable  
5 local zoning codes.

6 c. Within one year after the date of enactment of this act, the  
7 Department of Community Affairs, in consultation with the  
8 Department of Environmental Protection, shall adopt, pursuant to the  
9 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
10 seq.), standards for the purpose of sections 7 through 11 of this act,  
11 and shall review and update those standards at least every two years  
12 from the date on which they are adopted, with respect to:

13 (1) Energy Efficiency. The standards shall require, at a minimum,  
14 that (a) single family homes comply with the energy standards of the  
15 New Jersey Energy Star Homes program, or, if that program is not in  
16 effect at the time of application, the United States Environmental  
17 Protection Agency Energy Star Homes program; (b) energy use in all  
18 other buildings shall not exceed 65% of the energy use permitted by  
19 the relevant New Jersey energy code; (c) equipment and appliances,  
20 for which Energy Star standards exist, including but not limited to  
21 refrigerators, dishwashers and washing machines, shall meet those  
22 Energy Star standards; and (d) no less than 40% of high-use lighting  
23 fixtures shall meet Energy Star standards;

24 (2) Building Materials. The standards shall, at a minimum, specify  
25 requirements regarding minimum percentages of recycled content and  
26 renewable source material and maximum levels of toxicity and volatile  
27 organic compounds. Standards shall be developed for building  
28 materials, finishes and furnishings, including but not limited to:  
29 concrete and concrete masonry units; millwork substrates; insulation;  
30 ceramic, ceramic/ glass and cementitious tiles; ceiling tiles and panels;  
31 flooring and carpet; paints, coatings sealants and adhesives; and  
32 furniture. The development of the standards shall be informed by the  
33 LEED Green Building Rating System and the LEED Residential Green  
34 Building Rating System;

35 (3) Wood Use. The standards shall, at a minimum, (a) specify  
36 requirements to minimize wood use in wood-framed houses; and (b)  
37 require that old growth timber and tropical hardwood, except recycled  
38 wood and tropical hardwood certified in accordance with the protocol  
39 of the Forest Stewardship Council or, in lieu thereof, of another  
40 organization deemed by the Department of Environmental Protection  
41 to be authorized and capable of providing an equivalent protocol, shall  
42 not be used;

43 (4) Heat Island Reduction. The standards shall require, at a  
44 minimum, that (a) at least 50%, by square footage, of non-roof  
45 impervious surfaces, including driveways, parking areas, walkways and  
46 plazas, be light-colored or covered with specified coatings that

1 improve reflectance; and (b) roofs shall be composed of Energy Star  
2 labeled roof products, except where solar panels or roof gardens are  
3 installed;

4 (5) Water Efficiency. The standards shall require, at a minimum,  
5 that (a) each showerhead shall not exceed 2.0 gallons per minute; (b)  
6 each faucet shall not exceed 1.0 gallons per minute; (c) toilet flush  
7 volume shall not exceed 1.6 gallons; and (d) for commercial  
8 buildings, the drift rate of any cooling tower shall not exceed 1%;

9 (6) Heating and Cooling. The standards shall require, at a  
10 minimum, that central air conditioning refrigerant charge and air flow  
11 shall be documented to be within 10% of manufacturer  
12 recommendations;

13 (7) Durability. The standards shall require, at a minimum, that (a)  
14 roofs shall have a warranty of no less than 40 years; (b) insulated  
15 windows shall have a warranty of no less than 10 years; (c)  
16 overhangs shall include at least 80% of full attic/roof-slope insulation  
17 R-value; and (d) head casing flashing shall be installed for all  
18 windows and exterior doors;

19 (8) Indoor Air Quality. The standards shall require, at a minimum,  
20 that (a) interior paints shall contain no more than 100 grams per liter  
21 of volatile organic compounds; (b) sealants and adhesives used for  
22 interior applications shall contain no more than 250 grams per liter of  
23 volatile organic compounds; (c) carpets, carpet cushions and any  
24 necessary adhesives shall meet the standards set forth in the Carpet  
25 and Rug Institute Green Label Indoor Air Quality Test Program; (d)  
26 carpets shall not be installed in basements, bathrooms, kitchens, or  
27 within a four foot radius of the center of any doorway which leads  
28 outdoors; (e) only direct-vent, closed-combustion, or power vented  
29 space heating and water heating equipment shall be used, and vent-free  
30 space heating or water heating equipment shall not be used; (f) any  
31 wood stoves shall have ducted combustion air; (g) carbon monoxide  
32 detectors shall be installed consistent with Consumer Product Safety  
33 Commission recommendations, and with at least one detector per 500  
34 square feet of interior space; (h) enclosed parking shall be completely  
35 air-sealed from attached indoor spaces; (i) every building shall be  
36 furnished with a ventilation system and for commercial buildings the  
37 sizing of the system shall conform with the ASHRAE standard known  
38 as ASHRAE G2-2001; and (j) foundations of residential units shall  
39 be constructed according to the following requirements, unless the  
40 Department of Community Affairs approves alternative plans to ensure  
41 dry basements: the foundation shall have a continuous footing drain  
42 that is covered with stone, which in turn shall be covered with filter  
43 fabric, and which shall drain either to daylight or to an interior, sealed  
44 sump pump system; the foundation shall have porous backfill material;  
45 the vapor retarder shall be directly under slab; and the exterior of the  
46 below grade foundation shall be waterproofed;

1 (9) Construction Waste. The standards shall require, at a  
2 minimum, development of and adherence to a waste reduction plan  
3 that provides for separation of materials which are reusable or  
4 recyclable, such that a minimum of 30% of waste by volume shall be  
5 diverted from the waste stream; and

6 (10) Stormwater Management. The standards shall require, at a  
7 minimum, that developments on parcels of undeveloped land of four  
8 acres or more shall employ stormwater management measures in order  
9 to meet at least one of the following requirements: (a) post-  
10 development runoff volume of the land area of the development shall  
11 not exceed pre-development runoff volume; where runoff volume is  
12 defined as the 1.5 year, 24-hour peak discharge rate; or (b) the first  
13 inch of runoff or 80% of 100-year runoff produced by the impervious  
14 surfaces of the development shall be treated for total suspended solids,  
15 total phosphorous, and total nitrogen.

16 d. Upon application by a taxpayer, the Department of Community  
17 Affairs, in consultation with the Department of Environmental  
18 Protection, may issue a waiver of any regulatory provision adopted  
19 pursuant to subsection a. of this section, where the taxpayer has made  
20 a showing that the development was in compliance with the provision  
21 at the time of the issuance to the taxpayer of a location certificate, and  
22 that the development is no longer in compliance because of  
23 circumstances out of the taxpayer's control; or of any regulatory  
24 provision adopted pursuant to subsections b. or c. of this section,  
25 where the taxpayer has made a showing that compliance with the  
26 provision is impracticable due to unique characteristics of the site, or  
27 that deviation from the provision produces no net negative  
28 environmental impact.

29  
30 12. This act shall take effect immediately.  
31  
32

33 STATEMENT  
34

35 This bill, entitled the "Smart Growth Tax Credit Act," provides tax  
36 incentives against the corporation business tax and gross income tax  
37 for developers and owners who design and build residential and mixed  
38 use developments which meet specific "smart growth" and "green  
39 building" criteria. These criteria ensure that participating  
40 developments are appropriately located, resource efficient, pedestrian  
41 friendly, adequately serviced by mass transit, and built using materials  
42 and technologies that minimize environmental impacts and provide a  
43 healthier built environment. This bill also provides additional  
44 incentives for designing and building developments which exceed the  
45 required smart growth and green building standards.

46 The incentives provided by this bill are necessary in order to reduce

1 New Jersey's incidence of sprawl development and the adverse  
2 impacts of such sprawl development, which include the rapid  
3 consumption of open space and farmland, and the pollution and traffic  
4 congestion produced by automobile dependence. Intended to bolster  
5 the production of smarter, more sustainable development, this bill will  
6 help conserve undeveloped land, reduce air and water pollution,  
7 improve public health, reduce traffic congestion, ensure more efficient  
8 water usage that will help prevent future drought emergencies, and  
9 reduce energy bills and transportation costs for New Jerseyans. It will  
10 also help the State's building and development professionals overcome  
11 market barriers and develop the capacity to create superior buildings  
12 and neighborhoods at minimal additional cost. The increased stock of  
13 these buildings and neighborhoods will then increase consumer  
14 demand for walkable and transit-oriented development and cleaner,  
15 safer buildings.

16 The "Smart Growth Tax Credit Act" will be administered by the  
17 Department of Community Affairs in consultation with the Department  
18 of Environmental Protection. It will be available for seven years, and  
19 the total of all credits which could be allocated in the first fiscal year  
20 after enactment would be no more than \$20 million. In subsequent  
21 years, the Commissioner of Community Affairs, in consultation with  
22 the State Treasurer, may authorize up to \$50 million of credit  
23 allocations per year. Developers and owners will collect one-fifth of  
24 the credit due each year for the five years following the smart growth  
25 development's certification of eligibility.