

§2 - C.13:18A-5.2

§4 - C.13:19-5.4

§9 –

C.40:55D-38.1

P.L.2010, CHAPTER 4, *approved April 22, 2010*
Senate Committee Substitute for
Senate, No. 921

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

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 subsection a. of this section, include solar panels in any calculation
2 of impervious surface or impervious cover.

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

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

9

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

15 As used in this section, "solar panel" means an elevated panel or
16 plate, or a canopy or array thereof, that captures and converts solar
17 radiation to produce power, and includes flat plate, focusing solar
18 collectors, or photovoltaic solar cells and excludes the base or
19 foundation of the panel, plate, canopy, or array.

20

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

23 3. As used in this act:

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

34 "Commercial development" means a development designed,
35 constructed or intended to accommodate commercial or office uses.
36 "Commercial development" shall include, but need not be limited
37 to, any establishment used for the wholesale or retail sale of food or
38 other merchandise, or any establishment used for providing
39 professional, financial, or other commercial services;

40 "Commissioner" means the Commissioner of Environmental
41 Protection **[and Energy]** ;

42 "Department" means the Department of Environmental
43 Protection **[and Energy]** ;

44 "Development" means the construction, relocation, or
45 enlargement of any building or structure and all site preparation
46 therefor, the grading, excavation or filling on beaches or dunes, and

1 shall include residential development, commercial development,
2 industrial development, and public development;

3 "Dune" means a wind- or wave-deposited or man-made
4 formation of vegetated sand that lies generally parallel to and
5 landward of the beach, and between the upland limit of the beach
6 and the foot of the most inland slope of the dune. Dune includes
7 the foredune, secondary and tertiary dune ridges, as well as man-
8 made dunes, where they exist;

9 " Dwelling unit" means a house, townhouse, apartment,
10 cooperative, condominium, cabana, hotel or motel room, a room in
11 a hospital, nursing home or other residential institution, mobile
12 home, campsite for a tent or recreational vehicle or any other
13 habitable structure of similar size and potential environmental
14 impact, except that dwelling unit shall not mean a vessel as defined
15 in section 2 of P.L.1962, c.73 (C.12:7-34.37);

16 "Governmental agency" means the Government of the United
17 States, the State of New Jersey, or any other state, or a political
18 subdivision, authority, agency or instrumentality thereof, and shall
19 include any interstate agency or authority;

20 "Industrial development" means a development that involves a
21 manufacturing or industrial process, and shall include, but need not
22 be limited to, electric power production, food and food by-product
23 processing, paper production, agri-chemical production, chemical
24 processes, storage facilities, metallurgical processes, mining and
25 excavation processes, and processes utilizing mineral products;

26 "Person" means any individual, corporation, company,
27 association, society, firm, partnership, joint stock company, or
28 governmental agency;

29 "Public development" means a solid waste facility, including an
30 incinerator and landfill, wastewater treatment plant, public
31 highway, airport, an above or underground pipeline designed to
32 transport petroleum, natural gas, or sanitary sewage, and a public
33 facility, and shall not mean a seasonal or temporary structure
34 related to the tourism industry, an educational facility or power
35 lines;

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

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

40 "Residential development" means a development that provides
41 one or more dwelling units ; and

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

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

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

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

12
13 5. Section 3 of P.L.2004, c.120 (C.13:20-3) is amended to read
14 as follows:

15 3. As used in this act:

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

25 "Agricultural impervious cover" means agricultural or
26 horticultural buildings, structures, or facilities with or without
27 flooring, residential buildings, and paved areas, but shall not mean
28 temporary coverings;

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

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

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

1 "Construction beyond site preparation" means having completed
2 the foundation for a building or structure, and does not include the
3 clearing, cutting, or removing of vegetation, bringing construction
4 materials to the site, or site grading or other earth work associated
5 with preparing a site for construction;

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

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

11 "Department" means the Department of Environmental
12 Protection;

13 "Development" means the same as that term is defined in section
14 3.1 of P.L.1975, c.291 (C.40:55D-4);

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

17 "Disturbance" means the placement of impervious surface, the
18 exposure or movement of soil or bedrock, or the clearing, cutting,
19 or removing of vegetation;

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

31 "Facility expansion" means the expansion of the capacity of an
32 existing capital improvement in order that the improvement may
33 serve new development;

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

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

1 "Highlands open waters" means all springs, streams including
2 intermittent streams, wetlands, and bodies of surface water, whether
3 natural or artificial, located wholly or partially within the
4 boundaries of the Highlands Region, but shall not mean swimming
5 pools;

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

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

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

22 "Impervious surface" means any structure, surface, or
23 improvement that reduces or prevents absorption of stormwater into
24 land, and includes porous paving, paver blocks, gravel, crushed
25 stone, decks, patios, elevated structures, and other similar
26 structures, surfaces, or improvements;

27 "Individual unit of development" means a dwelling unit in the
28 case of a residential development, a square foot in the case of a non-
29 residential development, or any other standard employed by a
30 municipality for different categories of development as a basis upon
31 which to establish a service unit;

32 "Local government unit" means a municipality, county, or other
33 political subdivision of the State, or any agency, board,
34 commission, utilities authority or other authority, or other entity
35 thereof;

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

1 unit in the preservation area that requires an environmental land use
2 or water permit or that results in the ultimate disturbance of one
3 acre or more of land or a cumulative increase in impervious surface
4 by one-quarter acre or more. Major Highlands development shall
5 not mean an agricultural or horticultural development or
6 agricultural or horticultural use in the preservation area . Solar
7 panels shall not be included in any calculation of impervious
8 surface ;

9 "Mine" means any mine, whether on the surface or underground,
10 and any mining plant, material, equipment, or explosives on the
11 surface or underground, which may contribute to the mining or
12 handling of ore or other metalliferous or non-metalliferous
13 products. The term "mine" shall also include a quarry, sand pit,
14 gravel pit, clay pit, or shale pit;

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

29 "Office of Smart Growth" means the Office of State Planning
30 established pursuant to section 6 of P.L.1985, c.398 (C.52:18A-
31 201);

32 "Planning area" means that portion of the Highlands Region not
33 included within the preservation area;

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

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

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

40 "Regional master plan" means the Highlands regional master
41 plan or any revision thereof adopted by the council pursuant to
42 section 8 of this act;

43 "Resource management systems plan" means a site specific
44 conservation system plan that (1) prescribes needed land treatment
45 and related conservation and natural resource management
46 measures, including forest management practices, for the
47 conservation, protection, and development of natural resources, the

1 maintenance and enhancement of agricultural or horticultural
2 productivity, and the control and prevention of nonpoint source
3 pollution, and (2) establishes criteria for resources sustainability of
4 soil, water, air, plants, and animals;

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

9 "Service unit" means a standardized measure of consumption,
10 use, generation or discharge attributable to an individual unit of
11 development calculated in accordance with generally accepted
12 engineering or planning standards for a particular category of
13 capital improvements or facility expansions;

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

16 "Solar panel" means an elevated panel or plate, or a canopy or
17 array thereof, that captures and converts solar radiation to produce
18 power, and includes flat plate, focusing solar collectors, or
19 photovoltaic solar cells and excludes the base or foundation of the
20 panel, plate, canopy, or array;

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

24 "State entity" means any State department, agency, board,
25 commission, or other entity, district water supply commission,
26 independent State authority or commission, or bi-state entity;

27 "State Soil Conservation Committee" means the State Soil
28 Conservation Committee in the Department of Agriculture
29 established pursuant to R.S. 4:24-3;

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

34 "Waters of the Highlands" means all springs, streams including
35 intermittent streams, and bodies of surface or ground water, whether
36 natural or artificial, located wholly or partially within the
37 boundaries of the Highlands Region, but shall not mean swimming
38 pools.

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

40

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

43 31. a. (1) Any agricultural or horticultural development in the
44 preservation area that would result in the increase, after the date of
45 enactment of this act either individually or cumulatively, of
46 agricultural impervious cover by three percent or more of the total
47 land area of a farm management unit in the preservation area shall

1 require the review and approval by the local soil conservation
2 district of a farm conservation plan which shall be prepared and
3 submitted by the owner or operator of the farm management unit.
4 Upon approval of the farm conservation plan by the local soil
5 conservation district, the owner or operator of the farm management
6 unit shall implement the plan on the farm management unit. The
7 local soil conservation district shall transmit a copy of an approved
8 farm conservation plan to the State Soil Conservation Committee,
9 and, if any part of the farm management unit is preserved under any
10 farmland preservation program, to the State Agriculture
11 Development Committee.

12 (2) Any agricultural or horticultural development in the
13 preservation area that would result in the increase, after the date of
14 enactment of this act either individually or cumulatively, of
15 agricultural impervious cover by nine percent or more of the total
16 land area of a farm management unit in the preservation area shall
17 require the review and approval by the local soil conservation
18 district of a resource management systems plan which shall be
19 prepared and submitted by the owner or operator of the farm
20 management unit.

21 Prior to the approval of a resource management systems plan by
22 a local soil conservation district, a copy of the resource
23 management systems plan shall be forwarded by the local soil
24 conservation district to the Department of Environmental Protection
25 for review and approval, with or without conditions, or denial
26 within 60 days after receipt by the department. Upon approval of
27 the resource management systems plan by the local soil
28 conservation district and the Department of Environmental
29 Protection, the owner or operator of the farm management unit shall
30 implement the plan on the farm management unit. The local soil
31 conservation district shall transmit a copy of an approved resource
32 management systems plan to the State Soil Conservation
33 Committee, and, if any part of the farm management unit is
34 preserved under any farmland preservation program, to the State
35 Agriculture Development Committee.

36 (3) A farm conservation plan required pursuant to paragraph (1)
37 of this subsection and a resource management systems plan required
38 pursuant to paragraph (2) of this subsection shall be prepared in
39 accordance with science-based standards, consistent with the goals
40 and purposes of this act, which standards shall be established by the
41 State Board of Agriculture and the Department of Agriculture, in
42 consultation with the Department of Environmental Protection, the
43 State Agriculture Development Committee, Rutgers Cooperative
44 Extension, and the Natural Resources Conservation Service in the
45 United States Department of Agriculture. Within 270 days after the
46 date of enactment of this act, the State Department of Agriculture,
47 in consultation with the Department of Environmental Protection,

1 shall develop and adopt, pursuant to the "Administrative Procedure
2 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), these standards and any
3 other rules and regulations necessary to implement this section.

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

6 b. (1) If any person violates any provision of subsection a. of
7 this section, any rule or regulation adopted pursuant to subsection a.
8 of this section, or a farm conservation plan or a resource
9 management systems plan approved pursuant to subsection a. of this
10 section, the Department of Agriculture or the local soil conservation
11 district may institute a civil action in the Superior Court for
12 injunctive relief to prohibit and prevent the violation or violations
13 and the court may proceed in a summary manner.

14 (2) (a) Any person who violates any provision of subsection a. of
15 this section, any rule or regulation adopted pursuant to subsection a.
16 of this section, or a farm conservation plan or a resource
17 management systems plan approved pursuant to subsection a. of this
18 section shall be liable to a civil administrative penalty of up to
19 \$5,000 for each violation. If the violation is of a continuing nature,
20 each day during which it continues shall constitute an additional,
21 separate, and distinct offense. No assessment shall be levied
22 pursuant to this subsection until after the party has been notified by
23 certified mail or personal service and provided an opportunity for a
24 hearing.

25 (b) Any amount assessed under this subsection shall fall within
26 a range established in a penalty schedule adopted by the Department
27 of Agriculture pursuant to the "Administrative Procedure Act,"
28 which shall take into account the seriousness and duration of the
29 violation and whether the violation involves the failure to prepare or
30 to implement a farm conservation plan or resource management
31 systems plan. The schedule shall also provide for an enhanced
32 penalty if the violation causes an impairment to water quality. Any
33 civil administrative penalty assessed under this subsection may be
34 compromised by the Secretary of Agriculture upon the posting of a
35 performance bond by the violator, or upon such terms and
36 conditions as the secretary may establish by regulation.

37 (c) Any person who fails to pay a civil administrative penalty in
38 full pursuant to this subsection shall be subject, upon order of a
39 court, to a civil penalty of up to \$5,000 for each violation. If the
40 violation is of a continuing nature, each day during which it
41 continues shall constitute an additional, separate, and distinct
42 offense. Any such civil penalty imposed may be collected with
43 costs in a summary proceeding pursuant to the "Penalty
44 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
45 The Superior Court and the municipal court shall have jurisdiction
46 to enforce the provisions of the "Penalty Enforcement Law of 1999"
47 in connection with this subsection.

1 (d) All penalties collected pursuant to this subsection shall
2 either be used, as determined by the council, by the State
3 Agriculture Development Committee for the preservation of
4 farmland in the preservation area or by any development transfer
5 bank used or established by the council to purchase development
6 potential in the preservation area.

7 c. Nothing in this act, the regional master plan, any rules or
8 regulations adopted by the Department of Environmental Protection
9 pursuant to this act, or any amendments to a master plan,
10 development regulations, or other regulations adopted by a local
11 government unit to specifically conform them with the regional
12 master plan shall be construed to alter or compromise the goals,
13 purposes, policies, and provisions of, or lessen the protections
14 afforded to farmers by, the "Right to Farm Act," P.L.1983, c.31
15 (C.4:1C-1 et seq.), and any rules or regulations adopted pursuant
16 thereto.

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

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

21
22 7. Section 34 of P.L.2004, c.120 (C.13:20-32) is amended to
23 read as follows:

24 34. The Department of Environmental Protection shall prepare
25 rules and regulations establishing the environmental standards for
26 the preservation area upon which the regional master plan adopted
27 by the council and the Highlands permitting review program
28 administered by the department pursuant to this act shall be based.
29 These rules and regulations shall provide for at least the following:

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

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

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

20 d. notwithstanding the provisions of subsection a. of section 5
21 of P.L.1981, c.262 (C.58:1A-5), or any rule or regulation adopted
22 pursuant thereto, to the contrary, a system for the regulation of any
23 diversion of more than 50,000 gallons per day, and multiple
24 diversions by the same or related entities for the same or related
25 projects or developments of more than 50,000 gallons per day, of
26 waters of the Highlands pursuant to the "Water Supply Management
27 Act," P.L.1981, c.262 (C.58:1A-1 et seq.), and any permit issued
28 pursuant thereto shall be based on consideration of individual and
29 cumulative impacts of multiple diversions, maintenance of stream
30 base flows, minimization of depletive use, maintenance of existing
31 water quality, and protection of ecological uses. Any new or
32 increased diversion for nonpotable purposes that is more than 50%
33 consumptive shall require an equivalent reduction in water demand
34 within the same subdrainage area through such means as
35 groundwater recharge of stormwater or reuse. Existing unused
36 allocation or allocations used for nonpotable purposes may be
37 revoked by the department where measures to the maximum extent
38 practicable are not implemented to reduce demand. All new or
39 increased diversions shall be required to implement water
40 conservation measures to the maximum extent practicable;

41 e. a septic system density standard established at a level to
42 prevent the degradation of water quality, or to require the
43 restoration of water quality, and to protect ecological uses from
44 individual, secondary, and cumulative impacts, in consideration of
45 deep aquifer recharge available for dilution;

- 1 f. a zero net fill requirement for flood hazard areas pursuant to
2 the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50
3 et seq.);
- 4 g. the antidegradation provisions of the surface water quality
5 standards and the stormwater regulations applicable to category one
6 waters to be applied to Highlands open waters;
- 7 h. a prohibition on impervious surfaces of greater than three
8 percent of the land area, except that Highlands open waters shall not
9 be included in the calculation of that land area , and solar panels
10 shall not be included any the calculation of impervious surface ;
- 11 i. notwithstanding the provisions of the "Safe Drinking Water
12 Act," P.L.1977, c.224 (C.58:12A-1 et seq.), or any rule or
13 regulation adopted pursuant thereto, to the contrary, a limitation or
14 prohibition on the construction of new public water systems or the
15 extension of existing public water systems to serve development in
16 the preservation area, except in the case of a demonstrated need to
17 protect public health and safety;
- 18 j. a prohibition on development, except linear development for
19 infrastructure, utilities, and the rights-of-way therefor, provided that
20 no other feasible alternative, as determined by the department,
21 exists for the linear development, on steep slopes in the
22 preservation area with a grade of 20% or greater, and standards for
23 development on slopes in the preservation area exhibiting a grade of
24 between 10% and 20%. The standards shall assure that
25 developments on slopes exhibiting a grade of between 10% and
26 20% preserve and protect steep slopes from the negative
27 consequences of development on the site and the cumulative impact
28 in the Highlands Region. The standards shall be developed to
29 prevent soil erosion and sedimentation, protect water quality,
30 prevent stormwater runoff, protect threatened and endangered
31 animal and plant species sites and designated habitats, provide for
32 minimal practicable degradation of unique or irreplaceable land
33 types, historical or archeological areas, and existing scenic
34 attributes at the site and within the surrounding area, protect upland
35 forest, and restrict impervious surface; and shall take into
36 consideration differing soil types, soil erodability, topography,
37 hydrology, geology, and vegetation types; and
- 38 k. a prohibition on development that disturbs upland forested
39 areas, in order to prevent soil erosion and sedimentation, protect
40 water quality, prevent stormwater runoff, and protect threatened and
41 endangered animal and plant species sites and designated habitats;
42 and standards to protect upland forested areas that require all
43 appropriate measures be taken to avoid impacts or disturbance to
44 upland forested areas, and where avoidance is not possible that all
45 appropriate measures have been taken to minimize and mitigate
46 impacts to upland forested areas and to prevent soil erosion and
47 sedimentation, protect water quality, prevent stormwater runoff, and

1 protect threatened and endangered animal and plant species sites
2 and designated habitats.

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

4

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

7 8. The governing body of any county having a county planning
8 board may provide for the review of site plans for land development
9 along county roads or affecting county drainage facilities as
10 provided in subsection e. of this section and for the approval of
11 such development as hereinafter set forth and limited for the
12 purpose of assuring a safe and efficient county road system. Such
13 review and approval shall be in conformance with procedures and
14 standards adopted by resolution or ordinance as appropriate of the
15 governing body. Notice of the public hearing on a proposed
16 resolution or ordinance of the governing body establishing
17 procedures and standards to govern the review and regulation of
18 land development along county roads or affecting county drainage
19 facilities as provided in subsection e. of this section, and a copy of
20 such resolution or ordinance, shall be given by delivery or by
21 certified mail to the municipal clerk, secretary of the planning
22 board and secretary of the board of adjustment of each municipality
23 in the county at least 10 days prior to such hearing. These
24 procedures and standards shall be limited to:

25 a. The submission of a site plan, prior to the issuance of a
26 municipal building permit, drawn in accordance with standards in
27 the resolution or ordinance for any proposed land development,
28 excluding single family residential development but including
29 proposed commercial, industrial, multifamily structures containing
30 five or more units, or any other land development requiring off-
31 street parking area or producing surface runoff in excess of
32 standards set forth in the site plan review and approval resolution or
33 ordinance of the governing body.

34 b. The requirement of dedication of additional right-of-way in
35 accordance with the county master plan adopted by the county
36 planning board or an official county map adopted by the governing
37 body. Where by reason of special or unusual conditions said total
38 additional right-of-way is to be secured from just one side of an
39 existing road, only one-half of the additional right-of-way may be
40 required to be dedicated.

41 c. The requirement of physical improvements subject to
42 recommendations of the county engineer relating to the safety and
43 convenience of the traveling public, including drainage facilities, or
44 other highway and traffic design features as may be deemed
45 necessary on such county road or roads in accordance with the
46 engineering and planning standards established in the site plan
47 review and approval resolution or ordinance of the governing body.

1 d. The requirement of performance and payment guarantees
2 and procedures for the release of same, maintenance bonds of not
3 more than 2 years' duration from the date of acceptance of
4 improvements, cash contributions, and agreements specifying
5 minimum standards of construction for required improvements.
6 Procedures for, and limitations on the requirement of such
7 guarantees or cash contributions shall be governed by the provisions
8 of this act.

9 e. The requirement of adequate drainage facilities and
10 easements when, as determined by the county engineer in
11 accordance with county-wide standards, the proposed site plan will
12 cause storm water to drain either directly or indirectly to a county
13 road or through any drainage-way, structure, pipe, culvert or facility
14 for which the county is responsible for the construction,
15 maintenance or proper functioning.

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

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

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

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

28

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

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

38

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

41 3. A storm water management plan and a storm water
42 management ordinance or ordinances shall conform to all relevant
43 federal and State statutes, rules and regulations concerning storm
44 water management or flood control and shall be designed: a. to
45 reduce flood damage, including damage to life and property; b. to
46 minimize storm water runoff from any new land development where
47 such runoff will increase flood damage; c. to reduce soil erosion

1 from any development or construction project; d. to assure the
2 adequacy of existing and proposed culverts and bridges; e. to induce
3 water recharge into the ground where practical; f. to prevent, to the
4 greatest extent feasible, an increase in nonpoint pollution; g. to
5 maintain the integrity of stream channels for their biological
6 functions, as well as for drainage; and h. to minimize public safety
7 hazards at any storm water detention facilities constructed as part of
8 a subdivision or pursuant to a site plan. A storm water management
9 plan shall also include such structural changes and such additional
10 nonstructural measures and practices as may be necessary to
11 manage storm water. A storm water management plan and a storm
12 water management ordinance or ordinances shall not be construed
13 to prohibit solar panels to be constructed and installed on a site.
14 Solar panels shall not be included in any calculation of impervious
15 surface or impervious cover.

16 For purposes of this act :

17 **["nonpoint"]** “Nonpoint pollution” means pollution from any
18 source other than from any discernible, confined and discrete
19 conveyance, and shall include, but not be limited to, pollutants from
20 agricultural, silvicultural, mining, construction, subsurface disposal
21 and urban runoff sources.

22 “Solar panel” means an elevated panel or plate, or a canopy or
23 array thereof, that captures and converts solar radiation to produce
24 power, and includes flat plate, focusing solar collectors, or
25 photovoltaic solar cells and excludes the base or foundation of the
26 panel, plate, canopy, or array.

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

28

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

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

41 (1) No application for an amended approval seeking the
42 authority to construct a converted development shall be considered
43 a "use variance" or other "'d' variance" application pursuant to
44 subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70). Both
45 planning boards that initially granted approvals for the age-
46 restricted development and zoning boards of adjustment that
47 initially granted approvals for the age-restricted development shall

1 have the legal authority to grant amended approvals for a converted
2 development without the need to seek relief pursuant to subsection
3 d. of section 57 of P.L.1975, c.291 (C.40:55D-70), it being the
4 intent of this act that such converted developments are to be
5 considered permitted uses in the zoning district in which they are
6 located.

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

10 (1) the site meets the Residential Site Improvement Standards
11 parking requirement for the residential land uses in a converted
12 development as established pursuant to N.J.A.C.5:21-4.14 through -
13 4.16;

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

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

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

22 (5) if additional water supply or sewer capacity is needed and
23 the developer is unable to obtain additional supply or capacity, the
24 number of dwelling units in the development has been reduced
25 accordingly;

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

29 (7) if additional parking is provided and increases the amount of
30 impervious cover by more than one percent, the storm water system
31 calculations and improvements have been revised accordingly,
32 except that solar panels shall not be included in any calculation of
33 impervious surface or impervious cover. As used in this paragraph,
34 “solar panel” means an elevated panel or plate, or a canopy or array
35 thereof, that captures and converts solar radiation to produce power,
36 and includes flat plate, focusing solar collectors, or photovoltaic
37 solar cells and excludes the base or foundation of the panel, plate,
38 canopy, or array .

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

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

46

47 12. This act shall take effect immediately.

1

2

3

Exempts solar panels from impervious surface or impervious

4

cover designation.