

CHAPTER 4

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

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

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

Department approval required for waterfront development; exemptions.

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

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

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

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

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

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

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

C.13:18A-5.2 Solar panels not included in certain calculations relative to development in the pinelands.

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

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

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

C.13:19-3 Definitions.

3. As used in this act:

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

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

"Commissioner" means the Commissioner of Environmental Protection;

"Department" means the Department of Environmental Protection;

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

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

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

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

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

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

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

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

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

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

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

C.13:19-5.4 Solar panels not included in certain calculations relative to coastal development.

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

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

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

C.13:20-3 Definitions relative to the "Highlands Water Protection and Planning Act."

3. As used in this act:

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

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

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

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

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

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

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

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

"Department" means the Department of Environmental Protection;

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

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

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

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

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

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

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

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

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

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

"Impact fee" means cash or in-kind payments required to be paid by a developer as a condition for approval of a major subdivision or major site plan for the developer's proportional share of the cost of providing new or expanded reasonable and necessary public improvements located outside the property limits of the subdivision or development but

reasonably related to the subdivision or development based upon the need for the improvement created by, and the benefits conferred upon, the subdivision or development;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C.13:20-29 Agricultural, horticultural development, review required; enforcement.

31. a. (1) Any agricultural or horticultural development in the preservation area that would result in the increase, after the date of enactment of this act either individually or cumulatively, of agricultural impervious cover by three percent or more of the total land area of a farm management unit in the preservation area shall require the review and approval by the local soil conservation district of a farm conservation plan which shall be prepared and submitted by the owner or operator of the farm management unit. Upon approval of the farm

conservation plan by the local soil conservation district, the owner or operator of the farm management unit shall implement the plan on the farm management unit. The local soil conservation district shall transmit a copy of an approved farm conservation plan to the State Soil Conservation Committee, and, if any part of the farm management unit is preserved under any farmland preservation program, to the State Agriculture Development Committee.

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

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

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

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

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

(2) (a) Any person who violates any provision of subsection a. of this section, any rule or regulation adopted pursuant to subsection a. of this section, or a farm conservation plan or a resource management systems plan approved pursuant to subsection a. of this section shall be liable to a civil administrative penalty of up to \$5,000 for each violation. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate, and distinct offense. No assessment shall be levied pursuant to this subsection until

after the party has been notified by certified mail or personal service and provided an opportunity for a hearing.

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

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

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

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

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

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

C.13:20-32 Rules, regulations, standards.

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

a. a prohibition on major Highlands development within 300 feet of any Highlands open waters, and the establishment of a 300-foot buffer adjacent to all Highlands open waters; provided, however, that this buffer shall not extend into the planning area. For the purposes of this subsection, major Highlands development does not include linear development for infrastructure, utilities, and the rights-of-way therefor, provided that there is no other feasible

alternative, as determined by the department, for the linear development outside of the buffer. Structures or land uses in the buffer existing on the date of enactment of this act may remain, provided that the area of disturbance shall not be increased. This subsection shall not be construed to limit any authority of the department to establish buffers of any size or any other protections for category one waters designated by the department pursuant to the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), or any other law, or any rule or regulation adopted pursuant thereto, for major Highlands development or for other development that does not qualify as major Highlands development;

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

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

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

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

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

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

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

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

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

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

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

C.40:27-6.6 Review and approval of site plans for land development along county roads or affecting county drainage facilities.

8. The governing body of any county having a county planning board may provide for the review of site plans for land development along county roads or affecting county drainage facilities as provided in subsection e. of this section and for the approval of such development as hereinafter set forth and limited for the purpose of assuring a safe and efficient county road system. Such review and approval shall be in conformance with procedures and standards adopted by resolution or ordinance as appropriate of the governing body. Notice of the public hearing on a proposed resolution or ordinance of the governing body establishing procedures and standards to govern the review and regulation of land development along county roads or affecting county drainage facilities as provided in subsection e. of this section, and a copy of such resolution or ordinance, shall be given by delivery or by certified mail to the municipal clerk, secretary of the planning board and

secretary of the board of adjustment of each municipality in the county at least 10 days prior to such hearing. These procedures and standards shall be limited to:

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

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

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

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

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

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

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

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

C.40:55D-38.1 Solar panels not included in certain calculations relative to approval of subdivisions, site plans.

9. An ordinance requiring approval by the planning board of either subdivisions or site plans, or both, shall not include solar panels in any calculation of impervious surface or impervious cover.

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

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

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

C.40:55D-95 Storm water management plan, ordinance; requirements.

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

For purposes of this act:

“Nonpoint pollution” means pollution from any source other than from any discernible, confined and discrete conveyance, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

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

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

C.45:22A-46.6 Application to change to a converted development.

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

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

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

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

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

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

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

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

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

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

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

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

12. This act shall take effect immediately.

Approved April 22, 2010.