

**ASSEMBLY, No. 2419**

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**STATE OF NEW JERSEY**

**219th LEGISLATURE**

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INTRODUCED FEBRUARY 3, 2020

**Sponsored by:**

**Assemblyman DANIEL R. BENSON**

**District 14 (Mercer and Middlesex)**

**SYNOPSIS**

Provides that solar and photovoltaic energy facilities and structures on farmland are not inherently beneficial use, per se, for purposes of zoning approvals.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning solar and photovoltaic energy facilities and  
2 structures on farmland and amending P.L.1975, c.291.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. Section 3.1 of P.L.1975, c.291 (C.40:55D-4) is amended to  
8 read as follows:

9 3.1. "Days" means calendar days.

10 "Density" means the permitted number of dwelling units per  
11 gross area of land that is the subject of an application for  
12 development, including noncontiguous land, if authorized by  
13 municipal ordinance or by a planned development.

14 "Developer" means the legal or beneficial owner or owners of a  
15 lot or of any land proposed to be included in a proposed  
16 development, including the holder of an option or contract to  
17 purchase, or other person having an enforceable proprietary interest  
18 in such land.

19 "Development" means the division of a parcel of land into two or  
20 more parcels, the construction, reconstruction, conversion,  
21 structural alteration, relocation or enlargement of any building or  
22 other structure, or of any mining excavation or landfill, and any use  
23 or change in the use of any building or other structure, or land or  
24 extension of use of land, for which permission may be required  
25 pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.).

26 "Development potential" means the maximum number of  
27 dwelling units or square feet of nonresidential floor area that may  
28 be constructed on a specified lot or in a specified zone under the  
29 master plan and land use regulations in effect on the date of the  
30 adoption of the development transfer ordinance or on the date of the  
31 adoption of the ordinance authorizing noncontiguous cluster, and in  
32 accordance with recognized environmental constraints.

33 "Development regulation" means a zoning ordinance,  
34 subdivision ordinance, site plan ordinance, official map ordinance  
35 or other municipal regulation of the use and development of land, or  
36 amendment thereto adopted and filed pursuant to P.L.1975, c.291  
37 (C.40:55D-1 et seq.).

38 "Development restriction" means an agricultural restriction, a  
39 conservation restriction, or a historic preservation restriction.

40 "Development transfer" or "development potential transfer"  
41 means the conveyance of development potential, or the permission  
42 for development, from one or more lots to one or more other lots by  
43 deed, easement, or other means as authorized by ordinance.

44 "Development transfer bank" means a development transfer bank

**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 established pursuant to section 22 of P.L.2004, c.2 (C.40:55D-158)  
2 or the State TDR Bank.

3 "Drainage" means the removal of surface water or groundwater  
4 from land by drains, grading or other means and includes control of  
5 runoff during and after construction or development to minimize  
6 erosion and sedimentation, to assure the adequacy of existing and  
7 proposed culverts and bridges, to induce water recharge into the  
8 ground where practical, to lessen nonpoint pollution, to maintain  
9 the integrity of stream channels for their biological functions as  
10 well as for drainage, and the means necessary for water supply  
11 preservation or prevention or alleviation of flooding.

12 "Environmental commission" means a municipal advisory body  
13 created pursuant to P.L.1968, c.245 (C.40:56A-1 et seq.).

14 "Erosion" means the detachment and movement of soil or rock  
15 fragments by water, wind, ice and gravity.

16 "Farmland" means land actively devoted to agricultural or  
17 horticultural use that is valued, assessed, and taxed pursuant to the  
18 "Farmland Assessment Act of 1964," P.L.1964, c.48 (54:4-23.1 et  
19 seq.), or was so valued, assessed, and taxed at any time in the two  
20 tax years preceding the tax year of submittal of the application for  
21 development.

22 "Final approval" means the official action of the planning board  
23 taken on a preliminarily approved major subdivision or site plan,  
24 after all conditions, engineering plans and other requirements have  
25 been completed or fulfilled and the required improvements have  
26 been installed or guarantees properly posted for their completion, or  
27 approval conditioned upon the posting of such guarantees.

28 "Floor area ratio" means the sum of the area of all floors of  
29 buildings or structures compared to the total area of land that is the  
30 subject of an application for development, including noncontiguous  
31 land, if authorized by municipal ordinance or by a planned  
32 development.

33 "General development plan" means a comprehensive plan for the  
34 development of a planned development, as provided in section 4 of  
35 P.L.1987, c.129 (C.40:55D-45.2).

36 "Governing body" means the chief legislative body of the  
37 municipality. In municipalities having a board of public works,  
38 "governing body" means such board.

39 "Historic district" means one or more historic sites and  
40 intervening or surrounding property significantly affecting or  
41 affected by the quality and character of the historic site or sites.

42 "Historic preservation restriction" means a "historic preservation  
43 restriction" as defined in section 2 of P.L.1979, c.378 (C.13:8B-2).

44 "Historic site" means any real property, man-made structure,  
45 natural object or configuration or any portion or group of the  
46 foregoing of historical, archeological, cultural, scenic or  
47 architectural significance.

1 "Inherently beneficial use" means a use which is universally  
2 considered of value to the community because it fundamentally  
3 serves the public good and promotes the general welfare. Such a  
4 use includes, but is not limited to, (1) a hospital, school, child care  
5 center, group home, **【or】** a wind energy facility or structure , or (2)  
6 a solar or photovoltaic energy facility or structure on land other  
7 than farmland .

8 "Instrument" means the easement, credit, or other deed  
9 restriction used to record a development transfer.

10 "Interested party" means: (a) in a criminal or quasi-criminal  
11 proceeding, any citizen of the State of New Jersey; and (b) in the  
12 case of a civil proceeding in any court or in an administrative  
13 proceeding before a municipal agency, any person, whether residing  
14 within or without the municipality, whose right to use, acquire, or  
15 enjoy property is or may be affected by any action taken under  
16 P.L.1975, c.291 (C.40:55D-1 et seq.), or whose rights to use,  
17 acquire, or enjoy property under P.L.1975, c.291 (C.40:55D-1 et  
18 seq.), or under any other law of this State or of the United States  
19 have been denied, violated or infringed by an action or a failure to  
20 act under P.L.1975, c.291 (C.40:55D-1 et seq.).

21 "Land" includes improvements and fixtures on, above or below  
22 the surface.

23 "Local utility" means any sewerage authority created pursuant to  
24 the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-1 et  
25 seq.); any utilities authority created pursuant to the "municipal and  
26 county utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et  
27 seq.); or any utility, authority, commission, special district or other  
28 corporate entity not regulated by the Board of Regulatory  
29 Commissioners under Title 48 of the Revised Statutes that provides  
30 gas, electricity, heat, power, water or sewer service to a  
31 municipality or the residents thereof.

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

35 (cf: P.L.2013, c.106, s.3)

36  
37 2. Section 3.4 of P.L.1975, c.291 (C.40:55D-7) is amended to  
38 read as follows:

39 3.4 "Sedimentation" means the deposition of soil that has been  
40 transported from its site of origin by water, ice, wind, gravity or  
41 other natural means as a product of erosion.

42 "Sending zone" means an area or areas designated in a master  
43 plan and zoning ordinance, adopted pursuant to P.L.1975, c.291  
44 (C.40:55D-1 et seq.), within which development may be restricted  
45 and which is otherwise consistent with the provisions of section 8  
46 of P.L.2004, c.2 (C.40:55D-144).

47 "Site plan" means a development plan of one or more lots on  
48 which is shown (1) the existing and proposed conditions of the lot,

1 including but not necessarily limited to topography, vegetation,  
2 drainage, flood plains, marshes and waterways, (2) the location of  
3 all existing and proposed buildings, drives, parking spaces,  
4 walkways, means of ingress and egress, drainage facilities, utility  
5 services, landscaping, structures and signs, lighting, screening  
6 devices, and (3) any other information that may be reasonably  
7 required in order to make an informed determination pursuant to an  
8 ordinance requiring review and approval of site plans by the  
9 planning board adopted pursuant to article 6 of this act.

10 "Solar or photovoltaic energy facility or structure" means a  
11 facility or structure for the purpose of supplying electrical energy  
12 produced from solar or photovoltaic technologies, whether such  
13 facility or structure is a principal use, a part of the principal use, or  
14 an accessory use or structure.

15 "Standards of performance" means standards (1) adopted by  
16 ordinance pursuant to subsection 52d. regulating noise levels, glare,  
17 earthborn or sonic vibrations, heat, electronic or atomic radiation,  
18 noxious odors, toxic matters, explosive and inflammable matters,  
19 smoke and airborne particles, waste discharge, screening of  
20 unsightly objects or conditions and such other similar matters as  
21 may be reasonably required by the municipality or (2) required by  
22 applicable federal or State laws or municipal ordinances.

23 "State Transfer of Development Rights Bank," or "State TDR  
24 Bank," means the bank established pursuant to section 3 of  
25 P.L.1993, c.339 (C.4:1C-51).

26 "Street" means any street, avenue, boulevard, road, parkway,  
27 viaduct, drive or other way (1) which is an existing State, county or  
28 municipal roadway, or (2) which is shown upon a plat heretofore  
29 approved pursuant to law, or (3) which is approved by official  
30 action as provided by this act, or (4) which is shown on a plat duly  
31 filed and recorded in the office of the county recording officer prior  
32 to the appointment of a planning board and the grant to such board  
33 of the power to review plats; and includes the land between the  
34 street lines, whether improved or unimproved, and may comprise  
35 pavement, shoulders, gutters, curbs, sidewalks, parking areas and  
36 other areas within the street lines.

37 "Structure" means a combination of materials to form a  
38 construction for occupancy, use or ornamentation whether installed  
39 on, above, or below the surface of a parcel of land.

40 "Subdivision" means the division of a lot, tract or parcel of land  
41 into two or more lots, tracts, parcels or other divisions of land for  
42 sale or development. The following shall not be considered  
43 subdivisions within the meaning of this act, if no new streets are  
44 created: (1) divisions of land found by the planning board or  
45 subdivision committee thereof appointed by the chairman to be for  
46 agricultural purposes where all resulting parcels are 5 acres or  
47 larger in size, (2) divisions of property by testamentary or intestate  
48 provisions, (3) divisions of property upon court order, including but

1 not limited to judgments of foreclosure, (4) consolidation of  
2 existing lots by deed or other recorded instrument and (5) the  
3 conveyance of one or more adjoining lots, tracts or parcels of land,  
4 owned by the same person or persons and all of which are found  
5 and certified by the administrative officer to conform to the  
6 requirements of the municipal development regulations and are  
7 shown and designated as separate lots, tracts or parcels on the tax  
8 map or atlas of the municipality. The term "subdivision" shall also  
9 include the term "resubdivision."

10 "Transcript" means a typed or printed verbatim record of the  
11 proceedings or reproduction thereof.

12 "Variance" means permission to depart from the literal  
13 requirements of a zoning ordinance pursuant to sections 47 and  
14 subsections 29.2b., 57c. and 57d. of this act.

15 "Wind **[, solar or photovoltaic]** energy facility or structure"  
16 means a facility or structure for the purpose of supplying electrical  
17 energy produced from wind **[, solar, or photovoltaic technologies]**  
18 technology , whether such facility or structure is a principal use, a  
19 part of the principal use, or an accessory use or structure.

20 "Zoning permit" means a document signed by the administrative  
21 officer (1) which is required by ordinance as a condition precedent  
22 to the commencement of a use or the erection, construction,  
23 reconstruction, alteration, conversion or installation of a structure or  
24 building and (2) which acknowledges that such use, structure or  
25 building complies with the provisions of the municipal zoning  
26 ordinance or variance therefrom duly authorized by a municipal  
27 agency pursuant to sections 47 and 57 of this act.

28 (cf: P.L.2009, c.146, s.2)

29

30 3. This act shall take effect immediately.

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### STATEMENT

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35 This bill would provide that solar and photovoltaic energy  
36 facilities or structures would not be considered per se an inherently  
37 beneficial use for purposes of zoning approvals when such facilities  
38 or structures are on farmland.

39 Under the "Municipal Land Use Law" (MLUL), P.L.1975, c.291  
40 (C.40:55D-1 et seq.), if a use is held to be an "inherently beneficial  
41 use," it presumptively satisfies the positive criteria for the grant of a  
42 use variance under subsection d. of section 57 of the MLUL  
43 (C.40:55D-70), which is required when the proposed use is  
44 inconsistent with the zoning plan. The MLUL defines "inherently  
45 beneficial use" to expressly include certain enumerated uses; among  
46 them are solar and photovoltaic energy facilities or structures,  
47 regardless of the type of land on which they are located. This bill  
48 would provide that solar and photovoltaic energy facilities or

1 structures that are on farmland would not be expressly included in  
2 the definition of an “inherently beneficial use.” Farmland is  
3 defined in the bill to mean land actively devoted to agricultural or  
4 horticultural use that is valued, assessed, and taxed pursuant to the  
5 “Farmland Assessment Act of 1964,” P.L.1964, c.48 (54:4-23.1 et  
6 seq.), or was so valued, assessed, and taxed at any time in the two  
7 tax years preceding the tax year of submittal of the application for  
8 development.