

ASSEMBLY, No. 2419

STATE OF NEW JERSEY 219th LEGISLATURE

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.



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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)

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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,

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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)

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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

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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.