

Environmental and Land Use Regulation of Solar Projects

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Going green has prompted an increased interest in solar energy generation. Aside from initial startup and installation costs, solar photovoltaic (PV) systems offer a low cost, low maintenance alternative for obtaining energy. This, along with state and federal incentives, has resulted in a significant push towards solar development. Energy companies and solar developers are searching for large land areas that can accommodate ground mount systems, typically ranging from 5 to 20 Megawatts in size. Areas including agricultural fields, landfills, brownfields, wetlands, and other less developable areas are currently being analyzed. One of the principal challenges with these areas is that federal and state environmental regulatory restrictions may apply. This article will briefly expand upon these challenges. Another key challenge is gaining zoning approval for these facilities from local planning boards. However, this topic will be explored further in a future article.

Solar PV energy project development is subject to the same environmental land use regulatory programs as commercial or residential development including: NJ Freshwater Wetlands Protection Act Rules (NJAC 7:7A); NJ Flood Hazard Area Control Act Rules (NJAC 7:13); Coastal Permit Program Rules (NJAC 7:7); NJ Stormwater Management Rules (NJAC 7:8); D&R Canal Commission (NJAC 7:45); Highlands Act (NJAC 7:38); NJ Pinelands (NJAC 7:50); Federal Endangered Species Act of 1973; and Local Ordinances (e.g. Environmental Impact Statement, Steep Slopes, Stream Buffer, Floodplain and Endangered and Threatened Species).

Existing provisions of these programs may facilitate solar PV project approval. The Freshwater Wetlands Protection Act Rules (NJAC 7:7A) have no general permits for the installation of solar panels, therefore a difficult-to-obtain Individual Wetlands Permit would be required. Panels in Wetland Transition Areas may be authorized under the existing transition area averaging waiver or, if located in a transition area that is a paved or gravel area, a Special Activity Transition Area Waiver for Redevelopment applies. Under the Flood Hazard Area Control Act Rules, permit-by-rule (b)9 for the construction of an open structure in a flood hazard area or disturbed riparian zone outside of a floodway or permit-by-rule a(2) for constructing in a disturbed riparian zone or at or below grade in a flood hazard area may be applicable. If ineligible for these permits-by-rule, a Flood Hazard Area Individual Permit is required. This may not be difficult to obtain in flood hazard areas or disturbed riparian zones.

Along with the push for large scale solar PV projects, comes the push for legislation and rule changes promoting this type of development. NJ is currently in the process of amending legislation and regulations to facilitate solar projects. The NJ Pinelands Commission recently approved rule changes encouraging solar energy development within the Pinelands, while ensuring the Pinelands environmental standards are met. One of these changes is that installation of accessory solar energy facilities on existing structures will no longer be considered development. Other changes include authorizing solar energy facilities as a principal use in all management areas and allowing solar development as a principal use on existing landfills, remediated sites and resource extraction sites within the Preservation Area District, the Special Agricultural Production Area and the Forest Area. Details regarding additional Pinelands rules changes pertaining to solar development can be found at http://www.state.nj.us/pinelands/images/pdf%20files/press/PR_PinelandsApprovesSolarRules.pdf. NJ also recently adopted a law (S-921) that excludes solar panels from designation as impervious cover, thus facilitating stormwater management compliance. Only the pads for the inverters and the bases of the solar panels are considered impervious cover. NJ Coastal Permit Program Rules have been recently amended to facilitate solar projects. A coastal permit is not required for solar panels that are installed on a sanitary landfill provided the solar panels are included in the Closure and Post-Closure Care Plan or modified plan approved by the NJDEP. Additionally a coastal permit is not required if the solar panels are installed on legally existing impervious cover, unless located in a floodway. A permit-by-rule allows installation of solar panels on a maintained lawn or landscaped areas at a single family home or duplex lot. Another NJ Law (S1202/A3062) classifies a renewable energy project as an “inherently beneficial use” under the Municipal Land Use Law, facilitating local approvals. NJ Law S2126 provides that, notwithstanding any existing law, local ordinance or regulation, the development of solar PV energy facilities or structures on any closed landfill or quarry, or existing or closed resource extraction operation, is a permitted land use in every municipality, including the Pinelands Region.

Rules have been proposed to allow solar development on existing farmland assessed to retain right to farm act provisions (<http://www.state.nj.us/agriculture/sadc/ruleprop/proposedsolarAMP.pdf>). These reforms seek to amend the Agriculture Protection Restriction (APR) rules where the state has purchased the development rights and states that the land owner/farmer can't develop renewable energy facilities. In some counties like Cape May County this is in the process of being amended.

A new DRAFT Energy Master Plan was recently released (June 2011) which provides the Christie Administration's “strategic vision for the use, management and development of energy in New Jersey

over the next decade.” With NJ second only to CA in solar PV installed capacity, Christie appears to remain committed to solar PV development to meet aggressive goals for over 20% of energy production to be derived from renewable energy by 2021. Public hearings will be taking place throughout the summer months. The new DRAFT Energy Master Plan can be found in its entirety at: <http://www.nj.gov/emp/docs/pdf/2011%20Draft%20Energy%20Master%20Plan.pdf>.