

## **APPENDICES I - V. AVAILABLE ONLINE**

### **APPENDIX VI**

#### **MUNICIPAL LAND USE LAW**

##### **Chapter 55D. PLANNING, ZONING, ETC.**

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**ARTICLE 1. GENERAL PROVISIONS.**

**40:55D-1. Short title.** This act may be cited and referred to as the “Municipal Land Use Law.”

Adopted. L. 1975, c. 291, §1.

**40:55D-2. Purpose of the act.** It is the intent and purpose of this act:

- a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare;
- b. To secure safety from fire, flood, panic and other natural and man-made disasters;
- c. To provide adequate light, air and open space;

d. To ensure that the development of individual municipalities does not conflict with the development and general welfare of neighboring municipalities, the county and the State as a whole;

e. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment;

f. To encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies;

g. To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens;

h. To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight;

i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement;

j. To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land;

k. To encourage planned unit developments which incorporate the best features of design and relate the type, design and layout of residential, commercial, industrial and recreational development to the particular site;

l. To encourage senior citizen community housing construction;

m. To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land;

n. To promote utilization of renewable energy resources;

o. To promote the maximum practicable recovery and recycling of recyclable materials from municipal solid waste through the use of planning practices designed to incorporate the State Recycling Plan goals and to complement municipal recycling programs;

p. To enable municipalities the flexibility to offer alternatives to traditional development, through the use of equitable and effective planning tools including clustering, transferring development rights, and lot-size averaging in order to concentrate development in areas where growth can best be accommodated and maximized while preserving agricultural lands, open space, and historic sites; and

q. To ensure that the development of individual municipalities does not unnecessarily encroach upon military facilities or negatively impact the operation of military facilities, and to those ends, to encourage municipalities to collaborate with military facility commanders in planning and implementing appropriate land use controls, thereby improving the vitality of military facilities and protecting against their loss through the Base Realignment and Closure process or mission loss.

**Adopted.** L. 1975, c. 291, §2. **Amended.** L. 1979, c. 216, §1; L. 1980, c. 146, §1; L. 1985, c. 516, §1; L. 1987, c. 102, §25; L. 2013, c. 106, §1, effective August 7, 2013; L. 2016, c. 21, §1, effective August 1, 2016.

**40:55D-3. Definitions; shall, may; A to C.** For the purposes of this act, unless the context clearly indicates a different meaning:

The term “shall” indicates a mandatory requirement, and the term “may” indicates a permissive action.

“Administrative officer” means the clerk of the municipality, unless a different municipal official or officials are designated by ordinance or statute.

“Agricultural restriction” means an “agricultural deed restriction for farmland preservation purposes” as defined in section 3 of P.L.1983, c.32 (C.4:1C-13).

“Agricultural land” means “farmland” as defined pursuant to section 3 of P.L.1999, c.152 (C.13:8C-3).

“Applicant” means a developer submitting an application for development.

“Application for development” means the application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, planned development, cluster development, conditional use, zoning variance or direction of the issuance of a permit pursuant to section 25 or section 27 of P.L.1975, c.291 (C.40:55D-34 or C.40:55D-36).

“Approving authority” means the planning board of the municipality, unless a different agency is designated by ordinance when acting pursuant to the authority of P.L.1975, c.291 (C.40:55D-1 et seq.).

“Board of adjustment” means the board established pursuant to section 56 of P.L.1975, c.291 (C.40:55D-69).

“Building” means a combination of materials to form a construction adapted to permanent, temporary, or continuous occupancy and having a roof.

“Cable television company” means a cable television company as defined pursuant to section 3 of P.L.1972, c.186 (C.48:5A-3).

“Capital improvement” means a governmental acquisition of real property or major construction project.

“Circulation” means systems, structures and physical improvements for the movement of people, goods, water, air, sewage or power by such means as streets, highways, railways, waterways, towers, airways, pipes and conduits, and the handling of people and goods by such means as terminals, stations, warehouses, and other storage buildings or transshipment points.

“Cluster development” means a contiguous cluster or noncontiguous cluster that is not a planned development.

“Common open space” means an open space area within or related to a site designated as a development, and designed and intended for the use or enjoyment of residents and owners of the development. Common open space may contain such complementary structures and improvements as are necessary and appropriate for the use or enjoyment of residents and owners of the development.

“Conditional use” means a use permitted in a particular zoning district only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in the zoning ordinance, and upon the issuance of an authorization therefor by the planning board.

“Conservation restriction” means a “conservation restriction” as defined in section 2 of P.L.1979, c.378 (C.13:8B-2).

“Contiguous cluster” means a contiguous area to be developed as a single entity according to a plan containing a section or sections to be developed for residential purposes, nonresidential purposes, or a combination thereof, at a greater concentration of density or intensity of land use than authorized within the section or sections under conventional development, in exchange for the permanent preservation of another section or other sections of the area as common or public open space, or for historic or agricultural purposes, or a combination thereof.

“Conventional” means development other than cluster development or planned development.

“County agriculture development board” or “CADB” means a county agriculture development board established by a county pursuant to the provisions of section 7 of P.L.1983, c.32 (C.4:1C-14).

“County master plan” means a composite of the master plan for the physical development of the county in which the municipality is located, with the accompanying maps, plats, charts and descriptive and explanatory matter adopted by the county planning board pursuant to R.S.40:27-2 and R.S.40:27-4.

“County planning board” means the county planning board, as defined in section 1 of P.L.1968, c.285 (C.40:27-6.1), of the county in which the land or development is located.

**Adopted.** L. 1975, c. 291, §3. **Amended.** L. 1979, c. 216, §2; L. 1984, c. 20, §1; L. 1991, c. 412, §1, effective February 15, 1992; L. 2004, c. 2, §32, effective September 25, 2004; L. 2013, c. 106, §2, effective August 7, 2013.

**40:55D-4. Definitions; D to L.** “Days” means calendar days.

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

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

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

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

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

“Development restriction” means an agricultural restriction, a conservation restriction, or a historic preservation restriction.

“Development transfer” or “development potential transfer” means the conveyance of development potential, or the permission for development, from one or more lots to one or more other lots by deed, easement, or other means as authorized by ordinance.

“Development transfer bank” means a development transfer bank established pursuant to section 22 of P.L.2004, c.2 (C.40:55D-158) or the State TDR Bank.

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

“Electric vehicle supply equipment” or “electric vehicle service equipment” or “EVSE” means the equipment, including the cables, cords, conductors, connectors, couplers, enclosures, attachment plugs, power outlets, power electronics, transformer, switchgear, switches and controls, network interfaces, and point of sale equipment and associated apparatus designed and used for the purpose of transferring energy from the electric supply system to a plug-in electric vehicle. “EVSE” may deliver either alternating current or, consistent with fast charging equipment standards, direct current electricity. “EVSE” is synonymous with “electric vehicle charging station.”

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

“Erosion” means the detachment and movement of soil or rock fragments by water, wind, ice and gravity.

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

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

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

“Governing body” means the chief legislative body of the municipality. In municipalities having a board of public works, “governing body” means such board.

“Historic district” means one or more historic sites and intervening or surrounding property significantly affecting or affected by the quality and character of the historic site or sites.

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

“Historic site” means any real property, man-made structure, natural object or configuration or any portion or group of the foregoing of historical, archeological, cultural, scenic or architectural significance.

“Inherently beneficial use” means a use which is universally considered of value to the community because it fundamentally serves the public good and promotes the general welfare. Such a use includes, but is not limited to, a hospital, school, child care center, group home, or a wind, solar or photovoltaic energy facility or structure.

“Instrument” means the easement, credit, or other deed restriction used to record a development transfer.

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

“Land” includes improvements and fixtures on, above or below the surface.

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

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

**Adopted.** L. 1975, c. 291, §3.1. **Amended.** L. 1981, c. 32, §8; L. 1984, c. 20, §2; L. 1985, c. 398, §14; L. 1985, c. 516, §2; L. 1987, c. 129, §1; L. 1991, c. 199, §1, effective July 9, 1991; L. 1991, c. 412, §2, effective February 15, 1992; L. 2004, c. 2, §33, effective September 25, 2004; L. 2009, c. 146, §1, effective November 20, 2009; L. 2013, c. 106, §3, effective August 7, 2013; L. 2021, c. 171, §5, effective July 9, 2021.

**40:55D-5. Definitions; M to O.** “Maintenance guarantee” means any security which may be accepted by a municipality for the maintenance of any improvements required by this act, including but not limited to surety bonds, letters of credit under the circumstances specified in section 16 of P.L.1991, c.256 (C.40:55D-53.5), and cash.

“Major subdivision” means any subdivision not classified as a minor subdivision.

“Make-Ready” means the pre-wiring of electrical infrastructure at a parking space, or set of parking spaces, to facilitate easy and cost-efficient future installation of Electric Vehicle Supply Equipment or Electric Vehicle Service Equipment, including, but not limited to, Level Two EVSE and direct current fast chargers. Make Ready includes expenses related to service panels, junction boxes, conduit, wiring, and other components necessary to make a particular location able to accommodate Electric Vehicle Supply Equipment or Electric Vehicle Service Equipment on a “plug and play” basis. “Make-Ready” is synonymous with the term “charger ready,” as used in P.L.2019, c.362 (C.48:25-1 et al.).

“Master plan” means a composite of one or more written or graphic proposals for the development of the municipality as set forth in and adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28).

“Mayor” means the chief executive of the municipality, whatever his official designation may be, except that in the case of municipalities governed by municipal council and municipal manager the term “mayor” shall not mean the “municipal manager” but shall mean the mayor of such municipality.

“Military facility” means any facility located within the State which is owned or operated by the federal government, and which is used for the purposes of providing logistical, technical, material, training, and any other support to any branch of the United States military.

“Military facility commander” means the chief official, base commander or person in charge at a military facility.

“Minor site plan” means a development plan of one or more lots which (1) proposes new development within the scope of development specifically permitted by ordinance as a minor site plan; (2) does not involve planned development, any new street or extension of any off-tract improvement which is to be prorated pursuant to section 30 of P.L.1975, c.291 (C.40:55D-42); and (3) contains the information reasonably required in order to make an informed determination as to whether the requirements established by ordinance for approval of a minor site plan have been met.

“Minor subdivision” means a subdivision of land for the creation of a number of lots specifically permitted by ordinance as a minor subdivision; provided that such subdivision does not involve (1) a planned development, (2) any new street or (3) the extension of any off-tract improvement, the cost of which is to be prorated pursuant to section 30 of P.L.1975, c.291 (C.40:55D-42).

“Municipality” means any city, borough, town, township or village.

“Municipal agency” means a municipal planning board or board of adjustment, or a governing body of a municipality when acting pursuant to this act and any agency which is created by or responsible to one or more municipalities when such agency is acting pursuant to this act.

“Municipal resident” means a person who is domiciled in the municipality.

“Nonconforming lot” means a lot, the area, dimension or location of which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.

“Nonconforming structure” means a structure the size, dimension or location of which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision or amendment.

“Nonconforming use” means a use or activity which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision or amendment.

“Noncontiguous cluster” means noncontiguous areas to be developed as a single entity according to a plan containing an area, or a section or sections thereof, to be developed for residential purposes, nonresidential purposes, or a combination thereof, at a greater concentration of density or intensity of land use than authorized within the area, section, or sections, under conventional development, in exchange for the permanent preservation of another area, or a section or sections thereof, as common or public open space, or for historic or agricultural purposes, or a combination thereof.

“Office of Planning Advocacy” or “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) and transferred to the Department of State pursuant to Governor Christie’s Reorganization Plan No. 002-2011, effective August 28, 2011.

“Official county map” means the map, with changes and additions thereto, adopted and established, from time to time, by resolution of the board of chosen freeholders of the county pursuant to R.S.40:27-5.

“Official map” means a map adopted by ordinance pursuant to article 5 of P.L.1975, c.291.

“Offsite” means located outside the lot lines of the lot in question but within the property, of which the lot is a part, which is the subject of a development application or the closest half of the street or right-of-way abutting the property of which the lot is a part.

“Off-tract” means not located on the property which is the subject of a development application nor on the closest half of the abutting street or right-of-way.

“Onsite” means located on the lot in question and excluding any abutting street or right-of-way.

“On-tract” means located on the property which is the subject of a development application or on the closest half of an abutting street or right-of-way.

“Open-space” means any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space; provided that such areas may be improved with only those buildings, structures, streets and offstreet parking and other improvements that are designed to be incidental to the natural openness of the land or support its use for recreation and conservation purposes.

**Adopted.** L. 1975, c. 291, §3.2. **Amended.** L. 1979, c. 216, §3; L. 1991, c. 256, §1, effective August 13, 1991; L. 1998, c. 95, §1, effective November 1, 1998; L. 2004, c. 2, §34, effective September 25, 2004; L. 2005, c. 41, §2, effective March 7, 2005; L. 2013, c. 106, §4, effective August 7, 2013; L. 2016, c. 21, §2, effective August 1, 2016; L. 2021, c. 171, §6, effective July 9, 2021.

**40:55D-6. Definitions; P to R.** “Party immediately concerned” means for purposes of notice any applicant for development, the owners of the subject property and all owners of property and government agencies entitled to notice under section 7.1 of P.L.1975, c.291 (C.40:55D-12).

“Performance guarantee” means any security, which may be accepted by a municipality, including but not limited to surety bonds, letters of credit under the circumstances specified in section 16 of P.L.1991, c.256 (C.40:55D-53.5), and cash.

“Planned commercial development” means an area of a minimum contiguous or noncontiguous size as specified by ordinance to be developed according to a plan as a single entity containing one or more structures with appurtenant common areas to accommodate commercial or office uses or both and any residential and other uses incidental to the predominant use as may be permitted by ordinance.

“Planned development” means planned unit development, planned unit residential development, contiguous cluster or noncontiguous cluster, planned commercial development or planned industrial development.

“Planned industrial development” means an area of a minimum contiguous or noncontiguous size as specified by ordinance to be developed according to a plan as a single entity containing one or more structures with appurtenant common areas to accommodate industrial uses and any other uses incidental to the predominant use as may be permitted by ordinance.

“Planned unit development” means an area with a specified minimum contiguous or noncontiguous acreage of 10 acres or more to be developed as a single entity according to a plan, containing one or more contiguous clusters or noncontiguous clusters or planned unit residential developments and one or more public, quasi-public, commercial or industrial areas in such ranges of ratios of nonresidential uses to residential uses as shall be specified in the zoning ordinance.

“Planned unit residential development” means an area with a specified minimum contiguous or noncontiguous acreage of five acres or more to be developed as a single entity according to a plan containing one or more contiguous clusters or noncontiguous clusters, which may include appropriate commercial, or public or quasi-public uses all primarily for the benefit of the residential development.

“Planning board” means the municipal planning board established pursuant to section 14 of P.L.1975, c.291 (C.40:55D-23).

“Plat” means a map or maps of a subdivision or site plan.

“Preliminary approval” means the conferral of certain rights pursuant to sections 34, 36 and 37 of P.L.1975, c.291 (C.40:55D-46; C.40:55D-48; and C.40:55D-49) prior to final approval after specific elements of a development plan have been agreed upon by the planning board and the applicant.

“Preliminary floor plans and elevations” means architectural drawings prepared during early and introductory stages of the design of a project illustrating in a schematic form, its scope, scale and relationship to its site and immediate environs.

“Public areas” means (1) public parks, playgrounds, trails, paths and other recreational areas; (2) other public open spaces; (3) scenic and historic sites; and (4) sites for schools and other public buildings and structures.

“Public development proposal” means a master plan, capital improvement program or other proposal for land development adopted by the appropriate public body, or any amendment thereto.

“Public drainage way” means the land reserved or dedicated for the installation of storm water sewers or drainage ditches, or required along a natural stream or watercourse for preserving the biological as well as drainage function of the channel and providing for the flow of water to safeguard the public against flood damage, sedimentation and erosion and to assure the adequacy of existing and proposed culverts and bridges, to induce water recharge into the ground where practical, and to lessen nonpoint pollution.

“Public open space” means an open space area conveyed or otherwise dedicated to a municipality, municipal agency, board of education, State or county agency, or other public body for recreation and conservation purposes.

“Public utility” means any public utility regulated by the Board of Regulatory Commissioners and defined pursuant to R.S.48:2-13.

“Quorum” means the majority of the full authorized membership of a municipal agency.

“Receiving zone” means an area or areas designated in a master plan and zoning ordinance, adopted pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.), within which development may be increased, and which is otherwise consistent with the provisions of section 9 of P.L.2004, c.2 (C.40:55D-145).

“Recreation and conservation purposes” means “recreation and conservation purposes” as defined in section 3 of P.L.1999, c.152 (C.13:8C-3).

“Residential density” means the number of dwelling units per gross acre of residential land area including streets, easements and open space portions of a development.

“Resubdivision” means (1) the further division or relocation of lot lines of any lot or lots within a subdivision previously made and approved or recorded according to law or (2) the alteration of any streets or the establishment of any new streets within any subdivision previously made and approved or recorded according to law, but does not include conveyances so as to combine existing lots by deed or other instrument.

**Adopted.** L. 1975, c. 291, §3.3. **Amended.** L. 1981, c. 32, §9; L. 1991, c. 256, §2, effective August 13, 1991; L. 1991, c. 412, §3, effective February 15, 1992; L. 1995, c. 364, §1, effective January 5, 1996; L. 2004, c. 2, §35, effective September 25, 2004; L. 2013, c. 106, §5, effective August 7, 2013.

**40:55D-7. Definitions.** “Sedimentation” means the deposition of soil that has been transported from its site of origin by water, ice, wind, gravity or other natural means as a product of erosion.

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

“Site plan” means a development plan of one or more lots on which is shown (1) the existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, drainage, flood plains, marshes and waterways, (2) the location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping, structures and signs, lighting, screening devices, and (3) any other information that may be reasonably required in order to make an informed determination pursuant to an ordinance requiring review and approval of site plans by the planning board adopted pursuant to article 6 of this act [40:55D-37 et seq.].

“Standards of performance” means standards (1) adopted by ordinance pursuant to subsection 52d. [40:55D-65] regulating noise levels, glare, earthborne or sonic vibrations, heat, electronic or atomic radiation, noxious odors, toxic matters, explosive and inflammable matters, smoke and airborne particles, waste discharge, screening of unsightly objects or conditions and such other similar matters as may be reasonably required by the municipality or (2) required by applicable federal or State laws or municipal ordinances.

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

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

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

“Subdivision” means the division of a lot, tract or parcel of land into two or more lots, tracts, parcels or other divisions of land for sale or development. The following shall not be considered subdivisions within the meaning of this act, if no new streets are created: (1) divisions of land found by the planning board or subdivision committee thereof appointed by the chairman to be for agricultural purposes where all resulting parcels are 5 acres or larger in size, (2) divisions of property by testamentary or intestate provisions, (3) divisions of property upon court order, including but not limited to judgments of foreclosure, (4) consolidation of existing lots by deed or other recorded instrument and (5) the conveyance of one or more adjoining lots, tracts or parcels of land, owned by the same person or persons and all of which are found and certified by the administrative officer to conform to the requirements of the municipal development regulations and are shown and designated as separate lots, tracts or parcels on the tax map or atlas of the municipality. The term “subdivision” shall also include the term “resubdivision.”

“Transcript” means a typed or printed verbatim record of the proceedings or reproduction thereof.

“Variance” means permission to depart from the literal requirements of a zoning ordinance pursuant to sections 47 [40:55D-60] and subsections 29.2b., 57c. and 57d. of this act [40:55D-40; 40:55D-70].

“Wind, solar or photovoltaic energy facility or structure “ means a facility or structure for the purpose of supplying electrical energy produced from wind, solar, or photovoltaic technologies, whether such facility or structure is a principal use, a part of the principal use, or an accessory use or structure.

“Zoning permit” means a document signed by the administrative officer (1) which is required by ordinance as a condition precedent to the commencement of a use or the erection, construction, reconstruction, alteration, conversion or installation of a structure or building and (2) which acknowledges that such use, structure or building complies with the provisions of the municipal zoning ordinance or variance therefrom duly authorized by a municipal agency pursuant to sections 47 and 57 of this act [40:55D-60; 40:55D-70].

**Adopted.** L. 1975, c. 291, §3.4. **Amended.** L. 1979, c. 216, §4; L. 2004, c. 2, §36, effective September 25, 2004; L. 2009, c. 146, §2, effective November 20, 2009.

**40:55D-8. Municipal fees; exemptions.** a. Every municipal agency shall adopt and may amend reasonable rules and regulations, not inconsistent with this act or with any applicable ordinance, for the administration of its functions, powers and duties, and shall furnish a copy thereof to any person upon request and may charge a reasonable fee for such copy. Copies of all such rules and regulations and amendments thereto shall be maintained in the office of the administrative officer.

b. Fees to be charged (1) an applicant for review of an application for development by a municipal agency, and (2) an appellant pursuant to section 8 of this act [40:55D-17] shall be reasonable and shall be established by ordinance. In addition to covering the administrative costs associated with the implementation of P.L.1975, c.291 (C.40:55D-1 et seq.), these fees shall be used to defray the cost of tuition for those persons required to take the course in land use law and planning in the municipality as required pursuant to P.L.2005, c.133 (C.40:55D-23.3 et al.).

c. A municipality may by ordinance exempt, according to uniform standards, charitable, philanthropic, fraternal and religious nonprofit organizations holding a tax exempt status under the Federal Internal Revenue Code of 1954 (26 U.S.C. §501(c) or (d)) from the payment of any fee charged under this act.

d. A municipality shall exempt a board of education from the payment of any fee charged under this act.

e. A municipality may by ordinance exempt, according to uniform standards, a disabled person, or a parent or sibling of a disabled person, from the payment of any fee charged under this act in connection with any application for development which promotes accessibility to his own living unit.

For the purposes of this subsection, “disabled person” means a person who has the total and permanent inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, including blindness, and shall include, but not be limited to, any resident of this State who is disabled pursuant to the federal Social Security Act (42 U.S.C. §416), or the federal Railroad Retirement Act of 1974 (45 U.S.C. §231 et seq.), or is rated as having a 60% disability or higher pursuant to any federal law administered by the United States Veterans’ Act. For purposes of this paragraph “blindness” means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered as having a central visual acuity of 20/200 or less.

**Adopted.** L. 1975, c. 291, §4. **Amended.** L. 1979, c. 216, §5; L. 1983, c. 322, §1; L. 1989, c. 43, §1, effective March 9, 1989; L. 1996, c. 92, §2, effective January 1, 1996; L. 2005, c. 133, §1, effective July 7, 2005.

**40:55D-8.1. Short title.** Sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) shall be known and may be cited as the “Statewide Non-residential Development Fee Act.”

**Adopted.** L. 2008, c. 46, §32, effective July 17, 2008.

**40:55D-8.2. Findings, declarations relative to Statewide non-residential development fees.** The Legislature finds and declares:

a. The collection of development fees from builders of residential and non-residential properties has been authorized by the court through the powers established pursuant to the “Fair Housing Act,” P.L.1985, c.222 (C.52:27D-301 et al.). Due to the Legislature’s determination that the role of the Council on Affordable Housing has not developed in practice as intended, the Legislature further determines that authority relating to rulemaking on the collection of residential and non-residential development fees is appropriately delegated to the Department of Community Affairs, given the department’s existing roles related to local government finance and the funding and financing of affordable housing throughout the State.

b. New Jersey's land resources are becoming more scarce, while its redevelopment needs are increasing. In order to balance the needs of developing and redeveloping communities, a reasonable method of providing for the housing needs of low-, moderate-, and middle-income households, without mandating the inclusion of housing in every non-residential project, must be established.

c. A Statewide non-residential development fee program, which permits municipalities that have obtained or are in the process of seeking compliance certification to retain these fees for use in the municipality will provide a fair and balanced funding method to address the State's affordable housing needs, while providing an incentive to all municipalities to obtain compliance certification.

d. Whereas, pursuant to P.L.1977, c.110 (C.5:12-1 et seq.), organizations are directed to invest in the Casino Reinvestment Development Authority to ensure that the development of housing for families of low and moderate income shall be provided. The Casino Reinvestment Development Authority shall work to effectuate the purpose and intent of P.L. 1985, c. 222 (C. 52:27D-301 et al.).

e. (Deleted by amendment P.L.2024, c.2)

f. The negative impact of a State policy that over-relies on a municipal fee structure and of State programs that require a municipality to impose fees and charges on developers must be balanced against any public good expected from such regulation. It is undisputable that the charging of fees at high levels dissuades commerce from locating within a State or municipality or locality and halts non-residential and residential development, and these ill effects directly increase the overall costs of housing, and could impede the constitutional obligation to provide for a realistic opportunity for housing for families at all income levels.

**Adopted.** L. 2008, c. 46, §33, effective July 17, 2008. **Amended.** L. 2009, c. 90, §36, effective July 28, 2009; L. 2024, c. 2, §13, effective March 20, 2024, and shall apply to each new round of affordable housing obligations that begins following enactment.

**40:55D-8.3. Definitions relative to Statewide non-residential development fees.** As used in sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7):

“Construction” means new construction and additions, but does not include alterations, reconstruction, renovations, and repairs as those terms are defined under the State Uniform Construction Code promulgated pursuant to the “State Uniform Construction Code Act,” P.L.1975, c.217 (C.52:27D-119 et seq.).

“Commissioner” means the Commissioner of Community Affairs.

“Department” means the Department of Community Affairs.

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

“Equalized assessed value” means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).

“Mixed-use development” means any development which includes both a non-residential development component and a residential development component, and shall include developments for which (1) there is a common developer for both the residential development component and the non-residential development component, provided that for purposes of this definition, multiple persons and entities may be considered a common developer if there is a contractual relationship among them obligating each entity to develop at least a portion of the residential or non-residential development, or both, or otherwise to contribute resources to the development; and (2) the residential and non-residential developments are located on the same lot or adjoining lots, including but not limited to lots separated by a street, a river, or another geographical feature.

“Non-residential development” means: (1) any building or structure, or portion thereof, including but not limited to any appurtenant improvements, which is designated to a use group other than a residential use group according to the State Uniform Construction Code promulgated to effectuate the “State Uniform Construction Code Act,” P.L.1975, c.217 (C.52:27D-119 et seq.), including any subsequent amendments or revisions thereto; (2) hotels, motels, vacation timeshares, and child-care facilities; and (3) the entirety of all continuing care facilities within a continuing care retirement community which is subject to the “Continuing Care Retirement Community Regulation and Financial Disclosure Act,” P.L.1986, c.103 (C.52:27D-330 et seq.).

“Non-residential development fee” means the fee authorized to be imposed pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7).

“Relating to the provision of housing” shall be liberally construed to include the construction, maintenance, or operation of housing, including but not limited to the provision of services to such housing and the funding of any of the above.

“Spending plan” means a method of allocating funds collected and to be collected pursuant to an approved municipal development fee ordinance, or pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) for the purpose of meeting the housing needs of low- and moderate-income individuals.

“Treasurer” means the Treasurer of the State of New Jersey.

**Adopted.** L. 2008, c. 46, §34, effective July 17, 2008. **Amended.** L. 2024, c. 2, §14, effective March 20, 2024, and shall apply to each new round of affordable housing obligations that begins following enactment.

**40:55D-8.4. Fee imposed on construction resulting in non-residential development; exemptions.** a. Beginning on the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.), a fee is imposed on all construction resulting in non-residential development, as follows:

(1) A fee equal to two and one-half percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots; or

(2) A fee equal to two and one-half percent of the increase in equalized assessed value, of the additions to existing structures to be used for non-residential purposes.

b. All non-residential construction of buildings or structures on property used by churches, synagogues, mosques, and other houses of worship, and property used for educational purposes, which is tax-exempt pursuant to R.S.54:4-3.6, shall be exempt from the imposition of a non-residential development fee pursuant to this section, provided that the property continues to maintain its tax exempt status under that statute for a period of at least three years from the date of issuance of the certificate of occupancy. In addition, the following shall be exempt from the imposition of a non-residential development fee:

(1) parking lots and parking structures, regardless of whether the parking lot or parking structure is constructed in conjunction with a non-residential development, such as an office building, or whether the parking lot is developed as an independent non-residential development;

(2) any non-residential development which is an amenity to be made available to the public, including, but not limited to, recreational facilities, community centers, and senior centers, which are developed in conjunction with or funded by a non-residential developer;

(3) non-residential construction resulting from a relocation of or an on-site improvement to a nonprofit hospital or a nursing home facility;

(4) projects that are located within a specifically delineated urban transit hub, as defined pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208);

(5) projects that are located within an eligible municipality, as defined under section 2 of P.L.2007, c.346 (C.34:1B-208), when a majority of the project is located within a one-half mile radius of the midpoint of a platform area for a light rail system; and

(6) projects determined by the New Jersey Transit Corporation to be consistent with a transit village plan developed by a transit village designated by the Department of Transportation.

A developer of a non-residential development exempted from the non-residential development fee pursuant to this section shall be subject to it at such time the basis for the exemption set forth in this subsection no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development whichever is later.

For purposes of this subsection, “recreational facilities and community center” means any indoor or outdoor buildings, spaces, structures, or improvements intended for active or passive recreation, including but not limited to ball fields, meeting halls, and classrooms, accommodating either organized or informal activity; and “senior center” means any recreational facility or community center with activities and services oriented towards serving senior citizens.

If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the municipality as a lien against the real property of the owner.

c. (1) Unless authorized to pay directly to the municipality in which the non-residential construction is occurring in accordance with paragraph (2) of this subsection, developers shall pay non-residential development fees imposed pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) to the Treasurer, in accordance with subsection g. of this section in a manner and on such forms as

required by the Treasurer, provided that a certified proof concerning the payment shall be furnished by the Treasurer, to the municipality.

(2) The department shall maintain on its Internet website a list of each municipality that is authorized to use the development fees collected pursuant to this section and that has a confirmed status of compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), or is in the process of seeking compliance certification, which compliance shall include a spending plan pursuant to section 8 of P.L.2008, c.46 (C.52:27D-329.2) for all development fees collected.

(3) No later than 180 days following the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), any municipality that is or has been authorized to retain and expend non-residential development fees shall provide the department with a detailed accounting of all such fees that have been collected and expended since the inception of the municipal authorization to collect and retain said fees.

(4) Beginning with the year after the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), by February 15, every municipality that is or has been authorized to retain and expend non-residential development fees shall provide the department with a detailed accounting of all such fees that have been collected and expended previous year.

d. The payment of non-residential development fees required pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) shall be made prior to the issuance of a certificate of occupancy for such development. A final certificate of occupancy shall not be issued for any non-residential development until such time as the fee imposed pursuant to this section has been paid by the developer. A non-residential developer may deposit with the appropriate entity the development fees as calculated by the municipality under protest, and the local code enforcement official shall thereafter issue the certificate of occupancy provided that the construction is otherwise eligible for a certificate of occupancy.

e. The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which may be subject to a non-residential development fee. Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the non-residential development. The construction official responsible for the issuance of a final certificate of occupancy shall notify the local assessor of any and all requests for the scheduling of a final inspection on property which may be subject to a non-residential development fee. Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the non-residential development in accordance with the regulations adopted by the Treasurer pursuant to P.L.1971, c.424 (C.54:1-35.35); calculate the non-residential development fee pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7); and thereafter notify the developer of the amount of the non-residential development fee. Should the municipality fail to determine or notify the developer of the amount of the non-residential development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (C.40:55D-8.6). Upon tender of the estimated non-residential development fee, provided the developer is in full compliance with all other applicable laws, the municipality shall issue a final certificate of occupancy for the subject property. Failure of the municipality to comply with the timeframes or procedures set forth in this subsection may subject it to penalties to be imposed by the commissioner; any penalties so imposed shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 as amended by section 17 of P.L.2008, c.46 (C.52:27D-320).

A developer of a mixed use development shall be required to pay the Statewide non-residential development fee relating to the non-residential development component of a mixed use development subject to the provisions of P.L.2008, c.46 (C.52:27D-329.1 et al.).

Non-residential construction which is connected with the relocation of the facilities of a for-profit hospital shall be subject to the fee authorized to be imposed under this section to the extent of the increase in equalized assessed valuation in accordance with regulations to be promulgated by the Director of the Division of Taxation, Department of the Treasury.

f. Any municipality that is not in compliance with the requirements established pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), or regulations of the commissioner adopted thereto, may be subject to forfeiture of any or all funds remaining within its municipal development trust fund. Any funds so forfeited shall be deposited into the New Jersey

Affordable Housing Trust Fund established pursuant to section 20 of P.L.1985, c.222 as amended by section 17 of P.L.2008, c.46 (C.52:27D-320).

g. The Treasurer shall credit to the “Urban Housing Assistance Fund,” established pursuant to section 13 of P.L.2008, c.46 (C.52:27D-329.7) annually from the receipts of the fees authorized to be imposed pursuant to this section an amount equal to \$20 million; all receipts in excess of this amount shall be deposited into the “New Jersey Affordable Housing Trust Fund,” established pursuant to section 20 of P.L.1985, c.222 as amended by section 17 of P.L.2008, c.46 (C.52:27D-320), to be used for the purposes of that fund.

The Treasurer shall adopt such regulations as necessary to effectuate sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), in accordance with the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.).

**Adopted.** L. 2008, c. 46, §35, effective July 17, 2008. **Amended.** L. 2024, c. 2, §15, effective March 20, 2024, and shall apply to each new round of affordable housing obligations that begins following enactment; L. 2024, c. 36, §1, effective July 10, 2024, and shall apply retroactively to authorize and validate the provision of a detailed accounting by any municipality, pursuant to paragraph (3) of subsection c. of section 35 of P.L.2008, c.46 (C.40:55D-8.4), that is provided to the Department of Community Affairs on or before 180 days following the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.)

**40:55D-8.5. Regulations.** a. The commissioner shall promulgate, in accordance with the provisions of the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), such regulations as are necessary for the prompt and effective implementation of the provisions and purposes of section 8 of P.L.2008, c.46 (C.52:27D-329.2), including, but not limited to, provisions for the payment of any necessary administrative costs related to the assessment of properties and collection of any development fees by a municipality.

b. The commissioner shall adopt and promulgate, in accordance with the provisions of the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), such regulations as are necessary for the effectuation of P.L.2008, c.46 (C.52:27D-329.1 et al.), including but not limited to, regulations necessary for the establishment, implementation, review, monitoring, and enforcement of a municipal affordable housing trust fund and spending plan.

**Adopted.** L. 2008, c. 46, §36, effective July 17, 2008. **Amended.** L. 2024, c. 2, §16, effective March 20, 2024, and shall apply to each new round of affordable housing obligations that begins following enactment.

**40:55D-8.6. Inapplicability of certain provisions of law imposing fee upon developer of certain non-residential property.** a. The provisions of this subsection shall not apply to a financial or other contribution that a developer made or committed itself to make prior to the effective date of sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7). The provisions of P.L.2008, c.46 that would permit the imposition of a fee upon a developer of non-residential property shall not apply to:

(1) Non-residential property for which a site plan has received either preliminary approval, pursuant to section 34 of P.L.1975, c.291 (C.40:55D-46), or final approval, pursuant to section 38 of P.L.1975, c.291 (C.40:55D-50), prior to July 1, 2013; provided that a permit for the construction of the building has been issued by the local enforcing agency having jurisdiction, in accordance with section 13 of P.L.1975, c.217 (C.52:27D-131), prior to January 1, 2015; or

(2) A non-residential planned development which has received approval of a general development plan pursuant to section 5 of P.L.1987, c.129 (C.40:55D-45.3), or a nonresidential development for which the developer has entered into a developer’s agreement pursuant to a development approval granted pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.) or for which the redeveloper has entered into a redevelopment agreement pursuant to P.L.1992, c.79 (C.40A:12A-1 et al.) prior to the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.); provided, however, that the general development plan, developer’s agreement, redevelopment agreement, or any development agreement pursuant to the “Municipal Land Use Law,” P.L.1975, c.291 (C. 40:55D-1 et seq.) provides that the developer or redeveloper pay a fee for affordable housing of at least one percent of the equalized assessed value of the improvements which are the subject of the development plan, developer’s agreement, or redevelopment agreement;

(3) A non-residential project that, prior to July 1, 2013, has been referred to a planning board by the State, a governing body, or other public agency for review pursuant to section 22 of P.L.1975, c.291 (C.40:55D-31); provided that a permit for the construction of the building has been issued by the local enforcing agency having jurisdiction, in accordance with section 13 of P.L.1975, c.217 (C.52:27D-131), prior to January 1, 2015;

(4) A non-residential property for which a site plan application has received approval by the New Jersey Meadowlands Commission, pursuant to section 13 of P.L.1968, c.404 (C.13:17-14) prior to

July 1, 2013; provided that a permit for the construction of the building has been issued by the local enforcing agency having jurisdiction, in accordance with section 13 of P.L.1975, c.217 (C.52:27D-131), prior to January 1, 2015;

(5) Individual buildings within a nonresidential phased development that received either preliminary or final approval prior to July 1, 2013, provided that a permit for the construction of the building has been issued prior to January 1, 2015.

b. A developer may challenge non-residential development fees imposed pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the municipality or by the State, as the case may be. Appeals from a determination of the director may be made to the tax court in accordance with the provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

c. Whenever non-residential development is situated on real property that has been previously developed with a building, structure, or other improvement, the non-residential development fee shall be equal to two and a half (2.5) percent of the equalized assessed value of the land and improvements on the property where the non-residential development is situated at the time the final certificate of occupancy is issued, less the equalized assessed value of the land and improvements on the property where the non-residential development is situated, as determined by the tax assessor of the municipality at the time the developer or owner, including any previous owners, first sought approval for a construction permit, including, but not limited to, demolition permits, pursuant to the State Uniform Construction Code, or approval under the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.). If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

Whenever the developer of a non-residential development has made or committed itself to make a financial or other contribution relating to the provision of housing affordable to low and moderate income households prior to the enactment of P.L.2008, c.46 (C.52:27D-329.1 et al.), the non-residential development fee shall be reduced by the amount of the financial contribution and the fair market value of any other contribution made by or committed to be made by the developer. For purposes of this section, a developer is considered to have made or committed itself to make a financial or other contribution, if and only if: (1) the contribution has been transferred, including but not limited to when the funds have already been received by the municipality; (2) the developer has obligated itself to make a contribution as set forth in a written agreement with the municipality, such as a developer's agreement; or (3) the developer's obligation to make a contribution is set forth as a condition in a land use approval issued by a municipal land use agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

d. Unless otherwise provided for by law, no municipality shall be required to return a financial or any other contribution made by or committed to be made by the developer of a non-residential development prior to the enactment of P.L.2008, c.46 (C.52:27D-329.1 et al.) relating to the provision of housing affordable to low and moderate income households, provided that the developer does not obtain an amended, modified, or new municipal land use approval with a substantial change in the non-residential development. If the developer obtains an amended, modified, or new land use approval for non-residential development, the municipality, person, or entity shall be required to return to the developer any funds or other contribution provided by the developer for the provision of housing affordable to low and moderate income households and the developer shall not be entitled to a reduction in the affordable housing development fee based upon that contribution.

e. The provisions of sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) shall not be construed in any manner as affecting the method or timing of assessing real property for property taxation purposes. The payment of a non-residential development fee shall not increase the equalized assessed value of any property.

**Adopted.** L. 2008, c. 46, §37, effective July 17, 2008. **Amended.** L. 2009, c. 90, §37, effective July 28, 2009; L. 2011, c. 122, §1, effective August 24, 2011.

**40:55D-8.7. Certain local ordinances void.** a. Except as expressly provided in P.L.2008, c.46 (C.52:27D-329.1 et al.), including subsection b. of this section, any provision of a local ordinance which imposes a fee for the development of affordable housing upon a developer of non-residential

property, including any and all development fee ordinances adopted in accordance with any regulations of the department, or any provision of an ordinance which imposes an obligation relating to the provision of housing affordable to low- and moderate-income households, or payment in-lieu of building as a condition of non-residential development, shall be void and of no effect. A provision of an ordinance which imposes a development fee which is not prohibited by any provision of P.L.2008, c.46 (C.52:27D-329.1 et al.) shall not be invalidated by this section.

b. No affordable housing obligation shall be imposed concerning a mixed-use development that would result in an affordable housing obligation greater than that which would have been imposed if the residential portion of the mixed-use development had been developed independently of the non-residential portion of the mixed-use development.

c. Whenever the developer of a non-residential development regulated under P.L.1977, c.110 (C.5:12-1 et seq.) has made or committed itself to make a financial or other contribution relating to the provision of housing affordable to low- and moderate-income households, the non-residential development fee authorized pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) shall be satisfied through the investment obligations made pursuant to P.L.1977, c.110 (C.5:12-1 et seq.).

**Adopted.** L. 2008, c. 46, §38, effective July 17, 2008. **Amended.** L. 2024, c. 2, §17, effective March 20, 2024, and shall apply to each new round of affordable housing obligations that begins following enactment.

**40:55D-8.8. Applicability of section.** The provisions of this section shall apply only to those developments for which a fee was imposed pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), known as the “Statewide Non-residential Development Fee Act.”

a. A developer of a property that received preliminary site plan approval, pursuant to section 34 of P.L.1975, c.291 (C.40:55D-46), or final approval, pursuant to section 38 of P.L.1975, c.291 (C.40:55D-50) prior to July 17, 2008 and that was subject to the payment of a nonresidential development fee prior to the enactment of P.L.2009, c.90 (C.52:27D-489a et al.), shall be entitled to a return of any moneys paid that represent the difference between moneys committed prior to July 17, 2008 and monies paid on or after that date.

b. A developer of a non-residential project that, prior to July 17, 2008, has been referred to a planning board by the State, a governing body, or other public agency for review pursuant to section 22 of P.L.1975, c.291 (C. 40:55D-31) and that was subject to the payment of a nonresidential development fee prior to the enactment of P.L.2009, c.90 (C.52:27D-489a et al.), shall be entitled to a return of any moneys paid that represent the difference between moneys committed prior to July 17, 2008 and moneys paid on or after that date.

c. If moneys are required to be returned under subsection a., b. or d. of this section, a claim shall be submitted, in writing, to the same entity to which the moneys were paid, within 120 days of the effective date of P.L.2009, c.90 (C.52:27D-489a et al.). The entity to whom the funds were paid shall promptly review all requests for returns, and the fees paid shall be returned to the claimant within 30 days of receipt of the claim for return.

d. A developer of a non-residential project that paid a fee imposed pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to July 17, 2008 but prior to the effective date of P.L.2009, c.90 (C.52:27D-489a et al.), shall be entitled to the return of those moneys paid, provided that the provisions of section 37 of P.L.2008, c.46 (C.40:55D-8.6), as amended by P.L.2009, c.90 do not permit the imposition of a fee upon the developer of that non-residential property.

e. (Deleted by amendment, P.L.2024, c.2)

f. A developer of a non-residential project that paid a fee imposed pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to June 30, 2010 but prior to the effective date of P.L.2011, c.122, shall be entitled to the return of those monies paid, provided that said monies have not already been expended by the municipality on affordable housing projects, and provided that the provisions of section 37 of P.L.2008, c.46 (C.40:55D-8.6), as amended by P.L.2011, c.122 do not permit the imposition of a fee upon the developer of that non-residential property. If moneys are eligible to be returned under this subsection, a claim shall be submitted, in writing, to the same entity to which the moneys were paid, within 120 days of the effective date of P.L.2011, c.122. The entity to whom the funds were paid shall promptly review all requests for returns, to ensure applicability of section 37 of P.L.2008, c.46 (C.40:55D-8.6) and the fees paid shall be returned to the claimant within 30 days of receipt of the claim for return.

**Adopted.** L. 2009, c. 90, §39, effective July 28, 2009. **Amended.** L. 2011, c. 122, §2, effective August 24, 2011; L. 2024, c. 2, §18, effective March 20, 2024, and shall apply to each new round of affordable housing obligations that begins following enactment.

**40:55D-9. Meetings; municipal agency.** a. Every municipal agency shall by its rules fix the time and place for holding its regular meetings for business authorized to be conducted by such agency. Regular meetings of the municipal agency shall be scheduled not less than once a month and shall be held as scheduled unless canceled for lack of applications for development to process. The municipal agency may provide for special meetings, at the call of the chairman, or on the request of any two of its members, which shall be held on notice to its members and the public in accordance with municipal regulations. No action shall be taken at any meeting without a quorum being present. All actions shall be taken by a majority vote of the members of the municipal agency present at the meeting, except as otherwise required by sections 23, 25, 49, 50 [40:55D-32; 40:55D-34; 40:55D-62; 40:55D-63], and subsections 8e., 17a., 17b. and 57d. [40:55D-17; 40:55D-26; 40:55D-70] of this act. Failure of a motion to receive the number of votes required to approve an application for development shall be deemed an action denying the application. Nothing herein shall be construed to contravene any act providing for procedures for governing bodies.

b. All regular meetings and all special meetings shall be open to the public. Notice of all such meetings shall be given in accordance with municipal regulations. An executive session for the purpose of discussing and studying any matters to come before the agency shall not be deemed a regular or special meeting within the meaning of this act.

c. Minutes of every regular or special meeting shall be kept and shall include the names of persons appearing and addressing the municipal agency and of the persons appearing by attorney, the action taken by the municipal agency, the findings, if any, made by it and reasons therefor. The minutes shall thereafter be made available for public inspection during normal business hours at the office of the administrative officer. Any interested party shall have the right to compel production of the minutes for use as evidence in any legal proceedings concerning the subject matter of such minutes. Such interested party may be charged a reasonable fee for reproduction of the minutes for his use.

**Adopted.** L. 1975, c. 291, §5. **Amended.** L. 1979, c. 216, §6; L. 1984, c. 20, §3; L. 1985, c. 516, §3.

**40:55D-10. Hearings.** a. The municipal agency shall hold a hearing on each application for development, adoption, revision or amendment of the master plan, each application for approval of an outdoor advertising sign submitted to the municipal agency as required pursuant to an ordinance adopted under subsection g. of section 29.1 of P.L.1975, c.291 (C.40:55D-39) or any review undertaken by a planning board pursuant to section 22 of P.L.1975, c.291 (C.40:55D-31).

b. The municipal agency shall make the rules governing such hearings. Any maps and documents for which approval is sought at a hearing shall be on file and available for public inspection at least 10 days before the date of the hearing, during normal business hours in the office of the administrative officer. The applicant may produce other documents, records, or testimony at the hearing to substantiate or clarify or supplement the previously filed maps and documents.

c. The officer presiding at the hearing or such person as he may designate shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, including witnesses and documents presented by the parties, and the provisions of the "County and Municipal Investigations Law," P.L. 1953, c. 38 (C. 2A:67A-1 et seq.) shall apply.

d. The testimony of all witnesses relating to an application for development shall be taken under oath or affirmation by the presiding officer, and the right of cross-examination shall be permitted to all interested parties through their attorneys, if represented, or directly, if not represented, subject to the discretion of the presiding officer and to reasonable limitations as to time and number of witnesses.

e. Technical rules of evidence shall not be applicable to the hearing, but the agency may exclude irrelevant, immaterial or unduly repetitious evidence.

f. The municipal agency shall provide for the verbatim recording of the proceedings by either stenographer, mechanical or electronic means. The municipal agency shall furnish a transcript, or duplicate recording in lieu thereof, on request to any interested party at his expense; provided that the governing body may provide by ordinance for the municipality to assume the expense of any transcripts necessary for appeal to the governing body, pursuant to section 8 of this act [40:55D-17], of decisions by the zoning board of adjustment pursuant to subsection 57d. of this act [40:55D-70], up to a maximum amount as specified by the ordinance.

The municipal agency, in furnishing a transcript or tape of the proceedings to an interested party at his expense, shall not charge such interested party more than the actual cost of preparing the transcript or tape. Transcripts shall be certified in writing by the transcriber to be accurate.

g. The municipal agency shall include findings of fact and conclusions based thereon in each decision on any application for development and shall reduce the decision to writing. The municipal agency shall provide the findings and conclusions through:

(1) A resolution adopted at a meeting held within the time period provided in the act for action by the municipal agency on the application for development; or

(2) A memorializing resolution adopted at a meeting held not later than 45 days after the date of the meeting at which the municipal agency voted to grant or deny approval. Only the members of the municipal agency who voted for the action taken may vote on the memorializing resolution, and the vote of a majority of such members present at the meeting at which the resolution is presented for adoption shall be sufficient to adopt the resolution. If only one member who voted for the action attends the meeting at which the resolution is presented for adoption, the resolution may be adopted upon the vote of that member. An action pursuant to section 5 of the act (C. 40:55D-9) (resulting from the failure of a motion to approve an application) shall be memorialized by resolution as provided above, with those members voting against the motion for approval being the members eligible to vote on the memorializing resolution. The vote on any such resolution shall be deemed to be a memorialization of the action of the municipal agency and not to be an action of the municipal agency; however, the date of the adoption of the resolution shall constitute the date of the decision for purposes of the mailings, filings and publications required by subsections h. and i. of this section (C. 40:55D-10). If the municipal agency fails to adopt a resolution or memorializing resolution as hereinabove specified, any interested party may apply to the Superior Court in a summary manner for an order compelling the municipal agency to reduce its findings and conclusions to writing within a stated time, and the cost of the application, including attorney's fees, shall be assessed against the municipality.

h. A copy of the decision shall be mailed by the municipal agency within 10 days of the date of decision to the applicant or, if represented, then to his attorney, without separate charge, and to all who request a copy of the decision, for a reasonable fee. A copy of the decision shall also be filed by the municipal agency in the office of the administrative officer. The administrative officer shall make a copy of such filed decision available to any interested party for a reasonable fee and available for public inspection at his office during reasonable hours.

i. A brief notice of the decision shall be published in the official newspaper of the municipality, if there be one, or in a newspaper of general circulation in the municipality. Such publication shall be arranged by the applicant unless a particular municipal officer is so designated by ordinance; provided that nothing contained in this act shall be construed as preventing the applicant from arranging such publication if he so desires. The municipality may make a reasonable charge for its publication. The period of time in which an appeal of the decision may be made shall run from the first publication of the decision, whether arranged by the municipality or the applicant.

**Adopted.** L. 1975, c. 291, §6. **Amended.** L. 1979, c. 216, §7; L. 1984, c. 20, §4; L. 1998, c. 95, §2, effective November 1, 1998; L. 2004, c. 42, §5, effective June 29, 2004.

**40:55D-10.1. Informal review of developer's concept plan.** At the request of the developer, the planning board shall grant an informal review of a concept plan for a development for which the developer intends to prepare and submit an application for development. The amount of any fees for such an informal review shall be a credit toward fees for review of the application for development. The developer shall not be bound by any concept plan for which review is requested, and the planning board shall not be bound by any such review.

**Adopted.** L. 1979, c. 216, §8. **Amended.** L. 1985, c. 516, §4.

**40:55D-10.2. Vote by member who was absent from hearing; conditions.** A member of a municipal agency who was absent for one or more of the meetings at which a hearing was held or was not a member of the municipal agency at that time, shall be eligible to vote on the matter upon which the hearing was conducted, notwithstanding his absence from one or more of the meetings; provided, however, that such board member has available to him the transcript or recording of all of the hearing from which he was absent or was not a member, and certifies in writing to the board that he has read such transcript or listened to such recording.

**Adopted.** L. 1979, c. 216, §9. **Amended.** L. 1998, c. 95, §3, effective November 1, 1998.

**40:55D-10.3. Certification of complete application.** An application for development shall be complete for purposes of commencing the applicable time period for action by a municipal agency, when so certified by the municipal agency or its authorized committee or designee. In the event that the agency, committee or designee does not certify the application to be complete within 45 days of the date of its submission, the application shall be deemed complete upon the expiration of the 45-day period for purposes of commencing the applicable time period, unless: a. the application lacks information indicated on a checklist adopted by ordinance and provided to the applicant; and b. the municipal agency or its authorized committee or designee has notified the applicant, in writing, of the deficiencies in the application within 45 days of submission of the application. The applicant may request that one or more of the submission requirements be waived, in which event the agency or its authorized committee shall grant or deny the request within 45 days. Nothing herein shall be construed as diminishing the applicant's obligation to prove in the application process that he is entitled to approval of the application. The municipal agency may subsequently require correction of any information found to be in error and submission of additional information not specified in the ordinance or any revisions in the accompanying documents, as are reasonably necessary to make an informed decision as to whether the requirements necessary for approval of the application for development have been met. The application shall not be deemed incomplete for lack of any such additional information or any revisions in the accompanying documents so required by the municipal agency.

**Adopted.** L. 1984, c. 20, §5.

**40:55D-10.4. Procedures for applicants claiming approval by reason of municipal failure to act.** An applicant shall comply with the provisions of this section whenever the applicant wishes to claim approval of his application for development by reason of the failure of the municipal agency to grant or deny approval within the time period provided in the "Municipal Land Use Law," P.L. 1975, c. 291 (C. 40:55D-1 et seq.) or any supplement thereto.

a. The applicant shall provide notice of the default approval to the municipal agency and to all those entitled to notice by personal service or certified mail of the hearing on the application for development; but for purposes of determining who is entitled to notice, the hearing on the application for development shall be deemed to have required public notice pursuant to subsection a. of section 7.1 of P.L. 1975, c. 291 (C. 40:55D-12).

b. The applicant shall arrange publication of a notice of the default approval in the official newspaper of the municipality, if there be one, or in a newspaper of general circulation in the municipality.

c. The applicant shall file an affidavit of proof of service and publication with the administrative officer, who in the case of a minor subdivision or final approval of a major subdivision, shall be the officer who issues certificates pursuant to section 35, subsection b. of section 38 or subsection c. of section 63 of P.L. 1975, c. 291 (C. 40:55D-47; C. 40:55D-50; C. 40:55D-76), as the case may be.

**Adopted.** L. 1985, c. 516, §5.

**40:55D-10.5. Developmental regulations, certain, govern review of application.** Notwithstanding any provision of law to the contrary, those development regulations which are in effect on the date of submission of an application for development shall govern the review of that application for development and any decision made with regard to that application for development. Any provisions of an ordinance, except those relating to health and public safety, that are adopted subsequent to the date of submission of an application for development, shall not be applicable to that application for development.

**Adopted.** L. 2010, c. 9, §1, effective May 5, 2011.

**40:55D-11. Contents of notice of hearing on application for development or adoption of master plan.** Notices pursuant to section 7.1 and 7.2 of this act [40:55D-12; 40:55D-13] shall state the date, time and place of the hearing, the nature of the matters to be considered and, in the case of notices pursuant to subsection 7.1 of this act [40:55D-12], an identification of the property proposed for development by street address, if any, or by reference to lot and block numbers as shown on the current tax duplicate in the municipal tax assessor's office, and the location and times at which any maps and documents for which approval is sought are available pursuant to subsection 6b. [40:55D-10].

**Adopted.** L. 1975, c. 291, §7.

**40:55D-12. Notice of applications.** Notice pursuant to subsections a., b., d., e., f., g. and h. of this section shall be given by the applicant unless a particular municipal officer is so designated by ordinance; provided that nothing contained herein shall prevent the applicant from giving such notice if he so desires. Notice pursuant to subsections a., b., d., e., f., g. and h. of this section shall be given at least 10 days prior to the date of the hearing.

a. Public notice of a hearing shall be given for an extension of approvals for five or more years under subsection d. of section 37 of P.L.1975, c.291 (C.40:55D-49) and subsection b. of section 40 of P.L.1975, c.291 (C.40:55D-52); for modification or elimination of a significant condition or conditions in a memorializing resolution in any situation wherein the application for development for which the memorializing resolution is proposed for adoption required public notice, and for any other applications for development, with the following exceptions: (1) conventional site plan review pursuant to section 34 of P.L.1975, c.291 (C.40:55D-46), (2) minor subdivisions pursuant to section 35 of P.L.1975, c.291 (C.40:55D-47) or (3) final approval pursuant to section 38 of P.L.1975, c.291 (C.40:55D-50); notwithstanding the foregoing, the governing body may by ordinance require public notice for such categories of site plan review as may be specified by ordinance, for appeals of determinations of administrative officers pursuant to subsection a. of section 57 of P.L.1975, c.291 (C.40:55D-70), and for requests for interpretation pursuant to subsection b. of section 57 of P.L.1975, c.291 (C.40:55D-70). Public notice shall also be given in the event that relief is requested pursuant to section 47 or 63 of P.L.1975, c.291 (C.40:55D-60 or C.40:55D-76) as part of an application for development otherwise excepted herein from public notice.

In addition, public notice shall be given by a public entity seeking to erect an outdoor advertising sign on land owned or controlled by a public entity as required pursuant to section 22 of P.L.1975, c.291 (C.40:55D-31) or, if so provided by ordinance adopted pursuant to subsection g. of section 29.1 of P.L.1975, c.291 (C.40:55D-39), by a private entity seeking to erect an outdoor advertising sign on public land or on land owned by a private entity.

Public notice shall be given by publication in the official newspaper of the municipality, if there be one, or in a newspaper of general circulation in the municipality.

b. Except as provided in paragraph (2) of subsection h. of this section, notice of a hearing requiring public notice pursuant to subsection a. of this section shall be given to the owners of all real property as shown on the current tax duplicates, located in the State and within 200 feet in all directions of the property which is the subject of such hearing; provided that this requirement shall be deemed satisfied by notice to the (1) condominium association, in the case of any unit owner whose unit has a unit above or below it, or (2) horizontal property regime, in the case of any co-owner whose apartment has an apartment above or below it. Notice shall be given by: (1) serving a copy thereof on the property owner as shown on the said current tax duplicate, or his agent in charge of the property, or (2) mailing a copy thereof by certified mail to the property owner at his address as shown on the said current tax duplicate.

Notice to a partnership owner may be made by service upon any partner. Notice to a corporate owner may be made by service upon its president, a vice president, secretary or other person authorized by appointment or by law to accept service on behalf of the corporation. Notice to a condominium association, horizontal property regime, community trust or homeowners' association, because of its ownership of common elements or areas located within 200 feet of the property which is the subject of the hearing, may be made in the same manner as to a corporation without further notice to unit owners, co-owners, or homeowners on account of such common elements or areas.

c. Upon the written request of an applicant, the administrative officer of a municipality shall, within seven days, make and certify a list from said current tax duplicates of names and addresses of owners to whom the applicant is required to give notice pursuant to subsection b. of this section. In addition, the administrative officer shall include on the list the names, addresses and positions of those persons who, not less than seven days prior to the date on which the applicant requested the list, have registered to receive notice pursuant to subsection h. of this section. The applicant shall be entitled to rely upon the information contained in such list, and failure to give notice to any owner, to any public utility, cable television company, or local utility or to any military facility commander not on the list shall not invalidate any hearing or proceeding. A sum not to exceed \$0.25 per name, or \$10.00, whichever is greater, may be charged for such list.

d. Notice of hearings on applications for development involving property located within 200 feet of an adjoining municipality shall be given by personal service or certified mail to the clerk of such municipality.

e. Notice shall be given by personal service or certified mail to the county planning board of a hearing on an application for development of property adjacent to an existing county road or proposed road shown on the official county map or on the county master plan, adjoining other county land or situated within 200 feet of a municipal boundary.

f. Notice shall be given by personal service or certified mail to the Commissioner of Transportation of a hearing on an application for development of property adjacent to a State highway.

g. Notice shall be given by personal service or certified mail to the State Planning Commission of a hearing on an application for development of property which exceeds 150 acres or 500 dwelling units. The notice shall include a copy of any maps or documents required to be on file with the municipal clerk pursuant to subsection b. of section 6 of P.L. 1975, c. 291 (C. 40:55D-10).

h. Notice of hearings on applications for approval of a major subdivision or a site plan not defined as a minor site plan under this act requiring public notice pursuant to subsection a. of this section shall be given: (1) in the case of a public utility, cable television company or local utility which possesses a right-of-way or easement within the municipality and which has registered with the municipality in accordance with section 5 of P.L. 1991, c. 412 (C. 40:55D-12.1), by (i) serving a copy of the notice on the person whose name appears on the registration form on behalf of the public utility, cable television company or local utility or (ii) mailing a copy thereof by certified mail to the person whose name appears on the registration form at the address shown on that form; (2) in the case of a military facility which has registered with the municipality and which is situated within 3,000 feet in all directions of the property which is the subject of the hearing, by (i) serving a copy of the notice on the military facility commander whose name appears on the registration form or (ii) mailing a copy thereof by certified mail to the military facility commander at the address shown on that form.

i. The applicant shall file an affidavit of proof of service with the municipal agency holding the hearing on the application for development in the event that the applicant is required to give notice pursuant to this section.

j. Notice pursuant to subsections d., e., f., g. and h. of this section shall not be deemed to be required, unless public notice pursuant to subsection a. and notice pursuant to subsection b. of this section are required.

**Adopted.** L. 1975, c. 291, §7.1. **Amended.** L. 1979, c. 216, §10; L. 1985, c. 398, §15; L. 1991, c. 245, §1, effective August 7, 1991; L. 1991, c. 412, §4, effective March 31, 1992; L. 1998, c. 95, §4, effective November 1, 1998; L. 2004, c. 42, §6, effective June 29, 2004; L. 2005, c. 41, §3, effective March 7, 2005.

**40:55D-12.1. Registration; effectiveness; adoption of form; contents.** a. Every public utility, cable television company and local utility interested in receiving notice pursuant to subsection h. of section 7.1 of P.L. 1975, c. 291 (C. 40:55D-12) may register with any municipality in which the public utility, cable television company or local utility has a right-of-way or easement. The registration shall remain in effect until revoked by the public utility, cable television company, or local utility or by its successor in interest.

b. The administrative officer of every municipality shall adopt a registration form and shall maintain a record of all public utilities, cable television companies, and local utilities which have registered with the municipality pursuant to subsection a. of this section. The registration form shall include the name of the public utility, cable television company or local utility and the name, address and position of the person to whom notice shall be forwarded, as required pursuant to subsection h. of section 7.1 of P.L. 1975, c. 291 (C. 40:55D-12). The information contained therein shall be made available to any applicant, as provided in subsection c. of section 7.1 of P.L. 1975, c. 291 (C. 40:55D-12).

c. Any municipality may impose a registration fee of \$10 on any public utility, cable television company or local utility which registers to receive notice pursuant to subsection a. of this section.

**Adopted.** L. 1991, c. 412, §5, effective March 16, 1992.

**40:55D-12.2. Notice of registration to be provided to utilities.** Within 30 days after the effective date of this act, the administrative officer of every municipality shall notify the corporate secretary of every local utility that, in order to receive notice by an applicant pursuant to subsection

h. of section 7.1 of P.L.1975, c.291 (C.40:55D-12), the utility shall register with the municipality or any other municipality in which the utility has a right-of-way or easement.

**Adopted.** L. 1991, c. 412, §8, effective February 15, 1992.

**40:55D-12.3. Effect of failure to give notice; limitation of section.** Failure to give notice as required pursuant to P.L.1991, c.245, shall not invalidate any hearing or proceeding held or to be held, or any preliminary or final approval granted or to be granted, from August 7, 1991 until 75 days following enactment.

**Adopted.** L. 1991, c. 412, §9, effective January 17, 1992.

**40:55D-12.4. Notice to military facility commander from municipality.** a. Any military facility commander interested in receiving notice pursuant to paragraph (2) of subsection h. of section 7.1 of P.L.1975, c.291 (C.40:55D-12) and section 2 of P.L.1995, c.249 (C.40:55D-62.1) may register with the administrative officer of the municipality in which the military facility is situated and any municipality situated within 3,000 feet in all directions of the military facility. The registration shall remain in effect until revoked by the military facility commander.

b. The administrative officer of every municipality in which a military facility is situated or which is situated within 3,000 feet in all directions of a military facility shall adopt a registration form and shall maintain a record of any military facility which has registered with the municipality pursuant to subsection a. of this section. The registration form shall include the name and address of the military facility commander to whom notice shall be forwarded, as required pursuant to paragraph (2) of subsection h. of section 7.1 of P.L.1975, c.291 (C.40:55D-12). The information contained therein shall be made available to any applicant, as provided in subsection c. of section 7.1 of P.L.1975, c.291 (C.40:55D-12).

**Adopted.** L. 2005, c. 41, §1, effective March 7, 2005.

**40:55D-13. Notice concerning master plan.** The planning board shall give:

(1) Public notice of a hearing on adoption, revision or amendment of the master plan; such notice shall be given by publication in the official newspaper of the municipality, if there be one, or in a newspaper of general circulation in the municipality at least 10 days prior to the date of the hearing;

(2) Notice by personal service or certified mail to the clerk of an adjoining municipality of all hearings on adoption, revision or amendment of a master plan involving property situated within 200 feet of such adjoining municipality at least 10 days prior to the date of any such hearing;

(3) Notice by personal service or certified mail to the Office of Planning Advocacy and to the county planning board in which the municipality is situated, of (a) all hearings on the adoption, revision or amendment of the municipal master plan at least 10 days prior to the date of the hearing; such notice shall include a copy of any such proposed master plan, or any revision or amendment thereto; and (b) the adoption, revision or amendment of the master plan not more than 30 days after the date of such adoption, revision or amendment; such notice shall include a copy of the master plan or revision or amendment thereto;

(4) Notice by personal service or certified mail to the military facility commander of a military facility which has registered with the municipality pursuant to section 1 of P.L.2005, c.41 (C.40:55D-12.4) of (a) all hearings on the adoption, revision, or amendment of the municipal master plan at least 10 days prior to the date of the hearing; such notice shall include a copy of any such proposed master plan, or any revision or amendment thereto; and (b) the adoption, revision, or amendment of the master plan not more than 30 days after the date of such adoption, revision, or amendment; such notice shall include a copy of the master plan or revision or amendment thereto.

**Adopted.** L. 1975, c. 291, §7.2. **Amended.** L. 2016, c. 21, §3, effective August 1, 2016.

**40:55D-14. Effect of mailing notice.** Any notice made by certified mail pursuant to sections 7.1 and 7.2 of this act [40:55D-12; 40:55D-13] shall be deemed complete upon mailing.

**Adopted.** L. 1975, c. 291, §7.3.

**40:55D-15. Notice of certain hearings.** a. Notice by personal service, certified mail, or e-mail with confirmation that the e-mail was delivered, shall be made to the clerk of an adjoining municipality of all hearings on the adoption, revision or amendment of a development regulation involving property situated within 200 feet of such adjoining municipality at least 10 days prior to the date of any such hearing.

b. Notice by personal service, certified mail, or e-mail with confirmation that the e-mail was delivered, shall be made to the county planning board of (1) all hearings on the adoption, revision

or amendment of any development regulation at least 10 days prior to the date of the hearing, and (2) the adoption, revision or amendment of the municipal capital improvement program or municipal official map not more than 30 days after the date of such adoption, revision or amendment. Any notice provided hereunder shall include a copy of the proposed development regulation, the municipal official map or the municipal capital program, or any proposed revision or amendment thereto, as the case may be.

Notice of hearings to be held pursuant to this section shall state the date, time and place of the hearing and the nature of the matters to be considered. Any notice by certified mail or e-mail pursuant to this section shall be deemed complete upon mailing or when e-mailing, upon confirmation that the e-mail was delivered, as appropriate.

For the purposes of this section, proof that an e-mail was sent to the correct e-mail address within the required time frame shall constitute a rebuttable presumption of confirmation that the e-mail was delivered.

**Adopted.** L. 1975, c. 291, §7.4. **Amended.** L. 2015, c. 207, §1, effective January 11, 2016.

**40:55D-16. Filing of ordinances.** Development regulations, except for the official map, shall not take effect until a copy thereof shall be filed with the county planning board. A zoning ordinance or amendment or revision thereto which in whole or in part is inconsistent with or not designed to effectuate the land use plan element of the master plan shall not take effect until a copy of the resolution required by subsection a. of section 49 of P.L. 1975, c. 291 (C. 40:55D-62) shall be filed with the county planning board. The secretary of the county planning board shall within 10 days of the date of receipt of a written request for copies of any development regulation make such available to the party so requesting with said secretary's certification that said copies are true copies and that all filed amendments and resolutions are included. A reasonable charge may be made by the county planning board for said copies.

The official map of the municipality shall not take effect until filed with the county recording officer.

Copies of all development regulations and any revisions or amendments thereto shall be filed and maintained in the office of the municipal clerk.

**Adopted.** L. 1975, c. 291, §7.5. **Amended.** L. 1985, c. 516, §6.

**40:55D-17. Appeal to the governing body; time; notice; modification; stay of proceedings.**

a. Any interested party may appeal to the governing body any final decision of a board of adjustment approving an application for development pursuant to subsection d. of section 57 of P.L. 1975, c. 291 (C. 40:55D-70), if so permitted by ordinance. Such appeal shall be made within 10 days of the date of publication of such final decision pursuant to subsection i. of section 6 of P.L. 1975, c. 291 (C. 40:55D-10). In the case of any board established pursuant to article 10 of P.L. 1975, c. 291, the governing body of the municipality in which the land is situated shall be the "governing body" for purposes of this section. The appeal to the governing body shall be made by serving the municipal clerk in person or by certified mail with a notice of appeal, specifying the grounds thereof and the name and address of the appellant and name and address of his attorney, if represented. Such appeal shall be decided by the governing body only upon the record established before the board of adjustment.

b. Notice of the meeting to review the record below shall be given by the governing body by personal service or certified mail to the appellant, to those entitled to notice of a decision pursuant to subsection h. of section 6 of P.L. 1975, c. 291 (C. 40:55D-10) and to the board from which the appeal is taken, at least 10 days prior to the date of the meeting. The parties may submit oral and written argument on the record at such meeting, and the governing body shall provide for verbatim recording and transcripts of such meeting pursuant to subsection f. of section 6 of P.L. 1975, c. 291 (C. 40:55D-10).

c. The appellant shall, (1) within five days of service of the notice of the appeal pursuant to subsection a. hereof, arrange for a transcript pursuant to subsection f. of section 6 of P.L. 1975, c. 291 (C. 40:55D-10) for use by the governing body and pay a deposit of \$50.00 or the estimated cost of such transcript, whichever is less, or (2) within 35 days of service of the notice of appeal, submit a transcript as otherwise arranged to the municipal clerk; otherwise, the appeal may be dismissed for failure to prosecute.

The governing body shall conclude a review of the record below not later than 95 days from the date of publication of notice of the decision below pursuant to subsection i. of section 6 of P.L. 1975,

c.291 (C.40:55D-10), unless the applicant consents in writing to an extension of such period. Failure of the governing body to hold a hearing and conclude a review of the record below and to render a decision within such specified period shall constitute a decision affirming the action of the board.

d. The governing body may reverse, remand, or affirm with or without the imposition of conditions the final decision of the board of adjustment approving a variance pursuant to subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70). The review shall be made on the record made before the board of adjustment.

e. The affirmative vote of a majority of the full authorized membership of the governing body shall be necessary to reverse or remand to the board of adjustment or to impose conditions on or alter conditions to any final action of the board of adjustment. Otherwise the final action of the board of adjustment shall be deemed to be affirmed; a tie vote of the governing body shall constitute affirmation of the decision of the board of adjustment.

f. An appeal to the governing body shall stay all proceedings in furtherance of the action in respect to which the decision appealed from was made, unless the board from whose action the appeal is taken certifies to the governing body, after the notice of appeal shall have been filed with such board, that by reason of facts stated in the certificate, a stay would, in its opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by an order of the Superior Court on application upon notice to the board from whom the appeal is taken and on good cause shown.

g. The governing body shall mail a copy of the decision to the appellant or, if represented, then to his attorney, without separate charge, and for a reasonable charge to any interested party who has requested it, not later than 10 days after the date of the decision. A brief notice of the decision shall be published in the official newspaper of the municipality, if there be one, or in a newspaper of general circulation in the municipality. Such publication shall be arranged by the applicant unless a particular municipal officer is so designated by ordinance; provided that nothing contained herein shall be construed as preventing the applicant from arranging such publication if he so desires. The governing body may make a reasonable charge for its publication. The period of time in which an appeal to a court of competent jurisdiction may be made shall run from the first publication, whether arranged by the municipality or the applicant.

h. Nothing in this act shall be construed to restrict the right of any party to obtain a review by any court of competent jurisdiction, according to law.

**Adopted.** L. 1975, c. 291, §8. **Amended.** L. 1979, c. 216, §11; L. 1984, c. 20, §6; L. 1991, c. 256, §3, effective August 13, 1991.

**40:55D-18. Enforcement.** The governing body of a municipality shall enforce this act and any ordinance or regulation made and adopted hereunder. To that end, the governing body may require the issuance of specified permits, certificates or authorizations as a condition precedent to (1) the erection, construction, alteration, repair, remodeling, conversion, removal or destruction of any building or structure, (2) the use or occupancy of any building, structure or land, and (3) the subdivision or resubdivision of any land; and shall establish an administrative officer and offices for the purpose of issuing such permits, certificates or authorizations; and may condition the issuance of such permits, certificates and authorizations upon the submission of such data, materials, plans, plats and information as is authorized hereunder and upon the express approval of the appropriate State, county or municipal agencies; and may establish reasonable fees to cover administrative costs for the issuance of such permits, certificates and authorizations. The administrative officer shall issue or deny a zoning permit within 10 business days of receipt of a request therefor. If the administrative officer fails to grant or deny a zoning permit within this period, the failure shall be deemed to be an approval of the application for the zoning permit. In case any building or structure is erected, constructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of this act or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality or an interested party, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.

**Adopted.** L. 1975, c. 291, §9. **Amended.** L. 2001, c. 49, §1, effective July 3, 2001.

**40:55D-19. Appeal or petition in certain cases to the Board of Public Utility Commissioners.** If a public utility, as defined in R.S.48:2-13, or an electric power generator, as defined in section 3 of P.L.1999, c.23 (C.48:3-51), is aggrieved by the action of a municipal agency through said agency's exercise of its powers under this act, with respect to any action in which the public utility or electric power generator has an interest, an appeal to the Board of Public Utilities of the State of New Jersey may be taken within 35 days after such action without appeal to the municipal governing body pursuant to section 8 of this act [40:55D-17] unless such public utility or electric power generator so chooses. In such case appeal to the Board of Public Utilities may be taken within 35 days after action by the governing body. A hearing on the appeal of a public utility to the Board of Public Utilities shall be had on notice to the agency from which the appeal is taken and to all parties primarily concerned, all of whom shall be afforded an opportunity to be heard. If, after such hearing, the Board of Public Utilities shall find that the present or proposed use by the public utility or electric power generator of the land described in the petition is necessary for the service, convenience or welfare of the public, including, but not limited to, in the case of an electric power generator, a finding by the board that the present or proposed use of the land is necessary to maintain reliable electric or natural gas supply service for the general public and that no alternative site or sites are reasonably available to achieve an equivalent public benefit, the public utility or electric power generator may proceed in accordance with such decision of the Board of Public Utilities, any ordinance or regulation made under the authority of this act notwithstanding.

This act or any ordinance or regulation made under authority thereof, shall not apply to a development proposed by a public utility for installation in more than one municipality for the furnishing of service, if upon a petition of the public utility, the Board of Public Utilities shall after hearing, of which any municipalities affected shall have notice, decide the proposed installation of the development in question is reasonably necessary for the service, convenience or welfare of the public.

Nothing in this act shall be construed to restrict the right of any interested party to obtain a review of the action of the municipal agency or of the Board of Public Utilities by any court of competent jurisdiction according to law.

**Adopted.** L. 1975, c. 291, §10. **Amended.** L. 1999, c. 23, §58, effective February 9, 1999, except that, to the extent not already provided for by existing law, the authority of the board to order rate unbundling filings, restructuring filings, and stranded cost filings, perform audits of utility competitive services and take such other regulatory actions, including, but not limited to, the holding of hearings, providing of notice and opportunity for comment, the issuance of orders, and the establishment of standards, including auction standards adopted for application to an electric public utility that is executing a divestiture plan, and to take such other anticipatory regulatory action as it deems necessary to fulfill the purposes or requirements of this act shall apply retroactively to April 1, 1997 provided that the board shall take such actions as may be necessary, if any, to ensure that the requirements of this act are met in all regulatory actions related to this act which were commenced prior to its enactment.

**40:55D-20. Exclusive authority of planning board and board of adjustment.** Any power expressly authorized by this act to be exercised by (1) planning board or (2) board of adjustment shall not be exercised by any other body, except as otherwise provided in this act.

**Adopted.** L. 1975, c. 291, §11.

**40:55D-21. Tolling of running of period of approval.** In the event that, during the period of approval heretofore or hereafter granted to an application for development, the developer is barred or prevented, directly or indirectly, from proceeding with the development otherwise permitted under such approval by a legal action instituted by any State agency, political subdivision or other party to protect the public health and welfare or by a directive or order issued by any State agency, political subdivision or court of competent jurisdiction to protect the public health or welfare and the developer is otherwise ready, willing and able to proceed with said development, the running of the period of approval under this act or under any act repealed by this act, as the case may be, shall be suspended for the period of time said legal action is pending or such directive or order is in effect.

**Adopted.** L. 1975, c. 291, §12.

**40:55D-22. Conditional approvals.** a. In the event that a developer submits an application for development proposing a development that is barred or prevented, directly or indirectly, by a legal action instituted by any State agency, political subdivision or other party to protect the public health and welfare or by a directive or order issued by any State agency, political subdivision or court of competent jurisdiction to protect the public health and welfare, the municipal agency shall process such application for development in accordance with this act and municipal development regulations, and, if such application for development complies with municipal development

regulations, the municipal agency shall approve such application conditioned on removal of such legal barrier to development.

b. In the event that development proposed by an application for development requires an approval by a governmental agency other than the municipal agency, the municipal agency shall, in appropriate instances, condition its approval upon the subsequent approval of such governmental agency; provided that the municipality shall make a decision on any application for development within the time period provided in this act or within an extension of such period as has been agreed to by the applicant unless the municipal agency is prevented or relieved from so acting by the operation of law.

Adopted. L. 1975, c. 291, §13.

## ARTICLE 2. MUNICIPAL PLANNING BOARD.

**40:55D-23. Planning board membership.** a. The governing body may, by ordinance, create a planning board of seven or nine members. All members of the planning board, except for the Class II members set forth below, shall be municipal residents. The membership shall consist of, for convenience in designating the manner of appointment, the four following classes:

Class I--the mayor or the mayor's designee in the absence of the mayor or, in the case of the council-manager form of government pursuant to the Optional Municipal Charter Law, P.L.1950, c.210 (C.40:69A-1 et seq.) or "the municipal manager form of government law" (R.S.40:79-1 et seq.), the manager, if so provided by the aforesaid ordinance.

Class II--one of the officials of the municipality other than a member of the governing body, to be appointed by the mayor; provided that if there be an environmental commission, the member of the environmental commission who is also a member of the planning board as required by section 1 of P.L.1968, c.245 (C.40:56A-1), shall be deemed to be the Class II planning board member for purposes of this act in the event that there be among the Class IV or alternate members of the planning board both a member of the zoning board of adjustment and a member of the board of education.

Class III--a member of the governing body to be appointed by it.

Class IV--other citizens of the municipality, to be appointed by the mayor or, in the case of the council-manager form of government pursuant to the Optional Municipal Charter Law, P.L.1950, c.210 (C.40:69A-1 et seq.) or "the municipal manager form of government law" (R.S.40:79-1 et seq.), by the council, if so provided by the aforesaid ordinance.

The members of Class IV shall hold no other municipal office, position or employment, except that in the case of nine-member boards, one such member may be a member of the zoning board of adjustment or historic preservation commission. No member of the board of education may be a Class IV member of the planning board, except that in the case of a nine-member board, one Class IV member may be a member of the board of education. If there be a municipal environmental commission, the member of the environmental commission who is also a member of the planning board, as required by section 1 of P.L.1968, c.245 (C.40:56A-1), shall be a Class IV planning board member, unless there be among the Class IV or alternate members of the planning board both a member of the zoning board of adjustment or historic preservation commission and a member of the board of education, in which case the member common to the planning board and municipal environmental commission shall be deemed a Class II member of the planning board. For the purpose of this section, membership on a municipal board or commission whose function is advisory in nature, and the establishment of which is discretionary and not required by statute, shall not be considered the holding of municipal office.

b. The term of the member composing Class I shall correspond to the mayor's or manager's official tenure or if the member is the mayor's designee in the absence of the mayor, the designee shall serve at the pleasure of the mayor during the mayor's official tenure. The terms of the members composing Class II and Class III shall be for one year or terminate at the completion of their respective terms of office, whichever occurs first, except for a Class II member who is also a member of the environmental commission. The term of a Class II or Class IV member who is also a member of the environmental commission shall be for three years or terminate at the completion of his term of office as a member of the environmental commission, whichever occurs first. The term of a Class IV member who is also a member of the board of adjustment or board of education shall terminate whenever he is no longer a member of such other body or at the completion of his Class IV term, whichever occurs first. The terms of all Class IV members first appointed under this

act shall be so determined that to the greatest practicable extent the expiration of such terms shall be distributed evenly over the first four years after their appointments; provided that the initial Class IV term of no member shall exceed four years. Thereafter, the Class IV term of each such member shall be four years. If a vacancy in any class shall occur otherwise than by expiration of the planning board term, it shall be filled by appointment, as above provided, for the unexpired term. No member of the planning board shall be permitted to act on any matter in which he has, either directly or indirectly, any personal or financial interest. Any member other than a Class I member, after a public hearing if he requests one, may be removed by the governing body for cause.

c. In any municipality in which the term of the municipal governing body commences on January 1, the governing body may, by ordinance, provide that the term of appointment of any class of member of the planning board appointed pursuant to this section shall commence on January 1. In any municipality in which the term of the municipal governing body commences on July 1, the governing body may, by ordinance, provide that the term of appointment of any class of member appointed pursuant to this section commence on July 1.

**Adopted.** L. 1975, c. 291, §14. **Amended.** L. 1978, c. 37, §1; L. 1979, c. 216, §12; L. 1985, c. 516, §7; L. 1990, c. 130, §1, effective December 19, 1990; L. 1991, c. 256, §4, effective August 13, 1991; L. 1994, c. 158, §1, effective December 9, 1994; L. 1998, c. 95, §5, effective November 1, 1998.

**40:55D-23.1. Alternate members.** The governing body of any municipality in which the planning board exercises the powers of the board of adjustment pursuant to subsection c. of section 16 of P.L.1975, c.291 (C.40:55D-25) may, by ordinance, provide for the appointment to the planning board of not more than four alternate members, who shall be municipal residents. The governing body of any municipality with a separate planning board and board of adjustment may, by ordinance, provide for the appointment to the planning board of not more than two alternate members, who shall be municipal residents.

Alternate members shall be appointed by the appointing authority for Class IV members, and shall meet the qualifications of Class IV members of nine-member planning boards. Alternate members shall be designated at the time of appointment by the mayor as "Alternate No. 1" and "Alternate No. 2," and, in the case of a municipality in which four alternates have been appointed, "Alternate No. 1," "Alternate No. 2," "Alternate No. 3," and "Alternate No. 4." The terms of the alternate members shall be for two years, except that the terms of the alternate members shall be such that the term of not more than one alternate member shall expire in any one year; provided, however, that in any municipality in which four alternates have been appointed, the term of not more than two alternate members shall expire in any one year; and provided further that in no instance shall the terms of the alternate members first appointed exceed two years. A vacancy occurring otherwise than by expiration of term shall be filled by the appointing authority for the unexpired term only.

No alternate member shall be permitted to act on any matter in which he has either directly or indirectly any personal or financial interest. An alternate member may, after public hearing if he requests one, be removed by the governing body for cause.

Alternate members may participate in all matters but may not vote except in the absence or disqualification of a regular member of any class. Participation of alternate members shall not be deemed to increase the size of the planning board established by ordinance of the governing body pursuant to section 14 of P.L.1975, c.291 (C.40:55D-23). A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.

**Adopted.** L. 1979, c. 216, §13. **Amended.** L. 1998, c. 95, §6, effective November 1, 1998; L. 2000, c. 150, §1, effective November 9, 2000.

**40:55D-23.2. Lack of quorum; board of adjustment members to serve as temporary members.** If the planning board lacks a quorum because any of its regular or alternate members is prohibited by subsection b. of section 14 of P.L.1975, c.291 (C.40:55D-23) or section 13 of P.L.1979, c.216 (C.40:55D-23.1) from acting on a matter due to the member's personal or financial interests therein, regular members of the board of adjustment shall be called upon to serve, for that matter only, as temporary members of the planning board in order of seniority of continuous service to the board of adjustment until there are the minimum number of members necessary to constitute a quorum to act upon the matter without any personal or financial interest therein, whether direct or indirect. If a choice has to be made between regular members of equal seniority, the chairman of the board of adjustment shall make the choice.

**Adopted.** L. 1991, c. 256, §5, effective August 13, 1991.

**40:55D-23.3. Preparation, offering of basic course in land use law and planning; requirement.** a. The Commissioner of Community Affairs shall cause to be prepared and offered a basic course in land use law and planning within six months from the effective date of P.L.2005, c.133 (C.40:55D-23.3 et al.) for current and prospective members and alternate members of local planning boards pursuant to section 14 of P.L.1975, c.291 (C.40:55D-23) and section 13 of P.L.1979, c.216 (C.40:55D-23.1), zoning boards of adjustment pursuant to section 56 of P.L.1975, c.291 (C.40:55D-69), and supplemental zoning boards of adjustment pursuant to section 1 of P.L.2019, c.225 (C.40:55D-69.2), and combined boards as authorized under law. The basic course to be prepared and offered pursuant to this section shall consist of no more than five hours of scheduled instruction and shall be structured so that a member may satisfy this requirement within one calendar day. The commissioner shall work in conjunction with the New Jersey Planning Officials in establishing standards for curriculum and administration of the course of study.

b. On or after the first date on which a course in land use law and planning is offered, except as otherwise provided in section 3 of P.L.2005, c.133 (C.40:55D-23.4), a person shall not be seated as a first-term member or alternate member of a local planning board pursuant to section 14 of P.L.1975, c.291 (C.40:55D-23) or section 13 of P.L.1979, c.216 (C.40:55D-23.1), a zoning board of adjustment pursuant to section 56 of P.L.1975, c.291 (C.40:55D-69) or a combined board as authorized under law, unless the person agrees to take the basic course required to be offered under subsection a. of this section, which the person shall successfully complete within 18 months of assuming board membership in order to retain board membership. A person shall not be seated as a regular member of a supplemental zoning board of adjustment established pursuant to section 1 of P.L.2019, c.225 (C.40:55D-69.2) unless the person agrees to take the basic course offered under subsection a. of this section and successfully completes the course within six months of assuming board membership.

c. Except as otherwise provided in section 3 of P.L.2005, c.133 (C.40:55D-23.4), any person who is serving as a member or alternate member of a planning board or zoning board of adjustment or combined board as authorized under law on the first date on which a course in land use law and planning is offered shall be required to complete that course within 18 months of the date upon which the course is first offered in order to retain membership on that board.

d. A hearing or proceeding held, or decision or recommendation made, by a planning board or zoning board of adjustment shall not be invalidated if a member has participated in the hearing or proceeding or in the decision making or recommendation and that member is subsequently found not to have completed the basic course in land use law and planning required pursuant to P.L.2005, c.133 (C.40:55D-23.3 et al.).

**Adopted.** L. 2005, c. 133, §2, effective July 7, 2005. **Amended.** L. 2019, c. 225, §2, effective August 9, 2019.

**40:55D-23.4. Exemptions from educational requirements.** The following persons shall be exempt from the educational requirements established pursuant to section 2 of P.L.2005, c.133 (C.40:55D-23.3):

a. (1) The mayor or person designated to serve on a planning board in the absence of a mayor who serves as a Class I member pursuant to section 14 of P.L.1975, c.291 (C.40:55D-23);

(2) A member of the governing body serving as a Class III member pursuant to section 14 of P.L.1975, c.291 (C.40:55D-23);

b. Any person who is licensed as a professional planner and maintains a certificate of license issued pursuant to chapter 14A of Title 45 of the Revised Statutes which is current as of the date upon which that person would otherwise be required to demonstrate compliance with the provisions of subsection b. or c. of section 2 of P.L.2005, c.133 (C.40:55D-23.3);

c. Any person who offers proof of having completed a more extensive course in land use law and planning than that required by section 2 of P.L.2005, c.133 (C.40:55D-23.3) within 12 months of the date upon which that person would otherwise be required to demonstrate compliance with the provisions of subsection b. or c. of section 2 of P.L.2005, c.133 (C.40:55D-23.3) and which, in the determination of the commissioner, is equivalent to or more extensive than that course offered pursuant to subsection a. of section 2 of P.L.2005, c.133 (C.40:55D-23.3).

**Adopted.** L. 2005, c. 133, §3, effective July 7, 2005.

**40:55D-24. Organization of planning board.** The planning board shall elect a chairman and vice chairman from the members of Class IV, select a secretary who may or may not be a member or alternate member of the planning board or a municipal employee, and create and fill such other

offices as established by ordinance. An alternate member shall not serve as chairman or vice-chairman of the planning board. It may employ, or contract for, and fix the compensation of legal counsel, other than the municipal attorney, and experts, and other staff and services as it may deem necessary, not exceeding, exclusive of gifts or grants, the amount appropriated by the governing body for its use. The governing body shall make provision in its budget and appropriate funds for the expenses of the planning board.

**Adopted.** L. 1975, c. 291, §15. **Amended.** L. 1998, c. 95, §7, effective November 1, 1998.

**40:55D-25. Powers of planning board.** a. The planning board shall follow the provisions of this act and shall accordingly exercise its power in regard to:

- (1) The master plan pursuant to article 3 [40:55D-28 et seq.];
- (2) Subdivision control and site plan review pursuant to article 6 [40:55D-37 et seq.];
- (3) The official map pursuant to article 5 [40:55D-32 et seq.];
- (4) The zoning ordinance including conditional uses pursuant to article 8 [40:55D-62 et seq.];
- (5) The capital improvement program pursuant to article 4 [40:55D-29 et seq.];
- (6) Variances and certain building permits in conjunction with subdivision, site plan and conditional use approval pursuant to article 7 [40:55D-60 et seq.].

b. The planning board may:

- (1) Participate in the preparation and review of programs or plans required by State or federal law or regulation;
- (2) Assemble data on a continuing basis as part of a continuous planning process; and
- (3) Perform such other advisory duties as are assigned to it by ordinance or resolution of the governing body for the aid and assistance of the governing body or other agencies or officers.

c. (1) In a municipality having a population of 15,000 or less, a nine-member planning board, if so provided by ordinance, shall exercise, to the same extent and subject to the same restrictions, all the powers of a board of adjustment; but the Class I and the Class III members shall not participate in the consideration of applications for development which involve relief pursuant to subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70).

(2) In any municipality, a nine-member planning board, if so provided by ordinance, subject to voter referendum, shall exercise, to the same extent and subject to the same restrictions, all the powers of a board of adjustment; but the Class I and the Class III members shall not participate in the consideration of applications for development which involve relief pursuant to subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70).

d. In a municipality having a population of 2,500 or less, the planning board, if so provided by ordinance, shall exercise, to the same extent and subject to the same restrictions, all of the powers of an historic preservation commission, provided that at least one planning board member meets the qualifications of a Class A member of an historic preservation commission and at least one member meets the qualifications of a Class B member of that commission.

e. In any municipality in which the planning board exercises the power of a zoning board of adjustment pursuant to subsection c. of this section, a zoning board of adjustment may be appointed pursuant to law, subject to voter referendum permitting reconstitution of the board. The public question shall be initiated through an ordinance adopted by the governing body.

**Adopted.** L. 1975, c. 291, §16. **Amended.** L. 1985, c. 516, §8; L. 1991, c. 199, §2, effective July 9, 1991; L. 1994, c. 186, §1, effective December 23, 1994; L. 1996, c. 113, §8, effective September 5, 1996; L. 1999, c. 27, §1, effective February 24, 1999.

**40:55D-26. Referral powers.** a. Prior to the adoption of a development regulation, revision, or amendment thereto, the planning board shall make and transmit to the governing body, within 35 days after referral, a report including identification of any provisions in the proposed development regulation, revision or amendment which are inconsistent with the master plan and recommendations concerning these inconsistencies and any other matters as the board deems appropriate. The governing body, when considering the adoption of a development regulation, revision or amendment thereto, shall review the report of the planning board and may disapprove or change any recommendation by a vote of a majority of its full authorized membership and shall record in its minutes the reasons for not following such recommendation. Failure of the planning board to transmit its report within the 35-day period provided herein shall relieve the governing body from the requirements of this subsection in regard to the proposed development regulation, revision or amendment thereto referred to the planning board. Nothing in this section shall be construed as diminishing the application of the provisions of section 23 of P.L. 1975, c. 291 (C. 40:55D-32) to any official map or an amendment or revision thereto or of subsection a. of section

49 of P.L. 1975, c. 291 (C. 40:55D-62) to any zoning ordinance or any amendment or revision thereto.

b. The governing body may by ordinance provide for the reference of any matter or class of matters to the planning board before final action thereon by a municipal body or municipal officer having final authority thereon, except of any matter under the jurisdiction of the board of adjustment. Whenever the planning board shall have made a recommendation regarding a matter authorized by this act to another municipal body, such recommendation may be rejected only by a majority of the full authorized membership of such other body.

**Adopted.** L. 1975, c. 291, §17. **Amended.** L. 1984, c. 20, §7; L. 1985, c. 516, §10.

**40:55D-27. Citizens advisory committee; environmental commission.** a. After the appointment of a planning board, the mayor may appoint one or more persons as a citizens' advisory committee to assist or collaborate with the planning board in its duties, but such person or persons shall have no power to vote or take other action required of the board. Such person or persons shall serve at the pleasure of the mayor.

b. Whenever the environmental commission has prepared and submitted to the planning board and the board of adjustment an index of the natural resources of the municipality, the planning board or the board of adjustment shall make available to the environmental commission an informational copy of every application for development submitted to either board. Failure of the planning board or board of adjustment to make such informational copy available to the environmental commission shall not invalidate any hearing or proceeding.

**Adopted.** L. 1975, c. 291, §18. **Amended.** L. 1977, c. 49, §1.

### ARTICLE 3. MASTER PLAN.

**40:55D-28. Preparation; contents; modification.** a. The planning board may prepare and, after public hearing, adopt or amend a master plan or component parts thereof, to guide the use of lands within the municipality in a manner which protects public health and safety and promotes the general welfare.

b. The master plan shall generally comprise a report or statement and land use and development proposals, with maps, diagrams and text, presenting, at least the following elements (1) and (2) and, where appropriate, the following elements (3) through (17):

(1) A statement of objectives, principles, assumptions, policies and standards upon which the constituent proposals for the physical, economic and social development of the municipality are based;

(2) A land use plan element

(a) taking into account and stating its relationship to the statement provided for in paragraph (1) hereof, and other master plan elements provided for in paragraphs (3) through (17) hereof and natural conditions, including, but not necessarily limited to, topography, soil conditions, water supply, drainage, flood plain areas, marshes, and woodlands;

(b) showing the existing and proposed location, extent and intensity of development of land to be used in the future for varying types of residential, commercial, industrial, agricultural, recreational, open space, educational and other public and private purposes or combination of purposes including any provisions for cluster development; and stating the relationship thereof to the existing and any proposed zone plan and zoning ordinance;

(c) showing the existing and proposed location of any airports and the boundaries of any airport safety zones delineated pursuant to the "Air Safety and Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et al.);

(d) including a statement of the standards of population density and development intensity recommended for the municipality;

(e) showing the existing and proposed location of military facilities and incorporating strategies to minimize undue encroachment upon, and conflicts with, military facilities, including but not limited to: limiting heights of buildings and structures nearby flight paths or sight lines of aircraft; buffering residential areas from noise associated with a military facility; and allowing for the potential expansion of military facilities;

(f) including, for any land use plan element adopted after the effective date of P.L.2017, c.275, a statement of strategy concerning:

(i) smart growth which, in part, shall consider potential locations for the installation of electric vehicle charging stations,

(ii) storm resiliency with respect to energy supply, flood-prone areas, and environmental infrastructure, and  
(iii) environmental sustainability;  
(g) showing the existing and proposed location of public electric vehicle charging infrastructure; and

(h) including, for any land use plan element adopted after the effective date of P.L.2021, c.6, a climate change-related hazard vulnerability assessment which shall (i) analyze current and future threats to, and vulnerabilities of, the municipality associated with climate change-related natural hazards, including, but not limited to increased temperatures, drought, flooding, hurricanes, and sea-level rise; (ii) include a build-out analysis of future residential, commercial, industrial, and other development in the municipality, and an assessment of the threats and vulnerabilities identified in subsubparagraph (i) of this subparagraph related to that development; (iii) identify critical facilities, utilities, roadways, and other infrastructure that is necessary for evacuation purposes and for sustaining quality of life during a natural disaster, to be maintained at all times in an operational state; (iv) analyze the potential impact of natural hazards on relevant components and elements of the master plan; (v) provide strategies and design standards that may be implemented to reduce or avoid risks associated with natural hazards; (vi) include a specific policy statement on the consistency, coordination, and integration of the climate-change related hazard vulnerability assessment with any existing or proposed natural hazard mitigation plan, floodplain management plan, comprehensive emergency management plan, emergency response plan, post-disaster recovery plan, or capital improvement plan; and (vii) rely on the most recent natural hazard projections and best available science provided by the New Jersey Department of Environmental Protection;

(3) A housing plan element pursuant to section 10 of P.L.1985, c.222 (C.52:27D-310), including, but not limited to, residential standards and proposals for the construction and improvement of housing;

(4) A circulation plan element showing the location and types of facilities for all modes of transportation required for the efficient movement of people and goods into, about, and through the municipality, taking into account the functional highway classification system of the Federal Highway Administration, the types, locations, conditions and availability of existing and proposed transportation facilities, including air, water, road and rail, and identifying existing and proposed locations for public electric vehicle charging infrastructure;

(5) A utility service plan element analyzing the need for and showing the future general location of water supply and distribution facilities, drainage and flood control facilities, sewerage and waste treatment, solid waste disposal and provision for other related utilities, and including any storm water management plan required pursuant to the provisions of P.L.1981, c.32 (C.40:55D-93 et al.). If a municipality prepares a utility service plan element as a condition for adopting a development transfer ordinance pursuant to subsection c. of section 4 of P.L.2004, c.2 (C.40:55D-140), the plan element shall address the provision of utilities in the receiving zone as provided thereunder;

(6) A community facilities plan element showing the existing and proposed location and type of educational or cultural facilities, historic sites, libraries, hospitals, firehouses, police stations and other related facilities, including their relation to the surrounding areas;

(7) A recreation plan element showing a comprehensive system of areas and public sites for recreation;

(8) A conservation plan element providing for the preservation, conservation, and utilization of natural resources, including, to the extent appropriate, energy, open space, water supply, forests, soil, marshes, wetlands, harbors, rivers and other waters, fisheries, endangered or threatened species wildlife and other resources, and which systemically analyzes the impact of each other component and element of the master plan on the present and future preservation, conservation and utilization of those resources;

(9) An economic plan element considering all aspects of economic development and sustained economic vitality, including (a) a comparison of the types of employment expected to be provided by the economic development to be promoted with the characteristics of the labor pool resident in the municipality and nearby areas and (b) an analysis of the stability and diversity of the economic development to be promoted;

(10) An historic preservation plan element: (a) indicating the location and significance of historic sites and historic districts; (b) identifying the standards used to assess worthiness for historic site or

district identification; and (c) analyzing the impact of each component and element of the master plan on the preservation of historic sites and districts;

(11) Appendices or separate reports containing the technical foundation for the master plan and its constituent elements;

(12) A recycling plan element which incorporates the State Recycling Plan goals, including provisions for the collection, disposition and recycling of recyclable materials designated in the municipal recycling ordinance, and for the collection, disposition and recycling of recyclable materials within any development proposal for the construction of 50 or more units of single-family residential housing or 25 or more units of multi-family residential housing and any commercial or industrial development proposal for the utilization of 1,000 square feet or more of land;

(13) A farmland preservation plan element, which shall include: an inventory of farm properties and a map illustrating significant areas of agricultural land; a statement showing that municipal ordinances support and promote agriculture as a business; and a plan for preserving as much farmland as possible in the short term by leveraging moneys made available by P.L.1999, c.152 (C.13:8C-1 et al.) through a variety of mechanisms including, but not limited to, utilizing option agreements, installment purchases, and encouraging donations of permanent development easements;

(14) A development transfer plan element which sets forth the public purposes, the locations of sending and receiving zones and the technical details of a development transfer program based on the provisions of section 5 of P.L.2004, c.2 (C.40:55D-141);

(15) An educational facilities plan element which incorporates the purposes and goals of the “long-range facilities plan” required to be submitted to the Commissioner of Education by a school district pursuant to section 4 of P.L.2000, c.72 (C.18A:7G-4);

(16) A green buildings and environmental sustainability plan element, which shall provide for, encourage, and promote the efficient use of natural resources and the installation and usage of renewable energy systems; consider, encourage and promote the development of public electric vehicle charging infrastructure in locations appropriate for their development, including but not limited to, commercial districts, areas proximate to public transportation and transit facilities and transportation corridors, and public rest stops; consider the impact of buildings on the local, regional and global environment; allow ecosystems to function naturally; conserve and reuse water; treat storm water on-site; and optimize climatic conditions through site orientation and design; and

(17) A public access plan element that provides for, encourages, and promotes permanently protected public access to all tidal waters and adjacent shorelines consistent with the public trust doctrine, and which shall include a map and inventory of public access points, public facilities that support access, parking, boat ramps, and marinas; an assessment of the need for additional public access; a statement of goals and administrative mechanisms to ensure that access will be permanently protected; and a strategy that describes the forms of access to satisfy the need for such access with an implementation schedule and tools for implementation.

c. The master plan and its plan elements may be divided into subplans and subplan elements projected according to periods of time or staging sequences.

d. The master plan shall include a specific policy statement indicating the relationship of the proposed development of the municipality, as developed in the master plan to (1) the master plans of contiguous municipalities, (2) the master plan of the county in which the municipality is located, (3) the State Development and Redevelopment Plan adopted pursuant to the “State Planning Act,” sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and (4) the district solid waste management plan required pursuant to the provisions of the “Solid Waste Management Act,” P.L.1970, c.39 (C.13:1E-1 et seq.) of the county in which the municipality is located.

In the case of a municipality situated within the Highlands Region, as defined in section 3 of P.L.2004, c.120 (C.13:20-3), the master plan shall include a specific policy statement indicating the relationship of the proposed development of the municipality, as developed in the master plan, to the Highlands regional master plan adopted pursuant to section 8 of P.L.2004, c.120 (C.13:20-8).

**Adopted.** L. 1975, c. 291, §19. **Amended.** L. 1980, c. 146, §2; L. 1983, c. 260, §10; L. 1985, c. 222, §29; L. 1985, c. 398, §16; L. 1985, c. 516, §11; L. 1987, c. 102, §26; L. 1991, c. 199, §3, effective July 9, 1991; L. 1991, c. 445, §7, effective July 16, 1992; L. 1999, c. 180, §2, effective August 12, 1999; L. 2004, c. 2, §37, effective September 25, 2004; L. 2004, c. 120, §60, effective August 10, 2004; L. 2007, c. 137, §59, effective August 6, 2007; L. 2008, c. 54, §1, effective August 5, 2008; L. 2013, c. 106, §6, effective August 7, 2013; L. 2016, c. 21, §4, effective August 1, 2016; L. 2017, c. 275, §1, effective January 8, 2018; L. 2019, c. 81, §7, effective July 2, 2019; L. 2019, c. 267, §1, effective November 6, 2019; L. 2021, c. 6, §1, effective February 4, 2021.

**40:55D-28.1. Provision of technical assistance.** Upon request by a planning board, the Department of Environmental Protection shall provide technical assistance, as practicable, to a municipality preparing a climate change related hazard vulnerability assessment pursuant to subparagraph (h) of paragraph (2) of subsection b. of section 19 of P.L.1975, c.291 (C.40:55D-28).

**Adopted.** L. 2021, c. 6, §2, effective February 4, 2021.

#### **ARTICLE 4. CAPITAL IMPROVEMENTS PROGRAM AND PROJECT REVIEW.**

**40:55D-29. Preparation of capital improvement program.** a. The governing body may authorize the planning board from time to time to prepare a program of municipal capital improvement projects projected over a term of at least 6 years, and amendments thereto. Such program may encompass major projects being currently undertaken or future projects to be undertaken, with federal, State, county and other public funds or under federal, State or county supervision. The first year of such program shall, upon adoption by the governing body, constitute the capital budget of the municipality as required by N.J.S.40A:4-43 et seq. The program shall classify projects in regard to the urgency and need for realization, and shall recommend a time sequence for their implementation. The program may also contain the estimated cost of each project and indicate probable operating and maintenance costs and probable revenues, if any, as well as existing sources of funds or the need for additional sources of funds for the implementation and operation of each project. The program shall, as far as possible, be based on existing information in the possession of the departments and agencies of the municipality and shall take into account public facility needs indicated by the prospective development shown in the master plan of the municipality or as permitted by other municipal land use controls.

In preparing the program, the planning board shall confer, in a manner deemed appropriate by the board, with the mayor, the chief fiscal officer, other municipal officials and agencies, and the school board or boards.

Any such program shall include an estimate of the displacement of persons and establishments caused by each recommended project.

b. In addition to any of the requirements in subsection a. of this section, whenever the planning board is authorized and directed to prepare a capital improvements program, every municipal department, authority or agency shall, upon request of the planning board, transmit to said board a statement of all capital projects proposed to be undertaken by such municipal department, authority or agency, during the term of the program, for study, advice and recommendation by the planning board.

c. In addition to all of the other requirements of this section, any municipality that intends to provide for the transfer of development within its jurisdiction pursuant to section 3 of P.L.2004, c.2 (C.40:55D-139) shall include within its capital improvement program provision for those capital projects to be undertaken in the receiving zone or zones required as a condition for adopting a development transfer ordinance pursuant to subsection b. of section 4 of P.L.2004, c.2 (C.40:55D-140).

**Adopted.** L. 1975, c. 291, §20. **Amended.** L. 2004, c. 2, §38, effective September 25, 2004.

**40:55D-30. Adoption of capital improvement program.** Whenever the planning board has prepared a capital improvement program pursuant to section 20 of this act [40:55D-29], it shall recommend such program to the governing body which may adopt such program with any modification approved by affirmative vote of a majority of the full authorized membership of the governing body and with the reasons for said modification recorded in the minutes.

**Adopted.** L. 1975, c. 291, §21.

**40:55D-31. Review of capital projects.** a. Whenever the planning board shall have adopted any portion of the master plan, the governing body or other public agency having jurisdiction over the subject matter, before taking action necessitating the expenditure of any public funds, incidental to the location, character or extent of such project, shall refer the action involving such specific project to the planning board for review and recommendation in conjunction with such master plan and shall not act thereon, without such recommendation or until 45 days have elapsed after such reference without receiving such recommendation. This requirement shall apply to action by a housing, parking, highway, special district, or other authority, redevelopment agency, school board or other similar public agency, State, county or municipal. In addition, this requirement shall apply

to any public entity taking any action to permit the location, erection, use or maintenance of an outdoor advertising sign required to be permitted pursuant to P.L.1991, c.413 (C.27:5-5 et seq.).

b. The planning board shall review and issue findings concerning any long-range facilities plan submitted to the board pursuant to the "Educational Facilities Construction and Financing Act," P.L.2000, c.72 (C.18A:7G-1 et al.), for the purpose of review of the extent to which the long-range facilities plan is informed by, and consistent with, at least the land use plan element and the housing element contained within the municipal master plan adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) and such other elements of the municipal master plan as the planning board deems necessary to determine whether the prospective sites for school facilities contained in the long-range facilities plan promote more effective and efficient coordination of school construction with the development efforts of the municipality. The planning board shall devote at least one full meeting of the board to presentation and review of the long-range facilities plan prior to adoption of a resolution setting forth the board's findings.

**Adopted.** L. 1975, c. 291, §22. **Amended.** L. 2000, c. 72, §55, effective July 18, 2000; L. 2004, c. 42, §7, effective June 29, 2004.

## ARTICLE 5. THE OFFICIAL MAP.

**40:55D-32. Establish an official map.** The governing body may by ordinance adopt or amend an official map of the municipality, which shall reflect the appropriate provisions of any municipal master plan; provided that the governing body may adopt an official map or an amendment or revision thereto which, in whole or in part, is inconsistent with the appropriate designations in the subplan elements of the master plan, but only by the affirmative vote of a majority of its full authorized membership with the reasons for so acting recorded in the minutes when adopting the official map. Prior to the hearing on the adoption of any official map or any amendment thereto, the governing body shall refer the proposed official map or amendment to the planning board pursuant to subsection 17a. of this act [40:55D-26].

The official map shall be deemed conclusive with respect to the location and width of streets and public drainage ways and the location and extent of flood control basins and public areas, whether or not such streets, ways, basins or areas are improved or unimproved or are in actual physical existence. Upon receiving an application for development, the municipality may reserve for future public use, the aforesaid streets, ways, basins, and areas in the manner provided in section 32 [40:55D-44].

**Adopted.** L. 1975, c. 291, §23.

**40:55D-33. Change or addition to map.** The approval by the municipality by ordinance under the provisions of any law other than as contained in this article of the layout, widening, changing the course of or closing of any street, or the widening or changing the course of any public drainage way or changing the boundaries of a flood control basin or public area, shall be subject to relevant provisions of this act.

**Adopted.** L. 1975, c. 291, §24.

**40:55D-34. Issuance of permits for buildings or structures.** For purpose of preserving the integrity of the official map of a municipality no permit shall be issued for any building or structure in the bed of any street or public drainage way, flood control basin or public area reserved pursuant to section 23 of P.L.1975, c.291 (C.40:55D-32) as shown on the official map, or shown on a plat filed pursuant to this act before adoption of the official map, except as herein provided. Whenever one or more parcels of land, upon which is located the bed of such a mapped street or public drainage way, flood control basin or public area reserved pursuant to section 23 of P.L.1975, c.291 (C.40:55D-32), cannot yield a reasonable return to the owner unless a building permit is granted, the board of adjustment, in any municipality which has established such a board, may, in a specific case, by an affirmative vote of a majority of the full authorized membership of the board, direct the issuance of a permit for a building or structure in the bed of such mapped street or public drainage way or flood control basin or public area reserved pursuant to section 23 of P.L.1975, c.291 (C.40:55D-32), which will as little as practicable increase the cost of opening such street, or tend to cause a minimum change of the official map and the board shall impose reasonable requirements as a condition of granting the permit so as to promote the health, morals, safety and general welfare of the public. Sections 59 through 62 of P.L.1975, c.291 (C.40:55D-72 through C.40:55D-75) shall apply to applications or appeals pursuant to this section. In any municipality in which there is no

board of adjustment, the planning board shall have the same powers and be subject to the same restrictions as provided in this section.

The board of adjustment shall not exercise the power otherwise granted by this section if the proposed development requires approval by the planning board of a subdivision, site plan or conditional use in conjunction with which the planning board has power to direct the issuance of a permit pursuant to subsection b. of section 47 of P.L.1975, c.291 (C.40:55D-60).

**Adopted.** L. 1975, c. 291, §25. **Amended.** L. 1991, c. 256, §6, effective August 13, 1991.

**40:55D-35. Building lot to abut street.** No permit for the erection of any building or structure shall be issued unless the lot abuts a street giving access to such proposed building or structure. Such street shall have been duly placed on the official map or shall be (1) an existing State, county or municipal street or highway, or (2) a street shown upon a plan approved by the planning board, or (3) a street on a plat duly filed in the office of the county recording officer prior to the passage of an ordinance under this act or any prior law which required prior approval of plats by the governing body or other authorized body. Before any such permit shall be issued, (1) such street shall have been certified to be suitably improved to the satisfaction of the governing body, or such suitable improvement shall have been assured by means of a performance guarantee, in accordance with standards and specifications for road improvements approved by the governing body, as adequate in respect to the public health, safety and general welfare of the special circumstance of the particular street and, (2) it shall have been established that the proposed access conforms with the standards of the State highway access management code adopted by the Commissioner of Transportation under section 3 of the "State Highway Access Management Act," P.L.1989, c.32 (C.27:7-91), in the case of a State highway, with the standards of any access management code adopted by the county under R.S. 27:16-1 in the case of a county road or highway, and with the standards of any municipal access management code adopted under R.S. 40:67-1 in the case of a municipal street or highway.

**Adopted.** L. 1975, c. 291, §26. **Amended.** L. 1989, c. 32, §23, effective May 24, 1989.

**40:55D-36. Appeals.** Where the enforcement of section 26 of P.L.1975, c.291 (C.40:55D-35) would entail practical difficulty or unnecessary hardship, or where the circumstances of the case do not require the building or structure to be related to a street, the board of adjustment may upon application or appeal, vary the application of section 26 of P.L.1975, c.291 (C.40:55D-35) and direct the issuance of a permit subject to conditions that will provide adequate access for firefighting equipment, ambulances and other emergency vehicles necessary for the protection of health and safety and that will protect any future street layout shown on the official map or on a general circulation plan element of the municipal master plan pursuant to paragraph (4) of subsection b. of section 19 of P.L.1975, c.291 (C.40:55D-28).

Sections 59 through 62 of P.L.1975, c.291 (C.40:55D-72 through C.40:55D-75) shall apply to applications or appeals pursuant to this section. In any municipality in which there is no board of adjustment, the planning board shall have the same powers and be subject to the same restrictions as provided in this section.

The board of adjustment shall not exercise the power otherwise granted by this section if the proposed development requires approval by the planning board of a subdivision, site plan or conditional use in conjunction with which the planning board has power to direct the issuance of a permit pursuant to subsection c. of section 47 of P.L.1975, c.291 (C.40:55D-60).

**Adopted.** L. 1975, c. 291, §27. **Amended.** L. 1991, c. 256, §7, effective August 13, 1991.

## **ARTICLE 6. SUBDIVISION AND SITE PLAN REVIEW AND APPROVAL.**

**40:55D-37. Grant of powers; referral of proposed ordinance; county planning board approval.** a. The governing body may by ordinance require approval of subdivision plats by resolution of the planning board as a condition for the filing of such plats with the county recording officer and approval of site plans by resolution of the planning board as a condition for the issuance of a permit for any development, except that subdivision or individual lot applications for detached one or two dwelling-unit buildings shall be exempt from such site plan review and approval; provided that the resolution of the board of adjustment shall substitute for that of the planning board whenever the board of adjustment has jurisdiction over a subdivision or site plan pursuant to subsection 63b. of this act [40:55D-76].

b. Prior to the hearing on adoption of an ordinance providing for planning board approval of either subdivisions or site plans or both or any amendment thereto, the governing body shall refer any such proposed ordinance or amendment thereto to the planning board pursuant to subsection 17a. of this act [40:55D-26].

c. Each application for subdivision approval, where required pursuant to section 5 of P.L.1968, c. 285 (C. 40:27-6.3), and each application for site plan approval, where required pursuant to section 8 of P.L.1968, c. 285 (C. 40:27-6.6) shall be submitted by the applicant to the county planning board for review or approval, as required by the aforesaid sections, and the municipal planning board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the county planning board or approval by the county planning board by its failure to report thereon within the required time period.

**Adopted.** L. 1975, c. 291, §28.

**40:55D-38. Contents of ordinance.** An ordinance requiring approval by the planning board of either subdivisions or site plans, or both, shall include the following:

a. Provisions, not inconsistent with other provisions of this act, for submission and processing of applications for development, including standards for preliminary and final approval and provisions for processing of final approval by stages or sections of development;

b. Provisions ensuring:

(1) Consistency of the layout or arrangement of the subdivision or land development with the requirements of the zoning ordinance;

(2) Streets in the subdivision or land development of sufficient width and suitable grade and suitably located to accommodate prospective traffic and to provide access for firefighting and emergency equipment to buildings and coordinated so as to compose a convenient system consistent with the official map, if any, and the circulation element of the master plan, if any, and so oriented as to permit, consistent with the reasonable utilization of land, the buildings constructed thereon to maximize solar gain; provided that no street of a width greater than 50 feet within the right-of-way lines shall be required unless said street constitutes an extension of an existing street of the greater width, or already has been shown on the master plan at the greater width, or already has been shown in greater width on the official map;

(3) Adequate water supply, drainage, shade trees, sewerage facilities and other utilities necessary for essential services to residents and occupants;

(4) Suitable size, shape and location for any area reserved for public use pursuant to section 32 of this act [40:55D-44];

(5) Reservation pursuant to section 31 of P.L.1975, c.291 (C.40:55D-53) of any open space to be set aside for use and benefit of the residents of a cluster development or a planned development, resulting from the application of standards of density or intensity of land use, contained in the zoning ordinance, pursuant to section 52 of P.L.1975, c.291 (C.40:55D-65);

(6) Regulation of land designated as subject to flooding, pursuant to subsection e. of section 52 of (6) Regulation of land designated as subject to flooding, pursuant to subsection e. of section 52 of P.L.1975, c.291 (C.40:55D-65), to avoid danger to life or property;

(7) Protection and conservation of soil from erosion by wind or water or from excavation or grading;

(8) Conformity with standards promulgated by the Commissioner of Transportation, pursuant to the "Air Safety and Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et seq.), for any airport hazard areas delineated under that act;

(9) Conformity with a municipal recycling ordinance required pursuant to section 6 of P.L.1987, c.102 (C.13:1E-99.16);

(10) Conformity with the State highway access management code adopted by the Commissioner of Transportation under section 3 of the "State Highway Access Management Act," P.L.1989, c.32 (C.27:7-91), with respect to any State highways within the municipality;

(11) Conformity with any access management code adopted by the county under R.S.27:16-1, with respect to any county roads within the municipality;

(12) Conformity with any municipal access management code adopted under R.S.40:67-1, with respect to municipal streets;

(13) Protection of potable water supply reservoirs from pollution or other degradation of water quality resulting from the development or other uses of surrounding land areas, which provisions

shall be in accordance with any siting, performance, or other standards or guidelines adopted therefor by the Department of Environmental Protection;

(14) Conformity with the public safety regulations concerning storm water detention facilities adopted pursuant to section 5 of P.L.1991, c.194 (C.40:55D-95.1) and reflected in storm water management plans and storm water management ordinances adopted pursuant to P.L.1981, c.32 (C.40:55D-93 et al.); and

(15) Conformity with the model ordinance promulgated by the Department of Environmental Protection and Department of Community Affairs pursuant to section 2 of P.L.1993, c.81 (C.13:1E-99.13a) regarding the inclusion of facilities for the collection or storage of source separated recyclable materials in any new multifamily housing development.

c. Provisions governing the standards for grading, improvement and construction of streets or drives and for any required walkways, curbs, gutters, streetlights, shade trees, fire hydrants and water, and drainage and sewerage facilities and other improvements as shall be found necessary, and provisions ensuring that such facilities shall be completed either prior to or subsequent to final approval of the subdivision or site plan by allowing the posting of performance guarantees by the developer;

d. Provisions ensuring that when a municipal zoning ordinance is in effect, a subdivision or site plan shall conform to the applicable provisions of the zoning ordinance, and where there is no zoning ordinance, appropriate standards shall be specified in an ordinance pursuant to this article; and

e. Provisions ensuring performance in substantial accordance with the final development plan; provided that the planning board may permit a deviation from the final plan, if caused by change of conditions beyond the control of the developer since the date of final approval, and the deviation would not substantially alter the character of the development or substantially impair the intent and purpose of the master plan and zoning ordinance.

**Adopted.** L. 1975, c. 291, §29. **Amended.** L. 1980, c. 146, §3; L. 1983, c. 260, §11; L. 1985, c. 516, §12; L. 1987, c. 102, §27; L. 1989, c. 32, §24, effective May 24, 1989; L. 1989, c. 208, §1, effective December 29, 1989, but shall remain inoperative until the Department of Environmental Protection has adopted the required standards and guidelines, and shall not apply to any subdivision or site plan application that has received final approval as of that date; L. 1991, c. 194, §4, effective December 30, 1991, except subparagraph b(13) shall remain inoperative until the Department of Environmental Protection has adopted the required standards and guidelines, and shall not apply to any subdivision or site plan application that has received final approval as of that date; L. 1991, c. 445, §8, effective July 16, 1992; L. 1993, c. 81, §1, effective March 17, 1993; L. 2013, c. 106, §7, effective August 7, 2013; L. 2013, c. 123, §1, effective August 9, 2013.

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

**Adopted.** L. 2010, c. 4, §9, effective April 22, 2010.

**40:55D-39. Discretionary contents of ordinance.** An ordinance requiring approval by the planning board of either subdivisions or site plans or both may include the following:

a. Provisions for off-tract water, sewer, drainage, and street improvements which are necessitated by a subdivision or land development, subject to the provisions of section 30 of P.L.1975, c.291 (C.40:55D-42);

b. Provisions for standards encouraging and promoting flexibility, and economy in layout and design through the use of planned development, cluster development or both; provided that such standards shall be appropriate to the type of development permitted; and provided further that the ordinance shall set forth the limits and extent of any special provisions applicable to planned developments and to cluster developments, considering the availability of existing and proposed infrastructure and the environmental characteristics of any area proposed for development and any area proposed for protection as open space, agricultural land, or historic site, so that the manner in which such special provisions differ from the standards otherwise applicable to subdivisions or site plans can be determined;

c. Provisions for planned development:

(1) Authorizing the planning board to grant general development plan approval to provide the increased flexibility desirable to promote mutual agreement between the applicant and the planning board on the basic scheme of a planned development and setting forth any variations from the ordinary standards for preliminary and final approval;

(2) Requiring that any common open space resulting from the application of standards for density, or intensity of land use, be set aside for the use and benefit of the owners or residents in such development subject to section 31 of P.L.1975, c.291 (C.40:55D-43);

(3) Setting forth how the amount and location of any common open space shall be determined and how its improvement and maintenance for common open space use shall be secured subject to section 31 of P.L.1975, c.291 (C.40:55D-43);

(4) Authorizing the planning board to allow for a greater concentration of density, or intensity of land use, within a section or sections of development, whether it be earlier, later or simultaneous in the development, than in others, in order to realize the preservation of agricultural lands, open space, and historic sites, or otherwise advance the purposes of P.L.1975, c.291 (C.40:55D-1 et seq.);

(5) Setting forth any requirement that the approval by the planning board of a greater concentration of density or intensity of land use for any section to be developed be offset by a smaller concentration in any completed prior stage or by an appropriate reservation of public open space or common open space on the remaining land, or preservation of land for historic or agricultural purposes, by grant of development restriction, easement, or by covenant in favor of the municipality; provided that such reservation shall, as far as practicable, defer the precise location of common open space until an application for final approval is filed, so that flexibility of development can be maintained;

(6) Setting forth any requirements for timing of development among the various types of uses and subgroups thereunder and, in the case of planned unit development and planned unit residential development, whether some nonresidential uses are required to be built before, after or at the same time as the residential uses.

d. Provisions ensuring in the case of a development which proposes construction over a period of years, the protection of the interests of the public and of the residents, occupants and owners of the proposed development in the total completion of the development.

e. Provisions that require as a condition for local municipal approval the submission of proof that no taxes or assessments for local improvements are due or delinquent on the property for which any subdivision, site plan, or planned development application is made.

f. Provisions for the creation of a Site Plan Review Advisory Board for the purpose of reviewing all site plan applications and making recommendations to the planning board in regard thereto.

g. Provisions for standards governing outdoor advertising signs required to be permitted pursuant to P.L.1991, c.413 (C.27:5-5 et seq.) including, but not limited to, the location, placement, size and design thereof.

h. Provisions for cluster development:

(1) Authorizing the planning board flexibility to approve a subdivision or site plan or both through mutual agreement with an applicant to allow for the clustering of development within a section or sections of development at a greater concentration of density or intensity of land use than established for the zoning district, in order to achieve the goal of permanently protecting land as public open space or common open space, or for historic or agricultural purposes.

(2) Requiring the placement of a development restriction on any land identified for preservation in accordance with section 9 of P.L.2013, c.104 (C.40:55D-39.1).

i. Provisions requiring a successor developer to furnish a performance guarantee as a replacement for a performance guarantee that was previously accepted in accordance with standards adopted by ordinance and regulations adopted pursuant to section 1 of P.L.1999, c.68 (C.40:55D-53a) and section 41 of P.L.1975, c.291 (C.40:55D-53), or this subsection, for the purpose of assuring the installation and maintenance of on-tract improvements, and releasing the predecessor obligor and surety, if any, from liability pursuant to its performance guarantee.

**Adopted.** L. 1975, c. 291, §29.1. **Amended.** L. 1987, c. 129, §2; L. 2004, c. 42, §8, effective June 29, 2004; L. 2013, c. 106, §8, effective August 7, 2013; L. 2013, c. 123, §2, effective August 9, 2013.

**40:55D-39.1. Provision for permanent protection of certain land.** a. An ordinance authorizing the planning board to approve planned developments, subdivisions, or site plans that allow for contiguous cluster or noncontiguous cluster shall provide for the permanent protection of land proposed to be preserved as public open space or common open space, as a historic site, or as agricultural land in accordance with the provisions set forth in this section.

b. Land identified for preservation as public open space shall be conveyed or dedicated by conservation restriction. A municipality may use a conservation restriction template prepared by the Department of Environmental Protection for this purpose. The Department of Environmental Protection shall make available to municipalities a conservation restriction template.

c. (1) Land identified for preservation as a historic site shall be conveyed or dedicated by historic preservation restriction. A municipality may use a historic preservation restriction template prepared by the New Jersey Historic Trust or obtain approval of the historic preservation restriction by the New Jersey Historic Trust. The New Jersey Historic Trust shall make available to municipalities a historic preservation restriction template.

(2) A municipality accepting a historic preservation restriction that has provided for and maintains an active historic preservation commission, consistent with sections 21 through 26 of P.L.1985, c.516 (C.40:55D-107 et seq.), may authorize the commission to establish a mechanism for annual monitoring and enforcement of the historic preservation restriction consistent with The Secretary of the Interior's Standards for the Treatment of Historic Properties, Part 68 of title 36, Code of Federal Regulations.

(3) A municipality accepting a historic preservation restriction that has not provided for or does not maintain an active historic preservation commission, consistent with sections 21 through 26 of P.L.1985, c.516 (C.40:55D-107 et seq.), or authorized the commission to establish a mechanism for annual monitoring and enforcement of the historic preservation restriction, may convey or authorize conveyance of the historic preservation restriction by municipal ordinance to a qualified public agency or non-profit preservation organization, as determined by the New Jersey Historic Trust, which has a commitment to administer, annually monitor, and enforce the terms of the historic preservation restriction consistent with The Secretary of the Interior's Standards for the Treatment of Historic Properties, Part 68 of title 36, Code of Federal Regulations.

d. (1) Land identified for preservation as agricultural land shall be conveyed or dedicated by agricultural restriction. A municipality shall use an agricultural restriction template prepared by the State Agriculture Development Committee or obtain approval of the agricultural restriction by the State Agriculture Development Committee. The State Agriculture Development Committee shall make available to municipalities an agricultural restriction template.

(2) An agricultural restriction may contain provisions:

(a) to allow limited non-agricultural uses which the State Agriculture Development Committee finds compatible with agricultural use and production;

(b) to allow future amendments to the area subject to the agricultural restriction in order to accommodate public improvements including but not limited to roadways, drainage facilities and other public infrastructure so long as the amendment results in only de minimis impact to the original area subject to the restriction;

(c) to allow the inclusion of existing dwelling units or limited additional future housing opportunities that directly support the property's agricultural operations and are appropriate to the scale of the preserved farmland.

(3) The State Agriculture Development Committee shall grant or deny approval of a proposed agricultural restriction within 60 days of receipt of a request therefore. If the State Agriculture Development Committee fails to act within this period, the failure shall be deemed to be an approval of the agricultural restriction.

(4) Municipalities authorizing agricultural restrictions shall have an adopted "Right to Farm" ordinance consistent with the model Right to Farm ordinance adopted by the State Agriculture Development Committee pursuant to the "Right to Farm Act," P.L.1983, c.31 (C.4:1C-1 et al.).

(5) Agricultural land subject to an agricultural restriction approved by the State Agriculture Development Committee shall be provided the right to farm benefits under the "Right to Farm Act," P.L.1983, c.31 (C.4:1C-1 et al.) and other benefits that may be provided pursuant to the "Agriculture Retention and Development Act," P.L.1983, c.32 (C.4:1C-11 et seq.).

e. Any development restriction shall be recorded in the office of the county recording officer prior to the start of construction.

f. Any development restriction shall be expressly enforceable by the municipality and the State of New Jersey and, if authorized by municipal ordinance, another public agency or non-profit conservation organization.

g. An ordinance authorizing the planning board to approve planned developments, subdivisions or site plans that allows for contiguous cluster or noncontiguous cluster may provide for:

(1) the assignment of bonus density or intensity of use, including, but not limited to, increased units, floor area ratio, height, or impervious cover in order to realize the preservation of agricultural lands, open space, and historic sites or otherwise advance the purposes of P.L.1975, c.291 (C.40:55D-1 et seq.);

(2) the conveyance of land that is subject to a preservation restriction to a separate person or entity.

h. An ordinance authorizing the planning board to approve planned developments, subdivisions or site plans that allows for contiguous cluster may authorize the owners of contiguous properties to jointly submit an application for development.

i. An ordinance authorizing the planning board to approve planned developments, subdivisions or site plans that allows for noncontiguous cluster:

(1) shall not authorize use of the development transfer provisions set forth in the "State Transfer of Development Rights Act," P.L.2004, c.2 (C.40:55D-137 et seq.);

(2) may provide that areas to be developed are developed in phases, provided that the terms and conditions intended to protect the interests of the public and of the residents, occupants and owners of the proposed development in the total completion of the development are adequate;

(3) shall provide that any noncontiguous cluster program is optional.

**Adopted.** L. 2013, c. 106, §9, effective August 7, 2013.

**40:55D-40. Discretionary contents of subdivision ordinance.** An ordinance requiring subdivision approval by the planning board pursuant to this article may also include:

a. Provisions for minor subdivision approval pursuant to section 35 of this act [40:55D-47]; and

b. Standards permitting lot-size averaging and encouraging and promoting flexibility, economy and environmental soundness in layout and design in accordance with which the planning board may approve the varying, within a conventional subdivision, of lot areas and dimensions, and yards and setbacks otherwise required by municipal development regulations; provided that the authorized density on the parcel or set of contiguous parcels is not exceeded; provided that such standards shall be appropriate to the type of development permitted. An ordinance authorizing the planning board to approve subdivisions with varying lot areas may set forth limitations, or impose no limitation, upon the extent of variation in lot areas.

**Adopted.** L. 1975, c. 291, §29.2. **Amended.** L. 2013, c. 106, §10, effective August 7, 2013.

**40:55D-40.1. Site improvement standards: definitions.** As used in this act:

"Board" means the Site Improvement Advisory Board established by this act;

"Commissioner" means the Commissioner of Community Affairs;

"Department" means the Department of Community Affairs; and

"Site improvement" means any construction work on, or improvement in connection with, residential development, and shall be limited to, streets, roads, parking facilities, sidewalks, drainage structures, and utilities.

**Adopted.** L. 1993, c. 32, §1, effective January 29, 1993.

**40:55D-40.2. Legislative findings and declarations.** The Legislature hereby finds and declares that:

a. The multiplicity of standards for subdivisions and site improvements that currently exists in this State increases the costs of housing without commensurate gains in the protection of the public health and safety;

b. It is in the public interest to avoid unnecessary cost in the construction process and uniform site improvement standards that are both sound and cost effective will advance this goal;

c. Adoption of uniform site improvement standards will satisfy the need to ensure predictability;

d. The public interest is best served by having development review based, to the greatest extent possible, upon sound, objective site improvement standards rather than upon discretionary design standards;

e. The goal of streamlining the development approval process by improving the efficiency of the application process is best served by the establishment of a uniform set of technical site

improvement standards for land development which represents a consensus of informed and interested parties and which adequately addresses their concerns;

f. In order to provide the widest possible range of design freedom and promote diversity, technical requirements should be based upon uniform site improvement standards; and

g. The policymaking aspects of development review are best separated from the making of technical determinations.

**Adopted.** L. 1993, c. 32, §2, effective January 29, 1993.

**40:55D-40.3. Site Improvement Advisory Board.** a. There is established in, but not of, the department a Site Improvement Advisory Board, to devise statewide site improvement standards pursuant to section 4 of P.L.1993, c.32 (C.40:55D-40.4). The board shall consist of the commissioner or the commissioner's designee, who shall be a non-voting member of the board, the Director of the Division of Codes and Standards in the Department of Community Affairs, who shall be a voting member of the board, the Executive Director of the New Jersey Housing and Mortgage Finance Agency, or the executive director's designee, who shall be a voting member of the board, and nine other voting members, to be appointed by the commissioner. The other members shall include two professional planners, one of whom serves as a planner for a governmental entity or whose professional experience is predominantly in the public sector and who has worked in the public sector for at least the previous five years and the other of whom serves as a planner in private practice and has particular expertise in private residential development and has been involved in private sector planning for at least the previous five years, and one representative each from:

- (1) The New Jersey Society of Professional Engineers;
- (2) The New Jersey Society of Municipal Engineers;
- (3) The New Jersey Association of County Engineers;
- (4) The New Jersey Federation of Planning Officials;
- (5) (Deleted by amendment, P.L.2024, c.2);
- (6) The New Jersey Builders' Association;
- (7) The New Jersey Institute of Technology;
- (8) The New Jersey State League of Municipalities.

b. Among the members to be appointed by the commissioner who are first appointed, four shall be appointed for terms of two years each, four shall be appointed for terms of three years each, and two shall be appointed for terms of four years each. Thereafter, each appointee shall serve for a term of four years. Vacancies in the membership shall be filled in the same manner as original appointments are made, for the unexpired term. The board shall select a chair from among its members. Members may be removed by the commissioner for cause.

c. Board members shall serve without compensation, but may be entitled to reimbursement, from moneys appropriated or otherwise made available for the purposes of this act, for expenses incurred in the performance of their duties.

**Adopted.** L. 1993, c. 32, §3, effective January 29, 1993. **Amended.** L. 2024, c. 2, §19, effective March 20, 2024, and shall apply to each new round of affordable housing obligations that begins following enactment.

**40:55D-40.4. Board to submit recommendations for statewide site improvement standards.**

a. The board shall, no later than 180 days following the appointment of its full membership, prepare and submit to the commissioner recommendations for Statewide site improvement standards for residential development. The site improvement standards shall implement the recommendations with respect to streets, off-street parking, water supply, sanitary sewers and storm water management of Article Six (with the exhibits appended thereto) of the January 1987 "Model Subdivision and Site Plan Ordinance" prepared for the department by The Center for Urban Policy Research at Rutgers, The State University, except to the extent that the recommendations set forth in the "Model Subdivision and Site Plan Ordinance" are inconsistent with the requirements of other law; provided, however, that, in the case of inconsistency between the "Model Subdivision and Site Plan Ordinance" and the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), the site improvement standards recommended by the board shall conform to the provisions of the "Model Subdivision and Site Plan Ordinance"; and provided, further, that the board may in developing its recommendations, replace or modify any of the specific standards set forth in the aforesaid model ordinance in light of any recommended site improvement standards promulgated under similarly authoritative auspices of any academic or professional institution or organization.

In addition to those recommended standards, the board shall develop, and shall submit with recommendation to the commissioner, a model application form for use throughout the State.

At the time the board submits its recommendations for Statewide site improvement standards and a model Statewide application form, the board shall submit to the commissioner, the Governor and the Legislature any recommendations it may deem necessary, in view of the recommended site improvement standards and the model statewide application form, for changes in the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

b. The commissioner shall review the recommendations submitted by the board and, following his review, shall establish, by regulation adopted pursuant to the "Administrative Procedure Act", P.L.1968, c.410 (C.52:14B-1 et seq.), a set of Statewide site improvement standards to be followed by municipalities in granting development approval pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.) and a standard application form that shall be used throughout the State. The commissioner shall promulgate the recommendations of the board with regard to Statewide site improvement standards without making a change in any recommended standard unless, in the commissioner's judgment, a standard would: (1) place an unfair economic burden on some municipalities or developers relative to others; or (2) result in a danger to the public health or safety. The commissioner may veto any site improvement standard on the abovementioned grounds; however, any veto of the commissioner may be overridden by a two-thirds vote of the board. The regulations shall be adopted within one year of their submission by the board to the commissioner.

c. A municipality or developer may seek a waiver of any site improvement standard adopted by the board in connection with a specific development if, in the judgment of the municipal engineer or the developer, to adhere to the standard would jeopardize the public health and safety. Any application for a waiver shall be submitted in writing to the commissioner, who shall direct the application to a technical subcommittee, as described below, if the commissioner deems the application to be justified according to the standards set forth in this subsection. The technical subcommittee shall consist of those representatives set forth in paragraphs (1), (2) and (6) of subsection a. of section 3 of this act appointed by the commissioner to serve on the Site Improvement Advisory Board. Any decision of the technical subcommittee shall be adopted by resolution explaining the subcommittee's rationale for granting the waiver. The subcommittee shall render its decision within 30 days of the commissioner's determination that the application is justified. Any decision of the technical subcommittee may be appealed to the entire board; however, the board shall render any final decision of an appeal within 10 days of the hearing on the appeal and the decision of the full board shall be final. The waiver process shall not extend the time guidelines which constrain development applications which are set forth in the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

d. The board shall annually review the regulations adopted pursuant to subsection b. of this section, and shall recommend to the commissioner any changes in those regulations which the board deems necessary based on recommended site improvement standards promulgated under the authoritative auspices of any academic or professional institution or organization. Any changes made in the regulations pursuant to this subsection shall be made according to the same procedure and shall be subject to the same waiver provisions as those set forth in subsections a., b. and c. of this section.

**Adopted.** L. 1993, c. 32, §4, effective January 29, 1993.

**40:55D-40.5. Statewide standards to supersede local standards.** Notwithstanding any provision to the contrary of the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), the standards set forth in the regulations adopted pursuant to subsection b. of section 4 of this act shall supersede any site improvement standards incorporated within the development ordinances of any municipality, as provided hereunder. The regulations adopted by the commissioner pursuant to subsection b. of section 4 of this act and any subsequent amendments thereto shall take effect 180 days following the adoption of those regulations and any municipal ordinances in effect on that date shall be deemed to have been repealed and have no further force or effect; provided, however, that the development ordinances of any municipality shall continue to govern any project which has received preliminary approval on or before the effective date of any site improvement standards or amendments adopted thereto.

**Adopted.** L. 1993, c. 32, §5, effective January 29, 1993.

**40:55D-40.6. Municipal zoning power not limited.** Nothing contained in this act shall in any way limit the zoning power of any municipality.

**Adopted.** L. 1993, c. 32, §6, effective January 29, 1993.

**40:55D-40.7. Other State or county law concerning site improvements not affected.** a. Nothing in this act shall be construed to modify the provisions of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.) or any regulations promulgated pursuant thereto and section 502 of the "National Parks and Recreation Act of 1978" (Pub.L 95-625).

b. Nothing in this act shall be construed to prohibit, preempt or in any way affect the exercise of any authority by the State or any county government with respect to site improvements conferred by any other State law or regulation promulgated thereunder.

**Adopted.** L. 1993, c. 32, §7, effective January 29, 1993.

**40:55D-41. Contents of site plan ordinance.** An ordinance requiring site plan review and approval pursuant to this article shall include and shall be limited to, except as provided in sections 29 and 29.1 of this act [40:55D-38; 40:55D-39] standards and requirements relating to:

- a. Preservation of existing natural resources on the site;
- b. Safe and efficient vehicular and pedestrian circulation, parking and loading;
- c. Screening, landscaping and location of structures;
- d. Exterior lighting needed for safety reasons in addition to any requirements for street lighting;
- e. Conservation of energy and use of renewable energy sources; and
- f. Recycling of designated recyclable materials.

**Adopted.** L. 1975, c. 291, §29.3. **Amended.** L. 1980, c. 146, §4; L. 1987, c. 102, §28.

**40:55D-42. Contribution for off-tract water, sewer, drainage, and street improvements.** The governing body may by ordinance adopt regulations requiring a developer, as a condition for approval of a subdivision or site plan, to pay the pro-rata share of the cost of providing only reasonable and necessary street improvements and water, sewerage and drainage facilities, and easements therefor, located off-tract but necessitated or required by construction or improvements within such subdivision or development. Such regulations shall be based on circulation and comprehensive utility service plans pursuant to subsections 19b.(4) and 19b.(5) of this act [40:55D-28], respectively, and shall establish fair and reasonable standards to determine the proportionate or pro-rata amount of the cost of such facilities that shall be borne by each developer or owner within a related and common area, which standards shall not be altered subsequent to preliminary approval. Where a developer pays the amount determined as his pro-rata share under protest he shall institute legal action within one year of such payment in order to preserve the right to a judicial determination as to the fairness and reasonableness of such amount.

**Adopted.** L. 1975, c. 291, §30. **Amended.** L. 1998, c. 95, §8, effective November 1, 1998.

**40:55D-43. Standards for the establishment of open space organization.** a. An ordinance pursuant to this article permitting planned unit development, planned unit residential development or cluster development may provide that the municipality or other governmental agency may, at any time and from time to time, accept the dedication of land or any interest therein for public use and maintenance, but the ordinance shall not require, as a condition of the approval of a planned development, that land proposed to be set aside for common open space be dedicated or made available to public use.

An ordinance pursuant to this article providing for planned unit development, planned unit residential development, or cluster development shall require that the developer provide for an organization for the ownership and maintenance of any open space for the benefit of owners or residents of the development, if said open space is not dedicated to the municipality or other governmental agency or otherwise conveyed to or owned by a separate person or entity. Such organization shall not be dissolved and the organization, person, or entity shall not dispose of any open space, by sale or otherwise, except to an organization conceived and established to own and maintain the open space for the benefit of such development, and thereafter such organization shall not be dissolved or the organization, person, or entity dispose of any of its open space without first offering to dedicate the same to the municipality or municipalities wherein the land is located.

b. In the event that such organization, person, or entity shall fail to maintain the open space in reasonable order and condition, the municipal body or officer designated by ordinance to administer this subsection may serve written notice upon such organization, person, or entity or upon the owners of the development setting forth the manner in which the organization, person, or entity has failed to maintain the open space in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be cured within 35 days thereof, and shall state the date and place of a hearing thereon which shall be held within 15 days of the notice. At such hearing, the

designated municipal body or officer, as the case may be, may modify the terms of the original notice as to deficiencies and may give a reasonable extension of time not to exceed 65 days within which they shall be cured. If the deficiencies set forth in the original notice or in the modification thereof shall not be cured within said 35 days or any permitted extension thereof, the municipality, in order to preserve the open space and maintain the same for a period of 1 year may enter upon and maintain such land. Said entry and maintenance shall not vest in the public any rights to use the open space except when the same is voluntarily dedicated to the public by the owners. Before the expiration of said year, the designated municipal body or officer, as the case may be, shall, upon its initiative or upon the request of the organization, person, or entity theretofore responsible for the maintenance of the open space, call a public hearing upon 15 days written notice to such organization, person, or entity and to the owners of the development, to be held by such municipal body or officer, at which hearing such organization, person, or entity and the owners of the development shall show cause why such maintenance by the municipality shall not, at the election of the municipality, continue for a succeeding year. If the designated municipal body or officer, as the case may be, shall determine that such organization, person, or entity is ready and able to maintain said open space in reasonable condition, the municipality shall cease to maintain said open space at the end of said year. If the municipal body or officer, as the case may be, shall determine such organization, person, or entity is not ready and able to maintain said open space in a reasonable condition, the municipality may, in its discretion, continue to maintain said open space during the next succeeding year, subject to a similar hearing and determination, in each year thereafter. The decision of the municipal body or officer in any such case shall constitute a final administrative decision subject to judicial review.

If a municipal body or officer is not designated by ordinance to administer this subsection, the governing body shall have the same powers and be subject to the same restrictions as provided in this subsection.

c. The cost of such maintenance by the municipality shall be assessed pro rata against the properties within the development that have a right of enjoyment of the open space in accordance with assessed value at the time of imposition of the lien, and shall become a lien and tax on said properties and be added to and be a part of the taxes to be levied and assessed thereon, and enforced and collected with interest by the same officers and in the same manner as other taxes.

**Adopted.** L. 1975, c. 291, §31. **Amended.** L. 2013, c. 106, §11, effective August 7, 2013.

**40:55D-44. Reservation of public areas.** If the master plan or the official map provides for the reservation of designated streets, public drainageways, flood control basins, or public areas within the proposed development, before approving a subdivision or site plan, the planning board may further require that such streets, ways, basins or areas be shown on the plat in locations and sizes suitable to their intended uses. The planning board may reserve the location and extent of such streets, ways, basins or areas shown on the plat for a period of 1 year after the approval of the final plat or within such further time as may be agreed to by the developer. Unless during such period or extension thereof the municipality shall have entered into a contract to purchase or institute condemnation proceedings according to law for the fee or a lesser interest in the land comprising such streets, ways, basins or areas, the developer shall not be bound by such reservations shown on the plat and may proceed to use such land for private use in accordance with applicable development regulations. The provisions of this section shall not apply to the streets and roads, flood control basins or public drainageways necessitated by the subdivision or land development and required for final approval.

The developer shall be entitled to just compensation for actual loss found to be caused by such temporary reservation and deprivation of use. In such instance, unless a lesser amount has previously been mutually agreed upon, just compensation shall be deemed to be the fair market value of an option to purchase the land reserved for the period of reservation; provided that determination of such fair market value shall include, but not be limited to, consideration of the real property taxes apportioned to the land reserved and prorated for the period of reservation. The developer shall be compensated for the reasonable increased cost of legal, engineering, or other professional services incurred in connection with obtaining subdivision approval or site plan approval, as the case may be, caused by the reservation. The municipality shall provide by ordinance for a procedure for the payment of all compensation payable under this section.

**Adopted.** L. 1975, c. 291, §32.

**40:55D-45. Findings for planned developments.** Every ordinance pursuant to this article that provides for planned developments shall require that prior to approval of such planned developments the planning board shall find the following facts and conclusions:

a. That departures by the proposed development from zoning regulations otherwise applicable to the subject property conform to the zoning ordinance standards pursuant to subsection 52c. of this act [40:55D-65];

b. That the proposals for maintenance and conservation of the common open space are reliable, and the amount, location and purpose of the common open space are adequate;

c. That provision through the physical design of the proposed development for public services, control over vehicular and pedestrian traffic, and the amenities of light and air, recreation and visual enjoyment are adequate;

d. That the proposed planned development will not have an unreasonably adverse impact upon the area in which it is proposed to be established;

e. In the case of a proposed development which contemplates construction over a period of years, that the terms and conditions intended to protect the interests of the public and of the residents, occupants and owners of the proposed development in the total completion of the development are adequate.

**Adopted.** L. 1975, c. 291, §33.

**40:55D-45.1. General development plan, required contents, effect.** a. The general development plan shall set forth the permitted number of dwelling units, the amount of nonresidential floor space, the residential density, and the nonresidential floor area ratio for the planned development, in its entirety, according to a schedule which sets forth the timing of the various sections of the development.

The planned development shall be developed in accordance with the general development plan approved by the planning board notwithstanding any provision of P.L. 1975, c. 291 (C. 40:55D-1 et seq.), or an ordinance or regulation adopted pursuant thereto after the effective date of the approval.

b. The term of the effect of the general development plan approval shall be determined by the planning board using the guidelines set forth in subsection c. of this section, except that the term of the effect of the approval shall not exceed 20 years from the date upon which the developer receives final approval of the first section of the planned development pursuant to P.L. 1975, c. 291 (C. 40:55D-1 et seq.).

c. In making its determination regarding the duration of the effect of approval of the development plan, the planning board shall consider: the number of dwelling units or amount of nonresidential floor area to be constructed, prevailing economic conditions, the timing schedule to be followed in completing the development and the likelihood of its fulfillment, the developer's capability of completing the proposed development, and the contents of the general development plan and any conditions which the planning board attaches to the approval thereof.

**Adopted.** L. 1987, c. 129, §3.

**40:55D-45.2. General development plan, permitted contents.** A general development plan may include, but not be limited to, the following:

a. A general land use plan at a scale specified by ordinance indicating the tract area and general locations of the land uses to be included in the planned development. The total number of dwelling units and amount of nonresidential floor area to be provided and proposed land area to be devoted to residential and nonresidential use shall be set forth. In addition, the proposed types of nonresidential uses to be included in the planned development shall be set forth, and the land area to be occupied by each proposed use shall be estimated. The density and intensity of use of the entire planned development shall be set forth, and a residential density and a nonresidential floor area ratio shall be provided;

b. A circulation plan showing the general location and types of transportation facilities, including facilities for pedestrian access, within the planned development and any proposed improvements to the existing transportation system outside the planned development;

c. An open space plan showing the proposed land area and general location of parks and any other land area to be set aside for conservation and recreational purposes and a general description of improvements proposed to be made thereon, including a plan for the operation and maintenance of parks and recreational lands;

d. A utility plan indicating the need for and showing the proposed location of sewage and water lines, any drainage facilities necessitated by the physical characteristics of the site, proposed methods for handling solid waste disposal, and a plan for the operation and maintenance of proposed utilities;

e. A storm water management plan setting forth the proposed method of controlling and managing storm water on the site;

f. An environmental inventory including a general description of the vegetation, soils, topography, geology, surface hydrology, climate and cultural resources of the site, existing man-made structures or features and the probable impact of the development on the environmental attributes of the site;

g. A community facility plan indicating the scope and type of supporting community facilities which may include, but not be limited to, educational or cultural facilities, historic sites, libraries, hospitals, firehouses, and police stations;

h. A housing plan outlining the number of housing units to be provided and the extent to which any housing obligation assigned to the municipality pursuant to P.L. 1985, c. 222 (C. 52:27D-301 et al.) will be fulfilled by the development;

i. A local service plan indicating those public services which the applicant proposes to provide and which may include, but not be limited to, water, sewer, cable and solid waste disposal;

j. A fiscal report describing the anticipated demand on municipal services to be generated by the planned development and any other financial impacts to be faced by municipalities or school districts as a result of the completion of the planned development. The fiscal report shall also include a detailed projection of property tax revenues which will accrue to the county, municipality and school district according to the timing schedule provided under subsection k. of this section, and following the completion of the planned development in its entirety;

k. A proposed timing schedule in the case of a planned development whose construction is contemplated over a period of years, including any terms or conditions which are intended to protect the interests of the public and of the residents who occupy any section of the planned development prior to the completion of the development in its entirety; and

l. A municipal development agreement, which shall mean a written agreement between a municipality and a developer relating to the planned development.

**Adopted.** L. 1987, c. 129, §4.

**40:55D-45.3. Submission of general development plan.** a. (1) Any developer of a parcel of land greater than 100 acres in size for which the developer is seeking approval of a planned development pursuant to P.L. 1975, c. 291 (C. 40:55D-1 et seq.) may submit a general development plan to the planning board prior to the granting of preliminary approval of that development by the planning board pursuant to section 34 of P.L. 1975, c. 291 (C. 40:55D-46) or section 36 of P.L. 1975, c. 291 (C. 40:55D-48).

(2) Any developer of a parcel of land 100 acres or less in size for which parcel the developer is seeking approval of a planned development pursuant to P.L. 1975 c.291 (C.40:55D-1 et seq.), consisting of not less than 150,000 square feet of nonresidential floor area or not less than 100 residential dwelling units, or consisting of a combination of square feet of nonresidential floor area and residential dwelling units, which when proportionately aggregated at a rate of 1,500 square feet of nonresidential floor area to one residential dwelling unit, are equivalent to at least 150,000 square feet of nonresidential floor area or 100 residential dwelling units, may submit a general development plan to the planning board prior to the granting of preliminary approval of that development by the planning board pursuant to section 34 of P.L. 1975, c.291 (C.40:55D-46) or section 36 of P.L. 1975, c.291 (C.40:55D-48).

b. The planning board shall grant or deny general development plan approval within 95 days after submission of a complete application to the administrative officer, or within such further time as may be consented to by the applicant. Failure of the planning board to act within the period prescribed shall constitute general development plan approval of the planned development.

**Adopted.** L. 1987, c. 129, §5. **Amended.** L. 2011, c. 86, §1, effective July 1, 2011.

**40:55D-45.4. Modification of timing schedule.** In the event that the developer seeks to modify the proposed timing schedule, such modification shall require the approval of the planning board. The planning board shall, in deciding whether or not to grant approval of the modification, take into consideration prevailing economic and market conditions, anticipated and actual needs for

residential units and nonresidential space within the municipality and the region, and the availability and capacity of public facilities to accommodate the proposed development.

**Adopted.** L. 1987, c. 129, §6.

**40:55D-45.5. Variation in certain physical features, approval required.** a. Except as provided hereunder, the developer shall be required to gain the prior approval of the planning board if, after approval of the general development plan, the developer wishes to make any variation in the location of land uses within the planned development or to increase the density of residential development or the floor area ratio of nonresidential development in any section of the planned development.

b. Any variation in the location of land uses or increase in density or floor area ratio proposed in reaction to a negative decision of, or condition of development approval imposed by, the Pinelands Commission pursuant to P.L. 1979, c. 111 (C. 13:18A-1 et seq.) or the Department of Environmental Protection pursuant to P.L. 1973, c. 185 (C. 13:19-1 et seq.) shall be approved by the planning board if the developer can demonstrate, to the satisfaction of the planning board, that the variation being proposed is a direct result of such determination by the Pinelands Commission or the Department of Environmental Protection, as the case may be.

**Adopted.** L. 1987, c. 129, §7.

**40:55D-45.6. Amendments, approval required.** a. Except as provided hereunder, once a general development plan has been approved by the planning board, it may be amended or revised only upon application by the developer approved by the planning board.

b. A developer, without violating the terms of the approval pursuant to this act, may, in undertaking any section of the planned development, reduce the number of residential units or amounts of nonresidential floor space by no more than 15% or reduce the residential density or nonresidential floor area ratio by no more than 15%; provided, however, that a developer may not reduce the number of residential units to be provided pursuant to P.L.1985, c. 222 (C. 52:27D-301 et al.), without prior municipal approval.

**Adopted.** L. 1987, c. 129, §8.

**40:55D-45.7. Completion of development sections.** a. Upon the completion of each section of the development as set forth in the approved general development plan, the developer shall notify the administrative officer, by certified mail, as evidence that the developer is fulfilling his obligations under the approved plan. For the purposes of this section, "completion" of any section of the development shall mean that the developer has acquired a certificate of occupancy for every residential unit or every nonresidential structure, as set forth in the approved general development plan and pursuant to section 15 of P.L.1975, c. 217 (C. 52:27D-133). If the municipality does not receive such notification at the completion of any section of the development, the municipality shall notify the developer, by certified mail, in order to determine whether or not the terms of the approved plan are being complied with.

If a developer does not complete any section of the development within eight months of the date provided for in the approved plan, or if at any time the municipality has cause to believe that the developer is not fulfilling his obligations pursuant to the approved plan, the municipality shall notify the developer, by certified mail, and the developer shall have 10 days within which to give evidence that he is fulfilling his obligations pursuant to the approved plan. The municipality thereafter shall conduct a hearing to determine whether or not the developer is in violation of the approved plan. If, after such a hearing, the municipality finds good cause to terminate the approval, it shall provide written notice of same to the developer and the approval shall be terminated 30 days thereafter.

b. In the event that a developer who has general development plan approval does not apply for preliminary approval for the planned development which is the subject of that general development plan approval within five years of the date upon which the general development plan has been approved by the planning board, the municipality shall have cause to terminate the approval.

**Adopted.** L. 1987, c. 129, §9.

**40:55D-45.8. Termination of general development approval.** In the event that a development which is the subject of an approved general development plan is completed before the end of the term of the approval, the approval shall terminate with the completion of the development. For the purposes of this section, a development shall be considered complete on the date upon which a certificate of occupancy has been issued for the final residential or nonresidential structure in the

last section of the development in accordance with the timing schedule set forth in the approved general development plan and the developer has fulfilled all of his obligations pursuant to the approval.

**Adopted.** L. 1987, c. 129, §10.

**40:55D-46. Procedure for preliminary site plan approval.** a. An ordinance requiring site plan review and approval shall require that the developer submit to the administrative officer a site plan and such other information as is reasonably necessary to make an informed decision as to whether the requirements necessary for preliminary site plan approval have been met. The site plan and any engineering documents to be submitted shall be required in tentative form for discussion purposes for preliminary approval. If any architectural plans are required to be submitted for site plan approval, the preliminary plans and elevations shall be sufficient.

b. If the planning board required any substantial amendment in the layout of improvements proposed by the developer that have been the subject of a hearing, an amended application for development shall be submitted and proceeded upon, as in the case of the original application for development. The planning board shall, if the proposed development complies with the ordinance and this act, grant preliminary site plan approval.

c. Upon the submission to the administrative officer of a complete application for a site plan which involves 10 acres of land or less, and 10 dwelling units or less, the planning board shall grant or deny preliminary approval within 45 days of the date of such submission or within such further time as may be consented to by the developer. Upon the submission of a complete application for a site plan which involves more than 10 acres, or more than 10 dwelling units, the planning board shall grant or deny preliminary approval within 95 days of the date of such submission or within such further time as may be consented to by the developer. Otherwise, the planning board shall be deemed to have granted preliminary approval of the site plan.

**Adopted.** L. 1975, c. 291, §34. **Amended.** L. 1979, c. 216, §15; L. 1984, c. 20, §8.

**40:55D-46.1. Minor site plan approval.** An ordinance requiring, pursuant to section 7.1 of P.L.1975, c.291 (C.40:55D-12), notice of hearings on applications for development for conventional site plans, may authorize the planning board to waive notice and public hearing for an application for development, if the planning board or site plan subcommittee of the board appointed by the chairman finds that the application for development conforms to the definition of "minor site plan." Minor site plan approval shall be deemed to be final approval of the site plan by the board, provided that the board or said subcommittee may condition such approval on terms ensuring the provision of improvements pursuant to sections 29, 29.1, 29.3 and 41 of P.L.1975, c.291 (C.40:55D-38, 40:55D-39, 40:55D-41 and 40:55D-53).

a. Minor site plan approval shall be granted or denied within 45 days of the date of submission of a complete application to the administrative officer, or within such further time as may be consented to by the applicant. Failure of the planning board to act within the period prescribed shall constitute minor site plan approval.

b. Whenever review or approval of the application by the county planning board is required by section 8 of P.L.1968, c.285 (C.40:27-6.6), the municipal planning board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the county planning board or approval by the county planning board by its failure to report thereon within the required time period.

c. The zoning requirements and general terms and conditions, whether conditional or otherwise, upon which minor site plan approval was granted, shall not be changed for a period of two years after the date of minor site plan approval. The planning board shall grant an extension of this period for a period determined by the board but not exceeding one year from what would otherwise be the expiration date, if the developer proves to the reasonable satisfaction of the board that the developer was barred or prevented, directly or indirectly, from proceeding with the development because of delays in obtaining legally required approvals from other governmental entities and that the developer applied promptly for and diligently pursued the approvals. A developer shall apply for this extension before: (1) what would otherwise be the expiration date, or (2) the 91st day after the date on which the developer receives the last of the legally required approvals from the other governmental entities, whichever occurs later.

**Adopted.** L. 1979, c. 216, §14. **Amended.** L. 1991, c. 256, §8, effective August 13, 1991.

**40:55D-46.2. Application to collocate wireless communications equipment; terms defined.**

a. An application for development to collocate wireless communications equipment on a wireless communications support structure or in an existing equipment compound shall not be subject to site plan review provided the application meets the following requirements:

(1) the wireless communications support structure shall have been previously granted all necessary approvals by the appropriate approving authority;

(2) the proposed collocation shall not increase (a) the overall height of the wireless communications support structure by more than ten percent of the original height of the wireless communications support structure, (b) the width of the wireless communications support structure, or (c) the square footage of the existing equipment compound to an area greater than 2,500 square feet;

(3) the proposed collocation complies with the final approval of the wireless communications support structure and all conditions attached thereto and does not create a condition for which variance relief would be required pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.), or any other applicable law, rule or regulation.

b. For purposes of this section:

“Equipment compound” means an area surrounding or adjacent to the base of a wireless communications support structure within which is located wireless communications equipment.

“Collocate” means to place or install wireless communications equipment on a wireless communications support structure.

“Wireless communications equipment” means the set of equipment and network components used in the provision of wireless communications services: including, but not limited to, antennas, transmitters, receivers, base stations, equipment shelters, cabinets, emergency generators, power supply cabling, and coaxial and fiber optic cable, but excluding wireless communications support structures.

“Wireless communications support structure” means a structure that is designed to support, or is capable of supporting, wireless communications equipment, including a monopole, self-supporting lattice tower, guyed tower, water tower, utility pole, or building.

**Adopted.** L. 2011, c. 199, §1, effective January 17, 2012.

**40:55D-47. Minor subdivision.** An ordinance requiring approval of subdivisions by the planning board may authorize the planning board to waive notice and public hearing for an application for development if the planning board or subdivision committee of the board appointed by the chairman find that the application for development conforms to the definition of “minor subdivision” in section 3.2 of P.L.1975, c.291 (C.40:55D-5). Minor subdivision approval shall be deemed to be final approval of the subdivision by the board; provided that the board or said subcommittee may condition such approval on terms ensuring the provision of improvements pursuant to sections 29, 29.1, 29.2 and 41 of P.L.1975, c.291 (C.40:55D-38, C.40:55D-39, C.40:55D-40, and C.40:55D-53).

b. Minor subdivision approval shall be granted or denied within 45 days of the date of submission of a complete application to the administrative officer, or within such further time as may be consented to by the applicant. Failure of the planning board to act within the period prescribed shall constitute minor subdivision approval and a certificate of the administrative officer as to the failure of the planning board to act shall be issued on request of the applicant; and it shall be sufficient in lieu of the written endorsement or other evidence of approval, herein required, and shall be so accepted by the county recording officer for purposes of filing subdivision plats.

c. Whenever review or approval of the application by the county planning board is required by section 5 of P.L.1968, c.285 (C.40:27-6.3), the municipal planning board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the county planning board or approval by the county planning board by its failure to report thereon within the required time period.

d. Except as provided in subsection f. of this section, approval of a minor subdivision shall expire 190 days from the date on which the resolution of municipal approval is adopted unless within such period a plat in conformity with such approval and the provisions of the “Map Filing Law,” P.L.1960, c.141 (C.46:23-9.9 et seq.), or a deed clearly describing the approved minor subdivision is filed by the developer with the county recording officer, the municipal engineer and the municipal tax assessor. Any such plat or deed accepted for such filing shall have been signed by the chairman and secretary of the planning board. In reviewing the application for development for a proposed

minor subdivision the planning board may be permitted by ordinance to accept a plat not in conformity with the "Map Filing Law," P.L.1960, c.141 (C.46:23-9.9 et seq.); provided that if the developer chooses to file the minor subdivision as provided herein by plat rather than deed such plat shall conform with the provisions of said act.

e. The zoning requirements and general terms and conditions, whether conditional or otherwise, upon which minor subdivision approval was granted, shall not be changed for a period of two years after the date on which the resolution of minor subdivision approval is adopted; provided that the approved minor subdivision shall have been duly recorded as provided in this section.

f. The planning board may extend the 190-day period for filing a minor subdivision plat or deed pursuant to subsection d. of this section if the developer proves to the reasonable satisfaction of the planning board (1) that the developer was barred or prevented, directly or indirectly, from filing because of delays in obtaining legally required approvals from other governmental or quasi-governmental entities and (2) that the developer applied promptly for and diligently pursued the required approvals. The length of the extension shall be equal to the period of delay caused by the wait for the required approvals, as determined by the planning board. The developer may apply for the extension either before or after what would otherwise be the expiration date.

g. The planning board shall grant an extension of minor subdivision approval for a period determined by the board but not exceeding one year from what would otherwise be the expiration date, if the developer proves to the reasonable satisfaction of the board that the developer was barred or prevented, directly or indirectly, from proceeding with the development because of delays in obtaining legally required approvals from other governmental entities and that the developer applied promptly for and diligently pursued the required approvals. A developer shall apply for the extension before (1) what would otherwise be the expiration date of minor subdivision approval or (2) the 91st day after the developer receives the last legally required approval from other governmental entities, whichever occurs later.

**Adopted.** L. 1975, c. 291, §35. **Amended.** L. 1991, c. 256, §9, effective August 13, 1991.

**40:55D-48. Procedure for preliminary major subdivision approval.** a. An ordinance requiring subdivision approval by the planning board shall require that the developer submit to the administrative officer a plat and such other information as is reasonably necessary to make an informed decision as to whether the requirements necessary for preliminary approval have been met; provided that minor subdivisions pursuant to section 35 of this act [40:55D-47] shall not be subject to this section. The plat and any other engineering documents to be submitted shall be required in tentative form for discussion purposes for preliminary approval.

b. If the planning board required any substantial amendment in the layout of improvements proposed by the developer that have been the subject of a hearing, an amended application shall be submitted and proceeded upon, as in the case of the original application for development. The planning board shall, if the proposed subdivision complies with the ordinance and this act, grant preliminary approval to the subdivision.

c. Upon the submission to the administrative officer of a complete application for a subdivision of 10 or fewer lots, the planning board shall grant or deny preliminary approval within 45 days of the date of such submission or within such further time as may be consented to by the developer. Upon the submission of a complete application for a subdivision of more than 10 lots, the planning board shall grant or deny preliminary approval within 95 days of the date of such submission or within such further time as may be consented to by the developer. Otherwise, the planning board shall be deemed to have granted preliminary approval to the subdivision.

**Adopted.** L. 1975, c. 291, §36. **Amended.** L. 1979, c. 216, §16; L. 1984, c. 20, §9.

**40:55D-48.1. Disclosure of owners of corporation or partnership applying for certain subdivisions or variances.** A corporation or partnership applying to a planning board or a board of adjustment or to the governing body of a municipality for permission to subdivide a parcel of land into six or more lots, or applying for a variance to construct a multiple dwelling of 25 or more family units or for approval of a site to be used for commercial purposes shall list the names and addresses of all stockholders or individual partners owning at least 10% of its stock of any class or at least 10% of the interest in the partnership, as the case may be.

**Adopted.** L. 1977, c. 336, §1.

**40:55D-48.2. Listing of names and addresses of stockholders holding 10% or more stock or 10% or greater interest in partnership.** If a corporation or partnership owns 10% or more of the

stock of a corporation, or 10% or greater interest in a partnership, subject to disclosure pursuant to section 1 of this act [40:55D-48.1], that corporation or partnership shall list the names and addresses of its stockholders holding 10% or more of its stock or of 10% or greater interest in the partnership, as the case may be, and this requirement shall be followed by every corporate stockholder or partner in a partnership, until the names and addresses of the noncorporate stockholders and individual partners, exceeding the 10% ownership criterion established in this act, have been listed.

**Adopted.** L. 1977, c. 336, §2.

**40:55D-48.3. Approval of application.** No planning board, board of adjustment or municipal governing body shall approve the application of any corporation or partnership which does not comply with this act.

**Adopted.** L. 1977, c. 336, §3.

**40:55D-48.4. Concealing names of owners; fine.** Any corporation or partnership which conceals the names of the stockholders owning 10% or more of its stock, or of the individual partners owning a 10% or greater interest in the partnership, as the case may be, shall be subject to a fine of \$1,000.00 to \$10,000.00 which shall be recovered in the name of the municipality in any court of record in the State in a summary manner pursuant to “The Penalty Enforcement Law” (N.J.S. 2A:58-1 et seq.).

**Adopted.** L. 1977, c. 336, §4.

**40:55D-49. Preliminary approval, extension.** Preliminary approval of a major subdivision pursuant to section 36 of P.L.1975, c.291 (C.40:55D-48) or of a site plan pursuant to section 34 of P.L.1975, c.291 (C.40:55D-46) shall, except as provided in subsections d. and g. of this section, confer upon the applicant the following rights for a three-year period from the date on which the resolution of preliminary approval is adopted:

a. That the general terms and conditions on which preliminary approval was granted shall not be changed, including but not limited to use requirements; layout and design standards for streets, curbs and sidewalks; lot size; yard dimensions and off-tract improvements; and, in the case of a site plan, any requirements peculiar to site plan approval pursuant to section 29.3 of P.L.1975, c.291 (C.40:55D-41); except that nothing herein shall be construed to prevent the municipality from modifying by ordinance such general terms and conditions of preliminary approval as relate to public health and safety;

b. That the applicant may submit for final approval on or before the expiration date of preliminary approval the whole or a section or sections of the preliminary subdivision plat or site plan, as the case may be; and

c. That the applicant may apply for and the planning board may grant extensions on such preliminary approval for additional periods of at least one year but not to exceed a total extension of two years, provided that if the design standards have been revised by ordinance, such revised standards may govern.

d. In the case of a subdivision of or site plan for an area of 50 acres or more, the planning board may grant the rights referred to in subsections a., b., and c. of this section for such period of time, longer than three years, as shall be determined by the planning board to be reasonable taking into consideration (1) the number of dwelling units and nonresidential floor area permissible under preliminary approval, (2) economic conditions, and (3) the comprehensiveness of the development. The applicant may apply for thereafter and the planning board may thereafter grant an extension to preliminary approval for such additional period of time as shall be determined by the planning board to be reasonable taking into consideration (1) the number of dwelling units and nonresidential floor area permissible under preliminary approval, and (2) the potential number of dwelling units and nonresidential floor area of the section or sections awaiting final approval, (3) economic conditions and (4) the comprehensiveness of the development; provided that if the design standards have been revised, such revised standards may govern.

e. Whenever the planning board grants an extension of preliminary approval pursuant to subsection c., d., or g. of this section and preliminary approval has expired before the date on which the extension is granted, the extension shall begin on what would otherwise be the expiration date. The developer may apply for the extension either before or after what would otherwise be the expiration date.

f. The planning board shall grant an extension of preliminary approval for a period determined by the board but not exceeding one year from what would otherwise be the expiration date, if the

developer proves to the reasonable satisfaction of the board that the developer was barred or prevented, directly or indirectly, from proceeding with the development because of delays in obtaining legally required approvals from other governmental entities and that the developer applied promptly for and diligently pursued the required approvals. A developer shall apply for the extension before (1) what would otherwise be the expiration date of preliminary approval or (2) the 91st day after the developer receives the last legally required approval from other governmental entities, whichever occurs later. An extension granted pursuant to this subsection shall not preclude the planning board from granting an extension pursuant to subsection c. or d. of this section.

g. In the case of a site plan for a development consisting of not less than 150,000 square feet of nonresidential floor area or not less than 100 residential dwelling units, or consisting of a combination of square feet of nonresidential floor area and residential dwelling units, which when proportionately aggregated at a rate of 1,500 square feet of nonresidential floor area to one residential dwelling unit, are equivalent to at least 150,000 square feet of nonresidential floor area or 100 residential dwelling units, the planning board may grant the rights referred to in subsections a., b., and c. of this section for such period of time beyond three years, as shall be determined by the planning board to be reasonable taking into consideration (1) the number of dwelling units and nonresidential floor area permissible under preliminary approval, (2) economic conditions, and (3) the comprehensiveness of the development. The applicant may apply for thereafter, and the planning board may thereafter grant, an extension to the preliminary approval for such additional period of time as shall be determined by the planning board to be reasonable taking into consideration (1) the number of dwelling units and nonresidential floor area permissible under preliminary approval, (2) the potential number of dwelling units and nonresidential floor area of the section or sections awaiting final approval, (3) economic conditions, and (4) the comprehensiveness of the development; provided that if the design standards have been revised, such revised standards may govern.

**Adopted.** L. 1975, c. 291, §37. **Amended.** L. 1991, c. 256, §10, effective August 13, 1991; L. 2011, c. 86, §2, effective July 1, 2011.

**40:55D-50. Final approval of site plans and major subdivisions.** a. The planning board shall grant final approval if the detailed drawings, specifications and estimates of the application for final approval conform to the standards established by ordinance for final approval, the conditions of preliminary approval and, in the case of a major subdivision, the standards prescribed by N.J.S. 46:26B-1 et seq.; provided that in the case of a planned development, the planning board may permit minimal deviations from the conditions of preliminary approval necessitated by change of conditions beyond the control of the developer since the date of preliminary approval without the developer being required to submit another application for development for preliminary approval.

b. Final approval shall be granted or denied within 45 days after submission of a complete application to the administrative officer, or within such further time as may be consented to by the applicant. Failure of the planning board to act within the period prescribed shall constitute final approval and a certificate of the administrative officer as to the failure of the planning board to act shall be issued on request of the applicant, and it shall be sufficient in lieu of the written endorsement or other evidence of approval, herein required, and shall be so accepted by the county recording officer for purposes of filing subdivision plats.

Whenever review or approval of the application by the county planning board is required by section 5 of P.L.1968, c. 285 (C. 40:27-6.3), in the case of a subdivision, or section 8 of P.L.1968, c. 285 (C. 40:27-6.6), in the case of a site plan, the municipal planning board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the county planning board or approval by the county planning board by its failure to report thereon within the required time period.

**Adopted.** L. 1975, c. 291, §38. **Amended.** L. 2013, c. 106, §12, effective August 7, 2013.

**40:55D-51. Exception in application of subdivision or site plan regulation; simultaneous review and approval.** a. The planning board when acting upon applications for preliminary or minor subdivision approval shall have the power to grant such exceptions from the requirements for subdivision approval as may be reasonable and within the general purpose and intent of the provisions for subdivision review and approval of an ordinance adopted pursuant to this article, if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.

b. The planning board when acting upon applications for preliminary site plan approval shall have the power to grant such exceptions from the requirements for site plan approval as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval of an ordinance adopted pursuant to this article, if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.

c. The planning board shall have the power to review and approve or deny conditional uses or site plans simultaneously with review for subdivision approval without the developer being required to make further application to the planning board, or the planning board being required to hold further hearings. The longest time period for action by the planning board, whether it be for subdivision, conditional use or site plan approval, shall apply. Whenever approval of a conditional use is requested by the developer pursuant to this subsection, notice of the hearing on the plat shall include reference to the request for such conditional use.

Adopted. L. 1975, c. 291, §39.

**40:55D-52. Final approval of site plan or major subdivision; extension.** a. The zoning requirements applicable to the preliminary approval first granted and all other rights conferred upon the developer pursuant to section 37 of P.L.1975, c.291 (C.40:55D-49), whether conditionally or otherwise, shall not be changed for a period of two years after the date on which the resolution of final approval is adopted; provided that in the case of a major subdivision the rights conferred by this section shall expire if the plat has not been duly recorded within the time period provided in section 42 of P.L.1975, c.291 (C.40:55D-54). If the developer has followed the standards prescribed for final approval, and, in the case of a subdivision, has duly recorded the plat as required in section 42 of P.L.1975, c.291 (C.40:55D-54), the planning board may extend such period of protection for extensions of one year but not to exceed three extensions. Notwithstanding any other provisions of this act, the granting of final approval terminates the time period of preliminary approval pursuant to section 37 of P.L.1975, c.291 (C.40:55D-49) for the section granted final approval.

b. In the case of a subdivision or site plan for a planned development of 50 acres or more, conventional subdivision or site plan for 150 acres or more, or site plan for development of a nonresidential floor area of 200,000 square feet or more, the planning board may grant the rights referred to in subsection a. of this section for such period of time, longer than two years, as shall be determined by the planning board to be reasonable taking into consideration (1) the number of dwelling units and nonresidential floor area permissible under final approval, (2) economic conditions and (3) the comprehensiveness of the development. The developer may apply for thereafter, and the planning board may thereafter grant, an extension of final approval for such additional period of time as shall be determined by the planning board to be reasonable taking into consideration (1) the number of dwelling units and nonresidential floor area permissible under final approval, (2) the number of dwelling units and nonresidential floor area remaining to be developed, (3) economic conditions and (4) the comprehensiveness of the development.

c. Whenever the planning board grants an extension of final approval pursuant to subsection a., b., or e. of this section and final approval has expired before the date on which the extension is granted, the extension shall begin on what would otherwise be the expiration date. The developer may apply for the extension either before or after what would otherwise be the expiration date.

d. The planning board shall grant an extension of final approval for a period determined by the board but not exceeding one year from what would otherwise be the expiration date, if the developer proves to the reasonable satisfaction of the board that the developer was barred or prevented, directly or indirectly, from proceeding with the development because of delays in obtaining legally required approvals from other governmental entities and that the developer applied promptly for and diligently pursued these approvals. A developer shall apply for the extension before (1) what would otherwise be the expiration date of final approval or (2) the 91st day after the developer receives the last legally required approval from other governmental entities, whichever occurs later. An extension granted pursuant to this subsection shall not preclude the planning board from granting an extension pursuant to subsection a., b., or e. of this section.

e. In the case of a site plan for a development consisting of not less than 150,000 square feet of nonresidential floor area or not less than 100 residential dwelling units, or consisting of a combination of square feet of nonresidential floor area and residential dwelling units, which when proportionately aggregated at a rate of 1,500 square feet of nonresidential floor area to one residential dwelling unit, are equivalent to at least 150,000 square feet of nonresidential floor area

or 100 residential dwelling units, the planning board may grant the rights referred to in subsection a. of this section for such period of time beyond two years, as shall be determined by the planning board to be reasonable taking into consideration (1) the number of dwelling units and nonresidential floor area permissible under final approval, (2) economic conditions, and (3) the comprehensiveness of the development. The developer may apply for thereafter, and the planning board may thereafter grant, an extension of final approval for such additional period of time as shall be determined by the planning board to be reasonable taking into consideration (1) the number of dwelling units and nonresidential floor area permissible under final approval, (2) the number of dwelling units and nonresidential floor area remaining to be developed, (3) economic conditions, and (4) the comprehensiveness of the development.

**Adopted.** L. 1975, c. 291, §40. **Amended.** L. 1985, c. 93, §1; L. 1991, c. 256, §11, effective August 13, 1991; L. 2011, c. 86, §3, effective July 1, 2011.

**40:55D-53. Guarantees required; surety; release.** a. Before filing of final subdivision plats or recording of minor subdivision deeds or as a condition of final site plan approval or as a condition to the issuance of a zoning permit pursuant to subsection d. of section 52 of P.L.1975, c.291 (C.40:55D-65), the municipality may require and shall accept in accordance with the standards adopted by ordinance and regulations adopted pursuant to section 1 of P.L.1999, c.68 (C.40:55D-53a) for the purpose of assuring the installation and maintenance of certain on-tract improvements, the furnishing of a performance guarantee, and provision for a maintenance guarantee in accordance with paragraphs (1) and (2) of this subsection. If a municipality has adopted an ordinance requiring a successor developer to furnish a replacement performance guarantee, as a condition to the approval of a permit update under the State Uniform Construction Code, for the purpose of updating the name and address of the owner of property on a construction permit, the governing body may require and shall accept in accordance with the standards adopted by ordinance and regulations adopted pursuant to section 1 of P.L.1999, c.68 (C.40:55D-53a) for the purpose of assuring the installation and maintenance of certain on-tract improvements, the furnishing of a performance guarantee, and provision for a maintenance guarantee, in accordance with paragraphs (1) and (2) of this subsection.

(1) (a) If required by ordinance, the developer shall furnish a performance guarantee in favor of the municipality in an amount not to exceed 120% of the cost of installation of only those improvements required by an approval or developer's agreement, ordinance, or regulation to be dedicated to a public entity, and that have not yet been installed, which cost shall be determined by the municipal engineer, according to the method of calculation set forth in section 15 of P.L.1991, c.256 (C.40:55D-53.4), for the following improvements as shown on the approved plans or plat: streets, pavement, gutters, curbs, sidewalks, street lighting, street trees, surveyor's monuments, as shown on the final map and required by "the map filing law," P.L.1960, c.141 (C.46:23-9.9 et seq.; repealed by section 2 of P.L.2011, c.217) or N.J.S.46:26B-1 through N.J.S.46:26B-8, water mains, sanitary sewers, community septic systems, drainage structures, public improvements of open space, and any grading necessitated by the preceding improvements.

The municipal engineer shall prepare an itemized cost estimate of the improvements covered by the performance guarantee, which itemized cost estimate shall be appended to each performance guarantee posted by the obligor.

(b) A municipality may also require a performance guarantee to include, within an approved phase or section of a development privately-owned perimeter buffer landscaping, as required by local ordinance or imposed as a condition of approval.

At the developer's option, a separate performance guarantee may be posted for the privately-owned perimeter buffer landscaping.

(c) In the event that the developer shall seek a temporary certificate of occupancy for a development, unit, lot, building, or phase of development, as a condition of the issuance thereof, the developer shall, if required by an ordinance adopted by the municipality, furnish a separate guarantee, referred to herein as a "temporary certificate of occupancy guarantee," in favor of the municipality in an amount equal to 120% of the cost of installation of only those improvements or items which remain to be completed or installed under the terms of the temporary certificate of occupancy and which are required to be installed or completed as a condition precedent to the issuance of the permanent certificate of occupancy for the development, unit, lot, building or phase of development and which are not covered by an existing performance guarantee. Upon posting of a "temporary certificate of occupancy guarantee," all sums remaining under a performance

guarantee, required pursuant to subparagraph (a) of this paragraph, which relate to the development, unit, lot, building, or phase of development for which the temporary certificate of occupancy is sought, shall be released. The scope and amount of the “temporary certificate of occupancy guarantee” shall be determined by the zoning officer, municipal engineer, or other municipal official designated by ordinance. At no time may a municipality hold more than one guarantee or bond of any type with respect to the same line item. The “temporary certificate of occupancy guarantee” shall be released by the zoning officer, municipal engineer, or other municipal official designated by ordinance upon the issuance of a permanent certificate of occupancy with regard to the development, unit, lot, building, or phase as to which the temporary certificate of occupancy relates.

(d) A developer shall, if required by an ordinance adopted by the municipality, furnish to the municipality a “safety and stabilization guarantee,” in favor of the municipality. At the developer’s option, a “safety and stabilization guarantee” may be furnished either as a separate guarantee or as a line item of the performance guarantee. A “safety and stabilization guarantee” shall be available to the municipality solely for the purpose of returning property that has been disturbed to a safe and stable condition or otherwise implementing measures to protect the public from access to an unsafe or unstable condition, only in the circumstance that:

(i) site disturbance has commenced and, thereafter, all work on the development has ceased for a period of at least 60 consecutive days following such commencement for reasons other than force majeure, and

(ii) work has not recommenced within 30 days following the provision of written notice by the municipality to the developer of the municipality’s intent to claim payment under the guarantee. A municipality shall not provide notice of its intent to claim payment under a “safety and stabilization guarantee” until a period of at least 60 days has elapsed during which all work on the development has ceased for reasons other than force majeure. A municipality shall provide written notice to a developer by certified mail or other form of delivery providing evidence of receipt.

The amount of a “safety and stabilization guarantee” for a development with bonded improvements in an amount not exceeding \$100,000 shall be \$5,000.

The amount of a “safety and stabilization guarantee” for a development with bonded improvements exceeding \$100,000 shall be calculated as a percentage of the bonded improvement costs of the development or phase of development as follows:

\$5,000 for the first \$100,000 of bonded improvement costs, plus

two and a half percent of bonded improvement costs in excess of \$100,000 up to \$1,000,000, plus one percent of bonded improvement costs in excess of \$1,000,000.

A municipality shall release a separate “safety and stabilization guarantee” to a developer upon the developer’s furnishing of a performance guarantee which includes a line item for safety and stabilization in the amount required under this paragraph.

A municipality shall release a “safety and stabilization guarantee” upon the municipal engineer’s determination that the development of the project site has reached a point that the improvements installed are adequate to avoid any potential threat to public safety.

(2) (a) If required by ordinance, the developer shall post with the municipality, prior to the release of a performance guarantee required pursuant to subparagraph (a), subparagraph (b), or both subparagraph (a) and subparagraph (b) of paragraph (1) of this subsection, a maintenance guarantee in an amount not to exceed 15% of the cost of the installation of the improvements which are being released.

(b) If required, the developer shall post with the municipality, upon the inspection and issuance of final approval of the following private site improvements by the municipal engineer, a maintenance guarantee in an amount not to exceed 15% of the cost of the installation of the following private site improvements: stormwater management basins, in-flow and water quality structures within the basins, and the out-flow pipes and structures of the stormwater management system, if any, which cost shall be determined according to the method of calculation set forth in section 15 of P.L.1991, c.256 (C.40:55D-53.4).

(c) The term of the maintenance guarantee shall be for a period not to exceed two years and shall automatically expire at the end of the established term.

(3) In the event that other governmental agencies or public utilities automatically will own the utilities to be installed or the improvements are covered by a performance or maintenance guarantee

to another governmental agency, no performance or maintenance guarantee, as the case may be, shall be required by the municipality for such utilities or improvements.

b. The time allowed for installation of the bonded improvements for which the performance guarantee has been provided may be extended by the governing body by resolution. As a condition or as part of any such extension, the amount of any performance guarantee shall be increased or reduced, as the case may be, to an amount not to exceed 120% of the cost of the installation, which cost shall be determined by the municipal engineer according to the method of calculation set forth in section 15 of P.L.1991, c.256 (C.40:55D-53.4) as of the time of the passage of the resolution.

c. If the required bonded improvements are not completed or corrected in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereon to the municipality for the reasonable cost of the improvements not completed or corrected and the municipality may either prior to or after the receipt of the proceeds thereof complete such improvements. Such completion or correction of improvements shall be subject to the public bidding requirements of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.).

d. (1) Upon substantial completion of all required street improvements (except for the top course) and appurtenant utility improvements, and the connection of same to the public system, the obligor may request of the governing body in writing, by certified mail addressed in care of the municipal clerk, that the municipal engineer prepare, in accordance with the itemized cost estimate prepared by the municipal engineer and appended to the performance guarantee pursuant to subsection a. of this section, a list of all uncompleted or unsatisfactory completed bonded improvements. If such a request is made, the obligor shall send a copy of the request to the municipal engineer. The request shall indicate which bonded improvements have been completed and which bonded improvements remain uncompleted in the judgment of the obligor. Thereupon the municipal engineer shall inspect all bonded improvements covered by obligor's request and shall file a detailed list and report, in writing, with the governing body, and shall simultaneously send a copy thereof to the obligor not later than 45 days after receipt of the obligor's request.

(2) The list prepared by the municipal engineer shall state, in detail, with respect to each bonded improvement determined to be incomplete or unsatisfactory, the nature and extent of the incompleteness of each incomplete improvement or the nature and extent of, and remedy for, the unsatisfactory state of each completed bonded improvement determined to be unsatisfactory. The report prepared by the municipal engineer shall identify each bonded improvement determined to be complete and satisfactory together with a recommendation as to the amount of reduction to be made in the performance guarantee relating to the completed and satisfactory bonded improvement, in accordance with the itemized cost estimate prepared by the municipal engineer and appended to the performance guarantee pursuant to subsection a. of this section.

e. (1) The governing body, by resolution, shall either approve the bonded improvements determined to be complete and satisfactory by the municipal engineer, or reject any or all of these bonded improvements upon the establishment in the resolution of cause for rejection, and shall approve and authorize the amount of reduction to be made in the performance guarantee relating to the improvements accepted, in accordance with the itemized cost estimate prepared by the municipal engineer and appended to the performance guarantee pursuant to subsection a. of this section. This resolution shall be adopted not later than 45 days after receipt of the list and report prepared by the municipal engineer. Upon adoption of the resolution by the governing body, the obligor shall be released from all liability pursuant to its performance guarantee, with respect to those approved bonded improvements, except for that portion adequately sufficient to secure completion or correction of the improvements not yet approved; provided that 30% of the amount of the total performance guarantee and "safety and stabilization guarantee" posted may be retained to ensure completion and acceptability of all improvements. The "safety and stabilization guarantee" shall be reduced by the same percentage as the performance guarantee is being reduced at the time of each performance guarantee reduction.

For the purpose of releasing the obligor from liability pursuant to its performance guarantee, the amount of the performance guarantee attributable to each approved bonded improvement shall be reduced by the total amount for each such improvement, in accordance with the itemized cost estimate prepared by the municipal engineer and appended to the performance guarantee pursuant to subsection a. of this section, including any contingency factor applied to the cost of installation. If the sum of the approved bonded improvements would exceed 70 percent of the total amount of the performance guarantee, then the municipality may retain 30 percent of the amount of the total

performance guarantee and “safety and stabilization guarantee” to ensure completion and acceptability of bonded improvements, as provided above, except that any amount of the performance guarantee attributable to bonded improvements for which a “temporary certificate of occupancy guarantee” has been posted shall be released from the performance guarantee even if such release would reduce the amount held by the municipality below 30 percent.

(2) If the municipal engineer fails to send or provide the list and report as requested by the obligor pursuant to subsection d. of this section within 45 days from receipt of the request, the obligor may apply to the court in a summary manner for an order compelling the municipal engineer to provide the list and report within a stated time and the cost of applying to the court, including reasonable attorney’s fees, may be awarded to the prevailing party.

If the governing body fails to approve or reject the bonded improvements determined by the municipal engineer to be complete and satisfactory or reduce the performance guarantee for the complete and satisfactory improvements within 45 days from the receipt of the municipal engineer’s list and report, the obligor may apply to the court in a summary manner for an order compelling, within a stated time, approval of the complete and satisfactory improvements and approval of a reduction in the performance guarantee for the approvable complete and satisfactory improvements in accordance with the itemized cost estimate prepared by the municipal engineer and appended to the performance guarantee pursuant to subsection a. of this section; and the cost of applying to the court, including reasonable attorney’s fees, may be awarded to the prevailing party.

(3) In the event that the obligor has made a cash deposit with the municipality or approving authority as part of the performance guarantee, then any partial reduction granted in the performance guarantee pursuant to this subsection shall be applied to the cash deposit in the same proportion as the original cash deposit bears to the full amount of the performance guarantee, provided that if the developer has furnished a “safety and stabilization guarantee,” the municipality may retain cash equal to the amount of the remaining “safety and stabilization guarantee”.

f. If any portion of the required bonded improvements is rejected, the approving authority may require the obligor to complete or correct such improvements and, upon completion or correction, the same procedure of notification, as set forth in this section shall be followed.

g. Nothing herein, however, shall be construed to limit the right of the obligor to contest by legal proceedings any determination of the governing body or the municipal engineer.

h. (1) The obligor shall reimburse the municipality for reasonable inspection fees paid to the municipal engineer for the foregoing inspection of improvements; which fees shall not exceed the sum of the amounts set forth in subparagraphs (a) and (b) of this paragraph. The municipality may require the developer to post the inspection fees in escrow in an amount:

(a) not to exceed, except for extraordinary circumstances, the greater of \$500 or 5% of the cost of bonded improvements that are subject to a performance guarantee under subparagraph (a), subparagraph (b), or both subparagraph (a) and subparagraph (b) of paragraph (1) of subsection a. of this section; and

(b) not to exceed 5% of the cost of private site improvements that are not subject to a performance guarantee under subparagraph (a) of paragraph (1) of subsection a. of this section, which cost shall be determined pursuant to section 15 of P.L.1991, c.256 (C.40:55D-53.4).

(2) For those developments for which the inspection fees total less than \$10,000, fees may, at the option of the developer, be paid in two installments. The initial amount deposited in escrow by a developer shall be 50% of the inspection fees. When the balance on deposit drops to 10% of the inspection fees because the amount deposited by the developer has been reduced by the amount paid to the municipal engineer for inspections, the developer shall deposit the remaining 50% of the inspection fees.

(3) For those developments for which the inspection fees total \$10,000 or greater, fees may, at the option of the developer, be paid in four installments. The initial amount deposited in escrow by a developer shall be 25% of the inspection fees. When the balance on deposit drops to 10% of the inspection fees because the amount deposited by the developer has been reduced by the amount paid to the municipal engineer for inspection, the developer shall make additional deposits of 25% of the inspection fees.

(4) If the municipality determines that the amount in escrow for the payment of inspection fees, as calculated pursuant to subparagraphs (a) and (b) of paragraph (1) of this subsection, is insufficient to cover the cost of additional required inspections, the municipality may require the developer to deposit additional funds in escrow provided that the municipality delivers to the

developer a written inspection escrow deposit request, signed by the municipal engineer, which: informs the developer of the need for additional inspections, details the items or undertakings that require inspection, estimates the time required for those inspections, and estimates the cost of performing those inspections.

i. In the event that final approval is by stages or sections of development pursuant to subsection a. of section 29 of P.L.1975, c.291 (C.40:55D-38), the provisions of this section shall be applied by stage or section.

j. To the extent that any of the improvements have been dedicated to the municipality on the subdivision plat or site plan, the municipal governing body shall be deemed, upon the release of any performance guarantee required pursuant to subsection a. of this section, to accept dedication for public use of streets or roads and any other improvements made thereon according to site plans and subdivision plats approved by the approving authority, provided that such improvements have been inspected and have received final approval by the municipal engineer.

**Adopted.** L. 1975, c. 291, §41. **Amended.** L. 1979, c. 216, §17; L. 1991, c. 256, §12, effective August 13, 1991; L. 1991, c. 301, §1, effective January 1, 1992; L. 1991, c. 311, §1, effective November 8, 1991; L. 1997, c. 126, §1, effective September 21, 1997; L. 1999, c. 68, §3, effective April 22, 1999; L. 2013, c. 123, §3, effective August 9, 2013; L. 2017, c. 312, §1, effective January 16, 2018.

**40:55D-53a. Standardized form for performance guarantee, maintenance guarantee, letter of credit.** The Department of Community Affairs shall adopt by regulation a standardized form for a performance guarantee, maintenance guarantee and letter of credit required by an approving authority pursuant to section 41 of P.L.1975, c.291 (C.40:55D-53).

**Adopted.** L. 1999, c. 68, §1, effective April 22, 1999.

**40:55D-53b. Acceptance of standardized form.** Notwithstanding any ordinance to the contrary, an approving authority shall accept the standardized form for a performance guarantee, maintenance guarantee or letter of credit adopted by regulation by the Department of Community Affairs pursuant to section 1 of P.L.1999, c.68 (C.40:55D-53a) as complying with the provisions of section 41 of P.L.1975, c.291 (C.40:55D-53).

**Adopted.** L. 1999, c. 68, §2, effective April 22, 1999.

**40:55D-53c. Acceptance of performance guarantee from successor developer.** a. The governing body or an approving authority may accept a performance guarantee in favor of the municipality from a successor developer as a replacement for a performance guarantee that was previously furnished, pursuant to section 41 of P.L.1975, c.291 (C.40:55D-53), for the purpose of assuring the installation of improvements. Except as otherwise provided by an ordinance requiring a successor developer to furnish a replacement performance guarantee, the governing body or approving authority shall not accept a replacement performance guarantee without securing:

(1) written confirmation from the new obligor that the intent of the new obligor is to furnish a replacement performance guarantee, relieving the predecessor obligor and surety, if any, of any obligation to install improvements, and

(2) written verification from the municipal engineer that the replacement performance guarantee is of an amount sufficient to cover the cost of the installation of improvements, but not to exceed 120% of the cost of the installation, which verification shall be determined consistent with section 41 of P.L.1975, c.291 (C.40:55D-53).

b. An approving authority shall notify the governing body whenever it accepts a replacement performance guarantee. Notice shall contain a copy of the written confirmation of the new obligor's intent to furnish a replacement performance guarantee and the municipal engineer's written verification of the sufficiency of the amount of that replacement performance guarantee.

c. Within 30 days after receiving notice from the approving authority of its acceptance of a replacement performance guarantee, the governing body, by resolution, shall release the predecessor obligor from liability pursuant to its performance guarantee.

**Adopted.** L. 2013, c. 123, §4, effective August 9, 2013.

**40:55D-53.1. Disposition of required deposits.** Whenever an amount of money in excess of \$5,000.00 shall be deposited by an applicant with a municipality for professional services employed by the municipality to review applications for development, for municipal inspection fees in accordance with subsection h. of section 41 of P.L. 1975, c. 291 (C. 40:55D-53) or to satisfy the guarantee requirements of subsection a. of section 41 of P.L. 1975, c. 291 (C. 40:55D-53), the money, until repaid or applied to the purposes for which it is deposited, including the applicant's portion of the interest earned thereon, except as otherwise provided in this section, shall continue

to be the property of the applicant and shall be held in trust by the municipality. Money deposited shall be held in escrow. The municipality receiving the money shall deposit it in a banking institution or savings and loan association in this State insured by an agency of the federal government, or in any other fund or depository approved for such deposits by the State, in an account bearing interest at the minimum rate currently paid by the institution or depository on time or savings deposits. The municipality shall notify the applicant in writing of the name and address of the institution or depository in which the deposit is made and the amount of the deposit. The municipality shall not be required to refund an amount of interest paid on a deposit which does not exceed \$100.00 for the year. If the amount of interest exceeds \$100.00, that entire amount shall belong to the applicant and shall be refunded to him by the municipality annually or at the time the deposit is repaid or applied to the purposes for which it was deposited, as the case may be; except that the municipality may retain for administrative expenses a sum equivalent to no more than 33 1/3% of that entire amount, which shall be in lieu of all other administrative and custodial expenses.

The provisions of this act shall apply only to that interest earned and paid on a deposit after the effective date of this act.

**Adopted.** L. 1985, c. 315, §1.

**40:55D-53.2. Payments to professionals serving municipality; deposits towards expenses. a.**

The chief financial officer of a municipality shall make all of the payments to professionals for services rendered to the municipality or approving authority for review of applications for development, review and preparation of documents, inspection of improvements or other purposes under the provisions of P.L.1975, c.291 (C.40:55D-1 et seq.). Such fees or charges shall be based upon a schedule established by resolution. The application review and inspection charges shall be limited only to professional charges for review of applications, review and preparation of documents and inspections of developments under construction and review by outside consultants when an application is of a nature beyond the scope of the expertise of the professionals normally utilized by the municipality. The only costs that shall be added to any such charges shall be actual out-of-pocket expenses of any such professionals or consultants including normal and typical expenses incurred in processing applications and inspecting improvements. The municipality or approving authority shall not bill the applicant, or charge any escrow account or deposit authorized under subsection b. of this section, for any municipal clerical or administrative functions, overhead expenses, meeting room charges, or any other municipal costs and expenses except as provided for in this section, nor shall a municipal professional add any such charges to his bill. If the salary, staff support and overhead for a municipal professional are provided by the municipality, the charge shall not exceed 200% of the sum of the products resulting from multiplying (1) the hourly base salary, which shall be established annually by ordinance, of each of the professionals by (2) the number of hours spent by the respective professional upon review of the application for development or inspection of the developer's improvements, as the case may be. For other professionals the charge shall be at the same rate as all other work of the same nature by the professional for the municipality when fees are not reimbursed or otherwise imposed on applicants or developers.

b. If the municipality requires of the developer a deposit toward anticipated municipal expenses for these professional services, the deposit shall be placed in an escrow account pursuant to section 1 of P.L.1985, c.315 (C.40:55D-53.1). The amount of the deposit required shall be reasonable in regard to the scale and complexity of the development. The amount of the initial deposit required shall be established by ordinance. For review of applications for development proposing a subdivision, the amount of the deposit shall be calculated based on the number of proposed lots. For review of applications for development proposing a site plan, the amount of the deposit shall be based on one or more of the following: the area of the site to be developed, the square footage of buildings to be constructed, or an additional factor for circulation-intensive sites, such as those containing drive-through facilities. Deposits for inspection fees shall be established in accordance with subsection h. of section 41 of P.L.1975, c.291 (C.40:55D-53).

c. Each payment charged to the deposit for review of applications, review and preparation of documents and inspection of improvements shall be pursuant to a voucher from the professional, which voucher shall identify the personnel performing the service, and for each date the services performed, the hours spent to one-quarter hour increments, the hourly rate and the expenses incurred. All professionals shall submit vouchers to the chief financial officer of the municipality on a monthly basis in accordance with schedules and procedures established by the chief financial officer of the municipality. If the services are provided by a municipal employee, the municipal

employee shall prepare and submit to the chief financial officer of the municipality a statement containing the same information as required on a voucher, on a monthly basis. The professional shall send an informational copy of all vouchers or statements submitted to the chief financial officer of the municipality simultaneously to the applicant. The chief financial officer of the municipality shall prepare and send to the applicant a statement which shall include an accounting of funds listing all deposits, interest earnings, disbursements, and the cumulative balance of the escrow account. This information shall be provided on a quarterly basis, if monthly charges are \$1,000 or less, or on a monthly basis if monthly charges exceed \$1,000. If an escrow account or deposit contains insufficient funds to enable the municipality or approving authority to perform required application reviews or improvement inspections, the chief financial officer of the municipality shall provide the applicant with a notice of the insufficient escrow or deposit balance. In order for work to continue on the development or the application, the applicant shall within a reasonable time period post a deposit to the account in an amount to be agreed upon by the municipality or approving authority and the applicant. In the interim, any required health and safety inspections shall be made and charged back against the replenishment of funds.

d. The following close-out procedure shall apply to all deposits and escrow accounts established under the provisions of P.L.1975, c.291 (C.40:55D-1 et seq.) and shall commence after the approving authority has granted final approval and signed the subdivision plat or site plan, in the case of application review escrows and deposits, or after the improvements have been approved as provided in section 41 of P.L.1975, c.291 (C.40:55D-53), in the case of improvement inspection escrows and deposits. The applicant shall send written notice by certified mail to the chief financial officer of the municipality and the approving authority, and to the relevant municipal professional, that the application or the improvements, as the case may be, are completed. After receipt of such notice, the professional shall render a final bill to the chief financial officer of the municipality within 30 days, and shall send a copy simultaneously to the applicant. The chief financial officer of the municipality shall render a written final accounting to the applicant on the uses to which the deposit was put within 45 days of receipt of the final bill. Any balances remaining in the deposit or escrow account, including interest in accordance with section 1 of P.L.1985, c.315 (C.40:55D-53.1), shall be refunded to the developer along with the final accounting.

e. All professional charges for review of an application for development, review and preparation of documents or inspection of improvements shall be reasonable and necessary, given the status and progress of the application or construction. Review fees shall be charged only in connection with an application for development presently pending before the approving authority or upon review of compliance with conditions of approval, or review of requests for modification or amendment made by the applicant. A professional shall not review items which are subject to approval by any State governmental agency and not under municipal jurisdiction except to the extent consultation with a State agency is necessary due to the effect of State approvals in the subdivision or site plan. Inspection fees shall be charged only for actual work shown on a subdivision or site plan or required by an approving resolution. Professionals inspecting improvements under construction shall charge only for inspections that are reasonably necessary to check the progress and quality of the work and such inspections shall be reasonably based on the approved development plans and documents.

f. If the municipality retains a different professional or consultant in the place of the professional originally responsible for development, application review, or inspection of improvements, the municipality or approving authority shall be responsible for all time and expenses of the new professional to become familiar with the application or the project, and the municipality or approving authority shall not bill the applicant or charge the deposit or the escrow account for any such services.

**Adopted.** L. 1991, c. 256, §13, effective August 13, 1991. **Amended.** L. 1995, c. 54, §1, effective September 13, 1995, except that a municipality may implement these policies prior thereto.

**40:55D-53.2a. Applicant notification to dispute charges; appeals; rules, regulations.** a. An applicant shall notify in writing the governing body with copies to the chief financial officer, the approving authority and the professional whenever the applicant disputes the charges made by a professional for service rendered to the municipality in reviewing applications for development, review and preparation of documents, inspection of improvements, or other charges made pursuant to the provisions of P.L.1975, c.291 (C.40:55D-1 et seq.). The governing body, or its designee, shall within a reasonable time period attempt to remediate any disputed charges. If the matter is not resolved to the satisfaction of the applicant, the applicant may appeal to the county construction

board of appeals established under section 9 of P.L.1975, c.217 (C.52:27D-127) any charge to an escrow account or a deposit by any municipal professional or consultant, or the cost of the installation of improvements estimated by the municipal engineer pursuant to section 15 of P.L.1991, c.256 (C.40:55D-53.4). An applicant or his authorized agent shall submit the appeal in writing to the county construction board of appeals. The applicant or his authorized agent shall simultaneously send a copy of the appeal to the municipality, approving authority, and any professional whose charge is the subject of the appeal. An applicant shall file an appeal within 45 days from receipt of the informational copy of the professional's voucher required by subsection c. of section 13 of P.L.1991, c.256 (C.40:55D-53.2), except that if the professional has not supplied the applicant with an informational copy of the voucher, then the applicant shall file his appeal within 60 days from receipt of the municipal statement of activity against the deposit or escrow account required by subsection c. of section 13 of P.L.1991, c.256 (C.40:55D-53.2). An applicant may file an appeal for an ongoing series of charges by a professional during a period not exceeding six months to demonstrate that they represent a pattern of excessive or inaccurate charges. An applicant making use of this provision need not appeal each charge individually.

b. The county construction board of appeals shall hear the appeal, render a decision thereon, and file its decision with a statement of the reasons therefor with the municipality or approving authority not later than 10 business days following the submission of the appeal, unless such period of time has been extended with the consent of the applicant. The decision may approve, disapprove, or modify the professional charges appealed from. A copy of the decision shall be forwarded by certified or registered mail to the party making the appeal, the municipality, the approving authority, and the professional involved in the appeal. Failure by the board to hear an appeal and render and file a decision thereon within the time limits prescribed in this subsection shall be deemed a denial of the appeal for purposes of a complaint, application, or appeal to a court of competent jurisdiction.

c. The county construction board of appeals shall provide rules for its procedure in accordance with this section. The board shall have the power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, and the provisions of the "County and Municipal Investigations Law," P.L.1953, c.38 (C.2A:67A-1 et seq.) shall apply.

d. During the pendency of any appeal, the municipality or approving authority shall continue to process, hear, and decide the application for development, and to inspect the development in the normal course, and shall not withhold, delay, or deny reviews, inspections, signing of subdivision plats or site plans, the reduction or the release of performance or maintenance guarantees, the issuance of construction permits or certificates of occupancy, or any other approval or permit because an appeal has been filed or is pending under this section. The chief financial officer of the municipality may pay charges out of the appropriate escrow account or deposit for which an appeal has been filed. If a charge is disallowed after payment, the chief financial officer of the municipality shall reimburse the deposit or escrow account in the amount of any such disallowed charge or refund the amount to the applicant. If a charge is disallowed after payment to a professional or consultant who is not an employee of the municipality, the professional or consultant shall reimburse the municipality in the amount of any such disallowed charge.

e. The Commissioner of Community Affairs shall promulgate rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of this section. Within two years of the effective date of P.L.1995, c.54 (C.40:55D-53.2a et al.), the commissioner shall prepare and submit a report to the Governor, the President of the Senate, and the Speaker of the General Assembly. The report shall describe the appeals process established by section 3 of P.L.1995, c.54 (C.40:55D-53.2a) and shall make recommendations for legislative or administrative action necessary to provide a fair and efficient appeals process.

**Adopted.** L. 1995, c. 54, §3, effective September 13, 1995, except that a municipality may implement these policies prior thereto.

**40:55D-53.3. Limits on cash requirement for performance and maintenance guarantees.** A municipality shall not require that a maintenance guarantee required pursuant to section 41 of P.L.1975, c.291 (C.40:55D-53) be in cash or that more than 10% of a performance guarantee pursuant to that section be in cash. A developer may, however, provide at his option some or all of a maintenance guarantee in cash, or more than 10% of a performance guarantee in cash.

**Adopted.** L. 1991, c. 256, §14, effective August 13, 1991.

**40:55D-53.4. Estimate of cost for installation of improvements; appeal.** The cost of the installation of improvements for the purposes of section 41 of P.L.1975, c.291 (C.40:55D-53) shall

be estimated by the municipal engineer based on documented construction costs for public improvements prevailing in the general area of the municipality. The developer may appeal the municipal engineer's estimate to the county construction board of appeals established under section 9 of P.L.1975, c.217 (C.52:27D-127).

**Adopted.** L. 1991, c. 256, §15, effective August 13, 1991. **Amended.** L. 1995, c. 54, §2, effective September 13, 1995, except that a municipality may implement these policies prior thereto.

**40:55D-53.5. Acceptance of irrevocable letters of credit.** The approving authority shall, for the purposes of section 41 of P.L.1975, c.291 (C.40:55D-53), accept a performance guarantee or maintenance guarantee which is an irrevocable letter of credit if it:

a. Constitutes an unconditional payment obligation of the issuer running solely to the municipality for an express initial period of time in the amount determined pursuant to section 41 of P.L.1975, c.291 (C.40:55D-53);

b. Is issued by a banking or savings institution authorized to do and doing business in this State;

c. Is for a period of time of at least one year; and

d. Permits the municipality to draw upon the letter of credit if the obligor fails to furnish another letter of credit which complies with the provisions of this section 30 days or more in advance of the expiration date of the letter of credit or such longer period in advance thereof as is stated in the letter of credit.

**Adopted.** L. 1991, c. 256, §16, effective August 13, 1991.

**40:55D-53.6. Acceptance of street lighting responsibility by municipality.** If an approving authority includes as a condition of approval of an application for development pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.) the installation of street lighting on a dedicated public street connected to a public utility, then upon notification in writing by the developer to the approving authority and governing body of the municipality that (1) the street lighting on a dedicated public street has been installed and accepted for service by the public utility and (2) that certificates of occupancy have been issued for at least 50% of the dwelling units and 50% of the floor area of the nonresidential uses on the dedicated public street or portion thereof indicated by section pursuant to section 29 of P.L.1975, c.291 (C.40:55D-38), the municipality shall, within 30 days following receipt of the notification, make appropriate arrangements with the public utility for, and assume the payment of, the costs of the street lighting on the dedicated public street on a continuing basis. Compliance by the municipality with the provisions of this section shall not be deemed to constitute acceptance of the street by the municipality.

**Adopted.** L. 1991, c. 256, §17, effective August 13, 1991.

**40:55D-54. Recording of final approval of major subdivision; filing of all subdivision plats.**

a. Final approval of a major subdivision shall expire 95 days from the date of signing of the plat unless within such period the plat shall have been duly filed by the developer with the county recording officer. The planning board may for good cause shown extend the period for recording for an additional period not to exceed 190 days from the date of signing of the plat. The planning board may extend the 95-day or 190-day period if the developer proves to the reasonable satisfaction of the planning board (1) that the developer was barred or prevented, directly or indirectly, from filing because of delays in obtaining legally required approvals from other governmental or quasi-governmental entities and (2) that the developer applied promptly for and diligently pursued the required approvals. The length of the extension shall be equal to the period of delay caused by the wait for the required approvals, as determined by the planning board. The developer may apply for an extension either before or after the original expiration date.

b. No subdivision plat shall be accepted for filing by the county recording officer until it has been approved by the planning board as indicated on the instrument by the signature of the chairman and secretary of the planning board or a certificate has been issued pursuant to sections 35, 38, 44, 48, 54 or 63 of P.L.1975, c.291 (C.40:55D-47, 40:55D-50, 40:55D-56, 40:55D-61, 40:55D-67, 40:55D-76). The signatures of the chairman and secretary of the planning board shall not be affixed until the developer has posted the guarantees required pursuant to section 41 of P.L.1975, c.291 (C.40:55D-53). If the county recording officer records any plat without such approval, such recording shall be deemed null and void, and upon request of the municipality, the plat shall be expunged from the official records.

c. It shall be the duty of the county recording officer to notify the planning board in writing within seven days of the filing of any plat, identifying such instrument by its title, date of filing, and official number.

**Adopted.** L. 1975, c. 291, §42. **Amended.** L. 1991, c. 256, §18, effective August 13, 1991.

**40:55D-54.1. Notification to tax assessor of municipality.** Upon the filing of a plat showing the subdivision or resubdivision of land, the county recording officer shall, at the same time that notification is given to the planning board of the municipality pursuant to section 42 of the act [40:55D-54] to which this act is a supplement, send a copy of such notification to the tax assessor of the municipality in which such land is situated of the filing of said plat.

**Adopted.** L. 1977, c. 174, §1.

**40:55D-55. Selling before approval; penalty; suits by municipalities.** If, before final subdivision approval has been granted, any person transfers or sells or agrees to transfer or sell, except pursuant to an agreement expressly conditioned on final subdivision approval, as owner or agent, any land which forms a part of a subdivision for which municipal approval is required by ordinance pursuant to this act, such person shall be subject to a penalty not to exceed \$1,000.00, and each lot disposition so made may be deemed a separate violation.

In addition to the foregoing, the municipality may institute and maintain a civil action:

a. For injunctive relief; and

b. To set aside and invalidate any conveyance made pursuant to such a contract of sale if a certificate of compliance has not been issued in accordance with section 44 of this act [40:55D-56], but only if the municipality (1) has a planning board and (2) has adopted by ordinance standards and procedures in accordance with section 29 of this act [40:55D-38].

In any such action, the transferee, purchaser or grantee shall be entitled to a lien upon the portion of the land, from which the subdivision was made that remains in the possession of the developer or his assigns or successors, to secure the return of any deposits made or purchase price paid, and also, a reasonable search fee, survey expense and title closing expense, if any. Any such action must be brought within 2 years after the date of the recording of the instrument of transfer, sale or conveyance of said land or within 6 years, if unrecorded.

**Adopted.** L. 1975, c. 291, §43.

**40:55D-56. Certificates showing approval; contents.** The prospective purchaser, prospective mortgagee, or any other person interested in any land which forms part of a subdivision, or which formed part of such a subdivision 3 years preceding the effective date of this act, may apply in writing to the administrative officer of the municipality, for the issuance of a certificate certifying whether or not such subdivision has been approved by the planning board. Such application shall contain a diagram showing the location and dimension of the land to be covered by the certificate and the name of the owner thereof.

The administrative officer shall make and issue such certificate within 15 days after the receipt of such written application and the fees therefor. Said officer shall keep a duplicate copy of each certificate, consecutively numbered, including a statement of the fee charged, in a binder as a permanent record of his office.

Each such certificate shall be designated a "certificate as to approval of subdivision of land," and shall certify:

a. Whether there exists in said municipality a duly established planning board and whether there is an ordinance controlling subdivision of land adopted under the authority of this act.

b. Whether the subdivision, as it relates to the land shown in said application, has been approved by the planning board, and, if so, the date of such approval and any extensions and terms thereof, showing that subdivision of which the lands are a part is a validly existing subdivision.

c. Whether such subdivision, if the same has not been approved, is statutorily exempt from the requirement of approval as provided in this act.

The administrative officer shall be entitled to demand and receive for such certificate issued by him a reasonable fee not in excess of those provided in R.S. 54:5-14 and 54:5-15. The fees so collected by such official shall be paid by him to the municipality.

**Adopted.** L. 1975, c. 291, §44. **Amended.** L. 1979, c. 216, §18.

**40:55D-57. Right of owner of land covered by certificate.** Any person who shall acquire for a valuable consideration an interest in the lands covered by any such certificate of approval of a subdivision in reliance upon the information therein contained shall hold such interest free of any

right, remedy or action which could be prosecuted or maintained by the municipality pursuant to the provisions of section 43 of this act [40:55D-55].

If the administrative officer designated to issue any such certificate fails to issue the same within 15 days after receipt of an application and the fees therefor, any person acquiring an interest in the lands described in such application shall hold such interest free of any right, remedy or action which could be prosecuted or maintained by the municipality pursuant to section 43 of this act.

Any such application addressed to the clerk of the municipality shall be deemed to be addressed to the proper designated officer and the municipality shall be bound thereby to the same extent as though the same was addressed to the designated official.

**Adopted.** L. 1975, c. 291, §45.

**40:55D-58. Condominiums and cooperative structures and uses.** This act and all development regulations pursuant thereto shall be construed and applied with reference to the nature and use of a condominium or cooperative structures or uses without regard to the form of ownership. No development regulation shall establish any requirement concerning the use, location, placement or construction of buildings or other improvements for condominiums or cooperative structures or uses unless such requirement shall be equally applicable to all buildings and improvements of the same kind not then or thereafter under the condominium or cooperative corporate form of ownership. No approval pursuant to this act shall be required as a condition precedent to the recording of a condominium master deed or the sale of any unit therein unless such approval shall also be required for the use or development of the lands described in the master deed in the same manner had such lands not been under the condominium form of ownership.

**Adopted.** L. 1975, c. 291, §46.

Note: For more in-depth coverage of condominiums and cooperatives, see Smith and Estis, New Jersey Condominium Law (Gann).

**40:55D-59. Repealed.**

**Repealed.** L. 1983, c. 253, §1.

**ARTICLE 7. ANCILLARY POWERS OF PLANNING BOARD.**

**40:55D-60. Planning board review in lieu of board of adjustment.** Whenever the proposed development requires approval pursuant to this act of a subdivision, site plan or conditional use, but not a variance pursuant to subsection d. of section 57 of this act (C. 40:55D-70), the planning board shall have the power to grant to the same extent and subject to the same restrictions as the board of adjustment:

- a. Variances pursuant to subsection 57c. of this act [40:55D-70];
- b. Direction pursuant to section 25 of this act [40:55D-34] for issuance of a permit for a building or structure in the bed of a mapped street or public drainage way, flood control basin or public area reserved pursuant to section 23 of this act [40:55D-32]; and
- c. Direction pursuant to section 27 of this act [40:55D-36] for issuance of a permit for a building or structure not related to a street.

Whenever relief is requested pursuant to this section, notice of the hearing on the application for development shall include reference to the request for a variance or direction for issuance of a permit, as the case may be.

The developer may elect to submit a separate application requesting approval of the variance or direction of the issuance of a permit and a subsequent application for any required approval of a subdivision, site plan or conditional use. The separate approval of the variance or direction of the issuance of a permit shall be conditioned upon grant of all required subsequent approvals by the planning board. No such subsequent approval shall be granted unless the approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and zoning ordinance.

**Adopted.** L. 1975, c. 291, §47. **Amended.** L. 1979, c. 216, §19; L. 1984, c. 20, §10.

**40:55D-61. Time periods.** Whenever an application for approval of a subdivision plat, site plan or conditional use includes a request for relief pursuant to section 47 of this act [40:55D-60], the planning board shall grant or deny approval of the application within 120 days after submission by a developer of a complete application to the administrative officer or within such further time as may be consented to by the applicant. In the event that the developer elects to submit separate consecutive applications, the aforesaid provision shall apply to the application for approval of the variance or direction for issuance of a permit. The period for granting or denying and subsequent

approval shall be as otherwise provided in this act. Failure of the planning board to act within the period prescribed shall constitute approval of the application and a certificate of the administrative officer as to the failure of the planning board to act shall be issued on request of the applicant, and it shall be sufficient in lieu of the written endorsement or other evidence of approval herein required, and shall be so accepted by the county recording officer for purposes of filing subdivision plats.

Whenever review or approval of the application by the county planning board is required by section 5 of P.L.1968, c. 285 (C. 40:27-6.3), in the case of a subdivision, or section 8 of P.L.1968, c. 285 (C. 40:27-6.6), in the case of a site plan, the municipal planning board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the county planning board or approval by the county planning board by its failure to report thereon within the required time period.

**Adopted.** L. 1975, c. 291, §48. **Amended.** L. 1979, c. 216, §20; L. 1984, c. 20, §11.

## ARTICLE 8. ZONING.

**40:55D-62. Power to zone.** a. The governing body may adopt or amend a zoning ordinance relating to the nature and extent of the uses of land and of buildings and structures thereon. Such ordinance shall be adopted after the planning board has adopted the land use plan element and the housing plan element of a master plan, and all of the provisions of such zoning ordinance or any amendment or revision thereto shall either be substantially consistent with the land use plan element and the housing plan element of the master plan or designed to effectuate such plan elements; provided that the governing body may adopt a zoning ordinance or amendment or revision thereto which in whole or part is inconsistent with or not designed to effectuate the land use plan element and the housing plan element, but only by affirmative vote of a majority of the full authorized membership of the governing body, with the reasons of the governing body for so acting set forth in a resolution and recorded in its minutes when adopting such a zoning ordinance; and provided further that, notwithstanding anything aforesaid, the governing body may adopt an interim zoning ordinance pursuant to subsection b. of section 77 of P.L.1975, c.291 (C.40:55D-90).

The zoning ordinance shall be drawn with reasonable consideration to the character of each district and its peculiar suitability for particular uses and to encourage the most appropriate use of land. The regulations in the zoning ordinance shall be uniform throughout each district for each class or kind of buildings or other structure or uses of land, including planned unit development, planned unit residential development and cluster development, but the regulations in one district may differ from those in other districts.

b. No zoning ordinance and no amendment or revision to any zoning ordinance shall be submitted to or adopted by initiative or referendum.

c. The zoning ordinance shall provide for the regulation of any airport safety zones delineated under the "Air Safety and Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et seq.), in conformity with standards promulgated by the Commissioner of Transportation.

d. The zoning ordinance shall provide for the regulation of land adjacent to State highways in conformity with the State highway access management code adopted by the Commissioner of Transportation under section 3 of the "State Highway Access Management Act," P.L.1989, c.32 (C.27:7-91), for the regulation of land with access to county roads and highways in conformity with any access management code adopted by the county under R.S.27:16-1 and for the regulation of land with access to municipal streets and highways in conformity with any municipal access management code adopted under R.S.40:67-1. This subsection shall not be construed as requiring a zoning ordinance to establish minimum lot sizes or minimum frontage requirements for lots adjacent to but restricted from access to a State highway.

**Adopted.** L. 1975, c. 291, §49. **Amended.** L. 1983, c. 260, §12; L. 1985, c. 222, §30; L. 1985, c. 516, §13; L. 1989, c. 32, §25, effective May 24, 1989; L. 1991, c. 445, §9, effective July 16, 1992; L. 2013, c. 106, §13, effective August 7, 2013.

**40:55D-62.1. Notice of hearing on amendment to zoning ordinance.** Notice of a hearing on an amendment to the zoning ordinance proposing a change to the classification or boundaries of a zoning district, exclusive of classification or boundary changes recommended in a periodic general reexamination of the master plan by the planning board pursuant to section 76 of P.L.1975, c.291 (C.40:55D-89), shall be given at least 10 days prior to the hearing by the municipal clerk to the owners of all real property as shown on the current tax duplicates, located, in the case of a classification change, within the district and within the State within 200 feet in all directions of the

boundaries of the district, and located, in the case of a boundary change, in the State within 200 feet in all directions of the proposed new boundaries of the district which is the subject of the hearing.

In addition, the municipal clerk shall provide notice of a hearing on an amendment to the zoning ordinance proposing a change to the classification or boundaries of a zoning district, exclusive of classification or boundary changes recommended in a periodic general reexamination of the master plan, to the Office of Planning Advocacy, and to any military facility commander who has registered with the municipality pursuant to section 1 of P.L.2005, c.41 (C.40:55D-12.4), at least 10 days prior to the hearing, by personal service or certified mail.

A notice pursuant to this section shall state the date, time and place of the hearing, the nature of the matter to be considered and an identification of the affected zoning districts and proposed boundary changes, if any, by street names, common names or other identifiable landmarks, and by reference to lot and block numbers as shown on the current tax duplicate in the municipal tax assessor's office.

Notice shall be given to a property owner by: (1) serving a copy thereof on the property owner as shown on the said current tax duplicate, or his agent in charge of the property, or (2) mailing a copy thereof by certified mail and regular mail to the property owner at his address as shown on the said current tax duplicate.

Notice to a partnership owner may be made by service upon any partner. Notice to a corporate owner may be made by service upon its president, a vice president, secretary or other person authorized by appointment or by law to accept service on behalf of the corporation. Notice to a condominium association, horizontal property regime, community trust or homeowners' association, because of its ownership of common elements or areas located within 200 feet of the boundaries of the district which is the subject of the hearing, may be made in the same manner as to a corporation, in addition to notice to unit owners, co-owners, or homeowners on account of such common elements or areas.

The municipal clerk shall execute affidavits of proof of service of the notices required by this section, and shall keep the affidavits on file along with the proof of publication of the notice of the required public hearing on the proposed zoning ordinance change. Costs of the notice provision shall be the responsibility of the proponent of the amendment.

**Adopted.** L. 1995, c. 249, §2, effective September 12, 1995. **Amended.** L. 2005, c. 41, §4, effective March 7, 2005; L. 2016, c. 21, §5, effective August 1, 2016.

**40:55D-63. Protest.** Notice of the hearing on an amendment to the zoning ordinance proposing a change to the classification or boundaries of a zoning district, exclusive of classification or boundary changes recommended in a periodic general reexamination of the master plan by the planning board pursuant to section 76 of P.L.1975, c.291 (C.40:55D-89), shall be given prior to adoption in accordance with the provisions of section 2 of P.L.1995, c.249 (C.40:55D-62.1). A protest against any proposed amendment or revision of a zoning ordinance may be filed with the municipal clerk, signed by the owners of 20% or more of the area either (1) of the lots or land included in such proposed change, or (2) of the lots or land extending 200 feet in all directions therefrom inclusive of street space, whether within or without the municipality. Such amendment or revision shall not become effective following the filing of such protest except by the favorable vote of two-thirds of all the members of the governing body of the municipality.

**Adopted.** L. 1975, c. 291, §50. **Amended.** L. 1991, c. 256, §19, effective August 13, 1991; L. 1995, c. 249, §1, effective September 12, 1995.

**40:55D-64. Referral to planning board.** Prior to the hearing on adoption of a zoning ordinance, or any amendments thereto, the governing body shall refer any such proposed ordinance or amendment thereto to the planning board pursuant to subsection 17a. of this act [40:55D-26].

**Adopted.** L. 1975, c. 291, §51.

**40:55D-65. Contents of zoning ordinance.** A zoning ordinance may:

a. Limit and restrict buildings and structures to specified districts and regulate buildings and structures according to their type and the nature and extent of their use, and regulate the nature and extent of the use of land for trade, industry, residence, open space or other purposes.

b. Regulate the bulk, height, number of stories, orientation, and size of buildings and the other structures; the percentage of lot or development area that may be occupied by structures; minimum or maximum lot sizes, or a combination thereof, and dimensions, including provisions concerning lot-size averaging; minimum improvable lot areas and cluster development, and for these purposes

may specify minimum or maximum floor areas, or a combination thereof, floor area ratios and other ratios and regulatory techniques governing the intensity of land use and the provision of adequate light and air, including, but not limited to the potential for utilization of renewable energy sources. Such regulations may provide for the clustering of development between noncontiguous parcels and may, in order to provide equitable opportunities for the use of development potential on off-tract locations in addition to authorized on-site development, and, to encourage the flexibility of density, intensity of land uses, design and type, authorize a deviation in various clusters from the density, or intensity of use, established for the zoning district. The regulations by which the design, bulk and location of buildings are to be evaluated shall be set forth in the zoning ordinance and all standards and criteria for any feature of a cluster development shall be set forth in such ordinance with sufficient certainty to provide reasonable criteria by which specific proposals for clustered development can be evaluated.

c. Provide districts for planned developments; provided that an ordinance providing for approval of subdivisions and site plans by the planning board has been adopted and incorporates therein the provisions for such planned developments in a manner consistent with article 6 of P.L.1975, c.291 (C.40:55D-37 et seq.). The zoning ordinance shall establish standards governing the type and density, or intensity of land use, in a planned development. Said standards shall take into account that the density, or intensity of land use, otherwise allowable may not be appropriate for a planned development. The standards may vary the type and density, or intensity of land use, otherwise applicable to the land within a planned development in consideration of the amount, location and proposed use of open space; the location and physical characteristics of the site of the proposed planned development considering the availability of existing and proposed infrastructure and the environmental characteristics of the parcel that will be developed and the open space, agricultural or historical resources to be protected; and the location, design and type of dwelling units and other uses. Such standards may provide for the clustering of development between noncontiguous parcels and may, in order to encourage the flexibility of density, intensity of land uses, design and type, authorize a deviation in various clusters from the density, or intensity of use, established for an entire planned development. The standards and criteria by which the design, bulk and location of buildings are to be evaluated shall be set forth in the zoning ordinance and all standards and criteria for any feature of a planned development shall be set forth in such ordinance with sufficient certainty to provide reasonable criteria by which specific proposals for planned development can be evaluated.

d. Establish, for particular uses or classes of uses, reasonable standards of performance and standards for the provision of adequate physical improvements including, but not limited to, off-street parking and loading areas, marginal access roads and roadways, other circulation facilities and water, sewerage and drainage facilities; provided that section 41 of P.L.1975, c.291 (C.40:55D-53) shall apply to such improvements.

e. Designate and regulate areas subject to flooding (1) pursuant to P.L.1972, c.185 (C.58:16A-55 et seq.) or (2) as otherwise necessary in the absence of appropriate flood hazard area designations pursuant to P.L.1962, c.19 (C.58:16A-50 et seq.) or floodway regulations pursuant to P.L.1972, c.185 or minimum standards for local flood fringe area regulation pursuant to P.L.1972, c.185.

f. Provide for conditional uses pursuant to section 54 of P.L.1975, c.291 (C.40:55D-67).

g. Provide for senior citizen community housing.

h. Require as a condition for any approval which is required pursuant to such ordinance and the provisions of this chapter, that no taxes or assessments for local improvements are due or delinquent on the property for which any application is made.

i. Provide for historic preservation pursuant to section 5 of P.L.1991, c.199 (C.40:55D-65.1).

j. Provide for sending and receiving zones for a development transfer program established pursuant to P.L.2004, c.2 (C.40:55D-137 et al.).

k. Provide for areas to be developed and areas to be preserved through cluster development or establish criteria for the establishment of such areas for cluster development.

l. Provide that parcels that are developed and parcels that are preserved through contiguous cluster or noncontiguous cluster may be consolidated for tax and stewardship purposes if they are in common ownership.

**Adopted.** L. 1975, c. 291, §52. **Amended.** L. 1979, c. 216, §21; L. 1980, c. 146, §5; L. 1985, c. 516, §14; L. 1991, c. 199, §4, effective July 9, 1991; L. 1995, c. 364, §2, effective January 5, 1996; L. 2004, c. 2, §39, effective September 25, 2004; L. 2013, c. 106, §14, effective August 7, 2013.

**40:55D-65.1. Designation and regulation of historic sites or districts.** A zoning ordinance may designate and regulate historic sites or historic districts and provide design criteria and guidelines therefor. Designation and regulation pursuant to this section shall be in addition to such designation and regulation as the zoning ordinance may otherwise require. Except as provided hereunder, after July 1, 1994, all historic sites and historic districts designated in the zoning ordinance shall be based on identifications in the historic preservation plan element of the master plan. Until July 1, 1994, any such designation may be based on identifications in the historic preservation plan element, the land use plan element or community facilities plan element of the master plan. The governing body may, at any time, adopt, by affirmative vote of a majority of its authorized membership, a zoning ordinance designating one or more historic sites or historic districts that are not based on identifications in the historic preservation plan element, the land use plan element or community facilities plan element, provided the reasons for the action of the governing body are set forth in a resolution and recorded in the minutes of the governing body.

**Adopted.** L. 1991, c. 199, §5, effective July 9, 1991.

**40:55D-66. Miscellaneous provisions relative to zoning.** a. For purposes of this act, model homes or sales offices within a subdivision and only during the period necessary for the sale of new homes within such subdivision shall not be considered a business use.

b. No zoning ordinance governing the use of land by or for schools shall, by any of its provisions or by any regulation adopted in accordance therewith, discriminate between public and private nonprofit day schools of elementary or high school grade accredited by the State Department of Education.

c. No zoning ordinance shall, by any of its provisions or by any regulation adopted in accordance therewith, discriminate between children who are members of families by reason of their relationship by blood, marriage or adoption, and resource family children placed with such families in a dwelling by the Division of Youth and Family Services in the Department of Children and Families or a duly incorporated child care agency and children placed pursuant to law in single family dwellings known as group homes. As used in this section, the term “group home” means and includes any single family dwelling used in the placement of children pursuant to law recognized as a group home by the Department of Children and Families in accordance with rules and regulations adopted by the Commissioner of Children and Families provided, however, that no group home shall contain more than 12 children.

**Adopted.** L. 1975, c. 291, §53. **Amended.** L. 2004, c. 130, §113, effective August 27, 2004; L. 2006, c. 47, §185, effective July 11, 2006, and shall be retroactive to July 1, 2006.

**40:55D-66.1. Community residences, permitted use in residential districts.** Community residences for persons with developmental disabilities, community shelters for victims of domestic violence, community residences for persons with terminal illnesses, community residences for persons with head injuries, and adult family care homes for persons who are elderly and adults with physical disabilities shall be a permitted use in all residential districts of a municipality, and the requirements therefor shall be the same as for single family dwelling units located within such districts.

**Adopted.** L. 1978, c. 159, §1. **Amended.** L. 1979, c. 338, §2; L. 1993, c. 329, §7, effective December 23, 1993; L. 1997, c. 321, §1, effective January 8, 1998; L. 2001, c. 304, §11, effective April 2, 2002; L. 2017, c. 131, §172, effective July 21, 2017.

**40:55D-66.2. Definitions.** As used in P.L.1978, c.159 (C.40:55D-66.1 et seq.):

a. “Community residence for persons with developmental disabilities” means any community residential facility licensed pursuant to P.L.1977, c.448 (C.30:11B-1 et seq.) providing food, shelter, and personal guidance, under such supervision as required, to not more than 15 persons with developmental disabilities or with mental illnesses, who require assistance, temporarily or permanently, in order to live in the community, and shall include, but not be limited to: group homes, halfway houses, intermediate care facilities, supervised apartment living arrangements, and hostels. Such a residence shall not be considered a health care facility within the meaning of the “Health Care Facilities Planning Act,” P.L.1971, c.136 (C.26:2H-1 et al.). In the case of such a community residence housing persons with mental illness, the residence shall have been approved for a purchase of service contract or an affiliation agreement pursuant to procedures as shall be established by regulation of the Division of Mental Health and Addiction Services in the Department of Human Services. As used in P.L.1978, c.159 (C.40:55D-66.1 et seq.), “person with a developmental disability” means a person with a developmental disability as defined in section 2

of P.L.1977, c.448 (C.30:11B-2), and “person with a mental illness” means a person with a mental illness as defined in section 2 of P.L.1987, c.116 (C.30:4-27.2), but shall not include a person who has been committed after having been found not guilty of a criminal offense by reason of insanity or having been found unfit to be tried on a criminal charge.

b. “Community shelter for victims of domestic violence” means any shelter approved for a purchase of service contract and certified pursuant to standards and procedures established by regulation of the Department of Human Services pursuant to P.L.1979, c.337 (C.30:14-1 et seq.), providing food, shelter, medical care, legal assistance, personal guidance, and other services to not more than 15 persons who have been victims of domestic violence, including any children of such victims, who temporarily require shelter and assistance in order to protect their physical or psychological welfare.

c. “Community residence for persons with head injuries” means a community residential facility licensed pursuant to P.L.1977, c.448 (C.30:11B-1 et seq.) providing food, shelter, and personal guidance, under such supervision as required, to not more than 15 persons with head injuries, who require assistance, temporarily or permanently, in order to live in the community, and shall include, but not be limited to: group homes, halfway houses, supervised apartment living arrangements, and hostels. Such a residence shall not be considered a health care facility within the meaning of the “Health Care Facilities Planning Act,” P.L.1971, c.136 (C.26:2H-1 et al.).

d. “Person with head injury” means a person who has sustained an injury, illness, or traumatic changes to the skull, the brain contents, or its coverings which results in a temporary or permanent physiobiological decrease of mental, cognitive, behavioral, social, or physical functioning which causes the person to have a partial or total disability, but excluding a person with Alzheimer’s disease and related disorders or other forms of dementia.

e. “Community residence for persons with terminal illnesses” means any community residential facility operated as a hospice program providing food, shelter, personal guidance, and health care services, under such supervision as required, to not more than 15 persons with terminal illnesses.

f. “Alzheimer’s disease and related disorders” means a form of dementia characterized by a general loss of intellectual abilities of sufficient severity to interfere with social or occupational functioning.

g. “Dementia” means a chronic or persistent disorder of the mental processes due to organic brain disease, for which no curative treatment is available, and marked by memory disorders, changes in personality, deterioration in personal care, impaired reasoning ability, and disorientation.

**Adopted.** L. 1978, c. 159, §2. **Amended.** L. 1979, c. 338, §3; L. 1993, c. 329, §8, effective December 23, 1993; L. 1997, c. 321, §2, effective January 8, 1998; L. 2015, c. 125, §10, effective June 1, 2016; L. 2017, c. 131, §173, effective July 21, 2017.

**40:55D-66.3. Severability.** If any provision of this act or the application thereof to any person or circumstance is found unconstitutional, the remainder of this act and the application of such provisions to other persons or circumstances shall not be affected thereby, and to this end the provisions of this act are severable.

**Adopted.** L. 1978, c. 159, §3.

#### **40:55D-66.4 through 40:55D-66.5. Repealed.**

**Repealed.** L. 1998, c. 139, §1, effective December 11, 1998.

**40:55D-66.5a. Legislative findings and declaration regarding family day care homes in residential districts.** The Legislature finds and declares that:

a. With over 50 percent of working-age women now in the workforce, the need for high quality child care is of vital importance;

b. Not only does the availability of child care allow parents the peace of mind to pursue their careers and lead active, productive, professional lives, but it is also a necessity given the high cost of living in this State and the ever increasing need for families to bring home two incomes just to get by;

c. A significant number of people in this State, recognizing the tremendous need for quality child care, and who, in some cases, are already staying home caring for their own children, are providing child care services for a few additional children, thereby augmenting the supply of child care and providing a vital service that might otherwise not be available elsewhere; and

d. Given the paucity of decent, affordable child care combined with the current labor shortage in this State, it seems unreasonable to erect zoning barriers which effectively prevent the

establishment of or, in some cases, continuation of, these valuable and vitally necessary family day care homes.

e. It is therefore in the public interest and a valid public policy for this Legislature to eliminate those barriers which currently exist which prevent the establishment, or continued operation of, family day care homes in residential neighborhoods.

**Adopted.** L. 1991, c. 278, §1, effective September 13, 1991.

**40:55D-66.5b. Family day care homes as permitted use in all residential districts.** a. Family day care homes shall be a permitted use in all residential districts of a municipality. The requirements for family day care homes shall be the same as for single family dwelling units located within such residential districts. Any deed restriction that would prohibit the use of a single family dwelling unit as a family day care home shall not be enforceable unless that restriction is necessary for the preservation of the health, safety, and welfare of the other residents in the neighborhood. The burden of proof shall be on the party seeking to enforce the deed restriction to demonstrate, on a case-by-case basis, that the restriction is necessary for the preservation of the health, safety and welfare of the residents in the neighborhood who were meant to benefit from the restriction.

b. In condominiums, cooperatives and horizontal property regimes that represent themselves as being primarily for retirees or elderly persons, or which impose a minimum age limit tending to attract persons who are nearing retirement age, deed restrictions or bylaws may prohibit family day care homes from being a permitted use.

c. In condominiums, cooperatives and horizontal property regimes other than those permitted to prohibit family day care homes from being a permitted use under subsection b. of this section, deed restrictions or bylaws may prohibit family day care homes from being a permitted use; however, if such condominiums, cooperatives, or horizontal property regimes prohibit such use, the burden of proof shall be on the condominium association, cooperative association, or council of co-owners to demonstrate, on a case-by-case basis, that the prohibition is reasonably related to the health, safety, and welfare of the residents. The burden of proof also shall be on the condominium association, cooperative association, or council of co-owners to demonstrate, on a case-by-case basis, that any other restrictions imposed upon a family day care home, including but not limited to noise restrictions and restrictions on the use of interior common areas, are reasonably related to the health, safety and welfare of the residents.

d. For the purposes of this act:

“Family day care home” means the private residence of a family day care provider which is registered as a family day care home pursuant to the “Family Day Care Provider Registration Act,” P.L.1987, c.27 (C.30:5B-16 et seq.);

“Applicant” means a person who applies for a certificate of registration pursuant to the “Family Day Care Provider Registration Act,” P.L.1987, c.27 (C.30:5B-16 et seq.);

“Commissioner” means the Commissioner of Human Services;

“Condominium” means a condominium formed under the “Condominium Act,” P.L.1969, c.257 (C.46:8B-1 et seq.);

“Cooperative” means a cooperative as defined under “The Cooperative Recording Act of New Jersey,” P.L.1987, c.381 (C.46:8D-1 et seq.); and

“Horizontal property regime” means a horizontal property regime formed under the “Horizontal Property Act,” P.L.1963, c.168 (C.46:8A-1 et seq.).

**Adopted.** L. 1991, c. 278, §2, effective September 13, 1991. **Amended.** L. 1992, c. 13, §1, effective May 28, 1992.

**40:55D-66.6. Child care centers.** Child care centers for which, upon completion, a license is required from the Department of Human Services pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.), shall be a permitted use in all nonresidential districts of a municipality. The floor area occupied in any building or structure as a child care center shall be excluded in calculating: (1) any parking requirement otherwise applicable to that number of units or amount of floor space, as appropriate, under State or local laws or regulations adopted thereunder; and (2) the permitted density allowable for that building or structure under any applicable municipal zoning ordinance.

**Adopted.** L. 1989, c. 286, §1, effective January 12, 1990.

**40:55D-66.7. Non-residential development with child care center; calculation of density.** In considering an application for development approval for a nonresidential development that is to include a child care center that is located on the business premises, is owned or operated by employers or landlords for the benefit of their employees, their tenants' employees, or employees

in the area surrounding the development, and is required to be licensed by the Department of Human Services pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.), an approving authority may exclude the floor area to be occupied in any building or structure by the child care center in calculating the density of that building or structure for the purposes of determining whether or not the density is allowable under any applicable municipal zoning ordinance.

**Adopted.** L. 1992, c. 81, §1, effective August 6, 1992.

**40:55D-66.7a. Child care programs, exemption from local zoning restrictions.** Any child care program approved by a local board of education and operated by the board or by an approved sponsor in a public school, before or after regular school hours, pursuant to N.J.S.18A:20-34, shall be deemed a permitted use in all residential and nonresidential districts of a municipality and shall be exempt from local zoning restrictions.

**Adopted.** L. 1999, c. 83, §2, effective April 30, 1999.

**40:55D-66.8. Siting of a structure or equipment required for groundwater remedial action deemed essential to the continuation of a structure or use of property.** a. The siting of a structure or equipment required for a groundwater remedial action approved by the Department of Environmental Protection pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.), shall be deemed to be essential to the continuation of an existing structure or use of a property, including a nonconforming use, or to the development of a property, as authorized in the zoning ordinance of a municipality. A groundwater remedial action subject to this section, including any structure or equipment required in connection therewith, shall, therefore, be deemed to be an accessory use or structure to any structure or use authorized by the development regulations of a municipality; shall be a permitted use in all zoning or use districts of a municipality; and shall not require a use variance pursuant to subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70).

b. A municipality may, by ordinance, adopt reasonable standards for the siting of a structure or equipment required for a groundwater remedial action subject to subsection a. of this section. The standards may include specification of the duration of time allowed for the removal from a site of all structures or equipment used in the remedial action upon expiration of the term of the discharge permit or completion of the remedial action, whichever shall be sooner. Nothing in this subsection shall be deemed to authorize a municipality to require site plan review by a municipal agency for a groundwater remedial action, but an ordinance establishing siting standards may provide penalties and may authorize the municipality to seek injunctive relief for violations of the ordinance.

As used in this section, “groundwater remedial action” means the removal or abatement of pollutants in groundwater, and includes de-watering activities performed in connection with the removal or replacement of underground storage tanks, as defined in section 2 of P.L.1986, c.102 (C.58:10A-22), except that as used herein underground storage tanks shall include:

(1) farm underground storage tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(2) underground storage tanks used to store heating oil for on-site consumption in a nonresidential building with a capacity of 2,000 gallons or less; and

(3) underground storage tanks used to store heating oil for on-site consumption in a residential building.

**Adopted.** L. 1993, c. 351, §3, effective January 28, 1994, and it shall apply to applications filed on and after that date.

**40:55D-66.9. Variance for groundwater remedial action.** If, for any of the reasons set forth in subsection c. of section 57 of P.L.1975, c.291 (C.40:55D-70), a variance is required under that subsection c. for the siting of a structure or equipment to be used in a groundwater remedial action subject to section 3 of P.L.1993, c.351 (C.40:55D-66.8), a variance for the remedial action shall be deemed necessary to avoid exceptional and undue hardship on an owner, lessee or developer of a property for which a variance application is made; however, a zoning ordinance may authorize the zoning board of adjustment or planning board, as appropriate, to establish reasonable terms and conditions for issuance of a subsection c. variance. The zoning board of adjustment or planning board, as appropriate, shall review and take final action on an application for a subsection c. variance for a groundwater corrective action at the next meeting of the zoning board of adjustment or planning board, as appropriate, occurring not less than 20 days following the filing of an application therefor, unless the zoning board of adjustment or planning board, as appropriate, determines that the application lacks information indicated on a checklist adopted by ordinance and

made available to the applicant, and the applicant has been notified, in writing, of the specific deficiencies prior to expiration of the 20-day period.

**Adopted.** L. 1993, c. 351, §4, effective January 28, 1994, and it shall apply to applications filed on and after that date.

**40:55D-66.10. Methadone clinic deemed business for zoning purposes.** For the purposes of any zoning ordinance adopted by any municipality in the State pursuant to section 49 of P.L.1975, c.291 (C.40:55D-62), a municipality may provide within the ordinance that a facility offering outpatient methadone maintenance services, hereinafter referred to as a “methadone clinic,” shall be deemed to be a ‘business’ or commercial operation or functional equivalent thereof and shall not be construed, for zoning purposes, as ancillary or adjunct to a doctor’s professional office. When a municipality has adopted such an ordinance, the siting of a methadone clinic within a municipality shall be limited to zones designated for business or commercial use.

**Adopted.** L. 2001, c. 19, §1, effective January 30, 2001.

**40:55D-66.11. Wind and solar facilities permitted in industrial zones.** A renewable energy facility on a parcel or parcels of land comprising 20 or more contiguous acres that are owned by the same person or entity shall be a permitted use within every industrial district of a municipality.

For the purposes of this section:

“renewable energy facility” means a facility that engages in the production of electric energy from solar technologies, photovoltaic technologies, or wind energy.

**Adopted.** L. 2009, c. 35, §1, effective March 31, 2009.

**40:55D-66.12. Municipal ordinances relative to small wind energy systems.** a. Ordinances adopted by municipalities to regulate the installation and operation of small wind energy systems shall not unreasonably limit such installations or unreasonably hinder the performance of such installations. An application for development or appeal involving a small wind energy system shall comply with the appropriate notice and hearing provisions otherwise required for the application or appeal pursuant to the “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.).

b. Unreasonable limits or hindrances to performance of a small wind energy system shall include the following:

(1) Prohibiting small wind energy systems in all districts within the municipality;

(2) Restricting tower height or system height through application of a generic ordinance or regulation on height that does not specifically address allowable tower height or system height of a small wind energy system;

(3) Requiring a setback from property boundaries for a tower that is greater than 150 percent of the system height. In a municipality that does not adopt specific setback requirements for small wind energy systems, any small wind energy system shall be set back from the nearest property boundary a distance at least equal to 150 percent of the system height; provided, however, that this setback requirement may be reduced by the zoning board of adjustment or, if otherwise appropriate, by the planning board upon application in an individual case if the applicant establishes the conditions for a variance under the “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.) to the board’s satisfaction;

(4) Setting a noise level limit lower than 55 decibels, as measured at the site property line, or not allowing for limit overages during short-term events such as utility outages and severe wind storms; and

(5) Setting electrical or structural design criteria that exceed applicable provisions of the State Uniform Construction Code promulgated pursuant to the “State Uniform Construction Code Act,” P.L.1975, c.217 (C.52:27D-119 et seq.) and technical bulletins issued pursuant to section 2 of P.L.2009, c.244 (C.40:55D-66.13).

c. If the Commissioner of Environmental Protection has issued a permit for the development of a small wind energy system under the “Coastal Area Facility Review Act,” P.L.1973, c.185 (C.13:19-1 et seq.), prior to the effective date of P.L.2009, c.244 (C.40:55D-66.12 et al.), provisions of subsection b. of this section shall not apply to an application for development for that small wind energy system if the provisions of that subsection would otherwise prohibit approval of the application or require the approval to impose restrictions or limitations on the small wind energy system, including but not limited to restrictions or limitations on tower height or system height, the setback of the system from property boundaries, and noise levels.

d. For the purposes of this section:

“Small wind energy system” means a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity consistent with applicable provisions of the State Uniform Construction Code promulgated pursuant to the “State Uniform Construction Code Act,” P.L.1975, c.217 (C.52:27D-119 et seq.) and technical bulletins issued pursuant to section 2 of P.L.2009, c.244 (C.40:55D-66.13), and which will be used primarily for onsite consumption;

“System height” means the height above grade of the tower plus the wind generator;

“Tower height” means the height above grade of the fixed portion of the tower, excluding the wind generator; and

“Wind generator” means blades and associated mechanical and electrical conversion components mounted on top of the tower.

**Adopted.** L. 2009, c. 244, §1, effective January 16, 2010.

**40:55D-66.13. Issuance of technical bulletin.** Within 10 months of enactment of P.L.2009, c.244 (C.40:55D-66.12 et al.), the Director of the Division of Codes and Standards in the Department of Community Affairs, in consultation with the Department of Environmental Protection, shall issue a technical bulletin which shall include model municipal ordinances for the construction of small wind energy systems. Prior to issuance of the technical bulletin, the director shall hold one or more public hearings and solicit comments from interested parties. The Division of Codes and Standards in the Department of Community Affairs shall post the technical bulletin on its Internet website.

**Adopted.** L. 2009, c. 244, §2, effective January 16, 2010.

**40:55D-66.14. Compliance.** Small wind energy systems shall be built to comply with all applicable Federal Aviation Administration requirements, including 14 C.F.R. part 77, subpart B regarding installations close to airports, and all applicable airport zoning regulations.

**Adopted.** L. 2009, c. 244, §3, effective January 16, 2010.

**40:55D-66.15. Conditions for deeming abandoned; legal action.** A small wind energy system that is out of service for a continuous 12-month period shall be deemed abandoned. The municipal zoning enforcement officer may issue a notice of abandonment to the owner of an abandoned small wind energy system. The owner shall have the right to respond to the notice of abandonment within 30 days from the receipt date. The municipal zoning enforcement officer shall withdraw the notice of abandonment and notify the owner that the notice has been withdrawn if the owner provides the municipal zoning enforcement officer with information demonstrating the small wind energy system has not been abandoned. If the small wind energy system is determined to be abandoned, the owner of the small wind energy system shall remove the wind generator from the tower at the owner’s sole expense within three months of receipt of notice of abandonment. If the owner fails to remove the wind generator from the tower, the municipality may pursue a legal action to have the wind generator removed at the owner’s expense.

**Adopted.** L. 2009, c. 244, §4, effective January 16, 2010.

**40:55D-66.16. Solar, photovoltaic energy facility, structure, certain, permitted use within every municipality.** a. Notwithstanding any law, ordinance, rule or regulation to the contrary, a solar or photovoltaic energy facility or structure constructed and operated on the site of any landfill or closed resource extraction operation, shall be a permitted use within every municipality.

b. Notwithstanding any law, ordinance, rule or regulation to the contrary, a wind energy generation facility or structure constructed and operated on the site of any landfill or closed resource extraction operation, shall be a permitted use within every municipality outside the pinelands area as defined pursuant to section 3 of P.L.1979, c.111 (C.13:18A-3).

The Department of Environmental Protection may adopt, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations as necessary to effectuate the purposes of this subsection.

**Adopted.** L. 2011, c. 141, §2, effective December 14, 2011.

**40:55D-66.17. Findings, declarations, definitions, relative to tiny home occupancy on vacant municipal land.** a. The Legislature finds and declares that:

(1) An excess of vacant properties present a persistent problem in many New Jersey municipalities;

(2) Vacant properties create opportunities for criminal activity, lower neighborhood property values and local government revenues, and generally impair the public health and welfare;

(3) In recent years, an increasing awareness has developed over the large financial and environmental cost of building and maintaining an average American home;

(4) Many young people, and people of modest means, find themselves unable to afford to purchase these homes, or even rent them, as well as pay the large associated utility bills;

(5) Increasingly, many people view residing in a tiny home as a simple and viable alternative to the traditional house, that provides the resident more affordable housing, and lowers their environmental footprint;

(6) Despite the economic and environmental advantages of tiny home construction and occupancy, many who want to build or occupy tiny homes have expressed frustration with regulatory barriers to making tiny home living a reality; and

(7) It is, therefore, in the best interest of the State and a valid public purpose to permit New Jersey municipalities to lease vacant lots for use by the owners of tiny homes and to direct the Commissioner of Community Affairs to publish enhanced regulatory guidance on the acceptable uses of tiny homes in residential construction.

b. A municipality may adopt a tiny home rental ordinance to permit the use of vacant land owned by the municipality for tiny home rental purposes. A tiny home rental ordinance shall establish:

(1) whether the vacant land may be leased to the owner of a tiny home solely for their own occupancy, or whether the lessee may sublease the vacant land; and

(2) the setback, use group, and other zoning limitations that shall apply to homes built for tiny home rental purposes.

c. As used in P.L. 2019, c.490(C.40:55D-66.17 et al.):

“Tiny home” means a dwelling that is 400 square feet or less in floor area excluding lofts.

“Tiny home rental purposes” means the rental of individual lots, or portions of individual lots, for the placement and occupancy of tiny homes.

**Adopted.** L. 2019, c. 490, §1, effective January 21, 2020.

**40:55D-66.18. Variance not required for application.** An application for development submitted solely for the installation of electric vehicle supply equipment or Make-Ready parking spaces shall be considered a permitted accessory use and permitted accessory structure in all zoning or use districts of a municipality and shall not require a variance pursuant to subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70).

**Adopted.** L. 2021, c. 171, §1, effective July 9, 2021.

**40:55D-66.19. Applications at gasoline station, retail establishment.** a. An application for development for the installation of electric vehicle supply equipment or Make-Ready parking spaces at an existing gasoline service station, an existing retail establishment, or any other existing building shall not be subject to site plan or other land use board review, shall not require variance relief pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.) or any other law, rule, or regulation, and shall be approved through the issuance of a zoning permit by the administrative officer, provided the application meets the following requirements:

(1) the proposed installation does not violate bulk requirements applicable to the property or the conditions of the original final approval of the site plan or subsequent approvals for the existing gasoline service station, retail establishment, or other existing building;

(2) all other conditions of prior approvals for the gasoline service station, the existing retail establishment, or any other existing building continue to be met; and

(3) the proposed installation complies with the construction codes adopted in or promulgated pursuant to the “State Uniform Construction Code Act,” P.L.1975, c.217 (C.52:27D-119 et seq.), any safety standards concerning the installation, and any State rule or regulation concerning electric vehicle charging stations.

b. An application shall be deemed complete if:

(1) the application, including the permit fee and all necessary documentation, is determined to be complete;

(2) a notice of incompleteness is not provided within 20 days after the filing of the application; or

(3) a one-time written correction notice is not issued by the jurisdiction within 20 days after filing of the application detailing all deficiencies in the application and identifying any additional information explicitly necessary to complete a review of the permit application.

c. Electric vehicle supply equipment and Make-Ready parking spaces installed at a gasoline service station, an existing retail establishment, or any other existing building shall be subject to applicable local and Department of Community Affairs inspection requirements.

**Adopted.** L. 2021, c. 171, §2, effective July 9, 2021.

**40:55D-66.20. Certain multiple dwellings, preliminary site plan approval.** a. (1) As a condition of preliminary site plan approval, for each application involving a multiple dwelling with five or more units of dwelling space, which shall include a multiple dwelling that is a building held under a condominium or cooperative form of ownership, a mutual housing corporation, or a mixed use development, the developer or owner, as applicable, shall:

(a) prepare as Make-Ready parking spaces at least 15 percent of the required off-street parking spaces, and install electric vehicle supply equipment in at least one-third of the 15 percent of Make-Ready parking spaces;

(b) within three years following the date of the issuance of the certificate of occupancy, install electric vehicle supply equipment in an additional one-third of the original 15 percent of Make-Ready parking spaces; and

(c) within six years following the date of the issuance of the certificate of occupancy, install electric vehicle supply equipment in the final one-third of the original 15 percent of Make-Ready parking spaces.

(2) Throughout the installation of electric vehicle supply equipment in the Make-Ready parking spaces, at least five percent of the electric vehicle supply equipment shall be accessible for people with disabilities.

(3) Nothing in this subsection shall be construed to restrict the ability to install electric vehicle supply equipment or Make-Ready parking spaces at a faster or more expansive rate than as required by this subsection.

(4) Parking spaces equipped with electric vehicle supply equipment installed in accordance with P.L.2020, c.80 (C.52:27D-141.10 et seq.) and P.L.2020, c.108 (C.45:22A-48.4) shall count towards the total number of electric vehicle supply equipment required installations.

(5) During the site plan application review for multiple dwelling units, the local land use board shall review the locations where the Make-Ready equipment or electric vehicle supply equipment will be installed.

b. (1) As a condition of preliminary site plan approval, each application involving a parking lot or garage not covered in subsection a. of this section, a developer or owner, as applicable, shall:

(a) install at least one Make-Ready parking space if there will be 50 or fewer off-street parking spaces;

(b) install at least two Make-Ready parking spaces if there will be 51 to 75 off-street parking spaces;

(c) install at least three Make-Ready parking spaces if there will be 76 to 100 off-street parking spaces;

(d) install at least four Make-Ready parking spaces, at least one of which shall be accessible for people with disabilities, if there will be 101 to 150 off-street parking spaces; or

(e) install at least four percent of the total parking spaces as Make-Ready parking spaces, at least five percent of which shall be accessible for people with disabilities, if there will be more than 150 off-street parking spaces.

(2) In lieu of installing Make-Ready parking spaces, a parking lot or garage may install electric vehicle supply equipment to satisfy the requirements of this subsection.

(3) Nothing in this subsection shall be construed to restrict the ability to install electric vehicle supply equipment or Make-Ready parking spaces at a faster or more expansive rate than as required by this subsection.

(4) With respect to parking spaces for people with disabilities, the model land use ordinance published pursuant to section 4 of P.L. 2021, c.171 (C.40:55D-66.21) shall include standards that provide for the progression of accessible Make-Ready parking spaces to accessible electric vehicle supply equipment parking spaces, and shall conform to the requirements of the most recent “International Building Code” and “International Residential Code” published by the International Code Council except as the Commissioner of Community Affairs deems appropriate to deviate from those codes.

c. Notwithstanding the provisions of subsections a. and b. of this section, a retailer that provides 25 or fewer off-street parking spaces or the developer or owner of a single-family home shall not

be required to provide or install any electric vehicle supply equipment or Make-Ready parking spaces.

d. (1) The Site Improvement Advisory Board, established pursuant to section 3 of P.L.1993, c.32 (C.40:55D-40.3), shall, no later than 90 days following enactment of P.L. 2021, c.171 (C.40:55D-66.18 et al.), submit a recommendation to the Commissioner of Community Affairs to amend the Statewide site improvement standards for multifamily residential development to include the requirements set forth in sections 1 through 3 of P.L. 2021, c.171 (C.40:55D-66.18 through C.40:55D-66.20) and to include parking spaces with electric vehicle supply equipment in the calculation of minimum required parking spaces. The Commissioner of Community Affairs may review and promulgate the recommendation in accordance with the procedure set forth in subsection b. of section 4 of P.L.1993, c.32 (C.40:55D-40.4). The adopted criteria shall be consistent with the model land use ordinance published by the Commissioner of Community Affairs pursuant to section 4 of P.L.2021, c.171 (C.40:55D-66.21).

(2) The “State Uniform Construction Code Act,” P.L.1975, c. 217 (C. 52:27D-119 et seq.), shall incorporate the requirements set forth in sections 1 through 3 of P.L. 2021, c.171 (C.40:55D-66.18 through C.40:55D-66.20) no later than 90 days following enactment of P.L. 2021, c.171 (C.40:55D-66.18 et al.). The adopted criteria shall be consistent with the model land use ordinance published by the Commissioner of Community Affairs pursuant to section 4 of P.L.2021, c.171 (C.40:55D-66.21).

e. A parking space prepared with electric vehicle supply equipment or Make-Ready equipment pursuant to this section shall count as at least two parking spaces for the purpose of complying with a minimum parking space requirement. This subsection shall result in a reduction of no more than 10 percent of the total required parking.

f. All parking space calculations for electric vehicle supply equipment and Make-Ready equipment pursuant to this section shall be rounded up to the next full parking space.

g. A permitting application solely for the installation of electric vehicle supply equipment permitted as an accessory use shall not be subject to review based on parking requirements.

h. A power company funding the installation of electric vehicle supply equipment or Make-Ready parking spaces shall collaborate with developers and owners, with consultation from the Board of Public Utilities, in implementing the provisions of P.L. 2021, c.171 (C.40:55D-66.18 et al.).

i. The requirements in subsection a. and b. of this section are based on the number of off-street parking spaces associated with new construction that are required as part of a site plan approval; or, in the case of an expansion to an existing development or an existing parking lot or garage, the number of new, off-street parking spaces created as part of a site plan approval. If a developer or owner has received a parking variance as part of the site plan approval, the requirements shall be based on the number of off-street parking spaces provided pursuant to the variance.

**Adopted.** L. 2021, c. 171, §3, effective July 9, 2021. **Amended.** L. 2023, c. 220, §1, effective January 8, 2024.

**40:55D-66.21. Model land use ordinance.** a. (1) Within 30 days of enactment of P.L. 2021, c.171 (C.40:55D-66.18 et al.), the Commissioner of Community Affairs shall publish a model land use ordinance to address installation, sightline, and setback requirements and other health- and safety-related specifications for electric vehicle supply equipment and Make-Ready parking spaces and shall post the model land use ordinance on the department’s Internet website. The model land use ordinance published by the commissioner shall not require the rulemaking process pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.).

(2) The model land use ordinance shall include the requirements pursuant to sections 1 through 3 of P.L. 2021, c.171 (C.40:55D-66.18 through C.40:55D-66.20).

(3) The Commissioner of Community Affairs may periodically update the electric vehicle supply equipment and Make-Ready parking space requirements established pursuant to subsections a. and b. of section 3 of P.L. 2021, c.171 (C.40:55D-66.20) to reflect increased electric vehicle adoption levels and technological advances in the State. Any update to such parking requirements shall be adopted by the commissioner pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) and promulgated as amendments to the model land use ordinance published pursuant to this subsection. Amendments to the model ordinance to address installation, sightline, or setback requirements or other health- and safety-related specifications shall not require the rulemaking process pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.).

b. (1) The model land use ordinance published by the Commissioner of Community Affairs pursuant to this section shall be effective in each municipality, except that a municipality may deviate from the reasonable standards set forth in the model land use ordinance by adoption of an ordinance pursuant to paragraph (2) of this subsection.

(2) A municipality may, by ordinance, adopt reasonable standards to address installation, sightline, and setback requirements or other health- and safety-related specifications for electric vehicle supply equipment and Make-Ready parking spaces. Nothing in this subsection shall be deemed to authorize a municipality to require site plan review by a municipal agency solely for the installation of electric vehicle supply equipment or Make-Ready parking spaces.

(3) A municipality may encourage additional installation of electric vehicle supply equipment and Make-Ready parking spaces in development projects, but shall not require more than the requirements in the model land use ordinance published by the Commissioner of Community Affairs. The requirements adopted by the Site Improvement Advisory Board established pursuant to section 3 of P.L.1993, c.32 (C.40:55D-40.3) and the requirements adopted through the "State Uniform Construction Code Act," P.L.1975, c. 217 (C. 52:27D-119 et seq.) shall be consistent with the requirements set forth in the model ordinance and shall be updated if the model ordinance is updated pursuant to paragraph (3) of subsection a. of this section.

**Adopted.** L. 2021, c. 171, §4, effective July 9, 2021.

**40:55D-67. Conditional uses; site plan review.** a. A zoning ordinance may provide for conditional uses to be granted by the planning board according to definite specifications and standards which shall be clearly set forth with sufficient certainty and definiteness to enable the developer to know their limit and extent. The planning board shall grant or deny an application for a conditional use within 95 days of submission of a complete application by a developer to the administrative officer, or within such further time as may be consented to by the applicant.

b. The review by the planning board of a conditional use shall include any required site plan review pursuant to article 6 of this act [40:55D-37 to 40:55D-59]. The time period for action by the planning board on conditional uses pursuant to subsection a. of this section shall apply to such site plan review. Failure of the planning board to act within the period prescribed shall constitute approval of the application and a certificate of the administrative officer as to the failure of the planning board to act shall be issued on request of the applicant, and it shall be sufficient in lieu of the written endorsement or other evidence of approval, herein required, and shall be so accepted by the county recording officer for purposes of filing subdivision plats.

Whenever review or approval of the application by the county planning board is required by section 5 of P.L.1968, c. 285 (C. 40:27-6.3), in the case of a subdivision, or section 8 of P.L.1968, c. 285 (C. 40:27-6.6), in the case of a site plan, the municipal planning board shall condition any approval that it grants upon timely receipt of a favorable report on the application by the county planning board or approval by the county planning board by its failure to report thereon within the required time period.

**Adopted.** L. 1975, c. 291, §54.

**40:55D-68. Nonconforming structures and uses.** Any nonconforming use or structure existing at the time of the passage of an ordinance may be continued upon the lot or in the structure so occupied and any such structure may be restored or repaired in the event of partial destruction thereof.

The prospective purchaser, prospective mortgagee, or any other person interested in any land upon which a nonconforming use or structure exists may apply in writing for the issuance of a certificate certifying that the use or structure existed before the adoption of the ordinance which rendered the use or structure nonconforming. The applicant shall have the burden of proof. Application pursuant hereto may be made to the administrative officer within one year of the adoption of the ordinance which rendered the use or structure nonconforming or at any time to the board of adjustment. The administrative officer shall be entitled to demand and receive for such certificate issued by him a reasonable fee not in excess of those provided in R.S. 54:5-14 and R.S. 54:5-15. The fees collected by the official shall be paid by him to the municipality. Denial by the administrative officer shall be appealable to the board of adjustment. Sections 59 through 62 of P.L. 1979, c. 291 (C. 40:55D-72 to C. 40:55D-75) shall apply to applications or appeals to the board of adjustment.

**Adopted.** L. 1975, c. 291, §55. **Amended.** L. 1985, c. 516, §15.

**40:55D-68.1. Expansion of nonconforming hotel, guest house, rooming house or boarding house operations.** Any hotel, guest house, rooming house or boarding house which is situated in any municipality which borders on the Atlantic ocean in a county of the fifth or sixth class shall be permitted to operate on a full-year basis notwithstanding section 55 of P.L.1975, c.291 (C.40:55D-68) or any municipal ordinance, resolution, seasonal license, or other municipal rule or regulation to the contrary if it is demonstrated by affidavit or certification that:

a. a certificate of inspection has been issued for the hotel or guest house under the provisions of P.L.1967, c.76 (C.55:13A-1 et seq.) or, in the case of a rooming house or boarding house, that a license has been issued under P.L.1979, c.496 (C.55:13B-1 et al.); and

b. a hotel or guest house in the municipality which has obtained a certificate of inspection pursuant to P.L.1967, c.76 (C.55:13A-1 et seq.) or rooming house or boarding house in the municipality which is licensed under P.L.1979, c.496 (C.55:13B-1 et al.) is not prohibited from operating on a full-year basis on February 9, 1989 or on any other day following February 9, 1989.

**Adopted.** L. 1989, c. 67, §1, effective April 14, 1989.

**40:55D-68.2. Filing with commissioner of community affairs; effect.** The owner of any hotel, guest house, rooming house or boarding house who proposes to increase its operation to a full-year basis and who can demonstrate that a hotel, guest house, rooming house or boarding house in the municipality is not prohibited from operating on a full-year basis as provided under section 1 of this act [40:55D-68.1] shall file copies of that information with the Commissioner of Community Affairs in accordance with the requirements set forth in section 1 [40:55D-68.1] of this act and provide copies of that information to the clerks of the municipality and county in which the hotel, guest house, rooming house or boarding house is situated. The commissioner shall review that information submitted by the hotel, guest house, rooming house or boarding house owner and, within 30 days of receiving the information submitted, provide a determination of whether or not the hotel, guest house, rooming house or boarding house meets the requirements of section 1 [40:55D-68.1] of this act. If the commissioner does not provide a determination within the 30-day period, the hotel, guest house, rooming house or boarding house owner may commence the operation of the hotel, guest house, rooming house or boarding house on a full-year basis.

**Adopted.** L. 1989, c. 67, §2, effective April 14, 1989.

**40:55D-68.3. Penalty for false filing.** Any person who knowingly files false information under this act shall be liable to a civil penalty not to exceed \$1,000 for each filing. Any penalty imposed under this section may be recovered with costs in a summary proceeding pursuant to “the penalty enforcement law,” N.J.S.2A:58-1 et seq.

**Adopted.** L. 1989, c. 67, §3, effective April 14, 1989.

**40:55D-68.4. Municipalities not to prohibit senior citizens from leasing or renting rooms within single family primary residence to one person.** Notwithstanding any law, ordinance, rule or regulation to the contrary, a municipality shall not prohibit any senior citizen, who is the owner of a single-family dwelling which is his primary residence, from renting or leasing a room or rooms within that dwelling, together with general use associated with that dwelling, to one person, except that nothing in this act shall be construed to prohibit a municipality from allowing the rental or leasing to more than one person.

**Adopted.** L. 1997, c. 339, §1, effective January 12, 1998.

**40:55D-68.5. Senior citizen defined.** For the purposes of this act, a “senior citizen” is any person who has attained the age of 62 years on or after the effective date of this act, or the spouse of that person, or the surviving spouse of that person, if the surviving spouse is 55 years of age or older.

**Adopted.** L. 1997, c. 339, §2, effective January 12, 1998.

**40:55D-68.6. Act not to limit regulations pertaining to fire safety, and public health and welfare.** Nothing in this act shall be interpreted to limit the powers of a municipality to enforce applicable provisions of any laws, ordinances and regulations relating to fire safety, and public health and welfare.

**Adopted.** L. 1997, c. 339, §3, effective January 12, 1998.

**ARTICLE 9. ZONING BOARD OF ADJUSTMENT.**

**40:55D-69. Zoning board of adjustment.** Upon the adoption of a zoning ordinance, the governing body shall create, by ordinance, a zoning board of adjustment unless the municipality is eligible for, and exercises, the option provided by subsection c. of section 16 of P.L.1975, c.291 (C.40:55D-25). A zoning board of adjustment shall consist of seven regular members and may have not more than four alternate members. All regular members and any alternate members shall be municipal residents. Notwithstanding the provisions of any other law or charter heretofore adopted, such ordinance shall provide the method of appointment of all such members. Alternate members shall be designated at the time of appointment by the authority appointing them as "Alternate No. 1" and "Alternate No. 2," and, in the case of a municipality in which more than two alternates have been appointed, "Alternate No. 1," "Alternate No. 2," "Alternate No. 3," and "Alternate No. 4," as appropriate. The terms of the members first appointed under P.L.1975, c.291 (C.40:55D-1 et seq.) shall be so determined that to the greatest practicable extent, the expiration of such terms shall be distributed, in the case of regular members, evenly over the first four years after their appointment, and in the case of alternate members, evenly over the first two years after their appointment; provided that the initial term of no regular members shall exceed four years and that the initial term of no alternate member shall exceed two years. Thereafter, the term of each regular member shall be four years, and the term of each alternate member shall be two years. In any municipality in which more than two alternates have been appointed, the terms of not more than two alternate members shall expire in any one year. No member may hold any elective office or position under the municipality. No member of the board of adjustment shall be permitted to act on any matter in which he has, either directly or indirectly, any personal or financial interest. A member may, after public hearing if he requests it, be removed by the governing body for cause. A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term only.

The board of adjustment shall elect a chairman and vice chairman from its regular members and select a secretary, who may or may not be a member of the board of adjustment or a municipal employee.

Alternate members may participate in all matters but may not vote except in the absence or disqualification of a regular member. Participation of alternate members shall not be deemed to increase the size of the zoning board of adjustment established by ordinance of the governing body pursuant to section 56 of P.L.1975, c.291 (C.40:55D-69). A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, alternate members shall vote in the order of their numerical designations.

**Adopted.** L. 1975, c. 291, §56. **Amended.** L. 1978, c. 37, §2; L. 1979, c. 216, §22; L. 1985, c. 516, §27; L. 1998, c. 95, §9, effective November 1, 1998; L. 2004, c. 105, §1, effective July 14, 2004.

**40:55D-69.1. Planning board members may serve temporarily on board of adjustment, supplemental zoning board of adjustment.** If the zoning board of adjustment or supplemental zoning board of adjustment lacks a quorum because any of its regular or alternate members is prohibited by section 56 of P.L.1975, c.291 (C.40:55D-69) or section 1 of P.L.2019, c.225 (C.40:55D-69.2) from acting on a matter due to the member's personal or financial interest therein, Class IV members of the planning board shall be called upon to serve, for that matter only, as temporary members of the zoning board of adjustment or supplemental zoning board of adjustment. The Class IV members of the planning board shall be called upon to serve in order of seniority of continuous service to the planning board until there are the minimum number of members necessary to constitute a quorum to act upon the matter without any personal or financial interest therein, whether direct or indirect. If a choice has to be made between Class IV members of equal seniority, the chairman of the planning board shall make the choice.

**Adopted.** L. 1991, c. 256, §20, effective August 13, 1991. **Amended.** L. 2019, c. 225, §3, effective August 9, 2019.

**40:55D-69.2. Supplemental zoning boards of adjustment.** a. If the mayor of a municipality determines that the zoning board of adjustment is unable to process pending appeals and applications in a timely manner, the mayor may recommend the governing body of the municipality establish a supplemental zoning board of adjustment to address any backlog or influx of appeals and applications. The supplemental zoning board of adjustment shall be temporary in nature and exist in addition to the zoning board of adjustment created pursuant to section 56 of P.L.1975, c.291

(C.40:55D-69). The recommendation shall be submitted, in writing, at an official meeting of the governing body of the municipality.

b. Upon receipt of the mayor's recommendation, the governing body of the municipality may establish, by ordinance, a supplemental zoning board of adjustment, except that no more than one supplemental zoning board of adjustment may exist at any given time. The supplemental zoning board of adjustment shall share jurisdiction with the zoning board of adjustment created pursuant to section 56 of P.L.1975, c.291 (C.40:55D-69) over all new and pending appeals and applications before the zoning board of adjustment. The supplemental zoning board of adjustment shall have all the powers and responsibilities conferred by law to the zoning board of adjustment created pursuant to section 56 of P.L.1975, c.291 (C.40:55D-69). The supplemental zoning board of adjustment shall receive any new or pending appeals or applications referred by the chairperson of the zoning board of adjustment created pursuant to section 56 of P.L.1975, c.291 (C.40:55D-69). The supplemental zoning board of adjustment shall cease to receive new appeals and applications on the first day of the second year after the appointment of its full regular membership and shall terminate upon the completion of all pending appeals and applications thereafter.

c. The supplemental zoning board of adjustment shall consist of seven regular members and may have not more than four alternate members. All members of the supplemental zoning board of adjustment shall be municipal residents and appointed in a manner set forth in the ordinance adopted pursuant to subsection b. of this section. Alternate members shall be designated at the time of appointment by the authority appointing them as "Alternate No. 1" and "Alternate No. 2," and, in the case of a municipality in which more than two alternates are appointed, "Alternate No. 1," "Alternate No. 2," "Alternate No. 3," and "Alternate No. 4," as appropriate. The terms of the members shall expire on the date of termination of the supplemental zoning board of adjustment. A person shall not be seated as a member unless the person agrees to take the basic course in land use law offered under subsection a. of section 2 of P.L.2005, c.133 (C.40:55D-23.3) and successfully completes the course within six months of assuming board membership. A member of the supplemental zoning board of adjustment may not hold any elective office or position under the municipality. A member also may not act on any matter in which the member has any direct or indirect personal or financial interest. A member may, after public hearing, if requested, be removed by the governing body for cause.

d. The supplemental zoning board of adjustment shall elect a chairperson and vice chairperson from its regular members and select a secretary, who may or may not be a member of the supplemental zoning board of adjustment or a municipal employee.

e. Alternate members may participate in all matters but may not vote except in the absence or disqualification of a regular member. Participation of alternate members shall not be deemed to increase the size of the supplemental zoning board of adjustment established by ordinance of the governing body pursuant to this section. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice shall be made as to which alternate member is to vote, alternate members shall vote in the order of their numerical designations.

f. Notwithstanding the provisions of this section, a municipality that participates in a regional zoning board of adjustment, or a municipality in which the planning board exercises the powers of the zoning board of adjustment pursuant to subsection c. of section 16 of P.L.1975, c.291 (C.40:55D-25), may not establish a supplemental zoning board of adjustment.

**Adopted.** L. 2019, c. 225, §1, effective August 9, 2019.

**40:55D-70. Powers.** The board of adjustment shall have the power to:

a. Hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by an administrative officer based on or made in the enforcement of the zoning ordinance;

b. Hear and decide requests for interpretation of the zoning map or ordinance or for decisions upon other special questions upon which such board is authorized to pass by any zoning or official map ordinance, in accordance with this act;

c. (1) Where: (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to article 8 of this act [40:55D-62 et seq.] would result in

peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property, grant, upon an application or an appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship; (2) where in an application or appeal relating to a specific piece of property the purposes of this act or the purposes of the “Educational Facilities Construction and Financing Act,” P.L.2000, c.72 (C.18A:7G-1 et al.), would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment, grant a variance to allow departure from regulations pursuant to article 8 of this act [40:55D-62 et seq.]; provided, however, that the fact that a proposed use is an inherently beneficial use shall not be dispositive of a decision on a variance under this subsection and provided that no variance from those departures enumerated in subsection d. of this section shall be granted under this subsection; and provided further that the proposed development does not require approval by the planning board of a subdivision, site plan or conditional use, in conjunction with which the planning board has power to review a request for a variance pursuant to subsection a. of section 47 of this act [40:55D-60]; and

d. In particular cases for special reasons, grant a variance to allow departure from regulations pursuant to article 8 of this act to permit: (1) a use or principal structure in a district restricted against such use or principal structure, (2) an expansion of a nonconforming use, (3) deviation from a specification or standard pursuant to section 54 of P.L.1975, c.291 (C.40:55D-67) pertaining solely to a conditional use, (4) an increase in the permitted floor area ratio as defined in section 3.1. of P.L.1975, c.291 (C.40:55D-4), (5) an increase in the permitted density as defined in section 3.1 of P.L.1975, c.291 (C.40:55D-4), except as applied to the required lot area for a lot or lots for detached one or two dwelling unit buildings, which lot or lots either an isolated undersized lot or lots resulting from a minor subdivision or (6) a height of a principal structure which exceeds by 10 feet or 10% the maximum height permitted in the district for a principal structure. A variance under this subsection shall be granted only by affirmative vote of at least five members, in the case of a municipal board, or two-thirds of the full authorized membership, in the case of a regional board, pursuant to article 10 of this act.

If an application for development requests one or more variances but not a variance for a purpose enumerated in subsection d. of this section, the decision on the requested variance or variances shall be rendered under subsection c. of this section.

No variance or other relief may be granted under the terms of this section, including a variance or other relief involving an inherently beneficial use, without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance. In respect to any airport safety zones delineated under the “Air Safety and Zoning Act of 1983,” P.L.1983, c.260 (C.6:1-80 et seq.), no variance or other relief may be granted under the terms of this section, permitting the creation or establishment of a nonconforming use which would be prohibited under standards promulgated pursuant to that act, except upon issuance of a permit by the Commissioner of Transportation. An application under this section may be referred to any appropriate person or agency for its report; provided that such reference shall not extend the period of time within which the zoning board of adjustment shall act.

**Adopted.** L. 1975, c. 291, §57. **Amended.** L. 1979, c. 216, §23; L. 1983, c. 260, §13; L. 1984, c. 20, §12; L. 1991, c. 256, §21, effective August 13, 1991; L. 1991, c. 445, §10, effective July 16, 1992; L. 1997, c. 145, §1, effective June 30, 1997; L. 2007, c. 137, §60, effective August 6, 2007.

**40:55D-70.1. Report on variance applications, amendment recommendations.** The board of adjustment shall, at least once a year, review its decisions on applications and appeals for variances and prepare and adopt by resolution a report on its findings on zoning ordinance provisions which were the subject of variance requests and its recommendations for zoning ordinance amendment or revision, if any. The board of adjustment shall send copies of the report and resolution to the governing body and planning board.

**Adopted.** L. 1985, c. 516, §16.

**40:55D-70.2. Administrative officer error pursuant to report of historic preservation commission or planning board.** If, in the case of an appeal made pursuant to subsection a. of section 57 of P.L.1975, c.291 (C.40:55D-70), the board of adjustment determines there is an error in any order, requirement, decision or refusal made by the administrative officer pursuant to a report submitted by the historic preservation commission or planning board in accordance with section 25

of P.L.1985, c.216 (C.40:55D-111), the board of adjustment shall include the reasons for its determination in the findings of its decision thereon.

**Adopted.** L. 1991, c. 199, §6, effective July 9, 1991.

**40:55D-71. Expenses and costs.** a. The governing body shall make provision in its budget and appropriate funds for the expenses of the board of adjustment.

b. The board of adjustment may employ, or contract for, and fix the compensation of legal counsel, other than the municipal attorney, and experts and other staff and services as it shall deem necessary, not exceeding, exclusive of gifts or grants, the amount appropriated by the governing body for its use.

**Adopted.** L. 1975, c. 291, §58.

**40:55D-72. Appeals and applications to board of adjustment.** a. Appeals to the board of adjustment may be taken by any interested party affected by any decision of an administrative officer of the municipality based on or made in the enforcement of the zoning ordinance or official map. Such appeal shall be taken within 20 days by filing a notice of appeal with the officer from whom the appeal is taken specifying the grounds of such appeal. The officer from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record upon which the action appealed from was taken.

b. A developer may file an application for development with the board of adjustment for action under any of its powers without prior application to an administrative officer.

**Adopted.** L. 1975, c. 291, §59. **Amended.** L. 1979, c. 216, §24.

**40:55D-72.1. Continuation of certain applications.** Any application for development submitted to the board of adjustment pursuant to lawful authority before the effective date of an ordinance pursuant to subsection c. of section 16 of P.L. 1975, c. 291 (C. 40:55D-25) may be continued at the option of the applicant, and the board of adjustment shall have every power which it possessed before the effective date of the ordinance in regard to the application.

**Adopted.** L. 1985, c. 516, §9.

**40:55D-73. Time for decision.** a. The board of adjustment shall render a decision not later than 120 days after the date (1) an appeal is taken from the decision of an administrative officer or (2) the submission of a complete application for development to the board of adjustment pursuant to section 59b. of this act [40:55D-72].

b. Failure of the board to render a decision within such 120-day period or within such further time as may be consented to by the applicant, shall constitute a decision favorable to the applicant.

**Adopted.** L. 1975, c. 291, §60.

**40:55D-73.1. Repealed.**

**Repealed.** L. 1984, c. 20, §15.

**40:55D-74. Modification on appeal.** The board of adjustment may reverse or affirm, wholly or in part, or may modify the action, order, requirement, decision, interpretation or determination appealed from and to that end have all the powers of the administrative officer from whom the appeal is taken.

**Adopted.** L. 1975, c. 291, §61.

**40:55D-75. Stay of proceedings by appeal; exception.** An appeal to the board of adjustment shall stay all proceedings in furtherance of the action in respect to which the decision appealed from was made unless the officer from whose action the appeal is taken certifies to the board of adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by an order of the Superior Court upon notice to the officer from whom the appeal is taken and on due cause shown.

**Adopted.** L. 1975, c. 291, §62.

**40:55D-76. Other powers.** a. Sections 59 through 62 of this article [40:55D-72 to 40:55D-75] shall apply to the power of the board of adjustment to:

(1) Direct issuance of a permit pursuant to section 25 of this act [40:55D-34] for a building or structure in the bed of a mapped street or public drainage way, flood control basin or public area reserved pursuant to section 23 of this act [40:55D-32]; or

(2) Direct issuance of a permit pursuant to section 27 of this act [40:55D-36] for a building or structure not related to a street.

b. The board of adjustment shall have the power to grant, to the same extent and subject to the same restrictions as the planning board, subdivision or site plan approval pursuant to article 6 of this act [40:55D-37 et seq.] or conditional use approval pursuant to section 54 of this act [40:55D-67], whenever the proposed development requires approval by the board of adjustment of a variance pursuant to subsection d. of section 57 of this act (C. 40:55D-70). The developer may elect to submit a separate application requesting approval of the variance and a subsequent application for any required approval of a subdivision, site plan or conditional use. The separate approval of the variance shall be conditioned upon grant of all required subsequent approvals by the board of adjustment. No such subsequent approval shall be granted unless such approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and zoning ordinance. The number of votes of board members required to grant any such subsequent approval shall be as otherwise provided in this act for the approval in question, and the special vote pursuant to the aforesaid subsection d. of section 57 shall not be required.

c. Whenever an application for development requests relief pursuant to subsection b. of this section, the board of adjustment shall grant or deny approval of the application within 120 days after submission by a developer of a complete application to the administrative officer or within such further time as may be consented to by the applicant. In the event that the developer elects to submit separate consecutive applications, the aforesaid provision shall apply to the application for approval of the variance. The period for granting or denying any subsequent approval shall be as otherwise provided in this act. Failure of the board of adjustment to act within the period prescribed shall constitute approval of the application, and a certificate of the administrative officer as to the failure of the board of adjustment to act shall be issued on request of the applicant, and it shall be sufficient in lieu of the written endorsement or other evidence of approval herein required, and shall be so accepted by the county recording officer for purposes of filing subdivision plats.

Whenever review or approval of the application by the county planning board is required by section 5 of P.L.1968, c. 285 (C. 40:27-6.3), in the case of a subdivision, or section 8 of P.L.1968, c. 285 (C. 40:27-6.6), in the case of a site plan, the municipal board of adjustment shall condition any approval that it grants upon timely receipt of a favorable report on the application by the county planning board or approval by the county planning board by its failure to report thereon within the required time.

An application under this section may be referred to any appropriate person or agency for its report; provided that such reference shall not extend the period of time within which the zoning board of adjustment shall act.

**Adopted.** L. 1975, c. 291, §63. **Amended.** L. 1979, c. 216, §25; L. 1984, c. 20, §13.

## **ARTICLE 10. JOINT EXERCISE OF POWERS OF PLANNING AND LAND USE CONTROL.**

**40:55D-77. Generally.** The governing bodies of two or more municipalities, independently or with the board or boards of chosen freeholders of any county or counties in which such municipalities are located or of any adjoining county or counties or the governing body of any municipality and the board of chosen freeholders in which such municipality is located, or the boards of chosen freeholders of any two or more adjoining counties, may, by substantially similar ordinances or resolutions, as the case may be, duly adopted by each of such governing bodies within 6 calendar months after the adoption of the first such ordinance or resolution after notice and hearing as herein required, enter into a joint agreement providing for the joint administration of any or all of the powers conferred upon each of the municipalities or counties pursuant to this act. Such ordinance may also provide for the establishment and appointment of a regional planning board, a regional board of adjustment, or a joint building official, joint zoning officer or other officials responsible for performance of administrative duties in connection with any power exercised pursuant to this act.

**Adopted.** L. 1975, c. 291, §64.

**40:55D-78. Terms of joint agreement.** The ordinance shall, subject to this article, set forth the specific duties to be exercised jointly; the composition, membership and manner of appointment of any regional board including the representation of each municipality or county; the qualifications

and manner of appointment of any joint building official, joint zoning officer or other joint administrative officer; the term of office, the manner of financing, the expenses of such joint exercise of powers, the share of financing to be borne by each county and municipality joining therein, the duration of such agreement and the manner in which such agreement may be terminated or extended.

**Adopted.** L. 1975, c. 291, §65.

**40:55D-79. Membership of regional boards.** Every joint agreement creating a regional board under this article shall provide for a representative member on such board for each constituent municipality or county and may provide for additional representative members for any such constituent municipality or county. The representative member or members on a regional board for a constituent municipality shall be appointed by the mayor.

Any such member, after a public hearing if he requests one, may be removed for cause by the governing body of such constituent municipality. The representative member or members of a regional board for a constituent county shall be appointed by the board of chosen freeholders of such county. Any such member, after public hearing if he requests one, may be removed for cause by the board of chosen freeholders of such constituent county. In addition to such members, any regional planning board may adopt a resolution providing that the Commissioner of the Department of Environmental Protection appoint as a member of the regional planning board a representative of that department's Division of Parks and Forestry and an additional member who shall be a resident of the area served by the regional board but who shall not hold any public office or position excepting an appointive membership on a municipal or other planning board. Within 30 days of the adoption of such resolution the commissioner shall make the appointments as requested.

**Adopted.** L. 1975, c. 291, §66. **Amended.** L. 1979, c. 216, §26.

**40:55D-80. Organization of regional boards; rules and procedures.** Each regional board shall elect a chairman and a vice chairman from among its members, with a term of 1 year and eligibility for reelection, and select a secretary, who may or may not be a member or employee of the board, and may create and fill such other offices as it may determine.

Each regional board shall adopt rules for the transaction of its business and keep a record of its resolutions, transactions, findings and determinations, which record shall be a public record. Each regional board shall be subject to the provisions of article 1 of this act [40:55D-1 et seq.] relating to rules of procedures, meetings, hearings and notices.

**Adopted.** L. 1975, c. 291, §67.

**40:55D-81. Expenses; staff and consultants.** The regional board or agency may employ, or contract for and fix the compensation of legal counsel, other than an attorney for a constituent municipality or county, and experts and other staff and services, as it may deem necessary, not exceeding, exclusive of gifts or grants, the amounts agreed upon and appropriated for its use.

**Adopted.** L. 1975, c. 291, §68.

**40:55D-82. Sharing of costs and expenses.** The apportionment of costs and expenses under any joint agreement may be based upon apportionment valuations determined under R.S. 54:4-49, or upon population, budgets and such other factor or factors, or any combination thereof as provided in the agreement.

**Adopted.** L. 1975, c. 291, §69.

**40:55D-83. Termination of agreement.** Termination of a joint agreement pursuant to section 65 of this act [40:55D-78] shall not be made effective earlier than June 30 next succeeding the expiration of 12 full calendar months following the decision to terminate; provided that such termination may occur at an earlier date if the parties to the joint agreement unanimously agree to such earlier date on or after the date of the decision to terminate as provided by the joint agreement.

**Adopted.** L. 1975, c. 291, §70.

**40:55D-84. Regional planning board; powers.** A regional planning board shall prepare a master plan for the physical, economic and social development of the region, as created pursuant to the agreement, with elements similar to those mentioned in section 19 [40:55D-28], and may make such additional surveys and studies as may be necessary to carry out its duties. The governing body of any constituent municipality, by ordinance, or the board of chosen freeholders of any constituent county, by resolution, may delegate to the regional planning board, any or all of the powers and

duties of a municipal planning board, in the case of a municipality, and, in the case of a county, any or all of the powers and duties of a county planning board.

Notwithstanding any other provision of this act, no application for development shall be required to be reviewed and approved by both a regional planning board and the planning board of a constituent municipality.

**Adopted.** L. 1975, c. 291, §71.

**40:55D-85. Regional board of adjustment.** A regional board of adjustment shall consist of at least seven members. Each member shall be appointed for a term of 4 years, except that of the first members to be appointed, the term of at least one member shall expire at the end of every year. A regional board of adjustment shall have all the powers of a municipal board of adjustment of each of the constituent municipalities and, unless otherwise specified herein, shall be subject to the provisions of this act relating to municipal boards of adjustment. Except for determination of matters pending before them at the time of creation of a regional board of adjustment, the jurisdiction of all municipal boards of adjustment in the constituent municipalities shall be terminated by the regional board.

**Adopted.** L. 1975, c. 291, §72.

**40:55D-85.1. Appeal of certain regional board decisions.** a. In the case of any final decision of a regional planning board or regional zoning board of adjustment approving an application for development, the governing body of the municipality in which the land is situated which is the subject of the application for development may hear and decide an appeal by any interested party of this approval if the application for development is of a class of applications for development specified by ordinance as so subject to appeal. The appeal shall be made within 10 days of the date of publication of the final decision pursuant to subsection i. of section 6 of P.L. 1975, c. 291 (C. 40:55D-10). The appeal to the governing body shall be made by serving the municipal clerk in person or by certified mail with a notice of appeal specifying the grounds thereof and the name and address of the appellant and name and address of his attorney, if represented. The appeal shall be decided by the governing body only upon the record established before the regional board.

b. Notice of the meeting to review the record below shall be given by the governing body by personal service or certified mail to the appellant, to those entitled to notice of a decision pursuant to subsection h. of section 6 of P.L. 1975, c. 291 (C. 40:55D-10) and to the board from which the appeal is taken, at least 10 days prior to the date of the meeting. The parties may submit oral and written argument on the record at the meeting, and the governing body shall provide for verbatim recording and transcripts of the meeting pursuant to subsection f. of section 6 of P.L. 1975, c. 291 (C. 40:55D-10).

c. The appellant shall, (1) within five days of service of the notice of the appeal pursuant to subsection a. hereof, arrange for a transcript pursuant to subsection f. of section 6 of P.L. 1975, c. 291 (C. 40:55D-10) for use by the governing body and pay a deposit of \$50.00 or the estimated cost of such transcription, whichever is less, or (2) within 35 days of service of the notice of appeal, submit a transcript as otherwise arranged to the municipal clerk; otherwise, the appeal may be dismissed for failure to prosecute.

The governing body shall conclude a review of the record not later than 95 days from the date of publication of notice of the decision below pursuant to subsection i. of section 6 of P.L. 1975, c. 291 (C. 40:55D-10) unless the applicant consents in writing to an extension of the period. Failure of the governing body to hold a hearing and conclude a review of the record below and to render a decision within the specified period shall constitute a decision affirming the action of the board.

d. The governing body may reverse, remand, or affirm with or without the imposition of conditions the final decision of the regional board.

e. The affirmative vote of a majority of the full authorized membership of the governing body shall be necessary to reverse, remand, or affirm with or without conditions any final action of the regional board.

f. An appeal to the governing body shall stay all proceedings in furtherance of the action in respect to which the decision appealed from was made unless the board from whose action the appeal is taken certifies to the governing body, after the notice of appeal shall have been filed with the board, that by reason of acts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by an order of the

Superior Court on application upon notice to the board from whom the appeal is taken and on good cause shown.

g. The governing body shall mail a copy of the decision to the appellant or if represented then to his attorney, without separate charge, and for a reasonable charge to any interested party who has requested it, not later than 10 days after the date of the decision. A brief notice of the decision shall be published in the official newspaper of the municipality, if there is one, or in a newspaper of general circulation in the municipality. The publication shall be arranged by the applicant unless a particular municipal officer is so designated by ordinance; but nothing contained herein shall be construed as preventing the applicant from arranging the publication if he so desires. The governing body may make a reasonable charge for its publication. The period of time in which an appeal to a court of competent jurisdiction may be made shall run from the first publication, whether arranged by the municipality or the applicant.

h. Nothing in this act shall be construed to restrict the right of any party to obtain a review by any court of competent jurisdiction according to law.

**Adopted.** L. 1985, c. 516, §17.

**40:55D-86. Appointment of joint building officials, zoning officers and planning administrative officers.** The governing bodies of two or more constituent municipalities may provide by agreement, pursuant to procedures set forth herein, for the appointment of a joint building official, zoning officer, planning administrative officer or any thereof, and any other personnel necessary for the enforcement of the provisions of this act.

**Adopted.** L. 1975, c. 291, §73.

**40:55D-87. Joint administrative functions.** The building official, zoning office and planning administration functions, or any thereof, or a joint office shall be exercised in the same manner, to the same extent and with the same obligation to attend and report to the governing bodies, boards, communities and officials of each of the several municipalities as though such functions were exercised in each municipality separately, and all records for each of the municipalities shall be maintained separately and shall be available for public inspection pursuant to law.

Except as otherwise provided by joint agreement, any person or persons who may hereafter be appointed as a joint building official, zoning officer or planning administrative officer shall serve at the pleasure of the regional planning board.

**Adopted.** L. 1975, c. 291, §74.

**40:55D-88. Delegation to county, regional and interstate bodies.** The governing body of any municipality may, by ordinance pursuant to a written agreement, provide for the joint administration of any or all of the powers conferred upon the municipality by this act with a county, regional or interstate body authorized to act in the region of which the municipality is part. The ordinance shall set forth the membership of the joint body, the specific administrative duties to be exercised, in the manner of financing, the share of financing to be borne by the bodies involved, the duration of the agreement and the manner in which the agreement may be terminated or extended.

**Adopted.** L. 1975, c. 291, §75.

**40:55D-88.1. Short title.** This act shall be known and may be cited as the “Peter J. Barnes III Wildlife Preservation Act.”

**Adopted.** L. 2009, c. 132, §1, effective October 1, 2009. **Amended.** L. 2021, c. 195, §1, effective November 8, 2021.

**40:55D-88.2. Findings, declarations relative to the “Peter J. Barnes III Wildlife Preservation Commission.”** The Legislature finds and declares that:

a. The Dismal Swamp Conservation Area in Middlesex County is approximately 660 acres of freshwater wetlands, forested uplands, and meadows in a densely populated, highly developed central part of the State, offering unique natural habitat including federal priority wetlands;

b. The Dismal Swamp Conservation Area is a birding oasis in a densely developed region of the State where over 175 different bird species have been spotted, including the threatened and endangered grasshopper sparrow and yellow-crowned night-heron;

c. In addition to over 175 bird species, 25 mammals and over a dozen reptile and amphibian species have been sighted in the Dismal Swamp Conservation Area;

d. Archeological digs in the Dismal Swamp Conservation Area have uncovered at least five significant archeological sites, including one at least 10,000 years old;

e. This area, spanning Edison Township, Metuchen Borough, and South Plainfield Borough in Middlesex County, represents one of the last remaining wetland ecosystems in a highly urbanized environment in the State;

f. The area consists of privately and publicly owned parcels of land within three municipalities, each with its own planning and zoning authority, and as a result, decisions concerning development within the area are made without a coherent plan; and

g. It is therefore appropriate and in the best interests of the State to encourage the local governing bodies of Edison Township, Metuchen Borough, and South Plainfield Borough, respectively, in Middlesex County to establish a Peter J. Barnes III Wildlife Preservation Commission to provide comprehensive regulatory authority and regional planning for the area with a primary focus on protecting and preserving the ecological, historical, and recreational values of the area.

**Adopted.** L. 2009, c. 132, §2, effective October 1, 2009. **Amended.** L. 2021, c. 195, §2, effective November 8, 2021.

**40:55D-88.3. Definitions relevant to the “Peter J. Barnes III Wildlife Preservation Commission.”** As used in this act:

“Application for development” means the application form and all accompanying documents required by municipal ordinance for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance or other permit as provided in the “Municipal Land Use Law,” P.L.1975, c. 291 (C. 40:55D-1 et seq.).

“Commission” means the Peter J. Barnes III Wildlife Preservation Commission established pursuant to section 4 of this act upon adoption of authorizing resolutions by the local governing bodies of Edison Township, Metuchen Borough, and South Plainfield Borough in Middlesex County, respectively.

“Peter J. Barnes III Wildlife Preserve” means the area located within Edison Township, Metuchen Borough, and South Plainfield Borough in Middlesex County as delineated by a metes and bounds description approved by resolution adopted by the respective local governing bodies of those municipalities.

“Project” means any structure, land use change, or public improvement for which a permit from, or determination by, the municipality is required, which shall include, but not be limited to, building permits, zoning variances, and excavation permits.

**Adopted.** L. 2009, c. 132, §3, effective October 1, 2009. **Amended.** L. 2021, c. 195, §3, effective November 8, 2021.

**40:55D-88.4. Authorizing resolution.** a. Upon adoption of an authorizing resolution by the local governing body of Edison Township, Metuchen Borough, and South Plainfield Borough, respectively, in Middlesex County, there is established the Peter J. Barnes III Wildlife Preservation Commission. The commission shall consist of nine members, appointed and qualified as follows, provided however, that no more than five members shall be of the same political party and no more than three members shall be appointed from any one municipality:

- (1) Two residents of Edison Township, appointed by the governing body of the municipality;
- (2) Two residents of Metuchen Borough, appointed by the governing body of the municipality;
- (3) Two residents of South Plainfield Borough, appointed by the governing body of the municipality;

(4) Two elected officials from Middlesex County, appointed by agreement of the local governing bodies of Edison Township, Metuchen Borough, and South Plainfield Borough; and

(5) one representative of the Edison Wetlands Association, appointed by agreement of the local governing bodies of Edison Township, Metuchen Borough, and South Plainfield Borough;

b. Each member shall serve for a term of five years. Each member shall serve for the term of the appointment and until a successor shall have been appointed and qualified. Any vacancy shall be filled in the same manner as the original appointment for the unexpired term only.

c. Any member of the commission may be removed by adoption of a resolution by the local governing bodies of Edison Township, Metuchen Borough, and South Plainfield Borough for cause after a public hearing.

d. Each member of the commission shall take and subscribe to an oath to perform the duties of the office faithfully, impartially, and justly to the best of their ability.

e. The members of the commission shall serve without compensation, but the commission may reimburse its members for necessary expenses incurred in the discharge of their duties.

f. The commission shall select from its members a chairperson and vice-chairperson, and may employ an executive director, who may also serve as secretary, and a treasurer. The commission

may also appoint, retain and employ, without regard to the provisions of Title 11A, Civil Service, of the New Jersey Statutes, such officers, agents, employees and experts as it may require, and it shall determine their qualifications, terms of office, duties, services and compensation. The local governing bodies may provide administrative support to the commission.

g. The powers of the commission shall be vested in the members thereof in office from time to time, and a majority of the total authorized membership of the commission shall constitute a quorum at any meeting thereof. Action may be taken and motions and resolutions adopted by the commission at any meeting thereof by the affirmative vote of a majority of the total authorized membership; provided, however, that the commission may designate one or more of its agents or employees to exercise such administrative functions, powers, and duties, as it may deem proper, under its supervision and control. No vacancy in the membership of the commission shall impair the right of a quorum to exercise all the rights and perform all the duties of the commission.

h. No member, officer, employee, or agent of the commission shall be financially interested, either directly or indirectly, in any project, any part of a project area, or an application for development, other than a residence, or in any contract, sale, purchase, lease, or transfer of real or personal property located within the boundaries of the Peter J. Barnes III Wildlife Preserve.

(1) Any contract or agreement knowingly made in contravention of this subsection is voidable.

(2) Any person who willfully violates the provisions of this subsection shall forfeit office or employment.

**Adopted.** L. 2009, c. 132, §4, effective October 1, 2009. **Amended.** L. 2021, c. 195, §4, effective November 8, 2021.

**40:55D-88.5. Powers, duties of commission.** a. Upon establishment of the commission pursuant to section 4 of this act and appointment of its members, notwithstanding any provision of the “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.), to the contrary, the commission shall review and approve, reject or modify all applications for development within the Peter J. Barnes III Wildlife Preserve pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.). The commission shall exercise any or all of the powers and duties of a municipal planning board and any or all of the powers and duties of a county planning board for the Peter J. Barnes III Wildlife Preserve.

No application for development shall be required to be reviewed and approved by both the commission and the planning board of a constituent municipality.

b. The commission shall review and approve, reject, or modify any State project planned within the Peter J. Barnes III Wildlife Preserve, and submit its decision to the Governor and the commissioner of the department proposing the project.

c. The review of an application for development shall not be contingent upon the adoption of the master plan pursuant to section 6 of this act; however, upon adoption of the master plan, any application for development shall be reviewed to ensure that the actions proposed in the application also conform to the master plan. Until the adoption of the master plan pursuant to section 6 of this act, the decisions of the commission shall be based upon the municipal master plans, ordinances, and resolutions of Edison Township, Metuchen Borough, and South Plainfield Borough, adopted pursuant to the provisions of the “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.).

d. The commission shall coordinate and support activities by citizens’ groups to promote and preserve the Peter J. Barnes III Wildlife Preserve, and shall actively seek funds for the purchase and preservation of lands within the Peter J. Barnes III Wildlife Preserve for recreation and conservation purposes.

e. In accordance with the provisions of section 4 of P.L.1975, c.291 (C.40:55D-8), the commission may establish and charge reasonable fees for the review of applications for development submitted to the commission and for other services the commission may provide. Fees collected pursuant to this subsection shall be deposited into a separate account, and shall be dedicated for use by the commission solely for the purposes of administering and enforcing its responsibilities pursuant to this act.

**Adopted.** L. 2009, c. 132, §5, effective October 1, 2009. **Amended.** L. 2021, c. 195, §5, effective November 8, 2021.

**40:55D-88.6. Master plan for the “Peter J. Barnes III Wildlife Preservation Commission.”**

a. The commission shall prepare, or cause to be prepared, after holding one public hearing in each of the three municipalities within the Peter J. Barnes III Wildlife Preserve, a master plan for the physical, economic and social development of the Peter J. Barnes III Wildlife Preserve with elements similar to those provided for municipal master plans in section 19 of P.L.1975, c.291

(C.40:55D-28), as the commission determines to be appropriate for the preservation of the ecological and historical nature of the Peter J. Barnes III Wildlife Preserve.

The master plan shall include a report presenting the objectives, assumptions, standards and principles which are embodied in the various interlocking portions of the master plan. In preparing the master plan or any portion thereof or amendment thereto the commission shall give due consideration to: existing historical sites and potential restorations or compatible development; the range of uses and potential uses of the area in the developed communities through which it passes; designated areas to be kept as undeveloped, limited-access areas restricted to conservation or passive recreation; and any other issues the commission deems appropriate for the protection and enhancement of the area. In preparing the master plan or any portion thereof or amendment thereto, the commission shall consider existing patterns of development and any relevant master plan or other plan of development, and shall ensure widespread citizen involvement and participation in the planning process.

b. The commission shall act in support of local suggestions or desires to complement the master plan. Consultation, planning, and technical expertise shall be made available to local planning bodies that wish to implement land-use policies to enhance the area. The commission shall act on or refer complaints by citizens' groups or private residents who discover hazardous situations, pollution, or evidence of noncompliance with use regulations.

**Adopted.** L. 2009, c. 132, §6, effective October 1, 2009. **Amended.** L. 2021, c. 195, §6, effective November 8, 2021.

**40:55D-88.7. No approval extended, tolled to the “Peter J. Barnes III Wildlife Preservation Commission.”** Notwithstanding any provision of P.L.2008, c.78 (C.40:55D-136.1 et seq.) to the contrary, no approval, as defined therein, within the Peter J. Barnes III Wildlife Preserve shall be extended or tolled pursuant to the provisions of P.L.2008, c.78 (C.40:55D-136.1 et seq.).

**Adopted.** L. 2009, c. 132, §7, effective October 1, 2009. **Amended.** L. 2021, c. 195, §7, effective November 8, 2021.

## **ARTICLE 11. PERIODIC REEXAMINATION OF MUNICIPAL PLANS AND REGULATIONS.**

**40:55D-89. Periodic examination.** The governing body shall, at least every 10 years, provide for a general reexamination of its master plan and development regulations by the planning board, which shall prepare and adopt by resolution a report on the findings of such reexamination, a copy of which report and resolution shall be sent to the Office of Planning Advocacy and the county planning board. A notice that the report and resolution have been prepared shall be sent to any military facility commander who has registered with the municipality pursuant to section 1 of P.L.2005, c.41 (C.40:55D-12.4) and to the municipal clerk of each adjoining municipality, who may request a copy of the report and resolution on behalf of the military facility or municipality. A reexamination shall be completed at least once every 10 years from the previous reexamination.

The reexamination report shall state:

a. The major problems and objectives relating to land development in the municipality at the time of the adoption of the last reexamination report.

b. The extent to which such problems and objectives have been reduced or have increased subsequent to such date.

c. The extent to which there have been significant changes in the assumptions, policies, and objectives forming the basis for the master plan or development regulations as last revised, with particular regard to the density and distribution of population and land uses, housing conditions, circulation, conservation of natural resources, energy conservation, collection, disposition, and recycling of designated recyclable materials, and changes in State, county and municipal policies and objectives.

d. The specific changes recommended for the master plan or development regulations, if any, including underlying objectives, policies and standards, or whether a new plan or regulations should be prepared.

e. The recommendations of the planning board concerning the incorporation of redevelopment plans adopted pursuant to the “Local Redevelopment and Housing Law,” P.L.1992, c.79 (C.40A:12A-1 et al.) into the land use plan element of the municipal master plan, and recommended changes, if any, in the local development regulations necessary to effectuate the redevelopment plans of the municipality.

f. The recommendations of the planning board concerning locations appropriate for the development of public electric vehicle infrastructure, including but not limited to, commercial

districts, areas proximate to public transportation and transit facilities and transportation corridors, and public rest stops; and recommended changes, if any, in the local development regulations necessary or appropriate for the development of public electric vehicle infrastructure.

**Adopted.** L. 1975, c. 291, §76. **Amended.** L. 1980, c. 146, §6; L. 1985, c. 516, §18; L. 1987, c. 102, §29; L. 1992, c. 79, §50, effective August 5, 1992, and shall be retroactive to January 18, 1992; L. 2001, c. 342, §9, effective January 5, 2002; L. 2011, c. 65, §1, effective May 4, 2011; L. 2016, c. 21, §6, effective August 1, 2016; L. 2019, c. 267, §2, effective November 6, 2019.

**40:55D-89.1. Absence of adoption of reexamination report.** The absence of the adoption by the planning board of a reexamination report pursuant to section 76 of P.L. 1975, c. 291 (C. 40:55D-89) shall constitute a rebuttable presumption that the municipal development regulations are no longer reasonable.

**Adopted.** L. 1985, c. 516, §19.

**40:55D-90. Moratoriums; interim zoning.** a. The prohibition of development in order to prepare a master plan and development regulations is prohibited.

b. No moratoria on applications for development or interim zoning ordinances shall be permitted except in cases where the municipality demonstrates on the basis of a written opinion by a qualified health professional that a clear imminent danger to the health of the inhabitants of the municipality exists, and in no case shall the moratorium or interim ordinance exceed a six-month term.

**Adopted.** L. 1975, c. 291, §77. **Amended.** L. 1979, c. 7, §1; L. 1985, c. 516, §20.

## ARTICLE 12. SEVERABILITY, CONSTRUCTION AND EFFECTIVE DATE.

**40:55D-91. Severability of provisions.** If the provisions of any article, section, subsection, paragraph, subdivision or clause of this act shall be judged invalid by a court of competent jurisdiction, such order or judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this act and, to this end, the provisions of each article, section, subsection, paragraph, subdivision or clause of this act are hereby declared to be severable.

**Adopted.** L. 1975, c. 291, §78.

**40:55D-92. Construction.** This act being necessary for the welfare of the State and its inhabitants shall be considered liberally to effect the purposes thereof.

**Adopted.** L. 1975, c. 291, §79.

## ARTICLE 13. STORM WATER MANAGEMENT PLAN.

**40:55D-93. Storm water management plan; adoption of ordinances.** Every municipality in the State shall prepare a storm water management plan and a storm water control ordinance or ordinances to implement said plan. Such a storm water management plan shall be completed within 1 year from the date of promulgation of comprehensive storm water management regulations by the Commissioner of the Department of Environmental Protection, or by the next reexamination of the master plan required pursuant to section 76 of P.L. 1975, c. 291 (C. 40:55D-89), whichever shall be later, provided that a grant for the preparation of the plan has been made available pursuant to section 6 hereof [40:55D-98]. The plan shall be reexamined at each subsequent scheduled reexamination of the master plan pursuant thereto. Such a storm water control ordinance or ordinances shall be adopted within 1 year of the completion of the storm water management plan and shall be revised thereafter as needed.

**Adopted.** L. 1981, c. 32, §1.

Note: L. 1981, c. 32, §10 states: No preliminary or final subdivision or site plan approval granted prior to the effective date of this act shall be nullified by this enactment or by any storm water management plan adopted pursuant thereto.

**40:55D-94. Master plan; coordination with soil conservation district.** Such a storm water management plan shall be an integral part of any master plan prepared by that municipality pursuant to section 19 of P.L. 1975, c. 291 (C. 40:55D-28). Each municipality shall coordinate such plan with the appropriate soil conservation district established pursuant to chapter 24 of Title 4 of the Revised Statutes and with any storm water management plans prepared by any other municipality or any county, areawide agency or the State relating to the river basins located in that municipality.

**Adopted.** L. 1981, c. 32, §2.

**40:55D-95. Conformance to statutes, rules and regulations; design; “nonpoint pollution” defined.** 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.

**Adopted.** L. 1981, c. 32, §3. **Amended.** L. 1991, c. 194, §1, effective December 30, 1991; L. 2010, c. 4, §10, effective April 22, 2010.

**40:55D-95.1. Commissioner to adopt regulations.** The Commissioner of Environmental Protection, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt regulations to protect the public safety with respect to storm water detention facilities, including those aspects of design and operation of storm water detention facilities that may constitute a threat to the public safety. In adopting the rules and regulations, the commissioner shall, to the maximum extent feasible:

a. Promote site-specific solutions to public safety hazards at storm water detention facilities in keeping with generally accepted storm water management and engineering principles;

b. Deter the general public, especially children, from entering areas where storm water detention facilities are located;

c. Provide guidelines for designing escape aids for individuals who may become trapped in a storm water detention facility;

d. Provide that the declivity of a storm water detention basin be as gradual as possible, but within the limits of existing water quality regulations;

e. Eliminate, where possible, public safety hazards associated with storm water detention facilities.

The commissioner shall also examine the usefulness of trash and safety racks, grates, bar screens and lattices, and fencing, and recommend their use individually or in combination with respect to each type of design for an inlet to an outlet structure of a storm water detention facility.

**Adopted.** L. 1991, c. 194, §5, effective December 30, 1991.

**40:55D-96. Exception from certain requirements of act.** The Commissioner of Environmental Protection may, upon application by any municipality, grant an exception from any requirement of section 3 of P.L.1981, c.32 (C.40:55D-95), provided that the commissioner shall determine that such exception will not increase flood damage, or nonpoint pollution, or constitute a threat to the public safety, within or without the municipality.

**Adopted.** L. 1981, c. 32, §4. **Amended.** L. 1991, c. 194, §2, effective December 30, 1991.

**40:55D-97. Submission of plan by municipalities; approval.** Every municipality shall submit a storm water management plan and implementing ordinances adopted pursuant to this act to the county planning agency or county water resources association, as appropriate. No plan or ordinances shall take effect without approval by said agency or association. Said agency or association shall approve, conditionally approve, or disapprove said plan or ordinances in regard to their compatibility with applicable municipal, county, regional or State storm water management plans. No storm water management plan or ordinances shall be approved that are contrary to recognized storm water management principles or public safety regulations adopted pursuant to section 5 of P.L.1991, c.194 (C.40:55D-95.1). The agency or association shall set forth in writing

its reasons for disapproval of any plan or ordinance, or in the case of the issuance of a conditional approval, the agency or association shall specify the necessary amendments to the plan or ordinances. Any plan or ordinance approved pursuant to this section shall take effect immediately. Any plan or ordinance conditionally approved according to this section shall take effect upon the adoption by the governing body of the amendments proposed by the agency or association. Where the agency or association fails to approve, conditionally approve, or disapprove a plan or ordinance within 60 days of receipt of the plan or ordinance, the plan or ordinance shall be considered approved.

**Adopted.** L. 1981, c. 32, §5. **Amended.** L. 1991, c. 194, §3, effective December 30, 1991.

**40:55D-98. Grants; procedure for application.** The Commissioner of Environmental Protection, subject to available appropriations and grants from other sources, is authorized to make grants to any municipality, county, county planning agency or county water resources agency or other regional agency authorized to prepare storm water management plans. Any grants to a municipality shall provide 90% of the cost of preparing storm water management plans. The commissioner shall prescribe and promulgate, pursuant to law, procedures for applying for the grant and terms and conditions for receiving the grant.

**Adopted.** L. 1981, c. 32, §6.

**40:55D-99. Technical assistance and planning grants.** Counties, county planning agencies and county water resources associations shall be authorized to provide technical assistance and planning grants to municipalities to assist in the preparation and revision of municipal storm water management plans and implementing ordinances pursuant to section 1 of this supplementary act [40:55D-93].

**Adopted.** L. 1981, c. 32, §6.

## ARTICLE 14. MANUFACTURED HOMES.

**40:55D-100. Short title.** This act shall be known and may be cited as “The Affordable Housing Act of 1983.”

**40:55D-101. Legislative findings and declaration.** The Legislature finds and declares that:

a. The housing needs of many New Jersey citizens remain unmet each year, exemplified by the fact that, in recent years, only one-half of the estimated annual need for new housing units has been actually constructed.

b. The costs of conventional housing construction, mortgages, land and utilities have increased tremendously in recent years making it increasingly difficult for certain segments of the population, notably the elderly, families with young children, unmarried individuals, and young couples, to afford suitable conventional housing.

c. Due to the conventional housing shortage in New Jersey, the Legislature has a responsibility to encourage alternate means of housing for New Jersey citizens.

d. The design, durability and appearance of manufactured housing has improved significantly over the last decade so that certain styles of manufactured homes are difficult, if not impossible, to distinguish from conventional homes, and yet only 400 of these manufactured homes were sold Statewide during 1982.

e. Despite these significant improvements, there has not been a corresponding rapid escalation in the costs of manufactured homes, with the result that these homes remain affordable for the general population.

f. It is, therefore, in the public interest to promote the use of manufactured homes as affordable housing in New Jersey.

**40:55D-102. Definitions.** As used in this act:

a. “Commissioner” means the Commissioner of the Department of Community Affairs;

b. “Grade” means a reference plane consisting of the average finished ground level adjacent to a structure, building, or facility at all visible exterior walls;

c. “Manufactured home” means a unit of housing which:

(1) Consists of one or more transportable sections which are substantially constructed off site and, if more than one section, are joined together on site;

(2) Is built on a permanent chassis;

(3) Is designed to be used, when connected to utilities, as a dwelling on a permanent or nonpermanent foundation; and

(4) Is manufactured in accordance with the standards promulgated for a manufactured home by the secretary pursuant to the "National Manufactured Housing Construction and Safety Standards Act of 1974," Pub.L. 93-383 (42 U.S.C. §5401 et seq.) and the standards promulgated for a manufactured or mobile home by the commissioner pursuant to the "State Uniform Construction Code Act," P.L.1975, c. 217 (C. 52:27D-119 et seq.);

d. "Mobile home park" means a parcel of land, or two or more parcels of land, containing no fewer than 10 sites equipped for the installation of manufactured homes, where these sites are under common ownership and control for the purpose of leasing each site to the owner of a manufactured home for the installation thereof, and where the owner or owners provide services, which are provided by the municipality in which the park is located for property owners outside the park, which services may include but shall not be limited to:

- (1) The construction and maintenance of streets;
- (2) Lighting of streets and other common areas;
- (3) Garbage removal;
- (4) Snow removal; and
- (5) Provisions for the drainage of surface water from home sites and common areas.

A parcel, or any contiguous parcels, of land which contain, on the effective date of this act, no fewer than three sites equipped for the installation of manufactured homes, and which otherwise conform to the provisions of this subsection, shall qualify as a mobile home park for the purposes of this act;

e. "Nonpermanent foundation" means any foundation consisting of nonmortared blocks, wheels, concrete slab, runners, or any combination thereof, or any other system approved by the commissioner for the installation and anchorage of a manufactured home on other than a permanent foundation;

f. "Off site construction of a manufactured home" or section thereof means the construction of that home or section at a location other than the location at which the home is to be installed;

g. "On site joining of sections of a manufactured home" means the joining of those sections at the location at which the home is to be installed;

h. "Permanent foundation" means a system of support installed either partially or entirely below grade, which is:

- (1) Capable of transferring all design loads imposed by or upon the structure into soil or bedrock without failure;
- (2) Placed at an adequate depth below grade to prevent frost damage; and
- (3) Constructed of material approved by the commissioner;

i. "Runners" means a system of support consisting of poured concrete strips running the length of the chassis of a manufactured home under the lengthwise walls of that home;

j. "Secretary" means the Secretary of the United States Department of Housing and Urban Development; and

k. "Trailer" means a recreational vehicle, travel trailer, camper or other transportable, temporary dwelling unit with or without its own motor power, designed and constructed for travel and recreational purposes to be installed on a nonpermanent foundation if installation is required.

**40:55D-103. Municipalities may allow manufactured homes.** A municipal agency may allow manufactured homes on land the title to which is owned by the manufactured home owner.

**40:55D-104. Municipalities not to discriminate.** A municipal agency shall not exclude or restrict, through its development regulations, the use, location, placement, or joining of sections of manufactured homes which are not less than 22 feet wide, are on land the title to which is held by the manufactured home owner, and are located on permanent foundations, unless those regulations shall be equally applicable to all buildings and structures of similar use.

**40:55D-105. Review of development regulations.** When reviewing and approving development regulations pertaining to residential development, a municipal agency is to be encouraged to review those regulations to determine whether or not mobile home parks are a practicable means of providing affordable housing in the municipality.

**40:55D-106. Trailers.** Trailers shall not be subject to the provisions of this act [article].

Adopted. L. 1983, c. 386, §7.

**[ARTICLE 14A. HISTORIC PRESERVATION COMMISSION.]**

**40:55D-107. Historic Preservation Commission.** a. The governing body may by ordinance provide for a historic preservation commission.

b. Every historic preservation commission shall include, in designating the category of appointment, at least one member of each of the following classes:

Class A—a person who is knowledgeable in building design and construction or architectural history and who may reside outside the municipality; and

Class B—a person who is knowledgeable or with a demonstrated interest in local history and who may reside outside the municipality.

c. A historic preservation commission shall consist of five, seven or nine regular members and may have not more than two alternate members. Of the regular members a total of at least one less than a majority shall be of Classes A and B.

Those regular members who are not designated as Class A or B shall be designated as Class C. Class C members shall be citizens of the municipality who shall hold no other municipal office, position or employment except for membership on the planning board or board of adjustment.

Alternate members shall meet the qualifications of Class C members. The mayor or, if so specified by ordinance, the chairman of the planning board shall appoint all members of the commission and shall designate at the time of appointment the regular members by class and the alternate members as “Alternate No. 1” and “Alternate No. 2.” The terms of the members first appointed under this act shall be so determined that to the greatest practicable extent, the expiration of the terms shall be distributed, in the case of regular members, evenly over the first four years after their appointment, and in the case of alternate members, evenly over the first two years after their appointment; provided that the initial term of no regular member shall exceed four years and that the initial term of no alternate member shall exceed two years. Thereafter, the term of a regular member shall be four years, and the term of an alternate member shall be two years. A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term only. Notwithstanding any other provision herein, the term of any member common to the historic preservation commission and the planning board shall be for the term of membership on the planning board; and the term of any member common to the historic preservation commission and the board of adjustment shall be for the term of membership on the board of adjustment.

The historic preservation commission shall elect a chairman and vice-chairman from its members and select a secretary, who may or may not be a member of the historic preservation commission or a municipal employee.

Alternate members may participate in discussions of the proceedings but may not vote except in the absence or disqualification of a regular member. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.

d. No member of any historic preservation commission shall be permitted to act on any matter in which he has, either directly or indirectly, any personal or financial interest.

e. A member of a historic preservation body may, after public hearing if he requests it, be removed by the governing body for cause.

Adopted. L. 1985, c. 516, §21.

**40:55D-108. Funding; authority.** a. The governing body shall make provision in its budget and appropriate funds for the expenses of the historic preservation commission.

b. The historic preservation commission may employ, contract for, and fix the compensation of experts and other staff and services as it shall deem necessary. The commission shall obtain its legal counsel from the municipal attorney at the rate of compensation determined by the governing body, unless the governing body, by appropriation, provides for separate legal counsel for the commission. Expenditures pursuant to this subsection shall not exceed, exclusive of gifts or grants, the amount appropriated by the governing body for the commission’s use.

Adopted. L. 1985, c. 516, §22. Amended. L. 1991, c. 199, §7, effective July 9, 1991.

**40:55D-109. Duties.** The historic preservation commission shall have the responsibility to:

- a. Prepare a survey of historic sites of the municipality pursuant to criteria identified in the survey report;
- b. Make recommendations to the planning board on the historic preservation plan element of the master plan and on the implications for preservation of historic sites of any other master plan elements;
- c. Advise the planning board on the inclusion of historic sites in the recommended capital improvement program;
- d. Advise the planning board and board of adjustment on applications for development pursuant to section 24 [40:55D-110] of this amendatory and supplementary act;
- e. Provide written reports pursuant to section 25 [40:55D-111] of this amendatory and supplementary act on the application of the zoning ordinance provisions concerning historic preservation; and
- f. Carry out such other advisory, educational and informational functions as will promote historic preservation in the municipality.

**Adopted.** L. 1985, c. 516, §23.

**40:55D-110. Advice on certain applications.** The planning board and board of adjustment shall refer to the historic preservation commission every application for development submitted to either board for development in historic zoning districts or on historic sites designated on the zoning or official map or identified in any component element of the master plan. This referral shall be made when the application for development is deemed complete or is scheduled for a hearing, whichever occurs sooner. Failure to refer the application as required shall not invalidate any hearing or proceeding. The historic preservation commission may provide its advice, which shall be conveyed through its delegation of one of its members or staff to testify orally at the hearing on the application and to explain any written report which may have been submitted.

**Adopted.** L. 1985, c. 516, §24. **Amended.** L. 1991, c. 199, §8, effective July 9, 1991.

**40:55D-111. Reports on certain applications.** If the zoning ordinance designates and regulates historic sites or districts pursuant to subsection i. of section 52 of P.L.1975, c.291 (C.40:55D-65), the governing body shall by ordinance provide for referral of applications for issuance of permits pertaining to historic sites or property in historic districts to the historic preservation commission for a written report on the application of the zoning ordinance provisions concerning historic preservation to any of those aspects of the change proposed, which aspects were not determined by approval of an application for development by a municipal agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.). The historic preservation commission shall submit its report either to the administrative officer or the planning board, as specified by ordinance. If the ordinance specifies the submission of the historic preservation commission's report to the planning board, the planning board shall report to the administrative officer.

In the case of a referral by the administrative officer of a minor application for the issuance of a permit pertaining to historic sites or property in historic districts, as defined in the zoning ordinance, the chairman of the historic preservation commission may act in the place of the full commission for purposes of this section; and, if the ordinance specifies the submission to the planning board of a commission report on a minor application, the ordinance may authorize the chairman or a subcommittee of the planning board to act in place of the full board.

The historic preservation commission or the planning board, as the case may be, shall report to the administrative officer within 45 days of his referral of the application to the historic preservation commission. If within the 45-day period the historic preservation commission or the planning board, as the case may be, recommends to the administrative officer against the issuance of a permit or recommends conditions to the permit to be issued, the administrative officer shall deny issuance of the permit or include the conditions in the permit, as the case may be. Failure to report within the 45-day period shall be deemed to constitute a report in favor of issuance of the permit and without the recommendation of conditions to the permit.

**Adopted.** L. 1985, c. 516, §25. **Amended.** L. 1991, c. 199, §9, effective July 9, 1991.

**40:55D-112. Landmark designation.** The word "landmark" may substitute, in any ordinance, resolution, determination or official action pursuant to the "Municipal Land Use Law" (C. 40:55D-1 et seq.) and this amendatory and supplementary act, for "historic," "historic preservation" and "historic site."

**Adopted.** L. 1985, c. 516, §26.

**ARTICLE 15. TRANSFER OF DEVELOPMENT RIGHTS DEMONSTRATION****40:55D-113. Burlington County Transfer of Development Rights Demonstration Act.**

Sections 1 through 14 [40:55D-113 through 40:55D-126] and 17 through 19 [40:55D-127 through 40:55D-129] of this act shall be known and may be cited as the "Burlington County Transfer of Development Rights Demonstration Act."

**Adopted.** L. 1989, c. 86, §1, effective June 5, 1989.

**40:55D-114. Legislative findings.** The Legislature finds and declares that as the most densely populated state in the nation, the State of New Jersey is faced with the challenge of accommodating vital growth while maintaining the environmental integrity and preserving the natural resources and cultural heritage of the Garden State; that the responsibility for meeting this challenge falls most heavily upon local government to appropriately shape the land use patterns so that growth and preservation become compatible goals; that until now municipalities have lacked effective and equitable means by which potential development may be transferred from areas where preservation is most appropriate to areas where growth can be better accommodated and maximized; and that the tools necessary to meet the challenge of balanced growth in an equitable manner in New Jersey must be made available to local government as the architects of New Jersey's future.

The Legislature further finds and declares that prior to the implementation of development potential transfer programs on a Statewide basis, it is necessary to demonstrate its feasibility in a pilot program; that such a pilot program should take place in an area where there is experience with development easement purchase and transfer; that Burlington County served as the program area for the "Agricultural Preserve Demonstration Program Act," P.L.1976, c.50 (C.4:1B-1 et seq.), and has participated to a greater extent than any other county in both the pinelands development credit program instituted under the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.) and the development easement purchase program instituted under the "Agriculture Retention and Development Act," P.L.1983, c.32 (C.4:1C-11 et al.); that because of this participation and the familiarity of local government units and the residents of the county with this land use planning technique, it is especially suited and provides the most conducive laboratory to demonstrate the feasibility of such a program.

**Adopted.** L. 1989, c. 86, §2, effective June 5, 1989.

**40:55D-115. Definitions.** As used in this act:

"Agricultural land" means land identified as prime, unique, or of State importance according to criteria adopted by the State Soil Conservation Committee with emphasis on lands included in an agricultural development area duly identified by a county agriculture development board and certified by the State Agriculture Development Committee according to the provisions of section 11 of P.L.1983, c.32 (C.4:1C-18);

"County agriculture development board" or "CADB" means the county agriculture development board established by Burlington county pursuant to the provisions of section 7 of P.L.1983, c.32 (C.4:1C-14);

"Development potential" means the maximum number of dwelling units or square feet of nonresidential floor area that could be constructed on a specified lot or in a specified zone under the master plan and land use regulations in effect on the date of the adoption of the development transfer ordinance, and in accordance with recognized environmental constraints;

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

"Municipality" means any municipality in Burlington County;

"Infrastructure plan" means the water, sewer, and highway development plan for the receiving zone established by a development transfer ordinance;

"Development transfer bank" means a bank created pursuant to section 13 [40:55D-125] of this act;

"Instruments" means the easement, credit, or other deed restriction used to record a development transfer;

"Receiving zone" means an area designated in the master plan and zoning ordinance, adopted pursuant to the provisions of P.L.1975, c.291 (C.40:55D-1 et seq.), within which development is to be increased, and which is otherwise consistent with the provisions of section 6 [40:55D-118] of this act;

“Sending zone” means an area designated in the master plan and zoning ordinance, adopted pursuant to the provisions of P.L.1975, c.291 (C.40:55D-1 et seq.), within which development is to be prohibited or restricted and which is otherwise consistent with the provisions of section 6 [40:55D-118] of this act.

**Adopted.** L. 1989, c. 86, §3, effective June 5, 1989.

**40:55D-116. Transfer of development programs; Office of State Planning assistance.** a. The governing body of any municipality in Burlington County may, by ordinance approved by the county planning board, provide for the transfer of development within its jurisdiction. The governing bodies of two or more municipalities may, by substantially similar ordinances, provide for a joint program for the transfer of development, including transfers from sending zones in one municipality to receiving zones in the other.

b. The Office of State Planning, established pursuant to section 6 of P.L.1985, c.398 (C.52:18A-201), shall provide such technical assistance as may be requested by municipalities or the county planning board, and as may be reasonably within the capacity of the office to provide, for the purpose of providing for development transfers pursuant to the provisions of this act. The office shall also carry out its responsibilities as provided in sections 9 and 11 of this act [40:55D-121 and 40:55D-123].

**Adopted.** L. 1989, c. 86, §4, effective June 5, 1989.

**40:55D-117. Preparation for ordinance adoption.** Prior to the adoption of any development transfer ordinance, a municipality interested in adopting the ordinance shall:

a. Prepare a report that includes the following:

- (1) an estimate of the anticipated population and economic growth in the municipality for the succeeding 10 years;
- (2) the identification and description of all prospective sending and receiving zones;
- (3) an estimate of the development potential of the prospective sending and receiving zones;
- (4) an estimate of the typical land values of the proposed sending zone;
- (5) an estimate of existing and proposed infrastructure of the proposed receiving zone; and
- (6) a presentation of the procedure and method for issuing the instruments necessary to convey the development potential from the sending zone to the receiving zone.

b. Cause to be prepared an infrastructure plan for the receiving zone, which includes the location and cost of all infrastructure and a method of cost sharing if any portion of the cost is to be assessed against developers. The plan shall be enacted by ordinance prior to or concurrent with enactment of any development transfer ordinance.

c. Incorporate in its master plan and land use regulations explicit planning objectives and design standards for the receiving zone so that applications for development that maximize the use of development transfer and that are consistent with the planning objectives and design standards can be expedited. The municipality may, through application fees for development in the receiving zone, be reimbursed on a pro rata basis for the cost of amending its master plan and land use regulations.

The development transfer ordinance shall not take effect until the report and plans required under this section have been prepared and the conclusions therefrom have been included in the master plan adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28).

**Adopted.** L. 1989, c. 86, §5, effective June 5, 1989.

**40:55D-118. Sending and receiving zones.** The municipality shall, in view of the information gathered from the report and plans prepared pursuant to section 5 of this act [40:55D-117], prepare a development transfer ordinance that designates sending and receiving zones.

a. In creating and establishing sending and receiving zones, the governing body of the municipality shall designate tracts of land of such size and number as may be necessary to carry out the purposes of this act.

b. All land in a sending zone shall have one or more of the following characteristics:

- (1) substantially undeveloped or unimproved farmland, woodland, floodplain, wetlands, endangered species habitat, aquifer recharge area, recreation or park land, waterfront, or steeply sloped land;
- (2) land substantially improved or developed in a manner so as to present a unique and distinctive aesthetic, architectural, or historical point of interest in the municipality;

(3) other improved or unimproved areas that should remain at low densities for reasons of inadequate transportation, sewerage or other infrastructure, or for such other reasons as may be necessary to implement local or regional plans.

c. Lands permanently restricted through development or conservation easements existing prior to the adoption of a development transfer ordinance may be included in a sending zone upon a finding by the municipal governing body that this inclusion is in the public interest.

d. The receiving zone shall be appropriate and suitable for development and shall be at least sufficient to accommodate at all times all of the development potential of the sending zone.

e. The development potential of the receiving zone shall be determined by the governing body of the municipality utilizing the report and plans prepared pursuant to section 5 of this act [40:55D-117]; be realistically achievable in a functioning market as of the date of the adoption of the development transfer ordinance; provide for a minimum of twice the development permitted in the receiving zone as of the date of the adoption of the development transfer ordinance; and be consistent with the criteria established pursuant to subsection b. of section 8 of this act [40:55D-120]. No density increases may be achieved in a receiving zone without the use of appropriate instruments of transfer.

f. The municipal governing body shall, pursuant to the ordinance, direct the municipal planning board to carry out the development transfer program.

**Adopted.** L. 1989, c. 86, §6, effective June 5, 1989.

**40:55D-119. Recordation of permitted uses; effect of use variances.** a. The development transfer ordinance shall provide for the issuance of such instruments as may be necessary and the adoption of procedures for recording the permitted use of the land at the time of the recording, the separation of the development potential from the land, and the recording of the allowable residual use of the land upon separation of the development potential.

b. The development transfer ordinance shall specifically provide that upon the transfer of the development potential from a sending zone, the owner of the property from which the development potential has been transferred shall cause a statement containing the conditions of the transfer and the terms of the restrictions of the use and development of the land to be attached to and recorded with the deed of the land in the same manner as the deed was originally recorded. These restrictions and conditions shall state that any development inconsistent therewith is expressly prohibited, shall run with the land, and shall be binding upon the landowner and every successor in interest thereto.

c. The development transfer ordinance shall provide that, on granting a use variance under the provisions of section 57 of P.L.1975, c.291 (C.40:55D-70) that increases the development potential of a parcel of property not in the designated receiving zone for which the variance has been granted by more than 5%, that parcel of property shall constitute a receiving zone and the provisions of the ordinance for receiving zones shall apply with respect to the amount of development potential required to implement that variance.

**Adopted.** L. 1989, c. 86, §7, effective June 5, 1989.

**40:55D-120. Submission to county board, Pinelands Commission.** a. Prior to adoption of the development transfer ordinance, the municipality shall submit a copy of the proposed ordinance, copies of all reports and plans prepared pursuant to section 5 of this act [40:55D-117], and proposed municipal master plan changes necessary for the enactment of the development transfer ordinance to the county planning board. If the ordinance and master plan changes involve agricultural land, then the Burlington County Agriculture Development Board shall also be provided information identical to that provided to the county planning board.

b. The county planning board, upon receiving the development transfer ordinance and accompanying documentation, shall conduct a review of the ordinance with regard to the following criteria:

(1) consistency with the adopted master plan of the county;

(2) support of regional objectives for agricultural land preservation, natural resource management and protection, historic or architectural conservation, or the preservation of other public values as enumerated in subsection b. of section 6 of this act [40:55D-118];

(3) consistency with reasonable population and economic forecasts for the county;

(4) adequacy of present or proposed infrastructure for concentrated growth; and

(5) sufficiency of the receiving zone to accommodate the development potential that may be transferred from sending zones and a reasonable assurance of marketability of any instruments of transfer that may be created.

c. Any municipality located in whole or in part in the pinelands area, as defined in P.L.1979, c.111 (C.13:18A-1 et seq.), shall also submit the proposed development transfer ordinance, reports and plans, and master plan changes to the Pinelands Commission for review. The Pinelands Commission shall determine whether the ordinance is compatible with the pinelands development credit program implemented pursuant to P.L.1985, c.310 (C.13:18A-30 et seq.) and is otherwise consistent with the comprehensive management plan adopted by the Pinelands Commission pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.). If the commission determines that the development transfer ordinance is not compatible or consistent, the commission shall make such recommendations as may be necessary to conform the ordinance with the comprehensive management plan. The municipality shall not adopt the ordinance unless the changes recommended by the Pinelands Commission have been included in the ordinance.

**Adopted.** L. 1989, c. 86, §8, effective June 5, 1989.

**40:55D-121. County board's responsibility; Office of State Planning review.** a. Within 60 days of receiving the development transfer ordinance and accompanying documentation, the county planning board shall submit to the municipality formal comments detailing its review and shall either recommend or not recommend enactment of the development transfer ordinance. If enactment of the ordinance is recommended, the municipality may proceed with adoption of the ordinance. Failure to recommend or not recommend enactment of the ordinance within the 60-day period shall constitute recommendation of the ordinance.

b. The CADB shall review the development transfer ordinances and accompanying documentation within 30 days of receipt thereof, and shall submit such written recommendations as it deems appropriate, to the county planning board.

c. If the county planning board does not recommend enactment, the reasons therefor shall be clearly stated in their formal comments. If the objections of the county planning board cannot be resolved to the satisfaction of both the municipality and the county planning board within an additional 30 days, the municipality shall petition the Office of State Planning to render a final determination. In the event that a development transfer ordinance involves agricultural land, the municipality shall petition the Office of State Planning for a final determination.

d. The Office of State Planning shall review the record of comment of the county planning board, and the development transfer ordinance and supporting documentation, and within 60 days approve, approve with conditions, or disapprove the transfer ordinance stating in writing the reasons therefor. Failure of the Office of State Planning to approve, approve with conditions, or disapprove the development transfer ordinance within the 60-day period constitutes approval of the ordinance. The basis for review by the Office of State Planning shall be:

- (1) compliance of the development transfer ordinance with the provisions of this act,
- (2) accuracy of the information developed in the report and plans prepared pursuant to subsections a., b., and c. of section 5 of this act [40:55D-117]; and
- (3) an assessment of the potential of successful implementation of the development transfer ordinance.

**Adopted.** L. 1989, c. 86, §9, effective June 5, 1989.

**40:55D-122. Recordation; tax assessment.** a. All development transfers shall be recorded in the manner of a deed in the book of deeds in the office of the Burlington county clerk. This recording shall specify the lot and block number of the parcel in the sending zone from which the development potential was transferred and the lot and block number of the parcel in the receiving zone to which the development potential was transferred.

b. The county clerk shall transmit to the assessor of the municipality in which a development transfer has occurred a record of the transfer and all pertinent information required to value, assess, and tax the properties subject to the transfer in a manner consistent with subsection c. of this section.

c. Property from which and to which development potential has been transferred shall be assessed at its fair market value reflecting this development transfer. Development potential that has been removed from a sending zone but has not yet been employed in a receiving zone shall not be assessed for real property taxation. Nothing in this act shall be construed to affect, or in any other

way alter, the valuation assessment, or taxation of land that is valued, assessed, and taxed pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).

d. Property in a sending or receiving zone that has been subject to a development transfer shall be newly valued, assessed, and taxed as of October 1 next following the development transfer.

e. Development potential that has been conveyed from a property pursuant to this act is not subject to the fee imposed pursuant to P.L.1968, c.49 (C.46:15-5 et seq.).

**Adopted.** L. 1989, c. 86, §10, effective June 5, 1989.

**40:55D-123. Review by municipal agencies.** a. The development transfer ordinance shall be reviewed by the planning board and governing body of the municipality at the end of three years subsequent to enactment. This review shall include an analysis of development potential transactions in both the private and public market, an update of current conditions in comparison to the original report prepared pursuant to section 5 of this act [40:55D-117], and an assessment of the performance goals of the development transfer program including an evaluation of the units constructed with and without the utilization of the development transfer ordinance. A report of findings from this review shall be submitted to the county planning board and, where the sending zone includes agricultural land, the CADB for review and recommendations. Based on this review the municipality shall act to maintain and enhance the value of development transfer potential not yet utilized and, if necessary, amend the infrastructure plan and comprehensive development plan and design standards prepared pursuant to section 5 of this act [40:55D-117].

b. The development transfer ordinance shall be reviewed by the planning board and governing body of the municipality at the end of six years subsequent to enactment. This review shall provide for the examination of the development transfer ordinance to determine whether the program for development transfer and the permitted uses in the sending zone continue to remain economically viable, and shall require an update of the report and plans prepared pursuant to section 5 of this act [40:55D-117]. If at least 30% of the development potential available on the market at market value has not been transferred at the end of this six-year period, the municipal governing body shall repeal the development transfer ordinance within 90 days of the end of the six-year period unless one of the following is met:

(1) the municipality immediately takes action to acquire or provide for the private purchase of the difference between the development potential already transferred and 50% of the total development transfer potential created in the sending zone under the development transfer ordinance;

(2) a majority of the property owners in a sending zone who own land from which the development potential has not yet been transferred agree that the development transfer ordinance should remain in effect; or

(3) the municipality can demonstrate either future success or can demonstrate that low levels of development transfer activity is due not to ordinance failure but to low levels of development demand in general. This demonstration shall require the concurrence of the county planning board and the Office of State Planning, and shall be the subject of a municipal public hearing conducted prior to a final determination regarding the future viability of the development transfer program.

c. Thereafter the development transfer ordinance shall provide for review thereof by the planning board and the governing body of the municipality at least once every six years in conjunction with the review and update of the master plan of the municipality pursuant to the provisions of section 76 of P.L.1975, c.291 (C.40:55D-89). This review shall provide for the examination of the ordinance to determine whether the program and uses permitted in the sending zone continue to be economically viable and shall require an update of the report and plans prepared pursuant to section 5 of this act [40:55D-117].

d. If 60% of the development potential has not been transferred at the end of a 12-year period, the municipal governing body shall repeal the development transfer ordinance within 90 days at the end of the 12-year period unless the municipality meets the standards established pursuant to subsection b. of this section.

**Adopted.** L. 1989, c. 86, §11, effective June 5, 1989.

**40:55D-124. Repeal of ordinance.** a. If the development transfer ordinance is repealed, the municipality shall, by ordinance, amend its master plan to reflect the repeal and shall provide for continued use of development transfers that have been separated from a sending zone but which

have not yet been redeemed by transfer to a receiving zone by establishing density bonuses for development transfers to designated areas of the municipality for a period of not less than 10 years.

b. The repeal of a development transfer ordinance shall in no way rescind or otherwise affect the restrictions imposed and recorded pursuant to section 7 of this act [40:55D-119] on the use of the land from which the development potential has been transferred, unless all of the municipal, county, or State agencies to whom the deed restrictions run and whose funds were used to purchase the easement agree that it is in the public interest to release the restrictions.

**Adopted.** L. 1989, c. 86, §12, effective June 5, 1989.

**40:55D-125. Development Transfer Bank.** a. The governing body of Burlington county or a municipality therein may provide for the purchase, sale, or exchange of the development potential that is available for transfer from a sending zone by the establishment of a development transfer bank. Any development transfer bank established therefor shall be governed by a board of directors comprising five members appointed by the governing body of the municipality or Burlington county, as the case may be. The members shall have expertise in either banking, law, land use planning, natural resource protection, historic site preservation or agriculture. The bank shall be funded at a level equal to at least 10% of the market value of the sending zone prior to the implementation of the development transfer ordinance for the purchase, sale, or exchange and shall be renewed to this funding level on an annual basis. For the purposes of this act and the "Local Bond Law," P.L.1960, c.169 (C.40A:2-1 et seq.), a purchase by the bank shall be considered an acquisition of lands for public purposes.

b. The development transfer bank is authorized to purchase property in a sending zone if:

(1) Adequate funds have been provided for these purposes; and,

(2) The person from whom the development potential is to be purchased demonstrates possession of marketable title to the property, is legally empowered to restrict the use of the property in conformance with this act, and certifies that the property is not otherwise encumbered or transferred.

c. The development transfer bank may, for the purposes of its own development potential transactions, establish a municipal average of the value of the development potential of all property in a sending zone of a municipality within its jurisdiction, which value shall generally reflect market value prior to the effective date of the development transfer ordinance. The establishment of this municipal average shall not prohibit the purchase of development potential for any price by private sale or transfer but shall be used only when the development transfer bank itself is purchasing the development potential of property in the sending zone. Several average values in any sending zone may be established for greater accuracy of valuation.

d. The development transfer bank may sell, exchange, or otherwise convey the development potential of property that it has purchased or otherwise acquired pursuant to the provisions of this act, but only in a manner that does not substantially impair the private sale or transfer of development potential.

e. When the sending zone includes agricultural land a development transfer bank shall, when considering the purchase of development potential based upon values derived by municipal averaging, submit the municipal average arrived at pursuant to subsection c. of this section for review and comment to the CADB. The development transfer bank shall coordinate the development transfer program with the farmland preservation program established pursuant to P.L.1983, c.32 (C.4:1C-11 et al.) to the maximum extent practicable and feasible.

f. A development transfer bank may apply for funds for the purchase of development potential under the provisions of P.L.1978, c.118, P.L.1983, c.354, or any other act providing funds for the purpose of acquiring and developing land for recreation and conservation purposes consistent with the provisions and conditions of those acts.

g. A development transfer bank may apply for matching funds for the purchase of development potential under the provisions of P.L.1981, c.276 for the purpose of farmland preservation and agricultural development consistent with the provisions and conditions of that act and P.L.1983, c.32 (C.4:1C-11 et al.).

**Adopted.** L. 1989, c. 86, §13, effective June 5, 1989.

**40:55D-125.1. Solid waste facility buffer zone; definitions.** a. The governing body of any county authorized pursuant to law to establish a development transfer bank, and which has funded that bank at least to the minimum extent required by law, may identify a buffer zone around any

solid waste facility or sludge management facility located within the county, and the county development transfer bank, utilizing funds in that bank, may purchase or otherwise acquire the development potential of all or any part of the buffer zone, notwithstanding whether or not the municipality or municipalities within which the buffer zone is located has adopted a development transfer ordinance where authorized pursuant to law. The county development transfer bank may sell, exchange, or otherwise convey any such development potential purchased or otherwise acquired by the county development transfer bank, where authorized pursuant to law.

b. As used in this section:

“Development potential” means the same as that term is defined pursuant to section 3 of P.L.1989, c.86 (C.40:55D-115).

“Development transfer” means the same as that term is defined pursuant to section 3 of P.L.1989, c.86 (C.40:55D-115).

“Solid waste facility” means the same as that term is defined pursuant to section 3 of P.L.1970, c.39 (C.13:1E-3).

“Sludge” means the solid residue and associated liquid resulting from physical, chemical, or biological treatment of domestic or industrial wastewater.

“Sludge management facility” means any facility established for the purpose of managing, processing, or disposing of sludge.

“Wastewater” means residential, commercial, industrial, or agricultural liquid waste, sewage, or stormwater runoff, or any combination thereof, or other residue discharged to or collected by a sewerage system.

**Adopted.** L. 1994, c. 151, §1, effective December 2, 1994.

**40:55D-126. Development easement.** If the governing body of Burlington County provides for the acquisition of a development easement under the provisions of P.L.1983, c.32 (C.4:1C-11 et al.), it may sell the development potential associated with the development easement subject to the terms and conditions of the development transfer ordinance adopted pursuant to this act; provided that if the development easement was purchased using moneys provided under the “Farmland Preservation Bond Act of 1981,” P.L.1981, c.276, a percentage of all revenues generated through the resale of the development potential shall be refunded to the State in an amount equal to the State’s percentage contribution to the original development easement purchase. Notwithstanding the foregoing, such refund shall not be paid to the State in the event the State Treasurer determines that such refund would adversely affect the tax-exempt status of any bonds authorized pursuant to the “Farmland Preservation Bond Act of 1981,” P.L.1981, c.276. This repayment shall be made within 90 days after the end of the calendar year in which the sale occurs.

**Adopted.** L. 1989, c. 86, §14, effective June 5, 1989. **Amended.** L. 1993, c. 339, §9, effective December 27, 1993.

**40:55D-127. Equitable interests.** Notwithstanding any other provision of this act or of any other applicable law, nothing in this act shall be construed to limit or foreclose the right of a sending zone transferor or a receiving zone transferee of a development transfer pursuant to this act to bargain, wholly or partially in lieu of a cash sale price, for an equitable interest in any development in which the transfer may be used.

Any contract or conveyance of development potential in which the consideration for the transaction is, in whole or in part, an equitable interest remaining in the grantor, shall be a recordable instrument to be recorded consistent with the applicable provisions of Title 46 of the Revised Statutes.

**Adopted.** L. 1989, c. 86, §17, effective June 5, 1989.

**40:55D-128. Farm benefits.** Agricultural land involved in an approved development transfer ordinance shall be provided the right to farm benefits under P.L.1983, c.32 (C.4:1C-11 et al.) and other benefits that may be provided pursuant to P.L.1983, c.31 (C.4:1C-1 et al.).

**Adopted.** L. 1989, c. 86, §18, effective June 5, 1989.

**40:55D-129. Annual report.** a. The governing body of a municipality which adopts a development transfer ordinance shall annually prepare and submit a report on the operation of the development transfer ordinance to the county planning board.

b. The county planning board shall submit copies of these reports along with an analysis of the effectiveness of the ordinances in achieving the purposes of this act to the State Planning Commission on July 1 of the third year next following enactment of this act.

c. The State Planning Commission shall submit, to the Governor, the President of the Senate, and to the Speaker of the General Assembly 90 days subsequent to receiving the report from the Burlington county planning board, copies of its analysis along with its recommendations as to the advisability of enacting transfer of development rights enabling legislation on a Statewide basis.

**Adopted.** L. 1989, c. 86, §19, effective June 5, 1989.

## ARTICLE 16. PERMIT EXTENSIONS

**40:55D-130. Short title.** This act shall be known and may be cited as the “Permit Extension Act.”

**Adopted.** L. 1992, c. 82, §1, effective August 7, 1992.

**40:55D-131. Legislative findings and determinations.** The Legislature finds and determines that:

a. There exists a state of economic emergency in the State of New Jersey, which began on January 1, 1989, and is anticipated to extend at least through December 31, 1996, which has drastically affected various segments of the New Jersey economy, but none as severely as the State’s banking, real estate and construction sectors.

b. The process of obtaining planning and zoning board of adjustment approvals for subdivisions, site plans and variances is difficult, time consuming and expensive, both for private applicants and government bodies.

c. The process of obtaining the myriad other government approvals, such as wetlands permits, sewer extension permits, on-site wastewater disposal permits, stream encroachment permits, highway access permits, and numerous waivers and variances, is also difficult and expensive; further, changes in the law can render these approvals, if expired or lapsed, impossible to renew or to re-obtain.

d. The current economic crisis has wreaked devastation on the building industry, and many landowners and developers are seeing their life’s work destroyed by the lack of credit and dearth of buyers and tenants, due to uncertainty over the state of the economy and high levels of unemployment.

e. The construction industry and related trades are sustaining severe economic losses, and the lapsing of government development approvals is exacerbating those losses.

f. Due to the current inability of builders to obtain construction financing, under existing economic conditions, more and more once-approved permits are expiring or lapsing and, as these approvals lapse, lenders must re-appraise and thereafter substantially lower real estate valuations established in conjunction with approved projects, thereby requiring the reclassification of numerous loans which, in turn, affects the stability of the banking system and reduces the funds available for future lending, thus creating more severe restrictions on credit and leading to a vicious cycle of default.

g. As a result of the continued downturn of the economy, and the continued expiration of approvals which were granted by State and local governments, it is possible that thousands of government actions will be undone by the passage of time.

h. Obtaining an extension of an approval pursuant to existing statutory or regulatory provisions is both costly in terms of time and financial resources, and insufficient to cope with the extent of the present financial emergency; moreover, the costs imposed fall on the public as well as the private sector.

i. Obtaining extensions of approvals granted by State government is frequently impossible, always difficult, and always expensive and no policy reason is served by the expiration of these permits, which were usually approved only after exhaustive review of the application.

j. It is the purpose of this act to prevent the wholesale abandonment of approvals due to the present unfavorable economic conditions, by tolling the expiration of these approvals until such time as the economy improves, thereby preventing a waste of public and private resources.

**Adopted.** L. 1992, c. 82, §2, effective August 7, 1992. **Amended.** L. 1994, c. 145, §1, effective November 30, 1994.

**40:55D-132. Definitions.** As used in this act:

“Approval” means any approval of a soil erosion and sediment control plan granted by a local soil conservation district under the authority conferred by R.S.4:24-22 et seq., waterfront development permit issued pursuant to R.S.12:5-1 et seq., permit issued pursuant to “The Wetlands Act of 1970,” P.L.1970, c.272 (C.13:9A-10 et seq.), permit issued pursuant to the “Freshwater

Wetlands Protection Act,” P.L.1987, c.156 (C.13:9B-1 et seq.), approval of an application for development granted by the Delaware and Raritan Canal Commission pursuant to the “Delaware and Raritan Canal State Park Law of 1974,” P.L.1974, c.118 (C.13:13A-1 et seq.), permit issued by the Hackensack Meadowlands Development Commission pursuant to the “Hackensack Meadowlands Reclamation and Development Act,” P.L.1968, c.404 (C.13:17-1 et seq.), approval of an application for development granted by the Pinelands Commission pursuant to the “Pinelands Protection Act,” P.L.1979, c.111 (C.13:18A-1 et seq.), permit issued pursuant to the “Coastal Area Facility Review Act,” P.L.1973, c.185 (C.13:19-1 et seq.), septic approval granted pursuant to Title 26 of the Revised Statutes, permit granted pursuant to R.S.27:7-1 et seq. or any supplement thereto, permit granted by the Department of Transportation pursuant to Title 27 of the Revised Statutes or under the general authority conferred by State law, approval granted by a sewerage authority pursuant to the “sewerage authorities law,” P.L.1946, c.138 (C.40:14A-1 et seq.), approval granted by a municipal authority pursuant to the “municipal and county utilities authorities law,” P.L.1957, c.183 (C.40:14B-1 et seq.), approval issued by a county planning board pursuant to Chapter 27 of Title 40 of the Revised Statutes, preliminary and final approval granted in connection with an application for development pursuant to the “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.), permit granted pursuant to the “State Uniform Construction Code Act,” P.L.1975, c.217 (C.52:27D-119 et seq.) permit or certification issued pursuant to the “Water Supply Management Act,” P.L.1981, c.262 (C.58:1A-1 et seq.), permit granted authorizing the drilling of a well pursuant to P.L.1947, c.377 (C.58:4A-5 et seq.), certification or permit granted, or exemption from a sewerage connection ban granted, pursuant to the “Water Pollution Control Act,” P.L.1977, c.74 (C.58:10A-1 et seq.), certification granted pursuant to “The Realty Improvement Sewerage and Facilities Act (1954),” P.L.1954, c.199 (C.58:11-23 et seq.), certification or approval granted pursuant to P.L.1971, c.386 (C.58:11-25.1 et al.), certification issued pursuant to the “Water Quality Planning Act,” P.L.1977, c.75 (C.58:11A-1 et seq.), approval granted pursuant to the “Safe Drinking Water Act,” P.L.1977, c.224 (C.58:12A-1 et seq.), stream encroachment permit issued pursuant to the “Flood Hazard Area Control Act,” P.L.1962, c.19 (C.58:16A-50 et seq.), any municipal or county approval or permit granted under the general authority conferred by State law, or any other government authorization of any development application or any permit related thereto whether that authorization is in the form of a permit, approval, license, certification, waiver, letter of interpretation, agreement or any other executive or administrative decision which allows a development to proceed.

“Development” means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure or facility, or of any grading, soil removal or relocation, excavation or landfill or any use or change in the use of any building or other structure or land or extension of the use of land.

“Economic emergency” means the period beginning January 1, 1989 and continuing through to December 31, 1996.

“Government” means any municipal, county, regional or State government, or any agency, department, commission or other instrumentality thereof.

**Adopted.** L. 1992, c. 82, §3, effective August 7, 1992. **Amended.** L. 1994, c. 145, §2, effective November 30, 1994.

**40:55D-133. Approval extended during economic emergency.** a. For any government approval which expired or is scheduled to expire during the economic emergency, that approval is automatically extended until December 31, 1996, except as otherwise provided hereunder. Nothing in this act shall prohibit the granting of such additional extensions as are provided by law when the extensions granted by this act shall expire.

b. Nothing in this act shall be deemed to extend or purport to extend any permit issued by the government of the United States or any agency or instrumentality thereof, or to any permit by whatever authority issued of which the duration of effect or the date or terms of its expiration are specified or determined by or pursuant to law or regulation of the federal government or any of its agencies or instrumentalities.

c. Nothing in this act shall be deemed to extend any permit or approval issued pursuant to the “Pinelands Protection Act,” P.L.1979, c.111 (C.13:18A-1 et seq.) if the extension would result in a violation of federal law, or any State rule or regulation requiring approval by the Secretary of the Interior pursuant to P.L.95-625 (16 U.S.C. § 471 (i)).

d. This act shall not affect any administrative consent order issued by the Department of Environmental Protection in effect or issued during the period of the economic emergency, nor shall

it be construed to extend any approval in connection with a resource recovery facility as defined in section 2 of P.L.1985, c.38 (C.13:1E-137).

e. In the event that any permit extended pursuant to the "Permit Extension Act," P.L.1992, c.82 (C.40:55D-130 et seq.) was based upon the connection to a sanitary sewer system, the permit's extension shall be contingent upon the availability of sufficient capacity, on the part of the treatment facility, to accommodate the development whose approval has been extended. If sufficient capacity is not available, those permit holders whose permits have been extended shall have priority with regard to the further allocation of gallonage over those permit holders who have not received approval of a hookup prior to the enactment of the "Permit Extension Act." Priority regarding the distribution of further gallonage to any permit holder who has received the extension of a permit pursuant to the "Permit Extension Act" shall be allocated in order of the granting of the original approval of the connection.

f. This act shall not extend any approval issued under the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) in connection with an application for development involving a residential use where, subsequent to the expiration of the permit but prior to January 1, 1992, an amendment has been adopted to the master plan and the zoning ordinance to rezone the property to industrial or commercial use when the permit was issued for residential use.

g. In the case of any approval issued under the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) which is extended pursuant to P.L.1992, c.82 (C.40:55D-130 et seq.), a municipality may disapprove such an extension of approval for the period beyond January 1, 1996, if, subsequent to January 1, 1992, but prior to July 1, 1994, an amendment has been adopted to the master plan and the zoning ordinance to change the use of the property for which the approval was issued to a use different from the use for which the approval was issued. A municipal disapproval pursuant to this subsection shall be made prior to June 30, 1995.

h. Nothing in this act shall be deemed to extend any permit issued pursuant to the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.) that expires after December 31, 1994 but prior to January 1, 1997, if the permit was issued for a development located in the coastal area, as defined pursuant to section 4 of P.L.1973, c.185 (C.13:19-4), between the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, and a point 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward.

i. This act shall not affect the terms or expiration date of any stipulation of settlement that was made or entered into during the economic emergency, provided that the stipulation of settlement involves a development which received preliminary major subdivision approval prior to January 1, 1979 in a municipality that has adopted a zoning change affecting the lot size and density of the development which is the subject of the stipulation of settlement after the date of the preliminary or final subdivision approval of that development, and provided further that the stipulation of settlement does not affect any housing constructed or rehabilitated in fulfillment of a fair share housing plan adopted pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

**Adopted.** L. 1992, c. 82, §4, effective August 7, 1992. **Amended.** L. 1994, c. 145, §3, effective November 30, 1994; L. 1995, c. 341, §1, effective January 5, 1996.

**40:55D-134. No extension for project exemption pursuant to Wetlands Act; application to DEP.** a. (1) Except as otherwise provided in this section, nothing in this act shall have the effect of extending any project exemption granted pursuant to subsection d. of section 4 of the "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-4).

(2) This act shall automatically extend any project exemption granted pursuant to subsection d. of section 4 of P.L.1987, c.156 (C.13:9B-4) from the requirements of section 16 of P.L.1987, c.156 to maintain a transition area adjacent to freshwater wetlands, if the freshwater wetlands which would be affected by the project are not freshwater wetlands of exceptional resource value.

b. Any person who may be eligible for an automatic extension pursuant to the provisions of subsection a. of this section may submit an application to the Department of Environmental Protection and Energy for a determination of whether the freshwater wetlands affected by the project are freshwater wetlands of exceptional resource value as defined by the Department of Environmental Protection and Energy pursuant to P.L.1987, c.156 and any rules and regulations adopted pursuant thereto. This application shall be limited to a description of the location of the project by lot and block number and a delineation of the wetlands affected by the project. If the Department of Environmental Protection and Energy does not make a determination requested

pursuant to this subsection within 90 days of receipt of the application therefore, the freshwater wetlands shall be deemed to not be of exceptional resource value. The Office of Administrative Law shall provide for expedited appeal by the applicant of any determination that the freshwater wetlands affected by a project potentially eligible for an automatic extension pursuant to the provisions of subsection a. of this section are classified as freshwater wetlands of exceptional resource value.

c. In the event the Department of Environmental Protection and Energy obtains additional information clearly and convincingly demonstrating that a freshwater wetlands previously determined by the Department of Environmental Protection and Energy or otherwise deemed to not be of exceptional resource value are actually freshwater wetlands of exceptional resource value, the Department of Environmental Protection and Energy may, within one year after the date of its original determination or the date on which the freshwater wetlands were deemed not to be of exceptional resource value, reclassify the freshwater wetlands as a freshwater wetlands of exceptional resource value, and require compliance with the requirements of section 16 of P.L.1987, c.156 to maintain a transition area adjacent to freshwater wetlands. This subsection shall not apply to any project the actual construction of which has commenced at the time the Department of Environmental Protection and Energy provides notice to the applicant that the previous wetlands resource classification may be modified.

**Adopted.** L. 1992, c. 82, §5, effective August 7, 1992.

**40:55D-135. Notice in New Jersey Register.** State agencies shall, within 30 days after the effective date of this act, place a notice in the New Jersey Register extending all approvals in conformance with this act.

**Adopted.** L. 1992, c. 82, §6, effective August 7, 1992.

**40:55D-136. Construction.** The provisions of this act shall be liberally construed to effectuate the purposes of this act.

**Adopted.** L. 1992, c. 82, §7, effective August 7, 1992.

**40:55D-136.1. Short title.** This act shall be known and may be cited as the “Permit Extension Act of 2008.”

**Adopted.** L. 2008, c. 78, §1, effective September 6, 2008.

**40:55D-136.2. Findings, declarations relative to extension of certain permits and approvals.** The Legislature finds and declares that:

a. The most recent national recession has caused one of the longest economic downturns since the Great Depression of the 1930s and has drastically affected various segments of the New Jersey economy, but none as severely as the State’s banking, real estate and construction sectors.

b. The real estate finance sector of the economy is in severe decline due to the sub-prime mortgage problem and the resultant widening mortgage finance crisis. The extreme tightening of lending standards for home buyers and other real estate borrowers has reduced access to the capital markets.

c. As a result of the crisis in the real estate finance sector of the economy, real estate developers and redevelopers, including homebuilders, and commercial, office, and industrial developers, have experienced an industry-wide decline, including reduced demand, cancelled orders, declining sales and rentals, price reductions, increased inventory, fewer buyers who qualify to purchase homes, layoffs, and scaled back growth plans.

d. The process of obtaining planning board and zoning board of adjustment approvals for subdivisions, site plans, and variances can be difficult, time consuming and expensive, both for private applicants and government bodies.

e. The process of obtaining the myriad other government approvals, required pursuant to legislative enactments and their implementing rules and regulations, such as wetlands permits, treatment works approvals, on-site wastewater disposal permits, stream encroachment permits, flood hazard area permits, highway access permits, and numerous waivers and variances, also can be difficult and expensive; further, changes in the law can render these approvals, if expired or lapsed, impossible to renew or re-obtain.

f. County and municipal governments obtain determinations of master plan consistency, conformance, or endorsement with State or regional plans, from State and regional government entities which may expire or lapse without implementation due to the state of the economy.

g. The most recent national recession has severely weakened the building industry, and many landowners and developers are seeing their life's work destroyed by the lack of credit and dearth of buyers and tenants, due to the crisis in real estate financing and the building industry, uncertainty over the state of the economy, and increasing levels of unemployment in the construction industry.

h. The construction industry and related trades are sustaining severe economic losses, and the lapsing of government development approvals would, if not addressed, exacerbate those losses.

i. Financial institutions that lent money to property owners, builders, and developers are experiencing erosion of collateral and depreciation of their assets as permits and approvals expire, and the extension of these permits and approvals is necessary to maintain the value of the collateral and the solvency of financial institutions throughout the State.

j. Due to the current inability of builders and their purchasers to obtain financing, under existing economic conditions, more and more once-approved permits are expiring or lapsing and, as these approvals lapse, lenders must re-appraise and thereafter substantially lower real estate valuations established in conjunction with approved projects, thereby requiring the reclassification of numerous loans which, in turn, affects the stability of the banking system and reduces the funds available for future lending, thus creating more severe restrictions on credit and leading to a vicious cycle of default.

k. As a result of the continued downturn of the economy, and the continued expiration of approvals which were granted by State and local governments, it is possible that thousands of government actions will be undone by the passage of time.

l. Obtaining an extension of an approval pursuant to existing statutory or regulatory provisions can be both costly in terms of time and financial resources, and insufficient to cope with the extent of the present financial situation; moreover, the costs imposed fall on the public as well as the private sector.

m. It is the purpose of this act to prevent the wholesale abandonment of approved projects and activities due to the present unfavorable economic conditions, by tolling the term of these approvals for a period of time, thereby preventing a waste of public and private resources.

**Adopted.** L. 2008, c. 78, §2, effective September 6, 2008. **Amended.** L. 2012, c. 48, §1, effective September 19, 2012; L. 2014, c. 84, §1, effective December 26, 2014.

**40:55D-136.3. Definitions relative to extension of certain permits and approvals.** As used in P.L.2008, c.78 (C.40:55D-136.1 et seq.):

“Approval” means, except as otherwise provided in section 4 of P.L.2008, c.78 (C.40:55D-136.4), any approval of a soil erosion and sediment control plan granted by a local soil conservation district under the authority conferred by R.S.4:24-22 et seq., waterfront development permit issued pursuant to R.S.12:5-1 et seq., permit issued pursuant to “The Wetlands Act of 1970,” P.L.1970, c.272 (C.13:9A-1 et seq.), permit issued pursuant to the “Freshwater Wetlands Protection Act,” P.L.1987, c.156 (C.13:9B-1 et al.), approval of an application for development granted by the Delaware and Raritan Canal Commission pursuant to the “Delaware and Raritan Canal State Park Law of 1974,” P.L.1974, c.118 (C.13:13A-1 et seq.), permit issued by the New Jersey Meadowlands Commission pursuant to the “Hackensack Meadowlands Reclamation and Development Act,” P.L.1968, c.404 (C.13:17-1 et al.), approval of an application for development granted by the Pinelands Commission and determination of municipal and county plan conformance pursuant to the “Pinelands Protection Act,” P.L.1979, c.111 (C.13:18A-1 et seq.), permit issued and center designations pursuant to the “Coastal Area Facility Review Act,” P.L.1973, c.185 (C.13:19-1 et seq.), septic approval granted pursuant to Title 26 of the Revised Statutes, permit granted pursuant to R.S.27:7-1 et seq. or any supplement thereto, right-of-way permit issued by the Department of Transportation pursuant to paragraph (3) of subsection (h) of section 5 of P.L.1966, c.301 (C.27:1A-5), approval granted by a sewerage authority pursuant to the “sewerage authorities law,” P.L.1946, c.138 (C.40:14A-1 et seq.), approval granted by a municipal authority pursuant to the “municipal and county utilities authorities law,” P.L.1957, c.183 (C.40:14B-1 et seq.), an agreement with a municipality, county, municipal authority, sewerage authority, or other governmental authority for the use or reservation of sewerage capacity, approval issued by a county planning board pursuant to chapter 27 of Title 40 of the Revised Statutes, preliminary and final approval granted in connection with an application for development pursuant to the “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.), permit granted pursuant to the “State Uniform Construction Code Act,” P.L.1975, c.217 (C.52:27D-119 et seq.), plan endorsement and center designations pursuant to the “State Planning Act,” P.L.1985, c.398

(C.52:18A-196 et al. ), permit or certification issued pursuant to the “Water Supply Management Act,” P.L.1981, c.262 (C.58:1A-1 et al.), permit granted authorizing the drilling of a well pursuant to P.L.1947, c.377 (C.58:4A-5 et seq.), certification or permit granted, exemption from a sewerage connection ban granted, wastewater management plan approved, and pollution discharge elimination system permit pursuant to the “Water Pollution Control Act,” P.L.1977, c.74 (C.58:10A-1 et seq.), certification granted pursuant to “The Realty Improvement Sewerage and Facilities Act (1954),” P.L.1954, c.199 (C.58:11-23 et seq.), certification or approval granted pursuant to P.L.1971, c.386 (C.58:11-25.1 et al.), certification issued and water quality management plan approved pursuant to the “Water Quality Planning Act,” P.L.1977, c.75 (C.58:11A-1 et seq.), approval granted pursuant to the “Safe Drinking Water Act,” P.L.1977, c.224 (C.58:12A-1 et al.), permit issued pursuant to the “Flood Hazard Area Control Act,” P.L.1962, c.19 (C.58:16A-50 et seq.), any municipal, county, regional, or State approval or permit granted under the general authority conferred by State law or rule or regulation, or any other government authorization of any development application or any permit related thereto whether that authorization is in the form of a permit, approval, license, certification, permission, determination, interpretation, exemption, variance, exception, waiver, letter of interpretation, no further action letter, agreement or any other executive or administrative decision which allows a development or governmental project to proceed.

“Development” means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure or facility, or of any grading, soil removal or relocation, excavation or landfill or any use or change in the use of any building or other structure or land or extension of the use of land.

“Environmentally sensitive area” means an area designated pursuant to the State Development and Redevelopment Plan adopted, as of the effective date of P.L.2008, c.78 (C.40:55D-136.1 et seq.), pursuant to P.L.1985, c.398 (C.52:18A-196 et al.) as Planning Area 4B (Rural/Environmentally Sensitive), Planning Area 5 (Environmentally Sensitive), or a critical environmental site, but shall not include any extension area as defined in this section.

“Extension area” means an area designated pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), Planning Area 3 (Fringe Planning Area), Planning Area 4A (Rural Planning Area), a designated center, or a designated growth center in an endorsed plan until June 30, 2013, or until the State Planning Commission revises and readopts New Jersey’s State Strategic Plan and adopts regulations to refine this definition as it pertains to Statewide planning areas, whichever is later; a smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-6); regional growth areas, villages, and towns, designated in the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to section 7 of the “Pinelands Protection Act,” P.L.1979, c.111 (C.13:18A-8); the planning area of the Highlands Region as defined in section 3 of the “Highlands Water Protection and Planning Act,” P.L.2004, c.120 (C.13:20-3), and any Highlands center designated by the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4); an urban enterprise zone designated pursuant to P.L.1983, c.303 (C.52:27H-60 et seq.) or P.L.2001, c.347 (C.52:27H-66.2 et al.); an area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and 40A:12A-6) and as approved by the Department of Community Affairs; or similar areas designated by the Department of Environmental Protection. “Extension area” shall not include an area designated pursuant to the State Development and Redevelopment Plan adopted, as of the effective date of P.L.2008, c.78, pursuant to P.L.1985, c.398 as Planning Area 4B (Rural/Environmentally Sensitive) or Planning Area 5 (Environmentally Sensitive), except for any area within Planning Area 4B or Planning Area 5 that is a designated center, or a designated growth center in an endorsed plan.

“Extension period” means the period beginning January 1, 2007 and continuing through December 31, 2015; provided, however, that the period in Superstorm Sandy-impacted counties shall continue through December 31, 2016.

“Government” means any municipal, county, regional, or State government, or any agency, department, commission or other instrumentality thereof.

“Superstorm Sandy-impacted counties” means Atlantic, Bergen, Cape May, Essex, Hudson, Middlesex, Monmouth, Ocean, and Union counties, as identified by the United States Department of Housing and Urban Development.

“Superstorm Sandy-impacted extension period” means the period beginning January 1, 2016 and continuing through December 31, 2016.

**Adopted.** L. 2008, c. 78, §3, effective September 6, 2008. **Amended.** L. 2009, c. 336, §1, effective January 18, 2010; L. 2012, c. 48, §2, effective September 19, 2012; L. 2014, c. 84, §2, effective December 26, 2014; L. 2016, c. 14, §1, effective June 30, 2016, and be retroactive to January 1, 2016.

**40:55D-136.4. Existing government approval; extension period.** a. (1) For any government approval in existence during the extension period, the running of the period of approval is automatically suspended for the extension period, except as otherwise provided hereunder; however, the tolling provided for herein shall not extend the government approval more than six months beyond the conclusion of the extension period.

(2) For any government approval in existence on December 31, 2015 concerning lands located entirely within one or more of the Superstorm Sandy-impacted counties, as defined in section 3 of P.L.2008, c.78 (C.40:55D-136.3), the running of the period of approval is automatically suspended for the Superstorm Sandy-impacted extension period, except as otherwise provided hereunder; however, the tolling provided for herein shall not extend the government approval more than six months beyond the conclusion of the Superstorm Sandy impacted extension period.

(3) Nothing in P.L.2008, c.78 (C.40:55D-136.1 et seq.) shall shorten the duration that any approval would have had in the absence of P.L.2008, c.78 (C.40:55D-136.1 et seq.), nor shall P.L.2008, c.78 (C.40:55D-136.1 et seq.) prohibit the granting of such additional extensions as are provided by law when the tolling granted by P.L.2008, c.78 (C.40:55D-136.1 et seq.) shall expire. Notwithstanding any previously enacted provision of P.L.2008, c.78 (C.40:55D-136.1 et seq.), as amended and supplemented, the running of the period of approval of all government approvals which would have been extended pursuant to the definition of “extension area,” added by P.L.2012, c.48, shall be calculated, using that definition, retroactive to the enactment of P.L.2008, c.78 (C.40:55D-136.1 et seq.).

b. Nothing in P.L.2008, c.78 (C.40:55D-136.1 et seq.) shall be deemed to extend or purport to extend:

(1) any permit or approval issued by the government of the United States or any agency or instrumentality thereof, or any permit or approval by whatever authority issued of which the duration of effect or the date or terms of its expiration are specified or determined by or pursuant to law or regulation of the federal government or any of its agencies or instrumentalities;

(2) any permit or approval issued pursuant to the “Pinelands Protection Act,” P.L.1979, c.111 (C.13:18A-1 et seq.) if the extension would result in a violation of federal law, or any State rule or regulation requiring approval by the Secretary of the Interior pursuant to Pub.L.95-625 (16 U.S.C. s.471i);

(3) any permit or approval issued within an environmentally sensitive area;

(4) any permit or approval within an environmentally sensitive area issued pursuant to the “Highlands Water Protection and Planning Act,” P.L.2004, c.120 (C.13:20-1 et al.), or any permit or approval issued within the preservation area of the Highlands Region as defined in section 3 of P.L.2004, c.120 (C.13:20-3);

(5) any permit or approval issued by the Department of Transportation pursuant to Title 27 of the Revised Statutes or under the general authority conferred by State law, other than a right-of-way permit issued pursuant to paragraph (3) of subsection (h) of section 5 of P.L.1966, c.301 (C.27:1A-5) or a permit granted pursuant to R.S.27:7-1 et seq. or any supplement thereto;

(6) any permit or approval issued pursuant to the “Flood Hazard Area Control Act,” P.L.1962, c.19 (C.58:16A-50 et seq.), except (a) where work has commenced, in any phase or section of the development, on any site improvement as defined in paragraph (1) of subsection a. of section 41 of the “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-53) or on any buildings or structures or (b) where the permit or approval authorizes work on real property owned by the government or the federal government;

(7) any coastal center designated pursuant to the “Coastal Area Facility Review Act,” P.L.1973, c.185 (C.13:19-1 et seq.), that as of March 15, 2007 (a) had not submitted an application for plan endorsement to the State Planning Commission, and (b) was not in compliance with the provisions of the Coastal Zone Management Rules at N.J.A.C.7:7E-5B.6; or

(8) any permit or approval within the Highlands planning area located in a municipality subject to the “Highlands Water Protection and Planning Act,” P.L.2004, c.120, that has adopted, as of May 1, 2012, in accordance with the Highlands Water Protection and Planning Council conformance

approval, a Highlands master plan element, a Highlands land use ordinance, or an environmental resource inventory, except that the provisions of this paragraph shall not apply to any permit or approval within a Highlands center designated by the Highlands Water Protection and Planning Council, notwithstanding the adoption by the municipality of a Highlands master plan element, a Highlands land use ordinance, or an environmental resource inventory.

c. P.L.2008, c.78 (C.40:55D-136.1 et seq.) shall not affect any administrative consent order issued by the Department of Environmental Protection in effect or issued during the extension period, nor shall it be construed to extend any approval in connection with a resource recovery facility as defined in section 2 of P.L.1985, c.38 (C.13:1E-137).

d. Nothing in P.L.2008, c.78 (C.40:55D-136.1 et seq.) shall affect the ability of the Commissioner of Environmental Protection to revoke or modify a specific permit or approval, or extension thereof pursuant to P.L.2008, c.78 (C.40:55D-136.1 et seq.), when that specific permit or approval contains language authorizing the modification or revocation of the permit or approval by the department.

e. In the event that any approval tolled pursuant to P.L.2008, c.78 (C.40:55D-136.1 et seq.) is based upon the connection to a sanitary sewer system, the approval's extension shall be contingent upon the availability of sufficient capacity, on the part of the treatment facility, to accommodate the development whose approval has been extended. If sufficient capacity is not available, those permit holders whose approvals have been extended shall have priority with regard to the further allocation of gallonage over those approval holders who have not received approval of a hookup prior to the date of enactment of P.L.2008, c.78 (C.40:55D-136.1 et seq.). Priority regarding the distribution of further gallonage to any permit holder who has received the extension of an approval pursuant to P.L.2008, c.78 (C.40:55D-136.1 et seq.) shall be allocated in order of the granting of the original approval of the connection.

f. P.L.2008, c.78 (C.40:55D-136.1 et seq.) shall not toll any approval issued under the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) in connection with an application for development involving a residential use where, subsequent to the expiration of the permit but prior to January 1, 2007, an amendment has been adopted to the master plan and the zoning ordinance to rezone the property to industrial or commercial use when the permit was issued for residential use.

g. Nothing in P.L.2008, c.78 (C.40:55D-136.1 et seq.) shall be construed or implemented in such a way as to modify any requirement of law that is necessary to retain federal delegation to, or assumption by, the State of the authority to implement a federal law or program.

h. Nothing in P.L.2008, c.78 (C.40:55D-136.1 et seq.) shall be deemed to extend the obligation of any wastewater management planning agency to submit a wastewater management plan or plan update, or the obligation of a municipality to submit a wastewater management plan or plan update, pursuant to the "Water Quality Planning Act," P.L.1977, c.75 (C.58:11A-1 et seq.) and the Water Quality Management Planning rules, N.J.A.C.7:15-1.1 et seq., adopted by the Department of Environmental Protection, effective July 7, 2008.

i. All underlying municipal, county, and State permits or approvals within the extension area as defined in section 3 of P.L.2008, c.78 (C.40:55D-136.3), as amended, are extended in the Pinelands Area as designated pursuant to the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.).

**Adopted.** L. 2008, c. 78, §4, effective September 6, 2008. **Amended.** L. 2012, c. 48, §3, effective September 19, 2012; L. 2016, c. 14, §2, effective June 30, 2016, and be retroactive to January 1, 2016.

**40:55D-136.5. Notice.** State agencies shall, within 30 days after the effective date of P.L.2008, c.78 (C.40:55D-136.1 et seq.), and within 30 days after the effective date of any subsequent amendment and supplement thereto, place a notice in the New Jersey Register tolling approvals in the Superstorm Sandy-impacted counties, as defined in section 3 of P.L.2008, c.78 (C.40:55D-136.3) in conformance with P.L.2008, c.78 (C.40:55D-136.1 et seq.).

**Adopted.** L. 2008, c. 78, §5, effective September 6, 2008. **Amended.** L. 2012, c. 48, §4, effective September 19, 2012; L. 2016, c. 14, §3, effective June 30, 2016, and be retroactive to January 1, 2016.

**40:55D-136.6. Liberal construction.** The provisions of this act shall be liberally construed to effectuate the purposes of this act, and any subsequent amendment and supplement thereto.

**Adopted.** L. 2008, c. 78, §6, effective September 6, 2008. **Amended.** L. 2012, c. 48, §5, effective September 19, 2012.

**40:55D-136.7. Short title.** P.L.2020, c.53 (C.40:55D-136.7 et seq.) shall be known and may be cited as the “Permit Extension Act of 2020.”

**Adopted.** L. 2020, c. 53, §1, effective July 1, 2020, and shall be retroactive to March 9, 2020.

**40:55D-136.8. Findings and declarations.** The Legislature finds and declares that:

a. COVID-19 is a contagious, and at times, fatal, respiratory disease caused by the SARS-CoV-2 virus first discovered in the city of Wuhan, Hubei Province, People’s Republic of China, and quickly spread to multiple other countries, including the United States, and has severely impacted residents of the State of New Jersey;

b. Due to the potential risk of COVID-19 to residents of New Jersey, by way of Executive Order No. 103, Governor Philip D. Murphy declared that a State of Emergency and a Public Health Emergency exists in the State of New Jersey;

c. To limit the spread of COVID-19, it has become imperative for governments, institutions, businesses, organizations, and people throughout New Jersey to implement strict social distancing measures and take other precautions to reduce the public health impacts of the disease;

d. Due to the impacts of COVID-19, and protective measures necessary to avoid its further spread, much government, business, and economic activity has been halted, disrupted, or delayed;

e. These delays have adversely impacted real estate developers and redevelopers, including homebuilders and commercial, office, and industrial developers, whose projects may be held in abeyance as a result of the COVID-19 pandemic. Many of these projects have already received myriad governmental permits and approvals, which are expensive and time-consuming to obtain;

f. Obtaining an extension of an approval pursuant to existing statutory or regulatory provisions can be both costly in terms of time and financial resources; moreover, the costs imposed may fall on the public as well as the private sector; and

g. It is therefore appropriate, and the purpose of P.L.2020, c.53 (C.40:55D-136.7 et seq.), to toll the term of certain permits and approvals during the COVID-19 extension period in order to prevent the wholesale abandonment of approved projects and activities due to the present unfavorable economic conditions, thereby preventing a waste of public and private resources and allowing for the quick resumption of projects when it is safe to restart normal business and government activity.

**Adopted.** L. 2020, c. 53, §2, effective July 1, 2020, and shall be retroactive to March 9, 2020.

**40:55D-136.9. Definitions.** As used in P.L.2020, c.53 (C.40:55D-136.7 et seq.):

“Approval” means, except as otherwise provided in sections 4 through 11 of P.L.2020, c.53 (C.40:55D-136.10 through C.40:55D-136.17), any approval of a soil erosion and sediment control plan granted by a local soil conservation district under the authority conferred by R.S.4:24-22 et seq., waterfront development permit issued pursuant to R.S.12:5-1 et seq., permit issued pursuant to “The Wetlands Act of 1970,” P.L.1970, c.272 (C.13:9A-1 et seq.), permit issued pursuant to the “Freshwater Wetlands Protection Act,” P.L.1987, c.156 (C.13:9B-1 et al.), approval of an application for development granted by the Delaware and Raritan Canal Commission pursuant to the “Delaware and Raritan Canal State Park Law of 1974,” P.L.1974, c.118 (C.13:13A-1 et seq.), permit issued pursuant to the “Hackensack Meadowlands Reclamation and Development Act,” P.L.1968, c.404 (C.13:17-1 et al.), approval of an application for development granted by the Pinelands Commission and determination of municipal and county plan conformance pursuant to the “Pinelands Protection Act,” P.L.1979, c.111 (C.13:18A-1 et seq.), permit issued and center designations pursuant to the “Coastal Area Facility Review Act,” P.L.1973, c.185 (C.13:19-1 et seq.), septic approval granted pursuant to Title 26 of the Revised Statutes, permit granted pursuant to R.S.27:7-1 et seq. or any supplement thereto, right-of-way permit issued by the Department of Transportation pursuant to paragraph (3) of subsection (h) of section 5 of P.L.1966, c.301 (C.27:1A-5), approval granted by a sewerage authority pursuant to the “sewerage authorities law,” P.L.1946, c.138 (C.40:14A-1 et seq.), approval granted by a municipal authority pursuant to the “municipal and county utilities authorities law,” P.L.1957, c.183 (C.40:14B-1 et seq.), an agreement with a municipality, county, municipal authority, sewerage authority, or other governmental authority for the use or reservation of sewerage capacity, approval issued by a county planning board pursuant to chapter 27 of Title 40 of the Revised Statutes, preliminary and final approval granted in connection with an application for development pursuant to the “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.), permit granted pursuant to the “State Uniform Construction Code Act,” P.L.1975, c.217 (C.52:27D-119 et seq.), plan endorsement and center designations pursuant to the “State Planning Act,” P.L.1985, c.398 (C.52:18A-196 et al.), permit or certification

issued pursuant to the “Water Supply Management Act,” P.L.1981, c.262 (C.58:1A-1 et al.), permit granted authorizing the drilling of a well pursuant to P.L.1947, c.377 (C.58:4A-5 et seq.), certification or permit granted, exemption from a sewerage connection ban granted, wastewater management plan approved, and pollution discharge elimination system permit pursuant to the “Water Pollution Control Act,” P.L.1977, c.74 (C.58:10A-1 et seq.), certification granted pursuant to “The Realty Improvement Sewerage and Facilities Act (1954),” P.L.1954, c.199 (C.58:11-23 et seq.), certification or approval granted pursuant to P.L.1971, c.386 (C.58:11-25.1 et al.), certification issued and water quality management plan approved pursuant to the “Water Quality Planning Act,” P.L.1977, c.75 (C.58:11A-1 et seq.), approval granted pursuant to the “Safe Drinking Water Act,” P.L.1977, c.224 (C.58:12A-1 et al.), permit issued pursuant to the “Flood Hazard Area Control Act,” P.L.1962, c.19 (C.58:16A-50 et seq.), any municipal, county, regional, or State approval or permit granted under the general authority conferred by State law or rule or regulation, or any other government authorization of any development application or any permit related thereto whether that authorization is in the form of a permit, approval, license, certification, permission, determination, interpretation, exemption, variance, exception, waiver, letter of interpretation, no further action letter, agreement or any other executive or administrative decision which allows a development or governmental project to proceed; provided that, for all of the foregoing, the approval was validly issued, and the term of such approval was unexpired as of March 9, 2020.

“COVID-19” means the coronavirus disease 2019, as announced by the World Health Organization on February 11, 2020, and first identified in Wuhan, China.

“COVID-19 extension period” means the period beginning March 9, 2020 and continuing for as long as a public health emergency, pursuant to the “Emergency Health Powers Act,” P.L.2005, c.222 (C.26:13-1 et seq.), that has been declared by the Governor in response to COVID-19, is in effect.

“Development” means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure or facility, or of any grading, soil removal or relocation, excavation or landfill or any use or change in the use of any building or other structure or land or extension of the use of land.

“Government” means any municipal, county, regional, or State government, or any agency, department, commission or other instrumentality thereof.

**Adopted.** L. 2020, c. 53, §3, effective July 1, 2020, and shall be retroactive to March 9, 2020.

**40:55D-136.10. Period of approval automatically suspended.** a. For any government approval in existence on March 9, 2020, the running of the period of approval is automatically suspended for the COVID-19 extension period, except as otherwise provided hereunder; however, the tolling provided for herein shall extend the government approval at least six months beyond the conclusion of the COVID-19 extension period.

b. Nothing in P.L.2020, c.53 (C.40:55D-136.7 et seq.) shall be construed to reduce the time period of any approval in existence as of March 9, 2020.

c. Nothing in P.L.2020, c.53 (C.40:55D-136.7 et seq.) shall be construed to extend the time period of any government approval that expired before March 9, 2020.

d. Nothing in P.L.2020, c.53 (C.40:55D-136.7 et seq.) shall be deemed to extend or purport to extend:

(1) any permit or approval issued by the government of the United States or any agency or instrumentality thereof, or any permit or approval by whatever authority issued of which the duration of effect or the date or terms of its expiration are specified or determined by or pursuant to law or regulation of the federal government or any of its agencies or instrumentalities;

(2) any permit or approval issued pursuant to the “Pinelands Protection Act,” P.L.1979, c.111 (C.13:18A-1 et seq.) if the extension would result in a violation of federal law, or any State rule or regulation requiring approval by the Secretary of the Interior pursuant to Pub.L.95-625 (16 U.S.C. s.471i);

(3) any permit or approval issued within the preservation area of the Highlands Region as defined in section 3 of P.L.2004, c.120 (C.13:20-3);

(4) any permit or approval issued by the Department of Transportation pursuant to Title 27 of the Revised Statutes or under the general authority conferred by State law, other than a right-of-way permit issued pursuant to paragraph (3) of subsection (h) of section 5 of P.L.1966, c.301 (C.27:1A-5) or a permit granted pursuant to R.S.27:7-1 et seq. or any supplement thereto;

(5) any permit or approval issued pursuant to the “Flood Hazard Area Control Act,” P.L.1962, c.19 (C.58:16A-50 et seq.), except (a) where work has commenced, in any phase or section of the development, on any site improvement as defined in paragraph (1) of subsection a. of section 41 of the “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-53) or on any buildings or structures or (b) where the permit or approval authorizes work on real property owned by the government or the federal government;

(6) any coastal center designated pursuant to the “Coastal Area Facility Review Act,” P.L.1973, c.185 (C.13:19-1 et seq.); or

(7) any permit or approval within the Highlands planning area located in a municipality subject to the “Highlands Water Protection and Planning Act,” P.L.2004, c.120, that has adopted, in accordance with the Highlands Water Protection and Planning Council conformance approval, a Highlands master plan element, a Highlands land use ordinance, or an environmental resource inventory, except that the provisions of this paragraph shall not apply to any permit or approval within a Highlands center designated by the Highlands Water Protection and Planning Council, notwithstanding the adoption by the municipality of a Highlands master plan element, a Highlands land use ordinance, or an environmental resource inventory.

**Adopted.** L. 2020, c. 53, §4, effective July 1, 2020, and shall be retroactive to March 9, 2020.

**40:55D-136.11. Consent order unaffected.** P.L.2020, c.53 (C.40:55D-136.7 et seq.) shall not affect any administrative consent order issued by the Department of Environmental Protection in effect or issued during the COVID-19 extension period, nor shall it be construed to extend any approval in connection with a resource recovery facility as defined in section 2 of P.L.1985, c.38 (C.13:1E-137).

**Adopted.** L. 2020, c. 53, §5, effective July 1, 2020, and shall be retroactive to March 9, 2020.

**40:55D-136.12. Revocation, modification unaffected.** Nothing in P.L.2020, c.53 (C.40:55D-136.7 et seq.) shall affect the ability of the Commissioner of Environmental Protection to revoke or modify a specific permit or approval, or extension thereof pursuant to P.L.2020, c.53 (C.40:55D-136.7 et seq.), when that specific permit or approval or the commissioner’s underlying statutory or regulatory authority contains language authorizing the modification or revocation of the permit or approval by the department.

**Adopted.** L. 2020, c. 53, §6, effective July 1, 2020, and shall be retroactive to March 9, 2020.

**40:55D-136.13. Extension contingent on sewer capacity.** In the event that any approval tolled pursuant to P.L.2020, c.53 (C.40:55D-136.7 et seq.) is based upon the connection to a sanitary sewer system, the approval’s extension shall be contingent upon the availability of sufficient capacity, on the part of the treatment facility, to accommodate the development whose approval has been extended. If sufficient capacity is not available, those permit holders whose approvals have been extended shall have priority with regard to the further allocation of gallonage over those approval holders who have not received approval of a hookup prior to March 9, 2020. Priority regarding the distribution of further gallonage to any permit holder who has received the extension of an approval pursuant to P.L.2020, c.53 (C.40:55D-136.7 et seq.) shall be allocated in order of the granting of the original approval of the connection.

**Adopted.** L. 2020, c. 53, §7, effective July 1, 2020, and shall be retroactive to March 9, 2020.

**40:55D-136.14. Residential property rezoned to industrial or commercial.** P.L.2020, c.53 (C.40:55D-136.7 et seq.) shall not toll any approval issued under the “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.) in connection with an application for development involving a residential use where, subsequent to the expiration of the permit but prior to March 9, 2020, an amendment has been adopted to the master plan and the zoning ordinance to rezone the property to industrial or commercial use when the permit was issued for residential use.

**Adopted.** L. 2020, c. 53, §8, effective July 1, 2020, and shall be retroactive to March 9, 2020.

**40:55D-136.15. Federal law or program.** Nothing in P.L.2020, c.53 (C.40:55D-136.7 et seq.) shall be construed or implemented in such a way as to modify any requirement of law that is necessary to retain federal delegation to, or assumption by, the State of the authority to implement a federal law or program.

**Adopted.** L. 2020, c. 53, §9, effective July 1, 2020, and shall be retroactive to March 9, 2020.

**40:55D-136.16. Wastewater management plan.** Nothing in P.L.2020, c.53 (C.40:55D-136.7 et seq.) shall be deemed to extend the obligation of any wastewater management planning agency to

submit a wastewater management plan or plan update, or the obligation of a municipality to submit a wastewater management plan or plan update, pursuant to the “Water Quality Planning Act,” P.L.1977, c.75 (C.58:11A-1 et seq.) and the Water Quality Management Planning rules, N.J.A.C.7:15-1.1 et seq.

**Adopted.** L. 2020, c. 53, §10, effective July 1, 2020, and shall be retroactive to March 9, 2020.

**40:55D-136.17. Pinelands.** All underlying municipal, county, and State permits or approvals within the regional growth areas, villages, and towns, designated in the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to section 7 of the “Pinelands Protection Act,” P.L.1979, c.111 (C.13:18A-8), are extended.

**Adopted.** L. 2020, c. 53, §11, effective July 1, 2020, and shall be retroactive to March 9, 2020.

**40:55D-136.18. Notice.** a. State agencies shall, within 30 days after the effective date of P.L.2020, c.53 (C.40:55D-136.7 et seq.), place a notice in the New Jersey Register tolling approvals in conformance with P.L.2020, c.53 (C.40:55D-136.7 et seq.).

b. Any government approval subject to the automatic suspension of the running period of such approval for the COVID-19 extension period shall be registered with the department within 30 days of the notice in the New Jersey register.

c. The running period of any approval not registered pursuant to this section shall not be suspended for the COVID-19 extension period.

d. The department shall publish on its website a list of government approvals for which the running of the period of such approvals are suspended for the COVID-19 extension period within 14 days of receipt of the government approval registration pursuant to this section.

**Adopted.** L. 2020, c. 53, §12, effective July 1, 2020, and shall be retroactive to March 9, 2020.

**40:55D-136.19. Soil and fill recycling related to road or bridge construction.** The running of the period of any registration, application, or licensing requirement or timeframe imposed pursuant to P.L.2019, c.397 (C.13:1E-127.1 et al.), applicable to a person who performs soil and fill recycling services related to road or bridge construction activities, shall be suspended as of March 9, 2020 and the calculation of any registration, application filing, and licensing dates and the requirements related thereto, shall resume on the 60th day after the conclusion of the COVID-19 extension period.

**Adopted.** L. 2020, c. 53, §13, effective July 1, 2020, and shall be retroactive to March 9, 2020.

**40:55D-136.20. Period for application for development extended.** Notwithstanding any provision of P.L.1975, c.291 (C.40:55D-1 et seq.) to the contrary,

a. The 45-day period for an application for development to a municipal agency to be certified as complete pursuant to section 5 of P.L.1984, c.20 (C.40:55D-10.3) shall be extended to either 120 days after March 9, 2020, or 60 days after the date the application for development is submitted to the municipal agency, whichever date is later, for any application:

(1) awaiting certification as a complete application by a municipal agency as of March 9, 2020; or

(2) submitted by an applicant during the COVID-19 extension period.

b. The time periods for a municipal agency to either grant or deny any other application for development required under P.L.1975, c.291 (C.40:55D-1 et seq.) shall be extended by 120 days for any application:

(1) awaiting certification as a complete application by a municipal agency as of March 9, 2020; or

(2) pending before a municipal agency as of March 9, 2020.

c. The time periods for a municipal agency to either grant or deny any other application for development required under P.L.1975, c.291 (C.40:55D-1) shall be extended to either 120 days after March 9, 2020, or 60 days after the application for development is certified as complete by the municipal agency, whichever date is later, for any application submitted by an applicant during the COVID-19 extension period.

**Adopted.** L. 2020, c. 53, §14, effective July 1, 2020, and shall be retroactive to March 9, 2020.

## ARTICLE 17. STATE TRANSFER OF DEVELOPMENT RIGHTS

**40:55D-137. Short title.** Sections 1 through 27 of this act shall be known and may be cited as the “State Transfer of Development Rights Act.”

**Adopted.** L. 2004, c. 2, §1, effective September 25, 2004.

**40:55D-138. Findings, declarations relative to transfer of development rights by municipalities.** The Legislature finds and declares that as the most densely populated state in the nation, the State of New Jersey is faced with the challenge of accommodating vital growth while maintaining the environmental integrity, preserving the natural resources, and strengthening the agricultural industry and cultural heritage of the Garden State; that the responsibility for meeting this challenge falls most heavily upon local government to appropriately shape the land use patterns so that growth and preservation become compatible goals; that until now municipalities in most areas of the State have lacked effective and equitable means by which potential development may be transferred from areas where preservation is most appropriate to areas where growth can be better accommodated and maximized; and that the tools necessary to meet the challenge of balanced growth in an equitable manner in New Jersey must be made available to local government as the architects of New Jersey's future.

The Legislature further finds and declares that the "Burlington County Transfer of Development Rights Demonstration Act," P.L.1989, c.86 (C.40:55D-113 et al.), was enacted in 1989 as a pilot transfer of development rights (TDR) program to demonstrate the feasibility of TDR as a land use planning tool; and that the Burlington County pilot program has been a success and should now be expanded to the remainder of the State of New Jersey in a manner that is fair and equitable to all landowners.

The Legislature therefore determines that it is in the public interest to authorize all municipalities in the State to establish and implement TDR programs.

**Adopted.** L. 2004, c. 2, §2, effective September 25, 2004.

**40:55D-139. Transfer of development potential within jurisdiction.** a. The governing body of any municipality that fulfills the criteria set forth in section 4 of P.L.2004, c.2 (C.40:55D-140) may, by ordinance approved by the county planning board, provide for the transfer of development potential within its jurisdiction. The governing bodies of two or more municipalities that fulfill the criteria set forth in section 4 of P.L.2004, c.2 (C.40:55D-140) may, by substantially similar ordinances approved by their respective county planning boards, provide for a joint program for the transfer of development potential, including transfers from sending zones in one municipality to receiving zones in the other, regardless of whether or not those municipalities are situated within the same county. Any such program shall be carried out by the municipal planning board or boards.

A program may include the designation of one or more sending or receiving zones.

b. The Office of Smart Growth shall provide such technical assistance as may be requested by municipalities or a county planning board, and as may be reasonably within the capacity of the office to provide, in the preparation, implementation or review, as the case may be, of the master plan elements required to have been adopted by the municipality as a condition for adopting a development transfer ordinance pursuant to section 4 of P.L.2004, c.2 (C.40:55D-140), capital improvement program or development transfer ordinance.

**Adopted.** L. 2004, c. 2, §3, effective September 25, 2004.

**40:55D-140. Actions prior to adoption, amendment.** Prior to the adoption or amendment of any development transfer ordinance, a municipality shall:

a. Adopt a development transfer plan element of its master plan pursuant to paragraph (14) of subsection b. of section 19 of P.L.1975, c.291 (C.40:55D-28) in accordance with the requirements of section 5 of P.L.2004, c.2 (C.40:55D-141);

b. Adopt a capital improvement program pursuant to section 20 of P.L.1975, c.291 (C.40:55D-29) for the receiving zone, which includes the location and cost of all infrastructure and a method of cost sharing if any portion of the cost is to be assessed against developers pursuant to section 30 of P.L.1975, c.291 (C.40:55D-42);

c. Adopt a utility service plan element of the master plan pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) that specifically addresses providing necessary utility services within any designated receiving zone within a specified time period so that no development seeking to utilize development potential transfer is unreasonably delayed because utility services are not available;

d. Prepare a real estate market analysis pursuant to section 12 of P.L.2004, c.2 (C.40:55D-148) which examines the relationship between the development rights anticipated to be generated in the sending zones and the capacity of designated receiving zones to accommodate the necessary development; and

e. Either receive approval of: (1) its initial petition for endorsement of its master plan by the State Planning Commission pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) and regulations adopted pursuant thereto either individually, or as part of a county or regional plan, provided that the petition included the development transfer ordinance and supporting documentation, or (2) the development transfer ordinance and supporting documentation as an amendment to a previously approved petition for master plan endorsement by the State Planning Commission pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) and regulations adopted pursuant thereto.

**Adopted.** L. 2004, c. 2, §4, effective September 25, 2004.

**40:55D-141. Development transfer plan element, required inclusions.** In order to serve as the basis for a development transfer ordinance pursuant to subsection a. of section 4 of P.L.2004, c.2 (C.40:55D-140), a development transfer plan element of a masterplan shall include:

a. an estimate of the anticipated population and economic growth in the municipality for the succeeding 10 years;

b. the identification and description of all prospective sending and receiving zones;

c. an analysis of how the anticipated population growth estimated pursuant to subsection a. of this section is to be accommodated within the municipality in general, and the receiving zone or zones in particular;

d. an estimate of existing and proposed infrastructure of the proposed receiving zone;

e. a presentation of the procedure and method for issuing the instruments necessary to convey the development potential from the sending zone to the receiving zone; and

f. explicit planning objectives and design standards to govern the review of applications for development in the receiving zone in order to facilitate their review by the approving authority.

**Adopted.** L. 2004, c. 2, §5, effective September 25, 2004.

**40:55D-142. Procedure for municipality located in pinelands area.** a. Any municipality located in whole or in part in the pinelands area, as defined in the “Pinelands Protection Act,” P.L.1979, c.111 (C.13:18A-1 et seq.), shall submit the proposed development transfer ordinance, development transfer and utility service plan elements of the master plan, real estate market analysis, and capital improvement program to the Pinelands Commission for review for those areas included in that proposed ordinance that are situated within the pinelands area. The Pinelands Commission shall determine whether the proposed ordinance is compatible with the provisions of the “Pinelands Development Credit Bank Act,” P.L.1985, c.310 (C.13:18A-30 et seq.) and is otherwise consistent with the comprehensive management plan adopted by the Pinelands Commission pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.). If the commission determines that the proposed development transfer ordinance is not compatible or consistent, the commission shall make such recommendations as may be necessary to conform the proposed ordinance with the comprehensive management plan. The municipality shall not adopt the proposed ordinance unless the changes recommended by the Pinelands Commission have been included in the ordinance.

b. No development transfer ordinance that involves land in the pinelands area shall take effect unless it has been certified by the Pinelands Commission pursuant to the provisions of the “Pinelands Protection Act,” P.L.1979, c.111 (C.13:18A-1 et seq.) and the comprehensive management plan.

**Adopted.** L. 2004, c. 2, §6, effective September 25, 2004.

**40:55D-143. Preparation, amendment of development transfer ordinance.** A municipality which provides for the transfer of development as set forth in section 3 of P.L.2004, c.2 (C.40:55D-139) shall prepare or amend a development transfer ordinance that designates sending and receiving zones and is substantially consistent with or designed to effectuate the development transfer plan element of the master plan adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) and the capital improvement program adopted pursuant to section 20 of P.L.1975, c.291 (C.40:55D-29). A governing body that chooses to adopt an ordinance or amendment or revision thereto which in whole or in part is inconsistent with the development transfer plan element of the master plan or the capital improvement program may do so only by affirmative vote of a majority of the full authorized membership of the governing body, with the reasons of the governing body for so acting set forth in a resolution and recorded in its minutes when adopting such an ordinance.

In creating and establishing sending and receiving zones, the governing body of the municipality shall designate tracts of land of such size and number and with such boundaries, densities and permitted uses as may be necessary to carry out the purposes of P.L.2004, c.2 (C.40:55D-137 et al.).

The adoption or amendment of a development transfer ordinance shall be considered a change to the classifications or boundaries of a zoning district and therefore subject to the notification requirements of section 2 of P.L.1995, c.249 (C.40:55D-62.1).

**Adopted.** L. 2004, c. 2, §7, effective September 25, 2004.

**40:55D-144. Characteristics of sending zone.** a. A sending zone shall be composed predominantly of land having one or more of the following characteristics:

(1) agricultural land, woodland, floodplain, wetlands, threatened or endangered species habitat, aquifer recharge area, recreation or park land, waterfront, steeply sloped land or other lands on which development activities are restricted or precluded by duly enacted local laws or ordinances or by laws or regulations adopted by federal or State agencies;

(2) land substantially improved or developed in a manner so as to present a unique and distinctive aesthetic, architectural, or historical point of interest in the municipality;

(3) other improved or unimproved areas that should remain at low densities for reasons of inadequate transportation, sewerage or other infrastructure, or for such other reasons as may be necessary to implement the State Development and Redevelopment Plan adopted pursuant to P.L.1985, c.398 (C.52:18A-196 et al.) and local or regional plans.

b. Notwithstanding subsection a. of this section, lands permanently restricted through development easements or conservation easements existing prior to the adoption of a development transfer ordinance may be included in a sending zone upon a finding by the municipal governing body that this inclusion is in the public interest.

c. The development transfer ordinance may assign bonus development potential to specified properties in the sending zone based on specified criteria in order to encourage the permanent protection of those lands pursuant to the development transfer ordinance.

**Adopted.** L. 2004, c. 2, §8, effective September 25, 2004.

**40:55D-145. Characteristics of receiving zone.** a. A receiving zone shall be appropriate and suitable for development and shall be at least sufficient to accommodate all of the development potential of the sending zone, and at all times there shall be a reasonable likelihood that a balance is maintained between sending zone land values and the value of the transferable development potential.

b. The development potential of the receiving zone shall be realistically achievable, considering: (1) the availability of all necessary infrastructure; (2) all of the provisions of the zoning ordinance including those related to density, lot size and bulk requirements; and (3) given local land market conditions as of the date of the adoption of the development transfer ordinance.

c. The development potential of the receiving zone shall be consistent with the criteria established pursuant to subsection b. of section 13 of P.L.2004, c.2 (C.40:55D-149).

d. All infrastructure necessary to support the development of the receiving zone as set forth in the zoning ordinance shall either exist or be scheduled to be provided so that no development requiring the purchase of transferable development potential shall be unreasonably delayed because the necessary infrastructure will not be available due to any action or inaction by the municipality.

e. No density increases may be achieved in a receiving zone without the use of appropriate instruments of transfer.

**Adopted.** L. 2004, c. 2, §9, effective September 25, 2004.

**40:55D-146. Provisions of development transfer ordinance.** Except as otherwise provided in this section, a development transfer ordinance shall provide that, on granting a variance under subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70) that increases the development potential of a parcel of property not in the designated receiving zone for which the variance has been granted by more than 5%, that parcel of property shall constitute a receiving zone and the provisions of the ordinance for receiving zones shall apply with respect to the amount of development potential required to implement that variance.

This section shall not apply to any development that fulfills the definition of a minor site plan or minor subdivision.

**Adopted.** L. 2004, c. 2, §10, effective September 25, 2004.

**40:55D-147. Issuance of instruments, adoption of procedures relative to land use.** a. A development transfer ordinance shall provide for the issuance of such instruments as may be necessary and the adoption of procedures for recording the permitted use of the land at the time of

the recording, the separation of the development potential from the land, and the recording of the allowable residual use of the land upon separation of the development potential.

b. A development transfer ordinance shall specifically provide that upon the transfer of development potential from a sending zone, the owner of the property from which the development potential has been transferred shall cause a statement containing the conditions of the transfer and the terms of the restrictions of the use and development of the land to be attached to and recorded with the deed of the land in the same manner as the deed was originally recorded. These restrictions and conditions shall state that any development inconsistent therewith is expressly prohibited, shall run with the land, and shall be binding upon the landowner and every successor in interest thereto.

c. The restrictions shall be expressly enforceable by the municipality and the county in which the property is located, any interested party, and the State of New Jersey.

d. All development potential transfers shall be recorded in the manner of a deed in the book of deeds in the office of the county clerk or county register of deeds and mortgages, as appropriate. This recording shall specify the lot and block number of the parcel in the sending zone from which the development potential was transferred and the lot and block number of the parcel in the receiving zone to which the development potential was transferred.

e. All development potential transfers also shall be recorded with the State Transfer of Development Rights Bank in the Development Potential Transfer Registry as required pursuant to section 5 of P.L.1993, c.339 (C.4:1C-53).

**Adopted.** L. 2004, c. 2, §11, effective September 25, 2004.

**40:55D-148. Real estate market analysis.** a. Prior to the final adoption of a development transfer ordinance or any significant amendment to an existing development transfer ordinance, the planning board shall conduct a real estate market analysis of the current and future land market which examines the relationship between the development rights anticipated to be generated in the sending zone and the likelihood of their utilization in the designated receiving zone. The analysis shall include thorough consideration of the extent of development projected for the receiving zone and the likelihood of its achievement given current and projected market conditions in order to assure that the designated receiving zone has the capacity to accommodate the development rights anticipated to be generated in the sending zone. The real estate market analysis shall conform to rules and regulations adopted pursuant to subsection c. of this section.

b. Upon completion of the real estate market analysis and at a meeting of the planning board held prior to the meeting at which the development transfer ordinance receives first reading, the planning board shall hold a hearing on the real estate market analysis.

The hearing shall be held in accordance with the provisions of subsections a. through f. of section 6 of P.L.1975, c.291 (C.40:55D-10).

c. The Commissioner of Community Affairs, in consultation with the board of directors of the State Transfer of Development Rights Bank established pursuant to section 3 of P.L.1993, c.339 (C.4:1C-51), shall within 180 days of the enactment of P.L.2004, c.2 (C.40:55D-137 et al.), adopt rules and regulations which set forth the required contents of the real estate market analysis.

**Adopted.** L. 2004, c. 2, §12, effective March 29, 2004.

**40:55D-149. Submission by municipality prior to adoption of ordinance to county planning board.** a. Prior to adoption of a development transfer ordinance or of any amendment of an existing development transfer ordinance, the municipality shall submit a copy of the proposed ordinance, copies of the development transfer and utility service plan elements of the master plan adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) and capital improvement program adopted pursuant to section 20 of P.L.1975, c.291 (C.40:55D-29), proposed municipal master plan changes necessary for the enactment of the development transfer ordinance, and the real estate market analysis to the county planning board. If the ordinance and master plan changes involve agricultural land, then the county agriculture development board shall also be provided information identical to that provided to the county planning board.

b. The county planning board, upon receiving the proposed development transfer ordinance and accompanying documentation, shall conduct a review of the proposed ordinance with regard to the following criteria:

(1) consistency with the adopted master plan of the county;

(2) support of regional objectives for agricultural land preservation, natural resource management and protection, historic or architectural conservation, or the preservation of other public values as enumerated in subsection a. of section 8 of P.L.2004, c.2 (C.40:55D-144);

(3) consistency with reasonable population and economic forecasts for the county; and

(4) sufficiency of the receiving zone to accommodate the development potential that may be transferred from sending zones and a reasonable assurance of marketability of any instruments of transfer that may be created.

**Adopted.** L. 2004, c. 2, §13, effective September 25, 2004.

**40:55D-150. Formal comments, recommendation of county planning board.** a. Within 60 days after receiving a proposed development transfer ordinance and accompanying documentation transmitted pursuant to section 13 of P.L.2004, c.2 (C.40:55D-149), the county planning board shall submit to the municipality formal comments detailing its review and shall either recommend or not recommend enactment of the proposed development transfer ordinance. If enactment of the proposed ordinance is recommended, the municipality may proceed with adoption of the ordinance. Failure to submit recommendations within the 60-day period shall constitute recommendation of the ordinance.

b. The CADB shall review a proposed development transfer ordinance and accompanying documentation within 30 days of receipt thereof, and shall submit such written recommendations as it deems appropriate, to the county planning board.

c. If the county planning board does not recommend enactment, the reasons therefor shall be clearly stated in the formal comments. If the objections of the county planning board cannot be resolved to the satisfaction of both the municipality and the county planning board within an additional 30 days, the municipality shall petition the Office of Smart Growth to render a final determination pursuant to section 15 of P.L.2004, c.2 (C.40:55D-151).

**Adopted.** L. 2004, c. 2, §14, effective September 25, 2004.

**40:55D-151. Review by Office of Smart Growth.** When the Office of Smart Growth receives a petition pursuant to subsection c. of section 14 of P.L.2004, c.2 (C.40:55D-150), it shall review the petition, the record of comment of the county planning board, any supporting documentation submitted by the municipality, and any comments received from property owners in the sending or receiving zones and other members of the public. Within 60 days after receipt of the petition, the Office of Smart Growth shall approve, approve with conditions, or disapprove the proposed development transfer ordinance, stating in writing the reasons therefor. The basis for review by the Office of Smart Growth shall be:

a. compliance of the proposed development transfer ordinance with the provisions of P.L.2004, c.2 (C.40:55D-137 et al.);

b. accuracy of the information developed in the proposed development transfer ordinance, the development transfer and utility service plan elements of the master plan adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28), the real estate market analysis and capital improvement program adopted pursuant to section 20 of P.L.1975, c.291 (C.40:55D-29);

c. an assessment of the potential for successful implementation of the proposed development transfer ordinance; and

d. consistency with any plan that applies to the municipality that has been endorsed by the State Planning Commission pursuant to P.L.1985, c.398 (C.52:18A-196 et al.) and its implementing regulations.

**Adopted.** L. 2004, c. 2, §15, effective September 25, 2004.

**40:55D-152. Approval of municipal petition; appeal.** If the Office of Smart Growth determines, in response to a municipal petition submitted pursuant to subsection c. of section 14 of P.L.2004, c.2 (C.40:55D-150), that the proposed development transfer ordinance may be approved, the municipality may proceed with adoption of the proposed ordinance. If the Office of Smart Growth determines that the proposed ordinance may be approved with conditions, the Office of Smart Growth shall make such recommendations as may be necessary for the proposed ordinance to be approved. The municipality shall not adopt the proposed ordinance unless the changes recommended by the Office of Smart Growth have been included in the proposed ordinance. If the Office of Smart Growth determines that the development transfer ordinance should be disapproved, the municipality may not proceed with adoption of the proposed ordinance.

The decision by the Office of Smart Growth on the petition shall have the effect of a final agency action and any appeal of that decision shall be made directly to the Appellate Division of the Superior Court.

**Adopted.** L. 2004, c. 2, §16, effective September 25, 2004.

**40:55D-153. Transmission of record of transfer; assessment; taxation.** a. The county clerk or county register of deeds and mortgages, as the case may be, shall transmit to the assessor of the municipality in which a development potential transfer has occurred a record of the transfer and all pertinent information required to value, assess, and tax the properties subject to the transfer in a manner consistent with subsection b. of this section.

b. Property from which and to which development potential has been transferred shall be assessed at its fair market value reflecting the development transfer. Development potential that has been removed from a sending zone but has not yet been employed in a receiving zone shall not be assessed for real property taxation. Nothing in P.L.2004, c.2 (C.40:55D-137 et al.) shall be construed to affect, or in any other way alter, the valuation assessment, or taxation of land that is valued, assessed, and taxed pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).

c. Property in a sending or receiving zone that has been subject to a development potential transfer shall be newly valued, assessed, and taxed as of October 1 next following the development potential transfer.

d. Development potential that has been conveyed from a property pursuant to P.L.2004, c.2 (C.40:55D-137 et al.) shall not be subject to any fee imposed pursuant to P.L.1968, c.49 (C.46:15-5 et seq.).

**Adopted.** L. 2004, c. 2, §17, effective September 25, 2004.

**40:55D-154. Rebuttable presumption that development transfer ordinance is no longer reasonable.** The absence of either of the following shall constitute a rebuttable presumption that a development transfer ordinance is no longer reasonable:

a. plan endorsement pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) or regulations adopted pursuant thereto is no longer in effect for that municipality; or

b. a sufficient percentage of the development potential has not been transferred in that municipality as provided in section 20 of P.L.2004, c.2 (C.40:55D-156).

If the ordinance of a municipality that is a participant of a joint program pursuant to section 3 of P.L.2004, c.2 (C.40:55D-139) is presumed to be no longer reasonable pursuant to this section, then the ordinances of all participating municipalities also shall be presumed to be no longer reasonable.

**Adopted.** L. 2004, c. 2, §18, effective September 25, 2004.

**40:55D-155. Review by planning board, governing body after three years.** A development transfer ordinance and real estate market analysis shall be reviewed by the planning board and governing body of the municipality at the end of three years subsequent to its adoption. This review shall include an analysis of development potential transactions in both the private and public market, an update of current conditions in comparison to the development transfer plan element of the master plan adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) and capital improvement program adopted pursuant to section 20 of P.L.1975, c.291 (C.40:55D-29), and an assessment of the performance goals of the development transfer program, including an evaluation of the units constructed with and without the utilization of the development transfer ordinance. A report of findings from this review shall be submitted to the county planning board, the Office of Smart Growth and, when the sending zone includes agricultural land, the CADB for review and recommendations. Based on this review the municipality shall act to maintain and enhance the value of development transfer potential not yet utilized and, if necessary, amend the capital improvement program adopted pursuant to section 20 of P.L.1975, c.291 (C.40:55D-29), the development transfer plan element of the master plan adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) and the development transfer ordinance adopted pursuant to P.L.2004, c.2 (C.40:55D-137 et al.).

**Adopted.** L. 2004, c. 2, §19, effective September 25, 2004.

**40:55D-156. Review after five years.** A development transfer ordinance and the real estate market analysis also shall be reviewed by the planning board and governing body of the municipality at the end of five years subsequent to its adoption. This review shall provide for the examination of the development transfer ordinance and the real estate market analysis to determine

whether the program for development transfer and the permitted uses in the sending zone continue to remain economically viable, and, if not, an update of the development transfer plan element of the master plan adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) and capital improvement program adopted pursuant to section 20 of P.L.1975, c.291 (C.40:55D-29) shall be required. If at least 25% of the development potential has not been transferred at the end of this five-year period, the development transfer ordinance shall be presumed to be no longer reasonable, including any zoning changes adopted as part of the development transfer program, within 90 days after the end of the five-year period unless one of the following is met:

a. the municipality immediately takes action to acquire or provide for the private purchase of the difference between the development potential already transferred and 25% of the total development transfer potential created in the sending zone under the development transfer ordinance;

b. a majority of the property owners in a sending zone who own land from which the development potential has not yet been transferred agree that the development transfer ordinance should remain in effect;

c. the municipality can demonstrate either future success or can demonstrate that low levels of development potential transfer activity are due, not to ordinance failure, but to low levels of development demand in general. This demonstration shall require the concurrence of the county planning board and the Office of Smart Growth, and shall be the subject of a municipal public hearing conducted prior to a final determination regarding the future viability of the development transfer program; or

d. the municipality can demonstrate that less than 25% of the remaining development potential in the sending zone has been available for sale at market value during the five-year period.

**Adopted.** L. 2004, c. 2, §20, effective September 25, 2004.

**40:55D-157. Periodic reviews.** Following review of a development transfer ordinance as provided in section 20 of P.L.2004, c.2 (C.40:55D-156), the planning board and the governing body of the municipality shall review the development transfer ordinance and real estate market analysis at least once every five years with every second review occurring in conjunction with the review and update of the master plan of the municipality pursuant to the provisions of section 76 of P.L.1975, c.291 (C.40:55D-89). This review shall provide for the examination of the ordinance and the real estate market analysis to determine whether the program and uses permitted in the sending zone continue to be economically viable and, if not, an update of the development transfer plan element of the master plan adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) and capital improvement program adopted pursuant to section 20 of P.L.1975, c.291 (C.40:55D-29) shall be required.

If 25% of the remaining development transfer potential at the start of each five-year review period in the sending zone under the development transfer ordinance has not been transferred during the five-year period, the municipal governing body shall repeal the development transfer ordinance, including any zoning changes adopted as part of the development transfer program, within 90 days after the end of that five-year period unless the municipality meets one of the standards established pursuant to section 20 of P.L.2004, c.2 (C.40:55D-156).

**Adopted.** L. 2004, c. 2, §21, effective September 25, 2004.

**40:55D-158. Provision for purchase, sale, exchange of development potential.** a. The governing body of any municipality that has adopted a development transfer ordinance, or the governing body of any county in which at least one municipality has adopted a development transfer ordinance, may provide for the purchase, sale, or exchange of the development potential that is available for transfer from a sending zone by the establishment of a development transfer bank. Alternatively, the governing body of any municipality which has adopted a development transfer ordinance and has not established a municipal development transfer bank may either utilize the State TDR Bank or a county development transfer bank for these purposes, provided that the county in which the municipality is situated has established such a bank.

b. Any development transfer bank established by a municipality or county shall be governed by a board of directors comprising five members appointed by the governing body of the municipality or county, as the case may be. The members shall have expertise in either banking, law, land use planning, natural resource protection, historic site preservation or agriculture. For the purposes of P.L.2004, c.2 (C.40:55D-137 et al.) and the "Local Bond Law," N.J.S.40A:2-1 et seq., a purchase by the bank shall be considered an acquisition of lands for public purposes.

**Adopted.** L. 2004, c. 2, §22, effective September 25, 2004.

**40:55D-159. Purchase by development transfer bank.** a. A development transfer bank may purchase property in a sending zone if adequate funds have been provided for these purposes and the person from whom the development potential is to be purchased demonstrates possession of marketable title to the property, is legally empowered to restrict the use of the property in conformance with P.L.2004, c.2 (C.40:55D-137 et al.), and certifies that the property is not otherwise encumbered or transferred.

b. The development transfer bank may, for the purposes of its own development potential transactions, establish a municipal average of the value of the development potential of all property in a sending zone of a municipality within its jurisdiction, which value shall generally reflect market value prior to the effective date of the development transfer ordinance. The establishment of this municipal average shall not prohibit the purchase of development potential for any price by private sale or transfer, but shall be used only when the development transfer bank itself is purchasing the development potential of property in the sending zone. Several average values in any sending zone may be established for greater accuracy of valuation.

c. The development transfer bank may sell, exchange, or otherwise convey the development potential of property that it has purchased or otherwise acquired pursuant to the provisions of P.L.2004, c.2 (C.40:55D-137 et al.), but only in a manner that does not substantially impair the private sale or transfer of development potential.

d. When a sending zone includes agricultural land, a development transfer bank shall, when considering the purchase of development potential based upon values derived by municipal averaging, submit the municipal average arrived at pursuant to subsection b. of this section for review and comment to the CADB. The development transfer bank shall coordinate the development transfer program with the farmland preservation programs established pursuant to the "Agriculture Retention and Development Act," P.L.1983, c.32 (C.4:1C-11 et al.) and the "Garden State Preservation Trust Act," sections 1 through 42 of P.L.1999, c.152 (C.13:8C-1 et seq.) to the maximum extent practicable and feasible.

e. A development transfer bank may apply for funds for the purchase of development potential under the provisions of sections 1 through 42 of P.L.1999, c.152 (C.13:8C-1 et seq.), or any other act providing funds for the purpose of acquiring and developing land for recreation and conservation purposes consistent with the provisions and conditions of those acts.

f. A development transfer bank may apply for matching funds for the purchase of development potential under the provisions of the "Garden State Preservation Trust Act," sections 1 through 42 of P.L.1999, c.152 (C.13:8C-1 et seq.) for the purpose of farmland preservation and agricultural development consistent with the provisions and conditions of that act and the "Agriculture Retention and Development Act," P.L.1983, c.32 (C.4:1C-11 et al.). In addition, a development transfer bank may apply to the State Transfer of Development Rights Bank established pursuant to section 3 of P.L.1993, c.339 (C.4:1C-51) for either planning or development potential purchasing funds, or both, as provided pursuant to section 4 of P.L.1993, c.339 (C.4:1C-52).

**Adopted.** L. 2004, c. 2, §23, effective September 25, 2004.

**40:55D-160. Sale of development potential associated with development easement.** If the governing body of a county provides for the acquisition of a development easement under the provisions of the "Agriculture Retention and Development Act," P.L.1983, c.32 (C.4:1C-11 et al.) or the "Garden State Preservation Trust Act," sections 1 through 42 of P.L.1999, c.152 (C.13:8C-1 et seq.), it may sell the development potential associated with the development easement subject to the terms and conditions of the development transfer ordinance adopted pursuant to P.L.2004, c.2 (C.40:55D-137 et al.); provided that if the development easement was purchased using moneys provided pursuant to the "Garden State Preservation Trust Act," sections 1 through 42 of P.L.1999, c.152 (C.13:8C-1 et seq.), a percentage of all revenues generated through the resale of the development potential shall be refunded to the State in an amount equal to the State's percentage contribution to the original development easement purchase. Notwithstanding the foregoing, such refund shall not be paid to the State in the event the State Treasurer determines that such refund would adversely affect the tax-exempt status of any bonds authorized pursuant to the "Garden State Preservation Trust Act," sections 1 through 42 of P.L.1999, c.152 (C.13:8C-1 et seq.). This repayment shall be made within 90 days after the end of the calendar year in which the sale occurs.

**Adopted.** L. 2004, c. 2, §24, effective September 25, 2004.

**40:55D-161. Right to farm benefits.** Agricultural land involved in an approved development transfer ordinance shall be provided the right to farm benefits under the “Right to Farm Act,” P.L.1983, c.31 (C.4:1C-1 et al.) and other benefits that may be provided pursuant to the “Agriculture Retention and Development Act,” P.L.1983, c.32 (C.4:1C-11 et seq.).

**Adopted.** L. 2004, c. 2, §25, effective September 25, 2004.

**40:55D-162. Annual report by municipality to county; county to State.** a. The governing body of a municipality that adopts a development transfer ordinance shall annually prepare and submit a report on activity undertaken pursuant to the development transfer ordinance to the county planning board.

b. The county planning board shall submit copies of these reports along with an analysis of the effectiveness of the ordinances in achieving the purposes of P.L.2004, c.2 (C.40:55D-137 et al.) to the State Planning Commission on July 1 of the third year next following enactment of P.L.2004, c.2 (C.40:55D-137 et al.) and annually thereafter.

**Adopted.** L. 2004, c. 2, §26, effective September 25, 2004.

**40:55D-163. Construction of act relative to Burlington County municipalities.** a. Except as provided otherwise pursuant to subsections b. and c. of this section, the provisions of P.L.2004, c.2 (C.40:55D-137 et al.) shall not apply or be construed to nullify any development transfer ordinance adopted by a municipality in Burlington County pursuant to P.L.1989, c.86 (C.40:55D-113 et al.) prior to the effective date of P.L.2004, c.2 (C.40:55D-137 et al.).

b. On or after the effective date of P.L.2004, c.2 (C.40:55D-137 et al.), any municipality in Burlington County may adopt a development transfer ordinance either pursuant to P.L.1989, c.86 (C.40:55D-113 et al.) or P.L.2004, c.2 (C.40:55D-137 et al.).

c. Any municipality in Burlington County may utilize a development transfer bank established by the municipality or county pursuant to P.L.2004, c.2 (C.40:55D-137 et al.), by the municipality or Burlington County pursuant to P.L.1989, c.86 (C.40:55D-113 et al.), or by the State pursuant to P.L.1993, c.339 (C.4:1C-49 et seq.) or P.L.2004, c.2 (C.40:55D-137 et al.).

**Adopted.** L. 2004, c. 2, §27, effective September 25, 2004.

## **ARTICLE 18. PREMISES EXPANSION PERMITS FOR OUTDOOR SALES.**

**40:55D-164. Definitions.** As used in this act:

“Alcoholic beverage manufacturer license” or “license” means a plenary winery license, farm winery license, limited brewery license, restricted brewery license, cidery and meadery license, and craft distillery license issued pursuant to R.S.33:1-10.

“Alcoholic beverage retail consumption license” or “license” means a plenary retail consumption license, plenary retail consumption license used in connection with a hotel or motel, seasonal retail consumption license, or club license issued pursuant to R.S.33:1-12, or a concessionaire permit issued pursuant to Title 33 of the Revised Statutes that authorizes the sale of all alcoholic beverages for consumption on the licensed premises.

“Food” means food that is cooked, prepared, sold, served, and consumed on the business premises.

“Outdoor space” means a patio or deck, whether covered or uncovered, a yard, a walkway, or a parking lot, or a portion of any such space, that is located on the business premises, contiguous to the business premises, or in a non-contiguous location in accordance with paragraph (2) of subsection a. of section 2 of P.L.2024, c.95 (C.40:55D-165) which space is owned, leased, or otherwise in the lawful control of the owner or operator of the business premises.

“Premises expansion permit” means a permit issued to a manufacturer license holder or retail consumption license holder that entitles the license holder to use outdoor spaces as an extension of their business premises that they own or lease and that are located either on their business premises, contiguous to the business premises, or in a non-contiguous location in accordance with paragraph (2) of subsection a. of section 2 of P.L. 2024, c. 95 (C. 40:55D-165) for the purpose of conducting sales of food and beverages as allowed by law.

“Public sidewalk” means a sidewalk on the locally or county owned public right-of-way which is adjacent to the business premises or a portion thereof.

**Adopted.** L. 2024, c. 95, §1, effective November 25, 2024.

**40:55D-165. Premises expansion permit, alcoholic beverage manufacturer license, retail consumption license holder.** a. (1) Following the issuance of a special ruling or adoption of

regulations pursuant to subsection f. of this section, the Director of the Division of Alcoholic Beverage Control shall issue to the holder of an alcoholic beverage manufacturer license or retail consumption license a premises expansion permit upon application by the license holder. Application for the permit shall be made on an annual basis and the administrative fee for the permit shall be fixed by the director. The permit shall entitle the license holder to sell alcoholic beverages in outdoor spaces as an extension of their business premises that they own or lease and that are located either on their business premises, contiguous to the business premises, or in a non-contiguous location in accordance with paragraph (2) of this subsection. The director may impose any conditions upon the issuance or renewal of this permit deemed necessary and proper to achieve the objectives of this section.

(2) The permit shall entitle the license holder to expand the licensed premises to non-contiguous property, provided the property is in reasonable proximity to the licensed premises and the license holder has established safeguards to ensure that alcoholic beverages will be sold and served in accordance with Title 33 of the Revised Statutes. A license holder who obtains a premises expansion permit for a contiguous and non-contiguous property shall demonstrate that the license holder has a possessory interest and control over the property and shall be entitled to exercise the same privileges afforded on the existing licensed premises.

b. An applicant for a premises expansion permit shall file an application with the director with the following information:

(1) the name, address, and license number of the applicant;

(2) a description of the property that is the subject of the application as well as a sketch or photographs of the property;

(3) written approval or documentation from the property owner authorizing the temporary use of the expanded property by a licensee if the licensed property is not owned by the license holder; and

(4) proposed security plan for sale and service of alcoholic beverages on the expanded premises including prevention of pass-offs, underage drinking, and over-consumption.

c. The director shall transmit the application for a premises expansion permit to the municipal clerk and police chief of the municipal governing body in which the manufacturer license or retail consumption license is situated. For licensed premises located on property owned by or under the control of any political subdivision of this State, the application shall be reviewed and approved by a designated administrative official and the chief law enforcement officer responsible for the licensed property.

The director shall not approve or deny an application until it receives an endorsement or approval by the appropriate governing body officials.

d. Following the initial issuance, the renewal date of a premises expansion permit issued pursuant to this section shall be the same as the renewal date of the retail consumption license or manufacturer license.

e. (1) A license holder who held a temporary expansion permit issued pursuant to the director's special ruling prior to the effective date of this act shall be entitled, upon notice to the director and payment of a fee as shall be fixed by the director, to convert the permit to a premises expansion permit established pursuant to this section. A license holder who held the temporary expansion permit prior to the effective date of this act and converts the permit pursuant to this subsection shall not be required to submit to the director or municipal governing authority an additional application pursuant to P.L.2024, c.95 (C.40:55D-164 et al.).

(2) A temporary expansion permit issued pursuant to the director's special ruling prior to the effective date of this act shall remain in effect pending the director's issuance of a special ruling or adoption of regulations pursuant to subsection f. of this section until either November 30, 2025 or until the license holder is issued a premises expansion permit pursuant to this section.

f. No later than May 30, 2025, the director shall issue a special ruling or adopt regulations necessary to effectuate the purposes of this section. Regulations shall be effective immediately upon filing with the Office of Administrative Law for a period not to exceed 18 months and may, thereafter, be amended, adopted or readopted in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

**Adopted.** L. 2024, c. 95, §2, effective November 25, 2024, except that subsections a. through e. shall remain inoperative until May 30, 2025.

**40:55D-166. Outdoor spaces, extension of business premises, other than sale of alcoholic beverages, application filing, municipal zoning officer.** a. Notwithstanding the provisions of any

law to the contrary, the owner or operator of a restaurant that does not sell alcoholic beverages and the holder of an alcoholic beverage manufacturer license or retail consumption license may use, for purposes other than selling alcoholic beverages in such spaces as authorized pursuant to section 2 of P.L. 2024, c. 95 (C. 40:55D-165), outdoor spaces as an extension of their business premises that they own or lease and that are located either on their business premises contiguous to the business premises, or in a non-contiguous location.

b. The owner or operator of a restaurant that does not sell alcoholic beverages and the holder of an alcoholic beverage manufacturer license or retail consumption license seeking to utilize, for purposes other than selling alcoholic beverages in such spaces as authorized pursuant to section 2 of P.L. 2024, c. 95 (C. 40:55D-165), outdoor spaces as an extension of their businesses shall file an application with the municipal zoning officer. The application to the municipal zoning officer shall include:

(1) a plan, sketch, picture, or drawing that depicts the design, dimensional boundaries, and placement of tents, canopies, umbrellas, tables, chairs, and other fixtures of the outdoor spaces; and

(2) a plan for the control of litter, the removal and storage of garbage, and the cleaning of fixtures and grounds. If a business premises' parking lot is used for the service and sale of either food or beverages, or both, the owner or operator of a restaurant that does not sell alcoholic beverages and the holder of an alcoholic beverage manufacturer license or retail consumption license shall not encumber more than 75 percent of the lot's total parking spaces for service and sale, unless the parking lot contains less than eight parking spaces, and shall maintain at least one handicapped parking space in the parking lot.

c. A municipality may require that an applicant provide one or more of the following:

(1) written consent of the owner of the premises, if other than the applicant;

(2) an insurance certificate naming the municipality as an additional insured, with general liability on an occurrence with a limit of liability of at least \$1,000,000, with respect to losses arising solely from the operation of the outdoor dining facility; or

(3) an indemnification agreement with the municipality with respect to losses arising solely from the operation of the outdoor dining facility.

d. (1) The zoning officer shall issue an approval to the applicant within 15 business days of the application being submitted and deemed complete provided that the applicant meets and abides by all qualifications and requirements of P.L.2024, c.95 (C.40:55D-164 et al.), with the exception that the zoning officer may deny an application based on current violations of any other health, safety, fire, permitted use, or zoning regulation or upon any applicable law permitting the denial of a zoning permit. An application under this section shall not be considered a variance under the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

(2) A municipality may deny, revoke, or temporarily suspend the permit of any applicant or permittee that violates, or is not in compliance with, any provision of P.L.2024, c.95 (C.40:55D-164 et al.) or any provision of a law, ordinance, or regulation related to health, safety, fire, permitted use, zoning, or the consumption or control of alcoholic beverages not otherwise under the jurisdiction of the Division of Alcoholic Beverage Control and may also deny, revoke, or temporarily suspend the permit of any applicant or permittee based on any action taken against the applicant or permittee by the Division of Alcoholic Beverage Control related to the division's enforcement of any law or regulation related to the consumption or control of alcoholic beverages under its jurisdiction.

(3) An appeal to any approval, denial, revocation, or suspension may be filed through the municipal clerk with the governing body of the municipality. The governing body, or its designee, shall conduct a hearing and render a decision within 30 days of the filing of the appeal. The governing body may designate a municipal official or an attorney licensed in the State of New Jersey to serve as a hearing officer in place of the governing body for the purpose of conducting said hearing and rendering said decision. Nothing in P.L.2024, c.95 (C.40:55D-164 et al.) shall be construed to restrict the right of any party to obtain a review by any court of competent jurisdiction, according to law.

e. A permit issued pursuant to this section to a restaurant without an alcoholic beverage retail license shall be subject to annual renewal.

f. A municipality that approves an application for the holder of an alcoholic beverage manufacturer license or retail consumption license shall submit its endorsement to the Director of

the Division of Alcoholic Beverage Control pursuant to section 2 of P.L.2024, c.95 (C.40:55D-165).

g. The owner or operator of a restaurant that does not sell alcoholic beverages and the holder of an alcoholic beverage manufacturer license or retail consumption license who held a temporary permit issued by the municipality prior to the effective date of this act shall be entitled to convert the permit to a premises expansion permit established pursuant to this section to be used for purposes other than selling alcoholic beverages in such spaces as authorized pursuant to section 2 of P.L.2024, c.95 (C.40:55D-165). An owner or operator of a restaurant that does not sell alcoholic beverages and the holder of an alcoholic beverage manufacturer license or retail consumption license who held a temporary permit issued by the municipality prior to the effective date of this act and converts the permit pursuant to this subsection shall not be required to submit to the municipal governing authority an additional application pursuant to P.L.2024, c.95 (C.40:55D-164 et al.).

**Adopted.** L. 2024, c. 95, §3, effective November 25, 2024, except that subsections a. through e. shall remain inoperative until May 30, 2025.

**40:55D-167. Fixtures on private, public property, right of way, permitted use.** The installation and continuous use of tents, canopies, umbrellas, tables, chairs, and other fixtures on private property or public property or right of way designated by a municipality pursuant to P.L.2024, c.95 (C.40:55D-164 et al.) shall be a permitted use provided that the tent, canopy, umbrella, table, chairs, or other fixture conforms to all applicable provisions of the State Uniform Construction Code and Uniform Fire Code, which have been adopted by the Commissioner of Community Affairs pursuant to P.L.1975, c.217 (C.52:27D-119, et seq.) and P.L.1983, c.383 (C.52:27D-192 et seq.), respectively.

**Adopted.** L. 2024, c. 95, §4, effective November 25, 2024.

**40:55D-168. Municipal ordinances, applicability, notwithstanding permitted conducting of business outdoors.** a. Notwithstanding any provision of P.L.2024, c.95 (C.40:55D-164 et al.) to the contrary, all other municipal ordinances pertaining to sanitation, property maintenance, noise, business days and hours of operation, and days and hours of service of alcoholic beverages shall apply, unless specifically suspended or modified by the municipality or specifically prohibited by the provisions of this section.

b. With respect to a restaurant that does not sell alcoholic beverages and the holder of a premises expansion permit issued pursuant to section 2 of P.L.2024, c.95 (C.40:55D-165) operating in outdoor spaces pursuant to section 2 of P.L.2024, c.95 (C.40:55D-165), a municipality shall not prohibit or limit the days and hours of the outdoor service of food and beverages, including alcoholic beverages, except that municipalities may prohibit or limit operations for the hours after 10:00 p.m. and between 12:00 a.m. and 11:00 a.m. on Sundays through Wednesdays, and between 12:00 a.m. and 11:00 a.m. on Thursdays through Saturdays, with the exception that a municipal ordinance prohibiting or limiting the days and hours of indoor service of food and beverages, including alcoholic beverages, may be applied to the outdoor service of food and beverages, including alcoholic beverages, as a condition of the zoning approval pursuant to section 3 of P.L.2024, c.95 (C.40:55D-166). This provision shall not be construed as overruling or prohibiting the authority of a city of the first class to impose more restrictive time restrictions or prohibit or limit the days and hours of the outdoor service of food and beverages.

c. A municipality may either prohibit or limit the days and hours of any live performances, including musical performances, and the playing or projection of any content from a recording, streaming service, or television, cable, or Internet broadcasting service in outdoor spaces or on public sidewalks as a condition of the zoning approval pursuant to sections 3 and 4 of P.L.2024, c.95 (C.40:55D-166 and C.40:55D-167).

**Adopted.** L. 2024, c. 95, §5, effective November 25, 2024.

**40:55D-169. Public sidewalks, outdoor spaces, considered portion of premises open to public.** A public sidewalk or an outdoor space, including pedestrian walkways and pedestrian malls, which is subject to a premises expansion permit issued pursuant to section 2 or section 3 of P.L.2024, c.95 (C.40:55D-165 or C.40:55D-166) shall be considered a portion of the premises that is open to the public for the purposes of section 5 of P.L.1999, c.90 (C.2C:33-27).

**Adopted.** L. 2024, c. 95, §6, effective November 25, 2024.

**40:55D-170. Construction of act; restaurants temporarily, permanently closed, limited operation due to disciplinary, legal sanctions, entering settlement agreement.** Nothing in P.L.

2024, c. 95 (C. 40:55D-164 et al.) shall be interpreted or construed as permitting or mandating the opening, expansion, or resumption of unlimited operations of a restaurant that does not sell alcoholic beverages and the holder of a COVID-19 Expansion Permit issued by the Director of the Division of Alcoholic Beverage Control pursuant to the provisions of Special Ruling No. 2020-10 or a premises expansion permit issued pursuant to section 2 of P.L. 2024, c. 95 (C. 40:55D-165) that is closed, whether permanently or temporarily, or operating subject to limitations on its operations, service, or hours, as a result of disciplinary or legal sanctions imposed by, or entering into a settlement agreement with, a court of the State of New Jersey, a municipal court, the New Jersey Department of Law and Public Safety, the New Jersey Division of Alcoholic Beverage Control, or a municipal governing body acting as a local alcoholic beverage control board, as applicable.

**Adopted.** L. 2024, c. 95, §7, effective November 25, 2024.

**40:55D-171. Construction of act; State-owned rights-of-way.** Nothing in P.L.2024, c.95 (C.40:55D-164 et al.) permits the use of State-owned rights-of-way for the purposes of outdoor dining. A permit for the use of the State rights-of-way shall be issued upon application and approval of the New Jersey Department of Transportation. For the purposes of locally owned roads that intersect the State highway system, setbacks from the State right-of-way line will be 50 feet from April 1 to October 31, and 100 feet from November 1 to March 31.

**Adopted.** L. 2024, c. 95, §10, effective November 25, 2024.