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Solar Panels Not Impervious Cover in New Jersey

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On April 22, 2010, Governor Christie signed a new law that exempts solar panels from the calculation of impervious cover under a number of state laws. The calculation of impervious cover can be a critical factor in development projects in New Jersey, as many state and municipal laws limit the percentage of a property that can be covered by impervious cover. For instance, the Highlands Water Protection and Planning Act limits the size of new developments to 3% impervious cover, while the stormwater management rules are triggered based upon the amount of impervious cover added by a project.

The goal of the new legislation is to remove regulatory obstacles to developing solar power projects. The new legislation amends the Waterfront Development Act, the Pinelands Protection Act, the Coastal Area Facility Review Act, the Highlands Water Protection and Planning Act, the Municipal Land Use Law as well as laws related to county site plan approvals, stormwater management plans and the conversion of age-restricted community developments.

Under the new law, a “Solar Panel” is defined as “an elevated panel or plate, or a canopy or array thereof, that captures and converts solar radiation to produce power, and includes flat plates, focusing solar collectors, or photovoltaic solar cells and excludes the base or foundation of the panel, plate, canopy, or array.” Thus, while the solar panel itself is not impervious, the area where the solar panel attaches to the ground – the base or foundation – is still deemed impervious.

The new law does not, however, change how the calculation of impervious cover is undertaken under the Freshwater Wetlands Protection Act and the Flood Hazard Area Control Act. The legislative history does not indicate whether this was a deliberate or inadvertent omission. However, given the strict development limitations under these two laws, and the large areas covered by them, this omission could be significant.

Any New Jersey developers seeking to build a solar energy project, or include solar power generation as an ancillary feature of a development, will need to consult with their development team professionals to consider how this new legislation might impact their project.

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