



LEGAL Q&A

Q Is New Jersey taking the necessary steps to promote clean, alternative energy through Legislation?

A As a result of the adoption of the New Jersey Energy Master Plan, which calls for a 20% reduction in current energy consumption by 2020, the New Jersey Legislature is taking the necessary steps to make it less difficult to obtain land use approvals for the installation of alternative energy facilities where they may not be permitted under local zoning regulations. On November 20, 2009 Governor Jon S. Corzine signed into law Senate Bill S 1303, codified as P.L. 2009, ch. 146, which amends Section 3.1 of the New Jersey Municipal Land Use Law (N.J.S.A. 40:55D-4), and defines an "inherently beneficial use" to include a wind, solar or photovoltaic energy facility or structure.

The designation of wind, solar or photovoltaic energy facilities or structures as "inherently beneficial uses" eliminates the necessity of an applicant for variance approval to demonstrate that benefits of the variance relief outweighs any detriments to the community, which is also known as the Positive Criteria, one portion of the proofs needed for a variance.

While applicants will still be required to demonstrate that the facility or structure will not substantially impair the intent and scheme of the zone plan and ordinance, an applicant now presumptively satisfies the Positive Criteria for a variance to construct a wind, solar or photovoltaic energy facility or structure.



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