

PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

SITING RULES FOR GRID SUPPLY AND LARGE NET METERED SOLAR FACILITIES

Proposed Amendments: N.J.A.C. 14:8-1.2

Proposed New Rule: N.J.A.C. 14:8-12

BPU Docket Number: QX22100654

Notice of Correction (PRN 2023-011)

Take notice that the New Jersey Board of Public Utilities discovered typographical and editing errors in the above notice of proposal published in the February 6, 2023 New Jersey Register, 55 N.J.R. 135(a). The errors appear in the first paragraph of the Summary at 55 N.J.R. 135, wherein the Board referred to the Successor Solar Incentive Program as set forth at N.J.A.C. 14:8-10 instead of N.J.A.C. 14:8-11; and failed to mention where the new rule would be codified. To correct the typographical and editing errors, the text of the first paragraph of the Summary, which appeared in the February 6, 2023 notice of proposal in the New Jersey Register 55 N.J.R. at 135, is published below with the corrections.

Take further notice that the Board will accept comments on the notice of proposal, 55 N.J.R. 135(a), and this notice of correction until 5:00 p.m. Friday, April 7, 2023. The Board will continue to accept public comments limited to this notice of correction until 5:00 p.m.

While all comments will be given equal consideration and will be made part of the final record of this proceeding, the preferred method of transmittal is through the Board of Public Utilities' ("Board" or "BPU") Public Document Search tool, by searching for the specific BPU

docket number listed above and using the “Post Comments” button. Written comments may also be submitted. Please include subject matter and docket number and submit to:

Secretary of the Board

New Jersey Board of Public Utilities

44 South Clinton Ave., 1st Floor

P.O. Box 350

Trenton, NJ 08625-0350

Attn: BPU Docket No. QX22100654

Phone: 609-292-1599

Email: board.secretary@bpu.nj.gov

All comments are considered “public documents” for purposes of the State’s Open Public Records Act. Commenters may identify information that they seek to keep confidential by submitting it in accordance with the confidentiality procedures set forth in N.J.A.C. 14:1-12.3.

Full text of the corrected first paragraph within the Summary follows:

Summary

The Board of Public Utilities is proposing to establish new siting rules that will be codified at N.J.A.C. 14:8-12 and apply to all solar installations that would be eligible to compete in the new Competitive Solar Incentive (CSI) Program, which forms part of the larger Successor Solar Incentive (SuSI) Program set forth at N.J.A.C. 14:8-11. The SuSI Program serves as the permanent program for providing solar incentives to qualified solar electric generation facilities and the CSI Program is designed to provide incentives to larger solar facilities within the SuSI Program.

(a)

BOARD OF PUBLIC UTILITIES**Siting Rules for Grid Supply and Large Net Metered Solar Facilities****Proposed Amendment: N.J.A.C. 14:8-1.2****Proposed New Rules: N.J.A.C. 14:8-12**

Authorized By: New Jersey Board of Public Utilities, Joseph L.

Fiordaliso, President, Mary-Anna Holden, Dianne Solomon, Dr. Zenon Christodoulou, and Robert M. Gordon, Commissioners.

Authority: N.J.S.A. 48:2-12, 48:3-49 et seq., 48:3-87, 48:3-115, and 48:3-119.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

BPU Docket Number: QX22100654.

Proposal Number: PRN 2023-011.

The deadline for comments on this matter is 5:00 P.M. on April 7, 2023. While all comments will be given equal consideration and will be made part of the final record of this proceeding, the preferred method of transmittal is through the Board of Public Utilities' (Board) Public Document Search tool, by searching for the specific docket listed above and using the "Post Comments" button. Written comments may also be submitted. Please include subject matter and docket number and submit to:

Secretary of the Board
New Jersey Board of Public Utilities
44 South Clinton Ave., 1st Floor
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All comments are considered "public documents" for purposes of the State's Open Public Records Act. Commenters may identify information that they seek to keep confidential by submitting it in accordance with the confidentiality procedures set forth at N.J.A.C. 14:1-12.3.

The agency proposal is as follows:

Summary

The Board of Public Utilities is proposing to establish new siting rules that will apply to all solar installations that would be eligible to compete in the new Competitive Solar Incentive (CSI) Program, which forms part of the larger Successor Solar Incentive (SuSI) Program set forth at N.J.A.C. 14:8-10. The SuSI Program serves as the permanent program for providing solar incentives to qualified solar electric generation facilities and the CSI Program is designed to provide incentives to larger solar facilities within the SuSI Program.

The Clean Energy Act of 2018, P.L. 2018, c. 17 (Clean Energy Act), as modified by a series of solar-related amendments passed by the Legislature on June 30, 2021, and signed by Governor Murphy on July 9, 2021 (P.L. 2021, c. 169, hereinafter referred to as the "Solar Act of 2021" or "Act"), directs the Board to establish a comprehensive program to provide incentives for the development of at least 3,750 megawatts (MW) of new solar power generation by 2026. This target is informed by New Jersey's 2019 Energy Master Plan (EMP) and Governor Murphy's goal of achieving 100 percent clean energy by 2050.

The Solar Act of 2021 includes a set of specific criteria that will apply to all new grid supply solar installations, as well as new net metered non-residential solar installations with an installed capacity larger than five MW. The proposed amendments and new rules will form the implementation of the siting criteria specified in the Act. See N.J.S.A. 48:3-119.

The Board took a major step forward to implementing the Act with the creation of the SuSI Program in July 2021. The SuSI Program will set the State on a path to double its solar capacity by 2026 with the installation of 3,750 MW of new capacity. Like the Act itself, the SuSI Program is divided into two components: (1) the Administratively Determined Incentive (ADI) Program for net metered residential facilities, net metered

non-residential facilities of five MW or less, and community solar facilities; and (2) the Competitive Solar Incentive (CSI) Program for grid supply solar projects (that is, those projects selling electricity into the wholesale markets) and net metered non-residential projects over five MW in size. The ADI Program is currently in operation and open to new registrations, while the launch of the CSI Program is the subject of a companion Board proceeding pursuant to BPU Docket No. QX22100653.

Solar siting focuses on implementing Section 6 of the Act (N.J.S.A. 48:3-119), which directs the Board, in consultation with the New Jersey Department of Environmental Protection (NJDEP) and the Secretary of the New Jersey Department of Agriculture, to establish solar siting rules that will apply to projects eligible to participate in the CSI Program. The proposed siting rules have been developed in conjunction with the rules governing the conduct of the CSI Program, which includes market segmentation, price setting, eligibility, and other market rules. According to Section 6 of the Act (N.J.S.A. 48:3-119), in addition to applying to projects participating in the CSI Program, the proposed siting rules will also apply to any other grid supply solar facilities and net metered solar facilities over five MW commencing operation or interconnecting to the electric distribution or transmission system of a New Jersey public utility after the siting rules become effective. Collectively, projects subject to this section's siting requirements are referred to as "Competitive Solar Incentive-Eligible Facilities" or "CSI-eligible facilities."

The proposed amendments and new rules are designed to implement Section 6(b) of the Act (N.J.S.A. 48:3-119), which requires the development of the following solar siting criteria to:

- (1) facilitate the State's commitment to affordable, clean, and renewable energy, and the carbon dioxide emissions reduction goals established in the Global Warming Response Act (N.J.S.A. 26:2C-45);
- (2) minimize, as much as is practicable, potential adverse environmental impacts; and
- (3) where appropriate, consider:
 - (a) existing and prior land uses of the property;
 - (b) whether the property contains a contaminated site or landfill;
 - (c) any conservation or agricultural designations associated with the property;
 - (d) the amount of soil disturbance, impervious surface, and tree cover on the property;
 - (e) other site-specific criteria.

The proposed new rules at N.J.A.C. 14:8-12.3 and 12.4 track the prohibited land uses set forth at Section 6(c) of the Act and list a series of land uses that are not authorized for solar project siting, unless the applicant files a waiver petition with the Board and receives approval from it to proceed. The proposed new rules at N.J.A.C. 14:8-12.5 state the method for calculating the two and one-half percent Statewide threshold and the five percent county concentration limit of solar to be located on prime soil and soils of Statewide importance. The proposed new rules at N.J.A.C. 14:8-12.6 set forth the requirements for CSI-eligible facilities seeking a waiver. The proposed new rules at N.J.A.C. 14:8-12.7 outline the permission to operate requirements for a CSI-eligible facility and at N.J.A.C. 14:8-12.8 outline the construction requirements for a CSI-eligible facility.

Among the key items set forth in the proposed amendments and new rules are the provisions governing the placement of CSI-eligible facilities on agricultural lands. N.J.S.A. 48:3-119.6d(1) of the Act creates special rules for solar projects "sited on prime agricultural soils or soils of Statewide importance, as identified by the United States Department of Agriculture's Natural Resources Conservation Service, which are located in Agricultural Development Areas (ADA) certified by the State Agriculture Development Committee" (covered agricultural lands). Specifically, the proposed amendments and new rules implement a two and one-half percent limitation on the number of acres of covered agricultural lands on which CSI-eligible facilities can be sited, which is referred to as the "Statewide threshold." After the Board makes a determination that the Statewide threshold has been met, no additional CSI-eligible facilities are allowed to be sited on covered agricultural lands, unless the project sponsor seeks and receives a waiver from the Board.

Additionally, the proposed amendments and new rules include an independent cap on the acreage of covered agricultural lands that can be used to site CSI-eligible facilities in any one county, equal to five percent of such lands within that county, known as the “county concentration limit.” Once the five percent county concentration limit is reached, the proposed rules authorize Board staff to deny any subsequent siting applications in that county. Unlike the two and one-half percent discussed above, the county concentration limit is not susceptible to waiver.

Further, the Board’s rulemaking requires that the Board, in consultation with the Secretary of Agriculture, track and record the Statewide area of prime agricultural soils or soils of Statewide importance, which are located in ADA, certified by the State Agriculture Development Committee, and which are utilized for solar energy production by grid supply solar facilities and net metered solar facilities greater than five megawatts in size, in order to implement the provisions of this section.

The proposed amendments and new rules also include a mechanism to allow siting of CSI-eligible facilities on otherwise restricted land uses if the developer seeks and receives a waiver of the siting prohibition. The Board proposes to make solar projects located on the built environment eligible for a “waiver-by-rule,” whereas other projects would have to petition the Board for a waiver. Any petitioner will have to “set out the unique factors that make the project consistent with the character of the specific parcel, including whether the property is a contaminated site or landfill, otherwise marginal land, or whether the project utilizes existing development or existing areas of impervious coverage.” See N.J.S.A. 48:3-119(f). In such cases, the Board proposes to require consultation with the NJDEP or Secretary of Agriculture, as appropriate, and “may [...] grant a waiver to a project deemed to be in the public interest.” *Id.* The Board and its sister agencies may, at their discretion, consider mitigation measures project proponents suggest in determining whether a particular solar project is in the public interest, such as proposals that include the preservation of other lands (for example, donating substantial desirable land into permanent conservation), or the like. The Board, per the Act, would consider such waiver requests in consultation with the NJDEP or Secretary of Agriculture, as appropriate.

The waiver process will apply to the development of solar facilities on any site with a prohibited designation, even when that site may simultaneously also have another non-prohibited Land Use/Land Cover designation(s) (for example, in the case of forested land that is also a contaminated site, the forested land designation would require a waiver).

The waiver process will also apply to solar proposed on agricultural lands in excess of the caps. N.J.S.A. 48:3-119.6(f) will be implemented by rejecting any request for waiver of section 6(c)(7), as denied by operation of law if it would exceed the five percent county concentration limit and result in more than five percent of the unpreserved prime agricultural soils or soils of Statewide importance in a given county’s ADA being made available for solar siting.

The proposed rules implement section 6(e) of the Act by prohibiting siting of solar projects subject to the Act on preserved farmland, unless undertaken consistent with the requirements at N.J.S.A. 4:1C-32.4, which govern the construction of solar electric power generation facilities on preserved farmland. Nothing in these proposed amendments and new rules alters the process for siting solar facilities on preserved farmland.

All CSI-eligible facilities must register with the Board and are subject to the provisions of these proposed amendments and new rules, regardless of whether the facility qualifies for incentives under the CSI Program, another incentive program, or whether the CSI-eligible facility foregoes a solar program incentive.

The siting restrictions addressed in the proposed amendments and new rules are designed to reflect where it is permissible for solar projects to be located. Issues around dividing the market into particular segments, pricing of those segments, or proposals to better achieve other policy objectives, will be addressed in the Board’s companion proceeding on CSI Program design and rules pursuant to BPU Docket No. QX22100653, as published elsewhere in the issue of the New Jersey Register.

As the Board has provided for a 60-day comment period on this notice of proposal, the notice is excepted from the rulemaking calendar requirement set forth at N.J.A.C. 1:30-3.3(a)5.

Following is a section-by-section summary of the proposed amendments and new rules:

At N.J.A.C. 14:8-1.2, the Board proposes a new definition, applicable to the chapter for the term “Dual use.”

At N.J.A.C. 14:8-12.1, the Board proposes that the new subchapter will govern the criteria for siting of all new solar facilities that are eligible to compete in the CSI Program.

At N.J.A.C. 14:8-12.2, the Board proposes new definitions, specific to the subchapter for the terms “aggregate solar development,” “‘Agricultural Development Area’ or ‘ADA,’” “Committee,” “county concentration limit,” “covered agricultural lands,” “‘forested land’ or ‘forestland,’” “prime agricultural soils,” “soils of Statewide importance,” “Statewide threshold,” “transition zone,” and “wetlands.”

At N.J.A.C. 14:8-12.3, the Board proposes to prohibit siting CSI-eligible facilities on a variety of land types, including wetlands, forested lands, projects in the Highland and Pinelands, among others, pursuant to N.J.S.A. 48:3-119.c.

At N.J.A.C. 14:8-12.4, the Board proposes siting limitations for projects located on covered agricultural lands, including a prohibition on solar development on areas that exceed the Statewide threshold of two and one-half percent and the five percent county concentration limit of the county’s unpreserved land. This rulemaking also includes criteria for determining the acreage, procedure if acreage exceeds the limitations set forth at N.J.A.C. 14:8-12.4(a) or (b), and prohibition of siting on preserved farmland, excluding permission pursuant to N.J.S.A. 4:1C-32.4 et seq.

At N.J.A.C. 14:8-12.5, the Board proposes a method for calculating the percentage of covered agricultural lands. The method includes how to utilize the United States Department of Agriculture’s Natural Resource Conservation Service data to perform a spatial analysis using GIS, how to calculate two and one-half percent Statewide threshold, and how to calculate the county-by-county five percent county development limit.

At N.J.A.C. 14:8-12.6, the Board proposes waiver conditions for CSI-eligible facilities to locate on prohibited land uses with emphasis on whether the action is in the public interest by requiring a petition filing, denial procedure, and prohibition on preserved agricultural lands or lands that would exceed the five percent county concentration limit. The Board further proposes that CSI-eligible facilities proposed to be fully located on the built environment on otherwise prohibited land uses, will be presumptively deemed in the public interest, and that authority be delegated to Board staff to administratively grant a waiver in such cases.

At N.J.A.C. 14:8-12.7, the Board proposes permission to operate requirements for a competitive solar incentive-eligible facility including registration, project maturity requirements, and verification from the electric distribution company.

At N.J.A.C. 14:8-12.8, the Board proposes construction requirements for CSI-eligible facilities other than those located on the built environment. The proposed new rule covers general requirements for erosion prevention, and the mandatory compliance with pollinator standards established by NJDEP. In addition, the proposed new rule sets forth specific requirements for solar construction on covered agricultural lands, in order to allow this land to be returned to agricultural use upon the end of life of the solar installation, if so desired.

Social Impact

This rulemaking will have a positive social impact on New Jersey by ensuring that the State’s policy of promoting vigorous development of solar energy will not conflict with another important policy goal, that of preserving open space and agriculture. The proposed amendment and new rules are designed to balance the ability to connect solar projects to the grid in a timely manner to address the existential threat of global climate change and the need to preserve open and agricultural spaces for New Jersey citizens. In addition, the proposed amendment and new rules are responsive to the Legislature’s directive to minimize, as much as is practicable, potential adverse environmental impacts of CSI-eligible projects that meet the siting rules. To that end, the proposed amendment and new rules provide for consideration of any conservation or agricultural designations associated with a property; the amount of soil disturbance, impervious surface, and tree cover on a property; and other site-specific criteria. Moreover, the proposed amendment and new rules safeguard the public’s interest in preserving open space by implementing the statutory mandate that solar development may not proceed at all on certain land uses, including, but not limited to, land located in the

Pinelands and Highlands preservation areas, unless the applicant applies for and receives a waiver from the Board.

As the siting provisions of the Solar Act of 2021 do not differentiate between projects receiving SuSI Program incentives and solar projects that decide to forgo SuSI Program incentives, the proposed amendment and new rules, in turn, require all grid supply or net metered solar projects over five MW to meet the siting requirements of the proposed amendment and new rules, whether or not a given project seeks incentives through the SuSI Program. In this regard, the Board notes that the solar industry is evolving, and that it is possible that an increasing number of solar projects may choose to forgo an incentive through the SuSI Program. By requiring that all covered solar facilities comply with the siting provisions, the proposed amendment and new rules ensure that the State's interest in preserving open space and agricultural lands will be applied to all solar projects on an equal basis.

Economic Impact

The proposed amendment and new rules will have a positive economic impact by establishing clear and transparent solar project siting criteria that apply across the State and that allow for an expedited, rule-based, site-specific review process. By directing solar development toward the built environment and contaminated sites and away from open space and vulnerable areas, the proposed amendment and new rules will reduce the amount of open space that is lost to solar development. As a result, the proposed amendment and new rules will help to maintain the attractive character of these parts of the State and may indirectly bolster the tourism business that these areas support. Furthermore, the prohibition on large scale solar development on open space is not absolute; the proposed amendment and new rules also provide for a process to petition the Board for a waiver, thereby effectuating the legislative intention to balance environmental and affordability concerns.

There may be an increased cost to solar development as a result of directing a portion of New Jersey's solar industry away from open space; all things being equal, it is generally less expensive to develop large scale solar on greenfields, rather than on the built environment or contaminated sites. However, over time, potential solar development sites may be expected to become scarcer; solar development on the built environment and on contaminated sites may become more cost competitive with other solar projects.

Federal Standards Statement

N.J.S.A. 52:14B-1 et seq., requires State agencies that adopt, readopt, or amend State rules exceeding any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. This rulemaking has no Federal analogue and is not promulgated under the authority of, or in order to implement, comply with, or participate in any program established pursuant to Federal law or pursuant to a State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements. Accordingly, N.J.S.A. 52:14B-1 et seq., does not require a Federal standards analysis for the proposed amendment and new rules.

Jobs Impact

The proposed amendment and new rules are not anticipated to have a significant impact on employment in New Jersey. While the proposed amendment and new rules will prevent some construction and operation of some large-scale solar facilities that would otherwise have been built on open space and farmlands, they will simultaneously increase the number of such facilities built on preferred sites, such as the built environment and contaminated sites. As the procurement of solar pursuant to the CSI Program is based on competitive principles, and the targets for solar procurement are anticipated to be met irrespective of the proposed siting rules, the net impact on jobs associated with these siting restrictions is anticipated to be negligible.

Agriculture Industry Impact

The proposed amendment and new rules are likely to have an impact on the State's agricultural industry, because they implement the Legislative directive to allow siting of CSI-eligible facilities on covered agricultural soils, up to the limits established by the Solar Act of 2021. By providing that the siting criteria apply to all such projects, regardless of whether State incentives are sought, the proposed amendment and new rules balance the desire to "affordably expand New Jersey's commitment

to renewable energy while not compromising the State's commitment to preserving and protecting open space and farmland."

The proposed amendment and new rules also implement the two legislative restrictions on siting solar on farmland, so as to limit such solar development. The Solar Act of 2021 provides that a waiver is required for such solar development in two separate contexts. First, a waiver must be obtained after large-scale solar has been sited on two and one-half percent of covered agricultural lands Statewide. Second, the Solar Act of 2021 prohibits such solar projects once large-scale solar has been sited on five percent of the covered agricultural lands in any one county's designated agricultural development area.

The proposed amendment and new rules apply these limitations independently, so that a project that would be allowed under the two and one-half percent Statewide threshold will still be prohibited if it would breach the five percent county development limit in a particular county. The converse is also true, so that a solar project that would be allowed under the five percent county development limit will be prohibited if it would breach the two and one-half percent Statewide threshold. In either case, the proposed amendment and new rules would prohibit the solar project unless the project is granted a waiver pursuant to the proposed amendment and new rules. In this way, the proposed amendment and new rules will prevent the loss of a significant portion of the State's farmland, as well as disproportionate solar development in a single county, thus, preventing possible degradation of agricultural viability. In addition, the proposed amendment and new rules specify that the Board will use the United States Department of Agriculture Natural Resource Conservation Service data in calculating the above percentages and set out how that calculation will be performed. This ensures a transparent and consistent approach to the limits on development on farmland.

The proposed amendment and new rules specify mandatory compliance for most ground mounted CSI-eligible facilities with "Standards for the use of Pollinator-Friendly Native Plant Species and Seed Mixes in Grid Supply and Select Net Metered Solar Facilities" developed by the NJDEP, which will enable the creation of significant areas of pollinator habitat. As pollinators are important to agriculture, the creation of additional habitat presents a benefit.

Finally, the proposed amendment and new rules govern the construction methods used on covered agricultural soils with the aim of preventing soil compaction, preserving topsoil, and preventing erosion, in order to allow this land to be returned to agricultural production at the end of life of the solar installation, if so desired.

In summary, the proposed amendment and new rules are anticipated to have a beneficial impact on agriculture in New Jersey, by limiting and mitigating any potential negative impacts from the establishment of the CSI Program, and providing for additional pollinator habitat.

Regulatory Flexibility Statement

A small business, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is a business that has fewer than 100 full-time employees. This rulemaking will not impose any recordkeeping, reporting, or other compliance requirements on small businesses. The new CSI Program offers significant opportunity for additional revenue from solar development for small businesses, with a single project typically spurring investment of \$10 million to \$100 million. The proposed amendment and new rules, which pertain to the type of land on which a solar facility is proposed to be located, will only necessitate additional paperwork for businesses actively involved in developing large-scale solar, therefore, no small businesses are implicated.

Housing Affordability Impact Analysis

This rulemaking will not impact the affordability of housing in New Jersey, nor will it have an impact on the average costs of housing. This rulemaking only addresses the siting of large scale solar. Such solar is not located on individual residences and the proposed amendment and new rules governing its location will not affect housing prices or the housing market.

Smart Growth Development Impact Analysis

This rulemaking will not impact smart growth development in New Jersey. The scope of the rulemaking is limited to establishing siting criteria for large-scale solar development and construction requirements

for such development. This rulemaking will not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Board evaluated this rulemaking and determined that it will not have an impact on pretrial, detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. RENEWABLE ENERGY GENERAL PROVISIONS AND DEFINITIONS

14:8-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. Additional definitions that apply to this chapter can be found at N.J.A.C. 14:3-1.1, 14:4-1.2, and 14:8-2.2.

...
“Dual-use” means the practice of siting energy generation facilities, structures, and equipment for the production of electric power from solar photovoltaic panels located on unreserved farmland in agricultural or horticultural production that ensures the continued simultaneous use of the land below and adjacent to the panels for agricultural or horticultural production.
 ...

SUBCHAPTER 12. SITING RULES FOR GRID SUPPLY AND LARGE NET METERED SOLAR FACILITIES

14:8-12.1 Scope

(a) This subchapter sets forth the criteria for siting of grid supply solar facilities connected to the distribution or transmission system operated by a New Jersey electric distribution company and net metered solar facilities over five megawatts, as measured in direct current (MWdc). Collectively, projects subject to this section’s siting requirements are referred to as **“Competitive Solar Incentive-Eligible Facilities”** or **“CSI-eligible facilities.”**

(b) All CSI-eligible facilities must register with the Board and are subject to the provisions of this section, regardless of whether the facility participates in the Competitive Solar Incentive (CSI) Program, another incentive program, or whether the CSI-eligible facility foregoes solar incentives.

14:8-12.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Aggregate solar development” means the total number of acres of covered agricultural lands that are used to host CSI-eligible facilities, including those registered with the Board and those that have been constructed after implementation of the CSI Program.

“Agricultural development area” or **“ADA”** means an area identified by a county agriculture development board, pursuant to the provisions at N.J.S.A. 4:1C-18, and certified by the State Agriculture Development Committee.

“Committee” means the State Agriculture Development Committee created pursuant to P.L. 1983, c. 31 (N.J.S.A. 4:1C-4).

“County concentration limit” means five percent of the area of unreserved covered agricultural lands in a single New Jersey county.

“Covered agricultural land” means all land containing prime agricultural soils or soils of Statewide importance, as identified by the U.S. Department of Agriculture’s Natural Resources Conservation Service, located within an individual county’s designated agricultural development area, as determined by the Committee.

“Forested land” or **“forestland”** means land that is at least 1.0 acre in size and 120.0 feet wide and that has, or has had within the past 10

years, at least 10 percent crown cover by live tally trees of any size or at least 10 percent canopy cover of live tally species, based on the presence of stumps, snags, or other evidence. Forested land includes transition zones, such as areas between forest and non-forestland that meet the minimal tree stocking/cover and forest areas adjacent to urban and built-up lands.

“Prime agricultural soils” shall have the meaning as identified by the United States Department of Agriculture’s Natural Resources Conservation Service (NRCS) as available through the NRCS websoil survey (<https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>).

“Soils of Statewide importance” shall have the meaning as identified by the United States Department of Agriculture’s Natural Resources Conservation Service (NRCS) as available through the NRCS websoil survey (<https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>).

“Statewide threshold” means two and one-half percent of the Statewide area of covered agricultural lands.

“Transition zone” means an area between forested land and non-forestland that meets the minimal tree stocking or tree cover level, forest areas adjacent to urban and built-up lands, or other land that is adjacent to both forested land and to non-forested land.

“Wetlands” means those areas regulated by the NJDEP pursuant to N.J.A.C. 7:7 and 7:7A, or the Army Corps of Engineers. Included in this category are naturally vegetated swamps, marshes, bogs, and savannas that are normally associated with topographically low elevations, but may be located at any elevation where water perches over an aquiclude.

14:8-12.3 Siting prohibitions

(a) CSI-eligible facilities are prohibited from locating on the following land types (collectively **“prohibited land uses”**), unless they receive a waiver pursuant to N.J.A.C. 14:8-12.6:

1. Land preserved pursuant to the Green Acres Program, as defined at N.J.A.C. 7:36;

2. Land located within the preservation area of the Pinelands area, as designated in subsection b. of section 10 at P.L. 1979, c. 111 (N.J.S.A. 13:18A-11);

3. Land designated as forest area in the Pinelands Comprehensive Management Plan adopted pursuant to P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.);

4. Land designated as freshwater wetlands, as defined pursuant to P.L. 1987, c. 156 (N.J.S.A. 13:9B-1 et seq.), or coastal wetlands, as defined pursuant to P.L. 1970, c. 272 (N.J.S.A. 13:9A-1 et seq.);

5. Lands located within the Highlands preservation area, as designated in subsection b. of section 7 at P.L. 2004, c. 120 (N.J.S.A. 13:20-7b);

6. Forested land and associated transition zones; and

7. Covered agricultural lands in excess of the Statewide threshold of 2.5 percent of such soils, as set forth at N.J.A.C. 14:8-12.4.

(b) In determining whether a CSI-eligible facility is proposed to be sited on forested land, the following will apply:

1. Any roadside, streamside, or shelterbelt strips of trees shall constitute forested land if it has a width of at least 120 feet and a continuous length of at least 363 feet.

2. The presence of unimproved roads and trails, streams, or clearings in forested land shall not act to change the character of forested land, unless such roads, trails, streams, or clearings are more than 120 feet wide or larger than one acre in size.

14:8-12.4 Siting limitations for covered agricultural lands

(a) A CSI-eligible facility may not be located on covered agricultural lands when the aggregate solar development located on such lands will exceed the Statewide threshold.

(b) A CSI-eligible facility may not be located on covered agricultural lands in any county when the aggregate solar development will exceed the county concentration limit.

(c) In determining the acreage for aggregate solar development, the size of a CSI-eligible facility shall equal the total contiguous or noncontiguous area(s) supporting the solar energy facilities and related infrastructure. The total area calculation shall include any areas of land no longer available for, or in, agricultural or

horticultural production due to the presence of the solar energy facilities, including all areas of land that are devoted to, or supporting, the solar energy facilities; nonfarm roadways including access roads; any areas of the farm used for underground piping or wiring to transmit solar energy or heat where the piping or wiring is less than three feet from the surface; and areas consisting of other related facilities, structures, and equipment, including any other buildings or site amenities, deemed necessary for the production of solar energy.

(d) A CSI-eligible facility shall count towards aggregate solar development for both the Statewide threshold and the county concentration limit upon registration with the Board for conditional certification, pursuant to N.J.A.C. 14:8-11.5. The total acreage identified in the application shall be counted toward aggregate solar development. If the project's registration lapses without the project reaching commercial operation, then the project shall no longer be included in the calculations for aggregate solar development. Facilities approved by the Board as dual-use solar facilities will not be counted towards aggregate solar development.

(e) If the acreage required for a proposed CSI-eligible facility causes aggregate solar development to exceed the Statewide threshold set forth at (a) above, a waiver pursuant to N.J.A.C. 14:8-12.6 must be obtained from the Board before the proposed CSI-eligible facility will be allowed to register with the Board.

(f) A CSI-eligible facility is not permitted to exceed the acreage of solar development on covered agricultural lands submitted as part of the registration pursuant to N.J.A.C. 14:8-11.5.

(g) Upon completion of construction, and prior to commencing commercial operations, the facility's acreage will be updated to reflect the actual acreage used and provided to the Board, or its designee.

(h) Nothing in this subchapter shall be construed to permit siting of solar on preserved farmland, unless affirmatively allowed pursuant to N.J.S.A. 4:1C-32.4 et seq.

14:8-12.5 Calculating the Statewide limit and county thresholds for solar development on prime agricultural soils and soils of Statewide importance located within agricultural development areas in New Jersey

(a) The Board will utilize the United States Department of Agriculture Natural Resource Conservation Service data, as reflected in the Soil Survey Geographic Database/SSURGO, to perform the calculations set forth in this section.

(b) The Committee shall provide the aggregated GIS data layer identifying ADAs, as delineated by the county agriculture development boards and certified by the Committee.

(c) The Board will perform a spatial analysis using GIS to determine:

1. The total acreage of land within ADAs at both the State and county level;
2. The total acreage of land containing prime agricultural soils or soils of Statewide importance, as identified by the United States Department of Agriculture's Natural Resources Conservation Service; and
3. Land classified as "agriculture" in Level 1 of the Modified Anderson classification system within the most recent Land Use/Land Cover GIS data layer produced by the NJDEP.

(d) To calculate the two and one-half percent Statewide threshold, the Board will:

1. Determine the spatial distribution and acreage values for prime soils and soils of Statewide importance within each ADA that are assigned as "agriculture" in Level 1 of the Modified Anderson classification system within the most recent land use/land cover GIS data layer produced by the NJDEP;
2. Aggregate these values Statewide; and
3. Multiply the sum of these values by 0.025. The resulting number shall represent the maximum acreage of covered agricultural lands that can be used to host solar Statewide in the absence of an approved waiver.

(e) To calculate the county-by-county five percent county development limit, the Board will:

1. Determine the prime soils and soils of Statewide importance within each ADA that are assigned an "agricultural" designation in Level 1 of the Modified Anderson classification system within the most recent Land Use and Land Cover Classification System maps produced by the NJDEP;
2. Exclude areas designated as preserved farmland, Highlands, Pinelands, Green Acres, and State, Local, and Nonprofit Open Space;
3. Aggregate these designated land areas by county; and
4. Multiply each county value by 0.05. The resulting number shall represent the maximum acreage of covered agricultural lands located upon which CSI-eligible facilities may be sited in that county.

(f) The Board, in consultation with the Secretary of Agriculture, shall track and record the calculations set forth in this section and the calculations for aggregate solar development, pursuant to N.J.A.C. 14:8-12.4 and shall update the figures at least annually, which calculations shall be made available to the public by posting them to the Board's website.

14:8-12.6 Waiver provisions for siting on prohibited land uses

(a) Any entity seeking to locate a CSI-eligible facility on non-agricultural prohibited land uses or seeking a waiver of N.J.A.C. 14:8-12.4(a) may file a petition with the Board seeking to waive the prohibition for good cause shown. The Board, or its designee, shall make a positive finding with regard to any such petition only upon:

1. Consulting with other State agencies, as appropriate;
2. Determining that the petitioner has documented sufficient facts and circumstances establishing the public's specific interest in siting the CSI-eligible facility on or within a specific prohibited land use; and
3. Finding that the waiver is in the public interest.

(b) Notwithstanding the requirements at (a) above, CSI-eligible facilities proposed to be located on prohibited land uses are presumptively deemed to be in the public interest if the CSI-eligible facility will be located exclusively on the built environment, provided that the structure or surface has existed for at least three years prior to the date the waiver application is filed.

1. The Board designates approval of such waiver applications to Board staff or a program administrator duly retained by the Board.

2. Any CSI-eligible facility that is denied a waiver pursuant to (b)1 above may, instead, file a petition with the Board pursuant to (a) above explaining the specific facts and circumstances of its waiver request.

(c) The Board, or its designee, may request additional evidence prior to approving or denying a request for any waiver requested, pursuant to this section.

(d) Projects proposed to be located on preserved farmland, or that would exceed the county concentration limit within a given county, are not eligible for a waiver and the Board authorizes Board staff, or its designee, to administratively deny such requests.

14:8-12.7 Permission to operate a competitive solar incentive-eligible (CSI-eligible) facility

(a) All CSI-eligible facilities shall register their proposed solar projects with the Board and be subject to the milestone and project maturity requirements of the CSI Program pursuant to N.J.A.C. 14:8-11.5. Registration shall be required whether the owner or operator of a proposed solar project chooses to seek an incentive in the Competitive Solar Incentive Program, in any incentive program, or whether the CSI-eligible facility foregoes a solar program incentive.

(b) All CSI-eligible facilities will be subject to project maturity requirements and milestone reporting, pursuant to N.J.A.C. 14:8-11.5. Projects not seeking an incentive through the CSI Program shall be subject to the same milestone and project maturity requirements as projects participating in the CSI Program. Conditional registrations of CSI-participating projects and projects not seeking an incentive shall be treated equally.

(c) Prior to providing permission to operate to a CSI-eligible facility, an electric distribution company shall verify that the project has registered with the Board.

14:8-12.8 Construction requirements for competitive solar incentive-eligible (CSI-eligible) facilities

(a) All CSI-eligible facilities, other than those located on the built environment, shall comply with the requirements for soil erosion and sediment control in accordance with the New Jersey Soil Erosion and Sediment Control Act (N.J.S.A. 4:24-39 et seq.) and the implementing rules at N.J.A.C. 2:90.

(b) All CSI-eligible facilities, other than those located on the built environment, shall, as part of the development of a comprehensive siting plan, assess existing drainage conditions, and identify any areas where surface runoff currently exists or where proposed grades will create surface runoff concentration. All such areas shall be designed to prevent onsite erosion, as well as protect offsite areas from erosion and flooding.

(c) All CSI-eligible facilities shall comply with the NJDEP's Stormwater Management Rules, N.J.A.C. 7:8.

(d) All CSI-eligible facility panel drip lines shall be protected against scour.

(e) CSI-eligible facilities proposed to be located on land in agricultural use, other than those proposed to be located on the built environment, shall be submitted to the Soil Conservation District for compliance with requirements in this section and any applicable Soil Conservation District guidelines for stormwater runoff quantity and erosion control.

(f) CSI-eligible facilities, other than those mounted on the built environment, shall comply with the NJDEP's "Standards for the Use of Pollinator-Friendly Native Plant Species and Seed Mixes in Grid Supply and Select Net Metered Solar Facilities." CSI-eligible facilities that meet the requirements for qualification in the Contaminated Sites and Landfills tranche of the Competitive Solar Incentive Program, pursuant to N.J.A.C. 14:8-11.10(b)3 are exempted from mandatory compliance with the pollinator standards.

1. Entities proposing CSI-eligible facilities that require compliance with the NJDEP's "Standards for the Use of Pollinator-Friendly Native Plant Species and Seed Mixes in Grid Supply and Select Net Metered Solar Facilities" (Standards) shall demonstrate said compliance by submitting to the Board or program administrator duly retained by the Board, a vegetation management plan consistent with the requirements outlined in the referenced standards as part of the post-construction certification package.

i. CSI-eligible facilities shall successfully implement and maintain the site in accordance with the vegetative management plan. Successful implementation is determined by a minimum 80 percent survival rate of vegetation planted.

ii. CSI-eligible facilities shall comply with monitoring requirements.

(1) The Board may audit CSI-eligible facilities for compliance with the vegetative management plan. The Board, or its designee shall, within 60 days of the audit:

(A) Certify that the facility is in compliance with its vegetation management plan, with no additional actions required; or

(B) Notify the facility that it is in noncompliance with the required vegetation management plan.

(2) If the Board finds that the facility is in noncompliance with the required vegetation management plan, the Board, or its designee, shall:

(A) Specify the areas of noncompliance;

(B) Identify corrective actions required; and

(C) Identify the timeframe within which noncompliance must be addressed to avoid suspension of incentives pursuant to the CSI Program.

iii. Approved CSI facilities that are found to be in non-compliance with the NJDEP's "Standards for the Use of Pollinator-Friendly Native Plant Species and Seed Mixes in Grid Supply and Select Net Metered Solar Facilities," and that have failed to take the corrective actions identified at (f)ii(2) above within the timeframes specified, shall be notified by the Board or a program administrator duly retained by the Board of their suspension of incentives pursuant to the CSI Program, and conditions for restoration of the incentive.

(g) All CSI-eligible facilities located on covered agricultural lands, other than those mounted on the built environment, shall:

1. Prepare a plan identifying the following:

i. The location of proposed above- and below-ground facility infrastructure;

ii. The sequence for facility infrastructure removal and site restoration to prior agricultural conditions in the event that solar installations will be removed; and

iii. Pre-construction soil quality characteristics across the site on a 100-foot by 100-foot grid by a qualified soil scientist or geotechnical engineer, including:

(1) Soil map unit;

(2) Soil textural classification;

(3) Hydrologic soil group;

(4) Organic matter content;

(5) Salinity; and

(6) Macro nutrient content (N, P, K);

iv. Tabulate and correlate to the grid, mapped characteristics to enable potential future restoration of pre-grid installation conditions;

2. Indicate what party is responsible for removal and restoration back to prior agricultural conditions in the event that solar installations will be removed;

3. Have an assigned "environmental inspector," with experience in solar construction methods on land in agricultural use and agricultural production methods common to the area, who shall be responsible for ensuring compliance with all applicable mitigation, construction, and restoration procedures identified in Federal, State, and county permits, State rules, and the project plan;

4. Be installed by a screw, piling, or similar system that does not require a concrete footing or other permanent mounting. In the event these methods of mounting are not practicable, written justification shall be required by a licensed professional engineer responsible for designing the installation, that permanent ground mounting is necessary to conform with Federal or State laws, rules, or regulations and that the permanent mounting requires footings, concrete, or other permanent methods;

5. Retain stripped topsoil onsite for potential future return to agricultural use. All retained topsoil shall be permanently stabilized in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey, N.J.A.C. 2:90-1.3; and

6. Prevent topsoil within inter-panel row travel lanes from becoming compacted or otherwise co-mingled with subsoil layers by construction traffic.