

**SENATE, No. 3065**

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**STATE OF NEW JERSEY**

**221st LEGISLATURE**

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INTRODUCED APRIL 8, 2024

**Sponsored by:**

**Senator JOHN F. MCKEON**

**District 27 (Essex and Passaic)**

**Senator BOB SMITH**

**District 17 (Middlesex and Somerset)**

**SYNOPSIS**

Excludes environmentally sensitive and flood-prone land from designation as vacant or available for purposes of affordable housing construction.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT preventing affordable housing construction on certain  
 2 environmentally sensitive land and amending P.L.1995, c.231.

3  
 4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
 5 *of New Jersey:*

6  
 7 1. Section 1 of P.L.1995, c.231 (C.52:27D-310.1) is amended to  
 8 read as follows:

9 1. When computing a municipal adjustment regarding available  
 10 land resources as part of the determination of a municipality's fair  
 11 share of affordable housing, the **【Council on Affordable Housing】**  
 12 following shall **【exclude】** be excluded from **【designating】**  
 13 designation as vacant land:

14 (a) any land that is owned by a local government entity that as  
 15 of January 1, 1997, has adopted, prior to the institution of a lawsuit  
 16 seeking a builder's remedy or prior to the filing of a petition for  
 17 substantive certification of a housing element and fair share plan, a  
 18 resolution authorizing an execution of agreement that the land be  
 19 utilized for a public purpose other than housing;

20 (b) any land listed on a master plan of a municipality as being  
 21 dedicated, by easement or otherwise, for purposes of conservation,  
 22 park lands or open space and which is owned, leased, licensed, or in  
 23 any manner operated by a county, municipality or tax-exempt,  
 24 nonprofit organization including a local board of education, or by  
 25 more than one municipality by joint agreement pursuant to  
 26 P.L.1964, c.185 (C.40:61-35.1 et seq.), for so long as the entity  
 27 maintains such ownership, lease, license, or operational control of  
 28 such land;

29 (c) any vacant contiguous parcels of land in private ownership  
 30 of a size which would accommodate fewer than five housing units  
 31 **【if current standards of the council were applied】** based on  
 32 appropriate standards pertaining to housing density;

33 (d) historic and architecturally important sites listed on the State  
 34 Register of Historic Places or National Register of Historic Places  
 35 prior to the submission of the petition of substantive certification;

36 (e) agricultural lands when the development rights to these  
 37 lands have been purchased or restricted by covenant;

38 (f) sites designated for active recreation that are designated for  
 39 recreational purposes in the municipal master plan; and

40 (g) environmentally sensitive lands where development is  
 41 **【prohibited】** regulated by any State or federal agency, including, but  
 42 not limited to, the Highlands Water Protection and Planning Council,  
 43 established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), for  
 44 lands in the Highlands Preservation Area, and lands in the Highlands  
 45 Planning Area for Highlands-conforming municipalities, or regulated

**EXPLANATION** – Matter enclosed in bold-faced brackets **【thus】** in the above bill is  
 not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 pursuant to the "Flood Hazard Area Control Act," P.L.1962, c.19  
2 (C.58:16A-50 et seq.) or the "Freshwater Wetlands Protection Act,"  
3 P.L.1987, c.156 (C.13:9B-1 et seq.).

4 No municipality shall be required to utilize for affordable  
5 housing purposes land that is excluded from being designated as  
6 vacant land.

7 (cf: P.L.2008, c.46, s.39)

8  
9 2. This act shall take effect immediately.

10  
11  
12 STATEMENT

13  
14 This bill requires certain environmentally sensitive, flood-prone  
15 land, regulated by any State or federal agency, to be excluded from  
16 counting as available land for the construction of affordable  
17 housing as a part of the fair share affordable housing obligation of a  
18 municipality, established pursuant to the "Fair Housing Act,"  
19 P.L.1985, c.222 (C.52:27D-301 et al.). Currently, State statutes  
20 only establish this requirement if development is prohibited on the  
21 land by a State or federal agency.

22 Specifically, this bill requires land to be excluded from counting  
23 as available for the construction of affordable housing if the land is  
24 regulated by a State or federal agency, including, but not limited to:

- 25 • the Highlands Water Protection and Planning Council if the  
26 land is either in the Highlands Preservation Area, or, as long  
27 as the municipality has conformed to the Highlands regional  
28 master plan, if the land is in the Highlands Planning Area;  
29 • land regulated pursuant to the "Flood Hazard Area Control  
30 Act," P.L.1962, c.19 (C.58:16A-50 et seq.); or  
31 • land regulated pursuant to the "Freshwater Wetlands  
32 Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.).

33 The bill also makes technical amendments to replace references  
34 to an inactive agency, the Council on Affordable Housing.

35 This bill takes effect immediately upon enactment.