



LEGAL Q&A

Q it possible to release and relocate conservation restriction areas to accommodate facility modifications or new development?

A Yes. Conservation restrictions have become commonly used tools in the development approval process for maintaining open space areas. Without careful planning, these restrictions can severely limit future site development and expansion opportunities.

Historically, an Order of the NJDEP Commissioner after a public hearing process has been required to release conservation restrictions. However, NJDEP recently established procedures for "de minimis" modifications of conservation restrictions in limited circumstances. The conservation restriction instrument must specifically provide for such "de minimis" modifications. Additionally, the modification must result in an increased level of protected resources, or an equivalent area without compromising the original protected resource.

With the high cost and shrinking supply of developable land in the State, businesses will likely look to existing sites for future growth and expansion. Given the challenges associated with releasing conservation restrictions, it is critical that businesses reserve the right to undertake de minimis modifications of restricted areas.



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