

SENATE, No. 2608

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED FEBRUARY 21, 2013

Sponsored by:

Senator JEFF VAN DREW

District 1 (Atlantic, Cape May and Cumberland)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

SYNOPSIS

Clarifies authorization for cluster developments under MLUL.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/27/2013)

1 AN ACT concerning municipal land use approval, amending and
2 supplementing P.L.1975, c.291 (C.40:55D-1 et seq.)

3

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

6

7 1. Section 2 of P.L.1975, c.291 (C.40:55D-2) is amended to
8 read as follows:

9 2. Purpose of the act. It is the intent and purpose of this act:

10 a. To encourage municipal action to guide the appropriate use
11 or development of all lands in this State, in a manner which will
12 promote the public health, safety, morals, and general welfare;

13 b. To secure safety from fire, flood, panic and other natural and
14 man-made disasters;

15 c. To provide adequate light, air and open space;

16 d. To ensure that the development of individual municipalities
17 does not conflict with the development and general welfare of
18 neighboring municipalities, the county and the State as a whole;

19 e. To promote the establishment of appropriate population
20 densities and concentrations that will contribute to the well-being of
21 persons, neighborhoods, communities and regions and preservation
22 of the environment;

23 f. To encourage the appropriate and efficient expenditure of
24 public funds by the coordination of public development with land
25 use policies;

26 g. To provide sufficient space in appropriate locations for a
27 variety of agricultural, residential, recreational, commercial and
28 industrial uses and open space, both public and private, according to
29 their respective environmental requirements in order to meet the
30 needs of all New Jersey citizens;

31 h. To encourage the location and design of transportation
32 routes which will promote the free flow of traffic while
33 discouraging location of such facilities and routes which result in
34 congestion or blight;

35 i. To promote a desirable visual environment through creative
36 development techniques and good civic design and arrangement;

37 j. To promote the conservation of historic sites and districts,
38 open space, energy resources and valuable natural resources in the
39 State and to prevent urban sprawl and degradation of the
40 environment through improper use of land;

41 k. To encourage planned unit developments which incorporate
42 the best features of design and relate the type, design and layout of
43 residential, commercial, industrial and recreational development to
44 the particular site;

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 l. To encourage senior citizen community housing
2 construction;
- 3 m. To encourage coordination of the various public and private
4 procedures and activities shaping land development with a view of
5 lessening the cost of such development and to the more efficient use
6 of land;
- 7 n. To promote utilization of renewable energy resources; and
- 8 o. To promote the maximum practicable recovery and recycling
9 of recyclable materials from municipal solid waste through the use
10 of planning practices designed to incorporate the State Recycling
11 Plan goals and to complement municipal recycling programs.
- 12 p. To enable municipalities the flexibility to offer alternatives
13 to traditional development, through the use of equitable and
14 effective planning tools including clustering, transferring
15 development rights, and lot-size averaging in order to concentrate
16 development in areas where growth can best be accommodated and
17 maximized while preserving agricultural lands, open space, and
18 historic sites.
- 19 (cf: P.L.1987, c.102, s.25)

20

21 2. Section 3 of P.L.1975, c.291 (C.40:55D-3) is amended to
22 read as follows:

23 3. For the purposes of this act, unless the context clearly
24 indicates a different meaning:

25 The term "shall" indicates a mandatory requirement, and the term
26 "may" indicates a permissive action.

27 "Administrative officer" means the clerk of the municipality,
28 unless a different municipal official or officials are designated by
29 ordinance or statute.

30 "Agricultural restriction" means an "agricultural deed restriction
31 for farmland preservation purposes" as defined in section 3 of
32 P.L.1983, c.32 (C.4:1C-13).

33 "Agricultural land" means "farmland" as defined pursuant to
34 section 3 of P.L.1999, c.152 (C.13:8C-3).

35 "Applicant" means a developer submitting an application for
36 development.

37 "Application for development" means the application form and
38 all accompanying documents required by ordinance for approval of
39 a subdivision plat, site plan, planned development, cluster
40 development, conditional use, zoning variance or direction of the
41 issuance of a permit pursuant to section 25 or section 27 of
42 P.L.1975, c.291 (C.40:55D-34 or C.40:55D-36).

43 "Approving authority" means the planning board of the
44 municipality, unless a different agency is designated by ordinance
45 when acting pursuant to the authority of P.L.1975, c.291
46 (C.40:55D-1 et seq.).

47 "Board of adjustment" means the board established pursuant to
48 section 56 of P.L.1975, c.291 (C.40:55D-69).

1 "Building" means a combination of materials to form a
2 construction adapted to permanent, temporary, or continuous
3 occupancy and having a roof.

4 "Cable television company" means a cable television company as
5 defined pursuant to section 3 of P.L.1972, c.186 (C.48:5A-3).

6 "Capital improvement" means a governmental acquisition of real
7 property or major construction project.

8 "Circulation" means systems, structures and physical
9 improvements for the movement of people, goods, water, air,
10 sewage or power by such means as streets, highways, railways,
11 waterways, towers, airways, pipes and conduits, and the handling of
12 people and goods by such means as terminals, stations, warehouses,
13 and other storage buildings or transshipment points.

14 "Cluster development" means a contiguous cluster or
15 noncontiguous cluster that is not a planned development.

16 "Common open space" means an open space area within or
17 related to a site designated as a development, and designed and
18 intended for the use or enjoyment of residents and owners of the
19 development. Common open space may contain such
20 complementary structures and improvements as are necessary and
21 appropriate for the use or enjoyment of residents and owners of the
22 development.

23 "Conditional use" means a use permitted in a particular zoning
24 district only upon a showing that such use in a specified location
25 will comply with the conditions and standards for the location or
26 operation of such use as contained in the zoning ordinance, and
27 upon the issuance of an authorization therefor by the planning
28 board.

29 "Conservation restriction" means a "conservation restriction" as
30 defined in section 2 of P.L.1979, c.378 (C.13:8B-2).

31 "Contiguous cluster" means a contiguous area to be developed as
32 a single entity according to a plan containing a section or sections
33 to be developed for residential purposes, nonresidential purposes, or
34 a combination thereof, at a greater concentration of density or
35 intensity of land use than authorized within the section or sections
36 under conventional development, in exchange for the permanent
37 preservation of another section or other sections of the area as
38 common or public open space, or for historic or agricultural
39 purposes, or a combination thereof.

40 "Conventional" means development other than cluster
41 development or planned development.

42 "County agriculture development board" or "CADB" means a
43 county agriculture development board established by a county
44 pursuant to the provisions of section 7 of P.L.1983, c.32 (C.4:1C-
45 14).

46 "County master plan" means a composite of the master plan for
47 the physical development of the county in which the municipality is
48 located, with the accompanying maps, plats, charts and descriptive

1 and explanatory matter adopted by the county planning board
2 pursuant to R.S.40:27-2 and R.S.40:27-4.

3 "County planning board" means the county planning board, as
4 defined in section 1 of P.L.1968, c.285 (C.40:27-6.1), of the county
5 in which the land or development is located.

6 (cf: P.L.2004, c.2, s.32)

7

8 3. Section 3.1 of P.L.1975, c.291 (C.40:55D-4) is amended to
9 read as follows:

10 3.1. "Days" means calendar days.

11 "Density" means the permitted number of dwelling units per
12 gross area of land **【to be developed】** that is the subject of an
13 application for development, including noncontiguous land, if
14 authorized by municipal ordinance or by a planned development.

15 "Developer" means the legal or beneficial owner or owners of a
16 lot or of any land proposed to be included in a proposed
17 development, including the holder of an option or contract to
18 purchase, or other person having an enforceable proprietary interest
19 in such land.

20 "Development" means the division of a parcel of land into two or
21 more parcels, the construction, reconstruction, conversion,
22 structural alteration, relocation or enlargement of any building or
23 other structure, or of any mining excavation or landfill, and any use
24 or change in the use of any building or other structure, or land or
25 extension of use of land, for which permission may be required
26 pursuant to **【this act】** P.L.1975, c.291 (C.40:55D-1 et seq.).

27 "Development potential" means the maximum number of
28 dwelling units or square feet of nonresidential floor area that may
29 be constructed on a specified lot or in a specified zone under the
30 master plan and land use regulations in effect on the date of the
31 adoption of the development transfer ordinance or on the date of the
32 adoption of the ordinance authorizing noncontiguous cluster, and in
33 accordance with recognized environmental constraints.

34 "Development regulation" means a zoning ordinance,
35 subdivision ordinance, site plan ordinance, official map ordinance
36 or other municipal regulation of the use and development of land, or
37 amendment thereto adopted and filed pursuant to **【this act】**
38 P.L.1975, c.291 (C.40:55D-1 et seq.).

39 "Development restriction" means an agricultural restriction, a
40 conservation restriction, or a historic preservation restriction.

41 "Development transfer" or "development potential transfer"
42 means the conveyance of development potential, or the permission
43 for development, from one or more lots to one or more other lots by
44 deed, easement, or other means as authorized by ordinance.

45 "Development transfer bank" means a development transfer bank
46 established pursuant to section 22 of P.L.2004, c.2 (C.40:55D-158)
47 or the State TDR Bank.

1 "Drainage" means the removal of surface water or groundwater
2 from land by drains, grading or other means and includes control of
3 runoff during and after construction or development to minimize
4 erosion and sedimentation, to assure the adequacy of existing and
5 proposed culverts and bridges, to induce water recharge into the
6 ground where practical, to lessen nonpoint pollution, to maintain
7 the integrity of stream channels for their biological functions as
8 well as for drainage, and the means necessary for water supply
9 preservation or prevention or alleviation of flooding.

10 "Environmental commission" means a municipal advisory body
11 created pursuant to P.L.1968, c.245 (C.40:56A-1 et seq.).

12 "Erosion" means the detachment and movement of soil or rock
13 fragments by water, wind, ice and gravity.

14 "Final approval" means the official action of the planning board
15 taken on a preliminarily approved major subdivision or site plan,
16 after all conditions, engineering plans and other requirements have
17 been completed or fulfilled and the required improvements have
18 been installed or guarantees properly posted for their completion, or
19 approval conditioned upon the posting of such guarantees.

20 "Floor area ratio" means the sum of the area of all floors of
21 buildings or structures compared to the total area of **【the site】** land
22 that is the subject of an application for development, including
23 noncontiguous land, if authorized by municipal ordinance or by a
24 planned development.

25 "General development plan" means a comprehensive plan for the
26 development of a planned development, as provided in section 4 of
27 P.L.1987, c.129 (C.40:55D-45.2).

28 "Governing body" means the chief legislative body of the
29 municipality. In municipalities having a board of public works,
30 "governing body" means such board.

31 "Historic district" means one or more historic sites and
32 intervening or surrounding property significantly affecting or
33 affected by the quality and character of the historic site or sites.

34 "Historic preservation restriction" means a "historic preservation
35 restriction" as defined in section 2 of P.L.1979, c.378 (C.13:8B-2).

36 "Historic site" means any real property, man-made structure,
37 natural object or configuration or any portion or group of the
38 foregoing of historical, archeological, cultural, scenic or
39 architectural significance.

40 "Inherently beneficial use" means a use which is universally
41 considered of value to the community because it fundamentally
42 serves the public good and promotes the general welfare. Such a
43 use includes, but is not limited to, a hospital, school, child care
44 center, group home, or a wind, solar or photovoltaic energy facility
45 or structure.

46 "Instrument" means the easement, credit, or other deed
47 restriction used to record a development transfer.

1 "Interested party" means: (a) in a criminal or quasi-criminal
2 proceeding, any citizen of the State of New Jersey; and (b) in the
3 case of a civil proceeding in any court or in an administrative
4 proceeding before a municipal agency, any person, whether residing
5 within or without the municipality, whose right to use, acquire, or
6 enjoy property is or may be affected by any action taken under [this
7 act] P.L.1975, c.291 (C.40:55D-1 et seq.), or whose rights to use,
8 acquire, or enjoy property under [this act] P.L.1975, c.291
9 (C.40:55D-1 et seq.), or under any other law of this State or of the
10 United States have been denied, violated or infringed by an action
11 or a failure to act under [this act] P.L.1975, c.291 (C.40:55D-1 et
12 seq.).

13 "Land" includes improvements and fixtures on, above or below
14 the surface.

15 "Local utility" means any sewerage authority created pursuant to
16 the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-1 et
17 seq.); any utilities authority created pursuant to the "municipal and
18 county utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et
19 seq.); or any utility, authority, commission, special district or other
20 corporate entity not regulated by the Board of Regulatory
21 Commissioners under Title 48 of the Revised Statutes that provides
22 gas, electricity, heat, power, water or sewer service to a
23 municipality or the residents thereof.

24 "Lot" means a designated parcel, tract or area of land established
25 by a plat or otherwise, as permitted by law and to be used,
26 developed or built upon as a unit.

27 (cf: P.L.2009, c.146, s.1)

28

29 4. Section 3.2 of P.L.1975, c.291 (C.40:55D-5) is amended to
30 read as follows:

31 3.2. "Maintenance guarantee" means any security which may be
32 accepted by a municipality for the maintenance of any
33 improvements required by this act, including but not limited to
34 surety bonds, letters of credit under the circumstances specified in
35 section 16 of P.L.1991, c.256 (C.40:55D-53.5), and cash.

36 "Major subdivision" means any subdivision not classified as a
37 minor subdivision.

38 "Master plan" means a composite of one or more written or
39 graphic proposals for the development of the municipality as set
40 forth in and adopted pursuant to section 19 of P.L.1975, c.291
41 (C.40:55D-28).

42 "Mayor" means the chief executive of the municipality, whatever
43 his official designation may be, except that in the case of
44 municipalities governed by municipal council and municipal
45 manager the term "mayor" shall not mean the "municipal manager"
46 but shall mean the mayor of such municipality.

47 "Military facility" means any facility located within the State
48 which is owned or operated by the federal government, and which is

1 used for the purposes of providing logistical, technical, material,
2 training, and any other support to any branch of the United States
3 military.

4 "Military facility commander" means the chief official, base
5 commander or person in charge at a military facility.

6 "Minor site plan" means a development plan of one or more lots
7 which (1) proposes new development within the scope of
8 development specifically permitted by ordinance as a minor site
9 plan; (2) does not involve planned development, any new street or
10 extension of any off-tract improvement which is to be prorated
11 pursuant to section 30 of P.L.1975, c.291 (C.40:55D-42); and (3)
12 contains the information reasonably required in order to make an
13 informed determination as to whether the requirements established
14 by ordinance for approval of a minor site plan have been met.

15 "Minor subdivision" means a subdivision of land for the creation
16 of a number of lots specifically permitted by ordinance as a minor
17 subdivision; provided that such subdivision does not involve (1) a
18 planned development, (2) any new street or (3) the extension of any
19 off-tract improvement, the cost of which is to be prorated pursuant
20 to section 30 of P.L.1975, c.291 (C.40:55D-42).

21 "Municipality" means any city, borough, town, township or
22 village.

23 "Municipal agency" means a municipal planning board or board
24 of adjustment, or a governing body of a municipality when acting
25 pursuant to this act and any agency which is created by or
26 responsible to one or more municipalities when such agency is
27 acting pursuant to this act.

28 "Municipal resident" means a person who is domiciled in the
29 municipality.

30 "Nonconforming lot" means a lot, the area, dimension or location
31 of which was lawful prior to the adoption, revision or amendment of
32 a zoning ordinance, but fails to conform to the requirements of the
33 zoning district in which it is located by reason of such adoption,
34 revision or amendment.

35 "Nonconforming structure" means a structure the size, dimension
36 or location of which was lawful prior to the adoption, revision or
37 amendment of a zoning ordinance, but which fails to conform to the
38 requirements of the zoning district in which it is located by reasons
39 of such adoption, revision or amendment.

40 "Nonconforming use" means a use or activity which was lawful
41 prior to the adoption, revision or amendment of a zoning ordinance,
42 but which fails to conform to the requirements of the zoning district
43 in which it is located by reasons of such adoption, revision or
44 amendment.

45 "Noncontiguous cluster" means noncontiguous areas to be
46 developed as a single entity according to a plan containing an area,
47 or a section or sections thereof, to be developed for residential
48 purposes, nonresidential purposes, or a combination thereof, at a

1 greater concentration of density or intensity of land use than
2 authorized within the area, section, or sections, under conventional
3 development, in exchange for the permanent preservation of another
4 area, or a section or sections thereof, as common or public open
5 space, or for historic or agricultural purposes, or a combination
6 thereof.

7 "Office of Smart Growth" means the Office of State Planning
8 established pursuant to section 6 of P.L.1985, c.398 (C.52:18A-
9 201).

10 "Official county map" means the map, with changes and
11 additions thereto, adopted and established, from time to time, by
12 resolution of the board of chosen freeholders of the county pursuant
13 to R.S.40:27-5.

14 "Official map" means a map adopted by ordinance pursuant to
15 article 5 of P.L.1975, c.291.

16 "Offsite" means located outside the lot lines of the lot in question
17 but within the property, of which the lot is a part, which is the
18 subject of a development application or the closest half of the street
19 or right-of-way abutting the property of which the lot is a part.

20 "Off-tract" means not located on the property which is the
21 subject of a development application nor on the closest half of the
22 abutting street or right-of-way.

23 "Onsite" means located on the lot in question and excluding any
24 abutting street or right-of-way.

25 "On-tract" means located on the property which is the subject of
26 a development application or on the closest half of an abutting
27 street or right-of-way.

28 "Open-space" means any parcel or area of land or water
29 essentially unimproved and set aside, dedicated, designated or
30 reserved for public or private use or enjoyment or for the use and
31 enjoyment of owners and occupants of land adjoining or
32 neighboring such open space; provided that such areas may be
33 improved with only those buildings, structures, streets and offstreet
34 parking and other improvements that are designed to be incidental
35 to the natural openness of the land or support its use for recreation
36 and conservation purposes.

37 (cf: P.L.2005, c.41, s.2)

38

39 5. Section 3.3 of P.L.1975, c.291 (C.40:55D-6) is amended to
40 read as follows:

41 3.3. "Party immediately concerned" means for purposes of notice
42 any applicant for development, the owners of the subject property
43 and all owners of property and government agencies entitled to
44 notice under section 7.1 of P.L.1975, c.291 (C.40:55D-12).

45 "Performance guarantee" means any security, which may be
46 accepted by a municipality, including but not limited to surety
47 bonds, letters of credit under the circumstances specified in section
48 16 of P.L.1991, c.256 (C.40:55D-53.5), and cash.

1 "Planned commercial development" means an area of a minimum
2 contiguous or noncontiguous size as specified by ordinance to be
3 developed according to a plan as a single entity containing one or
4 more structures with appurtenant common areas to accommodate
5 commercial or office uses or both and any residential and other uses
6 incidental to the predominant use as may be permitted by ordinance.

7 "Planned development" means planned unit development,
8 planned unit residential development, **[residential]** contiguous
9 cluster or noncontiguous cluster, planned commercial development
10 or planned industrial development.

11 "Planned industrial development" means an area of a minimum
12 contiguous or noncontiguous size as specified by ordinance to be
13 developed according to a plan as a single entity containing one or
14 more structures with appurtenant common areas to accommodate
15 industrial uses and any other uses incidental to the predominant use
16 as may be permitted by ordinance.

17 "Planned unit development" means an area with a specified
18 minimum contiguous or noncontiguous acreage of 10 acres or more
19 to be developed as a single entity according to a plan, containing
20 one or more **[residential]** contiguous clusters or noncontiguous
21 clusters or planned unit residential developments and one or more
22 public, quasi-public, commercial or industrial areas in such ranges
23 of ratios of nonresidential uses to residential uses as shall be
24 specified in the zoning ordinance.

25 "Planned unit residential development" means an area with a
26 specified minimum contiguous or noncontiguous acreage of five
27 acres or more to be developed as a single entity according to a plan
28 containing one or more **[residential]** contiguous clusters or
29 noncontiguous clusters, which may include appropriate commercial,
30 or public or quasi-public uses all primarily for the benefit of the
31 residential development.

32 "Planning board" means the municipal planning board
33 established pursuant to section 14 of P.L.1975, c.291 (C.40:55D-
34 23).

35 "Plat" means a map or maps of a subdivision or site plan.

36 "Preliminary approval" means the conferral of certain rights
37 pursuant to sections 34, 36 and 37 of P.L.1975, c.291 (C.40:55D-
38 46; C.40:55D-48; and C.40:55D-49) prior to final approval after
39 specific elements of a development plan have been agreed upon by
40 the planning board and the applicant.

41 "Preliminary floor plans and elevations" means architectural
42 drawings prepared during early and introductory stages of the
43 design of a project illustrating in a schematic form, its scope, scale
44 and relationship to its site and immediate environs.

45 "Public areas" means (1) public parks, playgrounds, trails, paths
46 and other recreational areas; (2) other public open spaces; (3) scenic
47 and historic sites; and (4) sites for schools and other public
48 buildings and structures.

1 "Public development proposal" means a master plan, capital
2 improvement program or other proposal for land development
3 adopted by the appropriate public body, or any amendment thereto.

4 "Public drainage way" means the land reserved or dedicated for
5 the installation of storm water sewers or drainage ditches, or
6 required along a natural stream or watercourse for preserving the
7 biological as well as drainage function of the channel and providing
8 for the flow of water to safeguard the public against flood damage,
9 sedimentation and erosion and to assure the adequacy of existing
10 and proposed culverts and bridges, to induce water recharge into the
11 ground where practical, and to lessen nonpoint pollution.

12 "Public open space" means an open space area conveyed or
13 otherwise dedicated to a municipality, municipal agency, board of
14 education, State or county agency, or other public body for
15 **[recreational or conservational uses]** recreation and conservation
16 purposes.

17 "Public utility" means any public utility regulated by the Board
18 of Regulatory Commissioners and defined pursuant to R.S.48:2-13.

19 "Quorum" means the majority of the full authorized membership
20 of a municipal agency.

21 "Receiving zone" means an area or areas designated in a master
22 plan and zoning ordinance, adopted pursuant to P.L.1975, c.291
23 (C.40:55D-1 et seq.), within which development may be increased,
24 and which is otherwise consistent with the provisions of section 9
25 of P.L.2004, c.2 (C.40:55D-145).

26 **["Residential cluster" means a contiguous or noncontiguous area**
27 **to be developed as a single entity according to a plan containing**
28 **residential housing units which have a common or public open**
29 **space area as an appurtenance.]**

30 "Recreation and conservation purposes" means "recreation and
31 conservation purposes" as defined in section 3 of P.L.1999, c.152
32 (C.13:8C-3).

33 "Residential density" means the number of dwelling units per
34 gross acre of residential land area including streets, easements and
35 open space portions of a development.

36 "Resubdivision" means (1) the further division or relocation of
37 lot lines of any lot or lots within a subdivision previously made and
38 approved or recorded according to law or (2) the alteration of any
39 streets or the establishment of any new streets within any
40 subdivision previously made and approved or recorded according to
41 law, but does not include conveyances so as to combine existing
42 lots by deed or other instrument.

43 (cf: P.L.2004, c.2, s.35)

44

45 6. Section 19 of P.L.1975, c.291 (c.40:55D-28) is amended to
46 read as follows:

47 19. Preparation; contents; modification.

1 a. The planning board may prepare and, after public hearing,
2 adopt or amend a master plan or component parts thereof, to guide
3 the use of lands within the municipality in a manner which protects
4 public health and safety and promotes the general welfare.

5 b. The master plan shall generally comprise a report or
6 statement and land use and development proposals, with maps,
7 diagrams and text, presenting, at least the following elements (1)
8 and (2) and, where appropriate, the following elements (3) through
9 (16):

10 (1) A statement of objectives, principles, assumptions, policies
11 and standards upon which the constituent proposals for the physical,
12 economic and social development of the municipality are based;

13 (2) A land use plan element

14 (a) taking into account and stating its relationship to the
15 statement provided for in paragraph (1) hereof, and other master
16 plan elements provided for in paragraphs (3) through (14) hereof
17 and natural conditions, including, but not necessarily limited to,
18 topography, soil conditions, water supply, drainage, flood plain
19 areas, marshes, and woodlands;

20 (b) showing the existing and proposed location, extent and
21 intensity of development of land to be used in the future for varying
22 types of residential, commercial, industrial, agricultural,
23 recreational, open space, educational and other public and private
24 purposes or combination of purposes including any provisions for
25 cluster development; and stating the relationship thereof to the
26 existing and any proposed zone plan and zoning ordinance; and

27 (c) showing the existing and proposed location of any airports
28 and the boundaries of any airport safety zones delineated pursuant
29 to the "Air Safety and Zoning Act of 1983," P.L.1983, c.260 (C.6:1-
30 80 et al.); and

31 (d) including a statement of the standards of population density
32 and development intensity recommended for the municipality;

33 (3) A housing plan element pursuant to section 10 of P.L.1985,
34 c.222 (C.52:27D-310), including, but not limited to, residential
35 standards and proposals for the construction and improvement of
36 housing;

37 (4) A circulation plan element showing the location and types of
38 facilities for all modes of transportation required for the efficient
39 movement of people and goods into, about, and through the
40 municipality, taking into account the functional highway
41 classification system of the Federal Highway Administration and
42 the types, locations, conditions and availability of existing and
43 proposed transportation facilities, including air, water, road and rail;

44 (5) A utility service plan element analyzing the need for and
45 showing the future general location of water supply and distribution
46 facilities, drainage and flood control facilities, sewerage and waste
47 treatment, solid waste disposal and provision for other related
48 utilities, and including any storm water management plan required

1 pursuant to the provisions of P.L.1981, c.32 (C.40:55D-93 et al.). If
2 a municipality prepares a utility service plan element as a condition
3 for adopting a development transfer ordinance pursuant to
4 subsection c. of section 4 of P.L.2004, c.2 (C.40:55D-140), the plan
5 element shall address the provision of utilities in the receiving zone
6 as provided thereunder;

7 (6) A community facilities plan element showing the existing
8 and proposed location and type of educational or cultural facilities,
9 historic sites, libraries, hospitals, firehouses, police stations and
10 other related facilities, including their relation to the surrounding
11 areas;

12 (7) A recreation plan element showing a comprehensive system
13 of areas and public sites for recreation;

14 (8) A conservation plan element providing for the preservation,
15 conservation, and utilization of natural resources, including, to the
16 extent appropriate, energy, open space, water supply, forests, soil,
17 marshes, wetlands, harbors, rivers and other waters, fisheries,
18 endangered or threatened species wildlife and other resources, and
19 which systemically analyzes the impact of each other component
20 and element of the master plan on the present and future
21 preservation, conservation and utilization of those resources;

22 (9) An economic plan element considering all aspects of
23 economic development and sustained economic vitality, including
24 (a) a comparison of the types of employment expected to be
25 provided by the economic development to be promoted with the
26 characteristics of the labor pool resident in the municipality and
27 nearby areas and (b) an analysis of the stability and diversity of the
28 economic development to be promoted;

29 (10) An historic preservation plan element: (a) indicating the
30 location and significance of historic sites and historic districts; (b)
31 identifying the standards used to assess worthiness for historic site
32 or district identification; and (c) analyzing the impact of each
33 component and element of the master plan on the preservation of
34 historic sites and districts;

35 (11) Appendices or separate reports containing the technical
36 foundation for the master plan and its constituent elements;

37 (12) A recycling plan element which incorporates the State
38 Recycling Plan goals, including provisions for the collection,
39 disposition and recycling of recyclable materials designated in the
40 municipal recycling ordinance, and for the collection, disposition
41 and recycling of recyclable materials within any development
42 proposal for the construction of 50 or more units of single-family
43 residential housing or 25 or more units of multi-family residential
44 housing and any commercial or industrial development proposal for
45 the utilization of 1,000 square feet or more of land;

46 (13) A farmland preservation plan element, which shall include:
47 an inventory of farm properties and a map illustrating significant
48 areas of agricultural land; a statement showing that municipal

1 ordinances support and promote agriculture as a business; and a
2 plan for preserving as much farmland as possible in the short term
3 by leveraging moneys made available by P.L.1999, c.152 (C.13:8C-
4 1 et al.) through a variety of mechanisms including, but not limited
5 to, utilizing option agreements, installment purchases, and
6 encouraging donations of permanent development easements;

7 (14) A development transfer plan element which sets forth the
8 public purposes, the locations of sending and receiving zones and
9 the technical details of a development transfer program based on the
10 provisions of section 5 of P.L.2004, c.2 (C.40:55D-141);

11 (15) An educational facilities plan element which incorporates
12 the purposes and goals of the "long-range facilities plan" required to
13 be submitted to the Commissioner of Education by a school district
14 pursuant to section 4 of P.L.2000, c.72 (C.18A:7G-4); and

15 (16) A green buildings and environmental sustainability plan
16 element, which shall provide for, encourage, and promote the
17 efficient use of natural resources and the installation and usage of
18 renewable energy systems; consider the impact of buildings on the
19 local, regional and global environment; allow ecosystems to
20 function naturally; conserve and reuse water; treat storm water on-
21 site; and optimize climatic conditions through site orientation and
22 design.

23 c. The master plan and its plan elements may be divided into
24 subplans and subplan elements projected according to periods of
25 time or staging sequences.

26 d. The master plan shall include a specific policy statement
27 indicating the relationship of the proposed development of the
28 municipality, as developed in the master plan to (1) the master plans
29 of contiguous municipalities, (2) the master plan of the county in
30 which the municipality is located, (3) the State Development and
31 Redevelopment Plan adopted pursuant to the "State Planning Act,"
32 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.)
33 and (4) the district solid waste management plan required pursuant
34 to the provisions of the "Solid Waste Management Act," P.L.1970,
35 c.39 (C.13:1E-1 et seq.) of the county in which the municipality is
36 located.

37 In the case of a municipality situated within the Highlands
38 Region, as defined in section 3 of P.L.2004, c.120 (C.13:20-3), the
39 master plan shall include a specific policy statement indicating the
40 relationship of the proposed development of the municipality, as
41 developed in the master plan, to the Highlands regional master plan
42 adopted pursuant to section 8 of P.L.2004, c.120 (C.13:20-8).

43 (cf: P.L.2008, c.54, s.1)

44

45 7. Section 29 of P.L.1975, c.291 (C.40:55D-38) is amended to
46 read as follows:

- 1 29. Contents of ordinance. An ordinance requiring approval by
2 the planning board of either subdivisions or site plans, or both, shall
3 include the following:
- 4 a. Provisions, not inconsistent with other provisions of this act,
5 for submission and processing of applications for development,
6 including standards for preliminary and final approval and
7 provisions for processing of final approval by stages or sections of
8 development;
- 9 b. Provisions ensuring:
- 10 (1) Consistency of the layout or arrangement of the subdivision
11 or land development with the requirements of the zoning ordinance;
- 12 (2) Streets in the subdivision or land development of sufficient
13 width and suitable grade and suitably located to accommodate
14 prospective traffic and to provide access for firefighting and
15 emergency equipment to buildings and coordinated so as to
16 compose a convenient system consistent with the official map, if
17 any, and the circulation element of the master plan, if any, and so
18 oriented as to permit, consistent with the reasonable utilization of
19 land, the buildings constructed thereon to maximize solar gain;
20 provided that no street of a width greater than 50 feet within the
21 right-of-way lines shall be required unless said street constitutes an
22 extension of an existing street of the greater width, or already has
23 been shown on the master plan at the greater width, or already has
24 been shown in greater width on the official map;
- 25 (3) Adequate water supply, drainage, shade trees, sewerage
26 facilities and other utilities necessary for essential services to
27 residents and occupants;
- 28 (4) Suitable size, shape and location for any area reserved for
29 public use pursuant to section 32 of this act;
- 30 (5) Reservation pursuant to section 31 of **[this act]** P.L.1975,
31 c.291 (C.40:55D-43) of any open space to be set aside for use and
32 benefit of the residents of a cluster development or a planned
33 development, resulting from the application of standards of density
34 or intensity of land use, contained in the zoning ordinance, pursuant
35 to **[subsection c. of]** section 52 of **[this act]** P.L.1975, c.291
36 (C.40:55D-65);
- 37 (6) Regulation of land designated as subject to flooding,
38 pursuant to subsection e. of section 52 of **[this act]** P.L.1975,
39 c.291 (C.40:55D-65), to avoid danger to life or property;
- 40 (7) Protection and conservation of soil from erosion by wind or
41 water or from excavation or grading;
- 42 (8) Conformity with standards promulgated by the
43 Commissioner of Transportation, pursuant to the "Air Safety and
44 **[Hazardous]** Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et
45 seq.), for any airport hazard areas delineated under that act;
- 46 (9) Conformity with a municipal recycling ordinance required
47 pursuant to section 6 of P.L.1987, c.102 (C.13:1E-99.16);

1 (10) Conformity with the State highway access management
2 code adopted by the Commissioner of Transportation under section
3 3 of the "State Highway Access Management Act," P.L.1989, c.32
4 (C.27:7-91), with respect to any State highways within the
5 municipality;

6 (11) Conformity with any access management code adopted by
7 the county under R.S.27:16-1, with respect to any county roads
8 within the municipality;

9 (12) Conformity with any municipal access management code
10 adopted under R.S.40:67-1, with respect to municipal streets;

11 (13) Protection of potable water supply reservoirs from pollution
12 or other degradation of water quality resulting from the
13 development or other uses of surrounding land areas, which
14 provisions shall be in accordance with any siting, performance, or
15 other standards or guidelines adopted therefor by the Department of
16 Environmental Protection;

17 (14) Conformity with the public safety regulations concerning
18 storm water detention facilities adopted pursuant to section 5 of
19 P.L.1991, c.194 (C.40:55D-95.1) and reflected in storm water
20 management plans and storm water management ordinances
21 adopted pursuant to P.L.1981, c.32 (C.40:55D-93 et al.); and

22 (15) Conformity with the model ordinance promulgated by the
23 Department of Environmental Protection and Department of
24 Community Affairs pursuant to section 2 of P.L.1993, c.81
25 (C.13:1E-99.13a) regarding the inclusion of facilities for the
26 collection or storage of source separated recyclable materials in any
27 new multifamily housing development.

28 c. Provisions governing the standards for grading,
29 improvement and construction of streets or drives and for any
30 required walkways, curbs, gutters, streetlights, shade trees, fire
31 hydrants and water, and drainage and sewerage facilities and other
32 improvements as shall be found necessary, and provisions ensuring
33 that such facilities shall be completed either prior to or subsequent
34 to final approval of the subdivision or site plan by allowing the
35 posting of performance bonds by the developer;

36 d. Provisions ensuring that when a municipal zoning ordinance
37 is in effect, a subdivision or site plan shall conform to the
38 applicable provisions of the zoning ordinance, and where there is no
39 zoning ordinance, appropriate standards shall be specified in an
40 ordinance pursuant to this article; and

41 e. Provisions ensuring performance in substantial accordance
42 with the final development plan; provided that the planning board
43 may permit a deviation from the final plan, if caused by change of
44 conditions beyond the control of the developer since the date of
45 final approval, and the deviation would not substantially alter the
46 character of the development or substantially impair the intent and
47 purpose of the master plan and zoning ordinance.

48 (cf: P.L.1993, c.81, s.1)

1 8. Section 29.1 of P.L.1975, c.291 (C.40:55D-39) is amended
2 to read as follows:

3 29.1 Discretionary contents of ordinance. An ordinance
4 requiring approval by the planning board of either subdivisions or
5 site plans or both may include the following:

6 a. Provisions for off-tract water, sewer, drainage, and street
7 improvements which are necessitated by a subdivision or land
8 development, subject to the provisions of section 30 of P.L.1975,
9 c.291 (C.40:55D-42);

10 b. Provisions for standards encouraging and promoting
11 flexibility, and economy in layout and design through the use of
12 planned **[unit]** development, **[planned unit residential development**
13 **and residential]** cluster development, or both; provided that such
14 standards shall be appropriate to the type of development permitted;
15 and provided further that the ordinance shall set forth the limits and
16 extent of any special provisions applicable to **[such]** planned
17 developments and to cluster developments, considering the
18 availability of existing and proposed infrastructure and the
19 environmental characteristics of any area proposed for development
20 and any area proposed for protection as open space, agricultural
21 land, or historic site, so that the manner in which such special
22 provisions differ from the standards otherwise applicable to
23 subdivisions or site plans can be determined;

24 c. Provisions for planned development:

25 (1) Authorizing the planning board to grant general
26 development plan approval to provide the increased flexibility
27 desirable to promote mutual agreement between the applicant and
28 the planning board on the basic scheme of a planned development
29 and setting forth any variations from the ordinary standards for
30 preliminary and final approval;

31 (2) Requiring that any common open space resulting from the
32 application of standards for density, or intensity of land use, be set
33 aside for the use and benefit of the owners or residents in such
34 development subject to section 31 of **[this act]** P.L.1975, c.291
35 (C.40:55D-43);

36 (3) Setting forth how the amount and location of any common
37 open space shall be determined and how its improvement and
38 maintenance for common open space use shall be secured subject to
39 section 31 of **[this act]** P.L.1975, c.291 (C.40:55D-43);

40 (4) Authorizing the planning board to allow for a greater
41 concentration of density, or intensity of land use, within a section or
42 sections of development, whether it be earlier, later or simultaneous
43 in the development, than in others, in order to realize the
44 preservation of agricultural lands, open space, and historic sites, or
45 otherwise advance the purposes of P.L.1975, c.291 (C.40:55D-1 et
46 seq.);

1 (5) Setting forth any requirement that the approval by the
2 planning board of a greater concentration of density or intensity of
3 land use for any section to be developed be offset by a smaller
4 concentration in any completed prior stage or by an appropriate
5 reservation of public open space or common open space on the
6 remaining land, or preservation of land for historic or agricultural
7 purposes, by grant of development restriction, easement, or by
8 covenant in favor of the municipality; provided that such
9 reservation shall, as far as practicable, defer the precise location of
10 common open space until an application for final approval is filed,
11 so that flexibility of development can be maintained;

12 (6) Setting forth any requirements for timing of development
13 among the various types of uses and subgroups thereunder and, in
14 the case of planned unit development and planned unit residential
15 development, whether some nonresidential uses are required to be
16 built before, after or at the same time as the residential uses.

17 d. Provisions ensuring in the case of a development which
18 proposes construction over a period of years, the protection of the
19 interests of the public and of the residents, occupants and owners of
20 the proposed development in the total completion of the
21 development.

22 e. Provisions that require as a condition for local municipal
23 approval the submission of proof that no taxes or assessments for
24 local improvements are due or delinquent on the property for which
25 any subdivision, site plan, or planned development application is
26 made.

27 f. Provisions for the creation of a Site Plan Review Advisory
28 Board for the purpose of reviewing all site plan applications and
29 making recommendations to the planning board in regard thereto.

30 g. Provisions for standards governing outdoor advertising signs
31 required to be permitted pursuant to P.L.1991, c.413 (C.27:5-5 et
32 seq.) including, but not limited to, the location, placement, size and
33 design thereof.

34 h. Provisions for cluster development:

35 (1) Authorizing the planning board flexibility to approve a
36 subdivision or site plan or both through mutual agreement with an
37 applicant to allow for the clustering of development within a section
38 or sections of development at a greater concentration of density or
39 intensity of land use than established for the zoning district, in order
40 to achieve the goal of permanently protecting land as public open
41 space or common open space, or for historic or agricultural
42 purposes.

43 (2) Requiring the placement of a development restriction on any
44 land identified for preservation in accordance with section 9 of
45 P.L. c. (C.) (pending before the Legislature as this bill).

46 (cf: P.L.2004, c.42, s.8)

1 9. (New section) a. An ordinance authorizing the planning
2 board to approve planned developments, subdivisions, or site plans
3 that allow for contiguous cluster or noncontiguous cluster shall
4 provide for the permanent protection of land proposed to be
5 preserved as public open space or common open space, as a historic
6 site, or as agricultural land in accordance with the provisions set
7 forth in this section.

8 b. Land identified for preservation as public open space shall
9 be conveyed or dedicated by conservation restriction. A
10 municipality may use a conservation restriction template prepared
11 by the Department of Environmental Protection for this purpose.
12 The Department of Environmental Protection shall make available
13 to municipalities a conservation restriction template.

14 c. (1) Land identified for preservation as a historic site shall be
15 conveyed or dedicated by historic preservation restriction. A
16 municipality may use a historic preservation restriction template
17 prepared by the New Jersey Historic Trust or obtain approval of the
18 historic preservation restriction by the New Jersey Historic Trust.
19 The New Jersey Historic Trust shall make available to
20 municipalities a historic preservation restriction template.

21 (2) A municipality accepting a historic preservation restriction
22 that has provided for and maintains an active historic preservation
23 commission, consistent with sections 21 through 26 of P.L.1985,
24 c.516 (C.40:55D-107 et seq.), may authorize the commission to
25 establish a mechanism for annual monitoring and enforcement of
26 the historic preservation restriction consistent with The Secretary of
27 the Interior's Standards for the Treatment of Historic Properties,
28 Part 68 of title 36, Code of Federal Regulations.

29 (3) A municipality accepting a historic preservation restriction
30 that has not provided for or does not maintain an active historic
31 preservation commission, consistent with sections 21 through 26 of
32 P.L.1985, c.516 (C.40:55D-107 et seq.), or authorized the
33 commission to establish a mechanism for annual monitoring and
34 enforcement of the historic preservation restriction, may convey or
35 authorize conveyance of the historic preservation restriction by
36 municipal ordinance to a qualified public agency or non-profit
37 preservation organization, as determined by the New Jersey Historic
38 Trust, which has a commitment to administer, annually monitor,
39 and enforce the terms of the historic preservation restriction
40 consistent with The Secretary of the Interior's Standards for the
41 Treatment of Historic Properties, Part 68 of title 36, Code of
42 Federal Regulations.

43 d. (1) Land identified for preservation as agricultural land
44 shall be conveyed or dedicated by agricultural restriction. A
45 municipality shall use an agricultural restriction template prepared
46 by the State Agriculture Development Committee or obtain
47 approval of the agricultural restriction by the State Agriculture
48 Development Committee. The State Agriculture Development

1 Committee shall make available to municipalities an agricultural
2 restriction template.

3 (2) An agricultural restriction may contain provisions:

4 (a) to allow limited non-agricultural uses which the State
5 Agriculture Development Committee finds compatible with
6 agricultural use and production;

7 (b) to allow future amendments to the area subject to the
8 agricultural restriction in order to accommodate public
9 improvements including but not limited to roadways, drainage
10 facilities and other public infrastructure so long as the amendment
11 results in only de minimis impact to the original area subject to the
12 restriction;

13 (c) to allow the inclusion of existing dwelling units or limited
14 additional future housing opportunities that directly support the
15 property's agricultural operations and are appropriate to the scale of
16 the preserved farmland.

17 (3) The State Agriculture Development Committee shall grant or
18 deny approval of a proposed agricultural restriction within 60 days
19 of receipt of a request therefore. If the State Agriculture
20 Development Committee fails to act within this period, the failure
21 shall be deemed to be an approval of the agricultural restriction.

22 (4) Municipalities authorizing agricultural restrictions shall have
23 an adopted "Right to Farm" ordinance consistent with the model
24 Right to Farm ordinance adopted by the State Agriculture
25 Development Committee pursuant to the "Right to Form Act,"
26 P.L.1983, c.31 (C.4:1C-1 et al.).

27 (5) Agricultural land subject to an agricultural restriction
28 approved by the State Agriculture Development Committee shall be
29 provided the right to farm benefits under the "Right to Farm Act,"
30 P.L.1983, c.31 (C.4:1C-1 et al.) and other benefits that may be
31 provided pursuant to the "Agriculture Retention and Development
32 Act," P.L.1983, c.32 (C.4:1C-11 et seq.).

33 e. Any development restriction shall be recorded in the office
34 of the county recording officer prior to the start of construction.

35 f. Any development restriction shall be expressly enforceable
36 by the municipality and the State of New Jersey and, if authorized
37 by municipal ordinance, another public agency or non-profit
38 conservation organization.

39 g. An ordinance authorizing the planning board to approve
40 planned developments, subdivisions or site plans that allows for
41 contiguous cluster or noncontiguous cluster may provide for:

42 (1) the assignment of bonus density or intensity of use,
43 including, but not limited to, increased units, floor area ratio,
44 height, or impervious cover in order to realize the preservation of
45 agricultural lands, open space, and historic sites or otherwise
46 advance the purposes of P.L.1975, c.291 (C.40:55D-1 et seq.);

47 (2) the conveyance of land that is subject to a preservation
48 restriction to a separate person or entity.

1 h. An ordinance authorizing the planning board to approve
2 planned developments, subdivisions or site plans that allows for
3 contiguous cluster may authorize the owners of contiguous
4 properties to jointly submit an application for development.

5 i. An ordinance authorizing the planning board to approve
6 planned developments, subdivisions or site plans that allows for
7 noncontiguous cluster:

8 (1) shall not authorize use of the development transfer
9 provisions set forth in the “State Transfer of Development Rights
10 Act,” P.L.2004, c.2 (C.40:55D-137 et seq.);

11 (2) may provide that areas to be developed are developed in
12 phases, provided that the terms and conditions intended to protect
13 the interests of the public and of the residents, occupants and
14 owners of the proposed development in the total completion of the
15 development are adequate;

16 (3) shall provide that any noncontiguous cluster program is
17 optional.

18

19 10. Section 29.2 of P.L.1975, c.291 (C.40:55D-40) is amended
20 to read as follows:

21 29.2 An ordinance requiring subdivision approval by the
22 planning board pursuant to this article may also include:

23 a. Provisions for minor subdivision approval pursuant to
24 section 35 of this act; and

25 b. Standards permitting lot-size averaging and encouraging and
26 promoting flexibility, economy and environmental soundness in
27 layout and design in accordance with which the planning board may
28 approve the varying, within a conventional subdivision, of lot areas
29 and dimensions, and yards and setbacks otherwise required by
30 municipal development regulations **[in such a way that the average**
31 **lot areas and dimensions, yards and setbacks within the subdivision**
32 **conform to the conventional norms of the municipal development**
33 **regulations]**; provided that the authorized density on the parcel or
34 set of contiguous parcels is not exceeded; provided that such
35 standards shall be appropriate to the type of development permitted.
36 An ordinance authorizing the planning board to approve
37 subdivisions with varying lot areas may set forth limitations, or
38 impose no limitation, upon the extent of variation in lot areas.

39 (cf: P.L.1975, c.291, s.29.2)

40

41 11. Section 31 of P.L.1975, c.291 (C.40:55D-43) is amended to
42 read as follows:

43 31. a. An ordinance pursuant to this article permitting planned
44 unit development, planned unit residential development or
45 **[residential] cluster development** may provide that the municipality
46 or other governmental agency may, at any time and from time to
47 time, accept the dedication of land or any interest therein for public
48 use and maintenance, but the ordinance shall not require, as a

1 condition of the approval of a planned development, that land
2 proposed to be set aside for common open space be dedicated or
3 made available to public use.

4 An ordinance pursuant to this article providing for planned unit
5 development, planned unit residential development, or **[residential]**
6 cluster development shall require that the developer provide for an
7 organization for the ownership and maintenance of any open space
8 for the benefit of owners or residents of the development, if said
9 open space is not dedicated to the municipality or other
10 governmental agency or otherwise conveyed to or owned by a
11 separate person or entity. Such organization shall not be dissolved
12 and the organization, person, or entity shall not dispose of any open
13 space, by sale or otherwise, except to an organization conceived and
14 established to own and maintain the open space for the benefit of
15 such development, and thereafter such organization shall not be
16 dissolved or the organization, person, or entity dispose of any of its
17 open space without first offering to dedicate the same to the
18 municipality or municipalities wherein the land is located.

19 b. In the event that such organization, person, or entity shall
20 fail to maintain the open space in reasonable order and condition,
21 the municipal body or officer designated by ordinance to administer
22 this subsection may serve written notice upon such organization,
23 person, or entity or upon the owners of the development setting
24 forth the manner in which the organization, person, or entity has
25 failed to maintain the open space in reasonable condition, and said
26 notice shall include a demand that such deficiencies of maintenance
27 be cured within 35 days thereof, and shall state the date and place of
28 a hearing thereon which shall be held within 15 days of the notice.
29 At such hearing, the designated municipal body or officer, as the
30 case may be, may modify the terms of the original notice as to
31 deficiencies and may give a reasonable extension of time not to
32 exceed 65 days within which they shall be cured. If the deficiencies
33 set forth in the original notice or in the modification thereof shall
34 not be cured within said 35 days or any permitted extension thereof,
35 the municipality, in order to preserve the open space and maintain
36 the same for a period of 1 year may enter upon and maintain such
37 land. Said entry and maintenance shall not vest in the public any
38 rights to use the open space except when the same is voluntarily
39 dedicated to the public by the owners. Before the expiration of said
40 year, the designated municipal body or officer, as the case may be,
41 shall, upon its initiative or upon the request of the organization,
42 person, or entity theretofore responsible for the maintenance of the
43 open space, call a public hearing upon 15 days written notice to
44 such organization, person, or entity and to the owners of the
45 development, to be held by such municipal body or officer, at which
46 hearing such organization, person, or entity and the owners of the
47 development shall show cause why such maintenance by the
48 municipality shall not, at the election of the municipality, continue

1 for a succeeding year. If the designated municipal body or officer,
2 as the case may be, shall determine that such organization, person,
3 or entity is ready and able to maintain said open space in reasonable
4 condition, the municipality shall cease to maintain said open space
5 at the end of said year. If the municipal body or officer, as the case
6 may be, shall determine such organization, person, or entity is not
7 ready and able to maintain said open space in a reasonable
8 condition, the municipality may, in its discretion, continue to
9 maintain said open space during the next succeeding year, subject to
10 a similar hearing and determination, in each year thereafter. The
11 decision of the municipal body or officer in any such case shall
12 constitute a final administrative decision subject to judicial review.

13 If a municipal body or officer is not designated by ordinance to
14 administer this subsection, the governing body shall have the same
15 powers and be subject to the same restrictions as provided in this
16 subsection.

17 c. The cost of such maintenance by the municipality shall be
18 assessed pro rata against the properties within the development that
19 have a right of enjoyment of the open space in accordance with
20 assessed value at the time of imposition of the lien, and shall
21 become a lien and tax on said properties and be added to and be a
22 part of the taxes to be levied and assessed thereon, and enforced and
23 collected with interest by the same officers and in the same manner
24 as other taxes.

25 (cf: P.L.1975, c.291, s.31)

26

27 12. Section 38 of P.L.1975, c.291 (C.40:55D-50) is amended to
28 read as follows:

29 38. Final approval of site plans and major subdivisions.

30 a. The planning board shall grant final approval if the detailed
31 drawings, specifications and estimates of the application for final
32 approval conform to the standards established by ordinance for final
33 approval, the conditions of preliminary approval and, in the case of
34 a major subdivision, the standards prescribed by **【the "Map Filing**
35 **Law," P.L.1960, c. 141 (C. 46:23-9.9 et seq.)】** N.J.S.46:26B-1 et
36 seq.; provided that in the case of a planned **【unit development,**
37 **planned unit residential】** development **【or residential cluster】**, the
38 planning board may permit minimal deviations from the conditions
39 of preliminary approval necessitated by change of conditions
40 beyond the control of the developer since the date of preliminary
41 approval without the developer being required to submit another
42 application for development for preliminary approval.

43 b. Final approval shall be granted or denied within 45 days
44 after submission of a complete application to the administrative
45 officer, or within such further time as may be consented to by the
46 applicant. Failure of the planning board to act within the period
47 prescribed shall constitute final approval and a certificate of the
48 administrative officer as to the failure of the planning board to act

1 shall be issued on request of the applicant, and it shall be sufficient
2 in lieu of the written endorsement or other evidence of approval,
3 herein required, and shall be so accepted by the county recording
4 officer for purposes of filing subdivision plats.

5 Whenever review or approval of the application by the county
6 planning board is required by section 5 of P.L.1968, c. 285 (C.
7 40:27-6.3), in the case of a subdivision, or section 8 of P.L.1968, c.
8 285 (C. 40:27-6.6), in the case of a site plan, the municipal planning
9 board shall condition any approval that it grants upon timely receipt
10 of a favorable report on the application by the county planning
11 board or approval by the county planning board by its failure to
12 report thereon within the required time period.
13 (cf: P.L.1975, c.291, s.38)

14

15 13. Section 49 of P.L.1975, c.291 (C.40:55D-62) is amended to
16 read as follows:

17 49. Power to zone. a. The governing body may adopt or amend
18 a zoning ordinance relating to the nature and extent of the uses of
19 land and of buildings and structures thereon. Such ordinance shall
20 be adopted after the planning board has adopted the land use plan
21 element and the housing plan element of a master plan, and all of
22 the provisions of such zoning ordinance or any amendment or
23 revision thereto shall either be substantially consistent with the land
24 use plan element and the housing plan element of the master plan or
25 designed to effectuate such plan elements; provided that the
26 governing body may adopt a zoning ordinance or amendment or
27 revision thereto which in whole or part is inconsistent with or not
28 designed to effectuate the land use plan element and the housing
29 plan element, but only by affirmative vote of a majority of the full
30 authorized membership of the governing body, with the reasons of
31 the governing body for so acting set forth in a resolution and
32 recorded in its minutes when adopting such a zoning ordinance; and
33 provided further that, notwithstanding anything aforesaid, the
34 governing body may adopt an interim zoning ordinance pursuant to
35 subsection b. of section 77 of P.L.1975, c.291 (C.40:55D-90).

36 The zoning ordinance shall be drawn with reasonable
37 consideration to the character of each district and its peculiar
38 suitability for particular uses and to encourage the most appropriate
39 use of land. The regulations in the zoning ordinance shall be
40 uniform throughout each district for each class or kind of buildings
41 or other structure or uses of land, including planned unit
42 development, planned unit residential development and
43 **【residential】** cluster development, but the regulations in one district
44 may differ from those in other districts.

45 b. No zoning ordinance and no amendment or revision to any
46 zoning ordinance shall be submitted to or adopted by initiative or
47 referendum.

1 c. The zoning ordinance shall provide for the regulation of any
2 airport safety zones delineated under the "Air Safety and Zoning
3 Act of 1983," P.L.1983, c.260 (C.6:1-80 et seq.), in conformity with
4 standards promulgated by the Commissioner of Transportation.

5 d. The zoning ordinance shall provide for the regulation of land
6 adjacent to State highways in conformity with the State highway
7 access management code adopted by the Commissioner of
8 Transportation under section 3 of the "State Highway Access
9 Management Act," P.L.1989, c.32 (C.27:7-91), for the regulation of
10 land with access to county roads and highways in conformity with
11 any access management code adopted by the county under
12 R.S.27:16-1 and for the regulation of land with access to municipal
13 streets and highways in conformity with any municipal access
14 management code adopted under R.S.40:67-1. This subsection shall
15 not be construed as requiring a zoning ordinance to establish
16 minimum lot sizes or minimum frontage requirements for lots
17 adjacent to but restricted from access to a State highway.

18 (cf: P.L.1991, c.445, s.9)

19

20 14. Section 52 of P.L.1975, c.291 (C.40:55D-65) is amended to
21 read as follows:

22 52. A zoning ordinance may:

23 a. Limit and restrict buildings and structures to specified
24 districts and regulate buildings and structures according to their
25 type and the nature and extent of their use, and regulate the nature
26 and extent of the use of land for trade, industry, residence, open
27 space or other purposes.

28 b. Regulate the bulk, height, number of stories, orientation, and
29 size of buildings and the other structures; the percentage of lot or
30 development area that may be occupied by structures; minimum or
31 maximum lot sizes, or a combination thereof, and dimensions,
32 including provisions concerning lot-size averaging; minimum
33 improvable lot areas and cluster development, and for these
34 purposes may specify minimum or maximum floor areas, or a
35 combination thereof, floor area ratios and other ratios and
36 regulatory techniques governing the intensity of land use and the
37 provision of adequate light and air, including, but not limited to the
38 potential for utilization of renewable energy sources. Such
39 regulations may provide for the clustering of development between
40 noncontiguous parcels and may, in order to provide equitable
41 opportunities for the use of development potential on off-tract
42 locations in addition to authorized on-site development, and, to
43 encourage the flexibility of density, intensity of land uses, design
44 and type, authorize a deviation in various clusters from the density,
45 or intensity of use, established for the zoning district. The
46 regulations by which the design, bulk and location of buildings are
47 to be evaluated shall be set forth in the zoning ordinance and all
48 standards and criteria for any feature of a cluster development shall

1 be set forth in such ordinance with sufficient certainty to provide
2 reasonable criteria by which specific proposals for clustered
3 development can be evaluated.

4 c. Provide districts for planned developments; provided that an
5 ordinance providing for approval of subdivisions and site plans by
6 the planning board has been adopted and incorporates therein the
7 provisions for such planned developments in a manner consistent
8 with article 6 of P.L.1975, c.291 (C.40:55D-37 et seq.). The zoning
9 ordinance shall establish standards governing the type and density,
10 or intensity of land use, in a planned development. Said standards
11 shall take into account that the density, or intensity of land use,
12 otherwise allowable may not be appropriate for a planned
13 development. The standards may vary the type and density, or
14 intensity of land use, otherwise applicable to the land within a
15 planned development in consideration of the amount, location and
16 proposed use of open space; the location and physical
17 characteristics of the site of the proposed planned development
18 considering the availability of existing and proposed infrastructure
19 and the environmental characteristics of the parcel that will be
20 developed and the open space, agricultural or historical resources to
21 be protected; and the location, design and type of dwelling units and
22 other uses. Such standards may provide for the clustering of
23 development between noncontiguous parcels and may, in order to
24 encourage the flexibility of density, intensity of land uses, design
25 and type, authorize a deviation in various clusters from the density,
26 or intensity of use, established for an entire planned development.
27 The standards and criteria by which the design, bulk and location of
28 buildings are to be evaluated shall be set forth in the zoning
29 ordinance and all standards and criteria for any feature of a planned
30 development shall be set forth in such ordinance with sufficient
31 certainty to provide reasonable criteria by which specific proposals
32 for planned development can be evaluated.

33 d. Establish, for particular uses or classes of uses, reasonable
34 standards of performance and standards for the provision of
35 adequate physical improvements including, but not limited to, off-
36 street parking and loading areas, marginal access roads and
37 roadways, other circulation facilities and water, sewerage and
38 drainage facilities; provided that section 41 of P.L.1975, c.291
39 (C.40:55D-53) shall apply to such improvements.

40 e. Designate and regulate areas subject to flooding (1) pursuant
41 to P.L.1972, c.185 (C.58:16A-55 et seq.) or (2) as otherwise
42 necessary in the absence of appropriate flood hazard area
43 designations pursuant to P.L.1962, c.19 (C.58:16A-50 et seq.) or
44 floodway regulations pursuant to P.L.1972, c.185 or minimum
45 standards for local flood fringe area regulation pursuant to
46 P.L.1972, c.185.

47 f. Provide for conditional uses pursuant to section 54 of
48 P.L.1975, c.291 (C.40:55D-67).

- 1 g. Provide for senior citizen community housing.
- 2 h. Require as a condition for any approval which is required
3 pursuant to such ordinance and the provisions of this chapter, that
4 no taxes or assessments for local improvements are due or
5 delinquent on the property for which any application is made.
- 6 i. Provide for historic preservation pursuant to section 5 of
7 P.L.1991, c.199 (C.40:55D-65.1).
- 8 j. Provide for sending and receiving zones for a development
9 transfer program established pursuant to P.L.2004, c.2 (C.40:55D-
10 137 et al.).
- 11 k. Provide for areas to be developed and areas to be preserved
12 through cluster development or establish criteria for the
13 establishment of such areas for cluster development.
- 14 l. Provide that parcels that are developed and parcels that are
15 preserved through contiguous cluster or noncontiguous cluster may
16 be consolidated for tax and stewardship purposes if they are in
17 common ownership.
18 (cf: P.L.2004, c.2, s.39)

19

20 15. This act shall take effect immediately.

21

22

23 STATEMENT

24

25 This bill would amend the Municipal Land Use Law (MLUL) to
26 provide municipalities with more effective, fair, and affordable
27 tools to plan for livable neighborhoods and districts while
28 preserving farmland, open space, and historic sites. The bill would
29 expand upon the existing provisions of law that authorize cluster
30 development and clarify a provision of law that authorizes a related
31 planning tool, lot-size averaging. The bill is permissive,
32 authorizing municipalities and landowners additional options for
33 subdividing and developing land.

34 Under current law, clustering is a planning tool that allows
35 municipalities to permit development of one or more areas in a
36 more compact pattern than otherwise required in the zone, resulting
37 in the preservation of open space in the remaining land area or
38 areas. Two kinds of clustering are authorized in New Jersey today:

- 39 • “contiguous cluster,” where a parcel or set of adjacent parcels
40 are developed as a single entity that results in both
41 development and preservation; and
- 42 • “noncontiguous cluster,” where a set of non-adjacent parcels
43 are developed in the same way.

44 In both contiguous and noncontiguous clustering, the combined
45 development potential from the parcel or parcels is concentrated in
46 growth areas, resulting in more intense development of the growth
47 area than authorized under conventional zoning, and the remaining
48 land is permanently preserved. Cluster development, as opposed to

1 conventional development, allows municipalities and landowners to
2 concentrate development in areas where they agree that it makes
3 sense to target development. This can result in the establishment of
4 close-knit communities and allow for the more efficient provision
5 of infrastructure and local government services.

6 The bill amends the MLUL to make contiguous clustering and
7 noncontiguous clustering more effective and usable planning tools.
8 The bill responds, in part, to certain court decisions that have struck
9 down municipal cluster development ordinances because of a lack
10 of statutory authorization.

11 Current law authorizes the clustering of residential development
12 as a technique to preserve open space. The bill expands upon this
13 limited authorization by allowing municipalities to authorize the
14 clustering of residential, nonresidential, and mixed-use
15 development as a technique to preserve farmland, historic sites,
16 open space, or a combination thereof.

17 Current law specifically authorizes cluster development solely
18 within the context of planned developments, which, generally,
19 concern larger-scale developments and which impose more
20 requirements on both the applicant and the municipality. The bill
21 authorizes municipalities to use clustering through either the
22 provisions of a planned development or the zoning ordinance,
23 therefore encouraging the more effective development of smaller-
24 scale projects.

25 The bill authorizes municipalities to increase the development
26 potential in areas targeted for cluster development by assigning
27 density or intensity of use bonuses in order to create an incentive
28 for landowners to use the cluster development option.

29 The bill clarifies when noncontiguous clustering may be used
30 instead of a full transfer of development rights (TDR) program.
31 Under noncontiguous clustering, municipalities would be
32 authorized, but not required, to indicate “areas to be developed” and
33 “areas to be preserved,” or establish criteria for the selection of
34 such areas, both of which provide greater control over how
35 development would occur. A municipality may not, however,
36 utilize noncontiguous clustering to access the formal “density
37 transfer provisions” authorized by the TDR statute, which include
38 the allocation of severable development credits to sending-area
39 properties with the intent to create a market for their sale.

40 The bill clarifies that the MLUL authorizes “lot-size averaging”
41 by inserting that term into a provision of the MLUL that authorizes
42 municipal subdivision ordinances to include standards encouraging
43 and promoting flexibility, economy, and environmental soundness
44 in layout and design. This section permits a planning board to
45 approve the varying, within a conventional subdivision, of lot areas
46 and dimensions, and yards and setbacks otherwise required by
47 municipal development regulations in accordance with those
48 standards. The bill amends that section to afford planning boards

S2608 VAN DREW, OROHO

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1 greater discretion to approve subdivisions with varying lot areas,
2 provided that the authorized density on the parcel or set of
3 contiguous parcels is not exceeded. The bill also authorizes
4 municipalities to adopt lot-size averaging provisions as part of their
5 zoning ordinances.

6 The bill provides that a municipality would include any
7 provisions for cluster development in the land use plan element of
8 its master plan. The bill authorizes municipal zoning ordinances to
9 set forth ranges of permissible lot sizes, dimensions, and floor areas
10 for development within a zone, rather than setting forth specific lot
11 sizes, dimensions, and floor area ratios, thereby setting forth clear
12 parameters for boards and applicants when considering applications
13 involving clustering and lot-size averaging. The bill also authorizes
14 municipalities to include in their zoning ordinances provisions for
15 lot-size averaging, minimum improvable lot areas, and cluster
16 development.