



## Summary of the Cluster Development Bill

*Helping Towns Enhance the Value of Properties and Communities  
At a Lower Cost to Taxpayers*

**OVERVIEW:** This proposed bill amends the Municipal Land Use Law (MLUL) to provide municipalities with more effective, fair and affordable tools to plan for livable neighborhoods and districts while preserving farmland, open space and historic sites. The bill enhances the existing provisions for contiguous and noncontiguous clustering and lot-size averaging. It is permissive.

**BACKGROUND:** Clustering is a planning tool that allows municipalities to permit development in a compact pattern that results in the simultaneous preservation of open space, farmland, historic sites or other resources. Two kinds of clustering are authorized in New Jersey today: 1) “contiguous cluster,” where a parcel or set of adjacent parcels are developed as a single entity that results in both development and preservation; and 2) “noncontiguous cluster,” where a set of non-adjacent parcels are developed in the same way. In both types of clustering, the combined development potential from the parcel or parcels is concentrated in a growth area(s) that is developed more intensely, and the remaining land is permanently preserved. “Lot-size averaging” is an alternative to contiguous clustering that also provides municipalities with flexibility in defining residential subdivision requirements in a manner that leaves more open lands.

**NEED FOR IMPROVEMENTS:** The current MLUL provisions require updating and revision to make clustering work better. Noncontiguous clustering, in particular, may be used only in certain specified ways that limit its effectiveness. When municipalities have attempted to utilize it more broadly, the courts have struck down their ordinances as not being authorized by statute. Lot-size averaging, though it is used across New Jersey, has also not been explicitly authorized.

### **BILL PROVISIONS**

#### **General Provisions**

The bill is permissive. It provides municipalities with greater flexibility in planning for, and implementing, contiguous and noncontiguous cluster development:

- The bill authorizes municipalities to specify minimum and maximum lot sizes and dimensions, as well as minimum and maximum floor areas, allowing them to ensure compact development forms.
- The bill authorizes cluster development for residential, non-residential and mixed-use development.
- The bill allows three options for the land to be permanently preserved: 1) as open space and recreation land set aside either for the public or owners/residents of the cluster development; 2) as a historic site (which is a new option and has not yet been used); or 3) as an easement for agricultural use and production, consistent with the state’s farmland preservation program.
- The preservation lands may be conveyed to, or owned by, a separate person or entity, which makes implementation easier for developers and landowners.
- The bill ensures coordination with the master plan by calling for provisions for contiguous and noncontiguous cluster to be referenced in the Master Plan Land Use Element.

### **Noncontiguous Clustering**

The bill provides municipalities with greater control over how cluster development would occur, and clarifies their legal authority. Municipalities would be authorized to provide for “areas to be developed” and/or “areas to be preserved,” or to establish criteria for the selection of such areas. The bill also protects towns from a legal challenge by clarifying when noncontiguous clustering may be used instead of a full Transfer of Development Rights (TDR) program, by not allowing a municipality to utilize clustering to access the formal “density transfer provisions” authorized by the TDR statute, such as the allocation of severable development credits to sending-area properties with the intent to create a market for their sale and access to the state TDR Bank. (As such, the program is appropriate for more modest-scale cluster plans – where, typically, one or two developers could manage the transactions needed to develop the entire growth area. Noncontiguous clustering could also be used on a smaller scale, e.g., for preserving a single historic site.)

The bill streamlines the approval process for a noncontiguous cluster development application, by authorizing municipalities to permit clustering on noncontiguous lots through a conventional development application, or using the provisions of a Planned Unit Development. (Today, municipalities may approve a cluster application only as a Planned Unit Development, which has more requirements for both the applicant and the municipality.)

The program remains voluntary, not compulsory, on the part of landowners, and simply creates an additional option for subdividing and developing land. The bill authorizes towns to grant density bonuses for cluster development. Municipalities may need to increase the development potential of the growth area to ensure that it is similar in value to development according to the underlying zoning, which may be necessary if the types of residential units in the growth area are significantly smaller than those allowed by the underlying zoning. A municipality may choose to further increase the development potential in the growth area in order to create an incentive for landowners to cluster.

### **Lot-size Averaging**

Municipalities are authorized to adopt lot-size averaging provisions as part of a zoning ordinance, permitting a residential subdivision with minimum lot areas smaller than would otherwise be required, provided that the density permitted by the underlying zoning on the parcel(s) is not exceeded. All lots remain under private ownership. The bill gives towns the ability to limit the variation in lot sizes or impose no limitation.

**For more information, or to join our growing list of supporters, please contact Chris Sturm at 609-393-0008, x114 or [csturm@njfuture.org](mailto:csturm@njfuture.org).**