



Summary of the Cluster Development Act

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

OVERVIEW: Gov. Christie signed the cluster development bill into law on Aug. 7, 2013 (P.L.2013, c.106), following its unanimous passage through the legislature. This legislation 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 act enhances municipalities' ability to direct development and preservation by enhancing the existing provisions for contiguous and noncontiguous clustering and lot-size averaging. It is permissive.

Clustering allows municipalities to permit compact development that results in the simultaneous preservation of open space, farmland, historic sites or other resources. New Jersey authorizes two variants of cluster development:

- 1) Contiguous cluster— a parcel or set of adjacent parcels is developed as a single entity;
- 2) Noncontiguous cluster— a set of non-adjacent parcels is treated the same way.

In both options, 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.

STRENGTHENS MUNICIPAL AUTHORITY: The revised MLUL provisions give municipalities the clear legal authority to designate growth areas and preservation areas, and also streamlines implementation. Prior to the passage of the new law, unclear provisions in the MLUL caused the courts to strike down two municipal cluster ordinances. The law gives clear legal authorization for lot-size averaging, a practice already used across New Jersey.

PROVISIONS OF THE NEW LAW

General Provisions

The noncontiguous cluster is permissive, providing municipalities with greater flexibility in planning for, and implementing, contiguous and noncontiguous cluster development:

- Municipalities can specify minimum and maximum lot sizes and dimensions, as well as minimum and maximum floor areas, allowing them to ensure compact development forms.
- Municipalities can utilize cluster development for residential, non-residential and mixed-use development.
- Municipalities can utilize clustering to permanently preserve: 1) open space and recreation land set aside either for the public or owners/residents of the cluster development; 2) historic site (which is a new option and has not yet been used); or 3) an easement for agricultural use and production, consistent with the state's farmland preservation program.

- Preserved lands may be conveyed to, or owned by, a separate person or entity, which makes implementation easier for developers and landowners.
- Clustering ensures coordination with the master plan by requiring that provisions for contiguous and noncontiguous cluster are referenced in the Master Plan Land Use Element.

Noncontiguous Clustering

Under the new law, municipalities have greater control over how cluster development occurs, and clarifies their legal authority. Municipalities are now authorized to provide for “areas to be developed” and/or “areas to be preserved,” or to establish criteria for the selection of such areas. Towns are now protected 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 can 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. Previously, municipalities could approve a cluster application only as a Planned Unit Development, which had 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 act 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. Under the new law, towns have the ability to limit the variation in lot sizes or impose no limitation.

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