

Introduction to Non- Contiguous Clustering

A Guide for New Jersey
Municipalities

Includes recent amendments to the New Jersey Municipal Land Use Law allowing for the expansion of non-contiguous clustering as a planning tool. Written by Ben Spinelli for New Jersey Future with support from the Bunbury Fund.*

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Table of Contents

Introduction	2
Non-Contiguous Cluster Overview	4
What Is Non-Contiguous Clustering?	4
Non-Contiguous Clustering vs. Other Types of Density Transfers	6
Why Non-Contiguous Clustering?	8
How Did The Law Governing Non-Contiguous Clustering Change?	10
Creating A Non-Contiguous Clustering Ordinance	13
Advantages of Non-Contiguous Clustering	15
Disadvantages of Non-Contiguous Clustering	17
Economic Implications	18
Market Analysis	19
Adequacy of Demand	19
Value to the Parties	19
Summary of Economic Considerations	21
Implementation	22
What is Required to Implement Non-Contiguous Clustering?	22
Important Considerations	25
Characteristics of the Preservation Parcels	25
Characteristics of the Development Area	26
Restrictions Placed on Preserved Parcels	27
Additional Considerations	30
Non-Contiguous Clustering in Practice	31
The Robbinsville Model	32
The Delaware Township Model	34
Other Examples	36
Implementation Overview	42
Summary	43
Acknowledgements	45
Appendix	
I- Text of P.L. 2013, Chapter 106	ii
II-Green Acres Deed Checklist	xxix
III-SADC Approved Agricultural Deed of Easement for Non-Contiguous Cluster Protection	xxx
IV-N.J. Historic Trust Easement Template	xxxvii
V-Links to Existing Municipal Non Contiguous Clustering Ordinances	lii

Introduction to Non-Contiguous Clustering

A Guide for New Jersey Municipalities

Introduction

Establishing a vision for a community's future is perhaps the most important job of any municipal official. Managing the growth of a municipality is also one of the most challenging tasks. Municipal leaders have relied on standard zoning principles to plan the future of their communities for more than a century. The basic techniques, known as Euclidian Zoning, govern elements such as lot size, lot coverage, building sizes and heights and use types. These zoning provisions are highly useful, but also somewhat limited in what they can accomplish. Fortunately, municipalities have a number of additional provisions to employ in reaching their planning goals.

New Jersey's Municipal Land Use Law¹ (MLUL) provides a legal framework for the application of zoning principals. The MLUL also contains a number of aspirational goals for what land use law in the state should accomplish. In recognition of the limitations that basic zoning techniques present for reaching the goals contained in the MLUL, the legislature has added a number of provisions authorizing innovative tools that communities can utilize to help achieve those goals. Non-contiguous parcel clustering is one of those tools.

First authorized in 1996, non-contiguous clustering is a variation on the land use concept of cluster development. Unlike basic cluster development which sets aside a portion of a single development site as open space and concentrates all of the site's development on the remaining land, non-contiguous clustering allows a municipality to extend this concept to multiple tracts of land. As the name describes, the properties need not be contiguous and they need not be in common ownership. This provision allows for a developer to create a single project using the density potential of two (or more) different parcels of land. The tracts involved in the project will be designated for either development or preservation. The tract(s) designated for development will be built-out at an increased density while the tract(s) designated for preservation will be preserved in perpetuity.

Non-contiguous clustering can be used to effectuate preservation of open space, recreational lands, historic resources or agricultural land. It can foster both residential and non-residential development. Municipalities looking for a means to have greater control over their patterns of development as well as a way to supplement traditional

preservation efforts without spending acquisition funds should strongly consider the use of non-contiguous clustering where appropriate.

This methodology is similar in nature to the use of Transfer of Development Rights (TDR) with some important differences. Developments utilizing the non-contiguous clustering method require the developer to designate a tract(s) of land that will be protected from future development and a tract(s) where development will take place. The property designated for development will accommodate both the base levels of development allowable under the existing zoning for that property as well as the allowable base development that would have taken place on the tract designated for protection. Non-contiguous clustering can be used to manage residential, non-residential and mixed-use development. Municipalities may also offer an additional density bonus on the property that will be developed as an incentive for using this planning tool.

There are advantages on every side of the clustering transaction, which includes the owners of land designated for preservation, developers or owners of land slated for increased density and the community at-large. Land owners have more options for both preservation and development. Developers have the ability to respond to a changing market and reduce risk and costs. Municipalities have the opportunity to meet multiple planning goals in a manner that is sustainable from an environmental, economic and social standpoint. The resulting preservation of land that comes with the use of non-contiguous clustering helps to build community support for new growth and by avoiding “sprawl” development and focusing the scale to that of a pedestrian, the noncontiguous cluster provisions can help create attractive communities that create value.

Although there are a number of benefits that the use of non-contiguous clustering offers, this method has only been used sparingly in New Jersey since its creation. A lack of familiarity, complexity and the need for infrastructure for resulting denser development are just a few of the obstacles that have stood in the way of wider acceptance of this tool. This report addresses some of those issues and offers guidance for planners and municipal officials looking to bring the advantages of non-contiguous clustering to their community. This is a planning tool with tremendous potential for municipalities that seek to go beyond merely using land preservation as a means of stopping development.

The non-contiguous clustering provisions of the MLUL were recently amended to make this technique easier for municipalities to employ. Adding non-contiguous clustering to the array of options that a community can incorporate into their planning arsenal can provide a number of possibilities for municipal leaders to formulate and implement innovative plans for the future. This analysis is intended to help elected officials, planning and zoning board members and municipal planners understand what non-contiguous clustering is, what steps need to be taken to integrate this practice into a municipal zoning plan, what considerations need to be evaluated and

evaluate what the ultimate benefits can be. Non-contiguous clustering can be an extremely valuable addition to a community's planning toolbox.

The land use law contains a number of ambitious stated purposes that are intended to address the challenges facing New Jersey's municipalities trying to chart a sustainable and prosperous future in the nation's most densely populated state. Achieving those goals can prove to be elusive in our state's challenging environment where economic, environmental and social pressures constantly provide obstacles to overcome. However, finding methods that will alter development patterns, use market forces to attain municipal goals, create communities that are designed to be viable and supportable for the long-term has proven to be an elusive goal. This analysis of the non-contiguous clustering provisions of the MLUL will evaluate the benefits, discuss recent changes to the law, the important considerations that must be taken into account, the limitations and obstacles to utilizing this planning tool and examples of non-contiguous clustering in practice.

The ultimate aim is to provide guidance to communities to help formulate a plan using non-contiguous clustering in a manner that can actually be implemented. This document is intended to provide municipalities with an introduction to the advantages of non-contiguous clustering. It is not a substitute for the advice of a municipality's professionals. Communities that wish to investigate or utilize non-contiguous clustering should always seek advice of legal counsel, the municipal planner and consult the governing statutes before enacting any land use ordinances.

Non-Contiguous Cluster Overview

What Is Non-Contiguous Clustering?

Under current law, clustering is a planning tool that allows municipalities to permit development of one or more areas in a more compact pattern than would otherwise be allowed in the zone, resulting in the preservation of open space in the remaining land area or areas. Two kinds of clustering are authorized in New Jersey today: "contiguous cluster," where a parcel or set of adjacent parcels are developed as a single entity that results in both development of a portion of the parcel and the preservation of the remainder; and "noncontiguous cluster," where a set of non-adjacent parcels are developed, with one parcel(s) accepting increased density and the other parcel(s) being preserved.

Clustering ordinances have been used by municipalities for decades. Most towns are familiar with the clustering concept that takes the sub-division development potential of a single large tract and concentrates it in on a portion of that large parcel while preserving the remaining area as open space. Rather than covering an entire tract with uniformly sub-divided lots, the same numbers of allowable lots are created on

the portion of the property most suitable for development. The remaining land then becomes common open space that may be owned by a homeowner's association or deeded to either the municipality or to a non-profit land trust and will remain undeveloped in perpetuity. The overall density of development of the property will generally remain unchanged. Municipalities also have the option of offering density bonuses on the developed portion of the land to incentivize the use of clustering. In these instances there may be a slight increase in the total density. This is contiguous clustering.



BASE ZONING

In both contiguous and noncontiguous clustering, the combined development potential from the parcel or parcels is concentrated in growth areas, resulting in more intense development of the growth area than authorized under conventional zoning, and the remaining land is permanently preserved. Cluster development, as opposed to conventional development, allows municipalities and landowners to concentrate development in areas where they agree that it makes sense to target development. If a

municipality adopts design criteria for the developed portion of the project it will also allow for a higher degree of control over the character and nature of the development that takes place on the development end of the transaction.

The end result of a properly implemented clustering provision should be the establishment of well-designed close-knit communities which allow for the more efficient provision of infrastructure and local government services. The use of innovative designs and creating new neighborhoods that don't have a "cookie cutter" sub-division appearance can be achieved by allowing flexibility in the creation of developments on the development side of the transaction. Achieving this end may require the adoption of design standards by the municipality to accompany the clustering provisions.



DEVELOPMENT POTENTIAL FROM NON CONTIGUOUS PARCELS TRANSFERRED TO RECEIVING PARCEL

The concept of non-contiguous clustering extends the concept of clustering development on a single property to multiple tracts of land which need not be adjoining or contiguous. In fact in most cases it is likely preferable for the tracts to be substantially separated and to exhibit differing characteristics which will make one tract suitable for development and the other suitable for preservation. However

instead of concentrating development onto a portion or portions of a single property which occurs with a traditional contiguous cluster development, the entire development potential of the donor tract can be transferred to a tract targeted for increased development that will be built out at densities in excess of the base zoning. The tract that is suitable for preservation has permanent restrictions placed upon it that can result in permanent preservation of the parcel as common or public open space, farmland or a protected historic resource without the investment of public funds to purchase that property.

Non Contiguous Clustering vs. Other Types of Density Transfers

Conventional Development

- "Large Lot Zoning"
- Uniform Lot Sizes
- Development covers most, or all, of the site



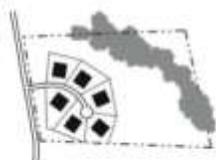
Conventional "Euclidian" zoning has been the dominant implementation mechanism of land use planning. The designation of uses, the prescription of lot sizes and control of development factors such as impervious coverage are the foundations of land use law. The provisions and concepts are familiar to municipal officials and planning professionals. The laws governing its use are extensive and have been thoroughly examined by the court system. It offers

predictability and stability in planning the future of a community. It is also limited in the results that can be expected when it is the only planning tool used to chart the development future of a municipality.

Contiguous clustering involves taking a single tract of land, even if it consists of multiple base lots, assessing the sub-division potential of that tract and then building out the full potential of the tract on only a portion the entire tract is a fairly simple and well-used practice. Enabling ordinances generally require a developer to submit a conforming sub-division plan to establish the total number of allowable lots on a tract and then create a second plan concentrating that allowable number of lots on the portion of the property most suitable for development. The result would be smaller lots than would normally be allowable covering only a portion of the original tract. The remaining land would be placed in common ownership with deed restrictions on its use as set forth in the MLULⁱⁱ.

Contiguous Cluster Development

- Development is concentrated on a portion of the site
- Remaining land is permanently preserved as open space or farmland

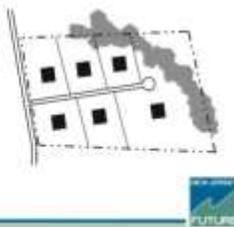


Most clustering ordinances have both a minimum size of the overall tract necessary to even consider clustering and a minimum lot size for the resulting clustered lots. The purpose of contiguous clustering is generally the desire to create a more aesthetically pleasing layout than would otherwise be achieved through simply sub-dividing the tract

into conforming lots. As an additional benefit, this method of development results in the creation of significant open space areas which may or may not be accessible to the public. The key to this mechanism is the common ownership of the original tract by the applicant; therefore the impact of using clustering is limited to the single common tract.

Lot Size Averaging

- Same number of units
- Lot sizes may be varied
- Goal is to create a private lot that is large enough to support a small farm or open space



A similar provision allows for lot size averaging. The MLUL authorizes deviation from standard lot sizes within a subdivision for the purpose of protecting specific features that may exist on the parent tract.ⁱⁱⁱ Lot size averaging provides flexibility in the layout of a subdivision and can be implemented to provide protection to features such as agricultural land, stream corridors or to deal with topographic constraints. Similar to the clustering ordinances, a minimum reduction

of lot size can be included. By allowing the reduction in the permitted minimum size of lots offset by increasing the size of other lots in the proposed development land disturbance and construction can be guided away from the features that are targeted for protection. However, lot size averaging has significant limitations. This tool will not provide for the creation of public open space and will result in the incorporation of all land in the development being assigned to building lots.



TDR RECVING ZONE, CHESTERFIELD TOWNSHIP

The other method of manipulating densities as part of the sub-division process is the use of Transfer of Development Rights (TDR). The New Jersey Statewide Transfer of Development Rights Act^{iv} sets forth the requirements for a TDR program. The use of TDR requires the establishment of formal sending and receiving zones and the assignment of development credits within the sending zone. Municipalities that have established development transfer ordinances

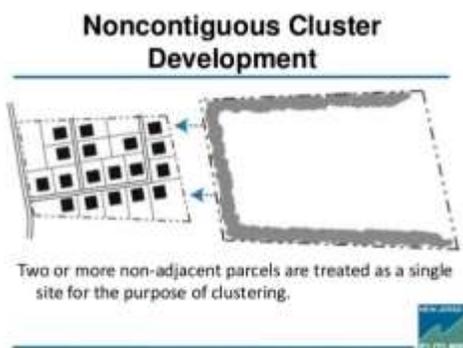
may use the State TDR Bank, establish their own transfer of development rights bank or use a county managed bank, if available, to facilitate transfers within their jurisdiction. The TDR bank is utilized to facilitate the trading, sale and transfer of development credits. Prior to adoption, a municipality must conduct a detailed market analysis of their community to support the enactment of a TDR program. The use of TDR's also requires plan endorsement from the State Planning Commission. The enactment of a TDR program is necessarily a comprehensive and involved process that can take several years to implement. There are few examples of successful TDR programs in

New Jersey, primarily because of the complexity of the procedure. Chesterfield Township in Burlington County and the Transfer of Development Credits program in the Pinelands regional planning area are two instances where TDR is working well but required specific circumstances to allow for the effective utilization of this planning method.

The biggest advantage of enacting and implementing a non-contiguous clustering ordinance is that it isn't TDR. A municipality can achieve many of the same goals without the major investment of resources and finances needed to enact and implement a Transfer of Development Rights program. A non-contiguous clustering provision does not require the detailed planning studies, infrastructure plans, population and economic growth estimates, land value estimates and the use of a transfer bank required for a TDR program. A properly crafted non-contiguous cluster ordinance provides a simpler and more straight-forward means of accomplishing the relocation of development from areas targeted for preservation and shifting it to a more desirable setting. It permits a direct transaction between individual property owners on a market basis with a predictable outcome. This is especially advantageous in communities where the scale of the density transfer and the number of transfers is anticipated to be low.

Why Non-Contiguous Clustering?

Non-contiguous clustering can provide a community with a number of benefits. The first is the ability to manage the geographic distribution of density in a manner that traditional zoning tools can't. The second is to bring another mechanism to open space preservation efforts-one that doesn't require the expenditure of public funds. Tracts can be preserved as farmland historic resources or open space while other parcels are developed at a higher density than would otherwise be permitted. The third is the ability to plan and manage the character of development on the development end of the transactions. Combining non-contiguous clustering with the use of design criteria such as form-based codes can be used to create developments that feature aesthetic and functional elements that could not be achieved through traditional "grid and sub-divide" methods of land use approval.



Non-contiguous clustering is a much simpler method for managing development and shaping the character of a community than the use of a Transfer of Development Rights. While there are similarities between TDR and non-contiguous clustering, such as geographically shifting density within a municipality, in practice the implementation of non-contiguous clustering is far more

straight-forward. Municipalities may designate certain zones within the municipality where properties are eligible for inclusion as parcels targeted for conservation or preservation and zones where tracts can be considered for increased density, but overall, once authorized, it is driven by private transactions and market forces.

In contrast with a TDR program, non-contiguous clustering is a voluntary development methodology. It requires either the agreement between the owners of two or more different parcels of land to pursue development approval with one owner developing their land while the other agrees to limit development or control of the different parcels by a single entity. Because this is a more complex transaction, a municipality may wish to offer land owners incentives such as a density bonus or considerations in the approval process regarding access to infrastructure to encourage its use.

The use of non-contiguous clustering has received a great deal of attention from the state's agricultural community. Non-contiguous clustering is viewed as both a supplement to diminishing farmland preservation funds and an alternative to the use of down zoning by municipalities to limit development. Advocates for the farming industry are also promoting allowances for the use of on-site wastewater treatment for the developed parcels in a non-contiguous cluster transaction. The State Agriculture Development Committee was a participant in the NJ Future Task Force investigating and advocating for the 2013 updates to the MLUL addressing issues with non-contiguous clustering. The New Jersey Farm Bureau adopted official policies in support of fostering and expanding the use of non-contiguous clustering as a planning tool.^v The recognition of the value that non-contiguous clustering can offer land owners, particularly agricultural land owners is an important part of building awareness of the tools potential and creating a constituency to advocate for its use.

A number of municipalities have already adopted ordinances to implement non-contiguous clustering. They have pursued this new technique with the aim of preserving farmland and open space through private market transactions. Robbinsville and Plainsboro, both in Mercer County, have had some success with the use of this planning method. Their experiences, along with those of other communities that have explored the use of non-contiguous clustering are discussed at length later in this report. These two municipalities, in particular, have achieved some level of progress by acting to preserve specific parcels and transferring that density to other parcels with specific development goals in mind.

Their experience reveals that three critical players must reach agreement for a density transfer based on this technique to take place: the municipality, the landowners, and the developer. There needs to be value for each participant in order for this technique to be employed successfully. A cooperative developer who recognizes the added value realized though the increased marketability of a unique well-designed neighborhood is essential. Equally, a municipality must be willing to take the risk of employing an innovative planning strategy and have a vision for its future and the role that non-contiguous clustering can play in achieving that end. Finally, there has to be financial

benefit to the landowners involved that equal or exceed what would be realized by either selling to a developer or through an open space or farmland preservation transaction.

How Did The Law Governing Non-Contiguous Clustering Change?

The original “Ogden Amendment”^{vi} that allowed the concept of clustering to be extended to non-contiguous parcels was enacted by the legislature in 1996. This revision to the Municipal Land Use Law (MLUL) specifically authorized clustering concepts to be applied to non-contiguous parcels of land. There were a number of allowances contained in this legislation that sought to practically enable the use of non-contiguous clustering and make it a useful tool. The provisions included elements such as an exemption from detailed economic analyses (in contrast to TDR), the authorization to use non-contiguous clustering on any scale consistent with the MLUL, flexibility with locating density on the parcels involved in the transaction and the ability to use non-contiguous clustering for the transfer of residential and non-residential development or for the transfer or both in the same transaction. However, the original terms of the legislation required that non-contiguous clustering be used only in conjunction with “planned developments”.

Such standards may provide for the clustering of development between noncontiguous parcels and may, in order to encourage the flexibility of density, intensity of land uses, design and type, authorize a deviation in various clusters from the density, or intensity of use, established for an entire planned development. The standards and criteria by which the design, bulk and location of buildings are to be evaluated shall be set forth in the zoning ordinance and all standards and criteria for any feature of a planned development shall be set forth in such ordinance with sufficient certainty to provide reasonable criteria by which specific proposals for planned development can be evaluated.^{vii}

Overall the provisions were not entirely clear on the details of how this mechanism would work in practice. It did not include a requirement for deed restrictions memorializing the preservation aspect of the development transaction. The provisions of this amendment were detailed in a report by Dr. David Kinsey prepared for the N.J. Office of State Planning, *Noncontiguous Parcel Clustering: A New Technique for Planned Density Transfers, Technical Reference Document #128*. However, the statute itself contained little direction on the actual implementation of non-contiguous clustering.

Several communities adopted non-contiguous clustering ordinances and attempted to put the new law into practice. Nine successful examples are discussed further on in this guide and were detailed in the NJ Future report, *Preserving Land Through Compact Growth: Case Studies of Noncontiguous Clustering in New Jersey*. The efforts of two other municipalities to utilize density transfers under the non-

contiguous clustering provisions (Franklin Township, Gloucester County and Springfield Township, Burlington County) were challenged in court. The two resulting court decisions made it clear that the method by which non-contiguous clustering could be implemented had to be carefully thought out^{viii}. The use of non-contiguous clustering could easily cross into the realm of practices that actually fit the definition of a Transfer of Development Rights program. The use of TDR was only statutorily authorized in a defined set of circumstances and there were a number of specific requirements necessary to meet the standards for such a program. Non-contiguous clustering could not be used as a shorthand method of implementing a TDR plan.

These legal challenges combined with the limitations of using non-contiguous clustering only in conjunction with planned unit developments led to very limited use of the method. The infrequent application of non-contiguous clustering and the legal questions surrounding its implementation prompted New Jersey Future to study why this tool was not being employed. This resulted in a series of recommendations to the state legislature for changes to the law designed to expand the circumstances under which non-contiguous provisions could be utilized. The recommendations also addressed ways of providing municipalities with greater flexibility in employing this planning method. In August 2013^{ix}, a number of amendments to the Municipal Land Use Law were adopted by the legislature to clarify the circumstances where non-contiguous clustering could be utilized, to define the purposes that this methodology could be used for on the conservation side and to simplify the implementation of this planning approach.

The bill authorized municipalities to include provisions in their zoning ordinances for lot-size averaging and cluster development. The changes were incorporated in a number of different sections of the MLUL including updates to definitions and specific authorizations to approve developments as a part of a non-contiguous cluster plan. It required municipalities to update the land use element of their master plans if they choose to enact a non-contiguous clustering provision. The changes authorized municipal zoning ordinances to set forth ranges of permissible lot sizes, dimensions, and floor areas for development within a zone, rather than setting forth specific lot sizes, dimensions, and floor area ratios. This allowed municipalities to set clear parameters for boards and applicants when considering applications involving clustering and lot-size averaging. The bill also authorized municipalities to include provisions for minimum improvable lot areas for cluster developments.

The goal was 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 amendments expanded upon the existing provisions authorizing cluster developments and clarified a provision of law that authorized a related planning tool, lot-size averaging. The amendments addressed both the development side of the equation by making it clear that non-contiguous clustering could be used by municipalities to authorize the clustering of residential, nonresidential and mixed-use development as well as the preservation side by making

it clear that the preservation purposes could include preservation of farmland, historic sites, open space, or a combination thereof. The revisions defined non-contiguous clustering as:

Noncontiguous areas to be developed as a single entity according to a plan containing an area, or a section or sections thereof, to be developed for residential purposes, non-residential purposes, or a combination thereof, at a greater concentration of density or intensity of land use than authorized within the area, section, or sections, under conventional development, in exchange for the permanent preservation of another area, or a section or sections thereof, as common or public open space, or for historic or agricultural purposes, or a combination thereof.^x

The prior existing law had specifically authorized cluster development solely within the context of planned developments. This generally involved larger-scale developments that imposed more requirements on both the applicant and the municipality to implement a development under its provisions. The new legislation authorizes municipalities to use clustering through either the provisions of a planned development or the zoning ordinance, therefore encouraging the more effective development of smaller-scale projects. It also made it clear that non-residential development could be part of the equation.

The new legislation authorizes municipalities to increase the development potential in areas targeted for cluster development by assigning density or intensity of use bonuses in order to create an incentive for landowners to use the cluster development option. This was an important addition to encourage the use of this planning tool. Additionally, the changes made to the legislation clarify when noncontiguous clustering may be used instead of a full transfer of development rights (TDR) program. Under the new noncontiguous clustering provision, municipalities would be authorized, but not required, to indicate “areas to be developed” and “areas to be preserved,” or establish criteria for the selection of such areas, both of which provide greater control over how development would occur. In direct response to the decision in the Franklin Township decision the amendment made it clear that a municipality may not utilize noncontiguous clustering to access the formal “density transfer provisions” authorized by the TDR statute, which include the allocation of severable development credits to sending-area properties with the intent to create a market for their sale. It also made clear that use of non-contiguous clustering must be through a voluntary permissive application.

The bill clarifies that the MLUL authorizes “lot-size averaging” by inserting that term into a provision of the MLUL that authorizes municipal subdivision ordinances to include standards encouraging and promoting flexibility, economy, and environmental soundness in layout and design. This section permits a

planning board to approve the varying, within a conventional subdivision, of lot areas and dimensions, and yards and setbacks otherwise required by municipal development regulations in accordance with those standards. The bill amends that section to afford planning boards greater discretion to approve subdivisions with varying lot areas, provided that the authorized density on the parcel or set of contiguous parcels is not exceeded. The bill also authorizes municipalities to adopt lot-size averaging provisions as part of their zoning ordinances.

The bill provides that a municipality would include any provisions for cluster development in the land use plan element of its master plan. The bill authorizes municipal zoning ordinances to set forth maximum lot size, ranges of permissible lot sizes, dimensions, and floor areas for development within a zone, rather than setting forth specific lot sizes, dimensions, and floor area ratios, thereby setting forth clear parameters for boards and applicants when considering applications involving clustering and lot-size averaging. It specifically provides:

...[S]uch regulations may provide for the clustering of development between noncontiguous parcels and may, in order to provide equitable opportunities for the use of development potential on off-tract location in addition to authorized on-site development, and to encourage the flexibility of density, intensity, of land uses, design and type, authorize a deviation in various clusters from the density, or intensity of use, established for the zoning district. The regulations by which the design, bulk and location of buildings are to be evaluated shall be set forth in the zoning ordinance and all standard and criteria for any feature of a cluster development shall be set forth in such ordinance with sufficient certainty to provide reasonable criteria by which specific proposals for cluster development can be evaluated.^{xi}

This provision provides municipalities with a great deal of flexibility for the design criteria for the development that will take place on the development side of the transaction. This is an important consideration. There are not many avenues for a municipality to exercise a great deal of control over the design of the final product.

Creating a Non-Contiguous Clustering Ordinance

A municipality needs to carefully evaluate the existing conditions in their community before proceeding. The municipal planner should be tasked with a review of the community's master plan and zoning ordinances and to identify where a non-contiguous cluster provision could foster the goals and vision of the municipality. This analysis should include preservation goals as well as both residential and non-residential development. While the law is permissive, any municipality electing to employ non-contiguous clustering must amend the land use element of the municipal

master plan to incorporate the use of non-contiguous clustering^{xii}. The multiple planning goals that can be addressed through the use of this planning tool and the inter-relationship of preservation and development goals make a comprehensive re-examination of the master plan an advisable step as well to insure consistency.

There are a number of communities that have adopted non-contiguous clustering ordinances and it is worthwhile to review these existing provisions for some guidance. Links to currently enacted ordinances are included in this report for reference. A municipality has a large degree of flexibility in defining the purposes for preservation and the conditions that must exist as a pre-requisite for implementing a non-contiguous clustering project. The use of incentives, such as density bonuses, should also be considered. However, clearly identifying your community's goals on both the preservation and development sides of the equation is an essential step.

It is essential to craft an ordinance that easily understood and not overly complex. It should contain a clear path to approval by the local planning board with unambiguous requirements, distinct steps and an articulated description of the circumstances where non-contiguous clustering is appropriate. Without these provisions the ordinance will not be employed and there will be little public support for its use.

Implementation of this form of clustering is reliant upon private agreement between one or more individual property owners who must all see both value and ease of use in order to utilize this mechanism. The following elements are recommended to be incorporated into a non-contiguous clustering ordinance:

1. A clearly stated conservation or preservation goal. This may be centered on environmental resources, active agricultural lands or an historic district. Whatever the goal of your community may be, it should be clearly articulated. This vision should be contained in both the community's master plan and in the enabling ordinance.
2. A geographic description of the areas of your community that are appropriate as locations that where development will be discouraged or a set of criteria by which they can be identified. This should identify where the resources targeted for protection exist. These locations should be assigned appropriate base densities and zoning designations.
3. Geographically defined areas where increased density is appropriate, or a set of criteria by which they can be identified. This area(s) should have appropriately assigned base densities. It should be carefully delineated and clearly identified with many of the same considerations used in designating a planned center.
4. Appropriately determined maximum densities that can be reached through the use of non-contiguous clustering.
5. Clearly stated criteria for approval of projects utilizing non-contiguous clustering.

6. Design standards on the development end of the transaction to insure that resulting development is consistent with a community's vision for its future.
7. Appropriate accommodations for necessary infrastructure, either existing or proposed, in the area of the community targeted for increased development.
8. Potentially, the allowance for incentives such as density bonuses on the development end of the proposal, reduced development fees or expedited review procedures for extension of infrastructure to overcome the burden of additional requirements under the ordinance.

Depending upon the circumstances and specific goals in the municipality, incorporating provisions that are designed to make the use of non-contiguous clustering a preferred alternative should be carefully considered. Unduly burdensome requirements will frustrate implementation of the ordinance. Conversely, municipalities need to be cautious because the increased densities allowed by the use of this tool carry a responsibility to insure that development will be sustainable from an economic, social and environmental standpoint. Factors such as the ability to support denser development with potable water, wastewater treatment, roads, utilities, school capacity and services like fire protection need to be carefully evaluated. The municipality is ultimately accountable for the results achieved. The community as a whole will either benefit from a well-planned implementation of non-contiguous clustering or will need to account for the consequences of a poorly conceived scheme.

Advantages of Non-Contiguous Clustering

Implementation of the noncontiguous cluster can allow a municipality to achieve some of its community goals in an affordable way. If a community expresses an interest to permanently preserve farmland, open space, or sites of cultural or historic significance, a municipality can encourage the use of the noncontiguous cluster to protect these interests. The noncontiguous cluster also encourages compact growth, which means a lower cost for municipal infrastructure and services than with sprawl development, such as fewer miles of road upkeep (plowing and/or sweeping) and maintenance.

In addition, “large lot development” does not have the same market appeal as it once did, particularly in rural areas. By providing landowners the option to utilize noncontiguous clustering, it enables the zoning ordinances to be more responsive to changes in market demand without a wholesale revision to the municipal zoning ordinance and master plan. There are a number of municipal planning goals that can be significantly advanced with the use of non-contiguous clustering. These include:

- Affordably achieving community preservation and development goals
- Preserve land or historic sites with private funds
- Enable implementation of innovative design standards

- Encourage walkable, pedestrian-oriented growth, which has lower costs for infrastructure and services
- Flexibility within the zoning code, granting the developer an opportunity to build compact development that meets market demand.
- Building community support for new development through investment in preservation
- Avoiding sprawl
- Creation of mixed use development

Municipalities are always struggling with the issue of control over the character and composition of new development. Non-contiguous clustering offers a way to encourage, not only the geography of where development is encouraged and where it is discouraged, but also the ability to influence the nature or “look” of new development. Combining the implementation of a non-contiguous clustering provision with design standards such as form-based codes can allow a municipality to influence new development in a manner that traditional zoning does not. It also allows the private market to provide the financial component of achieving an ambitious community vision, thereby lessening the burden on local taxpayers.

From a strictly financial standpoint, the ability to preserve land at little or no public cost is in and of itself of tremendous benefit. The average per acre cost to purchase the development rights of a farm in New Jersey is \$7,525.00 per acre. There is a high degree of variability across the state with costs ranging from a low of \$2,755.00 per acre in Cumberland County to a high of \$63,399.00 per acre in Passaic County^{xiii}. The cost of fee simple purchases of land for open space and recreational purposes are even higher. Even one significant transaction completed utilizing non-contiguous clustering can offer substantial economic savings to a municipality. If broader planning goals can be achieved in addition to those economic benefits, the potential value in using this planning tool is clear.

For land owners, the use of this tool creates new options. The owners of large lots in the designated preservation zones can access equity without selling land if the aim is farmland preservation. These landowners also have access to a private market transaction for preservation as an alternative to existing public programs. Downzoning doesn't equate to a loss of equity and land value does not diminish. It also gives landowners another alternative to keeping their land “as is,” without having to sell to a developer. This is especially true for property owners who would like to preserve their land under existing public land preservation programs but may not qualify because their land does not rank high enough to be selected for preservation in a highly competitive environment. This may be particularly advantageous for preserving farmland that is scattered or isolated or that may be outside of a designated agriculture development area as defined by the State Agriculture Development Committee and designated by the County Agriculture Development Board.

Landowners in the development or growth areas have an additional option for selling or developing their land beyond the existing “of right” potential under existing zoning. This may translate to both increased marketability of the property and higher value. Many of the development options offered by the use of non-contiguous clustering align with a growing sector of market demand in the housing sector. As “walkable” communities become more and more popular developers can create communities that will attract investment and meet the needs of this growing market sector. By clustering development, a developer also has lower costs for roads and other infrastructure. Increased marketability and decreased infrastructure costs translate into reduced risk for developers making the property more attractive.

Disadvantages of Non-Contiguous Clustering

There are a number of structural elements that are inherent to a non-contiguous clustering program that make implementation difficult. Beyond the permissive and voluntary nature of the tool that makes its use subject to private agreement, there are other considerations that need to be accounted for. Some, such as control of the properties involved in a transaction are situational issues that can be overcome. Others, such as the need for infrastructure can be real impediments to the use of this planning tool. Understanding the obstacles that a municipality will face in utilizing non-contiguous clustering is important both for comprehending the realistic potential for successfully achieving a municipality’s desired goals and for identifying practices or policies that can foster the use of this method.

Control of property is a basic element of implementation. Either a single owner or entity must own or otherwise control multiple properties in both the preservation and development portions of the community or an agreement must be reached between multiple property owners in both areas of the town. This merely complicates the transaction and is not necessarily an obstacle. However, it does mean that circumstances have to be aligned to allow the interests of property owners to be served by taking advantage of the non-contiguous provisions. Market conditions need to be advantageous on both sides of the transaction.

The use of non-contiguous clustering will be more complex than a simple “of right” land use application under the existing base zoning. New Jersey is an expensive and sometimes difficult place to pursue development approvals. The local planning or land use board and their professionals need to be fully conversant in both the ordinary approval process and in the use of this alternative development method. This is necessary to both accommodate the interests of an applicant and assure the applicant a fair and efficient approval process and to protect the interests of the community. If approved, there will be a development at higher than “normal” density and there will need to be appropriate provisions in place to accommodate those higher densities.

Some municipalities may view increased density, in and of itself a negative. The need for creating and maintaining infrastructure, the increased need to provide services

and the potential need to expand educational capacity comes with costs to the community that may not be offset by increased tax revenue. Assessing the development capacity of a community is necessary before undertaking any measures that may increase intensity of development. Balancing the increased costs and burdens with more sustainable development, potentially higher property values and other possible advantages must be part of the planning equation.

The main accommodation, and the one element of the transaction that can be an obstacle to the use of this tool, is the existence of adequate infrastructure or the ability to provide adequate infrastructure. Development at high densities will require the use of new wastewater treatment systems or adequate capacity at an existing system and access to a public or community drinking water system. Other infrastructure such as roads and stormwater management facilities and utilities need to be provided. This requires targeted investment in these systems and the ability to navigate the regulatory structure which may not allow necessary infrastructure to even be permitted under certain circumstances. Allowances for infrastructure need to be assessed and addressed at the outset because it can mean the difference between success and failure of a non-contiguous clustering program.

Not being part of a structured plan like a Transfer of Development Rights program may lead to scattered implementation. The market driven and circumstantial nature of how non-contiguous clustering will be used may lead to a non-uniform use of the practice. Partial development on the development end and partial preservation on the conservation end can lead to a result that none of the anticipated goals are reached. This is probably easier to deal with on the preservation end of the equation as conservation tools like open space and farmland preservation programs can still be used to achieve a municipality's goals. On the development end, partial implementation may be more problematic.

Finally, attaining the desired goals will take time. Multiple transactions driven by market conditions and the circumstance of multiple property owners will dictate the pace of progress. The municipality can exercise very little control over the actual implementation of the ordinance and it may take many years to reach the end product. An active real estate market may drive results much more quickly, but a sluggish market can mean extraordinarily slow progress. A municipality may need to devise and utilize a system of incentives to jump start the use of non-contiguous clustering. Density bonuses or expedited permit review are just two examples of possible measures that can encourage the use of this tool.

Economic Implications

In order for any planning tool to be effective, there must be an intersection between the interests and goals of the municipality, the rights and interests of property owners and the market forces that drive the product that developers will ultimately be

interested in building. There are two key economic issues that have a direct impact on whether or not a plan for utilizing non-contiguous clustering will actually be used. These issues will determine if there is appropriate value on all sides of the transaction. Even a neutral differential between development under a base zoning scenario and a non-contiguous clustering scenario would make the use of this tool unlikely. There needs to be a tangible economic advantage to the parties involved to trigger the use of non-contiguous clustering where it is available.

Market Analysis

One of the first steps is to determine, based on growth forecasts, whether or not sufficient value exists on the development end of the transaction to justify the proposed cluster development? Will the noncontiguous cluster option be more or less profitable than conventional development? What is the relative value of land under base development (conventional zoning) versus the relative value of land under the non-contiguous cluster development? Can a municipality offer an expedited process for approval thereby adding time-value or certainty to the transaction? Is there increased marketability of the product? These questions all need to be answered. If there is insufficient added value to the transaction as a non-contiguous cluster development, it will not be worth the additional effort and complexity that must be invested when compared with a conventional application and development.

Adequacy of Demand

How many new housing units are supportable given growth forecasts and recent development trends? This is a complex assessment. Does the product meet an identified need in the marketplace? Beyond merely evaluating the demand for individual units by number, it must be determined if the proposed units are the type of housing that will be readily sold. Does the proposed growth area development make sense given these forecasts? There is an inherent risk in undertaking any housing development, especially in the current market.

Value to the Parties

Beyond establishing the relative value between the parcels of land involved in these transactions, there must also be adequate benefits to all parties involved. This goes beyond merely the economic evaluation of equity between the conservation/preservation side of the equation and the development end. The municipality itself needs to “profit” from the transaction by being able to meet broader community goals that have both an economic component and a social component in terms of furthering a local vision. Without the ability to provide tangible benefits to property owners, developers and the municipality, there is little reason to pursue implementation of a non-contiguous clustering ordinance.

Municipality

The value to the local community has to be assessed before even undertaking the adoption of non-contiguous clustering as a planning option. Creating a community identity, establishing a particular neighborhood character, providing a broad range of housing opportunities along with the preservation of a particular resource or group of resources are all items of value to a municipality. Using a contiguous clustering ordinance that has been properly crafted and used in the right circumstances is a means to achieve all of those goals. Particularly, being able to attain preservation goals with little or no taxpayer costs for acquisition is a substantial value.

Preservation Areas

There will be two components of value to be considered on the preservation side. The value of the development rights expressed in terms of the unimproved per lot value that will be used by the purchaser and the residual value of the land after the development potential has been stripped by the transaction. This type of valuation is familiar to anyone who has participated in a farmland preservation transaction. The unrestricted value of the property under existing zoning compared with the residual value of the property without any development potential yields a differential that represents the development value of the property.

The transaction in a non-contiguous clustering development scenario has to provide compensation that is at least equal to that development value to the land owner on the development side. The property is going to be restricted from any future development so the bulk of the value has to be realized in this transaction and it has to be equivalent to the value provided by alternate disposition of the land (ie., unrestricted sale). If the land will be restricted to agricultural uses and remain in private ownership, the transaction is relatively simple and the property owner may be able to count on a future increase in the residual value of the restricted land. This would provide additional value outside the transaction. If the ultimate use of the property is to be permanent preservation, either through a transfer to a public entity or a private conservation group, both a mechanism for transfer of title and accounting for the residual value not paid in the private clustering transaction must be provided.

There are two important additional considerations. The first would be if preserved land in a non-contiguous clustering transaction may be used for development future recreational facilities. These are likely permitted under the standard Green Acres restrictions that would be put in place. The second involves agricultural land. Land preserved for agricultural purposes can have a reservation for the construction of housing opportunities for the farm owner, agricultural labor housing and agricultural buildings, such as barns or other accessory agricultural structures. The allowance for these future uses should be governed in a manner consistent with the way these issues are addressed through the SADC's policies for preserved farmland. Siting a residual housing opportunity or creating an exception area should be dealt with prior

to the restriction of the property using the same method employed in a farmland preservation transaction.

Development Areas

The value on the development side has more variable elements to be evaluated that are associated with the inherent risks of development. At a very basic level, the lot yield has to provide at least the difference between the value that can be realized under “of right” zoning and the cost involved in obtaining the development potential of the parcel(s) targeted for preservation. However, it is unlikely that a straight dollar for dollar equivalency would attract developers to use this tool. There have to be additional benefits. More units that would sell more quickly with reduced infrastructure costs would certainly be an incentive. However, it is probable that additional benefits that bring added economic value would be necessary to incentivize use of this planning tool.

A degree of certainty in the approval process, especially since the end development will be different from any others in the municipality, is essential. Time and predictability of results are vital to success. The real value, however, would likely come from granting density bonuses that increase the allowable units beyond merely the sum of the base zoning of the preserved and developed properties combined. This can be tricky because rational and reasonable limits on the amount of development allowed is essential as is the capacity of existing or reasonably expected infrastructure. Striking an appropriate balance between the scale of development, the capacity of the site and the community to accommodate development and the economic reality of what is necessary to achieve implementation will establish whether or not it is possible to utilize non-contiguous clustering and whether or not it is wise to do so.

Summary of Economic Considerations

One of the benefits of using non-contiguous clustering is that the amount of investment involved in preparation for using this tool is a fraction of the more complex Transfer of Development Rights program. However, it also means that the complex economic analysis done in preparation for the use of TDR is not available. This means that the municipality needs to be familiar with the land values in the community before putting the ordinances in place. The ratio of land available for contributing development potential to the land designated for increased development potential needs to be carefully evaluated. The scale and scope of density bonuses needs to be appropriately established to provide adequate incentives to developers without compromising larger community goals or exceeding infrastructure or resource capacities.

At a very basic level there needs to be additional value realized through the use of non-contiguous clustering to warrant using this tool in lieu of developing in

conformance with existing base zoning. Assuming there is market demand for the noncontiguous cluster development, is the value of land designated for cluster development and the value of preserved land equal to or greater than value of land for conventional development? This can be a difficult question to answer and it is possible that the only way to know is to test this in market conditions. It is possible that any incentive provisions may need to be re-visited after enactment of the non-contiguous clustering ordinance to address any inequities or obstacles that actual market conditions present.

Whatever mechanisms are ultimately put in place, they must be fair. Owners of land need to be compensated for the development potential that is surrendered in a fair amount. Developers using this tool need to be treated fairly as well as put in a position to realize a fair return on their investments that reflects the effort and risk involved. Finally, it needs to be fair to the community. While compact denser development will have advantages for the developer, there should be a concurrent value to the municipality. There must be adequate benefits in the form of better quality development and adequate preserved resources without unduly burdening the community as a whole through increased service costs, over-taxing infrastructure or exceeding the carrying capacity of the natural and built systems that support the municipality. All of these elements need to be in balance, not only to allow this mechanism to work, but also to establish whether or not this tool should be utilized.

Implementation

Although non-contiguous clustering has been an available planning tool for over 20 years, its use has been almost non-existent. There are a number of communities where a non-contiguous clustering ordinance would provide an appropriate mechanism for meeting an identified municipal vision. Only a handful of municipalities have adopted non-contiguous clustering ordinances. They are discussed in this report at page 33. Whatever the technical requirements necessary for implementation may be, the most important factors are awareness of the existence of non-contiguous clustering as an available measure and a willingness to use it. Municipalities that are interested in pursuing “smart growth” principals like combining center-based development with protection of valuable natural resources will find non-contiguous clustering a very useful tool for achieving these goals. However, without awareness and understanding of the process, even the most proactively planned communities may miss the opportunity to use this tool.

What Is Required to Implement Non-Contiguous Clustering?

There will be a number of actions that must be taken to facilitate the use of non-contiguous clustering as a planning tool in a community. The community implementing a non-contiguous clustering provision needs to take a strategic

approach to its preservation and development goals. This includes clearly identifying resources worthy of protection and the development capacity of property slated for increased development densities. Before an ordinance is adopted authorizing the use of this development option, a municipality needs to carefully evaluate the conditions necessary to support the implementation of non-contiguous clustering and insure that conditions are appropriate for its use. A municipality must take the following basic steps:

1. Amend the municipal Master Plan by providing for the use of non-contiguous clustering in the land use element of that plan. This should be done as part of a comprehensive reexamination of the community's planning goals.
2. Identify the portions of the community containing parcels to be preserved. These areas should be commonly or similarly zoned under the municipal zoning ordinance.
3. Identify the targeted areas of the community where parcels to be developed can accept increased densities or where creation of center-based development would be advantageous.
4. Establish a minimum size, or other criteria, for parcels targeted for preservation to be eligible for inclusion in a non-contiguous cluster project.
5. Identify and define the precise terms of the deed restrictions that will be placed on preserved parcels and establish a comprehensive plan for the long-term use of the preserved parcel once its development rights are transferred.
6. Evaluate the infrastructure requirements in the targeted development area(s). This may include sewer, water, roads, stormwater management and roads.
7. Make certain that the conditions in the defined development area are appropriate to accommodate the increased development density targeted for the location.
8. Evaluate the proposed development areas for environmental features that might inhibit development at increased densities or preclude the inclusion of the targeted tracts in an infrastructure service area under state Water Quality Management Plan (WQMP) rules.
9. Propose and adopt a municipal ordinance that allows for the use of non-contiguous clustering to facilitate density transfers between parcels.

Once the appropriate evaluation has been conducted and an ordinance adopted, actually applying the ordinance comes with its own set of challenges. The development of a project under a non-contiguous cluster ordinance is largely a private transaction subject to public review. Several factors need to fall into place:

1. Reach purchase agreements among the landowners of the preservation parcel, the development parcel, and the developer of the project in the growth area.
2. The developer must prepare and the municipality must review a concept plan for development of the development parcel.

3. The proposal must provide sufficient infrastructure (water, sewer, roads, etc.) for the development parcel to be built out at the higher density that includes the transferred developed rights.
4. Review and approve a single development application for the preservation parcel and the development parcel(s).
5. Deed restrict the preservation parcel in a manner appropriate to its preserved use.

As with any development project, there are important technical considerations to account for. Planning, infrastructure needs, affordable housing requirements, environmental constraints and the capacity to accommodate increased densities are some of the issues that must be addressed. Consideration of the use of non-contiguous clustering to promote residential, non-residential or mixed uses should also be evaluated.

The nature of the restrictions placed on the parcels where development will be limited also needs to be considered as well as the administration of properties that are preserved through the use of non-contiguous clustering. The specific requirements for the restrictions used to conserve a parcel vary depending on whether the parcel is to be used for either public open space, historic preservation purposes or for agricultural retention purposes. Each situation is specifically addressed in the Municipal Land Use Law and described in this report in the section titled: Restrictions Placed on Preserved Parcels on page 28.

Additionally, the ability to use non-contiguous clustering as an effective planning tool goes beyond just meeting the technical requirements to enact an ordinance. In an evaluation of the original non-contiguous clustering law written in 1997, Dr. David Kinsey cited an additional requirement-trust between the parties:

A municipality might be well advised to begin with a single, comparatively simple density transfer transaction, before embarking upon a more complex land preservation scheme relying upon voluntary density transfers, in order to build trust and respect among the critical players in this process. Success can be infectious and lead to further successes. As density transfers are still new and novel in New Jersey, trust must be built transfer-by-transfer and municipality-by-municipality for this new planning tool to assume a regular role in the tool kit of towns and citizens eager to achieve compact development, revitalized developed areas, and protected farmland and open space in the coming decades.^{xiv}

20 years later, the use of non-contiguous clustering as a planning tool still appears to be a “new and novel” planning tool and Dr. Kinsey’s point is still valid.

Additional references, including Powerpoint presentations and technical analyses, can be found on NJ Future’s web site. These materials were designed to explain non-contiguous clustering to both elected and appointed municipal officials. They can be found at www.njfuture.org/issues/environment-and-agriculture/land-preservation/tdr-clustering/noncontig-cluster-development.

Important Considerations

Each municipality will be faced with its own unique set of circumstances when considering whether or not to adopt a non-contiguous clustering provision and what particular factors need to be taken into account. The purpose for providing a mechanism for preserving land and the use of that land, the nature and character of development on the development end of the transaction and the maximum densities that can or should be permitted, the impact on the community as a whole and the planning for necessary infrastructure are all important factors that must be carefully assessed before enacting a set of non-contiguous clustering ordinances. Public support and input from the community into the vision for the community that will be created if the ordinances are implemented is essential. A thoughtful and innovative approach will be required in order to achieve any measure of success.

Characteristics of the Preservation Area



The main purpose of considering non-contiguous clustering is the protection or preservation of a specific resource in a municipality. The amended provisions of the Municipal Land Use Act expanded the purposes and circumstances that were allowable for the “preserved” uses for the properties that are in essence contributing density to the tracts that will be developed. Clearly establishing preservation priorities and using them to define the portions of

the municipality where policies should encourage lower development densities is essential. The adopted non-contiguous clustering ordinance may designate zones established under the municipal zoning ordinance as eligible for inclusion as the restricted land in a non-contiguous cluster development proposal or establish criteria for identifying them. The areas of the municipality targeted for preservation must be zoned appropriately and the non-contiguous clustering ordinance will may state the zones eligible for restrictions on development, the purpose for the restrictions and the nature of the restrictions.

The portions of the municipality targeted for preservation may be agricultural lands, lands with environmentally sensitive characteristics, or even a historic area. The preservation side of the equation may also target a parcel or parcels for public recreation. The important element is to clearly state the ultimate target outcome and craft the ordinance to achieve that goal. Identification of the resources portions of the community where these resources are located must be defined. There should also be minimum size requirements and/or resource protection criteria necessary for the donor parcels. Provisions for allowing aggregation of multiple lots to meet those minimum requirements would be a beneficial feature.

The value in utilizing non-contiguous clustering as a planning tool is the ability to supplement other preservation efforts that require expending public funds. Non-contiguous clustering will not replace those land preservation programs, but it can provide a means to preserve land at no public cost. The restrictions placed on the parcels that will be preserved should be analogous to the restrictions placed on other preserved lands. The State Agriculture Development Board (SADC) has prepared appropriate agricultural deed restrictions, consistent with the statutory provisions enabling non-contiguous clustering. The template can be found in the appendix to this document. Open space or recreational lands should have restrictions similar to those placed on land preserved under the “Green Acres” program and should also be transferred into public ownership. Guidelines for those restrictions are also included in the appendix. Finally, historic restrictions need to be consistent with the easements prepared by the New Jersey Historic Trust. The provisions of the Deed of Easement can be found in the appendix as well.

Characteristics of the Development Area



Just as important (and perhaps more so) as evaluating the attributes of the tract(s) to be preserved are the features of the land that will be developed. The potential development sites should be carefully evaluated for factors that could limit the development potential of these sites. The correct geographic location, the presence or absence of infrastructure, the presence of regulated environmental features and other circumstances are critical elements in determining the suitability of the site. More

intense development will likely, but not always, require sewer and water infrastructure capacity sufficient to accommodate the additional units. If sewer and water infrastructure are not utilized, careful evaluation of septic and well densities should be conducted. Management of traffic, stormwater, pedestrian safety and other elements of more intense development need to be adequately addressed. In many

rural communities, they will be facing these issues on a scale they have not encountered before. The municipal professionals must be prepared to deal with these factors and the land use/planning board needs to be properly supported in evaluating a project of this nature.

The issue of sanitary sewers and drinking water can be tricky. If a municipality has an established sewer service area, development parcels should be located within the area's boundaries if possible. If not, the parcels need to be appropriate for future inclusion in the sewer service area through the amendment process under the NJ Department of Environmental Protection (DEP) Water Quality Management Plan rules. Environmental considerations such as wetlands or environmentally sensitive waterways can disqualify a site from even being considered for a WQMP amendment. Carefully evaluating the portion of the municipality targeted for increased development is essential because there are features that will preclude an amendment of a sewer service area if they are present.

In rural communities where there are no sewer service areas, this can be an even greater challenge. Creating a compact center to accept development as part of a greater plan to preserve large contiguous tracts of land is a sound goal. However, it is likely that any portion of a rural municipality designated for increased density will contain environmental constraints. The use of wells and individual septic systems to service new development at increased density would almost certainly be problematic. The soil characteristics for accommodating individual septic and wells need to be fully evaluated and understood. In the alternative, employing innovative wastewater management techniques and creating a means for providing an adequate drinking water supply are necessary and need to be thoroughly investigated before employing non-contiguous clustering as a part of a municipality's growth management strategy.

Restrictions Placed on Preserved Parcels

The purpose of utilizing non-contiguous clustering needs to be carefully considered. The conservation goals of using non-contiguous clustering are just as important as the development goals. There needs to be a clearly articulated preservation goal that is advanced by the use of this planning tool. A reason for transferring density from a particular geographic location and the larger public policy objectives need to be clearly articulated. The property on the preservation side will be permanently deed restricted as part of the implementation of that public purpose. The requirement for the incorporation of permanent deed restrictions was a part of the adopted amendments to the non-contiguous clustering provisions.^{xv}

There are specific requirements for the restrictions used to conserve a parcel, which vary depending on whether the parcel is to be used for either public open space, historic preservation purposes or agricultural retention purposes. Each situation is specifically addressed in the Municipal Land Use Law.^{xvi} (Land preserved as common

open space is designated for use by residents and owners of the development, and is not subject to the same requirements for a deed restriction.)

When the parcel is being preserved as public open space, the land must be encumbered by a recorded conservation restriction that is consistent with the New Jersey Conservation Restriction and Historic Preservation Restriction Act. A municipality may use a conservation restriction template prepared by the New Jersey Department of Environmental Protection Green Acres Program for this purpose by contacting Sean Moriarty at Sean.Moriarty@dep.nj.gov. The preserved land may be transferred to a government entity for ownership and stewardship.

A property identified for preservation as a historic site must be conveyed or dedicated by a historic preservation restriction provided or approved by the New Jersey Historic Trust and monitored and enforced in accord with the Municipal Land Use Law. For more information and a template, contact Glenn Ceponis at Glenn.ceponis@dca.nj.gov.

When the land preserved is for agricultural purposes the issues become a bit more complicated. The changes to the non-contiguous cluster provisions have specific requirements for agricultural lands^{xvii}:

(1) Land identified for preservation as agricultural land shall be conveyed or dedicated by agricultural restriction. A municipality shall use an agricultural deed restriction template prepared by the State Agriculture Development Committee (SADC) or obtain approval of the agricultural restriction by the SADC. The SADC has made available to municipalities an agricultural deed restriction template on its website: <http://www.nj.gov/agriculture/sadc/tdr/cluster%20ag%20restriction.pdf>

(2) An agricultural restriction may contain provisions:

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

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

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

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

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

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

These provisions demonstrate that municipalities are required to use non-contiguous clustering as an agricultural retention tool in manner similar to the more traditional farmland preservation programs involving the sale of development rights are utilized. The use of comprehensive planning and the administration of preserved agricultural lands are intended to be similar as well. One important difference is that the municipality, not the SADC or the CADB, will be responsible for stewardship, administration and monitoring of the agricultural easements.

The New Jersey Department of Agriculture and the State Agriculture Development Committee (SADC) have adopted deed restrictions specifically for use in non-contiguous clustering situations that are similar to those utilized on properties preserved through their purchase of development rights program. A template of that easement is included as Appendix II to of this report. Requiring the deed of easement that restricts the properties designated for preservation to be treated in a similar manner as any other farm being preserved will provide for consistency in management. There are clear rules and guidelines that interpret and manage the meaning and the enforcement of deed restrictions. There are also significant farming issues that might arise on the preserved parcels that are traditionally dealt with by the SADC. Administration of these issues will fall to the municipality. Accepted agricultural management practices, right-to-farm disputes, agricultural labor housing and the retention of rights to construct residual housing units on the preserved agricultural lands are just some examples of issues that can and will arise. Municipalities employing non-contiguous clustering need to be prepared to handle these issues locally. Guidance should be sought from the CADB and/or SADC on how to handle administration of these concerns and to provide municipalities with standards they can apply to resolve them.

Additional Considerations



STORMWATER MANAGEMENT

When a non-contiguous clustering provision is adopted, a municipality will need to anticipate a number of different issues that, in many cases, have not been encountered before. The development potential of a community, in terms of carrying capacity, the character of the community, and the long-term development goals of a community are all essential considerations that must be evaluated carefully before adopting a non-contiguous clustering ordinance. It's important to realize that this is a tool that primarily manages the geographic distribution of development within a municipality, not the overall volume, although incentives to developers may lead to an increase in the gross number of units constructed.

While the number of units, or build-out, may not be significantly altered, the density of development in the targeted growth area will definitely be increased. This triggers a number of considerations. Increased density means increased impervious coverage along with the need for infrastructure including streets, sidewalks, parking and other amenities to accommodate the new development. The necessity of managing stormwater with less land available for traditional methods of detention or retention will require more attention to design and the use of innovative “green infrastructure. A municipality must be certain that it can accommodate the levels and the nature of the development that will result.

The municipality's planning professionals must be equal to the tasks involved in implementation of the ordinance. The planner and engineer must have adequate familiarity with the issues that will arise, particularly on the development end of the project. Layout of the streets, location of the units, the management of stormwater, setbacks and other planning considerations may be very different in the new development than have been experienced in anything the community has undertaken before. There may also be similar existing developments already built in the community that can provide practical guidance. The ability to work cooperatively with the developer of the project without compromising the long-term interests of the municipality is an essential skill that the professionals need to bring to the implementation process.

The design or the aesthetic appearance and layout of the neighborhoods that will be created on the development end of the project should be carefully evaluated. The ability to exercise control to a degree over the character of the new development is one of the benefits of using this tool and should not be ignored. Adoption of form-based codes or other design criteria need to be considered and should be a part of

any plan that incorporates non-contiguous clustering. Adequate community input should be solicited before adopting a non-contiguous ordinance. A municipality should not underestimate the level of commitment and the complexity of issues involved in successfully adopting and implementing this valuable planning method. However, the results that are achieved can make the investment worthwhile.

Finally, every municipality in New Jersey is subject to a constitutional mandate to provide affordable housing options. Increased development triggers an increased obligation to provide affordable housing opportunities. Affordable housing should be incorporated into a municipality's development plans as an integral part of a strategy to provide for a broad array of housing opportunities, not as an afterthought. The use of a non-contiguous cluster ordinance should be viewed as an opportunity to address this obligation. The development end of a non-contiguous clustering transaction will present the chance for a municipality to meet at least a portion of its affordable housing obligations. The increased densities and lower construction costs, along with whatever incentives may be provided, will make the inclusion of affordable units financially feasible for the developer. For the municipality, it allows their affordable housing goals to be advanced in a manner that incorporates affordable units seamlessly into the fabric of the community. Additionally, these units will ideally be located in a walkable center with access to transportation options and potentially employment opportunities. This can be an incredible benefit to the community.

Non-Contiguous Clustering in Practice

At least ten communities in New Jersey that have adopted non-contiguous clustering ordinances. Of those, five have actually implemented those ordinances. However, there is value in both examining both their purposes in adopting non-contiguous planning provisions and their experiences in trying to utilize this tool. They are instructive in demonstrating the innovative nature of this planning approach and the potential benefits of its implementation. There is also a benefit in evaluating the extent to which the non-contiguous clustering ordinances have been utilized, the nature of the end product for the communities and the various factors that have played a role in determining the extent of success (or lack thereof) in actual practice.

Non-contiguous clustering ordinances have been adopted in 10 communities across New Jersey. Delaware Township in Hunterdon County, Hillsborough Township in Somerset County, Hopewell Township, Plainsboro Township and Robbinsville Township (formerly Washington Township) in Mercer County, Middle Township in Cape May County, Monroe Township in Middlesex County, Mount Olive Township in Morris County, North Hanover Township in Burlington County and Ocean Township in Ocean County all adopted ordinances under the prior non-contiguous clustering statute. Some, such as Delaware Township, have updated their ordinances after the

2013 revisions were enacted. Of these ten municipalities, five have seen at least one transaction take place pursuant to their non-contiguous clustering provision. A detailed analysis of all of these communities can be found in a report prepared in 2012 by NJ Future.^{xviii}

This section will evaluate a successful example of the use of non-contiguous clustering (Robbinsville Township), an effort that has thus far gone unused (Delaware Township) and discuss in lesser detail some of the experiences of several of the other communities that have tried to implement non-contiguous provisions. There are valuable lessons in the experiences of each of these municipalities.

The Robbinsville Model



ROBBINSVILLE TOWN CENTER

The community most often cited for use of non-contiguous clustering is Robbinsville Township (formerly Washington Township) in Mercer County. Robbinsville had a greater vision of creating a well-planned center near the intersection of Routes 33 and 130. The township also had a large inventory of productive farmland they wished to protect. The use of non-contiguous clustering was identified as a means of achieving both goals. Their actual experience provides a great deal of insight into the challenges, limitations and benefits of the process. The former Washington Township is an approximately 20

square mile community in Mercer County with a population of 13,600 people and a substantial commercial presence of retail, office and warehouse space. Rapid suburban development was overtaking the town and there was strong community support to alter the patterns of building. While the actual implementation of their cluster provision used only a transfer of residential densities, the overall plan incorporated non-residential development as part of a mixed use town center.

The Township made a commitment to using innovative planning techniques to change the direction of the municipality in an effort to both create and implement a vision of what the residents wanted their community to look like. An existing geographic center of commercial and high-density residential development was identified as an appropriate location to direct growth. A great deal of public effort was put into creating an accepted design for the future of this center. The use of non-contiguous clustering was seen as an alternative to the much more complex tool of a transfer of development rights program. The center would require a modest amount of new development and the surrounding farmland would probably not have matched up well as a balance for sending and receiving areas to the extent necessary to sustain a TDR program.

The provisions of the non-contiguous cluster ordinance for the Robbinsville Center were creative and thoughtful. The town center district plan allowed density to be increased in two zones through “planned unit residential development credit transfer” (noncontiguous clustering) from the Rural Residential (RR) District in the northern part of the township, which included “proposed priority open space acquisition/preservation land(s) on the Land Preservation Plan.” The ordinances required permanent preservation for agriculture, conservation land or recreation. An exception was made for an existing house and farmstead in a manner that was consistent with the policies and practices of the State Agriculture Development Committee (SADC) for traditional farmland preservation transactions. Bonus credits were provided for open space lands with a higher ranking on the township’s Land Preservation Plan. The design guidelines established limits for density increases using noncontiguous clustering. The guidelines also created a transfer ratio for different types of housing units built in the town center.

Robbinsville succeeded in creating a center with a mix of residential and commercial development. The infrastructure necessary to support this center-based development (public water and public sewer with adequate capacity) was in place. A key component was an existing partially constructed condominium development that had stalled in its marketing. The existing developer was amenable to altering its existing approved plan and alternatively proceed with a new design to accommodate the planned center. The notion of saving farmland in the Township as a component of the construction of the center was never realized however. There were lands immediately surrounding the center that were transferred to public ownership or otherwise preserved through the implementation of the non-contiguous clustering provisions, but not nearly on the scale that was anticipated at the outset of the project.

Approximately 1,200 residential units were constructed within the designed center. This represented an increase of approximately 90 units over what would otherwise have been permitted. This construction took place on an approximately 200 acre site and included office and retail space as part of the center. As a consequence of the use of non-contiguous clustering to transfer density into the center, 193.5 acres comprising 6 separate properties in the RR, Rural Residential zone were preserved. This land would have required a significant investment of public funds to protect, likely in excess of \$6 million. There was clear value to the municipality on both sides of the transaction and to all of the parties involved in the transfer. The owners of the preserved properties were able to receive market value compensation, the developer was able to construct a highly marketable product with increased value and the community saw a more attractive and sustainable center-based development take place and was able to set aside valuable land in perpetuity at no public cost. This achieved the principal goals of enacting a non-contiguous clustering provision.

A significant amount of the Township’s agricultural lands have been developed since the creation of the Robbinsville Town Center. A large portion of those lands were converted to warehouse space for the logistics industry. If not for a cooperative large

scale developer that was already engaged in construction in the Township, Robbinsville's non-contiguous clustering ordinance may never have been implemented. Sharbell Development Corporation, the developer of the town center, was able to extract itself from an existing project with less marketability and a lower profit margin by using the cluster provision to alter their prior land use approvals. It was their commitment to purchase property for open space that provided the land on the preservation side of the equation.

Robbinsville's non-contiguous clustering provision never achieved the full desired effect of preventing sprawling development in the community. It resulted in a financially workable and marketable center, but that center was still highly automobile dependent. Infrastructure investment strategies need to be an integral part of the planning and this was a missing element. There were few provisions made for mass transit service to the new development and while better than what may have alternatively taken place in this location, the result was not as revolutionary as it could have been or as it was envisioned. In the end analysis, the creation of a walkable mixed-use community, primarily through the harnessing of market forces to achieve a desired end, has to be considered a successful use of this planning measure. However, it fell short of what could have been accomplished.

The Delaware Township Model



EXISTING HAMLET

Delaware Township is a rural 37 square mile municipality in Hunterdon County. A large portion of the Township is in various agricultural uses. The population of 4,500 is spread across the geography of the municipality in large lot subdivisions, historic estate properties, farms and in small historic crossroad centers. There is an extremely limited amount of commercial development, primarily within the existing centers. The Township had two goals; to save as much farmland as possible to retain to the rural character of the municipality and to direct a

modest amount of growth away from the agricultural areas and into the traditional historic village centers. The amount of development activity was anticipated to be too small for a Transfer of Development rights program to sustain itself and non-contiguous clustering was seen as a means to create a development pattern consistent with the community's long-term character.

The traditional rural centers of Rosemont and Sergeantsville were seen as perfect places to accept development that was concordant with the existing conditions. These historic centers were tiny crossroad communities with small commercial establishments, historic homes and defined the municipality's character. The opportunity to re-direct what would otherwise be typical large lot exurban

development into these centers while supplementing the traditional farmland preservation programs by siphoning development from the Township's agricultural properties was a perfect scenario for a non-contiguous clustering ordinance to produce its targeted results.

A great deal of thought went into the development side of the clustering ordinance. The form and character of the development was addressed in their Hamlet ordinance. The goal was to encourage compact development that is compatible with the carrying capacity of the natural and built environment. Delaware Township describes a hamlet as a largely residential area with some non-residential uses such as a school, a place of worship, community spaces, commons or any related land uses. The ordinance requires all buildings to be located on both a county or state road, and at least one mile from the intersection of County roads 604 and 523 (the village of Sergeantsville). Lot sizes may range from approximately 1/5 to 1/3 of an acre for single-family dwellings and from 1/6 to 1/3 of an acre for twin dwellings.

A major impediment existed however. The compact center-based development would require the use of potable and wastewater systems to serve any new residences as the lot sizes would be too small to accommodate functioning septic systems and potable wells. There was no existing infrastructure to utilize. The Township is entirely comprised of environmentally sensitive agricultural and forested land. There was no existing sewer service area and the likelihood of providing any of these services was low. The regulatory environment, beyond the control of the Township, presents a difficult obstacle to overcome. Recent proposed N.J.D.E.P. regulations would allow site-specific amendments to Water Quality Management Plans (WQMP).^{xix}

Center-based development, even in the contemplated modest scale, would require the use of package treatment systems or alternative wastewater management methods. There would need to be community wells to serve these new developments. The technology would add to the expense of development and compounding this expense is the regulatory environment that makes creation or expansion of infrastructure difficult in environmentally sensitive areas of the state-even when done in conjunction with a corresponding effort to protect environmentally sensitive lands elsewhere. The regulatory system at the state level is designed to discourage infrastructure dependent development in the rural areas of New Jersey. This is a rational goal. However, the inability to adjust the regulatory provisions to accommodate alternative development patterns as a means to preserving environmentally sensitive or agriculturally important land frustrates the use of alternative planning techniques and contributes to a reliance on traditional building methods, which in a rural location means large lot, septic and well-dependent development.

The obstacles to implementation in Delaware Township are largely on the development side of the ledger. There is ample land in the Township eligible and appropriate for preservation or restriction of development potential-almost all of it high quality agricultural land. In May 2015, the Township adopted a non-contiguous

clustering provision specifically aimed at preserving agricultural lands in the Township and intended to address the 2013 amendments to the non-contiguous clustering statutes.^{xx} The Hunterdon County Farmland Preservation program is highly competitive and utilizing non-contiguous clustering should provide a viable alternative for land owners looking for a preservation option. On the development side, the need for infrastructure and the regulatory environment make anything but traditional large lot septic/well dependent development difficult. In order for non-contiguous clustering to be a viable option, there has to be a clear and definitive path to development of higher density projects. The lack of an easily permitted solution or clear guidance on water and wastewater technologies that can be utilized is a serious impediment. There needs to be an approach that allows for the use of alternative infrastructure in rural areas as long as appropriate circumstances are clearly defined.

The establishment of regulations at the state level that would permit small scale water and wastewater treatment systems used in limited settings to facilitate transactions where significant land conservation will result is a necessity. There is a lack of will and a reticence to risk environmental damage that stands in the way. The reservations about changing infrastructure standards may be well-founded. However, in this context those concerns prove to be an impediment to greater gains in land use and environmental protection that would be realized through the use of non-contiguous clustering. New regulations that set stringent standards for the use of this alternate technology that include clear definitions of when, where and how it can be utilized are achievable and necessary to allow the use of non-contiguous clustering as an option in rural settings.

These factors along with demographic trends that have slowed development in N.J.'s rural counties have capped the marketability of new development in exurban communities.^{xxi} Hunterdon County declined in population between 2010 and 2013 and this trend has impacted Delaware Township. Delaware also has very specific requirements for the nature and character of the development on the development end of the transaction. The weak demand for new housing combined with these other factors have resulted in a lack of implementation of a very well planned and thoughtful non-contiguous clustering ordinance. Having non-contiguous clustering as a development option for the long term may yet prove to be an important factor in the Township's future.

Other Examples

Plainsboro

The experience in Plainsboro, a small community in Mercer County along the Route 1 corridor offers an interesting insight into how even a limited use of non-contiguous clustering can help achieve an important local goal. Plainsboro straddles busy Route 1 with a number of corporate campuses, research and development facilities, retail



centers and a major hospital along the highway. Plainsboro made a commitment to planning and developing a “village center” adjacent to Scudders Mill Road. The Township was also very aggressive and targeted in pursuing land preservation to protect the open space and farmland of the community and to provide recreational opportunities for the Township’s residents.

The community’s goals were set forth in a comprehensive Open Space and Recreation Plan that discussed the history of the Township and a vision for its future:

A series of major development approvals granted in the early 1970’s set in motion the construction of some 6,500 new housing units. Since that time, Plainsboro has been wrestling with the challenges of land use growth. The Township’s population has grown from 5,605 in 1980 to approximately 15,536 in 1997 and has now reached over 21,000. In addition to significant residential growth, Plainsboro’s local economy has benefited from the development of office and research facilities and many commercial establishments. A key element in managing the growth that Plainsboro continues to experience and enjoy has been a complementary effort to preserve Plainsboro’s inherent natural beauty and open spaces. The Township has aggressively pursued the preservation of open space as a way to manage growth and provide passive recreational opportunities for its growing and diverse citizenry.^{xxii}

There were specific goals included in the Township’s plan, including a number of facilities that were proposed or partially completed. Plainsboro recognized that the use of innovative planning tools had the potential for allowing the community to reach multiple goals that may have otherwise been beyond the ability or capacity of the Township to attain.

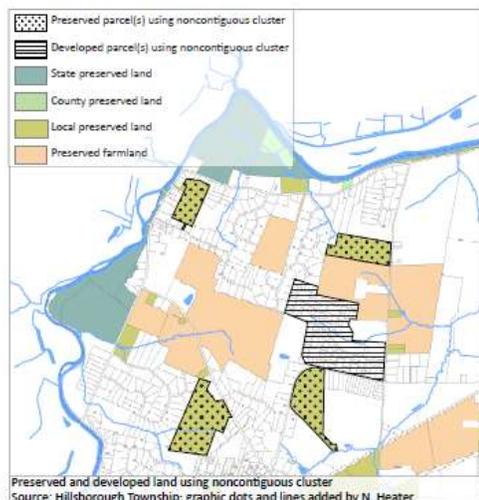
Plainsboro enacted a non-contiguous clustering provision with the intent of harnessing the Township’s development potential in a manner that would both further its intentions of creating a village center and help meet the goals of the Open Space and Recreation Plan. The ordinances succeeded to a modest extent. A single transaction utilized both contiguous and non-contiguous clustering provisions resulted in the preservation of approximately 100 acres of land as part of the 1,000 acre Plainsboro Preserve and another 425 acres of public and private open space and preserved farmland as part of a large scale development by Calton Homes. Similar to the experience in Robbinsville, the actual transfer of density only involved residential development potential. However, just like Robbinsville, the actual implementation

resulted in the creation of both residential and non-residential development as part of the creation of a mixed use center.

Plainsboro had very specific goals for each side of the transaction. Having that vision meant that even a single transaction could bring substantial value to the community. Additionally, the interaction between the non-contiguous clustering provisions of the local land use ordinance and the more traditional contiguous clustering provisions created a situation where the two measures were complimentary in their implementation. Plainsboro was able to realize multiple planning goals through the use of innovative planning and by harnessing a strong market for both commercial and residential development. While the actual non-contiguous clustering mechanism did not involve the direct transfer of development potential to create non-residential development, it played a role in fostering an integrated plan that provided for both residential and commercial development. The circumstances in Plainsboro were favorable for this outcome. The existence of both robust economic drivers and sound planning goals were vital factors for achieving even this modest success. This example demonstrates the need for multiple elements to align in order for non-contiguous clustering to work.

Hillsborough

Hillsborough is a sprawling 54 square mile municipality in Somerset County. The township is a mix of suburban tract housing, rural land and farmland. Hillsborough experienced explosive growth with the population more than tripling from 1970 to 2000. Most of that growth was in the form of sprawling residential sub-divisions that were created by the conversion of farmland to tract housing. Commercial development is concentrated along the Route 206 corridor. The Township had a goal of limiting sprawl development and creating a “town center” out of the existing development along Route 206, including creating a pedestrian friendly commercial area. The Township adopted a non-contiguous provision to foster these goals.



In the approximately 10 year period since the ordinance was adopted, a single transaction resulted in the preservation of four individual agricultural parcels as the result of increased density in a 142 acre residential development. This development necessitated the use of a dedicated package treatment sewer system to service the new homes. This transaction furthered the municipal goals on the preservation side but did little to advance the center-based concept the Township is striving to achieve. Despite the lack of progress, the Hillsborough has still pursued measures to

attempt to create the Town Center they envisioned, including having Route 206 bypass the existing commercial center to create a “Main Street” and advocating for re-activation of passenger rail service. The Township is combining the use of zoning and planning with infrastructure investment decisions to further their community’s vision.

Taking a long-term view, in the event the planning goals of the Township are continued, having non-contiguous clustering as an option for future development may have a key role in implementing Hillsborough’s objectives. It’s important to recognize that the lack of immediate results is not necessarily a signal that this planning strategy has failed. The Township’s goals are extremely ambitious and entail changing a 40 year development trend. It is unreasonable to expect to fundamentally change the community’s trajectory in a short period of time. Having innovative planning tools available in conjunction with boarder planning policies and infrastructure investment strategies will eventually be an effective approach. Having the patience to see this tactic through over a period of years and through multiple political cycles will be a challenge, but will also be a key re-shaping the community.

Monroe

Monroe Township is a 42 square mile municipality in Middlesex County located near exit 8 on the New Jersey Turnpike. This area of the state has become a center for the logistics industry and seen explosive growth in both residential and commercial development. Monroe, a rural and suburban community, grew rapidly and continues to experience relatively strong development pressure. In fact the Township’s population has more than quadrupled since 1970 with a significant amount of non-residential development accompanying this residential growth. The Township set a goal of preserving 50% of its land as preserved farmland and open space and enacted a non-contiguous clustering ordinance to supplement traditional land preservation programs to assist the community in meeting that goal. There is no particular community vision enunciated for the development end of the transactions. To date, a single transaction has taken place utilizing the non-contiguous ordinances that resulted in the preservation of a 257 acre farm in exchange for the increase in density in the construction of a 142 acre residential development.

Ocean Township



In the Pinelands region of the state, Ocean Township in Ocean County is split between the portion of the Township west of the Garden State Parkway that is managed under the authority of the Pinelands Comprehensive Management Plan and the remainder of the Township that is under

local municipal control. The portion of the Township within the Pinelands jurisdiction is subject to significant development restrictions and is also eligible for the regional TDR system known as the Pinelands Development Credit (PDC) transfer program. Additionally, the portion of the Township not under the Pinelands CMP is subject to the rules, regulations and restrictions of the Coastal Areas Facility Review Act (CAFRA). The regulatory restrictions on most of the land in the Township limits growth opportunities.

In an effort to manage growth appropriately, the Township went through the State Plan Endorsement process in 2005. Part of their comprehensive plan included the designation of the Waretown section of the Township as a Town Center. In addition to identifying this center to accommodate development, they also enacted measures to divert development away from environmentally sensitive areas of the Township and into the proposed center. This included a non-contiguous clustering provision. Increased development was permitted in a single site of approximately 17.5 acres while large portions of the Township were placed in a very restrictive “environmental conservation” zone. The development potential of land in the environmental conservation zone was eligible for use in the Town Center through their non-contiguous clustering provision.

A property owner with land in the environmental conservation zone challenged the Township’s zoning ordinances. Rather than seek equity through a non-contiguous clustering transaction, the landowner pursued litigation. The New Jersey Supreme Court’s decision in the matter of *Gripenburg v. Township of Ocean*^{xxiii} validated the municipality’s comprehensive zoning and planning scheme. The Court found that the objectives of creating a viable town center and protecting large contiguous tracts of environmentally sensitive land were valid and persuasive arguments for the use of aggressive zoning and planning measures-including substantial downzoning in the environmentally protected portion of the township. This example illustrates the voluntary and permissive elements of the use of the method. This would have been a prime opportunity for the use of non-contiguous clustering to promote and implement the township’s planning goals. Nevertheless, the potential for future use of non-contiguous clustering remains.

Other Communities

In addition to the municipalities already cited, a number of other communities have adopted non-contiguous clustering ordinances but have not seen the ordinance used to any significant effect. Hopewell Township in Mercer County adopted a non-contiguous provision to preserve the community’s agricultural and rural character and conserve its natural resources. Approximately 78% of the township was designated within Resource Conservation districts. Alternatives to conventional large-lot subdivisions were offered, which would allow land preservation through noncontiguous clustering. These include “open land subdivisions” and mixed-use hamlets. The

Marshall's Corner section of the municipality, which is targeted for redevelopment, is a target location for the creation of a hamlet-based community.

Middle Township, in Cape May County, is a large diffuse municipality encompassing over 1/3 of the Cape May peninsula. The Township was incorporated to take in dozens of historic villages, towns and hamlets, including the historic County Seat of Cape May Courthouse. In addition to these long-term settlement patterns, the Township contains environmental resources of local, state, federal and global significance. Large tracts of land in Middle Township have been preserved as part of the Cape May National Wildlife Refuge. In October 2011, Middle's master plan was endorsed by the New Jersey State Planning Commission. The plan seeks to encourage compact growth in centers while preserving environmentally sensitive areas, which cover approximately 70 percent of the township. To implement the master plan, Middle Township adopted a noncontiguous clustering ordinance in 2011.

One of the state's premier agricultural communities, North Hanover Township in Burlington County adopted a non-contiguous clustering provision to supplement the successful and aggressive farmland preservation efforts that have resulted in conserving over 3,600 acres of productive agricultural lands^{xxiv}. The Township is looking to divert development potential to three existing historic villages; Cookstown, Jacobstown and Sykesville. The Township eventually hopes to establish a Transfer of Development Rights program. North Hanover has adopted a non-contiguous clustering provision as an interim measure until they can complete the complex and time consuming steps necessary to enact a TDR ordinance and provide a means of accomplishing their goals until that time. However, the Township is now considering updating its non-contiguous clustering ordinance to take advantage of the recent amendments to the statute.

Mount Olive Township in Morris County was among the state's first municipalities to adopt a non-contiguous clustering ordinance. Since the adoption of that ordinance over 20 years ago, it was used for a single transaction for the creation of a 60-acre municipal park. In 2004, with the enactment of the Highlands Water Protection and Planning Act, Mount Olive was included in the Highlands Region with the Township split between the Preservation Area and the Planning Area as defined by the Act. The Highlands Act has provisions for a regional TDR program that could alleviate the need for non-contiguous clustering in Mount Olive. The Township revised its Master Plan and Zoning Ordinances in 2010 as part of the municipality's obligation to conform the Township's planning to the Highlands Regional Master Plan. The provisions for cluster developments were retained in the update with new standards for minimum lot sizes, characteristics of the land utilized and minimum (80%) standards for preservation when clustering is used.

Implementation Overview

Each of the 10 municipalities discussed herein that have adopted non-contiguous clustering provisions has carefully considered the reasons for utilizing this planning tool. They all have specific goals for both the areas slated for development and the areas designated for preservation in each community. They are all appropriately crafted with correct intentions. However, actual implementation has been limited.

The use of a mechanism like non-contiguous clustering is an ambitious undertaking and involves multiple properties with multiple owners. There are a number of complex relationships that must be aligned to produce results. There is a natural inclination to hope for immediate results and there may be local political pressures that accompany these expectations. However, changing the development trends in a community can take an extended period of time. Producing tangible results may take multiple transactions and will likely cover multiple election cycles. Consistency of policy and patience can be difficult commodities to come by in the public realm. However, planning is a long-term endeavor.

There are multiple factors that contribute to whether or not a non-contiguous clustering provision will be successful or not, including circumstances that are beyond the municipality's ability to control. The prevailing economic climate, market conditions and state-level regulatory provisions can all have a direct impact on the use of non-contiguous clustering as a planning tool and even the best conceived plans can be frustrated by these influences. Successful implementation relies on an economic climate that drives demand for new housing in the community combined with a market that is seeking the particular type of housing non-contiguous clustering will produce. Demographic trends all point towards a higher demand for walkable, transit-accessible, mixed-use communities and a move away from continued development of large-lot suburbs and exurbs. Non-contiguous clustering can play a role in fostering development that will meet the demand created by these larger societal trends and that will lead to more marketable and more sustainable development.

Municipalities that have put non-contiguous clustering provisions in place need to keep them available for future use, even if they have been used either sparingly or not at all. The larger demographic trends combined with the economic reality that funding for farmland and open space preservation will be more difficult to come by should combine to make non-contiguous clustering a useful and necessary planning tool. If the underlying conditions in a municipality are appropriate and there is a defined and predictable approval process, it should be more widely used. The key to implementation is creating an environment where non-contiguous clustering is a preferred option for municipalities, land owners and developers.

Summary

New Jersey has experienced nearly continuous growth for over half a century, interrupted only by downturns in the larger national economy. Much of that period has been characterized by sprawling suburban style development. In rural and suburban settings, the basic provisions of the New Jersey MLUL are designed to facilitate typical development by sub-division. The state's land use laws have also incorporated some innovative provisions specifically designed to provide municipalities with the ability to change the ordinary approaches to development. Non-Contiguous clustering is one of the planning tools added that can provide a powerful mechanism to alter that pattern. It's not an answer for reversing decades of development trends, but it is an important component in a comprehensive planning strategy that can make a significant difference.

New Jersey has a history of promoting "Smart Growth" planning principals for growth management and resource protection that covers over 30 years; longer if you take into account measures like the Hackensack Meadowlands Development and Reclamation Act which dates back to 1969. Additionally, New Jersey is one of the only states in the nation to have a statewide development and redevelopment plan. With innovative laws like the Pinelands Protection Act and the Highlands Water Protection and Planning Act, the state has always been a national leader in creating policies and measures to combat sprawl development.

This leadership has been born of necessity. The nation's most densely populated state has been forced to find ways to balance accommodating the needs of the nearly 9 million people living there with the necessity of protecting the resources that support that population. Land use patterns need to be managed in New Jersey, not only for protection of resources, but also to provide for economically and socially sustainable communities. The state's tradition of home rule places the bulk of the responsibility for shaping future development, even with the numerous state and regional planning measures, squarely at the municipal level.

Municipalities need to evaluate whether non-contiguous clustering is an appropriate option in a considered and logical manner. A comprehensive approach that identifies specific goals and assessing whether or not this planning tool can advance those aims is necessary. Links to sample ordinances are provided. However, each municipality will need to evaluate its own circumstances when considering the adoption of a non-contiguous clustering provision. Under the appropriate conditions, non-contiguous clustering can offer substantial benefits to a community.

New Jersey's municipalities need to be up to the challenge of taking measures necessary to alter existing development patterns. Exploring every option available is part of fulfilling that responsibility. Non-contiguous clustering will not be an appropriate solution for every town, but for many it can be a tool that makes a tremendous impact on a community's makeup. Saving farmland, saving open space,

protecting historic resources and creating communities that are better suited for the future through the power of the private marketplace are common objectives for towns throughout the state. Non-contiguous clustering should be an attractive option for municipalities struggling to find ways to accomplish each of these seemingly disparate goals. Any town looking to exercise stronger control of its future should consider incorporating non-contiguous clustering as an important part of a comprehensive planning strategy.

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He was an original member of the Highlands Council, the founder and president of the Raritan-Highlands Planning Compact and is a Senior Fellow with the Environmental Leadership Program in Washington D.C.

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About New Jersey Future

Founded in 1987, New Jersey Future is a nonprofit, nonpartisan organization that promotes sensible growth, redevelopment and infrastructure investments to foster vibrant cities and towns, protect natural lands and waterways, enhance transportation choices, provide access to safe, affordable and aging-friendly neighborhoods and fuel a strong economy. The organization does this through original research, innovative policy development, coalition-building, advocacy, and hands-on strategic assistance.

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- ⁱ N.J.S.A. 40:55D-1 et. seq.
- ⁱⁱ N.J.S.A. 40:55D-43
- ⁱⁱⁱ N.J.S.A. 40:55D-40
- ^{iv} N.J.S.A. 40:55D-137, et. seq.
- ^v 2016 New Jersey Farm Bureau Policies As Adopted by the delegates to the New Jersey Farm Bureau 97th Annual Meeting <https://njfb.org/wp-content/uploads/2016/02/2016-Policies.pdf>
- ^{vi} N.J.S.A. 40:55D-65(c), PL 1995, c. 364
- ^{vii} N.J.S.A. 40:55D-65 (c), PL 1995, c. 364 (amended 2013)
- ^{viii} **Builder’s League of South Jersey v. Township of Franklin**, 395 N.J. Super. 47 (App. Div. 2007) & **Flynn Tucker, LLC v. Township of Springfield**
- ^{ix} P.L. 2013, CHAPTER 106, approved August 7, 2013
- ^x N.J.S.A. 40:55D-5
- ^{xi} N.J.S.A. 40:55D-65 (b)
- ^{xii} N.J.S.A. 40:55D-62 (a)
- ^{xiii} New Jersey Farmland Preservation Program Summary of Preserved Farmland, State Agriculture Development Committee.
- ^{xiv} Noncontiguous Parcel Clustering: A New Technique for Planned Density Transfers, Technical Reference Document #128, N.J. Office of State Planning, David N. Kinsey, December 1997
- ^{xv} N.J.S.A. 40:55D-39 (h)
- ^{xvi} N.J.S.A. 40:55D-39.1
- ^{xvii} N.J.S.A. 40:55D-39.1 (d) (1), et. seq.
- ^{xviii} Preserving Land Through Compact Growth: Case Studies of Noncontiguous Clustering in New Jersey, Chris Sturm & Nicole Heater, NJ Future, April 2012.
- ^{xix} Proposed Amended Rule N.J.A.C. 7:15-4.4
- ^{xx} http://www.delawaretpnj.org/ordinances/or201503LU_Non_Contiguous_Cluster.pdf
- ^{xxi} The Receding Metropolitan Perimeter: A New Postsuburban Demographic Normal (2014), James W. Hughes & Joseph J. Seneca, Rutgers Regional Report 37: 1-16.
- ^{xxii} Township of Plainsboro Open Space & Recreation Plan, May 2011
- ^{xxiii} **Gripenburg v. Township of Ocean**, 220 N.J. 239 (2015)
- ^{xxiv} Burlington County Farmland Preservation, Preserved Acreage Totals by Township, Burlington County Planning Department, April 2008.

Appendix

I-Text of P.L. 2013, Chapter 106

II-Proposed Green Acres Deed of Conservation Restriction

III- SADC Approved Agricultural Deed of Easement for Non-Contiguous Cluster Protection

IV-N.J. Historic Trust Easement Template

V- Links to Existing Municipal Non-Contiguous Clustering Ordinances

I-Text of P.L. 2013, Chapter 106

P.L. 2013, CHAPTER 106, *approved August 7, 2013*

Assembly, No. 3761

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

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

1. Section 2 of P.L.1975, c.291 (C.40:55D-2) is amended to read as follows:
2. Purpose of the act. It is the intent and purpose of this act:
 - a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare;
 - b. To secure safety from fire, flood, panic and other natural and man-made disasters;
 - c. To provide adequate light, air and open space;
 - d. To ensure that the development of individual municipalities does not conflict with the development and general welfare of neighboring municipalities, the county and the State as a whole;
 - e. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment;
 - f. To encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies;
 - g. To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens;

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

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

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

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

l. To encourage senior citizen community housing construction;

m. To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land;

n. To promote utilization of renewable energy resources; and

o. To promote the maximum practicable recovery and recycling of recyclable materials from municipal solid waste through the use of planning practices designed to incorporate the State Recycling Plan goals and to complement municipal recycling programs.

p. To enable municipalities the flexibility to offer alternatives to traditional development, through the use of equitable and effective planning tools including clustering, transferring development rights, and lot-size averaging in order to concentrate development in areas where growth can best be accommodated and maximized while preserving agricultural lands, open space, and historic sites.

(cf: P.L.1987, c.102, s.25)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Conditional use" means a use permitted in a particular zoning district only upon a showing that such use in a specified location will comply with the conditions and standards for the

location or operation of such use as contained in the zoning ordinance, and upon the issuance of an authorization therefor by the planning board.

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

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

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

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

"County master plan" means a composite of the master plan for the physical development of the county in which the municipality is located, with the accompanying maps, plats, charts and descriptive and explanatory matter adopted by the county planning board pursuant to R.S.40:27-2 and R.S.40:27-4.

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

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

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

3.1. "Days" means calendar days.

"Density" means the permitted number of dwelling units per gross area of land [to be developed] that is the subject of an application for development, including noncontiguous land, if authorized by municipal ordinance or by a planned development.

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

"Development" means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining excavation or landfill, and any use or change in the

use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to [this act] P.L.1975, c.291 (C.40:55D-1 et seq.).

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

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

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

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

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

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

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

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

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

"Floor area ratio" means the sum of the area of all floors of buildings or structures compared to the total area of [the site] land that is the subject of an application for development, including noncontiguous land, if authorized by municipal ordinance or by a planned development.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Military facility" means any facility located within the State which is owned or operated by the federal government, and which is used for the purposes of providing logistical, technical, material, training, and any other support to any branch of the United States military.

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

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

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

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

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

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

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

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

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

"Noncontiguous cluster" means noncontiguous areas to be developed as a single entity according to a plan containing an area, or a section or sections thereof, to be developed for residential purposes, nonresidential purposes, or a combination thereof, at a greater concentration of density or intensity of land use than authorized within the area, section, or sections, under conventional development, in exchange for the permanent preservation of another area, or a section or sections thereof, as common or public open space, or for historic or agricultural purposes, or a combination thereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

"Planned development" means planned unit development, planned unit residential development, [residential] contiguous cluster or noncontiguous cluster, planned commercial development or planned industrial development.

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

"Planned unit development" means an area with a specified minimum contiguous or noncontiguous acreage of 10 acres or more to be developed as a single entity according to a plan, containing one or more [residential] contiguous clusters or noncontiguous clusters or planned unit residential developments and one or more public, quasi-public, commercial or industrial

areas in such ranges of ratios of nonresidential uses to residential uses as shall be specified in the zoning ordinance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. Preparation; contents; modification.

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

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

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

(2) A land use plan element

(a) taking into account and stating its relationship to the statement provided for in paragraph (1) hereof, and other master plan elements provided for in paragraphs (3) through (14) hereof and

natural conditions, including, but not necessarily limited to, topography, soil conditions, water supply, drainage, flood plain areas, marshes, and woodlands;

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

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

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

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

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

(5) A utility service plan element analyzing the need for and showing the future general location of water supply and distribution facilities, drainage and flood control facilities, sewerage and waste treatment, solid waste disposal and provision for other related utilities, and including any storm water management plan required pursuant to the provisions of P.L.1981, c.32 (C.40:55D-93 et al.). If a municipality prepares a utility service plan element as a condition for adopting a development transfer ordinance pursuant to subsection c. of section 4 of P.L.2004, c.2 (C.40:55D-140), the plan element shall address the provision of utilities in the receiving zone as provided thereunder;

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

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

(8) A conservation plan element providing for the preservation, conservation, and utilization of natural resources, including, to the extent appropriate, energy, open space, water supply, forests, soil, marshes, wetlands, harbors, rivers and other waters, fisheries, endangered or

threatened species wildlife and other resources, and which systemically analyzes the impact of each other component and element of the master plan on the present and future preservation, conservation and utilization of those resources;

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

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

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

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

(13) A farmland preservation plan element, which shall include: an inventory of farm properties and a map illustrating significant areas of agricultural land; a statement showing that municipal ordinances support and promote agriculture as a business; and a plan for preserving as much farmland as possible in the short term by leveraging moneys made available by P.L.1999, c.152 (C.13:8C-1 et al.) through a variety of mechanisms including, but not limited to, utilizing option agreements, installment purchases, and encouraging donations of permanent development easements;

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

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

(16) A green buildings and environmental sustainability plan element, which shall provide for, encourage, and promote the efficient use of natural resources and the installation and usage of renewable energy systems; consider the impact of buildings on the local, regional and global

environment; allow ecosystems to function naturally; conserve and reuse water; treat storm water on-site; and optimize climatic conditions through site orientation and design.

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

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

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

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

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

29. Contents of ordinance. An ordinance requiring approval by the planning board of either subdivisions or site plans, or both, shall include the following:

a. Provisions, not inconsistent with other provisions of this act, for submission and processing of applications for development, including standards for preliminary and final approval and provisions for processing of final approval by stages or sections of development;

b. Provisions ensuring:

(1) Consistency of the layout or arrangement of the subdivision or land development with the requirements of the zoning ordinance;

(2) Streets in the subdivision or land development of sufficient width and suitable grade and suitably located to accommodate prospective traffic and to provide access for firefighting and emergency equipment to buildings and coordinated so as to compose a convenient system consistent with the official map, if any, and the circulation element of the master plan, if any, and so oriented as to permit, consistent with the reasonable utilization of land, the buildings constructed thereon to maximize solar gain; provided that no street of a width greater than 50 feet within the right-of-way lines shall be required unless said street constitutes an extension of

an existing street of the greater width, or already has been shown on the master plan at the greater width, or already has been shown in greater width on the official map;

(3) Adequate water supply, drainage, shade trees, sewerage facilities and other utilities necessary for essential services to residents and occupants;

(4) Suitable size, shape and location for any area reserved for public use pursuant to section 32 of this act;

(5) Reservation pursuant to section 31 of [this act] P.L.1975, c.291 (C.40:55D-43) of any open space to be set aside for use and benefit of the residents of a cluster development or a planned development, resulting from the application of standards of density or intensity of land use, contained in the zoning ordinance, pursuant to [subsection c. of] section 52 of [this act], P.L.1975, c.291 (C.40:55D-65);

(6) Regulation of land designated as subject to flooding, pursuant to subsection e. of section 52 of [this act] P.L.1975, c.291 (C.40:55D-65), to avoid danger to life or property;

(7) Protection and conservation of soil from erosion by wind or water or from excavation or grading;

(8) Conformity with standards promulgated by the Commissioner of Transportation, pursuant to the "Air Safety and [Hazardous] Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et seq.), for any airport hazard areas delineated under that act;

(9) Conformity with a municipal recycling ordinance required pursuant to section 6 of P.L.1987, c.102 (C.13:1E-99.16);

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

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

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

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

(14) Conformity with the public safety regulations concerning storm water detention facilities adopted pursuant to section 5 of P.L.1991, c.194 (C.40:55D-95.1) and reflected in

storm water management plans and storm water management ordinances adopted pursuant to P.L.1981, c.32 (C.40:55D-93 et al.); and

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

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

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

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

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

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

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

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

b. Provisions for standards encouraging and promoting flexibility, and economy in layout and design through the use of planned [unit] development, [planned unit residential development and residential] cluster development, or both; provided that such standards shall be appropriate to the type of development permitted; and provided further that the ordinance shall set forth the limits and extent of any special provisions applicable to [such] planned developments and to cluster developments, considering the availability of existing and proposed infrastructure and the environmental characteristics of any area proposed for development and any area proposed for protection as open space, agricultural land, or historic site, so that the manner in which such

special provisions differ from the standards otherwise applicable to subdivisions or site plans can be determined;

c. Provisions for planned development:

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

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

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

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

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

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

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

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

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

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

h. Provisions for cluster development:

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

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

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

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

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

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

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

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

d. (1) Land identified for preservation as agricultural land shall be conveyed or dedicated by agricultural restriction. A municipality shall use an agricultural restriction template prepared by the State Agriculture Development Committee or obtain approval of the agricultural restriction by the State Agriculture Development Committee. The State Agriculture Development Committee shall make available to municipalities an agricultural restriction template.

(2) An agricultural restriction may contain provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Standards permitting lot-size averaging and encouraging and promoting flexibility, economy and environmental soundness in layout and design in accordance with which the planning board may approve the varying, within a conventional subdivision, of lot areas and

dimensions, and yards and setbacks otherwise required by municipal development regulations [in such a way that the average lot areas and dimensions, yards and setbacks within the subdivision conform to the conventional norms of the municipal development regulations]; provided that the authorized density on the parcel or set of contiguous parcels is not exceeded; provided that such standards shall be appropriate to the type of development permitted. An ordinance authorizing the planning board to approve subdivisions with varying lot areas may set forth limitations, or impose no limitation, upon the extent of variation in lot areas.

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

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

31. a. An ordinance pursuant to this article permitting planned unit development, planned unit residential development or [residential] cluster development may provide that the municipality or other governmental agency may, at any time and from time to time, accept the dedication of land or any interest therein for public use and maintenance, but the ordinance shall not require, as a condition of the approval of a planned development, that land proposed to be set aside for common open space be dedicated or made available to public use.

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

b. In the event that such organization, person, or entity shall fail to maintain the open space in reasonable order and condition, the municipal body or officer designated by ordinance to administer this subsection may serve written notice upon such organization, person, or entity or upon the owners of the development setting forth the manner in which the organization, person, or entity has failed to maintain the open space in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be cured within 35 days thereof, and shall state the date and place of a hearing thereon which shall be held within 15 days of the notice. At such hearing, the designated municipal body or officer, as the case may be, may modify the terms of the original notice as to deficiencies and may give a reasonable extension of time not to exceed 65 days within which they shall be cured. If the deficiencies set forth in the original notice or in the modification thereof shall not be cured within said 35 days or any permitted extension thereof, the municipality, in order to preserve the open space and maintain the same for a period of 1 year may enter upon and maintain such land. Said entry and maintenance shall not vest in the public any rights to use the open space except when the same is

voluntarily dedicated to the public by the owners. Before the expiration of said year, the designated municipal body or officer, as the case may be, shall, upon its initiative or upon the request of the organization, person, or entity theretofore responsible for the maintenance of the open space, call a public hearing upon 15 days written notice to such organization, person, or entity and to the owners of the development, to be held by such municipal body or officer, at which hearing such organization, person, or entity and the owners of the development shall show cause why such maintenance by the municipality shall not, at the election of the municipality, continue for a succeeding year. If the designated municipal body or officer, as the case may be, shall determine that such organization, person, or entity is ready and able to maintain said open space in reasonable condition, the municipality shall cease to maintain said open space at the end of said year. If the municipal body or officer, as the case may be, shall determine such organization, person, or entity is not ready and able to maintain said open space in a reasonable condition, the municipality may, in its discretion, continue to maintain said open space during the next succeeding year, subject to a similar hearing and determination, in each year thereafter. The decision of the municipal body or officer in any such case shall constitute a final administrative decision subject to judicial review.

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

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

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

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

38. Final approval of site plans and major subdivisions.

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

b. Final approval shall be granted or denied within 45 days after submission of a complete application to the administrative officer, or within such further time as may be consented to by

the applicant. Failure of the planning board to act within the period prescribed shall constitute final approval and a certificate of the administrative officer as to the failure of the planning board to act shall be issued on request of the applicant, and it shall be sufficient in lieu of the written endorsement or other evidence of approval, herein required, and shall be so accepted by the county recording officer for purposes of filing subdivision plats.

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

(cf: P.L.1975, c.291, s.38)

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

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

The zoning ordinance shall be drawn with reasonable consideration to the character of each district and its peculiar suitability for particular uses and to encourage the most appropriate use of land. The regulations in the zoning ordinance shall be uniform throughout each district for each class or kind of buildings or other structure or uses of land, including planned unit development, planned unit residential development and [residential] cluster development, but the regulations in one district may differ from those in other districts.

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

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

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

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

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

52. A zoning ordinance may:

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

b. Regulate the bulk, height, number of stories, orientation, and size of buildings and the other structures; the percentage of lot or development area that may be occupied by structures; minimum or maximum lot sizes, or a combination thereof, and dimensions, including provisions concerning lot-size averaging; minimum improvable lot areas and cluster development, and for these purposes may specify minimum or maximum floor areas, or a combination thereof, floor area ratios and other ratios and regulatory techniques governing the intensity of land use and the provision of adequate light and air, including, but not limited to the potential for utilization of renewable energy sources. Such regulations may provide for the clustering of development between noncontiguous parcels and may, in order to provide equitable opportunities for the use of development potential on off-tract locations in addition to authorized on-site development, and, to encourage the flexibility of density, intensity of land uses, design and type, authorize a deviation in various clusters from the density, or intensity of use, established for the zoning district. The regulations by which the design, bulk and location of buildings are to be evaluated shall be set forth in the zoning ordinance and all standards and criteria for any feature of a cluster development shall be set forth in such ordinance with sufficient certainty to provide reasonable criteria by which specific proposals for clustered development can be evaluated.

c. Provide districts for planned developments; provided that an ordinance providing for approval of subdivisions and site plans by the planning board has been adopted and incorporates therein the provisions for such planned developments in a manner consistent with article 6 of P.L.1975, c.291 (C.40:55D-37 et seq.). The zoning ordinance shall establish standards governing the type and density, or intensity of land use, in a planned development. Said standards shall take into account that the density, or intensity of land use, otherwise allowable may not be appropriate for a planned development. The standards may vary the type and density, or intensity of land use, otherwise applicable to the land within a planned development

in consideration of the amount, location and proposed use of open space; the location and physical characteristics of the site of the proposed planned development considering the availability of existing and proposed infrastructure and the environmental characteristics of the parcel that will be developed and the open space, agricultural or historical resources to be protected; and the location, design and type of dwelling units and other uses. Such standards may provide for the clustering of development between noncontiguous parcels and may, in order to encourage the flexibility of density, intensity of land uses, design and type, authorize a deviation in various clusters from the density, or intensity of use, established for an entire planned development. The standards and criteria by which the design, bulk and location of buildings are to be evaluated shall be set forth in the zoning ordinance and all standards and criteria for any feature of a planned development shall be set forth in such ordinance with sufficient certainty to provide reasonable criteria by which specific proposals for planned development can be evaluated.

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

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

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

g. Provide for senior citizen community housing.

h. Require as a condition for any approval which is required pursuant to such ordinance and the provisions of this chapter, that no taxes or assessments for local improvements are due or delinquent on the property for which any application is made.

i. Provide for historic preservation pursuant to section 5 of P.L.1991, c.199 (C.40:55D-65.1).

j. Provide for sending and receiving zones for a development transfer program established pursuant to P.L.2004, c.2 (C.40:55D-137 et al.).

k. Provide for areas to be developed and areas to be preserved through cluster development or establish criteria for the establishment of such areas for cluster development.

1. Provide that parcels that are developed and parcels that are preserved through contiguous cluster or noncontiguous cluster may be consolidated for tax and stewardship purposes if they are in common ownership.

(cf: P.L.2004, c.2, s.39)

15. This act shall take effect immediately.

STATEMENT

This bill would amend 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 would expand upon the existing provisions of law that authorize cluster development and clarify a provision of law that authorizes a related planning tool, lot-size averaging. The bill is permissive, authorizing municipalities and landowners additional options for subdividing and developing land.

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

- "contiguous cluster," where a parcel or set of adjacent parcels are developed as a single entity that results in both development and preservation; and
- "noncontiguous cluster," where a set of non-adjacent parcels are developed in the same way.

In both contiguous and noncontiguous clustering, the combined development potential from the parcel or parcels is concentrated in growth areas, resulting in more intense development of the growth area than authorized under conventional zoning, and the remaining land is permanently preserved. Cluster development, as opposed to conventional development, allows municipalities and landowners to concentrate development in areas where they agree that it makes sense to target development. This can result in the establishment of close-knit communities and allow for the more efficient provision of infrastructure and local government services.

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

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

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

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

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

The bill clarifies that the MLUL authorizes "lot-size averaging" by inserting that term into a provision of the MLUL that authorizes municipal subdivision ordinances to include standards encouraging and promoting flexibility, economy, and environmental soundness in layout and design. This section permits a planning board to approve the varying, within a conventional subdivision, of lot areas and dimensions, and yards and setbacks otherwise required by municipal development regulations in accordance with those standards. The bill amends that section to afford planning boards greater discretion to approve subdivisions with varying lot areas, provided that the authorized density on the parcel or set of contiguous parcels is not exceeded. The bill also authorizes municipalities to adopt lot-size averaging provisions as part of their zoning ordinances.

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

II-Proposed Green Acres Deed of Conservation Restriction

DEED OF CONSERVATION RESTRICTION

Grantor

TO

Grantee

Dated: _____

Record and return to:

Prepared By:

DEED OF CONSERVATION RESTRICTION

This Deed of Conservation Restriction is made and entered into this _____ day of _____, 20_ , between _____, whose post office address is _____ ("Grantor"), and _____, having its principal office located at _____ ("Grantee").

TAX MAP REFERENCE. Grantor owns in fee simple certain lands in the _____ of _____, County of _____, State of New Jersey, which lands are known as Block _____, Lot _____, on the respective Tax Map of _____, _____ County.

DESCRIPTION OF EASEMENT AREA. This Deed of Conservation is intended to apply to the [Property/Easement Area] more fully described in the metes and bounds description attached to and incorporated into this Deed as Exhibit A-1 and the [reduced survey/plan] attached hereto and incorporated as Exhibit A-2.

[Note: From this point forward, use the term "Property" if the Conservation Restriction applies to the entire property owned by Grantor (and/or an entire tax lot) and "Easement Area" if the Conservation Restriction applies to a portion of the Property.]

PURPOSE. It is the purpose of this Deed of Conservation Restriction to dedicate the Property/Easement Area for permanent protection and preservation for public open space, as defined at N.J.S.A. 40:55D-6 and as required by the municipal planning board's approval of a planned development, subdivision, or site plan, as the case may be, allowing for a contiguous or noncontiguous cluster ("Approval") issued pursuant to any municipal ordinance adopted under L. 2013 c. 106 (amending and supplementing N.J.S.A. 40:55D-1 et seq.) Preservation of the Property/Easement Area for public open space requires that it be used solely for "recreation and conservation purposes" as defined in N.J.S.A. 13:8C-3. Grantor understands and intends that this Deed of Conservation Restriction will benefit the public by virtue of permanent preservation of the Property/Easement Area. A copy of the Approval is attached hereto as Exhibit B.

GRANT OF CONSERVATION RESTRICTION. Grantor, for and in consideration of the benefits conferred upon it by the Approval, and pursuant to both N.J.S.A. 40:55D-39.1 and the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1 through 13:8B-9 ("Conservation Restriction Act"), hereby transfers, assigns, and grants to Grantee, its successors, and its

assigns a conservation restriction on the *Property/Easement Area* for the purpose of restricting its use, in perpetuity, as public open space to be used solely for recreation and conservation purposes. The provisions of this Deed of Conservation Restriction shall run with title to the *Property/Easement Area* and shall encumber the *Property/Easement Area* unless released in compliance with the requirements specified in the Conservation Restriction Act and any other applicable regulation or statute.

PROMISES BY GRANTOR. Grantor, for itself, its successors, and its assigns, agrees to:

- (1) Maintain, protect, and use the *Property/Easement Area* as public open space for recreation and conservation purposes only;
- (2) Ensure that any sale, transfer, lease, mortgage, exchange, donation, encumbrance or additional restriction placed on the *Property/Easement Area* is made expressly subject to this Deed of Conservation Restriction;
- (3) Provide public access to the *Property/Easement Area* in the manner and to the extent required by any municipal ordinance adopted under PL. 2013 c. 106 (amending and supplementing N.J.S.A. 40:55D-1-2838, et seq.);
- (4) Comply with any provisions of the Approval applicable to the *Property/Easement Area*; and

- (5) Comply with all other applicable provisions of any municipal ordinance adopted under PL. 2013 c. 106 (amending and supplementing N.J.S.A. 40:55D-1-2838, et seq.)

[Note: This list may be modified or expanded to include additional conditions on Grantor as required by the Approval, ordinance or otherwise negotiated by Grantee.]

RIGHTS OF GRANTEE. To accomplish the purpose of this Deed of Conservation Restriction the Grantor transfers, assigns, and grants the following rights to Grantee:

- (1) To enter upon the *Property/Easement Area* at reasonable times in order to monitor Grantor's maintenance of the *Property/Easement Area* and compliance with the terms of this Deed of Conservation Restriction, provided that Grantee shall not unreasonably interfere with Grantor's use and enjoyment of the *Property/Easement Area*;
- (2) To prevent any activity on or use of the *Property/Easement Area* that is inconsistent with recreation and conservation purposes;
- (3) To transfer its interest in this Deed of Conservation Restriction to an entity authorized to hold the restriction under the Conservation Restriction Act; and
- (4) To take any other action necessary or convenient to enforce this Deed of Conservation Restriction.

REMEDIES. In the event of any violation of this Deed of Conservation Restriction, Grantee may, in its sole discretion and with or without notice, institute suit or take any other action it deems necessary to enjoin such violation, *ex parte* or otherwise, and to require restoration of the *Property/Easement Area* to its prior condition and additionally to seek damages and costs incurred in bringing the action and curing the violation. Grantor further agrees to pay whatever costs Grantee incurs in enforcing the Grantor's obligations pursuant to this Deed of Conservation Restriction. Such costs shall include, but not be limited to, labor and other personnel costs, equipment and material costs, attorney and other professional fees, and court costs. The State of New Jersey, Department of Environmental Protection, the municipality in which the *Property/Easement Area* is located and any public agency or nonprofit conservation organization authorized by municipal ordinance adopted under N.J.S.A. 40:55D-39.1(f) shall have the same right to enforce this Deed of Conservation Restriction as Grantee.

ADDITIONAL COVENANTS. Grantor covenants that Grantor has done no act to encumber the *Property/Easement Area* other than to convey this Deed of Conservation Restriction to Grantee. Grantor's promise regarding other encumbrances is called a "covenant as to grantor's acts" (*N.J.S.A. 46:4-6*). This promise means that Grantor has not done anything which would allow anyone else to obtain any legal rights which affect the *Property/Easement Area* (such as by making a mortgage or by allowing a judgment to be entered against Grantor).

RECORDATION AND CORRECTIVE INSTRUMENTS. Grantor agrees to record this instrument in the official records of the County of _____, State of New Jersey, as soon as possible after [*insert language setting a milestone appropriate to the particular Approval.*] Grantee may re-record this instrument at any time it may deem necessary or convenient to preserve its rights pursuant to this Deed of Conservation Restriction. Grantor agrees to execute any corrective or additional instrument which Grantee determines may be necessary or convenient to secure its rights under this Deed of Conservation Restriction or fully to effectuate the purposes intended to be achieved by this Deed of Conservation Restriction.

EXECUTION SIGNATURES. This Deed of Conservation Restriction is signed and attested to by

Grantor's proper and authorized officers, directors, or representatives as of the date

written at the top of the first page.

GRANTOR:

[insert appropriate signature blocks and form or acknowledgment—signatures should be notarized]

EXHIBIT A-1

(insert metes and bounds description of the Property/Easement Area here)

EXHIBIT A-2

(insert reduced survey/plan of Property/Easement Area here)

EXHIBIT B

(insert copy of Approval here)

**AGRICULTURAL DEED RESTRICTION TEMPLATE
FOR FARMLAND PRESERVATION PURPOSES
[Municipal Form] OF _____**

This Agricultural Deed Restriction is made _____, 20_____.

BETWEEN _____, whose address is _____ and is referred to as the Grantor;

AND the [Municipal Form] of _____, whose address is _____ and is referred to as the Grantee and/or [Municipal Form].

The Grantor, Grantor's heirs, executors, administrators, personal or legal representatives, successors and assigns grants and conveys to the Grantee all of the nonagricultural development rights and credits on the area subject to the Agricultural Deed Restriction, also referred to as "Premises".

The tax map reference for the Premises is:
[Municipal Form] of _____, County of _____
Block(s) _____, Lot(s) _____

WHEREAS, the [Municipal Form] of _____ acknowledges that development of agriculture and retention of farmland is important to the economy and welfare of its citizens; and

WHEREAS, as set forth in N.J.S.A. 40A:55D-2p., a stated purpose of the Municipal Land Use Law is to provide municipalities with the flexibility to employ planning tools, such as cluster development, to accommodate growth while preserving agricultural lands, open space, and historic sites; and

WHEREAS, N.J.S.A. 40:55D-3 defines "cluster development" as "a contiguous cluster or noncontiguous cluster that is not a planned development"; and

WHEREAS, N.J.S.A. 40:55D-39h.(1) authorizes municipalities to include in their subdivision or site plan ordinances provisions for cluster development in order to permanently protect land for agricultural purposes; and

WHEREAS, N.J.S.A. 40:55D-39.1d.(1) provides that a municipal ordinance authorizing cluster development for the purpose of permanently protecting agricultural land contains a requirement that such preservation be effectuated by a recorded agricultural deed restriction using a template prepared or approved by the State Agriculture Development Committee; and

WHEREAS, at its meeting of _____, 20__, the State Agriculture Development Committee granted approval to the [Municipal Form] of _____'s agricultural restriction; and

WHEREAS, Ordinance _____ permits the use of clustering and/or non-contiguous clustering (as applicable) within the [Municipal Form] of _____ to concentrate development in areas where growth can best be accommodated and maximized while preserving agricultural lands; and

WHEREAS, Grantor received final subdivision and/or site plan approval (as applicable) for Block(s) _____, Lot(s) _____ on _____, 20__ as memorialized in _____ [Municipal Form] Planning Board Resolution # [or "No."] _____ dated _____, and

WHEREAS, final subdivision and/or site plan (as applicable) approval permitted transfer of density from Block(s) _____, Lot(s) _____ in connection with the development of Block(s) _____, Lot(s) _____, pursuant to Ordinance _____; and

Prepared by: _____

Print name and title

WHEREAS, it is the intention of the Grantee to permanently preserve Block(s) _____, Lot(s) _____ through this Agricultural Deed Restriction for Farmland Preservation Purposes (hereinafter, the "Agricultural Deed Restriction"); and

NOW THEREFORE, THE GRANTOR, GRANTOR'S HEIRS, EXECUTORS, ADMINISTRATORS, PERSONAL OR LEGAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS PROMISES that the Premises will be owned, used and conveyed subject to, and not in violation of the following restrictions:

1. Any development of the Premises for nonagricultural purposes is expressly prohibited unless specifically authorized herein.

2. Except as otherwise provided herein, the Premises shall be retained for agricultural use and production. Agricultural use shall mean the use of the Premises for common farmsite activities including, but not limited to: production, harvesting, storage, grading of product, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management and grazing.

3. Grantor certifies that at the time of the execution of this Agricultural Deed Restriction the nonagricultural uses indicated on attached Schedule (A) existed on the Premises. All other nonagricultural uses are prohibited except as expressly provided in this Agricultural Deed Restriction.

4. All nonagricultural uses, if any, existing on the Premises at the time of the execution of this Agricultural Deed Restriction as set forth in Section 3 above may be continued and any structure may be restored or repaired in the event of partial destruction thereof, subject to the following:

- i. No change in the pre-existing nonagricultural use is permitted ;
- ii. No expansion of the pre-existing nonagricultural use is permitted; and
- iii. In the event that the Grantor abandons the pre-existing nonagricultural use, the right of the Grantor to continue the use is extinguished.

5. The *[Municipal Form]* of _ may, in its discretion and pursuant to N.J.S.A. 40:55D-39.1d.(2)(a), permit limited non-agricultural uses on the Premises, and such uses shall be governed by the applicable standards set forth in N.J.S.A. 4:1C-32.1 and 32.3 (P.L.2015, c.275) and attendant regulations.

6. The boundaries of the Premises may be adjusted to accommodate future public improvements including, but not limited to, roadways, drainage facilities and other public infrastructure following a determination by the _____ *[Municipal Form]* Planning Board, in consultation with the *[Municipal Form]* Agricultural Advisory Committee, if applicable, that the amendment would result in only a de minimis impact to the area of the Premises.

7. No sand, gravel, loam, rock, or other minerals shall be deposited on or removed from the Premises excepting only those materials required for the agricultural purpose for which the land is being used.

8. No dumping or placing of trash shall be permitted on the Premises. The placement of other waste material shall be permitted on the Premises only if expressly recommended by the State Agriculture Development Committee as an agricultural management practice pursuant to N.J.A.C. 2:76-2A.1, et seq.

9. No activity shall be permitted on the Premises which would be detrimental to drainage, flood control, water conservation, erosion control, or soil conservation, nor shall any other activity be permitted which would be detrimental to the continued agricultural use of the Premises. Activities performed in conformance with a farm conservation plan approved by the local soil conservation district that meet or exceed the Basic Assessment Level in the U.S. Department of Agriculture Natural Resources Conservation Service *National and State Resource Concerns and Planning Criteria* in Section III of the Field

Office Technical Guide, as may be amended and supplemented, shall be permitted.

10. Grantee, and the entities identified in Paragraph 19, shall be permitted access to, and to enter upon, the Premises at all reasonable times, but solely for the purpose of inspection in order to enforce and assure compliance with the terms and conditions of this Agricultural Deed Restriction. Grantee agrees to give Grantor, and the entities identified in Paragraph 19, at least 24 hours advance notice of its intention to enter the Premises, and further, to limit such times of entry to the daylight hours on regular business days of the week.

11. Grantor may use the Premises to derive income from certain recreational activities such as hunting, fishing, cross country skiing and ecological tours, only if such activities do not interfere with the actual use of the land for agricultural production and that the activities only utilize the Premises in its existing condition. Other recreational activities from which income is derived and which alter the Premises, such as golf courses and athletic fields, are prohibited.

12. Nothing shall be construed to convey a right to the public of access to or use of the Premises except as stated in this Agricultural Deed Restriction or as otherwise provided by law.

13. Nothing shall impose upon the Grantor any duty to maintain the Premises in any particular state, or condition, except as provided for in this Agricultural Deed Restriction.

14. Nothing in this Agricultural Deed Restriction shall be deemed to restrict the right of Grantor, to maintain all roads and trails existing upon the Premises as of the date of this Agricultural Deed Restriction. Grantor shall be permitted to construct, improve or reconstruct any roadway necessary to service crops, bogs, agricultural buildings, or reservoirs as may be necessary.

15. At the time of this conveyance, Grantor has () existing single family residential buildings on the Premises, () residential buildings used for agricultural labor purposes and () recreational buildings. Grantor may use, maintain, and improve existing buildings on the Premises for agricultural, residential and recreational uses subject to the following conditions:

- i. Improvements to agricultural buildings shall be consistent with agricultural uses;
- ii. Improvements to residential buildings shall be consistent with agricultural or single and extended family residential uses. Improvements to residential buildings for the purpose of housing agricultural labor are permitted only if the housed agricultural labor is employed on the Premises; and
- iii. Improvements to recreational buildings shall be consistent with agricultural and recreational uses; and

16. No additional future housing opportunities shall be permitted on the Premises.

OR

16. Limited additional future housing opportunities that directly support the property's agricultural operations and are appropriate to the scale of the preserved farmland may be permitted... (SEE FOLLOWING THREE OPTIONS FOR INCLUSION IN THE AGRICULTURAL DEED RESTRICTION. OPTIONS 2 AND 3 REQUIRE SADC APPROVAL PRIOR TO USE OF THE TEMPLATE IN CONNECTION WITH ANY CLUSTER DEVELOPMENT PROJECT.)

OPTION 1: ...so long as the total number of housing units constructed does not exceed a gross density of one dwelling unit per 50 acres, including existing residential dwelling units identified in paragraph 15, above; or

OPTION 2: ...so long as the total number of housing units constructed does not exceed a gross density of _____ dwelling unit per _____ acres, including residential dwelling units identified in paragraph 15, above; **(MUNICIPALITY TO INSERT VALUES);** or

OPTION 3: ...pursuant to *[Municipal Form]* Ordinance **(INSERT ORDINANCE**

REFERENCE), dated **(INSERT DATE OF ORDINANCE EXISTING AT THE TIME OF SADC TEMPLATE APPROVAL)**. Any future amendments to the ordinance that have the effect of increasing future housing opportunities beyond those set forth in Ordinance **(INSERT ORDINANCE REFERENCE)** shall not be valid for purposes of this Agricultural Easement unless and until they are approved by the State Agriculture Development Committee.

For the purpose of this Agricultural Deed Restriction:

"Limited additional future housing opportunities that directly support the property's agricultural operations and are appropriate to the scale of the preserved farmland", means at least one person residing in the residential unit shall be regularly engaged in common farmsite activities on the Premises including, but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage, water management and grazing.

17. Grantor may construct any new buildings for agricultural purposes. The construction of any new buildings for residential use, regardless of its purpose, shall be prohibited except as follows:

- i To provide structures for housing of agricultural labor employed on the Premises but only with the approval of the Grantee. If Grantee grants approval for the construction of agricultural labor housing, such housing shall not be used as a residence for Grantor, Grantor's spouse, Grantor's parents, Grantor's lineal descendants, adopted or natural, Grantor's spouse's parents, Grantor's spouse's lineal descendants, adopted or natural; and
- i To construct a single family residential building anywhere on the Premises in order to replace any single family residential building in existence at the time of conveyance of this Agricultural Deed Restriction but only with the approval of the Grantee.
- ii To construct limited additional future housing opportunities subject to the requirements set forth in Paragraph 16 above. **(IF APPLICABLE)**

18. The land and its buildings which are affected may be sold collectively or individually for continued agricultural use as defined in Paragraph 2 of this Agricultural Deed Restriction. However, no division of the land shall be permitted.

OR

18. The land and its buildings which are affected may be sold collectively or individually for continued agricultural use as defined in Paragraph 2 of this Agricultural Deed Restriction. Division of the Premises is prohibited unless the _____ [Municipal Form] Planning Board, in consultation with the _____ Agricultural Advisory Committee, if applicable, determines that the division is for an agricultural purpose and results in agriculturally viable parcels. Division means any division of the Premises, for any purpose, subsequent to the effective date of this Agricultural Deed Restriction.

(SEE FOLLOWING THREE OPTIONS FOR INCLUSION IN THE AGRICULTURAL DEED RESTRICTION. OPTIONS 2 AND 3 REQUIRE SADC APPROVAL PRIOR TO USE OF THE TEMPLATE IN CONNECTION WITH ANY CLUSTER DEVELOPMENT PROJECT.)

- i For purposes of this Agricultural Deed Restriction, "Agriculturally viable parcels" means...

OPTION 1: ...the total number of divisions that may be permitted may not exceed one division for each 50 acres of the Premises as it exists on the effective date of this Agricultural Deed Restriction and all such divisions shall result in parcels containing a minimum of 25 acres capable of sustaining a variety of agricultural operations that yield a reasonable economic return under normal conditions, solely from each parcel's agricultural

output; or

OPTION 2: ...the total number of divisions that may be permitted may not exceed one division for each acres of the Premises as it exists on the effective date of this Agricultural Deed Restriction and all such divisions shall result in parcels containing a minimum of acres capable of sustaining a variety of agricultural operations that yield a reasonable economic return under normal conditions, solely from each parcel's agricultural output; **(MUNICIPALITY TO INSERT VALUES);** or

OPTION 3: ...the total number of divisions that may be permitted on the Premises may not exceed the gross density permitted by *[Municipal Form]* Ordinance **(insert ordinance reference)**, dated **(insert date of ordinance existing at the time of SADC template approval)**. Any future amendments to the ordinance that have the effect of increasing future division opportunities beyond those set forth in Ordinance **(insert ordinance reference)**, shall not be valid for purposes of this Agricultural Easement unless and until they are approved by the State Agriculture Development Committee.

- i. The requirements of this section do not obviate the need for any additional approvals to effectuate the division.

19. In the event of any violation of the terms and conditions of this Agricultural Deed Restriction, Grantee, the State of New Jersey or, if authorized by municipal ordinance, another public agency or non-profit conservation organization pursuant to N.J.S.A. 40:55D-39.1f., may institute any proceedings to enforce these terms and conditions including the institution of suit to enjoin such violations and to require restoration of the Premises to its prior condition. Grantee, the State of New Jersey or does not waive or forfeit the right to take any other legal action necessary to insure compliance with the terms, conditions, and purpose of this Agricultural Deed Restriction by a prior failure to act.

20. This Agricultural Deed Restriction imposes no obligation or restriction on the Grantor's use of the Premises except as specifically set forth in this Agricultural Deed Restriction.

21. This Agricultural Deed Restriction is binding upon the Grantor, the Grantor's heirs, executors, administrators, personal or legal representatives, successors and assigns and the Grantee; it shall be construed as a restriction running with the land and shall be binding upon any person to whom title to the Premises is transferred as well as upon the heirs, executors, administrators, personal or legal representatives, successors, and assigns of all such persons.

22. Throughout this Agricultural Deed Restriction, the singular shall include the plural, and the masculine shall include the feminine, unless the text indicates otherwise.

23. The word 'Grantor' shall mean any and all persons who lawfully succeed to the rights and responsibilities of the Grantor, including but not limited to the Grantor's heirs, executors, administrators, personal or legal representatives, successors and assigns.

24. Wherever in this Agricultural Deed Restriction any party shall be designated or referred to by name or general reference, such designation shall have the same effect as if the words, 'heirs, executors, administrators, personal or legal representatives, successors and assigns' have been inserted after each and every designation.

25. Grantor, Grantor's heirs, executors, administrators, personal or legal representatives, successors and assigns further transfers and conveys to Grantee all of the nonagricultural development rights and development credits appurtenant to the lands and Premises described herein.

26. This Agricultural Deed Restriction may be assigned, provided advanced written approval is obtained from the State Agriculture Development Committee, to the federal government, the State, a county, or a qualifying tax exempt nonprofit organization.

The Grantor signs this Agricultural Deed Restriction as of the date of the top of the first page. If the Grantor is a corporation, this Agricultural Deed Restriction is signed and attested to by its proper corporate officers, and its corporate seal, if any, is affixed.

_____(L.S.)

_____(L.S.)

Secretary (Corporate Seal)
(For use by corporations only)

(INDIVIDUAL ACKNOWLEDGMENT)

STATE OF NEW JERSEY, COUNTY OF _____ SS.:

I CERTIFY that on _____, 20____,

_____ personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

- (a) is named in and personally signed this AGRICULTURAL DEED RESTRICTION;
- (b) signed, sealed and delivered this AGRICULTURAL DEED RESTRICTION as his or her act and deed;
- (c) made this AGRICULTURAL DEED RESTRICTION for and in consideration of mutual obligations and benefits to each party.

Print name and title below signature _____

(CORPORATE ACKNOWLEDGMENT)

STATE OF NEW JERSEY, COUNTY OF _____ SS.:

I CERTIFY that on _____ 20____, the subscriber(s) _____, personally appeared before me, who, being by me duly sworn on his or her oath, deposes and makes proof to my satisfaction, that he or she is the Secretary of _____, the Corporation named in the within Instrument; that _____ is the President of said Corporation; that the execution, as well as the making of this Instrument, has been duly authorized by a proper resolution of the Board of Directors of the said Corporation, that deponent well knows the corporate seal of said Corporation; and that the seal affixed to said Instrument is the proper corporate seal and was thereto affixed and said Instrument signed and delivered by said President as and for the voluntary act and deed of said Corporation, in presence of deponent, who thereupon subscribed his or her name thereto as attesting witness..

Sworn to and subscribed before me, the date aforesaid

Print name and title below signature

(LIMITED LIABILITY COMPANY ACKNOWLEDGMENT)

STATE OF NEW JERSEY, COUNTY OF _____ SS.:

I CERTIFY that on _____, 20____, the subscriber(s) _____ personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

- (a) are the managing member(s) of _____, the Limited Liability Company named in the within Agricultural Deed Restriction;

- (b) are the managing members of said company;
- (c) that the execution, as well as the making of this Agricultural Deed Restriction, have been duly authorized by the Operating Agreement of the said Company, that said Agricultural Deed Restriction was signed and delivered by _____, as and for the

voluntary act and deed of said Company.

Print name and title below signature

([Municipal Form])

THE UNDERSIGNED, being _____ of the _____ [Municipal Form], hereby accepts and approves the foregoing restrictions, benefits and covenants.

ACCEPTED AND APPROVED this _____ day of _____, 20 ____.

Print name and title below signature

_____ [Municipal Form]

STATE OF NEW JERSEY, COUNTY OF _____ SS.:

I CERTIFY that on _____, 20____,

_____ personally came before me and acknowledged under oath, to my satisfaction that this person:

- (a) is named in and personally signed this Agricultural Deed Restriction;
- (b) signed, sealed and delivered this Agricultural Deed Restriction as the [Municipal Form]'s act and deed; and
- (c) Is the Administrator / Clerk of _____ [Municipal Form].

Signed and sworn to before me on _____,

~~Print name and title below signature~~

_____ [Municipal Form]

**NEW JERSEY HISTORIC TRUST
GARDEN STATE PRESERVATION FUND
HISTORIC PRESERVATION EASEMENT**

TABLE OF CONTENTS

	<u>Page</u>
DEED OF HISTORIC PRESERVATION	2
1. Purpose	3
2. Term	3
3. Grantor's Obligations	3
4. Request for Approval	3
5. Standards for Review	3
6. Reserved Rights	3
7. Public Access	4
8. Insurance	4
9. Indemnification	4
10. Casualty Damage or Destruction	4
11. Review After Casualty Damage or Destruction	4
12. Condemnation	4
13. Assignment	4
14. Extinguishment	4
15. Subsequent Transfers	5
16. Inspection	5
17. Evidence of Compliance	5
18. Grantee's Remedies	5
19. Amendment	5
20. Taxes	5
21. Grantee's Discretion	5
22. Costs of Enforcement	5
23. Costs of Liabilities	5
24. Written Notice	5
25. Notice from Government Authorities	6
26. Waiver of Certain Defenses	6
27. Recordation	6
28. Captions	6
29. Successors	6
30. Subordination	6
SIGNATURES	7
GRANTOR'S ACKNOWLEDGEMENT	8
MORTGAGEE'S ACKNOWLEDGEMENT	8
GRANTEE'S ACKNOWLEDGEMENT	9
SCHEDULE A - Legal Description	10
SCHEDULE B - Baseline Inventory of Protected Features	11
SCHEDULE C - Scope of Work to be Completed with Grant Funds	14
SCHEDULE D - Requirements for Public Access and Use	16

Prepared by: NJHT Staff
Principal Historic Preservation Specialist
New Jersey Historic Trust

Address: PO Box 457
Trenton, New Jersey 08625-0457

Record and return to: New Jersey Historic Trust
PO Box 457
Trenton, New Jersey 08625-0457

(Note: If using delivery service, please mail to New Jersey Historic Trust at 101 South Broad Street,
Room 604, Trenton, NJ 08608)

DEED OF HISTORIC PRESERVATION EASEMENT

THIS DEED OF HISTORIC PRESERVATION EASEMENT is made this ____ day of ____, 20__

Between **FRIENDS OF OLD BUILDING**, having a mailing address at 24 Old Building Lane, Any Town, New Jersey 08065, hereinafter referred to as the "Grantor";

And **NEW JERSEY HISTORIC TRUST**, having a mailing address at P.O. Box 457, Trenton, NJ 08625-0457, hereinafter referred to as the "Grantee".

Grantor grants and conveys to the Grantee a historic preservation easement (hereinafter the "Easement") on Grantor's property located in the Municipality of Any Town, County of , more fully described in Schedule A annexed hereto (hereinafter the "Property") for and in consideration of the sum of ONE DOLLAR (\$1.00) and a matching grant from Grantee to restore, rehabilitate, stabilize, and/or improve the Property for the continuing benefit of the people of the State of New Jersey (hereinafter the "Grant").

The tax map reference for the Property is:

Block 14, Lot 26

WHEREAS, Grantee is authorized pursuant to N.J.S.A. 13:1B-15.111 et. seq. and N.J.S.A. 13:8C-1 et. seq. to acquire historic preservation easements to protect New Jersey properties with historic, aesthetic or cultural significance being rehabilitated, stabilized, restored and improved through matching grants by the Garden State Historic Preservation Trust Fund in order to assure the continued preservation of grant-assisted properties for the public benefit; and

WHEREAS, the Grantor is the sole and exclusive owner of the Property; and

WHEREAS, the Property possesses historic, aesthetic, or cultural significance to Grantor and the people of the State of New Jersey and was listed as Old Building in the New Jersey Register of Historic Places on 5/24/2003 and/or the National Register of Historic Places on 6/18/2003 and

WHEREAS, Grantor and Grantee intend that the Property be preserved and maintained;

NOW, THEREFORE, Grantor promises that the Property will be owned, used and conveyed subject to, and not in violation of, the following covenants and restrictions:

1. Purpose. It is the purpose of this Easement to assure the preservation of the Property, to prevent any use of the Property that is not historically appropriate or that is detrimental to or will significantly impair or interfere with the historic features and to assure that public benefit continues after the expenditure of the Grant. The historic features of the Property are documented in a baseline inventory annexed hereto as Schedule B (hereinafter the "Protected Features") that the parties agree provide an accurate representation of the Property at the time of this conveyance and which shall serve as an objective information baseline for monitoring compliance with the terms of this Deed.

2. Term. This Easement shall become effective on May 4, 2012 (hereinafter the "Effective Date") and shall, thereafter, remain in full force and effect for a period of thirty (30) years until May 4, 2042.

3. Grantor's Obligations.

(a) Grantor shall perform the work items described in the Scope of Work (Attachment D-1 to a separate Grant Agreement executed by Grantor and Grantee) annexed hereto as Schedule C;

(b) Grantor shall not demolish or remove the Protected Features;

(c) Grantor shall not, without prior written approval of Grantee:

(i) adversely affect or threaten the structural soundness of the Protected Features;

(ii) make any changes to the Protected Features including alteration, removal, construction, remodeling, addition of new structures or other physical or structural change, including any change in color or surfacing or any excavation or topographical change which affects the appearance or construction of the Protected Features;

(iii) attach to or erect anything on or near the Protected Features which would prohibit them from being visible from ground level, or compromise the historic aesthetic or cultural significance of the Property except for temporary structures needed during any period of approved alteration or restoration.

(d) To prevent deterioration of the Property, Grantor shall maintain the Protected Features in good condition at Grantor's cost and expense. "Good condition" means that the Protected Features are intact and structurally sound, there are few or no cosmetic imperfections and the feature needs no more than routine maintenance.

(e) Grantor shall be responsible for deliberate damage or destruction of Protected Features. If Protected Features are deliberately damaged or destroyed for any reason by the Grantor, or persons acting on behalf of the Grantor; the Grantor shall be responsible for financial reimbursement to the Grantee in accordance with the provisions of Paragraph 19, Section (b). For purposes of this Easement, deliberate damage or destruction may result from, but is not limited to, deferred maintenance, demolition by neglect, and demolition.

(f) Grantor's obligation to maintain the Protected Features shall require replacement, repair, and reconstruction by Grantor whenever necessary, subject to the casualty provisions of paragraphs 11 and 12. Grantor's obligation to maintain the Property shall also require that the Property's landscaping be maintained in good appearance. The existing lawn areas shall be maintained as lawns and regularly mown. The existing meadows and open fields shall be maintained as meadows and open fields, regularly brushhogged to prevent the growth of woody vegetation where none currently grows.

(g) The dumping, abandonment or storage of ashes, trash, rubbish, or any other unsightly or offensive materials is prohibited on the Property.

(h) The Property shall not be divided or subdivided in law or in fact and the Property shall not be leased, devised or conveyed except as a unit.

(i) No above ground utility transmission lines, except those reasonably necessary for the existing buildings, may be created on the Property, subject to utility easements already recorded.

(j) Grantor's obligation to submit an Annual Easement Report to the Grantee in accordance with Paragraph 5.

4. Requests for Approval. Grantor must seek the approval of Grantee required by Paragraph 3(c) hereinabove by submitting to Grantee a request for approval in the form required by Grantee. Grantor shall submit to Grantee documents, including plans, specifications, and designs where appropriate, describing the proposed activity with reasonable specificity. In connection therewith, Grantor shall also submit to Grantee a timetable for the proposed activity in a form acceptable to Grantee and sufficient to permit Grantee to monitor such activity.

5. Annual Reports. The Grantor is required to submit an Annual Easement Report (Schedule D) to the Grantee beginning on the date of the first anniversary of the expiration of the Grant Agreement and then continuing throughout the term of the easement.

6. Standards for Review. In exercising any authority created by this Easement to inspect the Property or the Protected Features, to review and approve any construction, alteration, repair, addition of new structures or maintenance, or to review casualty damage or to reconstruct or approve reconstruction of the Protected Features following casualty damage, Grantee shall utilize The Secretary of the Interior's Standards for the Treatment of Historic Properties, (36 CFR 800 et seq.) (hereinafter the "Standards"). To determine the appropriateness of Grantor's request for approval submitted in accordance with Paragraph 4, Grantee may consult records documenting the Property's appearance including photographs and measured drawings, National or State Registers or other survey data, historic structure reports, existing condition surveys and other reports filed or to be filed at the New Jersey Historic Preservation Office,

New Jersey Historic Trust and other appropriate places within the State. Grantor agrees to abide by the Standards in performing all repairs and maintenance.

7. Reserved Rights. Except as set forth in Paragraph 3, the following rights, uses, and activities of or by Grantor on, over, or under the Property are permitted by this Easement and by Grantee without further approval by Grantee:

(a) the right to engage in all those acts and uses that: (i) are permitted by governmental statute or regulation; (ii) do not materially impair the Protected Features or the Property; and (iii) are not inconsistent with the purpose of this Easement;

(b) the right to maintain and repair the Protected Features strictly according to the Standards. As used in this Paragraph, the right to maintain and repair shall mean the use by Grantor of in-kind materials and colors applied in a workman-like manner. The right to maintain and repair as used in this paragraph shall not include the right to make changes in appearance, materials, colors, and workmanship from that existing prior to the maintenance and repair without the prior approval of Grantee in accordance with the provisions of Paragraphs 3, 4 and 6;

(c) the right to continue the existing use and enjoyment of the Property consistent with the purpose of this Easement; and

(d) the right to conduct at or on the Property educational and nonprofit activities that are not inconsistent with the purpose of this Easement.

8. Public Access. The property shall be accessible by the public as specified in Schedule D annexed hereto.

9. Insurance. Grantor shall keep the Property insured by an insurance company authorized to conduct business in the State of New Jersey against loss from the perils commonly insured under standard fire and extended coverage policies in an amount sufficient to reimburse Grantee in the amount of the Grant after all mortgagee claims are satisfied. Grantor shall also carry comprehensive general liability insurance against claims for personal injury and death in an amount not less than \$500,000 per person and \$1,000,000 per occurrence and property damage in the amount of \$250,000 per occurrence. Grantor shall deliver to Grantee, within ten (10) business days of the Effective Date, certificates of such insurance coverage. Each certificate shall name the Grantee, the State of New Jersey and their respective officers and employees as additional insureds and shall certify that coverage may not be cancelled for any reason except after thirty (30) days written notice to Grantee.

10. Indemnification. Grantor shall hold harmless, indemnify and defend Grantee, the State of New Jersey and their respective officers and employees from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in anyway connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause.

11. Casualty Damage or Destruction. In the event the Protected Features shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement, or other like casualty, Grantor shall notify Grantee in writing within fourteen (14) days of the damage or destruction, such notification describing what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Protected Features and to protect public safety, shall be undertaken by Grantor without Grantee's prior written approval. Within thirty (30) days of the date of damage or destruction, if required by Grantee, Grantor at its expense shall submit to the Grantee a written report prepared by a qualified restoration architect and an engineer acceptable to Grantor and Grantee, which report shall include the following:

(a) an assessment of the nature and extent of the damage;

(b) a determination of the feasibility of the restoration of the Protected Features and reconstruction of damaged or destroyed portions of the Protected Features; and

(c) a report of such restoration and reconstruction work necessary to return the Protected Features to the condition existing immediately prior to the damage or destruction.

12. Review After Casualty Damage or Destruction. If, after reviewing the report provided in paragraph 11, Grantor and Grantee agree that the Purpose of the Easement will be served by such restoration and reconstruction, Grantor and Grantee shall establish a schedule under which Grantor shall complete the restoration and reconstruction of the Protected Features in accordance with plans and specifications agreed to by the parties.

If, after reviewing the report, Grantor and Grantee agree in writing that restoration and reconstruction of the Property is impractical or impossible, or agree in writing that the Purpose of this Easement would not be served by such restoration and reconstruction, Grantor, may, with the prior written consent of Grantee, alter, demolish, remove, or raze the Protected Features, and construct new improvements on the Property. In this event the Grantee is entitled to compensation in accordance with Paragraph 19 of this agreement. In the event of the destruction of Protected Features, Grantor and Grantee may agree to extinguish this Easement in whole or in part in accordance with the laws of the State of New Jersey and Paragraph 15.

13. Condemnation. If the Property is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation from Grantor in the amount of all past grant monies in accordance with Paragraph 19, Section (b) of this agreement.

14. Assignment. This Easement is assignable by Grantee only to the State of New Jersey or a political subdivision of the State of New Jersey or to a charitable organization that is a qualified organization at the time of transfer under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. §501(c)(3)), as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder.

15. Extinguishment. If circumstances arise in the future such as to render the purpose of this Easement impossible to accomplish, this Easement may be terminated or extinguished by Grantee and Grantee shall be entitled to compensation from Grantor in the amount of the Grant.

16. Subsequent Transfers. Grantor agrees to give written notice to Grantee of the transfer of any interest in the Property at least thirty (30) days prior to the date of such transfer.

17. Inspection. At least annually, and upon prior reasonable notice to Grantor, representatives of Grantee shall be permitted to inspect and photograph the Property, including the Protected Features. Grantor agrees that it will not unreasonably withhold its consent in determining dates and times for such inspections.

18. Evidence of Compliance. Upon request by Grantee, Grantor shall promptly furnish Grantee with written certification in the form required by Grantee that, to the best of Grantor's knowledge, Grantor is in compliance with the obligations of Grantor contained herein.

19. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened:

(a) Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation within the period of time set forth in the notice and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured.

(b) In the event a violation cannot, or is not, corrected pursuant to Paragraph 19(a) above, Grantee shall be entitled to reimbursement for all past grant monies provided to the Grantor by the Grantee for the subject property.

(c) Grantee may bring an action at law or equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for a violation of the terms of this Easement or injury to any Protected Features protected by this Easement, and to require the restoration of the Property to the condition that existed prior to any such injury.

(d) Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the property. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Protected Features of the Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantor.

(e) Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

(f) Grantee's remedies described above shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or equity.

20. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Easement. Any such amendment shall be consistent with the purpose of this Easement; shall not permit additional development on the Property other than the development permitted by this Easement on the Effective Date; shall not permit any private inurement to any person or entity; and shall not adversely impact the Protected Features or the Property. Any such amendment shall be recorded by Grantor at its cost and expense in the county in which the Property is located. Nothing in this Paragraph shall require Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

21. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

22. Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantors shall not be deemed or construed to be a waiver by Grantee of such term or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

23. Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs of suit and reasonable attorneys' fees, and

any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor.

24. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property. Grantor shall keep the Property free of any construction or mechanics liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

25. Written Notice. Any notice which either Grantor or Grantee may desire or be required to give to the other party shall be in writing and shall be delivered by one of the following methods (i) overnight courier postage prepaid, (ii) registered or certified mail return receipt requested or, (iii) hand delivery; if to Grantor, then to Old Building, 24 Old Building Lane, Any Town, NJ and if to Grantee, then to Executive Director, New Jersey Historic Trust, P.O. Box 457, Trenton, New Jersey 08625-0457. Each party may change its address set forth herein by a notice to such effect to the other party.

26. Notice from Government Authorities. Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the Property received by Grantor from any government authority within five (5) days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or lien where compliance is required by law.

27. Waiver of Certain Defenses. Grantors hereby waive any defense of laches, estoppel, or prescription.

28. Recordation. Grantor shall record this instrument in timely fashion in the county in which the Property is located at Grantor's cost and expense.

29. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

30. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns.

31. Subordination. At the time of the conveyance of this Easement, the Property is subject to a Mortgage/Deed of Trust held by _____ (hereinafter, "Mortgagee"/"Lender"). The Mortgagee/Lender joins in the execution of this Easement to evidence its agreement to subordinate the Mortgage to this Easement under the following conditions and stipulations:

(a) the Mortgagee/Lender and its assignees shall have a prior claim to all insurance proceeds as a result of any casualty, hazard, or accident occurring to or about the Property and the proceeds of any condemnation proceeding, and shall be entitled to same in preference to Grantee until the Mortgage/the Deed of Trust is paid off and discharged, notwithstanding that the Mortgage/the Deed of Trust is subordinate in priority to the Easement.

(b) If the Mortgagee/Lender receives an assignment of the lease, rents, and profits of the Property as security or additional security for the loan secured by the Mortgage/Deed of Trust, then Mortgagee/Lender shall have prior claim to the leases, rents, and profits of the Property and shall be entitled to receive same in preference to Grantee until the Mortgagee's /Lender's debt is paid off or otherwise satisfied, notwithstanding that the Mortgage/Deed of Trust is subordinate in priority to the Easement.

(c) The Mortgagee/Lender or purchaser in foreclosure shall have no obligation, debt, or liability under the Easement until the Mortgagee/Lender or a purchaser in foreclosure under it obtains ownership of the Property. In the event of foreclosure or deed in lieu of foreclosure, the Easement is not extinguished.

(d) Nothing contained in this Easement shall be construed to give any Mortgagee/Lender the right to violate the terms of this Easement or to extinguish this Easement by taking title to the Property by foreclosure or otherwise.

Grantor, Grantee and, if applicable, Mortgagee sign this Deed of Easement as of the date at the top of the first page. If the Grantor is a corporation, this Deed of Easement is signed and attested to by its proper corporate officers and its corporate seal is affixed.

ATTEST:

FRIENDS OF OLD BUILDING

BY: _____

Print Name:

Print Name:

ATTEST:

NEW JERSEY HISTORIC TRUST

By: _____

Executive Director

Print Name:

Print Name:

ATTEST:

MORTGAGEE:

BY: _____

Print Name:

Print Name:

This instrument has been reviewed
and approved as to form.

Paula S. Dow
Attorney General of New Jersey

By: _____

Patricia Stern
Deputy Attorney General

GRANTOR'S ACKNOWLEDGEMENT

STATE OF NEW JERSEY, COUNTY of _____ SS.:

I CERTIFY on _____, 20_

_____ personally came before me and acknowledged under oath, to my satisfaction, that:

- (a) this person is the _____ of Grantor named in this Deed of Easement;
- (b) This person is the attesting witness to the signing of this Deed of Easement by _____ who is Grantor's _____;
- (c) this Deed of Easement was signed and delivered by Grantor as its voluntary act duly authorized by a proper resolution of its governing body or board (which resolution has been filed with Trust);
- (d) this person knows Grantor's proper seal which was affixed to this Deed of Easement;
- (e) this person signed this proof to attest to the truth of these facts.

Print Name:

Signed and sworn before me
_____, 20_

MORTGAGEE'S ACKNOWLEDGMENT

STATE OF NEW JERSEY, COUNTY OF _____ SS.:

I CERTIFY on _____, 20_

_____ personally came before me and acknowledged under oath, to my satisfaction, that:

- (a) this person is the _____ of Mortgagee named in this Deed of Easement;
- (b) This person is the attesting witness to the signing of this Deed of Easement by _____ who is Mortgagee's _____;
- (c) this Deed of Easement was signed and delivered by Mortgagee as its voluntary act duly authorized by a proper resolution of its governing body or board (which resolution has been filed with Trust);
- (d) this person knows Mortgagee's proper seal which was affixed to this Deed of Easement;
- (e) this person signed this proof to attest to the truth of these facts.

Print Name:

Signed and sworn before me
_____, 20_

GRANTEE'S ACKNOWLEDGMENT

STATE OF NEW JERSEY, COUNTY OF MERCER SS.:

I CERTIFY that on _____, 20_

_____ personally came before me and acknowledged under oath, to my satisfaction,

that:

- (a) this person is the _____ of Grantee named in this Deed of Easement;
- (b) this person is the attesting witness to the signing of this Deed of Easement by _____ who is Grantee's _____;
- (c) this Deed of Easement was signed and delivered by Grantee as its voluntary act duly authorized by a proper resolution of its Board of Trustees;
- (d) this person knows the proper seal which was affixed to this Deed of Easement;
- (e) this person signed this proof to attest to the truth of these facts.

Print Name:

Signed and sworn before me

_____, 20_

SCHEDULE A

New Jersey Historic Trust

Historic Preservation Easement

Legal Description of Property

The property consists of that certain tract, parcel or lot of land, situate, lying and being in Old Town, in the County of Any County and State of New Jersey, and is more particularly described and bounded as follows:

Beginning at a spike in the center line of Old Building Lane at the intersection of the south edge of Swampy Place, and runs along the said edge of Swampy Place, (1) South Thirty one Degrees and twenty six minutes East, seventy seven and sixty three hundredth feet to a corner of lot #13; thence by said lot, (2) South Fifty eight Degrees and thirty four minutes West, one hundred and twelve and forty two – hundredth feet to a corner in the line of Lily Tucker’s land; hence thereby (3) sixty seven feet to a spike in the center line of Old Building Lane aforesaid; thence along the said center line of Old Building Lane aforesaid; thence along the said centre line, (4) North Fifty three Degrees and seven minute East One hundred and twelve and ninety three hundredth feet to the Beginning.

Containing Eight thousand one hundred and thirty and twenty one hundredth Square Feet.

Being a part of a tract of land that was set off to Lily Tucker, by Commissioners appointed to make partition of the real estate of Nellie Brown decd. And was conveyed to the said Lily Tucker by a deed of indenture dated the ninth day of January A.D. 1911, and is recorded in the Clerks Office of Any County at Old Town New Jersey in Book #520 of Deeds, and being lot #24 Old Building Lane in the Borough of Old Town aforesaid.

SCHEDULE B

**NEW JERSEY HISTORIC TRUST
HISTORIC PRESERVATION EASEMENT
BASELINE INVENTORY OF PROTECTED FEATURES**

Old Building, 2006.2187

PROTECTED PROPERTY FEATURES

X SITE FEATURES (if not applicable, go to Exterior):

Natural Features

- Trees/Shrubs:
- Lawns/Vegetation/Ground Cover:
- Streams/Ponds/Wetlands:
- Topographical Features:
- Other:

Manmade Features

- Benches/Site Furnishings/Gazebos:
- Fences/Walls/Gates:
- Drain Inlets/Catch Basins/Drain Pipes:
- Roads/Driveways/Sidewalks:
- Parking Lots:
- Curbs:
- Signs:
- Archaeological Resources:
- Other:

Other

- All other SITE features referenced in documents filed or to be filed at the New Jersey Historic Trust, including attachment D-1 of Grant Agreement, including all future amendments.

X EXTERIOR FEATURES (If not applicable, go to Interior):

List building(s) protected by Easement:

Old Building, 2006.2187

Roof

- Roof Covering: asphalt roofing
- Roof Sheathing: wood sheathing
- Flashing: metal
- Chimneys: square brick chimneys near east bay of south elevation and same position on north elevation
- Roof Penetrations/Decorations:
- Gutters/Downspouts: no gutters; cast iron downspouts located at four corners drain directly into the ground
- Cornice: wood soffit and boxed cornice
- Trim:
- Other:

Facades

- Walls: khaki colored cast concrete block on first floor, asbestos siding on second floor (Asbestos siding will be replaced with wood clapboard siding as per Schedule C); marble corner block on 5th course from

bottom in southeast corner of the main elevation inscribed 1938; wood string course between concrete block and shingles runs perimeter of building

- Windows (Openings/Frames/Sash/Trim): all cast concrete lintels; all second floor windows are wood frame two over two true divided lights (4 on the south and north elevations, 3 one west, and 2 on east elevation); east/main elevation: paired aluminum frame one over one replacement windows flank entry; and header areas filled with painted plywood; south elevation: three single and one half-size one over one aluminum replacement windows; west elevation: one single and two half-size one over one aluminum replacement windows; north elevation: two single and one half-size one over one aluminum replacement window (Existing aluminum windows will be replaced with wood windows as per Schedule C)
- Doors (Openings/Frames/Door Units): west elevation: four divided light over two horizontal panels and wood frame screen door; east elevation: two replacement doors with aluminum replacement screen doors; wood framed transom lights (covered on interior); north elevation: one door with three horizontal lights over two horizontal panels and replacement doors set in wood paneled surround with opaque glass in transom
- Attachments (Shutters/Signs/Awnings):
- Foundation: poured concrete
- Other: square louvered vent at gable peak on east elevation; square wood-covered opening between two windows on west elevation

Appurtenances

- Steps/Stairs: north elevation: concrete steps and slab to entries; east elevation: four slab steps to two entries with metal pole railing up middle of steps; west elevation: single freestanding concrete block step
- Landings/Slabs:
- Porches:
- Balconies:
- Light Fixtures:
- Other:

Other

- Other: Permanent marker approved by the NJ Historic Trust
- All supporting structural members
- All other EXTERIOR features referenced in documents filed or to be filed at the New Jersey Historic Trust, including attachment D-1 of Grant Agreement, including all future amendments.

NA INTERIOR FEATURES

List space(s) in building(s) protected by easement. (Include name of building if more than one. Spaces are marked and delineated on attached floor plan(s))

Finishes

- Floors:
- Walls:
- Ceilings:
- Molding/Trim:
- Other:

Openings

- Doors/Door Hardware:
- Door Frames:
- Windows/Window Hardware:
- Window Frames:
- Other:

Other Features

- Stairs (Carriage/Railings):
- Fireplaces (Hearth/Mantel/Surround):
- Built-in Features:

- X All supporting structural members
- X All other INTERIOR features referenced in documents filed or to be filed at the New Jersey Historic Trust, including attachment D-1 of Grant Agreement, including all future amendments.

BASELINE DOCUMENTATION OF PROPERTY

General Statement

As per Paragraph 3 of easement, Trust may consult records documenting the Property's appearance and condition filed or to be filed at the New Jersey Historic Preservation Office, New Jersey Historic Trust, and at other places within the State.

Because existing documentation may not continue to reflect the actual appearance and condition of the property at the time of project completion, it will be supplemented by baseline information provided in the Quarterly Reports and the Project Completion Report.

Overview of Existing Documentation

1. Historic Structures Reports & Preservation Plans:
 - a *Old Building Preservation Plan*, Qualified Architect and Consultants, August 2005.
2. Photographs:
 - a 39 color photographs submitted with application 2006.2187 to the NJ Historic Trust 2006 Grant Round of the Garden State Historic Preservation Trust Fund.

SCHEDULE C

New Jersey Historic Trust

Historic Preservation Easement

Scope of Work to be Completed with Grant Funds

ATTACHMENT D-1, SCOPE OF WORK

Name of Grantee: Friends of Old Building
Project Name: Old Building
Project Number: 2006.2187
Grant Award: \$ 750,000

I. OVERVIEW OF PRESERVATION OBJECTIVES OF ENTIRE PROJECT

The Old Building was constructed as a community headquarters, but used as an office from 1931 to 1942. The building continues to be a meeting for a variety of organizations in the community. More recently, academic, state and local history organizations have discovered the building's history, and a historic interpretation and use of the site is planned as part of its restoration.

The building is threatened by continued disuse of the first floor and damage inflicted by water infiltration (since corrected) in the second floor meeting space. The proposed work is phase one of a scope of work outlined in a 2005 preservation plan funded by a previous Trust grant.

II. PROJECT REVIEW AUTHORITY

The New Jersey Historic Trust will review the planning documents (and special testing reports) for this project. The Trust will also review the contract documents, plans, specifications, etc. according to *The Secretary of the Interior's Standards for the Treatment of Historic Properties* (1995), as well as oversee construction.

III. ACTIVITIES FUNDED BY THISGRANT

III.A Description of Work to be Funded with this Grant.

The scope of work of this grant includes:

1. Non-construction costs directly related to the funded work:
 - a. Architectural and engineering services by Quality Architects and Consultants relevant to the construction work listed below (including schematic design, design development, contract documents, and construction administration).
 - b. The contract documents must set minimum qualifications for all general contractors and subcontractors using language similar to below:

The bidder shall demonstrate successful experience in the restoration of historic buildings using the *Secretary of the Interior's Standards for the Treatment of Historic Properties* on at least two projects of similar size and scope of work as the subject project within the past five years, at least one of which was reviewed and approved by a state Historic Preservation Office, the New Jersey Historic Trust, or the historic review body of a county or municipal authority.

Pre-qualification statements from general contractors must be submitted for NJHT review and approval before bid documents are

distributed. Subcontractor qualifications are to be submitted for NJHT review and approval with bids.

- c. Preparation of Project Completion Report which shall include (unless submitted with periodic reports): narrative description with photographs of all completed work; drawings, specifications, reports, and other records documenting the work if not included in earlier submissions; as-built drawings of all phases of work; revised D-1 Scope of Work showing work completed and actual money spent; names of contracted firms with duties identified; final employment figures; any recommendations for future treatment.
- d. No more than **20% of the total construction costs** (up to a limit of **\$120,834**) may be used to fund non-construction costs.

2. Construction costs directly related to the funded work as described in *Project Manual, Phase 1: Exterior Restoration of the Old Building, December 2005, by Quality Architects and Consultants.*

- Division 1: General Requirements
 - a. NJHT Project Sign
 - b. Coordination and supervision
- Division 4: Masonry
 - a. Repair and spot repoint masonry
- Division 6: Wood & Plastics
 - a. Repair wood cornice and soffits
- Division 7: Thermal & Moisture Protection
 - a. Install new aluminum hang gutters and downspouts
- Division 8: Doors & Windows
 - a. Restore wood windows
 - b. Replace south elevation door and restore frame
- Division 9: Finishes
 - a. Paint all exterior woodwork
- Division 10: Specialties
 - a. Install NJHT approved permanent marker upon completion of work.

III.B Line Item Costs for Work to be Funded with this Grant.

See the following page for the Schedule of Values. (Note: item amounts may be estimates.)

IV. **PROJECT SCHEDULE:**

Agreement Commencement Date:	5/4/2007
Work Period Commencement Date:	11/19/2006
Agreement Execution Deadline:	11/4/2008
Project Commencement Deadline:	11/4/2008
Work Period Expiration Date:	5/4/2011
Agreement Expiration Date:	5/4/2012

Created: December 7, 2004 by NJHT Staff
Revised:

SCHEDULE D

New Jersey Historic Trust
Historic Preservation Easement
Requirements for Public Access and Use

 X As this Property IS now ACCESSIBLE to the public, no additional access is required. The SITE of the Property must remain generally accessible to the public for the term of this easement.

 As this Property IS NOT now ACCESSIBLE to the public, public openings are required. The (SITE and/or INTERIOR) of the Property is/are to be open to the public a minimum of 6 hours a day at reasonable spaced intervals a minimum of 12 days in any calendar year during the term of this Easement specified in Paragraph 2. If the hours of public access are not permanently posted or additional hours are required under this Easement, a sign advertising each opening is to be maintained on the property in public view beginning one week before, and on the day of public access, or public notice is to be placed in an appropriate local newspaper.

Non-Contiguous Cluster Ordinances in New Jersey

Delaware Township (Hunterdon County):

http://www.delawaretwpnj.org/ordinances/or201503LU_Non_Contiguous_Cluster.pdf

Hillsborough Township (Somerset County):

<http://ecode360.com/10256051#10256051>

(See Section 188-98 D (6))

Hopewell Township (Mercer County):

http://www.hopewelltp.org/Residential_Dist.pdf

Middle Township (Cape May County):

<http://www.middletownship.com/Sustainable%20Jersey/Clustering%20Ordinances.pdf>

Monroe Township (Middlesex County)

<http://clerkshq.com/default.ashx?clientsite=monroetwp-nj>

(See Section 108-6.7 E & 108-6.8 I)

North Hanover Township (Burlington County):

<http://www.northhanovertwp.com/Zoning/zoning%20ordinance%20Aug%202013.pdf>

(see section 16-081)

Ocean Township (Ocean County)

<http://ecode360.com/14289113?highlight=clustering,clustered,cluster#14289113>

(See Section 410-24 C (13))

Plainsboro Township (Mercer County)

<http://ecode360.com/9429329#9429329>

(See Section 101-15 J)

Township of Robbinsville (Mercer County):

<http://ecode360.com/6348111>

(See TC Town Center District-Section C (7) and Section 142-31)



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