

# ASSEMBLY, No. 3761

## STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED FEBRUARY 7, 2013

**Sponsored by:**

**Assemblyman JERRY GREEN**

**District 22 (Middlesex, Somerset and Union)**

**Assemblyman ROBERT D. CLIFTON**

**District 12 (Burlington, Middlesex, Monmouth and Ocean)**

**Co-Sponsored by:**

**Assemblywoman Handlin, Senators Van Drew and Oroho**

**SYNOPSIS**

Clarifies authorization for cluster developments under MLUL.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/31/2013)**

A3761 GREEN, CLIFTON

2

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

3

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

6

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

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

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

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

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

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

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

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

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

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

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

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

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

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

A3761 GREEN, CLIFTON

3

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

20

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7

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

10 3.1. "Days" means calendar days.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

38

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44

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

47 19. Preparation; contents; modification.

- 1 a. The planning board may prepare and, after public hearing,  
2 adopt or amend a master plan or component parts thereof, to guide  
3 the use of lands within the municipality in a manner which protects  
4 public health and safety and promotes the general welfare.
- 5 b. The master plan shall generally comprise a report or  
6 statement and land use and development proposals, with maps,  
7 diagrams and text, presenting, at least the following elements (1)  
8 and (2) and, where appropriate, the following elements (3) through  
9 (16):
- 10 (1) A statement of objectives, principles, assumptions, policies  
11 and standards upon which the constituent proposals for the physical,  
12 economic and social development of the municipality are based;
- 13 (2) A land use plan element
- 14 (a) taking into account and stating its relationship to the  
15 statement provided for in paragraph (1) hereof, and other master  
16 plan elements provided for in paragraphs (3) through (14) hereof  
17 and natural conditions, including, but not necessarily limited to,  
18 topography, soil conditions, water supply, drainage, flood plain  
19 areas, marshes, and woodlands;
- 20 (b) showing the existing and proposed location, extent and  
21 intensity of development of land to be used in the future for varying  
22 types of residential, commercial, industrial, agricultural,  
23 recreational, open space, educational and other public and private  
24 purposes or combination of purposes including any provisions for  
25 cluster development; and stating the relationship thereof to the  
26 existing and any proposed zone plan and zoning ordinance; and
- 27 (c) showing the existing and proposed location of any airports  
28 and the boundaries of any airport safety zones delineated pursuant  
29 to the "Air Safety and Zoning Act of 1983," P.L.1983, c.260 (C.6:1-  
30 80 et al.); and
- 31 (d) including a statement of the standards of population density  
32 and development intensity recommended for the municipality;
- 33 (3) A housing plan element pursuant to section 10 of P.L.1985,  
34 c.222 (C.52:27D-310), including, but not limited to, residential  
35 standards and proposals for the construction and improvement of  
36 housing;
- 37 (4) A circulation plan element showing the location and types of  
38 facilities for all modes of transportation required for the efficient  
39 movement of people and goods into, about, and through the  
40 municipality, taking into account the functional highway  
41 classification system of the Federal Highway Administration and  
42 the types, locations, conditions and availability of existing and  
43 proposed transportation facilities, including air, water, road and rail;
- 44 (5) A utility service plan element analyzing the need for and  
45 showing the future general location of water supply and distribution  
46 facilities, drainage and flood control facilities, sewerage and waste  
47 treatment, solid waste disposal and provision for other related  
48 utilities, and including any storm water management plan required

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44  
45 7. Section 29 of P.L.1975, c.291 (C.40:55D-38) is amended to  
46 read as follows:

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

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

9 b. Provisions ensuring:

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

12 (2) Streets in the subdivision or land development of sufficient  
13 width and suitable grade and suitably located to accommodate  
14 prospective traffic and to provide access for firefighting and  
15 emergency equipment to buildings and coordinated so as to  
16 compose a convenient system consistent with the official map, if  
17 any, and the circulation element of the master plan, if any, and so  
18 oriented as to permit, consistent with the reasonable utilization of  
19 land, the buildings constructed thereon to maximize solar gain;  
20 provided that no street of a width greater than 50 feet within the  
21 right-of-way lines shall be required unless said street constitutes an  
22 extension of an existing street of the greater width, or already has  
23 been shown on the master plan at the greater width, or already has  
24 been shown in greater width on the official map;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

24       c. Provisions for planned development:

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

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

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

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

47       (5) Setting forth any requirement that the approval by the  
48 planning board of a greater concentration of density or intensity of

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

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

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

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

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

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

32 h. Provisions for cluster development:

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

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

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

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

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

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

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

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

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

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

3 (2) An agricultural restriction may contain provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18

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

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

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

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

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

40

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

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

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

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

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

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

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

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

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

26

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

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

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

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

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

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

14

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

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

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

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



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

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

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

19

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

22 52. A zoning ordinance may:

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

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

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

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

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

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

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

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

19

20 15. This act shall take effect immediately.

21

22

23 STATEMENT

24

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

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

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

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

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

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

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

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

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

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

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

**A3761 GREEN, CLIFTON**

29

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

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