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New Jersey Legislature Approves Cluster Development Bill
Bill would amend MLUL to clarify authorization for cluster developments

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The New Jersey Senate yesterday gave final legislative approval to legislation that amends the Municipal Land Use Law (MLUL) to expand authorization for the use of cluster developments. The legislation, S2608 (Senators Van Drew and Oroho)/A3761 (Assemblymen Green and Clifton), must now be approved by Governor Christie. If signed into law, it would provide municipalities and landowners additional options for subdividing and developing land through clustering and authorize municipalities to use lot-size averaging.

Clustering allows municipalities to concentrate development of one or more areas while restricting development in the remaining areas. Current law authorizes the use of both contiguous and non-contiguous clustering. In both types of clustering, the overall development potential from the parcel or parcels is concentrated on a portion of the property, and the remaining land is permanently protected.

The legislation would make several important changes to expand the authorized use of clustering:

- Current law authorizes clustering of residential development to preserve open space. The bill would allow municipalities to cluster residential, nonresidential, and mixed-use development to preserve farmland, historic sites, open space, or a combination thereof.
- Current law authorizes cluster development solely for planned developments, which are larger developments. The legislation would authorize municipalities to use clustering for developments which are not planned developments, which will allow its use for smaller-scale projects.
- The bill would authorize municipalities to increase development potential in areas targeted for cluster development by assigning density or intensity-of-use bonuses. This would create an incentive for landowners to use cluster development.
- The legislation clarifies when noncontiguous clustering may be used rather than a full transfer of development rights (TDR) program. Under noncontiguous clustering, municipalities would be authorized to indicate “areas to be developed” and “areas to be preserved,” or establish criteria for the selection of such areas. However, a municipality may not use noncontiguous clustering to utilize the formal TDR provisions currently authorized by the MLUL.



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- The legislation would amend the MLUL to clarify that “lot-size averaging” is authorized. The use of lot size averaging would provide planning boards greater discretion to approve subdivisions with varying lot areas, provided that the authorized density is not exceeded.
- The bill would authorize municipal zoning ordinances to provide ranges of permissible lot sizes, dimensions, and floor areas for development within a zone, rather than specific lot sizes, dimensions, and floor area ratios. This would provide parameters for boards and applicants when considering applications involving clustering and lot-size averaging.

For the full text of the legislation, please click [here](#).

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