



**LAND PRESERVATION THROUGH NONCONTIGUOUS
PARCEL CLUSTERING IN NEW JERSEY**

23

**MUNICIPAL
IMPLEMENTATION
TOOL #23**

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ABOUT THIS BROCHURE

This brochure is one in a series of Municipal Implementation Tools available to local governments and planning partners to assist in implementing the region's long-range plan, *Connections: The Regional Plan for a Sustainable Future*. Prepared and adopted by the Delaware Valley Regional Planning Commission (DVRPC), the long-range plan provides a sustainable land use and transportation vision for the region's growth and development through the year 2035. *Connections* establishes four key strategies that are essential to realizing a sustainable future:

- Managing growth and protecting natural resources;
- Developing livable communities
- Building an energy-efficient economy, and
- Establishing a modern multi-modal transportation system.

Municipal governments have the primary authority and responsibility to implement these policies. The Municipal Implementation Tool (MIT) series is designed to introduce local officials and citizens to planning techniques that may be useful in their communities. Each Municipal Implementation Tool (MIT) covers a different topic and provides an overview of the use of the tool, the benefits, and best practices from within the Greater Philadelphia region.

For additional information about DVRPC and the *Connections* planning process, please visit www.dvrpc.org/Connections.

To learn about and download additional Municipal Implementation Tool brochures, visit www.dvrpc.org/asp/PublicationSearch. Select "Type of Report" under "What to Search For" and "Municipal Implementation Tool" from the list presented.

What Is Noncontiguous Parcel Clustering?

Noncontiguous parcel clustering is a voluntary planning tool that allows land to be preserved in a similar manner as a transfer of development rights (TDR) program. Both noncontiguous parcel clustering and TDR allow valuable land within a “sending” area to be preserved by transferring its development rights to land targeted for growth, or the “receiving” area. TDR programs are crafted by individual municipalities and have defined sending and receiving areas that support the municipality’s overall land development goals, such as prevention of sprawl development or preservation of large swaths of valuable farmland.

Noncontiguous parcel clustering is not intended to substitute for a TDR program and may not be used to access the formal density transfer provisions authorized by the TDR statute. While noncontiguous parcel clustering is inadequate as a substitute for a robust TDR program, it is nonetheless a valuable preservation technique because it is a relatively simple transfer technique that does not require the detailed planning and valuation analysis of a TDR program.

Furthermore, in 2013 the NJ legislature amended the clustering provisions of the Municipal Land Use Law (MLUL) to give municipalities more flexibility to use noncontiguous parcel clustering to achieve their development and preservation goals. Previously, in order to use the noncontiguous parcel clustering tool, the noncontiguous land parcels were required to be part of the same planned residential development and treated as a single cluster development in which the development rights and density of the sending parcel are transferred to the parcel where development at a higher density is permitted. Now, a municipality may authorize the use of noncontiguous parcel clustering via provision within the municipal zoning ordinance and is required to include provisions for cluster development in the land use element of its master plan. It may also incentivize the use of noncontiguous parcel clustering by offering density or intensity of use bonuses. Non-residential and mixed-use developments are now permitted in addition to residential developments when using the noncontiguous parcel clustering tool. Finally, land preserved through application of noncontiguous parcel clustering may now include active farmland and historic sites in addition to open space.

Noncontiguous Parcel Clustering is Authorized by Law in New Jersey

In 1996, New Jersey's Municipal Land Use Law (N.J.S.A 40:55D-65.C) authorized municipalities to use noncontiguous parcel clustering. Specifically, the legislation provides that a municipality's zoning ordinance may:

Provide districts for planned developments... [and] 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; 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.

The legal basis for density transfers is simple: land owners have both the right to the existing use of their land and the right to develop the land within zoning regulations, and these rights can be separated. Furthermore, municipalities have the responsibility to direct growth to the most suitable locations while preserving valuable community assets, such as farmland or open space, and zoning is a legitimate tool for doing so.

Two court cases, one in 2006, Flynn Tucker, LLC, et al v. Township of Springfield, et al., Docket No. L-108-06 (Consolidated), and one in 2007, Builders League of South Jersey v. Township of Franklin, 365 N.J. Super.46 (NJ Superior Court Appellate Division), demonstrated the need to modify the original 1996 MLUL provision allowing the use of cluster development (including noncontiguous parcel clustering).

The court cases clarified the provision from 1996 that initially allowed noncontiguous parcel clustering. First, it could be used only in planned residential developments that met all of the statutory requirements of the local municipal ordinance. Second, municipalities were not permitted to use noncontiguous parcel clustering as a substitute for a TDR program, which requires greater scrutiny and approvals from the county and state. The limited circumstances in which noncontiguous parcel clustering could be applied did not encourage its use as a land preservation tool among municipalities. So in 2013, the MLUL was amended in order 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.

It also redefined cluster development to mean “a contiguous cluster or noncontiguous cluster that is **not** a planned development” and further defined noncontiguous cluster development to mean:

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, on 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.

The 2013 amendment to the MLUL makes it much easier for municipalities to use noncontiguous parcel clustering to preserve land and direct development. Instead of applying to only planned residential developments for the preservation of open space, municipalities may now cluster residential, nonresidential, and/or mixed-use development to preserve farmland, historic sites, open space, or a combination thereof. And while planned developments are usually quite large, this expanded MLUL provision allows smaller projects to qualify as noncontiguous parcel cluster developments.

The land use element of a municipality's master plan is required to contain provisions for cluster development, and the municipality may permit the use of cluster development (including noncontiguous parcel clustering) through its zoning ordinance.

Municipalities are permitted to offer incentives that increase the development potential in areas targeted for cluster development in the form of density or intensity of use bonuses.

Noncontiguous parcel clustering has been further differentiated from TDR under the 2013 MLUL amendment. Instead of the "sending" and "receiving" zones required by TDR, under noncontiguous parcel clustering, municipalities would be authorized to indicate "areas to be developed" and "areas to be preserved," but those areas may not utilize the formal density transfer provisions unique to TDR.

Noncontiguous Parcel Clustering is Different from TDR and Cluster Development

While very similar to noncontiguous parcel clustering in that they preserve land and direct development, TDR and cluster development are different in key ways. To implement a TDR program, the State Transfer of Development Rights Act requires that municipalities prepare several planning documents prior to adopting a TDR ordinance: a development transfer plan element and a utility service plan element in the municipal master plan, a capital improvement program for the receiving zone, and a real estate market analysis. The municipality must then receive approval from the New Jersey State Planning Commission of either its initial petition for endorsement of its master plan (or as part of a county or regional plan), or its development transfer ordinance and supporting documentation as an amendment to its previously approved petition for master plan endorsement. In practical terms, implementation of a TDR program is a multi-year process requiring substantial municipal resources.

Cluster development groups development structures on a portion of a site so that the remainder of the site is preserved, and it may be voluntary or mandatory. When cluster development is permitted across multiple sites, the sites must be contiguous. So although noncontiguous parcel clustering does involve cluster-style development, it is on parcels that are not adjacent to each other and is never mandatory.

What Are Its Advantages?

Perhaps the biggest advantage of using noncontiguous parcel clustering is that it allows land to be permanently preserved without using taxpayer money for acquisition. As many municipalities learn when they try to preserve their dwindling supply of farmland or open space, land values are high – especially in New Jersey – and acquiring land or the development rights to land can be prohibitively expensive.

Encouraging community members to embrace higher density development, which places less strain on environmental resources and public infrastructure, has also proven to be difficult. However, noncontiguous parcel clustering allows municipalities to preserve land in exchange for increasing development density. Having tangible evidence – preserved land – as a visible reminder of the benefit of increasing density may help build community support for it.

A TDR program is the most comprehensive approach to preserving land and guiding development to where it is most suitable; however, establishing a TDR program can be a long, arduous process. Given that noncontiguous parcel clustering requires only cooperation between the land owners, the developer, and the municipality, rather than an expensive and lengthy planning process, it is a valuable land preservation tool available to be used even as a municipality contemplates establishing a larger TDR program.

What Are Its Disadvantages?

Noncontiguous parcel clustering may not preserve large contiguous areas of land because it is voluntary and not part of a larger TDR program with defined sending and receiving areas for development. Therefore, the land preserved through noncontiguous parcel clustering may be interwoven with other development.

Ultimately, noncontiguous parcel clustering is a market-driven tool. There needs to be an incentive for land owners and developers to want to transfer the development rights of one property to another property. Sometimes even density bonuses, targeted infrastructure benefits, or other incentives, such as expedited review of proposals and reduced municipal fees, are inadequate to encourage developers to use noncontiguous parcel clustering.

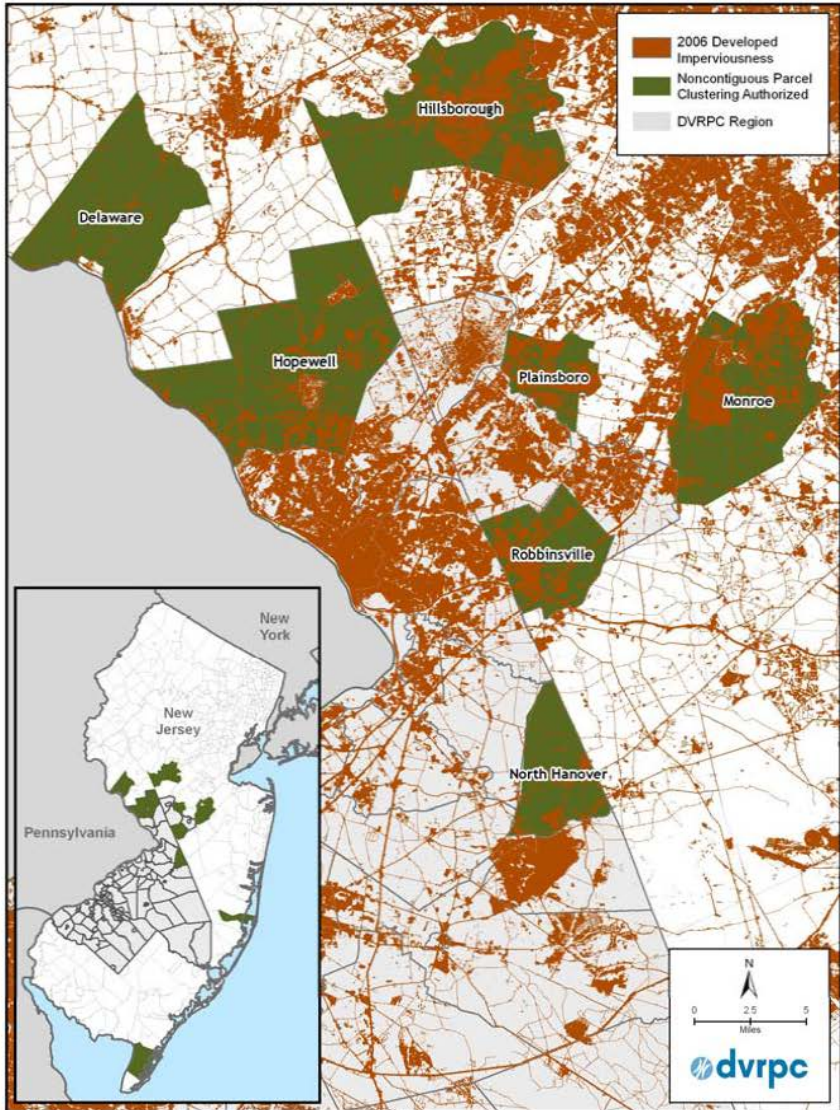
Who Should Use Noncontiguous Parcel Clustering?

Municipalities that have specific parcels of land, such as farmland or open space they wish to preserve, or an identifiable growth center they wish to strengthen, should consider using the noncontiguous parcel clustering technique. It may also be a valuable interim technique municipalities can use while in the process of creating a TDR program.

Who is Using It Now?

As shown by the inset on the following map, nine municipalities in New Jersey have adopted ordinances that permit noncontiguous parcel clustering (North Hanover Township in Burlington County, Middle Township in Cape May County, Delaware Township in Hunterdon County, Hopewell and Robbinsville Townships in Mercer County, Monroe and Plainsboro Townships in Middlesex County, Ocean Township in Ocean County, and Hillsborough Township in Somerset County). Of those, only four have had subsequent development that used the tool. An April 2012 publication by New Jersey Future, “Preserving Land Through Compact Growth: Case Studies of Noncontiguous Clustering in New Jersey,” provides excellent profiles of each of these communities. The “Developed Imperviousness” (developed land) layer on the adjacent map shows how, despite evident development pressure, these municipalities have undeveloped land resources worthy of preservation.

Map of Impervious Coverage and Municipalities Permitting Noncontiguous Parcel Clustering in New Jersey



Within the DVRPC region, Robbinsville, North Hanover, and Hopewell have adopted ordinances authorizing noncontiguous parcel clustering and since then, Robbinsville has had a successful noncontiguous parcel cluster development. There, the township permitted the developer to develop an additional 90 residential units within a mixed-use town center in exchange for the preservation of six properties (193.5 acres) previously identified by the municipality's Open Space Priority List.

North Hanover's ordinance has been in place since 2009, but the unfavorable development climate has yet to attract a developer willing to enter into the agreements necessary to move forward with noncontiguous parcel clustering development. The municipality is also moving forward with a TDR plan, so potentially interested parties may be waiting to see what kind of incentives will be offered under that plan before moving ahead with any type of noncontiguous development.

The reasons Hopewell has not yet seen noncontiguous parcel clustering development are a bit more complicated. Perhaps the largest issue is the township's lack of adequate wastewater disposal and water supply for dense development alternatives. Hopewell relies on small community wastewater systems and New Jersey's Department of Environmental Protection has very restrictive requirements for increasing density in these areas. In addition, the residents of Hopewell Township value their open space and have continued to invest in aggressive land preservation efforts that have resulted in the preservation of about one-third of the township. Many residents would prefer to continue preserving land in this manner rather than allowing increased density anywhere within the township.



Washington Town Center,
Robbinsville, NJ (source: Sharbell
Development)



One of Six Permanently Preserved
Parcels, Robbinsville, NJ (source:
DVRPC)

Creating a Noncontiguous Parcel Clustering Ordinance

While New Jersey's Municipal Land Use Law authorizes the use of the noncontiguous parcel clustering tool, municipalities must open the door to implementation through a new ordinance or an amendment to the zoning ordinance. Municipalities have a great deal of flexibility in defining how noncontiguous parcel clustering will be implemented and may tailor definitions of land to be preserved and incentives such as density bonuses to best suit the individual development and preservation goals of their communities.

After providing for the noncontiguous parcel clustering tool to be used via ordinance, municipalities must specify how land will be preserved and what form development will take under the provision. Land preservation generally occurs in one of two ways – deed restriction or land dedication. Permanent deed restrictions limit the activities (including development) that can occur on a parcel of land in the future. In cases of deed restriction, the original property owner may or may not retain ownership of the land. Land dedication allows the property owner to transfer ownership of the land directly to the municipality or to a third party conservation organization. Municipalities may choose to allow land preservation to occur either way, or both ways.

Once the municipality decides how to preserve the land, it should define which lands are eligible for preservation under their noncontiguous parcel clustering provisions. Many municipalities have land listed on their Open Space Priority List, land listed under other conservation lists such as NJDEP Natural Heritage Sites, or land with prime soils that is valuable and a high priority for preservation. The noncontiguous parcel clustering ordinance may specify that lands preserved have value. "Value" is typically defined using criteria ranging from a listing on a priority preservation list to a minimum percentage of prime soils to adjacency to existing municipal open space, etc.

The noncontiguous parcel clustering ordinance should also specify how much land must be preserved and may determine whether noncontiguous parcels are or are not permitted to contribute to the total land area required for planned development. Some ordinances specify a minimum size for the area to be preserved, while others specify the minimum area to be developed. A municipality may elect to establish a transfer ratio for how much density must be transferred from the sending area based on what type of development occurs in the receiving area. The ordinance may also

require preservation of a minimum amount of land in the entire project area, not only in the sending area.

Municipalities may identify additional conditions that must be met in order to use noncontiguous parcel clustering. In order to minimize the overall impact of new development, they may allow it only on existing county roads, in areas where soils can support a community wastewater system, or in areas with an adequate water supply.

Finally, the ordinance should specify the incentives the municipality offers to developers who elect to use noncontiguous parcel clustering. Reducing the minimum lot sizes, offering bonus units, and/or increasing the impervious coverage allowances are most common. In the DVRPC region, Robbinsville awards bonus density to developers in exchange for preserving land listed high on their Land Preservation Plan.

Developing Land Using Noncontiguous Parcel Clustering

Below is a list of actions that must occur in order to develop land using the noncontiguous parcel clustering tool.

1. Municipalities must update the land use element of the municipal master plan to contain provisions for cluster development.
2. Municipalities must, via new ordinance or through an amendment to the zoning ordinance, permit noncontiguous parcel clustering.
3. The land owners of the sending area parcel and the receiving area parcel, and the developer of the receiving area parcel, must reach purchase agreements.
4. The developer must prepare a single application showing how development will occur on the receiving area parcel and how land will be preserved on the sending area parcel.
5. The municipality must review and approve the development application and the deed restriction or land dedication.
6. The planned development may commence.

Assistance in Establishing a Noncontiguous Parcel Clustering Ordinance

Listed below are organizations that may be able to provide assistance to municipalities wishing to establish a noncontiguous parcel clustering ordinance or to amend their existing zoning ordinance to permit noncontiguous parcel clustering.

- County Planning Agencies
 - Burlington County Planning Board
(www.co.burlington.nj.us/Pages/ViewDepartment.aspx?did=48)
 - Camden County Planning Division
(www.camdencounty.com/government/offices-departments/planning-division)
 - Gloucester County Planning Division
(www.co.gloucester.nj.us/depts/p/pw/planning/default.asp)
 - Mercer County Planning Division
(nj.gov/counties/mercer/departments/planning/)
- Association of New Jersey Environmental Commissions
(www.anjec.org/index.htm)
- Delaware Valley Regional Planning Commission (www.dvrpc.org)
- New Jersey Department of Agriculture
(www.state.nj.us/agriculture/about/njdacontacts.html)
- New Jersey Department of Community Affairs
(www.state.nj.us/dca/)
- New Jersey Department of Economic Development
(www.njeda.com/web/default.aspx)
- New Jersey Future (www.njfuture.org)
- New Jersey Office for Planning Advocacy
(www.nj.gov/state/planning/index.html)

Hopewell Township

Municipal Code Book, Chapter XVII, Article X, Sections 17-160 and 17-172
(www.clerkshq.com/default.ashx?clientsite=Hopewell-NJ)

Zoning Map (www.hopewelltpw.org/zoning_map_revised_5-18-06.pdf)

North Hanover Township

Municipal Subdivision Ordinance, Section 15.061
(www.northhanover.us/subpages/construction/forms/Ch15LandSubSitePlanReview.pdf)

Municipal Zoning Ordinance, Section 16.081
(www.northhanover.us/subpages/construction/forms/NHTZoningOrdinances.pdf)

Proposed Zoning Map

(www.northhanover.us/subpages/construction/forms/NHTZoningMap.pdf)

Robbinsville Township

Municipal Ordinance, Chapter 142, Article IV, Section 142-19
(www.ecode360.com/WA0755)

Town Center Zoning and Design Guidelines
(www.ecode360.com/documents/WA0755/WA0755-142g%20Design%20Guidelines.pdf)

Zoning Map

(www.robbinsville-twp.org/Municipal%20Departments/planningzone.html)

Angarone, Nick, et al. 2007. "General Planning – Compact Development Patterns." Office of Planning and Sustainable Communities.
www.nj.gov/dep/opsc/docs/Compact_Development.pdf

DVRPC. 2011. "Assessing the Potential for a Regional Transfer of Development Rights Program in Salem County, NJ." A Report of the Salem County Regional Task Force.
www.dvrpc.org/reports/11051.pdf

Farber, Joy. 2010. TDR Reform. Memo to Legislative Reform Subcommittee to TDR Task Force Members.
www.dvrpc.org/tdr/taskforce/pdf/Comm_4_memo_legislative_reform.pdf

Kinsey, David N., Kinsey & Hand. 1997. "Noncontiguous Parcel Clustering: A New Technique for Planned Density Transfers, Technical Reference Document #128." New Jersey Office of State Planning, Department of Treasury.
www.nj.gov/state/planning/docs/parcelclustering120197.pdf

Miller, Kerry. 2012. "Noncontiguous Clustering Helps Delaware Plan for Growth." ANJEC Report, Winter 2012.
www.anjec.org/pdfs/Winter2012ANJECReportNoncontiguousClustering.pdf

Mercer, Courtenay D. 2008. "Courts Fluster Non-Contiguous Cluster." The Jersey Planner March/April Edition, New Jersey Chapter of the American Planning Association, pp. 10-11.
www.njplanning.org/wp-content/uploads/jp_mar_apr_2008.pdf

New Jersey Municipal Land Use Law (MLUL).
www.envirostewards.rutgers.edu/Lecture%20Resource%20Pages/2008Lecture%20Notes/New%20Jersey%20Municipal%20Land%20Use%20Law%201-2008.pdf

Sturm, Chris. 2011. "Affordable Land Preservation Tools: Contiguous and Noncontiguous Clustering." New Jersey Future Presentation.
www.njfuture.org/wp-content/uploads/2011/06/affordable-land-pres-tools-060111.pdf

Sturm, Chris. 2011. "Land Preservation Using Off-site Clustering." New Jersey Future Presentation.
www.njfuture.org/wp-content/uploads/2011/06/Land-Pres-Using-Off-site-Clustering-3-19-11.pdf

Sturm, Chris and Nicole Heater. 2012. "Preserving Land Through Compact Growth: Case Studies of Noncontiguous Clustering in New Jersey." New Jersey Future Publication.
www.njfuture.org/wp-content/uploads/2012/05/NJ-Future-Non-Contiguous-Clustering.pdf
Note: The "Appendix" and "Bibliography" sections of this report have many useful links to plans, ordinances, and related articles.

Zubblatt, Alan B. 1996. "Clustering options: powerful new zoning tool." New Jersey Lawyer, Vol 5, No 31.
www.zubblatt.com/articles_citations_clustering_options.html

The Delaware Valley Regional Planning Commission is dedicated to uniting the region's elected officials, planning professionals and the public with a common vision of making a great region even greater. Shaping the way we live, work and play, DVRPC builds consensus on improving transportation, promoting smart growth, protecting the environment and enhancing the economy. We serve a diverse region of nine counties: Bucks, Chester, Delaware, Montgomery, and Philadelphia in Pennsylvania; and Burlington, Camden, Gloucester, and Mercer in New Jersey. DVRPC is the federally designated Metropolitan Planning Organization for the Greater Philadelphia Region – leading the way to a better future.

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