

Old Bridge (1987)
Supplemental Letter Brief & + Certification
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July 22, 1987

Honorable Eugene Serpentelli, J.S.C.
Superior Court
Ocean County Court House
CN 2191
Toms River, NJ 08754

RE: Olympia & York Old Bridge Development Corp.
et al. vs. Old Bridge, et al.

Dear Judge Serpentelli:

Please accept this supplemental letter brief on behalf of the Planning Board of the Township of Old Bridge. The Planning Board filed a Motion pursuant to Rule 4:50-1, with a supporting Brief and Affidavit of Carl Hintz on December 30, 1986. The return date for the Motion of January 16, 1987 was continued by the Court pending delineation of wetlands by Olympia & York and Woodhaven Village and certification thereof by the U.S. Army Corps of Engineers (hereinafter Corps).

As of the date of this letter brief, it is the understanding of the Planning Board of Old Bridge Township (hereinafter Planning Board) that the Corps has certified the Olympia & York application and has designated 1,459 acres of wetlands within the O&Y tract. So far, the Corps has not certified the wetlands delineation on the Woodhaven tract but it is the understanding of the Planning Board based upon representations of Woodhaven Village and the Corps that certification will be granted after a third on-site inspection is completed. For purposes of deciding the Planning Board Motion, the Planning Board stipulates that approximately 490 acres are wetlands on the Woodhaven parcel.

Additionally, the Planning Board submits in support of its Motion the Affidavit of Joan George, the Chairperson of the Old Bridge Planning Board; the Report of Carl Hintz, entitled Environmental Limitations And Their Impact on Olympia & York and Woodhaven Villages dated May 1987; and, lastly the report prepared by Sullivan Associates, entitled Planning Report For The Olympia & York Planned Development dated May 26, 1987. Both reports are referred to in the Affidavit of Joan George and are

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attached hereto as Exhibits A-1 and A-2.

SUPPLEMENTAL FACTUAL BACKGROUND

Andrew Sullivan (hereinafter Sullivan) states in his planning report submitted on behalf of O&Y to the Planning Board analyzing the wetland delineation and its planning impact upon the O&Y parcel at page three that:

"Of a total of approximately 2,600 acres, the final wetlands mapping, as submitted to the Corps, identifies approximately 1,459 acres of wetlands. Any development requiring fill on these lands would be subject to an Army Corps of Engineers 404 permit. The remaining lands, totaling approximately 1,141 acres, are not subject to regulation by the Corps. About 581 (39%) of these uplands are located in large continuous tracts of land, ranging from 25 to 132 acres in size. Another 200 acres of these lands are located in tracts ranging from 10 to 19 acres in size. Most of these upland parcels are adjacent to existing roads and are accessible."

Sullivan's analysis of the amount of developable land contained in this paragraph is consistent with the analysis of Carl Hintz in his report to the Planning Board. More specifically, the Sullivan report refers to 581 acres of larger size tracts and 200 acres of smaller size tracts equaling, in total, 781 acres. Subtracting 781 acres from 1,141 acres of uplands (2,600 acres less 1,459 acres of wetlands) an amount remains of 360 acres of scattered uplands consisting in size of one through ten acres. These small parcels are not adjacent to existing roads and are not accessible. Moreover, they are not buildable and are not recognized or counted even in the Sullivan report as developable land.

The Hintz report, at page twenty-seven, table one, under the designation "developable", concludes that approximately 784 acres are developable on the O&Y tract. In short, both consultants basically agree that approximately 784 acres are developable out of the 1,141 acres of uplands on the O&Y tract. This represents about 30% of all land on the O&Y tract that is developable. This also constitutes a loss of approximately 57% of developable land since the original submission by O&Y indicated that approximately 2,304 acres were developable.

A similar analysis of the Woodhaven parcel has been made by Carl Hintz but no report comparable to the Sullivan report has been submitted by Woodhaven as yet. An important missing factor which must be determined after Corps certification is the exact location of wetlands vis-a-vis uplands and the impact on accessibility to road access and upland parcel size for development purposes, particularly at a gross density of four units to the acre.

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BASIC PREMISE

The Planning Board believed that approximately 4,000 acres included in the Court settlement were buildable and the proposed development of O&Y and Woodhaven Village could be achieved in a manner substantially like that proposed by the developers subject, of course, to market contingencies regarding financing but not subject to the impossibility of performance due to the physical limitations of the land. The elimination of at least 1,949 acres of wetlands coupled with the loss of at least another 300 acres of scattered, unusable uplands destroys any of the planning or financial advantages which the Planning Board bargained for on behalf of the residents of Old Bridge Township at the time of the settlement. This analysis does not take into account the loss of acreage in the Woodhaven tract.

After full review of the record including correspondence between the various parties and the Corps, the Planning Board does not believe that fraud was involved on the part of any party. Clearly, a change in Federal law regarding the definition and status of "wetlands" devastated any opportunity on the part of Old Bridge Township to realize any benefits from the development proposed by O&Y or Woodhaven.

LOST BENEFITS

The Planning Board bargained for benefits that would accrue to all of the citizens of Old Bridge Township and agreed to the settlement for that reason. The benefits included:

1. A strong tax base and employment source within the O&Y development through extensive office commercial and industrial development along Routes 9 and 18. More than seven and one half million square feet of office and industrial floor space was provided for in the Court settlement. All lands on which this base was to be developed are no longer buildable because all of it is designated as wetlands by the Corps.
2. Adequate areas for active recreation including an 18-hole golf course and sites for schools, firehouses and first-aid buildings are lost. Even golf courses are not permitted in wetlands nor are the other public facilities.
3. It was believed that 1,625 units of Mt. Laurel II housing, the lion's share of the Old Bridge Township responsibility, would be satisfied within the O&Y and Woodhaven development tracts. This was based on a buildout of approximately 18,000 dwelling units conditioned upon a ten (10%) percent mandatory set aside. This is no longer possible. The ten (10%) percent set aside was seen as a significant benefit in that the Township would be able to incorporate the Mt. Laurel housing in a reasonable manner phased in relation to jobs, tax base, and sound planning.

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4. The Planning Board expected a new town to take place with a transportation system internally sound and intergrated with the remainder of Old Bridge Township. The Planning Board expected sound urban design including a variety of densities and housing types sited in ways which would result in most efficient use of land and most efficient use of municipal services and facilities. This is no longer possible.

THE URBAN LEAGUE

The contention of the Urban League has been from the beginning that the Township of Old Bridge is responsible for its fair share of low and moderate income housing under the Mt. Laurel doctrine. The Urban League has never waived from this position. However, since the Settlement Order was entered by this Court, the Council on Affordable Housing (COAH), pursuant to the Fair Housing Act determined that Old Bridge Township's fair share was 862 units of low and moderate income housing. Additionally, COAH credited Old Bridge Township with 450 units leaving an outstanding obligation of approximately 412 units of low and moderate income housing. The Planning Board will immediately develop a fair housing plan and adopt a housing element of the Master Plan to provide for its full constitutional responsibility as indicated by COAH.

BUILDERS: Olympia & York and Woodhaven

Clearly, the two builders and particularly Olympia & York are impacted dramatically by the advent of wetlands legislation and wetlands delin-eation. However, as the Supreme Court in The Hills Development Co. v. Township of Bernards, 103 N.J. 1 (1986) recognized there are very dan-gerous and unpredictable scenarios which may arise due to legislative changes and court decisions which impact developers negatively.

LEGAL ARGUMENTS

(1) Rule 4:50-1

The Planning Board relies on the arguments set forth in Points I, II and III of its brief filed December 30, 1986. Additionally, the Plan-ning Board seeks to stress that at the time of the settlement the Plan-ning Board knew that approximately 336 acres were undevelopable on the O&Y site and that 158 acres were undevelopable on the Woodhaven site due to streams and wetlands. The Planning Board was advised that the Corps had issued a nationwide permit for development for the O&Y site in 1979. It was not until after the public hearing started that the wetlands issue manifested itself. This issue concerning change of law regarding treatment of wetlands was material and certainly would have changed the terms of the court settlement. These facts constitute grounds to set aside the settlement pursuant to Rule 40:50-1. See,

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Bauer v. Griffin, 104 N.J. Super 530, 544 (Law div. 1969) and Aiello v. Myzie, 88 N.J. Super 187, 196 (App. Div. 1965). As to change of law justifying relief, see Ford v. Weisman, 188 N.J. Super 614, 619 (App. Div. 1983).

(2) REOPENER CLAUSE III-A.3

The Reopener Clause set forth in the settlement agreement provides:

Any party to this agreement, upon good cause shown, may apply to the Court for modification of this agreement based on a modification of law by a court of competent jurisdiction, a subsequently enacted state statute, a subsequently adopted administrative regulation of a state agency acting under statutory authority, or based on no reasonable possibility of performance." (See paragraph III-A.3)

The Planning Board moves to reopen the agreement due to a "subsequently adopted administrative regulation of a state agency acting under statutory authority" and also based upon no reasonable possibility of performance.

The Council on Affordable Housing established pursuant to the Fair Housing Act has promulgated rules and regulations which, among other things, establish a fair share responsibility for each municipality in New Jersey. In the case of Old Bridge Township, the Council on Affordable Housing has established a fair share requirement of 412 low and moderate income housing units. The regulation was adopted subsequent to the agreement entered into by the parties herein. The administrative regulation sets forth a specific fair share responsibility which is based upon state and regional planning considerations. The Reopener Clause was bargained for expressly for permitting adjustments either upward or downward in the fair share number subsequent to the agreement by the Council on Affordable Housing.

Additionally, based upon the wetlands dilemma it is clear that the benefits of the settlement to be derived by Old Bridge Township for the benefit of its citizens can no longer be realized. In effect, there is no reasonable possibility of performance which would insure those benefits and the agreement must be modified to reflect the wetlands dilemma. The Planning Board is presently reviewing its Master Plan with its Planning Consultant, Carl Hintz, for the purpose of revising the Master Plan and zoning regulations of the Township of Old Bridge in light of requirements and guidelines adopted by the Council on Affordable Housing and new state regulations pertaining to the delineation and regulation of development on wetlands. The Planning Board seeks modification of the agreement in a manner which is consistent with the plans and studies concerning the Master Plan revision presented

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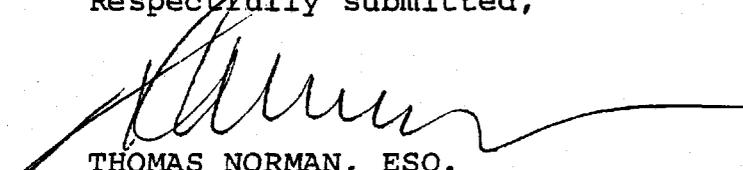
to the Planning Board by its consultant and seeks Court approval to submit these plans in conjunction with this request for modification of the agreement.

CONCLUSION

There is no question that the Doctrine of Finality is extremely important as all controversies must come to an end at some point in time. In this case a settlement was entered after twelve months of negotiations among the parties and, in the ordinary course, the controversy should terminate with the settlement. However, the discovery of significant areas of wetlands, albeit due to a change of regulation, makes it impossible for Olympia & York and Woodhaven to perform in any substantial way with the terms of the settlement. This wetlands dilemma unfortunately affects in a very negative way sound planning and development in a substantial portion of Old Bridge Township. The development standards contained in the settlement can not be followed blindly for the sake of "finality" if the end result will devastate sound planning in a large portion of Old Bridge Township. Nor should the terms of the settlement be followed if the end result will have a substantially detrimental impact on the environment. The Planning Board and Township are concerned with the public welfare of Old Bridge Township rather than private interests.

For these reasons, the Planning Board demands that the Judgment and Order of Repeal be set aside and that this matter be transferred to COAH for review in accordance with the rules and regulations adopted pursuant to the Fair Housing Act. Alternatively, the Planning Board demands that the agreement be modified to reflect the subsequently adopted administrative regulations of COAH establishing the Constitutional obligation of 412 units of low and moderate income housing for Old Bridge Township and also to reflect the wetlands dilemma leading to the impossibility of performance with regard to Olympia & York and Woodhaven Village.

Respectfully submitted,



THOMAS NORMAN, ESQ.
For Old Bridge Township Planning Board

TN:gk

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URBAN LEAGUE OF GREATER
NEW BRUNSWICK, et al.

Plaintiffs,

vs.

THE MAYOR AND COUNCIL of the
BOROUGH OF CARTERET, et al.

Defendants,

and

O & Y OLD BRIDGE DEVELOPMENT
CORPORATION, a Delaware
Corporation,

and

WOODHAVEN VILLAGE, INC., a New
Jersey Corporation,

Plaintiffs,

vs.

THE TOWNSHIP OF OLD BRIDGE in the
COUNTY of MIDDLESEX, a Municipal
Corporation of the State of New
Jersey, THE TOWNSHIP COUNCIL OF
THE TOWNSHIP OF OLD BRIDGE, THE
MUNICIPAL UTILITIES AUTHORITY OF
THE TOWNSHIP OF OLD BRIDGE, THE
SEWERAGE AUTHORITY OF THE TOWNSHIP
OF OLD BRIDGE and THE PLANNING
BOARD OF THE TOWNSHIP OF OLD
BRIDGE,

Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY/
OCEAN COUNTY
(Mount Laurel II)

DOCKET NO. C-4122-73

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY/
OCEAN COUNTY
(Mount Laurel II)

DOCKET NO. L-009837-84 PW
and NO. L-036734-84 PW

CIVIL ACTION

CERTIFICATION OF
JOAN GEORGE

I, JOAN GEORGE, of full age, do hereby certify as follows:

1. I am the Planning Board Chairperson of the Township of Old Bridge Planning Board and have been a member of the Planning Board and served as its Chairperson since January 1, 1984. I am personally familiar with all negotiations of the Planning Board leading to the acceptance and approval on the part of the Planning Board of the Settlement Order dated January 24, 1986 resolving the controversy entitled The Civic League of Greater New Brunswick, et al. vs. The Township of Old Bridge, et al., Docket #L-009837-84 P.W. and #L-036734-84 P.W.

2. During the entire time of negotiations during 1985, copies of articles published in the Wall Street Journal, New York Times and Newsweek depicting Olympia & York Development Corporation as a builder of office and commercial development were distributed to the Planning Board by representatives of Olympia & York. It was further explained that O & Y Old Bridge Development Corporation (O & Y) was a fully owned subsidiary of Olympia & York Development Corporation, an international corporation based in Canada with Corporate assets in excess of 7 billion dollars. Moreover, Olympia and York was correctly portrayed as the largest privately owned development corporation in the world. It was stressed by representatives of O & Y at various meetings with the Planning Board that O & Y had the financial capability and building expertise to guarantee the construction of large scale commercial development including office buildings, regional shopping centers and other nonresidential development in conjunction with the new

town development which it was proposing in Old Bridge Township. Additionally, O & Y representatives stressed the fact that Olympia & York in Canada built a new town development and a slide show was presented to the Planning Board illustrating it.

3. The development of the O & Y tract in Old Bridge in conjunction with the Woodhaven tract was proposed to the Planning Board as a new town development which would provide its own employment base and tax base. Both developers, and especially O & Y, stressed the importance of a strong tax base which could be utilized to pay for the municipal costs of servicing and maintaining a new town. Both developers also stressed that the provision of a strong employment generating base was necessary for the new residents of the new town development including households which qualified for low and moderate income housing.

4. Moreover, the negotiations leading to the settlement focused primarily on the planning and financial benefits which would inure to the residents of the Township of Old Bridge. Resolution of the Mt. Laurel litigation instituted by the Urban League, although extremely important, was secondary in terms of procuring agreement of the Planning Board for the proposed settlement of the controversy.

5. It was the understanding of the Planning Board based upon representations made by representatives of O & Y at several meetings approximately 2,550 buildable acres were available for development within the 2,640 acre tract. Conversely, it was emphasized that less than 100 acres were undevelopable and these

acres corresponded to the WS Zone District shown in the Land Development Ordinance of the Township of Old Bridge. More importantly, the WS (wetland) acres and all stream corridors were shown as areas contained within a professionally designed 18 hole golf course which would be available to the residents of the new town. It was further represented that 35 acres and 2 percent of all residential lands would be available for active recreational activities and public facilities in addition to the golf course.

6. The residential development within the O & Y tract included four proposed sites for mid-rise apartment buildings. It was the strong and convincing argument of O & Y that a full mix of residential building types and densities and a variety of architectural designs would be included within the proposed new town development.

7. During negotiations leading to the settlement, a serious impasse occurred for a brief period with regard to the details of a "staging performance" which required that a fixed amount of industrial/commercial office space or shopping center space had to be developed before more residential development could be approved. This phase of the negotiations was extremely critical because it involved approximately seven and one half million (7,500,000) square feet of industrial, commercial and office development proposed by O & Y, particularly in the area adjacent to the confluence of Routes 9 and 18. Based upon the reputation of Olympia & York and the very attractive location of the land areas Olympia & York proposed for nonresidential development at the Routes 9 and 18 location, the Planning Board fully

expected that the proposed nonresidential development would occur.

8. Negotiations concerning the fair share responsibility of the Township of Old Bridge were, in effect, secondary to those negotiations relating to the proposed new town within which 1,638 units of low and moderate were required. The Planning Board perceived that the fair share responsibility of Old Bridge could be satisfied in the new town. The Planning Board believed that land would be available for support facilities including schools, firehouses and first aid buildings. The Planning Board agreed to a ten percent set aside based upon the understanding that the vast majority of low and moderate income housing units could be constructed in the new town where adequate employment opportunities would be present for the new residents. My understanding was that the Woodhaven Village application contained far less nonresidential development but otherwise would provide all facilities needed to serve a new town population.

9. All plans shown to the Planning Board during negotiations indicated adequate transportation facilities connecting the proposed new town development to the rest of Old Bridge Township. Of primary importance to the Planning Board was the Trans Old Bridge Expressway which provided a limited-access major transportation link for east to west travel through the municipality.

10. The Planning Board determined initially that the proposed developments of O & Y and Woodhaven represented "leap-frog" development because it was located in the most rural portion of Old Bridge Township and was not serviced by public water, sewer or adequate road facilities. I believed that the public

benefit and general welfare of all residents of Old Bridge Township would not be served by permitting developments in the area proposed by O & Y and Woodhaven until it was explained by representatives of O & Y and Woodhaven that the proposed development would be self-contained in terms of employment and municipal facilities to provide municipal services.

I would not have consented to the settlement if I had known that it was not physically possible for Olympia & York and Woodhaven Village to build a new town within the Township of Old Bridge providing for an employment base and large recreational facility while satisfying the lions share of the Mt. Laurel II Housing responsibility of Old Bridge Township.

11. The Planning Board insisted that a "reopener" provision be included in the settlement providing that any party could seek to set aside or revise the settlement in the event of new laws or regulations of new agencies that revised the Mt. Laurel obligation or for impossibility of performance on the part of any of the parties to the agreement. At the time of the settlement all parties were aware that the Council on Affordable Housing had been created pursuant to the Fair Housing Act. The Planning Board was aware that the Council on Affordable Housing was devising new formulas to allocate low and moderate housing responsibilities to the various municipalities in New Jersey. The Planning Board agreed to the settlement only upon the condition that a reopener clause be included to insure that in the event the fair share responsibility of Old Bridge Township was less than that set forth in the settlement the fair share number

could be revised downward. I also recognize that the number could also be increased if the fair share number devised by COAH was greater than the settlement number. However, I agreed to this concept on the basis of fairness and I also believe that the Planning Board consented to the agreement for the same reason.

12. It is my understanding that the U.S. Army Corps of Engineers has certified that the O & Y tract contains approximately 1,450 acres of wetlands. Additionally, it is my understanding based upon the report of the Planning Board Consultant, Carl Hintz, dated May 1987 and attached hereto as Exhibit A, that of the remaining 1,150 acres, only 700 acres are developable and the remaining 450 acres are scattered in a piece meal fashion throughout the tract and are in most cases inaccessible without the construction of bridges through wetland areas. At this time, it is my understanding that the application for wetlands certification submitted by Woodhaven Village has not been certified by the U.S. Army Corps of Engineers.

The basic premise that the Planning Board relied upon was that Olympia & York could develop approximately 2,600 acres of land for a new town. This can no longer be achieved since less than thirty-five percent of the total land is actually buildable. The report of Sullivan Associates, attached hereto as Exhibit B, dated May 26, 1987, consultants for O & Y, confirms this observation. It is clear to me that except for some token areas for neighborhood commercial activity O & Y cannot comply with its agreement to build the nonresidential facilities including industrial, office and regional shopping center space and cannot provide active open

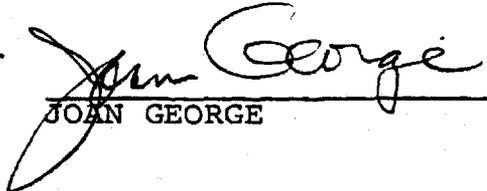
space, nor the golf course, nor the lands necessary for public services including the schools, firehouses and first aid buildings. The new transportation plan cannot possibly service the needs of Old Bridge Township. Worst of all the proposed residential densities now suggested by O & Y for the remaining lands exceeds any proposed densities agreed upon by the Planning Board and do not provide for a mix of housing densities and types. To a lesser extent the same is true with regard to the development proposed by Woodhaven Village.

13. As Chairperson of the Planning Board, I believe the motion of the Planning Board to set aside the entire settlement should be granted on the basis of fairness and fair play given the loss of buildable land due to the wetlands problem. More specifically, it would be unfair to all of the current residents of Old Bridge Township to force compliance with an agreement which no longer contains all of the benefits bargained for by the Planning Board.

14. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: June 29, 1987

TN:dm



JOAN GEORGE

PLANNING REPORT
FOR
THE OLYMPIA AND YORK
PLANNED DEVELOPMENT
OLD BRIDGE TOWNSHIP, NEW JERSEY

PREPARED FOR:
O&Y OLD BRIDGE DEVELOPMENT CORP.

MAY 26, 1987

PLANNING REPORT

FOR

THE OLYMPIA & YORK PLANNED DEVELOPMENT
OLD BRIDGE TOWNSHIP, NEW JERSEY

Prepared For: O&Y Old Bridge Development Corp.

Prepared By: Sullivan Associates

Date: May 26, 1987

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EXHIBITS

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- B. Land Use Alternative Plan A
- C. Land Use Alternative Plan B
- D. Site Development Plan

A. INTRODUCTION

In the early part of 1986, in accordance with the Court Order and Settlement Agreement of January 24, 1986, the Old Bridge Township Planning Board was in the process of conducting public hearings on Plates A and A-1, which represented O&Y's intended development plans.

During the public hearings, O&Y became aware that potentially larger areas of the project than originally anticipated might be classified as wetlands, thus falling under the jurisdiction of the US Army Corps of Engineers (The Corps). Because of uncertainty as to the extent and usability of the wetland areas, O&Y asked the Planning Board to adjourn the public hearing until such time as the unresolved questions could be clarified.

At that time, O&Y began a detailed mapping of their property. This process took almost one year, ending in February 1987. The survey did verify that a larger portion of the site was affected by wetlands than originally anticipated, and that additional planning studies would be necessary to address its implications.

The purpose of this report is to summarize the results of the wetlands survey and to outline our proposals for a Planned Unit Development on the O&Y property, which is fully responsive to the delineated wetlands on the site and the relevant wetland regulatory authority of the Corps. These proposals include the provision of a wide variety of housing types, including a set-aside for low and moderate income housing; the development of commercial and employment generating SD uses; a circulation plan and proposed strategies for the development of the Trans Old Bridge connector; and the provision of lands for public purpose, recreation and open space uses.

B. WETLANDS DELINEATION

The Army Corps of Engineers, as the agency charged with regulating the wetlands, determines the limits of its jurisdiction on the basis of detailed field investigations of soils, vegetation and hydrologic site conditions. Lands found to be within the Corps' jurisdiction are subject to 404 permit requirements for any development activities requiring the placement of fill in the wetlands. All lands outside the Corps' jurisdiction are available for development according to local development regulations. This delineation process has been completed for the O&Y site by Amy S. Green, Environmental Consultants. The criteria and methodology employed in this delineation, along with the results of the study, are detailed in the Wetlands Delineation Report, dated February 1987.

The limit of the wetlands, which was marked in the field by Amy S. Green, Environmental Consultants, has been surveyed and mapped by Taylor Wiseman Taylor, Consulting Engineers. Because of the size of the O&Y site (approximately 4 square miles) and the detail of the mapping, which included approximately 1,300 survey points, this mapping took nearly a year to complete.

Representatives of the Corps accompanied by the Federal Environmental Protection Agency and the United States Fish and Wildlife Services, have visited the O&Y property during the wetlands delineation process to inspect the wetlands delineation made by Amy S. Green, Environmental Consultants. The Corps has verbally confirmed the location, the extent and the limits of the wetlands as delineated. O&Y has recently submitted the final wetlands report, along with final maps prepared by Taylor Wiseman Taylor, surveyors to the US Army Corps of Engineers for acceptance of the wetlands delineation as the official limit of Corps jurisdiction.

Of a total of approximately 2,600 acres, the final wetlands mapping, as submitted to the Corps, identifies approximately 1,459 acres of wetlands. Any development requiring fill on these lands would be subject to an Army Corps of Engineers 404 permit. The remaining lands, totalling approximately 1,141 acres, are not subject to regulation by the Corps. About 581 acres (39%) of these uplands are located in large contiguous tracts of land, ranging from 25 to 132 acres in size. Another 200 acres of these lands are located in tracts ranging from 10 to 19 acres in size. Most of these upland parcels are adjacent to existing roads and are accessible.

LAND USE PLANS

O&Y has developed two land use plan alternatives, which address the concerns of the Township of Old Bridge. In each, the residential, special development, and commercial components are treated essentially the same. The principal difference between these two plans is the omission or inclusion of the Trans-Old Bridge Connector, which is a proposed cross-town freeway, long desired by the Township and incorporated into the Township Master Plan.

In both of these plans, no filling of wetlands is proposed for the residential component. The areas designated for commercial uses, that are located adjacent to Route 18, require fill which is permitted upon the issuance of a 404 permit by the Army Corps of Engineers. Because the T.O.B. is a Township Master Plan Road, it has been included on Alternative Plan B. However, its alignment does cross numerous wetland areas, and the Corps has advised O&Y that it is unlikely a permit would be issued to a developer to construct such a road. Consequently, it has been eliminated on Alternative Plan A to illustrate the independence of the development from this road improvement.

A description of the plan components follows:

1. Residential

The residential uses in each plan are located on upland areas only, with no requirement for a 404 permit because there will be no filling of wetlands. Much of this upland area is adjacent to and accessible from existing roads. Those uplands which are not adjacent to a road, but are relatively close to accessible uplands, will be reached with simple bridge structures not requiring fill.

Conceptually, the residential areas in both plan alternatives will be developed in a manner similar to that proposed in Plate A of the Settlement Agreement. Using Plate A as a base line, the overall residential density, including the land devoted to public purpose and non-designated open space, was calculated to be approximately 5.96 units per acre on 1,771 acres. This, of course, assumes the 10,560 units proposed on Plate A.⁷ Extracting the public purpose lands and the non-designated open space yielded a residential density of approximately 6.5 units per acres. With these densities, Plate A as proposed with the Settlement Agreement, provided the opportunity for a wide variety of housing types, including single-family detached, single-family attached, patio homes, maisonettes, and multi-family homes. The residential component also included a ten percent (10%) set-aside for lower income units.

The residential components of both land use plans are proposed to be developed at the same densities and range of housing types, as contemplated in the court settlement. The amount of residential land between the two being 835 for one and 845 acres for the other. Applying a residential density of 5.96 units per acre would yield approximately 4,977 to 5,036 units. This would comfortably allow an adequate amount of residential upland area to be devoted to public purpose and recreational uses.

Because of the configuration of the various upland parcels, some being long and wide others being short and narrow, O&Y prepared a test site plan of a substantial portion of the project to demonstrate that the residential lands can be developed at the intensity and range of housing types as described in the site planning standards contained in the Settlement Agreement.

The area selected for the test plan is in the central portion of the project and contains a total of approximately 480 acres. It is bounded on the north by Pleasant Valley Road, on the south by E. Graystone Road, on the east by Marlboro Road, and on the west by Englishtown Road. It was selected because it contains the least favorable representative sample of the various uplands configurations.

The site plan, which was drawn at a scale of 1"=200', illustrates a wide range of housing types from multi-family to single-family detached with a ten percent (10%) component for lower income housing. All of the housing units are located on upland areas. The plan conforms to the site planning standards contained in the Settlement Agreement. The only wetlands intrusion would be for road crossings and these would be bridged. In certain instances, there are single-family lot lines which extend into the wetlands, however, these portions of the lots are outside the building envelopes and, under the Corps regulation, this is permitted provided the wetlands are not filled.

The following summarizes the test site plan.

TEST SITE DEVELOPMENT

Total Area & Units	1,275 du	480 ac.
Wetlands		243 ac.
Uplands		237 ac.
Multi-Family	<u>848 du*</u>	<u>43 ac.</u>
Townhomes	509 du	74 ac.
Patio Homes	188 du	35 ac.
Single-Family		
1/3 acre lots	94 du	63 ac.
Commercial	75,000 sf	9 ac.

Note: of these, 128 du are lower income.

The test site plan demonstrates that the configuration of upland areas does not materially affect the yield of residential units per acre as related to the acres of upland. As previously mentioned, wetlands can form a portion of the yard area and, as the test plan substantiates, the upland areas that are too small to develop are offset by these yards. Thus, there is no net loss in the acreage of developable land. The plan also, consistent with good planning principles, incorporates the concept of mini clusters of housing located off country roads surrounded by substantial open space. There is a broad range and balance of housing types.

Depending upon how much land is ultimately devoted to residential uses, the O&Y Planned Development can provide approximately 5,000 units with about 500 lower income units. The test site plan demonstrates that this is realistic, viable, and in accordance with the principles of the Settlement Agreement, and totally outside the jurisdiction of the Corps of Engineers.

2. Special Development and Commercial

Both Land Use Alternatives A and B show parcels for Special Development ranging in size from 17 to 54 acres and totalling 149 acres which are generally located along Route 18 and Texas Road. SD-1 is 54 acres and is linear in configuration. It is bounded by Route 18 and the 100 year flood plain for the Deep Run watershed system. SD-1 is accessible from Route 18. SD-2 is 17 acres and located at the intersection of Route 18 and Texas Road. Access is via Texas Road.

Parcels SD-3 and SD-4 are respectively south and north of Texas Road, between its intersection with Marlboro Road and Route 18. SD-4 is 40 acres, SD-3 is 38 acres. Access to both of these parcels is from Texas Road. Using the fifty percent (50%) F.A.R. allowance contained in the Settlement Agreement, the theoretical development capability of these parcels is 3,245,220 s.f. Of the total land, approximately 91 acres of development area will be on filled wetlands requiring a permit from the Corps, while the remaining 58 acres are uplands not requiring a Corps permit.

Plan A does not include the Trans Old Bridge Connector, whereas Plan B does include it. The significant difference between Plans A and B, insofar as the location and extent of lands designated for commercial use, is a direct response to the commercial potential obviously inherent in lands with frontage exposure on this major traffic artery. Plan A identifies eight (8) commercial parcels, C-1 through C-8, with the majority of the land area located adjacent to Route 18. On these parcels (C-5, C-6, C-7, and C-8 totalling 112 acres), filling of wetlands and the related 404 permit would be required. The remaining parcels located along Englishtown Road and at the intersection of Marlboro and Texas Roads would not require fill, since they are located only on uplands. The total Commercial Land on Plan A is 128 acres.

Plan B differs from Plan A only in the vicinity where the T.O.B. intersects Route 18. At this location, there is an additional 27 acres of commercially designated land along the T.O.B. giving Plan B a total of 155 acres of commercial.

3. Circulation

Both of the Land Use Alternatives rely primarily on the existing road network with necessary improvements and the addition of some minor arterial roads. While neither of the alternatives is dependent upon the Trans-Old Bridge Connector, Alternative B includes the T.O.B. alignment, because this was a requirement of the Settlement Agreement. The particulars concerning the T.O.B. and its impact upon wetlands will be discussed later in this report.

In terms of the existing road network within the project area, Land Use Alternative A provides for the upgrading of East Graystone Road between Englishtown Road and the realigned Marlboro Road. Pleasant Valley Road would also be upgraded from its intersection with Marlboro Road west to its intersection with a proposed minor arterial. Marlboro Road would be improved between Route 18 and Pleasant Valley Road and re-aligned south of Pleasant Valley Road to Texas Road.

In addition to improving these existing roads, Plan A contains three new minor arterials. On the eastern portion of the project, there is a new road connecting Marlboro Road directly with Route 18. This serves a commercial parcel (C-8) on the north and a residential parcel (R-8) to the south. The second roadway goes in a northwestern alignment and connects Pleasant Valley Road and Englishtown Road. This road serves a substantial residential area north of Pleasant Valley Road. The remaining proposed road runs from Englishtown Road to Texas Road in a generally north-south direction and serves the residential parcels in the area west of Englishtown Road. Preliminary traffic studies confirm that Land Use Plan A will function adequately without the T.O.B.

The circulation system generally has minimal effect on the wetlands. Where existing roads are adjacent to wetlands, they will be upgraded using the limits of the present fill section, no additional fill will be put within the wetlands. The proposed roads are located primarily on uplands areas. Where they do cross wetlands, the wetlands will be bridged so that no fill will be required for the wetlands crossing. O&Y has submitted the design methodology for wetland crossings to the Corps and is currently waiting for an official concurrence from the Army Corps of Engineers as to the acceptability of the designs for these crossings.

Land Use Plan Alternative B proposes essentially the same circulation system, except that it includes the T.O.B. During the planning process, many different alignments for the T.O.B. were explored, the objective being to minimize the crossing of wetland areas. All of the alignments, including the one selected, have substantial stretches of road located in wetlands, approximately 5,280 feet of the total 10,800 feet. Because of the size of the T.O.B. and the extent of the wetlands crossings, it would be completely economically unfeasible to attempt to bridge the wetlands areas. Recognizing that O&Y is committed to constructing the T.O.B., Plan B has incorporated it. However, construction of the T.O.B. will require a permit from the Corps because those sections of the road traversing wetlands will have to be constructed on fill.

Based on extensive inquiry, O&Y does not believe that, as a developer, they will be able to obtain the 404 permit from the Corps that will be required for its construction. O&Y believes that in order for the Corps of Engineers to approve the T.O.B., it will be necessary for Old Bridge Township to apply for the 404 permit and demonstrate how the T.O.B. would serve the overall public interest of the municipality beyond the potential benefits that may accrue to the O&Y Planned Development. If the Township is willing to apply for and is successful in obtaining the requisite Corps approval, O&Y recognizes that it is committed to construction of its fair share of the T.O.B.

Public Purpose, Recreation and Open Space

During the hearing process for Plate A, the Planning Board expressed particular interest in the Public Purpose and recreation components of the plan. The Settlement Agreement provides that two percent (2%) of the residential lands be devoted to Public Purpose uses and that an area equal to twenty percent (20%) of the residential lands be dedicated open space. The Planning Board was concerned that there be enough Public Purpose lands and areas for active recreation, particularly field areas. In this regard, during the hearing process, meetings were held between O&Y, the School Board and the Fire Department, in order to assess needs. Given these concerns, the two Land Use Plan Alternatives respond by providing more Public Purpose land than called for in the Settlement Agreement, and also by allocating more upland area for active recreational purposes than required. Of necessity, these uses have been allocated to the uplands portions of the project, because they would require fill permits if allocated to wetland areas.

In the case of the Public Purpose lands, the area allocated is based upon two acres for a fire station, fifteen acres for a school site, and five acres for other uses which the Township would deem desirable. Both alternative plans provide for these 27 acres. Their locations have not been designated and would be subject to the expressed preferences of the Township.

During the public hearing on Plate A of the Settlement Agreement, it was suggested by the Township Planning Consultant that the recreation areas be calculated on the basis of a publication by the National Recreation and Park Associates called Recreation, Park and Open Space Standards and Guidelines. The standards specify land areas as a multiple of population for mini, neighborhood, and community parks. These standards are acceptable to O&Y and have been used in developing the two plans.

Assuming an average population of 2.5 persons per unit, sizes were calculated for the three alternate land use plans. The standards recommend that the mini and neighborhood parks be of an active nature, while the community park may be used for passive recreation, or a combination of active and passive recreation, including areas of diverse environmental quality. The land allocated, approximately 31 acres, is that which would be used for active purposes and thus is part of the upland area. The passive portion of the community park, approximately half of the total area, would be allocated on wetland areas. In addition, Land Use Plans A and B will dedicate a minimum of 138 and 136 acres respectively, of the wetlands areas for open space purposes. Thus, together with the recreation set-aside, the 20% open space requirement shall be met.

5. Land Use Plan Summaries

The following are summary tabulations for the three Land Use Plan Alternatives.

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1141 uplands

<u>ALTERNATIVE A</u> (5,036 DU)		
Development Area		1,122 ac
Residential Area		845 ac
Public Purpose Area	(27 upland) 22 ac	
Recreation Area	31 ac	
Commercial Area	(112 wet) 128 ac	
Special Development Area	(91 wet) 149 ac	
Reserved/Open Space Area*	(all wet)	1,338 ac
Additional Upland Area		112 ac
New Roads		28 ac
TOTAL TRACT AREA		2,600 ac

<u>ALTERNATIVE B</u> (4,977 DU)		
Development Area		1,139 ac
Residential Area		835 ac
Public Purpose Area	22 ac	
Recreation Area	31 ac	
Commercial Area	155 ac	
Special Development Area	149 ac	
Reserved/Open Space Area*		1,308 ac
Additional Upland Area		103 ac
New Roads		50 ac
TOTAL TRACT AREA		2,600 ac

* Open space area allocated within reserved lands and the recreation land shall equal 20% of the residential area.

D. SUMMARY AND CONCLUSIONS

The following is a summary of the facts and conclusions discussed in this report.

1. The O&Y Planned Development is approximately 2,600 acres.
2. Extensive field investigation and surveying have determined that there are 1,141 acres of upland and 1,459 acres of wetland on the property.
3. Construction activity involving fill material in designated wetlands areas is regulated by the US Army Corps of Engineers. Similar activity occurring on upland areas is not regulated by the Corps.
4. O&Y has proposed two (2) alternative development plans. In each case, residential construction is confined to upland areas. Minor road crossings avoid wetlands by short-span bridging. Currently, a determination is being sought from the Corps as to their acceptance for the design of these road crossings.
5. The two development proposals vary as to the inclusion of or deletion of the Trans-Old Bridge Connector (T.O.B.).
6. The plans are designed to accommodate 149 acres of Special Development area and between 128 and 155 acres of commercial uses, thus, between 277 acres and 304 acres of ratables.
7. Using as a basis the net residential densities of Plate A, these alternatives provide between 4,970 and 5,036+ dwelling units, of which 10% would be devoted to lower income households. These can be accommodated in conformance with the site planning standards contained in the Settlement Agreement.
8. The additional wetlands, while having an affect on the proposal depicted in Plate A of the Settlement Agreement do not, however, preclude a viable development, including lower income housing, a variety of market housing types, commercial and SD uses, community and recreational facilities and open space, on the O&Y lands, all consistent with the Settlement Agreement.