

RULS - AD - 1976 - 140

8/13/1976

• MOTION TO DETERMINE THE SUFFICIENCY OF PLAINTIFF'S ANSWERS / OBJECTIONS

Pgs - 76

S-1290

The original of the within Notice of Motion has been filed with the Clerk of the Superior Court in Trenton, New Jersey.

*McCarter & English*

McCARTER & ENGLISH

*[Signature]*  
[Faint text]

McCARTER & ENGLISH  
550 Broad Street  
Newark, NJ 07102  
(201) 622-4444

RULS - AD - 1976 - 140

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - SOMERSET COUNTY  
DOCKET NO. L-25645-75 P.W.

THE ALLAN-DEANE CORPORATION, a  
Delaware corporation, qualified  
to do business in the State of  
New Jersey,

Plaintiff

Civil Action

-vs-

THE TOWNSHIP OF BERNARDS, IN  
THE COUNTY OF SOMERSET, et al.

Defendants

MOTION TO DETERMINE THE  
SUFFICIENCY OF PLAINTIFF'S  
ANSWERS OR OBJECTIONS TO DE-  
FENDANTS' FIRST REQUEST FOR  
ADMISSIONS

8-13-76

TO: MASON, GRIFFIN & PIERSON, ESQS.  
Attorneys for Plaintiff  
201 Nassau Street  
Princeton, NJ 09540

SIRS:

PLEASE TAKE NOTICE that on Friday, August 13, 1976, at 9:00 o'clock in the forenoon or as soon thereafter as counsel can be heard, we shall move the Court (Hon. B. Thomas Leahy, J.C.C.) at the Somerset County Court House, Somerville, New Jersey, to

determine the sufficiency of plaintiff's answers to defendants' First Request for Admissions, Paragraphs 8, 15 and 28, and the sufficiency of plaintiff's objections to Paragraphs 7, 22, 23, 24 and 25 of defendants' First Request for Admissions.

Defendants, The Township of Bernards, et al. also move, pursuant to Rule 4:23-1, for an order requiring plaintiff to pay these defendants the reasonable expenses incurred in obtaining the relief sought in this motion, including attorneys' fees.

In support of the within motion, we shall rely upon the brief submitted herewith.

Yours respectfully,

MCCARTER & ENGLISH  
Attorneys for Defendants, The  
Township of Bernards, et al.

NICHOLAS CONOVER ENGLISH

By

Nicholas Conover English  
A Member of the Firm

STATE OF NEW JERSEY )  
  ) SS:  
COUNTY OF ESSEX        )

MICHAEL SOZANSKY, being duly sworn according to law, upon his oath deposes and says:

1. I am employed by McCarter & English, attorneys for defendants, The Township of Bernards, et al.

2. On August 4, 1976, I personally mailed, by certified mail, return receipt requested, postage prepaid, a copy of the within Notice of Motion to Determine the Sufficiency of Plaintiff's Answers or Objections to Defendants' First Request for Admissions to Mason, Griffin & Pierson, Esqs., attorneys for plaintiff, P.O. Box 391, 201 Nassau Street, Princeton, NJ 08540, and to John F. Richardson, Esq., attorney for the Somerset County Planning Board, 1 East High Street, P.O. Box 1034, Somerville, NJ 08876.

Sworn to and subscribed )  
before me this 4th day )  
of August, 1976.         )

      /s/ Michael Sozansky        
Michael Sozansky

\_\_\_\_\_  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Nov. 15, 1977

SEP 10 1975

SOMERSET COUNTY  
L. 25645-75 P.W.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - SOMERSET COUNTY  
DOCKET NO. L-25645-75 P.W.

THE ALLAN-DEANE CORPORATION, a  
Delaware corporation, qualified  
to do business in the State of  
New Jersey,

Plaintiff,

vs.

THE TOWNSHIP OF BERNARDS, IN  
THE COUNTY OF SOMERSET, et al.,

Defendants.

FILED ✓  
RECORDED SK \_\_\_\_\_ Page \_\_\_\_\_  
Civil Action

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PLAINTIFF'S BRIEF IN OPPOSITION TO  
DEFENDANT'S MOTION TO DETERMINE THE  
SUFFICIENCY OF PLAINTIFF'S ANSWERS  
OR OBJECTIONS TO DEFENDANT'S FIRST  
REQUEST FOR ADMISSIONS

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MASON, GRIFFIN & PIERSON  
Attorneys for Plaintiff, The  
Allan-Deane Corporation  
201 Nassau Street  
Princeton, N. J. 08540  
(609) 921-6543

PRELIMINARY STATEMENT

This matter comes before the Court on a Motion by Defendant's, Township of Bernards, Township Committee of the Township of Bernards, and the Planning Board of the Township of Bernards to determine the sufficiency of Plaintiff's answers to paragraphs 8, 15 and 28 and the sufficiency of Plaintiff's objections to paragraphs 7, 22, 23, 24 and 25 of Defendant's First Request for Admissions. More specifically, as set forth in their brief, Defendant's seek an order that Plaintiff be deemed to have admitted paragraphs 7, 8, 15, 24, 25 and 28. Further, Defendant's seek an order with respect to paragraphs 22 and 23 that they either be deemed admitted or that Plaintiff be required to serve amended answers thereto.

As will become apparent, this motion by the above-named Defendants was filed solely for purposes of harassment. Defendant's First Request for Admissions contains 29 numbered paragraphs, each requesting the admission of certain matters by Plaintiff. The mere fact that Defendant's Motion is directed at only 8 of the 29 requested admissions is greatly probative of Plaintiff's good faith in attempting to respond in discovery.

In any event there follows a paragraph by paragraph response to Defendant's Motion.

PARAGRAPH 7

Defendants requested Plaintiff to admit that Plaintiff and Johns-Manville Corporation had knowledge of particular facts at a particular point in time. Defendants have ably cited the law, but apparently have failed to read it. The language contained in the Hercules Powder Company case cited at page 2 of Defendant's brief makes it clear that "corporate knowledge" of a particular fact is a legal conclusion, not a fact. By restricting their Request for Admissions to corporate entities Defendants were requesting Plaintiff to admit a legal conclusion not a fact.

R.4:22-1 states in pertinent part:

"A party may serve upon any other party a written request for the admission for purposes of the pending action only, of the truth of any matters of fact. . ."

Defendants may legitimately seek admissions concerning knowledge possessed by individuals, and may inquire as to whether those individuals are officers or agents of certain corporations. However, the question of whether the fact that an individual possessed certain knowledge and the fact that the individual was an officer or agent of a corporation combine after application of general legal principles expressed in the cases and elsewhere to produce the legal conclusion that a corporation is charged with imputed knowledge of its agents is a matter for the Court to

decide as a matter of law.

Now as for the effect of the deposition testimony of Arthur C. Smith, it is not at all clear from the cited testimony on page 3 of Defendant's brief that Mr. Smith knew what the zoning in Bernards Township was at the time Allan-Deane Corporation bought the land in question. If the Court scrutinizes the testimony there is no indication of when Mr. Smith learned that the zoning in Bernards Township was three-acre. There is a reference to time in the question relating to Bedminster Township but not in the question relating to Bernards Township. Perhaps that ambiguity is clarified elsewhere in the transcript. However, the cited passage does nothing to aid Defendants in this action with respect to the time Mr. Smith obtained certain knowledge. But, it should be remembered that regardless of what Mr. Smith's knowledge was, the question of whether his knowledge is chargeable to Allan-Deane Corporation or Johns-Manville Corporation is a legal determination which should not be the subject of a Request for Admission.

The Court should enter an order denying Defendant's Motion with respect to paragraph 7 of the First Request for Admissions.

#### PARAGRAPH 8

Here again, we find Defendants leaping to conclusions. The fact that Johns-Manville Corporation may have seen fit to



use the term "the Company" in its annual report of 1969 to include certain subsidiaries and affiliates has absolutely nothing whatever to do with what corporate entity actually holds title, and will develop the subject land and in Somerset County. There is no inconsistency between the annual report cited in Defendant's brief and Plaintiff's answer to paragraph 8 of Defendant's First Request for Admissions. If Defendants believe there is an inconsistency they may make of it what they will at the time of trial.

Further, Defendants attempt to rely on deposition testimony of Arthur C. Smith in the Bedminster litigation as a basis upon which Allan-Deane Corporation should be deemed to admit the subject matter of paragraph 8. Again, there is the problem of definitions of terms. The words "Johns-Manville" as used in the cited passage may or may not refer to "Johns-Manville Corporation", "Allan-Deane Corporation", "Johns-Manville Corporation and Allan-Deane Corporation as parent and subsidiary", or "Johns-Manville Corporation and all affiliated and subsidiary companies". The point is, that the fact is, that Plaintiff stands by its response to paragraph 8 of Defendant's First Request for Admissions, so that if Defendants perceive what they believe to be an inconsistency between Mr. Smith's testimony and Allan-Deane Corporation's response to paragraph 8 they can make what they want out of it at a later time. Allan-Deane Corporation will stand by

its response to paragraph 8, and the Court should deny Defendant's Motion with respect to that paragraph.

PARAGRAPH 15

Defendants argue with respect to this paragraph that because a document entitled "Water Quality Management: New Jersey's Vanishing Options" allegedly contains a statement to the effect that the Passaic River is among the ten worst polluted streams in the United States of America and because a draft of that report was an exhibit in prior litigation involving Allan-Deane Corporation, and because Allan-Deane Corporation may have referred to the draft report in its "Proposal for an Open-Space Community", and finally because the Supreme Court of New Jersey took judicial notice of another report issued by the same agency, that Plaintiff must accept that statement as fact. The reason Plaintiff cannot truthfully admit or deny that fact is clearly stated in Plaintiff's response to the requested admission. Defendants appear to take the position that if Plaintiff is familiar with the report, it must admit the truth of the facts asserted in that report. That is absurd.

Aside from the fact that whether the Passaic River is among the ten worst polluted streams in the United States of America is irrelevant to any issue in this law suit (especially in view of the fact that neither the word "polluted"

or "stream" are defined) Plaintiff maintains that its answer complies with Rule 4:22-1 and that it would not be in a position to admit the fact unless it had taken water samples from and analyzed all of the streams in the United States, and unless the word "polluted" was defined.

True, Plaintiff's response does not mimick the words of the rule or state "I have made reasonable inquiry and the information known or readily obtainable by me is insufficient to enable me to admit or deny, etc.", but those words in the rule should not be required as a mindless incantation; rather Plaintiff's response should be read and understood for what it says, and that is that Plaintiff will not admit that the Passaic River is among the ten worst polluted streams in the United States of America unless Plaintiff has itself conducted the tests, and unless the term polluted is defined.

This is not to say that the Court may not decide that the Passaic River is one of the ten worst polluted streams in the United States of America after hearing testimony presented by Defendants, with the opportunity for cross-examination and rebuttal testimony at the time of trial.

Therefore, Defendant's Motion should be denied with respect to paragraph 15 of Defendant's First Request for Admissions.

PARAGRAPHS 22, 23, 24 and 25

In each of the above-enumerated paragraphs Defendants allegedly set forth bits and snatches of various documents, and requested Plaintiff to admit that those bits and snatches were contained in the documents cited. Apparently, the request is not for an admission of facts contained in documents, nor is it a request to admit the genuineness of a document. It is a request to admit that certain words are contained in certain documents.

We submit that Defendants misconceive the meaning and effect of Rule 4:22-1 in that no where does it provide for the type of admission requested in paragraphs 22, 23, 24 and 25 of their First Request for Admissions. Even if Plaintiff admitted that certain statements were made in specified documents such admissions would not affect the evidential value of those statements. Indeed the Court should be highly suspicious of an attempt by a party to litigation to somehow sever statements made in documents from the documents themselves. Can it be that Plaintiff will somehow attempt to introduce the substance of the cited passages at trial, and then object if anything in those documents outside of the cited passages is referred to?

Plaintiff would suggest to the Court as it attempted to suggest to Defendants in its response to the Request for Admissions that Defendants submit the entire documents to

Plaintiff and that if anything is to be admitted it will be the genuiness of an entire document.

It should be noted that Defendants have demonstrated that they will require absolute literal compliance with the rules, as is their right. However, they cannot later be heard to complain when Plaintiff's demand the same rights to literal compliance with the rules as in requesting the submission of the entire documents in question.

The Court should deny Defendant's Motion with respect to paragraphs 22, 23, 24 and 25.

#### PARAGRAPH 28

The situation with respect to paragraph 28 of the First Request for Admissions is unusual and even mildly amusing. Here we have an document which bears the title "Interim Technical Report 4509-1506, a Staff Report of Tri-State Regional Planning Commission, January 1976, 'Most Likely Targets for Planned Growth'". However, on page (ii) there is a statement that the report does not "necessarily represent the views of the Tri-State Commissioners" and it "should not be quoted for publication or cited as official record without the express approval of the Executive Director". If the English language retains any meaning at all the disclaimer referred to above is exactly that, a disclaimer. There is no purpose to be served in this litigation by admitting the genuiness of a document when

the authors of it have disclaimed responsibility as occurred here.

The Court should deny Defendant's Motion to respect to paragraph 28 of Defendant's Request for Admissions.

#### THE AWARD OF EXPENSES

Defendant's Motion is directed toward requests for admissions which are themselves largely if not totally without relevance to the issues to be tried in this law suit. The Request for Admissions, as well as the Motion directed at enforcing them have but one purpose, to delay, harass, and otherwise discourage Plaintiff from its resolve to develop its property. If Plaintiff has the right to develop its property at reasonable densities, it doesn't matter, and it could not arguably matter, whether Plaintiff knew what the zoning was at the time it purchased the property. Defendant's have consistently tried to drag Johns-Manville Corporation into this lawsuit for no other reason than to harass its corporate officers in the hope that they may somehow influence their smaller subsidiary into getting out of this litigation. What difference does it make whether the owner of land will make money from its development? What probative value would the fact that the Passaic River is one of the ten worst polluted streams in America have, unless one knows exactly what that means for the quality of life and the environment of the Passaic River communities? What difference does it make



SOMERSET COUNTY COURT  
ASSIGNMENT CLERK'S OFFICE  
Somerville, New Jersey 08876

W. J. Wintermute, Sr.  
Assignment Clerk

Phone: (201) 725-4700  
Ext. 315



May 3, 1977

entd. I. C. D. \_\_\_\_\_

Recorded Bk. \_\_\_\_\_ Page \_\_\_\_\_

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O  
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Y

Henry A. Hill, Jr., Esq.  
Mason, Griffin & Pierson, Esqs.  
201 Nassau Street  
Princeton, New Jersey 08540

McCartar & English, Esqs.  
550 Broad Street  
Newark, New Jersey 07102  
ATTENTION Nicholas Conover English, Esq.

John F. Richardson, Esq.  
One East High Street  
Somerville, New Jersey 08876

Re: The Allan-Leane Corporation, Inc. vs. The Township  
of Bernards, in the County of Somerset Inc.  
Docket No. L-25645-75  
E-1299 P.W.

Gentlemen:

Please be advised that all pending motions on the  
above captioned matter have been scheduled for hearing  
before the Honorable David G. Lucas on Monday, June 6,  
1977, at 9:00 A.M.

Counsel will be expected to proceed at that time.

Very truly yours,

William J. Wintermute, Sr.

WJW/gh

CC: Honorable David G. Lucas  
Lawrence R. Olson, County Clerk ✓

mB  
1/77



S-1290

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - SOMERSET COUNTY  
DOCKET NO. L-25645-75 P.W.

THE ALLAN-DEANE CORPORATION, a :  
Delaware corporation, qualified :  
to do business in the State of :  
New Jersey, :

Plaintiff :

Civil Action

-vs-

THE TOWNSHIP OF BERNARDS, IN :  
THE COUNTY OF SOMERSET, et al. :

Defendants :

AUG 3 9 32 AM 1971  
SOMERSET COUNTY CLERK

*Brief out*

MOTION TO DETERMINE THE SUFFICIENCY OF  
PLAINTIFF'S ANSWERS OR OBJECTIONS TO  
DEFENDANTS' FIRST REQUEST FOR ADMISSIONS

MCCARTER & ENGLISH  
Attorneys for Defendants, The  
Township of Bernards, et al.  
550 Broad Street  
Newark, NJ 07102  
(201) 622-4444

This brief is filed in support of the motion of defendants, The Township of Bernards, et al to determine the sufficiency of plaintiff's answers or objections to certain paragraphs as contained in plaintiff's Answer to Defendants' First Request for Admissions.

For the convenience of the court, a copy of defendants' First Request for Admissions, and a copy of plaintiff's Answer thereto, are attached to this brief.

This motion is brought pursuant to the portion of Rule 4:22-1 which provides:

"The party who has requested admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The provisions of R.4:23-1(c) apply to the award of expenses incurred in relation to the motion."

We will deal separately with the paragraphs in the plaintiff's answer to which this motion is directed.

PARAGRAPH 7

The First Request for Admissions in Paragraph 7 reads:

"7. When plaintiff took title to the aforesaid lands, both plaintiff and Johns-Manville Corporation knew that the land in Bernards Township was zoned for single-family residences on 3-acre minimum lots, and that most of the land in Bedminster Township was zoned for single-family residences on 5-acre minimum lots."

Plaintiff's answer reads:

"7. Plaintiff objects to Paragraph 7 of the First Request for Admissions on the grounds that both Plaintiff and Johns-Manville are corporations."

The basis for plaintiff's objection is not entirely apparent, but presumably rests on plaintiff's view that a corporation knows nothing or cannot know anything. However, the law is otherwise. In Hollingsworth v. Lederer, 125 N.J.Eq. 193 (E. & A. 1939), the court stated at p. 206:

"It has been held, 'that the corporation is affected with constructive knowledge, regardless of its actual knowledge, of all material facts of which its officer or agent receives notice or acquires knowledge while acting in the course of his employment and within the scope of his authority, and the corporation is charged with such knowledge even though the officer or agent does not in fact communicate his knowledge to the corporation.' 14a C.J. 482 § 2350, 12a. See Vulcan Detinning Co. v. American Can Co., 70 N.J.Eq. 588; 72 N.J.Eq. 387; 62 Atl. Rep. 881; Schenck v. Mercer County Mutual Fire Insurance Co. 24 N.J.Law 447; Atlantic City v. Atlantic City Pier Co., 62 N.J.Eq. 139; Trenton Banking v. Woodruff, 2 N.J.Eq. 117."

See also Hercules Powder Company v. Nieratka, 113 N.J.L. 195 (S.Ct. 1934, affd. 114 N.J.L. 254 (E. & A. 1935) wherein the court held at 113 N.J.L. 199:

"And a corporate body, as a legal entity, cannot itself have knowledge. If it can be said to have knowledge at all, that must be the imputed knowledge of some corporate agent. Knowledge of the proper corporate agent must be regarded as, in legal effect, the knowledge of the corporation. Allen v. City of Millville, 87 N.J.L. 356; affirmed 88 Id. 693."

To the same effect, Newark Hardware Company v. Stove Manufacturers Corp., 136 N.J.L. 401, 403 (S.Ct. 1948), affd on op. 137 N.J.L. 612 (E. & A. 1948).

That plaintiff's objection is utterly frivolous is

demonstrated by the deposition of Arthur C. Smith, taken in the case of Allan-Deane Corporation v. Township of Bedminster. At the time of the deposition, the deponent was the President of Allan-Deane Corporation and also a Director and Vice-President of Johns-Manville Corporation. Mr. Smith testified (p.6, 1.3 of the Transcript of his deposition taken November 18, 1971):

"Q. Now at the time the plaintiff bought its land, did it know that the lands in Bedminster which it was buying were located in a 5-acre minimum lot zone?

A. Yes.

Q. And what was the zoning in Bernards Township with respect to the lands you bought there?

A. Three acre."

The court should enter an order that plaintiff is deemed to admit Paragraph 7 of the First Request for Admissions.

#### PARAGRAPH 8

Paragraph 8 of defendants' First Request for Admissions reads:

"8. Johns-Manville Corporation acquired the aforesaid land in the name of Allan-Deane Corporation as an investment for the purpose of making money."

Plaintiff's answer thereto reads:

"8. Plaintiff denies the matter of which an admission is requested in Paragraph 8 of the First Request for Admissions. The aforesaid lands were acquired by Plaintiff and not by Johns-Manville Corporation in the name of Plaintiff as an investment **and** for the purpose of eventually developing a balanced community."

The court should enter an order determining that

plaintiff is deemed to have admitted Paragraph 8 of defendants' First Request for Admissions. Plaintiff has admitted Paragraph 10 of defendants' First Request for Admissions which is a quotation from the Johns-Manville Corporation Annual Report of 1969 which includes reference to "the company's purchase in November of 1363 acres of land in Somerset County, New Jersey for investment \* \* \*." In context, the word "company" refers to Johns-Manville Corporation.

Moreover, in the aforesaid deposition of Arthur C. Smith, then President of plaintiff corporation, taken in connection with the Bedminster litigation, Mr. Smith testified (p.4, l.9):

"Q. Now, is the use to which Allan-Deane proposes to devote its property directly related to some other activities of Johns-Manville, or by contrast, is it simply a profit making venture?

A. It is an investment for Johns-Manville.

Q. And the purpose of the investment is to make some money for Johns-Manville?

A. Certainly."

#### PARAGRAPH 15

Paragraph 15 of the defendants' First Request for Admissions reads:

"15. The Passaic River is among the 10 worst polluted streams in the United States of America."

Plaintiff's answer thereto reads:

"Plaintiff cannot truthfully admit or deny the matter of which an admission is requested

since Plaintiff has not taken water samples from and analyzed all of the streams in the United States of America and because Defendants do not define the word 'polluted'."

Plaintiff's answer does not comply with Rule 4:22-1, which states:

"The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. \* \* \* An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny."

Plaintiff has failed to state that it has made reasonable inquiry and that the information known or readily obtainable by it is insufficient to enable it to admit or deny. The reasons which plaintiff ascribes for its inability to admit or deny are patently ridiculous. In Paragraph 24 of the defendants' First Request for Admissions is set forth a quotation from a report of the County and Municipal Government Study Commission entitled "Water Quality Management: New Jersey's Vanishing Options" in which the statement is made: "The Passaic River and the Arthur Kill are among the ten worst polluted streams in the nation." Plaintiff cannot plead infamiliarity with this report since a draft of said report, issued in March 1973, was Exhibit D-17 received into evidence in the trial of Allan-Deane Corporation v. Bedminster Township, and it is also cited as one of the sources in a document entitled "A Proposal for an Open Space Community", which was

presented by plaintiff to the Bernards Township Planning Board on February 10, 1976, and which was marked Exhibit D-76 Id. at depositions herein taken on May 24, 1976. The quoted language in the final report issued June 1973 is unchanged from that appearing in the March 1973 draft. In any event, the New Jersey Supreme Court, in Hackensack Meadowlands v. Municipal Land Fill Authority, 68 N.J. 451 (1975) at p. 462, took judicial notice of another report issued by the County and Municipal Government Study Commission. If the Supreme Court and this Court can take judicial notice of a report of the County and Municipal Government Study Commission, there would seem to be no reason why plaintiff cannot familiarize itself also with such a report, particularly when it has received actual notice of the preliminary draft thereof.

The court should enter an order that plaintiff is deemed to have admitted Paragraph 15 of the defendants' First Request for Admissions.

PARAGRAPHS 22 and 23

Paragraph 22 of the defendants' First Request for Admissions reads:

"22. The Governor's Commission to Evaluate the Capital Needs of New Jersey stated in its Volume 2, Research Report, April 1975, at p. 46:  
\* \* \*."

There follows a statement quoted from the cited report.

Similarly Paragraph 23 of the defendants' First Request for Admissions reads:

"23. In June 1975, the Department of Community Affairs issued a report entitled 'Secondary Impact of Regional Sewerage Systems, Volume 1' in which the following general recommendations were made: \* \* \*."

There follow quotations from the cited report.

Plaintiff objects to each of these two paragraphs on the ground that the document referred to was not served upon plaintiff with the Request for Admissions as required by Rule 4:22-1 and that therefore this is an improper request for admissions.

We submit that plaintiff misconceives the meaning and effect of Rule 4:22-1 as well as the nature of Requests 22 and 23. These paragraphs do not request that plaintiff admit the genuineness of a copy of a document. On the contrary, plaintiff is merely asked to admit that certain statements are made in specified documents. It should be pointed out that these documents are public in nature, issued by established governmental bodies. The Report of the Governor's Commission to Evaluate the Capital Needs of New Jersey received widespread discussion in the press and, as stated in Request 22, that Report refers to the document referred to in Paragraph 23 of the Request for Admissions.

Plaintiff has not asserted that it is unable to locate or obtain copies of the public documents cited.

Admittedly, these defendants could have served plaintiff with the complete documents cited in Paragraphs 22



and 23 of the Request. However, the Research Report of the Governor's Commission contains 280 pages, and the Report of the Department of Community Affairs on the Secondary Impact of Regional Sewerage Systems contains 80 pages. Rather than clutter up the record with a great deal of unnecessary material, it would appear to be sensible and economical to limit a request for admissions to the relevant material in a public document. Even if plaintiff admitted Requests 22 and 23, it would not be precluded from offering other parts of those documents, -- of indeed the entire documents -- into evidence.

The court should overrule plaintiff's objections and enter an order that Paragraphs 22 and 23 are admitted, or, in the alternative, that an amended answer be served.

#### PARAGRAPH 24

Paragraph 24 of the defendants' First Request for Admissions asks plaintiff to admit certain quoted excerpts from the County and Municipal Government Study Commission entitled "Water Quality Management: New Jersey's Vanishing Options". For the reasons already discussed in connection with Paragraphs 15, 22 and 23, the plaintiff's objections to Paragraph 24 should be overruled and the court should enter an order that Paragraph 24 is deemed to have been admitted.

#### PARAGRAPH 25

Paragraph 25 of the defendants' First Request for

Admissions asks plaintiff to admit a quotation from a report of Tri-State Transportation Commission entitled "Regional Development Guide - Technical Perspectives" November 1969. This document was received into evidence as Exhibit D-8 in the case of Allan-Deane Corporation v. Bedminster, and it is also cited as one of the sources in a document entitled "A Proposal for an Open Space Community", which was presented by plaintiff to the Bernards Township Planning Board on February 10, 1976, and which was marked Exhibit D-76 Id. at depositions herein taken on May 24, 1976. Under these circumstances, plaintiff's objection that no copy of this report "was served upon plaintiff or otherwise made available to plaintiff" is frivolous.

For these reasons as well as those already discussed in connection with Paragraphs 22 and 23, the court should enter an order overruling plaintiff's objections to Paragraph 25 of the First Request for Admissions and should enter an order that said paragraph is deemed to be admitted by plaintiff.

PARAGRAPH 28

Paragraph 28 of the First Request for Admissions reads:

"Exhibit A attached hereto and made a part hereof is a genuine copy of Interim Technical Report 4509-1506, a Staff Report of Tri-State Regional Planning Commission, January 1976, entitled 'Most Likely Targets for Planned Growth.'"

In its response, plaintiff says, among other things:

"Plaintiff, therefore, objects to the characterization of this report as 'genuine' \* \* \*."

Plaintiff misconceives Paragraph 28 of the Request for Admissions. Plaintiff is not asked to admit that the report itself is genuine, but rather that Exhibit A is a genuine copy of the report.

The court should overrule plaintiff's objection and enter an order that plaintiff is deemed to have admitted Paragraph 28 of the Request for Admissions.

THE AWARD OF EXPENSES

It is submitted that the plaintiff's answers and objections to which this motion has been directed are so palpably lacking in merit that the court should award defendants, The Township of Bernards, et al. the reasonable expenses incurred in obtaining the orders sought for herein, including attorneys' fees, all as provided in Rule 4:23-1(c). Such an award is expressly available in proceedings to determine the sufficiency of answers or objections to Request for Admissions, Rule 4:22-1.

Respectfully submitted,

MCCARTER & ENGLISH  
Attorneys for Defendants, The  
Township of Bernards, et al.

By *Nicholas Conover English*  
Nicholas Conover English  
A Member of the Firm

MCCARTER & ENGLISH  
550 Broad Street  
Newark, NJ 07102  
(201) 622-4444  
Attorneys for Defendants

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - SOMERSET COUNTY  
DOCKET NO. L-25645-75 P.W.

THE ALLAN-DEANE CORPORATION, a  
Delaware corporation, qualified  
to do business in the State of  
New Jersey,

Plaintiff

-vs-

Civil Action

THE TOWNSHIP OF BERNARDS, IN THE  
COUNTY OF SOMERSET, a municipal  
corporation of the State of New  
Jersey, et al.

Defendants

FIRST REQUEST FOR ADMISSIONS

TO: Mason, Griffin & Pierson, Esqs.  
Attorneys for Plaintiff  
201 Nassau Street  
Princeton, NJ 08540

SIRS:

Defendants herewith request plaintiff to admit, within  
30 days of service hereof upon you in accordance with Rule 4:22,  
the following:

1. Plaintiff was originally incorporated in 1969 as a  
wholly owned subsidiary of Johns-Manville Corporation.

2. Plaintiff is presently a wholly owned subsidiary of a subsidiary of Johns-Manville Corporation.

3. Plaintiff was formed by Johns-Manville Corporation for the purpose of acquiring, holding legal title to, and developing land which Johns-Manville Corporation had decided to buy with the use of its own funds.

4. In or about the year 1969, plaintiff took title to a contiguous tract of land in Bernards and Bedminster Townships which, with minor changes in area, now consists of approximately 1,071 acres located in Bernards Township and approximately 461 acres located in Bedminster Township.

5. The source of the purchase price paid for the aforesaid lands was Johns-Manville Corporation.

6. The average price which Johns-Manville Corporation or plaintiff paid for the aforesaid lands in Bernards Township and Bedminster Township was approximately \$3,500 per acre.

7. When plaintiff took title to the aforesaid lands, both plaintiff and Johns-Manville Corporation knew that the land in Bernards Township was zoned for single-family residences on 3-acre minimum lots, and that most of the land in Bedminster Township was zoned for single-family residences on 5-acre minimum lots.

8. Johns-Manville Corporation acquired the aforesaid land in the name of Allan-Deane Corporation as an investment for the purpose of making money.

9. As of December 31, 1969 Johns-Manville Corporation had assets in excess of a half billion dollars and no long-term corporate debt.

10. The Johns-Manville Corporation annual report, 1969, includes the following statement:

"As a matter of policy, Johns-Manville aggressively seeks growth both in its present businesses and in new lines of endeavor, where the Company's raw materials, manufacturing know-how, marketing and sales experience offer the best profit potential. To coordinate the implementation of this policy two new corporate departments, each under the direction of a vice president, were established in 1969 -- 'Planning' and 'Growth and Development'.

"The Corporate Planning Department will organize and coordinate short and long range planning throughout the Company; develop growth strategy; identify, review and recommend growth businesses and markets which Johns-Manville should consider entering or participating in on an expanded basis.

"The Corporate Growth and Development Department will implement approved growth plans through acquisition, new business development, or licensing agreement.

"An initial project, combining the efforts of both new departments, resulted in the Company's purchase in November of 1,363 acres of land in Somerset County, New Jersey, for investment and the eventual development of a balanced community. Responding to the growing demand for leisure time facilities, Johns-Manville is working with the local planning authorities to develop the area for both recreational and compatible residential use."

11. The Johns-Manville Corporation annual report, 1969, includes on page 16 a picture of a topographic model of the Allan-Deane property in Bedminster and Bernards Townships with a caption reading:

"Topographic model of Johns-Manville's 1,363 acre New Jersey land development project is reviewed by ---

1. Fred L. Pundsack, Vice President for Research and Development.

2. George C. Sillion, J-M Director and President of Butler Manufacturing Company.

3. George B. Munroe, J-M Director and President of Phelps Dodge Corporation.

4. W. Richard Goodwin, Vice President for Corporate Planning."

In the picture Mr. Goodwin is holding a pointer which he is directing to the topographic model.

12. Johns-Manville Corporation annual report, 1969, states corporate assets as of December 31, 1969 at a figure of \$501,829,000.

13. Johns-Manville Corporation annual report, 1975, identifies W. Richard Goodwin as President and Chief Executive Officer. The W. Richard Goodwin who in 1975 was President and Chief Executive Officer of Johns-Manville Corporation is the same individual who in 1969 was Vice President for Corporate Planning of Johns-Manville Corporation.

14. Johns-Manville Corporation annual report, 1975, contains a consolidated balance sheet for Johns-Manville Corporation and subsidiary companies. The said consolidated balance sheet shows total corporate assets of \$1,077,380,000. Said consolidated balance sheet includes the following entry under the heading "Assets":

	(Thousands of Dollars)	
	<u>December 31</u>	
INVESTMENT IN AND ADVANCES TO REAL ESTATE SUBSIDIARY	1975	1974
	<u>21,577</u>	<u>17,126</u>

15. The Passaic River is among the 10 worst polluted streams in the United States of America.

16. Under the present state of technological development,

economically feasible sewage treatment plants inevitably introduce pollutants into the receiving waters.

17. A large part of plaintiff's land in Bernards Township drains naturally into the Dead River.

18. Development of plaintiff's land in Bernards Township as proposed by plaintiff would cause a large increase in the quantity of surface water runoff.

19. An increase in the surface water runoff from the plaintiff's lands into the Dead River would cause flood problems downstream.

20. The Dead River flows into the Passaic River.

21. Flooding problems along the Passaic River downstream from the Dead River are already severe and a matter of public concern.

22. The Governor's Commission to Evaluate the Capital Needs of New Jersey stated in its Volume 2, Research Report, April 1975, at p. 46:

"The Commission feels that an immediate change in priorities must be made. Greater emphasis should be placed on projects for cleaning up polluted water and for rebuilding outmoded sewerage systems in the urban areas. A correspondingly lower emphasis should be given to construction that will cause urban sprawl. There is simply not enough money, nor is it desirable, to provide sewers for every community in New Jersey. The undesirable effects of excess sewer capacity are all too evident and have been documented in several reports. Among these are the report of the study contracted by the Department of Community Affairs to be released shortly and entitled Secondary Impact of Regional Sewer Systems, and the report of a study done by the



Environmental Quality Council in 1974, entitled "Sewers and Suburban Sprawl." (p. 46)

The Commission's recommendations included the following:

"A study of a Master Water Cycle Plan based on conservation, desirable land use, and population growth should be initiated immediately, and no major financial State involvement in water supply projects should be contemplated until justified by that study. Based on some preliminary estimates, the State's share of the capital needs in this area may range as high as \$185 million. \* \* \*

Priority should be given to developed areas needing rehabilitation over new projects.

A strict administrative review should be required of all funded sewer projects to prevent unplanned growth through excessive overbuilding."  
(p. 64)

23. In June 1975, the Department of Community Affairs issued a report entitled "Secondary Impact of Regional Sewerage Systems, Volume 1" in which the following general recommendations were made:

"The State of New Jersey should regulate investment in sewerage systems to insure that the considerable sums it controls are used first to eliminate the tremendous number of water quality problems across the State and secondly to provide extra capacity for future populations." (p. 8)

Rural areas in New Jersey should be considered a highly valued resource and protected from extensive sewerage systems where need for service is not demonstrable.

"In the absence of a State land use program, the best course of action is to keep development options open for the future as much as possible, rather than locking the State into configurations dominated by sewerage plants. This could be done by concentrating investment on the severe problems in already built up

areas and only investing in minimum essential capacity in those developing areas where problems exist and headwaters or recreational waters must be protected. A further step in carrying this course of action should be increased enforcement of the regulatory power of the DEP in dealing with septic systems and package treatment plants." (p. 9)

The Report states the following conclusion at p. 58:

"Lack of concern about secondary impacts exist at all government levels. Estimating the long-range impacts of growth induced by sewers is a complete task demanding many different kinds of expertise. Before the issues relating to growth and its impact can be clarified for the public, a great deal of analysis has to be done. Direct or primary impacts are much easier to measure and understand, such as those dealing with the flora and fauna on the sewer rights of way, the number of trees to be taken down in order to put in pipes, etc. Thus consultants put their emphasis on primary impacts and slide over the secondary ones in environmental assessments. Furthermore, besides not appearing in the assessment, the effects of the proposed system on future water supply and water quality, on runoff and flooding, on increases in municipal service costs, on the character of the area are usually not factored into the earlier planning and design of the system. So secondary impact analysis is almost totally absent from the decision-making process."

24. The State of New Jersey, County and Municipal Government Study Commission, in a report entitled "Water Quality Management: New Jersey's Vanishing Options", issued June 1973, stated:

a. "Much of New Jersey's water is polluted. Each day more than one billion gallons of inadequately treated domestic and industrial wastes are spewed into the State's waterways. All the major rivers in northeastern New Jersey, from the Ramapo to the Raritan, and all the major streams in the Delaware River Basin from Trenton

to Cumberland County fail to meet State water quality standards. The Passaic River and the Arthur Kill are among the 10 worst polluted streams in the nation. Even the Atlantic Ocean is polluted -- all ocean shellfishing grounds from Sandy Hook to Beach Haven within one mile of the shoreline have been closed to harvesting due to potential health hazards.

For years, New Jersey has been heading for a water quality crisis. Urban growth, suburban sprawl, and industrial development have hastened the deterioration of water quality. As a consequence of the expanding and competing demands, fresh water must be used and reused many times throughout the State. Along the Passaic River, for example, the Passaic Valley Water Commission (PVWC) takes 75 million gallons daily from the river at Little Falls to supply over 400,000 people in sixteen municipalities. Sewage treatment facilities located above Little Falls discharge 50 million gallons of treated domestic and industrial wastes daily. This means that during the summer months when the river's flow is 100 million gallons daily, the PVWC actually supplies at least 25 mgd of reused water. \* \* \*

"Water is a basic resource; it is necessary for sustaining life. The use of rivers, streams, and bays as sewers for dilution and transport of wastes negates their use as a source of water supply, as a base of recreational activity, as a habitat for fish and wildlife. In the extreme it may mean the survival of the State's economic base. In the headwaters of the Passaic River alone, continued degradation of water quality could contaminate the potable water supply for millions of people." (p.1)

b. "Municipal planning boards rarely consider water quality when giving approval for more and more construction. Their lack of comprehensive consideration is now evidenced by the bans on further development. In New Jersey, a State with critical housing shortages, the building bans will be felt in those communities which have recently developed or are now rapidly developing. Even beyond the question of housing, there is the issue of the basic economic vitality of the State. Rapid growth has occurred at the expense of the overall quality of life and the impact is significant:

Formerly unregulated discharges by industry must now be replaced by modern treatment facilities.

Municipalities that fostered rapid growth without providing adequate sewerage facilities will face a dramatic halt to development and a high bill for new wastewater treatment facilities.

The seashore recreation and fishing industries will remain threatened as long as water pollution and the ocean disposal of sludge and other harmful wastes continues.

Land use and community development planning will continue to be incoherent as long as water quality is not viewed as an equal, basic factor in decision-making.

The failure of water quality management to date affects these and other broad governmental performance considerations. Most of all it points up the need to reassess basic land use planning principles if there is to be more orderly and beneficial development in the future. Finally, it reflects a need to define and establish institutional arrangements for coordinating the water quality goals and implementing the activities of the various governmental units." (p.5)

c. "Without controls it is impossible to force [sewerage] authorities to plan with municipal, county, and State planning agencies. The absence of integration and coordination which was observed in all twenty-one counties, has thus resulted in a hindrance to orderly development and wanton sewerage of headwater areas, flood plains, and wetlands which in turn precipitated development where it should not occur. Sewers are meant to protect the environment from the adverse impact of polluted waters. It seems a contradiction that millions of dollars are being expended without stringent controls and that the net result is often environmental degradation and uncontrolled growth patterns." (p.97)

25. Tri-State Transportation Commission, in a report entitled "Regional Development Guide - Technical Perspectives", November 1969, stated on pp. 25 to 27:

"The Region's hydrologic cycle, with its network of rivers and streams, is its natural waterworks. Naturally available water is the Region's most important natural resource. For smoother performance the Region must use this resource as completely and effectively as possible. Accordingly, the form of this resource and the way it functions may determine where development should locate, and where it should not.

"An urban region needs a plentiful and continuous supply of water for many different purposes, both direct and indirect. There are many more such purposes requiring much greater quantities than we usually suspect.

"Household, industrial and public water supplies are essential to the existence of an urban region: its streams and ground water aquifers are, so to speak, the Region's natural water supply and distribution systems.

"Water bodies and streams are the outdoor recreational features in highest and most substantially increasing demand in our society.

"The dilution and removal of wastes by its streams to the ocean is the Region's natural sewage disposal system: the more water in the river, the less purification of effluent is necessary.

"The ground water reserves, which maintain a minimum flow in the streams and can be tapped by wells, are some of the Region's natural water-supply reservoirs: rainfall replenishes them where the ground is permeable and through aquifers. Urbanization makes the ground less permeable and the streams more flood-prone.

"Plentiful irrigation in dry years is essential in the Region's open spaces, public and private, to maintain their cover of vegetation, and therefore the significance and usefulness of their openness.

"Forest cover, to survive, requires enough water in the ground: the Region's forests are its natural water-supply regulators, its natural flood controllers, its natural purifiers of the air, and may even play a part in maintaining the level of annual rainfall.

"Thus water is a critical resource. Though plenty of water is available urbanization wastes it. Urbanization pollutes water and makes it unusable. Urbanization substitutes instant runoff and discharge through storm-sewers and streams into the ocean, for percolation, which stores water in the ground, and for evaporation and transpiration, which return water to the air. If urban development were to cover the entire land surface of the Region, its water supply would have to depend on an increasingly elaborate system of cisterns to capture it, reservoirs to store it and treatment plants to purify it. Or superregional systems of aqueducts would have to bring it from increasingly faraway places. Desalting plants are another alternative. These devices are expensive -- feasible and perhaps necessary in part for public water supplies, but certainly not feasible for recreation, irrigation, waste removal and climate control. It is surely less costly for most purposes, first to use the water that is already in the Region, the 40 inches of rainfall that nature delivers each year to every square inch of its surface. Careful conservation and the fullest possible utilization of nature's built-in water-supply and control system is the way to do it.

"The headwater areas of the Region's streams are the places that 'produce' and regulate the Region's water. Their higher elevations catch and hold more snow in the winter. Summer rainclouds tend to discharge there. In the natural state their forest ground absorbs the rainwater like a sponge, reduces flood crests by retaining the water after heavy rainfall, and holds it there in storage for continuous discharge throughout the year. It is the water that percolates into the ground at these higher elevations that recharges the Region's aquifers, including those of Long Island. Indeed, natural lakes, ponds and swamps, both large and small, in the headwater areas are always water collectors and holders, forming a huge natural reservoir system that artificial reservoirs can enlarge, if necessary, many times over. Finally, the rainwater that falls in the headwater areas has the longest distance to go before it is lost in the ocean. During this journey the largest number of people have the greatest chance to use and reuse it, and more of it will be able to percolate into the ground to recharge the groundwater table.

"The Tri-State Region must therefore deal

carefully with its headwater areas. If they can remain predominantly in the natural state, where the artifacts of man have only an incidental effect on the natural landscape, the Region's headwater areas will continue to function effectively as important natural suppliers of its water."

26. Tri-State Transportation Commission became the Tri-State Regional Planning Commission by virtue of L. 1971, c. 161 (N.J.S.A. 32:22B-2, et seq.).

27. The lands owned by plaintiff in Bernards and Bedminster Townships occupy a position in the headwaters of both the Passaic River and the Raritan River watersheds.

28. Exhibit A, attached hereto and made a part hereof, is a genuine copy of Interim Technical Report 4509-1506, a Staff Report of Tri-State Regional Planning Commission, January 1976, entitled "Most Likely Targets for Planned Growth."

29. The genuineness of "Regional Plan News, March 1975, Number 97, The State of the Region", a copy of which is served upon you herewith.

Yours respectfully,

McCarter & English  
Attorneys for Defendants, Bernards  
Township, et al.

By ~~NICHOLAS CONOVER ENGLISH~~  
Nicholas Conover English  
A Member of the Firm

STATE OF NEW JERSEY )  
                                  ) SS:  
COUNTY OF ESSEX      )

MICHAEL SOZANSKY, being duly sworn according to law,  
upon his oath deposes and says:

1. I am employed by McCarter & English, attorneys  
for defendants, The Township of Bernards, The Township Committee  
of the Township of Bernards and the Planning Board of the Town-  
ship of Bernards.

2. On June 15, 1976, I personally mailed by certified  
mail, return receipt requested, postage prepaid, a copy of the  
within First Request for Admissions to Mason, Griffin & Pierson,  
Esqs., Attorneys for Plaintiff, P.O. Box 391, 201 Nassau Street,  
Princeton, NJ 08540.

Sworn to and subscribed )  
before me this 15th day )  
of June, 1976.              )

/s/ Michael Sozansky  
Michael Sozansky

EMILY J. ZIRKEL

ATTORNEY GENERAL OF NEW JERSEY  
My Commission Expires Oct. 29, 1979



INTERIM TECHNICAL REPORT  
4509-1506

**MOST LIKELY TARGETS FOR PLANNED GROWTH**

- I - THE REGION
- II - THE COUNTIES AND PLANNING REGIONS



TRI-STATE REGIONAL PLANNING COMMISSION  
ONE WORLD TRADE CENTER  
NEW YORK, NEW YORK 10048

JANUARY 1976

EXHIBIT A

Interim technical reports are staff papers that are reviewed by the Commission's technical advisory group. Such reports do not necessarily represent the views of the Tri-State commissioners. Thus, they should not be quoted for publication or cited as official records without the express approval of the executive director. It is the policy of the Commission to make interim technical reports available on request.

This report was prepared by Joel S. Weiner, Ik Sung Kim and Stephen C. Carroll, as part of Project 1506--Updating Regional Forecasts (Coordination).

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## PREFACE

The Tri-State Regional Planning Commission, as the metropolitan planning organization for the New York urban region, has been mandated by federal law to develop:

"projections of urban area economic, demographic, and land use activities consistent with urban development goals and the development of potential transportation demands based on these levels of activity."\*/

Given this HUD requirement, regional forecasts of jobs and population were established by the Commission. In arriving at these regional control totals for selected future years (1980, 1985, 1990, 1995 and 2000), consideration was given to historical trend data (including the impact of the prevailing recession), future decision making surveys (affecting birth rates, family formation, etc.), national/regional relationships and the dynamics of inter-regional economics (why certain regions are more attractive in terms of commercial activity and population settlement than others). These forecasts and the reasoning that went into them are fully described in Section I of this report. They result in estimates of 9.1 million jobs and 20.8 million people by the year 2000.

Where these additional jobs and people will be distributed throughout the Region's cities, towns and counties could be approached in several different ways. Using a strict economic or demographic forecast of trends at local levels would likely result in a Region characterized by decentral-

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\*/ Federal Register, Vol. 40, No. 181, September 17, 1975, pertaining to those elements to be included in the urban transportation process. The U.S. Department of Housing and Urban Development, as part of "701" Comprehensive Planning Assistance, requires similar economic and demographic projections for land use planning [Federal Register, August 22, 1975, Section 600.70, (a), (1)] and for Tri-State's housing element [Federal Register, August 22, 1975, Section 600.72, (a-6) and (b-1)].

ization. The more densely developed areas, particularly: New York City, Newark, Jersey City, Bridgeport and New Haven would continue to lose jobs and people to the suburban towns; city revenues would decline as a consequence of this erosion of the tax base, further compounding an already severe fiscal crisis. Social and environmental problems would be accentuated.

At the other extreme, a plan that called for a complete reversal of observed trends would be unrealistic as to provide unacceptable bases for public investment in capital improvements and operations. Government efforts to guide land use, economic development and urban settlement have had limited effect in the past, and even if stronger planning controls come into effect, and it is hoped that they will, the rate at which public momentum can be altered will be slow.

As a matter of good planning, Tri-State has resisted these two extremes (strict trending on the one hand and excessive wishing on the other). The sub-regional distributions of jobs and population contained herein are projections with a high content of planning preference reflecting an intermediate approach. They are based on economic and demographic stability in the central cities (albeit at somewhat lower levels than in the past) and modest growth for the mid-distance and outlying counties. This type of forward planning on the part of Tri-State would serve to bring about a better balance between residential and non-residential activities, conserve energy and reduce air and noise pollution by promoting greater use of mass transportation, stabilize the tax base of the central cities by stemming the exodus of industry and people, preserve generous open lands for recreation and other leisure activities, and provide upward social and economic mobility of the poor by clustering economic activity to increase

job opportunities for the more disadvantaged, less mobile members of society. This position is consonant with the Regional Development Guide which Tri-State has used to focus its planning, and which has been coordinated through cross-acceptance with sub-regional plans.

## **I - THE REGION**

TRI-STATE'S 1985 AND YEAR 2000 REGIONAL ESTIMATES OF JOBS AND POPULATION ARE FORECASTS BASED ON: (1) RATIONAL STUDY AND ANALYSIS OF AVAILABLE PERTINENT DATA (HISTORICAL OBSERVATION) AND (2) CONSIDERATION OF UNDERLYING AND MODIFYING FACTORS IN ORDER TO CALCULATE WHAT IS LIKELY TO OCCUR IN THE FUTURE GIVEN A BROAD SET OF LAND DEVELOPMENT GOALS.



## INTRODUCTION

This chapter presents revised forecasts of jobs and population for the Tri-State Region. These new figures, which represent slow growth, supercede all previous estimates and for the short run,<sup>1/</sup> will be utilized in all of Tri-State's planning processes.

The necessity for revised regional estimates stemmed from a recently completed assessment of the economy. The study showed that the Region's natural increase (births minus deaths) has declined markedly since the mid-sixties (see Figure 1), while regional jobs (the principal determinant of migration) have remained some 200 thousand below the 1970 peak of 8.4 million (see Figure 2). In order for the Region to attain those jobs and population levels previously forecasted for year 2000, a new surge of growth at an increasing rate would have to take hold: a highly unlikely development given the present economic climate.

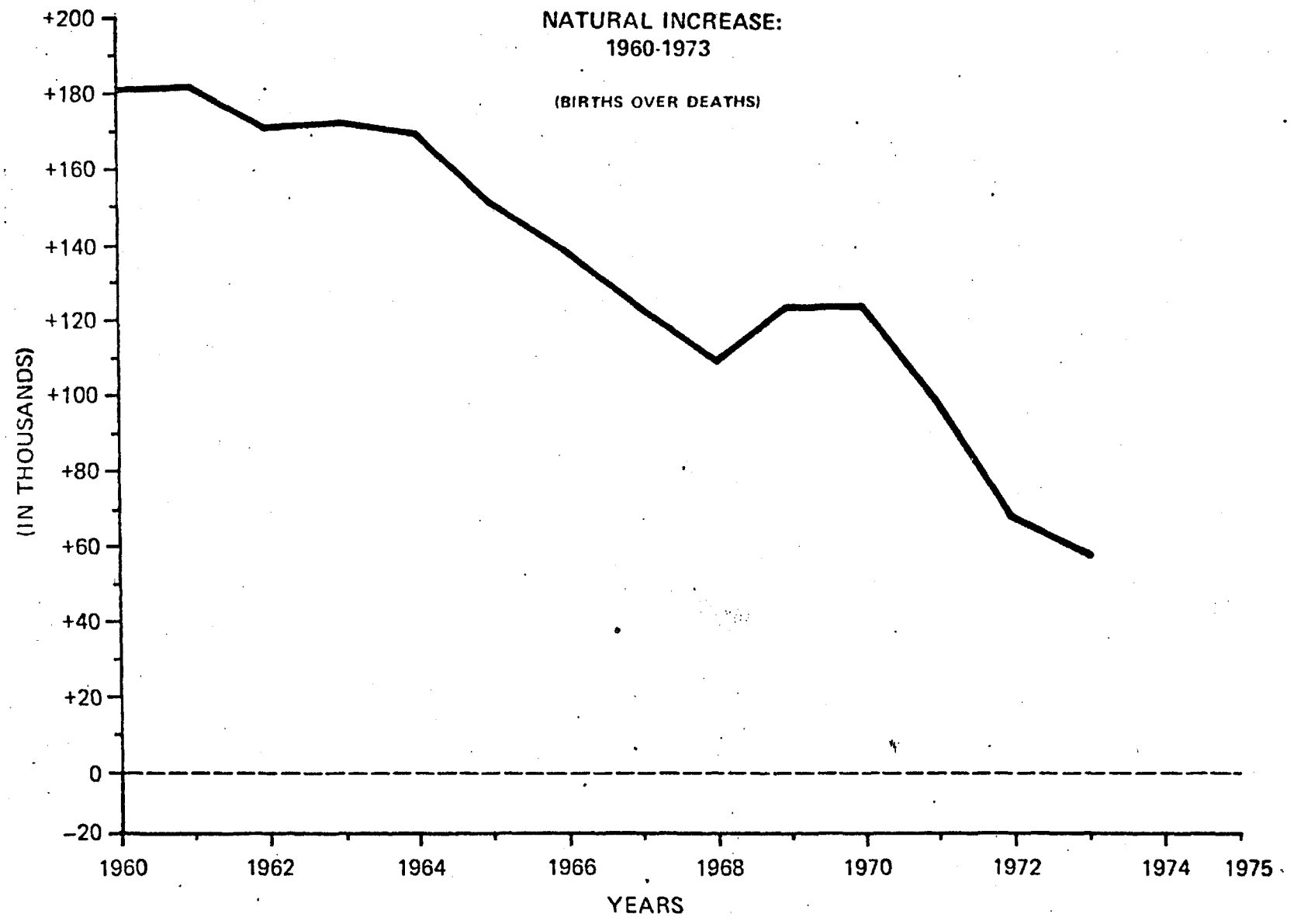
## THE PREVAILING ECONOMIC CLIMATE

In 1970, the Region's population stood at 18.7 million, with a total employment of 8.4 million, an unemployment rate of 46 percent and a fertility rate of 2.1 (replacement level fertility). At mid-decade, the Region's population now stands at 18.9 million; jobs are down to 8.2 million; the unemployment rate for the first three months of 1975 is in excess of 9.0 percent; the fertility rate (like the Nation's) is below replacement level; and there is net out-migration for the third year in a row.

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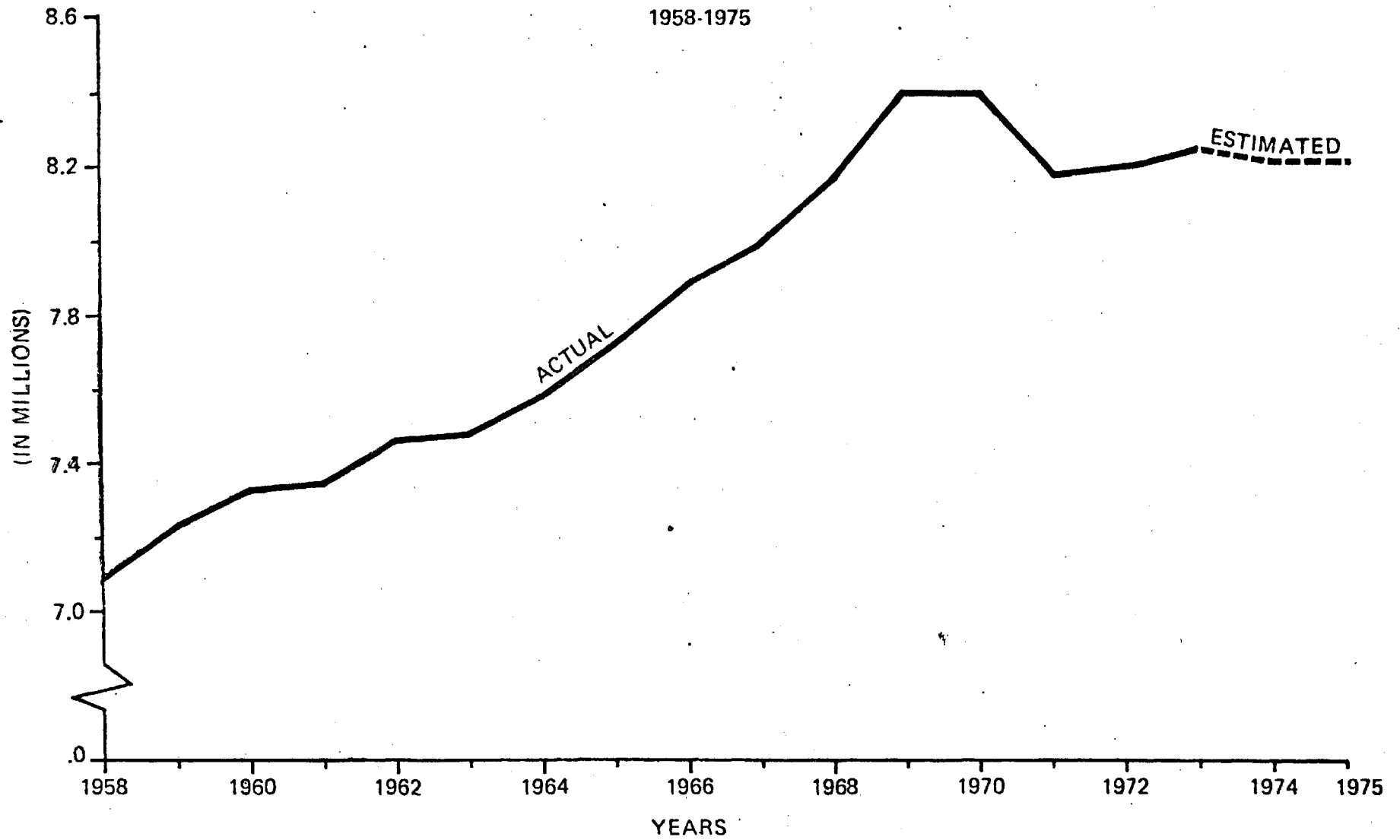
<sup>1/</sup> The Tri-State staff intends to make periodic (annual) reviews of all demographic and economic data which would influence our future population growth rate. Revisions will be made whenever necessary.

FIGURE I  
NATURAL INCREASE:  
1960-1973



SOURCES: THE CONNECTICUT, NEW JERSEY AND NEW YORK STATE  
DEPARTMENTS OF HEALTH.

FIGURE 2  
REGIONAL EMPLOYMENT:  
1958-1975



SOURCES: THE CONNECTICUT, NEW JERSEY AND NEW YORK STATE  
DEPARTMENTS OF LABOR AND TRI-STATE ESTIMATES.

While there is widespread recognition that fiscal and monetary policies will ultimately cope with and end the prevailing recession, it is doubtful that the Region will ever achieve those growth levels maintained during the late fifties and sixties. In comparative terms, the Region's competitive position with respect to the Nation and other leading metropolitan areas has eroded. Occupational wage levels, while still exceeding national averages, have decelerated somewhat during the sixties and early seventies: significantly narrowing the regional-national gap and reducing the Region's advantage. Both regional population and employment, as percent shares of national population and employment, have decreased over time: indicating that the competitive edge with respect to economic activity and hence, population growth, has seemingly shifted to other parts of the Nation, such as the Southeast and the Southwest. Moreover, during the current period of peak unemployment and low birth rates, the regional jobless rate has exceeded that for the Nation, while the fertility rate has remained below the national average. Finally, with respect to the cost of living, this Region remains one of the highest priced areas in the Country. Such personal consumption expenditure items as: housing, food, clothing, personal care and medical care are traditionally highest in the urban Northeast-- particularly within the Tri-State Region and the Boston Standard Metropolitan Statistical Area. At present, the only competitive advantage the Region seems to enjoy is with respect to the cost of public transportation.

If these comparative trends in regional economic activity continue during the post-recession era, and there is no reason to believe that they will cease without outside intervention, the Region must expect and plan for a period of far slower growth than in the past.

### THE INGREDIENTS OF "SLOW GROWTH": DEMOGRAPHIC ASSUMPTIONS

Total regional population is estimated, for each five year period between 1970 and year 2000, via the application of the age-cohort survival technique. A base year population, stratified by age and sex, is modified by natural increase (births minus deaths) and net migration for each projection period. Net migration is determined via the interplay of jobs and the employed civilian labor force. Hence, it becomes essential that Tri-State relies on its ongoing monitoring activities and makes use of such data items as births, deaths, jobs, unemployment and labor force participation when estimating the future population of the Region.

The following set of assumptions, decided upon after careful study and analysis of available pertinent data, constitute key inputs to the age-cohort survival technique:

1. Death rates will continue to reflect the overall age-specific life expectancies as reported by the Bureau of the Census, Current Population Series;
2. The Region's fertility rate will dip below replacement level commencing with the first projection period (1970-1975) and gradually come back up to 2.1 births per woman upon completion of child-bearing by 1990 (i.e., replacement rate). Thereafter, the fertility rate will remain fixed at 2.1;
3. The Region's employment will register a sharp decline between 1970 and 1975 and thereafter will display limited, but stable growth: culminating with a total employment of 9.1 million by year 2000.

Future employment was independently derived from trend analysis of regional employment growth covering the 1958-1975 period (see Table I and Figure 3). Placing greater emphasis on the post-1970 period, a 0.4 percent per annum growth in total regional employment was selected;

4. The labor force participation rate for the population aged 14-64 will remain fixed at the 1970 level. Greater female participation will be offset by earlier retirements and substantial reductions in labor force participation among the young (14 through 20). (This phenomenon is well documented in recent monitoring ITRs based on Current Population Survey data.);
5. The unemployment rate will be calibrated for the first 5-year projection period on the basis of Tri-State's ongoing monitoring activities, which reveal that a representative unemployment rate for the period 1970-1975 will be 5.5 percent. This rate, it is assumed, will gradually decline (in decrements of 0.5 percentage points) for each subsequent projection period until full employment (generally associated with an unemployment rate of 4.0 percent) is attained. This will occur during the period 1985-1990, after which the unemployment rate will remain constant; <sup>2/</sup>
6. The dual job-holder rate will remain fixed at 5.5 percent;
7. The net migration control total will, once again, be tied to the performance of the economy: specifically, available

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<sup>2/</sup> If the Region's unemployment rate (a critical input variable) does not trend downward and stabilize at 4.0 percent by 1985-1990, then Tri-State's long-term population estimate would likely change.

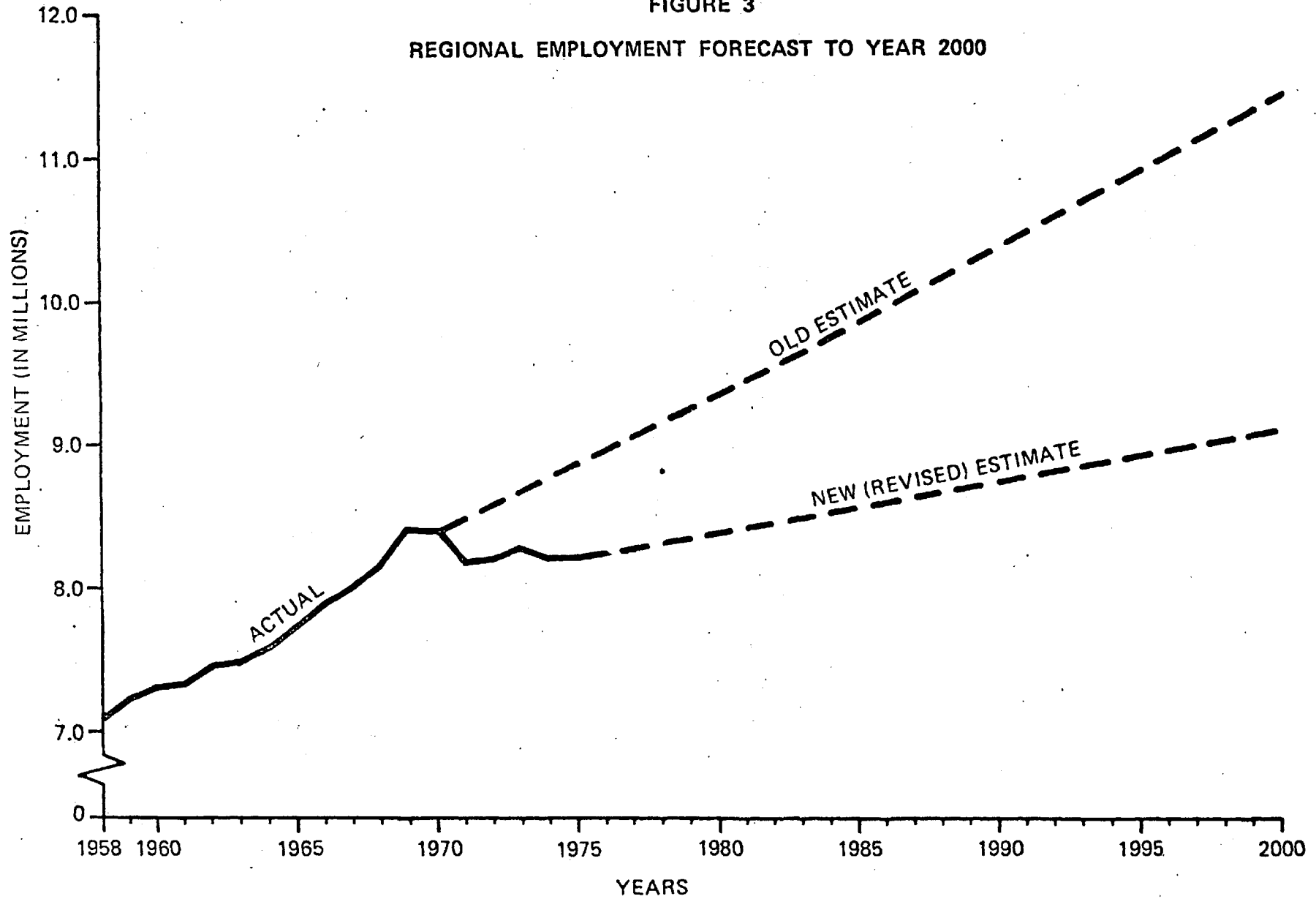
REGIONAL EMPLOYMENT GROWTH  
(Compounded Annual Rates of Change)

Terminal Year	Initial Year																	Employment (in thousands)	
	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	7,082.7	1958
1959	2.0																	7,224.6	1959
1960	1.6	1.2																7,312.2	1960
1961	1.2		0.4															7,344.9	1961
1962	1.3			1.6														7,463.7	1962
1963	1.1				0.3													7,484.7	1963
1964	1.1					1.3												7,585.6	1964
1965	1.2						1.9											7,733.0	1965
1966	1.3							2.0										7,887.3	1966
1967	1.4								1.6									8,016.2	1967
1968	1.4									1.9								8,169.2	1968
1969	1.6										2.9							8,406.3	1969
1970	1.4											-0.03						8,404.1	1970
1971	1.1												-2.6					8,190.7	1971
1972	1.0													0.2				8,207.2	1972
1973	1.0														0.9			8,280.0	1973
1974	0.9															-0.7		8,225.0	1974
1975	0.9	0.8	0.8	0.8	0.7	0.8	0.7	0.6	0.5	0.3	0.1	-0.4	-0.4	0.1	0.1	-0.4	0.0	8,225.0	1975

Sources: The Connecticut, New Jersey and New York State Departments of Labor and Tri-State estimates.

FIGURE 3

REGIONAL EMPLOYMENT FORECAST TO YEAR 2000



SOURCES: THE CONNECTICUT, NEW JERSEY AND NEW YORK STATE DEPARTMENTS OF LABOR AND TRI-STATE ESTIMATES.



jobs. If the in-resident labor force aged 14 through 64 (adjusted for inbound migrants during each projection period, less the unemployed plus dual job holders) exceeds the available jobs (as is expected, since job growth is assumed to be relatively modest), then the Region will be characterized by net out-migration. The actual net migration control total for the population aged 0-64 will be determined by the labor force/available jobs mismatch, inflated by those dependents of the employed labor force aged 14-64. Out migration among the elderly will be largely determined by historical observation since most elderly are non-responsive to economic opportunity (job considerations). Allowances will be made for those senior citizens who will retain working status. Their participation rates will be predicated upon 1970 Census of Population data and gradually reduced as the projection period lengthens, due to anticipated earlier retirements.

If the job estimate exceeds the employed in-resident labor force, then the above procedure would yield a positive net migration control total. The computational steps would remain the same as above, with the Region's population being subdivided into three components:

- (1) ages: 0-13 (a dependent population);
- (2) ages: 14-64 (a productive population responsive to economic opportunity); and

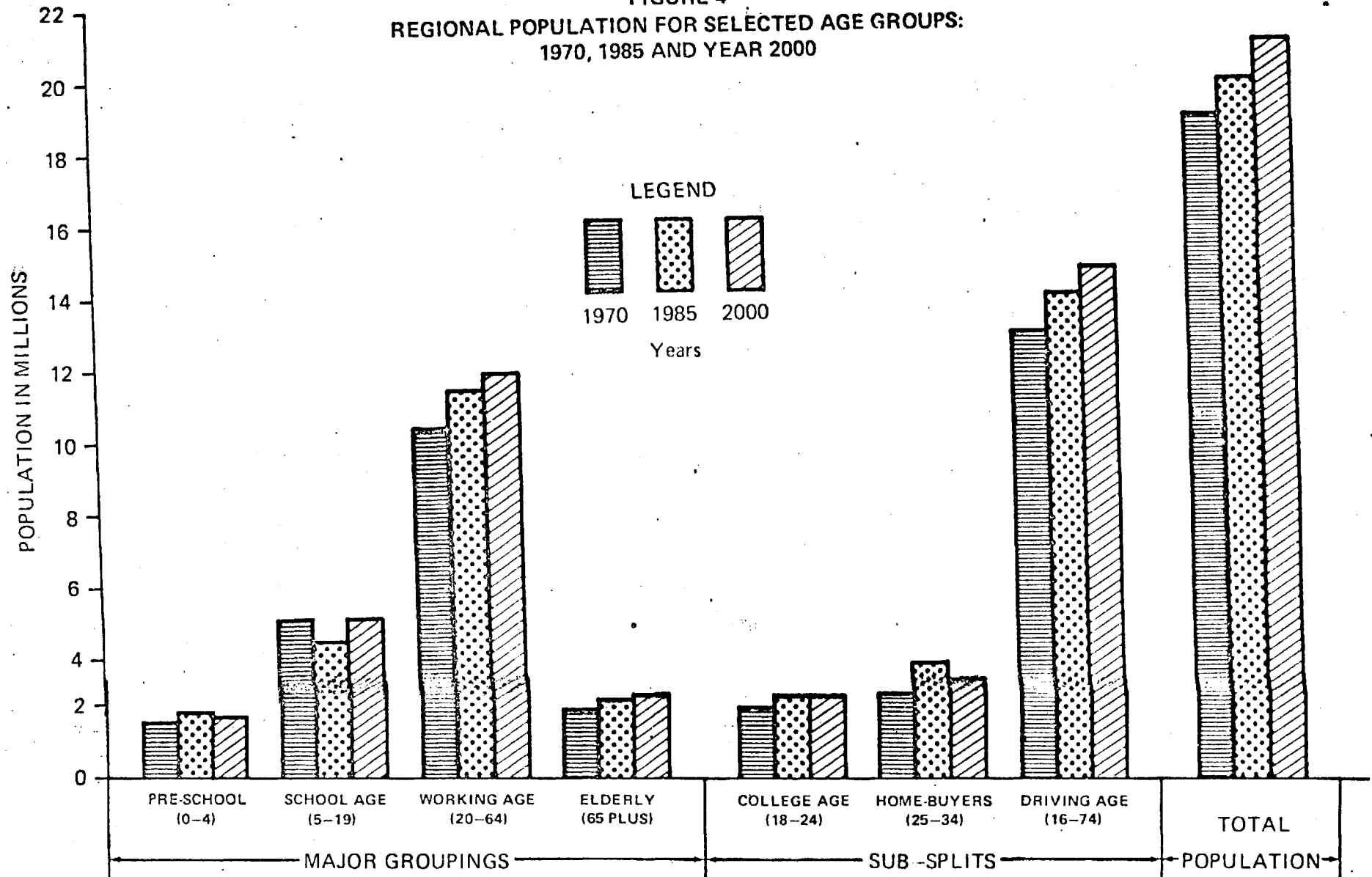
(3) ages: 65 plus (generally, non-responsive to changes in the job market and not dependent upon the migration characteristics of the working age groups); and

8. Allocation of the migration control total (which is expected to be negative in order to maintain limited, but stable growth among the age groups) will involve the application of those migration characteristics associated with other "no growth" metropolitan areas. As input to the model, then, the 1960 through 1970 distributive system of net out-migration among competing age-cohort groups for the Boston Standard Metropolitan Statistical Area has been selected to replicate what is likely to happen in a Tri-State Region characterized by "slow growth."

#### FORECAST HIGHLIGHTS

Under the slow growth assumptions outlined above, the Region's year 2000 estimates of jobs and population will be 9.1 million and 20.8 million respectively: both sizable reductions (2.4 million fewer jobs and 3.9 million fewer people) than Tri-State's previous controls (see ITR 4467-1506). Nevertheless, the Region will add 2 million people between 1970 and year 2000. Of this total, 1.5 million will fall within the working age cohorts (ages 20 through 64, inclusive); the pre-school (0-4) and school age (5-19) populations will remain virtually unchanged from the 1970 base; and the elderly (65 years and older) will record an increment of 400 thousand (see Figure 4).

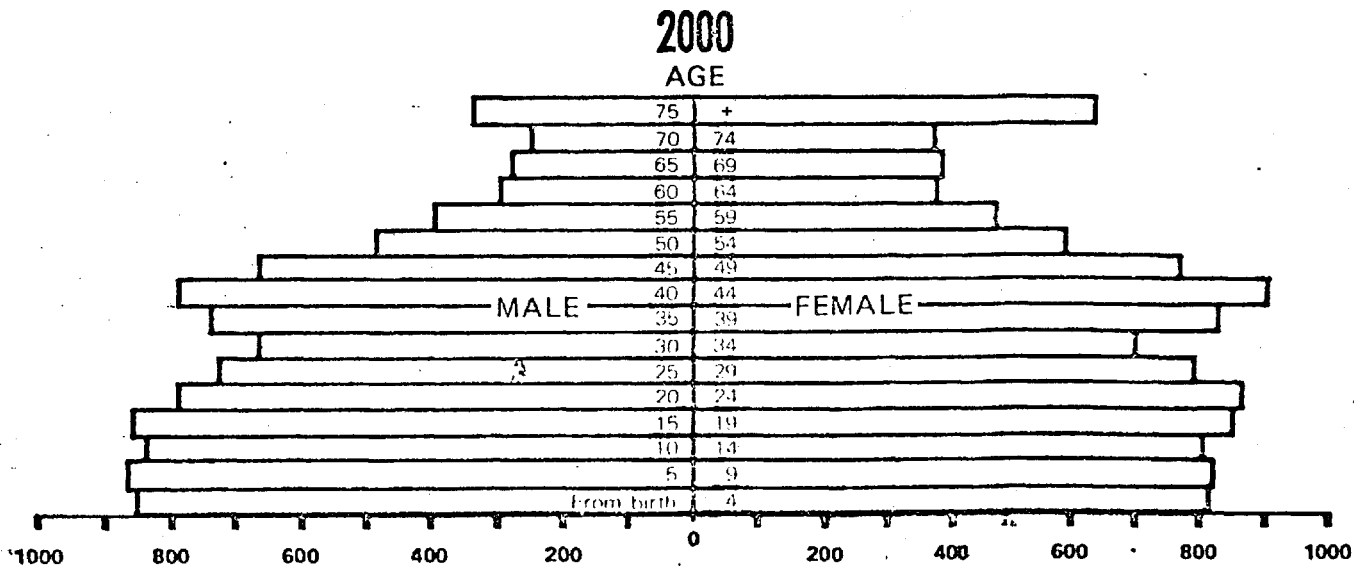
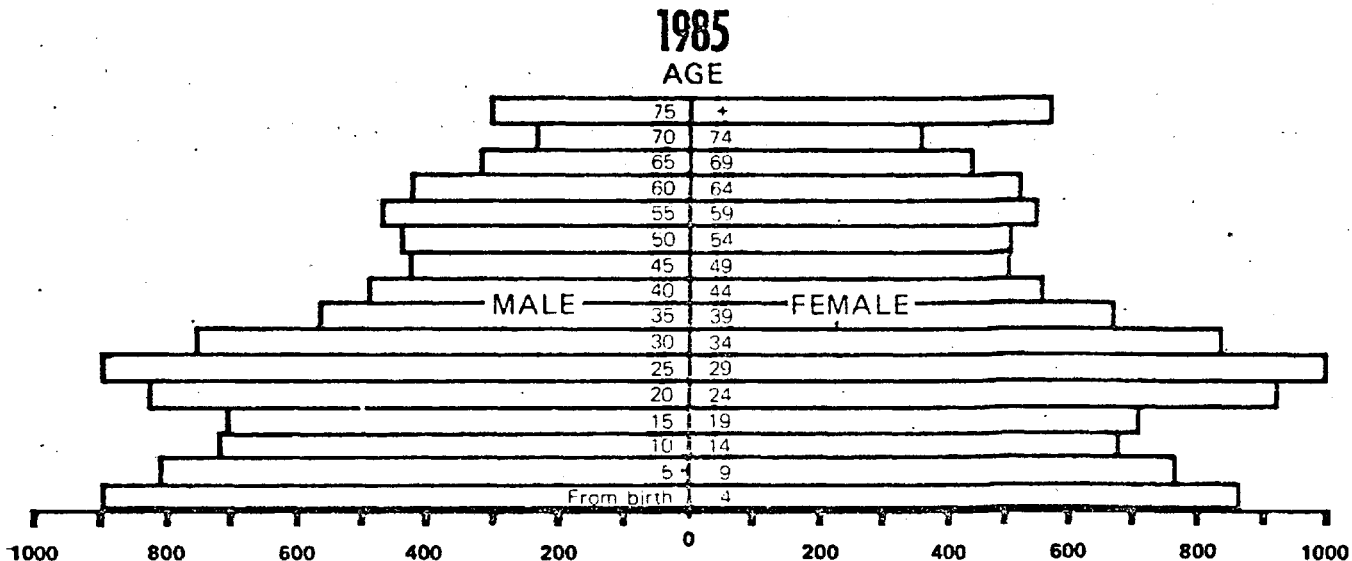
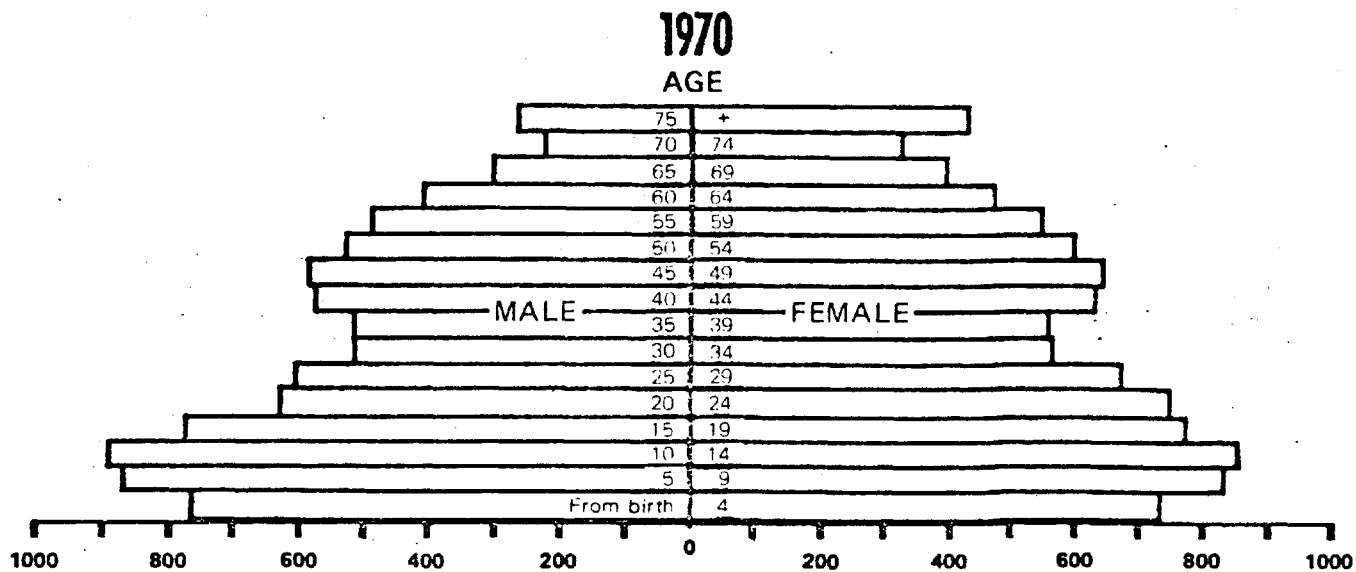
**FIGURE 4**  
**REGIONAL POPULATION FOR SELECTED AGE GROUPS:**  
**1970, 1985 AND YEAR 2000**



SOURCES: U.S. BUREAU OF CENSUS & TRI-STATE ESTIMATES.

The demand for future goods and services will be profoundly influenced by the shifting age composition of a population experiencing limited, but stable growth (see the population pyramids, Figure 5). For example, existing day care facilities appear more than adequate to accommodate future demand, while there will be an over-abundance of elementary schools and teachers between 1970 and 1985; at present, many public schools are being closed down, with pupils reassigned to other units. College enrollment (undergraduate as well as post graduate) is apt to slacken during the post 1985 period when the 18 to 24 year olds are projected to level-off at 2.3 million; one major result of a stable applicant pool will be an intensification of competition among existing colleges for prospective enrollees. Many small, private colleges will face the prospect of even going out of business. The homebuyer group, on the other hand, will experience modest growth between 1970 and 1985, after which time the 25 to 34 year olds (the principal consumers of single family homes) will experience a decline of 600 thousand. Finally, the driving age population (the 16 to 74 year olds), like the total and working age populations, will experience limited, but stable growth over the next thirty years (less than five-tenths of one percent per annum). These factors will affect vehicle registration and travel predictions.

**FIGURE 5**  
**COMPOSITION OF THE POPULATION BY AGE AND SEX:**  
**THE TRI-STATE REGION, 1970, 1985 & 2000**



(POPULATION IN THOUSANDS)

Sources: U.S. Bureau of Census and Tri-State estimates.

## II - THE COUNTIES AND PLANNING REGIONS

WHEREAS THE REGION-WIDE ECONOMIC AND DEMOGRAPHIC CONTROL TOTALS FOR 1985 AND YEAR 2000 ARE FORECASTED, SUB-REGIONAL (COUNTY AND PLANNING REGION) TIME SERIES ESTIMATES ARE PROJECTIONS WITH A HIGH CONTENT OF PLANNING PREFERENCE. THEY REFLECT THE OFFICIAL CAPACITY TARGETS CONTAINED IN THE REGIONAL DEVELOPMENT GUIDE. THESE TIME SERIES ESTIMATES ARE USEFUL AS INDICES OF THE RATE OF SUB-REGIONAL DEVELOPMENT OR REDEVELOPMENT IN A TIME CONTINUUM BETWEEN THE 1970 BASE AND "CAPACITY."\*

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\**That time when all sites are in ultimate planned use.*

INTRODUCTION

A downward revision of growth estimates for the Region has, of course, reduced the rate at which development can be expected in the various counties, cities and places. This could simply mean that it will take longer for the ultimate saturation point to be reached. Thus, a level of development that was previously expected in 1990 might not occur until 1995 or year 2000.

However, some parts of the Region, due to greater accessibility and development potential, are growing faster than other areas as evidenced by Tri-State's monitoring studies and analyses. County and planning region population numbers for the year 2000 reflect these sub-regional variations and hence, are considered the most likely targets for planned growth. These forward estimates will be used by staff on an interim basis. A five percent tolerance (plus or minus) is assumed to be acceptable in working with sub-regions.

The present numbers may be further reviewed and adjusted as part of the process leading up to a revised Land Use Element by August 1977, as required by HUD. All sub-regions are invited to participate in this process, as are State and regional agencies.

SUB-REGIONAL DISTRIBUTIONS

For the sub-regional distribution of the revised year 2000 population estimate, the procedure involves the application of the land development system. This system is a device which distributes the future development of major land uses, including housing units (from which are derived population estimates--see Table II), in conformity with the Commission's Regional Development Guide.<sup>3/</sup> Hence, these forward estimates have a high content of planning preference which includes policies to achieve the following development objectives:

- (1) Conserve valuable natural systems and resources and those suited for leisure uses; promote environmental quality.
- (2) Gather economic activities; resist random development of the spread city type. Among other effects, this clustering of non-residential activities would:
  - provide economies of scale with respect to public services such as sewer systems;
  - maintain the tax base for the older cities;
  - provide more job choices for the disadvantaged and less mobile members of society; and
  - curtail auto dependency (promote the use of public transportation) and thereby conserve energy and reduce air pollution.
- (3) Organize residential activities consistent with the preceding two objectives, with a reduction of the two extremes of high rise concentrations and large lot sprawl in order to:

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<sup>3/</sup> Sub-regional population estimates for 1985 are in process as well as 1985 and year 2000 sub-regional estimates of non-residential floor area (from which are derived employment numbers).



- provide for higher, preferably transit-supporting densities of residential development in and near clusters of economic activity;
- take full advantage of infrastructure already in place;
- provide more opportunities for the disadvantaged; and
- produce satisfying living environments.

TABLE II

MOST LIKELY POPULATION TARGETS FOR PLANNED GROWTH FOR THE YEAR 2000\*  
(in thousands)

	<u>Population</u>
Tri-State Region Total	20,810
Connecticut Portion	1,890
New Jersey Portion	5,980
New York Portion	12,940
New York City	7,660
New York w/o NYC	5,280
Central Naugatuck	270
Greater Bridgeport	340
Housatonic Valley	190
South Central	600
South Western	390
Valley	100
Bergen	1,090
Essex	900
Hudson	570
Middlesex	870
Mormouth	680
Morris	550
Passaic	510
Somerset	280
Union	530
Bronx	
Kings	
New York	7,660
Queens	
Richmond	
Dutchess	330
Nassau	1,430
Orange	420
Putnam	90
Rockland	330
Suffolk	1,770
Westchester	910

\* As adopted by the Tri-State Regional Planning Commission, January 8, 1976, for staff use on an interim basis.

III - STATISTICAL APPENDIX

A1: REGIONAL POPULATION, BY AGE AND SEX: 1970

<u>Age Group</u>	<u>1970</u>		
	<u>Total</u>	<u>Male</u>	<u>Female</u>
0- 4	1,498,252	763,301	734,951
5- 9	1,703,790	869,814	833,976
10-14	1,738,652	885,260	853,392
15-19	1,546,285	770,759	775,526
20-24	1,378,276	628,258	750,018
25-29	1,273,792	602,440	671,352
30-34	1,090,978	522,312	568,666
35-39	1,090,075	522,340	567,735
40-44	1,203,066	575,131	627,935
45-49	1,218,836	578,336	640,500
50-54	1,126,386	528,777	597,609
55-59	1,028,973	480,777	548,196
60-64	884,906	409,796	475,110
65-69	703,272	305,434	397,838
70-74	544,907	222,574	322,333
75+	694,556	265,323	429,233
Total	18,725,002	8,930,632	9,794,370

Tri-State Regional Planning Commission  
Socio-Economic Development Section  
May 1975

A2. REGIONAL POPULATION, BY AGE AND SEX: 1985

Age Group	1985		
	Total	Male	Female
0- 4	1,757,403	896,965	860,438
5- 9	1,568,327	802,557	765,770
10-14	1,390,851	711,622	679,229
15-19	1,417,327	707,784	709,543
20-24	1,744,985	822,385	922,600
25-29	1,892,964	897,886	995,078
30-34	1,587,959	755,438	832,521
35-39	1,226,591	562,298	664,293
40-44	1,047,292	490,255	557,037
45-49	927,066	425,790	501,276
50-54	943,616	437,101	506,515
55-59	1,015,164	467,462	547,702
60-64	944,987	424,500	520,487
65-69	756,398	320,655	435,743
70-74	595,880	236,508	359,372
75+	874,654	306,879	567,775
Total	19,691,464	9,266,085	10,425,379

Tri-State Regional Planning Commission  
 Socio-Economic Development Section  
 May 1975

A3. REGIONAL POPULATION, BY AGE AND SEX: YEAR 2000

Age Group	2000		
	Total	Male	Female
0- 4	1,665,056	850,043	815,013
5- 9	1,682,897	865,184	817,713
10-14	1,638,081	833,318	804,763
15-19	1,710,620	854,819	855,801
20-24	1,650,758	782,697	868,061
25-29	1,517,220	724,380	792,840
30-34	1,365,018	661,694	703,324
35-39	1,562,042	732,913	829,129
40-44	1,692,996	789,528	903,468
45-49	1,434,652	664,577	770,075
50-54	1,079,365	481,812	597,553
55-59	872,149	394,419	447,730
60-64	670,831	291,838	378,993
65-69	660,232	278,183	382,049
70-74	625,462	248,281	337,181
75+	977,878	377,720	640,158
Total	20,805,257	9,791,406	11,013,851

Tri-State Regional Planning Commission  
Socio-Economic Development Section  
May 1975

MASON, GRIFFIN & PIERSON  
201 NASSAU STREET  
PRINCETON, N. J. 08540  
(609) 921-6543  
ATTORNEYS FOR Plaintiff

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
SOMERSET COUNTY  
DOCKET NO. L-25645-75 P.W.

THE ALLAN-DEANE CORPORATION, a  
Delaware corporation, qualified  
to do business in the State of  
New Jersey,

Plaintiff

vs.

THE TOWNSHIP OF BERNARDS, IN THE  
COUNTY OF SOMERSET, a municipal  
corporation of the State of New  
Jersey, et al.,

Defendants.

Civil Action

PLAINTIFF'S ANSWER TO  
DEFENDANTS' FIRST REQUEST  
FOR ADMISSIONS

Plaintiff herewith makes the following response  
to the First Request For Admissions served by Defendants:

1. Plaintiff admits the matter of which an  
admission is requested in Paragraph 1 of the First Request  
For Admissions.

2. Plaintiff admits the matter of which the  
admission is requested in Paragraph 2 of the First Request  
For Admissions.

3. Plaintiff admits that the Allan-Deane Corporation was formed originally as a wholly owned subsidiary of Johns-Manville Corporation for the purpose of acquiring, holding legal title to, and developing land, but denies the remainder of the matter of which an admission is requested.

4. Plaintiff admits the matter of which an admission is requested in Paragraph 4 of the First Request For Admissions.

5. Plaintiff admits that it borrowed from Johns-Manville Corporation the purchase price for the aforesaid lands.

6. Plaintiff denies the matter of which an admission is requested in Paragraph 6 of the First Request For Admissions.

7. Plaintiff objects to Paragraph 7 of the First Request For Admissions on the grounds that both Plaintiff and Johns-Manville are corporations.

8. Plaintiff denies the matter of which an admission is requested in Paragraph 8 of the First Request For Admissions. The aforesaid lands were acquired by Plaintiff and not by Johns-Manville Corporation in the name of Plaintiff as an investment and for the purpose of eventually developing a balanced community.

9. Plaintiff admits the matter of which an admission is requested in Paragraph 9 of the First Request For Admissions.



10. Plaintiff admits the matter of which an admission is requested in Paragraph 10 of the First Request For Admissions.

11. Plaintiff admits the matter of which an admission is requested in Paragraph 11 of the First Request For Admissions.

12. Plaintiff admits the matter of which an admission is requested in Paragraph 12 of the First Request For Admissions.

13. Plaintiff admits the matter of which an admission is requested in Paragraph 13 of the First Request For Admissions.

14. Plaintiff admits the matter of which an admission is requested in Paragraph 14 of the First Request For Admissions.

15. Plaintiff cannot truthfully admit or deny the matter of which an admission is requested since Plaintiff has not taken water samples from and analyzed all of the streams in the United States of America and because Defendants do not define the word "polluted".

16. Plaintiff denies the matter of which an admission is requested in Paragraph 16 of the First Request For Admissions.

17. Plaintiff admits the matter of which an admission is requested in Paragraph 17 of the First Request For Admissions.

18. Plaintiff denies the matter of which an admission is requested in Paragraph 18 of the First Request For Admissions.

19. Plaintiff denies the matter of which an admission is requested in Paragraph 19 of the First Request For Admissions.

20. Plaintiff admits the matter of which an admission is requested in Paragraph 20 of the First Request For Admissions.

21. Plaintiff admits there have been some flooding problems along the Passaic River downstream from the Dead River, but denies any characterization or interpretation in the remainder of the matter of which an admission is requested.

22. Plaintiff objects to Paragraph 22 of the First Request For Admissions on the ground that the document referred to was not served with the Request For Admissions as required by Rule 4:22-1 and that this is therefore an improper request for admissions.

23. Plaintiff objects to Paragraph 23 of the First Request For Admissions on the ground that a copy of the document or report referred to was not served upon Plaintiff as required by Rule 4:22-1 and that this is therefore an improper request for admissions.

24. Plaintiff objects to Paragraph 24 of the First Request For Admissions on the ground that the report or document referred to was not served or otherwise made available to Plaintiff and that this, therefore, is an improper request for admissions under Rule 4:22-1.

25. Plaintiff objects to Paragraph 25 of the First Request For Admissions on the ground that no copy of the report or document referred to was served upon Plaintiff or otherwise made available to Plaintiff as

required by Rule 4:22-1 and that this, therefore, is an improper request for admissions.

26. Plaintiff admits the matter of which an admission is requested in Paragraph 26 of the First Request For Admissions.

27. Plaintiff admits the matter of which an admission is requested in Paragraph 27 of the First Request For Admissions.

28. Plaintiff admits that Defendants have attached a copy of a document which bears the title of "Interim Technical Report 4509-150, A Staff Report of Tri-State Regional Planning Commission, January 1976, Most Likely Targets For Planned Growth" but the document furnished to Plaintiff contains, on page ii, the statement that this report does not "necessarily represent the views of the Tri-State Commissioners" and that this report "should not be quoted for publication or cited as official records without the express approval of the executive director". Plaintiff, therefore, objects to the characterization of this report as "genuine" on the ground that the report states on its face that not even the Tri-State Regional Planning Committee Commission is willing to stand behind or verify the facts stated herein.

29. Plaintiff admits that a genuine copy of the "Regional Plan

News, March 1975, Number 97, The State of the Region" was served upon  
us.

MASON, GRIFFIN & PIERSON  
Attorneys for Plaintiff

By: 

Henry A. Hill, Jr.  
A Member of the Firm

Dated: July 14, 1976