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Draft of report re: Belminster's Housing Program

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Memorandum

December 23, 1983

RULS - AD - 1983 - 190

TO: All Parties-Bedminster v. Allan Deane

FROM: George M. Raymond

Enclosed please find a draft of my report to Judge Serpentelli regarding Bedminster's Housing Region, Fair Shares, and Compliance. A subsequent draft will deal with the inclusionary provisions of the Township's Land Development Regulations.

I have promised to provide Judge Serpentelli with a final draft on or before January 6, 1984. Since I will need two or three days to review your input and produce the report, I expect to have all responses to this draft by the close of business on January 3rd. Your cooperation will be gratefully appreciated.

P.S. Please overlook typographical errors--there was no time to proof properly.

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DRAFT

The Bedminster Housing Region
and Fair Shares

1. Determination of Bedminster's Housing Region

a. Analysis

The August, 1983 Housing Element of the Master Plan prepared by Richard Coppola and adopted by the Township of Bedminster defines the housing region of which Bedminster is a part as that area which can be reached within 30 minutes' commuting time. The warrant claimed for using this criterion is the 1980 U.S. Census finding that the mean travel time to work of all employed residents of the Township was 27.5 minutes, with 57.3 percent of such residents reporting commuting trips of less than 30 minutes.

This methodology has found considerable currency among experts who have been called upon to define housing regions within the meaning of Mount Laurel II.

From the court's point of view, however, the definition of regions using each community as the focal point presents a serious problem in that it would result in the same community being assigned a number of different court-approved fair

share allocations. Each regional fair share study allocates the total prospective and surplus present need calculated for its specific region among the communities in that region. It is thus inevitable that the allocation to the same community will change depending upon the region in which it is included for calculation purposes. Thus, the N.J. Supreme Court's hope that, as soon as possible, a consistent regional pattern will be adopted for Mount Laurel II purposes is not just the expression of a desire for theoretical neatness but a practical necessity.

The Bedminster definition is challenged by Dobbs¹ on the substantively justifiable grounds that if 57.3 percent of all employed residents travel less than 30 minutes, 42.7 percent travel more. If the outer limits of the region are drawn at the end of a 30-minute trip, the mean commuting time of those living and working within it would be closer to 15 minutes than to the 27.5-minute mean travel time of Bedminster residents reported by the 1980 U.S. Census. Therefore, based on the Township's own reasoning, the outer limits of the Bedminster region must be extended to encompass those areas which can be reached in 45 minutes or more.

¹Submission to George Raymond re Allan-Deane v. Bedminster Township by Leonard Dobbs, prepared by Wallace Roberts & Todd and Ernest Erber (hereinafter referred to as Dobbs).

Dobbs suggests that the 8-county Northeastern Region (including Bergen, Hudson, Passaic, Essex, Morris, Union, Middlesex and Somerset Counties) is "closer to a workable model within the [Mount Laurel II] court's criteria than any lesser alternative." This "region" was also accepted by the Trial Court in the Urban League of Essex County, et al. v. Township of Mahwah.

The definition of Bedminster's housing region as encompassing the 8-county area is concurred in also by the Public Advocate² as satisfying the five criteria set forth by the Supreme Court:

- Housing market/commuting considerations.
- The goal of consistent regional definitions throughout the State.
- Sharing of housing needs and land resources.
- Data availability and reliability.
- Relationship to existing planning regions.

The sweeping assertion that the above criteria justify the inclusion of Somerset County into the Northeastern Region is

² Memorandum addressed to Kenneth Meiser by Geoffrey Weiner of Abeles Schwartz Associates, Inc., November 21, 1983 (hereinafter referred to as the Public Advocate).

not entirely supported by the detailed findings in the 1980 Census and elsewhere. For instance

-- Of 91,701 employed Somerset County residents responding to the question as to their place of employment,³ only 459, (or 0.005%) worked in Bergen County, 412 (or 0.004%) worked in Hudson County, and 407 (or 0.004%) worked in Passaic County.

-- Similarly, only 469 (or 0.002%) of Hudson County's 210,480 "employed residents," 304 (or 0.0008%) of Bergen County's 384,469, and 354 (or 0.002%) of Passaic County's 162,714⁴ worked in Somerset County.

The difficulty of relying on present commuting patterns as the primary basis for the definition of housing regions is illustrated by the job/housing relationship between Somerset and Essex and Somerset and Morris Counties. Only 1,474, or 0.004% of Essex County's 384,469 "employed residents" work in Somerset County, whereas 3,762, or 0.04%, of those living in Somerset County work in Essex County. Does either of these two numbers or percentages suffice to establish an

³ Hereinafter referred to as "employed residents."

⁴ Clarke & Caton, Mahwah Township Fair Housing Report, July 1983, prepared for the Hon. Harvey Smith, J.S.C., Bergen County - Table E-7, p.38.

"inter-relationship" in the Mount Laurel II sense? If neither, then what is one to make of the fact that of Somerset County's "employed residents" only 3,717, or 0.04% (almost identical to the percentage employed in Essex County) work within easy reach in adjacent Morris County?⁵

Clarke & Caton's argument in the Mahwah fair share study⁶ that most employed residents both live and work in the 8-County Region is not convincing per se since it is almost axiomatic that the larger the region, the greater the chance that this will be the case. If all of New Jersey were defined as "the region," the percentage of the labor force both living and working in the state probably would be in the very high 90s.

As for being a part of "established planning regions," the 8-County Northeastern Region is not recognized as such by any official agency. Under the circumstances, why should not the 8-county "region" be broadened as recommended by the Tri-State Regional Planning Commission to include Monmouth County? But then, how "established" is the Tri-State-defined region itself, given that its delineator, the -

⁵ Ibid.

⁶ Clarke & Caton, op. cit.

Tri-State Regional Planning Commission, is now a defunct agency which is thus no longer able to perform those functions of data updating and analysis and activity coordination which invest

a non-self-governing agglomeration of municipal jurisdictions with "regional" meaning?

As for the "region" defined by the Regional Plan Association (RPA), it is even larger than the 9-County Tri-State region due to the addition of Mercer County.⁷ Despite RPA's well-deserved reputation in the planning field, being a private organization with limited resources, it too, is not in a position to perform those functions which invest the term "region" with substantive meaning.

One answer to these perplexities may be furnished by the just-released Rutgers University study of housing regions throughout the State.⁸ After adding three counties to the 8 northeastern counties, this study recommends that the resulting eleven-county area be divided into three housing regions, as follows:

⁷ The Tri-State and Regional Plan "regions" are cited in the Public Advocate's report in support of the contention that the 8-county region is "related to existing planning regions."

⁸ Mount Laurel II; Challenge and Delivery of Low-Cost Housing, Center for Urban Policy Research, Rutgers University, 1983 (hereinafter referred to as the CUPR Study).

1. Bergen, Hudson, and Passaic (Northeast Region)
2. Essex, Union, Morris and Sussex (Northwest Region)
3. Middlesex, Somerset, Hunterdon and Warren (West Central Region)

The study claims that each of these three regions satisfies the Mount Laurel II criteria--including that of the need for the sharing of housing needs and land resources--better than any other configuration. According to the study, the six regions which "emerged...using regions of commuting complementarity as well as other criteria (income, housing costs, vacant land, etc.)...additionally reflect...intra-regional differences and inter-regional similarities. [The proposed] regions contain a mix of rural and urban areas, housing types, and socioeconomic characteristics, yet they are also balanced such that within the statewide parameters one region is not significantly poorer or more urban than another nor are there noticeable differences in either housing types or housing quality."⁹

The CUPR "regions" also have the advantage of a basic agreement with the newly (June 30, 1983) delineated U.S. Census designations of Metropolitan Statistical Areas, which

⁹ Ibid., pp. 23-24.

meets the important Mount Laurel II criterion of ready availability of data.

If the CUPR claims regarding regional balance stand up to the scrutiny to which they will be inevitably subjected, and if its definition of regions is accepted by the Court as the answer to the Supreme Court's call for the establishment of consistent regions, then the 4-county Middlesex-Somerset-Hunterdon-Sussex region might be a preferred substitute to the 8-County Northeastern Region as Bedminster's housing region.

b. Recommendation

Based on the information available at this time I recommend that Bedminster's housing region be deemed to consist of the 8 Northeastern Counties. Since we are not dealing with a precise science, however, in determining present and prospective housing needs and in allocating Mount Laurel II responsibilities, I have also taken into consideration the factual base and methodology underlying the CUPR Study conclusions.

2. Determination and Allocation of the Prospective Need

a. Determination of Prospective Regional Need

It is generally agreed that the fair share of the "prospective need" for which Mount Laurel II requires municipalities

to provide "for a reasonable period of time in the future" is the number of units needed to accommodate the municipality's share of the anticipated population growth in its region.

The Public Advocate projected the growth for the 1980-1990 decade as a basis for determining the probable number of households which will have to be housed in the region by 1990. The projection is based on New Jersey Department of Labor county population projections using the ODEA Economic/-Demographic Model which projects population migrations on the basis of anticipated labor market conditions rather than past migration trends. The resulting 1980-1990 increase in the region's population is expected to be 206,000 persons, with 198,000 expected to be added to the "Intermediate Ring" counties of Middlesex, Morris, and Somerset. Essex and Hudson Counties are expected to lose 88,000 persons.

Calculating that, by 1990, the household size will decline from 2.83 person per household to 2.71, the Public Advocate estimates that some 140,919 additional households will have to be housed during that period. Adding 4 percent to achieve the minimum desirable vacancy rate of 1.5 percent in sales housing and 5 percent in rental housing brings the total to 146,556. Of these, 39.6 percent, or 58,036 households, will need lower income housing units. Based on the

1979 median income in Somerset County, 60.7 percent of these, or 35,228 units, should be affordable to low income households (with incomes of 0 to 50 percent of the region's median income) and 39.3 percent, or 22,308 units, should be priced for moderate income families (with incomes of 50 and 80 percent of the median).

Dobbs accepts the above methodology and its resulting estimates of prospective low and moderate income housing needs for the region.

The CUPR Study uses the New Jersey Department of Labor ODEA Demographic Cohort Model¹⁰ which, it claims, better reflects the reality of the slow, recession-impacted 1980-1983 population growth than the model used by the Public Advocate. The resulting 1980-1990 projection of the total prospective low- and moderate-income housing need for the 4-County West Central Region (which that study recommends as Bedminster's "region") is 22,002 units.¹¹ CUPR then adjusts this figure downward to 20,283 to account for those

¹⁰ CUPR, op. cit. p. 119.

¹¹ Ibid., Exhibit 2-23, p. 128.

relatively few households which can be expected to be housed by the conventional housing market.¹²

The unacceptability of the region proposed by Bedminster invalidates its calculation of prospective regional need as well.

b. Allocation of Prospective Need

The Public Advocate allocated the total prospective regional housing need directly to all municipalities in the region on the basis of the average of their respective shares of (1) the region's vacant developable land, as calculated in the May 1978 New Jersey Department of Community Affairs Revised Statewide Housing Allocation Report for New Jersey (hereinafter referred to as the Allocation Report), and (2) the growth in non-government covered jobs between 1975 and 1981.

For Bedminster, with 2.2 percent of the region's vacant developable land and 1.8 percent of the recent employment growth, the composite allocation factor of 2.032 percent was applied to the prospective regional need figure of 58,036. The resulting prospective need allocated to the Township is 1,179 units.

¹² Ibid., Exhibit 5-19, p.285.

In my opinion, the Public Advocate's allocation formula is severely flawed because of the unreliability of the data regarding vacant developable land in the region as a whole and in its municipalities. The vacant developable land figures in the Allocation Report were based on information that was three or four years old when first used. Enormous changes have occurred along the whole length of Route I-287 between the New Jersey Turnpike and Route I-80, rendering these data obsolete.

Of even greater concern, however, is the definition of "vacant developable land" used in the Allocation Report as it relates to the State development policy expressed in the State Development Guide Plan (hereinafter referred to as the SDGP). The Allocation Report defines as "vacant and developable" all the vacant land in the community "less land with greater than 12 percent slope, wetlands, qualified farmlands and public lands," irrespective of whether such theoretically developable vacant land lies in an area designated as suitable for "growth" or "limited growth" in the SDGP. Communities located in their entirety in "limited-growth" or non-growth areas were exempt from consideration, but for communities where even a fraction of their vacant developable land was located in a "growth" area, all of their vacant land was counted for allocation purposes.

If the State Development Guide Plan determination of "non-growth" areas is to have any meaning, those lands which are so classified in the plan should not be counted as if available for development irrespective of whether the community in which they are located also contains lands classified as suitable for growth.

Bedminster's case illustrates with particular clarity the problem raised by the use of all of the municipality's vacant developable land as a basis for determining its proper share of the region's future higher density housing development (since, under present conditions, low- and moderate-income housing can only be produced at densities of at least 6-8 units per acre). In Bedminster, the State Development Guide Plan delineates a "growth area" straddling Routes 202-206 and extending to the Township's eastern boundary (see map entitled "Critical Areas: Flood Plains"). Excluding land with greater than not 12, but 15 percent slope, wetlands and flood plains, and publicly owned lands--and ignoring some 360 acres of land in agricultural use--, the vacant developable land within this corridor amounts to only 1,529 acres. (This acreage includes all the land with less than 15 percent slope that was formerly owned by Allan-Deane). The 1,529 acres represent only 26.9 percent of the 5,675 acres credited to Bedminster in the Allocation Report.

Bedminster's "limited growth" area is part of a continuum which extends westward across the top of Hunterdon County and north into Morris County (where it includes the Township of Chester, whose similar designation in the SDGP caused the Supreme Court to keep it free of any Mount Laurel obligation). The Supreme Court explicitly states that it is "able to fashion judicial relief through...a remedial solution that imposes the Mount Laurel obligation only in those areas designated as 'growth areas' by the SDGP."¹³ The Court adds: "There is nothing in our Constitution that says that we cannot satisfy our constitutional obligation to provide lower income housing and, at the same time, plan the future of the state intelligently."¹⁴

Significantly, the Court also points out that if, subsequent to the Mount Laurel II decision, a municipality were to encourage or allow development in contravention of the SDGP, a trial court "should more readily conclude that the challenged SDGP 'non-growth' characterization has become inappropriate."¹⁵ It would be ironic, indeed, if a court-mandated breach of the SDGP pattern for rational

¹³ 92 N.J. 158, p. 236.

¹⁴ *Ibid*, p. 238.

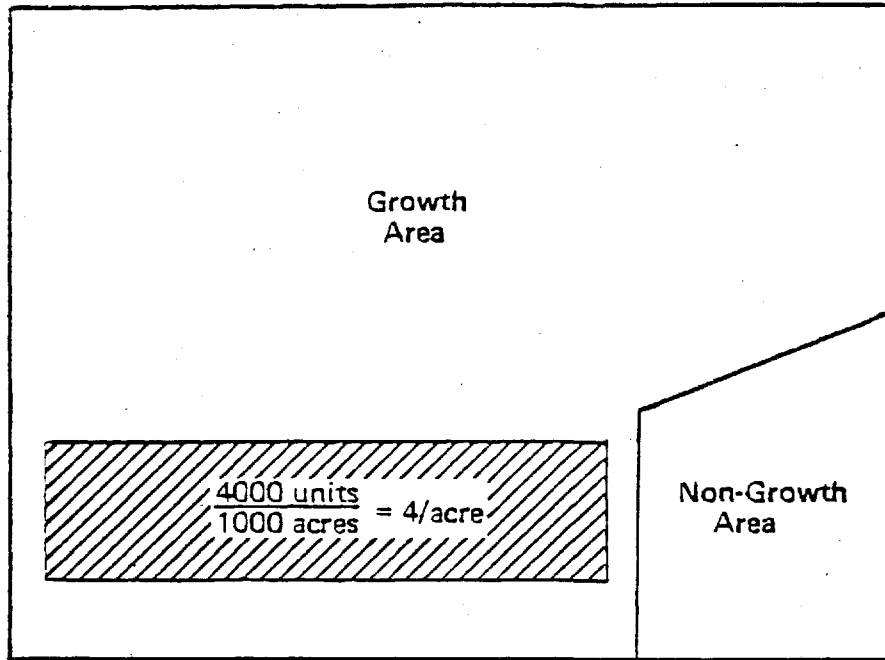
¹⁵ *Ibid*, p. 242.

distribution of development in Bedminster were to be found in the future as offering grounds for the invalidation of the Township's SDGP-based Master Plan.

Figures 1 and 2 illustrate the distortion of development patterns which could, and probably would, result from the allocation of housing responsibilities on the basis of the Allocation Report. To prevent such distortions, a given municipality's share of the region's total vacant developable land should be calculated by comparing the developable acreage in its "growth" area only, with a similarly developed quantity for the region as a whole.

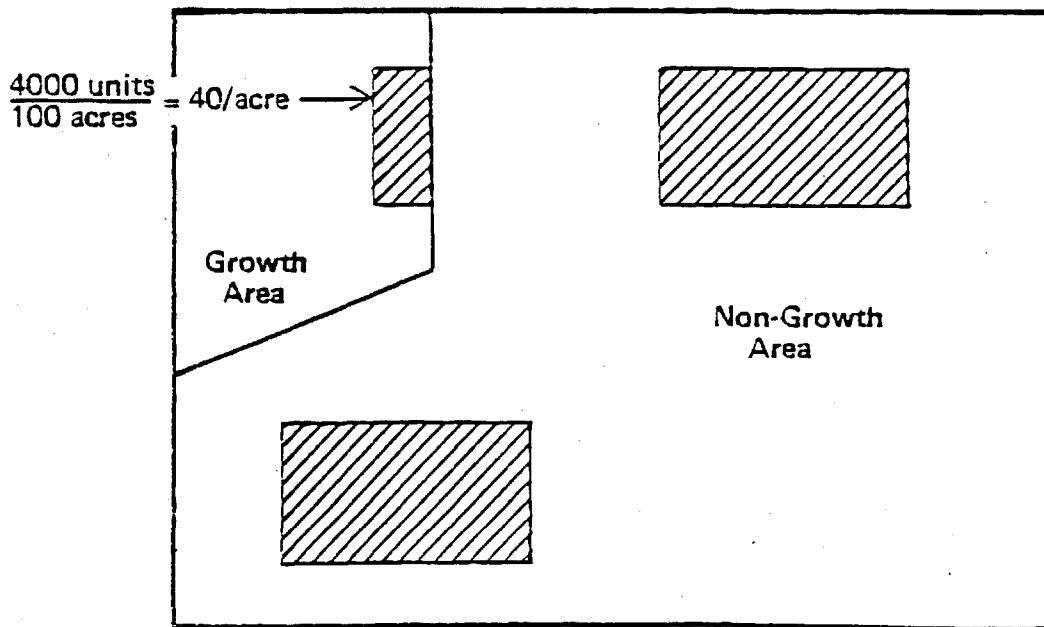
While it is true that vacant developable land is a key allocation criterion "by which new housing can be directed to where it is both suitable and feasible,"¹⁶ the area within Bedminster to which this criterion can be applied without violating the SDGP thus only encompasses the 1,529

¹⁶ A Fair Share Housing Allocation for Ten Municipalities in Morris County, prepared for New Jersey Department of the Public Advocate by Abeles Schwartz Associates, Inc., October, 1983, p. 34.



Community A- 1000 vacant developable acres, all of which lie in the "growth area"

Figure 1



Community B- 1000 vacant developable acres of which only 100 lie in the "growth area"

Figure 2

Housing Allocation to each = 800 units of lower income housing requiring a land capacity of 4000 units with a 20% mandatory set-aside.



Vacant Developable Land

vacant acres that are truly "developable" and which lie within the "growth" corridor (see map entitled "Critical Areas: Flood Plains). If similar determinations of the amount of vacant developable land in "growth" areas, exclusively, were available for all communities in the 8-County Region, it would be possible to establish Bedminster's share. Although the Allocation Report may well contain "the only statewide calculations of developable land available on a municipal level,"¹⁷ these vacant developable land figures are outdated and methodologically flawed. They lack the credibility needed to permit them to be used as a fair share allocation criterion as recommended by the Public Advocate.

* * *

This leaves the factor of recent employment growth as the sole valid fair share allocation criterion. Its use is sanctioned by Mount Laurel II which favors "[f]ormulas that accord substantial weight to employment opportunities in the municipality, especially new employment accompanied by substantial ratables..." Using Bedminster's 1.8 percent

¹⁷Ibid., p. 35.

share of the region's recent growth in employment as the sole allocation criterion and applying it to the prospective regional need of 58,036 units reduces the Township's fair share from 1,179 to 1,045 units.

* * *

Dobbs disagrees with the Public Advocate's prospective fair share allocation of 1,179 units. Without any warrant in Mount Laurel II, he allocates the agreed-upon 58,036 units first to each county in the region and only then to each municipality on the basis of its share of the county's vacant developable land. I have already discussed the unreliability of the estimates of vacant developable land and the unacceptability of the definition used in the Allocation Report. Also the Mount Laurel II decision clearly mandates that each municipality provide for its fair share of the prospective need of its entire region. If Somerset County is to be used as "the region" for the purpose of allocating the need, then it should also be used as "the region" for the purpose of determining that need.. For these reasons I rejected Dobbs' estimate of 1,360-units as Bedminster's allocation of prospective need.

* * *

Applying the Public Advocate's allocation methodology to the prospective need in the West Central Region determined by the CUPR Study produces the following results:

<u>Jurisdiction</u>	<u>Private Covered Jobs: 1975-1981</u>		<u>Difference</u>
	<u>1975</u>	<u>1981</u>	
Hunterdon	14,991	19,420	+ 4,430
Middlesex	197,382	243,547	+46,165
Somerset	63,130	82,496	+19,366
Warren	<u>22,635</u>	<u>25,084</u>	+ 2,449
Total			72,410
Bedminster	838	4,396	3,558

Bedminster's job growth between 1975 and 1981 thus represents 4.9 percent of that throughout the 4-County Region. Applied to that portion of the 20,283-unit prospective regional need that is unmet by the conventional housing market this produces 994 units as Bedminster's share.

Because the CUPR Study does not provide county by county information, it is not possible to disaggregate the data for the purpose of forming and reforming regions. As a result, it is not possible to examine what the effect would be of applying the Public Advocate's allocation methodology to the prospective need for the 8-county region if such need were determined in accordance with the CUPR methodology. A reasonable and conservative approximation can be derived, however, by discounting the incremental need attributable to Hunterdon, Warren and Sussex Counties which is probably

relatively minor. Since the combined CUPR Northeast, Northwest and West Central Regions include and are larger than the Public Advocate's 8-county region, a comparison of the two is useful:

	CUPR <u>11-County Area</u> ¹⁸	Public Advocate's <u>8-County Region</u>
Present Need	37,524	104,364
Prospective Need	<u>30,380</u>	<u>58,036</u>
Total	67,904	162,400

Thus, omitting the needs of Hunterdon, Warren and Sussex Counties, the total prospective need determined by the CUPR Study is 58.2% lower than that determined by the Public Advocate. Applying Bedminster's 1.8% share of its 8-County Region's recent growth to CUPR's 30,380 prospective need for the 11-county "region" produces an allocation to Bedminster of only 547 units.

* * *

Since availability of vacant developable land is both a key ingredient of a municipality's ability to provide the "realistic opportunity" for the construction of low- and

¹⁸ CUPR, op. cit., Exhibits 4-17, 5-18 and 5-19, pp. 283-285.

moderate-income housing mandated by the Supreme Court and a legitimate criterion in the formulation of a genuinely fair allocation of responsibilities, it is important to consider the effect of disqualifying its use. In this particular instance, the number of units allocated to Bedminster by the Public Advocate as its share of the prospective need was reduced by only 134, or 11.3 percent. Based on the facts recited above, using the vacant developable land figures supplied by the Allocation Report would probably cause greater distortion.

If the vacant developable land figures in the Allocation Report were used in conjunction with the CUPR Study, instead of being increased the allocation to Bedminster would be reduced by 25.5 percent, as follows:

<u>Jurisdiction</u>	<u>Vacant Developable Land (in Acres)</u>
Hunterdon	67,981
Middlesex	62,810
Somerset	46,562
Warren	<u>59,032</u>
Total	236,385
Bedminster	5,675

Bedminster's share of the region's vacant developable land is thus 2.4 percent. Using the Public Advocate's methodology of averaging this factor with Bedminster's 4.9 percent

of the job growth in the 4-County Region produces a composite allocation factor of 3.65 percent. When applied to the 20,283-unit prospective regional need determined by CUPR this produces only 740 units as Bedminster's share as against the 994 units that resulted from using the job growth factor as the sole allocation criterion.

* * *

The use of the Township's share of the present total employment in the region as a second allocation criterion was examined, but rejected. As indicated above, the Mount Laurel II decision favors factoring in ratables that accompany new employment. To some extent, the Township's relative ability to support the development mandated by Mount Laurel II can be measured by its share of the region's total non-residential ratables which, in turn, are related to the total number of employees. In 1981, Bedminster's covered employment amounted to 4,396, or 0.257% of the region's 1,709,286 total. Averaged with Bedminster's 1.8% share of the region's employment this growth produces a composite allocation factor of 1.03 which would bring Bedminster's fair share of the region's prospective need down to 598 units.

This criterion was rejected because a municipality's ability to support the services and facilities which are paid for largely by the real estate tax cannot be measured only from the revenue end. These costs are much higher per capita in old cities with crumbling infrastructure, decaying housing, and a high fiscal overburden of police, fire, sanitation and education costs due to the high density concentrations of lower income households. Also, as Bedminster's costs of servicing the new development increase, so will its non-residential tax base following construction of The Hills commercial center, the City-Federal Savings and Loan Association's headquarters building, and others. Furthermore, most of the services required by the residents of condominium developments such as The Hills are user-supported, whereas in older urban areas such costs fall largely upon the real estate tax base.

* * *

c. Recommended Allocation of Prospective Need to
Bedminster

After consideration of the above, I recommend that Bedminster's share of the 1990 prospective housing need in its housing region be established at 908 units. This figure was arrived at by (1) reducing the 1,179 unit allocation proposed by the Public Advocate to 1,045 units, as explained

above; (2) by averaging the two CUPR-based figures of 994 and 547,¹⁹ which produces an allocation of 771 units; and (3) averaging 1,045 with 771. The resulting 908-unit allocation compares with 666-741 units proposed by the Township and the 1,360 figure urged by Dobbs.

3. Determination and Allocation of Present Need

A municipality's fair share of the "present need" consists of the replacement need for its existing dilapidated and overcrowded units that are occupied by low- and moderate-income households plus an appropriately determined proportion of the excess "present need" of older, built-up communities."

* * *

Dobbs has added another component of municipal "present need" which he calls "Expected to Reside [in the municipality] by Reason of Employment." He calculates this component by comparing the percentage of all persons employed in Somerset County who commute into the county from elsewhere

¹⁹This figure represents the prospective need for an 11-county region.

with the average percentage of incommuters to all other counties in the 8-county region.

Based on unpublished 1980 Census data supplied by Clarke and Caton,²⁰ Dobbs claims that 38,611, or 46 percent, of all persons employed in Somerset County in 1980 resided outside of the county. Since the average in-commuting to all 8 counties in the region is only 37%, there is an excess of 3,473 in-commuters, 40 percent of whom, representing 1,376 households, have low or moderate incomes. Dobbs claims therefore that this calls for the provision of 1,376 units of Mount Laurel-type housing in Somerset County. As the final step, Dobbs then adds 14% of that number, or 192 units, to Bedminster's share of Mount Laurel housing, based on the sole criterion of Bedminster's share of all of the County's vacant developable land.

This reasoning ignores the fact that the 1980 Census also shows that 45,370, or 49.5 percent, of all of Somerset County's "employed residents" work outside the county. If those who "in-commute" are counted as persons "expected to reside" in Somerset County by reason of employment, then

²⁰ Clarke & Caton, op. cit., Table E-6, p. 37.

those who "out-commute" should be counted as persons who can be expected to reside elsewhere.

If the 192 units needed for those "expected to reside" in Somerset County is the product of reducing the in-commuting to the average of all 8 counties, the same procedure in reverse would produce the number of units to be subtracted from Somerset County's responsibility. Excluding the 8,275 persons whose place of work was not reported, the 1980 Census found that 46,331 persons, or 50.5% of the total, both work and live in the county and 45,370, or 49.5%, work elsewhere.

Based on unpublished 1980 Census data supplied to me by the Regional Plan Association, the average "out-commuting" for all 8 counties in the region is 38.34 percent. This is 11.16 percent less than Somerset County's 49.5 percent of out-commuters. Since the difference between the 46% of all those employed in the County who in-commute and the 37% region-wide average is only 9 percent, use of this criterion for allocation purposes would reduce rather than increase Bedminster's fair share of the present need.

Use of this criterion was rejected, however, primarily because nowhere in its Mount Laurel II decision did the Supreme Court suggest that equalizing existing in and out

commuting among the State's counties is a part of the constitutional obligation of municipalities. The above discussion is supplied only to show that, in any event, the methodology used by Dobbs is one-sided and therefore flawed.

a. Indigenous Need

There is little disagreement regarding Bedminster's relatively minor responsibility with respect to its own existing deficient or overcrowded units. Dobbs accepts Bedminster's estimate of 39 such units. The Public Advocate's figure is 59. The difference between the two figures is primarily definitional since the Township includes as deficient only 11 units lacking kitchens and 22 lacking complete plumbing. The Public Advocate excludes the 11 units lacking kitchens-- as well as 6 units found by the Township to be overcrowded-- but includes 30 units having inadequate heating facilities or none at all. He then assumes that 82 percent, or 43 of the resulting 52 units, are occupied by low and moderate income households and then adds 16 units which are needed "to provide mobility and choice in an otherwise tight and inflated housing market." This brings the total to 59, or 20 units above the number determined to be needed by the Township.

Before dealing with the difference, it is important to establish the type of remedial measures called for by any

"indigenous need" determined in this manner. The customary equating of this "need" with the need for new construction of the same number of units is fallacious. A unit lacking some item of plumbing or having an inadequate heating system, or needing general rehabilitation can often be improved. While in many instances, and especially so in older urban areas, an absence of these facilities indicates the presence of multiple deficiencies, this need not be so in a community like Bedminster. Until better estimates are produced through the only means that is truly reliable, namely local house by house surveys, I believe that not more than one third of the ¹³deficient units should be counted as needing to be replaced.

As for the few overcrowded units that are otherwise in sound condition, it is entirely possible that none will need to be replaced. When new units are constructed in the community to accommodate low and moderate income households, the mismatch between unit sizes and sizes of households occupying them can be straightened out. The sound units which would be thus vacated that are affordable to low and moderate income households, could be used instead of new ones for properly sized "prospective need" households.

Thus, at this time, I believe that it is appropriate to assume that, of the 59 deficient units found by the Public

should be reduced to the fourteen required
 Advocate only ~~20~~ ^{replacement plus} will need to be replaced. ~~To these should~~
~~be added~~ the 16 units needed to achieve the desired vacancy
 rate in the existing low- and moderate income housing
 supply. I recommend therefore that the total indigenous
 need for Bedminster Township be set at ³⁰ ~~36~~. This is ^{nine} ~~three~~
 units below the Bedminster and Dobbs estimates and twenty-
~~three~~ ^{nine} units below that of the Public Advocate.

b. Determination and Re-allocation of Surplus "Present
 Need"

To meet the New Jersey Supreme Court's mandate that no
 municipality be burdened with more than its fair share of
 the present need of the region, the Public Advocate has
 determined that the "present need" replacement burden to be
 assumed by each municipality should not exceed the 6.795
 percent regional average of deteriorated or overcrowded
 units occupied by Mount Laurel eligible household as a
 percentage of the region's total number of occupied year
 round housing units. In Bedminster, this results in a
 replacement need allocation of 61 units, 18 more than
 43-unit indigenous "present need" determined by the Public
 Advocate. The Public Advocate correctly recognizes that the
 redistributing the low- and moderate-income population from
 one part of the region to another by providing housing units
 for that specific purpose must be allowed a full generation
 (30 years) to permit a corresponding redistribution of

economic activities and employment opportunities. He thus allocates 6 replacement units to the Township of Bedminster for the period until 1990. I concur with this number.

* * *

Bedminster's own calculations of surplus "present need" are based on the region delineated by it which was not accepted.

* * *

Dobbs differs with the Public Advocate's formulation. His determination of the surplus "present need" of the region accepts the Public Advocate's method of deriving the regional average which should not be exceeded (6.8%). He then re-allocates the surplus in excess of 6.8% from three counties (Essex, Hudson and Passaic) to the remaining five counties in proportion to the average of each of the five counties' share of the existing employment and vacant developable land in the five counties. As the last step he then allocates to Bedminster the burden of supplying 417 units based on the Township's average share of Somerset County's vacant developable land, only.

This methodology again ignores the Mount Laurel II mandate that each municipality be required to shoulder its fair

share of the housing needs of its entire region. It is clearly inappropriate to manipulate the definition of "the region" every time one deals with one or another aspect of housing need. Why, for instance, should replacement units to Somerset County be allocated based on the average between its share of both the employment and the vacant developable land in its freshly tailored region, while the allocation to Bedminster is based only on its share of the county's vacant developable land? The reasoning is strained, the methodology suspect, and the results exaggerated.

Even more serious, however, is the difference in allocation methodology between Dobbs and the Public Advocate. The latter starts with the fact that, on a region-wide basis, the proportion of deteriorated and overcrowded units occupied by Mount Laurel II-eligible households averages 6.795 percent of the region's total occupied housing units. The Public Advocate then redistributes the population living under unacceptable conditions among all communities in the region whose percentage of housing needing "replacement" is below the region-wide average. He does this in such a way that the allocation to each municipality, together with its existing unacceptably housed households, will equal the average for the region. This method, by taking into account the existing size of the community, follows the Supreme Court's admonition that no municipality should be "radically

transformed by a deluge of low and moderate income develop-
 ments."²¹ When added to the existing ³⁹⁻⁴³~~39~~ units representing
 the Township's "indigenous need" the 417 redistributive
 lower income units allocated to Bedminster by Dobbs would
 bring the total of such units to 33.6 percent of the
 Township's resulting occupied housing units!

5. Summation of Bedminster's Recommended Fair Shares

The Township's total allocation of the present and prospec-
 tive need for low- and moderate-income housing recommended
 in this report thus amounts to the following:

<u>Present Need</u>	30	
Indigenous	<u>36</u>	
Re-allocated Surplus	6	36
Sub-Total		<u>42</u>
<u>Prospective Need</u>		908
Total		<u>950</u> 9+1

6. Bedminster's Response to the Mount Laurel II Mandate

Bedminster's response to its obligation under Mount Laurel II has taken two forms:

- a. It has rezoned certain portions of the "growth" corridor delineated in the SDGP that were defined in Allan Deane V. Township of Bedminster, and sanctioned in a prior Court order in this action.

²¹ 92 N.J. 219.

b. It has modified its land development regulations by creating new zoning districts, some of which included mandatory set-asides for subsidized or least-cost housing. The Court found that these provisions satisfied the mandate of Mount Laurel I. Following Mount Laurel II, the Township introduced an amendment to its Land Development Regulations, action on which was stayed pending a determination of Bedminster's housing region and fair shares under the revised mandate and a review of the amendment itself as to its compliance with Mount Laurel II.

a. Bedminster's Rezoning

The new zoning map is enclosed in this report (see Land Use Plan). Only 12 sites in the modified "growth" corridor were zoned specifically in response to the court mandate to provide for low- and moderate-income units. These sites are shown on the map entitled Identification of MF, PRD and PUD Land Areas.

The total capacity of each site and the number of low- and moderate-income units that could be produced on each was analyzed by both Bedminster and Dobbs. Since publication of its August 1982 Master Plan Housing Element which was relied upon by Dobbs for his site analysis, Bedminster has revised


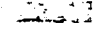
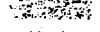

Land Use Plan

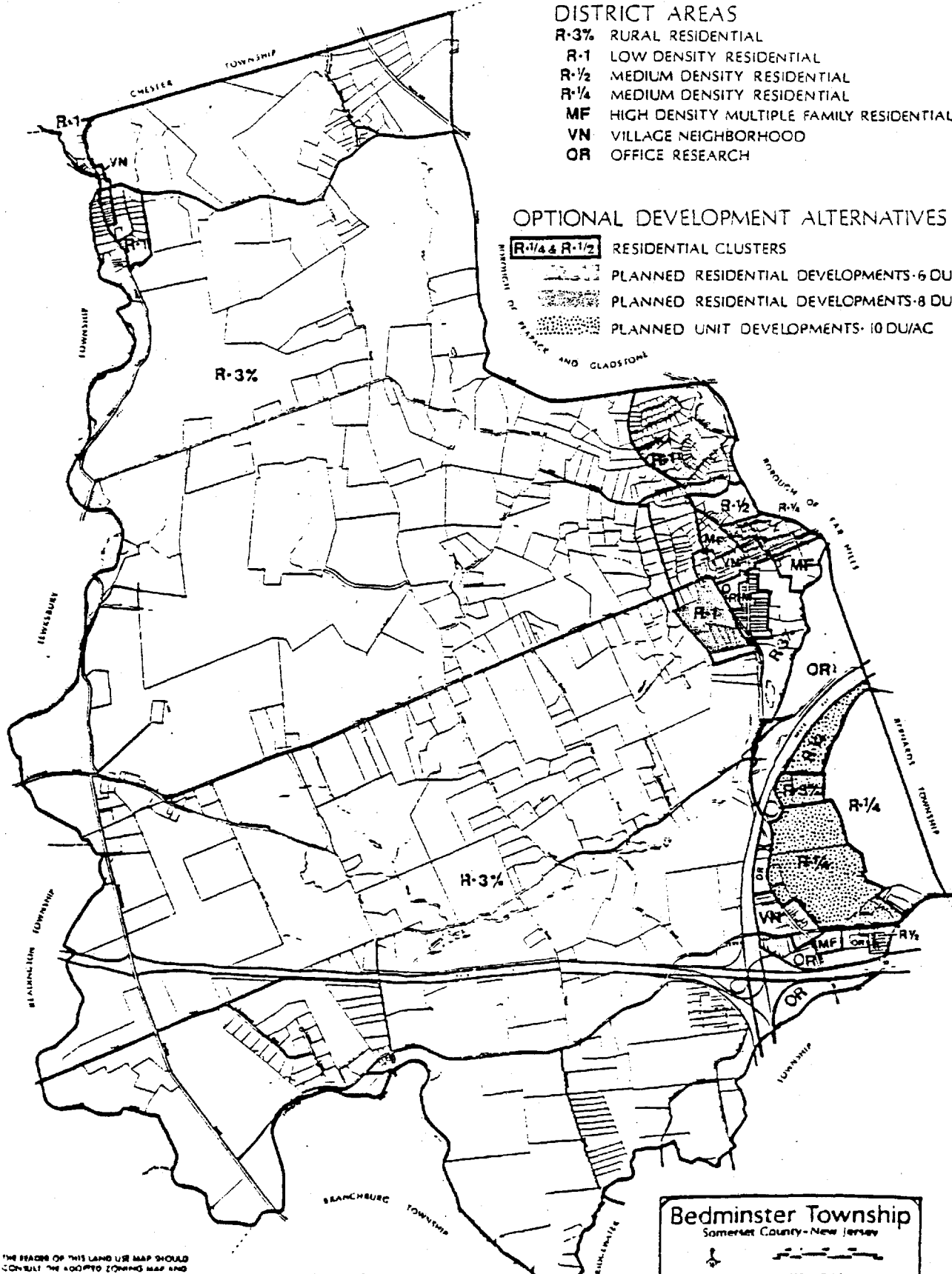
APRIL, 1982

DISTRICT AREAS

- R-3% RURAL RESIDENTIAL
- R-1 LOW DENSITY RESIDENTIAL
- R-1/2 MEDIUM DENSITY RESIDENTIAL
- R-1/4 MEDIUM DENSITY RESIDENTIAL
- MF HIGH DENSITY MULTIPLE FAMILY RESIDENTIAL
- VN VILLAGE NEIGHBORHOOD
- OR OFFICE RESEARCH

OPTIONAL DEVELOPMENT ALTERNATIVES

-  R-1/4 & R-1/2 RESIDENTIAL CLUSTERS
-  PLANNED RESIDENTIAL DEVELOPMENTS-6 DU/A
-  PLANNED RESIDENTIAL DEVELOPMENTS-8 DU/A
-  PLANNED UNIT DEVELOPMENTS-10 DU/AC



NOTE: THE READER OF THIS LAND USE MAP SHOULD CONSULT THE ADOPTED ZONING MAP AND THE OFFICIAL ASSESSOR'S MAP WITHIN THIS DOCUMENT FOR THE LOCATION OF "CRITICAL AREAS" AS DEFINED AND CONTROLLED BY SECTION 13-408 OF THE LAND DEVELOPMENT ORDINANCE OF THE TOWNSHIP OF BEDMINSTER.

Bedminster Township
Somerset County - New Jersey

BASE MAP PREPARED BY
1400 North 10th Street, P.O. Box 1170
Somerset, New Jersey 08876

its capacity study on the basis of more accurate recent information regarding the extent of "critical" areas.²² Shown in Table 1 are the 12 sites and their total development capacity as determined by Bedminster and Dobbs.

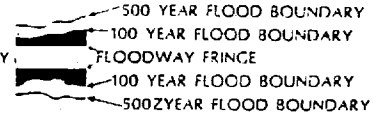
(Bedminster identifies the sites by means of letters--A to L--whereas Dobbs uses the numbers 1 to 12.) The capacity of each site is expressed in dwelling unit within the limits set by the applicable land development regulations including the effect of any portion of the site being characterized as "critical" (i.e. being susceptible to flooding or having a slope in excess of 15 percent.

²²Flood Insurance Rate Maps and Floodway Boundary-Floodway Maps prepared by the Federal Emergency Management Agency and dated September 30, 1982.

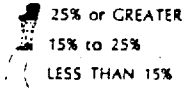
Identification of "MF", "PRD", and "PUD" land areas.

Critical Areas

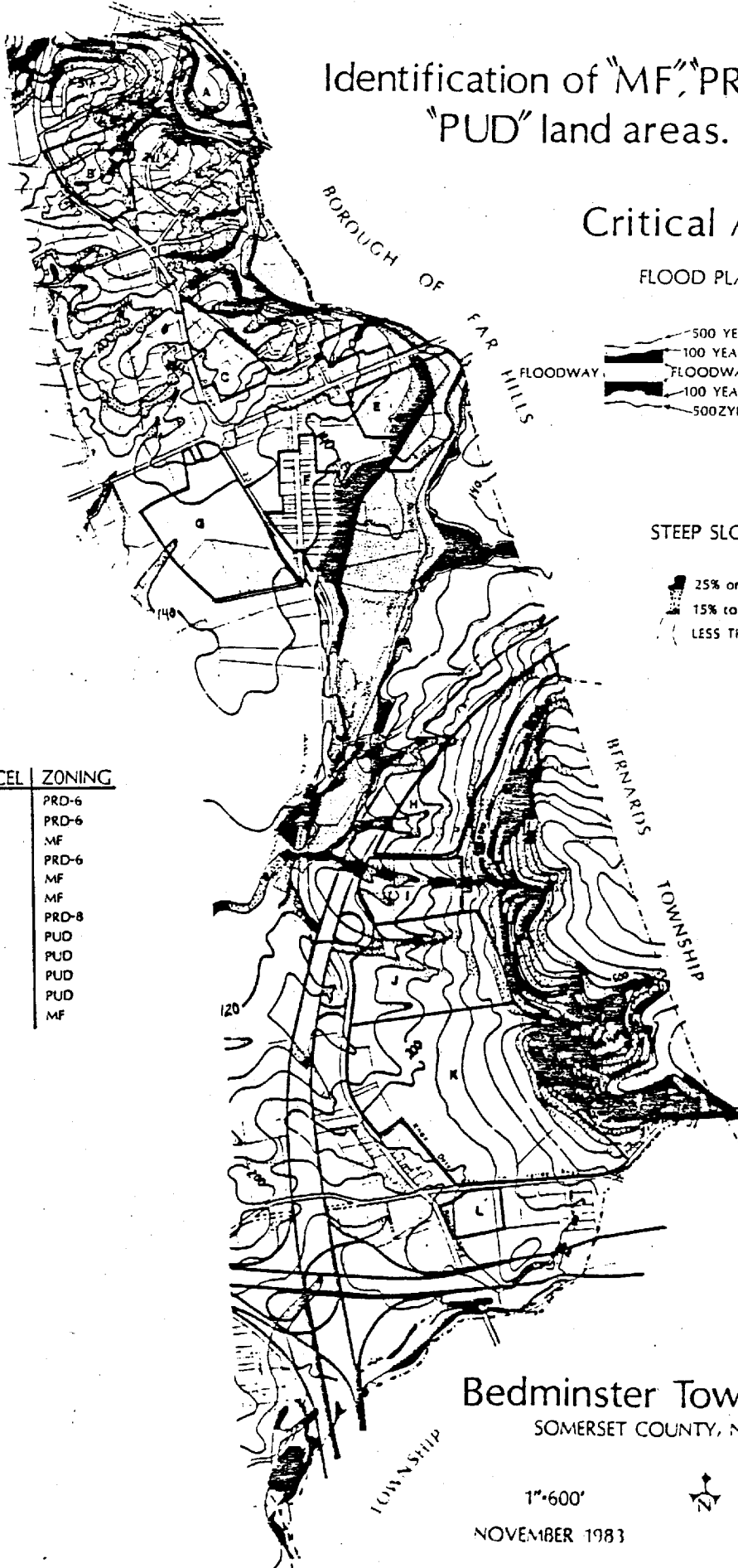
FLOOD PLAINS



STEEP SLOPES



PARCEL	ZONING
A	PRD-6
B	PRD-6
C	MF
D	PRD-6
E	MF
F	MF
G	PRD-8
H	PUD
I	PUD
J	PUD
K	PUD
L	MF



Bedminster Township
SOMERSET COUNTY, N. J.

1"=600'



NOVEMBER 1983

Table 1

SITES ZONED MF, PRD, AND PUD
Bedminster Township

Site Identification		Capacity in Dwelling Units	
<u>Bedminster</u>	<u>Dobbs</u>	<u>Bedminster</u>	<u>Dobbs</u>
A	1	66	134
B	2	80	79
C	3	290	67
D	4	36	81
E	5	199	146
F	6	306	0
G	7	514	517
H	8	449	414
I	9	257	0
J	10	599	0
K	11	1,287	1,287
L	12	<u>177</u>	<u>178</u>
Total		4,260	2,903

Upon review of these sites and with the benefit of the more recent topographic and hydrological data used by Bedminster, I have determined that the 12 sites have the capacities set forth below. The reasons for the difference between these determinations and those offered by either Bedminster or Dobbs are supplied in the explanatory notes which follow the table. Minor differences were overlooked.

<u>Site Identification</u>		
<u>Bedminster</u>	<u>Dobbs</u>	<u>Capacity</u>
A	1	66
B	2	80
C	3	165
D	4	36
E	5	199
F	6	0
G	7	514
H	8	414
I	9	257
J	10	599
K	11	1,287
L	12	177
	Total	3,794

Site A (No. 1) Dobbs assumed that only 11 acres of this 23-acre site are critical. In fact, the proportions are reversed.

Site C (No. 3) The total area of this site amounts to 24.77 acres. It is zoned MF (a classification which permits 12 dwelling units per acre). Dobbs' analysis found only one vacant developable parcel containing 5.57 acres. In fact, despite the presence of single family houses, three others, with a combined area of 8.22 acres, can be assumed to be available. I base this opinion on the probability that the higher value of the land for multi-family development will lead its owners to dispose of their oversized

lots. The total area available for development is thus increased to 13.78 acres with a resulting yield of 165 units.

Site D (No. 4) Dobbs assumed that the entire 13.8 acres are "non-critical." Based on the update of environmental factors mentioned above, Bedminster has revised its evaluation of this site by showing 7.8 acres as "critical" and 5.8 acres as suitable for development at the permitted density of 6 units per acre.

Site E (No. 5) The difference between the 199-unit capacity of this site claimed by Bedminster and the 146-unit credited to it by Dobbs is derived from a difference in the measurement of the "critical" area. Dobbs characterized 31.58 of the total of 43.24 acres as "critical" whereas Bedminster found that only 27.1 acres were so affected. Since Bedminster had the advantage of updated information I concur with its determination.

Site F' (No. 6) This site, which is zoned MF permitting multi-family development at a density of 12 units per acre, consists of a strip straddling Route 206 between its point of separation from Route 202 and a point south of Lamington Road. With one or two exceptions, the frontages along both sides of the road are developed with one family houses. Eleven lots containing 18.5 acres of the site's total of 30.14 acres, all have a depth of some 600 feet. Taking into account that 4 of the 18.5 acres are "critical," the capacity of the site is 174 units.

Dobbs assigned zero capacity to this site because of the difficulty and cost of site assembly. In the short run, he is probably correct. In the long run, market pressures can be expected to cause the assembly of at least the rear portions of these lots with one or two points of access to Route 206. For purposes of this study, however, I have concurred with Dobbs' evaluation.

Site H (No. 8) Dobbs assumes that 20% of this 51.76-acre site will be developed for commercial uses, as permitted under the Township's applicable Planned Unit Development District regulations. Even though, as Dobbs also notes, the access to this site is difficult--which to me suggests that the optional use of 20% of the site for commercial uses will be foregone--I have accepted Dobbs' evaluation.

Site I (No. 9) This site encompasses 31.79 acres, of which 6.2 are "critical." It contains 4 single family houses on lots which average 7.95 acres. The zoning permits 10 dwellings per acre. The total value of the entire tract for such development can be conservatively estimated at close to \$4 million (using the generally accepted premise that developers are prepared to pay around \$15,000 per unimproved acre of readily useable land zoned for townhouse development). For these reasons, I rejected Dobbs'

assumption that the existing houses render this land unavailable for development.

Site J (No. 10) Bedminster and Dobbs agree on the capacity of the site, but Dobbs alleges that the presence of a single house on this eminently developable 73.25-acre site makes it unavailable for development. The site adjoins The Hills and the approved site plan of the Hills development provides access to this site. Its development capacity of nearly 600 units under its 10 units per acre PUD classification makes it worth perhaps as much as \$9 million or more. Under the circumstances, I cannot support Dobbs' claim that this site should not be counted.

- b. Does the Bedminster Zoning Provide a Reasonable Opportunity for the Provision of Low- and Moderate Income Housing?

The answer to the question in the above title is a function of the probable number of affordable units that would be provided under the applicable regulations

on each of the sites zoned to permit housing at higher densities (6 to 12 units per acre).

The analysis which follows deals with the several sites in the order of the immediacy of their availability for development and assumes that the "affordability" aspects of the Land Development Regulations will be adjusted to comply fully with Mount Laurel II.

(1) Sites Available for Early Development

Site K (11) The Hills development will produce 260 units approved as affordable by the Court.

Sites I (9) and J (10) These two sites, which are zoned for 10 units per acre with a mandatory 20 percent affordable housing set-aside, have access to adequate sewer capacity and can thus be assumed to provide a reasonable opportunity for the construction of 171 units of affordable housing (one-fifth of their aggregate capacity of 856 units).

Site L (12) This site, which is zoned MF and which has a capacity of 177 units, also has access to available sewer capacity. The current regulations do not impose a mandatory set-aside in MF Districts. The Township's proposed amendment, however, would impose a 35% minimum affordable housing requirement. As I will discuss at greater length in the analysis of those Bedminster Land Development Regulations that are related to affordable housing, the economic feasibility of a 35% requirement is doubtful. For this reason, I am crediting this site with only 20% of its total capacity, or 35 units.

Site E (5) This site, which is also zoned MF, has a total capacity of 199 units, including 40 affordable units (at 20% of the total). The availability of this site is a function of the successful resolution of two problems which diminish the ability of the

existing Bedminster-Far Hills sewage treatment plant to accept additional loads. Part of the existing capacity of the plant is being held in reserve for AT&T in addition to its current usage. AT&T may be willing to relinquish this excess. The capacity of the plant is also affected by storm water infiltration which may be curable.

The Township will attempt to work out these problems in the near future. Since the Mount Laurel II mandate allows the Township up to six years for the development of the needed sites, I believe that this site should be credited with at least 20% of its capacity at this time. If the Township's efforts fail to resolve the sewerage capacity problem within the next year or two, other sites would have to be substituted.

One alternate possibility is using the entire site for subsidized senior citizen housing, in which case its entire 199-unit capacity would be devoted to affordable housing. I deem this to be a realistic alternative inasmuch as the federal Section 202 Senior Citizen Housing program is still available and the location of the site, immediately adjoining the Bedminster Village Center, makes it eminently suitable for such housing.

Funding commitments for Section 202 projects are awarded exclusively to non-governmental non-profit sponsors on a competitive basis, so that the Township's interest, desire and success in encouraging the establishment of an eligible sponsor organization in the next two or three years will be a major determinant of whether the site will be credited with 40 or 199 units towards its compliance with Mount Laurel II.

Altogether the sites which can be classified as providing the required "reasonable opportunity" thus have the capacity for 506 to 665 units of affordable housing. Site L (12), which is also located near shopping in the Pluckemin Village area, was not credited with the possibility of its being used for Section 202 housing in its entirety because, without a substantial change in federal housing policies, Bedminster would be unlikely to gain approval of two sites within a two to three year period.

(2) Sites Available for Later Development

Sites A (1) and D (4) zoned PRD at 6 units per acre, together have a capacity of 102 units and could thus provide 20 units of affordable housing. Site G (7), zoned PRD at 8 units per acre, has a capacity of 514 units, or 103 affordable units. Site H (8) has a capacity of 414 units, including 83 affordable units, under its PUD, 10-unit per acre zoning. All four sites will only be useable following expansion of sewer services which will require time.

The availability within the next six years of Sites B (2) and C (3), with their aggregate

capacity of 245 units (including 49 affordable units) is conjectural since it would depend upon site assembly, redevelopment, or willingness of individual owners to proceed with relatively small developments on their own.

The 255-unit affordable housing capacity of the six sites discussed above, though real, is thus not credited against Bedminster's current mandate under Mount Laurel II.

To summarize:

	<u>Site Nos.</u>	<u>Affordable Units</u>
<u>Available for Immediate Development:</u>	I (9) & J (10)	171
	K (11)	260
	L (12)	45 35 ^{lyr}
Sub-Total		466
<u>Probably Available Within Three Years:</u>	E (5)	<u>40-199</u>
Total Affordable Units Reasonably Provided For:		506-665
<u>Other Affordable Units Which May Be Constructed on Rezoned Sites after 1990</u>	A(1), B(2), C(3), D(4), G(7), H(8)	<u>255</u>
<u>Total Zoned Capacity</u>		761-920

* * *

In its decision, the Supreme Court was aware of the possibly deleterious effect of a wave of

development too sudden and large to be absorbed in an orderly fashion by small rural or suburban municipalities:

"...any changes brought about by this opinion need not be drastic or destructive. Our scenic and rural areas will remain essentially scenic and rural, and our suburban communities will retain their basic suburban character..."²³

In a communication to me dated December 19, 1983, Mr. Richard Coppola, Bedminster's planning consultant, stated in part as follows:

"...the current (1980) population of the Township is 2,469 people who are housed in 938 total housing units. With the development of The Hills PUD only, the population of the Township will have increased by a factor of 2.3 to 5,670 people. When currently sewered Sites I, J and L also are developed, the population of the Township will have increased to 8,180 people, which is more than three (3) times the current population. At that time, and assuming no other residential development in the municipality has occurred, the total number of dwelling units in the municipality will have increased three and one-half (3.5) times.

The impact on the school systems serving the Township is even more dramatic. By the time The Hills PUD is developed, the Township may have to expand its lone elementary school since the rated functional capacity of the school will have been exceeded. Additionally, Bedminster Township will have doubled the number of students it currently sends to the regional high school located in Bernards

²³ 92 N.J. 220.

Township. At the time that Sites I, J and L are developed, the Township will need additional elementary school space equal, almost, to that which currently exists (709 elementary age students vs 404 rated functional capacity)."

The impact described above would result from development that would produce 506 certain affordable units and possibly as many as 665.²⁴ The Township's "fair share" allocation recommended in this report amounts to ~~950~~⁹⁴⁴ units of such housing. The difference between the ~~950~~⁹⁴⁴ required affordable housing units and the 506-665 units provided for thus amounts to ~~285-444~~²⁷⁹⁻⁴³⁸ units. If these additional units were provided through a 20 percent mandatory set-aside, the total additional development would amount to ~~1,425-2,220~~^{1,395-2,190} units. This would add approximately ~~3,500~~³⁴⁰⁰ to ~~5,450~~⁵³⁵⁰ persons to Bedminster's already projected 1990 population of 8,180 inhabitants. The total increase above the Township's 1980 population of 2,469 would amount to between ~~9,200~~^{9,100} and ~~11,150~~^{11,050} persons, while the rate of increase of would be ~~475~~⁴⁶⁵ to ~~550~~⁵⁴⁵ percent. This increase would occur not in ten, but in six years, since the population of the Township has

²⁴ Although the impact may be reduced slightly if Site E(5) is developed with senior citizen housing.

remained relatively stable between 1980 and the end of 1983.

I believe that such a rate of growth would be excessive. It would destroy many of the intangible values which invest Bedminster with its present quality. On the other hand, providing 506-665 units of Mount Laurel II-type housing within six years will definitely cause it to lose that negative quality--exclusionary zoning--which the Mount Laurel II decision intends to eradicate.

My opinion is based also on the possibility that, if the methodology recommended in the CUPR Study is accepted in the near future, Bedminster's allocation may be lowered to approximately the level provided for in its current zoning.

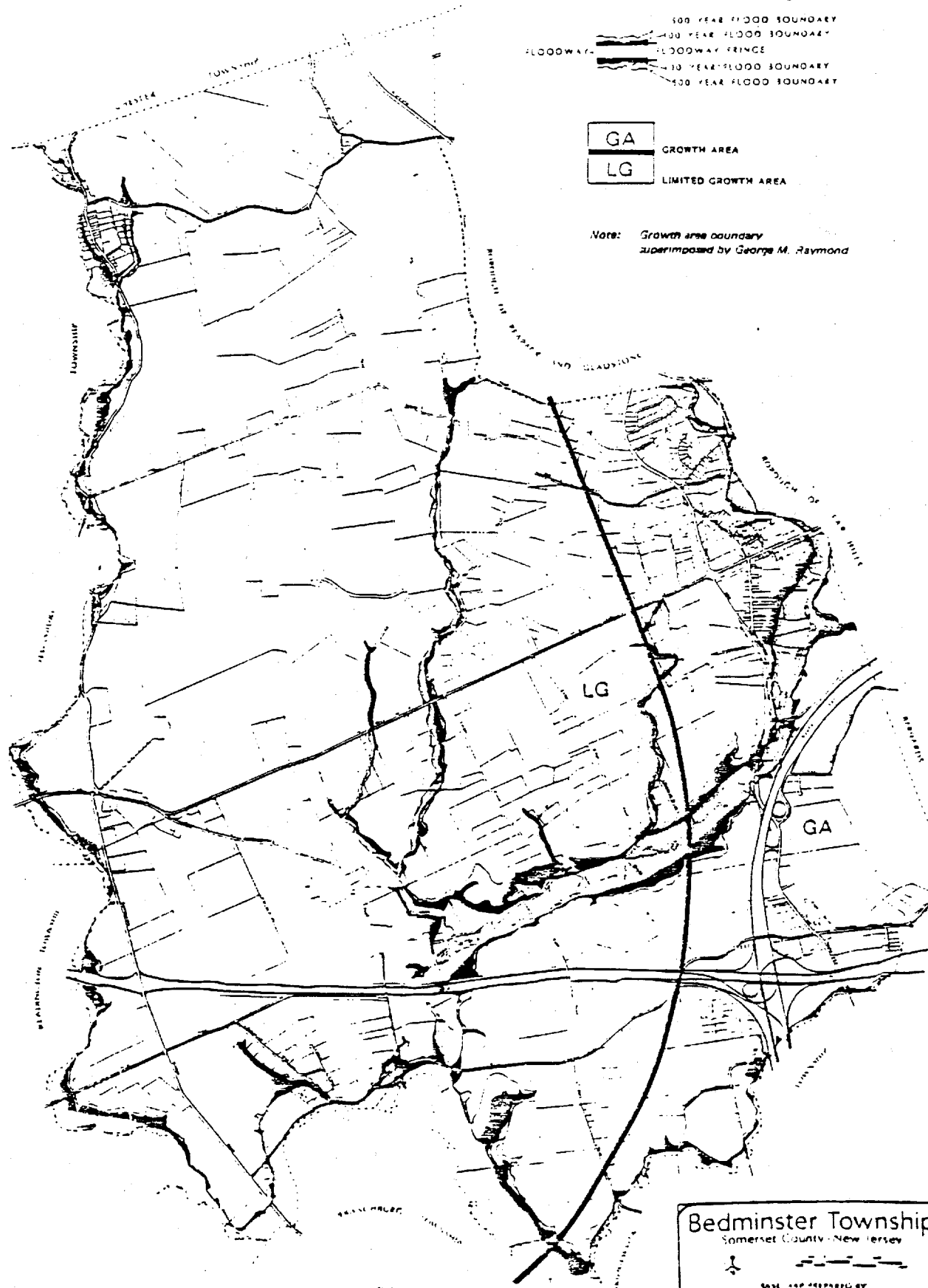
Any continuing imbalance that may result from acceptance of this level of compliance at this time would be subject to review and adjustment at the end of the six year repose period.

c. Recommendation

Based on the above, I recommend that the Township's current zoning, modified so as to require a mandatory

set-aside of not less than 20 percent of affordable units in all MF Districts, be found to comply with the Mount Laurel II mandate that, by 1990, Bedminster provide a reasonable opportunity for the construction of its fair share of the present and prospective low- and moderate-income housing need in its housing region.

Critical Areas: Flood Plains NOVEMBER 1982



SOURCE: FLOOD INSURANCE RATE MAPS AND FLOOD BOUNDARY-FLOODWAY MAPS
 PROVIDED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY SEPT. 10, 1982.

Bedminster Township
 Somerset County - New Jersey

SCALE AND PREPARED BY
 GEORGE M. RAYMOND, ENGINEER P.E.
 SOMERSET COUNTY ENGINEERING DEPARTMENT, 1000 N. 1ST ST., BEDMINSTER, N.J. 08917