

- Brief and Appendix on Behalf of respondent Hillsborough Alliance for Adult Living, L.L.P.

Pg. 133

HI 000039B

-----+
IN THE MATTER OF THE PETITION
FOR SUBSTANTIVE CERTIFICATION
OF THE HOUSING ELEMENT AND
FAIR SHARE PLAN OF THE
TOWNSHIP OF HILLSBOROUGH,
SOMERSET COUNTY, SUBSTANTIVE
CERTIFICATION 31-99
-----+

SUPERIOR COURT OF
NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-5349-95-T1

CIVIL ACTION

BRIEF AND APPENDIX ON BEHALF OF RESPONDENT
HILLSBOROUGH ALLIANCE FOR ADULT LIVING, L.L.P.

Of Counsel and On the Brief:
Peter A. Buchsbaum, Esq.

On the Brief:
Mark H. Schepps, Esq.

GREENBAUM, ROWE, SMITH, RAVIN,
DAVIS & HIMMEL LLP
Metro Corporate Campus One
P.O. Box 5600
Woodbridge, New Jersey 07095
(732) 549-5600
Attorneys for Respondent
Hillsborough Alliance for Adult
Living, L.L.P.

7/3/97

TABLE OF CONTENTS

	<u>Page</u>
TABLE TO APPENDIX	iv
TABLE OF AUTHORITIES	v
INTRODUCTION	1
PROCEDURAL HISTORY	4
STATEMENT OF FACTS	5
LEGAL ARGUMENT	20

POINT I

THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING DID NOT ACT IN AN ARBITRARY, CAPRICIOUS, OR UNREASONABLE MATTER WHEN, IN THE EXERCISE OF ITS EXPERTISE AND DISCRETION IT GRANTED SUBSTANTIVE CERTIFICATION TO THE HILLSBOROUGH TOWNSHIP HOUSING PLAN.	20
A. The Decisions Of An Administrative Agency Such As The Council On Affordable Housing Are Entitled To Deference In This Court.	20
B. The Decisions Of The Council On Affordable Housing In Granting Or Denying Substantive Certification Are Entitled To Even More than the Usual Deference To Administrative Discretion Because COAH Has Been Entrusted With The Delicate Task Of Administering The Constitutional Obligation Imposed On Municipalities To Provide Reasonable Opportunities For Affordable Housing	22
C. Given The Deference Due To It By This Court, COAH Did Not Act Arbitrarily Or Capriciously In Determining That The Hillsborough Plan, Including The HAAL Site, Should Be Approved	24
1. In Light Of The Background Legal Principles Outlined In Points IA And 1B, Supra, COAH'S Action Was Clearly Sustainable	24

2.	COAH'S Action As To The Provision Of Sewerage Was Rational Despite Appellant's Strenuous Claims To The Contrary At AB51-57	27
3.	Environmental And Planning Con- straints	29

POINT II

	COAH ACTED WELL WITHIN THE BROAD DISCRETION AFFORDED TO IT IN DETERMINING THAT NEITHER STATE PLANNING CONSIDERATIONS AS A WHOLE, NOR THE LACK OF CENTER DESIGNATION FOR THE HAAL SITE, PRECLUDED APPROVAL OF HILLSBOROUGH'S PLAN FOR MEETING ITS AFFORDABLE HOUSING OBLIGATIONS	30
--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----

A.	COAH Was Correct In Declining To Enforce The State Plan As A Mandatory, Site Specific Zoning Map Which Precludes Certain Uses, Including The Proposed HAAL Use	31
1.	The State Plan Is Not Site Specific	31
2.	The General Policies In The State Plan Do Not Dictate A Reversal Of COAH's Determination	36
3.	Specific State Plan Policies Also Render COAH'S Action Non-Arbitrary	37
B.	By Requiring A Waiver Of Its Rules With respect to Center Designation, COAH In Fact Applied A More Stringent Requirement To Hillsborough And The HAAL Site Than Was Dictated By Its Regulations, Because No Waiver Of State Plan Center Designation Was Required Under The Facts Of This Case	42

POINT III

	COAH'S ACTION IN APPROVING A WAIVER OF STATE PLAN CENTER DESIGNATION WAS, UNDER THE FACTS OF THIS CASE, ENTIRELY REASONABLE AND NOT ARBITRARY AND CAPRICIOUS	45
--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----

A.	COAH'S Formal Waiver Provision is Constitutional	45
----	---------------------------------------------------------------	----

B.	COAH's Formal Waiver Provisions Should Be Read Disjunctively Rather Than Conjunctively	52
C.	COAH'S Informal Waiver Provisions Are Not Subject To The Rule-Making Requirements Of The Administrative Procedure Act	54
1.	The Policy Does Not Constitute Formal Agency Action	54
2.	Even If The Policy Is Substantive, It Is Still Not A Rule	56
D.	Under The Facts Of This Case, Grant Of The Waiver Was Not Arbitrary And Capricious	61
	CONCLUSION	65

TABLE TO APPENDIX

1.	Van Cleef Engineering Associates Greenbriar at the Village Maps	1a
2.	Township of Hillsborough Master Plan Housing Plan Element and Fair Share Plan Excerpts	6a
3.	Hillsborough Township Master Plan Update to Land Use Element Greenways Narrative and Map	9a
4.	New Jersey State Development and Redevelopment Plan Excerpts	20a
5.	The Centers Designation Process Excerpt	51a
6.	Somerset County Cross Acceptance Report	53a

TABLE OF AUTHORITIES

<u>Cases Cited</u>	<u>Page</u>
<u>165 Augusta Street, Inc. v. Collins,</u> 9 N.J. 259 (1952)	53
<u>American Cyanamid v. Dept. of Envir. Prot.,</u> 231 N.J. Super. 292 (App. Div.), certif. denied, 117 N.J. 89 (1989)	57
<u>Bressman v. Gash,</u> 131 N.J. 517 (1993)	52
<u>Burbridge v. Mine Hill Township,</u> 117 N.J. 376 (1990)	50
<u>Calton Homes, Inc. v. Council on Affordable Housing,</u> 244 N.J. Super. 438 (App. Div. 1990), certif. denied, 127 N.J. 326 (1991)	23
<u>Crema v. N.J. Dept. of Environmental Protection,</u> 94 N.J. 286 (1983)	46, 47
<u>Englewood Cliffs v. Englewood,</u> 257 N.J. Super. 413, (App. Div. 1992), <u>aff'd,</u> 132 N.J. 327, <u>cert. denied,</u> 510 U.S. 991, 114 S. Ct. 547, 126 L. Ed. 2d 449 (1993)	20, 21
<u>Gloucester County Welfare Bd. v. New Jersey Civil</u> <u>Serv. Comm'n. 93 N.J. 384 (1983)</u>	20
<u>Hills Dev. Co. v. Bernards Tp. in Somerset Cty.,</u> 103 N.J. 1 (1986)	22-24
<u>Hills Development Co. v. Bernards Township,</u> 229 N.J. Super. 318 (App. Div. 1988)	24
<u>In re Berardi,</u> 23 N.J. 485 (1957)	46
<u>In re Denville,</u> 247 N.J. Super. 186 (App. Div. 1991) <u>rev'd, sub nom. In re Warren, 132 N.J. 1 (1993)</u>	23
<u>In re Roseland,</u> 247 N.J. Super. 203 (App. Div. 1991), <u>rev'd, sub nom. In re Warren, 132 N.J. 1 (1993)</u>	23

<u>In re Solid Waste Util. Cust. Lists,</u> 106 <u>N.J.</u> 508 (1987)	55, 58
<u>In re Warren,</u> 132 <u>N.J.</u> 1 (1993)	23, 24
<u>In Review of Health Care Admin. Bd. v. Finley,</u> 168 <u>N.J. Super.</u> 152, 166 (App. Div. 1979), <u>aff'd</u> , 83 <u>N.J.</u> 67, <u>cert. denied</u> , <u>sub nom.</u> <u>Wayne Haven Nursing Home v. Finley</u> , 101 <u>S. Ct.</u> 342, 449 <u>U.S.</u> 944, 66 <u>L. Ed. 2d</u> 208 (1980)	46
<u>John Doe v. Poritz,</u> 142 <u>N.J.</u> 1 (1995)	59
<u>Matter of Hazardous Waste facility,</u> 258 <u>N.J. Super.</u> 483 (App. Div. 1992)	53
<u>Metromedia, Inc. v. Director, Div. of Taxation,</u> 97 <u>N.J.</u> 313 (1984)	56-61
<u>Metzdorf v. Rumson,</u> 67 <u>N.J. Super.</u> 121 (App. Div. 1961)	50
<u>Motyka v. McCorkle,</u> 58 <u>N.J.</u> 165 (1971)	46
<u>Mt. Laurel Tp. v. Public Advocate of N.J.,</u> 83 <u>N.J.</u> 522 (1980)	46
<u>New Jersey Bell Telephone Co. v. Communications Workers,</u> 5 <u>N.J.</u> 354 (1950)	45
<u>Schierstead v. City of Brigantine,</u> 20 <u>N.J.</u> 164 (1955)	46
<u>Service Armament Co. v. Hyland,</u> 70 <u>N.J.</u> 550 (1976)	53
<u>So. Burlington Cty. N.A.A.C.P. v. Mount Laurel Tp.,</u> 67 <u>N.J.</u> 151, <u>cert. denied</u> , 423 <u>U.S.</u> 808, 46 <u>L. Ed. 2d</u> 28, 96 <u>S. Ct.</u> 18 (1975)	22
<u>So. Burlington Cty. N.A.A.C.P. v. Mount Laurel Tp.,</u> 92 <u>N.J.</u> 158, (1983)	22, 33
<u>State v. Garthe,</u> 145 <u>N.J.</u> 1 (1996)	58

<u>Tocco v. N.J. Council on Affordable Housing,</u> 242 <u>N.J. Super.</u> 218 (App. Div.), <u>certif. denied</u> , 122 <u>N.J.</u> 403 (1990), <u>cert. denied</u> , 111 <u>S.Ct.</u> 1389, 499 <u>U.S.</u> 937, 113 <u>L. Ed. 2d</u> 446 (1991)	23
<u>Van Dalen v. Washington Tp.,</u> 120 <u>N.J.</u> 234 (1990)	20, 21, 24
<u>Ward v. Scott,</u> 11 <u>N.J.</u> 117, (1952)	45, 47-50, 52
<u>Wes Outdoor Advertising Co. v. Goldberg,</u> 55 <u>N.J.</u> 347 (1970)	46

Statutes Cited

Page

33 <u>U.S.C.A.</u> §1288	27
<u>N.J.S.A.</u> 13:19-17	36
<u>N.J.S.A.</u> 40:55D-45.2(1)	9
<u>N.J.S.A.</u> 40:55D-70d	47, 48, 51
<u>N.J.S.A.</u> 40:55D-70c	52, 53
<u>N.J.S.A.</u> 52:14B-2(e)	54, 55
<u>N.J.S.A.</u> 52:14B-4	58-59
<u>N.J.S.A.</u> 52:18A-196, <u>et seq.</u>	31
<u>N.J.S.A.</u> 52:18A-200	31
<u>N.J.S.A.</u> 52:18A-201	30
<u>N.J.S.A.</u> 52:27D-16	22
<u>N.J.S.A.</u> 52:27D-301	22
<u>N.J.S.A.</u> 52:27D-307c(2)(e)	34
<u>R.S.</u> 40:55-39	48
<u>R.S.</u> 40:55-39c	53

<u>Regulations Cited</u>	<u>Page</u>
<u>N.J.A.C.</u> 5:91	49, 51
<u>N.J.A.C.</u> 5:91-4.1	51
<u>N.J.A.C.</u> 5:91-6.1 <u>et seq.</u>	51
<u>N.J.A.C.</u> 5:91-12	49
<u>N.J.A.C.</u> 5:91-13.1 <u>et seq.</u>	51
<u>N.J.A.C.</u> 5:92	49
<u>N.J.A.C.</u> 5:93	49, 51
<u>N.J.S.A.</u> 5:93, Appendix A	35
<u>N.J.A.C.</u> 5:93-1	14
<u>N.J.A.C.</u> 5:93-1.3	25, 26
<u>N.J.A.C.</u> 5:93-2.3	35
<u>N.J.A.C.</u> 5:93-4.2 (d)	29
<u>N.J.A.C.</u> 5:93-4.3	27
<u>N.J.A.C.</u> 5:93-4.3 (c)	27
<u>N.J.A.C.</u> 5:93-5.4	25, 54
<u>N.J.A.C.</u> 5:93-5.4 (c)	13, 16, 18, 42, 63
<u>N.J.A.C.</u> 5:93-5.4 (d)	42, 43, 62, 64
<u>N.J.A.C.</u> 5:93-5.6,	25
<u>N.J.A.C.</u> 5:93-5.6 (b)	25, 29
<u>N.J.A.C.</u> 5:93-15.1	44, 49, 52-55, 60-61
<u>N.J.A.C.</u> 5:93-15.1 (a)	51
<u>N.J.A.C.</u> 5:93-15.1 (b)	13, 48
<u>N.J.A.C.</u> 5;93-4.2 (c)	29
<u>N.J.A.C.</u> 7:15-5.18	27

N.J.A.C. 17:32-1.1 et seq. 35
N.J.A.C. 17:32-7.1 32
N.J.A.C. 17:32-8.2(b) 33

INTRODUCTION

This is a case brought by a group which had taken no part in the development of Hillsborough's Fair Share Plan and Housing Element over a long period of time, had never challenged any of the approvals on which the plan was based, had never challenged the zoning sanctioning such approvals, and had never filed any objection or otherwise participated in the open mediation process of the Council on Affordable Housing's ("COAH"). The plan had been carefully formulated, received by the Council on Affordable Housing without objections, and was ready for final substantive certification. Only at the eleventh hour, after all this had taken place, did Appellant first claim that issues of deep principle involving the relationship between COAH and the State Plan have to be resolved in this case.

In making its arguments respecting this matter, Appellant ignores the facts of this case respecting state planning concerns. This is in sharp contrast to the approach taken by the Director of the Office of State Planning. In supporting COAH's fact-driven response in this matter, the Director determined that it presented a variety of unique factors bearing on the relationship between the State Plan and municipal housing obligations as enunciated first in the Mt. Laurel opinion, and later in the Fair Housing Act as administered by the Council on Affordable Housing. Appellant thus ignores the five or more years this particular housing plan was in gestation, the two local development approvals already granted to it, and the unchallenged nature of the affordable housing zoning underlying

these approvals. This zoning was adopted long before this matter was certified by COAH.

Appellant also ignores the unique use of the site as proposed. As amended in 1995, the approved General Development Plan calls for an extended care and congregate living facility, as well as a variety of other housing choices for senior citizens, together with a 40 unit low and moderate income development for families. Appellant additionally fails to mention that the project it attacks will, at full build out, provide 450 low and moderate income housing units, thus yielding one of the largest such totals of any development in suburban New Jersey.

Furthermore, Appellant ignores the unique character of the site. It is not in the middle of virgin fields; on the contrary, it is near the heavily developed center of Hillsborough. Surrounding the site is a variety of barriers, including a river, railroads, and major roads. All of these factors combine to set this site off as a unique tract of land. Further, it is not, as Appellant asserts, distant from sewer, water and other infrastructure. In fact it is served by sewer and water lines which run right up to and alongside the site. And it is not, as Appellant's position could lead one to believe, far from developed Planning Areas as designated in the State Development and Redevelopment Plan ("SDRP"). It borders an extensive growth area which, in fact, encompasses a significant portion of the site.

Applying its expertise to these facts, the New Jersey Council on Affordable Housing, with the full concurrence of the Office of State Planning ("OSP"), found that the Hillsborough Alliance site was well qualified for inclusion in a Fair Share Plan and Housing Element, and that such inclusion did not violate any state planning principles. In the reasonable exercise of their discretion as expert administrative agencies charged with both affordable housing and state planning, neither COAH nor the Director of the Office of State Planning found Hillsborough's long considered housing plan to constitute such a threat to planning as to warrant its rejection. On the contrary, this plan was found to more than adequately provide for affordable housing in the region. The Court should respect this determination and affirm COAH's granting substantive certification to Hillsborough Fair Share Plan and Housing Element.

PROCEDURAL HISTORY

On February 28, 1995, Hillsborough Township petitioned the Council on Affordable Housing for substantive certification of its Housing Element and Fair Share Plan. The new construction component of this plan, of some 160 units, consists entirely of 96 age restricted units and 40 family rental units, together with a 24 unit bonus for these family rentals. All units are to be located in Respondent Hillsborough Alliance for Adult Living's ("HAAL's") planned adult community/health care facility site.

Although public notice of this petition was given at or about the time the petition was filed, and an objection was taken pursuant to that notice, Appellant New Jersey Future declined to participate in mediation with respect to this plan. Instead, almost a year later, when COAH was on the verge of granting substantive certification, Appellant first submitted written comments on March 15, 1996, urging that the grant of substantive certification be delayed, even though it had been pending for nearly one year. COAH rejected this request and granted substantive certification of the Hillsborough Fair Share Plan and Housing Element on April 3, 1996. On May 20, 1996, Appellant filed a Notice of Appeal with this Court challenging COAH's action. An initial Statement of Items Comprising the Record and an appeal was filed with this Court on October 9, 1996. An amended Statement of Items Comprising the Record was filed on February 4, 1997.

STATEMENT OF FACTS

Respondent Hillsborough Alliance for Adult Living generally adopts the Counterstatement of Facts set forth in the brief of Hillsborough Township which sets forth the history of the zoning of the HAAL site. See HRB1-9¹. HAAL does wish, however, to add information as to the character of its site which is part of the Hillsborough Fair Share Plan. The site is not remote. It was identified in the 1992 State Development Redevelopment Plan (hereafter "SDRP" or "State Plan") as a Village Center that is suitable for a development of some 3,000 units. This is the exact number of units proposed by HAAL and approved by Hillsborough in 1995. It features a prominent health care emphasis; a 25 year contract with the Hunterdon Medical Center has been adopted as part of the Developer's Agreement for the site.

Most importantly, there is sewer service to the site. As the sewer service area map in the Appendix demonstrates, a sewer line of adequate capacity does extend to the front of the HAAL site. See LRA3a. Thus, to reach the site itself, not even one inch of extra line needs to be constructed. The alleged lack of sewer on the site consists solely of the fact that internal sewers within the proposed construction area have not been built. This is hardly unusual. As with any proposed develop-

¹ Reference to Appellant's Appendix shall be as follows: AA page #; reference to Appellant's Brief shall be: AB page #; reference to Respondent Township of Hillsborough's Brief shall be: HRB page #; reference to Respondent Township of Hillsborough's Appendix shall be: HRA page #; and reference to Respondent Hillsborough Alliance for Adult Living's Appendix shall be LRA.

ment, the internal lines which will crisscross the site once it has been developed have not yet been built. From a sewer standpoint, the site is not remote from existing facilities.²

The same is true for water facilities. There is water service to this site. It is true that internal water lines, like internal sewer lines, have not yet been constructed because no development is yet in place. Yet, as with sewer lines, not one single inch of water main needs to be extended to the site from surrounding areas in order to connect the site to existing water service. The water lines are already there.

In addition, the site is not literally surrounded by Planning Area 4, as suggested in the map excerpts provided in Appellant's Appendix. See AA231a-232a. Appellant has chosen to provide a partial view -- the western half -- of the map incorporated in Hillsborough's Housing Element. The full version of that same map is provided in Respondent's Appendix. See LRA7a-8a. Appellant's version of the map misleads one to conclude that the site is surrounded by the "unspoiled" land of Planning Area 4. The reality of the situation, however, as borne out by the complete map, is that the site is located partially within Planning Area 2, adjacent to the more densely populated portions of the township, most of which have a Planning Area 2 designation. It is not, as Appellant would like

² Furthermore, as will be described more fully infra, the site is partially within Planning Area 2, which is designated in the SDRP as a suburban growth area. Thus, not only is the site adjacent to existing sewer lines, it is next to and partially located within a pro-development Planning Area which accompanies such sewers. None of these facts are mentioned by Appellant.

this Court to believe, in the middle of nowhere. In fact, by location, the site is close to the Hillsborough Municipal Building and is not far from the junction of Route 206 and Amwell Road, which is the busy hub of Hillsborough. COAH and the Office of State Planning could thus easily find that this site is not in a remote rural location.

The site has discrete boundaries which combine to form a border to it as a development area. Part of the site is bounded by a railroad. Another part is bounded by the South Branch of the Raritan River. Still other areas are bounded by Amwell Road, which is a major road. There is also a greenway surrounding the outlying portions of the site. See LRA9a-19a. In fact, it is only to the east of the site, in the direction of existing development, that the site has no real logical boundaries. Here the site melds into the existing development pattern. See LRA12a.

Moreover, Appellant ignores the existing commitments to the site that Hillsborough has made. The HAAL has vested rights by virtue of its General Development Plan obtained in 1992, and renewed in 1995, as well as by the 1996 Developer's Agreement. See AA178a-185a; AA40a-50a. The determination of vested rights, from which no appeal has been taken, bind Hillsborough to allow development on this site regardless of whether Hillsborough receives substantive certification from COAH or not. Thus, development on this site may proceed under existing zoning, even if substantive certification is disapproved. In that case, however, Hillsborough would not get credit for all of the low

and moderate income units produced on this site. This fact, to which Office of State Planning Director Simmens averted in his letter approving a waiver of Center designation for the site, is essentially ignored in Appellant's statement of facts.

It should also be noted that Respondent HAAL has had its engineer check the maps to determine the proportion of land in Planning Area 2, 4 and 5. In fact, some 8.7% of the HAAL site is in Planning Area 2, not the 5% claimed by Appellant. Moreover, less than 1% of this site is in Planning Area 5, not the 5% claimed to be in this environmentally sensitive designation. See LRA1a. In sum, to the extent the Planning Areas are important, the relevant facts are that the HAAL site is substantially adjacent to Planning Area 2, that almost 10% of the site is located within Planning Area 2, and that the site was identified as a Center in the SDRP itself. Id.

Finally, with respect to Planning Area designations, the whole issue may well be mooted. Under the State Plan, Planning Area 2 is an area with sewer service. The Plan specifically states as follows:

The following criteria are intended as a general guide for delineating the Suburban Planning Area [Planning Area 2], and local conditions may require flexible application of the criteria to achieve the Policy Objectives of this Planning Area.

(1) Population densities of less than 1,000 persons per square mile; and

(2) A land area contiguous to the Metropolitan Planning Area where it can be demonstrated that the natural systems and the existing or planned urban infrastructure (includes public water supply, sewers, storm water drainage and transportation)

have the capacity to support development that meets the Policy Objectives of this Planning Area; and

(3) Land area greater than one square mile.

LRA31a-32a (emphasis added). By virtue of the Council on Affordable Housing Resolution, the HAAL site is slated for sewer service when the next round of cross acceptance begins on July 15, 1997.³ Accordingly, during the cross acceptance round that begins next month, the entire site will become eligible for Planning Area 2 treatment.

The Developer's Agreement between Hillsborough and HAAL, adopted pursuant to the approved General Development Plan and N.J.S.A. 40:55D-45.2(1), which authorizes such agreements, states that Hillsborough will cooperate with HAAL in obtaining Planning Area 2 (Suburban Development with sewers) designation, since the site:

Having been reviewed by the Office of State Planning (OSP) and the assurance given to COAH by OSP that during [the] 1995 cross acceptance process for the State Development Plan at the PAC site in Planning Area 4 [it] will be recommended for inclusion in Planning Area 2. This inclusion would not prohibit the approval of sewers by NJDEP but rather encourages such infrastructure.⁴

³ Although under the State Planning Act a re-make of the State Plan was due by June, 1995, three years after initial adoption of the plan, that task is just going forward now. According to the Commission, cross acceptance will begin on July 15.

⁴ The Developer's Agreement also provides for the eventual build out of 450 low and moderate income units. See ¶5, AA44a, stating that 15% of the total build out, or 450 units, must be low or moderate income.

AA45a. The Agreement is dated February 27, 1996. No appeal has been taken with respect to this Agreement even though the time period for such appeal elapsed over a year ago.

Against this factual background, the Council on Affordable Housing, before certifying the Hillsborough Plan, requested an opinion from the Office of State Planning as to the applicability of state planning considerations during the process of reviewing Hillsborough's Fair Share Plan for certification. By letter dated January 31, 1996, Herbert Simmens, the Director of the Office of State Planning ("OSP"), responded that his office, which is the administrative arm designated by statute for administering the State Planning Act, had no objection to a waiver. In supporting his findings, Mr. Simmens asserted the following:

1. The proposed PAC/HCF is located largely in Planning Area 4 with a small portion (5 percent) located in Planning Area 2. State Plan policy 20 (p28) states that "in instances where municipalities and counties identify a center at the intersection of two or more planning areas a center will be designated as lying within the area of lowest numerical value." Therefore any center designation for the PAC/HCF would be looked at under the Planning Area 2 policy objectives and criteria. Under the Memorandum of Understanding between COAH and the SPC, sites in Planning Area 2 are required to be located in designated centers.
2. "Hillsborough Village Square" is identified as a planned village in the State Plan.
3. The General Development Plan for the PAC/HCF was given initial approval in 1991, prior to the adoption of the State Plan.
4. The proposed extension of sewer infrastructure, if approved by the Department of Environmental Protection, would not extend very far beyond existing sewer infrastructure.

5. The request to include this site as part of the Township's fair share obligation is made jointly by the developer and the municipality.

6. The representation in your letter that COAH rules regarding the timely filing of a petition for substantive certification by Hillsborough would preclude the granting of a builder's remedy or site specific relief to an objector by COAH.

7. The principle in the COAH/OSP MOU which states that "Municipalities that are consistent with the State Plan's goals, objectives and policies, and that petition the Council within two years of filing a housing element with the Council, will receive the benefit of maximum flexibility with respect to Council certification."

8. The vigorous plan for acquisition of open space and easements by the Township, Somerset County, a neighboring community in Hunterdon County, and Hunterdon County. Consistent with the intent of Planning Area 4 these acquisitions will serve to create an open space green belt including much of the undeveloped lands in proximity to the PAC/HCF.

9. If a center designation petition were filed, I believe a reasonable case could be made that the project could meet many of the criteria for center designation, particularly if incorporated into a somewhat larger community development area. The PAC/HCF appears to meet many of the policy objectives of Planning Area 2. The PAC/HCF is consistent with many of the design characteristics of a planned village, including a range of housing types, sufficient density (well in excess of 3 dwelling units per net acre) and intensity of use, a pedestrian oriented commercial core and green, and adequate internal pedestrian linkages. Commercial and health care related employment is accommodated. The project is identified in local and county plans. Adequate transportation capacity would have to be demonstrated.

AA62a-63a.

Mr. Simmens also noted that the age restrictive nature of the project, even though it had diverse housing types, had not been specifically anticipated in the 1992 State Plan. He suggested that such projects be addressed in the revision to the State Plan, which is now being commenced. AA63a. Finally, Mr.

Simmens advised COAH that he had carefully considered the individual facts relating to this particular situation and his response was based on those individual facts:

It is important to emphasize that my recommendation is based on weighing all the factors involved in this issue and that no single factor is sufficient to be determinative. For example, the fact that a development was approved prior to the adoption of the State Plan would not on its own be sufficient justification to support a waiver, nor would the fact that it was identified as a planned village nor that the town and the developer were jointly agreeing on the site. Therefore, my conclusion concerning this request for a center designation waiver should not be viewed as a precedent for a future waiver request by any other municipality.

AA63a-64a.

Based on these detailed findings, reflecting a great deal of thought, Mr. Simmens advised COAH that the Office of State Planning had no objection to the granting of a waiver of the requirement of Center designation. He further advised that the Hillsborough Plan, with the HAAL site, could be approved by COAH, consistent with state planning principles, even if the HAAL site were not formally designated as a State Plan Center.

On April 3, 1996, the Council on Affordable Housing granted substantive certification in a Resolution. AA11a-26a. That Resolution specifically referenced Mr. Simmens' letter and also incorporated the findings of fact made in a Compliance Report written by COAH staff. Specifically, in the recitals in its Resolution, COAH found that:

WHEREAS, COAH confirms its support of the State Development and Redevelopment Plan (SDRP) and encourages center designation as set out in the Memorandum of Understanding of October 27, 1992; however, COAH policy states that COAH may waive center designa-

tion as per N.J.A.C. 5:93-5.4(c) when a new site meeting a 12-year [affordable housing] obligation was jointly proposed by the municipality and the developer and the site has water and sewer capacity and accessibility and is determined to be available, approvable, suitable and developable; . . .

AA23a. The HAAL site met these criteria. The Resolution went on to state:

WHEREAS Hillsborough's waiver request meets COAH criteria for waiver pursuant to N.J.A.C. 5:93-15.1(b) in that the waiver fosters the production of affordable housing, the waiver fosters the intent, if not the letter of COAH rules and the strict application of the rule would work unnecessary hardship as set forth in the COAH Compliance Report dated March 4, 1996; .

AA24a. Implementing these findings, COAH, also in the recitals of its resolution granting approval to Hillsborough, not only granted substantive certification, but specifically imposed the following detailed schedule for the production of affordable housing units:

<u>Market units completed</u> <u>completed</u>	<u>Affordable units</u>
231 (30%)	32 (24%)
462 (60%)	64 (47%)
616 (80%)	96 (70%)
693 (98%)	136 (100%)
707 (100%)	

AA25a.

The Compliance Report, which was incorporated in, and indeed physically attached to the COAH Resolution of Substantive Certification, contains an extensive discussion, which again was essentially ignored by Appellant, of the suitability of the site under COAH regulations, as well as its eligibility for a waiver.

With respect to the site's availability, developability, suitability, and approvability, the usual requirements for all new construction sites for affordable housing, the Compliance Report found as follows:

1. This is a new site meeting a 12-year obligation and is jointly proposed by Hillsborough and the developer. The PAC development received general development plan approval from the Hillsborough Township Planning Board in 1991, prior to the adoption of the SDRP in June 1992. The township proposed this new site in its 1995 housing element and fair share plan to address its second round affordable housing obligation. The municipality and the developer have drafted a developer's agreement for 135 (sic) affordable housing units at this site that will address the township's 12-year inclusionary obligation.

2. The site has water and sewer. Public water service will be provided by the Elizabethtown Water Company and the entire tract is within the sewer service area of the Hillsborough Township Municipal Utility Authority. The tract is included in the Somerset County Waste Water Management Plan which is under review by the New Jersey Department of Environmental Protection (DEP). Upon DEP approval, sewage from the tract will be carried to the Somerset Raritan Valley Sewerage Authority regional wastewater treatment plant in Bridgewater Township.

3. The site is available. As per the definition in N.J.A.C. 5:93-1, the owner/developer of the PAC has acquired clear title or has a contract interest for the site, free of encumbrances.

4. The site is approvable. The PAC site first received general development plan approval in 1991. On December 7, 1995, it received approval of an amended General Development Plan by the Hillsborough Township Planning Board that reduced the total number of potential units from 11,000 to 3,000.

5. The site is suitable. It is adjacent to compatible land uses such as the municipal complex, the library, police department and the YMCA. It has vehicular access via Amwell Road, River Road and Mill Lane. It has no environmental constraints which would prevent development of the site at 3,000 units.

6. The site is developable. As stated above, public water service will be provided by the Elizabethtown

Water Company and the entire tract is within the sewer service area of the Hillsborough Township Municipal Utility Authority. The tract is included as an amendment which is under DEP review.

AA33a. These factual findings have not been challenged by Appellant. In addition, the Compliance Report made detailed findings with respect to the proposed waiver of formal designation of the site as a Center. The Report went into detail on three specific findings of fact with respect to the grant of a waiver:

1. The waiver fosters the production of affordable housing. The site not only provides for all of Hillsborough Township's new 12-year cumulative obligation but the developer has agreed to provide an additional 15 percent of affordable units for Hillsborough's future fair share obligations. This provision is contained in a signed agreement between Hillsborough Township and the developer which resulted from the mediation process.

2. The waiver fosters the intent, if not the letter, of COAH's rules. COAH's rules regarding center designation in Planning Areas 4 and 5 were based upon an understanding that sites in Planning Areas 4 and 5 did not have infrastructure. After adoption of the rules, COAH learned that this was not accurate and subsequently a meeting between representatives from COAH, the Office of State Planning (OSP) and the State Planning Commission (SPC) took place in the fall of 1994. At that time it was agreed that COAH would not amend its rules with regard to Planning Areas 4 and 5 but would offer a waiver to towns that fell into two specific categories (see attached policy memo, Exhibit B). The Hillsborough site falls into category 2. The policy was articulated at COAH's December 1994 meeting and published in the COAH newsletter. The waiver request meets the criteria of COAH's articulated policy and fosters the intent and pronounced letter of COAH's rules.

3. The strict application of the rule would create an unnecessary hardship. COAH first learned of Hillsborough's PAC site in June 1991 in a letter forwarded to COAH's executive director. The township has been proceeding in good faith to ensure that the site will meet COAH's regulations and policy so it could be included in Hillsborough's 12 year plan. The Hillsborough Township governing body petitioned COAH for substantive certification and the petition contained the PAC site. There was a 45 day period for objectors to file with COAH and the township. One objector did so and at the end of mediation, there were no contested issues of fact. The mediation report was presented at the February 1996 COAH meeting. The many reasons to now grant substantive certification are listed in this report. To not waive N.J.A.C. 5:93-5.4(c) would clearly create an unnecessary hardship.

AA33a-34a. It should be noted that these findings not only dealt with the present obligation, but also with the developer's commitment to provide 450 units over full build out as well. See Finding #1, supra. Finding #2 merely states what is the case here, namely that some tracts of land identified as rural in the State Plan do have access to water and sewer facilities, and thus could efficiently make use of same. In its third finding, COAH stated that Hillsborough's Plan, which was voluntarily submitted in the absence of litigation, was one which should be encouraged in order to foster affordable housing. COAH went on to state that there were so many reasons to grant substantive certification that to deny Hillsborough's request for same would be an interference with the production of such housing where there was a municipal blessing.

In addition to these detailed findings, the COAH report set forth ten specific principles as contained in the Memorandum of Understanding between COAH and the State Planning Commission. The report then recited how the housing plan addressed each of these. AA34a-35a; AA54a. Although all ten principles were addressed, the most extensive comments were made with respect to principles #3 and #4, set forth below, which thoroughly and in detail recited not only that the site was within two Planning Areas, but also that "a site visit and review of technical data reviewed no such [environmental] constraints," AA35a, and that "infrastructure may be easily extended to the site as it is in close proximity." Id.

The compliance report's specific findings with respect to the planning and environmental character of the HAAL site and the Hillsborough Plan, and its comparison of the State Plan, included the following:

3. COAH has considered the SDRP's Resource Planning and Management Map. COAH is also aware of SDRP's concern regarding infrastructure availability and environmental sensitivity. COAH's review of the Hillsborough plan indicates that the site is within two planning areas and that there is an SDRP plan policy that states that if a site falls within two planning areas, that the criteria in the lower planning area prevails. Therefore, sites in Planning Area 2 do not need center designation. COAH is sensitive to environmental constraints and in fact has rules that address this issue. A site visit and review of technical data reveal no such constraints. In addition, infrastructure may be easily extended to the site as it is in close proximity. The site is in the Somerset County Wastewater Management Plan and is awaiting DEP approval. COAH understands that Somerset County is supportive

of the amendment and DEP expects to move on the plan this year.

AA35A. COAH also found consistency with the goals, objectives and policies of the SDRP as follows:

4. This site is not inconsistent with the goals, objectives and policies of the SDRP. The site is within two planning areas; the site will maximize existing infrastructure in that such infrastructure may be easily extended to the site and the site has been reduced from the potential to yield 11,000 units to a more compact 3,000 units.

AA35a. Based on all these findings, the staff concluded:

For all the above reasons, COAH's staff recommends granting of a waiver of N.J.A.C. 5:93-5.4(c) regarding center designation. . . .

Id. Finally, the COAH report makes it clear that there was an extensive mediation process involving the developer of the HAAL site and another rival developer who apparently raised some of the same issues that Appellant raised much later. New Jersey Future did not participate in these extensive proceedings.

Based on all the above, COAH staff supported, and COAH ultimately granted, substantive certification to Hillsborough, including in that grant an approval of the HAAL site.

Aside from the facts bearing on the COAH approval, it is also evident that the HAAL site has vested development rights. These rights were first conferred upon HAAL by the January, 1992 Resolution of the Planning Board granting HAAL General Development Plan approval. See AA178a-181a. These rights were extended for a period of an additional five years by the Resolution of the Planning Board of December, 1995, giving HAAL such rights to the year 2000. See AA182a-185a.

In addition, these was further confirmation of these rights with the Township governing body through the adoption of the Developer's Agreement. See AA40a-49a. This Agreement spelled out HAAL's obligation to proceed with its 3,000 unit approval, in addition to its rights to 136 low and moderate income units, which would produce 160 units of credit, and eventually 450 units of affordable housing overall. Id. Thus, through no fewer than three separate municipal acts, HAAL has vested rights to proceed with its development. None of these acts state that such rights are dependent on eventually receiving COAH certification; rather, they are absolute grants of vested rights pursuant to the Municipal Land Use Law. These are grants which, in effect, date back to the period before the State Plan was adopted.

No appeal was ever taken from these grants of rights. Thus, they are not the subject of any potential challenge in this Court. The rationality of the COAH certification thus must be judged, in part, in terms of these extant vested right commitments to the HAAL site, in addition to the usual factors applicable to a COAH certification.

In sum, notwithstanding COAH's and OSP's detailed and even painstaking findings regarding this particular site, in addition to all of the other factors enumerated above, New Jersey Future has challenged COAH's action as irrational. That challenge is the subject of the within appeal.

LEGAL ARGUMENT

I. THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING DID NOT ACT IN AN ARBITRARY, CAPRICIOUS, OR UNREASONABLE MATTER WHEN, IN THE EXERCISE OF ITS EXPERTISE AND DISCRETION IT GRANTED SUBSTANTIVE CERTIFICATION TO THE HILLSBOROUGH TOWNSHIP HOUSING PLAN.

A. The Decisions Of An Administrative Agency Such As The Council On Affordable Housing Are Entitled To Deference In This Court.

Decisions of an administrative agency are accorded a presumption of correctness by New Jersey courts. In Van Dalen v. Washington Tp., the New Jersey Supreme Court stated that "[o]ur review of an administrative agency's action is limited in scope." Van Dalen v. Washington Tp., 120 N.J. 234, 244 (1990) (citing Gloucester County Welfare Bd. v. New Jersey Civil Serv. Comm'n. 93 N.J. 384, 390 (1983)). Van Dalen dealt with a developer's appeal from a Resolution of the Council on Affordable Housing which granted substantive certification of a township's Housing Element and Fair Share Plan pursuant to the Fair Housing Act. Van Dalen v. Washington Tp., 120 N.J. at 236-37. In rendering its decision to reject the developer's appeal, the Court stated that:

We will not substitute our judgment for that of the agency unless the action is arbitrary or capricious. Moreover, an administrative agency's exercise of statutorily-delegated responsibility is accorded a strong presumption of validity and reasonableness. The presumption is even stronger when the agency has been delegated discretion to determine the specialized procedures for its tasks.

Id. at 244 (citations omitted).

The Appellate Division reached the same conclusion regarding the presumption of correctness of administrative decisions in Englewood Cliffs v. Englewood, 257 N.J. Super. 413,

455-56 (App. Div. 1992), aff'd, 132 N.J. 327, cert. denied, 510 U.S. 991, 114 S. Ct. 547, 126 L. Ed. 2d 449 (1993). In Englewood Cliffs, sending and receiving school districts challenged the State Board of Education's decision denying the termination of the sending-receiving relationship between the two school districts. Id. at 422. The Appellate Division affirmed the State Board of Education's decision, stating:

As long as the action [taken by the agency] is within the fair contemplation of the enabling statute, that action must be accorded a presumption of validity and regularity. If there is any fair argument in support of the agency's action or any reasonable ground for difference of opinion among intelligent and conscientious officials, "the decision is conclusively legislative, and will not be disturbed unless patently corrupt, arbitrary or illegal." Where special expertise is required, as in this case, an even stronger presumption of reasonableness exists.

Id. at 455 (citations omitted). The court added that:

[W]here an agency is responsible for enforcing a statute, its interpretation will "be accorded considerable weight" on appeal.

Id. at 456 (citations omitted).

It is thus clear that, absent arbitrary and capricious conduct, New Jersey courts are loath to upset the determinations of administrative agencies.

The case at bar closely resembles Van Dalen, supra in which the Supreme Court refused to substitute its judgment for that of COAH in making determinations regarding the implementation of a municipality's Mt. Laurel obligation. Clearly, the law is that courts in New Jersey must defer to the reasonable judgment of the administrative agency charged with the implementation of the legislature's intent. That principle is applicable here.

B. The Decisions Of The Council On Affordable Housing In Granting Or Denying Substantive Certification Are Entitled To Even More Than The Usual Deference To Administrative Discretion Because COAH Has Been Entrusted With The Delicate Task Of Administering The Constitutional Obligation Imposed On Municipalities To Provide Reasonable Opportunities For Affordable Housing.

In Mt. Laurel II, the Supreme Court reiterated its call for legislative action to relieve the Courts of the burden of enforcing the constitutional obligation of municipalities to provide opportunities for affordable housing. So. Burlington Cty. N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158, 212-213 (1983). The Legislature responded to this challenge by the adoption of the Fair Housing Act, N.J.S.A. 52:27D-301, et seq. In Hills Dev. Co. v. Bernards Tp. in Somerset Cty., 103 N.J. 1 (1986), the Court faced its first great test of this new statute. Litigants who had been in court under So. Burlington Cty. N.A.A.C.P. v. Mount Laurel Tp., 67 N.J. 151, cert. denied, 423 U.S. 808, 46 L. Ed. 2d 28, 96 S. Ct. 18 (1975) ("Mt. Laurel I") and Mt. Laurel II, supra, for years argued that their cases should remain in court since it would be a manifest injustice, in the words of the statute, N.J.S.A. 52:27D-16, to derail the court proceedings which had lasted so long, and to transfer the administration of housing obligations to a new administrative agency.

Nonetheless, the Supreme Court, which had steadfastly enforced the Mt. Laurel doctrine, held that the creation of a new agency was such an affirmative and momentous response by the Legislature that even long pending cases should be transferred to it. Specifically, the Court entrusted to COAH responsibility

for working out a uniform scheme of satisfying the obligations to provide for a region's Fair Share of affordable housing opportunities. Hills, supra, 103 N.J. at 50-51. The Court chose to defer to this agency even while it recognized that such deferral could cause delay in some cases. Moreover, it so respected the Legislature's choice of COAH as the forum for affordable housing controversies that it declared that the courts should generally follow COAH rules in deciding the relatively few cases that the judiciary would continue to hear. Id. at 63.

The Court further held that the statute had to be read to give COAH certain powers, in particular the power to restrain development found to be inconsistent with affordable housing obligations, even though the statute had not specifically conferred that power upon COAH. Id. at 61-62; Tocco v. N.J. Council on Affordable Housing, 242 N.J. Super. 218 (App. Div.), certif. denied, 122 N.J. 403 (1990), cert. denied, 111 S.Ct. 1389, 499 U.S. 937, 113 L. Ed. 2d 446 (1991).

This theme of deference to COAH decision making has subsequently continued. Calton Homes, Inc. v. Council on Affordable Housing, 244 N.J. Super. 438 (App. Div. 1990), certif. denied, 127 N.J. 326 (1991), generally sustained the COAH substantive rules governing affordable housing. The cases of In re Roseland, 247 N.J. Super. 203 (App. Div. 1991), rev'd, sub nom. In re Warren, 132 N.J. 1 (1993), and In re Denville, 247 N.J. Super. 186 (App. Div. 1991) rev'd, sub nom. In re Warren, 132 N.J. 1 (1993), likewise sustain COAH's granting of

substantive certification in cases where vacant land adjustments and regional contribution agreements are involved. See also Van Dalen v. Washington Tp., supra.

In sum, our judiciary has recognized that the working out of affordable housing plans in particular situations is a task which is best left to the Legislature's chosen administrative agency.⁵ Accordingly, there is a very strong presumption that COAH's exercise of its powers with respect to the Hillsborough substantive certification should not be second guessed by the Court. Any other ruling would involve the courts in the constitutional housing thicket that the Supreme Court, in the Hills case, supra, emphatically decided to leave to COAH, as intended by the Legislature.

- C. Given The Deference Due To It By This Court, COAH Did Not Act Arbitrarily Or Capriciously In Determining That The Hillsborough Plan, Including The HAAL Site, Should Be Approved.

- 1. In Light Of The Background Legal Principles Outlined In Points IA And IB, Supra, COAH'S Action Was Clearly Sustainable.

⁵ Those few cases which have reversed COAH actions have involved either a procedural deficiency, Hills Development Co. v. Bernards Township, 229 N.J. Super. 318 (App. Div. 1988) (disputed fact issues must be referred to the Office of Administrative Law), or some systemic deficiencies in the rules, In re Warren Township, 132 N.J. 1 (1993) (COAH rule respecting residency preferences invalidated because it was inconsistent with the constitutional requirement that municipalities meet the needs of regions, not simply local needs). In contrast, COAH's actions in evaluating the facts of particular substantive certifications have generally been sustained.

The COAH regulation governing approval of new construction sites for affordable housing is N.J.A.C. 5:93-5.6, which deals with the approval of sites for new construction contained in a housing plan. The relevant subsection of that regulation provides as follows:

(b) The Council's review of municipal plans to zone for inclusionary development shall include, but not necessarily be limited to: the existing densities surrounding the proposed inclusionary site; the need for a density bonus in order to produce low and moderate income housing; whether the site is approvable, available, developable and suitable pursuant to N.J.A.C. 5:93-1.3; the site's conformance with the State Development and Redevelopment Plan pursuant to N.J.A.C. 5:93-5.4; the existence of steep slopes, wetlands and floodplain areas on the site; the present ability of a developer to construct low and moderate income housing at a specific density; the length of time an inclusionary site has been zoned at a specific density and set-aside without being developed; and the number of inclusionary sites that have developed within the municipality at specific densities and set-asides.

N.J.A.C. 5:93-5.6(b). These criteria essentially break down into three categories. The first concerns whether the site is available, developable, suitable, and approvable, as defined by COAH. The second criterion is whether there is conformity with the State Development and Redevelopment Plan. The third factor regards whether the site is affected by the existence of severe environmental constraints on the property.

First, there is no basis for this Court to disturb COAH's findings, recited in the Statement of Facts, supra, that the site is available, developable, suitable, and approvable. The fact that a developer has sufficient site control to receive approvals for it, as well as to continue making further subdivision approval applications right up until the present,

demonstrates that this site is "available" and "developable" as those terms are defined in the definitions section of the COAH regulations, N.J.A.C. 5:93-1.3. Clearly, the cooperation between the landowners and the present developer, U.S. Homes, demonstrates that the site is "available" since it is clear of encumbrances which preclude development for low or moderate income housing.

In addition, the site is also suitable. It is adjacent to compatible land uses, as demonstrated by the facts that sewer service exists to the site and that it borders a substantial developed area. Such development is reflected in the fact that the large area on the eastern border of the site has a Planning Area 2 designation. These facts are clear from the record, and COAH did not act unreasonably in so finding.

The site is also "developable" as defined in COAH's rules. It has access to appropriate water and sewer infrastructure; such infrastructure already exists along part of the site. These parts of the site not only have sewer consistency approvals, but have actual service. Approximately 40 acres of the site either already so approved or have actual service. LRA2a. Only the internal lines in this site need to be approved and installed. Moreover, as particularly noted by the Township in its brief, see HRB44-47, the balance of the site has been proposed for sewer inclusion for several years, and is presently the subject of a petition to DEP by the developer of the HAAL site for sewer service.

2. COAH'S Action As To The Provision Of Sewerage Was Rational Despite Appellant's Strenuous Claims To The Contrary At AB51-57.

Moreover, there was nothing arbitrary in COAH's making sewer approval of the balance of the site a condition subsequent to its grant of substantive certification. Under governing DEP regulations, specifically N.J.A.C. 7:15-5.18, DEP is obliged to approve extension of sewers where they are consistent with zoning, such as in the case at bar. This should be especially true in situations where there is a commitment in terms of vested rights, as described above, and where the zoning has been supported by substantive certification on the part of the Council on Affordable Housing.⁶

In addition, COAH regulations clearly provide for obtaining water and sewer during the period of substantive certification, that is, after it has been granted. Specifically, COAH is to determine, under N.J.A.C. 5:93-4.3, whether it is realistic for the site to receive water or sewer during the period of certification. Given the history of this site's inclusion in sewer plans, and that sewers already exist in a portion of the site, it was certainly not arbitrary and capricious to find that the requirements of this regulation were satisfied.

More importantly, Hillsborough is required by COAH regulations to assist in the provision of sewers to the HAAL site. According to N.J.A.C. 5:93-4.3(c)2:

⁶ Appellant cites 33 U.S.C.A. §1288 in connection with its comments on sewerage. See AB6. However, that statute relates to a federal grant program which is not involved in this case. There are no federal sewer planning requirements affecting this case.

Municipal officials shall endorse all applications to the DEP or its agent to provide water and/or sewer capacity. Such endorsements shall be simultaneously submitted to the Council.

Id. (Emphasis added). Accordingly, Hillsborough must approve applications for sewer service to the site, and has no authority to unilaterally withdraw such applications. Appellant's apparent argument that Hillsborough can undermine its own certification by refusing to consent to the extension of sewers to the HAAL site is therefore specious. Hillsborough is obligated to do those things with respect to sewer that are necessary to make its certification work. It cannot act contrary to its own certified plan.

In addition, the COAH certification requires that Hillsborough continue to meet this sewer obligation by reporting to COAH on its compliance with its obligation every six months. It further requires that:

[A]ny deviation from the terms and conditions of this certification which affects the ability of the municipality to provide for the realistic opportunity of its fair share of low and moderate income housing and which the municipality fails to remedy may render this certification null and void.

AA26a. Thus, in addition to the COAH regulations, the very terms of the certification itself require Hillsborough to act in concert with the developer to get approval of the sewers for the site. The underlying DEP regulations, as noted above, also require such approval where the zoning is in place, as it is here. It is therefore reasonable for the COAH staff report and the COAH approval resolution to have found that this site is

approvable and developable with respect to sewers, especially given the additional fact that the developer has vested rights to develop on this site, and that the site is already partially within the sewer service area.

3. Environmental And Planning Constraints.

Moreover, the site has no unusual environmental constraints. As COAH found during its site visit, see AA35a, wetlands, steep slopes and other features typically incorporated in COAH regulations, see N.J.A.C. 5:93-4.2(d), do not interfere with the use of this large site for up to 450 affordable housing units. COAH's decision not to disqualify this site under the environmental features portion of N.J.A.C. 5:93-5.6(b) and N.J.A.C. 5:93-4.2(c) was therefore not arbitrary and capricious. To the contrary, it was in fact the only choice available to COAH.

Finally, considerations with respect to consistency with the State Plan also do not render COAH's approval of this site arbitrary, capricious and unreasonable. For reasons set forth in Point II, infra, where the issue is more fully developed in response to the minute attention Appellant has given to it, COAH was entirely within its rights in approving this 450 low or moderate income unit, 15% set aside, mixed use senior citizen development, which had vested rights for years, as an appropriate low or moderate income housing site.

II. COAH ACTED WELL WITHIN THE BROAD DISCRETION AFFORDED TO IT IN DETERMINING THAT NEITHER STATE PLANNING CONSIDERATIONS AS A WHOLE, NOR THE LACK OF CENTER DESIGNATION FOR THE HAAL SITE, PRECLUDED APPROVAL OF HILLSBOROUGH'S PLAN FOR MEETING ITS AFFORDABLE HOUSING OBLIGATIONS.

Appellant, recognizing that the HAAL site and the Hillsborough Plan represents a serious and innovative effort to produce lower income housing in the context of a mixed use senior citizen development, concentrates almost its entire legal argument on COAH's supposed noncompliance with the State Plan. According to Appellant, all one needs to do is simply look at the State Plan map, find the Planning Area designation, and then reject the site if it is either not in the right Planning Area or if it has not been designated as a planned Center.

Appellant's argument grossly misstates the thrust and intent of the State Plan, the letter and spirit of COAH's rules, and the facts in this case. In so doing, Appellant ignores the findings by the Director of the Office of State Planning, which is the administrative arm of the State Planning Commission, N.J.S.A. 52:18A-201, that this unusual senior citizen mixed use development, which has vested rights and is in the site of a Village identified on the State Plan map, could be certified by COAH without detriment to the objectives of sound regional planning in New Jersey. In fact, Appellant, in its haste to make this case a major and, Respondent submits, unnecessary collision between housing and environmental principles, ignores the careful weighing of the facts and planning issues by both

the Director of State Planning and the Council on Affordable Housing.

A. COAH Was Correct In Declining To Enforce The State Plan As A Mandatory, Site Specific Zoning Map Which Precludes Certain Uses, Including The Proposed HAAL Use.

1. The State Plan Is Not Site Specific.

Contrary to Appellant's implication, the State Plan is not a zoning Ordinance. Instead, the State Planning Act, N.J.S.A. 52:18A-196, et seq., makes it clear that the State Plan was intended to be a general policy document which would guide the development of different areas of New Jersey. The Act further states that:

The State Development and Redevelopment Plan shall be designed to represent a balance of development and conservation objectives best suited to meet the needs of the State.

N.J.S.A. 52:18A-200.

Further, nowhere does the State Planning Act give the State Planning Commission, the Office of State Planning, or the SDRP any regulatory authority in and of itself. Unlike the Municipal Land Use Law, which provides for regulation of land use, the State Planning Act confers upon regulatory agencies no regulatory powers whatsoever.

This theme is well carried in the State Plan itself, which in several places asserts that it is not to be treated as a regulatory document:

The State Plan is different from functional State agency plans and municipal and county master plans. The State Plan is not a regulation but a policy guide for State, regional and local agencies to use when they exercise their delegated authority.

LRA26a.

The same theme is repeated in regulations adopted by the State Planning Commission with respect to carrying out its responsibilities. In a regulation which deals with petitions for voluntary requests by municipalities for a report from the State Planning Commission that their Ordinances are consistent with the State Plan, the Commission has ruled that:

(b) Neither the State Development and Redevelopment Plan nor its Resource Planning and Management Map is regulatory and neither should be referenced or applied in such a manner. It is not the purpose of this process to either "validate" or "invalidate" a specific code, ordinance, administrative rule, regulation or other instrument of plan implementation.

(c) No municipal, county, regional or State agency should delay any decision making process due to a pending review of their plans by the Office of State Planning for consistency with the SDRP. . . .

N.J.A.C. 17:32-7.1. Thus, it is clear beyond dispute that the function of the SDRP and the State Planning Act is neither to regulate particular pieces of land, nor to mandate specific regulations applicable to any parcel.

The State Plan has taken the same approach with in the amendment of its Resource Planning and Management Map. The amendment states:

Neither the State Development and Redevelopment Plan nor its Resource Planning and Management map is regulatory and it is not the purpose of this process to provide for amendments to the Map to reflect, or "validate," land use changes or to serve as a legal basis for making such changes. . . .

N.J.A.C. 17:32-8.2(b). Even more bluntly, the amendment adds:

There is no site specific change of land use that is inherently inconsistent with the State Plan. . . .

Id. Accordingly, the State Plan text and the regulations of the State Planning Commission have emphatically affirmed that the SDRP is not a regulatory zoning document.

To be sure, there is a tradition in the implementation of affordable housing obligations, derived from Mt. Laurel II itself, that the meeting of affordable housing requirements should not give a license to developers to force affordable housing construction onto the best, most environmentally sensitive areas of the State of New Jersey. See Mt. Laurel II, supra, 92 N.J. at 219.

However, those policies are not at issue in this case. This is a case in which a municipality agreed with a developer that a site is appropriate for affordable housing, and that it represents an unusual opportunity for a mixed use senior citizen community which will provide low or moderate income units well beyond that which is immediately necessary. The words of the Mt. Laurel II opinion, which were intended to restrain developers and courts from ordering inappropriate development

over municipal objection, have no relevance where a municipality, in its own discretion, has decided that a site is appropriate for affordable housing. In fact, municipal discretion in this regard should be no more subject to second guessing than municipal discretion to zone lands under the Municipal Land Use Law. Even the Appellant in this case does not suggest that the Hillsborough PAC/HCF zone is invalid under that law.⁷

The fact that the State Plan is of general, rather than site specific, application is also demonstrated in the Fair Housing Act, which is one of the few regulatory-type statutes to explicitly mention the State Plan. The Fair Housing Act, however, merely states that COAH should consider the State Development and Redevelopment Plan in assigning housing need to individual municipalities. N.J.S.A. 52:27D-307c(2)(e). This section of the Fair Housing Act merely requires that an adjustment of Fair Share be made wherever the numbers assigned to a municipality would alter its character in a way that is inconsistent with the SDRP.

⁷ In fact, its failure to challenge this zoning is fatal to Appellant's argument in the case at bar. If the Ordinance is valid as a matter of police power discretion, even if it produced no affordable housing, then certainly the Ordinance should be valid if it has the added benefit of providing a substantial affordable housing yield. In this sense, the underlying and unchallenged validity of the PAC/HCF zoning demonstrates that Appellant is seizing, at the last possible moment, upon the COAH certification as a way of challenging a long established municipal zoning policy, a policy which predates the State Plan with respect to development of the HAAL site.

Nothing in the Fair Housing Act bars a municipality from using its zoning powers under the Municipal Land Use Law to voluntarily select a site which it feels, in its best judgment, will provide affordable housing. Significantly, the limited requirement as to the imposition of housing allocations is the Fair Housing Act's only mandate with respect to the SDRP. The Fair Housing Act is thus entirely consistent with the State Planning Act, which has no regulatory provisions. It is also consistent with the SDRP itself, which disclaims site specific imposition. See also the State Planning Regulations cited supra, N.J.A.C. 17:32-1.1 et seq.

COAH has clearly been faithful to its limited mandate of not imposing quotas on municipalities where to do so would force them to grow in a way not consistent with the SDRP. Its regulations do accord lower numbers to communities which are either partially or totally not within growth areas as set forth in the SDRP maps. See N.J.A.C. 5:93-2.3⁸ Nothing in the COAH regulations which implement this portion of the Fair Housing Act bars municipalities from deciding that they would prefer to meet their housing obligations on sites which are entirely or, a

⁸ Under the COAH regulations, municipalities do get a lower Fair Share to the extent they are outside Planning Area 1 or 2. See N.J.A.C. 5:93, Appendix A, Distribution of Low and Moderate Income Housing Need.

fortiori, as in this case, only partially outside of a growth area.⁹

2. The General Policies In The State Plan Do Not Dictate A Reversal Of COAH's Determination.

Appellant, again using its zoning map analogy, attempts to argue that the policies in the State Plan could somehow be contravened or contaminated by approval of this very substantial affordable housing site. COAH and the Office of State Planning quite properly rejected that contention.

First, general policies with respect to Planning Area designations, on which Appellant almost totally relies, are not nearly as categorical as claimed. The State Plan states that criteria for Planning Area 4, in which most of this site lies, is merely to be used as a general guide for use with respect to particular pieces of property, subject to a flexible application based on local conditions. See LRA35a. This not only supports the argument made above that the plan is not site specific, but also demonstrates that the criteria for designation of Planning Areas are not to be applied in a single-minded mandatory Ordinance-type fashion.

⁹ The evidence is clear that when the Legislature wished to make the State Plan site specific and regulatory, it did so. Clearly, in the case of amendments to the Coastal Area Facility Review Act, it made that choice when it stated that the implementation of the CAFRA permitting program should follow State Plan categories. See N.J.S.A. 13:19-17. No such expression, however, is contained in the Fair Housing Act. This omission is a telling argument against Appellant's effort to convert the State Plan into a statewide mandatory zoning map.

Given this observation, it becomes apparent why COAH and the Office of State Planning refused to find any violation of state planning principles or policies in this case, especially where a site is athwart a boundary between Planning Areas.

3. Specific State Plan Policies Also Render COAH'S Action Non-Arbitrary.

Aside from the general nature of the SDRP's site designation, the SDRP contains specific policies which make the approval of Hillsborough's Plan by COAH and Office of State Planning appropriate. First, the main distinction between a growth area (Planning Area 2) and a limited growth area (Planning Area 4) is the presence of existing or planned sewers in the area. See State Plan, criteria for Planning Areas 2 and 4. LRA31a-32a; LRA35a-36a. See also Statement of Facts, supra. In this case, although the site formally is substantially designated as Planning Area 4, it in fact is presently served by sewers. The fact that the sewers had not been extended throughout the site is perfectly understandable, since the site is as yet undeveloped. Since sewers are at the site and hence accessible, the policies of the State Plan with respect to development in areas served by infrastructure have been fully satisfied, even though sewers have not yet been built.

In addition, the State Plan contains a special policy, Policy #20, which deals with transition between growth and limited growth Planning Areas. That policy, as articulated by

the Director of State Planning in this case, indicates that Center designation is not a sine qua non of State Plan policies where a site is not only accessible to infrastructure, but also includes more than one Planning Area. In such cases, Centers need not be a focus for development in order for there to be consistency with State Plan policies. Moreover, such an observation is that much more powerful in the present case where the site borders on a substantial developed area that is included within Planning Area 2, i.e., a growth area. We are not, in this case, dealing with an isolated pristine wilderness.

Third, the State Plan recognizes interests in equity and expectations. It states as follows:

Where implementation of the goals, policies and objectives of the State Plan affects the reasonable development expectations of property owners or disproportionately affects the equity of other citizens, agencies at all appropriate levels of government should employ programs, including for example compensation, that mitigate such impacts to ensure that the benefits and burdens flowing from implementation of the State Plan are borne on an equitable basis.

LRA28a. In the case at bar, there have been equities and expectations built up by virtue of the 1992 and 1995 General Development Plan approvals, as well as by the Developer's Agreement. While Appellant tries to pretend that these policies with respect to equity are not even in the State Plan, they clearly are, and they certainly render well within the realm of reason the determinations by both COAH and the Office of State

Planning that the development of the HAAL site will not offend the principles of sound planning.¹⁰

Fourth, as observed by the Office of State Planning, the HAAL site was identified in the original State Plan maps as a Village Center. According to State Planning Commission documents, a Village Center should provide for housing for up to 4,500 people, as well as for a mixture of uses. See LRA52a, excerpt from Publication 99 of the Office of State Planning, relating to Village Centers and other forms of Centers. The HAAL projects 3,000 units and about 4,500 residents, containing a mixture of housing types, along with health care facilities, extended care facilities and recreational facilities. This site is surrounded by natural features such as a greenway which is the subject of an active acquisition program, a river, and man-made features such as roads and a railroad line. See Statement of Facts, supra; LRA7a; LRA12a. It thus presents a concrete, bounded property similar to what the plan envisions for a Center. Accordingly, as the Director of State Planning found,

¹⁰ We note that some of Appellant's comments reflect an anti-development bias completely inconsistent with this and other policy expressions in the State Plan. See LRA38a-40a (policy respecting affordable housing, which encourages a unique diversity of choice of housing such as is proposed here). We specifically refer to Appellant's comments about manipulation of the maps and richness of plan busting development, see AB48-49, for a project that was approved well before the plan was adopted, and was assembled well before that. In addition, Appellant's comment that the proposal was a kind of compromise that lead to adoption of the State Plan, see AB4, is utterly without support in the record, and is completely contrary to the complex multifaceted nature of the this development.

the State Plan policies with respect to Centers have been satisfied.

The fact that the Center was not designated is really of little moment. The State Plan identified 600 Centers which it anticipated would be designated through actual Center plans within the three year statutory term of the State Plan's initial life, or shortly thereafter. See LRA41a-50a. Instead, only 30 such plans have been designated.¹¹ Thus, only 5% of the Centers envisioned in the State Plan have been designated, and the status of the Hillsborough planned Village, shown on the State Plan map, is thus typical. The single fact that such an identity was incorporated on the State Plan map during cross acceptance, along with the other factors set forth above, constitutes a recognition that the area in question, although formally denominated Planning Area 4, included characteristics which may be suitable for more intense development without violating the principles and policies of the State Plan.

Fifth, the open ended nature of the State's Centers policies is further demonstrated by a trenchant observation made by Director Simmens in his letter of January 31, 1996. See AA62a-64a. He stated that the issue of Centers comprised of senior development simply had not been addressed in the State Plan. Id. at 63a. He felt that this was a topic that should be addressed when the State Plan was being revised. Id. In the

¹¹ This information is based on a review of State Planning publications with respect to center designation.

meantime, he felt uncertain as to how the State Plan policies might be applied to senior citizen mixed use development. Id. at 63a-64a. For this reason, he could find no incompatibility between the proposed use and the underlying mixed use goals of the State Plan. Id.

Based on the above, this Court should reject the State Planning straitjacket which Appellant advocates. The Court should not substitute Appellant's single minded view of the appropriate policy in this instance for the measured, careful analysis and findings adopted by the state agencies responsible for administering the Fair Housing Act and State Planning Act.

Accordingly, the facts recited above overwhelmingly support COAH's finding of consistency with the State Plan. COAH did not ignore its regulations with respect to the State Plan. It actively sought consultation with the Office of State Planning concerning the exercise of its responsibilities. It received assurances from the Director of that Office that the policies of the State Plan would not be violated. After receiving this advice, which resulted from its voluntarily consultation process, COAH acted. It certainly behaved responsibly, not arbitrarily and capriciously, in concluding that the Hillsborough Township Fair Share Plan, with its 450 low or moderate income housing units, vested rights, access to sewers, et al., should be approved. To find arbitrariness and capriciousness in that decision is impossible.

B. By Requiring A Waiver Of Its Rules With Respect To Center Designation, COAH In Fact Applied A More Stringent Requirement To Hillsborough And The HAAL Site Than Was Dictated By Its Regulations, Because No Waiver Of State Plan Center Designation Was Required Under The Facts Of This Case.

In Point IIA, supra, we have demonstrated that the HAAL development sufficiently complies with COAH and State Plan policies as a whole. Consequently, its approval by COAH, with the concurrence of the Office of State Planning, was not arbitrary and capricious. Appellant's entire argument with respect to the waiver of State Plan Center designation under N.J.A.C. 5:93-5.4(c) is misplaced because such waiver is not, in fact, required by COAH regulations. COAH's insistence on a waiver, and findings with respect to same, thus demonstrates COAH's faithfulness to its statutory and regulatory mandates with respect to the State Plan.

Although not cited by Appellant, the regulation which really should govern this case is N.J.A.C. 5:93-5.4(d). Unlike N.J.A.C. 5:93-5.4(c) which Appellant cites, N.J.A.C. 5:93-5.4(d) specifically applies to "municipalities that are divided by more than one planning area." Hillsborough clearly is such a municipality, as even the skewed State Plan map submitted by Appellant, as well as the official map attached as an appendix to this brief shows. See LRA7a-8a. Hillsborough is in fact a community that includes a multiplicity of Planning Areas.

With respect to such municipalities, the unchallenged COAH regulations state as follows:

1. The Council shall encourage and may require the use of sites in planning areas 1 and 2 prior to approving inclusionary sites in planning areas 3, 4 and 5 that lack sufficient infrastructure.

N.J.A.C. 5:93-5.4(d). This provision clearly says only that COAH shall encourage, and only "may require," the use of sites in Planning Areas 1 and 2 in mixed communities like Hillsborough. Further, even such encouragement is only to be applied where sites in Planning Areas 3, 4, and 5 lack sufficient infrastructure. The HAAL site clearly does not lack sufficient infrastructure because, as noted several times above, it is serviced by a county road system, and existing sewer facilities and water facilities go right up to and along the site.

Further, the third subparagraph of N.J.A.C. 5:93-5.4(d) states as follows:

The Council shall encourage and may require the use of sites to which existing infrastructure can easily be extended prior to approving inclusionary sites that require the creation of new infrastructure in an area not presently serviced by infrastructure.

Id. This regulation provides a positive endorsement for the HAAL site and the Hillsborough Plan. Infrastructure does not have to be extended to the site. It already exists. Therefore, it is just the kind of site whose use COAH is supposed to encourage according to the COAH regulations which deal with State Plan issues.

In sum, N.J.A.C. 5:93-5.4(d) supports COAH's action here as not only being consistent with the State Plan principles

contained in the COAH regulations, but actually encouraged by them. To the extent that COAH went an extra step and required a waiver under N.J.A.C. 5:93-15.1, see Point III, infra, it was justified in granting same, since its own regulations clearly anticipated and approved of project sites such as the HAAL site in a community like Hillsborough, which is bisected by several Planning Areas.

Thus, this regulation, ignored by Appellant, conclusively demonstrates that COAH's actions, in concordance with the Office of State Planning, were not arbitrary and capricious. In fact, such actions, which resulted in the approval of a 450 unit low or moderate income housing development, where only 136 units were required, demonstrates a fidelity not only to the principles of the State Plan, but to the needs of lower income persons. COAH action here was thus exemplary, and not arbitrary as Appellant claims.

III. COAH'S ACTION IN APPROVING A WAIVER OF STATE PLAN CENTER DESIGNATION WAS, UNDER THE FACTS OF THIS CASE, ENTIRELY REASONABLE AND NOT ARBITRARY AND CAPRICIOUS.

Given the deference that is owed COAH, as set forth in Point I, supra, its careful findings of fact and the circumstances of this case, as set forth in Point II, supra, and the fact that its own regulations clearly support the choice of a site such as the HAAL site, COAH certainly did not act arbitrarily and capriciously in first applying a regulation that was more strict than the one actually applicable to the case, and then granting a waiver of it. Thus, even if a waiver was required under the circumstances of this case, COAH reasonably utilized a valid regulation in granting such a waiver.

A. COAH'S Formal Waiver Provision is Constitutional.

Statutory or administrative standards do not have to be precise in order to pass constitutional scrutiny. The New Jersey Supreme stated that:

[T]he exigencies of modern government have increasingly dictated the use of general rather than minutely detailed standards in regulatory enactments under the police power.

Ward v. Scott, 11 N.J. 117, 123-24 (1952). See also New Jersey Bell Telephone Co. v. Communications Workers, 5 N.J. 354, 371 (1950) (general standards prescribed by a statute delegating legislative authority to an administrative body are sufficiently definitive and are not unconstitutionally vague). Moreover, these standards may not only be general; they may even be

implied. Motyka v. McCorkle, 58 N.J. 165, 177-78 (1971). See Mt. Laurel Tp. v. Public Advocate of N.J., 83 N.J. 522, 532 (1980); Schierstead v. City of Brigantine, 20 N.J. 164, 169 (1955); In re Berardi, 23 N.J. 485, 491 (1957); Wes Outdoor Advertising Co. v. Goldberg, 55 N.J. 347, 350-53 (1970).

These precepts govern the rules at issue here. The vagueness standards applied to administrative decisions are the same as those applied to statutes. In Review of Health Care Admin. Bd. v. Finley, 168 N.J. Super. 152, 166 (App. Div. 1979), aff'd, 83 N.J. 67, cert. denied, sub nom. Wayne Haven Nursing Home v. Finley, 101 S. Ct. 342, 449 U.S. 944, 66 L. Ed. 2d 208 (1980).

Appellant cites Crema v. N.J. Dept. of Environmental Protection for the proposition that the standards and principles governing the discretionary actions of administrative officers should be articulated in as much detail as possible. Crema v. N.J. Dept. of Environmental Protection, 94 N.J. 286, 301 (1983) (emphasis added). Crema is inapposite to the case at bar for two reasons. The first reason is that the Court merely stated that administrative officers "should" articulate their standards in detail. The Court imposed no requirement that they do so.

The second reason is that Crema did not decide the constitutionality of a statute or regulation that was claimed to be vague. Its decision is therefore totally inapplicable to the case at bar. The Supreme Court in Crema ruled that the Department of Environmental Protection abused its discretion by

relying on adjudication rather than rule making. Id. at 306. This obviously does not address the alleged unconstitutionality of a standard due to its vagueness.

The discussion cited by Appellant that referred to due process did not state that detail such as that urged by Appellant is required. The Supreme Court stated that:

"' [D]ue process means that administrators must do what they can to structure and confine their discretionary powers through safeguards, standards, principles and rules.' This principle employs no balancing approach but simply holds that due process requires some standards, both substantive and procedural, to control agency discretion."

Id. at 301 (citations omitted). In the present case, COAH does have general standards in place which guide its granting of waivers under N.J.A.C. 5:93-15.1. In addition, COAH's rules contain many procedural and substantive safeguards. Therefore, Crema's discussion of due process, which was unrelated to the Court's decision in that case, does not apply to the case at bar.

In Ward, the New Jersey Supreme Court found R.S. 40:55-39d (the predecessor statute to N.J.S.A. 40:55D-70d, which empowers a board of adjustment to grant so-called "use" zoning variances, to be constitutional, despite its lack of specific standards. Ward, 11 N.J. at 122-28. The grant of a use variance by a board of adjustment is analogous to a grant of a formal waiver by COAH. In both cases, an administrative body is making a discretionary, fact-specific waiver of its rules in a particular instance in order to achieve its objectives. The Supreme

Court's ruling in Ward that the general standard embodied in the phrase "in particular cases and for special reasons" was not unconstitutionally vague thus has great significance to the case at bar. If the general standard contained in N.J.S.A. 40:55D-70d for granting a use variance is constitutional, then surely the three standards for granting a waiver contained in N.J.A.C. 5:93-15.1(b) are constitutional as well.

The Court stated that:

In dealing with the question of standards it is elementary that we are not confined to the specific terms of subsection (d) [referring to R.S. 40:55-39] but must examine the entire act in the light of its surroundings and objectives. Nor are we restricted to the ascertainment of standards in express terms if they may be reasonably implied from the entire act.

Ward, 11 N.J. at 123 (citations omitted). The Court went on to state that the Legislature:

[R]ecognized that comprehensive restrictive regulations designed to carry out these goals, if rigidly and literally enforced without any opportunity whatever for relief in special situations, might result in serious injustice or impairment of the underlying public purposes; accordingly, it wisely adopted the policy expressed in R.S. 40:55-39 which enables individual variances consistent with the public interest and the purposes of the zone plan and zoning ordinance.

Id. at 126. The Court also recited several instances, both in New Jersey and elsewhere, in which broad, general standards were utilized to achieve public policy goals, and concluded that the broad language of R.S. 40:55-39 was not unconstitutional. Id. at 124-25.

This analysis clearly supports the validity of COAH's waiver provision is contained in N.J.A.C. 5:93-15.1. This rule provides as follows:

(a) Any party may request a waiver from a specific requirement of the Council's rules at N.J.A.C. 5:91, 5:92 and 5:93 at any time. Such a waiver may be requested as part of a municipal petition, by motion in conformance with N.J.A.C. 5:91-12, or in such other form as the Council may determine, consistent with its procedural rules at N.J.A.C. 5:91.

(b) The Council will grant waivers from specific provisions of its rules if it determines:

1. That such a waiver fosters the production of low and moderate income housing;
2. That such a waiver fosters the intent of, if not the letter of, its rules; or
3. Where the strict application of the rule would create an unnecessary hardship.

N.J.A.C. 5:93-15.1. It is clear that these standards, when read in conjunction with all of the rules governing the conduct of COAH, are not so general so as to lead to arbitrary and capricious conduct on the part of COAH. To the contrary, the waiver provisions merely give COAH the flexibility to deal with unique situations as they arise. This flexibility allows COAH to carry out its mandate in a manner which allows it to avoid "serious injustice or impairment of [its] underlying purpose." Ward, 11 N.J. at 126. These standards are actually much more specific than the "in particular cases and for special reasons" standard found to be constitutional in Ward. If such a standard, which incorporates all of the broad purposes of zoning

is valid, then so too are these waiver standards. See Burbridge v. Mine Hill Township, 117 N.J. 376, 386-7 (1990).

The first provision, that the waiver foster the production of low and moderate income housing, is clear and definite on its face. Appellant's argument that this represents no standard at all since any housing approved within a Fair Share Plan "fosters" the production of housing is disingenuous at best. The purpose of the standard is to give COAH the flexibility to waive its otherwise rigidly enforced rules, if to do so would further its goal of the development of affordable housing. It is more definite than the "special reasons" standard upheld in Ward, supra.

It has been said that the purpose of planning and zoning is to control and direct the physical development of the community and its environs in order to promote social and economic well-being. Metzdorf v. Rumson, 67 N.J. Super. 121, 126-27 (App. Div. 1961) (citations omitted). See also Burbridge, supra. No less can be said of the purpose of the Supreme Court's mandate, as enacted by the Legislature, to provide affordable housing for the citizens of New Jersey. COAH has been given the authority to grant substantive certifications to affordable housing plans, and it needs the flexibility afforded by its waiver provisions in order to have the ability to react to individual situations on a case-by-case basis in such a manner so as to satisfy its mandate to provide affordable housing.

The meaning of the second provision, that the waiver foster the intent of, if not the letter of, its rules, is equally easy to ascertain. In fact, the language of this provision mirrors that of N.J.S.A. 40:55D-70d, which states that a variance will only be granted if it "will not substantially impair the intent and purpose of the zone plan and zoning ordinance." Id. Again, the reason why a general standard is not only not unconstitutionally vague, but is in fact appropriate, is that it gives COAH the needed flexibility to deal with unique situations as they arise, rather than locking COAH into a rigid set of rules and procedures. Procedural and substantive safeguards, such as the provisions for reviews and appeals contained in COAH's rules at N.J.A.C. 5:91 and N.J.A.C. 5:93, ensure that these general standards will not be arbitrarily and capriciously applied.¹²

The meaning of the third provision, that the strict application of the rule would create an unnecessary hardship, is also self-explanatory. Appellant attempts to obfuscate this point by stating in its brief that it is unclear to whom the hardship must apply. This contention is without merit; a plain reading of N.J.A.C. 5:93-15.1(a) reveals that any party, either a developer or a municipality, may request a waiver. Developers

¹² For instance, N.J.A.C. 5:91-4.1 provides a mechanism for any person to object to a proposed Housing Element and Fair Share Plan. N.J.A.C. 5:91-6.1 et seq. outlines procedures to be followed for the review of a Housing Element when an objection has been filed. N.J.A.C. 5:91-13.1 et seq. provides for amendments to the terms of a substantive certification to be approved by the Council at any time following the granting of substantive certification at the request of any party.

do not have to have a constitutional right, as Appellant asserts, to have their sites chosen for inclusionary zoning in order to claim a hardship due to a strict application of COAH's rules. Furthermore, it is unnecessary for COAH to either define "hardship" or "unnecessary" in order to give a plain meaning to this waiver provision. Definitions for both words can be found in most English dictionaries.

Moreover, N.J.S.A. 40:55D-70c, which gives boards of adjustment the power to grant zoning variances in instances in which the variance would relieve an undue hardship, provides adequate precedent for "hardship" as a definable term. See Bressman v. Gash, 131 N.J. 517, 523-25 (1993), for a discussion of the application of the term "hardship" to an application for a zoning variance. Appellant's argument that a term such as "hardship," whose meaning has been long established by both the Legislature and the courts, is unconstitutionally vague is without merit. The waiver provisions of N.J.A.C. 5:93-15.1 are thus constitutional on their face and withstand due process scrutiny as applied by New Jersey's Supreme Court in Ward, supra.

B. COAH's Formal Waiver Provisions Should Be Read Disjunctively Rather Than Conjunctively.

Appellant next claims that even if they are valid, the waiver provisions must be read conjunctively rather than disjunctively. The cases appellant cites in support of this

proposition, however, do not support this position. Both Service Armament Co. v. Hyland, 70 N.J. 550, 558-59 (1976), and Matter of Hazardous Waste Facility, 258 N.J. Super. 483, 488-89 (App. Div. 1992), state that statutory and, by analogy, regulatory exceptions should be strictly but reasonably construed. A strict reading of N.J.A.C. 5:93-15.1 can only be interpreted to mean that the three waiver provisions are to be disjunctively applied. The word "or" is clearly placed where an "and" would be if COAH had meant for its waiver provisions to be applied conjunctively.

The approach taken by COAH in construing N.J.A.C. 5:93-15.1 is identical to that taken by the courts in applying a similar statutory waiver provision. N.J.S.A. 40:55D-70c, which provides standards under which a bulk variance may be granted by a board of adjustment, also uses the word "or" to separate its various standards. New Jersey courts have consistently applied these standards disjunctively. See 165 Augusta Street, Inc. v. Collins, 9 N.J. 259, 264 (1952) (applying the standards set forth in R.S. 40:55-39c, the predecessor to N.J.S.A. 40:55D-70c, disjunctively). Since a zoning variance is closely related to a formal COAH waiver, and since the formal waiver standards are in many ways similar to the standards necessary for a zoning variance, this Court should similarly apply COAH's waiver standards disjunctively.

C. COAH'S Informal Waiver Provisions Are Not Subject To The Rule-Making Requirements Of The Administrative Procedure Act.

1. The Policy Does Not Constitute Formal Agency Action.

A waiver rule, which has been subjected to the formalities of rule-making as required by the Administrative Procedures Act, already exists. See N.J.A.C. 5:93-15.1. Appellant seems to ignore this vital point in arguing that COAH's informal policy of considering waivers somehow violates the requirements of the Administrative Procedures Act. COAH's policy merely gives direction to the agency in determining the appropriateness of employing its formal waiver rule in a given situation.

The informal policy of entertaining a waiver of the requirements of N.J.A.C. 5:93-5.4, pursuant to COAH's formal waiver provisions (see N.J.A.C. 5:93-15.1), does not constitute administrative rule-making, and is therefore not subject to the notice, publication, comment, and hearing requirements of formal rule-making under the Administrative Procedure Act. N.J.S.A. 52:14B-2(e) defines an administrative rule as follows:

"Administrative rule" or "rule," when not otherwise modified, means each agency statement of general applicability and continuing effect that implements or interprets law or policy, or describes the organization, procedure or practice requirements of any agency. The term includes the amendment or repeal of any rule, but does not include: (1) statements concerning the internal management or discipline of any agency; (2) intraagency and interagency statements; and (3) agency decisions and findings in contested cases.

Id. COAH's informal policy of entertaining waivers does not meet the definition of a rule as set forth in N.J.S.A. 52:14B-2(e). COAH's policy is nothing more than an intraagency statement describing a situation in which it will entertain a waiver request pursuant to its authority to do so under N.J.A.C. 5:93-15.1. As such, it falls under the "intraagency statement" exception to N.J.S.A. 52:14B-2(e), and is therefore not a rule subject to formal rule-making requirements.

Moreover, the mere fact that the agency will consider a waiver is so open-ended that it doesn't even pass the minimal test of being an agency action. Since this mere consideration really cannot be considered an action, it can hardly be argued that such consideration need be subject to formal rule-making.

In this connection, the Supreme Court has stated that:

[I]t is within the agency's discretion "to select those procedures most appropriate to enable the agency to implement legislative policy."

In re Solid Waste Util. Cust. Lists, 106 N.J. 508, 519-20 (1987) (citations omitted). Thus, unless due process or the Administrative Procedures Act has been violated, courts will defer to the agency's preference. Neither has been violated in the case at bar, and COAH has already expressed its preference to deal with these situations on a case-by-case basis until it has enough information in order to be able to determine, after careful review, whether a formal rule change is necessary. See AA51a-52a. Since COAH's memorandum indicating its desire to

consider situations on a case-by-case basis does not mandate a particular substantive result, it cannot be said to in and of itself require a formal rule.

2. Even If The Policy Is Substantive, It Is Still Not A Rule.

The New Jersey Supreme Court has set forth a six-part test to be employed to ascertain whether an agency policy must be considered an administrative rule which must be addressed by formal rule-making. In Metromedia, Inc. v. Director, Div. of Taxation, 97 N.J. 313 (1984), the Court stated:

[A]n agency determination must be considered an administrative rule when all or most of the relevant features of administrative rules are present and preponderate in favor of the rule-making process. Such a conclusion would be warranted if it appears that the agency determination, in many or most of the following circumstances, (1) is intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an individual or a narrow or select group; (2) is intended to be applied generally and uniformly to all similarly situated persons; (3) is designed to operate only in future cases, that is prospectively; (4) prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization; (5) reflects an administrative policy that (i) was not previously expressed in any official and explicit agency determination, adjudication or rule, or (ii) constitutes a material and significant change from a clear, past agency position on the identical subject matter; and (6) reflects a decision on administrative regulatory policy in the nature of the interpretation of law or general policy. These relevant factors can, either singly or in combination, determine in a given case whether the essential agency action must be rendered through rule-making or adjudication.

Id. at 331-332. The Court ruled that the Division of Taxation's decision to apply an "audience share factor" to attribute a portion of an out of state taxpayer's receipts to New Jersey, in order to assess a tax on them, constituted a rule whose adoption required compliance with statutory rule-making procedures. Id. at 334. In the Metromedia case, supra, the Court found, after balancing all of the relevant factors, that the agency determination in question passed the six part test as outlined by the Supreme Court. Id. at 334-35.

Where all six factors were not present, however, the courts have sustained an agency's choice of administrative approach. In American Cyanamid v. Dept. of Envir. Prot., 231 N.J. Super. 292 (App. Div.), certif. denied, 117 N.J. 89 (1989), the Supreme Court applied the six factors enumerated in Metromedia and concluded that the Department of Environmental Protection did not engage in de facto rule-making in utilizing certain technology and methodology to delineate a flood hazard area. Id. at 305-07. The Appellate Division ruled that although the DEP's actions had some characteristics of a rule, the Supreme Court's opinion in Metromedia, supra, does not require an entirely quantitative, rather than a qualitative, analysis of the six factors. Id. at 306-07. As a result, even though some of the six factors were met, the Appellate Division concluded that:

[W]e cannot fairly say that "all or most of the relevant features of administrative rules are present

[in this case] and preponderate in favor of the rule-making process."

Id. at 307 (quoting Metromedia, 97 N.J. at 331).

In State v. Garthe, 145 N.J. 1 (1996), the issue before the Supreme Court was whether the action of the State Police in setting forth procedures to test breath alcohol testing machines was rule-making subject to the promulgation requirements of the Administrative Procedure Act. Id. at 3. The Court once again applied the six factor test outlined in Metromedia, supra. Garthe 145 N.J. at 6. In discussing the six factors, the Court stated:

All of those factors need not be present for an agency determination to constitute rulemaking and are to be balanced according to weight, not number.

Id. The Court went on to state that:

Obviously, not every action of a State agency, including informal action, is subject to the formal notice and comment requirement of N.J.S.A. 52:14B-4.

Id. at 7. The Court held that the State Police's actions did not constitute rule-making, stating:

[G]iving proper weight to the factors, the action of the State Police in setting forth procedures to test breathalyzer machines is more like an intra-agency memorandum than rulemaking."

Id.

In In re Solid Waste Util. Cust. Lists, 106 N.J. 508 (1987), ninety-two solid waste utilities challenged a Board of Public Utilities Order requiring them to turn over their customer lists. Id. at 512-13. The Court held that the order was a directive that was clearly inferable from the applicable

statute. Id. at 518. Thus, even though the Court determined that the first three Metromedia factors were satisfied, the order was found to be an attempt to obtain the information necessary to do its job rather than a rule. Id. The Court noted that:

As an alternative to acting formally through rule-making or adjudication, administrative agencies may act informally. . . . Although not discussed in judicial decisions or legal literature as often as formal action, informal action constitutes the bulk of the activity of most administrative agencies.

Id. (Citations omitted).

The Court came to the same conclusion in John Doe v. Poritz, 142 N.J. 1 (1995), again ruling that even though the first three Metromedia factors were satisfied, the final three, which deserved to be weighted more heavily, were not satisfied. Id. at 97. As a result, the Attorney General's implementation guidelines involving sex offender registration and community notification statutes were found not to constitute administrative rules which must conform to the requirements of the Administrative Procedure Act. Id.

Applying the Supreme Court's well reasoned analysis to the case at bar leads to the conclusion that COAH's informal waiver policy is not an administrative rule pursuant to N.J.S.A. 52:14B-2. Therefore, there is no requirement for the policy to conform to the formal requirements of N.J.S.A. 52:14B-4.

To the extent that COAH's informal policy to consider waiver requests does not constitute action, see Point IIIC1,

supra, none of the six factors enunciated by the Supreme Court in Metromedia, supra, are satisfied. Even if COAH's informal intraagency policy of merely entertaining waivers that are already covered by a formal rule is somehow construed to constitute action, however, the policy is still not subject to formal rule-making.

In the present case, at least the final three Metromedia factors are not satisfied. The waiver policy does not prescribe a legal standard or directive that is not otherwise expressly provided by, or clearly and obviously inferable from, either the Fair Housing Act or COAH's formally adopted regulations. It does not reflect an administrative policy that was not previously expressed in any official and explicit COAH determination, adjudication or rule. Furthermore, it does not constitute a material and significant change from a clear, past COAH position on the identical subject matter. Finally, it does not reflect a decision in the nature of the interpretation of law or general policy.

More specifically, N.J.A.C. 5:93-15.1, which was formally adopted pursuant to formal rule-making procedures, gives COAH the discretion to grant waivers. The informal waiver policy merely gives guidance to the agency in making a determination as to whether to consider granting such a waiver pursuant to N.J.A.C. 5:93-15.1 in a given circumstance. As such, it is nothing more than an intraagency memorandum. Consequently, COAH's informal waiver policy neither meets the statutory

definition of a rule nor satisfies the six part test enunciated by the Supreme Court in Metromedia, supra, for determining when rule-making procedures are necessary in order to validate agency actions. COAH's informal waiver policy is thus valid as it is presently applied.

D. Under The Facts Of This Case, Grant Of The Waiver Was Not Arbitrary And Capricious.

Appellant also argues that COAH's waiver provision is not applicable to the facts of this case. COAH's position is that each of standards for a formal waiver enunciated in N.J.A.C. 5:93-15.1 are satisfied in the case at bar. The three tests in N.J.A.C. 5:93-15.1 are that waivers must (1) foster the production of low or moderate income housing; (2) foster the intent of rules; and (3) avoid unnecessary hardships.

COAH made extensive findings with respect to each of these since they were all addressed in the Compliance Report that was incorporated by reference into the rules granting substantive certification. See AA33a-35a. The planner's report first observed that, as noted above, the site not only provides for all of Hillsborough Township's new 12 year cumulative obligation, but it also provides for an additional continuing obligation for at least 300 additional low and moderate income units. This securing of not only the instant 12 year obligation in its entirety, but of the housing obligation for years to come, demonstrates a commitment to the production of affordable

housing that is exemplary. When it is further considered that this commitment was made, not in the context of litigation which forced it upon Hillsborough, but on an entirely voluntarily basis by Hillsborough, then COAH's application of its "fosters the production" of housing test again appears exemplary. It is not, as Appellant charges, arbitrary and capricious. Clearly, COAH's findings in this regard are well based.

With regard to fostering the intent, if not the letter, of COAH's rules, COAH made an accurate determination, based on the facts in this case, that although the instant site was only partially located in Planning Area 4, it had ready access to sewer and water infrastructure. Thus, the COAH policy against needless extension of infrastructure into virgin areas where such extension was unnecessary had not been violated in this instance. In the case at bar, road, water, and sewer infrastructure were already available to this site.

Accordingly, the intent of not only the COAH rules with respect to affordable housing, but also of its rules with respect to the extension of infrastructure in opposition to State Plan policies, was met by the site. The waiver was justified on these grounds as well. In addition, although not noted by COAH at the time, its parallel regulation, N.J.A.C. 5:93-5.4(d), clearly sanctioned what COAH did in this case. See Point IIB, supra. COAH approved a site which had access to water and sewer infrastructure, although the State Planning map had not recognized the existence of this infrastructure when it

placed the site in Planning Area 4. As already noted, although much of the site is located in Planning Area 4, it was adjacent to substantial infrastructure. Thus, this case is exactly what COAH had anticipated as a potential use of its waiver rule. AA33a-35a.

Finally, as COAH found, a strict application of the rule would create an unnecessary hardship. As previously stated, Hillsborough had made substantial commitments to this site since at least 1991. See Statement of Facts, supra. The developer does therefore have vested rights. Furthermore, the site has been a focus of planning in Hillsborough for a long period of time.

It would thus indeed be a hardship, as the Director of the Office of State Planning found, to force Hillsborough to find another site when this one already has vested approvals to be built, and has been in the planning stages for so long. In fact, this site has been in various planning stages longer than the State Plan has been in existence. As the State Plan itself implies in its equity provisions quoted above, even planning policies must recognize existing equities and arrangements.

Similarly, it defies reason to insist that a community which has approved a substantial project and granted it rights should be forced to find another project, merely to satisfy the technical application of a rule contained in N.J.A.C. 5:93-5.4(c). This rule is not even applicable to a mixed Planning Area community. Nonetheless, Appellant bravely proceeds with

just such an argument. This Court should reject this argument and find that COAH, with the advice and consent of the Office of State Planning, acted properly to promote housing. COAH's actions were consistent with the intent of its rules, including those rules dealing with the State Plan, especially N.J.A.C. 5:93-5.4(d). In addition, COAH's actions served to avoid hardship both to the developer, which has been working in good faith on this site for most of a decade, and to the Township, which has been working with the developer in planning this site and had granted it vested rights.

CONCLUSION

It is thus clear that, absent arbitrary and capricious conduct, New Jersey courts are loath to upset the determinations of administrative agencies. In this case COAH has clearly acted within its statutory mandate by granting certification of Hillsborough's housing element and Fair Share Plan. Its interpretation of the Fair Housing Act and its granting of the waiver is supported by the text, legislative purpose, and public policy embodied by the statute. Accordingly, since COAH acted within its discretion, and did not act in an arbitrary or capricious manner in granting substantive certification to Hillsborough Township's Housing Plan, this Court should affirm COAH's grant of substantive certification in this case.

Respectfully submitted,

GREENBAUM, ROWE, SMITH, RAVIN
DAVIS & HIMMEL LLP
Attorneys for Respondent
Hillsborough Alliance for
Adult Living, L.L.P.

By: 

PETER A. BUCHSBAUM

Dated: July 3, 1997

APPENDIX



Van Cleef Engineering Associates

NEIL I. VAN CLEEF, N.J. P.E., L.S. & P.P.
ROBERT J. CLEMCO, N.J. P.E. & P.P.
ROBERT B. HEBELL, N.J. P.E., L.S. & P.P.
DANIEL A. MADY, N.J. L.S. & P.P.
PAUL E. POGORZELSKI, N.J. P.E. & P.P.

Consulting Civil, Environmental & Municipal Engineering
Land Surveying • Professional Planning • Landscape Architecture

April 25, 1997

Peter A. Buchsbaum, Esq.
Greenbaum, Rowe, Smith, Ravin, Davis & Himmel
Metro Corporate Campus I, PO Box 5600
Woodbridge, New Jersey 07095

Faxed Only

RB: Greenbriar at The Village
Hillsborough Township

Dear Mr. Buchsbaum:

Pursuant to your request regarding Greenbriar at The Village, I am herewith transmitting the following items:

1. A copy of a plan entitled "New Jersey State Planning Areas for Greenbriar at The Village, Hillsborough Township, Somerset County, New Jersey" dated April 25, 1997 and indicating Greenbriar at The Village lot boundaries and the appropriate New Jersey State Planning Areas.

Specifically, the enclosed map indicates the following:

Planning Area PV4-Planned Village-Rural Planning Area	686.8 Acres	90.8 Percent
Planning Area 2-Suburban Planning Area	65.8 Acres	8.7 Percent
Planning Area 5-Environmentally Sensitive Planning Area	<u>3.7 Acres</u>	<u>0.5 Percent</u>
	756.3 Acres	100.0 Percent

Please Reply To:

- CENTRAL NJ REGIONAL OFFICE • P.O. Box 275 • 339 Amwell Road • Belle Mead, N.J. 08502 • (908) 359-8291 • FAX # (908) 359-1580
- WESTERN NJ OFFICE • 1128 Route 31 • Lebanon, New Jersey 08833 • (908) 735-9500 • FAX # (908) 735-6364
- SOUTHERN NJ OFFICE • 2345 Route 33 • Robbinsville, New Jersey 08691 • (609) 259-3263 • FAX # (609) 259-0278
- NORTHERN NJ OFFICE • 114 Algonquin Parkway • Whippany, New Jersey 07981 • (201) 887-8711 • FAX # (201) 887-7749
- EASTERN PA OFFICE • 50 East Court Street • Doylestown, PA 18901 • (215) 345-1876 • FAX # (215) 345-1730

Peter A. Buchsbaum, Esq.
April 25, 1997
Page 2

RE: **Greenbriar at The Village
Hillsborough Township**

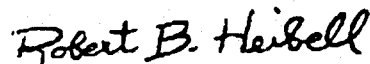
2. A copy of a plan entitled "Sanitary Sewer Service Areas for Greenbriar at The Village, Hillsborough Township, Somerset County, New Jersey" dated April 25, 1997 and indicating Greenbriar at The Village lot boundaries and the appropriate Sanitary Sewer Service Areas.

Specifically, the enclosed map indicates the following:

Individual On-Site Septic Areas	715.9 Acres	94.7 Percent
Projected SRVSA Service Area	30.4 Acres	4.0 Percent
Existing SRVSA Service Area	<u>10.0 Acres</u>	<u>1.3 Percent</u>
	756.3 Acres	100.0 Percent

Please review the enclosed information and contact me should you have any questions.

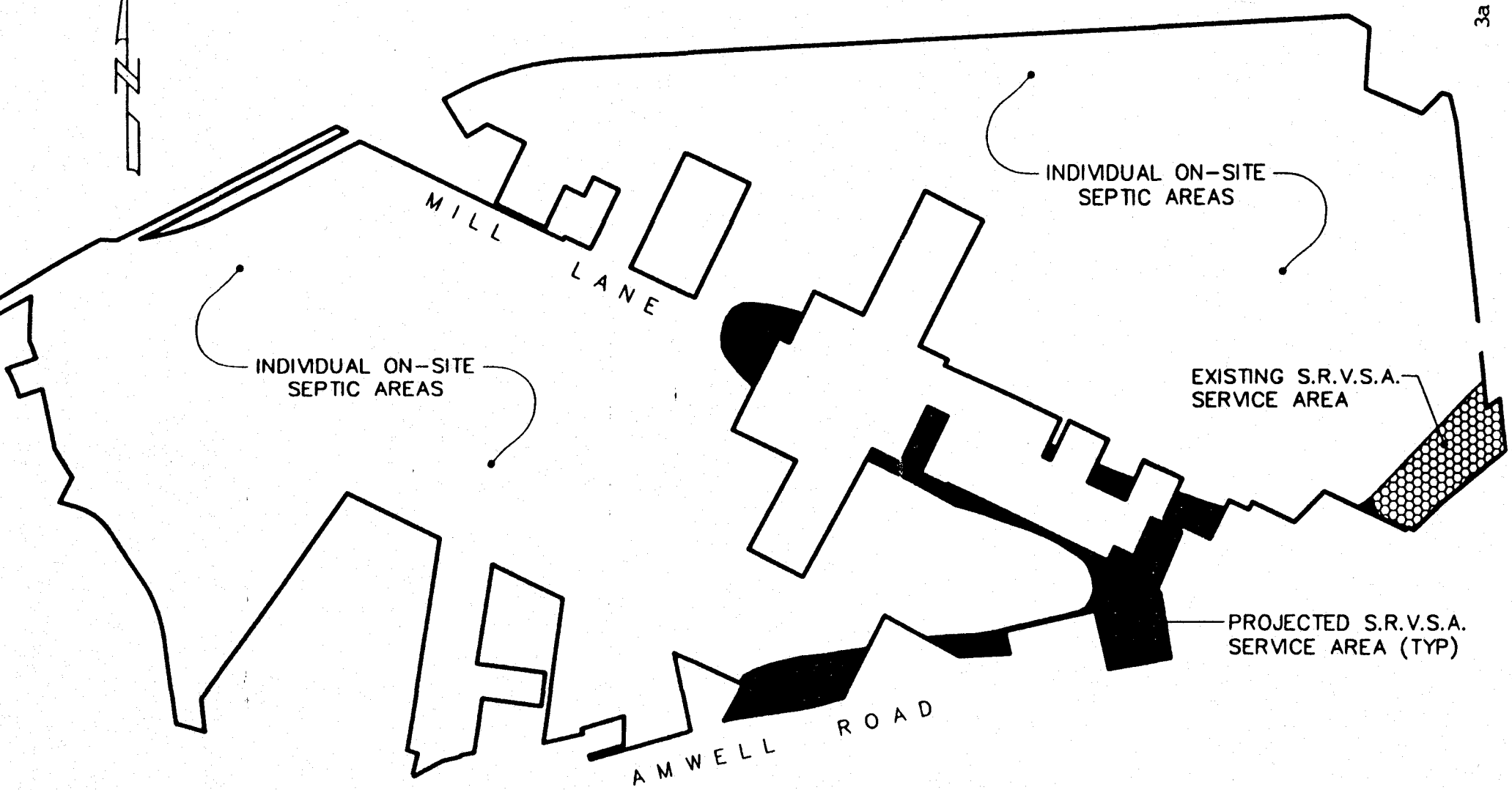
Sincerely,



Robert B. Heibell, P.E. & L.S.

RBH/gw

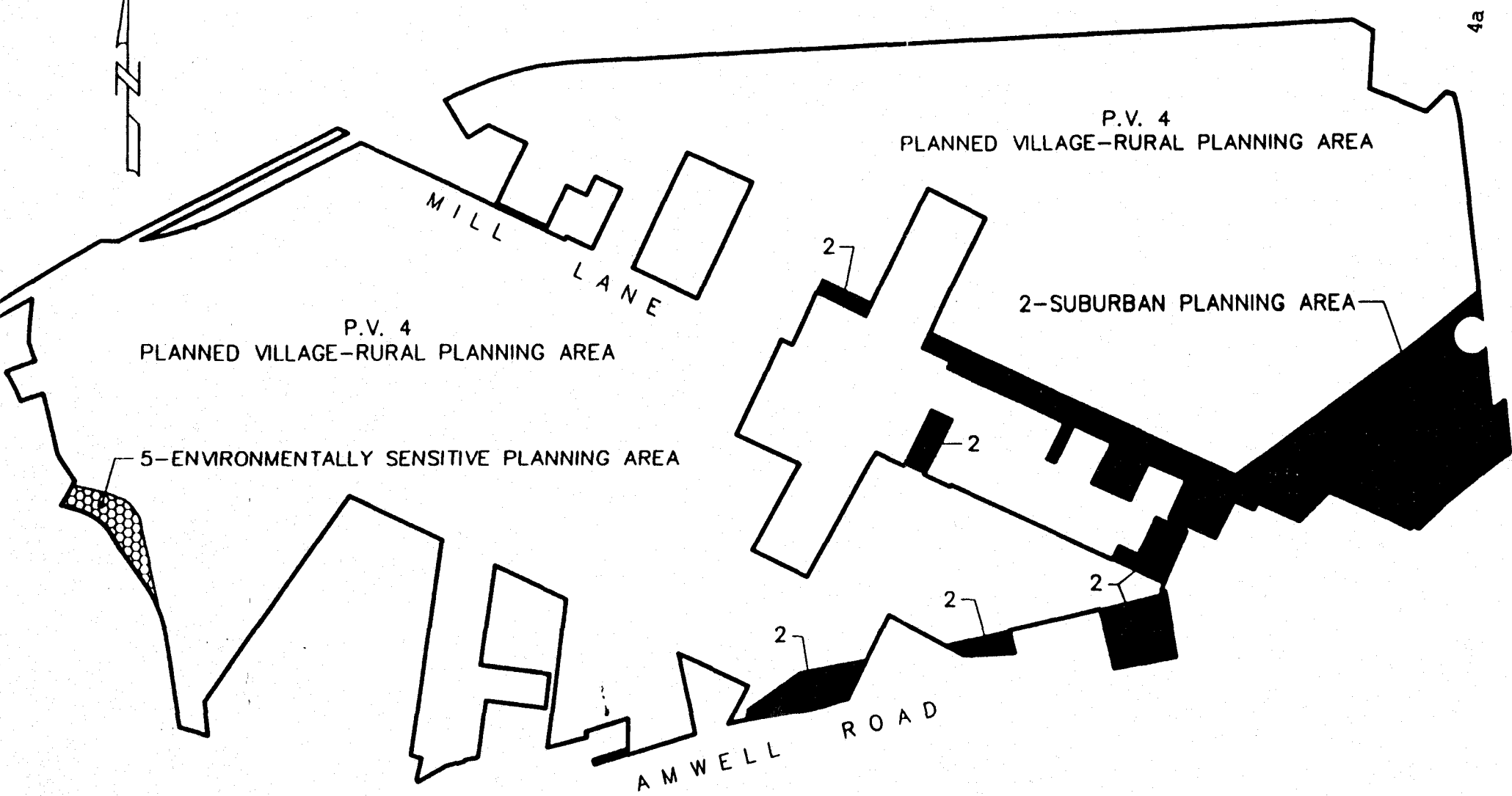
cc: John R. Halleran, Esq. (w/encl)
Harry Smith (w/encl)
Gregory A. Snyder (w/encl)



SOURCE MAP:
 SEWER SERVICE AREA MAP
 FOR THE
 WASTEWATER MANAGEMENT PLAN
 FOR
 HILLSBOROUGH TOWNSHIP
 SOMERSET COUNTY, NEW JERSEY
 PREPARED BY
 VAN CLEEF ENGINEERING ASSOCIATES
 AS AMENDED OCTOBER 18, 1995

SANITARY SEWER SERVICE AREAS
 FOR
 GREENBRIAR AT THE VILLAGE
 SITUATED IN
 HILLSBOROUGH TOWNSHIP
 SOMERSET COUNTY, NEW JERSEY
 PREPARED BY
 VAN CLEEF ENGINEERING ASSOCIATES
 APRIL 25, 1997
 SCALE: 1" = 1,000'



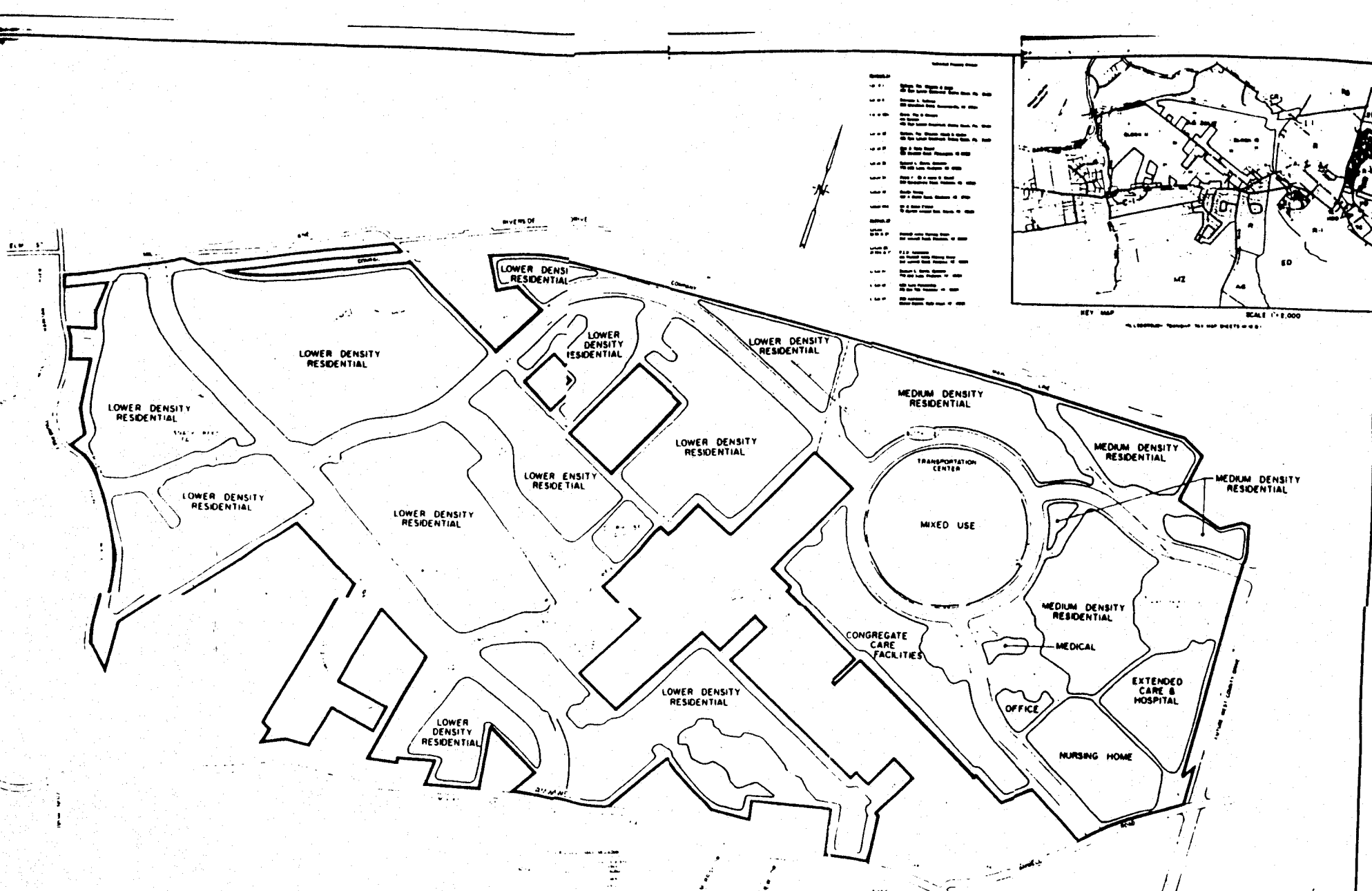


SOURCE MAP:

RESOURCE PLANNING AND MANAGEMENT MAP (R.P.M.M.)
 OF THE FIRST
 NEW JERSEY STATE DEVELOPMENT AND REDEVELOPMENT PLAN
 PREPARED BY THE
 NEW JERSEY STATE PLANNING COMMISSION
 JUNE 12, 1992

NEW JERSEY STATE PLANNING AREAS
 FOR
 GREENBRIAR AT THE VILLAGE
 SITUATED IN
 HILLSBOROUGH TOWNSHIP
 SOMERSET COUNTY, NEW JERSEY
 PREPARED BY
 VAN CLEEF ENGINEERING ASSOCIATES
 APRIL 25, 1997
 SCALE: 1" = 1,000'





gjm
 9 | 2007 | 10000000000 | INC | P | S
 PROFESSIONAL OFFICE BUILDING | 110 | NORTH 22 | WEST
 ARCHITECTS | PLANNERS

GENERAL DEVELOPMENT LAND USE PLAN			
THE VILLAGE			
ILLUSTRATION RELATIVE TO ADULT CARE L.P.			
ILLUSTRATION RELATIVE TO ADULT CARE L.P.			
Project No.	10000000000	Date	10/10/10
Project Name	THE VILLAGE	Client	ADULT CARE L.P.
Project Location	110 NORTH 22 WEST	Scale	AS SHOWN
Project Status	PLANNING	Author	gjm
Project Description	GENERAL DEVELOPMENT LAND USE PLAN		

ILLUSTRATION RELATIVE TO ADULT CARE L.P.
 ILLUSTRATION RELATIVE TO ADULT CARE L.P.
 ILLUSTRATION RELATIVE TO ADULT CARE L.P.

APPLICANT
 ILLUSTRATION RELATIVE TO ADULT CARE L.P.
 10000000000
 10000000000

YANKEE ENGINEERING, ARCHITECTS
 110 NORTH 22 WEST
 10000000000
 10000000000
 BY: **THOMAS P. HULL**
 ROBERT B. HENNEL

TOWNSHIP
OF
HILLSBOROUGH

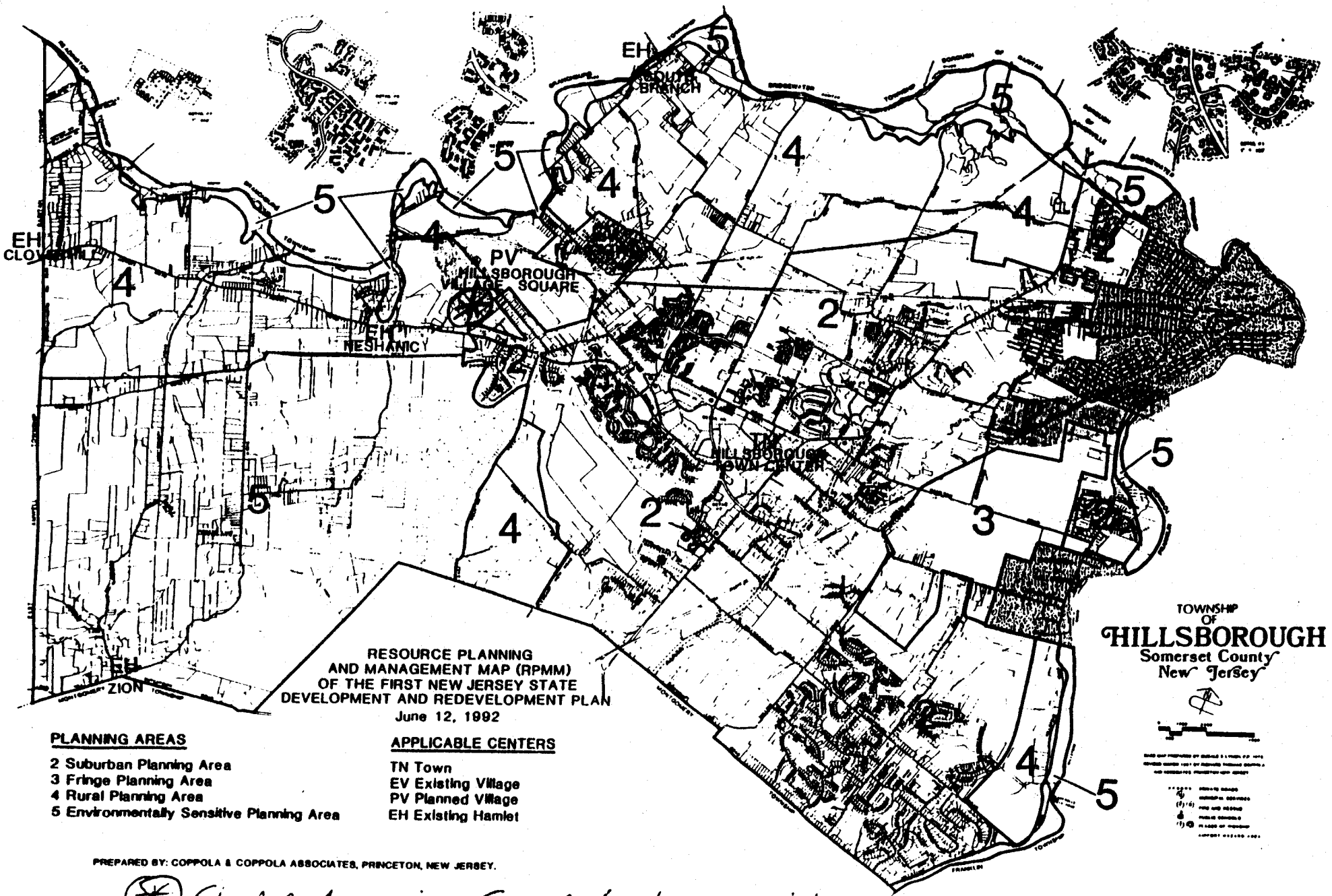
SUMMIT COUNTY
NEW JERSEY

MASTER PLAN
HOUSING PLAN ELEMENT
AND
FAIR SHARE PLAN

1973

RECEIVED
TOWN OF
HILLSBOROUGH
NEW JERSEY

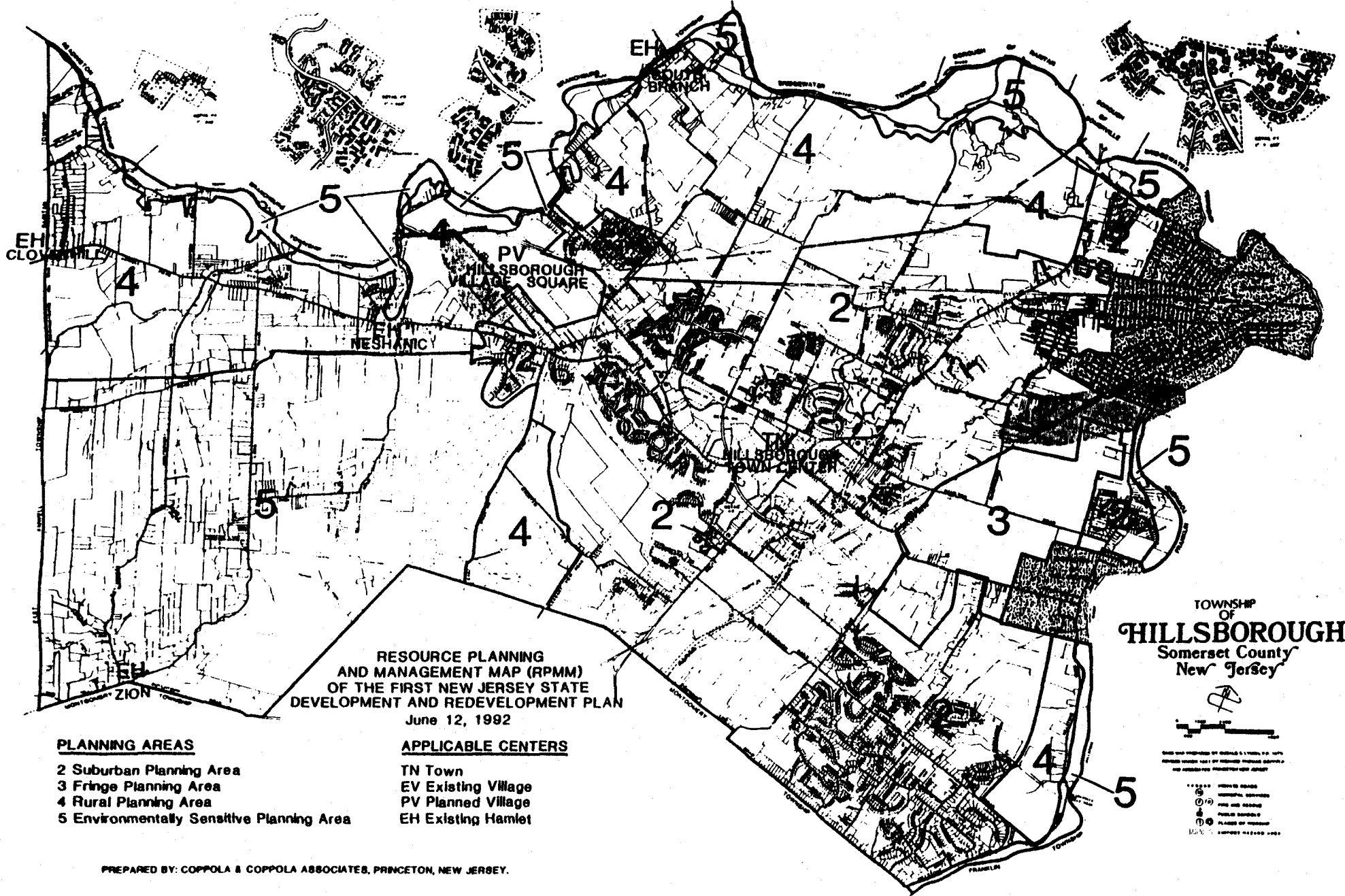
PREPARED BY COPPOLA & COPPOLA ASSOCIATES
PRINCETON, NEW JERSEY
IN COOPERATION WITH EDWARD A. HALPERN, ESQ.
HILLSBOROUGH, NEW JERSEY



PREPARED BY: COPPOLA & COPPOLA ASSOCIATES, PRINCETON, NEW JERSEY.

(Handwritten signature and date)





RESOURCE PLANNING AND MANAGEMENT MAP (RPMM) OF THE FIRST NEW JERSEY STATE DEVELOPMENT AND REDEVELOPMENT PLAN
 June 12, 1992

PLANNING AREAS

- 2 Suburban Planning Area
- 3 Fringe Planning Area
- 4 Rural Planning Area
- 5 Environmentally Sensitive Planning Area

APPLICABLE CENTERS

- TN Town
- EV Existing Village
- PV Planned Village
- EH Existing Hamlet

TOWNSHIP OF
HILLSBOROUGH
 Somerset County
 New Jersey

SEE THE PROCEEDINGS OF THE BOARD OF TOWNSHIP FOR THE YEAR 1992 FOR THE LIST OF TOWNSHIP PLANNING AREAS AND APPLICABLE CENTERS.

***** STATE ROAD
 (---) MUNICIPAL BOUNDARY
 (---) FIRE AND RESCUE
 (---) PUBLIC SCHOOL
 (---) PLANNING AREA
 (---) APPLICABLE CENTER

HILLSBOROUGH TOWNSHIP MASTER PLAN
UPDATE TO LAND USE ELEMENT

GREENWAYS NARRATIVE

2-5 PROJECTED LAND USE

Paragraphs one through five remain unchanged.

GREENWAYS PLAN :

“Greenways are a testament to the need to protect our lands and keep them alive, healthy, and green. The community-based, democratic effort to bring greenways about is composed of hard-working, ordinary people who are dedicated to improving the quality of their everyday lives by preserving and connecting the remnants of nature near their homes and workplaces.”

- Charles E. Little, Greenways for America

The Hillsborough Township Greenways Plan consists of a largely uninterrupted expanse of existing open space, both private and public, which links together woodlands, wetlands, stream corridors, steep slopes, and other sites having geological, botanical, cultural and historic qualities.

In some cases, the Greenways Plan is limited to a narrow easement; in other cases, it expands to the width of a field, a farm, or a meadow. In all cases, the Greenways Plan is important because it provides a meaningful way of linking together existing open space, as well as proposed open space.

The proposed open space areas are conceptual corridors and broad linkages that have been designed to connect the existing open space. These proposed greenways follow ridge lines, parallel stream

corridors, and may include significant areas of wetlands and floodplains. Ultimately, these proposed greenways will provide planners and township officials with a valuable framework for the purchase of open land, and for guiding future development decisions.

In addition, the Hillsborough Greenways Plan is designed to provide all of its citizens with numerous opportunities to enjoy a diverse mix of both passive and active recreational experiences. Wherever practical, the Greenways Plan provides interconnections between developed areas, schools, parks and natural areas. It should be noted, however, that many portions of the Greenways Plan will be left undisturbed to provide natural habitat and wildlife corridors. The Greenways Plan also recognizes similar plans in adjacent communities, and an effort has been made to provide linkage with open space in East Amwell and Montgomery Townships. In this way, Hillsborough's Greenways Plan serves both local and regional needs by providing an open space system of countywide significance.

The benefits which accrue from preserving and protecting open space through a Greenways Plan are many. Among other things greenways:

- Protect environmentally sensitive lands
- Provide valuable corridors for wildlife movement
- Preserve ecological diversity by protecting valuable habitat
- Protect water quality and control flooding by providing buffers between developed areas
- Provide diverse recreational opportunities
- Preserve local character
- Save tax dollars by controlling development

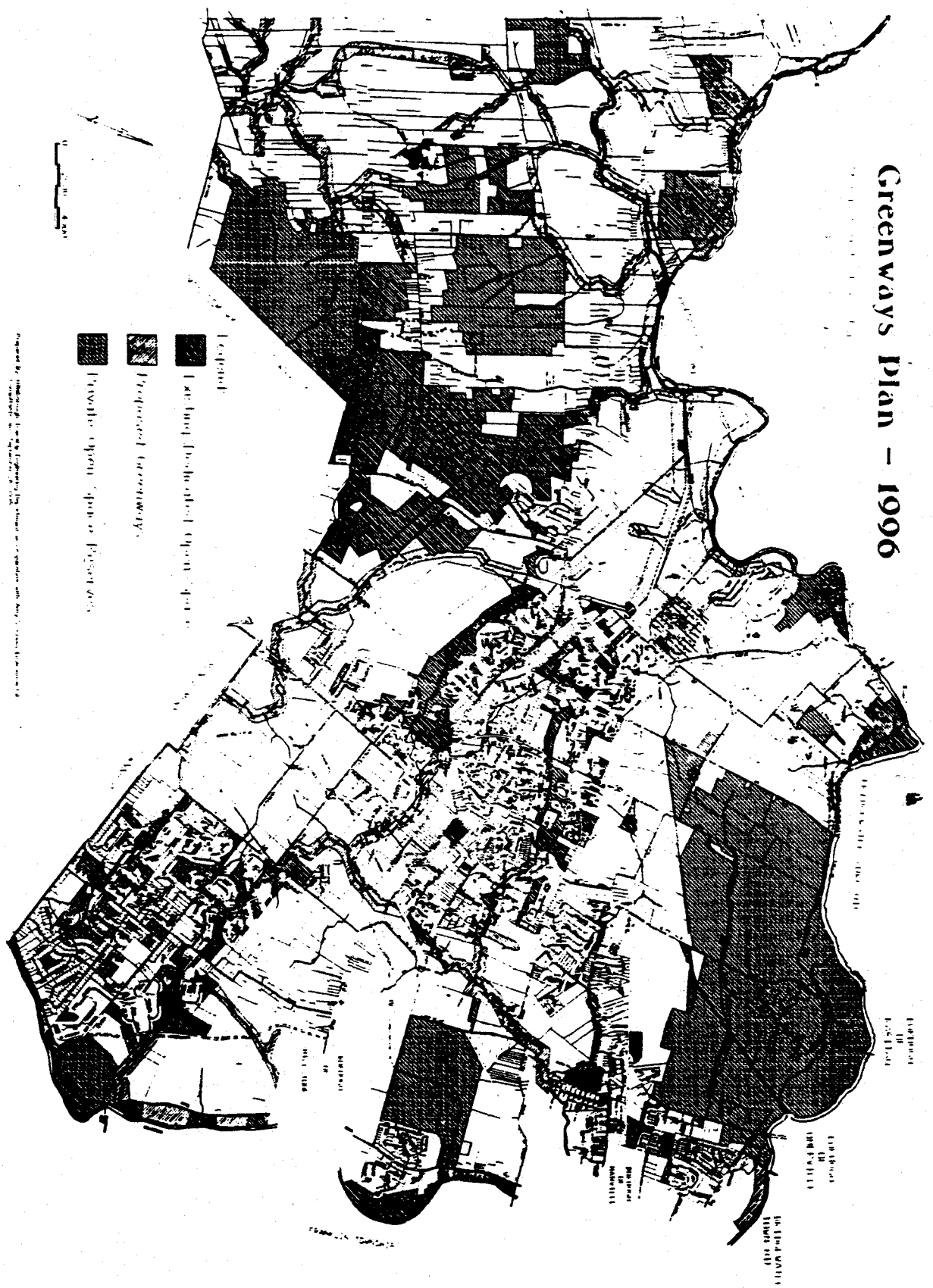
- Provide outdoor classrooms where citizen can study the natural environment
- Help to shape new growth and development so that it accommodates community needs and goals.

“A clean, safe and attractive environment is essential to assuring the health of our citizens,” so notes the New Jersey State Plan. Hillsborough Township recognizes this need and by implementing a Greenways Plan seeks to ensure a high quality of life important to the identity of the community. :

Proposed Greenways Plan to be numbered 4-A.

Land Use Element pages 17 through 19.
November 7, 1996

Greenways Plan - 1996



HILLSBOROUGH TOWNSHIP MASTER PLAN
UPDATE TO CIRCULATION ELEMENT

AMSTERDAM ROAD NARRATIVE

4-5 CIRCULATION PLAN

Paragraphs one through five remain unchanged.

The Millstone River Road By-Pass, more commonly known as Amsterdam Drive runs North/South from Hillsborough Road to Hamilton Road by way of intersection with "Corporate Way" just south of Hamilton Road. Due to environmental restraints, flood free improvement of Sunnymeade Road is not possible and a more effective northerly link via Corporate Way to Millstone River Road is now envisioned. In this manner the traffic from Amsterdam Drive will re-join River Road just south of Manville. The road is envisioned as a major North/South collector for residents of the southeast portion of the Township and will help equalize North/South traffic in that area, providing relief for South Woods Road and existing Millstone River Road. This is consistent with the State's and Township's intended purpose of preserving the Millstone River Historic and Scenic Corridors, eliminating the need for realignment and widening of Millstone/River Road.

In order to protected and preserve the quality of life for those existing and proposed residents along the intended corridor, the following design standards have been developed with the assistance of residents and the Somerset County Engineer's Office:

1. The roadway will have a somewhat serpentine alignment relying as much as possible on a 900 foot radius. This is both the minimum acceptable design radius and maximum desirable radius.

2. The 70 foot wide Right-Of-Way will be bounded on both sides by minimum 30 foot conservation easements.
3. The typical pavement shall be 40 feet curb to curb, striped for two lanes with shoulders, utilizing the shoulder areas for bike paths.
4. Curbs, sidewalks and street trees shall be maintained along the full length of the roadway, with densely planted earthen berms constructed along adjacent properties of a height to obscure the sight and sound of vehicular traffic. Sidewalks, yet to be built, in the existing 80 foot Right of Way sections should be built 7 feet 0 inches inside the Right of Way.
5. At the southern end, the T-intersection with Millstone River Road will remain.
6. The Northern intersection with Corporate Way or Hamilton Road shall be a T-intersection.
7. The road shall be "restricted access" with no private driveway access permitted.
8. The intended speed limit shall be the lowest acceptable to the Somerset County Engineer's Office based on input from the Township and local residents, which has been identified by the County Engineer to be accepted at a maximum of 35 mph.
9. This "Residential Collector" roadway will ultimately be taken over as a "County" roadway.

Paragraphs six through nineteen remain unchanged.

Circulation Element pages 9 through 15.
November 7, 1996

HILLSBOROUGH TOWNSHIP MASTER PLAN
UPDATE TO CONSERVATION ELEMENT

GREENWAYS NARRATIVE

8-2 GREENWAYS PLAN (new section)

“Greenways are a testament to the need to protect our lands and keep them alive, healthy, and green. The community-based, democratic effort to bring greenways about is composed of hard-working, ordinary people who are dedicated to improving the quality of their everyday lives by preserving and connecting the remnants of nature near their homes and workplaces.”

- Charles E. Little, Greenways for America

The Hillsborough Township Greenways Plan consists of a largely uninterrupted expanse of existing open space, both private and public, which links together woodlands, wetlands, stream corridors, steep slopes, and other sites having geological, botanical, cultural and historic qualities.

In some cases, the Greenways Plan is limited to a narrow easement; in other cases, it expands to the width of a field, a farm, or a meadow. In all cases, the Greenways Plan is important because it provides a meaningful way of linking together existing open space, as well as proposed open space.

The proposed open space areas are conceptual corridors and broad linkages that have been designed to connect the existing open space. These proposed greenways follow ridge lines, parallel stream corridors, and may include significant areas of wetlands and floodplains. Ultimately, these proposed greenways will provide planners and township officials with a valuable framework for the purchase of open land, and for guiding future development decisions.

In addition, the Hillsborough Greenways Plan is designed to provide all of its citizens with numerous opportunities to enjoy a diverse mix of both passive and active recreational experiences. Wherever practical, the Greenways Plan provides interconnections between developed areas, schools, parks and natural areas. It should be noted, however, that many portions of the Greenways Plan will be left undisturbed to provide natural habitat and wildlife corridors. The Greenways Plan also recognizes similar plans in adjacent communities, and an effort has been made to provide linkage with open space in East Amwell and Montgomery Townships. In this way, Hillsborough's Greenways Plan serves both local and regional needs by providing an open space system of countywide significance.

The benefits which accrue from preserving and protecting open space through a Greenways Plan are many. Among other things greenways:

- Protect environmentally sensitive lands
- Provide valuable corridors for wildlife movement
- Preserve ecological diversity by protecting valuable habitat
- Protect water quality and control flooding by providing buffers between developed areas
- Provide diverse recreational opportunities
- Preserve local character
- Save tax dollars by controlling development
- Provide outdoor classrooms where citizen can study the natural environment
- Help to shape new growth and development so that it accommodates community needs and goals.

Update to Master Plan
Greenways Plan Narrative and Map
November 7, 1996

“A clean, safe and attractive environment is essential to assuring the health of our citizens,” so notes the New Jersey State Plan. Hillsborough Township recognizes this need and by implementing a Greenways Plan seeks to ensure a high quality of life important to the identity of the community.

Proposed Greenways Plan to be numbered 3.

Conservation Element page 6.
November 7, 1996

Please see Greenway Map included in the
Land Use section

HILLSBOROUGH TOWNSHIP MASTER PLAN
UPDATE TO APPENDICES AND SOURCES

November 7, 1996

12-2 LAND USE PLAN ELEMENT

Hillsborough Township Engineering Department, 1996 (Baseline Map, Review and Analysis).

Hillsborough Township Open Space Advisory Committee, 1996.

Hillsborough Township Environmental Commission, 1996 (Greenways Plan and Text).

Amy Greene Environmental Consultants, 1996.

12-4 CIRCULATION PLAN ELEMENT

Hillsborough Township Engineering Department, 1996 (Amsterdam Road Narrative).

Citizen Advisory Group R A A D, 1996.

12-8 CONSERVATION PLAN ELEMENT

Hillsborough Township Engineering Department, 1996 (Baseline Map, Review and Analysis).

Hillsborough Township Environmental Commission, 1996 (Greenways Plan and Text).

Amy Greene Environmental Consultants, 1996.

Appendices and Sources pages 1 through 8.
November 7, 1996

THE
NEW JERSEY
STATE DEVELOPMENT AND REDEVELOPMENT PLAN

Prepared by:
The New Jersey State Planning Commission

June 12, 1992



I. INTRODUCTION

Overview of the State Plan

New Jersey is a State of abundant resources and a highly desirable quality of life. The State has been blessed with a strong economy, and it is well positioned to share in the benefits of national growth and prosperity. The State's resources and its quality of life are sensitive to the impacts of unplanned growth and development, however, and there are increasing signs that New Jersey's resources and quality of life are under siege. There is evidence in many parts of the State of a deterioration in the quality of life: traffic congestion, loss of agricultural lands, polluted streams, loss of wetlands, deteriorating urban centers, fiscal stress and other impacts of unplanned growth.

In recent decades, shifts in the State's development pattern and the aging of its urban infrastructure have led to decay and decline in many of the State's urban areas. While jobs in the State have doubled over the last several decades, jobs in the major cities of the State have declined by more than 35 percent. Since 1950, hundreds of thousands of acres of rural and agricultural lands have been converted to sprawling subdivisions, a pattern of development that destroys the character of the cultural landscape, is inefficient in terms of public facilities and services and devoid of the sense of place that has long defined the character of life in New Jersey. In turn, this sprawling, consumptive pattern of development has contrib-

uted to increased housing prices. Worse still, sprawl generates more vehicle miles of travel than more compact forms of development. Ironically, though New Jersey has more miles of highway per square mile than any other state, over 60 percent of the State's interstate system is operating at or above capacity during peak periods of use.

1. THE STATE PLANNING ACT

If New Jersey wants to preserve and maintain its abundant natural, cultural, economic and social resources--its quality of life--it must plan for its future. In 1985, the Legislature of the State of New Jersey adopted the State Planning Act, (N.J.S.A. 52:18A-196 et seq.) In the Act, the Legislature declared that the State of New Jersey needs sound and integrated "Statewide planning" to:

"...conserve its natural resources, revitalize its urban centers, protect the quality of its environment, and provide needed housing and adequate public services at a reasonable cost while promoting beneficial economic growth, development and renewal"

Under the Act, the State Development and Redevelopment Plan is to establish "statewide planning objectives" regarding land use, housing, economic development, transportation, natural resource conservation, agriculture and farmland retention, recreation, urban and suburban redevelopment, historic preservation, public facilities and services and intergovern-

mental coordination. Sound and integrated statewide planning around these issues is the anticipated result of a statewide planning process that involves the active participation of State agencies and local governments in its preparation.

The State Planning Act recognizes and is based on the following principles:

1. *The future well-being of the State of New Jersey depends on equal and shared social and economic opportunity among all its citizens;*
2. *A reasonable balance between public- and private-sector investment in infrastructure is key to the fiscal health, economic prosperity and environmental integrity of the State;*
3. *Coordinated planning among the State and local governments can ensure that "economies, efficiencies and savings" are achieved regarding public- and private-sector investment in the State;*
4. *The revitalization of the State's urban centers is necessary if all New Jersey's citizens are to benefit from growth and economic prosperity;*
5. *The provision of adequate and affordable housing in reasonable proximity to places of employment is necessary to ensure equal social and economic opportunity in the State; achieving this end requires sound planning to ensure an adequate supply of available land that can be developed in an efficient growth pattern; and*
6. *The conservation of natural resources and the protection of environmental qualities are vital to the quality of life and economic prosperity of New Jersey.*

The State Development and Redevelopment Plan responds to these principles and establishes a vision and a plan for the future of New Jersey. It is intended to serve as a guide for how public policy decisions should be made at all levels of government to achieve the Goals of the State Planning Act. The State Plan identifies these Goals as well as Strategies and public policy measures that, when applied by all levels of government, will shape growth in ways that will help achieve the intent and purpose of the State Planning Act.

2. STATE PLANNING GOALS AND STRATEGIES

The following statements summarize State Planning Goals and Strategies:

1. **REVITALIZE THE STATE'S URBAN CENTERS AND AREAS** by investing wisely and sufficiently in improvements to their human resources and infrastructure systems to attract private investment;
2. **CONSERVE THE STATE'S NATURAL RESOURCES** by planning the location and intensity of growth to maintain the capacities of natural resource systems and then investing in infrastructure and natural resource protection programs in ways that guide growth according to this planning;
3. **PROMOTE BENEFICIAL ECONOMIC GROWTH, DEVELOPMENT AND RENEWAL** by providing infrastructure in advance of, or concurrent with, the impacts of new development sufficient to maintain adequate facility standards;
4. **PROTECT THE ENVIRONMENT** by planning for growth in compact forms at locations and intensities of use that protect land and

Overview of the State Plan

water quality, allow expeditious regulatory reviews and make sufficient transportation alternatives feasible to help achieve and maintain air quality standards;

5. PROVIDE ADEQUATE PUBLIC SERVICES AT A REASONABLE COST by planning locations and patterns of growth that maintain existing and planned capacities of infrastructure, fiscal, social and natural resource systems;

6. PROVIDE ADEQUATE HOUSING AT A REASONABLE COST by planning for the location of a density of housing sufficiently close to both employment opportunities and public transportation so as to reduce both housing and commuting costs for low-, moderate- and middle-income groups;

7. PRESERVE AND ENHANCE HISTORIC, CULTURAL, OPEN SPACE AND RECREATIONAL LANDS AND STRUCTURES by identifying these resources and using public investment strategies; preservation, conservation and regulatory programs; and other techniques to guide growth in locations and patterns that protect them; and

8. ENSURE SOUND AND INTEGRATED PLANNING STATEWIDE by using the State Plan as a guide to planning and growth-related decisions at all levels of government.

3. GENERAL PLAN STRATEGY

The General Plan Strategy is TO ACHIEVE ALL STATE PLANNING GOALS by coordinating public and private actions to guide future growth into compact forms of development and redevelopment, located to make the most efficient use of infrastructure systems and to support the maintenance of capacities in infrastructure, environmental,

natural resource, fiscal, economic and other systems.

Growth occurs primarily, though not exclusively, through private investment in jobs, housing, commercial services and other economic activities. The public sector invests in the facilities and services required to support this growth and regulates private development activities to protect the public health, safety and welfare. Public and private decisions on where, how and when growth occurs, therefore, are inextricably linked - each influences the decisions of the other. While private-sector development decisions must follow existing regulations, these decisions usually lead public investments in the infrastructure that will be required to support it. In other words, growth usually occurs first, and many of the public facilities required to maintain service standards lag behind. The result is traffic congestion, pollution, loss of open space and other negative impacts. The State Plan recommends that governments at all levels undertake sound, capacity-based planning. Governments should then use their plans to devise public investment strategies and regulatory policies that shape the locations and patterns of development that will lead to the achievement of the Goals of the State Planning Act.

Because the negative impacts of growth occur when the capacities of natural and built systems are exceeded, our planning must carefully consider these capacities. In follow-up to our planning, our regulatory programs should assure that system capacities are maintained at levels that protect the public's health and safety. Capacities are not, however, just matters of physical tolerances. They are also matters of

TO ACHIEVE ALL STATE PLANNING GOALS

...devise public investment strategies and (policies) that shape the locations and patterns of development...

fiscal responsibility and foresight. The ability of the State and its citizens to generate revenue for expensive new infrastructure and natural resource protection programs is not unlimited, so public funds should be used to maximize capacity per unit of investment. For instance, if a certain amount of public investment in a compact form of development can support more development than the same amount invested to support a sprawl pattern, then the fiscal capacity of the State is enhanced by investing in the more compact form.

4. STATEWIDE POLICIES

Statewide coordination of planning will be achieved through the application of the Plan's "Statewide Policies." These Policies are designed to improve both the planning and the coordination of public policy among all levels of government so that we can overcome existing problems and not create new problems in the future. The Statewide Policies address seventeen substantive areas of concern:

Equity; Comprehensive Planning; Resource Planning and Management; Public Investment Priorities; Infrastructure Investments; Economic Development; Urban Revitalization; Housing; Transportation; Historic, Cultural and Scenic Resources; Air Quality; Water Resources; Open Lands and Natural Systems; Energy Resources; Waste Management; Agriculture; and Areas of Critical State Concern.

Statewide Policies are designed to improve intergovernmental coordination of planning in a complex, highly diverse state. They will not, in and of themselves, lead to the patterns of development necessary to achieve the Goals of the Act. They need to be applied to public and private decisions through a management "struc-

ture" that accounts for the geographic diversity of the State and the unique opportunities and constraints that this diversity presents in terms of achieving the Goals of the Act. The Plan calls this structure the "Resource Planning and Management Structure."

5. RESOURCE PLANNING AND MANAGEMENT STRUCTURE

The Resource Planning and Management Structure identifies the types of compact forms of development that are desirable and necessary to assure efficient infrastructure and protection of natural and environmental resources in the various regions of the State. It also identifies the regions of the State within which there are critical natural and built resources that should be either protected or enhanced in order to achieve the Goals of the State Planning Act. The compact forms are called "Centers" and the regions are called "Planning Areas."

Centers

The State Plan contemplates the following five types of Centers:

- Urban Centers**
- Towns**
- Regional Centers**
- Villages**
- Hamlets**

Centers are compact forms of development that, compared to sprawl development, consume less land, deplete fewer natural resources and are more efficient in the delivery of public services. The concept of Centers is the key organizing principle for new growth and development in the State. Centers have a core of

Overview of the State Plan

public and private services and an area surrounding the core defined by a "Community Development Boundary." The Community Development Boundary of a Center defines the geographic limit of planning for development of the Center. In areas served by urban infrastructure, the boundary should be drawn to define areas for development and redevelopment activity, coordinated public resource investment, planning for transportation linkages, and other purposes. In areas served, or to be served, by community infrastructure (primarily in exurban and rural areas), the boundary should be drawn to delineate, in addition to the purposes described above, the limit of future extension of a Center's capital facility services and, therefore, the geographical extent of its future growth. Areas outside of the Centers' community development boundaries are the "environs" of the Centers, and these environs should be protected from the impacts of development within the Centers and from other sources.

The amount of growth that should occur in any particular Center depends upon its capacity characteristics and the unique opportunities and constraints presented by the Planning Area in which it exists. Centers should be planned and maintained so that they develop a unique character and "sense of place," attributes of desirable communities described earlier as "Communities of Place."

Planning Areas

Planning Areas serve a pivotal role in the State Plan by setting forth Policy Objectives that guide the application of the State Plan's State-

wide Policies within each area, guide local planning and decisions on the location and size of Centers within Planning Areas and protect or enhance the environs of these Centers. In all cases, the application of Planning Area Policy Objectives serve to achieve the Goals of the State Planning Act.

The Planning Areas are:

- PA 1 Metropolitan Planning Area**
- PA 2 Suburban Planning Area**
- PA 3 Fringe Planning Area**
- PA 4 Rural Planning Area**
- PA 5 Environmentally Sensitive Planning Area**

The Planning Areas (e.g., PA 5) are geographically delineated to reflect the conditions (e.g., environmentally sensitive natural resources) that the Act requires the Plan to address through policies (e.g., Statewide Policies on Natural and Cultural Resources). Because each Planning Area has different characteristics, it is unique and requires a unique set of Policy Objectives. These Policy Objectives orient the application of Statewide Policies to assure proper development of the Centers and adequate protection of their environs, all within the context of each Planning Area's unique conditions. The capacities of infrastructure, natural resource and other systems should be major considerations in planning the location and intensity of growth in each Planning Area. In the Metropolitan and Suburban Planning Areas, development and redevelopment activities should promote progress toward the sense of place inher-

ent in the State Plan's Community of Place concept.

The Resource Planning and Management Structure relies upon the Environmentally Sensitive Planning Area as a primary means of protecting and managing the State's natural and environmental resources. Yet the State Plan recognizes that there are important natural and environmental resources found in other Planning Areas as well. The Plan refers to these sites in other Planning Areas as "Critical Environmental/Historic Sites," and it recommends that the Policy Objectives and other provisions of the Environmentally Sensitive Planning Area apply to these sites even though they are not located in the Environmentally Sensitive Planning Area. These sites are to be identified during the Cross-acceptance and municipal master planning processes.

6. HOW THE STATE PLAN SHOULD BE USED

The State Plan is different from functional State agency plans and municipal and county master plans. The State Plan is not a regulation but a policy guide for State, regional and local agencies to use when they exercise their delegated authority. For example, the State Plan does not automatically change the criteria for the issuance of a State permit, but it does contemplate that the agency responsible for issuing permits should review its plans and regulations in light of the State Plan and make appropriate modifications to reflect the Goals, Strategies, Policies and Objectives of the Plan, if such modifications are within the scope of the agency's authority. If the necessary modifications would exceed the agency's authority, it should seek to obtain the authority through normal legislative

or rule-making processes. Similarly, when county and municipal master plans are updated, they should be modified to reflect the provisions of the State Plan. In these ways, the intent of the State Planning Act is achieved through existing lines of delegated authority and through existing implementation processes.

The State Plan also will be important when the State of New Jersey makes infrastructure investment decisions. The State Plan will serve as a guide to when and where available State funds should be expended to achieve the Goals of the State Planning Act. The principal source of this guidance is provided by the State Plan's Public Investment Priorities, a section of State-wide Policies.

It is the position of the State Planning Commission that a basic policy in implementation of the State Plan is to achieve the public interest goals of the State Planning Act while protecting and maintaining the equity of all citizens. It is the intent of the State Planning Commission that the benefits and burdens of implementing the State Plan should be equitably distributed among all citizens of the State. Where implementation of the goals, policies and objectives of the State Plan affects the reasonable development expectations of property owners or disproportionately affects the equity of other citizens, agencies at all appropriate levels of government should mitigate such impacts to ensure that the benefits and burdens flowing from implementation of the State Plan are borne on an equitable basis.

It is the intent of the State Planning Commission that the benefits and burdens of implementing the State Plan should be equitably distributed among all citizens of the State.

ing the State Plan as a guide to planning and growth-related decisions at all levels of government.

9. GENERAL PLAN STRATEGY: ACHIEVE STATE PLANNING GOALS BY COORDINATING PUBLIC AND PRIVATE ACTIONS TO GUIDE FUTURE GROWTH INTO COMPACT FORMS OF DEVELOPMENT AND REDEVELOPMENT, LOCATED TO MAKE THE MOST EFFICIENT USE OF INFRASTRUCTURE SYSTEMS AND TO SUPPORT THE MAINTENANCE OF CAPACITIES OF INFRASTRUCTURE, ENVIRONMENTAL, NATURAL RESOURCE, FISCAL, ECONOMIC AND OTHER SYSTEMS.

The State Planning Act contains three key provisions that mandate the approaches the Plan must use in achieving State Planning Goals. The Plan must:

" . . . encourage development, redevelopment and economic growth in locations that are well situated with respect to present or anticipated public services and facilities and to discourage development where it may impair or destroy natural resources or environmental qualities.";

" . . . reduce 'sprawl'"; and

" . . . promote development and redevelopment in a manner consistent with sound planning and where infrastructure can be provided at private expense or with reasonable expendi-

The Statewide Policy Structure
tures of public funds." (N.J.S.A. 52:18A-196, et seq.)

Present and anticipated public services and facilities are located in the State's urban and suburban areas and in the many smaller towns and villages existing throughout the rural areas of the State. These services are usually established in a central place and are extended outward. Sprawl occurs when growth is not logically related to existing and planned public services and facilities. Sound planning would encourage patterns of development that are less expensive than sprawl patterns because they can be served more efficiently with infrastructure. A plan that adheres to these three mandates, therefore, should have a general strategy that promotes compact patterns of development adequately served by infrastructure.

B. Statewide Policies

The State Planning Goals provide the ends to which governments at all levels should aspire in their planning and decision-making. The Strategies identify the most effective approaches for achieving these Goals and provide a context for policy initiatives in a broad array of substantive areas. These areas include comprehensive planning, resource planning and management, public investment priorities, infrastructure investments, economic development, urban revitalization, housing, transportation, natural and cultural resources, agriculture and areas of critical State concern.

Statewide Policies

1. EQUITY

It is the position of the State Planning Commission that a basic policy in implementation of the State Plan is to achieve the public interest goals of the State Planning Act while protecting and maintaining the equity of all citizens. It is the intent of the State Planning Commission that the benefits and burdens of implementing the State Plan should be equitably distributed among all citizens of the State. Where implementation of the goals, policies and objectives of the State Plan affects the reasonable development expectations of property owners or disproportionately affects the equity of other citizens, agencies at all appropriate levels of government should employ programs, including for example compensation, that mitigate such impacts to ensure that the benefits and burdens flowing from implementation of the State Plan are borne on an equitable basis.

In contributing to the development of the State Plan, many groups have expressed concerns about "equity." Urban center residents, for example, feel that their equity has been eroded through urban disinvestment and resource allocation policies favoring new development in suburban and rural areas. Suburban residents, on the other hand, feel that they have lost equity via overcrowded highways, loss of nearby open space, rising taxes, and other negative growth impacts, the result, they feel, of inadequate planning, underfunding of infrastructure and other factors. Rural residents, particularly farmland owners and other land owners, feel that their equity is eroded when the use of their land is constrained to the extent that it lowers the value of their property and, in particular, jeopardizes

the economic viability of farming operations. These groups have expressed their desire that the plan address these issues.

It is the position of the State Planning Commission that the State Plan should neither be used in a manner that places an inequitable burden on any one group of citizens nor should it be used as a justification for public actions that have the effect of diminishing equity. It is also the position of the Commission that the achievement, protection and maintenance of equity be a major objective in public policy decisions as public- and private-sector agencies at all levels adopt plans and policies aimed at becoming consistent with the State Plan.

The Commission urges individuals and groups that have concerns about equity to use all avenues to assure that their concerns are considered in governmental actions and to prevent inappropriate application, or abuse, of the State Plan. Legally, the State Plan is a statement of State policy formulated to guide planning, not regulation. Public-sector agencies, and private-sector organizations such as lending institutions, should not use designations and delineations contained in the State Plan to determine the market value of particular tracts or parcels of land. Accordingly, such uses of the State Plan are inappropriate because it is not designed to regulate and should not be applied to the future use or intensity of use of specific parcels of land. Both public- and private-sector agencies are cautioned that direct application of the State Plan to specific parcels of land may result in inequitable distribution of the benefits and burdens of public action.

...the Suburban Planning Area is a key area for accommodating market forces and demand for new development.

Policy Objectives

The following set of Policy Objectives is unique to the Metropolitan Planning Area and should be used to guide the application of the State Plan's Statewide Policies, the criteria for the identification of any existing or planned Centers appropriate in this Planning Area, the delineation of Community Development Boundaries around Centers and local and State-agency planning.

- (1) *Land Use: Guide new development and redevelopment to ensure efficient and beneficial utilization of scarce land while capitalizing on the inherent public facility and service efficiencies of the concentrated development patterns.*
- (2) *Housing: Preserve the existing housing stock through maintenance and rehabilitation and provide a variety of housing choices through development and redevelopment.*
- (3) *Economic Development: Promote economic development by encouraging redevelopment efforts such as infill and land assembly, public/private partnerships and infrastructure improvements.*
- (4) *Transportation: Capitalize on the high-density settlement patterns that encourage the use of public transit systems and alternative modes of transportation to improve travel among major population centers, employment centers and transportation terminals.*
- (5) *Natural Resource Conservation: Reclaim environmentally damaged sites and mitigate future*

negative impacts, particularly to waterfront scenic vistas, any remaining wildlife habitat and to Critical Environmental/Historic Sites generally. Give special emphasis to addressing air quality concerns; provide open space and recreational amenities.

- (6) *Recreation: Provide maximum recreational opportunities by concentrating on the maintenance and rehabilitation of existing parks and open space while expanding the system through redevelopment and reclamation projects.*
- (7) *Historic Preservation: Integrate historic preservation with redevelopment efforts in a way that will not compromise either the historic resource or the area's need to redevelop.*
- (8) *Public Facilities and Services: Complete, repair or replace existing infrastructure systems to eliminate deficiencies and enable future development and redevelopment efforts.*
- (9) *Intergovernmental Coordination: Provide for the regionalization of as many public services as feasible and economical, and coordinate the efforts of State, county and municipal governments to ensure sound redevelopment, by encouraging private sector investment and providing supportive government regulations, innovative tax policies and other governmental policies and programs.*

2. SUBURBAN PLANNING AREA (PA2)

General Description

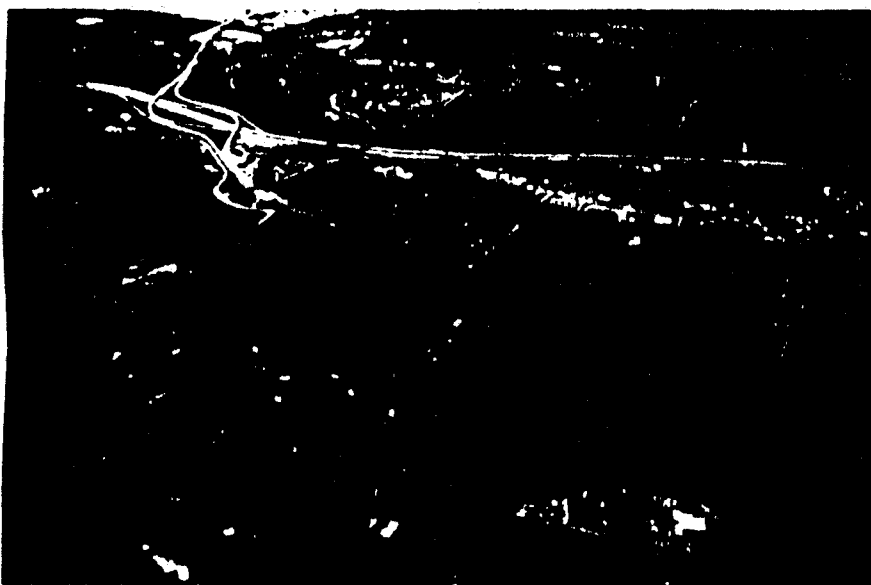
The Suburban Planning Area is generally located adjacent to the more densely developed

Planning Areas

Metropolitan Planning Area, but can be distinguished from it by a lack of high intensity Centers and by the availability of vacant developable land. The Suburban Planning Area is or will be served by urban infrastructure, except that there is limited, if any, availability of alternative modes of transportation to the automobile. The Area has generally been designated for growth in municipal master plans. As development expands to the Area's boundary, these services will become increasingly available if planned properly.

The Suburban Planning Area contains ex-urban lands that will be converted to suburban

Unmanaged, sprawl development in the Suburban Planning Area can be transformed into focused development centers where public services can be provided at a lower cost to the taxpayer.



subdivisions, office campuses or shopping centers. The Area's current development pattern lacks the compact settlement pattern of the older suburbs in the Metropolitan Planning Area and is almost entirely dependent on the private automobile for transportation, with few focal points for community interaction. Because the existing pattern of development is inefficient in terms of the cost of facilities and services, it pressures property taxes up to pay for services that are more expensive than they should be. This pattern also does little in terms of leveraging private sector investment. The misalignment that this pattern creates between facilities demand and facilities capacity results in traffic congestion, unavailability of affordable housing and destruction of open space that defines community character and sense of place.

Intent

The existing inventory of undeveloped and underdeveloped land in the Suburban Planning Area provides sufficient land area to accommodate much of the market demand for future growth and development in the State. While the less developed Planning Areas provide for additional growth and development, the Suburban Planning Area is a key area for accommodating market forces and demand

While much of the future growth pattern may already be influenced by the placement of major transportation services, sewer alignments, existing development and preliminary development approvals, this Planning Area offers opportunities to expand infrastructure efficiently from neighboring Metropolitan Planning Areas.

for new development. The intent of the State Development and Redevelopment Plan is to guide development into more efficient and serviceable patterns in this Area.

While much of the future growth pattern may already be influenced by the placement of major transportation services, sewer alignments, existing development and preliminary development approvals, this Planning Area offers opportunities to expand infrastructure efficiently from neighboring Metropolitan Planning Areas. Extended public services can, in turn, help create compact centers of development to support public transportation systems. "Retrofitting," or redeveloping existing settlements, provides additional opportunities to accommodate growth.

New development in the Suburban Planning Area should be designed to discourage sprawl. Internally oriented, mixed-use Centers that promote a sense of community should be designed for this Area. This will ensure fiscal responsibility, efficient and effective infrastructure, reasonable cost housing, reduced congestion and balanced economic development. Where possible, development should be concentrated in Centers. These Centers should be surrounded by open space systems that protect environmentally sensitive resources and provide regionally significant recreational opportunity.

Resource Planning and Management Structure Centers

Though the settlement pattern in the Suburban Planning Area has, to some degree, been determined by existing or planned infrastructure, by existing private sector expectations and rights and by pending development applications, there still exist many opportunities to direct growth into well-planned, compact Centers. Unique opportunities also exist to retrofit, or redesign, existing, single use developments into mixed-use Centers.

Centers in the Suburban Planning Area should be located and designed to meet the Policy Objectives of the Suburban Planning Area. Infrastructure should be provided preferably before, but in any case no later than, the impacts of development.

Delineation Criteria

The following criteria are intended as a general guide for delineating the Suburban Planning Area, and local conditions may require flexible application of the criteria to achieve the Policy Objectives of this Planning Area.

- (1) *Population densities of less than 1,000 persons per square mile; and*
- (2) *A land area contiguous to the Metropolitan Planning Area where it can be demonstrated that the natural systems and the existing or planned urban infrastructure (includes public water supply, sewers, storm water drainage and transportation) have the capacity to support development*

Planning Areas

that meets the Policy Objectives of this Planning Area; and

- (3) *Land area greater than one square mile.*

Policy Objectives

The following Policy Objectives are unique to the Suburban Planning Area and should be used to guide the application of the State Plan's Statewide Policies, the criteria for identification of any existing or planned Centers appropriate in this Planning Area, the policies for delineating Community Development Areas and local and State-agency planning.

- (1) *Land Use: Guide development into compact Centers, including former single-use developments that have been retrofitted, or restructured, to accommodate mixed-use development, services and cultural amenities.*
- (2) *Housing: Provide a variety of housing choices primarily in mixed-use Centers or retrofitted commercial developments.*
- (3) *Economic Development: Guide opportunities for economic development into Centers that take advantage of public/private partnerships with respect to existing or planned infrastructure.*
- (4) *Transportation: Link Centers to the Metropolitan Planning Area and major highway and transit corridors by emphasizing the use of public transportation systems and alternative modes of transportation.*
- (5) *Natural Resource Conservation: Conserve open-space and buffer areas of critical environmental concern.*

- (6) *Agriculture: Guide development to ensure the viability of agriculture and the retention of productive farmland in agricultural areas adjacent to the Suburban Planning Area.*
- (7) *Recreation: Target park land acquisitions and improvements to enable the integration of contiguous systems into the fabric of the settlement pattern and to provide passive recreational facilities.*
- (8) *Historic Preservation: Integrate historic preservation efforts with development efforts in a way that will not compromise either the resource's historic significance or the area's need to develop.*
- (9) *Public Facilities and Services: Time and sequence the extension of public facilities and services to support development in Centers and ensure adequate levels of public and private services.*
- (10) *Intergovernmental Coordination: Establish regional approaches to the planning and provision of facilities and services for development in Centers.*

3. FRINGE PLANNING AREA (PA3)

General Description

The Fringe Planning Area is at the edges of the developing Suburban Planning Area. The Fringe Planning Area does not have and is not planned to have, during current planning horizons, urban level infrastructure. The Area is primarily served by a rural, two-lane road network and on-site well water and wastewater systems. The Fringe Planning Area is a predominantly rural landscape with scattered small

A well-planned and managed Fringe Planning Area can be an effective buffer between more intensely developed urban and suburban areas and the agricultural and environmentally sensitive lands.

Centers and the surrounding open space and agricultural uses.

- (10) *Intergovernmental Coordination: Establish coordination among all public service providers to ensure proper timing and sequencing of facility and service extensions.*

4. RURAL PLANNING AREA (PA4)

General Description

The Rural Planning Area includes large masses of undeveloped land interspersed by sparse residential, commercial and industrial development; wooded tracts; rural towns and villages; and most of the State's prime farmland. The Area also includes lands related to other rural economic activities such as resource extraction and fishing. With respect to agriculture, these lands are currently under cultivation and are the State's most productive. They also have the greatest potential of sustaining continued agricultural activities in the future. Their location, current use and high soil quality distinguish them from agricultural lands in other Planning Areas.

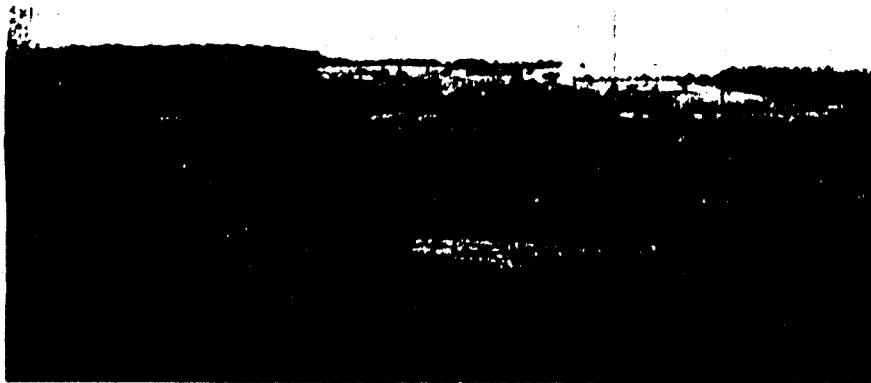
In the major farming regions of the State, adequate water resources and large, contiguous tracts of land with minimal land-use conflicts are essential to sustaining successful farming operations and farmland productivity. Acceptable farming practices can protect prime, fertile soils. Prudent land development practices are required to protect water resources and retain large, contiguous tracts of agricultural

land. If a viable agricultural industry is to be sustained in the future, the conversion of some of these lands to nonfarm uses must be sensitive to the Area's predominant rural character and agricultural land base.

Intent

The State Development and Redevelopment Plan responds to the mandate of the State Planning Act to protect agricultural lands. It fulfills this goal by encouraging future rural development in a form that supports, rather than conflicts with, the Area's predominant rural character and agricultural land base. The State Plan recommends a pattern of development in Planning Area 4 that promotes a stronger rural economy in the future while meeting the immediate needs of rural residents. First, the Plan recognizes that the State's economic growth in the future, like that of the rest of the nation, will be considerably slower than in the 1980s. To accommodate an appropriate level of growth, therefore, rural areas will need strong economic centers. These centers will attract private investment that otherwise might not occur. Second, the Plan recognizes the need to locate certain farm services and businesses (e.g., farm suppliers, processors and marketing services) in Planning Area 4, but it encourages and promotes their concentration within Centers supported by the necessary infrastructure and investment. Accordingly, the Plan recommends strengthening the economic capacities of exist-

The State Plan recommends a pattern of development in Planning Area 4 that promotes a stronger rural economy in the future while meeting the immediate needs of rural residents.



Centers. These Centers provide ready markets for farm produce. They also provide jobs and income which help to supplement the farm economy. On the other hand, the intrusion of nonfarm activities into agricultural areas can interfere with farming practices and make it more difficult to sustain a viable operation. In the Rural Planning Area, nonfarm land uses must develop at a density and in a manner that minimizes the potential for land-use conflicts. This can be achieved through the Centers strategy and by implementing other kinds of

Policy objectives for the Rural Planning Area include priority treatment for farmland preservation funding.

ing centers and strategically locating new centers to minimize the negative impacts of growth on present and future farming operations. Such a pattern of development will strengthen non-farm rural economies at the same time that it assures maintenance of a strong, viable agricultural industry for the State. It is a pattern that also recognizes the fact that farm families and workers have become increasingly reliant on off-the-farm income.

The relationship between farm and non-farm land uses in New Jersey has always been a complex one. Many farmers benefit from the close proximity of residential and commercial

sound land-use planning techniques.

Encouraging appropriate patterns of development in the Rural Planning Area would be considerably enhanced by a number of planning and mitigation tools. Such tools include clustering, capacity-based planning, timing and sequencing, privately coordinated multi-tract development, sliding-scale zoning, transfer of development rights programs, purchase of development rights programs, use assessment and "right-to-farm" laws. Such planning tools help to encourage land use patterns that ensure appropriate development and economic growth, while maintaining ongoing agricultural operations, land values and the rural character of this Planning Area.

Economic competition throughout the world in the future will be keen. With "quality

In the Rural Planning Area, nonfarm land uses must develop at a density and in a manner that minimizes the potential for land-use conflicts.

of life" becoming an increasingly important economic criterion, our pattern of development in the future must be carefully and thoughtfully planned. Rural New Jersey contributes substantially to the State's quality of life and will play an increasing role in its economic growth. New Jersey's rural areas, therefore, should not only offer strong economic centers but an ambience and character that make living and working there attractive as well. In other words, Centers and their Environs in the Rural Planning Area should complement each other.

The Plan seeks to promote strong economies in Centers while protecting both the agricultural features and the environmentally sensitive features that will maintain the character of the State's rural areas. To accomplish this objective, the Rural Planning Area includes a subarea: 4B -Environmentally Sensitive Planning Area. This subarea identifies productive farmland that also contains valuable ecosystems or wildlife habitats. For Planning Area 4 lands that are not in subarea 4B, the Policy Objectives for Planning Area 4 should be used in planning for Centers and for the conversion of any agricultural and nonagricultural lands in the Environs of Centers. On the other hand, for lands located in subarea 4B, the Policy Objectives of Planning Area 5 -Environmentally Sensitive Planning Area should be used in planning for Centers and for the conversion of such lands located in the Environs of these Centers.

New development in the Rural Planning Area should be consistent with Statewide Policies and should be encouraged in discrete Centers located and designed to achieve the Policy Objectives for the Rural Planning Area. Growth should be guided to existing Centers before planned (new) Centers. Community infrastructure should be provided only in Centers, and private sector investment should provide this infrastructure for planned (new) Centers. The environs of Centers should be protected from the impacts of Center development and should be maintained as open land. Centers should serve as receiving areas for transfers of development rights.

Delineation Criteria

The following criteria are intended as a general guide for delineating the Rural Planning Area, and local conditions may require flexible application of the criteria to achieve the Policy Objectives of this Planning Area.

- (1) *Population density of less than 1,000 people per square mile, outside Centers; and*
- (2) *Area greater than one square mile; and*
- (3) *Land currently in agricultural or natural resource production or having a strong potential for production:*
 - a. *Soils of local importance as determined by the County Agriculture Development Board; or*
 - b. *Prime and unique soils as determined by the U.S.D.A. Soil Conservation Service; or*

Planning Areas

- c. Soils of statewide importance as determined by the N.J.D.A. State Soil Conservation Committee; and
- (4) Undeveloped wooded tracts, vacant lands, and large, contiguous tracts of agricultural lands predominantly served by rural two-lane roads and individual wells and septic tanks; and
- (5) Farmland satisfying the above delineation criteria, as well as the delineation criteria for the Environmentally Sensitive Planning Area, is designated as Planning Area 4B Rural Environmentally Sensitive Planning Area.

Policy Objectives

The following set of Policy Objectives are unique to the Rural Planning Area and should be used to guide the application of the State Plan's Statewide Policies, the criteria for identification of existing or planned (new) Centers appropriate in this Planning Area, the policies for delineating Community Development Boundaries around Centers and local and State-agency planning.

(1) *Land Use: Enhance agricultural viability and rural character by guiding development and redevelopment into Centers. Ensure that the location, pattern and intensity of any development in the Environs maintains existing low-density development patterns that complement the rural character and landscape, and maintain large contiguous areas of open space. Any development in Planning Area 4 should be designed using creative land use and design techniques to*

- ensure that it does not conflict with agricultural operations, does not exceed the capacity of natural and built systems and protects areas where past public investments in farmland preservation have been made.*
- (2) *Housing: Encourage the production of reasonably priced housing for all segments of the population within Centers, recognizing the special locational needs of agricultural employees.*
- (3) *Economic Development: Promote economic activities within Centers that complement and support the rural and agricultural communities and that provide diversity in the rural economy and opportunities for off-farm income and employment.*
- (4) *Transportation: Maintain a transportation system that provides appropriate access of agricultural products to markets and accommodates the weight of modern agricultural equipment.*
- (5) *Natural Resource Conservation: Minimize potential conflicts between agricultural practices and sensitive environmental resources.*
- (6) *Agriculture and Farmland Preservation: Give priority to Rural Planning Area for farmland preservation funding and agricultural incentive programs.*
- (7) *Recreation: Provide active recreational opportunities through acquisition and development of parks in Centers and alternative recreational uses of farmland.*
- (8) *Historic Preservation: Outside Centers, coordinate historic preservation needs with farmland preservation efforts, and, within Centers, incorporate historic sites and structures as assets in development and redevelopment efforts.*

Resource Planning and Management Structure

- (9) *Public Facilities and Services: Support appropriate infrastructure development by establishing adequate levels of capital facilities and services to support Centers; to protect large contiguous areas of productive farmlands; to protect past public investments in farmland preservation programs; and to minimize conflicts between Centers and surrounding farms.*
- (10) *Intergovernmental Coordination: Coordinate efforts of various State agencies, county and municipal governments to ensure that State and local policies and programs support agriculture by examining the effects of financial institution lending, government regulation, taxation and other governmental policies and programs.*

lands; prime forested areas; scenic natural landscapes; and other significant topographical, geological or ecological features. These resources are critically important not only for the residents of the Planning Area, but for all New Jersey citizens. The future environmental and economic integrity of the State rests in the protection of these irreplaceable resources.

Existing Centers within the Environmentally Sensitive Planning Area have been, and often remain, the focus of residential and commercial growth and public facilities and services for their region. These Centers generally are linked to each other by rural roads and separat-

5. ENVIRONMENTALLY SENSITIVE PLANNING AREA (PA5)

The Environmentally Sensitive Planning Area meets the Rural Planning Area in this town along the Delaware River.

General Description

The Environmentally Sensitive Planning Area has large contiguous land areas with valuable ecosystems and wildlife habitats. These lands have remained somewhat undeveloped or rural in character. They are characterized by watersheds of pristine waters, trout streams and drinking water supply reservoirs; recharge areas for potable water aquifers; habitats of endangered or threatened plant or animal species; coastal and freshwater wet-



Statewide Policies

Revitalization and Human Resource Development

**Policy 18
Human Services**

Provide adequate public assistance to those in need while ensuring that responsibility for public assistance is shared equitably by the State, its various jurisdictions and all the citizens of the State.

**Policy 19
Public Health**

Provide access to cost-effective, comprehensive, primary care and prevention services while ensuring that responsibility is shared equitably by the State, its various jurisdictions and all citizens of the State, through adequate reimbursement systems to promote health and reduce reliance on hospital-based settings at an acute stage of illness.

**Policy 20
Education**

Promote improvements in public education while ensuring that responsibility is shared equitably by the State, its various jurisdictions and all citizens of the State, including investments to upgrade facilities, to provide special education services and programs to all eligible students and families, and to provide development curricula to meet educational needs of urban student populations.

**Policy 21
Employment Training**

Target and adapt public and private work-force readiness programs, economic development resources and cooperative activities to contribute to revitalization efforts, while ensuring that responsibility is shared equitably by the State, its various jurisdictions and all citizens of the State.

**Policy 22
Public Safety and Crime Prevention**

Develop policies and programs, with responsibility shared equitably by the State, its various jurisdictions and all citizens of the State, to improve safety and prevent crime and thereby encourage revitalization, ensuring that those areas that experience demonstrably persistent high crime rates are given highest priority with respect to such programs as the Safe and Clean Neighborhood Program, Neighborhood Crime Watch Programs and Domestic Violence and Juvenile Intervention Programs.

8. HOUSING

The essential element of the Statewide Policies for Housing is to preserve and expand the supply of safe, decent and reasonably priced housing by increasing residential land availability, improving access between jobs and housing, eliminating unnecessary regulatory delays and coordinating the provision of public infrastructure with housing development, while also promoting low-and moderate-income and affordable housing through code enforcement, housing subsidies, community-wide housing approaches and coordinated efforts with the New Jersey Council on Affordable Housing.

Public policies can be crafted to influence the development of housing options at more affordable prices. Initiatives and reforms in regulatory processes, provision of infrastructure, land-use controls, tax and fiscal policies, construction standards and intergovernmental cooperation can provide the necessary impetus for the construction of housing at prices that more New Jerseyans can afford.

The condition of the entire residential housing market is a concern. Housing costs are generally higher in New Jersey than in other states. Our residents also spend a larger percentage of their incomes on housing than residents of many other states. Yet, the way that the housing market affects low- and moderate-income, and very low-income households, is of special concern. The cost of shelter to these households is particularly onerous. The financial burden imposed by the price of housing on households generally needs to be alleviated, but public resources should be targeted specifically to alleviate the unusually heavy burden of housing costs for households at the lower end of the housing market.

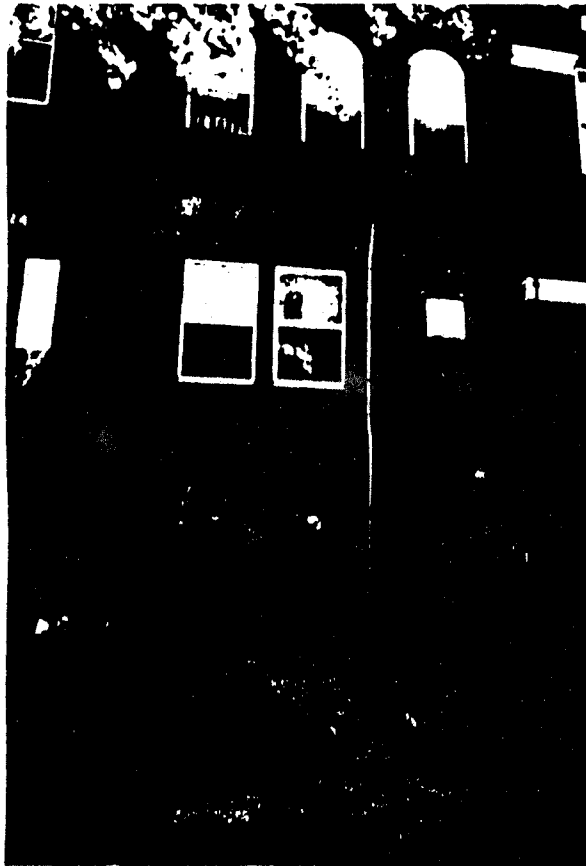
Today, a review of State housing policy is especially important considering the way federal housing policy has changed over the past decade. State housing programs were typically created in reaction to federal housing recommendations and mandates. Yet, since 1981, the federal government has significantly weakened

its role and introduced tax reform that has considerably affected private housing investment opportunities.

Changes in the housing market also demand this review. Curiously, the dramatic increase in housing costs in New Jersey occurred during a time of unprecedented growth in construction. A near-record 57,074 permits were issued in 1986 alone. A seemingly insatiable demand during a period of tremendous economic growth simply outpaced supply. The escalation in the price of housing also meant a concomitant decline in its affordability for many residents. The growing number of homeless people reflects only the most visible evidence of the scarcity of reasonably-priced housing.

The recent housing boom in New Jersey is over. Fewer than 20,000 housing units were approved for construction in 1990. It is unlikely that construction will soon reach the peaks of the last decade. On our present course, the stock of low- and moderately-priced housing will continue to dwindle. Changes in federal tax treatment of housing investment, ever-increasing operating expenses, the decline in housing subsidy programs and the entry of condominium and cooperative housing arrangements have taken their toll. Even the cycle of decay and revitalization of urban centers often reduces the affordable housing stock. During a period of disinvestment in a city, housing units often are abandoned and lost. When rapid reinvestment occurs, the introduction of higher rental units and new tenure types displace existing residents and again units are removed from the low end and the middle of the housing market.

Solutions to these housing concerns lie in the observation that the supply of housing is a



New Jersey boasts a diverse housing stock, ranging from this townhouse in an urban setting...

Statewide Policies

product of diverse forces that go beyond a simple marketplace analysis of supply and demand and the cost of land, labor, capital and construction. The role of the government in housing is broad. It spans a wide range of activities from land-use regulation, land assembly and development to code enforcement; from the provision of housing subsidies for targeted groups and geographic areas to the enforcement of credit and fair-housing regulations.

New Jersey needs an adequate housing supply in a range of prices and types to promote access to labor, economic growth and stability. Public policies can be crafted to influence the preservation and expansion of the supply of safe, decent and reasonably-priced housing. The Plan seeks to promote a comprehensive planning approach that at once reduces the regulatory burdens and infrastructure shortfalls affecting housing construction, while targeting resources to those segments of the housing market traditionally underserved by the private sector. This approach also attempts to place housing in a wider community context



...to these single family detached units in a town...

Planning Goals and Planning Area Policy Objectives.

Planning and Regulation

Policy 1 Housing Plan



...to these clustered units in a suburban area.

and account for its impact on both natural resources and social concerns.

The following policies represent the major issues facing New Jersey in housing, and should serve as a guide to State, county and local agencies in incorporating the State Plan's policies on housing into their planning and decision-making processes. They should be applied to meet State

Prepare a State Comprehensive Housing Assistance Plan in accordance with the National Affordable Housing Act.

Policy 2 A Reasonable Mix of Land Uses

Land use plans and regulations should encourage a reasonable balance among land uses, so that nonresidential uses

DESIGNATED URBAN CENTERS

*Atlantic City
Camden
Elizabeth
Jersey City
New Brunswick
Newark
Paterson
Trenton*

Existing Towns Identified by Counties and Municipalities

The following list includes Towns identified by counties and municipalities for inclusion in the State Plan. Towns may be smaller than, or extend beyond, a single municipality. The list does not include the Hackensack Meadows Development Commission area or the Pinelands area outside of the CAFRA area. This list includes Towns within the CAFRA area.

EXISTING TOWNS

ATLANTIC COUNTY

Absecon; Brigantine; Buena (Buena Borough); Margate; Pleasantville; Smithville (Galloway Twp.); Somers Point; Ventnor.

BERGEN COUNTY

Bergenfield; Cliffside Park/Fairview; Edgewater; Emerson; Franklin Lakes; Glen Rock;

Hillsdale; Ho-Ho-Kus; Lyndhurst; Oakland; Oradell; Ridgefield Park; River Edge; Teterboro; Waldwick; Westwood.

BURLINGTON COUNTY

Beverly; Bordentown City; Burlington City; Florence/Roebing (Florence Twp.); Maple Shade; Moorestown (Moorestown Twp.); Pemberton Borough; Riverton; Wrightstown (including parts of North Hanover and Springfield).

CAMDEN COUNTY

Berlin Boro.; Berlin Twp.; Gibbsboro; Pine Hill; Sicklerville (Winslow Twp.).

CAPE MAY COUNTY

Avalon; Cape May; City Sea Isle City; Stone Harbor; Town Bank/North Cape May (Lower Twp.); Villas (Lower Twp.).

GLOUCESTER COUNTY

Clayton; Deptford; Glassboro; Pitman; Swedesboro; Williamstown (Monroe).

HUNTERDON COUNTY

Clinton; Frenchtown; High Bridge; Lambertville; Lebanon; Milford.

MERCER COUNTY

Hightstown; Princeton Junction.

MIDDLESEX COUNTY

Avenel-Woodbridge (Woodbridge); Carteret; Central Old Bridge; Colonia-Iselin (Woodbridge); Dean-Dayton/Rt. 130 (South Brunswick);

Dunellen; Fords (Woodbridge); Heathcote (South Brunswick); Highland Park; Jamesburg; Kendall Park (South Brunswick); Laurence Harbor (Old Bridge); Metuchen; Middlesex Borough; Milltown; Monmouth Junction (South Brunswick); Morgan (Sayreville); North Central Monroe; North Edison; Route 130 Corridor (North Brunswick); Route One (North Brunswick); Rt. 33 (Monroe); Sayreville; Sewaren (Woodbridge); South Amboy; South Edison; South Plainfield; South River; Spotswood.

MONMOUTH COUNTY

Farmingdale; Keyport; Manasquan; Matawan; Neptune.

MORRIS COUNTY

Butler; Chatham; Chester; Denville; Madison; Mt. Arlington; Pequannock; Pompton Plains; Rockaway Boro.

OCEAN COUNTY

Barnegat Light (Ocean Twp.); Bay Head; Beach Haven (Long Beach Twp.); Forked River (Lacey Twp.); Harvey Cedars; Island Heights; Lakehurst; Lavallette; Long Beach; Mantoloking; Mystic Island; (Little Egg Harbor Twp.); New Egypt (Plumstead Twp.); Ocean Gate; Point Pleasant Beach; Point Pleasant Boro; Seaside Heights; Seaside Park; Ship Bottom; Surf City; Tuckerton.

PASSAIC COUNTY

Bloomington; Haledon; Hawthorne; Little Falls; Pompton Lakes; Wanaque; West Milford Town Center.

SALEM COUNTY

Carneys Point; Elmer Borough; Penns Grove Boro.; Pennville Twp.; Woodstown Boro/Fringe South.

SOMERSET COUNTY

Basking Ridge/Lyons (Bernards); Bernardsville; Bound Brook; Hillsborough; Town Center; Manville; North Plainfield; Raritan; Somerset (Franklin); South Bound Brook.

SUSSEX COUNTY

Andover Borough; Branchville Borough; Hopatcong Borough; Lake Mohawk area (Sparta); Ogdensburg Borough; Stanhope Borough.

UNION COUNTY

Fanwood; Garwood; Roselle Park; Springfield.

WARREN COUNTY

Alpha Borough; Belvidere Borough; Washington Borough.

Existing and Planned Regional Centers Identified by Counties and Municipalities

The following list includes Regional Centers identified by counties and municipalities for inclusion in the State Plan. Regional Centers may be smaller than, or extend beyond, a single municipality. The list does not include the Hackensack Meadowlands Development Commission area or the Pinelands area outside of the CAFRA area. This list includes Regional Centers within the CAFRA area. In some cases, Regional Centers are identified by points and locations on highways, interchanges, intersections or the name of unincorporated places.

EXISTING REGIONAL CENTERS

BERGEN COUNTY

Elmwood Park/Saddle Brook; Englewood; Fair Lawn; Fort Lee; Garfield/Lodi; Hackensack; Mahwah/Ramsey/Allendale/Upper Saddle River; Montvale/Park Ridge/Woodcliff Lake; Paramus/Maywood/Rochelle Park; Ridgewood; Rutherford/Carlstadt/East Rutherford/Wallington/Wood-Ridge; Teaneck.

BURLINGTON COUNTY

Mount Holly

CAPE MAY COUNTY

Cape May Court House (Middle Twp.); Ocean City; Rio Grande (Middle Twp.); Wildwood

CUMBERLAND COUNTY

Bridgeton; Millville; Vineland.

ESSEX COUNTY

Montclair

GLOUCESTER COUNTY

Woodbury

HUNTERDON COUNTY

Flemington

MERCER COUNTY

Princeton Borough; Route 1 (West Windsor)

MIDDLESEX COUNTY

Forrestal-Plainsboro (Plainsboro); MetroPark-Woodbridge Center (Edison and Woodbridge); N.J. Turnpike Interchange 8A (South Brunswick and Monroe); N.J. Turnpike Interchange 9 - Route 18 (East Brunswick); Perth Amboy; Raritan Center (Edison and Woodbridge).

MONMOUTH COUNTY

Asbury Park; Eatontown; Freehold Borough; Long Branch; Red Bank.

MORRIS COUNTY

Morristown; Randolph.

OCEAN COUNTY

Lakewood; Toms River (Dover Twp.)

PASSAIC COUNTY

Clifton; Passaic.

Appendix C

SALEM COUNTY

Salem City/Urban Fringe (Mannington).

SOMERSET COUNTY

Somerville (including parts of Bridgewater and Raritan).

SUSSEX COUNTY

Franklin/Hamburg/Hardyston; Newton; Sussex Boro/Wantage; Vernon.

UNION COUNTY

Cranford; Linden; Plainfield; Rahway; Summit; Union; Westfield.

WARREN COUNTY

Hackettstown; Phillipsburg.

PLANNED REGIONAL CENTERS

BURLINGTON COUNTY

Planned Center/TDR Receiving Area (Chesterfield Twp.)

GLOUCESTER COUNTY

Elk; Logan.

HUNTERDON COUNTY

Planned Regional Center (Clinton Twp.)

MERCER COUNTY

I-295 (Hopewell Twp.)

MIDDLESEX COUNTY

Garden State Parkway Exit 120 (Old Bridge); Routes 9 and 18 (Old Bridge).

MONMOUTH COUNTY

Neptune (Rt. 66/Garden State Parkway Area)

MORRIS COUNTY

Rockaway Town Square (Rockaway Twp.)

OCEAN COUNTY

Jackson (Jackson Twp.); Jackson/Great Adventure (Jackson Twp.); Manchester; Stafford/Manahawkin (Stafford Twp.).

PASSAIC COUNTY

Wayne

Existing and Planned Villages Identified by Counties and Municipalities

The following list includes Villages identified by counties and municipalities for inclusion in the State Plan. The list does not include the Hackensack Meadowlands Development Commission area or the Pinelands area outside of the CAFRA area. This list includes Villages within the CAFRA area. In some cases, Villages are identified by points and locations on highways, interchanges, intersections or the name of places within municipalities.

EXISTING VILLAGES

ATLANTIC COUNTY

Belcoville (Weymouth Twp.); East Vineland (Buena Vista Twp.); Longport; Port Republic; Wheat Road.

BURLINGTON COUNTY

Columbus (Mansfield Twp.); Cookstown (North Hanover Twp.); Crosswicks (Chesterfield Twp.); Georgetown (Mansfield Twp.); Jobstown (Springfield Twp.); Juliustown (Springfield and Wrightstown); New Gretna (Bass River Twp.); Vincentown (Southampton).

CAPE MAY COUNTY

Cape May Point; Del Haven (Lower Twp.); Dennisville (Dennis Twp.); Goshen (Middle Twp.); Marmora (Upper Twp.); Palermo (Upper Twp.); Petersburg (Upper Twp.); South Dennis (Dennis Twp.); South Seaville (Middle Twp.); Strathmere (Upper Twp.); Tuckahoe (Upper Twp.); Whitesboro/Burleigh (Middle Twp.).

CUMBERLAND COUNTY

Carmel (Deerfield Twp.); Cedarville (Lawrence Twp.); Centre Grove (Lawrence Twp.); Cumberland/Hesstown (Maurice River Twp.); Deerfield (Deerfield Twp.); Delmont (Maurice River Twp.); Dividing Creek (Downe Twp.); Fairton (Fairfield); Fortescue (Downe Twp.); Greenwich (Greenwich Twp.); Heislerville (Maurice River Twp.); Laurel Lake (Millville City); Leesburg/Dorchester (Maurice River Twp.);

Mauricetown (Maurice River Twp.); Newport (Downe Twp.); Othello (Greenwich Twp.); Port Elizabeth (Maurice River Twp.); Port Norris (Commercial Twp.); Roadstown (Stow Creek Twp.); Rosenhayn (Deerfield Twp.); Sea Breeze (Fairfield); Shiloh (Shiloh Borough); Springtown (Greenwich Twp.).

GLOUCESTER COUNTY

Clarksboro (East Greenwich); Franklinville (Franklin); Malaga (Franklin); Mickleton (East Greenwich); Mt. Royal (East Greenwich); Mullica Hill (Harrison); Newfield (Newfield); Wenonah (Wenonah).

HUNTERDON COUNTY

Annandale; Bloomsbury; Califon (Califon); Glen Gardner (Glen Gardner); Hampton (Hampton); Oldwick (Tewksbury Twp.); Pittstown (Franklin Twp.); Riegel Ridge (Holland Twp.); Ringoes (E. Amwell Twp.); Sergeantsville (Delaware Twp.); Stockton (Stockton Borough); Three Bridges (Readington Twp.); Whitehouse Station (Readington Twp.).

MERCER COUNTY

Edinburg (West Windsor); Hopewell (Hopewell Borough); Lawrenceville (Lawrence Twp.); Pennington (Pennington); Robbinsville (Washington); Titusville (Hopewell Twp.); West Trenton (Ewing).

Appendix C

MIDDLESEX COUNTY

Cranbury Village (Cranbury Twp.); Dayton (South Brunswick); Helmetta Borough (Helmetta Borough); Kingston (South Brunswick); Monmouth Junction (South Brunswick).

MONMOUTH COUNTY

Adelphia (Howell); Allentown (Allentown); Ardena (Howell); East Keansburg (Middletown); Englishtown (Englishtown); Hance Park (Tinton Falls); Holmdel (Holmdel); Leonardo (Middletown); Leonardville (Middletown); Lincroft (Middletown); Pine Brook (Tinton Falls); Reevytown (Asbury Ave. & Garden State Parkway, Tinton Falls); Roosevelt (Roosevelt); Town Center (Rt. 35 & Kings Highway, Middletown).

MORRIS COUNTY

Beach Glen (Rockaway Twp.); Berkshire Valley (Jefferson Twp.); Gillette (Passaic Twp.); Green Pond (Rockaway Twp.); Green Village (Harding Twp.); Hibernia (Rockaway Twp.); Ironia (Randolph Twp.); Lake Telemark (Rockaway Twp.); Marcella (Rockaway Twp.); Mendham (Mendham Borough); Meriden (Rockaway Twp.); Millington (Passaic Twp.); Mt. Freedom (Randolph Twp.); Stirling (Passaic Twp.).

OCEAN COUNTY

Barnegat (Barnegat Twp.); Cassville (Jackson Twp.); Cedar Run (Stafford Twp.); Nugentown (Little Egg Harbor Twp.); Rt 539 & Rt 537 (Plumsted

Twp.); Van Hiseville (Jackson Twp.); Waretown (Ocean Twp.); West Creek (Little Egg Harbor).

PASSAIC COUNTY

Oak Ridge (West Milford); Upper Greenwood Lake (West Milford).

SALEM COUNTY

Alloway (Alloway Twp.); Brotmanville (Pittsgrove Twp.); Canton (Lower Alloway Creek Twp.); Daretown (Upper Pittsgrove Twp.); Hancocks Bridge (Lower Alloway Creek Twp.); Harmersville (Lower Alloway Creek Twp.); Laytons Lake (Carneys Point Twp.); Monroeville (Upper Pittsgrove Twp.); Norma (Pittsgrove Twp.); Oakwood Beach (Elsinboro Twp.); Olivet-Centerton (Pittsgrove Twp.); Pedricktown (Oldmans Twp.); Pole Tavern (Upper Pittsgrove Twp.); Quinton (Quinton Twp.); Sharptown (Pilesgrove Twp.); Sinnickson Landing (Elsinboro Twp.); Yorktown (Pilesgrove Twp.).

SOMERSET COUNTY

Bedminster (Bedminster); Bradley Gardens (Bridgewater); East Millstone (Franklin); Far Hills (Far Hills); Finderne (Bridgewater); Flagtown (Hillsborough); Gladstone (Peapack-Gladstone); Kingston (Franklin); Liberty Corner (Bernards); Martinsville (Bridgewater); Middlebush (Franklin); Millstone (Millstone); Neshanic Station (Branchburg); Peapack (Peapack-Gladstone); Rocky Hill (Rocky Hill).

SUSSEX COUNTY

Brighton (Green); Cranberry Lake (Byram Twp.); Edison (Sparta Twp.); Glenwood (Vernon

Twp.); Hainesville (Sandyston Twp.); Highland Lakes (Vernon Twp.); Huntsville (Green); Lafayette (Lafayett); Lake Tranquility (Green Twp.); Lockwood (Byram Twp.); McAfee (Vernon); Montague Twp. (Montigue Twp.); North Church (Hardystown); Springdale (Andover Twp.); Sussex Hills (Vernon).

WARREN COUNTY

Alphano (Independence); Anderson (Mansfield); Asbury (Franklin Twp.); Blairstown (Blairstown Twp.); Bridgeville (White Twp.); Broadway (Franklin Twp.); Columbia (Knowlton Twp.); Delaware (Knowlton); Harmony (Harmony Twp.); Hope (Hope Twp.); Lower Harmony (Harmony); Manunkachunk (Knowlton); Marksboro (Frelinghuysen); Mountain Lake (Frelinghuysen); Oxford Borough; Port Murray (Mansfield Twp.); Riegelsville (Pohatcong); Weirtown (Allamuchy).

PLANNED VILLAGES

BURLINGTON COUNTY

Crystal Lake (Mansfield); Georgetown West (Mansfield Twp.); Hartford Road Center (Moorestown Township); Route 206 (Mansfield).

CUMBERLAND COUNTY

Stow Creek Twp.

GLOUCESTER COUNTY

Fairview (Washington)

MERCER COUNTY

Marshalls Corner (Hopewell Twp.); Province Line Rd. South of Quakerbridge Mall (Lawrence Twp.).

MIDDLESEX COUNTY

Applegarth (Monroe)

MONMOUTH COUNTY

524 & Doctors Creek (Upper Freehold); 539 & Elisdale Rd (Upper Freehold); Hornerstown (537/539, Upper Freehold); Marlboro Village (Marlboro Twp. - Route 79/School Road East); New Canton (I-195/Old York Rd., Upper Freehold); Pullentown (I-195/Sharon Station Rd. Upper Freehold); Wrightville (I-195/Imlays Rd., Upper Freehold).

MORRIS COUNTY

Budd Lake (Mt. Olive); German Valley (Mt. Olive); Rt. 206 - Cooper Lane (Chester Twp.); Suntan Lake (Riverdale); Upper Hibernia Rd. #1 (Rockaway); Upper Hibernia Rd. #2 (Rockaway).

OCEAN COUNTY

Rt. 528 (Plumsted)

PASSAIC COUNTY

Upper Ringwood (Ringwood)

SALEM COUNTY

Elmer Fringe #26 and 31; Forest Lane; Pedricktown (Oldmans Twp.); Rt. 540 (Mannington Twp.); Rt. 657 (Mannington Twp.);

US 40 (Pittsgrove Twp. and Upper Pittsgrove Twp.); Willow Grove (Pittsgrove Twp.).

SOMERSET COUNTY

Branchburg Town Center; Franklin Park (Franklin); Hillsborough Village Square; Montgomery Village Pike Run (Montgomery); Pluckemin (Bedminster); Warren Town Center; Watchung Center.

WARREN COUNTY

Panther Valley (Allamuchy); Rt. 31- Ryman Rd. (Washington Twp.); Rt. 173 - Rt. 637 Rt. 517 - Catswamp Rd. (Allamuchy); Rt. 617-Lake Just-it Rd.

Existing and Planned Hamlets Identified by Counties and Municipalities

The following list includes Hamlets identified by counties and municipalities for inclusion in the State Plan. The list does not include the Hackensack Meadowlands Development Commission area or the Pinelands area outside of the CAFRA area. This list includes Hamlets within the CAFRA area. In some cases, Hamlets are identified by points and locations on highways, interchanges, intersections or the name of places within municipalities.

EXISTING HAMLETS

ATLANTIC COUNTY

Chestnut Neck; Clarkstown; Conoverstown; Corbin City (Corbin City).

BURLINGTON COUNTY

Chesterfield (Chesterfield Twp.); Hedding (Mansfield Twp.); Jacksonville (Springfield Twp.); Masonville (Mt. Laurel Twp.); Sykesville (Chesterfield Twp.).

CAPE MAY COUNTY

Beesley's Point (Upper Twp.); Clermont; Eldora (Dennis Twp.); Green Creek (Middle Twp.); Oceanview Seaville (Upper Twp.); Swainton (Middle Twp.).

HUNTERDON COUNTY

Baptistown (Kingwood Twp.); Barbertown (Ringwood Twp.); Bunnvale (Lebanon Twp.); Cherryville (Franklin Twp.); Cokesbury (Tewksbury Twp.); Croton (Raritan Twp.); Everittstown (Franklin Twp.); Jutland (Union Twp.); Linvale (East Amwell Twp.); Little York (Alexandria Twp.); Mountainville (Tewksbury); Mt. Airy (West Amwell Twp.); Mt. Pleasant (Alexandria Twp.); New Hampton (Lebanon Twp.); Norton (Union Twp.); Pattenburg (Union Twp.); Penwell (Lebanon Twp.); Quakertown (Franklin Twp.); Readington (Readington Twp.); Reaville (East Amwell Twp.); Rocktown (East Amwell Twp.); Rosemont (Delaware Twp.);

Stanton (Readington Twp.); Vernoy (Tewksbury Twp.); Wertsville (East Amwell); West Portal (Bethlehem); Woodglen (Lebanon).

MERCER COUNTY

Groveville (Hamilton); North Crosswicks (Hamilton); Windsor (Washington).

MIDDLESEX COUNTY

Cranbury Station (Cranbury); Gravel Hill (Monroe); Matchaponix (Monroe); Mounts Mills (Monroe); Tracy (Monroe).

MONMOUTH COUNTY

Arneytown (Upper Freehold); Cream Ridge (Upper Freehold); Ellisdale (Upper Freehold); Extonville (Upper Freehold); Imlaystown (Upper Freehold); New Sharon (Upper Freehold); Ramtown North (Howell); Ramtown South (Howell).

MORRIS COUNTY

Long Valley (Washington Twp.); Meyersville (Passaic Twp.).

OCEAN COUNTY

Cedar Bonnet Island (Stafford Twp.); Rt. 528/Jackson (Jackson); Holmansville (Jackson); Long Swamp (Plumsted Twp.); Mayetta (Stafford Twp.); Millstream Rd & Rt 537 (Plumsted Twp.); Staffordville.

PASSAIC COUNTY

Glen Wild Lake (Bloomingdale); Lake Iosco (Bloomingdale); Lake Kampfe (Bloomingdale); Newfoundland (West Milford).

SALEM COUNTY

Auburn (Oldmans Twp.); Elk Terrace (Quinton Twp.); Hagersville Rd. (Elsinboro Twp.).

SOMERSET COUNTY

Belle Mead (Montgomery); Blawenburg (Montgomery); Centerville (Branchburg); Cloverhill (Hillsborough); Griggstown (Franklin); Harlingen (Montgomery); Neshanic (Hillsborough); North Branch (Branchburg); Pottersville (Bedminster); Skillman (Montgomery); South Branch (Hillsborough); Zion (Hillsborough/Montgomery).

SUSSEX COUNTY

Barry Lakes (Vernon Twp.); Beemerville (Wantage Twp.); Cliffwood Lake (Vernon); Colesville (Wantage Twp.); Drew Lakes (Vernon Twp.); Five Points (Stillwater Twp.); Flatbrookville (Walpack); Greendell (Green); High Breeze (Vernon); Lake Conway (Vernon); Lake Glenwood (Vernon Twp.); Lake Panorama (Vernon Twp.); Lake Wallkill (Vernon Twp.); Libertyville (Wantage); Middleville (Stillwater Twp.); Monroe (Sparta); Paulins Kill (Stillwater); Pleasant Valley (Vernon Twp.); Plumbsock (Wantage); Stockholm (Hardyston); Swartswood (Stillwater); Tall Timbers (Vernon); Vernon Valley Lakes (Vernon).

Appendix C

WARREN COUNTY

Allamuchy (Allamuchy Twp.); Beattystown (Mansfield); Brainards (Harmony); Buttzville (White Twp.); Camp Hope (Hope); Carpentersville (Pohatcong); Cornish (White); Fineville (Pohatcong); Great Meadows (Independence Twp.); Hainsburg (Knowlton); Harmony Station (Harmony); Hazen (White Twp.); Hutchinson (Harmony); Jacksonburg (Blairstown); Karrsville (Mansfield); Knowlton (Knowlton); Lomasons Glen (White Twp.); Mt. Hermon (Hope); New Village (Franklin Twp.); Port Colden (Washington Twp.); Rockport (Mansfield); Springtown (Pohatcong Twp.); Summerfield (White Twp.); Swartsville (Greenwich Twp.); Townsbury (Liberty Twp.); Vail (Blairstown); Vienna (Independence Twp.); Warren Glen (Pohatcong).

PLANNED HAMLETS

GLOUCESTER COUNTY

Rt 623 (Harrison)

OCEAN COUNTY

Marshalls Corner (Plumsted Twp.)

WARREN COUNTY

Changewater (Washington Twp.); Lake Susquehana (Blairstown); PH Rockport Rd. - Washborn Rd. (Mansfield); Rt. 94 Lambert Rd. (Blairstown); Walnut Valley (Blairstown).



The Centers Designation Process

Document #99
February 1993

prepared by:
New Jersey Office of State Planning
Department of the Treasury
33 West State Street, 9th Floor
CN 204
Trenton, New Jersey 08625-0204

The Centers Designation Process

Appendix 5. Center Planning Guidelines

The following information is illustrative. It provides ranges of factors petitioners should consider as they plan for the development of a center. This information is to guide local planning and establish a common vision and understanding for intergovernmental dialogue, and does not establish required standards for center planning.

Towns

Area	< 2 square miles
Population	> 1000 [™] - < 10,000 [™]
Employment	> 500 - < 10,000 [°]
Dwelling units	500 - 4,000
Job:Dwelling unit ratio	1:1 - 4:1 [°]
Dwelling units per acre	3 - >12 [°] net

Regional Centers

Area	1 - 10 square miles [°]
Population	PA 1, 2, 3 - > 10,000 [™] PA 4, 5 - > 5,000 [™]
Employment	PA 1, 2, 3 - > 10,000 [™] PA 4, 5 - > 5,000 [™]
Dwelling units	2,000 - 15,000 [°]
Job:Dwelling unit ratio	2:1 - 5:1 [°]
Dwelling units per acre	3 [™] - > 20 [°] net

Villages

Area	< 1 square mile
Population	< 4,500 [™]
Employment	50 - 1,000
Dwelling units	75 - 2,000
Job:Dwelling unit ratio	0.5:1 - 2:1 [°]
Dwelling units per acre	> 3 [™] net

NEW JERSEY STATE INTERIM PLAN

THE MAP

This report is submitted by the Hillsborough Township Planning Board. The Planning Board reviewed the State Interim Plan Map and the report of the Hillsborough Township Cross Acceptance Negotiating Committee. The Planning Board authorized release of this report to Somerset County and the State of New Jersey at a Planning Board open public meeting of November 14, 1991.

HILLSBOROUGH TOWNSHIP REPORT

The Hillsborough Township Cross Acceptance Negotiating Committee met with Somerset County officials on October 17, 1991 to discuss the map of Hillsborough Township associated with the New Jersey State Interim Plan. The map (copy attached) was prepared by the Somerset County Planning Board in conformance with the state's mapping criteria. This report will address Hillsborough's general acceptance of the map and discuss two areas of concern; 1) Identifying a New Planned Village for the proposed Planned Adult Community in the western portion of the township, and 2) Requesting a change of Planning Area 3 to Planning Area 2 upon completion of an amendment to the existing 201 Waste Water Management Study.

GENERAL ACCEPTANCE:

Planning Areas

The designation of the Planning Areas is similar or identical to what the township agreed to two years ago when the mapping represented the Tier System. In the past the Township was successful in identifying the Sourland Mountain Region as environmentally sensitive and such designation was endorsed by the state. On the present map the Sourland Mountain Region is designated Planning Area 5, environmentally sensitive, which is consistent with the township's Master Plan.

Communities of Place

The township acknowledges the designations of Communities of Place as shown on the map. They are as follows: A Town Center in the central portion of the township, a Village in the Flagtown Section and four Hamlets - Clover Hill, South Branch, Zion and Neshanic.

HILLSBOROUGH TOWNSHIP REQUESTS

Adding New Planned Village Designation:

The township and the county have agreed that recognizing a proposed Adult Planned Community in the western portion of the township is appropriate at this time. Hillsborough Township Planning Board has approved an application for classification of lands between Amwell Road, at the intersection of Mill Lane, and the Raritan River as a Planned Adult Community under Township

Ordinance 91-6. Such classification grants certain vested rights. In this particular case, the right to bring forth a General Development Plan has been established. Therefore, in order to identify the proposed community, the county and the municipality have agreed that adding a designation for a New Planned Village is appropriate.

Hillsborough and the county realize that a state standard for identifying a Community of Place is that certain infrastructure be in place or proposed. In the case of the proposed Adult Planned Community the existing sewer service has adequate capacity and is so noted on the approved Classification Plan. Therefore, the township and the county agree that the New Planned Village qualifies for designation at this time and should be indicated on the map.

Change in Designation of Planning Area 3:

Planning Area 3 overlays a significant segment of Hillsborough that is zoned to attract corporate development. Such development is necessary in achieving a stable tax base. The township expects that development of this area is imminent for many reasons. Namely, the zoning is in place to attract ratables, construction of the proposed Somerset Express Way is anticipated, work on the bypass of Route 206 is underway, public water and public sewer is available, the amendment to the 201

study is proposed, and the county, with support of the township, is requesting that the state identify a Transportation Development District (TDD) adjacent to this area. These circumstances all have a positive effect on the future development of this area.

At this time, the county and the township agree that the change in designation is correct based upon the present conditions. Therefore, each also agree that the potential for changing the designation from a Planning Area 3 to a Planning Area 2 should be achieved as soon as possible.

HILLSBOROUGH'S CONCERN:

Hillsborough understands that the State Plan, once adopted, will be updated every three years. The township requires assurance that when the 201 study is amended and adopted, the township will have the ability to change the designation of Planning Area 3 immediately and not have to wait until such time as the state updates the State Plan.

PBXA1091.DOC

November 14, 1991