THE ASSEMBLY TASK FORCE TO STUDY THE IMPACT OF THE FAIR HOUSING ACT AND STATE PLANNING ACT

FINDINGS AND RECOMMENDATIONS
NOVEMBER 29, 2001

Assemblywoman Connie Myers
Chair

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Dear Speaker Collins:

Assembly Resolution 158 directed the Assembly Task Force to study the Fair Housing Act and State Planning Act. I hereby submit the Assembly Task Force report for your consideration. This report lays the groundwork for the introduction of legislation to effectuate changes in current State law.

Prior to summarizing some key points that the report emphasizes, I would like to take the opportunity to point out significant trends occurring in the legislative-judicial arena as it pertains to both these acts.

The Fair Housing Act was created to replace the Courts' jurisdiction over affordable housing policy. Fifteen years later, the pattern of the Courts setting policy and the Legislature amending current law to address concerns brought through court cases continues. COAH has developed ways for rural municipalities to satisfy their obligations without additional development, but the courts only deal with inclusionary zoning because suits are brought by builders. At the same time, COAH and the State Planning Commission often cite Court cases instead of statutes when setting policy and writing regulations.

Change in affordable housing policy is desperately needed, not only for rural areas, but for suburban and urban areas, too. The current policies are not helping the poor in this wealthiest state in the nation. The relatively few affordable units in suburban and rural areas are providing needed housing for recent college graduates and retirees, while the poor remain in urban areas because it is impossible to build housing that is affordable to the poor in most of New Jersey.

It is interesting to note that in response to Task Force inquiries as to whether Mt. Laurel is really helping the poor, COAH indicates ***"Only if there are deep public subsidies can Mt. Laurel housing reach households whose incomes are below 40 percent of median."*** (September 4, 2001 correspondence from COAH Executive Director to Assembly Task Force)

The Mt. Laurel doctrine was intended to ensure that growing municipalities cannot zone out the poor. But in the past 16 years, zoning has not proved to be a sufficient mechanism for a "realistic opportunity" for affordable housing in the eyes of the court. It's just too expensive to build affordable housing. Diminishing land and thus increased land acquisition costs and building costs since the inception of Mt. Laurel has resulted in less affordable housing throughout the state.

COAH has promulgated complex bureaucratic regulations to force towns to address their municipal fair share obligation and builders have created endless condominium and town house developments with a "fair share" of affordable units, which have caused infrastructure and service needs to dramatically increase in towns once considered more affordable.

The Task Force in studying these complicated issues decided to recommend better ways to link

affordable housing programs and funding with real municipal housing needs, including municipal obligations. The Task Force also decided to recommend changes to both the Fair Housing Act and State Planning Act that reflect the legislative intent of both acts and the changing historical and economic circumstances since their enactment and implementation. For instance, the State Plan envisions "centers" being developed in rural areas to accommodate affordable housing. Centers, mixed-use areas with infrastructure, have high density like suburban downtowns. Creating "centers" would suburbanize rural areas and create competition for existing downtowns, making it harder for them to survive as the centers they already are. The Task Force, thus, recommends that the State Planning Commission promote other alternatives to the center designation model to preserve open space. Such an approach will not only economically strengthen existing downtown and urban areas but at the same time will allow rural areas to focus on the preservation of farmland and other environmentally sensitive land and assist the suburbs to focus on stabilizing growth, and therefore, property taxes. This is but one of the many recommendations offered in the attached Task Force report before you.

The Task Force has offered specific recommendations so that COAH can revamp its formula to better mirror real municipal housing need with fairer and equitable guidelines for municipalities. The Task Force in redefining terms such as "prospective need," "housing need," "region" and providing that the percentage of affordable housing will be linked to the degree of growth in a municipality will clarify for municipalities more understandable standards used in determining municipal fair share. These specific changes and others will result in more municipalities meeting their affordable housing obligations, thereby, receiving protection from the threat of litigation and corresponding legal costs. The recommendation calling for additional financing incentives for both urban and non-urban towns seeks to provide the necessary resources for municipalities.

Recommended amendments to the Fair Housing Act will provide for clear-cut, more specific criteria that COAH must apply in determining municipal fair share obligations avoiding complicated, bureaucratic formulas used in past methodologies. Existing pre-1980 affordable housing stock must be credited under Task Force recommendations and extended family living arrangements that meet income standards under the Fair Housing Act must also be credited.

Other Task Force recommendations including proposed amendments to the acts will further clarify for COAH and the courts that affordable housing is but one of a number of public policies that must be considered. The goal of the task force is to ensure that municipalities regain control over land use while accommodating reasonable affordable housing obligations.

The Task Force believes that these report recommendations and proposed amendments to both acts will restore and strengthen the initial goals of both laws in light of new emerging economic circumstances and conditions.

I look forward to working with you and the Assembly leadership in moving ahead with recommended measures.

Sincerely,

Assemblywoman Connie Myers
Chair

For Task Force Members --

Assemblyman Ken Lefevre
William Dowd, Esq.
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1. INTRODUCTION

A. Task Force Charge:

The Assembly Task Force to study The Fair Housing Act and State Planning Act was established pursuant to Assembly Resolution 158.

This seven member panel was directed by resolution to focus on:

- the degree of success in accomplishing the stated goals of each act;
- the intended or unintended impacts directly or indirectly caused by the acts' implementation and some quantification of those impacts; and
- the inter-relationship of these two acts and whether the goals of the acts have been hindered or furthered in their implementation.

The resolution also directed the Task Force to prepare a report for submission to the General Assembly and Governor, and at that time if it determines that changes to these laws are necessary, those suggestions shall also be included in the report. All these charges have been met. In fact, this report contains recommendations for proposed amendments to both acts as well as detailed rationale for why such amendatory changes are needed.

Appointments to this Assembly Task Force were fully completed at the end of March 2001 and the Task Force promptly began preparing for its study of this very complex issue. Two public task force meetings were held on April 10th and June 19th. The Task Force heard from diverse groups and individuals including local elected officials, citizen groups, professional planners and farmers the two executive State agencies implementing the Fair Housing Act and State Planning Act.

In addition, the Task Force reached out and held informal discussions with the COAH board, Office of State Planning, environmental and local government representatives as a follow-up to testimony received and discussed many of the issues raised at the two public meetings it held.

The Task Force made inquiries to the Department of Community Affairs (DCA) and the New Jersey Housing and Mortgage Finance Agency (HMFA) concerning funding/financing information and the Administrative Office of the Courts (AOC) concerning the use of builder's remedy litigation across the state since 1985.

The Task Force sent surveys to all 566 municipalities pertaining to both acts' implementation aspects. The survey contained sixteen questions, some multiple choice, some yes/no options, and others requiring narrative answers. Some key findings are highlighted in various sections of this report relative to the subject matter being discussed. Of those municipalities responding to the survey, 59 percent of the respondents indicated that their towns received substantive certification, 32 percent

filed fair share plans but have not yet received substantive certification, nine percent did not file plans and were involved with court litigation and seven percent indicated they were subject to builder's remedy suits.

The Task Force also sent State Plan surveys to 21 county planning boards. This five question survey deals with such issues as municipal participation in the cross acceptance process; counties' projected growth in 2020 and the percentage of growth as it pertains to planning areas 1, 2, 3, 4 and 5; counties' prioritization of projects relating to transportation, farmland preservation, open space preservation, affordable housing, and capital facilities; master plan and plan endorsement; the State Plan's impact on municipal land use decisions.

B. Affordable Housing Funding:

Pursuant to **N.J.S.A. 52:27D-320(a)**, the Fair Housing Act, monies from the Neighborhood Preservation Nonlapsing Revolving Fund shall be used by the Department of Community Affairs to award grants or loans for housing projects and programs in municipalities whose housing elements have received substantive certification from COAH, in municipalities receiving State aid, or those subject to builder's remedy as well as receiving municipalities where a regional contribution agreement has been executed. Pursuant to **N.J.S.A. 52:27D-321**, the NJHMFA is required to establish affordable housing programs to assist municipalities in meeting the obligation of developing communities to provide low and moderate income housing. Subsection (a) stipulates that the agency shall allocate, for a reasonable period of time established by its board, no less than 25 percent of it bond authority for housing construction and rehabilitation for such low and moderate income housing.

It was clear that the Legislature intended that state funds be established to fund affordable housing obligations. At the same time, it is clear that municipalities have had to rely primarily on builders to finance these mandates. Since this raises the cost of housing, the Task Force examined this problem in detail.

This Assembly Task Force's attempt to collect affordable housing information required reaching out to several State and federal agencies as well as private banking institutions. This collected data does not provide the total picture concerning affordable housing funding in this State. However, one thing is certain - and that is - that many more thousands of affordable housing units have been produced beyond the number of units (i.e. approximately 28,000) estimated by COAH and housing advocacy groups; many more hundreds of millions of dollars have been invested in affordable housing in the form of construction and/ or permanent long-term financing, gap financing, and home mortgage loans to buyers than have been publicized.

Currently, funding information about affordable housing programs in the State is not coordinated but is disparate by agency and program. In fact, according to a guide published by the N.J. Department of Community Affairs on its web site:

"Although this Guide is a good source of information on income-restricted housing, it does not list all the affordable housing in the State. There is no single source of information."
(http://www.state.nj.us/dca/dhcr/guide_description.htm)

Specific information for other programs that are aimed at providing additional special housing needs are not included, such as: The Scattered Site AIDS Permanent Housing Program, Services for Independent Living (seniors), and The Transitional Housing Revolving Loan Program (homeless families). In addition, funding information is not included for Lead-Based Paint Hazards as well as contributions from the more prominent private groups which are investing in the affordable housing market such as the Thrift Institutions Community Investment Corporation and other financial institutions' efforts at meeting their federal Community Reinvestment Act (CRA) responsibilities as well as other for-profit/non-profit partnerships for affordable housing production. However, a summary of data collected as of August 2, 2001 follows.

- In Fiscal Year 2001, approximately **$534.247 million** of **federal monies** was channeled towards *affordable housing from Tenant Based Section 8, Community Development Block Grants, HOME Investment Partnership Program* and *Emergency Shelter Grants*. In federal Fiscal Year 2000, the Camden Housing Authority received **$35.0 million** from the *federal HOPE VI Revitalization Grant Program* while the Jersey City Housing Authority received **$1.144 million** from the *HOPE VI Demolition Grant Program*. Additionally, the *U.S. Department of Agriculture - Rural Development Funding* between 1995-2000 allocated **$197.517 million** for direct loans, guarantees and grants to low, very low, and moderate income rural families. The *Federal Home Loan Bank* channeled **$30.062 million** into affordable housing between 1995-2000.

-In the fiscal year 2001, **$25.310 million** of **State monies** were allocated for affordable housing purposes; (**$18.560 million**) from the *Balanced Housing-Neighborhood Preservation* funded by *Realty Transfer Tax receipts*; and additional affordable housing funds of **$6.750 million**.

-In addition, between the years 1990-2000, **$290.78 million** was pumped into single-family affordable housing by the NJHMFA, much of this amount being channeled towards Mt. Laurel related projects; **$110 million** was channeled towards loans for restricted occupancy for low and moderate income households, and **$127.208 million** for construction loans and subsidy programs under the *Urban Home Ownership Recovery Program*; **$53.5 million** went to mortgage loans to purchasers under the *Urban Projects Program*;

"The total number of HMFA home buyer program loans funded between 1977 and 2001 under the federal guidelines is 45,147 for a total of **$2.936 billion**." Since the enactment and implementation of the Fair Housing Act, "between 1990 and 2000 the HMFA funded 18,684 home buyer program mortgages pursuant to federal income limits for a total of **$1.655 billion**." (***Source**: August 2, 2001 HMFA correspondence, data for assembly task force on the Fair Housing and State Planning acts*)

-HMFA allocated **$66.378 million** for low income tax credit housing units for all projects including Mt. Laurel related projects (1995-2000). The agency provided credits to multi-family dwelling developments for 2,864 low income tax credit housing units, totaling **$13.314 million**; those tax credits spurred a total investment in housing of **$95.928 million** (1995-2000). These projects were either COAH approved

or court-ordered projects; the latter level of funding was further increased by accounting for 2001 tax credits that produced an additional 338 units, with a tax credit allocation of **$2.978 million** resulting in a total equity investment of **$21.988 million**;

-Besides the billions of dollars pumped into the aforementioned affordable housing programs from the various sources referenced above, much additional funding by the HMFA is being channeled into other state sponsored housing projects across the state. For instance, HMFA funded: 156 loans totaling **$1.45 million** under the *College and University Loan Program*; 36 loans totaling **$.71 million** under the *Potable Water Program******; 81 loans totaling **$11.4 million** under the Upstairs Downtown Program; 5,979 loans totaling **$764.9 million** for *Police and Firemen*; 118 loans totaling **$276 million** under *Equity Gap*; 20 loans totaling **$2.55 million** under the *Permanency Foster Parents Program*; 14 loans totaling **$1.42 million** for *Developmental Disability*; 82 loans totaling **$8.67 million** for the *Thrift Institution Community Investment Corporation (TICIC)*; *UHORP* construction and grant funds for 2,170 units totaling **$116 million**; and 3,000 grants/loans totaling **$10 million** for the *Downpayment Program*. (*Loans to owners of single-family residences whose source of potable water violates State primary drinking water standards.)

According to HMFA, "The grand total for single family lending is in excess of **$3.85 billion**." (***Source**: **HMFA, August 2, 2001 correspondence, data for Assembly Task Force on Fair Housing and State Planning Acts).***

-Between 1995-2000, the *Casino Reinvestment Development Authority* (CRDA) allocated **$224.903 million** to Atlantic City affordable housing projects.

-*Regional Contribution Agreements* accounted for **$144,046,735** of investment for 7,344 transferred housing units for first and second round obligations according to a list provided by COAH on May 29, 2001.

-*Development fees* collected for municipal affordable housing funds amounted to $91.249 million as of August 2000.

Development fees ($91.2 million) and regional contribution agreement ($144 million) funds covering the first and second round fair share housing obligations totaling some $235.2 million represent approximately 14.2 percent of the $1.655 billion of HMFA home buyer program loans funded between 1990-2000. This only accounts for HMFA affordable housing funds. However, if on considers balanced housing and other state and federal dollars targeted to affordable housing, development fee and regional contribution agreement investments represent an almost insignificant portion of all these funding sources.

These latter numbers do not even reflect builders and/or non-profits' investment in affordable housing beyond affordable housing monies provided through DCA, HMFA and federal and private institutions. However, it should be noted that regional contribution agreement funding amounts often attract a large share of monies from builders since in exchange for developing housing in sending municipalities on sites that may have otherwise not been zoned for a certain type of development, builders will pay the cost for the production of affordable units in receiving municipalities, usually urban centers which have entered into regional contribution agreements with such sending

municipalities.

Interestingly, the majority of responses to Task Force municipal survey question #5 concerning who funds the construction of affordable housing units in connection with builder's remedy suits and voluntary inclusionary developments indicated that builders do. Only 48 percent of the municipalities responding to this survey answered this question. Of the respondents, 63 percent cited that builders funded construction, 15 percent responding cited municipal funds, four percent cited non-profit funding, and eighteen percent stated that a combination of funds were used.

C. Development Trends/Anti-Development Sentiment:

According to testimony provided to the Assembly Task Force, 18,000 acres annually were developed in New Jersey during the period from 1986 to 1995. ***(Testimony of Penny Pollock Barnes, NJ Future, April 10, 2001 Task Force Meeting Transcript, P. 148)***. In addition, it is expected that the State's population will grow by some 800,000 to one million more people and a million more jobs will be created in the State over the next twenty years. **(*Testimony of Herb Simmens, Office of State Planning, April 10, 2001 Assembly Task Force Meeting Transcript, P. 82)*** When more residential growth occurs, expenses increase much more than any tax revenues generate. Surveys suggest that residents of the State want less development, less traffic congestion and a better quality of life ***(See excerpt from Testimony below)***.

> **"I tried doing some surveys. What I found is this -- trying to get at whether people wanted one model or the other, what I found is people just don't want anything. People want to stop development in their own community. People don't want any new housing, they don't want any new stores, they don't want anything."** *(Testimony of Dr. Ted Goertzel, Professor of Sociology at Rutgers Camden, April 10, 2001 Assembly Task Force Meeting Transcript, p. 64.)*
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> **"From our perspective, the system for governing land use and, I think, most importantly, protecting the public's interest, ... I don't think it's overstating to say it's broken....It doesn't effectively direct development away from sensitive environmental areas."** *(Testimony of Tim Dillingham, New Jersey Conservation Foundation, April 10, 2001 Assembly Task Force Meeting Transcript, p. 123.)*
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> **"....New Jersey's population grew by 4.5 percent (1986-1995), while the number of developed acres increased by 14.1%, or 3.2 times as fast. At this rate, we will run out of developable land in 30 years."** *(Testimony of Penny Pollock-Barnes, April 10, 2001 Assembly Task Force Meeting Transcript, p. 148)*
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> **"It's interesting because some have criticized us for being too far in one direction -- for saying all we're doing is stopping growth. And we've heard people from the environmental community say all the State Plan does is encourage growth and doesn't stop growth."** *(Testimony of Herbert Simmens, April 10, 2001, p. 83)*

2. THE LEGISLATURE'S RESPONSE TO MT. LAUREL DECISION

A. Findings of Court

As noted in the findings section of the New Jersey Fair Housing Act (**N.J.S.A. 52:27D-302**), the Mount Laurel Supreme Court cases determined that every municipality in a **"growth area"** has a constitutional obligation through land use regulations to provide a **"realistic opportunity for a fair share of its region's present and prospective needs for housing for low and moderate income families."**

The Mount Laurel II case clearly provides that in "non-growth areas," no municipality will have to provide for more than the generated present need and unlike communities in growth areas should not be required to accept regional share. The court decision stated:

> **"…. there is no reason today not to impose the Mt. Laurel obligation in accordance with sound planning concepts, no reason in our Constitution to make every municipality a microcosm of the entire state in its housing pattern, and there are persuasive reasons based on sound planning not to do so. …."**

The court decision also noted that:

> **"we have decided not to make the State Development Guide Plan (SDGP) the absolute determinant of the locus of the Mt. Laurel obligation....While we believe important policy considerations are involved in our decision not to make the SDGP conclusive, we think it even more important to point out that it will be the unusual case that concludes the locus of the Mt. Laurel obligation is different from that found in the SDGP. Subject to those cases, we hold that henceforth, only those municipalities containing "growth areas" as shown on the concept map of the SDGP (or any official revision thereof) shall be subject to the Mt. Laurel prospective need obligation".... "In non-growth areas, however (limited growth, conservation, and agricultural), no municipality will have to provide for more than the present need generated within the municipality, for to require more than that would be to induce growth in that municipality in conflict with the SDGP."**

B. Summary of the Fair Housing Act

Pursuant to the *Mount Laurel* court decisions, and The Fair Housing Act which was subsequently enacted to address those decisions, municipalities have a constitutional obligation to provide a realistic opportunity for the provision of affordable housing within the municipality. "Affordable housing" under the act means housing which is affordable to persons of low or moderate income, which is defined to mean households having 50 percent or less or 80 percent or less, respectively, of the median income for the region. The act created the council on affordable housing (COAH), which calculates regional and municipal affordable housing needs for six year cycles. COAH then allocates the need by municipality. COAH has released two cycles of numbers, and is currently preparing its third cycle of numbers. The act also amended the "Municipal Land Use Law," (MLUL) to require that each municipality update the master plan every six years.

At the same time the Fair Housing Act was enacted, companion legislation creating the State Planning Commission was also enacted. This legislation replaced the old state guide plan with the State Development and Redevelopment Plan (SDRP), also known as the "State Plan," which is to be the state blueprint for growth and development while protecting natural resources and environmentally sensitive lands. The SDRP is also to be utilized, as was the State guide plan, in determining which areas of the state are developing or best capable of accepting growth. In contrast to the State guide plan, which had earmarked some areas as not growing, the Final 1992 SDRP first annunciated that all regions of the state were capable of accommodating growth. Thus, the affordable housing responsibility under the *Mount Laurel* decisions for those municipalities which were growing became a responsibility for every municipality.

The most recent information from COAH (2000 annual report) indicates that the following units of housing have been credited under the Fair Housing Act:

28,855 new units, either built or under construction
13,231 units for which realistic zoning is in place
7,396 units rehabilitated or created through RCAS primarily in urban areas
11,249 rehabilitated units primarily in suburban and rural areas

60,731 approximate total housing units credited or produced since the enactment of the FHA.

"The numbers are a conservative estimate of only what has been reported to COAH."…. "...the numbers only reflect low and moderate income housing that was created from 1980 to the present for COAH Credit." *(September 4, 2001 Correspondence from Shirley Bishop, Exec. Dir., COAH, to William Dowd, Esq., Member of Task Force.)*

Although compliance with the constitutional obligation for affordable housing is required, the submission of an affordable housing plan by a municipality to COAH under the Fair Housing Act is not required. However, a municipality that submits its plan to COAH and receives substantive certification gains protection from "builder's remedy" lawsuits for the period of the certification. In addition, courts are guided by the COAH numbers in determining whether a town is providing a realistic opportunity for affordable housing. Municipalities are permitted to address up to 50 percent of their fair share obligation (the number after credits are given) through a regional contribution agreement approved by COAH under which funds are transmitted to another municipality, along with a certain portion of a municipality's fair share number.

C. Use of Builder's Remedy

Under current COAH rules, a minimum of $25,000 *(NJAC 5:93-6.5)* must accompany each unit transferred under a regional contribution agreement. One manner in which a municipality may finance its affordable housing obligation is to allow a developer to build a certain amount of market-

rate housing within the town in exchange for the funding by the developer of a regional contribution agreement, through which the town gets to transfer a portion of the housing obligation number to the receiving municipality. In addition, regulations authorized through court decisions permit a municipality which has received substantive certification from COAH to assess what are termed "*Mount Laurel*" impact fees upon developers in the municipality. This development fee applies to any construction, even an individually-built, single family residence.

As previously mentioned, a town that does not submit an affordable housing plan to COAH is still required to comply with the constitutional obligation recognized in the *Mount Laurel* cases, and is at risk that "builder's remedy" lawsuits will be brought against it. West Windsor, which has not applied for substantive certification from COAH, has been sued several times by builders, and has lost most of the suits. The town attempted to slow down the development that it was being forced to accept through the court's orders by enacting a "timed-growth" ordinance. The ordinance designated areas within the municipality where the number of residential units and amount of floor space of commercial development would be limited and phased at certain time intervals. However, the ordinance permitted the "acceleration" of building rights if a developer paid for certain infrastructure costs. In the West Windsor ordinance, these costs were limited to roads. The ordinance was challenged, and the court held that it was invalid as a moratorium on development, in violation of N.J.S.A. 40:55d-90 (a section of the MLUL). See: *Toll Brothers, Inc. V. West Windsor Twshp*, 312 *N.J.super*. 540 (1998). The New Jersey Supreme Court recently agreed to hear the appeal of a builder's remedy lawsuit against West Windsor by Toll Brothers, inc. This pending case represents the first opportunity in recent years for the Supreme Court to review the impact of *Mount Laurel* and the "Fair Housing Act."

In a recently decided case, the zoning ordinance of Mount Olive Township requiring a five acre minimum lot size was challenged by a plaintiff who had sought a builder's remedy against the township. The trial court denied the plaintiff a builder's remedy, but invalidated the ordinance as too restrictive. On appeal, the appellate court reversed the judgment invalidating the ordinance, holding that a "municipality's voluntary compliance with the State Plan should be a significant factor [in determining] the validity of a zoning or rezoning ordinance." *Mount Olive Complex v. Twshp. of Mount Olive*, 2001 WL 604269, slip op. At 1. The plaintiff's land contained significant wetlands, steep slopes and flood plains, and the ordinance had been tailored to advance the purposes of the state plan in recognition of those factors. This case is significant in that it affirms that zoning decisions of a municipality can be given great deference if they are made in conjunction with the goals of the state plan.

The findings section **(N.J.S.A. 52:27D-302 b)** of the Fair Housing Act acknowledges, on the basis of Mount Laurel II, that the determination of the methods for satisfying this obligation **"is better left to the Legislature,"** and that the court has **"always preferred legislative to judicial action in their field,"** and the role of the courts in upholding Mt. Laurel doctrine **"could decrease as a result of legislative and executive action."** Pursuant to **N.J.S.A. 52:27D-303,** this act's intent is to **"provide various alternatives to the use of the builder's remedy as a method of achieving fair share housing."** Unfortunately, the builder's remedy has been used to develop even in areas of the

State where infrastructure is scarce including environmentally sensitive areas.

N.J.S.A. 52:27D-328 defines ***"exclusionary zoning litigation"*** to mean **"lawsuits filed in courts of competent jurisdiction in this State challenging a municipality's zoning and land use regulations on the basis that the regulations do not make realistically possible the opportunity for an appropriate variety and choice of housing for all categories of people living within the municipality's housing region, including those of low and moderate income, who may desire to live in the municipality."** ***"Builder's remedy"*** is defined as **"a court imposed remedy for a litigant who is an individual or a profit-making entity in which the court requires a municipality to utilize zoning techniques such as mandatory set-asides or density bonuses which provide for the economic viability of a residential development by including housing which is not for low and moderate income households."**

> **"All you need is one developer before a planning board that is not getting the density that he or she wants, and the first thing the developer will do is look to see if the town has a COAH certified plan."** *(Testimony of Shirley Bishop, COAH, April 10, 2001 Assembly Task Force Meeting Transcript, p. 12)*
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> **"It amazes me that this is 16 years later, there is an administrative alternative for municipalities, and they're still being sued...some municipalities would much rather have the court decide where the housing is being built than make a decision. But the towns are still being sued."** *(Testimony of Shirley Bishop, April 10, 2001, p. 11.)*
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> **"We do intend to meet our obligation. We have met our obligation....we're already hearing the new numbers are coming. We'll meet our obligation, but we just don't want to continue to be forced to build out."** *(Testimony of Mayor Sandy Urgo, Roxbury Township, June 19, 2001 Assembly Task Force Meeting Transcript, p. 48)*
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> **"Roxbury was one of the first municipalities in the county to settle on the Mount Laurel II. And as you said, the obligation was 665 units.....but Roxbury is one of those towns that was overwhelmed with builder's remedy lawsuits. And probably that's what really caused the large number -- the increasing housing units in the municipality."** *(Remarks of Christine Marion, Task Force Member, June 19, 2001 Assembly Task Force Meeting Transcript, p. 49)*

Pursuant to **N.J.S.A. 52:27D-309(a)(b),** a municipality may elect to notify COAH as to its intention of submitting a fair share housing plan. If it elects to do so, it shall prepare and file a housing element based on COAH guidelines. Any municipality which does not participate or submit such plan and becomes a defendant in exclusionary zoning litigation, would not be entitled to administrative remedies by COAH.

> **"I've been involved in housing litigation in Pennsylvania where they don't have the builders' remedy and no housing gets built. It seems to me to the extent that we have been successful in New Jersey is because of the tension established by the builder's remedy --that communities know that -- especially those that are in the path of growth -- that they're vulnerable if they don't plan for low and moderate income housing."** *(Testimony of Mr. Art Bernard, former COAH Exec. Dir., June 19, 2001 Assembly Task Force Meeting Transcript, p. 21)*

Uncertified municipalities throughout the State have been targeted for builder's remedy suits to build in areas that a municipality may want to STAY undeveloped. Successful litigation outcomes usually result in the construction of inclusionary housing at densities previously not permitted under the local zoning. A concrete example of the aggressive use of "builder's remedy" is periodic communications placed on the law firm web site of Hill, Wallack in Princeton. According to a March 15, 2001 release entitled "299 Municipalities Now Vulnerable to Exclusionary Zoning," a quote from Henry Hill, Esq. reads:

> **"The failure of these towns to either petition COAH for substantive certification or renew previous, now expired certifications, represents a substantial opportunity to homebuilders interested in initiating exclusionary zoning litigation and willing to set aside a portion of their development for affordable housing."**
> *(http://www.nj-landuselaw.com/250_exclusionary_new_jersey_tow.htm)*

According to the latter site, about 300 municipalities have no current substantive certification from COAH under the Fair Housing Act or repose from the Superior Court under the Mt. Laurel Doctrine and are presumably vulnerable to Mt. Laurel litigation, notwithstanding other weighted factors such as available vacant and developable land, infrastructure considerations or environmental factors.

Most of the uncertified towns are in Bergen, Monmouth, Ocean, Atlantic, Camden, Sussex and Union counties and a list of municipalities by county is provided on the web site for builders' use.

> **"I feel very strongly that you have to take the builders out of it. ....Right now, the builder's are taking advantage of the program. It's created a very unhealthy situation. It's not creating smart planning or smart growth. It's creating disaster area -- a very expensive disaster area that we're running to keep up with....And the litigation costs are astronomical. If we add all the money that we've all spent on the litigation over affordable housing, we could have probably tripled our affordable housing stock in the state easily."** *(Testimony of Mayor Sandy Urgo, Roxbury Twsp., June 19, 2001 Assembly Task Force Meeting, p. 50)*

Information provided by COAH addressing the second round obligation, which may be underestimated, indicates a minimum of 67 court towns where builder's remedy law suits were initiated **(SEE ATTACHMENT 1)**. COAH estimates that there were a minimum of 45 court towns where such suits were initiated during the first round (1987-1993). Unfortunately, requests made for the total number of builder's remedy law suits revealed that this information is compiled by COAH through informal means such as tracking newspaper articles and information relayed to COAH by attorneys. However, no formal sharing of information between the Administrative Office of the Courts and COAH exists currently despite past requests made by COAH to the courts. No information is available concerning such suits prior to the implementation of the Fair Housing Act by COAH.

3. KEY ISSUES OF FAIR HOUSING ACT INVOLVING INCONSISTENCY IN IMPLEMENTATION

A. General Sentiments of Certain Municipalities

A survey taken by Holmdel Township in calendar year 2000, which was sent to all 566 municipalities, indicated some disillusionment with the implementation process of the Mount Laurel doctrine. To the question "*Do you feel that Mount Laurel has improved the qualify of life in your town?*" Twenty-eight percent said yes, fifty-eight percent said no; to the question "*Should the State help pay administration costs for the Mount Laurel program?*" Eighty-nine percent said yes, eleven percent said no; to the question "*Do you feel that Mount Laurel program is beneficial to your town?*" Thirty-nine percent said yes, sixty-three percent said no.

It should also be noted that in answering Task Force municipal survey question #6, regarding the effects of meeting affordable housing obligations on increased services and associated costs**,** 92 percent of respondents indicated professional fees (i.e. planners, fair share plans, master plan revisions, attorneys, RCA preparation); 41 Percent indicated litigation costs; 35 percent indicated service costs (i.e. fire, police, refuse collection, recycling); 65 percent cited administrative costs (i.e. rehabilitation program, related staff costs); 22 percent cited school costs and 12 percent cited property tax rate increases; and eight percent cited other costs. Percents may add to more than 100 percent because municipalities responded with more than one answer to this question.

Task force municipal survey question #14 asked municipalities to rate their key concerns about the implementation of the Fair Housing Act by providing them with choices concerning the various procedures, practices and rules used by COAH in determining their fair share. The issues which received the greatest number of responses, being ranked "of very high concern" included: 'regional reallocated need', 'little attention by state policies given to promotion of open space'; 'municipalities not getting to determine their own municipal numbers'; the issues of 'not receiving credit for pre-1980 housing' and 'COAH's housing type restrictions for credit' tied in terms of number of municipal responses.

Some representatives of local government testified before the Task Force concerning the weaknesses and drawbacks of the Mount Laurel implementation process. For instance, according to testimony before the Task Force:

> **"The affordable housing -- Mount Laurel decisions and COAH have been absolutely disastrous to us. We have the largest COAH obligation in the State of New Jersey, larger than most counties. I think, right now, we've got our obligation down to 1,700 or 1,800 units."** *(Mayor Bud Aldrich, Dover Township Committee, April 10, 2001 Assembly Task Force Meeting Transcript, p. 106.)*

> **"And what about us? Now we have Round III coming up and the other USES that there may be in the room today.....Is there any level of parity? How about the towns that haven't complied? Would you consider... freezing the obligation from the towns that have complied while the others come up to their level of expectation under what Judge Wilentz promulgated many, many years ago?"** *(Terence Wall, Holmdel Township Committee, April 10, 2001 Assembly Task Force Meeting Transcript, p. 54)*

B. Access to Jobs and Employment

The Fair Housing Act clearly suggested a nexus between the location of affordable housing and employment opportunities access. In fact, the provision in **N.J.S.A. 52:27D-312** relating to regional contribution agreements provides that the council shall determine whether or not such agreement **"provides a realistic opportunity for the provision of low and moderate income housing within convenient access to employment opportunities."**

It is interesting to note that in response to Task Force municipal survey question #12 which asked municipalities whether their "fair share" plan for Round I and/or Round II noted the present number of business establishments or employment level in their municipality, thirty four percent of this questions's respondents stated that they included such information in their filed fair share plan; 66 Percent of the respondents indicated that they did not include this information in their fair share plan.

Testimony presented to the Task Force and remarks made by Task Force members on the subject of employment and jobs in relation to housing are highlighted:

> **"...I think that the original Mount Laurel doctrine, and quite a bit of the language in the statute, relates to affordable housing near -- with access to jobs."** *(Remarks by Assemblywoman Connie Myers, Assembly Task Force Chair, April 10, 2001 Assembly Task Force Meeting Transcript, p. 58.)*
>
> **"I would just like to rephrase the part about employment and jobs. The formula components are really not in place. And I don't know what the final form will be. But employment opportunities and jobs are, by statute, part of the review for the RCA. And that is being done for every RCA."** *(Testimony of Shirley Bishop, Exec. Dir., COAH, April 10, 2001, p. 58)*
>
> **"I'm looking at the shifts in income and employment growth in the state. It looks like things are still, at least in the northern part of the state, moving westward. If the methodology still -- uses income and employment growth as a determination, you're probably going to see the majority of affordable housing obligations to be in those western municipalities, whereas the State Planning Act seems to encourage growth to occur more to the east. There seems to be an inherent conflict there."** *(Remarks by Christine Marion, Assembly Task Force Member, April 10, 2001 Assembly Task Force Meeting Transcript, p. 31)*

An indicator of where jobs are being created concerns business relocations to the State. A study of the State Commerce and Economic Growth Commission's past business relocation reports reveal the following trends. In 1998, over one-half of the relocating companies moved to New Jersey's most densely populated urban places, or cities. Less than half of the relocating companies chose suburban sites. In 1999, Hudson County was the prime relocation destination, claiming 47 percent of the State's total projected jobs with Jersey City the leading choice within the county. **(SEE ATTACHMENT 2)**

C. No Credit for Pre-1980 Affordable Housing

Pursuant to **N.J.S.A. 52:27D-307**, the act stipulates that in order to obtain credit, a certificate of occupancy must have been issued for a rehabilitated or newly constructed unit between April 1, 1980 and December 15, 1986; the unit complies with construction code standards certified by a code official; and a household must certify in writing that it receives no greater income than the definition of this act; and the unit must be affordable to low/moderate income households under standards by COAH at the time of substantive certification filing.

All units constructed after December 1986 had to have deed restrictions. However, between 1980 and December 1986, before COAH's regulations came into existence, there was housing created or rehabilitated that would be considered affordable today but with no deed restriction in place. COAH through regulation gave credit for each such standard housing unit but was sued on the basis that the regulation was too permissive and as part of a settlement, an amendment to the Fair Housing Act was made setting forth criteria for crediting such housing provided by the private market between 1980 and 1986 which was affordable according to present day selling prices and/or rents. No pre-1980 affordable housing is credited because the need was generated from April 1980.

> **"Basically, what it boils down to is, we're an affordable town now. We have about 70 percent, as near as we can figure, without going into a full blown study -- affordable homes. The problem is that affordable homes and the COAH formulas do not start the municipalities out on a level playing field....We have many of our homes, that were affordable homes, built prior to 1981 that are not included, and we can't claim them as affordable homes."***(Testimony of Mayor Clarence "Bud" Aldrich, III, April 10, 2001, p.106-107)*

> **"Your honor, how do you feel about allowing pre-1980 housing stock to be applied in determining your fair share obligation?** *(Question of Mayor Al Schweikert, Task Force Member, Assembly Task Force Meeting Transcript, p. 53)*

> **"I feel very positive about anything that brings my number down at this point. There's too much housing in Roxbury Township. I think that's an excellent idea."** *(Mayor Sand Urgo, Roxbury Twsp., June 19, 2001 Assembly Task Force Meeting Transcript, p. 53)*

D. Municipal Determination of Fair Share

Pursuant to **N.J.S.A. 52:27D-307,** COAH shall determine housing regions of the State, estimate present and prospective need for low/moderate income housing at State/regional levels and adopt criteria and guidelines for municipal determination of present/prospective fair share need in the respective regions. However, in practice this is not occurring. Yet, in order to comply with COAH requirements and the process itself, towns are expending a large amount of funds.

> **"...it has cost us about $4 million just to settle our in-house COAH requirements."** *(Testimony of Tom Kenyon, Member of the Tewksbury Township Planning Board and Committee, June 19, 2001*

Assembly Task Force Meeting Transcript, p. 62.)

According to remarks and testimony provided to the Assembly Task Force concerning the municipality's role in determining its numbers:

> **"...the language of the Fair Housing Act which states that initial determination of fair share is to be made by officials at the municipal level. And so I would like ....whether that's occurring, how's that occurring."** *(Remarks of Assemblywoman Connie Myers, Task Force Chair, April 10, 2001 Assembly Task Force Meeting Transcript, p. 28)*

> **"COAH generates pre-credited numbers. They are estimates of affordable housing for each municipality. Those numbers are the starting point, because the municipality determines if it has credits that are eligible to reduce the number."** *(Testimony of Shirley Bishop, Exec. Dir., April 10, 2001, p. 29)*

> **"I just want to get on the record that this is another area that I think needs clarification. I think there are people that are reading this in different ways. And where that is true, I think, we need to have the debate...and look at whether we need to clarify it one way or the other."** *(Remarks of Assemblywoman Connie Myers, Task Force Chair, April 10, 2001, p. 30)*

E. Regions Contain Counties that have Great Differences

Pursuant to **N.J.S.A. 52:27D-304,** "housing region" is defined as two to four contiguous, whole counties which have social, economic and income similarities and which constitute, to the greatest extent feasible, the primary metropolitan statistical areas as defined by the Census Bureau prior to the act's effective date. Some maintain that regions contain counties with great differences. For instance, for 1993-1999 the northeast region contains Bergen, Passaic, Hudson, Sussex; the northwest includes Essex, Morris, Union, Warren; the West Central includes Middlesex, Somerset, Hunterdon; the East Central includes Monmouth, Ocean, Mercer; the Southwest includes Camden, Gloucester, Burlington; the South Southwest consists of Atlantic, Cape May, Cumberland, Salem.

> **"Poor old Sussex gets -- Hudson County's practically built out, unless you want to talk about contaminated land. So everything is pushed up into Sussex County. And they get -- They have -- as the Mayor said, they get an inordinate amount of fair share, which is not fair to them..."** *(Testimony of Thomas Kenyon, Vice President, New Jersey Planning Officials, June 19, 2001 Assembly Task Force Meeting Transcript, p. 78)*

F. Credit for Types of Housing too Restrictive

The findings section of the Fair Housing Act encourages construction, conversion, and rehabilitation of housing in urban centers. It also acknowledges that the Supreme Court decision **"demands"** that municipal land use regulations affirmatively afford a reasonable opportunity for a variety of housing choices for low/moderate cost housing to meet the needs of people desiring to live there. COAH is

not providing equal credit for the various types of housing that may be built (i.e. senior, group homes, rehabilitated etc.). *Alternative living arrangements* such as residential health care facilities, transitional facilities for the homeless, group homes and congregate housing may be eligible for credit on a bedroom basis. *Accessory apartments* may be credited requiring a $10,000 municipal subsidy per apartment. *Write-down/buy-down* may be used to address up to 10 units of a municipality's obligation provided that a minimum of $20,000 per house is committed to purchase a previously occupied market rate house in standard condition and resold at a reduced price with a 30 year deed restriction. *Elder cottage housing (ECHO)* may address up to 10 units of a municipality's rehabilitation obligation. *Age-restricted housing* may be used to address up to 25 percent of a municipality's fair share obligation. *Rental housing* is part of every municipality's fair share obligation, eligible for a two-for-one credit.

Task force survey question #7 asked municipalities to check the different types of housing for which they received fair share credit. In ranking order, rehabilitation received the most responses followed by inclusionary zoning, senior housing, alternative living, regional contribution agreements, rental units, accessory apartments and municipally sponsored construction units.

Currently, no credit is being provided for extended family living arrangements whether they occur out of necessity due to economic circumstances or voluntarily on the part of family members as a lifestyle choice.

> **"....there's only a certain percentage of senior housing you can develop. The question is, why is that? We have 76-some-odd million baby boomers getting older every day, and we are limiting the amount of senior housing we can provide under COAH.. The very people who most likely need this type of program... yet we're capping what we can provide for them."** *(Testimony of Terence Wall, Member of Holmdel Township Committee, April 10, 2001, p. 52)*
>
> **"There should not be a limit on the number of buy-downs. There should not be a limit on Habitat for Humanity houses or group homes or any of the things -- no-build options. We should have no-build options. And we should not be limited in those no-build options....I think we should all have no-build options available to us."** *(Testimony of Mayor Sandy Urgo, Roxbury Township, June 19, 2001 Assembly Task Force Meeting Transcript, p. 50)*
>
> **"I have more seniors coming to me asking about affordable housing in town than I have families or younger people. They seem to have the greatest need. So, yeah, I think it should be increased....I don't like all these designed limitations. I don't know that anyone is good enough and knows Roxbury as well as Roxbury does to know what our need is. I think we're perfectly capable of taking that money and designing a plan that fits well in our town without all these limitations."** *(Testimony of Mayor Sandy Urgo, Roxbury, June 19, 2001, p. 54)*
>
> **"And in Phillipsburg, we have boarded houses up. We have boarded houses all over town. Where I live there are four boarded houses on my street. This is a mile away. It's unfathomable to be bleeding for a town that you love and also lose all the -- countryside. You lose the city and the countryside. It's the same process. And it's very unacceptable."** *(Testimony of Michael King,*

Chairperson, Phillipsburg Riverview Organization, June 19, 2001 Assembly Task Force Meeting Transcript, p. 94.)

G. Deed Restrictions

In order for all rehabilitation activity that occurred from 1990 to the present to be credited several criteria must be met: - the unit must be occupied by a low/moderate income household; - the unit was raised to code standard; - at least one major system needed repair and the overall program cost averaged $8,000 per unit; - a six year deed restriction is placed on owner-occupied rehabilitated households and a 10 year deed restriction on a rental unit. All newly constructed affordable housing including housing with public subsidies have controls on affordability or a deed restriction in place. Under the first COAH obligation round, the restrictions extended for 20 years and under the second round, restrictions extend for 30 years. According to COAH, some municipalities now provide for permanent deed restrictions on affordable housing units.

Pursuant to **N.J.S.A. 52:27D-321**, the N.J. Housing and Mortgage Finance Agency is directed to establish affordable housing programs to assist municipalities in meeting the obligation of developing communities to provide low and moderate income housing and specifies under 321(f) that the agency shall, in consultation with the Council on Affordable Housing, establish controls to insure the maintenance of housing assisted under the Fair Housing Act as affordable to low and moderate income households for a period of not less than 20 years. The section also allows for a shorter period of affordability controls if the economic feasibility of the program is jeopardized by the longer period.

An interagency task force, composed of COAH, DCA, AND HMFA, has been involved with finalizing rules regarding uniform housing affordability controls including the time periods under which occupancy restrictions remain in force**.** The purpose of the uniform controls is to ensure that low and moderate income housing units created under the Fair Housing Act are in fact occupied by low and moderate income families. These controls establish income eligibility standards for the buyers of restricted ownership units; maximum sales prices for restricted ownership units; income eligibility standards for tenants of restricted rental units; and rent restrictions for restricted rental units.

H. Effects of Inclusionary Developments on Services and Property Taxes

The Fair Housing Act findings section encourages, but does not mandate municipalities to expend municipal resources to help provide low or moderate income housing. Pursuant to **N.J.S.A. 52:27D-311,** a municipality may provide a phasing schedule to achieve its fair share, may have a portion of its fair share met through a regional contribution agreement <u>but a municipality shall not be required to raise or expend municipal revenues in order to provide low and moderate income housing</u>. Even though this provision states that a municipality shall not be required to expend its revenues to provide low/moderate income housing, new market-rate and affordable units under inclusionary zoning, whether as a result of builder's remedy or voluntary fair share plans submitted

by municipalities, create an impact on municipal services. Therefore, municipal revenues are being expended not only to provide housing but also to support municipal services for new developments.

> **"And clearly, there have been some inclusionary housing developments that have had the unfortunate consequence of promoting large-scale development. I won't necessarily even say sprawl, only because we all have a different definition of sprawl. In many cases, these large scale inclusionary developments have been at or above the density that are recommended in the State Plan. So they may be fairly dense, but they may be located in very environmentally sensitive lands or prime farmlands and induce other developments that aren't consistent with the State Plan. But I think a lot of that is a result not of conscious policy by COAH, but of courts and of communities that have attempted to struggle with how to meet their COAH obligations."** *(Testimony of Herbert Simmens, April 10, 2001, p. 72)*
>
> **"Now, doesn't the Fair Housing Act though, state categorically, that no municipality shall be required to expend municipal funding in order to meet its Mount Laurel obligation?"** *(Remarks of Henry Kent-Smith, Task Force Member, April 10, 2001 Assembly Task Force Meeting Transcript, p.24)*
>
> **"Absolutely. And then a town that doesn't want to expend its own resources does not have to participate in the COAH process."** *(Testimony of Shirley Bishop, April 10, 2001, p. 24)*
>
> **"When we were looking at towns coming with new second-round plans, inclusionary zoning was not the option of choice, except for those municipalities that had court settlements or mediated agreements that had to keep the sites in the plan. Many of the municipalities were actively looking for group homes -- were also providing for age-restricted rental housing. I don't see age-restricted housing, rental housing or group homes promoting sprawl. COAH developments are tight developments. Our density is generally six to the acre.....In the rural communities, other than court settlements....You do not really find the inclusionary zoning in the rural areas, because there is no public water or sewer."** *(Testimony of Shirley Bishop, April 10, 2001, p. 15)*

According to information provided by COAH on June 6, 2001, some inclusionary zoning developments (approximately 25) during the second round obligation were located in Planning Areas 4, 4B, and 5, accounting for about 3,289 market rate and affordable housing units **(SEE ATTACHMENT 3)**. Unfortunately, planning area information for every inclusionary development cited on this list provided by COAH was not available. Many sites listed had absolutely no reference to planning area categories and COAH was not able to provide any information pertaining to inclusionary zoning developments for round one obligations. Thus, the aforementioned numbers for inclusionary developments in PA 4, 4B, and 5 may be underestimated. The Task Force inquired to both the Office of State Planning (OSP) and The Council on Affordable Housing (COAH) attempting to ascertain what planning area categories certain developments fell into, however, both OSP and COAH were unable to provide the planning area categories for these specific inclusionary developments.

Task force municipal survey results reveal very interesting findings as it relates to municipal responses for survey question # 4. This question asked towns that were subject to either builder's remedy or provided for voluntary inclusionary developments to identify the number of acres, density usage, and number of market and low/ moderate income housing units produced. Only 39 percent of the total respondents to the survey answered this question. However, within the municipalities that were respondents to this question, an aggregate of 2,418 acres were used for development, resulting in the construction of some 9,618 market rate units and 2,400 low/moderate income units for a total of 12,018 housing units.

Highlights of testimony received by the Task Force on the effects of inclusionary development include such statements as:

> **"I've heard of this growth share plan that's being promoted. I think, once again, that doesn't take the builders out of it, because the only way the builders are interested in building affordable housing is if they increase the density to a minimum of six units to an acre, and that's on the real low end, and then build four market-rate units for every one unit. And that doesn't work."** *(Testimony of Mayor Sandy Urgo, Roxbury Twsp., June 19, 2001 Assembly Task Force Meeting Transcript, p. 51)*

> **"I've come to tell you what a disaster the Fair Housing Act has been for our community....I would suggest that one of the, I assume and hope, unintended impacts of the Fair Housing Act is to create a huge hardship on a group of people and, in fact, to make their homes unaffordable to them.....There is a group of senior citizens in Roxbury Township. We have a pretty big senior population...They've been there their whole lives. They're blue-collar families. They are being pushed out of our community. In 10 years, our tax rate has increased 35 percent, our water rates have increased over 100 percent, and our sewer rates have increased 80 to 90 percent.... When you take forests and you turn them into housing and you increase the demand for recreation, for transportation, for schooling, and roads and plowing and police and emergency services and everything that goes along with housing you create a burden on the property taxpayer. And right now, the Fair Housing Act as it's being implemented, is creating some affordable housing.... But in return, you create a burden on another group of people and you make their homes less affordable. ...We have seniors who are actually being put on affordable housing waiting lists because they're forced to leave their home...because they don't have the income to stay in their home...."** *(Testimony of Mayor Sandy Urgo, Roxbury Twsp., June 19, 2001 Assembly Task Force Meeting Transcript, p. 43-45)*

I. Regional Contribution Agreements

As previously noted, **N.J.S.A. 52:27D-312(a)** allows a municipality to transfer up to 50 percent of its fair share to another municipality within its housing region provided that a contractual agreement has been appropriately approved and substantive certification has been received. Some testimony received by this Assembly Task Force questioned the current procedures for RCAS as well as the quality of housing obtained under this housing option. For instance, a local governing body representative testified:

> **"...Is 50 percent (for RCA) the right number? How is that number arrived at?....Maybe it should be 100 percent RCA....If it (Fair Housing Act) talks about regions, why does a municipality have to keep 50 percent of its allocation if we're talking about regions?"** *(Testimony of Terence Wall, Member of Holmdel Township Committee, April 10, 2001 Assembly Task Force Meeting Transcript, p. 49-50)*

Task force municipal survey question #11 asked municipalities how a sending municipality funded its regional contribution agreement if they chose to enter into one. Seventy-seven percent of the responses indicated 'developer funds;' 46 percent cited 'bond funds;' 15 percent indicated 'blended funds', and eight percent cited the 'use of local, state and federal funding.' Percents may add up to more than 100 percent because municipalities responded with more than on answer to this question.

4. POLICY AREAS FOR RECOMMENDATIONS TO THE FAIR HOUSING ACT

A. BASIS FOR FORMULA

1. Clarify language in the Fair Housing Act to clearly state the connection or linkage between low/moderate income housing obligation and employment opportunity access. Proposed amendatory language to the Fair Housing Act which provides further detail with regard to this recommendation is discussed under section 4, K of the report pertaining to recommended changes to the Fair Housing Act.

2. Clarify language in the fair housing act to prevent speculative and subjective bases that are factors used by COAH and the courts to determine a municipality's fair share obligation number. Proposed amendments to the act, which are discussed in detail under section 4, K, of this report, redefine terms such as "prospective need," "housing need, " "region," and specify criteria to be used by COAH in determining municipal fair share. Such changes will not only provide greater direction by the Legislature as to the intent of the act but will also provide municipalities with fair and consistent guidelines that encourage compliance, thereby, promoting the production of more affordable housing. The percentage of affordable housing should be relative to the degree of growth in a municipality.

> **-Under the Task Force's recommendation, indigenous and present need will be determined by identifying dilapidated units in a town through the census. Prospecive need will be determined through actual development approvals and construction (i.e. realty transfers), and not projections as is currently the case.**

B. BASIS FOR CREDITS

3. Allow pre-1980 housing stock to be applied in determining fair share obligation and amend

the Fair Housing Act accordingly. This recommendation is discussed in further detail under this section of the report 4, K.

4. Credits should be given to extended family household units if they meet income characteristics of the Fair Housing Act.

5. Credit a municipality's affordable housing obligation number if existing household occupants in a municipality have incomes that meet the parameters set in the census. Also, credit should be provided for existing homes in a municipality which are already affordable. Proposed changes to the act relating to this particular recommendation are discussed in more detail under this section 4, K of this report.

> - The act **(N.J.S.A. 52:27D-304b)** defines "low income housing" as housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located. "Moderate income housing" is defined in the same manner, except that "gross household income is equal to more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located."
>
> **"When you think of these communities -- Pohatcong, Alpha, Lopatcong, the whole place is affordable..... I mean, Pohatcong -- a medium house is $117,000. The whole place is affordable. ....Maybe there are some houses heading to $250,000 and $300,000. But basically, it's -- The houses are between $60,000 and $190,000. The whole community is affordable."** *(Testimony of Michael King, Chairperson, Phillipsburg Riverview Organization, June 19, 2001 Assembly Task Force Meeting Transcript, p.95-96.)*
>
> **"So I think that you will see us recommending that we adopt legislation that will require COAH to permit the crediting of more units when they're actually affordable."** *(Remarks of Assemblywoman Connie Myers, Task Force Chair, June 19, 2001 Assembly Task Force Meeting Transcript, p. 96.)*

6. Any non-profit, federal or other local/state affordable housing projects funded and constructed in a municipality, should be part of a municipality's fair share plan and credited towards a municipality's fair share obligation number. The act should be amended to more clearly achieve this goal.

C. FUNDING

7. Increase coordination of HMFA, DCA, COAH and other federal dollars to municipal 'fair share obligation' projects in order to reduce the burden on local property taxpayers. Fair share

housing obligation projects should receive priority consideration for funding. The DCA in cooperation with the latter agencies should also issue annual reports that account for every dollar spent for affordable housing projects and the number of affordable housing units produced and rehabilitated etc. whether or not they are COAH related since the affordable housing being constructed, rehabilitated, and financed by HMFA and other state programs provide housing for individuals/families whose income level may either fall within the guidelines of the Fair Housing Act for "low" and "moderate" income or whose income level and home purchase prices meet federal qualified mortgage bond lending rules regardless of whether or not deed restrictions are attached to such occupancy. These federal rules restrict income and provide home purchase price limits "But are not as restrictive as those applicable under the Fair Housing Act," even though HMFA notes that "a significant percentage of these loans were used to fund home purchases under the fair housing act rules." ***(Source: August 2, 2001 Memorandum Submitted by NJHMFA to Task Force in Response to Assembly Task Force Questions)***

> - April 10, 2001 testimony by COAH before the Task Force indicated that as a result of fair share obligations **"as of last year, 25,900 new affordable housing units were built," "an additional 14,200 housing units were either zoned or had approvals in place,"** and **"10,400 deficient units occupied by low and moderate income families, primarily in the suburbs, have been rehabilitated."** However, thousands of other affordable housing units that are not considered Mount Laurel units, but which house families with incomes that meet standard income levels for low/moderate households, are also being financed but not appropriately included in such counts.

It is important to note that April 10th testimony cited above only sheds light on the number of affordable housing units built that are COAH related. As noted in the introduction of this report, billions of dollars have been invested in New Jersey affordable housing production and thousands and thousands more affordable housing units have been produced and rehabilitated through state sponsored and other financing programs (i.e. Balanced Housing, HMFA single family and multi-family, federal, and private institutions, see p. 5-8 of report)

8. Redirect affordable housing funds to help municipalities meet Mt. Laurel obligations.

> - Currently, urban areas receive the bulk of funding - millions of dollars - from the Balanced Housing Program which gets its source of funding from the realty transfer fees on the sale of homes, and other urban municipal aid. Yet, urban municipalities are not filing fair share plans since the threat of builder's remedy suits do not loom as in rural and suburban fringe municipalities, the very areas in which the State Plan attempts to promote rational development and/or development only when infrastructure exists. As noted previously, the Fair Housing Act clearly stipulated that monies from the Neighborhood Preservation Non-lapsing Revolving Fund should be channeled to help municipalities meet Mr. Laurel obligations. However, the share of monies being received currently by municipalities in urban, suburban, and rural areas is not equitable.

9. Close a loophole that currently exists in law relating to realty transfer fees which treat new

housing construction differently than home resales**.** Currently, home sellers must pay $1.75 per $500 of the total home purchase price amount. However, this same rate does not apply to new construction home sales. The sellers of newly constructed housing units pay .75 cents per $500 of the first $150,000 of the total home purchase price amount and receive a one dollar exemption. The Task Force recommends closing this loophole on homes costing $300,000 and over, thereby, raising more monies that will be channeled towards the Balanced Housing Program to increase funding for municipalities' affordable housing efforts. The current one dollar exemption for housing costing less than $300,000 will remain to further encourage the construction of affordable housing.

D. CLARIFY STATUTE

10. Clarify the definition of terms such as “need” and “growth area.” The term “need” should reflect more realistic factors in arriving at a municipality’s fair share obligation, taking into consideration existing affordable housing stock. Proposed amendments to the Fair Housing Act makes changes in definitions and the factors utilized in determining fair share.

E. SIX YEAR CYCLE

11. COAH’s fair share obligation round should remain as a six year cycle since it coincides with municipal master plan cycles and the Task Force recommendation under section 7A specifies that the State Planning Commission should revise and re-adopt the State Plan at least every “six years” in lieu of the current law’s provision of “three years.” COAH would prefer a 10 year cycle since its numbers are based on the census. The Task Force could support this initiative providing there are provisions for adjustments based on changes occurring in municipalities or statewide that affect these numbers.

F. BUILDERS REMEDY

12. The Task Force believes that the builder's remedy is a court-created tool in providing for affordable housing. The Task Force strongly contends that Task Force recommended changes to the Fair Housing Act make the process fair for all municipalities and obviates the need for builder's remedy." Applying the standards of Task Force recommended changes concerning how municipal fair share obligation is calculated (as discussed under 4, A, 2), which will eliminate past round methodologies which were capricious and unfair, will encourage the filing of fair share plans by all municipalities. Thus, fulfillment of such fair share plans would afford municipalities protection against court-created builder's remedy litigation.

12A. COAH should investigate the viability of using a sliding scale approach with regard to the current 4-1 ratio of market rate units to low/moderate income housing units as it relates to voluntary inclusionary developments. The ratio should be adjusted in proportion to the value of the land on which the developer is building. Amendments to the Fair Housing Act to statutorily establish this change, should also be considered once the issue is further studied by COAH. The courts should

follow these guidelines is builder's remedy litigation occurs where municipalities have not filed fair share plans or received substantive certification. The Task Force received testimony concerning this issue and believes that this issue deserves closer scrutiny and examination. Testimony concerning this issue stated:

> **"A 4-to-1 ratio means that the builder could come in and build four market homes for every one affordable unit. It's been said today that has not encouraged sprawl, and that has not encouraged - perhaps, and I may be paraphrasing - but secondary impacts -- fire, first aid, schools. I would suggest that when you're able to build four market value homes for every affordable home, that absolutely has an impact..... Now, part of the reason I understand the 4-to-1 ratio is so that a builder can still extract a return on his investment, because he's being such a great guy to put some affordable housing together to help people. Well, if that's the case, then shouldn't there be some kind of test where if you're able to get a certain return on your investment on those 4-to-1s should, perhaps -- where the land is more valuable, where the market value has a larger margin of return -- should that be adjusted 3 to 1, 2.25 to 1, etc? It doesn't make sense. We're trying to put a square peg in a round hole."** *(Testimony of Terence Wall, Member of Holmdel Township Committee, April 10, 2001 Assembly Task Force Meeting Transcript, p. 50-51)*

13. The Administrative Office of the Courts (AOC) should initiate an appropriate case management logging system to record all litigation pertaining to builder's remedy suits so that AOC can share information relating to builder's remedy court cases on a systematic basis with the N.J. Council on Affordable Housing. Such information sharing is not currently a practice.

> -A letter of August 22, 2001 sent by the task force chair requesting information from the Administrative Office of the Courts concerning a list of builder's remedy suits filed and/or disposed of during the post-1985 period through present did not yield any results. The AOC maintains that this information is not retrievable since case management of civil matters such as land use is treated differently from criminal and family court cases. **(<u>See Appendix</u>)**

> **"COAH understands that there are 69 towns that have had exclusionary zoning lawsuits filed. COAH has no information on the majority of the towns."** ***(September 4, 2001 correspondence from Shirley Bishop, Exec. Dir., COAH to William Dowd, Esq., member of Task Force.)***

G. NEW REPORTING MECHANISM TO TRACK WHO IS BENEFITING

14. Establish a county residency preference for those who live or work in a county and who will occupy Mt. Laurel housing units within such county to ensure that this State program provides affordable housing for the county's low-income individuals or families. This recommendation must be taken in context and in combination with proposed Task Force recommendation under section 4, K, of this report that the Fair Housing Act be amended to redefine "region" as county. It appears that the legal standards reached in a federal court decision as well as a N. J. Supreme Court decision <u>Township of Warren</u>, 132 n.j. 1 (1993) would support a county residency preference.

> - The N.J. Supreme Court invalidated a regulation by COAH which had permitted municipalities to fill vacancies in affordable housing units by giving preferences to city residents. The court held that the

preferences could not be reconciled with the regulatory scheme established pursuant to the state's affordable housing policy. An important State goal of the Fair Housing Act focused on addressing regional housing needs as calculated under COAH methodology and would be furthered by a preference for regional residents in occupying affordable housing units in the region.

- According to information provided by COAH, occupancy data collected after November 30, 1992 by the Housing Affordability Service (HAS) within the Department of Community Affairs, which administers a majority of affordable housing units across the state, reveals that 49 of the 440 residents placed in Monmouth County affordable housing developments were from out-of-state. ***(September 4, 2001 correspondence from Shirley Bishop, Exec. Dir., COAH to William Dowd, Esq., member of Task Force).***

H. COAH BOARD MEMBERSHIP

15. Since the Fair Housing Act and State Planning Act have a nexus inasmuch as promoting comprehensive planning for the production of affordable housing where infrastructure exists and the protection of open space, farmland and environmentally sensitive areas, statutorily establishing representation from rural areas on the COAH board would contribute greatly to the scope of understanding the inter-relationship of both acts and their implementation.

N.J.S.A. 52:27D-305a provides that COAH shall **"consist of 11 members appointed by the Governor with the advice and consent of the Senate."** The Task Force recommends that an amendment be made to the act to specify, at least one of the members shall be representative of a rural municipality having a population of 10,000 or less and a population density of 500 persons per square mile or less.

Currently, COAH has a representative from a rural municipality. This proposed amendment will ensure that this practice remains the case. The Mount Laurel doctrine did not envision rural municipalities being impacted. However, COAH's 1992 regulations ensured that they would be most heavily impacted.

I. REGIONAL CONTRIBUTION AGREEMENTS

16. The Task Force strongly recommends that any current or future discussions of changing the percentage of affordable housing unit transfers allowed under the Fair Housing Act should be postponed until such time that the effects of Task Force recommended amendments to this act, relating to fair share obligation calculations, are determined.

J. PENDING LEGISLATION

17. Funding of Affordable Housing

The Task Force endorses legislation to support affordable housing initiatives provided funding is linked to municipal affordable housing obligations to minimize if not eliminate any impact on property taxes. The Task Force notes the following pending legislation in this area.

-S-222 Bryant, which is pending before the Senate Budget and Appropriations Committee, requires that 10 percent of AFDC emergency assistance funding be used to pay for development of low-income rental housing.

-S-737 Bassano, which is pending before the Senate Budget and Appropriations Committee, makes a supplemental appropriation of $100,000 to the Division of Housing and Community Resources in the Department of Community Affairs to fund $100,000 grant for development of affordable housing for disabled people.

-S-1137 Kyrillos/Kenny which is on second reading in the Senate and ACS for A-2591/A-2451Collins, Smith, pending before the Assembly Appropriations Committee, popularly known as "The Multiple Dwelling State Tax Credit Act."

-S-1138 Kyrillos/Kenny which is on second reading in the Senate and ACS for A-2592/A-2452 Collins/Smith, pending before the Assembly Appropriations Committee, popularly known as "The Neighborhood Revitalization State Tax Credit Act."

-S-2248 Bucco, which is pending before the Senate Community and Urban Affairs Committee, permits municipalities to establish "Senior Citizen Affordable Housing Support Program," and combines property tax relief with COAH credit. Assembly companion measure, A-3305 Merkt/Pennacchio, is pending before the Assembly Housing Committee.

-A-3726 Kelly/Biondi, which is pending before the Assembly Housing Committee, codifies the Urban Home Ownership Recovery Program (UHORP) in the NJHMFA to promote revitalization and stabilization of urban neighborhoods.

18. Council on Affordable Housing

The Task Force notes legislation which is related to the Council on Affordable Housing (COAH).

-S-1319 Bennett/A-2375 Kelly/Lance, which is on second reading in the Assembly, increases certification period governing COAH from six to ten years under the "Fair Housing Act."

The Task Force finds that changing the cycle to 10 years would require significant provisions for interim adjustments to fair share obligations. If such adjustments are proposed, this legislation should be considered along with suggestions that would change the Master Plan and State Plan cycles to 10 years. Unless and until COAH proposes a plan for making interim adjustments, the cycle should be kept to six years because it is the same as the Master Plan cycle and the recommended cycle for the

State Plan.

-S-2085 Robertson, which is on second reading in the Senate, clarifies legislative intent concerning fulfillment of fair share housing obligations and substantive certification. Its companion measure, A-3173 Zecker, is pending before the Assembly Housing Committee.

- S-2234 Bucco, pending before the Senate Community and Urban Affairs Committee, changes the earliest date of construction or rehabilitation of housing granted credits without controls. Assembly companion measure, A-2657 Holzapfel/Myers, is pending before the Assembly Housing Committee.

-A-2610 Gregg/Myers, pending before the Senate Community and Urban Affairs Committee, prohibits de-crediting by COAH of affordable housing unit upon expiration of term of deed restriction.

If the Task Force recommended amendments to the Fair Housing Act are adopted, these bills would be unnecessary since there will be no date. All affordable housing would be credited.

-A-831 Smith, R., pending before the Assembly Housing Committee, requires inclusion of community residences for the disabled in "fair share" affordable housing plans.

The Task Force notes that the Fair Housing Act already has provisions for crediting community residences for the disabled.

A-2430 LeFevre/Kelly, which is on second reading in the Assembly, requires HMFA to prioritize projects affordable to extended family caregivers and amends the Fair Housing Act to allow funding for programs supporting extended family care.

-A-3115 Thompson, pending before the Assembly Housing Committee, provides additional fair share housing credit to municipalities in substantial compliance with terms of substantive certification for period beginning in 2000.

Since the amendments to the Fair Housing Act recommended by the Task Force should provide for fairer obligations, these bills should not be necessary.

K RECOMMENDED CHANGES TO THE FAIR HOUSING ACT

19. Findings

N.J.S.A. 52:27D-302a stipulates that the Mount Laurel II case **"has determined that every municipality in a growth area has a constitutional obligation to provide through its land use regulations a realistic opportunity for a fair share of its region's present and prospective needs**

for housing low and moderate income families." The Task Force believes that this section's language should be modified to delete reference to the phrase "through its land use regulations" to provide that other tools besides zoning can be used such as affordable housing funding. The rationale for these changes, allowing other tools besides zoning, is explained further.

In areas where there is significant developable land and corresponding development pressure, land prices are so high that the only way to provide affordable housing through land use regulations is by high density and "inclusionary zoning" where a developer gets the right to build four market rate units for every affordable unit provided. In some instances, the number of market rate units negotiated is higher. Municipalities without infrastructure have been forced by the courts to build such developments, causing "sprawl." Such inclusionary developments usually result in escalating property taxes from increased population and service demands, particularly schools. In fact, inclusionary zoning has made some existing housing less affordable because of increases in property taxes. Many municipalities - in order to prevent spiraling property taxes, congestion, environmental degradation and a general decline in the quality of life in their communities - bargain with the Council on Affordable Housing (COAH) to fulfill their obligations through other means such as regional contribution agreements (RCAs) or rehabilitation of existing homes in their municipalities or in other municipalities in their region rather than rely on new construction.

Since the goal of the Mount Laurel doctrine focuses on preventing municipalities from zoning out the poor, the obligation must be re-examined in light of economic realities and development trends in 2001. New Jersey citizens demonstrated a strong preference for land preservation in the 1998 open space preservation ballot question. The increasing shortage of developable land is raising the cost of development, making affordable housing more difficult to achieve. Subsidies are increasing. When these subsidies must be financed from the property tax, existing low and moderate income residents wind up with less affordable homes. State subsidies from broader based taxes must be used to prevent affordable housing programs from increasing the costs of other housing. The goal of preserving rural and environmentally sensitive areas means high density housing is undesirable in these locations. Therefore, subsidies for low density affordable units must be considered if housing obligations are to be met in all areas. Zoning is no longer the issue. Money is. Since "land use regulations" are no longer a realistic vehicle for meeting the obligation, this language is deleted from the Act.

In the Act, the Legislature directed COAH to report in three years on how to implement the law on a regional basis. COAH reported in 1988 that it did not recommend regional implementation, but in 1992, without legislative authorization, COAH implemented obligations based on regions. The current regulations have encouraged "sprawl" by lumping together urban, suburban and rural counties so as to increase suburban and rural obligations despite the fact that most State and federal funding for affordable housing is channeled primarily to urban municipalities. Recommended amendments to the Act directing this funding to urban municipalities provide a replacement for regional contribution agreements that currently generate additional revenues to urban areas at the expense of rural and suburban housing costs. The Task Force acknowledges that COAH has implemented the Fair Housing Act on a regional basis, although without statutory authorization. To reduce the

negative and inequitable effects of the current regions, it is recommended that each county serve as a region for its constituent municipalities, providing the opportunity for regional planning by a taxing unit.

N.J.S.A. 52:27D-302d stipulates **"There are a number of essential ingredients to a comprehensive planning and implementation response, including the establishment of reasonable fair share housing guidelines and standards, the initial determination of fair share by officials at the municipal level and the preparation of a municipal housing element, State review of the local fair share study and housing element, and continuous State funding for low and moderate income housing to replace the federal housing subsidy programs which have been almost completely eliminated."**

The Task Force notes that in practice, municipalities have never determined their fair share. Instead of "guidelines and standards," COAH mandated a formula, which determined fair share. Since this has been the practice for nearly 15 years, and since municipalities, particularly rural ones, do not have the resources to determine fair share, this language should be deleted. In 1985, federal housing subsidies had been "almost completely eliminated." Current circumstances indicate that this is not true, so this language should be deleted. Much of the funding for affordable housing is driven by federal programs implemented through the New Jersey Housing and Mortgage Finance Agency, which administers billions annually through various programs. However, to keep the burden on property taxes to a minimum, State funding for affordable housing to supplement federal programs is desirable. Amendments to the Act strengthen the tie between affordable housing programs and municipal obligations, as originally intended.

N.J.S.A. 52:27D-302f, which pertains to regional contribution agreements, states **"...it is appropriate to permit the transfer of a limited portion of the fair share obligations among municipalities in a housing region, so long as the transfer occurs on the basis of sound, comprehensive planning, with regard to an adequate housing financing plan, and in relation to the access of low and moderate income households to employment opportunities."** N.J.S.A. 52:27D-302h states **"The Supreme Court of New Jersey in its Mount Laurel decisions demands that municipal land use regulations affirmatively afford a reasonable opportunity for a variety and choice of housing including low and moderate cost housing, to meet the needs of people desiring to live there."**

In addition, the Task Force recommends that the phrase "municipal land use regulations" be deleted under 302h and replaced by acknowledging that municipalities "affirmatively afford a reasonable opportunity for a variety and choice of housing including low and moderate cost housing..."

The Task Force notes that New Jersey has become a popular place to live because of its premier corridor location between Washington, D.C. and Boston and between New York City and Philadelphia. The State economy reflects that diversity of location in its business climate and its attraction as a place to live as a result of the State's proximity to mountains, shore and urban centers.

Despite the fact that New Jersey has become one of the most popular states in which to live along the northeast corridor, legitimate State goals of farmland preservation, preservation of environmentally sensitive lands, limited infrastructure resources make it impossible for the State to accommodate everyone who wants to live here. Indeed, such accommodation could result in a lesser quality of life for people who have lived here for many years, and in some cases, generations. The need for affordable housing must be met while seeking a balance that preserves a healthy environment and prevents congestion that leads to problems that may only be addressed by confiscatory taxation.

20. Definitions

N.J.S.A. 52:27D-304a defines "council" and states that COAH **"shall have primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in this State."** N.J.S.A. 52:27D-304b defines "housing region" as **"a geographic area of not less than two nor more than four contiguous whole counties which exhibit significant social, economic and income similarities, and which constitute to the greatest extent practicable the primary metropolitan statistical areas as last defined by the United States Census Bureau prior to the effective date of this act."** N.J.S.A. 52:27D-304c of the current act defines "low income housing" as **"housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for household of the same size within the housing region in which the housing is located."**

The Task Force recommends that the term "regional" be deleted under 304a and that the definition of "housing region" Under 304b be redefined as meaning "county." Therefore, reference to "housing region" in connection with ascertaining household income under 304c will now be relative to county. The latter change would also apply as it relates to 304d which defines "moderate income."

These recommended changes to the act establish the county as the housing region. The region must be more than a municipality or municipalities made up primarily of affordable housing would incur the same obligations as a municipality without affordable housing, contrary to the intent of the Mount Laurel doctrine. This amendment opens up the possibility that county planning boards have an opportunity to work with its municipalities on a plan for affordable housing within its borders. Pending legislation that would provide for more regional planning may spur further refinements to this concept in the future.

52:27-304f defines "inclusionary development" to **"mean a residential housing development in which a substantial percentage of the housing units are provided for a reasonable income range of low and moderate income households."**

The Task Force finds that nearly all inclusionary developments have been built in response to a "builder's remedy," which defines the percentage. The Task Force finds that a subjective term like

"substantial" is unnecessary and confusing. Likewise, the definitions of low and moderate income housing determine the incomes of eligible applicants so the subjective term "reasonable" is also deleted.

N.J.S.A. 52:27D-304j defines "prospective need" to mean **"a projection of housing needs based on development and growth which is reasonably likely to occur in a region or a municipality, as the case may be, as a result of actual determination of public and private entities. In determining prospective need, consideration shall be given to approvals of development applications, real property transfers and economic projections prepared by the State Planning Commission..."**

The Task Force recommends that growth reasonably likely to occur be specifically limited to municipality not "region," as 304j currently indicates. Also, under 304j, determining prospective need should be solely limited to "approvals of development applications and real property transfers" but not "economic projections prepared by the State Planning Commission." The Task Force recommends, that contents of the municipal master plan be also considered in determining "prospective need."

The Task Force notes that when COAH began assigning numbers for prospective need in its 1992 regulations, municipalities saw obligations soar. Many of the projections were based on the building boom of the 1980s, however. After the 1990 recession and subsequent efforts to preserve farmland and open space, some municipalities never saw the growth that had been predicted for them. Yet once assigned, the numbers proved difficult for the municipality to change. Removing the more subjective and speculative bases for projections should address this problem. The municipal master plan is supposed to be a blueprint for future development and must by law be adopted through a public process, so it is the best guideline. This emphasis restores the local focus effectively removed from the Act by other amendments transferring responsibility for fair share determination to COAH.

21. Council on Affordable Housing / Responsibilities

N.J.S.A. 52:27D-307 prescribes the duties of COAH which include: **"a. Determine housing regions of the State; b. Estimate the present and prospective need for low and moderate income housing at the State and regional levels;"** The Task Force recommends the deletion of the latter language since this provision in the statute has been construed by COAH as permitting the agency to determine housing need, which was never authorized by the Legislature. The need for housing must be addressed as any other need funded by government - through dedicated funds and annual appropriations by the Legislature. Housing need, under the proposed amendments to the act discussed below, will relate to municipalities' present need and prospective need with legislative clarification as to how it shall be determined. The Task Force also recommends the incorporation of additional language to this section which states that the council's duty is to: determine municipal fair share. Fair share shall include present need, which shall be determined through the decennial

census by counting the number of substandard housing units within a municipality. It shall also include prospective need, which shall be determined by calculating the percentage of homes that must be affordable in a municipality when growth occurs after the effective date of this act. In determining this percentage, the Council shall examine the municipality's housing element with particular regard to access to employment opportunities. The Council may also use reports from the Department of Labor and the census in assessing employment opportunities. The percentage of affordable housing shall be relative to the degree of growth. COAH may issue tables and sliding scales that may be used by municipalities to estimate the impacts of growth on their obligation. It should be noted that in Maryland, 15 percent of new housing developments must be set aside for affordable housing and one unit of affordable housing must be provided for each 2000 square feet of commercial space created. This concept has been embraced by environmental and housing groups. The problem comes in compensating the builder for requiring this housing. In Maryland, density bonuses are offered. In New Jersey, the public will not support public policy that increases the cost of market rate housing. This is institutionalizing the builder's remedy, which is anathema to municipalities. Experience indicates that the impacts of affordable housing obligations are minimal when public funds are available to finance these projects.

In addition, N.J.S.A. 52:27D-307c1 allows COAH to **"Adopt criteria and guidelines for municipal determination of its present and prospective fair share of the housing need in a given region."** The Task Force recommends deleting the latter language. 307c1 also states that **"Municipal fair share shall be determined after crediting on a one-to-one basis each current unit of low and moderate income housing of adequate standard..."** The Task Force recommends adding the term prospective prior to "municipal fair share" and removing the phrase "of adequate standard" from this provision. In addition, the Task Force recommends additional language to the current provision which states that the **"unit for which credit is sought is affordable to low and moderate income households under the standards established by the council at the time of filing of the petition for substantive certification."** The additional language specifies that the unit is occupied by a low or moderate income household, as determined through the decennial census. The Task Force also recommends the deletion of existing language in this provision which requires a member of the household to sign a certification concerning income level.

N.J.S.A. 52:27D-307c1(a) limits a municipality's ability to receive credit for a unit since it states **"a municipality shall be entitled to a credit for a unit if it demonstrates that the municipality issued a certificate of occupancy for the unit, which was either newly constructed or rehabilitated between April 1, 1980 and December 15, 1986."** The Task Force recommends removing this provision and other related language so that the Act is returned to the original wording of the Act. Past amendments to the Act that restricted credits to units built since the Mount Laurel court decisions have meant that municipalities made up primarily of older stock that is largely affordable have nevertheless incurred relatively substantial obligations. Residents of these kinds of municipalities can ill afford to subsidize new affordable housing programs, nor should they be asked to. The practice has increased the cost of housing, resulting in less affordable housing. The Mount Laurel doctrine's goals aimed at ensuring a realistic opportunity for housing for low and moderate income families to prevent exclusionary zoning. This principle is irrelevant where most homes are

already affordable. The census provides affordability data which will be used in determining housing need**.** The census determines how many housing units are affordable and how many households are of low and moderate income. These numbers may be combined to allow COAH to estimate the number of affordable units occupied by low and moderate income households. This method will restore fairness to municipalities that have difficulty earning "credits without controls" because of lack of resources or lack of responsiveness from residents regarding reporting income levels. The census also determines the number of affordable units that are substandard. The distinction substandard simply indicates the degree of funding for rehabilitation needed in a municipality. It provides no bearing on whether a municipality is zoning out the poor. Therefore, there is no need to refer to units of "adequate standard."

N.J.S.A. 52:27D-307c(2) states **"Municipal adjustment of the present and prospective fair share based upon available vacant and developable land, infrastructure considerations or environmental or historic preservation factors and adjustments shall be made whenever: a. The preservation of historically or important architecture and sites and their environs or environmentally sensitive lands may be jeopardized, b. The established pattern of development in the community would be drastically altered, c. Adequate land for recreational, conservation or agricultural and farmland preservation purposes would not be provided, d. Adequate open space would not be provided,**
e. The pattern of development is contrary to the planning designations in the State Development and Redevelopment Plan..." f. Vacant and developable land is not available in the municipality,
g. Adequate public facilities and infrastructure capacities are not available or, would result in costs prohibitive to the public if provided;" the Task Force recommends deleting reference to "adjustment of the" as it relates to municipal present and prospective fair share, deleting existing language that reads "and adjustments shall be made whenever,"under 307c(2) and deleting reference to factors cited under 307c(2)c, d, and e. The Task Force recommends that new language be added to this provision to clarify that <u>developments providing affordable housing shall not be mandated</u> where factors cited in a, b, f, g exist. In addition, the Task Force recommends the addition of language to 307c(2)f pertaining to "Vacant and developable land" to <u>exclude agricultural land, which is defined as land that is under farmland assessment</u>. The Task Force also recommends the deletion of the term "adequate" to 307c(2)g pertaining to public facilities and the deletion of the phrase "available, or would result in costs prohibitive to the pubic if provided; and" but replacing this language to provide that <u>public facilities and infrastructure capacities are not present</u>;

The Task Force recommends amending the latter provisions to provide better guidance to COAH and the courts. Subjective terms such as "drastically" and "adequate" are eliminated. The amendment clarifies that these factors effectively prohibit development for affordable housing purposes. Absent these amendments, the courts could continue to side with developers, mandating housing that is much more dense than any other in a municipality, mandating that buildings be torn down to provide opportunities for affordable housing and mandating municipalities spend property tax dollars to provide infrastructure for affordable housing developments, encouraging "sprawl" by mandating sewer and water extensions in the process. The reference to agricultural land follows the practice

in Pennsylvania, which considers agricultural land as already "developed." This is in keeping with the farmland preservation goals of both farmland assessment and the Garden State Preservation Trust Act. Land that is slated by a municipality for preservation is likewise eliminated from the definition of "vacant and developable land." Three factors are eliminated because they are duplicative.

N.J.S.A. 52:27D-307 Subsection d pertaining to COAH's duties states **"Provide population and household projections for the State and housing regions;"** and 307 Subsection e, which provides for a 1,000 limit for municipal fair share obligations under certain circumstances, also provides that the council **"shall give appropriate weight to pertinent research studies, government reports,...implementation of the State Development and Redevelopment Plan...To assist the council, the State Planning Commission ..shall provide the council annually with economic growth, development and decline projections for each housing region for the next six years..."** The Task Force recommends that 307 subsection d be deleted entirely since this function is duplicative of duties of the State Planning Commission. Also, 307 Subsection e should be modified to delete the latter references pertinent to COAH's use of "research studies, government reports" etc. and the State Planning Commission's submission to COAH of various projections over a six year period. These provisions are no longer needed since the Task Force recommends new language that provides criteria for determining fair share.

22. Repeal of Other Miscellaneous Sections

The Task Force recommends the deletion and repeal of the following sections of law since these provisions were apparently never implemented, and, in ten years, no one has objected. They include: N.J.S.A. 52:27D-307.1 et seq. pertaining to the Register of Housing Projects and the requirement that the commissioner shall maintain such a register.

23. Municipal Housing Element

N.J.S.A. 52:27D-309a concerning the municipal housing element provides that **"within five months after the council's adoption of its criteria and guidelines, the municipality shall prepare and file with the council a housing element, based on the council's criteria and guidelines..."** The Task Force recommends deleting the phrase "its criteria and guidelines" and replacing it with fair share obligations and deletion of the phrase "based on the council's criteria and guidelines".

24. Provision of Fair Share by Municipality

N.J.S.A. 52:27D-311a(3), pertaining to a municipality's adoption of a housing element in its provision of fair share, the provision states **"Determination of measures that the municipality will take to assure that low and moderate income units remain affordable to low and moderate income households for an appropriate period of not less than six years."** The Task Force finds that deed restrictions, the primary method that has been used to implement this provision, have proven

problematic. Thus, the Task Force recommends deleting the latter provision to give municipalities more discretion. If units do not remain affordable, the municipality's obligation will probably increase, providing an incentive for mechanisms such as deed restrictions. By removing the mandate, however, an opportunity to provide units without deed restrictions is created, making units more attractive to homeowners. Deed restrictions do not address the problem of low and moderate income households that occupy affordable housing and subsequently increase their incomes to where they would not be eligible. Because these amendments change the way fair share is calculated, it makes sense to eliminate this requirement.

N.J.S.A. 52:27D-311a(4) provides that a municipality's housing element can include various techniques including **"A plan for infrastructure expansion and rehabilitation if necessary to assure achievement of the municipality's fair share of low and moderate income housing."** The Task Force recommends deleting the latter provision of law since it notes that the State Plan has determined that infrastructure should not be expanded in agricultural and environmentally sensitive areas of the State. The latter provision, however, has led the courts to require infrastructure expansion in such areas, contrary to the State Plan, which was created to implement the Fair Housing Act.

25. Substantive Certification

N.J.S.A. 52:27D-314a provides that **"The municipality's fair share plan is consistent with the rules and criteria adopted by the council and not inconsistent with achievement of the low and moderate income housing needs of the region as adjusted pursuant to the council's criteria and guidelines adopted pursuant to subsection c. of section 7 of this act;"** This language should be amended by deleting reference to **"region as adjusted pursuant to the council's criteria and guidelines adopted pursuant to subsection c. of section 7 of this act."** "Low and moderate income housing needs" strictly pertains to municipality.

26. Neighborhood Preservation Nonlapsing Revolving Fund

N.J.S.A. 52:27D-320 establishes the Neighborhood Preservation Nonlapsing Revolving Program within the Department of Community Affairs and a "separate" fund **"for monies appropriated by section 33 of this act."** The Task Force recommends deleting reference to section 33 of this act and recommends adding language that essentially provides that the fund would have monies appropriated by the realty transfer fee and any other funds designated by the Legislature. The Task force finds that subsequent to the funds expended in accordance with section 33, parts of the realty transfer fee were designated for affordable housing programs.

N.J.S.A. 52:27D-320d states that **"Amounts deposited in the Neighborhood Preservation Fund shall be targeted to regions based on the region's percentage of the State's low and moderate**

income housing need as determined by the council." The latter language should be deleted entirely.

27. Affordable Housing Assistance

N.J.S.A. 52:27D-321 states that **"The agency [HMFA] shall establish affordable housing programs to assist municipalities in meeting the obligation of developing communities to provide low and moderate income housing."** In addition, 321a stipulates **"Of the bond authority allocated to it ...the agency will allocate, for a reasonable period of time established by its board, no less than 25% to be used in conjunction with housing to be constructed or rehabilitated with assistance under this act."**

The Task Force recommends changing the statute to increase from 25 percent to 100 percent of the agency's bond authority, monies to be allocated in assisting municipalities to meet the obligation associated with providing low and moderate income housing. The Task Force also recommends deleting the latter statutory reference to the phrase "for a reasonable period of time established by its board," pertaining to the allocation of bond monies for affordable housing.

28. Builder's Remedy

N.J.S.A. 52:27D-328 relating to builder's remedy moratorium states **"For the purposes of this section, 'exclusionary zoning litigation' shall mean lawsuits filed in courts of competent jurisdiction in this State challenging a municipality's zoning and land use regulations on the basis that the regulations do not make realistically possible the opportunity for an appropriate variety and choice of housing for all categories of people living within the municipality's housing region, including those of low and moderate income, who may desire to live in the municipality."** The Task Force recommends deleting reference to "who may desire to live in the municipality" for the same reasons already discussed in prior recommended amendments to the Act.

5. STATE PLANNING AND ITS IMPLEMENTATION

A. The State Planning Act Goals

The State Planning Act was always intended to provide guidelines for municipalities to consider in designing their land use policies to promote rational development in locations where infrastructure exists and protect farmland and other environmentally sensitive areas. Testimony provided to the Task Force by the State Planning Officials emphasized this point when they stated:

> **"...We need the State Plan as a guide. I can see we must save our shore. I can see where we must save the pinelands, because it is such a huge aquifer....But in conclusion..., it is our contention that the Plan stay a guide and not a law. It is our contention that through education and outreach, along with information and advocacy, the goals of the State Development and Redevelopment**

> **Plan can become a reality to the benefit of all."** *(Testimony of Tom Kenyon, Vice President, New Jersey Planning Officials, June 19, 2001 Assembly Task Force Meeting Transcript, p. 65)*

Various state departments and agencies have either proposed or enacted rules and regulations as well as award funding incentives that serve to implement the State Development and Redevelopment plan. For instance, the Department of Community Affairs in its March 30, 2001 draft of its "Consolidated Action Plan" states:

> **"The State agencies are generally guided in their land use policies and decision making with regard to public investments by the State Development and Redevelopment Plan. The funding under the Consolidated Plan, to the greatest extent possible, will be consistent with the State Development and Redevelopment Plan and its Resource Planning and Management Map."**

With regard to the latter topic concerning the State Plan to be used as a guide for municipalities rather than a mandate for municipal land use decision-making, the Task Force in subsequent sections of this report generally recommends that the State Planning Act be amended to better mirror those propositions based on legislative intent upon which the State Planning Commission is to operate. Proposed amendments to this act are subsequently discussed in section 7 f of this report.

In terms of gauging sentiments about how the state plan has impacted municipalities, the Task Force county planning boards survey asked question #5 to obtain input from counties as to whether the State Plan has affected changes in municipal land use decisions. Eight counties felt that the state plan has had an effect on municipal land use decisions while two counties answered that it has had no effect on municipal decision-making.

B. Newly Adopted State Development and Redevelopment Plan

The newly adopted March 1, 2001 State Development and Redevelopment Plan focuses on promoting and accommodating growth in various areas of the State. As summarized in the executive summary of the New Jersey State Development and Redevelopment Plan, its overall direction focuses on: **1)** promoting growth in "centers" and other appropriate areas in the Metropolitan Planning Area (*PA1*); **2)** promoting growth in "centers" and other appropriate areas in the Suburban Planning Area (*PA2*); **3)** accommodating growth in "centers" in the Fringe Planning Area (*PA3*) ; and **4)** accommodating growth in "centers" in Rural and Environmentally Sensitive Planning Areas (*PA4,4B, 5*);

> **"Generally, the State Plan calls for promoting growth in Planning Areas 1 and 2, preferably in centers, but not necessarily required to be in centers, and what we call accommodating growth in centers in Planning Areas 3, 4, and 5. So that's essentially, what you might say would be the one-sentence -- two-sentence summary of where the State Plan encourages growth to occur in New Jersey."** *(Testimony of Herbert Simmens, April 10, 2001, p. 78)*

The Assembly Task Force county planning board survey sent to all 21 counties revealed some

interesting findings in connection with population growth projected in 2020 and where that growth will occur relative to the various State Development and Redevelopment Plan's identified planning areas. ***(SEE ATTACHMENT 4)*** eleven counties responded to the survey. Survey question 2a and 2b indicated the following: of the aggregate 3.3 million expected population for 2020 in the eleven counties that were survey respondents, the following trends appear:

PLANNING AREA 1:

- Atlantic, Gloucester and Salem counties expect 0-9 percent population growth; Monmouth and Warren counties expect 10-30 percent growth; Cumberland county expects a 31-50 percent growth; and Hudson and Bergen counties expect a 100 percent growth in planning area 1.

PLANNING AREA 2:

- Hunterdon, Salem and Warren counties expect 0-9 percent Growth; Atlantic County expects 10-30 percent growth, Cumberland and Gloucester counties expect 31-50 percent growth; and Monmouth County expects more than 50 percent growth in planning area 2.

CENTERS IN PLANNING AREAS 3, 4, 5:

-Growth in Atlantic, Gloucester, Hunterdon and Salem counties is expected to occur by some 0-9 percent; Cumberland and Warren counties expect growth between 10-30 percent; and Monmouth County expects more than 50 percent growth in centers located within planning areas 3, 4, 5.

NON-CENTERS IN PLANNING AREAS 3, 4, 5:

-On the basis of the latter findings, it appears that counties such as Hunterdon, Monmouth and Salem will have higher percentages of growth occurring in non-centers located within planning areas 3, 4, 5; Atlantic County expects 52-90 percent growth; Gloucester County 32-69 percent; Warren County 31-71 percent; and Cumberland county will not absorb any new growth in non-centers within planning areas 3, 4 and 5. These findings suggest that development is expected to occur in the very locations in which the state development and redevelopment plan discourages development (i.e. non-centers of pa 4,5), thereby, resulting in more infrastructure demands, increased costs and suburban sprawl in rural communities.

C. Reasons Municipalities Have Volunteered to Be "Centers"

Testimony provided to the Task Force defined a "center" as essentially:

> **"A concentration of households and employment in what we call a compact, mixed use form, meaning that it has an intensity of use that's high enough to support efficient infrastructure to often, not always, support mass transit; to provide a diversity of employment. It's also designed so that it's walkable....it's an integrated, compact, mixed use community.**" *(Testimony of Herb Simmens, April 10, 2001, p. 68)*

> **"So the Commission has designated or endorsed some 87 municipalities thus far on a voluntary basis. We have about another 50 in the hopper that we will be working with over the next six to nine months or so..."** *(Testimony of Herbert Simmens, April 10, 2001, p. 40)*

The State Development and Redevelopment Plan encourages development in appropriate locations through the voluntary center or plan endorsement process which enables a municipality or group of municipalities that have been endorsed or designated to obtain priority access to State funding which allows greater ability to accommodate growth in those areas as well as an incentive for municipalities to participate in planning that is compatible with the State Plan. In addition, municipalities that follow guidelines of the State Plan receive one-stop-shopping services. "Smart growth" planning grants provide financial assistance to counties, willing to prepare with municipalities, regional strategic plans. According to a July 12, 2001 list provided by the Office of State Planning, there are approximately 122 municipalities throughout the State that are considered "centers with endorsed plans." Only 34 municipalities in 10 counties of the 122 municipalities enumerated on this list, were located in Planning Areas 4, 4B, 5, and 5B; Burlington (5), Cape May (8), Cumberland (5), Mercer (1), Morris (1), Ocean (1), Salem (4), Somerset (1), Sussex (3), and Warren (5). **(SEE ATTACHMENT 5)**

> **"Let me mention one thing that's, again, not directly related to the act, but to its effective implementation, and that is streamlining the regulatory process without compromising the regulatory standards. DEP has introduced something called a sector permit.....those places encouraged for growth in local plans and the State plan will -- developers and municipalities and other interested parties won't have to go through as many hoops without compromising the integrity of the environmental resources there."** *(Testimony of Herbert Simmens, April 10, 2001, p. 84.)*

> **"We actually have a list in the State Plan, and on our Web site, of roughly, about 15 state programs, such as the Balanced Housing Program and Green Acres Program and other housing, transportation, open space, historic preservation programs that basically tilt, if you will -- give an extra couple of points or benefit to those communities when they're doing their scoring and ranking a proposal for funding."** *(Testimony of Herbert Simmens, April 10, 2001, p. 70)*

Those municipalities that volunteered to become centers, which responded to Assembly Task Force survey question #3 which concerns identified factors that influence a municipality's decision of whether or not to become a designated center, cited such reasons as "availability of funds, grants," "better impervious coverage limits within the town center," and "in-fill development."

D. Factors that Influence Municipalities Not to Become Centers

Some maintain that due to a host of reasons, including but not limited to, municipal home rule and a different tax structure, New Jersey is not ripe ground for some of the concepts being promoted by the State Development and Redevelopment Plan which relies heavily on center designations and preservation of land surrounding such designations**.** Many municipalities choose not to be centers since they contend that the benefits do not outweigh the drawbacks. Some municipalities choose not to become a center since infrastructure systems would have to be added or entirely upgraded and

revamped. Some municipalities simply do not want to grow anymore.

Sixty-two percent of the municipalities responding to this survey answered Task Force municipal survey question #2 which asked municipalities how they have been involved with the State Plan. Sixty-nine percent of respondents to this question indicated that they volunteered as designated centers; fourteen percent specified they chose not to be designated centers and twenty-six percent indicated they modified their local zoning ordinances to use State Plan concepts. Percents may add up to more than 100 percent because municipalities responded with more than one answer to this question.

Those municipalities that did not want to become centers, which responded to Assembly Task Force survey question #3 which concerns identifying factors that influence a municipality's decision of whether or not to become a designated center, cited such reasons as excessive density, no public or private water and sewer service, and lack of funding for the process.

In addition, testimony and remarks provided to the Task Force indicate that not many municipalities have volunteered to become centers for diverse reasons. Highlights of testimony include:

> **"...I think history has shown that centers are not being created."** *(Remarks by Henry Kent-Smith, June 19, 2001 Assembly Task Force Meeting Transcript, p. 17)*
>
> **"There are a lot of obligations tied to becoming a center. And I've heard of individuals who have complied with the center process. They go through all kinds of hoops, and maybe never get any benefit from that..... plan endorsement... is the Office of State Planning judging the will of those people from that local municipality and, perhaps, even overriding a cross acceptance finding from the county and municipal level."** *(Testimony of Mr. Joe Doyle, Executive Director, New Jersey Planning Officials, June 19, 2001 Assembly Task Force Meeting Transcript, p. 74)*
>
> **"I also wanted to say that the center designation process itself needs another look. It's been a very bad experience for us."** *(Testimony of Michael King, Chairperson, Phillipsburg Riverview Organization, June 19, 2001 Assembly Task Force Meeting Transcript, p. 97.)*
>
> **"...the last point that I have to make -- is that it's going to be hard to revitalize a city if the economic energy keeps going out to these other places or to these new centers. It doesn't make sense, at this juncture, to be making new centers when we have the wonderful old neighborhoods and neglected downtowns and old industrial buildings sitting, waiting for people to come back."***(Testimony of Michael King, June 19, 2001 Assembly Task Force Meeting Transcript, p. 100)*
>
> **"I just want to say that as I look at the Plan, I think it's based on a really outdated planning orthodox -- the idea that we ought to have old-fashioned towns surrounded by open spaces. I don't think that's going to happen in New Jersey.... what is really happening in New Jersey is people are spreading out into the open space areas. And I don't think that can be stopped. I think it's a matter of democracy that people actually like living in those areas, and that's where they want to build...where they want to move. And there is not the political force to do what the State Plan would like them to do. So I sort of see it as an empty exercise -- creating these centers and environs and trying to divide places up into centers and environs. And really, it doesn't seem**

to fit the area. *(Testimony of Dr. Ted Goertzel, April 10, 2001 Assembly Task Force Meeting Transcript, p. 60)*

"I don't think it's really ethical either, if you could do it, to force development -- to go into the older communities that have been there a long time. They really don't want more development either.....the city of Camden....They're trying to move away from density and trying to keep more of a suburban lifestyle." *(Testimony of Dr. Goertzel, April 10, 2001 p. 61)*

"I think that really the Planning Commission or the planners in the State should put more emphasis on trying to have an attractive development in a dispersed model rather than trying to go back to the idea of we're going to force everybody back into the cities and stop dispersion in these rural areas, because I don't believe that's going to happen." *(Dr. Goertzel, April 10, 2001, p. 62)*

"I think the State Planning Commission is really locked into an outdated model of what planning should be that has really failed everywhere in the world. Even in London, it's failed. All the developments skipped over the greenbelt, and it's going out to the middle of nowhere, and there's traffic all over. And we ought to realize that New Jersey is not going to be the vanguard of this. Even in Oregon, it's going to fail. But it's certainly going to fail in New Jersey...And we ought to try to make the best of what we have, which is dispersed development." *(Goertzel, April 10, 2001, p. 64)*

E. Cross-Acceptance

The process of updating and re-adopting the State plan involves a "cross-acceptance" process which is statutorily established. The process involves dialogue, coordination and negotiation among state, local and regional plans. Some individuals who testified before this Task Force maintain that cross-acceptance needs further refinement and that in practice it does not match up to the intent of the act, which was to encourage a grassroots effort from bottom-to-top. Highlights of testimony provided to the Assembly Task Force include:

"So, in the last few years, I started committees in the seven southern towns in Warren County with the intention of trying to deal with this cross acceptance process. And what I basically found is that the towns were not really participating. There was no actual procedure....Five thousand acres were changing. What an arduous task it is to go town to town and have a map and have the officials not know what you're talking about." *(Testimony of Michael King, Chairperson, Phillipsburg Riverview Organization, June 19, 2001 Assembly Task Force Meeting Transcript, p. 92)*

"Cross acceptance, therefore, is more of a sharing of plans on the local level, which is actually filtered through the counties, and the counties bring forward the intelligence to the State level. The State Planning Commission, the Office of State Planning are to take those and put them into the State Plan that is on the State level....Where we are going...is into the plan endorsement..not something which in fact is an ingredient of the overall intent of the State Planning Act, because it is now taking the Office of State Planning and bringing it into each individual municipality to gauge it into a consistency test against itself whether or not it has met the standards of the Office of State Planning and the State Planning Commission, not necessarily by the standards of cross

acceptance." *(Testimony of Joe Doyle, Executive Director, State Planning Officials, June 19 Assembly Task Force Meeting Transcript, p. 68.)*

"In fact, there were some 1,000--approximately 1,000 disagreements.....that were put in writing by the counties and municipalities. The Commission negotiated approximately three-quarters of those to the point where we could literally or figuratively have a handshake at the end of the meeting..." *(Testimony of Herbert Simmens, April 10, 2001, p. 36)*

Task Force county planning boards survey question #2 asks county planners if municipalities within their counties participated in the cross-acceptance process, giving them choices as to what type of participation occurred. According to survey results, a total of 238 municipalities actively participated in the cross acceptance process. For the first round, ten counties responded that they "submitted reports'; eight indicated that they 'Mapped amendments,' and eight 'planned amendments.' For the second round, 10 counties responded that they 'submitted reports;' ten indicated that they 'mapped amendments,' and nine 'planned amendments.'

F. Memorandum of Understanding Between COAH and the State Planning Commission

A memorandum of understanding between the two agencies theoretically promotes coordination in terms of the construction of affordable housing units and State Plan guidelines for development which emphasize sites that have existing infrastructure. Theoretically, COAH housing designations should not be in conflict with planning designations in the State Plan and COAH rules state that in rural or environmentally sensitive areas (Planning areas 4 and 5): **"The Council shall require inclusionary development (containing affordable housing) to be located in the centers"** and that **"all sites designated for low and moderate income housing shall be consistent with the applicable"** water and sewer plans. COAH indicated that ironically, market rate units do not have to abide by such stringent regulations.

Despite the theoretical parameters at work under the Memorandum of Understanding, it is interesting to note that Eighty-nine percent of municipalities which responded to Task Force municipal survey question #10 which pertains to rural communities with substantial land areas in planning areas 4 and 5 indicated that they did not believe that COAH and OSP coordinated their respective goals with regard to their municipalities. Only ELEVEN PERCENT responded that there was coordination.

"The first paragraph of the 1993 memorandum of understanding says that since all municipalities can grow, they must provide a realistic opportunity for affordable housing. And that sort of becomes the linchpin for allocating a prospective need or regional need on rural municipalities." *(Remarks by Mr. Henry Kent-Smith, Task Force Member, April 10, 2001 Task Force Meeting Transcript, p. 23)*

"...the allocation of prospective need or regional obligations to municipalities which, historically, have never demonstrated any growth -- are primarily agricultural in nature, and as such, in the Mount Laurel I and Mount Laurel II context weren't considered to be growth communities with an affordable housing obligation at all." *(Remarks by Mr. Henry Kent-Smith, June 19, 2001 Task*

Force Meeting Transcript, p. 15)

"The memorandum of understanding is based on a principle that was annunciated in the State Plan that every municipality in the state can, and probably will, grow, and that as it grows, some portion of the housing -- the growth should be for low and moderate income housing, and that each community should be in these -- Planning Areas 3, 4, and 5 now -- should target a small area called the center, in which they would accommodate growth. And that's where the low and moderate income households would take place." *(Testimony of Mr. Art Bernard, Planner, Former COAH Director, June 19, 2001 Assembly Task Force Meeting Transcript, p. 15)*

"From COAH's perspective, as far as I'm concerned, the idea behind the memorandum of understanding was to try to find sites that had sewer...So, if you comply with the housing obligation in the rural areas and put it in a center so we can get sewer there, you're fine. And you're really not subject to litigation. Someone can always sue, but it's not really going anywhere. And if you don't do those things, then you're subject to litigation like every other community in the State." *(Testimony of Mr. Art Bernard, June 19, 2001 Assembly Task Force Meeting Transcript, p. 17)*

COAH encourages, but does not require, that a new inclusionary development in Planning Areas (PA) 1, 2, and 3 be in centers. In (PA) 4 and 5, COAH requires that new affordable housing sites that were not part of a previously certified plan be in designated centers. To accomplish this end, municipalities may be required to expand existing centers or create new centers. Waivers may be granted by the Office of State Planning. Sites in PA 4 and 5 which were part of a previously certified plan from round one do not require such a waiver and may be included in a municipality's second round plan without filing for center designation. Sites with infrastructure have priority over sites not currently serviced by infrastructure. Despite the latter action taken by coah and the Office of State Planning, courts appear to be handling affordable housing sites in planning areas 4 and 5 within their own discretion, not necessarily following the rules promulgated by COAH and OSP.

"We have regulations at COAH that say if there is a new inclusionary site in Planning Areas 4 and 5, it must be in a center or the municipality may apply to COAH for a waiver from center designation. ....OSP reviews the waiver to center designation. If the recommendation is not favorable, COAH will not certify the site. And COAH has been consistent with that." *(Testimony of Shirley Bishop, April 10, 2001, p. 18)*

6. PROBLEM AREAS WITH COAH AND STATE PLAN IMPLEMENTATION

A. Lack of Coordination with the State Development and Redevelopment Plan

Some groups contend that there is a failure to fully coordinate affordable housing sites with open space and rural community preservation in the State.

"COAH has failed to fully coordinate its policies with the State Plan. We have seen the State Plan blamed for luxury housing sprouting up on farm fields under the guise of providing affordable housing. This is not a result of the Plan, but rather a result of COAH's failure to coordinate its regulations and procedures with the Plan. What these two acts have in common is poor implementation...." *(Testimony of Penny Pollock-Barnes, New Jersey Future, April 10, 2001*

Assembly Task Force Meeting Transcript, p. 150)

This issue is discussed further in Section 6 (F) which describes the interaction of COAH and OSP on the basis of their memorandum of understanding.

B. Location of Affordable Housing in Planning Areas 3, 4, 5

Pursuant to **N.J.S.A. 52:27D-307,** municipal adjustment of present and prospective fair share is made on the basis of available vacant and developable land, infrastructure considerations, or environmental or historic preservation factors. Such adjustments shall be made if historically important sites or surroundings, environmentally sensitive lands may be jeopardized; the development pattern would be drastically altered; adequate land for recreation, agriculture, conservation and open space would not be provided; the pattern of development is contrary to planning designations in the State Development and Redevelopment Plan; vacant/developable land, and adequate public and infrastructure facilities are not available and would result in prohibitive costs to the public.

Concerning COAH's mediation process and the use of factors in adjusting and determining fair share numbers, Task Force survey question #8 asks municipalities what factors did COAH apply in arriving at their fair share numbers. Sixty-nine percent responses cited 'vacant land;' 38 percent cited 'rehabilitation and redevelopment;' 25 percent indicated 'rural character;' 19 percent indicated 'farmland or environmentally sensitive area;' and 44 percent cited other considerations.

According to COAH, vacant and developable land is weighted differently depending on its location.

> **"For instance, if a municipality was totally in PA 4 or 5, then there would be no affordable housing allocation based on land; on the other hand, land in PA1 and 2 receives a full count of affordable housing and land in PA 3 receives a .5 count."** *(Answers submitted by COAH on May 31, 2001 in response to Assembly Task Force questions)*

> **"...there are at least three areas where the statutes, either the State Planning Act or accompanying acts, are quite explicit as to how it should be used. And first, of course, particularly relevant to today's discussion, is the relationship with the Council on Affordable Housing, where, as was already mentioned, the Council is required to take into account the planning designations in the State Plan when it comes up with its various formula."** *(Testimony of Herbert Simmens, Executive Director, Office of State Planning, April 10, 2001 Assembly Task Force Meeting Transcript, p. 34.)*

> **"...there are two provisions (in the Municipal Land Use Law). One is that any site plan of over 150 acres, or 500 units, has to be sent to the Office of State Planning."** *(Herbert Simmens, April 10, 2001, p. 34.)*

Task Force municipal survey question #9 asks municipalities with land areas categorized as planning areas 4 and 5 how they were affected by COAH's calculation/determination of fair share numbers during Round I and II obligations. Interestingly, 57 percent of the respondents to this question indicated that their fair share numbers increased in round II over round I; 22 percent responded that

their fair share numbers decreased in Round II; 17 percent cited that their numbers remained unchanged and four percent indicated that no participation in round 1 occurred, thus no comparisons are available. It is interesting to note upon further analysis that those respondent municipalities which indicated their fair share numbers increased in round ii over round 1, had an average 74 percent of the total land acreage in their municipalities located in PA 4 (rural), pa4B (rural environmentally sensitive), PA5 (Environmentally sensitive), and PA5b (environmentally sensitive barrier island). This finding raises some concern since despite the fact that COAH maintains it weighs rural character and environmentally sensitive considerations in adjusting fair share obligations, this apparently seems not to have occurred in these particular cases.

7. POLICY AREAS FOR RECOMMENDATIONS IN CONNECTION WITH THE STATE PLANNING ACT'S GOALS

A. SIX YEAR CYCLE

1. COAH and the State Plan should focus its activities around a six year cycle beginning in 2002. Currently, 52:18a-199a stipulates that the State Planning Commission shall **"revise and readopt at least every three years...the State Development and Redevelopment Plan..."** while some have argued keeping consistency between the activity of COAH and the State Plan on the basis of census numbers which are published every ten years, the Task Force recommends that the act be amended to delete the "three year" period in which the commission can revise and readopt the State Development and Redevelopment Plan and amend it to six years. This change makes sense since the municipal master plans and affordable housing obligations are based on six year cycles.

> **"I am very much afraid that within that 10-year period, as we have witnessed in the first 10 years of its life, that there will be a lot of muscle flexing and rules that will be not necessarily from the grassroots level on the cross acceptance plane. Before going ahead with endorsing a 10-year cycle, or an extension of it, I would rather see the cross acceptance process refinement accomplished, first."** *(Mr. Joe Doyle, Executive Director, New Jersey State Planning Officials, June 19, 2001 Assembly Task Force Meeting Transcript, p. 89-90)*

B. EQUITY ISSUE

2. Require the Garden State Preservation Trust to initiate a study which analyses land equity issues as it relates to municipal land use policy changes for lesser density in urban, suburban, and rural areas and its effects on the value of farmland, other open space, and undeveloped land as the case may be.

> -A popular method of growth control in many parts of the country is the rezoning of property or entire areas of a community in an effort to prevent most, if not all, new development. However, with such growth control trends, the issue of equity as it relates to property values of land being impacted by such rezoning has become more significant than ever. Some groups

maintain that the value of land does not decrease on the basis of supply and demand principles. Thus, if developable land dwindles, the value of the land increases. Others, however, including farmers, landowners of large numbers of acres, and developers maintain that the value of the land decreases.

Some highlights of testimony received by the Task Force concerning the various perspectives about the equity issue follow:

> **"...we have zoning changes on the books right now that were under litigation for approximately 70 percent of what's left to develop in the town. And if that goes through, then we're going to six acre lots, which is going to make our land more valuable. And I just wonder how that's going to affect where our COAH numbers are."** *(Testimony of Mr. John Hart, former Mayor of Hopewell Township, April 10, 2001 Assembly Task Force Meeting Transcript, P. 57)*

> **"As you know, 1998 -- we had Merrill Lynch application in our town move in and now bring in approximately 6,500 employees to the township. I believe Hopewell Township is one of the most aggressive municipalities in the state as far as open space, farmland acquisition goes....and I was wondering if our formulation can be changed, because as open space becomes available -- as developable land starts to dwindle, our prices on our land go up. And they don't build any moderate houses in the township anymore. It's either mcmansions or -- that's all there is. I haven't seen a ranch house or a cape cod built in that town in quite a few years now."** *(Testimony of John Hart, April 10, 2001, p. 55)*

> **"The agricultural community has concerns with the State Plan, due mostly to the equity concern issue."...."We've been told by the Governor and DEP -- Governor Whitman at the time -- that it (large lot zoning) won't affect the value of the land, but we feel that devaluation will occur from it."** *(Testimony of Steven Jany, President of the State Board of Agriculture, April 10, 2001 Assembly Task Force Meeting Transcript, p.115, p. 116)*

> **"So the whole idea of equity, both for landowners and for municipalities, is something I really think you [the Task Force] need to consider."** *(Testimony of Mr. Tony Stanzione, Executive Director, Cumberland Development Corporation, June 19, 2001 Assembly Task Force Meeting Transcript, p. 33)*

3. Transfer of Development Rights (TDR) is a concept to promote open space and agricultural preservation while addressing equity concerns and guiding development into areas more suitable for growth. Transfer of Development rights cannot be authorized until the problem of land equity in sending districts is addressed. Because there are few areas in the State that want higher density required in order for TDRs to work, it is questionable whether landowners in sending districts could sell their rights. If the State Development Bank were to purchase these rights, who would buy them and for what purpose and where would they be used? Until these questions are addressed, the Task Force recommends voluntary TDR as authorized under A-2365 pending before the Legislature because it would protect equity in sending areas. A further discussion of specific bills which deal with TDR exists under the section of the report entitled "Pending Legislation" 7, D, 6.

"In a conventional TDR program, the zoning authority limits the allowed development density in areas targeted for higher-density development and then sells zoning variances to developers. The revenue goes to purchase development rights in areas zoned for preservation. As the value rights is the difference between the land's value in developed and undeveloped uses, the compensation reduces opposition from the owners of land zoned to remain undeveloped." *(Thorsnes, Paul and Simons, Gerald P.W., "Letting the Market Preserve Land: The Case for a Market-Driven Transfer of Development Rights Program," Contemporary Economic Policy, Vol. 17, Issue 2, April 1999)*

"TDR programs also have potential beyond balancing the benefits and burdens resulting from regulatory actions, including helping to guide development to locations designated for compact growth and development." *(N.J. Office of State Planning, State Planning Commission Implementation Report, June 12, 1992, p. 16)*

"While only a voluntary program, the State Plan can provide added leverage to a community to defend their zoning. What we really need are the legislators to help municipalities implement the goals of the State Plan. For example, provide a TDR mechanism so that development rights could be readily transferred from more rural areas to centers where developments should be placed, requiring the local master plans be consistent with the State Plan so all levels of planning are moving towards a common goal of a sustainable state with better communities. A stable source of funding similar to the Garden State Trust Fund for open space preservation would go a long way to revitalize developed areas of the state and strengthen existing infrastructure systems." *(Testimony of Barbara Simpson, The Association of New Jersey Environmental Commissions, April 10, 2001, p. 93)*

C. ALTERNATIVES TO CENTERS

4. Require the State Planning Commission and State Planning Office to promote other alternatives for open space preservation than the center designation model. Low density development and recognition of other development patterns should be considered.

- During the past "cross-acceptance" process, the New Jersey County Planners Association with the input and specific comments from counties across the state concerning the "feasibility of centers" noted:

"Regardless of the perceived merits of this concept (development only in centers), it can not be universally applied due to legal, political, social and economic factors and is contrary to the very nature of our historic development. If there is no basis for creating a center, other than aesthetics, it will not work."*(Issues of Statewide Concern, N.J. State Development and Redevelopment Plan, as presented by N.J. County Planners Association, September 28, 1998.)*

- As noted by the State County Planners Association, some existing centers (hamlets, villages, and towns) that will have to absorb more development under the "center designation model" do not have sewer systems. Also, if PA1 and PA 2 are to absorb more growth, many existing wastewater treatment

facilities will need to be expanded and upgraded which may be cost-prohibitive and not even feasible due to restrictions on expansion. The fact that such needed upgrades for proposed centers may be 'cost-prohibitive' seems to be clearly at odds with the State Planning Act in which **52:18A-196(a)** stipulates that needed housing and adequate public services be provided "at a reasonable cost" and **52:18A-200(b)** which requires that the State plan shall **"promote development and redevelopment in a manner consistent with sound planning and where infrastructure can be provided at private expense or with reasonable expenditures of public funds."**

5. Encourage the construction of low/moderate income housing unit styles that are at less density/low density, preferably not townhomes/condominiums where such construction would preserve the character of the community. Such housing styles would blend better in rural type settings and such an approach may also prove to be good alternatives in urban and suburban areas.

"What we're seeing, and I think anybody who looks at New Jersey is seeing this -- is that in many, many suburban and rural communities....there's very little middle income housing that's being zoned and built....And so we have the McMansions on the one hand....If you look at the development patterns in the 1960s, 1970s and maybe even early 1980s, the Levittowns and so many of our communities that we may call sprawl-- But if you look at the densities of housing and the cost of housing when they were built, it was quite affordable....And we're seeing less and less of that." *(Testimony of Herb Simmens, April 10, 2001, p.72-73)*

"The original suburban house of Levittown-- the Levitt Cape Cod -- was a 900 square foot tribute to modesty. We are now producing amenity-laden finished machines for living that are at least two and one-half times as large -- big and lush. In 1998, the average size for a new house in the Northeast region of the United States was approaching 2,300 square feet. In the large lot subdivisions of New Jersey's Wealth Belt, the modular size is easily 3,600 square feet -- and the new 'Starter Castles' are far larger." *(Source: Hughes, James W. and Seneca, Joseph J., "The New Emerging Wealth Belt: New Jersey's New Millennium Geography, Rutgers Regional Report, Issue Paper no. 17, September 1999, p. 16-17).*

"Between 1960 and 1990, less than 60 percent of housing units authorized by building permits in the state were single family units. In the 1990s, over 85 percent of building permits have been single family, representing an all-time record share of market. In

addition, the 1990s' single family units are far larger, with ever-greater amenity packages." *(Source: Hughes, James W. and Seneca, Joseph J., "The New Emerging Wealth Belt: New Jersey's New Millennium Geography, Rutgers Regional Report, Issue Paper no. 17, September 1999, p. 16-17).*

D. PENDING LEGISLATION

6. Transfer of Development Rights

Several pieces of legislation concerning TDR are pending in Assembly and Senate standing reference committees.

-S-1101 Martin, Adler/ A-855 Bagger, which is currently pending in the Senate Economic Growth, Agriculture and Tourism Committee and Assembly Agriculture and Natural Resources Committee, authorizes the adoption of municipal transfer of development rights programs.

- A-2365 Myers, which is pending in the Assembly Agriculture and Natural Resources Committee, authorizes municipalities to transfer development rights and participate in State Transfer Development Rights Bank.

-A-3632 Arnone, which is pending before the Assembly Agriculture and Natural Resources Committee, authorizes adoption of municipal to transfer of development rights programs.

7. State Plan.

Several pieces of legislation dealing with the State Development and Redevelopment Plan are pending in Assembly and Senate standing reference committees. State Plan related legislation includes:

- A-2844 Myers, which is currently pending before the Assembly Agriculture and Natural Resources Committee, requires the State to revise and readopt State redevelopment plan every six years.

- S-1499 Adler, which is pending before the Senate Community and Urban Affairs Committee, encourages consistency of municipal planning documents with the State Development and Redevelopment Plan.

- A-861 Bagger, which is pending before the Assembly Agriculture and Natural Resources Committee, requires municipal master plans under Municipal Land Use Law to be consistent with State Development and Redevelopment Plan.

- S-114 Connors, Ciesla/ A-2691 LeFevre, which is pending in the Senate State

Government Committee and the Assembly Agriculture and Natural Resources Committee, prohibits the State from utilizing the State Plan in permitting and funding determinations.

The Task Force recommends amendments to the State Planning Act that clarify that the Plan is a visionary document, not a regulatory document. However, if the State were prohibited from utilizing the Plan as the latter legislation provides for, there would be no point in having it. The Task Force recommends amendments to the latter legislation.

- A-525 LeFevre / Blee, is pending before the Assembly Education Committee, provides additional State school aid to school districts located in municipalities which contain Regional Growth Areas.

The Task Force endorses this concept of providing additional state aid to growth areas that accommodate regional development.

8. Timed-Growth Ordinances (in areas relative to the State Plan).

The Task Force notes that several bills are pending which deal with the issue of timed-growth. They include:

- S-3002 Gormley/ A-3253 Blee/LeFevre, is pending before the Assembly Local Government Committee, authorizes municipalities situated in regional growth areas within Pinelands Area to adopt timed growth ordinances under certain circumstances.

These bills limit timed growth ordinances to growth areas in the Pinelands. Since the Pinelands is already regulated, it may be appropriate to adopt these bills so that timed growth may be tried before being adopted on a statewide basis.

E. RECOMMENDED CHANGES TO THE STATE PLANNING ACT

9. Commission Representation

52:18A-196i establishes the State Planning Commission should consist of **"representatives from the executive and legislative branches of State government, local government, the general public and planning community."**

The Task Force recommends deleting representatives of "executive and legislative branches" of State government on the State Planning Commission. This change is needed because legislators were deleted from membership in the final version of the Act.

52:18A-197 states that **"There is established in the Department of Treasury a State Planning Commission to consist of 17 members of a State Planning Commission."**

The Task Force recommends deleting reference to the "Treasury Department" and replacing it with the Department of Community Affairs which actually mirrors current circumstances.

52:18A-197c stipulates that **"Four persons, not more than two whom shall be members of the same political party, who shall represent municipal and county government, and at least one of whom shall represent the interest of urban areas, to be appointed by the Governor." " ...the Governor shall give consideration to the recommendations of the New Jersey League of Municipalities, the New Jersey Conference of Mayors, the New Jersey Association of Counties, and the New Jersey Federation of Planning Officials."**

The Task Force recommends amending the Act so that at least one member should represent the interest of rural areas and that the County Boards of Agriculture be added to the list of organizations that give recommendations to the Governor. It was envisioned that urban areas would be the focus of the Fair Housing Act and the State Planning Act. In practice, however, rural areas were heavily impacted by both laws. Therefore, it is appropriate to require representatives of rural areas and agriculture serve on the State Planning Commission.

10. Commission Responsibilities

52:18A-199b pertaining to the commissions responsibilities, states that the commission shall, **"Prepare and adopt as part of the plan a long-term Infrastructure Needs Assessment, which shall provide information on present and prospective conditions, needs and costs with regard to State, county and municipal capital facilities, including water, sewer, transportation, solid waste, drainage, flood protection, shore protection and related capital facilities;"**

The Task Force recommends deleting this provision from the Act since it is not needed because agencies in charge of these policy areas issue reports to the Governor and the Legislature regarding these needs on an annual basis. Where more specific information is needed, the Governor and/or the Legislature must require reporting that will make such an assessment more useful than the reports thus far prepared for the Commission, which have been largely based on assumptions.

52:18A-199f states that the commission shall **"review any bill introduced in either house of the Legislature which appropriates funds for a capital project and may study the necessity, desirability and relative priority of the appropriation by reference to the State Development and Redevelopment Plan and make recommendations to the Legislature and to the Governor concerning the bill;"** The Task Force recommends that this provision be deleted from the Act since it has never been implemented. Since the Commission was moved to the Department of Community Affairs from the Department of Treasury, such a review is inappropriate.

11. State Development and Redevelopment Plan Goals

52:18A-200a pertaining to the goals of the State Development and Redevelopment Plan, states that the plan shall **"Protect the natural resources and qualities of the State, including, but not limited to, agricultural development areas, fresh and saltwater wetlands, flood plains, stream corridors, aquifer recharge areas, steep slopes, areas of unique flora and fauna and areas with scenic, historic, cultural and recreational values;"**The Task Force recommends that the Act be amended to stipulate that the State Plan identify the areas to be preserved to "protect the natural resources and ..."

52:18A-200b stipulates that the State Development and Redevelopment plan shall **"Promote development and redevelopment in a manner consistent with sound planning and where infrastructure can be provided at private expense or with reasonable expenditures of public funds. This should not be construed to give preferential treatment to new construction."** The Task Force recommends the Act be modified to specify that the State Development and Redevelopment Plan identify areas to "promote development and redevelopment in a manner consistent with sound planning and where infrastructure" exists. The proposed amendments delete the provision relating to infrastructure being provided "at private expenses or with reasonable expenditures of public funds."

The Task Force contends that the rationale for the latter changes is simple. A plan cannot protect natural resources or promote development where infrastructure exists. Only government agencies directed by legislation and accompanying funding can accomplish this goal. These amendments clarify that the State Plan is not expected to be a regulatory document, but a visionary one to be implemented through legislation at all levels of government. Language relating to existing infrastructure is needed to clarify that current public policy doesn't encourage "sprawl," or the extension of infrastructure into agricultural or environmentally sensitive areas (at any price).

52:18A-200f states that the plan shall **"Coordinate planning activities and establish Statewide planning objectives in the following areas: 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 intergovernmental coordination."**

The Task Force recommends deleting how the State development and redevelopment plan "coordinate planning activities and establish Statewide planning objectives" and amend the Act to consider planning objectives established by the Legislature and State agencies concerning the latter policy areas.. The goal of the State Planning Commission made up of appointed members establishing planning objectives for every area of State government has not materialized in 15 years. The reality is that one agency cannot dictate to the rest of State government.

12. Office of State Planning

52:18A-201a states that the **"Office of State Planning be established in the Department of the Treasury."** The Task Force recommends the Act be amended so that the Office of State Planning is established in the Department of Community Affairs.

52:18A-201b(1) states that the Office of State Planning shall assist the commission in the performance of its duties and shall **"Publish an annual report on the status of the State Development and Redevelopment Plan which shall describe the progress towards achieving the goal of the plan, the degree of consistency achieved among municipal, county and State plans, the capital needs of the State, and progress towards providing housing where such need is indicated."** The Task Force recommends the Act be amended to delete "the capital needs of the State, and progress towards providing housing where such need is indicated." It is preferable that the office focus on the State Plan and allow the Treasury to determine capital needs and the Council on Affordable Housing to determine progress towards providing housing.

13. Cross Acceptance

52:18A-202b states that **"The commission shall negotiate plan cross-acceptance with each county planning board, which shall solicit and receive any findings, recommendations and objections concerning the plan from local planning bodies. Each county planning board shall negotiate plan cross-acceptance among the local planning bodies within the county, unless it shall notify the commission in writing within 45 days of the receipt of the preliminary plan that it waives this responsibility, in which case the commission shall designate an appropriate entity, or itself, to assume this responsibility. Each board or designated entity shall, within six months of receipt of the preliminary plan, file with the commission a formal report of findings, recommendations and objections concerning the plan, including a description of the degree of consistency and any remaining inconsistency between the preliminary plan and county and municipal plans. In any event, should any municipality's plan remain inconsistent with the State Development and Redevelopment Plan after the completion of the cross-acceptance process the municipality may file its own report with the State Planning Commission, notwithstanding the fact that the county planning board has filed its report with the State Planning Commission. The term cross-acceptance means a process of comparison of planning policies among governmental levels with the purpose of attaining compatibility between local, county and State plans. The process is designed to result in a written statement specifying areas of agreement or disagreement and areas requiring modification by parties to cross acceptance.**

The Task Force recommends that the Act be amended to include language stipulating that the report shall include a resolution from the governing body of each municipality in the county stating its concurrence with the report or its objections within 90 days..If a municipal governing body takes no action within the latter time period, then, it will be deemed that the county report is acceptable.

Amendments shall also provide for a mediation process similar to what exists under the Fair Housing Act so that municipalities can file their own reports and/or object to the county report.The Task Force recommends deleting language, **"... where a municipality may file its own report with the State Planning Commission"** notwithstanding the fact that the county planning board has filed its report with the State Planning Commission." One of the reasons that the State Plan has been ineffective is that all land use remains under local control. Yet municipal officials who set local land use policy frequently do not participate in cross acceptance and evidence little knowledge of how the State Plan affects them. These recommended amendments will ensure municipal participation and provide a mechanism for resolving disputes that are currently left outstanding, undermining the Plan.

52:18A-202c states that, **"Upon consideration of the formal reports of the formal reports of the county planning boards, the commission shall prepare and distribute a final plan to county and municipal planning boards and other interested parties.** The Task Force recommends deleting subsequent language in this section of the Act which states, **"The commission shall conduct not less than six public hearings in different locations throughout the State for the purpose of receiving comments on the final plan. The commission shall give at least 30 days public notice of each hearing in advertisement in at least two newspapers which circulate in the area served by the hearing and at least 30 days notice to the governing body and planning board of each county and municipality in the area served by the hearing."**

52:18A-202d states that the commission shall, take **"full account of the testimony presented at the public hearings, the commission shall make revisions in the plan as it deems necessary and appropriate and adopt the final plan by a majority vote of its authorized membership no later than 60 days after the final public hearing."** The Task Force recommends deleting the latter language from the Act and amending it so that, if a municipal planning board desires changes in the adopted plan, it shall petition the Commission for consideration and hearing. If the Commission rejects the changes requested, the municipality can ask for a hearing before the Office of Administrative Law. The Commission has not significantly revised the Plan after the issuance of the final draft. The public hearings appear to be unnecessary since experience has demonstrated that objections are usually restatements of earlier testimony already considered by the Commission. Substituting a mechanism for revising the Plan in response to changing needs and concerns before the adoption of the next six year plan would be more effective.

14. State Plan / Plan Phases / Assessment Study

The Task Force recommends deleting 52:1SA-202.1 pertaining to findings relating to design and implementation of the State Plan including cross acceptance, plan phases, and the Assessment Study to be incorporated in the Final Plan. The Task Force also recommends the deletion of 52:18A-202.2 from the Act. This section pertains to utilization of staff, other state agencies, independent firms or institutions of higher learning for studies; submission and distribution of report; review by each county and municipality." The Task Force notes that there have been two Assessment studies over the past 15 years, the first being the most comprehensive. Since the focus of the State Plan has not significantly changed from the first to second plans, it is prudent to eliminate this requirement in favor of ongoing monitoring and annual reports.

ATTACHMENT I

COURT TOWNS - SECOND ROUND OBLIGATION

Municipality	County	Court Number
Egg Harbor Twp.	Atlantic	Not Known
Alpine Boro	Bergen	Not Known
Emerson Boro	Bergen	Not Known
Fort Lee Boro	Bergen	**207**
Franklin Lakes Boro	Bergen	Not Known
Harrington Park Boro	Bergen	**57**
Palisade Park Boro	Bergen	Not Known
Rochelle Park Boro	Bergen	Not Known
Saddle Brook Twp.	Bergen	Not Known
Saddle River Boro	Bergen	Not Known
Tenafly Boro	Bergen	Not known
Washington Twp.*	Bergen	Not known
Bordentown Twp.	Burlington	Not Known
Cinnaminson Twp.	Burlington	Not Known
Delran Twp.	Burlington	Not Known
Easthampton Twp.	Burlington	**70**
Edgewater Park Twp.	Burlington	Not Known
Evesham Twp.	Burlington	**508**
Mansfield Twp.	Burlington	Not Known
Mt. Laurel Twp.	Burlington	**839**
Pemberton Boro	Burlington	Not Known

Washington Twp.	Burlington	Not Known
Cherry Hill Twp.	Camden	Not Known
Haddon Twp.	Camden	Not Known
Upper Deerfield Twp.	Cumberland	Not Known
Essex Fells Twp.	Essex	Not Known
Fairfield Twp.	Essex	Not Known
Livingston Twp.	Essex	Not Known
Harrison Twp.	Gloucester	Not Known
Washington Twp.	Gloucester	**544**
West Deptford	Gloucester	Not Known
Woolwich Twp.	Gloucester	Not Known
Clinton Twp.*	Hunterdon	Not Known
Hampton Boro	Hunterdon	Not Known
West Amwell Twp.	Hunterdon	**30**
Princeton Boro	Mercer	**348**
West Windsor Twp.	Mercer	Not Known
Carteret Boro	Middlesex	**84**
Edison Twp.	Middlesex	Not Known
So. Plainfield Twp.	Middlesex	**419**
Woodbridge Twp.	Middlesex	Not Known
Avon-by-the-Sea	Monmouth	Not Known
Colts Neck Twp.	Monmouth	Not Known
Eatontown Boro	Monmouth	Not Known
Hazlet Twp.	Monmouth	Not Known
Ocean Twp.	Monmouth	Not Known
Roosevelt Boro	Monmouth	Not Known
Spring Lake Boro*	Monmouth	Not Known
Wall Twp.	Monmouth	**1,127**
Berkeley Twp.	Ocean	Not Known
Bay Head Boro	Ocean	Not Known
Barnegat Twp.	Ocean	**357**
Beachwood Boro	Ocean	Not Known
Jackson Twp.	Ocean	Not Known
Manchester Twp.	Ocean	Not Known
Seaside Heights Boro	Ocean	Not Known
Hawthorne Boro	Passaic	Not Known
Pilesgrove Twp.	Salem	Not Known
Green Brook Twp.	Somerset	Not Known

Hillsborough Twp.	Somerset	Not Known
Fredon Twp.	Sussex	Not Known
Green Twp.	Sussex	Not Known
Berkeley Heights Twp.	Union	**190**
Springfield Twp.	Union	157
Summit City	Union	Not Known
Westfield Town	Union	Not Known
Pohatcong	Warren	Not Known

* Settlement or no longer under court jurisdiction.

Source: *COAH, List of Court Towns Addressing Second Round Obligations, May 29, 2001.*

ATTACHMENT 2

MOST POPULAR RELOCATION MUNICIPAL SITES

County	1998	1999
Hudson	Jersey City (14), Secaucus (4), Kearny (2), North Bergen, Weehawken, Union City	Jersey City (19), Bayonne (3), Secaucus (2), Kearny (2), North Bergen, Weehawken
Bergen	Carlstadt (3), Paramus (3), Fair Lawn (2), Garfield, Mahwah, Fort Lee, Edgewater, East Rutherford, Teterboro, Teaneck, South Hackensack, Fairview	Hackensack (5), Moonachie (3), Montvale (2), Lodi (2), Carlstadt, Englewood, Fort Lee, Lyndhurst, Northvale, Ridgefield, Teterboro
Middlesex	New Brunswick (4), Edison (4), Piscataway (3), Cranbury (2), Iselin (2), North Brunswick, Jamesburg, Monroe, Perth Amboy	Carteret, Sayreville, Perth Amboy
Gloucester	Logan Twp. (9), West Deptford (4), Clarksboro, Clayton, Gibbstown, Glassboro, Washington	Logan (8), West Deptford (2), Greenwich, Glassboro, Swedesboro

Essex	Newark (6), Irvington (3), Maplewood	Newark (6), Irvington, Bloomfield
Mercer	Trenton (2), East Windsor, Lawrenceville	Trenton (2), Hamilton, Pennington, Princeton, Washington
Morris	Parsippany (2), Mille Hill Twp., Rockaway	Morristown (3), Parsippany (2), Par.-Troy Hills (2), Hanover
Somerset	Branchburg, Bridgwater, Montgomery, Somerset	Bernards Twp. (3), Franklin Twp. (2), Branchburg, Peapack/Gladstone, Sommerville Boro.
Union	Elizabeth (2), Union, Summit	Elizabeth (2), Kenilworth, Cranford
Passaic	Paterson (4), Clifton	Paterson (2), Wayne (2), Clifton
Camden	Cherry Hill, Pensauken	Bellmawr, Cherry Hill, Haddonfield
Burlington		Mount Laurel (2), Florence, Westampton
Cumberland		Vineland City (4), Millville
Atlantic	Pleasantville, Atlantic City	Pleasantville
Monmouth		Matawan
Ocean		Lakewood
Warren	Hackettstown (2), Phillipsburg (2)	
Hunterdon		Union Twp.
Cape May		Cape May City
Salem		
Sussex		

Note: 1997 Business Relocation Report did not include municipalities.

ATTACHMENT 3

INCLUSIONARY ZONING DEVELOPMENTS IN PLANNING AREAS 4, 4B, 5

Municipality	Project Name	Planning Area	Market	Afford.
Mendham Twp.	Drakewick	5	78	14
Mendham Twp.	Mountainview	5	54	12
Mendham Twp.	Brookrace	5	86	12
Mt. Arlington Boro	Season's Glen	5		15
Roxbury Twp.	Muscarelle	5	260	65
Roxbury Twp.	Southwind	5	133	17
Washington Twp.	Peachtree Village	4B	190	42
Washington Twp.	Brittany Hills	4B	56	38
Washington Twp.	Fairway Mews	4B	127	32
West Milford Twp.	Stanford Village	5	177	31
West Milford Twp.	Valley Ridge	5	98	11
West Milford Twp.	Bald Eagle Manor	5	526	25
West Milford Twp.	Random Woods	5	135	15
Far Hills Boro	The Polo Club	5	100	25

Andover Twp.	Mt. Laurel (sales/rental)	4, 5		76
Fredon Twp.*	Block 801, Lot 33	4B	162	28
Fredon Twp.*	Block 801, Lot 1.01	4B	0	0
Fredon Twp.*	Block 801, Lot 8	4B	0	0
Fredon Twp.*	Block 801, Lot 19	4B	0	0
Sparta Twp.	Sparta Business Campus	5	31	17
Sparta Twp.	Makor Property (Site A)	5	96	24
Sparta Twp.	Broderick Property (Site B)	5	14	3
Lopatcong Twp.	Overlook at Lopatcong	4	376	22
Pohatcong Twp.	RDS Realty, Inc.	5	0	66
		Total	2,699	590

*No activity

Source: *COAH, extrapolated from June 6, 2001 print-out of municipalities that have inclusionary developments in their second round affordable housing plans.*

ATTACHMENT 4

COUNTY PLANNING BOARD SURVEY - RESULTS FROM QUESTION 2a & 2b

COUNTY	2020 EXPECTED POPULATION	PLANNING AREA 1	PLANNING AREA 2	CENTERS IN 3,4,5	NON-CENTERS IN 3,4,5
ATLANTIC	**324,306**	**0-9%**	**10-30%**	**0-9%**	**10-48%*, 52-90%+**
BERGEN	**907,584**	**100%**			**0%**
CUMBERLAND	**162,500**	**31-50%**	**31-50%**	**10-30%**	**72-130%*, (-30)-28%+**
ESSEX	**6.1%**	**n/a**	**n/a**	**n/a**	**n/a**
GLOUCESTER	**308,300**	**0-9%**	**31-50%**	**0-9%**	**31-68%*, 32-69%+**

HUDSON	**646,600**	**100%**			**0%**
HUNTERDON	**181,996/189,425**	**n/a**	**0-9%**	**0-9%**	**0-18%*, 82-100%+**
MONMOUTH	**702,599**	**10-30%**	**>50%**	**>50%**	**110-130%***
SALEM	**0-5%**	**0-9%**	**0-9%**	**0-9%**	**0-27%*, 73-100%+**
SOMERSET	**n/a**	**n/a**	**n/a**	**n/a**	**n/a**
WARREN	**128,000**	**10-30%**	**0-9%**	**10-30%**	**29-69%*, 31-71%+**
TOTAL	**3,369,314**				

*Minimum and maximum percentage of growth expected in PA 1, 2 and centers in 3, 4, 5.

+ Minimum and maximum percentage of growth expected in non-centers, PA 3, 4, 5.

ATTACHMENT 5

CENTERS AND ENDORSED PLANS BY MUNICIPALITIES (BY PLANNING AREA)

Center Name	County	Municipality	Planning Area
Chesterfield	Burlington	Chesterfield Twp.	4
Crosswicks	Burlington	Chesterfield Twp.	4
Sykesville	Burlington	Chesterfield Twp.	4
TDR Receiving Area	Burlington	Chesterfield Twp.	4
Vincentown	Burlington	Southhampton Twp.	4
Avalon	Cape May	Avalon Boro	5B
Cape May	Cape May	Cape May City	5
Cape May Point	Cape May	Cape May Point Boro	5
Stone Harbor	Cape May	Stone Harbor Boro	5B
The Wildwoods	Cape May	No. Wildwood City	5B
The Wildwoods	Cape May	West Wildwood Boro	5B
The Wildwoods	Cape May	Wildwood City	5B
The Wildwoods	Cape May	Wildwood Crest Boro	5, 5B
Delmont	Cumberland	Maurice River Twp.	5
Dorchester-Leesburg	Cumberland	Maurice River Twp.	5
Prt. Elizabeth-Bricksboro	Cumberland	Maurice River Twp.	5

Heislerville	Cumberland	Maurice River Twp.	5
Mauricetown Station	Cumberland	Maurice River Twp.	5
Hopewell	Mercer	Hopewell Boro	4, 5
Mendham	Morris	Mendham Boro	5
New Egypt	Ocean	Plumsted Twp.	4
Elmer	Salem	Elmer Boro	4B, 5
Elmer	Salem	Upper Pittsgrove Twp.	4B
Salem	Salem	Salem City	4
Kingston	Somerset	Franklin Twp.	4
Andover	Sussex	Andover Boro	4B, 5
Hopatcong	Sussex	Hopatcong Boro	4, 5
Newton	Sussex	Newton Town	4, 4B, 5
Hope	Warren	Hope Twp.	4, 4B
Mount Herman	Warren	Hope Twp.	4
Oxford	Warren	Oxford Twp.	4, 5
Washington Twp.	Warren	Washington Boro	4, 4B
Washington Twp.	Warren	Washington Twp.	4, 4B, 5
Woodstown	Salem	Woodstown Boro	4

Source: Extrapolated from the *New Jersey Office of State Planning List of Centers and Endorsed Plans by municipalities, July 12, 2001*