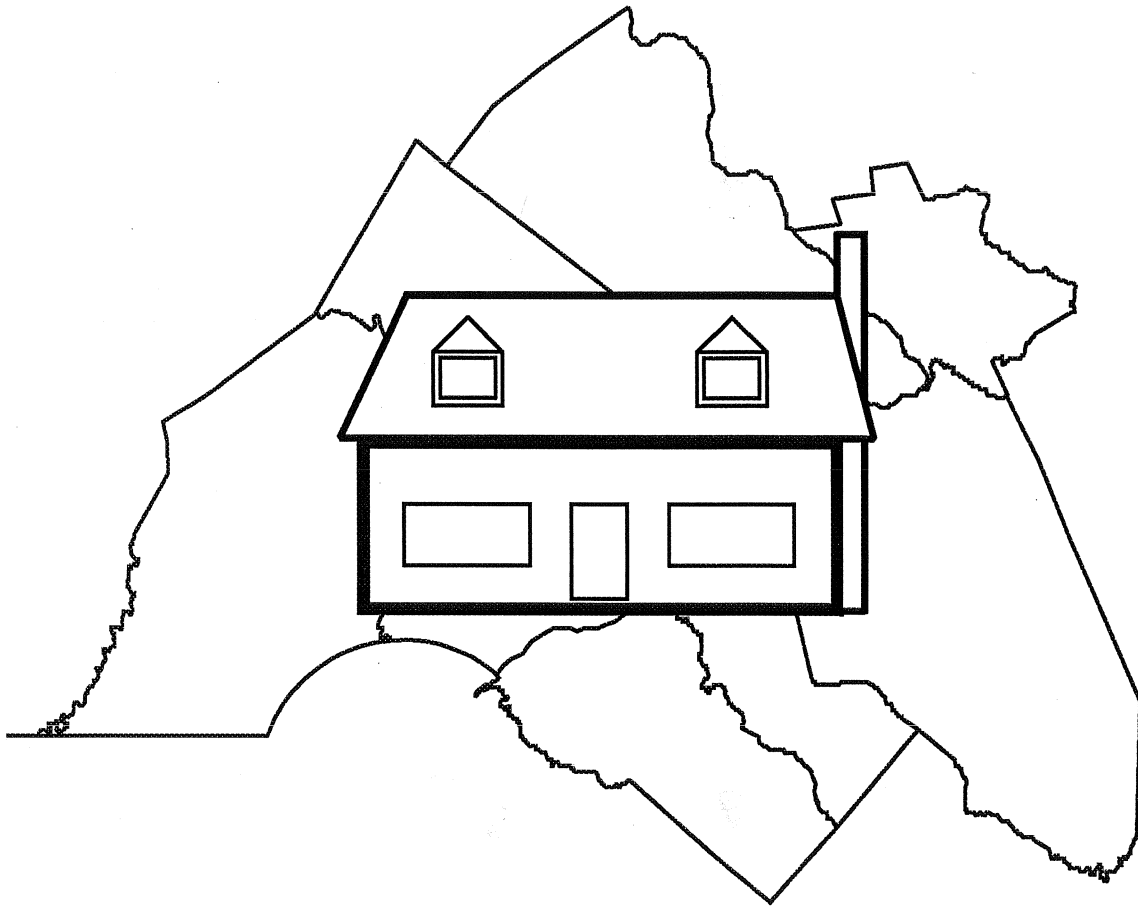


BUILDING THE DREAM

Solutions for Affordable
Homeownership



DELAWARE VALLEY REGIONAL PLANNING COMMISSION

JULY 1991

BUILDING THE DREAM

Solutions for Affordable Homeownership

Prepared by:



**Delaware Valley Regional
Planning Commission**

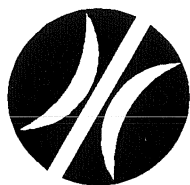
**The Bourse Building
Twenty-One South Fifth Street
Philadelphia, Pennsylvania 19106**

July 1991

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The preparation of this report was funded through federal grants from the U.S. Department of Transportation's Federal Highway Administration (FHWA) and Urban Mass Transportation Administration (UMTA), as well as by DVRPC's member governments. The authors, however, are solely responsible for its findings and conclusions, which may not represent the official views or policies of the funding agencies.

Created in 1965, the Delaware Valley Regional Planning Commission (DVRPC) is an interstate, intercounty and intercity agency which provides continuing, comprehensive and coordinated planning for the orderly growth and development of the Delaware Valley region. The region includes Bucks, Chester, Delaware, and Montgomery counties as well as the City of Philadelphia in Pennsylvania and Burlington, Camden, Gloucester, and Mercer counties in New Jersey. The Commission is an advisory agency which divides its planning and service functions between the Office of the Executive Director, the Office of Public Affairs, and three line Divisions: Transportation Planning, Regional Information Services Center, which includes Office of Regional Planning, and Finance and Administration. DVRPC's mission for the 1990s is to emphasize technical assistance and services and to conduct high priority studies for member state and local governments, while determining and meeting the needs of the private sector.



The DVRPC logo is adapted from the official seal of the Commission and is designed as a stylized image of the Delaware Valley. The outer ring symbolizes the region as a whole while the diagonal bar signifies the Delaware River flowing through it. The two adjoining crescents represent the Commonwealth of Pennsylvania and the State of New Jersey. The logo combines these elements to depict the areas served by DVRPC.

DELAWARE VALLEY REGIONAL PLANNING COMMISSION

Publication Abstract

<p style="text-align: center;">TITLE</p> <p>BUILDING THE DREAM: SOLUTIONS FOR AFFORDABLE HOMEOWNERSHIP</p>	<p>Date Published: July, 1991</p> <p>Publication No. 91029</p>
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Geographic Area Covered:

The nine-county DVRPC region, including Philadelphia, Bucks, Chester, Delaware and Montgomery counties in Pennsylvania and Burlington, Camden, Gloucester and Mercer counties in New Jersey.

Key Words:

Housing affordability; regulatory, social and financial barriers; comprehensive housing affordability strategy; fair share housing mandate.

ABSTRACT

Identifies barriers to affordable housing. Discusses federal involvement in affordable homeownership and affordable homeownership policies and programs in New Jersey and Pennsylvania. Provides specific recommendations for federal, state, municipal, regional agency and development community action to increase the affordable housing stock and decrease the cost of homeownership in the region.

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EXECUTIVE SUMMARY

The lack of affordable homeownership opportunities in the Delaware Valley has escalated in recent years, fueled by housing prices which have increased faster than annual household incomes. A 1990 DVRPC report, "Homeownership: A Vanishing Dream?", documented the extent to which affordable housing problems affect average working households, finding that a median income household would be unable to purchase a median priced home in 81% of the region's municipalities.

The affordable housing crisis now threatens the economic vitality of the region, as employers find it increasingly difficult to attract and retain a qualified work force. Employers are often forced to pay higher wages to employees who are unable to locate affordable housing close to work and must therefore commute long distances; realize decreased employee productivity and increased absenteeism and tardiness; and incur increased retraining costs as employee turnover increases. A lack of affordable homeownership opportunities may therefore be a deterrent to prospective employers considering relocation or expansion of their facilities.

The current report identifies regulatory, social and financial barriers which limit the production of affordable housing or increase the cost of housing production. Existing federal and state policies and programs addressing affordable homeownership are discussed. Recommendations are provided for public and private sector action to address affordable housing production in the region.

CONCLUSION

The report concludes that the majority of existing state and federal programs address the demand side of the affordable housing issue, providing low-cost financing, reduced down payments and closing cost assistance to prospective purchasers who are able to locate affordable units. While these programs are essential in terms of increasing homeownership in areas where an affordable housing stock exists (such as Philadelphia, Camden or Trenton), more action must be taken to increase the number, availability and distribution of affordable units elsewhere in the region. Local land use regulations, such as zoning, are the primary control over the production of housing units. However, local governments in this region have shown a reluctance to voluntarily promote the production of affordable housing. The report therefore concludes that resolution of the affordable housing crisis may ultimately include statewide mandates to localities to provide for a fair share of the region's affordable housing needs.

RECOMMENDATIONS

The study presents specific recommendations for state, federal, municipal, county, regional agency and development community actions designed to increase the affordable housing stock and decrease the cost of homeownership opportunities in the region. The federal government is urged to appropriate the full funding amount authorized by the 1990 affordable housing legislation; commit additional funding for affordable homeownership programs, such as employer-assisted programs; link other federal funding to affordable housing actions; and continue to fund rental assistance programs.

The Pennsylvania legislature should require municipalities to address their fair share of the region's housing needs as a part of a comprehensive plan, and should assume primary responsibility for establishing goals, policies and acceptable standards for defining regional housing needs. Both New Jersey and Pennsylvania should provide additional funding for the production of affordable housing and should link eligibility for available state funding to local affordable housing actions. State agencies should streamline their permitting procedures as a means of reducing housing production costs, and various state agencies dealing with housing and community development should coordinate their responsibilities and activities to ensure common goals and the most efficient usage of available staff and resources.

Regional agencies should assist the states and the counties in defining regional housing needs; provide data and technical assistance; provide a regional perspective on both residential and non-residential development; and define the linkages between land uses and the existing infrastructure. County planning agencies should assist state and regional agencies in defining regional and county housing needs, and adopt a county-wide comprehensive housing affordability strategy. Each county should work with municipalities to quantify local fair share of the region's needs, and utilize their available staff and resources to assist municipalities in developing local affordable housing plans.

The report recommends that municipalities recognize their responsibility to provide for the needs of current and prospective residents and revise local comprehensive plans and zoning ordinances to allow and encourage the production of affordable housing, through the use of higher density residential zoning; density bonuses for developers who construct affordable housing; public-private partnership efforts; or by encouraging adaptive re-use or non-traditional housing forms. Subdivision requirements and construction standards should be revised where possible to reduce construction costs while continuing to protect the environment and the public good, and the length of time required to secure development approvals should be reduced.

Finally, a cooperative relationship must be developed between government planning agencies and the builders of the region's housing, who must be encouraged to combine profit motives and public benefit to create affordable homeownership opportunities.

I. INTRODUCTION

The limited availability of housing units which are affordable for purchase by median income households is now recognized as a serious problem throughout the Delaware Valley region, in both New Jersey and southeastern Pennsylvania. Problems in securing sound affordable housing, once limited to the lowest income segments of the population, now affect many middle class workers, including secretaries, nurses, retail workers, police and fire personnel, municipal employees and teachers. Many housing advocates maintain that problems with housing affordability and quality are more widespread and severe today than in previous years, as evidenced by the growing gap between the regional housing costs and income.

The lack of affordable housing in the Delaware Valley has reached crisis proportions in recent years, fueled by housing prices which have increased faster than household incomes. For example, in Montgomery County, Pennsylvania, the median household income increased by 73% between 1980 and 1988, while the median price of all residential units increased by approximately 125%.¹ Nationally, the median family income increased 183% between 1970 and 1987, while median home prices increased by 249%. Housing prices in the northeastern section of the country have increased even faster than in other parts of the country: between 1980 and 1987, housing prices in the Northeast increased by almost 100%, while the price of housing in the Midwest, South and West increased by only 16% to 25%.²

In the Delaware Valley region, the median income household (a four-person household earning \$38,300 annually)³ could afford to purchase the median priced housing unit in only 19% of the region's 353 municipalities. Table I illustrates the minimum income necessary to purchase housing at different prices and Figure I illustrates the distribution of housing prices throughout the region.

The problem of escalating housing prices has particularly affected the 24-29 year old age group, typically first-time homebuyers. The rate of homeownership amongst this group declined from 43.3% in 1980 to 35.4% in 1990, primarily because of the high cost of

¹Montgomery County Planning Commission, "Housing Price Study", 1989.

²Hinds, Michael D. "Owning a Home Recedes as an Achievable Dream", New York Times, 1988.

³U.S. Department of Housing and Urban Development, January 1, 1990.

TABLE I**MINIMUM INCOME REQUIRED TO PURCHASE
MEDIAN PRICED UNIT IN SAMPLE MUNICIPALITIES**

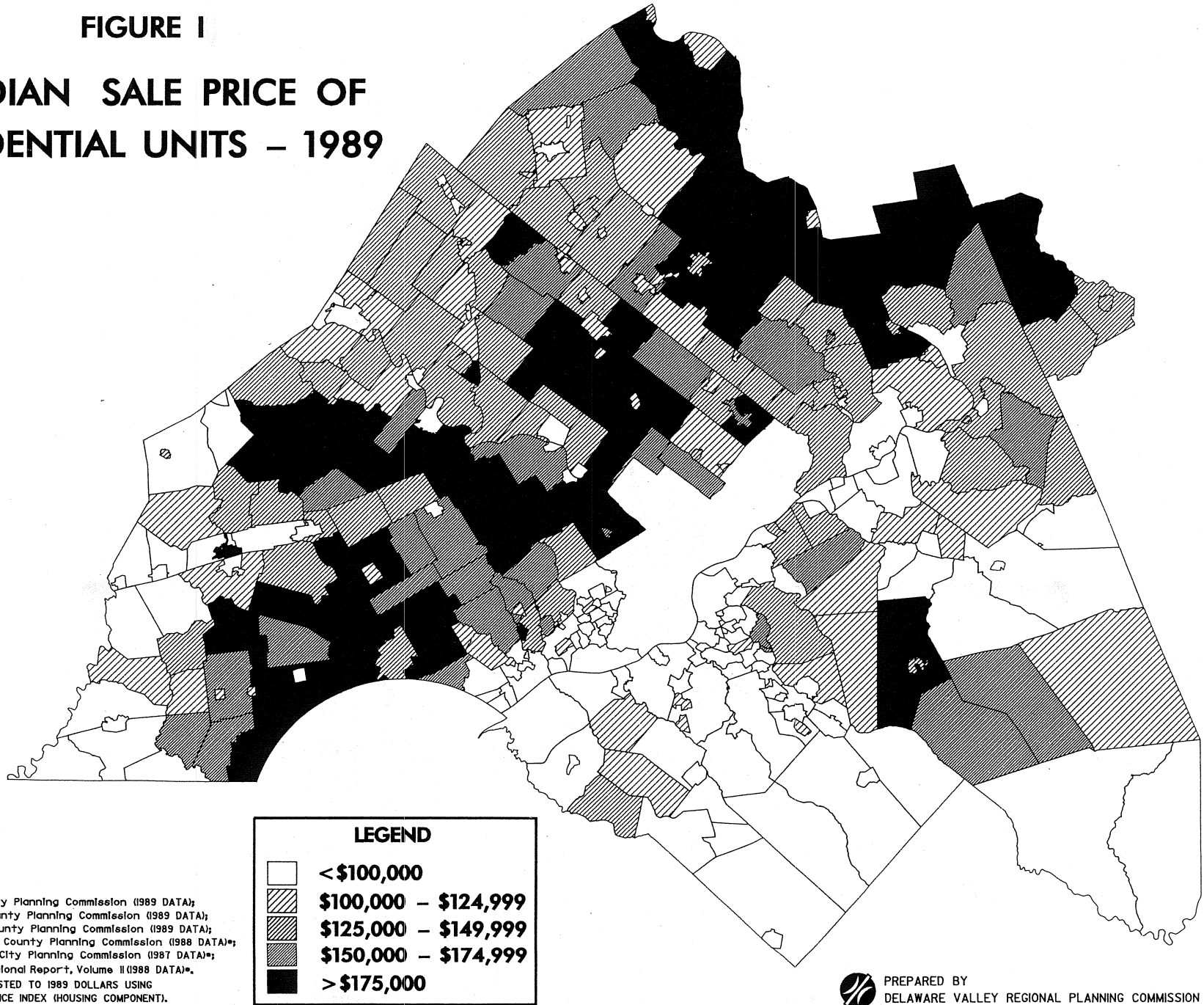
<u>MUNICIPALITY, COUNTY</u>	<u>MEDIAN SALES PRICE¹</u>	<u>MINIMUM INCOME REQUIRED²</u>
Camden City, Camden	23,174	10,468
Chester City, Delaware	24,900	13,192
Gloucester City, Camden	47,874	20,079
Swedesboro, Gloucester	59,979	29,154
Trenton, Mercer	64,287	31,608
Mount Holly, Burlington	76,084	35,878
Bristol, Bucks	71,000	36,275
Malvern, Chester	88,990	39,273
West Chester, Chester	100,000	44,512
Marlborough, Montgomery	104,691	47,653
Mount Laurel, Burlington	114,937	50,202
Lower Pottsgrove, Montgomery	108,533	51,777
Abington, Montgomery	109,817	54,203
Bensalem, Bucks	128,200	61,321
Haverford, Chester	141,000	67,281
Middletown, Bucks	144,500	68,598
Marple Township, Delaware	155,000	70,961
Moorestown, Burlington	172,849	75,451
Concord, Delaware	203,510	94,085
Radnor, Delaware	222,000	101,824
Lower Merion, Montgomery	298,904	128,336
Princeton Township, Mercer	362,602	149,483
Upper Makefield, Bucks	352,000	152,066






¹1989 Prices. See Homeownership: A Vanishing Dream, DVRPC, November 1990.

²Assume 10% down payment, 10.5% 30-year fixed rate mortgage, and 28% of income towards housing costs, including mortgage principle and interest, property taxes and homeowner's insurance. Variations in income to sales price ratios are dependent on local property taxes.


FIGURE I

**MEDIAN SALE PRICE OF
RESIDENTIAL UNITS – 1989**



LEGEND	
	< \$100,000
	\$100,000 – \$124,999
	\$125,000 – \$149,999
	\$150,000 – \$174,999
	> \$175,000

SOURCE: Bucks County Planning Commission (1989 DATA);
Chester County Planning Commission (1989 DATA);
Delaware County Planning Commission (1989 DATA);
Montgomery County Planning Commission (1988 DATA)*;
Philadelphia City Planning Commission (1987 DATA)*;
Rutgers Regional Report, Volume II (1988 DATA)*.
* DATA ADJUSTED TO 1989 DOLLARS USING
CONSUMER PRICE INDEX (HOUSING COMPONENT).

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homeownership and the inability of potential first time buyers to accumulate the necessary capital to cover downpayment and closing costs.⁴ Adjusting for inflation, the median income of potential first time homebuyers is below the 1972 level, while housing costs are significantly higher.⁵ The Joint Center for Housing Studies at Harvard University estimates that approximately 2 million more households would own homes today if homeownership rates had remained at 1980 levels.⁶

IMPACTS OF A LACK OF AFFORDABLE HOUSING

A lack of decent and affordable housing has social and economic impacts on individual communities and the region as a whole. The most obvious impact is the creation of a socioeconomic imbalance between urban and suburban areas. Lower income individuals and families, unable to locate affordable housing in suburban residential areas, are forced to remain in older, potentially substandard housing in urban areas with limited available resources with which to maintain or rehabilitate those units. In the more expensive residential suburbs, younger households (particularly first-time home buyers) are often unable to locate affordable units.

In many suburban areas of New Jersey and Pennsylvania many existing residents would be unable to purchase their present homes given today's housing costs. In turn, their children are unable to afford to live in the neighborhood in which they were raised. Populations within localities become less and less diversified, as household mobility is limited based on the affordability of the housing stock.

Many municipalities are now experiencing fiscal problems caused by the low-density, single-family detached residential development which they have encouraged. The provision of services to scattered subdivisions is more expensive than the provision of similar services to higher density development. Higher service costs are increasingly becoming the responsibility of an older population which are now finding themselves "housing rich" but "cash poor", required to pay high property taxes on housing units which they would be unable to afford to purchase at today's costs.

A lack of affordable housing alternatives can also have serious negative consequences on the economic vitality of an area. Employers who have relocated from urban areas into less costly suburban office space are now experiencing severe labor shortages, particularly for lower paying entry-level positions. Recent studies have confirmed that

⁴U.S. News and World Report, August 6, 1990, Page. 41. Basic data from the Joint Center for Housing Studies, Harvard University.

⁵Joint Center for Housing Studies, Harvard University, The State of the Nation's Housing, 1990. Cambridge, Massachusetts, 1990.

⁶Ibid.

employers in areas with high housing costs have found it increasingly difficult to attract and retain a qualified work force.⁷ Detrimental effects of affordable housing shortages on employers include higher wages which must be paid to employees to offset high housing or commuting costs; decreased productivity from employees forced to commute long distances; increased employee absenteeism and tardiness; and an increase in employee turnover and subsequent retraining costs. A lack of affordable housing, particularly for service sector employees, can therefore be a deterrent to prospective employers seeking to relocate or expand their operations.

Other significant problems which arise when employees are forced to commute long distances include escalating air pollution levels and increased traffic congestion, particularly if affordable residential areas and employment centers are not linked by efficient mass transit systems. A 1990 DVRPC study found that areas which contain affordable housing such as southern New Jersey and western Chester County are often not located near major employment centers and are not linked to existing or prospective employment centers by efficient mass transit services.⁸ The area with the greatest concentration of affordable housing and available mass transit - the City of Philadelphia - continues to lose population.

Additionally, limited affordable homeownership opportunities have resulted in a tightening of the rental market, as families which traditionally would purchase their first home have delayed such a move because of an inability to locate an affordable unit. This scenario leads to an increased demand for rental units, which increases the cost of the existing rental stock. In turn, it becomes even more difficult to accumulate the necessary capital for downpayment and closing costs, extending the family's time in rental housing. Other lower income households which traditionally would occupy rental housing units are forced to pay higher rates for lesser quality rental units, because of these moderate and median income households which continue to occupy available units. Ultimately, the lowest-income households, forced to pay an increasing percentage of their monthly income for escalating rental prices, may be forced into homelessness, as they are left off the bottom rung of the "housing ladder". Thus, limited affordable homeownership opportunities for moderate and median income households effects the full range of housing opportunities for various income-level households.

STUDY PURPOSE

The current study is designed to complement a 1990 DVRPC study of affordable homeownership opportunities in the Delaware Valley, entitled "Homeownership: A

⁷Ibid.

⁸Delaware Valley Regional Planning Commission, "Homeownership: A Vanishing Dream?", December, 1990.

Vanishing Dream?". That report concluded that a median income household (earning approximately \$38,300 annually) would be unable to afford to purchase a median priced housing unit in 81% of the municipalities in the Delaware Valley region (See Table II).

Bucks, Montgomery, Chester and Mercer Counties were found to be the most "unaffordable". In contrast, median income households would be more likely able to purchase a median priced house in Philadelphia, Camden County or Gloucester County. New Jersey communities in the DVRPC region were generally found to be more affordable than Pennsylvania communities, with 45 of 114 New Jersey communities (40%) identified as "affordable" as opposed to only 23 of 239 Pennsylvania communities (10%).⁹ Figure II illustrates the percentage of municipalities within specified ranges of representative housing costs and minimum required incomes in both Pennsylvania and New Jersey.

Older boroughs and cities within the DVRPC region were identified as having the least expensive housing stock. However, the potential impacts on affordability of significant rehabilitation or maintenance costs which may be associated with the older housing stock often found in these areas were not considered in the report.

This report considers factors which have cumulatively resulted in the limited production of affordable housing units and contributed to the escalation of housing prices and provides recommendations which could bolster the production and retention of additional affordable housing units for homeownership. Existing federal and state policies and programs which are intended to mitigate some of the barriers to affordable housing production and promote affordable homeownership are evaluated in terms of the extent to which they respond to these barriers and lead to additional affordable homeownership opportunities for moderate and median income households.

The report was researched and written under the guidance of its steering committee, which included representatives from each county's planning commission; representatives of the cities of Philadelphia, Camden, Trenton and Chester; the Pennsylvania Department of Community Affairs; the Pennsylvania Housing Mortgage Finance Agency; the New Jersey Department of Community Affairs; the New Jersey Council on Affordable Housing; the New Jersey Housing and Mortgage Finance Agency; and both the Pennsylvania and New Jersey Homebuilders Associations (see Appendix A).

⁹For the purpose of the 1990 report, "affordable" municipalities were defined as those localities where a median income household earning \$38,300 per year could afford to purchase a median priced house, given certain basic assumptions.

TABLE II
MINIMUM INCOME REQUIRED TO PURCHASE A
MEDIAN PRICED UNIT, 1989

	NUMBER OF MUNICIPALITIES				
Minimum Income Required	Less Than \$38,300*	\$38,301-\$49,999	\$50,000-\$69,999	\$70,000-\$89,999	Greater Than \$90,000
Representative Housing Costs	Less Than \$82,000	\$82,000-\$107,999	\$108,000-\$151,999	\$152,000-\$195,999	Greater Than \$196,000
Bucks	2	9	29	8	6
Chester	8	18	25	8	14
Delaware	8	19	11	7	4
Montgomery	4	9	30	12	7
Philadelphia	1	0	0	0	0
TOTAL PENNSYLVANIA	23 (10%)	55 (23%)	95 (40%)	35 (14%)	31 (13%)
Burlington	10	14	12	4	0
Camden	17	15	4	1	0
Gloucester	17	6	1	0	0
Mercer	1	0	5	2	5
TOTAL NEW JERSEY	45 (40%)	35 (31%)	22 (19%)	7 (6%)	5 (4%)
TOTAL DVRPC REGION	68 (19%)	90 (26%)	117 (33%)	42 (12%)	36 (10%)

* Median annual income for a four-person household in the Philadelphia region as of January 1, 1990, as estimated by the U.S. Department of Housing and Urban Development.

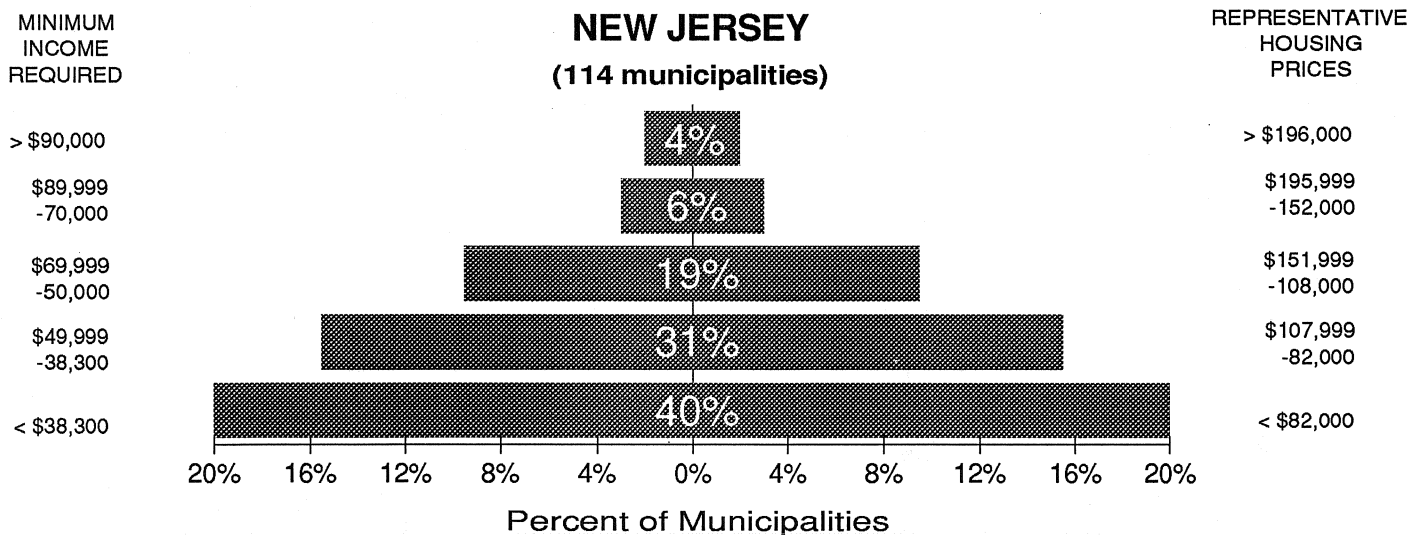
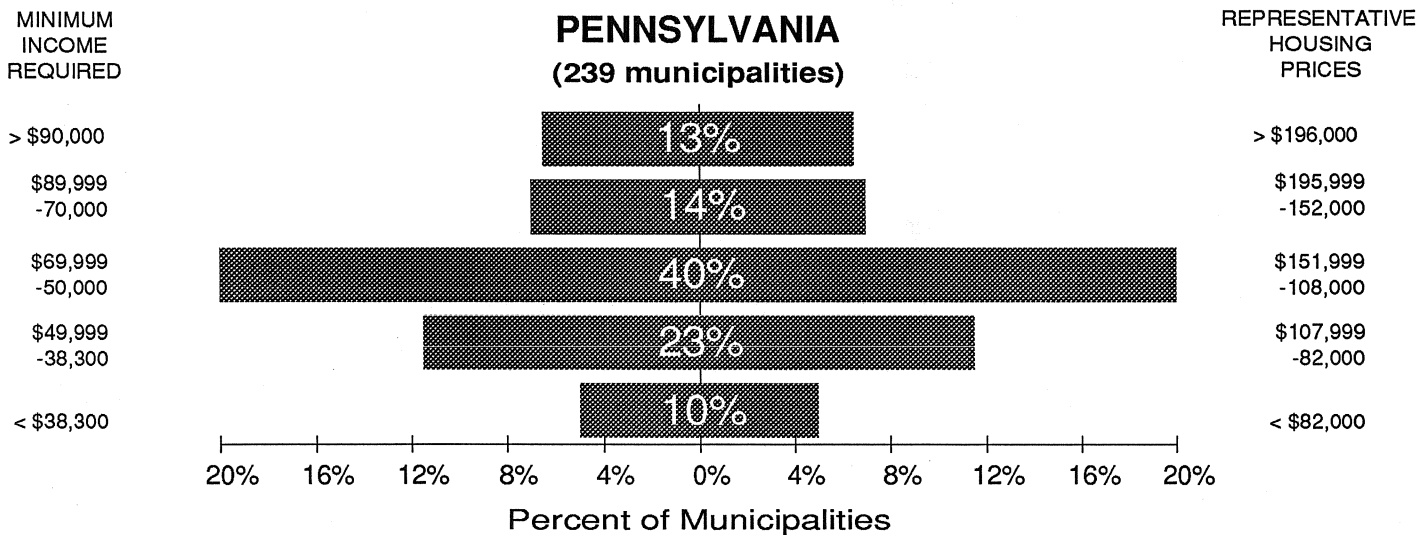
Minimum income required to purchase based on household paying 28% of income towards housing cost, including mortgage principle and interest, taxes and insurance. Representative housing costs based on average property taxes of \$2.75 per \$100 market value.

Source: "Homeownership: A Vanishing Dream?", Delaware Valley Regional Planning Commission, November 1990.

Delaware Valley Regional Planning Commission, August 1991

Figure II

HOUSING PRICES AND THE MINIMUM INCOME REQUIRED TO PURCHASE 1989



Notes: Assumes 28% housing costs / income ratio; 10% down payment; 10.5%, 30 year fixed rate mortgage; average property tax of \$2.75 per \$100.00 market value.



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II. BARRIERS TO AFFORDABLE HOUSING

Many factors have served to limit the production of affordable units or have contributed to escalating housing prices which in turn have exacerbated the affordable housing crisis. This chapter identifies and discusses various regulatory, social and financial factors which affect the production of affordable housing and the ability of average working households to afford to purchase a unit. The following chapters discuss existing programs designed to mitigate some of these barriers and increase the supply of affordable housing units. Most of these barriers, particularly regulatory and land use barriers, impact upon the affordable housing crisis by reducing the supply of affordable units. Others, particularly financial barriers, effect the ability of moderate and median income households to purchase a home.

REGULATORY BARRIERS

Government regulations and the review process have been identified by some as significant barriers to the construction of low-cost housing. The development community claims that delays caused by the review process and over-regulation can add as much as \$25,000 per unit in additional development costs. While development review procedures and regulations are essential to protect the health, safety and general welfare of a community, excessive or inappropriate regulations increase the cost of housing by either increasing the cost of building or by lengthening the development process. Since the majority of land use control is initiated at the local level, many of these regulatory barriers can be traced to local regulation and control. State agencies have also been accused of contributing to the length and costs associated with the development review and approval process, particularly agencies that enforce environmental regulations.

The primary local land use control which acts as a barrier to the production of affordable housing is the lack of medium to high density residential zoning served by the appropriate water, sewer and transportation infrastructure, which would allow the necessary densities to accommodate affordable housing production.

Municipalities in both New Jersey and Pennsylvania have been reluctant to zone property to allow medium to high density residential development. A 1985 report by the

Montgomery County Planning Commission noted that the county contained only about one-fourth of the properly zoned land that would be needed through the year 2000 to accommodate the expected demand for medium to high density housing.¹⁰ The Middlesex-Somerset-Mercer Regional Council reported in 1987 that only 8% of the undeveloped residentially-zoned land located within their tri-county area was designated for densities greater than two units per acre.¹¹

Lack of adequately zoned land is mainly attributable to the perceived increases in the cost of services necessitated by that development, as compared to the revenue-generating potential of commercial or industrial development. Lack of available land zoned to accommodate higher density residential development increases the cost of such properties, which in turn increases the cost of the housing units constructed on the sites.

In many areas, properties which are zoned for higher density residential uses do not have the necessary infrastructure (particularly sewer and water) in place to service such development. In a second report issued by Montgomery County in 1988, the planning commission concluded that of 3,346 acres of vacant land zoned for four or more units per acre, only 623 acres (19%) had access to public water and sewer with existing excess capacity.¹² Thus, developers are often forced to either develop these properties at densities lower than would be allowed or pay for the necessary infrastructure improvements, again increasing the ultimate cost of the housing units.

Additional municipal, state and federal actions which have been identified as contributing to the cost of housing include the following:

- excessive minimum lot sizes, minimum lot widths and minimum floor areas in residential zones;
- excessive subdivision requirements, including cartway widths, setbacks, buffers, landscaping, parking and paving;
- unreasonable impact fees, off-site improvement requirements, mandatory dedications and other exactions;
- construction standards which may add excessive costs or limit the use of less

¹⁰Montgomery County Planning Commission, "Reducing Housing Costs: The Local Government Role", 1985, pg. II-7.

¹¹New Jersey Builders Association, "The Human Environment: Housing New Jersey," January 1990.

¹²Montgomery County Planning Commission, "Development Potential in Montgomery County, PA: An Inventory of Selected Vacant Land", 1988.

expensive construction methods;

- local reluctance to allow non-traditional housing alternatives such as accessory apartments, elder cottages, residential conversions and shared housing;
- local planning and zoning hearing board processing delays;
- delays caused by state environmental agency reviews and regulations (including storm-water management regulations, freshwater wetlands regulations and environmental impact statements); and,
- additional state agency regulations viewed as limiting the amount of available developable land, such as New Jersey's State Development and Redevelopment Guide or Pine Barrens regulations.

The Joint Venture for Affordable Housing was initiated as a demonstration program by the United States Department of Housing and Urban Development in 1982, in response to a recognition of the effect of land use regulations on affordable housing production. The goal of this program is to reduce housing costs by revising outdated or unnecessary land-use and building regulations and by allowing innovative designs and materials to meet standards based on performance. Technical assistance is provided by the National Association of Homebuilders. Since the program's inception, approximately 7,000 below-market rate units have been built in over 400 projects nation-wide. Developers have documented cost savings as high as 30% per unit, using increased densities (which generated the greatest savings per unit); zero lot line and cluster development; and relaxed development standards (including reducing street widths, limiting sidewalks to one side of the street within the development and reducing the required number of manholes). Reduced development standards also indirectly affect the number of units built on each site, since less of the site is covered by streets and sidewalks and additional acreage is available for development.

Many members of the development community argue that, although minimum building and design standards protect the general welfare of the community, reducing these standards and basing minimum standards on performance can actually benefit the community. Reduced street widths within developments, for example, can discourage speeding and pass-through traffic and increase the community's sense of place.

SOCIAL BARRIERS

Local opposition to the concept of affordable housing can also add to the cost of housing, primarily by delaying the review and approval process. In many cases, local opposition to "affordable" housing has resulted in a complete lack of zoning for multi-family housing zoning or allowable alternatives to the traditional large-lot single-family residential development. This effectively limits the supply of affordable housing in the

community.

The cost of defending against existing residents opposed to higher density housing is now considered by developers as another routine but unnecessary development cost. Such groups claim that higher density residential developments will lower the values of existing development and increase local taxes, given the expected number of new residents and level of services required. Existing residents often stereotype affordable housing as unattractive, and likewise stereotype prospective residents of those units as undesirable. These groups target elected or appointed officials who will be required to review and/or approve the objectionable development and apply the appropriate political pressure in order to defeat, reduce or significantly delay project approval. Politicians in turn are hesitant to advocate or advance changes which could lead to the development of affordable housing.

Developers have now begun targeting these groups with lawsuits charging that objections to and protests against higher density, affordable housing developments are not in the overall public interest. Protests by existing residents have often proven to be extremely expensive for the developer, given the time involved in resolving differences, the expense of potential litigation and the compromises which often must be struck in order to secure approval for a project.

Many existing residents are opposed to any residential development other than single-family detached housing because of a basic misconception as to the type of people alternative housing developments will attract to the community. The primary concerns that many existing residents voice in opposition to a proposed "affordable" housing development include the additional school-age children that such developments will bring into the municipality's education system and the expected traffic generation. While legitimate concerns, it is unfair, uneconomical and perhaps illegal for existing residents to simply close the door to additional residential development in areas appropriate for growth.

FINANCIAL BARRIERS

In addition to these regulatory and social barriers to affordable housing construction, financial constraints may also increase the cost of new housing units or may limit a household's ability to purchase existing units. Financial barriers to affordable housing include the following:

- the cost and availability to the builder of construction financing;
- escalating land costs;
- a tendency on the part of developers to build units which sell at the higher end of the market, in order to ensure adequate profit margins;

- inability of the prospective homeowner to pay typical fees related to purchasing a home, including credit reports fees, loan origination fees, mortgage points, transfer taxes, attorney's fees, appraisal costs, title insurance, title searches and mandatory reserve requirements;
- inability to accumulate capital to cover the required down payment;
- inability to afford the monthly carrying costs of homeownership, including mortgage principal and interest, taxes, homeowners' insurance, private mortgage insurance (required in most cases if the downpayment is less than 20% of the purchase price) and where applicable, condominium or homeownership association fees;
- cautious underwriting criteria used by banks and a general reluctance to underwrite mortgages which carry any risk (including loans to first-time homebuyers with minimum down payments); and
- once in the home, an inability to afford to pay the cost of maintaining the unit.

SUMMARY

Various factors can increase the cost of housing beyond affordable levels for prospective moderate and median income purchasers. These factors generally either increase the cost of actually producing the housing or inhibit the ability of the prospective purchaser to acquire the unit. The supply of affordable housing units is affected by factors which increase housing production costs, including exclusionary zoning practices; excessive subdivision requirements; local delays in the review and approval process; impact fees and other exactions; and delays and expense caused by state environmental agency reviews. If an affordable unit is located, financial constraints which may further prohibit homeownership include large downpayment and closing costs and the monthly carrying costs of homeownership, such as mortgage principle and interest, property taxes, insurance and private mortgage insurance.

Local opposition to accepting a fair share of the region's affordable housing need stems from the structure of local government financing in both New Jersey and Pennsylvania. Given the existing system of autonomous municipal governments, communities compete with one another to attract development which offers the highest tax rate and requires the least services. Residential development, while essential to house the citizenry and provide a work force for area businesses, does not generate as much revenue as it will require in expenditures for services. It follows, therefore, that local officials and existing residents usually support non-residential, tax-generating development and often oppose residential development that will require services that cost more than that development will generate.

III. FEDERAL INVOLVEMENT IN AFFORDABLE HOMEOWNERSHIP

This chapter briefly summarizes federal policies and programs which address affordable homeownership opportunities for moderate or median income households. Generally, federal involvement in affordable homeownership is limited to federal mortgage insurance programs and a secondary mortgage market created by the federal government. The federal government also allows state housing agencies to sell tax-exempt mortgage revenue bonds, through which many states have funded successful homeownership programs. Limited assistance for non-profit sponsors of affordable housing was previously available, but is currently limited to loans to assist in the creation of multifamily housing for the elderly or handicapped under Section 202.

The chapter includes a brief discussion of the Community Development Block Grant program and its indirect effects on affordable homeownership; the 1990 Housing Act (the Cranston-Gonzales Act) and its implications for affordable homeownership; the Community Reinvestment Act of 1977 (CRA); and the affordable housing disposition program available through the Resolution Trust Company (RTC), created by the 1989 Financial Institutions Reform, Recovery and Enforcement Act (FIRREA).

Federal funding of both affordable rental and owner-occupied housing declined dramatically throughout the 1980's, decreasing from about \$30 billion in 1980 to \$8 billion by 1989. These cutbacks prevented many working families from being able to afford to purchase a home and forced many households to expend a greater percentage of their income for rent, severely limiting their ability to save the necessary capital to eventually purchase a home. Many experts argue that cutbacks in federal spending on housing are directly responsible for the severity of the current housing crisis, in terms of both quality and affordability of the housing stock.

FEDERAL MORTGAGE INSURANCE PROGRAMS

The United States Department of Housing and Urban Development (HUD) offers several mortgage insurance programs to eligible homebuyers which serve to reduce the cost of purchasing a unit by lowering the risk to the mortgager. Federal mortgage insurance and guarantees are provided through the Federal Housing Administration (FHA), created by Congress in 1934; the Veterans Administration (VA); and the Farmers Home Administration (FmHA). Federal underwriting allows lower income buyers to borrow more funds with smaller down payments and lower interest rates than are possible without federal backing.

FHA's Section 203 federal mortgage insurance program provides an incentive to commercial lenders to invest capital in home mortgages by insuring mortgages for up to 97% of the property value. HUD/FHA-insured homeowners threatened with foreclosure due to unforeseen circumstances may apply for assignment of the loan to HUD, which may then take over the mortgage and adjust the payments until the homeowner is financially prepared to resume their full payments. Any household able to meet the cash investment, mortgage payment and credit requirements is eligible. Through September of 1988, over 15 million units were insured under HUD's 203 mortgage insurance program, with a total value of almost \$375 billion.

While not limited to low or moderate income purchasers, FHA's section 203 mortgage insurance program increases affordability by decreasing the initial cash outlay required from prospective buyers, specifically by reducing the required downpayment. Prospective buyers obtaining FHA loans may also now expend up to 33% of their income for housing costs, as opposed to 28% with conventional financing.

FHA's section 221(d)(2) program is designed to accept some of the risk that commercial lenders would normally assume in financing mortgages for low and moderate income households. The insurance is paid monthly rather than in a lump sum, decreasing the up-front costs to the homebuyer. Downpayments of less than 3% are acceptable in certain circumstances, further reducing the up-front costs of homeownership.

Mortgage insurance is also provided to low and moderate income households with poor credit histories under the section 237 program. Budgeting and debt-management counseling is provided through various HUD-approved organizations. This program is not widely available; through September of 1988, only 5,289 units were insured nationwide under the special credit risk program, with a total loan value of approximately \$81.2 million.

Under the Section 245 program, FHA offers federal mortgage insurance for graduated payment mortgages or adjusted rate mortgages to homebuyers who expect their income to rise significantly in future years. Larger than usual downpayments are required, but such mortgages allow the purchaser to make small initial monthly payments and gradually increase their payments over time. Any FHA-approved lender may make graduated payment or adjustable rate mortgages.

Other FHA mortgage insurance programs that are currently active provide mortgage insurance for condominiums, cooperatives and manufactured homes (Title I). Additionally, the 203(k) program provides mortgage insurance for the rehabilitation and refinancing or the purchase and rehabilitation of substandard properties. The 223(e) program acts in conjunction with other HUD insurance programs to address the special risks associated with financing housing in older, declining but still viable urban neighborhoods.

THE SECONDARY MORTGAGE MARKET

The federal government has also created agencies to develop secondary markets for mortgages, particularly for federally underwritten mortgages. The secondary mortgage market is primarily composed of the Federal National Mortgage Association (Fannie Mae); the Government National Mortgage Association (Ginnie Mae); and the Federal Home Loan Mortgage Corporation (Freddie Mac). These agencies purchase mortgages from approved lenders that originate the loans, reducing the lender's risk and allowing primary lenders to replenish their supply of available mortgage funding. Fannie Mae, for example, recently announced programs under which the agency will purchase mortgages approved under employer-assisted housing programs and reverse equity mortgages given to senior citizens.

COMMUNITY DEVELOPMENT BLOCK GRANTS

The Community Development Block Grant (CDBG) program offers states and municipalities assistance in revitalizing neighborhoods. CDBG funds are allocated on a formula basis to carry out various neighborhood revitalization and economic development activities and to improve community facilities and services. Seventy percent of the allocated funds are distributed to entitlement communities (metropolitan cities with at least 50,000 population, certain urban counties and central cities) and the remaining thirty percent is distributed to non-entitlement communities (generally rural areas with less than 50,000 people) through the states. The formula allocation is based on poverty; population; overcrowded housing conditions; the age of housing; and growth rates.

CDBG funds must be used to address community needs that present serious and immediate threats to the health and welfare of the community or to prevent or eliminate blight, and at least 70% of these funds must be used to assist low and moderate income residents. Many communities have therefore chosen to focus their CDBG activities on rehabilitation programs for low and moderate income residents. While affordable housing objectives are sometimes achieved using these funds, these achievements are incidental to overall community development objectives. However, the 1990 National Affordable Housing Act also authorizes the use of CDBG funding for the implementation of affordable homeownership programs, providing an additional funding source for these programs.

THE NATIONAL AFFORDABLE HOUSING ACT OF 1990

The National Affordable Housing Act of 1990 (known as the Cranston-Gonzales Act) was signed into law on November 28, 1990. The law created two major new programs; Home Investment Partnerships and Homeownership Opportunity for People Everywhere (HOPE). The legislation also terminated several existing housing programs, including the rental rehabilitation program; housing development action grants (HoDAG); the Section 8 Moderate Rehabilitation Program; the Section 312 rehabilitation loan program; and the urban homestead program.

The Home Investment Partnerships program will provide grants to be used for "acquisition, new construction, reconstruction or rehabilitation of affordable housing or to provide tenant-based rental assistance". While this program could theoretically be used for new construction of affordable owner-occupied housing, the funding allocation schedule and mandatory matching requirements of the program encourage rehabilitation rather than new construction. The HOME Program will require a 50% match for all new construction projects, while only requiring a 33% match for substantial rehabilitation and a 25% match for rental rehabilitation or rental assistance programs. The matches can include non-federal cash contributions; deferred or foregone taxes and fees; the value of donated land; the value of on-site or off-site improvements; or the value of administrative services (up to 7% of the HOME grant).

The HOME Program has a \$1 billion authorization for Fiscal Year 1991 and an additional \$2 billion for Fiscal Year 1992, but no funds have been appropriated to date. Funds will be distributed on a formula allocation basis to cities, counties and states, with some communities receiving outright grants and others required to provide matching funds, depending on the level of funding for which the community is eligible. The Act also requires that 15% of a jurisdiction's allocation be used for projects sponsored by non-profit organizations, which should benefit counties in the region where non-profit organizations are now active in developing affordable homeownership programs.

A second major new initiative created by the 1990 housing legislation is the Homeownership and Opportunity for People Everywhere (HOPE) program. HOPE is designed to convert public housing and multifamily housing currently owned, held, financed or insured through HUD or owned and held by the Farmers Home Administration, the Resolution Trust Corporation, or state and local governments to individual ownership or tenant ownership and management. HUD will administer both planning and implementation grants under this program, with public housing authorities, tenant councils, nonprofit organizations and public agencies applying directly to HUD for funding. All units converted to affordable ownership under the HOPE program will be subject to strict resale controls.

Additionally, the 1990 National Housing Act creates a National Homeownership Trust Fund to provide assistance to first-time home buyers with incomes below 95% of the median income for the region. Funds would be available to reduce the mortgage interest rate and for downpayment assistance, reducing the buyer's down payment obligation to 1%. Although \$250 million is authorized in Fiscal Year 1991 and an additional \$521.5 million in Fiscal Year 1992, Congress has not yet appropriated any money for this program or any others authorized in the 1990 legislation.

The 1990 national housing legislation requires that participating states, counties and cities develop a comprehensive housing affordability strategy (CHAS). Jurisdictions have long been required to develop planning documents in order to receive federal housing funding. The Stuart B. McKinney Homeless Assistance Act required a Comprehensive Homeless

Assistance Plan (CHAP) as a condition to receiving homeless program funding. A Housing Assistance Plan (HAP) is required under the CDBG Program, and is used in conjunction with various federal housing programs (such as Section 8 Rental Assistance). The CHAS will eventually replace both the CHAP and the HAP, incorporating useful elements of both into one single working document.

The Comprehensive Housing Affordability Strategy must include a needs assessment, summarizing housing needs projected over the next five years; a profile of market and inventory conditions, including trends in population and housing; a description of strategies which integrates the needs and the existing conditions in the jurisdiction and prioritizes investments over the next five year period; a description of the resources needed and available to implement the strategies; and an implementation plan, defining goals and objectives. Each municipality will be required to report annually to HUD on progress made towards implementing its housing strategy.

The 1990 Housing Act provides opportunities for increased federal involvement in and funding of affordable rental and owner-occupied housing. The requirement that all jurisdictions develop a Comprehensive Housing Affordability Strategy will force states and localities to assess the nature and extent of the affordable housing problem and should lead to greater coordination of efforts and more efficient usage of available resources. The legislation also creates an opportunity for non-profit organizations to secure funding for various housing activities.

Critics, however, maintain that the Act presents few new policies or programs, instead eliminating some programs and reintroducing them in a new format and with new guidelines. The development of effective state, county and local Comprehensive Housing Affordability Strategies, while conceptually important, may prove to be logistically difficult. Changes to FHA mortgage insurance programs made within the Act have also raised the minimum cash outlay required from prospective borrowers (for example, borrowers applying for a \$100,000 FHA loan will be required to pay an additional \$1,226). Although funding has been authorized for programs created by the Act, no appropriations have yet been made, and the present fiscal climate would predict that any appropriation will be less than the fully authorized amount.

COMMUNITY REINVESTMENT ACT (CRA) ACTIVITIES

The Community Reinvestment Act of 1977 requires that commercial banks, savings and loans and savings banks reinvest funds in communities located within their service area, regardless of the income of a particular neighborhood. The Act requires financial institutions to help meet the credit needs of the entire community. Responsibilities under the CRA may be met by banks through lending for business, agriculture, education and home improvement or purchase, or by financing state and local governments. The four federal regulators of the banking industry (the Federal Reserve, the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Federal Home Loan Bank

Board) issued a joint statement in 1989 suggesting steps that local financial institutions could take to comply with CRA, including making special efforts to try to meet the identified credit needs of their communities (for example, by participating in federally insured lending programs such as FHA or VA); establishing a community development corporation; and supporting locally based public/private partnerships that provide loans, grants or technical assistance to private development initiatives.

Banks required to fulfill their responsibilities under the CRA represent a significant source of funding for non-profit sponsors of affordable housing projects, for such things as seed money; low-cost construction financing; and reduced rate mortgages for prospective owners. For example, New Jersey Urban Lending, a non-profit organization providing technical assistance and low-interest construction loans to non-profit and for-profit developers of affordable housing, is supported in part by CRA funds from various local banks. This funding source is becoming particularly significant, in light of drastic cutbacks in state and federal funding.

FIRREA AND THE RESOLUTION TRUST CORPORATION (RTC)

The Financial Reform, Recovery and Enforcement Act of 1989 provided for major restructuring of the thrift industry and reorganization of the federal agencies that oversee that industry. The Resolution Trust Corporation (RTC) was created through that legislation to manage and sell failed savings and loan companies and to recover taxpayer funds by managing and selling their assets. The RTC was directed by Congress to dispose of the real estate assets of those failed companies in a way that minimizes losses and maximizes return; would minimize the impact on local real estate and financial markets; and that maximizes the continued availability and affordability of residential properties for low and moderate income individuals.

To accomplish this last directive, the law directs that any single family property to be sold through the RTC which lists for less than \$67,500 be first offered for sale directly to qualified purchasers such as households that earn less than 115% of the median income for the area and intend to occupy the unit or non-profit organizations or public agencies that agree to rent or resell the properties to families earning less than 80% of the area's median income. List price is based on an estimation of the fair market value of the property. If a qualified purchaser is not located within 90 days, the RTC is allowed to sell the property to any buyer. Multi-family properties are subject to the same 90-day marketing period to qualified buyers, with maximum list prices corresponding to the number of units in the structure. The RTC generally does not provide financing for affordable units, instead requiring cash sales where the financing is provided through a third party, such as a state housing agency or a private lender.

The RTC has been criticized by housing advocates for failing to accomplish the intent of FIRREA regarding affordable housing. Some of this criticism stems from contradictions in the objectives defined by Congress. While directing that the RTC assist in increasing

the supply of affordable units, Congress also directed that the agency sell properties in bulk whenever possible and at as close to market value as possible, in order to maximize recovery of taxpayers money. Bulk sales of properties (several properties sold to one purchaser) are not subject to the provisions imposing special conditions on the sale of lower cost units. Additionally, although local governments, non-profit agencies and income eligible households are given the first option to purchase affordable units, the RTC until recently required that eligible buyers pay 95% of the market value for those units, and does not offer reduced-rate financing.

In response to criticism, the RTC recently revised its rules to facilitate the disposition of affordable units to eligible families. The RTC now discounts real estate by 20% immediately and by up to 40% if the property is not sold within six months. The revised rules allow the agency to market eligible single-family properties through a series of sealed bids and auctions as well as individually, and allows the RTC to accept the best offer (at its discretion) for eligible properties which it receives from qualified buyers without regard to a minimum price. Additionally, the RTC can now donate properties that cost more to maintain than can be realized from a sale and that have not sold within a reasonable time to non-profit organizations or state or local agencies that work to provide affordable housing for low or moderate income households.

Activities of the RTC can be expected to have little effect on the supply of affordable units in the Delaware Valley. Many units now held by the RTC are located in the Midwest, particularly Texas, and the majority of the available units are not affordable to moderate income purchasers.

SUMMARY

Funding for federal housing programs has declined drastically over the past decade. Direct federal subsidy of affordable housing is directed mainly at subsidizing rental housing for low and very low income households. Federal involvement in affordable homeownership is limited to federal insurance or guarantees of home mortgages and the creation of a secondary mortgage market to increase the availability of mortgage revenue. The federal government has also allowed state housing agencies to sell tax-exempt mortgage revenue bonds, whereby agencies such as The Pennsylvania Housing Finance Agency and the New Jersey Housing and Mortgage Finance Agency have funded successful single-family homeownership programs. The next two chapters will examine the programs and efforts of the two states.

IV. NEW JERSEY'S AFFORDABLE HOUSING EFFORTS

New Jersey is widely recognized as a leader among the states for its efforts in recognizing and responding to the problems associated with the limited availability of affordable housing units for low, moderate and median income residents. This chapter briefly discusses the evolution of affordable housing policy in the state and describes the primary existing state programs designed to assist in the creation and retention of affordable owner-occupied units.

New Jersey's affordable housing efforts formally began in 1970 when the State Supreme Court upheld a local zoning variance and continued through the most famous exclusionary zoning decisions, known as Mount Laurel I and Mount Laurel II. These two court decisions and the many subsequent court actions which they spawned provided the impetus for the New Jersey Fair Housing Act of 1985. This innovative and distinctive state legislation led to a statewide affordable housing initiative known as the New Jersey Council on Affordable Housing (COAH).

NEW JERSEY CHRONOLOGY

The first New Jersey Supreme Court decision upholding a variance to allow a low-income housing project was decided in 1970. In the case of *DeSimone v. Greater Englewood Housing Corporation*, the court supported the local decision to grant a variance, stating that communities have an obligation to plan and zone for the needs of all segments of the population. By 1971, significant housing cases were brought against four additional municipalities. These cases included a complaint by the United Auto Workers and the National Committee Against Discrimination challenging the "racially discriminatory" zoning of Mahwah Township (in Bergen County); an exclusionary zoning lawsuit by Allan-Deane Corporation against Bedminster Township's five acre minimum lot size requirement; and the filing of the Southern Burlington County NAACP's landmark litigation against Mount Laurel Township. In that same year, Madison Township's entire zoning ordinance was declared invalid in *Oakwood at Madison v. Township of Madison*, with the decision citing large lot zoning, limited acreage for apartments, limitations on bedroom sizes, and minimum floor area requirements in single family homes as exclusionary.

In 1974, the Urban League of Greater New Brunswick initiated the first county-wide lawsuit in New Jersey challenging exclusionary zoning, questioning the ordinances of 23 of Middlesex County's 25 municipalities. In 1975, in *Southern Burlington County NAACP v. Township of Mount Laurel* (commonly referred to as Mount Laurel I), the court ruled that municipalities could not constitutionally enforce land use regulations that excluded

households based on income, and that all municipalities must accept a fair share of the regional housing needs. The responsibility of complying with this decision was left entirely with the municipalities, since no state legislation existed which could be used to enforce the court's mandate.

A 1977 New Jersey court decision, won by a developer, specifically stated that the provision of low-cost housing alternatives could be accomplished by lowering design standards. In its *Oakwood v. Madison Township* decision, the New Jersey court identified a checklist of exactions which municipalities were imposing which resulted in higher housing costs.

However, the same court decision weakened the original Mount Laurel mandate by authorizing a "numberless" approach to determining a municipality's fair share obligation. In two additional cases, *Pascack Association v. Township of Washington* and *Fobe Associates v. Demarest*, the court refused to impose any fair share obligations on older, suburban areas. Many localities interpreted these 1977 decisions as a signal that the Court was reluctant to vigorously impose Mount Laurel obligations, leading to widespread non-compliance by municipalities. In 1978, the Morris County Fair Housing Council, represented by the New Jersey Office of the Public Advocate, filed an exclusionary zoning suit against 27 of Morris County's 39 municipalities.

In 1983, in *Southern Burlington County NAACP v. Township of Mount Laurel* (commonly referred to as Mount Laurel II), the court responded to the lack of compliance of their original mandate to provide affordable housing by assigning to each municipality a numerical allocation of low and moderate income housing need. The court required development of a fair share formula; required the use of the State Development Guide Plan to allocate fair share responsibilities; allowed developers to legally challenge local ordinances as exclusionary and seek "builders remedies"; and assigned three specific trial judges to expediently handle all Mount Laurel litigation. The Mount Laurel II decision led to numerous legal challenges to local zoning ordinances.

A fair share formula which allowed all municipalities in the state to calculate their fair share was approved by one of the three designated Mount Laurel judges in 1984. The first post-Mount Laurel II inclusionary development was constructed during this same year (The Hills at Bedminster) after Bedminster Township settled its Mount Laurel litigation.

NEW JERSEY FAIR HOUSING ACT OF 1985

On July 2, 1985 the New Jersey Legislature adopted the Fair Housing Act (PL 1985, Chapter 222) under pressure from the courts, municipal officials and developers. This pressure resulted from high litigation costs to both developers and municipalities; high density builders' remedies which were mandated by the courts as a solution to exclusionary challenges; and the unreasonably lengthy court process involved in exclusionary zoning and fair share lawsuits.

The Fair Housing Act of 1985 set up a board of nine representatives from state government, local elected officials and persons representing the interests of low and moderate income households, to be known as the Council on Affordable Housing (COAH). COAH was required by the Act to adopt a methodology by which to assign housing need; adopt rules establishing a review process; and establish criteria by which a municipality would design an affordable housing plan.

In 1986, in *Hills Development Corporation v. Bernards Township* (commonly referred to as Mount Laurel III), the Supreme Court declared the Fair Housing Act to be constitutional and referred all housing challenges pending in the trial courts to COAH for disposition.

New Jersey's Municipal Land Use Law requires that any municipality that enacts a zoning ordinance must first adopt a master plan, which at a minimum includes a land use element and a housing element. The Fair Housing Act assigned responsibility to the Council on Affordable Housing for reviewing and approving housing elements in municipal comprehensive plans. Localities are required to specify within these housing elements how their fair share of the regional housing need can realistically be met. COAH defines housing regions; estimates the present and prospective need for low and moderate income housing at the state and regional levels; and defines criteria and guidelines for determining the fair share for each of the state's 567 municipalities.

Municipalities were granted an initial grace period, until January 5, 1987, during which time they could develop and adopt a plan which would provide a "realistic opportunity" to meet the housing needs assigned by COAH. During this grace period every municipality in the state was protected from exclusionary zoning litigation. In order to maintain this protection after the grace period, each municipality is required to file an affordable housing plan with COAH and, at their option, formally request COAH's review and certification of this plan. The filing of a plan or a petition for substantive certification automatically extends an assumed validity to the municipality's plan. This differs from municipal experience before the state courts, where the plan was not assumed to be valid and municipalities were required to prove that local ordinances were not exclusionary. If exclusionary litigation is filed against a locality, the case is typically referred to COAH for review.

METHODS OF PROVIDING AFFORDABLE UNITS

The Fair Housing Act specifically encourages municipalities to utilize innovative approaches to providing affordable housing. However, COAH's regulations and the Fair Housing Act require that the affordable housing plan provide a "realistic opportunity" to provide low and moderate income housing units. This requirement has had a tendency to direct municipalities to utilize four basic methods within their affordable housing plans to address the assigned fair share obligation. These four methods are as follows:

- Inclusionary zoning: Inclusionary zoning is the process whereby a municipality zones residential acreage at higher densities in return for a mandatory set-aside of units which will be affordable for low to moderate income households. For example, acreage may be zoned to allow 6 dwelling units per acre and require a 20% set-aside of affordable units. This concept allows developers to build at higher densities and recover the cost of the affordable unit through the sale of the market value units. For inclusionary development, COAH regulates such elements as pricing of the set-aside units, bedroom size distribution, income of the prospective occupants, location of the units within the development and resale.
- Rehabilitation: Each municipality is assigned a specific number of units (based on census surrogates) which are presently considered unsound and which could be rehabilitated as a partial fulfillment of their fair share obligation. This number is referred to as the "indigenous need" within a municipality's assigned fair share number. Under COAH guidelines, rehabilitation of these units must include necessary repairs to all major systems (heating, electrical, plumbing, roof, structural and foundation) and may also include cosmetic renovations (such as painting or siding). An average of \$8,000 must be spent on units rehabilitated under a locality's rehabilitation program. Most municipalities develop rehabilitation programs as a part of their fair share plan, since it is often more politically acceptable to fund the rehabilitation of existing units for existing residents.
- Municipal construction: Municipalities may opt to fund and construct their own affordable housing projects, rather than allowing developers to build at higher than traditional densities with mandatory set-asides. This option is also politically popular, particularly if the locality opts to build units to accommodate low and moderate income senior citizens.
- Regional Contribution Agreements: COAH's regulations allow municipalities to transfer up to 50% of their fair share obligation to another municipality within its housing region by means of a voluntary contractual agreement between the two localities, known as a Regional Contribution Agreement (RCA). Housing provided through an RCA may include new construction, rehabilitation of existing units or residential conversion of existing units. The sending municipality negotiates and pays to the receiving municipality a specific price per unit transferred, which is then used to produce or rehabilitate affordable low or moderate income housing within the receiving municipality.

The first RCA in the state was signed in February of 1988, when Tewksbury (in Hunterdon County) transferred \$1,200,015 (representing 45 units, at a cost of \$26,667 per unit) to Perth Amboy in Middlesex County. Since 1988, 28 regional contribution agreements have been reached between municipalities,

transferring almost \$61 million to older, urban areas of the state for use in rehabilitating or adding to the existing affordable housing stock.

Proponents of the RCA concept argue that the process allows wealthy suburban municipalities to effectively "sell off" their obligation to provide affordable housing. However, RCA's have proven to be an effective means of channeling funds for rehabilitation and new housing construction back into urbanized areas, where infrastructure and services vital to low and moderate income households (including mass transportation and human services) exist. The City of Newark, for example, has signed agreements to receive \$13,701,500 for the rehabilitation and new construction of housing.

In 1990, the New Jersey Department of the Public Advocate filed suit seeking to invalidate the concept of RCA's, charging that the transfer of affordable housing obligations away from wealthier suburban areas perpetuates exclusionary zoning. However, the state Superior Court ruled in March of 1991 that the concept behind the regional agreements (supporting rehabilitation of the urban housing stock) is endorsed by the federal government.

These four methods represent the primary means through which New Jersey municipalities have attempted to respond to the Mt. Laurel mandate. Alternative methods of providing affordable housing units which COAH is now considering as a part of the re-examination of their rules and policies include accessory apartments; elder cottages; condominium buy-downs; shared housing; "two-fer" in-fill developments (where a moderate-income family owns a duplex and rents one-half to a low income household while occupying the second half); lease-purchase arrangements; and employer-assisted housing.

COAH STATUS REPORT

As of March of 1991, 117 municipalities throughout the State of New Jersey had received substantive certification of their housing elements and fair share plans from COAH. These plans provide an opportunity for the construction of 13,171 new housing units which are affordable to low and moderate income households; the rehabilitation of 1,996 substandard units; and the transferring of credits for an additional 2,151 units to receiving municipalities through Regional Contribution Agreements.

Within the DVRPC region, only 21 of 114 communities have received substantive certification of their housing elements and fair share plans, including 6 municipalities within Burlington County; 7 communities within Camden County; 5 communities within Gloucester County; and 3 localities within Mercer County. These certified plans provide an opportunity for the construction of 2,455 new affordable units and the rehabilitation of 218 existing substandard units. An additional 11 municipalities located within the DVRPC region have presented plans to COAH and have petitioned for certification, and 14

municipalities have been sued by developers and have remained outside of the COAH process.

An obvious problem with the COAH process is the limited participation by municipalities despite the judicial and legislative mandate to develop fair share housing plans. While the provision of a fair share of the region's affordable housing needs is mandatory, the process is market-driven. Municipalities generally file fair share plans with COAH if they are under threat of litigation by a developer challenging their zoning ordinance as exclusionary. As the housing market slows, it becomes less likely that developers will be anxious to build high density residential projects, and the threat of being sued also diminishes. Thus, compliance with the Mt. Laurel mandate to plan for a fair share of the region's housing needs is high when the housing market is good, and declines when the economy tightens. Unfortunately, the need for affordable housing increases during those times of economic downturns when compliance with Mt. Laurel decreases.

Other issues which have arisen as the COAH process unfolds include the accuracy and fairness of the formula used to determine total statewide housing needs and to distribute that total need to municipalities; the definition of housing regions for the purpose of assessing each municipality's fair share number; the definition of income within each region; the relationship between the COAH process and the state planning process; and the role of county planning agencies. Additionally, critics question the lack of monitoring of affordable units produced in response to the Fair Housing Act. However, COAH has generally been successful in fulfilling the objectives of the Fair Housing Act, and the agency's rules and policies have been tested and upheld in the courts on numerous occasions. The Fair Housing Act mandates that COAH revise and publish municipal housing obligations by 1993, and the agency is currently in the process of re-examining its rules and policies in preparation for the calculation of the new local obligations.

AFFORDABLE HOMEOWNERSHIP PROGRAMS IN NEW JERSEY

In November of 1990, New Jersey voters defeated an affordable housing bond issue that would have provided additional funding for low interest mortgages for low and moderate income homebuyers, particularly first-time buyers. A revised Bill (A-4379), known as the "Housing and Jobs Bond Issue of 1991", has been approved by the Assembly Appropriations Committee and is currently being reviewed by the full Assembly. The current legislation would authorize the sale of \$135 million in general obligation bonds to create new housing opportunities for first-time buyers, veterans, the elderly or disabled, tenants and low or moderate income families.

Programs which would be authorized by the pending legislation include a \$60 million program which would provide down payment and closing cost assistance to first-time buyers; a \$25 million program of housing construction in Urban Target Areas; \$15 million to help municipalities meet fair share housing mandates; and \$15 million for disabled and senior citizen housing. The revised legislation attempts to link new job creation (and the

resulting increase in tax revenues) with neighborhood revitalization and the creation of new affordable housing. If approved by the Legislature, voters would again be asked to consider the sale of bonds for affordable housing.

Existing affordable housing programs in New Jersey are administered by the Department of Community Affairs (NJDCA) and the New Jersey Housing and Mortgage Finance Agency (NJHMFA). In general, NJDCA housing programs are community-based, focusing on neighborhood preservation and housing production. NJHMFA programs are designed to provide assistance directly to homebuyers for the purchase of units. Programs of the New Jersey Urban Lending Program and Neighborhood Housing Services are also described.

PROGRAMS OF THE NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS

The primary DCA programs which affect affordable homeownership opportunities are the Balanced Housing Program, the Neighborhood Preservation Program and the Affordable Housing Management Services (AHMS). The DCA, through its Division of Housing, also administers several programs aimed at providing affordable rental housing, which indirectly affect the ability of low and moderate income households to afford to purchase housing by lowering rental costs, thus enabling these households to save money to ultimately be used for downpayment and closing costs.

Balanced Housing Program

The Balanced Housing Program (also known as the neighborhood preservation balanced housing program) was created by the Fair Housing Act of 1985, to be administered within the Department of Community Affairs and funded through a percentage of the realty transfer tax. The major purpose of the program is to assist municipalities in meeting their Mt. Laurel housing obligations. Eligible municipalities include those localities that have petitioned for or received certification from COAH; municipalities which have reached a court-approved settlement of its fair share obligation, including those subject to court-ordered builders' remedies; municipalities that have been designated as a receiving municipality in an approved RCA; and municipalities that are classified as "urban aid" communities and were previously eligible to receive state aid.

The goal of the program is to promote and support acquisition, site preparation, rehabilitation or construction of housing units for low or moderate income occupancy. Eligible activities also include conversion of non-residential space to residential usage and the creation of accessory apartments for occupancy by low or moderate income households. The program is neighborhood-based, providing grants to municipalities for housing projects. Municipalities can either undertake housing projects themselves or contract with other interested parties (such as the local housing authority, a non-profit corporation or a private developer). Fifty percent of the grant money must fund housing which will be available to low income occupants.

While many of the projects financed with Balanced Housing funds result in the rehabilitation or creation of affordable rental units, funds have also been used to fund homeownership projects. The Balanced Housing Program funds only the gap between project cost and other revenues. DCA may deny or reduce funding if the project can be built with less funds or without funding and still be affordable to households earning less than 80% of the region's median income. The maximum subsidy per unit, depending on the sales price and bedroom size, ranges up to \$27,500.

As of July of 1990, the program had funded 175 separate grants at a total cost of \$84.6 million. The Office of Management and Budget has projected that the Balanced Housing Program will receive approximately \$18 million for use during 1991. However, funding during fiscal year 1992 is expected to decrease to \$10.9 million. One problem with the program is that funding is derived from a percentage of the realty transfer tax, so that as the economy slows and real estate activity declines, available balanced housing funding also declines.

All units supported with Balanced Housing funding must remain affordable and continue to be occupied by low and moderate income households for between 10 and 20 years, depending on its location. To accomplish this, DCA requires that projects funded through the Balanced Housing Program contract with Affordable Housing Management Service (AHMS) in order to monitor affordability (see a description of AHMS below).

Neighborhood Preservation Program

The purpose of the Neighborhood Preservation Program is to restore services, promote rehabilitation and repair or restore the infrastructure of viable but deteriorating neighborhoods. Municipalities are given grants with which to undertake neighborhood restoration. Most projects have involved single family housing rehabilitation. Neighborhood Preservation funds may be used in conjunction with Balanced Housing Program funding to promote affordable homeownership, through such techniques as downpayment or closing cost assistance. Participants must earn less than 120% of the median income for the area, and the municipality must demonstrate that the neighborhood has the potential to stabilize within a three to five year period. The maximum grant is \$85,000 per year per neighborhood, for three to five years.

Affordable Housing Management Services (AHMS)

Affordable Housing Management Services (AHMS) was created as a result of the Fair Housing Act, which mandated that various state agencies assist municipalities in meeting their low and moderate income housing obligation. The service was developed as a cooperative effort by NJDCA, COAH and NJHMFA, and is administered within NJDCA.

The Fair Housing Act requires that housing created in response to the legislation remain affordable for at least 20 years. AHMS assists municipalities in meeting this mandate by

helping to market affordable units; establishing a screening process for potential homebuyers or tenants, based on income eligibility; maintaining eligibility lists and referring homebuyers and renters as appropriate; determining maximum resale prices and rental rates; establishing procedures with which to monitor occupancy of the units; and providing counseling services to potential buyers.

If the services offered by AHMS are utilized, reasonable fees are charged to either the municipality or the developer (depending on the agreement) for initial occupancy. A reasonable fee is then charged to the property owner at the time of resale (since AHMS will notify an appropriate, eligible buyer from its waiting list and determine the allowable resale price) or to the landlord in the case of affordable rental units that are reoccupied.

NEW JERSEY URBAN LENDING PROGRAM

The New Jersey Urban Lending Program is a non-profit organization which offers construction loans and technical assistance to developers of affordable rental or for-sale housing. To date, 7 construction loans have been issued, totalling approximately \$17 million and accounting for approximately 201 affordable units. Additionally, the organization has provided planning and technical assistance to an additional 26 developers that eventually secured financing through other sources.

The organization receives funding from Neighborhood Housing Services, Inc. (its parent organization) and private banks, which provide funding in partial fulfillment of their CRA responsibilities. It also generates some income through its loan application fee of \$500 plus 1% of the loan amount at closing. The Urban Lending Program previously received money from the NJDCA, but funding was eliminated as a part of the State's recent cost-cutting measures. DCA, however, continues to provide in-kind services, including free office space and utilities.

In addition to reduced-rate construction financing, New Jersey Urban Lending offers first mortgages to first-time homebuyers unable to secure mortgages through either conventional sources or through programs offered by NJHMFA. Mortgages are offered through Neighborhood Housing Services. Approximately fifty mortgage loans closed within the last year, totalling over \$4 million.

New Jersey Urban Lending was particularly instrumental in facilitating the development of a "two-fer" in-fill project in the City of Camden. The project involved the construction of 22 duplexes, built at a cost of approximately \$110,000 each and sold to moderate income households for approximately \$55,000. These moderate-income purchasers, unable to qualify for a conventional mortgage, were able to use prospective rental income from the second half of the unit in order to qualify to purchase. In turn, they agreed to rent the second half at an affordable rate to a low-income family. New Jersey Urban Lending provided planning and technical assistance to the developer; was able to secure \$1.2 million in funding from NJDCA's Balanced Housing Program to reduce construction

costs; and acted as an intermediary to secure below-market financing for the purchasers. Two Federal Home Loan Banks with local offices provided 8% financing for purchasers, and an additional \$800,000 from the Balanced Housing Program provided loans which allowed buyers to make 20% down-payments, eliminating the need for private mortgage insurance.

PROGRAMS OF THE NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

The New Jersey Housing and Mortgage Finance Agency (NJHMFA) administers programs designed to directly assist prospective homeowners in being able to afford to purchase housing units. Affordable homeownership programs administered by or applied for through NJHMFA include the Basic Homebuyers Program; Homeownership Opportunities for New Jersey Homebuyers; the Community Buyers Program; Homeownership for Performing Employees (HOPE); the Buy-it and Fix-it Program; and the No Down Payment Loan Program. NJHMFA programs are generally funded through the sale of tax-exempt mortgage revenue bonds.

Between 1980 and June 30th of 1990, NJHMFA expended approximately \$1.2 billion on over 23,000 loans through its programs. During this time period, 1,088 loans were issued in Burlington County, totalling almost \$59 million; 2,131 loans were issued in Camden County, totalling approximately \$103 million; 941 loans were issued in Gloucester County, totalling almost \$51 million; and 1,440 loans were issued in Mercer County, totalling approximately \$60 million. NJHMFA's most recent bond issue, in the fall of 1990, was also its largest to date, at \$298 million.

Basic Homebuyers Program

The basic homeownership program offered through the NJHMFA is their Home Buyers Program, the purposes of which are to enable families to buy their first home and to encourage people to purchase in urban neighborhoods. The program provides fixed-rate, long-term mortgages at reduced interest rates (as of June, 1991, HMFA loans were offered at 8.88% annually). Eligible applicants include buyers of houses in Urban Target Areas (specific areas where HMFA offers additional incentives in order to encourage homeownership) and first time buyers (including anyone who has not owned a home in the last three years). Urban Target Areas located within the DVRPC region include the City of Camden, Burlington City, Gloucester City and Trenton.

The income limit for program eligibility is 100% to 110% of median income for first time buyers in general, but are raised to 120% to 140% of median income in Urban Target Areas. The sales price of eligible units is restricted, varying by county. Buyers must be able to provide closing costs and at least five percent of the purchase price as a downpayment.

NJHMFA's Homebuyers Program is advertised through television and print advertisements. Prospective participants are advised of program requirements and given a list of participating lenders (63 lenders currently participate in the program). After deciding if they are eligible and can qualify to purchase, applicants then locate a unit that costs less than the applicable price limit (depending on the location) and submit an agreement of sale, proof of income and 1% of the mortgage loan as a deposit (refundable if the applicant does not qualify for the loan). The participating lenders process the application as they would any mortgage application, with secondary mortgages provided through Fannie Mae. If necessary, NJHMFA will underwrite the loan a third time. When the loan processing is completed NJHMFA pays \$725.00 to the lender for the processing costs incurred.

At closing, the buyer is required to pay an additional 1% of the mortgage loan, and must occupy the unit within sixty days of purchase. The waiting period to participate in the program is generally about eight weeks from the time a unit is located and a sale is negotiated, including 30 to 45 days processing time and an additional 30 to 45 days before closing.

In 1990, \$267 million was expended through the homebuyers program. Individual mortgages averaged approximately \$80,000 to \$85,000. Although program activity level varies as market mortgage rates fluctuate, the 5% down payment requirement and 2% fee serve as a powerful incentive to eligible homebuyers. Reducing downpayment and closing cost demands on the buyer has enabled families to purchase a unit that they would otherwise be unable to afford to purchase.

The program is demand-oriented, assisting buyers in purchasing existing units by reducing down payment requirements and mortgage interest rates. The program does not address the provision of any additional affordable units, and cannot assist prospective buyers unable to locate affordable units in specific locations. Although it is advertised on television and in print advertisements, it also could be argued that since buyers are responsible for contacting the state, obtaining information and applying through certain lenders, persons most in need of the program may never be made aware of its benefits.

Locating an eligible unit may also be difficult in certain areas of the state given current purchase limits, since the median sales price of housing exceeds the program limits in many areas of New Jersey (see Figure I). In Mercer County, for example, the price of a newly constructed unit may not exceed \$135,990 and existing single family units cannot exceed \$94,860, although the median sales price of housing units exceeded \$135,000 in 10 of 13 municipalities in this county in 1989¹³. In Burlington, Camden, and Gloucester

¹³"Homeownership: A Vanishing Dream", Delaware Valley Regional Planning Commission, 1990.

Counties the price of a new unit cannot exceed \$124,290, and the price limit for an existing single family unit is \$99,450.

Homeownership Opportunities for New Jersey Buyers

The Homeownership Opportunities for New Jersey Buyers Program is a \$250 million loan program which began in February of 1991. Unlike other NJHMFA programs, this market-rate program is not funded through periodic bond issues but is accomplished through Fannie Mae's Community Lending Initiative. The project is a joint effort by the NJHMFA (which markets the program), the Federal National Mortgage Association (Fannie Mae) and a private mortgage insurer, the General Electric Mortgage Insurance Company. It offers first-time buyers higher than typical mortgage debt-to-income ratios; higher income eligibility limits than allowed under other homebuyer programs; relaxed down payment requirements; and expanded credit application guidelines.

The program is available to first-time buyers; anyone who has not owned a housing unit within the previous three years; veterans; and a divorced or separated person who retains neither title nor occupancy of their original unit. Eligible households may earn no more than 135% of the county or statewide median income. In Camden, Burlington and Gloucester Counties, the maximum allowable annual income is \$48,645 for a one or two-person household and \$57,105 for households with three or more members; in Mercer County, the allowable incomes for small and large households are \$50,715 and \$59,535, respectively.

Application is made through any one of 23 participating lenders. These lenders sell resulting mortgages to Fannie Mae, often for an agreed upon total for a bundle of mortgage loans. The loans are insured by General Electric. Participating lenders must receive training from the General Electric Mortgage Insurance Company and in turn provide extensive counselling to prospective homebuyers, including four pre-closing counselling sessions and two post-closing counselling sessions, on basic financial management and homeownership responsibilities.

This program offers many incentives which should make it an effective program for prospective buyers who might otherwise be unable to secure a conventional mortgage. The program allows a housing cost to income ratio of 33% as opposed to the standard 28%, allowing many households to purchase units which otherwise may be deemed unaffordable. Purchasers are required to provide only a 5% down payment on the unit, and 2% of that downpayment can come from either gift monies or unsecured loans. The program also serves an expanded pool of potential participants, since income eligibility thresholds are slightly higher than the basic homeownership program. The maximum loan amount is based on the income of the participant using standard Fannie Mae methodology, rather than being pre-determined based on location of the unit.

A weakness of the program is that it again is demand-oriented, and can only assist prospective purchasers in buying existing units at current prices by relaxing lending standards. Loans tend to be riskier, since owners are not required to invest as much as would routinely be required and are also allowed to spend more of their disposable income for housing costs. Since these loans tend to carry increased risk, the cost of private mortgage insurance provided by General Electric is no lower than that offered with conventional financing. The mandatory counselling sessions for participants may, however, lower the risk of future loan defaults.

Community Home Buyer's Program

This program works in conjunction with the Homeownership Opportunities Program, described above. For prospective homebuyers at lower income levels, NJHMFA uses a portion of its bond monies to purchase mortgages from participating lenders. The Agency then offers lower interest rates to lower income buyers. Eligible participants are those households earning no more than 115% of the county or statewide median income. Higher income limits apply if the unit is located within urban target areas, given NJHMFA's objective of encouraging revitalization of New Jersey's cities.

As with the Homeownership Opportunities Program, participants receive extensive pre- and post-settlement counselling on homeownership and financial management. Unlike the basic program, the maximum price of a unit purchased under the Community Buyers Program is subject to the purchase price limits applicable to NJHMFA's Basic Homeownership Program (based on location of the unit) rather than being based on the income of the purchaser.

Homeownership Opportunities for Performing Employees (HOPE)

This agency-originated program is designed to forge a cooperative effort between NJHMFA and the private sector in combating the housing affordability problem, particularly as it affects employers. The program attempts to make housing more affordable by rolling downpayment and closing costs into the mortgage package. Additionally, it provides below market interest rates that increase the prospective homebuyer's purchasing power.

In order to participate in the program, employers must demonstrate financial security to NJHMFA, as determined through an evaluation of their three latest financial statements. Participating employers then select eligible employees based on their own criteria, which must meet state and federal income guidelines. Generally, employers design eligibility criteria based on years of service; employee performance evaluations; and the ability of the employee to accumulate a downpayment. Current annual income limits in Burlington, Camden and Gloucester Counties are \$42,300 for small families and \$48,625 for large families; in Mercer County, income limits are \$ 44,100 and \$50,715 for small and large

households, respectively. Employees interested in the HOPE program inquire directly through their employer.

The current HOPE interest rate for a thirty year fixed rate mortgage is 8.88%. Mortgage payments are graduated over several years, providing additional purchasing power to prospective purchasers who have higher earning potential.

Participation in the HOPE program to date has been limited; HOPE loans total \$700,000, providing an average loan of \$66,667 per employee. NJHMFA provides 100% of the financing, and the only financial responsibility of the employer is to guarantee between 10% and 20% of the mortgaged amount (agreed upon by NJHMFA and the employer at the inception of the program) should the employee default.

NJHMFA has approved nine separate employers for participation in the HOPE program. Within the DVRPC region, employers in Camden and Medford are participants. The relatively low level of employer participation in the HOPE program may be due in part to the lack of knowledge on the part of employers about the range of options available in designing a program that limits their risk. For example, risk may be limited through strict employee eligibility criteria or through innovative financing measures, such as allowing employees to pay a percentage of their down payment against his or her pension. The program is funded through NJHMFA's periodic mortgage revenue bond issues.

Buy-it and Fix-it Program

While many housing programs seek to encourage the construction of new affordable housing units, this program makes use of the existing but deteriorated housing stock. Structured in conjunction with HUD's Section 203(k) program of FHA-insured housing, the Buy-It and-Fix-It Program eliminates the need to secure multiple loans for acquisition and rehabilitation of existing homes by packaging the acquisition loan, rehabilitation loans and closing costs into one mortgage.

Eligible participants must meet the standard income eligibility requirements for other HMFA programs (earn less than 115% of the region's median income, based on household size), with higher income limits applicable to purchasers of houses located within Urban Target Areas. Houses purchased under this program must be at least twenty years old; retain 75% of their existing walls (including 50% exterior walls and 75% of the internal structural framework); and require rehabilitation work which will cost at least 25% as much as the original mortgage investment.

Application for the program is made directly to the NJHMFA. Prospective purchasers must have a sales contract and work specifications for the necessary rehabilitation work. The program falls under the current \$298 million bond issue for all NJHMFA programs.

Although the 203(k) program has been in existence for decades, the program had been phased out in New Jersey before being reinstated under a new organization in March of 1991. Originally, three "players" were required for each application: a lender (to process the application), HUD (to inspect the unit) and NJHMFA (to purchase the loans after the lender and HUD had fulfilled their responsibilities). The bureaucracy involved in participating in the program effectively drove away lenders and discouraged program participation. The new program is administered completely by NJHMFA, from the application process through the inspection and the approval of the mortgage loan. Under its new organization, the Buy-It-and-Fix-It program is expected to operate more efficiently and be more attractive to prospective purchasers.

No Down Payment Loan Program

The No Down Payment Loan Program is originated through the NJHMFA and is available to municipalities and non-profit groups. The purpose of this program is to enable low and moderate income, first-time or urban homebuyers to afford homeownership by offering 100% financing, including amortization of certain closing costs. A primary goal of the program is to encourage municipalities to allow set-asides of affordable housing units in response to Mount Laurel mandates.

Each participating municipality or participating institution must provide tax abatements, donated land or grant money (from CDBG funds or NJDCA's Balanced Housing funds) to projects which in turn provide a percentage of the development as affordable units. Mortgage loan funds are then made available through NJHMFA for purchasers of units within that specific development.

Once the new or existing development has been approved, individuals apply directly to the municipality to participate in the No Down Payment Loan program. Participants must meet standard NJHMFA income guidelines, and units are subject to the same purchase price limits that apply under the Basic Homeownership Program. Eligible borrowers are required to pay an application fee and two percent of the loan, including one percent as a lock-in fee and an additional one percent at closing. The program is funded through periodic bond issues.

Since its inception in September of 1986, this program has granted an estimated 150 loans. Of the 63 lenders who participate in NJHMFA's Basic Homebuyers Program, 20 also participate in the No Downpayment Program. Applicants are required to have a tie to the community (employment, existing residence, or family residence); allow physical visits to their existing home, in order to demonstrate their ability and willingness to maintain a home; and participate in a counseling program prior to settlement and in the months immediately following the sale.

A problem with this program is the fact that participants are not allowed to have any outstanding loan commitments other than with NJHMFA. Given today's economic realities

and existing disparities between employment locations and mass transit routes, many prospective first-time buyers carry outstanding student loan or automobile debt.

Housing Assistance Corporation (HASCO)

HASCO is a subsidiary of the NJHMFA, which develops its own affordable housing and also assists nonprofit and private developers in all phases of housing production. HASCO offers planning and technical services; assistance with determining project feasibility; participation as a co-venturer or co-owner; and assistance in applying for federal funding. Activity to date has been minimal.

SUMMARY

The Mount Laurel court decisions and the Fair Housing Act created a judicial and legislative mandate for New Jersey municipalities to accept and plan for their fair share of the region's affordable housing needs. The mandate is market-driven, with compliance generally initiated by developers seeking to build at higher densities than those allowed by ordinance. Housing assistance programs offered through both NJDCA and NJHMFA assist municipalities in fulfilling their Mt. Laurel housing obligations and assist homeowners in purchasing affordable units. Strict resale controls are imposed on affordable units produced in response to the Mt. Laurel mandate, as a means of ensuring retention of the affordable housing stock.

Accepted methods of providing affordable units recognized by the Council on Affordable Housing (COAH) include inclusionary zoning, rehabilitation of the existing substandard housing stock, municipal construction, and regional contribution agreements. Other methods now being considered by COAH which could be applied in Pennsylvania to produce affordable housing opportunities include elder cottages, conversions, accessory apartments, employer-assisted housing and condominium buy-downs.

A potentially significant new funding source to assist communities in fulfilling their Mt. Laurel housing obligations lies in the housing impact fee regulations now being promulgated by the Council on Affordable Housing. Following the Mount Laurel decisions, many communities (particularly those with high fair share numbers) began charging developers housing impact fees, as a way of raising money to fund affordable housing construction or rehabilitation. Developers challenged these fees, charging that municipalities had no authority to charge them. In March of 1990, New Jersey's Supreme Court ruled that such fees were legal, given that state legislation mandated that communities plan for a realistic opportunity to meet their fair share of the region's housing needs. The Council on Affordable Housing was given the responsibility of developing the rules under which municipalities may charge housing impact fees.

One segment of the development community that should be required to pay a percentage of the cost of providing affordable housing in a community are developers of non-

residential, employment-generating uses, since the need for additional housing stems in part from the needs of prospective employees. Developers of either residential or non-residential projects which include affordable housing units should obviously not be required to also pay a housing impact fee, since affordable housing needs are already being met by the development. Housing impact fee rules should either exempt these developers from having to pay the fee or, alternatively, should allow for payment of the fee from the municipality's general fund.

Rules which require certification of an affordable housing plan by COAH in order to implement housing impact fees would increase participation in the COAH process by municipalities. Compliance with the provisions of the Fair Housing Act and certification of a fair share housing plan by COAH prior to local imposition of a housing impact fee may be imperative, given that the state Supreme Court validated such fees only because of the Fair Housing Act and its directive that localities plan for affordable housing.

The production of affordable housing would also increase if community development and housing funds available to municipalities from other agencies (such as the Department of Community Affairs and the New Jersey Housing and Mortgage Finance Agency) were linked to local compliance with the Fair Housing Act and additional innovative efforts to produce and retain affordable housing. While participation in the COAH process is required in order to receive Balanced Housing Program money, other programs do not impose this requirement. The Council on Affordable Housing is now undergoing a complete re-examination of its rules and policies in preparation for the second set of statewide municipal housing obligations which will be developed and issued in 1993. While having encountered some problems during its initial years, COAH has generally been successful in fulfilling the objectives of the Fair Housing Act.

V. PENNSYLVANIA'S AFFORDABLE HOUSING EFFORTS

This chapter describes the local responsibility for land use and affordable housing in Pennsylvania and state judicial decisions regarding exclusionary zoning litigation and fair share housing cases. The Commonwealth's various programs and policies designed to promote affordable homeownership opportunities are then presented.

The current structure of governmental responsibility in the Commonwealth of Pennsylvania limits the ability to address issues of region-wide significance, such as affordable housing. Municipalities and counties are guided by the Pennsylvania Municipalities Planning Code (MPC), which empowers localities to plan for and regulate their development through zoning, subdivision and land development ordinances. Recent amendments to the MPC require Pennsylvania counties to develop comprehensive plans and update county-wide plans every three years. Municipal comprehensive plans, if prepared, must be "generally consistent" with the county plan, but local units of government are not required to develop or update either a comprehensive plan or a zoning ordinance. County plans are advisory in nature only.

A significant obstacle to a statewide response to the provision of affordable housing in Pennsylvania is the varying degree to which different regions of the Commonwealth are affected. Affordable housing shortages are most severe in the Southeastern portion of the Commonwealth, specifically in the four suburban Philadelphia counties of Bucks, Chester, Delaware and Montgomery, but are not yet a serious problem in many other parts of the commonwealth. A shortage of affordable homeownership opportunities in the southeastern counties is now recognized as a significant problem which is affecting the continued economic vitality of the region, as employers find it increasingly difficult to attract and retain a qualified entry-level work force.

JUDICIAL RESPONSES TO AFFORDABLE HOUSING CHALLENGES IN PENNSYLVANIA

Unlike the courts in New Jersey, Pennsylvania courts have traditionally taken a very passive role regarding the provision of affordable low or moderate income housing. Two issues in Pennsylvania make it difficult to challenge a local zoning ordinance as exclusionary: the procedure for challenges outlined in the MPC and the court's definition of legal standing.

The governing body of a municipality or its zoning hearing board must hear validity challenges to its ordinance before any appeal to the courts. The Pennsylvania MPC

outlines a process known as a curative amendment, where a landowner who challenges the validity of a zoning regulation may present a proposed amendment which would resolve the invalid condition. A municipality which determines that its zoning ordinance is invalid (or exclusionary) may also prepare and enact a curative amendment to correct the ordinance. In such a case, the locality is given 180 days to enact an amendment, during which time they are not required to hear or consider any challenges to the existing ordinance. This zoning review procedure can significantly lengthen the process of challenging an ordinance as exclusionary, increasing the risk and the eventual cost to the landowner or other interested party.

Additionally, Pennsylvania law requires that a person be either a landowner in the community or have an interest in the property in question in order to legally challenge a local ordinance. This definition of legal standing prohibits non-residents and third parties who may represent regional interests from challenging the validity of a local ordinance which they believe is exclusionary. The 1988 amendments to the Municipalities Planning Code (MPC) state that any "aggrieved person" may approach the Zoning Hearing Board. However, the decision regarding what constitutes an "aggrieved person" is left to the discretion of the local Board. Additionally, the reference to "aggrieved" parties is found in some sections of the planning code but omitted from others, leaving questions as to who has standing unresolved.

In cases where a municipality has allowed for a variety of uses and densities, the Pennsylvania Supreme Court has exhibited extreme reluctance in becoming involved in the issue of affordable housing, specifically stating that they do not want to be seen as a "Super Board of Adjustment"¹⁴. When reviewing local ordinances, courts to date have limited themselves to determining whether or not the local hearing board sufficiently considered local and regional housing and development needs during their review of the challenge. The courts have generally not questioned whether a local decision regarding local and regional housing needs was correct or not, provided that the issue was discussed in the local decision.

PENNSYLVANIA CHRONOLOGY

The following cases represent the major case law in the Commonwealth of Pennsylvania on exclusionary zoning practices. Decisions on whether or not local ordinances were exclusionary were made for a number of reasons, including inappropriate minimum lot size; the total exclusion of certain residential uses; an obligation to provide for a fair share of the region's housing need; and a basic reluctance of the court to become involved in local zoning issues. Common to all cases, however, is the reference to a need for a specific land use (multifamily housing) rather than the need for affordable housing units when defining the concept of "fair share housing".

¹⁴*Appeal of M.A. Kravitz, Inc.*, 460 a.2d.1075, 1983.

The validity of a four acre minimum lot size requirement was first challenged in the case of *National Land and Investment Company v. Easttown Township* (419 Pa.504, 215 A.2d.597). The requirement was ruled to be unconstitutional, since it effectively denied access to outsiders. The court held that any ordinance "whose primary purpose is to prevent the entrance of newcomers in order to avoid future burdens, economic and otherwise, upon the administration of public services and facilities cannot be held valid". This case represents the first time that the court considered the responsibility of a municipality to accommodate its share of new development and the interests of persons desiring to live within the locality.

A local zoning ordinance was held to be invalid because it did not provide for any apartment uses in 1970, in the *Appeal of Girsh*. The court determined that localities cannot deny entrance to prospective residents in order to avoid future burdens on its services by not allowing for any multifamily residential land uses. The decision specifically noted, however, that municipalities were not obligated to allow all land uses. Instead, residential uses were differentiated from industrial uses, with the court discussing the "right of people to live upon the land".

The Pennsylvania Supreme Court held in 1975 that a local ordinance was exclusionary because it did not provide for a fair share of the regional need for apartment construction. After the Girsh decision, many localities began providing a token amount of land within their boundaries for apartment uses. Willistown Township, for example, had allowed apartment construction on only 80 acres of a total of 11,589 acres within township limits. The 1975 decision in the case of *Township of Willistown v. Chesterdale Farms, Inc.* (462 PA 445, 341 A.2d. 466) was significant in that it was the first case to consider the idea of regionalism in determining whether an ordinance was exclusionary. Although this decision mandated that a "fair share" of acreage be made available for multifamily construction, the fair share requirement was not defined, and the court did not consider whether zoning for multi-family uses would necessarily result in housing which was affordable to low and moderate income people.

The 1978 case of *Surrick v. Zoning Hearing Board of the Township of Upper Providence* (382 A.2d. 105, 476 Pa. 182) established a three-pronged analytical matrix which would serve as a test for determining whether or not an ordinance was exclusionary. The court recommended that a decision be based on (a) whether the community in question was a logical area for development and growth, (b) how much development would occur in the community based on the existing ordinance, and (c) whether the ordinance had the effect of excluding otherwise logical growth. In determining whether the acreage allowed for multifamily use within the locality was its fair share, the court stated that "the percentage must be considered in light of current population growth pressure within the community as well as the region, and in light of the total undeveloped land in the community". This decision left many questions unanswered, since the court did not specifically define areas which were "appropriate for growth" or "population growth pressure".

The court partially considered these issues in the 1983 *Appeal of Elocin, Inc.* (501 Pa. 348, 461 A.2d. 771), noting that the community was highly developed and had little undeveloped land. Thus, the municipality was not obligated to provide multifamily acreage, and the existing ordinance was found to be constitutional.

The 1983 *Appeal of M. A Kravitz, Inc.* (460 A.2d. 1075, 501 Pa. 200) is significant in that the court voiced their reluctance in questioning a municipal ordinance, specifically stating that they refused to be looked upon as a "super board of adjustment" or "planning commission of the last resort". In this case, the court stressed that a municipality's decision concerning land use is assumed to be correct, and concerned itself only with considering whether the municipality's "zoning formulas ... reflect a balanced and weighted consideration of the many factors which bear upon local and regional housing needs and development". Thus, the court refused to disagree with or even comment upon the locality's zoning classifications, assessing only the process by which the municipality had arrived at their final decision regarding their fair share.

In 1985, in *Fernley v. Board of Supervisors of Schuylkill Township* (509 PA 413, 502 A.2d. 585), Schuylkill Township's zoning ordinance was found to be exclusionary because it totally prohibited the construction of multifamily dwellings. The court specifically stated that any "balanced and weighted" consideration to the "fair share" principle was irrelevant if an ordinance totally excluded certain kinds of residential uses.

More recently, in 1986 a local zoning ordinance was again ruled to be invalid, in the *Appeal of Marple Gardens, Inc.* (514 A.2d. 216). In this case, the ordinance was declared exclusionary because it totally excluded mobile home parks. The court decided that a municipality must provide for all types of residential uses, but that once the uses are provided for challenges must be decided based upon some consideration of whether a "fair share" of acreage is provided.

In 1990 the Pennsylvania Supreme Court again ruled that ordinances which provide for a variety of housing types are still exclusionary if mobile home parks are banned, in the *Appeal of Shore* (573 A.2d.1011). The court also ruled that mobile homes on permanent foundations which meet the standards for conventional units cannot be banned in any zone in the *Appeal of Geiger* (510 PA 231, 507 A.2d.361).

PENNSYLVANIA'S AFFORDABLE HOUSING LEGISLATION

The 1988 amendments to the Pennsylvania Municipalities Planning Code include reference to the provision of affordable housing by municipalities and may reflect an intent on the part of the Legislature to take a more affirmative position on affordable housing issues. For example, when considering challenges to their local ordinance, the zoning hearing board or the governing body is directed to consider the impact of the proposal on

"regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of persons otherwise unlawfully excluded by the challenged provision of the ordinance or map..."¹⁵.

The planning code indicates that any enacted zoning ordinances should reflect community development objectives that are determined by the locality and stated in either a comprehensive plan or in a statement by the governing body. The MPC directs that, among other issues, the community address the "need for housing, commerce and industry" within their statement of objectives¹⁶. The code also states that the purposes of zoning include providing for all basic forms of housing in the community (including single-family, multifamily and mobile homes) and allowing for reasonable overall community growth.¹⁷

Likewise, when considering issues that municipal comprehensive plans should address, Article III of the MPC states that local plans should include strategies "to meet the housing needs of present residents and of those individuals and families anticipated to reside in the municipality, which may include conservation of presently sound housing, rehabilitation of housing in declining neighborhoods, and the accommodation of new housing in different dwelling types and at appropriate densities for households of all income levels".¹⁸

However, the MPC does not require that municipalities develop and adopt a comprehensive plan or enact a local zoning ordinance. Lacking a specific legislative or judicial mandate to consider regional issues such as housing affordability, it seems unlikely that municipalities will voluntarily confront such a controversial problem. While the 1988 amendments to the Pennsylvania Municipalities Planning Code raise questions regarding the intent of the Legislature regarding local responsibility for regional affordable housing needs, the issue remains unclear and unresolved.

AFFORDABLE HOMEOWNERSHIP PROGRAMS OF THE PENNSYLVANIA HOUSING FINANCE AGENCY

Most available affordable homeownership programs in Pennsylvania are administered under the Pennsylvania Housing Finance Agency (PHFA), a public corporation of the Commonwealth. PHFA was created by the Pennsylvania General Assembly in 1972, and

¹⁵Pennsylvania Municipalities Planning Code, Act 247 of 1968 as amended by Act 170 of 1988, Article IX, Section 916.1 (c)(5)(ii).

¹⁶Ibid. Article VI, Section 606.

¹⁷Ibid, Article VI, Sections 604(4) and 604(5).

¹⁸Ibid, Article III, Section 302 (2.1).

given the ability to sell tax exempt revenue bonds in order to finance both single and multifamily housing. Since its creation, PHFA has sold over \$2.7 billion of bonds, with its most recent bond issue equal to \$70 million.

The agency administers several rental housing programs, including its HOMES program; a rental rehabilitation program funded by the U.S. Department of Housing and Urban Development (HUD); and the federal Low-Income Rental Housing Tax Credit Program. While not described in this report, these rental programs may indirectly increase homeownership opportunities by lowering rental costs for participating households, enabling them to accumulate savings for downpayment and closing costs. The agency administers or manages several programs designed to assist existing and prospective homeowners, including the Single Family Homeownership Program; HOMESTART; the Homeowners Emergency Mortgage Assistance Program (HEMAP); and the Pennsylvania Housing Insurance Fund (PHIF).

Single Family Homeownership Program

PHFA's Single Family Homeownership Program is the umbrella program covering both the Statewide Homeownership Program and the Lower Income Homeownership Program. Both of these programs offer 30-year fixed rate mortgages at rates generally one and a half to two points below conventional financing rates, and require payment of fees equal to one percent of the mortgage plus \$200. This fee is approximately one-half of that usually charged by lenders. Loans are originated through local participating lenders. Down payment requirements vary from 5% (for conventional loans) to 3% (for FHA loans) to 0% (for VA loans), although FHA and VA loans are not necessarily available through all participating lenders. The advantages of these programs are the lower mortgage interest rate (providing lower long-term carrying costs) and the lower up-front fees.

The limited number of local lenders participating in the program may make it difficult for eligible prospective buyers to be made aware of or take advantage of the benefits of PHFA's homeownership program. In Bucks County, for example, a total of fifteen lenders county-wide participate in PHFA's basic homeownership program, and of these fifteen, two offices are located in Philadelphia, one in King of Prussia and one in Allentown. Only seven of these lenders are also FHA-approved lenders, and twelve offer VA mortgages. Thus, it becomes even more difficult to combine the reduced interest rate benefit of PHFA's program with the reduced downpayment requirements of either VA or FHA.

Applicants are eligible for PHFA's Single Family Program if they have not owned a home within the previous three years, unless they are planning to purchase within one of 39 "target counties" that are exempt from the first-time ownership requirement. Within the DVRPC region, only Philadelphia County is identified as a "target county". Income limits are determined as a percentage of the region's median income and defined by household size: within the DVRPC region, one or two member households may earn no more than \$36,500, while households with three or more members may earn no more than \$41,500.

The price of the house to be purchased under the program is also limited depending on the region in which it is located. Within the DVRPC region, new homes must cost no more than \$120,000, and existing homes must sell for no more than \$109,000. These sales price limits have made locating an eligible unit difficult in certain locations. In 1989, for example, the median sales price of all housing units was below \$109,000 in only 81 of the 239 Pennsylvania municipalities located within the DVRPC region¹⁹, and the average price of new single family homes is well above \$120,000 in many locations (see Figure I). In Montgomery County, for example, the median sales price of a new single-family detached unit in was \$207,398 in 1988, while the median price of a new single-family attached unit was \$124,900.²⁰ In Bucks County, the median price of a new housing unit in 1990 was \$166,900.²¹

Participants in the statewide homeownership program register for a mortgage lottery and submit an application, including an agreement of sale, to a participating lender. After the lender has prioritized pending applications, PHFA allots a set amount of available funds to each lender based on several criteria, including population and income statistics. Lottery numbers are then drawn to determine in which order individual loan applications will be processed.

Differences between the general statewide homeownership program and the lower income homeownership program include the interest rate and the method of application. The lower income program is specifically targeted to lower income first-time buyers and is available year-round to eligible participants. Participants do not have to go through the lottery process, and lenders may request additional funds from PHFA if loan applications from eligible participants exceed their existing allotment. Eligible participants must meet PHFA's general income limits and also be either a family that consists of at least one parent and one related child, or a handicapped individual. The interest rate for this program is approximately one-half percent lower than the general statewide program. Over 500 families (with an average income of less than \$18,500) have been assisted through the lower income homeownership program to date, receiving approximately \$17 million to finance units that sold for an average price of \$35,397.

Eligible lower income participants may also qualify for closing cost assistance of up to \$2,000 in most counties and up to \$2,500 in Philadelphia County. Closing cost assistance is offered in the form of a second mortgage loan, which must be repaid only if the home is sold, refinanced or transferred within five years of the sale and is forgiven at the rate

¹⁹Delaware Valley Regional Planning Commission, "Homeownership: A Vanishing Dream?", November, 1990.

²⁰Montgomery County Planning Commission, "Housing Price Study", 1989, pp. 8-9.

²¹Bucks County Planning Commission, "1990 Housing Prices and Affordability", April, 1991, pg. B-1.

of 20% per year. Over \$480,000 in closing cost assistance was committed to 368 lower income families during 1990.

A single bond issue is responsible for funding both the Statewide and Lower Income Homeownership Programs. The most recent bond issue was for \$70 million. Over the past 10 years, approximately 35,000 households have been assisted through the two PHFA homeownership programs. In Fiscal Year 1989-1990, almost 4,100 loans were approved. The number of approved loans projected for the 1990-1991 fiscal year is 4,600, a significant increase from the 2,700 loans approved between 1986 and 1987 (see Table II).

HOMESTART

The HOMESTART Program is sponsored through the State Treasurer's Office and managed by PHFA. Under the program, the treasury department purchases mortgage-backed securities guaranteed by the Federal National Mortgage Association (Fannie Mae). Mortgages are then offered at lower than conventional mortgage interest rates, and downpayment requirements are reduced. The program was designed to complement PHFA's Statewide Homeownership Program by offering mortgage loans to prospective homebuyers earning no more than 150% of the area's median income, thus reaching a larger target population. Within the DVRPC region, eligible families may earn up to \$57,450 annually.

The HOMESTART Program is targeted to three types of households: first-time homebuyers; single parent families with dependent children; and veterans who have not been served by VA mortgage programs. Application procedures are comparable to those under the Statewide Homeownership Program. Like the maximum allowable income, the maximum allowable purchase price of the house is higher under the HOMESTART Program than under PHFA's traditional programs; in the DVRPC region, the maximum allowable purchase price is currently \$143,625 for either a new or an existing unit. The required down payment is 5%, of which 2% can be a gift from a family member. Origination fees are slightly higher than the basic PHFA statewide program, equaling 2% of the mortgage loan plus normal closing costs. The monthly mortgage payment, including principal, interest, taxes and insurance, cannot exceed 33% of the applicant's monthly income, as opposed to the standard 30% allowed under conventional lending practices.

The HOMESTART Program held its first lottery in the Fall of 1990, offering \$100 million in mortgage loans statewide and offering an 8.4%, 30-year fixed rate mortgage.

Pennsylvania Housing Insurance Fund

Through its Pennsylvania Housing Insurance Fund (PHIF), PHFA also offers a less expensive alternative to standard primary mortgage insurance and thereby further reduces

TABLE III

**PENNSYLVANIA HOUSING FINANCE AGENCY
SINGLE FAMILY HOMEOWNERSHIP PROGRAM***

	1986-87	1987-88	1988-89	1989-90	1989-90 (Projected)
Loans Approved	2,759	3,123	3,299	4,094	4,600
Mortgage Funding	\$120,690,000	\$162,473,000	\$164,587,000	\$204,335,000	\$245,000,000
Average Family Income	\$ 23,000	\$ 23,700	\$ 24,600	\$ 26,800	\$ 27,500

*Includes both the Statewide Homeownership Program and the Lower Income Homeownership Program.

Source: Pennsylvania Department of Community Affairs, March 1991.

Delaware Valley Regional Planning Commission, June 1991

the cost of homeownership for participating homeowners. PHIF operates as an internal division of PHFA with independent decision-making authority. The fund underwrites the risk of primary mortgage default on approximately one-third of all PHFA single-family mortgage loans. Since private mortgage insurance is routinely required for all mortgage loans which exceed 80% of the value of the property, lower-cost mortgage insurance can reduce the monthly housing cost for virtually all buyers purchasing under PHFA programs.

Homeowners' Emergency Mortgage Assistance Program

This program, created in 1983 by Act 91, is unique among state homeownership programs in that it is designed to help homeowners retain ownership of their home during times of temporary financial crisis. Homeowners about to face foreclosure due to circumstances beyond their control (including such circumstances as unemployment, disability, or the death of a spouse) may be eligible for assistance for up to three years, provided that they live in their home; are in permanent housing (for example, mobile homes are not eligible); and can present a reasonable prospect for taking full responsibility for their mortgage payments within 36 months.

When lenders notify Pennsylvania homeowners of an impending foreclosure, they are also required to provide notice of the availability of assistance through the HEMAP program. The homeowner must then make an appointment with an approved counselling service (listed with the notice from the lender) within 30 days. The counselor must in turn file an application for HEMAP assistance within 30 days of the appointment and a decision to deny or approve assistance must be made within 60 days of receipt of the application. Once the loan has been approved, PHFA pays all arrearage to bring the mortgage current. The homeowner may be required to provide some share of the monthly payment, provided that their share does not exceed 35% of their monthly income. Assistance is provided in the form of an interest-free loan, and repayment does not begin until the homeowner is once again financially stable. Approximately 6,000 families are now repaying HEMAP loans.

Because the applications and approvals are issued on a continuous basis and the loans overlap, it is difficult to estimate the actual number of families assisted through this program. From the program's inception in 1984 through March 15, 1991, a total of 12,223 families had been assisted through the HEMAP Program, for a total of \$122 million in encumbered funds. Estimated funding for both fiscal year 1990-91 and 1991-92 is \$7.5 million annually. While this program does not assist households in purchasing their homes per se, it assists existing homeowners who might otherwise lose their homes to foreclosure and in turn be unable to locate alternative housing. Since 1983, the Pennsylvania Legislature has twice extended HEMAP, most recently through 1992.

PROGRAMS OF THE PENNSYLVANIA DEPARTMENT OF COMMUNITY AFFAIRS

In addition to those programs offered through PHFA, housing assistance programs are offered through the Pennsylvania Department of Community Affairs. Programs offered by the DCA generally operate as aids to communities in general. For example, state planning assistance grants are available to assist communities in developing comprehensive plans, including housing plans. The role of these programs in producing and maintaining affordable housing is a part of the primary goal of stabilizing and maintaining neighborhoods. Homeowners are helped by these programs to the extent that housing programs are incorporated into the neighborhood preservation scheme.

Housing and Development Program

The Housing and Development Program is administered by the Bureau of Housing and Development within the Pennsylvania Department of Community Affairs. Generally, the program provides communities and in some cases non-profit organizations with grants to aid in rehabilitation of the existing housing stock, or for acquisition of vacant residential lots for new housing development. Operating on a \$20 million budget for the past few years, Housing and Community Development makes appropriations annually to low-income neighborhoods. Once the appropriations are made, all funds must be obligated within two years, a difficult task considering that the application review and approval process lasts approximately six months.

Since the late 1940's, this program has funded projects ranging from new construction to rehabilitation of both rental and owner-occupied housing units. Municipalities must have specific projects for which the grants, if awarded, will be used. Philadelphia receives 20% of the funds available statewide due to special legislative exception, which is similar to a block grant for specific neighborhood projects. Of the \$20 million available annually, \$4 million is directed to the City of Philadelphia and administered through the City's Office of Housing and Community Development.

In many depressed areas of the state which receive HCD Program funds, rehabilitation of existing structures is undertaken and the units are ultimately sold at affordable prices to prospective owner-occupants. The Department of Community Affairs has also recently encouraged community-based non-profit groups to apply for funds as a supplement to CDBG funds, which may encourage additional usage of available funds for projects that will result in additional affordable homeownership opportunities.

Neighborhood Assistance Program

The Neighborhood Assistance Program, administered within the Bureau of Human Resources, awards tax credits to corporations who support, amongst other activities, housing rehabilitation. State tax credits of up to 70% are provided to corporations which assist local non-profit organizations in housing activities. This support may be in the form

of either financial assistance or a contribution of materials. The provision of affordable housing opportunities under this program is incidental to the overall goal of revitalizing neighborhoods throughout the Commonwealth.

Planning Assistance

The Pennsylvania Department of Community Affairs offers planning assistance grants to municipalities through its Bureau of Community Planning. These planning grants can assist communities in developing comprehensive plans which consider affordable housing objectives, as directed by the MPC. The agency has also begun developing a statewide Comprehensive Housing Affordability Strategy (CHAS) as directed by the National Housing Act of 1990. Steering Committee meetings are currently being conducted throughout the state to gather data and ideas from housing experts and advocates, in order to determine the policy and direction to be taken within the CHAS.

SUMMARY

Homeownership programs offered through the Pennsylvania Housing Finance Agency provide an opportunity for income eligible households, particularly first-time homebuyers, to purchase a home. These various programs offer reduced mortgage interest rates, reduced downpayment requirements, a lower-cost alternative to private mortgage insurance and closing cost assistance, and provide additional incentives for purchasers of units located within urban areas such as the City of Philadelphia. Planning grants offered through the Department of Community Affairs can assist municipalities in developing a local housing strategy as described in the MPC, and DCA has begun development of the statewide Comprehensive Housing Affordability Strategy required by the 1990 federal housing legislation.

However, municipal planning in Pennsylvania remains optional. Although the Pennsylvania courts and the Legislature have begun to discuss the significance and extent of the affordable housing problem, neither has mandated that local governments provide a share of the region's need for affordable housing units. Existing homeownership programs focus on enabling moderate and median income households to purchase existing units, and generally do not assist in the production and retention of affordable owner-occupied units.

VI. CONCLUSION AND RECOMMENDATIONS

This chapter summarizes the respective roles and need for cooperative relationships among the public and private sectors, and provides 51 specific recommendations for federal, state, county, municipal, regional agency and development community action to increase the affordable housing stock and decrease the cost of homeownership opportunities in the region.

Federal homeownership programs are currently limited to mortgage guarantee and insurance programs and the government's role in creating a secondary mortgage market. Mortgage insurance programs enable households to purchase units by allowing them to borrow more money through reduced lending standards and down payment requirements. The secondary mortgage market purchases mortgages from primary lenders, increasing the availability of mortgage money. These programs address demand rather than supply, requiring the prospective purchaser to locate an affordable unit before participation. The underlying assumption is that affordable units exist which could be purchased by moderate and median income families, if assistance in financing these units is offered to eligible households. While it is generally recognized that housing programs of all types receive insufficient funding, these programs may also be under-utilized due to the limited supply of affordable housing.

Although limited funding for the actual development of new affordable units is available through the two state Departments of Community Affairs, state housing agencies also primarily address the demand side of the affordable housing issue, providing low-cost financing, reduced down payments and closing cost assistance. Prospective purchasers must be able to locate affordable units on their own and work through a local participating lender in order to participate in available ownership programs.

Although under-funded, programs are in place to assist people in obtaining financing and paying the initial costs of homeownership, if affordable units are available. While these programs are essential to help increase homeownership in those areas where existing units are affordable, such as the urban areas of Philadelphia or Camden, more action must be taken to increase the stock of affordable housing units elsewhere in the region. Given the existing fiscal realities of both the federal government and the states, deep subsidies for constructing affordable, owner-occupied housing are unlikely. The key to resolving the affordable housing crisis and increasing the stock of affordable units therefore lies in approaches which decrease the cost of producing housing and thereby increase the number, availability and distribution of affordable housing units.

THE ROLE OF NONPROFIT ORGANIZATIONS

Non-profit organizations have become invaluable in terms of packaging limited funding sources to produce viable projects. For example, non-profit organizations have sponsored successful affordable housing developments by securing Community Reinvestment Act (CRA) money and funding from various foundations; obtaining low-cost construction financing; packaging state mortgage interest-rate deduction and federal mortgage insurance programs; and selling mortgages on the secondary market (for example, to Fannie Mae). Non-profit organizations are also able to initiate innovative methods of responding to problems facing moderate and median income purchasers, such as lease-purchase arrangements which require little, if any, up-front costs. Non-profit organizations work directly with community residents and bring the added benefits of helping to build community spirit.

Additional federal and state grants should be made available to responsible non-profit organizations which work to effectively combine funding sources and develop affordable housing. The 1990 affordable housing legislation presents an opportunity for these groups to receive additional funding, provided that eligible counties, cities and states develop Comprehensive Housing Affordability Strategies (CHAS). The legislation also affords city, county and state planning and housing agencies additional control over the activities of non-profit organizations, since these agencies are responsible for developing the CHAS as a means of coordinating housing goals and activities. Non-profit organizations would be more effective in actually developing affordable housing for ownership, though, if they encountered less opposition on the local level to the development of affordable housing alternatives.

RECOMMENDATIONS

The actual production of affordable units is now and will likely continue to be initiated and regulated at the local level through local land use controls, particularly zoning. In both Pennsylvania and New Jersey, localities have demonstrated extreme reluctance in allowing either high density residential development or non-traditional housing techniques and designs which can accommodate affordable development. Given this local reluctance, the ultimate means of increasing the supply of affordable for-sale housing units are statewide mandates and incentives to provide a share of the region's need for affordable housing. Based on New Jersey's experiences with limited participation by municipalities as the housing market slows, workable mandates cannot be only market-driven (initiated under threat of litigation by builders seeking to build at high densities) but must also be linked to other incentives or penalties, such as preferential state funding for infrastructure projects or ineligibility for certain funding sources if municipalities refuse to comply.

Competition between municipalities to attract the type of commercial developments which are viewed as high tax-generators but low service users must also be eliminated. This

chase for high "tax rates" is often accompanied by a reluctance to accommodate the residential densities that would facilitate affordable housing development. Any long-range solution must therefore include either regional tax-base sharing (where adjoining municipalities share both the revenue from tax-generating developments such as commercial or industrial uses and the cost of services and infrastructure necessitated by residential development) or the application of a formula allocating each municipality's fair share of affordable housing that is sensitive to the financial responsibilities tied to such development.

Existing homeownership programs in both Pennsylvania and New Jersey appropriately offer incentives designed to encourage homeownership within urban areas such as Philadelphia, Camden and Trenton. These areas can accommodate moderate and median income households in the existing affordably-priced housing stock and offer mass transit service and the necessary health and human services. Homeownership within urban areas promotes revitalization and stabilization of the urban centers; discourages the continuation of the regional pattern of urban sprawl; and assists in providing the necessary work force for employment concentrated in these urban areas. New Jersey's concept of regional contribution agreements, whereby wealthier suburban municipalities contribute towards the development and redevelopment of affordable housing in the urban centers, should also be encouraged. This concept would allow wealthier suburban municipalities in Pennsylvania, for example, to partially fulfill their responsibility for a fair share of the region's affordable housing needs by contributing towards improving homeownership opportunities within the City of Philadelphia.

The concept of regional contribution agreements should not be a complete substitute, however, to the provision of affordable housing within each municipality. In addition to existing program incentives for urban areas, programs which encourage or require the production of additional affordable housing units in suburban municipalities will provide a more equitable distribution of housing opportunities within the region. Affordable housing opportunities in suburban areas will provide a closer match of workers to jobs, which are increasingly locating in the suburban areas.

Revisions to local, state and federal regulations can significantly reduce housing construction costs. At the same time, however, developers must pass on cost savings to the consumer, and the price of affordable, below-market cost housing must be controlled to ensure retention of the affordable housing stock after future resales. New Jersey's resale controls on affordable units produced in exchange for density bonuses to the developer (in the form of deed restrictions linking allowable increases in price at resale to increases in the median income of the region since the original sale) could be used as a model.

SUMMARY

Recommended Federal Actions

The federal government must recognize both the interrelationships between affordable homeownership, the tightening rental market and eventual homelessness, and the linkages between affordable housing for the labor force and overall economic vitality. Housing must therefore be identified as a national priority, and additional federal funding should be committed to homelessness prevention programs, low and moderate income rental programs, affordable homeownership programs and overall community development programs. The federal government should also provide an incentive for state and local affordable housing action by linking federal funding priority with state and local affordable housing efforts.

- Appropriate the full funding amount authorized by the National Affordable Housing Act of 1990;
- Commit additional funding for affordable homeownership programs (including the development of employer-assisted housing programs, down payment and closing cost assistance programs, and mortgage interest rate reduction programs), recognizing the link between affordable homeownership and economic development;
- Link other federal funding (including Community Development Block Grant funding, transportation and infrastructure funding, and funding for open space or recreational development) to each community's attempts to address their share of the affordable housing needs of its region; and,
- Continue to fund low-cost rental assistance programs, recognizing the link between the affordability of the rental housing stock and the ability of moderate and median income households to move up the "housing ladder" to eventual homeownership.

Recommendations For State Legislatures And Agencies

Give local reluctance to provide for a fair share of the region's housing needs, state legislatures and agencies should assume the primary responsibility for defining housing goals and policies, defining state and regional housing needs and mandating local housing planning. Both states should require that local planning and zoning schemes accommodate a fair share of the region's housing needs and that localities actively work to reduce housing construction costs, thereby allowing developers to produce affordable units. The states should use the strong incentives created by financing provided to local governments to link eligibility for state funds directly to local compliance with the state's housing mandate. Various state agencies which deal with housing should be coordinated

and state permitting procedures should be streamlined as a means of reducing housing production costs.

- The New Jersey legislature should require all New Jersey municipalities to adopt fair share housing plans which address their individual mandates for affordable housing under the provisions of the Fair Housing Act in order to remain eligible for certain state funding, such as infrastructure funding, Green Acres funding for recreation, all funding from the Department of Community Affairs, and funding for highway projects under the New Jersey Department of Transportation;
- The Pennsylvania legislature should require Pennsylvania municipalities to develop comprehensive plans and to include within their planning document a plan considering the needs of prospective residents of all income levels and addressing their share of the region's need for affordable housing units. The Commonwealth should take the lead in establishing the goals, policies and acceptable standards for defining regional affordable housing needs, and eligibility for state funding sources should be linked to each locality's fair share housing actions. State planning grants could assist municipalities in undertaking this process;
- Both states should streamline the permitting process, particularly for environmental reviews and permits, to maintain the level of protection but provide clear standards and a faster time-frame;
- Both states should increase the availability of funding for infrastructure improvements (including streets and water or sewer systems) in communities which allow and encourage higher density development, particularly in areas linked to employment centers or the mass transit network;
- Both states should coordinate the responsibilities and activities of the various state agencies dealing with housing and community development, in order to ensure that all agencies are working towards common goals and to facilitate the most efficient usage of available funds and professional staff. Educational programs for new members of municipal or county planning boards should be developed to assist local officials to understand their affordable housing responsibilities and mandates;
- Both states should develop statewide recommended technical standards for site improvements such as sidewalks, driveways and curbing;
- Pennsylvania should develop and adopt a uniform construction code for residential construction and rehabilitation;

- The Pennsylvania legislature should consider the adoption of housing impact fee legislation such as that being promulgated by the New Jersey Council on Affordable Housing, in order to allow municipalities to charge reasonable fees to market-rate developers to assist in meeting the community's affordable housing needs reasonable fees. However, impact fee regulations must be in a form which is useable and productive for municipalities;
- Both states should continue to support the construction of low-cost rental housing, in order to increase the affordable rental housing stock and allow potential homebuyers to accumulate the necessary capital to eventually purchase a home;
- Both states should continue to utilize available state housing funds to support the development of employer-assisted housing programs (such as New Jersey's HOPE program) and actively market the benefits of those programs to employers;
- Both states should actively market their existing programs to a broader audience, in order that all prospective homebuyers are aware of program benefits and program qualification requirements. Utilize a multi-media approach, including television, radio and print to sell both the existing programs and the importance of providing affordable housing;
- Both states should encourage and support (for example, through financial incentives) lower-cost alternative housing construction techniques, particularly modular housing; and,
- Pennsylvania should develop and New Jersey should refine an effective management and monitoring process which ensures that units built using subsidies or other incentives and originally sold at below-market prices to moderate and median income buyers remain affordable upon resale (using NJDCA's Affordable Housing Management Services as a model).

Recommendations For Municipalities

The authority to regulate the density, scale and type of housing built in both Pennsylvania and New Jersey rests at the local level through local land use controls, particularly zoning. Local zoning controls are perhaps the single most important factor in controlling housing production. Local governments must therefore recognize their responsibility to provide for the needs of all current and prospective residents and revise local ordinances to allow and encourage the production of lower cost housing alternatives. Municipalities should respond to statewide mandates to provide for a fair share of the region's affordable housing needs by revising comprehensive plans and zoning ordinances to allow the residential densities necessary to produce affordable units. Local land use controls

should be reviewed and revised to reduce construction costs while still protecting the public good, and steps should be taken to reduce the length of time required to process, review and approve land development applications.

- Revise zoning ordinances to allow medium and high density residential development that would facilitate affordable housing production in areas appropriate for growth (in terms of existing water, sewer, transportation and other infrastructure);
- Allow flexibility in housing designs in most residential zones, including zero-lot line development and cluster developments, to give developers flexibility in designing higher density developments while reducing adverse environmental impacts and producing quality open spaces;
- Encourage mixed-use development and planned residential developments and reduce the number of acres necessary for planned residential developments to a minimum of five acres;
- Provide density bonuses to developers willing to provide housing units affordable to moderate and median income purchasers at controlled, below-market prices within their development;
- Use vacant public lands or acquire available vacant land for the development of affordable housing projects;
- Rezone excess industrially or commercially zoned land for residential uses and supportive services (such as neighborhood commercial development);
- Reduce minimum lot sizes and minimum floor area requirements in residential zones to accommodate smaller single-family homes, thus creating the densities necessary to support mass transit service and reduce the cost of municipal services;
- Actively market lower-cost alternative construction techniques such as modular construction as a means of reducing housing construction costs;
- Award density bonuses for developers who undertake in-fill development on vacant tracts to produce affordable units at controlled, below-market prices;
- Encourage adaptive reuse of non-residential structures for residential uses as appropriate;

- Allow elder cottages, accessory apartments and residential conversions (of one residence into two, for example) as a means of increasing the affordable housing stock for one and two person households, particularly the elderly;
- Review and revise as appropriate existing site requirements (including landscaping requirements, setbacks, sidewalks, curbs, street widths, lighting requirements, and parking space requirements) and construction standards. Require developers to meet specific performance standards but provide the flexibility necessary to allow the use of updated and less expensive construction methods and technologies;
- Abide by all requirements defined in either the New Jersey Land Use Law, the Pennsylvania Municipalities Planning Code, New Jersey's Transportation Development Districts Act or Pennsylvania's Act 47 (Transportation Partnerships Act) regarding reasonable impact fees and other proposed exactions;
- Require only a reasonable amount of dedicated open space for park or recreation purposes from developers (as allowed by Pennsylvania's Municipalities Planning Code or New Jersey's Municipal Land Use Law) and award density bonuses to developers who provide more than a pre-defined, reasonable amount;
- New Jersey municipalities should closely follow the regulations currently being written by the Council on Affordable Housing regarding imposition of housing impact fees and development of a housing trust fund and adopt a reasonable ordinance if appropriate, in order to supplement funding to meet the housing needs of the community;
- Abide by all requirements defined in either the Municipalities Planning Code or the New Jersey Municipal Land Use Law concerning services such as plat review fees and fees for engineering inspections of improvements;
- Review existing ordinances to ensure that requirements are clearly stated and consistent between all documents (for example, within the comprehensive plan and the zoning ordinance) and update or (if none exist) adopt clear and concise ordinances;
- Review proposed development plans concurrently with county planning agencies rather than waiting for county agency's comments before beginning local review;
- Smaller, less developed municipalities should consider developing joint municipal and planning ordinances and boards with adjacent communities,

which would facilitate a more coordinated and efficient review of prospective development projects; and,

- Appoint alternate members to zoning hearing boards in order to eliminate postponements due to lack of a quorum.

Recommendations For County Planning Agencies

County agencies should assist state and regional agencies in defining regional housing needs and in working with municipalities to quantify their fair share of the region's need. Each county's overall comprehensive planning efforts should include a comprehensive housing affordability strategy, to be used as a guide for municipal housing planning efforts. County planning agencies should also utilize their staff and resources to assist municipalities in developing local affordable housing plans.

- Develop and update a county-wide comprehensive housing affordability strategy as required by the 1990 federal housing legislation, as a means of tracking the existing affordable housing stock and the current and projected housing needs of the community and thereby maintaining a regional view of affordable housing needs;
- Assist in defining county and regional housing needs and each municipality's fair share of the county's affordable housing needs;
- Utilizing county planning staff and resources, provide technical assistance to municipalities willing to plan for a share of the county's affordable housing needs, through direct planning assistance and through such activities as the publication of model zoning provisions which promote affordable housing unit production (such as those released by the Bucks County Planning Commission and the Montgomery County Planning Commission);
- Facilitate expedient county review of all proposed development plans; and,
- Include in the county review of proposed local developments a consideration of the impact of a development on the regional housing needs and the locality's fair share of the regional need for affordable housing.

Recommendations For Regional Planning Agencies

The role of regional planning agencies such as the Delaware Valley Regional Planning Commission lies in assisting the counties and the states in defining regional housing needs. Regional agencies should also provide data and technical assistance to counties and municipalities, and provide a regional perspective on residential and non-residential development.

- Assist the states and counties in defining regional affordable housing needs;
- Assist in coordinating regional housing activities;
- Provide data and technical assistance to counties and municipalities; and,
- Define existing linkages between land uses and infrastructure (including transportation and water and sewer infrastructure), thereby identifying areas appropriate for affordable housing development.

Recommendations For Developers

All the best efforts of government planning agencies will be lost without a cooperative relationship with the developers and builders who ultimately create the housing in the region. Developers must be viewed as partners who can combine profits and public benefits to create affordable homeownership opportunities.

- Take advantage of all government programs which provide tax credits or favorable loan conditions for the provision of either new or rehabilitated affordable units;
- Market housing units at prices which reflect cost savings resulting from reduced construction and land costs;
- Encourage, propose and participate in public/private partnerships in order to reduce housing costs, including the construction of affordable housing units on vacant public lands as appropriate;
- Propose and negotiate density bonus increases and fast-tracking of development approvals in exchange for the provision of below-market affordable units; and,
- Review all applicable development regulations (such as comprehensive planning documents, zoning ordinances and environmental regulations) to ensure that all applicable requirements have been met and all necessary documents are included in the original submission, in order to expedite the review process.

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APPENDIX A

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