



N.J. appellate court upholds Highlands Council plan to prevent housing development in environmentally-sensitive area

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By **MaryAnn Spoto/The Star-Ledger**



Andrew Mills/The Star Ledger In this file photo, Roxbury Mayor Jim Rilee shakes hands after he introduces Gov. Chris Christie at a Roxbury town hall meeting. Rilee is the new chairman of the state's Highlands Council and is one of four newly appointed members.

New Jersey's plan to curb development in the environmentally sensitive Highlands can move forward despite claims it will hurt efforts to add affordable housing, a state appeals court panel ruled today.

The three-judge panel gave the thumbs-up to the Highlands Council's master plan, turning back legal challenges by affordable housing advocates and developers.

The rulings — made in five separate cases — were hailed by environmental groups who say it will help protect ground water from the 860,000-acre Highlands region that is used by more than 5 million New Jerseyans.

Environmentalists are sometimes wary of affordable housing projects — which are often included with larger housing projects — saying they can easily turn into sprawl if there aren't tight controls on development.

"That's why you want it to be controlled by the (Highlands) plan and not by builders and lawsuits," said Jeff Tittel, director of the New Jersey chapter of the Sierra Club. "Affordable housing numbers are about affordable housing, not about protecting the water and protecting the environment."

Housing advocates, however, slammed the decisions, saying the Highlands plan does nothing to spur construction of homes or apartments for low- and moderate-income residents.

"There are no regulations at all in the Highlands," said Kevin Walsh, counsel to the Fair Share Housing Center. "The Highlands Council is making things up as they go along. That's not the way our government is supposed to work."

Fair Share Housing Center had challenged the validity of the Highlands Council's master plan, adopted in 2008, which includes affordable housing units in the 88 communities in the Highlands region.

Fair Share Housing contends the Highlands Council, made up of 15 appointees who make decisions on how the region in the northeast corner of the state will be developed, had not adopted any rules. Walsh said that means mayors could make any agreements they want with the council, including moving affordable housing units out of their towns.

But the appeals court panel said the Highlands regional master plan was adopted appropriately and that affordable housing is part of the overall planning process, not a separate issue.

The judges noted that the master plan is also designed to protect ground water, revamp polluted sites and preserve open space, farms and significant historic areas.

The appeals court panel rejected Fair Share Housing's claim that an executive order signed by Gov. Jon Corzine in 2008 should be invalidated because it reduced the size of the affordable housing obligations in the Highlands without directing that those units be built in a different location.

It also ruled against developers J&S Group Inc., Bocina Homes and Toll Brothers who contended in separate lawsuits that the Highlands Council was required to set aside land for development when it restricts construction in other spots, a procedure known as transfer of development rights.

Walsh said his group is deciding whether to ask the Appellate Division to reconsider its decision.

Eileen Swan, executive director of the Highlands Council, said the council is "very pleased" with the ruling.

"It affirms our work," she said. "The method by which the regional master plan was adopted was more rigorous than any rule making. We are always very careful to go back to the Highlands Act and make sure we are always consistent with it."

Staff writer Ben Horowitz contributed to this report.