

New Jersey Court Clips Highlands Council's Wings, Upholds Exemption

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In the latest chapter in a long-running saga over a JCP&L substation in the Highlands Preservation Area, the Appellate Division of New Jersey Superior Court affirmed the DEP's authority to approve an exemption from the Highlands Act notwithstanding an adverse recommendation from the Highlands Council. The Highlands Act includes certain exemptions from the Act, the Highlands Regional Master Plan, any rules or regulations adopted by the DEP, including an exemption for certain public utility lines, rights-of-way, and system upgrades "provided that the activity is consistent with the goals and purposes of this act ". The statute calls the DEP to determine when the exemptions apply through the Highlands Applicability Determination (HAD) process.

The DEP granted an exemption for the substation subject to certain conditions, including Highlands Council approval of a landscaping plan that uses native plant species to screen the substation from adjacent homes and roadways and complement the character of an existing historic district. The Highlands Council's review went far beyond that, and concluded that the substation project was not consistent with the goals and purposes of the Highlands Act. The DEP rejected the Highlands Council's recommendation and upheld the exemption.

A local citizens group appealed, and the Appellate Division upheld the DEP's decision. Emphasizing that it is the DEP, not the Highlands Council, that has authority to decide Highlands Act exemptions, the court agreed with the DEP that "the Council exceeded its mandate in issuing a 'recommendation' that the exemption did not apply." The court concluded that the DEP was not required to defer to that recommendation.

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