



# New Jersey Supreme Court Strikes Down COAH Growth Share Rules, Invites Legislative Action on Affordable Housing

## Client Advisories

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The New Jersey Supreme Court issued [an opinion on September 26, 2013](#), invalidating the Council on Affordable Housing's ("COAH") third round growth share rules, finding noncompliance with the State's Fair Housing Act (the "FHA"). The Court held that the third round rules, originally adopted in 2004, exceeded COAH's authority under the FHA for two reasons:

- The agency calculation of affordable housing needs did not include region-specific data; and
- The rules failed to definitively quantify each town's housing obligation because the obligation could be adjusted based on actual growth.

Since the growth share methodology was considered so entwined with the whole regulatory program, the Court invalidated all of COAH's procedural and substantive rules and required new rules to be adopted within five months, by February 26, 2014. Throughout the decision, written by Justice Jaynee LaVecchia, the Court emphasized its intent to defer to legislative action and to not impose a "straightjacket" on the Legislature if it decides to change the FHA, even stating an open mind on the possibility of a legislatively dictated growth share approach.

The dissent, authored by Justice Helen Hoens, criticized the majority for failing to provide guidance on constitutionally acceptable alternatives, for reading provisions of the FHA too narrowly and out of context and for invalidating the entire COAH program instead of ordering a routine correction.

The decision continues the extreme uncertainty which has characterized affordable housing in New Jersey since 1999. While we wait for COAH or the Legislature to act, we will be working on guidance for our clients on questions such as:

- Will towns' third round fair share numbers increase or decrease?

- Will the Legislature reach a consensus which the Governor can approve, within the five-month time frame, and if so, will it resurrect the current growth share approach or take a different approach?
- How does the decision affect towns involved in builder's remedy suits and towns which previously obtained approval of third round housing plans?
- Should towns take any action before the new COAH rules are adopted?
- Can towns continue to collect developer's fees while fair share obligations are unclear and housing plans may be unenforceable?

If you would like to discuss these or other questions concerning the Supreme Court decision, or any related issue, please contact Guliet Hirsch, Partner in Archer's **Land Use, Environmental Permitting and Compliance Group**, at (908) 788-9700 or [ghirsch@archerlaw.com](mailto:ghirsch@archerlaw.com), or any member of the Group at any of our offices listed below.

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