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Highlands Act is fair, court rules

Appellate court rejects claim that act is unconstitutional.

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The state's controversial law restricting development across a large swath of North Jersey doesn't trample property owners' constitutional rights, an appellate court ruled Friday.

The 35-page ruling marked the first time an appeals panel has weighed in on the validity of the 2004 law, which was established to protect the water supply for 4 million people. The law curbs development on some 800,000 acres across Warren, Hunterdon, Morris, Sussex, Passaic, Bergen, and Somerset counties.

Opponents of the Highlands Act said the decision is off base.

"It steps on the U.S. Constitution," said Richard Gardner, a freeholder in Warren County, which joined nine property owners in filing a lawsuit in April.

Devlen Mackey, a farmer who heads the Highlands Conservation Association, said the ruling was predictable. His group intends to sue in federal court next month, he said.

Mackey said his 100 acres in White Township were once worth \$2 million, but now he wouldn't get the \$500,000 he still owes on the land, where he grows fruits and vegetables.

"They decide they can come along and change the rules and not pay anybody," Mackey said.

The appellate court said the Highlands Act allows property owners to apply for a hardship waiver through the state Department of Environmental Protection.

The decision actually gives the DEP guidance on how to evaluate hardship applications, directing the agency to streamline the process, said Livingston, N.J., attorney William F. Harrison. Harrison developed policy as Highlands coordinator and chief counsel for the New Jersey Office of Smart Growth from 2002 to 2005.

Harrison, also a former assistant director at the Pinelands Commission, said, "It is not likely that any direct attack on the statute will succeed."

However, if the Highlands Council doesn't get a management plan in place -- it already is 14 months late -- that might be grounds for a successful challenge, he said. For now, the courts are accepting that if a plan is adopted soon, it's still "within the bounds of reason," but if the delays continue, that might not be the case, Harrison said.

In March, the Highland council chair reported to the appellate court that its final regional master plan would be adopted before Sept. 30, 2007.

Six lawsuits challenging the Highlands Acts remain pending in the courts while there are another 30 cases appealing DEP rules, said David Wald, a spokesman for the Attorney General's Office.

Friday's appellate decision upheld a November 2005 ruling by Superior Court Judge Theodore Bozonelis,

who rejected a Morris County developer's claim that the law's development restrictions amounted to an unjust taking of land.

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