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U.S. Supreme Court Rejects Challenge to the Highlands Act

The United States Supreme Court has rebuffed a challenge to the validity of the Highlands Water and Protection and Planning Act and the Highlands Regional Master Plan, ending a two-year court battle brought by nine landowners who claimed the Highlands Act and Regional Master Plan constituted a taking of private property without just compensation.

The challenge was initially dismissed by the Superior Court of New Jersey on January 18, 2008; the Appellate Division of the Superior Court of New Jersey affirmed that decision on September 4, 2009, and the New Jersey Supreme Court declined to hear the case in January. On June 28, the U.S. Supreme Court notified the New Jersey Office of the Attorney General that it would not hear the case after reviewing briefs by both parties and the earlier court decisions.

“The U.S. Supreme Court’s dismissal of this case affirms the decisions of the New Jersey courts, which upheld the validity of the Highlands Regional Master Plan, the boundaries of the Preservation Area, and the remedies available to Highlands Region property owners,” Highlands Council Deputy Executive Director and Chief Counsel Tom Borden said.

In their original complaint to the New Jersey Superior Court, the landowners claimed the Highlands Council did not have the authority to adopt the Highlands Regional Master Plan; the Highlands Act violated the constitutional rights of farmers and large property owners; the transfer of development rights program (TDR) is not a viable source of funding; and the Highlands Act boundaries are not justified by science. The complaint was dismissed Superior Court of New Jersey Judge the Honorable Paul Innes. Further appeals were rejected by the Appellate Division of the Superior Court and the New Jersey Supreme Court.

In their Petition for a Writ of Certiorari (a review of the lower court’s decision) to the United States Supreme Court, the petitioners claimed the Highlands Act constituted a taking of private property

without just compensation in violation of the Fifth Amendment, and that farming is a fundamental right requiring strict judicial scrutiny in examining due process and equal protection claims. The Supreme Court denied the petition without comment.

“The Highlands Act includes a number of provisions to address landowner equity for property owners with large lots including exemptions, waivers, the dual appraisal method for land preservation, and the Transfer of Development Rights Program,” Highlands Council Executive Director Eileen Swan said. “The Act also sets goals for the preservation of farming and farmland as they are vital components of the economy, welfare, and cultural landscape of the Highlands. We must continue our focus on these provisions.”

The Highlands Council has advocated and testified in support of the extension of the dual appraisal methods for the Highlands to address lands preservation under the Green Acres and Farmland Preservation programs. Under the dual appraisal method, property owners in the Highlands who voluntarily preserve their land under these programs will receive two appraisals – one based on the current property value, and one based on the local zoning, State environmental laws, and NJDEP regulations in effect as of January 1, 2004 (before the adoption of the Highlands Act). The higher of these two values will be used as the basis for negotiation. The extension bill, A-2217, would extend the period for another five years, until June 30, 2014. The bill was passed unanimously by the Assembly and Senate and is before Governor Christie for his consideration.

For landowners that may not qualify for Green Acres or Farmland Preservation, see the Highlands Council’s Transfer of Development Rights program and the Highlands Development Credit Bank at: <http://www.highlands.state.nj.us/njhighlands/hdcbank/>. Applications are being accepted through July 15 under the second round of hardship consideration for purchasing Highlands Development Credits from eligible Preservation Area property owners using \$10 million in Bank funding.