



JON S. CORZINE
Governor

State of New Jersey
Highlands Water Protection and Planning Council
100 North Road (Route 513)
Chester, New Jersey 07930-2322
(908) 879-6737
(908) 879-4205 (fax)
www.highlands.state.nj.us



JOHN R. WEINGART
Chairman

EILEEN SWAN
Executive Director

Press Release

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Contact: Eileen Swan

Court Upholds Constitutionality of the Highlands Act

Chester, NJ – On the 3rd anniversary of the Highlands Act, the Appellate Division of the Superior Court of New Jersey has upheld the constitutionality of the Highlands Water Protection and Planning Act. In a comprehensive decision, the Appellate Division fully affirmed the trial court decision issued by the Honorable B. Theodore Bozonelis. The decision involves a 93 acre tract of undeveloped forested land in Washington Township in Morris County. The plaintiff, OFP, L.L.C., which sought to subdivide the property into 26 residential lots, filed a complaint alleging that the Highlands Act violated the protections in the New Jersey and United States Constitutions regarding due process, equal protection and taking of property without just compensation. In addition, OFP argued that the Preservation Area boundary was arbitrary given the property's proximity to the Combe Fill South Landfill.

In a strong and thorough decision, the Appellate Division rejected OFP's claims that the Highlands Act was unconstitutional. The Appellate Division concluded that "the trial court correctly held that OFP's taking claim should not be entertained because OFP failed to avail itself of the administrative remedy of a hardship waiver." The court discussed the Legislature's creation of a hardship waiver in the Highlands Act to allow for the waiver of the Preservation Area regulations to avoid a taking without just compensation.

In addition, the Appellate Division rejected OFP's claim that the retroactive application of the Highlands Act was unconstitutional or manifestly unjust by emphasizing that the retroactivity is limited to a four-and-a-half month period and by concluding that "the evident legislative purpose in providing for limited retroactive application of the Highlands Act was to prevent a rush by landowners to obtain development approvals." Lastly, the court rejected the claim that inclusion of the property in the Preservation Area was arbitrary. The court concluded that, in fulfilling the purpose of the Highlands Act to preserve clean drinking water and natural resources from sprawl development, the "Legislature was not required to consider the condition of each individual property within the preservation area in establishing its boundaries" and that individual circumstances can be examined through an application for a hardship waiver.

Chairman John Weingart said, "This is a significant endorsement of the Highlands Council's regional approach to planning for the future of this critical part of New Jersey" and Executive Director Eileen Swan noted that "This is a landmark decision that upholds the importance of the Highlands Act and the ability built into the Act to address situations of true hardship."

In August 2004, the New Jersey Legislature enacted the Highland Water Protection and Planning Act in order to protect nearly 860,000 acres which supply drinking water for more than sixty-five percent of New Jersey's residents. The Highlands Act created the Highlands Council as a regional planning entity charged with protecting the water resources and natural beauty of the New Jersey Highlands while allowing for planned, sustainable development and redevelopment of the region. The Council members include a broad and representative range of elected officials from Highlands municipalities and counties, as well as individuals with diverse backgrounds and area perspectives.