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## NJ is re-evaluating strict septic rules that angered Highlands Act landowners

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State environmental officials are re-evaluating the regulation considered most onerous by property owners in the Highlands, the one that has led to a near end of subdivision developments.

The New Jersey Department of Environmental Protection is in the midst of studying the "septic density" rule it implemented in May 2005 as a result of the Highlands Water Protection and Planning Act in 2004.

That rule allows construction of only one septic system per 88 forested acres and 25 farmland acres in the preservation area — that half of the 860,000-acre region considered most critical to ensuring the state's water supply. That effectively ended the ability of landowners to build large-scale housing developments.

The DEP has been defending this rule for years against a lawsuit by the New Jersey Farm Bureau, which claims the septic regulations are arbitrary and not based on science. But last March, as a judge was about to hear the case, the DEP sought a six-month delay in the case in order to review its regulations.

"We are looking at septic density in response to the pending court action," said Larry Ragonese, a DEP spokesman. "A number of people alleged our science on this issue was not supporting the DEP's conclusions. So, we thought it was prudent to look at the science and standards approved by a previous DEP administration."

The Farm Bureau hopes this is the first step the new administration is taking toward loosening Highlands regulations to allow for more development.

"These flawed density standards lack adequate scientific support and have greatly reduced property uses for many Highlands landowners," said Richard Nieuwenhuis, president of the Farm Bureau.

But environmentalists, some of whom worked for decades to get land in the area preserved, worry the review will hurt land and water protection efforts.

**"I hope they will realize why the rules are as they are, that they are supported by science," said Julia Somers, executive director of the New Jersey Highlands Coalition. "But this (review) does not reflect well on the department."**

The farm bureau challenged the rule as arbitrary and not scientifically justified. For instance, it had argued that the DEP rules assume too many people would be living in each home in the region and used record drought water levels. It contended that by using a more accurate, smaller family size and a somewhat higher but still low average rainfall amount would lead to a rule allowing one septic per 6.2 acres.

Two years ago, an appellate panel sent that challenge to the office of administrative law for a full hearing after determining that the bureau had raised substantial questions about the validity of the rules. But in March 2009 the judge found the rules to be reasonable. The farm bureau is appealing that ruling, with arguments to have begun four months ago.

The strict rules led to a virtual halt of major development in the preservation area, including sections of Morris County, and complaints from landowners about lost land value for which no compensation is available.

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