

Court's ruling protects S.C. wetlands

Conservationists applaud long-awaited decision

The S.C. Supreme Court dealt a smashing blow Monday to developers who have tried for years to overturn state rules that safeguard coastal freshwater wetlands from unchecked development.

The decision, much anticipated by environmentalists and developers, overturns a 2008 lower-court verdict that declared invalid state rules protecting freshwater wetlands along the coast.

If the Supreme Court had upheld the lower court decision, potentially hundreds of thousands of acres of freshwater wetlands would have been open for development without state oversight.

Conservationists cheered Monday's decision, saying it's an important victory for the plants, wildlife and wetlands that define South Carolina's Lowcountry.

"This has been a cloud hanging over coastal wetlands and coastal resources in general for nearly 10 years now," Pawleys Island lawyer Jimmy Chandler said.



"We finally put this argument to rest."

Chandler said the Supreme Court decision reinforces protections for all freshwater wetlands on the coast, but it is particularly significant for isolated depressions.

Isolated wetlands have been largely without federal protection in South Carolina since a 2001 U.S. Supreme Court ruling curtailed the U.S. Army Corps of Engineers' authority. The ruling left state regulators with the only authority to limit or stop development in the soggy depressions - but that authority has been under attack.

Since 2001, developers from Beaufort to Myrtle Beach have raised questions about the state's coastal law and South Carolina's authority. But the case decided Monday is the only one to reach the S.C. Supreme Court.

Chandler's co-counsel, Amy Armstrong, called the decision "the most significant and far-reaching" their office had handled in years. "It affects literally hundreds of thousands of acres of wetlands that are not protected under federal rules."

Stan Barnett, a lawyer for a business group that had challenged state authority, said he has little choice but to accept the Supreme Court decision. While isolated wetlands are considered important to wildlife, they also can get in the way of new development that businesspeople say helps the economy.

"The Supreme Court in this state is the last word," Barnett said. "I'm disappointed."

Despite the ruling, developers can still get permission to build in isolated wetlands - but only after review and approval from the state Department of Health and Environmental Control. Monday's Supreme Court decision allows DHEC to continue oversight. The agency can turn down a developer's request or require a change in plans.

Unlike river swamps and salt marshes, isolated wetlands aren't directly connected to streams, lakes or the ocean. Many are fed by groundwater or rainfall and are rich in plants and wildlife. Black bears, for instance, are attracted to isolated wetlands near Myrtle Beach to feed on the succulent berries that grow there.

Carolina bays, rare oval-shaped depressions found almost exclusively in South Carolina, are among the types of isolated wetlands in the coastal plain. South Carolina has 300,000 to 400,000 acres of isolated wetlands, most of which are in the coastal plain.

At issue before the S.C. Supreme Court was a company's development plans for 62 acres at Murrells Inlet, at least half of which includes isolated wetlands.

The state Department of Health and Environmental Control had denied a storm water permit for the work, but that was overturned by the S.C. Administrative Law Court after the development company appealed. Spectre LLC was preparing the land for future commercial development.

Administrative Law Judge John McLeod said the state coastal-management program was not valid because it had not been through the proper procedures to regulate coastal development. The state could not use the coastal management program to deny permits in isolated freshwater wetlands, the court said. McLeod also said federal rules did not apply because the wetlands were isolated.

But Monday, the Supreme Court said McLeod had erred and it upheld the state coastal-management rules as valid. The Supreme Court said the coastal program was approved by the Legislature, making it a legal way to regulate wetlands at the state level.

The S.C. Supreme Court case does not affect salt marshes, which are protected by a separate state permitting program, or isolated wetlands in the state's interior, where state rules are different than on the coast.

DHEC, the S.C. Wildlife Federation, the Coastal Conservation League and the League of Women voters had appealed the case to the Supreme Court. Last October, the court heard arguments in the case.

"DHEC is pleased with the state Supreme Court's unanimous ruling upholding the validity of our coastal-management program," DHEC spokesman Thom Berry said. "This complete and important victory in the Spectre case will allow DHEC to continue to implement regulations and policies to guide the reasonable use and protection of our resources."