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REAL ESTATE / TRANSACTIONAL LAW

Update

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SUPREME COURT TO DECIDE CHALLENGE TO HIGHLANDS

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On December 5, 2007, the Supreme Court of New Jersey granted OFP, LLC's petition for certification to consider the legality of the Highlands Water Protection and Planning Act, P.L. 2004, Chapter 120 (Highlands Act). In 2004, OFP challenged the Highlands Act as unconstitutional on its face and as applied to OFP's property. Both the trial court and the Appellate Division upheld the constitutionality of the Highlands Act.

OFP's property, located in Washington Township, Morris County, consists of more than 90 acres. The Highlands Act, which was adopted on August 10, 2004, contained a provision making the effective date of the statute retroactive to March 29, 2004. Prior to March 29, 2004, OFP had obtained preliminary subdivision approval and had vested land use rights to construct 26 single family homes. OFP also had obtained numerous environmental permits from the NJDEP. In fact, as of March 29, 2004, the only outstanding permit for the project was the NJDEP's Potable Water Supply Permit, which was obtained on May 4, 2004. The subsequently adopted Highlands Act has served to deprive OFP of any use of its property for over four years and has effectively barred OFP from constructing the 26 lot subdivision that was approved by the Washington Township Planning Board in

1999. OFP's case presents a substantial question of public importance that transcends the interests of OFP as the Highlands Act adversely effects the interests of all owners of property located within the New Jersey Highlands preservation area.

In enacting the Highlands Act, the Legislature intended not only to protect and preserve an environmentally sensitive area, but also to ensure fairness to property owners whose property values would be adversely affected by the substantial limitations on development mandated in the area "by a strong and significant commitment by the State to fund the acquisition of exceptional natural resource value lands." N.J.S.A. 13:20-2. The Legislature mandated that the Highlands Council adopt a Regional Master Plan (RMP) no later than 18 months after the date of its first meeting. The Legislature further mandated that the Highlands Council establish a transfer development rights program (TDR Program) for the Highlands Region which furthers the goals of the RMP. The TDR Program would entitle an applicant to receive the market value of its development rights adversely affected by the adoption of the Highlands Act based on rules and regulations of the NJDEP in effect its day before the date of the enactment. The deadline for the adoption of the RMP

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expired on June 15, 2006. The deadline for the adoption of the TDR Program expired on March 10, 2006. As of April 1, 2008, there is still no RMP and no TDR Program. The Highlands Council's failure to follow the Legislature's mandate is now squarely before the Supreme Court for consideration.

For the past four years, OFP and many other property owners in the Highlands Region have been deprived of any use of their land and have received no compensation from the State of New Jersey.

The Supreme Court has not set a date for oral argument. Please check the Sterns & Weinroth website for the latest updates on OFP's challenge of the Highlands Act and the scheduling of the argument.

If you have any questions regarding this case or the Highlands Act, please contact Brian Mulligan at bmulligan@sternslaw.com or 609.989.5038.

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