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By Randi Schillinger, Esq., Saiber Schlesinger Satz & Goldstein, LLC Where should we (or can we) develop? The Highlands Water Protection and Planning Act

Ask anyone today to comment on significant events with respect to the current state of the New Jersey real estate market and likely the response will focus on slowing home sales. Although the slow down in the residential market may be the headline grabber of today, of greater long-term significance are the various development regulations and initiatives enacted over the past few years and which are on the horizon. These have and will continue to drive development away from rural “green fields” and toward redevelopment of inner city areas and brownfields.



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the intense initiative toward the protection of open space have removed and continue to remove thousands of acres of open land from the “buildable” category. In contrast, programs such as “Smart Growth,” the financial incentives offered in connection with redevelopment, the Brownfields Initiatives and liability protections offered to developers of brownfields are difficult for developers to ignore.

On April 12, 2006, the New Jersey Superior Court Appellate Division, upheld the Stormwater Regulations, N.J.A.C. 7:8-5.5(h), which establishes “special water resource protection areas” around New Jersey’s Category One waterways, consisting of 300-ft. buffers on each side of these waters. The Department of Environmental Protection (“DEP”) calculates that 3,855 miles of rivers and streams and 10,219 acres of reservoirs have Category One protection.

On August 22, 2006, in response to continuing flooding in the Delaware and Passaic basins, Governor Corzine announced substantial changes to the New Jersey Flood Hazard Area Control Act. The new flood regulations will limit development in flood plains and create new anti-flood

measures in addition to expanding buffer zones around state streams. The former requirement of 25-50 ft. buffers will be increased to 50, 100 or 300 feet depending on the category of the waterway the property adjoins. Early estimates from builder organizations suggest that the new expanded undeveloped buffer zones could place tens of thousands of additional acres off limits to development.

The Highlands Act was signed into law on August 10, 2004. In November 2005, the Superior Court of New Jersey dismissed a lawsuit alleging that the Highlands Act constituted a taking of private property without just compensation. The Highlands Preservation Area consists of approximately 400,000 acres where development will be severely limited, if not completely prohibited.

In addition, the DEP has intensified permit compliance inspections for DEP Land Use permits, including Freshwater Wetlands, Coastal Area Facility Review Act (CAFRA), Stream Encroachment, Waterfront Development, Coastal Wetlands and Highlands Preservation Area. In a July 20, 2006 News Release, DEP reported on substantial penalties assessed (in ex-

cess of \$600,000 each) for violations of the Freshwater Wetlands Protection Act and Stream Encroachment Act by two builders in connection with their construction sites.

Where does this leave development going forward in New Jersey? DEP has identified approximately 10,000 brownfields sites across the state with potential for development.

The recent trend in concert with the state’s “Smart Growth Initiative” is to rehabilitate old warehouses and buildings in urban areas – particularly at locations where transportation, sewer lines and other infrastructure are already in place. The regulations, initiatives and increased enforcement of existing regulations are compelling developers to become redevelopers. Developers would agree that in many instances, they are concentrating on rehabilitating rather than building, because there is no other sensible option, all of which point developers towards the redevelopment of New Jersey’s cities and older suburbs.

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