

Highlands Act still a good deal a decade later

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Ten years ago today, [the New Jersey Highlands Water Protection and Planning Act](#) was approved by a 90 percent majority of the Legislature and signed into law by Gov. Jim McGreevey. It was a far-reaching and complex bill that, as a matter of public health and economic security, would secure New Jersey a plentiful supply of clean water for at least another generation.

[The Highlands Act](#) was a last-resort response to uncontrolled sprawl that in the previous 20 years consumed more than 100 square miles of Highlands forests, wetlands and farm fields — and that an uncoordinated framework of municipal, county and state regulations had proven incapable of controlling.

Over the past 100 years, New Jersey's densely inhabited northeast metropolis had developed a reliance on the Highlands' clean drinking water, which also supplies food, beverage, pharmaceutical, energy and other water-consuming industries. The Highlands forests — which stand out in the heavily populated northern half of the nation's most densely populated state — functioned as a vast sponge that naturally filtered out impurities at a fraction of the cost of structural water treatment.

Today, 5.4 million people in New Jersey drink Highlands water and enjoy the fourth-lowest water rates in the nation. An abundant supply of clean Highlands water allowed northern New Jersey to grow and expand to the extent it has. Still, the region was fast approaching the point where continued growth and development would exceed the Highlands' water-bearing capacity.

Has the Highlands Act lived up to its promise? To farmers who say the law stripped their land of value, by barring the kinds of building that developers would pay big money for, the state reneged on a promise to compensate them for lost value. For 10 years, nothing has dogged the Highlands Act and impeded its full implementation like this issue.

The perception of the failed compensation promise is the focus of [Gov. Chris Christie's hostility toward the law](#), his justification for making anti-Highlands Act appointments to the Highlands Council — the government agency that oversees the law — and reason for [firing the council's committed](#), effective executive director. It has politicized the Highlands Council and polarized the Highlands region.

For the record, there is nothing in the Highlands Act requiring compensation for its impact on property values. In legal decisions on challenges to the Highlands Act — lawsuits brought by farmers — and similar court cases, the mere act of government limits on land use isn't cause for compensation. In fact, New Jersey's constitution gives the state power to regulate land use, and courts have ruled that it's appropriate for government to protect public-trust resources.

There is no legal requirement to compensate landowners for the law's impact. But what about a moral obligation, and any unmet promise of compensation?

In legislative hearings before passage of the Highlands Act, the bill's prime sponsor, Sen. Bob Smith (D-Middlesex), told landowners: "We will show you the money."

At the time, the Garden State Preservation Trust Fund was flush with cash to buy land and development rights on forest or farmland critical to the state's water supply and under threat of development. The Highlands Act required that an even greater portion of the fund go to the Highlands. This is the "compensation" Smith was promising.

Smith also sponsored the bill that helped Highlands landowners by requiring that the trust appraise their property as if the Highlands Act never happened — thus, at higher property values. But it was for the sale of the land, or at least development rights. The state had no intent to write checks and getting nothing in return. There would be no "compensation" for the mere loss of speculative value.

The current Highlands Council — remade with Christie's appointees, including their chair — has committed to fulfilling the "compensation" promise. It has yet to define its funding source, who will be compensated and for what. Meanwhile, the Garden State Preservation Trust Fund, for the first time in 50 years, is depleted.

Whether or not the Highlands Council can pull that rabbit out of its hat, we are emerging from a long economic downturn that effectively halted the development pressures the Highlands Act was intended to keep at bay. Already, we are seeing interest in long-dormant development projects rekindled, such as the Bi-County Development in Oakland and Bellemead in Tewksbury, and a troubling willingness by the government to find loopholes to grant them exemptions from Highlands regulations.

Now may be the time, at the Highlands Act's 10-year anniversary, to remind ourselves why the law was needed, and to remind the government that we have given to them the solemn responsibility of protecting our public resources.

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