



# Success in the Highlands

## Smart Growth Recommendations from New Jersey Future

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### Development, Preservation Costs Necessitate a Creative Master Plan

Passage of the Highlands Water Protection and Planning Act in 2004 marked an important first step in protecting lands that supply drinking water for more than half of all New Jerseyans – but only a first step.

The Act divides the Highlands into two areas — the 416,000-acre preservation area that will be subject to special protections, and the surrounding 443,000-acre planning area that contains some areas suitable for development as well as high-value conservation lands, most of which are presently zoned for growth.

An important first step is to enhance on-going preservation efforts. The state, counties and municipalities, ably supported by land trusts, water purveyors and other organizations, are already busy preserving key parcels in the Highlands. This effort needs to be expanded, in part by focusing additional federal funding targeted to the region.

An immediate challenge, however, is to protect environmentally sensitive lands within the region from development now, until acquisition funds become available over time and landowners are willing to sell. This challenge must be met jointly by the Highlands Council, a 15-member regional planning group created by the Act, and by the NJ Department of Environmental Protection.

The Council's most powerful tool will be the regional master plan it must adopt by June 2006. New Jersey Future believes that this plan should be based on an analysis of the region's capacity to accommodate growth. Placing critical lands off limits to development must be a primary strategy to avoid the low-density sprawl that fragments habitat and breaks up contiguous forest. The plan must also control where and how growth occurs, so that it complements preservation areas and strengthens communities. These aspects of the plan – preservation of environmentally sensitive lands first, and then growth – should encapsulate the Council's vision for the region and drive its decision-making.

NJDEP will be responsible for promulgating a suite of regulations designed to protect the water supplies and ecological resources of the area. These regulations will provide tighter standards on any "major developments" in the preservation area.

Yet another critical step must also be taken — because development will still threaten one-third of the preservation area as well as many conservation lands in the planning area — and within the foreseeable future, there are not enough funds to purchase all the necessary land. Work by our colleagues at Regional Plan Association and Environmental Defense shows:

- There are approximately 180,000 acres of undeveloped, environmentally sensitive land in the "preservation area" of which 120,000 are open to limited development. Even with Highlands Act restrictions, it is estimated that some 7,000 – 14,500 units could be built.<sup>1</sup> (Note: Rules due from Department of Environmental Protection in May could affect these numbers.)
- There are another 120,000 acres of unprotected land in the "planning area" that are a top priority for preservation.<sup>2</sup> Currently, 90,000 of these acres are zoned for growth, at an estimated level of approximately 40,000 residential units.<sup>3</sup>
- According to a New Jersey Future study, preserving these 300,000 acres would cost more than \$1.9 billion in today's dollars. Yet between fiscal years 2005 and 2009, only \$450,000 million in acquisition funds will be available, creating a short-term funding gap of at least \$1.45 billion.<sup>4</sup>

A key part of the plan then must also be techniques to shift development from conservation areas to places where growth is desired, which has the added benefit of preserving landowner equity to some degree using these tools:

- Clustering on non-contiguous lots.
- Municipal Transfer of Development Rights (TDR) programs that shift growth within a town.
- A regional TDR program that relocates growth to voluntary areas within the region and in nearby towns.

**See page four for New Jersey Future's detailed policy recommendations.**

# A Master Plan That Uses All Tools to Achieve Regional Goals

## A Legislative Mandate for Preservation

The primary purpose of the Highlands Act is to protect the region's many natural resources. Land preservation is identified as a primary tool.<sup>5</sup> The legislation specifically calls for the Council to "*identif[y] zones within the preservation area where development shall not occur in order to protect water resources and environmentally sensitive lands and which shall be permanently preserved through use of a variety of tools including but not limited to land acquisition and the transfer of development rights.*"

## How Much Land Should be Preserved?

Our planning colleagues estimate that there are **300,000 acres** of unprotected, undeveloped land in the Highlands that have high conservation values and should be permanently preserved.<sup>6</sup>

## How Much Would it Cost to Reach this Goal?

An analysis of open space and farmland purchases in the Highlands over the last six years shows ongoing increases in acreage prices, with this year's average cost to the state estimated at \$6,200 per acre. Multiply this number times 300,000 acres, and you get a total preservation bill starting at **\$1.9 billion** in today's dollars. (Note that the \$6,200 average cost figure does not factor in the matching funds provided by local governments and nonprofits.)

## How Much Land Can be Preserved through Acquisition?

To ascertain projected spending in the region during the next five years, New Jersey Future polled all available sources of land acquisition funds in the Highlands. We divided the total, some \$450 million, by the projected cost of open space or farmland. We found that, under optimistic assumptions, **approximately 65,000 acres could be purchased between July 2004 - June 2009**. About one half of this would be purchased with Green Acres funds, and just under a third with Farmland Preservation funds. Because most acquisitions depend on willing sellers, there is limited control over *what* land is purchased.

## How Can Clustering Help?

Clustering on non-contiguous lots can be used to transfer growth between two parcels that have the same owner, but need not be adjacent. This simple tool is being used extensively in the NJ Pinelands to prevent scattered development in low-density zones. Clustering

works best as a conservation tool when the underlying zoning density is appropriate.

## How Can TDR Help?

The Highlands Act requires the Council to use TDR as a tool to implement the regional plan by transferring growth from conservation areas to growth areas in the planning area, or elsewhere in Highlands counties.

TDR programs generate economic value in growth areas by allowing builders to purchase the right to increase density. The more attractive the growth area is as a place to build, the more the density increases will be worth. Well-located receiving districts with publicly funded infrastructure and strong design standards generate the most value. This value is then used to purchase development rights from conservation areas. TDR banks can make this transaction simple for builders and landowners.

TDR programs provide a way to enable preservation AND economic growth for a town or region, by:

- Protecting land from development without purchase through designation of preservation zones and financial credits to the landowner.
- An alternative, often lucrative, form of compensation for landowners interested in selling their land.
- Later purchase of the property in fee simple, by government or private conservancies, if desired.

## Regional Planning Symposium

New Jersey Future is collaborating with the Regional Plan Association, Environmental Defense and the Regional Planning Partnership to provide factual information on land preservation goals and techniques in the Highlands. We presented our preliminary findings to the Highlands Council last February.

The group is now planning a Regional Planning Symposium on June 14 at 6:30 p.m. at the Morris County Cultural Center. Members of the public are welcome to join local and national experts in discussing ways to promote preservation of critical lands and opportunities for smart growth. For more information, contact Sasha Corchado at RPA's New Jersey office at [sasha@rpa.org](mailto:sasha@rpa.org).

## Benefits of Accepting Growth Include Saving Land

Most suburban and rural municipalities shun growth, fearing its impact on schools, roads and the need for more taxes. The prevailing wisdom has been that down-zoning is the best approach to land use. Yet, even where appropriate, down-zoning is only a first step. While it reduces the amount of growth, it also results in more low-density sprawl that fragments forests and farmland.

Another approach is suggested by leading municipalities across New Jersey concentrating higher-density growth as a way to meet community objectives, especially when modest incentives are provided. Consider the following:

- Some 20 towns have applied for designation as transit villages this year, which requires approval of master plans that encourage compact densities around transit stations.
- Some 15 municipalities have applied to be TDR demonstration projects. The chosen towns will use TDR to revitalize older neighborhoods, strengthen failing shopping districts, create new villages and build transit centers, while preserving open lands.
- Redevelopment areas are being created at record pace to enable towns to revitalize underutilized places where infrastructure already exists.

The Highlands Act provides incentives for municipalities that are certified as being in conformance with the regional plan and that create TDR receiving districts with a moderate<sup>7</sup> density. These incentives include:

- Authority to impose impact fees
- Generous planning and zoning grants
- Priority for state land-acquisition grants
- Priority for state infrastructure funds
- Legal protection

(Towns located in Highlands counties but outside the region are eligible for the first three benefits.)

To encourage further municipal participation, the Council can promote TDR as a tool for reaching these other community objectives:

- Preserving their remaining lands, by designating local sending districts, targeting land acquisition grants, and recommending low-density zoning for these lands.
- Strengthening existing neighborhoods through redevelopment, transit-oriented development and infill development.

The Council can limit regional growth transfers into plan-



Crosswicks Village in Chesterfield Township inspired the design of Chesterfield's TDR village. Photo by Clarke Caton Hintz

ning-area towns by promoting receiving districts outside the region and by using “intra-municipal” TDR as much as possible. Because so many towns – 83 total – include at least some Planning Area land, many development transfers can occur within a single municipality. This eliminates the fiscal impacts that may occur when growth, especially residential growth, is transferred from one town to another. To the extent that regional transfers are needed, they should be spread fairly through the region.

## Informational Resources

### Highlands Water Protection and Planning Act

Find the full text of the legislation at:

[www.nj.gov/dep/highlands/docs/highlands\\_bill.pdf](http://www.nj.gov/dep/highlands/docs/highlands_bill.pdf)

Find a bill summary from the Rutgers Cooperative

Extension at: [www.rce.rutgers.edu/Highlands/](http://www.rce.rutgers.edu/Highlands/)

Find information from DEP on the Act's implementation

at: [www.nj.gov/dep/highlands/](http://www.nj.gov/dep/highlands/)

### New Jersey's TDR Program

Overview of TDR programs from New Jersey Future:

[www.njfuture.org/articles/transfer\\_rights\\_04.pdf](http://www.njfuture.org/articles/transfer_rights_04.pdf)

For information on TDR grants and technical assistance,

visit [www.nj.gov/dca/osg/resources/tdr/index.shtml](http://www.nj.gov/dca/osg/resources/tdr/index.shtml), or

contact Courtenay Mercer, NJ Office of Smart Growth,

609-943-9938. To learn more about the statewide TDR

bank, visit: [www.state.nj.us/agriculture/sadc/tdrbank.htm](http://www.state.nj.us/agriculture/sadc/tdrbank.htm)

### The Highlands Council

For a list of Highlands Council members, meeting dates,

agendas, and other information, visit: <http://www.nj.gov/njhighlands/> or call Adam Zellner, Executive Director, at

908-879-6737.

# Recommendations and Checklist for Highlands Act Success

New Jersey Future calls on the Highlands Council, local officials in the region, and state officials to take the following steps to ensure successful implementation of the Highlands Act. Safeguarding water and ensuring that the Highlands continues to offer a high quality of life requires the following:

**1) Adopt a detailed land use plan for the region based on a regional land-and-water capacity analysis.**

- a) Commit to some 300,000 acres<sup>8</sup> of top priority conservation lands that require permanent preservation in order to achieve environmental protection goals.
- b) Identify opportunities in the planning area appropriate for new housing and economic development. Accommodate local concerns as much as possible without compromising regional goals. Ensure attractive, healthy communities through design guidelines.
- c) Include land use *regulations* to govern zoning, clustering, and natural resource protections.

**2) Seek permanent preservation of designated lands through no-build zones on the most vulnerable conservation lands in the preservation area and “critical environmental areas” in the planning area.<sup>9</sup>**

**3) Use land acquisition and transfer mechanisms such as TDR to defend preservation designations and compensate landowners.** Establish:

- a) A strategic land acquisition program based on a GIS ranking system.
- b) A comprehensive TDR program that includes

transfers within municipalities as well as regional transfers.

- c) Other creative provisions such as clustering on non-contiguous lots and mandatory clustering with large open space set-asides.

**4) Encourage towns to plan for receiving districts that will support community goals. Seek districts both in and outside the region. Offer the towns meaningful incentives including:**

- a) Larger Green Acres and Farmland Preservation grants.
- b) State infrastructure funds.
- c) Fiscal assistance for towns that accept growth. Until property tax reform is in place, provide state school aid for fast-growing towns. Enable towns to adopt timed-growth ordinances.
- d) Aggressive education and outreach programs including visioning workshops.
- e) Creation of a mayors’ committee to help the Council address local concerns.
- f) Packaging of incentives and assistance through a “Highlands Village program.”

**5) Adopt measurable benchmarks and monitor progress to ensure achievement of master plan goals.** Seek federal funding for a detailed environmental monitoring program that tracks the impact of land use on water other natural resources.

**6) Ensure the State Development and Redevelopment Plan reflects and is consistent with the more detailed Highlands master plan.** Ensure the State Planning Commission plan endorsement process supports the Highlands Council’s conformance review process.

## Endnotes

<sup>1</sup> Environmental Defense (ED) and Regional Plan Association. (RPA). Based on a GIS analysis and interpretation of the Highlands Act regulatory provisions.

<sup>2</sup> ED and RPA. Based on analysis by RPA, NJCF, Passaic River Coalition, and Highlands Coalition of the 2002 USDA Forest Service Highlands Regional Study Update, Garden State Greenways, NJ DEP Landscape Project, and NJ Water Supply Authority priorities.

<sup>3</sup> ED and RPA. Based on analysis of 2001 build out data in planning area towns and input from county planners.

<sup>4</sup> New Jersey Future land acquisition survey, Fall 2004.

<sup>5</sup> The Act states the regional plan for the preservation area shall: “prohibit or limit to the maximum extent possible construction or development which is incompatible with preservation of this unique area.” In the planning area, the regional plan shall, “preserve to the maximum extent possible any environmentally sensitive lands and other lands needed for recreation and conservation purposes”.

<sup>6</sup> See footnote 2.

<sup>7</sup> Five or more dwelling units per acre.

<sup>8</sup> Environmental Defense and Regional Plan Association. See footnote 2.

<sup>9</sup> Highlands Water Protection and Planning Act, sections 12 (a) and 11 (6) (g).

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