

POWER PLAY IN THE WETLANDS

Is the Administration Rolling Over for Developers at the Expense of the Environment and Wildlife?



BY JOSEPH DONOHUE

If John Q. Public happened to be thumbing through the Feb. 19 edition of the New Jersey Register of regulations, he would have spotted what appeared to be a soothing assurance. An "environmental summary" on the first of 39 pages of revisions proposed for the state's Freshwater Wetlands Protection Program began as follows:

"The majority of the changes . . . will have no significant environmental impacts because they reflect clarifications in language and changes to administrative procedures and are not of a substantive nature."

Even the most ardent lover of migratory songbirds or the endangered eastern salamander could take comfort from such a calming bureaucratic vow.

The trouble is: It might be a lie.

Far from being placated, environ-

mentalists fear that regulatory maneuvers by the Florio administration threaten to undermine—not safeguard—the integrity of more than 320,000 acres of ecologically sensitive wetlands areas across the state. Defenders of these soggy expanses—credited with sheltering wildlife, filtering pollution, stemming floods and providing recreational opportunities—say they detect a disturbing pattern. It is one, they say, marked by the outlines of an apparent sellout to politically influential real estate developers by a Democratic administration once viewed as a confirmed friend of the environmental movement.

Exhibit A: A December ruling by Robert J. Del Tufo, Florio's attorney general, that significantly relaxed the state's criteria for granting developers exemptions from key provisions of the Freshwater Wetlands Act of 1987.

Del Tufo's ruling, and a separate decision the same day by the state Department of Environmental Protection—both issued even while the officially proposed regulatory changes were pending—was

an immediate and major victory for Reider Land Technology Inc. The firm is developer of a multi-billion-dollar commercial venture, known as Metroplex, planned for an area that includes wetland acreage in Middlesex County.

Reider had asked DEP for a go-ahead exemption on the grounds that municipal site-plan approvals for the project pre-dated any cutoff embodied by the Wetlands Act. Significantly, the developer was represented in its challenge by the Clifton law firm of Klein Chapman, a longtime Democratic Party campaign contributor that later boasted of its ability to secure the exemption.

On a larger scale, Del Tufo's ruling was widely applauded by the development community—with good reason, say some environmentalists. Although it is difficult to gauge the precise impact, they claim the ruling sets the stage for exempting from regulatory controls as much as 80 percent of all development that had been proposed for freshwater wetland areas before July 1, 1988.

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"Del Tufo opened the door," remarked Candace Ashmun, a member of the Pinelands and State Planning commissions. "They've basically exempted everything in the state."

Ed Lloyd, a longtime environmental lobbyist and now an attorney with the Rutgers Environmental Law Clinic in Newark, observed: "I think the administration is misinterpreting the Wetlands Act to the harm of the environment. And that's what worries me."

Said David Moore, executive director of the New Jersey Conservation Founda-

tion: "In my opinion, we have less protection than we started with" because the weakened state law now will take precedence over many municipal programs that were much tougher.

Representatives of developers dismiss such criticism as the frenzied hyperbole of eco-activists. For its part, the Florio administration seems perplexed that anyone could doubt the environmental commitment of the governor or his subordinates.

Ann Crawford, Del Tufo's press secretary, denied that politics or political connections played any part in the ruling. She

defended her boss's record on the environment and said the exemption ruling stuck to a careful interpretation of the Wetlands legislation. "The ruling seems unequivocal," she said. "If it's wrong, then they (critics) should talk to the Legislature and get them to change it."

Scott Weiner, who took over as Florio's new environmental commissioner after the Del Tufo and Metroplex rulings were issued, said flatly: "The governor doesn't want to see the state's environment cast aside in the interest of developers... A lot can be done in terms

FLORIO CONTRIBUTOR: 'WE DID THIS ON THE MERITS'

A top Democratic fundraiser and longtime contributor to Gov. Jim Florio denies using political connections to prompt a recent state ruling that critics say will leave freshwater wetlands virtually unregulated.

Shortly after Attorney General Robert Del Tufo late last year issued a ruling that environmentalists claim gutted the 1987 Freshwater Wetlands Act, the Clifton law firm of Klein Chapman sent a letter to members of the New Jersey Builders Association claiming credit for prompting the ruling.

One of the firm's senior partners is Herbert C. Klein, a former Democratic Assemblyman from Passaic County who sits on the Democratic State Committee's fundraising board and served on Florio's transition committee. At one time, Klein had been mentioned as a possible candidate for the post of state insurance commissioner.

Since early 1989, Klein Chapman partners and their wives have contributed at least \$44,500 to Democratic coffers. Klein personally has donated to Florio's campaigns since at least 1981.

Klein's law firm represents Reider Land Technology, Inc., which has proposed a major commercial development in South Brunswick called "Metroplex." The firm convinced state environmental officials in December that the project qualifies for exemption from the state's Freshwater Wetlands Act, a move that environmentalists are challenging in court. (Klein Chapman has filed a "cross-appeal" contesting the state's authority to require wetlands "buffer zones" around certain activities, such as road crossings and the filling of less than one acre of wetland, that are automatically acceptable under federal wetlands laws.) Questions raised by the Metroplex prompted the Del Tufo ruling.

The Klein Chapman letter, written by partner Timothy Haley, boasted to builders statewide that the law firm recently "caused a major reduction in the amount of land subject to wetlands regulations." The change embodied in the Metroplex exemption should have many positive effects on development," the letter said. "The time, effort and expense of obtaining an

exemption should be reduced. More land should be available for development."

Despite his close ties to top-ranking Democrats, Klein, a state Assemblyman between 1972 and 1976, said the Metroplex case was handled strictly in the legal realm.

"We did this on the merits. We have a lot of expertise," he said. "We've got a good relationship with [state regulators] because it's a working relationship. They respect us as professionals and they deal with us as professionals."

"We think the ruling made a lot of sense. It's consistent with the statute and we certainly don't think it savaged the law or that it is anti-environment."

Haley said he considers it an "insult to Del Tufo's integrity" to imply that the attorney general's opinion was politically motivated. He said the letter did not lure any new clients but acknowledged that it did prompt some existing ones to seek exemptions from the Wetlands Act.

Haley strongly took issue with assertions by environmentalists that the Del Tufo ruling virtually strips away protections for freshwater wetlands. Even developers receiving exemptions from state law still must seek Army Corps of Engineers permits if they seek to fill more than one acre, he noted.

Asked what was meant in the letter by stating that the ruling caused a "major reduction in the amount of land subject to wetlands regulation," Haley said he was referring primarily to exemptions from wetlands buffer requirements that were mandated by the state Supreme Court prior to Del Tufo's ruling.

Ann Crawford, the attorney general's press secretary, said politics played no role in his decision. "This formal opinion like any other policy opinions in this office was dictated by the law," she said.

Scott Weiner, the state's environmental commissioner and campaign treasurer for Florio's 1989 election, also denied that partisan politics rules state decision-making.

"If someone is really going to be a friend, they are going to understand the bounds of propriety," he said.

— Joseph Donohue

of the state's competitiveness by providing an efficient process. That doesn't mean you loosen your standards."

But environmentalists aren't alone in their distress.

Assemblywoman Maureen Ogden, R-Short Hills, a co-sponsor of the Wetlands Act called the ruling "really outrageous. It just seems to me that the Florio administration has totally failed the environment on this issue. It's an outright betrayal."

Even Newark Mayor Sharpe James—one of the state's most prominent Democrats—weighed into the fray with what amounts to one the most unusual assaults ever by an urban politician on the administration of his own party.

"The Attorney General's opinion on municipal subdivision exemptions threatens to make a mockery of New Jersey's freshwater wetlands protection program," James told Florio in a Feb. 14 letter. "The opinion is especially damaging because, in many cases, wetlands protection will be weaker than before the act was passed because state law preempts municipalities from regulating and protecting wetlands."

James, motivated less by environmental worries than by pragmatic concerns—he would rather developers be given incentives to concentrate their efforts in blighted urban areas—urged the governor to declare a moratorium on wetlands exemptions until tighter regulatory controls can be restored.

Administration officials acknowledge that environmentalists made a similar plea in a private meeting with Florio in early February. Whether he will move forcefully to alter the regulatory framework in their favor, however, remains to be seen. But until he acts—or fails to act—they are not taking any chances. In addition to launching a statewide letter-writing campaign to try to pressure Florio into reversing Del Tufo, they are taking advantage of available procedural weapons.

The Rutgers Environmental Law Clinic has requested an administrative law hearing on the merits of the Metroplex case that prompted the attorney general's ruling. The clinic also is challenging the project—and Del Tufo's legal reasoning—in the state Appellate Division. In both actions, it is representing a broad-based environmental coalition, including the New Jersey Conservation Foundation, American Littoral

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Society, New Jersey Audubon Society and the Association of New Jersey Environmental Commissions.

Del Tufo's ruling could even face objections from within the administration's own ranks. Susan Silver, an assistant deputy in the Cabinet-level Office of the Public Advocate, said environmentalists have asked her office to contest it.

"We share the environmentalists' concerns and it is something we are considering," she said. While her boss, Public Advocate Wilfredo Caraballo, has yet to stake out a formal position on the state's wetlands protection rules, he has voiced concern over proposed *federal* guidelines that he considers lax in the regulation of the dumping of dredging materials in wetland areas of the Hackensack meadowlands.

The Del Tufo ruling and the Metroplex project approval are not the only actions that have prompted environmentalists to question whether the Florio administration is trying to appease the development community.

Last September, DEP granted a stream-encroachment permit for developer Dominick Alfieri to erect a large hotel-office complex on a portion of a 55-acre marsh and swamp forest at the headwaters of the South Branch of the Rahway River. The site spans both Edison and Woodbridge townships. The Environmental Law Clinic has also filed a legal challenge against that project.

In February, the DEP reversed a decision to require the developer of a Parsippany-Troy Hills housing project to include a 150-foot wetlands buffer to protect

four endangered species on the property. The developer, Crow Foody Central, claimed it would be forced to abandon the low-cost housing project if the buffer requirement stood. That concern became moot, however, when the company convinced DEP that it qualified for an exemption from the freshwater wetlands law.

Environmental critics also cast a dubious eye on the formation by Florio last fall of an Economic Development Task Force within his office. The intent, he said at the time, is to "continue to clean up the bureaucratic mess in which business and industry too often get tangled.

"We will set a tone in the Governor's office for all state workers who deal directly with people that their job is to work for these people, not for the sake of bureaucratic rules," Florio said. But some wonder how far the administration is willing to go to help "these people."

Weiner, a regular participant at meetings of the task force, labels "unfounded" any fears about Florio's environmental commitment. Weiner said the sessions were not a threat but rather a tool that can be used as an "early warning system for all agencies in state government to be coordinating."

The ruling by Del Tufo on wetlands exemptions stirred a particularly strong chord of environmental anxiety because it involved an unresolved and highly sensitive issue that has dogged the Wetlands Act since it was signed in 1987 by former Gov. Thomas H. Kean: What should be done with development projects that were already under way in some degree when the legislation took effect? The ruling was requested by Florio's first environmental commissioner, Judith Yaskin, in a bid to end the confusion.

Administration officials say the attorney general's analysis merely sought the most obvious reading of the law. But environmentalists feel he stretched the exemptions to their maximum extent.

They are troubled by the attorney general's interpretation of a provision exempting builders who had applied for municipal subdivision or site-plan approvals before June 8, 1987, or those who had received preliminary subdivision or site-plan approvals before July 1, 1988.

Prior to Del Tufo's ruling, state envi-

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ronmental officials had been pardoning only projects displayed on maps submitted for local approvals. But because project documentation is sketchy in some municipalities, there was concern that some builders were being cheated out of valid exemptions. Del Tufo declared that all lands that are part of a subdivision application or approval—physically displayed on the maps or not—during the appropriate time period are exempt from the Wetlands Act.

Environmentalists insist the exemption should apply only where developers can prove that a definite project exists. Builders should not get a break solely because they own subdivided land, they contend. Some see this as a clear signal that the administration is bowing to developers to try to create jobs and jumpstart a sluggish economy.

But Crawford denied the ruling was anti-environment. She contended the attorney general's record on environmental matters has been "excellent."

Del Tufo even gave a speech in late February in Morris County in which he asserted that the Florio administration "will never 'sell our soul' as the price of economic growth." He noted that the state is "immersed in a number of cases against major companies for environmental violations."

Meanwhile, representatives of developers adamantly reject suggestions that the wetlands law, from their perspective, has been emasculated.

"That's ridiculous," said Jeffrey Horn, executive director of the National Association of Industrial and Office Parks based in Edison, which has been successful in scaling back some wetlands regulations through lawsuits. Horn insisted the Florio administration and recent court rulings—including one nullifying a freeze on development in coastal zones—have done little more than restore balance.

"They [state environmental officials] were going way beyond the legislative intent. And the court bore us out," he said. And even though its powers have been scaled back somewhat, Horn said DEP is still "doing everything it can to minimize wetlands encroachment."

Marlton attorney Richard Hluchan, a former deputy attorney general who once served as the main legal adviser for

the Pinelands Commission, was the attorney who successfully nullified Florio's executive order last year that sought to tighten state control of coastal development. He thinks environmentalists, who agreed four years ago that developments-in-progress should be exempt from the freshwater wetlands law, are spoiled sports.

"They are not happy with the compromise and they are trying to construe it away or otherwise undo it," he said. "They would like to apply the wetlands act to every project regardless of how far along the project is in the approval process and how much has already been spent for planning and pursuing approvals."

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Without the Authority's help—indeed even with it—Johnson said the Allied Junction project alone is on shaky financial ground because of its big price tag, ranging upwards of \$700 million.

From the start, money has been a bugaboo for this administration in more ways than one. The state still is wrestling with a budget deficit, despite Florio's \$2.8 billion tax increase last year. Downs claims the budget crunch will have little or no impact on transportation projects because the state recently raised the cap on the transportation trust fund, which is financed through state gasoline tax receipts.

But the deficit may yet have an impact.

A couple of months after the TEC report, state Treasurer Douglas Berman unveiled a \$14.3 billion state budget that is heavily reliant on the sale of state roads to the New Jersey Turnpike Authority to raise at least \$400 million. That money had been earmarked in the Kean administration for transportation projects, and could have been tapped by Florio to implement the TEC report.

Davis, the former Kean aide, decried the \$400-million road sale as ludicrous. She said some projects in the Circle of Mobility would not have cost nearly that much, including the \$278-million proposal to blast a new three-lane tunnel through the Palisades in Weehawken for cars, buses or a rail line.

That proposal has been dropped by the Florio administration.

"Sounds like budget deficit by Turn-

"Del Tufo's opinion only served to clarify what the law is," he said.

But despite the development community's claims about the harshness of Wetlands Act provisions—and about DEP's over-enthusiasm for carrying them out—most applications for exemptions have been approved by the agency since the program took effect in June 1988, well before the latest easing of rules by the Florio administration.

Of 1,653 exemption applications received since then, 1,177—or 71 percent—have been approved, state officials say. Another 130 were denied, 86 were canceled and 260 remain pending.

pike to me," Davis remarked.

The road sale must be approved by the Legislature and may face a court challenge by bond holders. But Downs defended the ploy, saying the money isn't needed for transit—at least not immediately.

"We funded everything that could have been funded in five years," he said.

But even assuming that the projects in the TEC report are built, the state is still playing catch-up. The Port Authority estimates that there will be a 57.5 percent increase in car registration by the year 2015, and those cars will increase the amount of miles traveled on New Jersey roads by 22 percent.

"There is no question we have to do more in the long term," said Lussenhop, of the Regional Plan Associations.

But the administration doesn't seem to have much more up its sleeve.

Florio's transportation staff has spent the past year criticizing their predecessors for making promises that could not possibly be kept. The implication has been that we got nothing from the Kean administration. That's a harsh conclusion. But look around. It's not far from the truth. The administration's big victory was creating the transportation trust fund—which has been sufficient to maintain infrastructure, but almost every plan to expand it was throttled.

Now, like a doctor relieving the shift, it is Florio's turn in the transportation emergency ward.