



Environmental Protection and Land Use Policy: Balancing Green Policy and Politics

From The New Jersey Reporter

By Michael Catania, President, Conservation Resources Inc.

As Jon Corzine settles into the Governor's office this month, his new Administration will face a host of critical environmental and land use issues. Many of these issues are familiar concerns that previous administrations have grappled with repeatedly during the last 20 to 30 years, with varying degrees of success. Virtually all of these issues, however, remain as persistent challenges, and solutions to these problems will only be exacerbated by the state's current precarious financial position.

Environmental and land use issues have long been key elements of the political landscape in the Garden State. As the most densely populated state in the nation, New Jersey is also the first (and perhaps only) state to be faced with complete build-out of all of its available land sometime within the next generation. Our state also has more Superfund sites than any other state, which is an indication of both our past heritage of manufacturing and heavy industry, as well as our aggressive regulatory climate. The fact remains, however, that public concerns about sprawl, traffic congestion and the safety of the air we breathe and the water we drink are as common as Jersey jokes on late night television.

Interestingly, these issues have dominated neither the polls nor election debates in the last several gubernatorial campaigns. Yet a host of environmental issues simmer just below the surface, and it is hard to pick up a newspaper, listen to a news or talk-show radio, or attend a session of the Legislature without seeing daily evidence that these issues remain in the forefront of our political consciousness. Add to that the numerous colorful but quotable partisans who work these issues on both sides from the State House to Main Street, and it becomes apparent that perspectives on the environment and land use are volatile issues which have serious regional and statewide political implications. Equally obvious is that skillful navigation of these issues could well help the new Governor advance his overall agenda in a variety of ways, while neglect or failure to adequately address these matters could herald a political crisis which will inevitably have broader consequences. Indeed, each of these issues fully illustrates the First Law of Ecology, which tells us that everything is in fact connected to everything else.

To put the issues facing the Corzine Administration into context, however, it is helpful to review the recent history of environmental and land use matters in New Jersey, to review the substantial progress which New Jersey has made, and to focus on the remaining principal challenges.

The Garden State is widely considered to be in the top small tier of states which have systematically and aggressively addressed environmental and land uses issues ever since the first Earth Day was celebrated on April 22, 1970. In those last 35 years, Governors from Republican William Cahill through Democrat Richard Codey, as well as Legislatures controlled by both parties, have enacted an impressive avalanche of environmental laws, including measures to regulate a wide variety of activities and economic uses. In addition, New Jersey has enacted strict

laws to limit virtually all forms of pollution, and the state has also assumed responsibility for administering all of the basic federal regulatory programs and laws, including those designed to limit the impacts of air pollution, water pollution, pesticides, radiation, and hazardous waste. In addition, New Jersey has often exceeded minimum federal standards and even the very scope of federal environmental programs by adopting comprehensive regulatory initiatives to prevent toxic catastrophes, to require the cleanup of industrial establishments prior to closure or transfer, to establish safe drinking water standards for a variety of unpronounceable chemical contaminants, to mandate recycling and pollution prevention, and to impose one of the strictest “polluter pays” liability regimes in the world.

In terms of addressing land use matters, New Jersey law provides special protections for our coastal areas, for the unique Meadowlands, Pinelands and Highlands regions, and for coastal and freshwater wetlands, flood plains, stream corridors, watershed lands, as well as threatened and endangered species. We have also permanently protected almost 25 percent of the land area of our state as open space or farmland through the combined efforts of state, county, municipal, and non-profit conservation agencies -- not to mention our statutory goal of adding another million acres of protected lands by 2009. If achieved, this ambitious goal would mean that some 40 percent of the total land area of the Garden State would be covered by some form of permanent protection.

Last but not least, New Jersey is one of the very few states that has adopted a statewide development and redevelopment plan which guides state investment in the various infrastructure (such as sewers, roads and water supplies) that supports development. And, in order to enforce and administer this complex regulatory scheme, we were one of the first states in the nation to establish a Department of Environmental Protection. Since 1970, that agency has since grown into an omnipresent and wide-ranging bureaucracy which now manages to touch virtually every aspect of human activity. In a number of instances, in our quest to insure a healthful environment, we have “deputized” county and municipal governments, and, at times, even the private sector, by devolving responsibilities to them for the implementation and enforcement of state environmental programs.

As a result of all of these efforts, most reasonable people would agree that we have in fact made significant strides in cleaning up our land, water and air, and that New Jersey is widely regarded as having some of the best laws and programs of any state to direct our efforts to address the remaining environmental challenges.

However, it is equally obvious that New Jersey is in no position to rest on its environmental laurels. For example, many areas of the state routinely fail to meet federally mandated ambient air quality standards, and many Garden State residents, particularly the very young, the very old, and those with asthma and emphysema, remain at risk from air pollution. Similarly, despite the many layers of protection, many of our rivers and streams continue to suffer from unacceptable water quality, and numerous communities are subject to historic or new contamination which threatens their water supplies. Farmland and open space continues to disappear at the alarming rate of some 50 acres per day, and sprawling development continues to gobble up lands desperately needed for active and passive recreation, as well as watershed protection, aquifer recharge and critical wildlife habitats. Mind-numbing traffic continues to plague residents throughout every corner of the state, and alternatives to the automobile remain out of reach in all but a few commuter corridors to New York or Philadelphia. Sadly, guiding development away from environmentally sensitive areas, and encouraging the redevelopment of our cities is not yet routinely within our grasp, and time seems to be quickly running out to shape development patterns in a way which

would enhance the quality of life in both urban and rural areas. And, in the post 9/11 world, the need to protect New Jersey's numerous chemical plants, power plants and vulnerable water supplies from the new insidious threat of terrorism looms large as the new administration takes office.

INSURING SMART GROWTH

While one person's smart growth may well be another's unwanted development, it is clear that our new governor will need to pay close attention very early in his administration to several issues that can help encourage the redevelopment of urban areas and discourage development from sprawling into the hinterlands. None will pose a greater political challenge demanding more of his immediate attention than deciding how to handle the infamous "Fast Track" legislation.

Redesigning Fast Track Legislation

Just as the McGreevey administration was successful in securing passage of landmark Highlands protection legislation, what should have been its crowning achievement was virtually nullified in the eyes of many by a series of backroom deals that quickly culminated in the speedy passage of the so-called "Fast Track" legislation, so nicknamed because it provided an expedited approval process and a permitting czar who could veto denials of permits for development in certain parts of the state. Reviled by local governments, environmentalists, and editorial boards throughout the State, the political backlash to this end run around the traditional regulatory process was so severe that Governor McGreevey, in one of his final acts before resigning in the wake of a series of scandals, used one of his last executive orders to delay the effective date of this new laws.

Governor Codey also used his executive authority to further delay the full implementation of this oft-criticized statute, deferring this matter for action until the Corzine administration settles into its new responsibilities.

Fast Track poses several problems for the new administration. Its numerous and vocal opponents throughout the state claim that its expedited and unilateral process will reduce environmental protections for local communities, jeopardize federal funding, create several expensive new bureaucracies in various state agencies at a time when we can least afford to do so, and simply reward developers and redevelopers who have mastered the "pay to play" maze of campaign contributions at the expense of the public interest. However, the law is strongly supported by a number of Democratic legislators whose votes our new governor will need for any number of initiatives.

Fortunately, it is probably true that most reasonable and informed people in New Jersey would agree that it would be appropriate to create a process which makes it easier to develop, or redevelop, in appropriate places, especially in urban areas, just as it ought to be more difficult to develop in environmentally sensitive areas within the state. However, the way that process is designed and its substantive provisions are crucial to its credibility and public acceptance. In that regard, the way the Fast Track legislation was negotiated behind the scenes and quickly ushered through the Legislature made it inevitable that it would become a textbook case of how not to make good public policy. Accordingly, the only way that the new administration can dig itself out of this debacle left by McGreevey is to go back to square one and utilize an open public process to completely retool Fast Track in a way that adequately addresses the numerous legitimate concerns which were raised, but almost completely ignored, by its proponents. While it is possible that a few key legislators might be able to supervise this retooling through the normal committee process, it would be far more preferable for the governor to ask a blue ribbon panel composed of a wide variety of key and respected stakeholders of various perspectives to tackle this chore and recommend a new approach for legislative consideration. This may well be the

only way to avoid the morass of legal and political problems that will inevitably follow if the current law is allowed to take effect.

New Regulations to Discourage Inappropriate Development

Despite the aggressive leadership of DEP Commissioner Brad Campbell, several new regulatory proposals to control growth were not adopted in the waning days of the Codey administration. The first of these proposals was an attempt to severely limit development throughout the suburban and rural areas of the state by prohibiting the extension of sewer service for a wide variety of projects which are not included in regional wastewater management plans. This proposal was recently withdrawn by an embattled Campbell shortly before he left office in response to broad opposition from local officials and the development sector, who felt that the measure was exceedingly heavy-handed.

Wastewater management plans are a vestigial organ of the massive federal sewer construction grants program which fueled substantial construction of sprawl-inducing sewer construction throughout the boom years of the 1970s and 1980s. The idea was to insure that federal funds went to plan, design and build projects which were consistent with detailed plans and sewer service areas prepared and adopted by designated areawide wastewater management planning agencies.

When the Reagan administration changed the construction grants program to a revolving loan program, wastewater management plans nevertheless endured, and evolved into an arcane and lengthy regulatory process which represented full employment for environmental attorneys and consultants, and virtually guaranteed excruciating frustration for local officials and developers who sought sewer service for their projects. Securing approval of a plan amendment through this multi-year process became the stuff of legends, and many plan amendments simply never made it through the ping-pong approval process, leaving large areas of the state with obsolete plans which reflected reality when the Tocks Island Dam was still a viable project several decades ago. Even the more rabid opponents of Campbell's proposal acknowledge, however, that sewer service plans really do need to be updated, and that it does not make sense to permit new sewer service in many environmentally sensitive areas of the state. Accordingly, a new initiative to more selectively weed out areas inappropriate for sewer service – and to streamline the process of updating plans and encouraging sewer service for areas which should be developed or redeveloped - will obviously need to be proposed in 2006 as one of the key ways in which growth management can be achieved.

A second much-heralded regulatory proposal (which was never actually officially proposed) was a complex new rule to protect threatened and endangered species, nicknamed the "T&E." rule. This rule would have mandated the preparation of what are known as "habitat conservation plans" under the State Endangered Species Act as a way to balance the protection of adequate habitat for rare species while allowing development to proceed in appropriate areas. The environmental community waited in vain literally for years as McGreevey and Campbell promised that this rule would soon be proposed. Many others, however, viewed this initiative as merely a new guise for the much-maligned "BIG" (Basis for Intelligent Growth) Map battles which Campbell eventually lost to his colleague and fellow cabinet member, Susan Bass Levin, the former (and probable future) Commissioner of the Department of Community Affairs. In any event, the Codey administration never gave this proposal its support, and the "T&E Rules" never even appeared as a formal rule proposal in the New Jersey Register.

Despite the reticence by both the McGreevey and Codey administrations to proceed with these rules, however, a thoughtful, workable new process which provides a mechanism for habitat conservation plans would serve both development and environmental interests alike. These plans

would make it easier to avoid what former Interior Secretary Bruce Babbitt called “train wrecks” - those case in which the discovery of a rare species late in the development approval process escalates the legal and political stakes and often results in lengthy and bitter litigation. If carefully crafted, a new rule proposal could actually make it easier and more politically acceptable to provide more protection for critical habitats for imperiled species, while also making it somewhat easier and more efficient to develop or redevelop other, more environmentally-appropriate areas. Given that this effort remains one of the environmental communities top priorities, we can expect that the new administration will have to grapple with this matter early on.

PRESERVING OPEN SPACE AND FARMLAND

Extending the Garden State Preservation Trust

Along with a host of environmental problems, Jon Corzine will inherit several extremely popular and effective programs that have made New Jersey a national leader in the preservation of open space and farmland. Once supported by sporadic bond acts, both the state Green Acres and State Farmland Preservation programs have enjoyed a stable and plentiful source of funding through the landmark Garden State Preservation Trust Act (the GSPT), which was enacted in 1999. As a result, both programs have flourished, fueling a surge of state land acquisition and farmland preservation, as well as matching grants and low cost loans to local governments, and even matching grants to non-profit conservation organizations. In turn, these state funds have been dramatically leveraged by dedicated open space taxes which have been approved by local voters in all 21 counties and in almost 250 of the state’s 566 municipalities. Private funding generated by non-profit land trusts have further leveraged these public funds, as have below-market sales by private landowners who can claim a charitable contribution deduction against the New Jersey state income tax.

But these popular state programs have in some ways become a victim of their own success, as funding provided through the GSPT is expected to begin running out by the end of 2006, just as demand for these funds – and the need for expedited land acquisition - has reached an all-time high. Complicating this reality is the fact that, while this money will likely be completely exhausted after little more than eight years, the constitutionally dedicated \$98 million per year in sale tax revenues that voters approved in 1998 to support the \$1.15 billion in bonds issued by the GSPT still has another 22 years to run until these bonds are retired. Furthermore, the Corzine administration is expecting an estimated budget deficit of up to \$6 billion for FY 2007, as well as record debt service payments in 2006 and beyond. To make matters worse, the Transportation Trust Fund is near bankruptcy, which will likely necessitate a gas tax increase, which in turn will probably be subject to a voter-approved constitutional dedication on the November 2006 ballot. In addition, the school construction fund appears to be out of money as well.

Clearly, amidst all of the other financial woes, 2006 may not be the time to ask voters to approve an extension of funds for the GSPT, no matter how popular open space and farmland preservation may be. However, the problem will definitely need to be addressed within the first few years of the Corzine administration, and our new Governor would do well to begin laying the groundwork for continuing this critical program soon after he takes office. This could be done by reappointing the Governor’s Council on New Jersey Outdoors, or a similar group, an approach that has been used successfully by two previous governors.

The appointment early in 2006 of a Governor’s Council composed of respected citizens to study the remaining need for open space and farmland preservation funding would be an important first step. This group could hold hearings around the state to identify and evaluate alternative mechanisms to fund an extension of the GSPT, and report it findings to the Governor and the

Legislature by the end of 2006. Such a schedule would allow the new Governor to focus on passage of his first budget, and on the renewal of the Transportation Trust Fund and resolution of the school construction funding problems. This would also let him make progress on building a consensus for open space funding, which could be considered by the Legislature early next year, in time for voter consideration of a resulting ballot question in November of 2007.

Stewardship of Public Lands

Sadly, New Jersey has made significant additions to its state parks, state forests and wildlife management areas just as funding for the management of these public lands has proven inadequate to the task. While the 1998 effort to secure a stable source of funding for open space and farmland preservation originally included funding for capital improvements to public lands, as well as operating resources to insure proper management, these latter two items were dropped from consideration as the funding measure went through the legislative process. As a result, facilities on state lands are now in dire need of repair and restoration, capital expenses have been deferred repeatedly, and visitors to these attractions often find them deteriorated, understaffed, or even shuttered.

In addition, local governments, especially in urban areas, have also experienced extreme difficulty in maintaining the open spaces they manage for public use, and more and more responsibility has fallen to the private sector to keep parks open and usable. For this reason, Governor Corzine should seek to have renewed funding for the GSPT specifically include stewardship and capital funds for state land management agencies, and a new category of matching stewardship grants for local governments and non-profits, so that we can begin to work through the backlog of deferred maintenance and provide world-class facilities and programs to make our protected open spaces attractive to both residents and tourists alike.

Petty's Island

Another issue that is sure to bedevil the new administration is the fate of Petty's Island. In many ways, Petty's Island is a microcosm of many of the issues discussed above, and will be a difficult political challenge for Governor Corzine as he seeks to distance himself from the same political bosses with whom he needs to co-exist in order to get his agenda approved by the Democratic Legislature.

Petty's Island is a 392-acre island in the Delaware River, located between Camden and Philadelphia, although the island is actually a part of Pennsauken Township. The oil company Citgo, the current owner of Petty's Island, has offered to clean up the island, currently home to several industrial facilities and a pair of nesting bald eagles, and donate it to the state Natural Lands Trust. Citgo also offered the Trust a \$2 million endowment for the management of the island as an urban nature preserve. But Petty's Island has also long been eyed by local officials as the centerpiece of their planned redevelopment of the Pennsauken and Camden riverfront, and the island has become a virtual board game representing the rough and tumble of Jersey politics. In fact, it has been suggested that the desire to redevelop Petty's Island was directly linked to the speedy passage of the Fast Track law, and that it was passed in order to prevent the DEP from using endangered species rules to deny the necessary environmental permits.

The recent saga of Petty's Island reads like a novel. The McGreevey administration originally flirted with the idea of creating a Liberty State Park South along the Camden waterfront and sent signals to Citgo that the state government would accept donation of the island. But in the face of strong opposition by powerful South Jersey Democratic leader George Norcross and virtually every South Jersey Democratic legislator, the McGreevey administration reversed course, publicly renounced the Citgo offer, and directed its representatives on the Natural Lands Trust to reject the land donation. Pennsauken then began the actions that would be needed to condemn the

island so it could be turned over its designated redeveloper, the politically connected Cherokee firm, for the development of upscale housing, and a golf course and conference center.

This rejection so infuriated many environmentalists and community activists that they launched a series of public events to accuse Pennsauken and Cherokee of “pay to play” politics, publishing the details of Cherokee’s generous political contributions to local and statewide Democrats. At roughly the same time, state and federal wildlife officials brought charges against a Cherokee consultant for causing the death of a baby bald eagle from the Petty’s Island nest, and the nesting eagles appear to have recently relocated from the island to the Camden waterfront. During the gubernatorial campaign, Republican nominee Doug Forrester repeatedly sought to use Petty’s Island as the poster child in his campaign to paint Corzine as beholden to Norcross and other Democratic bosses. While this strategy did not ultimately affect the outcome of the gubernatorial race, it did guarantee that “Petty politics” would remain the subject of strong media and public interest in the Corzine administration, for better or for worse.

In fact, it appears probable that Pennsauken will move to condemn Petty’s Island within months, of Corzine’s inauguration, and the new Governor will likely be pressed to repudiate the decision of his predecessor to acquiesce to the redevelopment of Petty’s Island by Cherokee. Politically, this will be a extremely difficult decision for Corzine to have to make.

For many, turning Petty’s Island into a nature preserve represents a once in a lifetime chance to have a spectacular urban park within sight of the skyline of Philadelphia, complete with bald eagles, at no cost to the public. These people also view a preserved Petty’s Island as the centerpiece of a redeveloped waterfront which will attract new private capital in much the same way that Liberty State Park has encouraged the redevelopment of the Hudson River waterfront into what is now known as the “Gold Coast.” Equally important, some folks believe that saving the island could represent a rejection of “pay to play” politics and an opportunity for Jon Corzine to make it perfectly clear to the bosses that there really is a new sheriff in town and a new way of doing business in Trenton.

To others, however, including virtually the entire Democratic power structure in South Jersey, Petty’s Island is the quintessential example of a brownfield that ought to be redeveloped, where economic concerns should clearly trump ecological issues.

For a new Governor, who spoke often on the campaign trail about redesigning the Fast Track permitting process, curbing the abuse of eminent domain, ending “pay to play” politics, revitalizing urban areas, preserving open space and rare species, and demonstrating his independence from party bosses, the showdown over Petty’s is close at hand. And whether or not Jon Corzine chooses to weigh in to direct the outcome of this matter may well be the first defining moment of his new administration, as well as one that will have a profound and lasting effect on his future relationship with power brokers and partisans on both sides of this and many other contentious issues.