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WEAK PLANNING PROCESS FRUSTRATES PROTECTION OF PUERTO RICO'S THREATENED COASTLINE

by Mark Borak*

For over a decade, conservationists in Puerto Rico have waged a constant battle to gain legal protection for one of the island's most ecologically sensitive natural resources.¹ Thanks in part to its location on a picturesque stretch of coastline near its capital, San Juan, a swath of undeveloped land known as the Northeast Ecological Corridor ("NEC") has come under constant threat of large scale development.² Aside from its stunning view of verdant hills descending from *El Yunque* National Forest to the pristine shoreline, the corridor harbors a seven mile long sandy beach, a bioluminescent lagoon, mangrove forest, and habitats for over fifty rare, threatened, endangered and endemic species—including the leatherback sea turtle.³ The critically endangered leatherback returns each year to nest on the beach, which is one of only three significant nesting sites left in the United States.⁴ Leatherbacks are especially vulnerable to the effects of development activity such as beach renourishment and artificial lighting.⁵ In response to a petition from the Sierra Club in August 2011, the U.S. Fish and Wildlife Service expressed its intent to review and revise the designated critical habitat for the leatherback, and possibly add the NEC as a critical habitat.⁶ This review process, however, will likely take several years, and would only afford protection from Federal actions, leaving the NEC vulnerable to private development.⁷

During the administration of former Governor Aníbal Acevedo Vilá, concerned residents, fisherman, and environmental activists formed the Coalition for the Northeast Ecological Corridor ("Coalition"), which successfully swayed the former Governor to designate the area as a nature reserve.⁸ Acevedo Vilá's order prohibited the planned development of large-scale Marriott and Four Seasons golf resorts in favor of less invasive uses centered on eco-tourism.⁹ However, once Vilá's term expired in 2009, his successor Governor Luis Fortuño abruptly rescinded the nature reserve designation and pushed through a new plan that allows large scale residential, commercial and tourist development.¹⁰ After a decade-long citizens campaign finally secured protection for the corridor, there was no effective check to prevent the new administration from reversing the order and further hampering conservation by changing the planning and permitting process in order to encourage more development.¹¹

Among the first actions that Fortuño took upon entering office was to create a new agency to handle construction permits, which promises to process most permits within ninety days of receipt regardless of their complexity.¹² With the stewardship of several officials who had direct ties with local developers, the new development plan for the corridor was shuttled through the planning process with minimal opportunity for review or public comment.¹³ This new plan, dubbed the Great Northeast Reserve,

cobbles together tracts of existing parkland and retains some of the originally protected areas, but omits over 430 acres that were protected under the previous designation and permits extensive development in the heart of the corridor.¹⁴

While representatives from the Coalition contend that the new plan falls far short of conservation and are backing a Puerto Rico Senate bill to reverse it, the deeper issue is the manner in which it was approved.¹⁵ After limited opportunity for public review, the plan gained rapid approval by the Puerto Rico Planning Board (whose Chair and four other members were appointed by Fortuño) and the Department of Natural and Environmental Resources (whose Secretary consulted for a private development project that was included in the new plan).¹⁶ The Tourism Company (whose Director of Planning and Development prepared the Environmental Impact Statement for one of the developers) and the Department of Economic Development and Commerce (whose principal officer in charge of strategic project development served as construction manager for one of the proposed resorts) both assented to the plan after limited review.¹⁷

These direct conflicts of interest demonstrate how Puerto Rico's land use process has succumbed to regulatory capture, a condition in which industries most affected by regulation exert a disproportionately large amount of influence over the regulatory bodies meant to keep them in check.¹⁸ Aside from the harm this bias toward rapid development does to responsible land use planning, the situation can also have a detrimental effect on the economic growth of the island, and even on real estate developers themselves.¹⁹ Agency officials' current favoritism toward developers is largely a result of the pro-development Governor's ability to place sympathetic officials in key agencies. Likewise, the future election of a populist, anti-development Governor could result in a sharp reversal of fortunes and a chilling effect on development. Additionally, the Fortuño administration seems to have overlooked the fact that the NEC in its natural state is both an ecological haven and a tourist attraction that cannot be replicated elsewhere, which makes it an integral asset to the long-term viability of Puerto Rico's tourism industry. In the long run, political instability and unpredictable development policies satisfy neither the environmentalist nor the real estate developer.

Such has largely been the experience of Puerto Rico's land use planning process—repeated attempts at solidifying a predictable land use scheme have been frustrated by countless exceptions and orders circumventing the process.²⁰ Furthermore,

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WATER CRISIS IN THE MURRAY-DARLING BASIN: AUSTRALIA ATTEMPTS TO BALANCE AGRICULTURAL NEED WITH ENVIRONMENTAL REALITY

by Joshua Axelrod

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adoption of the forthcoming Basin Plan and eventual compliance with its standards.⁴² The MDBA faces the challenge of redirecting policy toward a future of sustainable water use that recognizes the vulnerability of the communities that will be affected most.⁴³ As the Guide's proposals are integrated into the forthcoming Basin Plan, the MDBA must show MDB communities how their input

has been incorporated and how the central government's policy decisions have the communities' interests at heart.⁴⁴ As proposed by the Guide, the Basin Plan, and its implementation, must provide a viable framework for balancing these considerations in order to ensure future water resource security, economic stability, and necessary environmental rehabilitation.⁴⁵



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the development of an island-wide master plan has been in the works for many years, but has been repeatedly delayed.²¹ This legacy of poor planning has fostered the island's chronic sprawl, causing increased consumption of land even as population growth has slowed.²² By drafting and enacting a long-range master plan focused on resolving the island's inefficient land use patterns and prioritizing natural resource conservation, policymakers have

an opportunity to reverse this trend. Accompanied by transparency, public participation and gubernatorial accountability, the approval of a comprehensive master plan could represent the best hope of protecting finite natural resources and promoting sustainable economic development on one of the world's most densely populated islands.²³



THE ARCTIC COUNCIL: GATEKEEPER OR DOORMAT TO THE WORLD'S NEXT MAJOR RESOURCE BATTLE?

by Oded Cedar

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member-nations to establish the organization's binding powers. The permanent-observer nations should argue that the impacts of fossil fuel development are of global concern and affect all nations.³¹ Therefore, proper safety and environmental standards are needed to ensure stable and sustainable development of the Arctic's natural resources, a goal to which the AC is already committed.

The permanent-observer nations should also seek more influence on the affairs of the AC in relation to fossil fuel development. Without usurping the position of the member-nations, the permanent-observer nations should demand some limited voting rights when the AC wishes to enact binding resolutions. Providing the permanent-observer nations with voting rights would allow

more countries to voice their priorities and concerns, which may force the AC member-nations to consider the implications of their fossil fuel development plans on the global community.

If the AC member-states wish to take advantage of the benefits of climate change in the Arctic, they should do so in a manner that also honors their Ottawa commitments and the AEPS. The international community, then, should pressure the AC to make changes to its structure and provide effective oversight of fossil fuel extraction in the Arctic. In turn, the AC should respond by making the Ottawa Declaration binding and enforceable upon member-nations, allocating voting power to the permanent-observer nations, and effectuating the needed regulations.



Endnotes: WEAK PLANNING PROCESS FRUSTRATES PROTECTION OF PUERTO RICO'S THREATENED COASTLINE

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- ¹ See Sierra Club, Petition to Revise Critical Habitat for the Endangered Leatherback Sea Turtle 30 (Feb. 22, 2010), http://www.nmfs.noaa.gov/pr/pdfs/petitions/leatherback_criticalhabitat_feb2010.pdf.
- ² *Id.* at 31-33.
- ³ *Id.* at 6.
- ⁴ See Sierra Club, Petition to Revise Critical Habitat for the Endangered Leatherback Sea Turtle 13 (Nov. 2, 2010), http://www.nmfs.noaa.gov/pr/pdfs/petitions/leatherback_criticalhabitat_nov2010.pdf; See also NAT'L MARINE FISHERIES SERVICE & U.S. FISH AND WILDLIFE SERV., LEATHERBACK SEA TURTLE (*DERMOCHELYS CORIACEA*) 5 YEAR REVIEW: SUMMARY AND EVALUATION 14-15 (2007), http://www.nmfs.noaa.gov/pr/pdfs/species/leatherback_5yearreview.pdf.
- ⁵ *Id.* at 32.
- ⁶ Endangered and Threatened Wildlife and Plants; 90-Day Finding and 12-Month Determination on a Petition To Revise Critical Habitat for the Leatherback Sea Turtle, 76 Fed. Reg. 47133 (Aug. 4, 2011) (to be codified at 50 C.F.R. pt. 17), available at <http://www.regulations.gov/#!documentDetail;D=FWS-R4-ES-2011-0045-0001> (explaining that the revision is being done based on a recommendation from the EPA's five-year review of listed sea turtle species and upon completion of the review, the EPA would determine whether changes to the species status or critical habitat needed to be made).
- ⁷ See *id.* at 47138-9.
- ⁸ *Puerto Rico Preserves Beach from Development*, MSNBC.com, (updated Oct. 5, 2007 12:27:24 PM ET), http://www.msnbc.msn.com/id/21148775/ns/us_news-environment/t/puerto-rico-preserves-beach-development/.
- ⁹ Kevin Mead, *Coalition Blasts Newly Stamped NEC Plan*, CARIBBEAN BUSINESS (July 5, 2011), http://cbonlinepr.com/news03.php?nt_id=59214&ct_id=1.
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- ¹¹ *Orden Ejecutiva del Gobernador de Puerto Rico*, ADMINISTRATIVE BULLETIN No. OE-2009-042, Oct. 30, 2009, [http://www.jp.gobierno.pr/Portal_JP/Portals/0/VP/BorradorVP/III\(1a\)%20OE-2009-42A%20APECEN_r.pdf](http://www.jp.gobierno.pr/Portal_JP/Portals/0/VP/BorradorVP/III(1a)%20OE-2009-42A%20APECEN_r.pdf).
- ¹² Puerto Rico Permit Process Reform Act, 2009 P.R. Laws 161, 65, http://www.jp.gobierno.pr/Portal_JP/Portals/0/Leyes/Ley_Num_161.pdf.
- ¹³ See Aura N. Alfaro, *NEC Gains Ground, but Criticism Lingers*, CARIBBEAN BUSINESS, (July 1, 2011), http://www.caribbeanbusinesspr.com/news03.php?nt_id=59063&ct_id=1; See also Maria Miranda, *Environmental Group Files Lawsuit Regarding NEC*, PUERTO RICO DAILY SUN (August 10, 2011), <http://www.prdailysun.com/index.php?page=news.article&id=1312947087>.
- ¹⁴ See Mead, *supra* note 9.
- ¹⁵ Raissa Calderón Mauras-Ricci, *Legislation Proposed to Protect the NEC*, PUERTO RICO DAILY SUN (Sept. 24, 2011), <http://www.prdailysun.com/index.php?page=news.article&id=1316918892>.
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- ¹⁷ *Id.*
- ¹⁸ See generally George J. Stigler, *The Theory of Economic Regulation*, 2 THE BELL JOURNAL OF ECONOMICS AND MANAGEMENT SCIENCE, No. 1, 3-21 (Spring, 1971), http://www.giuripol.unimi.it/Materiali%20Didattici/Regolazione%20dei%20Mercati%20-%20Ammannati/STIGLER_economicRegulation.pdf (introducing the modern theory that in time regulatory agencies come to be controlled by the industries they regulate).
- ¹⁹ See Irina Slinko et. al., *Laws for Sale: Evidence from Russia*, 7 AM. L. & ECON. REV. 284, 285 (2005).
- ²⁰ See Sebastián Martinuzzi et al., *Land Development, Land Use, and Urban Sprawl in Puerto Rico Integrating Remote Sensing and Population Census Data*, 79 LANDSCAPE & URB. PLAN. 288, 289 (2007), http://www.fs.fed.us/global/iitf/pubs/ja_iitf_2007_martinuzzi001.pdf.
- ²¹ See Thomas H. Douthat, "Puerto Rico, You Lovely Island ... Puerto Rico, You Ugly Island": *Combating Criollo Sprawl-the Puerto Rico Land Use Plan and Transect-Based Zoning As A Solution to the Island's Land Use Problems*, 76 REV. JUR. U.P.R. 441, 453-54 (2007).
- ²² *Id.* at 441, 443.
- ²³ See MARIA JUNCOS-GAUTIER ET AL., FINAL REPORT: LAND USE SUSTAINABILITY INDEX FOR PUERTO RICO (2009), http://cfpub.epa.gov/ncer_abstracts/index.cfm/fuseaction/display.abstractDetail/abstract/7535/report/F.

Endnotes: LIQUID CHALLENGES: CONTESTED WATER IN CENTRAL ASIA

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- ⁶⁷ Antipova, et al., *supra* note 10, at 505-06.
- ⁶⁸ WEINTHAL, *supra* note 23, at 7.
- ⁶⁹ Bo Libert et al., *Water and Energy Crisis in Central Asia*, 6 CHINA & EURASIA FORUM QUARTERLY 3, 10 (2008).
- ⁷⁰ *Id.* at 10-11.
- ⁷¹ David Trilling, *Kyrgyzstan: Melting Glaciers Threaten Central Asia's Ecological and Energy Future*, EURASIANET.ORG (Oct. 18, 2010), <http://www.eurasianet.org/node/62177>.
- ⁷² *Id.*
- ⁷³ *Id.*
- ⁷⁴ *Id.*
- ⁷⁵ Libert et al., *supra* note 70, at 10.
- ⁷⁶ Libert et al., *supra* note 70, at 14.
- ⁷⁷ Libert et al., *supra* note 70, at 10.
- ⁷⁸ Libert et al., *supra* note 70, at 10.
- ⁷⁹ ICG ASIA REPORT No. 34, *supra* note 32, at 23.
- ⁸⁰ Libert, et al., *supra* note 70, at 14.
- ⁸¹ ICG ASIA REPORT No. 34, *supra* note 32, at 23.
- ⁸² BANK INFORMATION CENTER, TAJIKISTAN'S ROGUN HYDRO: SOCIAL AND ENVIRONMENTAL ASPECTS 1, 6 (2011).
- ⁸³ *Id.* at 6.
- ⁸⁴ *Id.*
- ⁸⁵ See CHRISTINE BICHSEL, CONFLICT TRANSFORMATION IN CENTRAL ASIA: IRRIGATION DISPUTES IN THE FERGHANA VALLEY 38-40 (2009) (discussing irrigation issues in the Ferghana Valley).
- ⁸⁶ Sievers, *supra* note 45, at 374.
- ⁸⁷ Sievers, *supra* note 45, at 374-75.
- ⁸⁸ ICG ASIA REPORT No. 34, *supra* note 32, at 5.
- ⁸⁹ Sievers, *supra* note 45, at 365.
- ⁹⁰ ICG ASIA REPORT No. 34, *supra* note 32, at 4.
- ⁹¹ Sievers, *supra* note 45, at 374, 401.
- ⁹² ICG ASIA REPORT No. 34, *supra* note 32, at 5.
- ⁹³ ICG ASIA REPORT No. 34, *supra* note 32, at 13-14.
- ⁹⁴ ICG ASIA REPORT No. 34, *supra* note 32, at 5, 12-13.
- ⁹⁵ ICG ASIA REPORT No. 34, *supra* note 32, at 12.
- ⁹⁶ Martin Kipping, *Can "Integrated Water Resources Management" Silence Malthusian Concerns? The Case of Central Asia*, 2 WATER INT'L 305, 311 (2008).
- ⁹⁷ See Kipping, *id.* at 311 (arguing that the transnational nature of the water makes the local conflicts more difficult to resolve).
- ⁹⁸ Cf. HAMMOND MURRAY-RUST ET AL., INT'L WATER MGMT. INST., RESEARCH REPORT No. 67, WATER PRODUCTIVITY IN THE SYR DARYA-RIVER BASIN 1, 4-5 (2003) (discussing the creation and effect of the ICWC as a means of reforming water management in the Syr-Darya River Basin).
- ⁹⁹ ICG ASIA REPORT No. 34, *supra* note 32, at 15-16.
- ¹⁰⁰ ICG ASIA REPORT No. 34, *supra* note 32, at 16.
- ¹⁰¹ ICG ASIA REPORT No. 34, *supra* note 32, at 15-16.
- ¹⁰² ICG ASIA REPORT No. 34, *supra* note 32, at 15-16.
- ¹⁰³ ICG ASIA REPORT No. 34, *supra* note 32, at 15-16.
- ¹⁰⁴ See FRANCINE HIRSCH, EMPIRE OF NATIONS, ETHNOGRAPHIC KNOWLEDGE AND THE MAKING OF THE SOVIET UNION 1, 168-69 (2005) (discussing a petition by Uzbek-identified residents of villages on the Kirgiz side of the river claiming that they should be unified with Uzbekistan, as their identity was culturally Uzbek, and their villages were agricultural, rather than cattle breeding).
- ¹⁰⁵ See HIRSCH, *id.* at 171 (expounding upon the difficulties in territorial disputes in the Ferghana Valley, where delineations were not always straightforward).