State Planning in New Jersey (B)

After a five-year planning process, in 1992 New Jersey finally adopted an official state plan. The document, however, had such vague language on implementation that the state's governor could choose how, if at all, to direct state agencies to use its recommendations.

Governor James Florio, who had never fully recovered his popularity following enactment of his 1990 tax program, and who faced a difficult reelection campaign in 1993, generally supported the plan as consistent with his own policies. Carl Van Horn, Florio's chief policy advisor, claimed that the administration had been "implementing parts of the plan before it was adopted" through measures such as increased investment in transit, the new school-aid program, and a proposal to tighten development controls in environmentally sensitive areas along the New Jersey shore.\(^1\) Thomas Downs, who served as DOT secretary under Florio, also said that his department used the various drafts of the plan in arriving at some of its capital budgeting and regulatory decisions, most notably in discussions of the circumstances in which property owners should be granted curb cuts onto non-limited-access state roads.

Given that the Republican-controlled legislature was hostile to the plan, Florio decided to proceed cautiously, merely asking state agencies to report to him on how the plan should be implemented. In the context of Florio's general support, key agencies and the planning commission negotiated a series of agreements on use of the state plan. DOT and the commission agreed in June 1993, for example, that they would "establish policies to facilitate the development of 'centers' and

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\(^{1}\) Unless otherwise indicated all quotations are from interviews with the author in late 1996.

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to encourage development in ways consistent" with the plan. DOT and DEP, moreover, agreed that they would use the plan's demographic projections as a basis for preparing transportation and air quality analyses required by the federal Clean Air Act Amendments of 1990. DOT cautioned, though, that its actions had to be guided first and foremost by its federal and state statutory mandates. Finally, the state's Council on Affordable Housing, which establishes communities' affordable housing responsibilities, agreed to use the plan's demographic projections in allocating future "fair-share" housing responsibilities, a policy that for the first time would assign some responsibility for affordable housing to rural areas. In a 1996 interview, Florio contended that if he had been reelected he would have used the plan more aggressively in his second term as a way to prioritize infrastructure investments and as a guide to regulatory decision-making, though without usurping local zoning powers. He added, however, that the effects of the plan on his policies in a second administration would have been relatively minor. The plan was simply "an additional tool," he opined, adding, "you don't have to have a state plan to argue for some minimum degree of rationality and coordination." What the plan does, he continued, is offer "one more means of trying to focus attention" on key issues such as urban revitalization. "The plan," he concluded, "was an intellectual structuring" for a variety of decisions the governor and key officials had to make.

New Governor, Old Debates

Christine Todd Whitman, who narrowly defeated Florio in 1993, generally supported the state plan, but the centerpiece of her campaign was a promise of dramatic tax cuts. In keeping with this approach, during her first two years in office she said relatively little about planning. She did restore funding for the Office of State Planning to its FY 1992 level (after targeting it for virtual elimination in her first budget proposal). In general, however, her focus was on cutting taxes, encouraging economic growth, and regulatory reform.

Whitman—who proclaimed that the state was "open for business" in her inaugural address—maintained that she intended to focus on environmental results with fewer procedural hassles. Many environmentalists claimed, however, that deep budget cuts for environmental regulation, combined with an emphasis on attracting business investment, were undermining the state's longstanding efforts to protect the environment. Consequently a coalition of 20 state environmental groups issued a "Green Plan" for New Jersey in mid-1995, calling upon Whitman—who in previous public posts had garnered a reputation as a moderate environmentalist—to take a more activist stance on environmental issues. Among other things, they urged Whitman to require

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2 New Jersey Department of Transportation (1993).
3 Since the previous state plan had designated those areas as "no-growth" areas, they previously had no official responsibility to provide affordable housing.
4 Whitman had been president of the state's Board of Public Utilities and director of a board of freeholders in a rapidly-growing county in central New Jersey.
state agencies plan and act in consistency with the state plan.\textsuperscript{5} Whitman responded in late 1995 by informing her Cabinet members and the media that she supported the plan and asking the former to prepare reports on how they were implementing it. She also delivered a well-publicized speech before the planning commission in February 1996, stating: “Your plan is the map to a sustainable New Jersey.”\textsuperscript{6}

Whitman declined, however, to seek mandatory local compliance with the plan. Jane Kenny, who served as Whitman’s chief policy advisor until early 1996, when she became the state’s commissioner of community affairs, explained:

> In this state, if you try to ram something down somebody’s throat you are going to get legislation saying you can’t do that. ... So if we tell municipalities and people of this state that this is a document they have to obey, we are not going to have a planning process.

**Inducing Compliance**

Instead, the Whitman administration decided to seek plan compliance by raising the plan’s profile and offering communities that complied with the plan financial incentives and expedited processing of state permits. According to Kenny:

> What I’m talking about is a cultural change. That’s what a leader like the governor can do. The governor has a limited amount of time. There are a zillion demands on that limited time. So basically you can focus on a few priorities. If her priorities are on an issue like encouraging good land use policy, caring about rebuilding cities, and providing the technical and financial resources to do that ... then you are going to effect positive change.

In keeping with this approach, the State Planning Commission established a process to certify that local master plans would create centers as envisioned by the state plan. Communities that received this certification, along with eight cities identified in the plan, would be eligible for priority assistance from the state’s discretionary funding programs. By late 1996, 23 of the state’s more than 500 communities had sought and received this designation. None of those seeking such designation, however, made substantial changes to their plans (though several made minor changes in response to concerns expressed by the commission).

\textsuperscript{5} Americas Listoral Society, et. al. (1995).
\textsuperscript{6} Whitman (1996).
For their part, key state agencies gave communities modest credit for complying with the state plan. The state DOT, for example, altered its scoring system for capital projects to give 10 percent credit for projects that benefited designated centers, distressed municipalities, or urban areas. In addition, DOT set aside about $1 million (in an annual budget of more than $1 billion) to fund small projects in communities designated as "centers" by the state plan. Similarly, DEP began using plan consistency as one of its criteria in scoring local requests for funds from the state's wastewater treatment financing program and its "Green Acres" open space purchase program.

Many plan supporters contended, however, that these were merely cosmetic changes. The Tri-State Transportation Campaign, a regional coalition of environmental groups, for example, criticized the state DOT for a five-year capital plan that spent 32 percent of available highway funds on capacity expansion projects, many of them in areas where the plan aimed to prevent sprawl. This was double what New York and Connecticut devoted to such projects and a higher percentage than in 20 other states. Observing such policies, former State Planning Commissioner Candace Ashmun commented: "The governor is saying and thinking all the right things. But in the meantime the builders are doing their thing with cabinet members."

Key legislators, however, explicitly warned the governor not to make more significant use of the plan in allocating capital funds. State Senator Robert Littell, a rural Republican who chaired the Budget and Appropriations Committee, for example warned that any effort to reallocate infrastructure funding from rural to urban areas "isn't going to happen. We [in rural areas] pay our fair share in taxes. We intend to get our fair share back. If we don't, our constituents will throw us out of office."

Regulatory Implementation

On the regulatory front, an early controversy involved COAH, which in 1995 had issued new rules stating that it generally would not approve new local affordable housing plans requiring substantial construction in areas where the state plan discouraged new development. Towns that sought such development had to ask the state planning commission to designate the proposed sites as a new "center," or obtain a waiver from the planning commission.

In early 1996 this policy was tested when officials in Hillsborough, a fast-growing town in central New Jersey, asked COAH to rule that the inclusion of 450 affordable units in a proposed 3,000-unit elderly housing development would satisfy its Mt. Laurel requirement. Local elected officials strongly backed this development proposal, viewing elderly housing as a land use that

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7 New Jersey Department of Transportation (1995b). See also New Jersey Department of Transportation (1995a).
9 Whitman chose not to reappoint Ashmun to the planning commission, a move that was applauded by plan critics, including many legislative leaders. She did however, reappoint Ashmun to the Pinelands Commission.
would generate significantly more in tax revenues than the cost of local services it would need. In addition, since the proposed site was in a remote part of town, the officials believed the project could be built without creating unacceptable traffic or visual impacts. About 95 percent of the site, however, was on land that the state plan classified as environmentally sensitive, and thus unsuitable for development.

Environmentalists and plan supporters bitterly opposed the proposed plan as did some Hillsborough residents who felt the proposed development was not in keeping with the town’s generally rural character. Despite these protests, the State Planning Commission granted a waiver on the ground that some of the site was in areas where the plan encouraged growth. In response, New Jersey Future, a coalition of plan supporters, sued to overturn the planning commission and COAH decisions as not in keeping with the state plan.

To further complicate matters, local officials (who now included a project opponent) did not apply to the state’s Department of Environmental Protection for a permit to extend a sewer line to the site. The lack of a sewer permit convinced COAH that the town was not planning to proceed with the project. In early 1998 the court remanded the issue to COAH, which ultimately withdrew its certification on the ground that the town had no intention of pursuing the project.10

A second controversy involved DEP Commissioner Robert Shinn, who in mid 1996 issued an administrative order telling DEP’s assistant commissioners to make the policies and regulations that guide their respective programs consistent with the state plan “to the extent permitted by law.”11 Not long after Shinn issued this order, DEP officials requested that several localities and counties applying for DEP permits explain how the projects and plans in question related to the state plan. Convinced that the order and the requests showed that DEP was planning to implement the state plan via its regulatory authority, the New Jersey Builders Association sued to overturn Shinn’s order on the ground that he had illegally established new DEP rules without following proper administrative procedures.

In the ensuing court case, Shinn contended that his subordinates’ requests were inappropriate and that his order was merely an intra-agency communication designed to encourage DEP officials to use the plan’s concepts in formal rulemaking procedures, not in assessing particular permit requests. In 1997, a state superior court accepted this explanation and upheld Shinn’s action as appropriate.12

10 For more on this dispute see various issues of New Jersey Future’s newsletter, which are available on the World Wide Web at www.njfuture.org.
11 New Jersey Department of Environmental Protection (1996).
Plan advocates, such as New Jersey Future, believed that the court ruling allowed DEP to take steps such as banning sewer extensions in areas where the plan discouraged growth, if the agency followed official procedures in drafting such new rules. In fact, during the court case DEP officials indicated that they were seriously considering such a policy.

Plan skeptics, however, warned that they would fight such efforts to implement the plan via agency regulations. Senator Littel, for example, warned in late 1996 that:

The law is clear. ... Planning and zoning remain the purview of the municipal governing bodies ... and that hasn't been changed.

One of the judges who heard the lawsuit challenging Shinn's administrative order echoed this warning in a separate concurring opinion, writing: "if we are to have state planning rather than local planning, let the Legislature say so and let the political process proceed in due course. The Legislature, however, has never imposed state planning except in certain defined areas ...." 13

Such warnings created a quandary for Whitman as she approached the end of her first term. On the one hand, she supported most of the plan's general goals, such as protecting environmentally sensitive areas and revitalizing cities. The public, moreover, seemed to support many of the plan's goals. A 1993 Star Ledger/Eagleton Institute poll, example, found that 64 percent favored maintaining strict anti-pollution laws even if this might discourage the growth of jobs and industry. 14 On the other hand, most new economic activity in New Jersey was occurring, contrary to the plan, in suburban and suburbanizing locales. Vigorous plan implementation, therefore, would run counter to Governor Whitman's policies of facilitating growth and deferring to private investors on where it should go.

Like her predecessors, therefore, Whitman was trying to find a middle course, supportive of the concept of state planning but remote from the debates about plan implementation. For three reasons, however, this course was becoming increasingly difficult. First, since the plan was in place, state agencies were being challenged to act on its recommendations. Second, the State Planning Commission had to update the plan and, in doing so, reexamine implementation issues. Third, in early 1997 the state's Supreme Court—which in 1994 had rejected the state's school funding plan—ordered Whitman to develop a new plan to equalize school spending per child statewide, 15 a challenge that spilled over into land use policy because property taxes provide substantial support for many schools, particularly in suburban areas.

15 Abbott et. al. v. Burke 141 Supreme Court of New Jersey, 149 N.J. 145; 693 A.2d 417; 1997 N.J. LEXIS 141. For the 1994 decision see Supreme Court of New Jersey, 136 N.J. 444; 643 A.2d 575; 1994 N.J. LEXIS 624. (In FY 1995, localities provided 61 percent of all school funding; the state provided about 37 percent; and the federal government provided 2 percent.)
In deciding how to address these issues, Whitman, who was running for reelection in 1997, had to face some difficult choices about whether—and if so how—to amend and use the state plan.
References

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--- (1995b) "Report to the Governor on Implementation of the State Development and Redevelopment Plan," Trenton, NJ.


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