

## The specter of Paseo Caribe

By : RAFAEL HERNANDEZ COLON

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A specter has haunted the Acevedo Vilá administration. This incorporeal spirit arose from the encampments of self-appointed, professionally lacking defenders of the public domain, from the gray offices of midlevel bureaucrats and from the notebooks of like-minded journalists. It became visible through administrative or judicial decisions that terrorized the rule of law.

Its most clear manifestation was revealed at the Paseo Caribe project, where the specter's vindications failed miserably because they rested on half-baked theories regarding the terrestrial-maritime zone that were unpresentable before the Supreme Court. Before Paseo Caribe, the specter had shown itself throughout the northeast coast and in the Courtyard by Marriott project in Isla Verde. It put at issue the viability of permits and the finality of administrative actions.

The specter has taken hold of the Department of Natural & Environmental Resources (DNER), which is responsible for implementing the constitutional mandate to conserve our natural resources for development and utilization for the community's general welfare. The constitutional mandate is well-balanced. It promotes conservation as well as development and utilization of our natural resources for the common good. The department's policies must be balanced according to this mandate. *However*, the specter has tilted them toward conservation in a radical way. This emphasis is evidenced by arbitrary decisions and disregard for administrative law and the proper procedures necessary for adequate implementation of the constitutional mandate.

A policy is germinating in the DNER that will shake up the foundations of economic activity in Puerto Rico until the issue is put to rest by the Supreme Court or the incoming administration. The policy is directed toward the maritime zone.

The maritime zone belongs to the public domain. This means it isn't amenable to ownership. Private people, corporations and the government can't own the maritime zone. The civil-law doctrine says it is *fuera del comercio de los hombres* (beyond the reach of commerce), that you can't buy, sell, mortgage or rent this space because it is part of the people's domain.

Ever since Puerto Rico was a Spanish province, the maritime zone has been defined as the spaces along Puerto Rico's coasts that are bathed by the ebb and flow of the ocean, where the tides are felt and, where the tides aren't felt, where the largest waves (in case of hurricanes) reach. This definition, originally in the Spanish law of docks and ports, with minor changes, is currently in our law on docks and ports.

Basically, what the maritime zone has covered is the beach area. Originally, the Department of Public Works had the authority to fix the exact boundaries of the maritime zone. When the DNER was created in 1976, it assumed this responsibility since it was charged by its organic law with the surveillance and conservation of the zone and to grant franchises, permits and licenses for its use and exploitation.

The DNER certification of the maritime zone's boundaries is necessary so the titles to properties abutting the ocean may have their precise limits, capacity and extent. Although surveyors have had their differences with the DNER about where the waves reach, whether there is an ebb and flow of tides or where the waves reach in case of hurricanes, no major public issue arose in the past regarding the DNER's certifications of the zone.

This changed under the Acevedo Vilá administration. The specter has taken hold of the policymakers in the DNER and they have established new criteria—not based on the definition of the zone in the law of docks and ports—to determine the extent of the maritime zone. With the new criteria, we aren't talking about the beach area, more or less. We are talking about acres and acres inland. Now, we are talking not about the ocean and the waves, but about the biological and physical components of the whole extent of properties abutting the sea.

Fixing the boundaries of the maritime zone has become a task not only of surveyors but also of biologists and geologists, who will determine whether, in the properties' soil, there are plants proper to the salitrales—saltpeter beds—or whether there are dunes, mangroves, rocks, marine sediment, sand deposits or marine fossils.

Using this criteria, the DNER has begun to extend the maritime zone by hundreds of acres inland. It has determined land that has been used for decades in productive use or residential purposes now belongs to the public domain. This, in turn, means the title to these lands are registered in the property registry as having no meaning or force of law, no economic value and, thus, the DNER can eject the owners from the properties without any compensation.

Obviously, this policy, which violates basic constitutional rights, won't stand. But such reckless disregard for the constitutional rights of property owners places the rule of law in Puerto Rico at issue. The rule of law is essential to our common good, to economic development, to the enjoyment of our civil liberties.

The specter must be exorcised from the corridors of power so the rule of law will prevail and we can get our economy moving again.