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'Isolated' stance opens wetlands gates

By Elizabeth Shogren
Tribune newspapers: Los Angeles Times

November 16, 2003

ST. MARYS, Ga. -- The views across grassy salt marshes and the Intracoastal Waterway to a federally protected island wilderness are so picturesque that Home & Garden Television chose the Cumberland Harbour housing development as the location for its 2004 "dream home."

So far, HGTV's large, genteel Victorian with a private deep-water dock is the only house built among the cypress and live oaks dripping with Spanish moss. But on these 1,100 acres in southeastern Georgia, the developer has plans for a gated development of 1,200 homes -- plus streets, a yacht club, swimming pools and other amenities for the affluent.

Potential home buyers may be eagerly anticipating the completion of expensive housing on pristine waterfront property, but federal officials charged with protecting rare plants and animals are worried. Two endangered species, the wood stork and the Eastern indigo snake, rely on these wetlands for habitat. But because these wetlands have been designated "isolated," no federal agency has a say in what happens to them.

The U.S. Supreme Court ruled in 2001 that under the Clean Water Act, the government can protect waterways that are navigable or tributaries or marshes that drain into navigable waters -- but can no longer regulate "nonnavigable, isolated, intrastate" ponds, wetlands or mud flats just because they provide a habitat for migratory birds.

The Army Corps of Engineers, which has jurisdiction over the nation's waterways, has interpreted that ruling to mean that isolated wetlands no longer fall under the provisions of the Clean Water Act and are thus no longer protected from development.

Before the court's decision, Cumberland Harbour's developer would have been required to seek a permit from the Corps of Engineers before filling in or draining any of the wetlands. The U.S. Fish and Wildlife Service would have investigated the potential impact on rare animals and plants. And the Army Corps of Engineers would have either rejected the permit or, at the least, required the developer to make up for the loss of each acre of wetland by restoring or creating wetlands nearby.

Now, once a wetland area is determined to be "isolated," a developer may not even have to notify state or federal authorities before bringing in the bulldozers.

But the environment pays a price each time wetlands are filled, say those who study them.

"Wetlands ... can release water slowly over time, even during drought periods," said Keith Parsons, an environmental specialist with the Georgia Department of Natural Resources. "As wetlands are being developed, they're no longer acting as reservoirs."

President Bush has declared his commitment to a goal of "no net loss" of wetlands, first set in 1990 during his father's presidency, but the Army Corps does not know how many wetlands and streams nationwide are being lost or polluted as a result of the Supreme Court ruling. The Fish and Wildlife Service and the Environmental Protection Agency are not keeping track, either.

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Top officials in the Corps of Engineers downplayed the impact of the ruling so far but conceded that it could grow in the coming years.

"The significant losses predicted immediately after [the court ruling], from what we've been able to see, are not occurring," said Mark Sudol, chief of the Corps' regulatory branch. "There may be [such losses] in the future."

But regulators, environmentalists and wetlands experts in states like Georgia and Texas, which have no programs to protect isolated waters, point to projects where hundreds of acres of wetlands and streams have been destroyed or are slated for destruction because they were judged to be isolated.

In its 2001 ruling, the Supreme Court said it would be a "significant impingement upon a traditional state power" for the Army Corps of Engineers to regulate isolated waters and wetlands just because migratory birds depend on them. But, ironically, the majority of states have indicated they want the federal government to find a way to regulate as many of these areas as possible.

Local and state environmental officials say they are concerned that the loss of wetlands and streams will affect water quality and wildlife, but add that they do not have adequate resources to enforce their regulations.

Among them are officials in California, which has lost more than 90 percent of its wetlands to farming and development, according to the U.S. Fish and Wildlife Service. The state has laws to protect the remaining waters and wetlands, but it does not have the staff, programs or funding to ensure compliance, said Michael Levy, senior staff counsel for the State Water Resources Control Board.

The Bush administration contends that other federal and state programs aimed at preserving and creating wetlands are making up for any losses that may result from the court's decision.

"It is merely one component of a much more massive effort across the federal government and states toward the goal of halting overall wetlands loss," said James Connaughton, chairman of the White House Office of Environmental Quality.

In January, the administration announced that in response to the Supreme Court ruling, it would develop regulations clarifying the definition of "waters of the United States" -- those streams, bodies of water and wetlands that still will be protected by the Clean Water Act.

In the absence of such rules, there have been dozens of lawsuits and on-the-ground disputes over whether local Army Corps officials are making the right calls.

One involves a project in Brantley County, Ga., where as many as 177 acres of wetlands may be destroyed for a titanium mine. Environmentalists believe the wetlands should be protected because they are linked to other wetlands that connect to navigable waters.

Altamaha River Keeper, a Georgia environmental organization, is considering legal action if the company developing the mine does not agree to protect those wetlands.

"I'm getting even," said James Holland, a hulking 62-year-old with thick gray hair who said he helped found the environmental group after the destruction of coastal wetlands decimated his crabbing business. "Can we afford to lose any more wetlands than we already have? I say, 'No.' I've given my life to say 'no.'"

On a recent afternoon, Holland watched as a steady stream of trucks filled with dirt drove into the Cumberland Harbour development. Environmentalists are considering their options here, too, including a possible lawsuit, he said.

"You only bring in dirt to fill in wetlands," Holland said, as he looked through binoculars at several wood storks flying around a recently created man-made lake.

Development could be costly for these long-legged wading birds, which forage in brackish and freshwater wetlands,

and for the Eastern indigo snake, which lives in burrows dug in these wetlands by the gopher tortoise, a threatened species in Georgia.

Paul Beidel, a senior vice president at Land Resource Companies, which is developing the property, said his company was committed to having a "soft footprint" on the environment.

"Our goal is to kind of have zero impact to wetlands," he said, adding that he was referring only to the so-called jurisdictional wetlands, the ones that the Army Corps has determined have connections with navigable waters. He does not know, he said, how many acres of isolated wetlands are being destroyed at Cumberland Harbour.

Some students of wetlands believe that the Army Corps' interpretation of the Supreme Court ruling is not hurting the environment.

David Crawley, a wetlands scientist and consultant for a housing development in Rincon, a bedroom community of Savannah, believes the regulations are sufficiently "protective."

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