

**COORDINATING GROWTH AND
ENVIRONMENTAL MANAGEMENT
THROUGH CONSENSUS BUILDING**

**VOL. 2, APPENDIX
CASE STUDIES**

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with cases contributed by
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Case 1

GROWTH MANAGEMENT CONSENSUS PROJECT

by Judith Innes¹

Overview

The Growth Management Consensus Project (GMCP) was an 18-month effort from the time the participation of stakeholders was first sought, in which representatives of virtually all the major interests came together to build consensus on basic features for statewide legislation on growth management. The group achieved a remarkable amount of mutual understanding and agreement among most of the players in view of the complexity of the issues, the range of highly adversarial interests, and the short 10 months of actual meetings. The project produced a 28-page report² outlining a wide range of issues and principles on which there was substantial agreement among most players. These “emerging” agreements helped to shape participants’ views and the positions of the interest groups they represented, both during and after the process. While the group produced no specific legislative recommendations a number of the “emerging” agreements they reached were incorporated into pending legislation. The participants also influenced legislative and executive deliberations as they testified in public hearings and as their staff lobbied in the following year.

The GMCP began with a heterogeneous, contentious collection of stakeholders, few of whom had ever sat at a table together or tried to cooperate over a policy issue. These stakeholders listened to one another during the 10 months, found they had some areas of common or compatible interest, and were able to build new long-term relationships with each other. In this process new interests became involved in the debate over growth management, most notably those concerned about social equity. The process helped the participants to see how their interests were linked to the others, and to agree that they should devise a system in which each could get needs met. In particular, many participants came to see the importance of certainty for both environmentalists and developers, as well as the pervasive relevance of social equity to growth policy. The process pushed some groups into thinking through for the first time how various strategies for growth management would affect them, and pushed other groups into altering long-held positions. Finally an informal result of the GMCP was a spin-off group that formed at the end of the process, composed of centrist stakeholders committed to preparing legislation. They were to use the product of the GMCP — the emerging agreements

¹ Interviews were conducted by Judith Innes and Michael Neuman.

² Center for California Studies, California State University Sacramento, “Summary of Findings: Growth Management Consensus Project,” January 5, 1992.

— as the starting point for their more intensive effort to create detailed legislation (see EERC case).

These were steps toward the coordination of opinions, understandings and strategies that are essential in the longer run for the development of politically supported and implementable legislation. This process developed crucial social and political capital that continues to grow and to be used to develop a workable strategy for statewide management of growth.

The process, however, was limited by its failure to engage or satisfy several key stakeholders whose support may be crucial to passage of legislation and/or implementation. In particular, although local government was represented in a variety of ways, these representatives were not satisfied that the process had provided well for their concerns. In addition, some significant development and business interests remained adamantly opposed to many agreements. Finally, the process did not develop a shared information base, which might have resolved some issues and could do so in the future. Still, the test of this process may be in the efforts that have spun off from it.

This case and its successor, The Economic and Environmental Recovery Coalition (EERC), have particular interest among our cases for several reasons. First, because the case is directly about stakeholders designing a statewide growth management system, we have learned a great deal about the perceived options for growth management and players' concerns. This knowledge has directly informed our recommendations. Second, this is a particularly challenging case to test the potential of consensus building as a way of reaching agreement on complex, far-reaching tasks, where interests have long been deeply opposed. Because of the detailed records, the willingness of staff and facilitators, and the opportunity we had to listen to discussions, we were able to learn more in this case than in some others about how and why facilitation was important and about the process and type of discussion that led to converging or differing views. Finally, because lobbyists who formally and professionally represent large interest groups were at the meetings, we were able to get particular insight through this and the EERC case about the dilemmas and strategies facing participants as they try to represent those interests in consensus building.

Basic Story

In the late 1980s growth management was on the agenda in Sacramento, but the players were many and the proposals fragmented and in conflict with one another. Sixty or 70 bills were in the hopper in 1988, some with significant consequences, including the creation of county congestion management agencies for transportation decision-making. The demand for consensus building came from two directions. On the one hand, a collection of interest groups, including builders, developers, and local government, worried that new legislation might pass without their assent, wrote to the governor and legislature asking for a moratorium on growth management-related legislation and for the initiation of a consensus-building process. On the

other, legislators and legislative staff interested in passing legislation sought to break the gridlock by establishing a consensus process among the key political interests.

Legislative staff took the initiative in mid-1990, with the backing of key legislators from both parties. They started a process that was informally encouraged by legislative leaders, but was outside the legislature's formal responsibility. In order to assure neutrality and obtain the expertise to help establish a diverse consensus-building group, they got California State University, Sacramento to agree to help establish and manage a consensus-building process. With the help of CSUS project director Susan Sherry, staff developed a first-draft list of stakeholder categories for inclusion. The three "shopped the list around" and sought to make it as inclusive as possible of the full range of interests in growth management. Their list included representatives of 32 interests, ranging across the building and development industry, business community, environmental groups, local and county governments, COGs, affordable housing, air quality districts, transportation, and social equity/ethnic groups. The staff largely chose interests that had statewide organizations so they genuinely could be statewide players. Since the initiators seem to have regarded this group discussion effort as basically an improvement on the normal lobbying and negotiation process, rather than a formally mandated government activity, no state agencies or governor's office representatives were included. Their goal was eventually to produce not only legislation but a political coalition capable of passing it. They also wanted to introduce into the political mix interests that represented the ethnic diversity of the state. Until that time growth management had been largely a debate between environmentalists and developers, and initiators believed it should include other concerns. Legislative studies had shown that growth management programs could have adverse impacts on many city ethnic groups and the poor. Finally, staff tried to get a representative from the governor's office to participate or at least observe, but the governor's staff chose not to be involved and instead organized their own interagency council.

Many players were reluctant at first to participate. The principal incentive was that legislation might pass, and most stakeholders would prefer to be at the table when it was being designed. But it was not clear that the GMCP would provide that table. The staff had to amass a significant number of important participants in order to persuade those who preferred the status quo or who expected to have influence independent of the GMCP that they should be involved. Some players feared joining the group because they thought they might end up politically isolated, with a large majority agreeing on legislation they opposed. Their participation itself might seem to represent support for whatever was produced. Moreover, it was a gubernatorial election year and that introduced uncertainties for some players. Dianne Feinstein had already declared her support for a growth management plan. Pete Wilson was more ambiguous about his intentions, and was less certain to support legislation. Those who most feared growth management, largely from the building and real estate industries, would have no recourse from an unsatisfactory outcome if Feinstein won, but they could protest proposals to Wilson. Finally, the project would take valuable time and energy. Would it be worthwhile to the stakeholders and their organizations?

Growth Management Consensus Project

After six months of individual persuasion, cajoling letters from the Senate and Assembly leaders, the election of Wilson as governor, and several weeks of negotiating ground rules, the group finally agreed to assemble. Some participants came on board only after a critical mass was established. Four pages of ground rules addressed several worries of potential participants.

They agreed that consensus would be defined as 100 percent agreement. This decision, without which a number of players would not have come to the table, virtually guaranteed that consensus could not be achieved on many points. This is why organizers of consensus-building groups typically seek a less demanding standard of agreement. Participants also agreed not to quote each other outside of meetings and not to go outside the process to lobby legislators on these issues while the process was going on. Stakeholders agreed to attend all statewide meetings and to consult regularly with their constituency organizations. Alternates were permitted, and stakeholders each brought one or two staff to meetings. Stakeholders were “principals” of organizations, presidents, or board members or other appointees, not paid staff. Only stakeholders were permitted to speak in the meetings, however. Observers, including the press, were permitted at meetings, although few came regularly.

Although the legislature provided space, supplies, and staff assistance, \$200,000 in funding was needed to pay the facilitator and to support weekend workshops. The project director raised this funding in part from the participants themselves, making clear that participation was in no way related to financial contributions. Big supporters included the Hewlett Foundation, the Irvine Company, and the South Coast Air Quality District, and other support came from a range of businesses, utilities, and the legislature itself. Financial contributions were made public.

At more or less the same time as the first meeting of the GMCP, in January 1991, Governor Wilson announced the formation of the Interagency Council on Growth Management, chaired by Richard Sybert of the Governor’s Office of Planning and Research and including high-level representatives of several key agencies. This council was to develop strategy on growth management for the state. They proceeded in the following months, in tandem with GMCP, to hold hearings around the state and to produce compilations of academic papers, reviews of practices in other states, and volumes of testimony.

This activity created some uncertainty among the players about the prospect for the GMCP as the forum for reaching agreements. It was disconcerting that these two parallel activities were not joined. Staff efforts to get the governor’s office to send at least an observer were to no avail. It was unclear whether the governor was planning to produce a proposal to pre-empt legislative initiative, or whether this council’s work could mesh with that of the GMCP. Nonetheless, attendance was high, 80 to 90 percent over seven months at the 13 meetings, each of which lasted a full day or weekend. This was all the more remarkable because the designated stakeholders were “principals” only — elected officials, developers,

organizational directors or board members.³ Only labor formally dropped away, although one or two other stakeholders did not attend much after a time. Over time, staff became more involved through the small caucus meetings held during the day-long gatherings.

The legislative staff hammered out four position papers to provide a common starting place for the group. Although players often disagreed with these, the papers provided a focus for discussion and the themes they introduced became central to the findings. The papers dealt with the state's role in managing growth, with the ways land use was being determined by fiscal criteria, with the need for certainty in the development and regulatory process, and with the need for compactness in land use. They introduced the concept of social equity into the discussions. Legislative staff continued to provide analytic reports and conceptual pieces on issues such as governance. They framed options and explained alternative paradigms for approaching the issues. Staff also provided information about proposed legislation and other advice on the legislative process.

Project director Sherry worked closely throughout with legislative staff not only to choose the stakeholders and negotiate the ground rules, but also to develop ideas, plan overall strategy, and to plan the meetings. She took on the roles of meeting facilitator and mediator outside the process, as necessary. From the outset the group was run not by a chair, but by a facilitator. At first an out-of-state facilitator was hired who had some comparable experience, but for a variety of reasons, the group was dissatisfied with this facilitator's approach. The group was made up of strong individuals, many of whom already knew or thought they knew the issues well. During and between meetings group members began to work most closely with Susan Sherry, and eventually insisted that she be the facilitator. They asked the other staff to stop attending, as some players were concerned that they represented particular legislators who had already taken positions on legislation. It was a sign that the group had begun to feel "ownership" of its own process, which according to experienced facilitators is an important component of success. The group had to demonstrate in particular that it was independent of the legislature. However, after about four weeks the group realized they needed the staff assistance and asked the staff to return.

With the guidance of staff, the group defined a set of issues to discuss. They established an overall goal of seeking consensus on legislation to manage growth. They worked out a mission statement identifying such objectives as identifying the key issues requiring state leadership, developing specific agreements among constituencies on key policy issues, identifying the key disagreements and their basis, and preparing a set of recommendations to

³ The individuals representing the stakeholders were chosen by the stakeholders themselves. That is, a certain number of slots were identified for counties. The County Supervisors Association was asked to select individuals and they selected two supervisors, each representing a different view of growth management and reflecting the range of their constituencies. The League of Cities chose one mayor and one city planning director so they could also represent the American Planning Association. The California Building Industry Association chose a developer, and so on.

the governor and others. They accomplished all but the last objective. All along the group had control of the decisions, although they were strongly guided by ideas provided by staff.

The group decided they needed to meet at first in caucus groups organized by clusters of interests, because many stakeholders had not had the opportunity to develop positions on a number of growth management policies. They felt uncertain of what they should say and preferred to build their understanding of the issues with more or less like-minded people, rather than have to express views to potential adversaries at this early stage. Caucuses representing environmental, business, governmental, social equity, and housing interests were formed. While staff originally suggested that business and development caucuses be kept separate, as they had different interests, development interests insisted on joining in one united group. Considerable time in early meetings was devoted to giving players within caucus groups opportunity to reach agreement on some questions. Lists of agreements and positions were drawn up, followed by meetings that paired two caucuses at a time, in order to resolve cross-caucus differences. Then mixed group caucuses were held on issues. Representatives of these small meetings reported to the larger group at the end of the day. Ms. Sherry kept lists of agreements and differences, clarifying as they went. Issues that were too controversial were taken off the table as they proceeded, including an environmentalist proposal for population limits and local rent control. A number of fiscal issues were set aside for later, and then never fully addressed. Afterwards, the group set the agenda for the next meeting, sometimes relying on an ad hoc agenda-setting committee.⁴

The GMCP was an intense and difficult process. Many of the issues were of deep and emotional significance to the stakeholders: local control over land use, property rights, and protection of fragile environments. These players had been confronting one another for years, and now they had to learn a new way of relating. There was little trust to start with, and little mutual understanding. Topics like population limits or urban growth boundaries could make some players “go ballistic.” Some of these issues, like urban growth boundaries, remained serious sticking points, even in the EERC, while others like population limits were not mentioned further. Certain development interests — particularly the Building Industry Association, representing many small builders; the realtors; the Business Properties association, representing many shopping center developers; and some local elected officials — were most often found in opposition to majority views. In the view of some people we interviewed, these players were unlikely ever to agree to a significant growth management proposal. But the project did not last long enough, nor become the only arena for decision-making, so this view may or may not be correct.

The facilitator played a significant role in defusing issues, not only by how she handled the meetings, which at times threatened to get out of control, but even more significantly by her work between meetings. She took phone calls at all hours. She listened to concerns of

⁴ See Susan Sherry, “The Growth Management Consensus Project,” *Land Use Forum*, Winter 1992, 91-94, for a more detailed outline of the project and process.

stakeholders, developed ways these issues could be dealt with in meetings, and, by virtually all accounts, maintained neutrality and complete confidentiality. She constantly reviewed and revised the processes with the advice of the players, and later with the legislative staff when the group asked them to return to provide assistance. She worked an estimated 60 hours a week, not only doing these mediation-facilitation tasks, but also doing administrative and clerical work. This effort was well above and beyond what she was paid to do. She did it because she believed in the cause and because it was the center's first project and it was important to do it well. Given the history of conflict among the players, without this type of extra effort it is likely that far less agreement would have been achieved in such a short time. months. Unfortunately, this model is hard to duplicate as it depends on a personal commitment that is unreasonable to expect in a hired professional facilitator.

The various stakeholders held differing views of the process and its outcomes. Most felt the facilitator was invaluable for her neutrality, energy, and the way she drove them to try to find areas of agreement. Most felt they were heard and that in general it was a valuable process, in which they learned a lot. Opinions differed, however, on whether participants thought much was accomplished, but many of the group members changed their views of how to work in the future as a result of this process. One stakeholder who had no prior experience with this type of process, and who was often in the minority, expressed what many of the players seemed to believe: "I came from the GMCP with the impression that coalition building is a thing of the future, instead of everyone for themselves and for maintaining the status quo." Most said that they learned a great deal about where other players were coming from and that they developed relationships with people as individuals, which helped them work together.

The most dissatisfied of the participants included representatives of local government, who felt their fundamental interests were not well addressed, particularly the fiscal problems they thought prevented them from changing their policies. Although a number of principles they sought on fiscal issues were agreed to, there was a feeling that these matters were left too far to the end of the process and that hard issues such as the role of Proposition 13 and tax limitation measures were not addressed. Moreover, they felt they were in the difficult position that all the other players wanted something from them. In turn, a number of the other participants expressed impatience with these local government representatives, calling them "whiners" because of their insistence on additional funding in a context in which the state budget had little to offer, and constantly repeated "the mantra of local control over land use."

One reason for the problem was that local governments could not agree among themselves, nor exert leadership in the GMCP process. They had deliberately sent representatives who reflected the wide range of opinion both for and against growth management among their constituency. Moreover, elected officials were particularly uncomfortable in dealing with the narrow-purpose lobbying groups, such as affordable housing proponents, who could stand to push their agenda single-mindedly, while local governments had to integrate and represent a variety of agendas. Some of the government players criticized the caucus process as divisive, and contended that the group should have met more as a whole or in representative groups

concerning issue areas, rather than in caucus groups that gave players the chance to harden into separate positions. They should have spent more time on developing the common framework and objectives, according to one respondent with ample experience in similar processes.⁵ Government stakeholders were largely assigned the task of trying to agree on a governmental structure, while environmentalists and business worked more on issues like growth limits. The net effect was that the government representatives tended to feel marginalized and they did not find much in the agreements to satisfy them.

As the process wore on some of the stakeholders began to be tired of meetings, less able to attend, and uncertain of the value of continuing. A few apparently intransigent stakeholders (individuals were regarded intransigent, rather than all members of any one stakeholder category) seemed likely to prevent the achievement of 100 percent consensus on anything. The Governor's Interagency Council, moreover, seemed likely to suggest legislation at the beginning of the next legislative session, making it unclear if the GMCP effort would be worthwhile. The GMCP had amassed a 100-page document of agreements and issue analysis (written largely by a select group of stakeholder staff who volunteered), but participants were not interested in wordsmithing this document. It was too overwhelming and detailed. They needed a product and a punctuation point to their work. It seemed to some players better to wait for the governor's proposal than to work on something that might be wasted effort. Others felt that no progress would be made as long as certain obdurate participants were involved, and they were already privately discussing a new group they would start, including the more "reasonable" participants. The group empowered the facilitator to draft a short version of the report, which they presented to a joint legislative hearing in Sacramento. They then disbanded formally.

Assessment of Results

The products of the process included a list of emerging agreements.⁶ Even the most contentious of these represented 85 to 90 percent agreement, with no more than three stakeholders disagreeing on any one item. None were listed that did not have substantial support within each caucus. The greatest degree of consensus was on several points: the state should coordinate its own policies; any growth management system would have to be built on providing certainty for all players or none would accept it; compact growth would be important and some type of land designation method would be required; and both environmen-

⁵ The facilitator's view of this was that the group would have moved in this direction had it continued, but they needed the caucus groups for security and education at the outset. It is worth noting that mediators who run consensus building processes may spend weeks or months at the outset before beginning formal meetings, assisting participants in framing their own point of view and understanding what they have at stake. It is important to equalize the players' capacity to participate to make the consensus meaningful and keep the players at the table.

⁶ See Final Report, Growth Management Consensus Project, October, 1992.

tal protection and economic development were equally important objectives. The report also contained a description and explanation of areas of continuing contention.

For many players these positions represented changes or new positions reached during the process. The most notable change in perspective of group members came in regard to the question of social equity. The social equity representatives had to learn about growth management as they had not been involved in the debates before, while the other players learned about equity issues. As the process began, participants assumed that social equity was a special interest, related to housing or other such issues. But the ethnic community leaders managed to demonstrate to the others how growth management issues in general had distributional and equity implications. Environmentalists had come to the table with a proposal for setting population limits, which they retreated from when the ethnic community representatives explained how it would operate as a racist policy differentially affecting minority groups. Affordable housing advocates learned that such is not desirable unless it is near transportation and services. The most graphic illustration that a shared understanding had been reached was provided when the chair of the Interagency Growth Management Council said in a public meeting with GMCP members that growth management was not a social equity issue, and he was firmly contradicted by one of the business caucus, who was supported in turn by the other members. In our interviews, many noted that during the process they had come to see how growth management and social equity were integrally related.

There were other less tangible but perhaps even more significant results. The players developed substantial social and political capital, and a certain amount of intellectual capital, that they continue to use today. Some of the players developed considerable mutual understanding and trust, particularly among the environmental groups, politically moderate business entities (represented by a coalition known as the California Council for Environmental and Economic Balance), and the social equity and housing players. This was to become the basis for a spin-off group that was to continue the effort to produce legislation on their own (see the case on the Economic and Environmental Recovery Coalition). They used the mutual understandings and agreements reached as a starting place for developing shared principles and, ultimately, writing detailed legislation.

But all players had learned about each other and had contacts and new abilities to talk and to understand one another's views. They learned how not to make assumptions about each other and to listen. Some, like the California Association of Realtors, had changed their official positions in response to GMCP discussions, moving closer to accepting, for example, affordable housing policies. Many players who had supported regional government backed away from the position, concluding that it was politically too difficult to achieve at that point. Overall, players found and documented much common ground, coming from positions of extreme difference and often hostility. And they had done so in an extremely short time frame as these processes go.

The failures and limits of this process can be briefly noted. First, it simply did not continue long enough to move to concrete operational agreements. Second, the parallel activity

Growth Management Consensus Project

by the governor's office, and the governor's lack of commitment to growth management, undermined the effort. Third, the process neither produced nor used systematic data or other research-based information that could have helped to resolve differences, by, for example, showing what the consequences might be of urban growth boundaries, or finding out the degree to which the public would accept denser development if it were served by transit. Fourth, the effort to be all-inclusive, combined with the 100 percent consensus requirement, virtually guaranteed no agreement on any point. Then, too, the mixture of narrow interests with representative of cities, counties, and councils of government was problematic. Such interest groups had little to lose and much to gain and could afford to hold out for their positions. But cities and counties had much to lose, and they could not take strong stands since they had to balance many goals and represent communities with a wide range of attitudes toward growth. Ultimately they knew they would be on the receiving end of most decisions. The failure to incorporate local governments into this consensus will be problematic in future if not corrected, since these governments must carry out the policies.

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Case 2

ECONOMIC AND ENVIRONMENTAL RECOVERY COALITION

by Judith Innes¹

Overview

This is the story of a quiet, two-year effort that began with representatives of a diverse but moderate group of participants from the Growth Management Consensus Project, including business, social equity, and environmental interests, who continued to meet on their own after that project to craft legislation. The group has worked intensively over the period, expanding from a core group of eight individuals representing 13 organizations to a 15-member steering committee representing 25 organizations, all of which could accept the set of “First Principles” the core group established. This effort has produced a legislative package involving four interrelated bills, including one establishing a statewide growth management program and three others relating to infrastructure and finance. Each of these is a significant and complex proposal, particularly the first.

Although not all disputes have yet been resolved, and the legislation (as amended by the end of the 1993 session) still has gaps, the group had made remarkable progress in reducing the disputed issues and finding strategies that the diverse players could accept. It also produced an increasingly sophisticated framework for establishing and coordinating growth management at all levels of government. The group continues its work, aiming for action in the next legislative session — although the recent defeat at the polls of the local majority vote bond issues has led to discouragement, since this was a key element in the fiscal strategy.

Basic Story

As the Growth Management Consensus Project (GMCP) began to wind down, a subgroup of the stakeholders who shared a number of important bases for agreement on growth management and who were committed to action began talking about continuing to meet on their own after the project to try to craft legislation, building on the principles of emerging agreement in that project. They quickly named themselves the Economic and Environmental Recovery Coalition (EERC) as the recession deepened in California. The eight, who began their quiet, unpublicized discussions in fall of 1991, were designated representatives to this group by organizations such as the California Council for Environmental and

¹ Interviews were done by Judith Innes and Michael Neuman, and Judith Gruber attended a meeting.

Economic and Environmental Recovery Coalition

Economic Balance, a 20-year old coalition of businesses, labor and public utilities, which took the position that the protecting environment was necessary for California's business climate. Other organizations included the Sierra Club, the Natural Resources Defense Council, California Rural Legal Assistance, the Western Center on Law and Poverty, the Ethnic Coalition of Los Angeles, the South Coast Air Quality District, and the American Planning Association. Essentially, the group included major environmental interests, moderate business and private-sector interests, ethnic interests, affordable housing and the poor, as well as air and water concerns. These participants, each of whom had shown leadership and the ability to articulate positions in the GMCP, typically wore more than one hat, representing two or more organizations formally or informally because of their knowledge and their personal concerns.

The group came together partly by the initiative of some of these individuals, who in turn held informal discussions with others who were possible participants. Thus the selection process combined an effort to include interests that seemed crucial, and to select individuals who could be reasonable and represent those interests. In the beginning the group was intentionally kept small to assure its effectiveness as a working group. The precise way the group was selected and formed is difficult to recount clearly, since the participants' memories conflict to some degree about the details. This informal, rather ambiguous process, did, however, cause some hard feelings among stakeholders not included.

Participants in the EERC were moderates among GMCP participants. They did not represent the full range of opinion, nor all the stakeholders. They did not officially include such stakeholders as the Building Industry Association, the California Realtors, the Business Properties Association, farming interests, cities, counties, or COGs, although one or two participants were knowledgeable about the governments and unofficially attempted to represent the local viewpoint. Most were staff or lobbyists located in or near Sacramento, where meetings were held, although sometimes conference calls were used instead. These individuals had already helped to draft agreements and documents in the GMCP. The EERC was diverse and participants differed significantly among themselves, although less so than in the GMCP. Its members had come to develop good working relationships in the GMCP and to regard each other as reasonable people. They had learned to talk and to build consensus. They had accumulated social and intellectual capital with which they could begin the EERC process.

GMCP participants were vaguely aware of this group's activities in the ensuing months, and some felt resentful that they had not been included. Several local government representatives commented that there was insufficient local representation. Others noted that a sizable proportion of the business community was not represented. However, the basic notion of the EERC was that a group that could begin to build agreement among themselves might later be able to widen the consensus. The GMCP had convinced them that the full representation of all stakeholders and the 100 percent voting rule would not allow progress toward legislation. This informal process allowed them to avoid those players who had become obstructions to

agreements. Members of the EERC hoped, if they could reach agreement among a wide and diverse enough core of people, that they could produce viable legislation.

EERC participants included David Booher, representing the California Council of Environmental and Economic Balance, and John White, representing environmental groups and the South Coast Air Quality Management District. Others in this first-phase group were Rae James, representing the Ethnic Coalition in Los Angeles; Janet Ruggiero, a planner from a small rural community and prominent member of the American Planning Association; and Marc Brown as a low-income housing advocate. Members of this group contacted a selected set of other stakeholders from the GMCP or stakeholder staff to explore the possibility of future participation or to get their views of issues.

This group met informally over a weekly lunch in Sacramento and held monthly retreats. They began by agreeing on a set of First Principles, which they publicized in June 1992. They worked in a cooperative way, without a chair or staff, despite the intense disagreements that still separated them. Increasingly, the EERC developed its own strong internal dynamic and culture as participants moved toward their shared objective. Two individuals, Booher and White, were by all accounts the moving force of this effort, keeping it alive and moving it forward throughout its life. Observers remarked on how these two, despite their representing opposite poles of opinion, had developed a full understanding of one another's perspectives; each was able to represent the other's point of view, if necessary.

The group's First Principles drew heavily on the emerging agreements with which the GMCP had ended. These established four key themes to guide the work: the importance of investment and productivity; efficiency in the use of public and private resources; greater certainty in the growth process and decisions; and equity in any legislative package for ethnic and racial groups and the disadvantaged. These themes had been thoroughly discussed and represented real choices of priorities among many ways to address the issues. Other principles dealt with compact development and creating opportunities for affordable housing; fiscal reforms so that local government land use decisions would not have to be so driven by revenue needs; funding for infrastructure; integrated state growth management policies and standards, along with enforcement mechanisms; regional growth management strategies and reallocation of authority in regions; and changes in general plans to be consistent with regional strategy. (Some of these principles were substantially modified by the time legislation was written.)

After about a year, when the group had become well established and was ready to work on crafting the legislation, they invited Susan Sherry once again to act as facilitator, and they asked legislative staff to assist them as they had in the GMCP. The group needed a facilitator to help them record agreements, manage the discussion, and identify and address sticking points. Sherry advised the group that in her role as professional facilitator she needed to be regarded as a neutral party and requested that they establish and publicize explicit ground rules for how others could join this process. She believed this kind of openness would be required to assure legitimacy of the results.

The group's response was to circulate the information that stakeholders could join if they agreed to the First Principles. Several more players joined in fall 1992, including Angelo Siracusa of the Bay Area Council, an organization of big businesses; Grantland Johnson, Sacramento County Supervisor representing the African-American Summit; Ann Baker of the Metropolitan Water Districts of Southern California; Claudia Martinez of the Mexican American Legal Defense and Education Fund; Ann Kelly of the California Manufacturers Association; Robert Pernell, representing California State Council of Laborers and other construction labor unions; Jill Lawrence, representing the LA 2000 Partnership; and other representatives of environmental, labor, ethnic, and business groups. Members of the group actively solicited participation from the League of Cities, BIA, BPA, realtors, and state Chamber of Commerce, who decided not to participate. In numerous meetings city and county governments remained represented only informally by Ruggiero and Johnson; BIA and BPA developers, along with representatives of real estate and farming interests, chose not to participate, although the farm bureau did participate in several meetings.

In this process, in contrast to the GMCP, Ms. Sherry operated primarily as a facilitator, working mainly to prepare for and manage meetings. She no longer played a strong outside mediating role nor performed clerical and administrative tasks. The latter were provided by stakeholder organizations' contributions and through a grant obtained from the Hewlett Foundation. In between meetings, however, group members themselves carried on intensive communications over their assigned tasks. Thus, the group typically delegated problems and language to be worked out by subcommittees consensually chosen to work in between meetings. Members worked hard, with several putting in enormous numbers of hours.

It is instructive to see how these players actually worked to build consensus on an increasingly specific legislation, at this writing embodied largely in four bills.² They agreed early on that the various elements of the legislation had to be regarded as a package, and that no one would support one part without the others. Therefore, for example, the legislation to make local bond issues pass with a majority instead of a two-thirds' vote would only pass in conjunction with the effort to set up a statewide Conservation and Development Commission to set state policy. Participants had learned, through two years of discussion, that all of their interests were interconnected and that their mutual support of the bill would not only depend on each getting the pieces they needed, but also on the continuing mutual trust that they had built. They also understood that managing growth involves many simultaneous activities. To reduce sprawl and increase use of public transit, efforts would have to be made to free local governments from the fiscal pressures that encourage them to approve sprawling, large-lot development, shopping malls, and offices distant from housing.

The discussion in the meeting we attended showed how the understanding of players was built through a combination of thinking through general principles and applying them in

² SB 377, Presley, etc.

specific examples. They began with a focus on sticking points within topic areas, such as governance or fiscal issues. Participants tried to identify issues that were resolvable and others that could be deal breakers if included in the legislation. The group looked at the suggested language for legislation and raised questions about its meanings and implications for implementation. The process was one of group learning about the complexities and ambiguities of principles that participants originally had thought were more simple, as they discussed their implications with the individuals in the group who had special knowledge. They moved back and forth from ideas about basic principles to very-specific applications and scenarios as a way of understanding the issues involved.

The discussion on whether to require local plan consistency with state policy is a case in point. A lawyer in the group tried to explain why courts never overturn consistency determinations. There is no exact way to decide if a plan is consistent. The problem comes when this type of vague requirement, relying on a number of subjective judgments, is associated with an entitlement to funding. Then the vagueness is much more problematic. Courts, he contended, would ask for performance standards, as being easier to enforce fairly than plan consistency requirements. The group then brainstormed to find an alternative way to address the concern for consistency of local action with state policy. As a result, the idea of a self-certification of local plans became more attractive than it had been earlier. Indeed, the First Principles suggested that this option would have been precluded. This process is an example of how a group that has built its social and political capital can work towards shared understandings and agreements in a way that is collaborative rather than adversarial, and which can lead to new and unexpected ways of addressing a problem.

As of the end of the 1993 legislative session, four linked bills³ represented the agreements reached to that point. The central one — SB 377 (Presley) — set up goals and policies for the state, a statewide commission involving state agency heads and citizens, a requirement both to create a statewide conservation and development plan and to assure consistency of individual state agency plans with this plan, and a proposed set of voluntary methods for regional collaborative planning among localities, which are to be encouraged by the state recognition of these plans and policies in various ways. The bill is paired with a bond issue for infrastructure, an infrastructure bank, and new potential for local governments to raise bond funding with only a majority vote instead of two-thirds. The larger bill was written so that it would not pass unless the others did, in reflection of the group's understanding of how their interests are linked in a common system.⁴

³ These include SB 377, SB 101, SB 844, and SCA 19.

⁴ The failure in November 1993 of a proposition that would have lowered the requirement from two-thirds to a majority for school bonds to pass, has discouraged EERC players about the prospects for passage of legislation in the near future. Agreement to the package depended on the provision of funding for infrastructure, and on the linkage between funding and growth limitation efforts. The prospects for this funding remain murky, given current California fiscal conditions. EERC members continued to meet in early 1994 to work on next steps.

Economic and Environmental Recovery Coalition

A number of issues remained unresolved as of fall 1993. Within the EERC there was considerable controversy over the notion of urban limit lines. This strategy, proposed by environmental groups, was bitterly opposed by developers and cities in the GMCP. It became one of the most serious sticking points throughout both cases. The EERC, however, was prepared to establish the principle in the legislation that compact growth was desirable and to mandate identification by cities and regions of areas where intensive development will be encouraged or where land will be preserved. In the latter case, the actual implementation and nature of this designation will become the next step of the process. The issues about whether and how to evaluate consistency between local, regional, or state agency plans, and the state policies or plan, remain poorly resolved, since these also were highly contentious and complex. The latest version of the legislation included a broad opportunity for challenges to consistency determination and voluntary mediation, through state commission hearings.

The Economic and Environmental Recovery Coalition had great strengths because of the small size of the group, the level of understanding and trust with which participants began, and the skills of the players, most of whom are lobbyists with a good understanding of how to represent their interests and regular communication with their interest groups. The leadership of Booher and White was by all accounts significant to the success the group achieved.

However, a number of limitations may turn out to be significant when it comes to trying to enact, and then to implement, legislation. Missing stakeholders may prove to be significant later, in terms both of getting the necessary political capital to support the legislation and of getting a system designed in a way that will work in practice. Relying on lobbyists as heavily as the coalition did, moreover, meant that not many participants could speak to how things worked within an agency or at the local level, where much of the growth management activity inevitably plays out. Planner Ruggiero seemed to have the constant role of telling the group that some fine-sounding idea simply would not work the way they thought when it had to be implemented locally. Moreover, it seems that for many participants the goal of this process became framed as designing a proposal that could pass the legislature and meet the concerns of enough key players to get their backing. Participants concluded there was nothing they could do to satisfy local governments or even get them to participate, but they went ahead because many felt they could get sufficient votes without them. Only one local elected official was part of the EERC, and he did not officially represent governments.

Finally, while the process did develop substantial shared intellectual capital, as members came to understand the ramifications of their proposals for one another's activities and created a common understanding of the issues and probable consequences of policies, very little was provided in the way of technical or research-based information. This is a gap that may become more problematic in the future as more detailed policy proposals emerge. It is also possible that some issues could have been resolved in the light of information about population and growth patterns and trends.

Case 3

SAN DIEGO REGIONAL GROWTH MANAGEMENT STRATEGY

by Judith E. Gruber and Michael Neuman¹

The Regional Growth Management Strategy (RGMS) of the San Diego Association of Governments (SANDAG) was prepared by the association's staff and the Regional Growth Management Technical Committee (RGMTTC) and adopted by the SANDAG Board of Directors in January of 1993. It culminated in a four-year process begun by the voters' passage of Proposition C in November 1988, which called for the establishment of a Regional Planning and Growth Management Review Board and the preparation of the RGMS. The strategy deals with the regional impacts of growth and development.

Five factors contributed to SANDAG's success in preparing and adopting a consensus RGMS. First, the demand to address the negative impacts of growth was high on the regions' political agenda in the mid- and late 1980s. Second, residents of San Diego County widely share a perception that theirs is a coherent metropolitan region. This perception is both one of a discrete geographic unit (San Diego County) with distinct boundaries on all sides, and an attitude towards a place. This attitude includes a strong culture of civic activism and a strong sense that their place has a high quality of life, which they want to save. The third factor was the quality of the SANDAG staff, as evidenced in the coordination of the process, and the information and technical support they provided. Fourth was the desire to avoid a state-imposed regional strategy by enacting a homegrown one. Finally, the San Diego metropolitan region is a relatively simple one, being monocentric and encompassing a single county.

History

Proposition C built on a 20-year history of regional cooperation regarding growth management and related issues. This history began with the formation of the Comprehensive Planning Organization (CPO) around 1970 — the first attempt at comprehensive regional planning. In the early 1970s, three events — all initiated by the City of San Diego — continued a focus on regionwide planning. They were Lynch and Appleyard's 1974 report on the uniqueness of the regional landscape and the need to do something at the regional level to

¹ Interviews were conducted by Judith Gruber and Michael Neuman.

protect it;² the work of growth management pioneer Bob Freilich on a plan and ordinance for impact fees and the legal timing and sequencing of growth; and the election of Pete Wilson as mayor and his championing of growth management.

In 1980, SANDAG was formed. It replaced the CPO, and assumed an increasing level of regional planning responsibilities.³ SANDAG is the single organization that conducts regionwide planning for growth management, land use, transportation, airports, the environment, and related functions. It serves as the Regional Transportation Commission, the Metropolitan Planning Organization, and the Congestion Management Agency, among other functions. Its Fiscal Year 1994 budget for planning is in excess of \$9 million. It is highly recognized throughout the county as providing reliable information and thoughtful planning studies.

The SANDAG Board of Directors is made up of one elected official from each member agency — a mayor or council member from each of the 18 cities in the county and a supervisor from the county. In addition there are advisory and liaison members from agencies such as Caltrans, the U.S. Department of Defense, the Port of San Diego, and Tijuana/Baja California. The board has a large work program, of which the Regional Growth Management Strategy is but one item, albeit an important one.

When Proposition C appeared on the ballot in November 1988 it was one of five competing measures dealing with the issue of growth. Two were grassroots citizens' initiatives that would have created stringent housing caps, one in the unincorporated area of the county, one in the city of San Diego. In response to these initiatives, the city and county proposed alternative, less stringent, measures. Proposition C got very little attention during the campaign; most media attention was focused on the two San Diego measures. In the end, however, Proposition C was the only one of the five that passed.

The purpose of Proposition C was to “demonstrate public support for the concept that certain impacts associated with growth should be resolved on a regional basis.”⁴ It proposed the establishment of a Regional Planning and Growth Management Review Board (regional board) to “formulate a regional growth management plan for resolving problems associated with transportation management, solid waste disposal, water reclamation, sewage disposal, air quality, and growth inducing industrial zoning.” The measure also called for the establishment of a blue ribbon committee consisting of representatives from the cities and the county to determine how the regional board should be established. As one local official explained,

² Kevin Lynch and Donald Appleyard, “Temporary Paradise? A Look at the Special Landscape of the San Diego Region,” Report to the City of San Diego Planning Department, September 15, 1974.

³ For a discussion of the history of SANDAG see Peter M. Detwiler, “Is Cooperation Enough? A Review of San Diego’s Latest Growth Management Program,” in Urban Land Institute (Douglas R. Porter, ed.) *State and Regional Initiatives for Managing Development*, 1992.

⁴ Text of Proposition C, November 1988, as reprinted in San Diego Association of Governments, “Regional Growth Management Strategy,” January 1993, p. 115.

Proposition C “was quite easy, because everyone was frustrated with business as usual. . . . It was the answer to all of our problems — preservation and economic growth.... There were so many ordinances to stop growth. We needed a way to do it to *allow* both growth and preservation.”

The Blue Ribbon Committee

The blue ribbon committee (BRC) established as a result of Proposition C was to figure out how to develop a regional growth management strategy. The BRC was composed of elected officials from the 18 cities and the county; most (if not all) were members of the SANDAG board. It was chaired by county supervisor Brian Bilbray, the principal author of Measure C. The committee met monthly for about six months, supported by a staff of seven from SANDAG, who were later to become key players in the process to prepare the RGMS. The staff’s relationship with the committee was described as a “back and forth” one, with neither leading the other. Committee members knew both each other and the staff from their work on the SANDAG board, and this eased the work of the group considerably. The BRC worked by consensus, but did take votes to formalize agreements. In fact, there proved to be little conflict within the committee.⁵

The BRC’s main activity was, in essence, constitution writing: members worked out the intergovernmental and administrative arrangements to govern the regional growth management process, particularly the preparation, adoption, and implementation of the RGMS. According to one participant, their goal was to create something that would work and thereby preempt more draconian measures from the state or the electorate. They were well aware that if they failed “the voters would solve it for us, and we would have much less flexibility.” The BRC also discussed the general planning approach based on quality of life standards, as well as the local approval process for the strategy and its implementation. Thus, the main concepts in the RGMS were approved by the jurisdictions via the BRC process before the work to write the RGMS began.

The BRC recommended that SANDAG serve as the Regional Planning and Growth Management Review Board specified in the measure. Although the developers and the environmentalists were *not* initially in favor of having SANDAG perform this function, according to one participant “the stakeholders were satisfied with the BRC process,” and therefore accepted the decision. Since having SANDAG perform this function required a change in its joint powers agreement, the recommendation had to be approved by each jurisdiction, which was accomplished with little, if any, opposition.

⁵ For a more detailed discussion of the operation of the Blue Ribbon Committee see Detwiler, 1992.

The Regional Growth Management Technical Committee

SANDAG formed a Regional Growth Management Technical Committee to work on the actual drafting of the strategy and on resolving the technical issues created by it. This committee is composed of staff from the 19 jurisdictions (mostly planning directors and city managers), plus staff representatives from Caltrans, the U.S. Department of Defense, the Local Agency Formation Commission, the Port of San Diego, the Air Pollution Control District, the San Diego County Water Authority, the Metropolitan Transit Development Board, the North County Transit District, and the Regional Water Quality Control Board. It is currently chaired by the city manager of one of the SANDAG jurisdictions.

At first, the technical committee met twice a month, but it eventually settled on a monthly meeting schedule with additional subcommittee meetings. Meetings last about two hours and attendance is high, with a fairly consistent 25 to 30 persons at each meeting. The composition of group has been more or less stable. Most members are planners and know each other from the area planning community. One member explained that as a result, “even if they are not friends, they at least respect each other’s opinion and that’s important when working on something like this.”

Meetings of the committee are open to the public; at the end of each meeting the committee has a comment period when nonmembers are invited to speak. A few groups, and in particular one moderate environmental organization, regularly have people at meetings who participate as observers and make comments at the end. Most citizen input to the committee, however, comes through the SANDAG board, to whom the committee reports, and through letters of comment on drafts of the strategy.

The committee has not used professional facilitators, but the chair has had training in consensus building and describes himself as being “very self-conscious about [his] role as facilitator.” According to a committee member, “over the months we’ve developed a very collaborative style as a team and I think that has allowed us to work through issues fairly effectively.”

As is typical of SANDAG committees, SANDAG staff play a major role in the committee’s work. A leading member of the committee explained the committee’s role as one of being “a sounding board to do problem solving and develop consensus.” SANDAG staff set the agenda and provide committee members with a monthly agenda packet containing staff reports that define the issues and provide background information, staff recommendations, and questions that need addressing. Committee members read the packet in advance and discuss it at the meeting.

In the view of at least one committee member, the staff role has been very important in helping the committee reach consensus. He argued that one necessary ingredient to reach consensus “is to have good technical underpinnings so that the understanding we all come to the table with is largely the same. I think the staff at SANDAG has done a very good job in giving us all the data we need without burying us in minutia..”

The committee fairly quickly developed a norm of trying to deal with easy things first and not belaboring difficult issues. As one committee member commented, “If you took up all the controversial issues at the same time you took up the plan, there’s a good chance the whole thing would be blown out so that you would lose the good with the controversial.” When it reaches a sticking point the committee typically either refers the issue back to staff for additional information or forms a subcommittee to work on the matter. At times, it also refers a question it is having difficulty with to the SANDAG board for policy guidance.

To the extent that there has been conflict within the group it has largely been a product of the different needs of cities of varying sizes, varying densities, and varying stages of development. For example, the county wanted to see more of an emphasis in the original strategy on the jobs/housing balance, since there are relatively few jobs in the unincorporated areas under the county’s jurisdiction.

Committee members report that even when such differences emerge, discussion is rarely contentious and typically takes the form of representatives from different jurisdictions explaining their needs. One committee member argued that, in fact, these differences had a positive impact on group discussions of the draft strategy “because it was contrast mode. I think that created a wider band of understanding than we might have had otherwise. So that whole contrast in those meetings created greater dialogue around what does it really mean and I think the benefit was just better understanding.”

One strategy the committee adopted for dealing with the varying needs of the communities represented was to adopt a norm that decisions would be reached by voice vote whenever possible, in contrast to having each city’s representative register a vote. As one member explained, this meant “that nobody had to take a position against their city’s interest, but the whole might prevail and everybody could meet their own needs at home.”

There are at least three different linkage channels between committee members and local elected officials. First, the committee reports to the SANDAG board regularly. Since the board contains an elected official from each jurisdiction in the county, this serves as a way of keeping all communities informed of the committee’s work. Moreover, in many communities the technical committee representative works closely with the SANDAG board member, briefing the member before meetings and going over the board’s agenda. Second, when the committee makes a recommendation to the board, the board sends it out to the councils and bodies in the region that are affected for comment and feedback. Finally, committee members themselves keep their city councils apprised of committee activities.

Now that the technical committee has completed its work drafting the RGMS, it has turned its attention to some of the difficult issues it had tabled earlier. Probably foremost among these is the jobs/housing balance. At the suggestion of SANDAG staff, the committee is working on reconceptualizing this issue in terms of transportation times and distances to different kinds of facilities. As one member explains it, the idea is that, for example, “a major regional shopping center should be within x minutes of all residents. You can’t put all the

houses next to all the jobs and you probably don't want to put all of the jobs throughout the whole region, dispersed through the housing. It's not good planning.”

The committee, led by its air quality/land use distribution subcommittee, is also now struggling with the latest regional growth forecast, trying to balance housing, industry, and open space in ways that more completely implement the RGMS. It has become clear to most committee members that to do this there will have to be greater density in some residential areas, particularly near transit stations. This in turn would require changes in either general plans or in city policies and ordinances and that have created some controversy.

The Regional Growth Management Strategy

The drafting of the RGMS began with a series of public forums held throughout the county in 1989 by the blue ribbon committee. These forums typically were designed to identify what citizens thought should be in the strategy. A first draft of the RGMS was prepared by SANDAG staff and the technical committee in 1990–91. In June 1991 the SANDAG board accepted the draft for review and comment by citizens, interest groups, and member jurisdictions. Comments were received and the draft was revised, largely by a drafting subcommittee of the technical committee. This revised draft was presented to the SANDAG board in January and February 1992, which recommended approval by member jurisdictions.

The strategy itself is 68 pages long. As stipulated in the ballot measure, it takes a quality-of-life approach to growth management, and contains standards and objectives. It also recommended actions for nine quality-of-life factors: air quality, transportation/congestion management, water, sewage disposal, sensitive lands and open space, solid waste management, hazardous waste management, housing, and economic prosperity. It is largely a compilation of existing state and federal mandates, but in a form that pulls them together in a coordinated system and frames them in regional terms.

Some jurisdictions quickly embraced the RGMS, while some had minor objections and others were very skeptical. In the second group were cities that were concerned, for example, that the RGMS was only part of the growth management plan, with reports on regional infrastructure, open space, and economic prosperity still to come. These cities expressed some reluctance to sign onto one piece before the others were finished, but this reluctance was overcome relatively easily. More serious objections were raised in some localities where the very idea of regional planning was a hard sell. One city objected to the inclusion of an economic element in the strategy, fearing that it would detract from the growth management aspects of the effort. Another was concerned that the strategy not require more restrictive fair-share housing requirements than those already mandated by the state.

Reluctant communities were won over through a process of education by SANDAG board members and staff about the importance of regional planning and about the philosophy behind the RGMS. Many credit a generalized attitude of cooperation within the region as helping to get localities to accept the strategy despite having reservations about specific

aspects of it. Most observers think the fact that the RGMS asks for specific results but is flexible in how the results are achieved was crucial to its approval. The strategy sets standards that each community has to meet, but decisions about how to meet them remain local. Because the strategy does not deal with specific projects, jealously guarded local prerogatives in this area were not challenged.

In the end, all but one jurisdiction (Del Mar) approved the RGMS, but even Del Mar is participating in its implementation. The final RGMS was approved by the SANDAG board in January 1993.

The strategy contains a self-certification process for determining local and regional agency consistency with the various elements of the RGMS. This process, which one mayor called a “growth management honor system,” was set up to have two phases. The first phase, completed in early 1993, essentially involved a determination by each jurisdiction of which elements of the strategy they were in compliance with. The second phase, due in January 1994, required the jurisdictions to certify their compliance with all elements of the strategy, with the understanding that some things like larger congestion management plans and measures related to air quality may require longer timeframes.

The Growth Management Technical Committee wrote the checklists and the procedures for self-certification. At least some members of the SANDAG staff believe that they are more complex and stricter than they would have been had SANDAG staff written them. The checklists were approved by the jurisdictions as part of the RGMS approval.

Many jurisdictions were willing to approve the checklist despite knowing they would be out of compliance on some elements. Participants explain this willingness in several ways. First, and perhaps most important, the checklist was based on mandates from the state and federal governments that the jurisdictions were already required to meet. Thus, they were not taking on new obligations, although they were giving greater salience to existing ones. Second, observers argue that jurisdictions believed they could come into compliance on most elements, and accepted the need to do so. Third, many of the things cities believed they would have the most difficulty complying with were part of larger air quality and congestion management plans that realistically they knew they would be given more than the stipulated year to complete. Finally, more cynical observers point to the fact that there are no serious sanctions for noncompliance.

The Regional Open Space Element Citizens Advisory Committee

The Open Space Element Citizens Advisory Committee was formed in early 1993 as an advisory committee to the SANDAG board, and is chaired by a member of that board. It has no decision-making capacity, but rather serves as a sounding board that provides policy guidance on open space issues.

The Open Space Committee is composed of representatives from six conservation organizations, the Construction Industry Federation, developers, the League of Women Voters,

realtors, the Farm Bureau, the San Diego Taxpayers Association, and the San Diego mayor's office. One participant asserted that since those who formed the group foresaw going to the voters to fund open space acquisition, the group was composed with politics in mind:

People on the task force bring a constituency, a funding source, people to work on a ballot measure. In part I'm on the committee because I offer a base. . . . Some of us represent constituencies who walk precincts, some raise money. When we shift from policy recommendations to a campaign, we become an important link.

As is true of most SANDAG committees, the committee functions with heavy staff involvement. The SANDAG staff sets the agenda, provides the committee with background information, and drafts documents for committee response. For example, the staff presented a draft definition of open space which the committee then spent two sessions discussing. The Open Space Committee is also supported by a technical advisory committee composed of planning and parks and recreation staff from the constituent jurisdictions.

Tension has arisen on the committee between members from the conservation community and those who represent the development industry. The conservation community wants to acquire only land that cannot be kept as open space through regulations. The developers, concerned with overregulation, think that if the public wants open space, the public should have to buy it. Thus, they want to focus solely on the public finance measures to acquire open space. It is not clear what will happen if the committee cannot reach consensus on this matter.

Committee members have asked SANDAG staff to map open space in the county. Some of this already has been done in connection with several coordinated habitat conservation planning programs that cover the region, but which just involve habitat. Since there are many different kinds of open space, some of which serve several functions, committee members are interested in seeing where they overlap and how much acreage is involved. From that they hope to figure out how much can be protected through regulation and how many acres will have to be bought. Among the issues the committee expects to deal with in the future are priorities for acquiring land, and particularly whether priority should be given to purchasing expensive land near urban areas or larger, less expensive plots in more rural areas.

The Regional Economic Development Strategy Advisory Committee

The Regional Economic Development Strategy Advisory Committee was formed in December 1991 to add an economic prosperity element to the RGMS. The committee was formed in response to criticisms from the business community of the draft RGMS because it did not consider the state of the economy. That original draft included eight quality-of-life elements, not the nine in the final strategy. Business interests argued that quality of life, environmental protection, and growth management could not be separated from economic

strength and that all of these elements had to be balanced. As a result of these criticisms, the SANDAG board directed the staff to add a ninth element to the strategy — economic prosperity.

SANDAG's board directed staff to put together a list of private and public community interests and invite them to participate in the new committee; there was an explicit attempt to make the committee's composition be as broad as possible. About 45 individuals or groups were invited; on average, approximately 15–18 people attend the committee's monthly meetings, with a core group of about 12–15. Members include representatives from city and county governments, the Private Industry Council, conservation groups, the League of Women Voters, and the Chamber of Commerce. Over half of the regular attenders come from economic-based organizations, and environmental representatives feel that they are a definite minority, in part because there are so few environmental organizations in the area. Environmental representatives say that they try, often successfully, to make up in forcefulness and persuasiveness what they lack in numbers. After the committee began meeting it made an effort to get representatives from specific major employers to attend as well, but it did not get a very enthusiastic response to this initiative. The group chose as its chair (with the encouragement of the SANDAG staff) a representative of a local business coalition who had been involved with SANDAG for almost its entire history and who had been very active in pushing for the inclusion of an economic element in the RGMS.

The committee was charged with developing an economic prosperity element for the RGMS. The process was driven by SANDAG staff, who developed the work program and did a 10-year economic analysis as background for the committee. The committee reacted to the work program, evaluated data, offered comments and suggestions, and shaped the recommendations. The SANDAG data were extremely important to the process. As one participant explained, "If the data said something, we would take it into account." In September 1992 the committee completed a draft economic prosperity element and issued a report to the SANDAG board called "Evaluating Economic Prosperity in the San Diego Region," which provides an evaluation of the current economic situation.

As the committee worked on developing the economic element, it became clear to members that this was only part of its job. When they submitted their report they asked the SANDAG board for permission to proceed with a second phase of work that would involve a regional economic development strategy that addressed the deficiencies their report had identified. The committee expects this effort to take approximately a year and a half. When the strategy is completed, it will be presented to the SANDAG board and made available to local agencies to assist them in economic development.

Debates within the committee have revolved around how to best deal with the stagnant standard of living the economic analysis identified. By and large these debates have not been ideological, but rather, as one participant described them, "a searching process with all of us trying to figure out practical realities." According to participants, differences between environmentalists and business interests on the committee have generally involved degrees of

interpretation rather than a serious debate over the premise that the economic health of the region is important. Environmental representatives were relieved to discover that the business interests on the committee, although not fond of environmental regulations, accepted the need for them. They attribute this in part to the fact that most of the business representatives do not come from the development community.

Debates have been resolved via consensus; the committee has never gotten to the point where there were insurmountable differences. Meetings are organized to foster consensus by avoiding stating group positions early on that would then have to be changed. Instead, the committee attempts to discuss issues and have attitudes emerge out of the discussion. Normally when differences emerged within the committee, the staff economists to the committee would revise a document in light of committee discussion and present it again. At the time of our study the committee was in basic agreement on the need to invest in infrastructure and in industries that create highly paid jobs, the need to ensure sufficient industrial land, the need to improve the port, the need to create stronger ties with Mexico, and the need to develop a new airport.

In some cases individuals raised arguments but then let them drop when it became clear that their view was a minority one within the group. One individual, for example, wanted the committee to delve more deeply into the housing issue, but accepted the fact that the group as a whole did not want to. Others held their peace on issues and continue to have reservations about the product. In these cases the group's consensus is thinner than it might appear, according to some informants, since the willingness of these members to go along with the group derives from the fact that these individuals did not think the whole process was sufficiently important to make an issue of their concerns. It was not clear to them (and others) what would happen to the report, and they concluded that it was not worth fighting because the likely consequences of agreeing seemed small.

The issue of what will happen to the committee's work is on the minds of even the committee's most committed members. They believe that they have provided good information and a well-thought-out, responsible set of reports, but it is not clear how these will translate into action by local agencies. The economic prosperity element has not yet been incorporated into the self-certification process and staff are still working on how that will be done. Some fear that is where true conflict will emerge and that until then, the committee's work will be at the "Mom and apple pie stage."

The Regional Revenues Advisory Committee

The Regional Revenues Advisory Committee was charged with identifying regional facilities that lack funding and with recommending potential sources of funds to build those facilities. The committee was composed of elected officials from some SANDAG jurisdictions, some city/county attorneys, some city/county managers, a representative from the local land use bar, one from the construction industry, one from the Chamber of Commerce, and

advisory representatives from Caltrans, the Metropolitan Transit Development Board, and the North County Transit District. It met for approximately two years from 1991 to 1993. As is true of virtually all SANDAG committees, this one was heavily led by SANDAG staff, with the committee responding to staff proposals which would then be redrafted to take into account the committee's views.

The committee's first task was to decide which facilities were truly regional in scope and should be funded through a regional finance mechanism, rather than through purely local revenues. The staff originally proposed 13 different kinds of regional facilities, which the committee narrowed down to five: transportation, justice facilities, regional parks/open space, social services, and health. They concluded that emergency response equipment and animal control were not regionwide. Water, sewage, solid waste, energy, and hazardous waste were eliminated since the committee concluded that they should be funded with user fees. Representatives of public schools and the cooperative library system appealed to the committee to be included as part of its plan, but the committee rejected both appeals on the grounds that these were local facilities, not regional ones.

Most committee members describe the process of arriving at these decisions as a reasonably easy one, although there were some disputes. One source of disagreement came from county representatives, who sought a broader definition of regional facilities, according to some informants, because the county is financially strapped; access to regional revenues would enable it to fund more services. Others questioned whether health and welfare should be a regional, as opposed to state or county, responsibility.

The most difficult aspect of the committee's work was to identify potential funding mechanisms for remedying the shortfall in regional facilities. The focus of controversy was the extent to which development impact fees should be relied upon. Private-sector representatives, as well as some from the public sector, were very concerned that the committee not recommend sole reliance on such fees. Other committee members saw such fees as the best way of gaining needed revenues.

Eventually the committee agreed that new development could not be expected to assume all of the costs for new regional infrastructure. This agreement was reached after considerable discussion. The committee asked SANDAG staff to develop data on the extent of existing shortfalls in such things as transportation, jails, and roads. The data showed that where there were measurable standards, there was already a significant deficit. Those data, plus SANDAG data showing that population increases from in-migration were going down while natural increase within the existing population was going up, convinced the committee that the entire financial burden should not be placed on future residents. Before this happened, however, everyone had to be satisfied that they were getting correct and relevant information, i.e., that the data were valid. It was a matter of open discussion for several meetings and was an education process for the entire committee.

In all of these discussions, committee members reported that SANDAG staff took the lead. Staff gave the committee preliminary findings, formulated recommendations, led the

committee's discussion of those recommendations, and then revised them on the basis of the committee's comments. In response to the concerns of some committee members about impact fees, for example, the staff came up with alternative financing mechanisms and ways to allocate costs between existing and new development. They had to explain the data to committee members who varied considerably in their background and extent of knowledge about the subject matter. As one committee member related, "the staff had to be very patient."

Although there were disputes and debates within the committee, according to some informants, the debates never got too bitter because all the committee was doing was formulating a plan. In addition to the question of finance mechanisms, these debates involved what improvements would get priority and whether there was the necessary nexus between a finance mechanism and the service it was intended to fund. No one ever rejected anyone else's position out of hand; the concerns of all members were acknowledged, and no one had a veto. According to some informants, the committee was able to reach agreement in part because members knew they would have another shot at arguing issues before the entire SANDAG board.

In the end, the main focus of the committee's report was on development impact fees, but it also identified other sources of funding, such as assessment districts, and identified their advantages and disadvantages. The report recognized that if all of the projected shortfall is put on new development, the impact fee would be so high that development would not occur. Consequently, it developed alternative scenarios about how to allocate impact fees on new development. The report also included a recommendation that localities should look at the long-run ramifications of imposing impact fees, particularly on the cost of housing.

Once drafted, the committee's report was sent out for review by SANDAG's member jurisdictions and other interested parties in August 1992. Jurisdictions raised such questions as what the priorities for locating infrastructure would be, and what the priorities would be among the kinds of facilities delineated. Some changes were made in the report after this comment period, including the recommendation that if impact fees were to be levied they should be phased in, and a recommendation that infrastructure improvements should be distributed equitably across the region, although it gave no details about what such a distribution would look like. The committee also added a discussion of a process by which a jurisdiction could be reimbursed for an infrastructure investment.

The committee's work ended with the submission of its final draft report to the SANDAG board in June 1993. The board requested that a workshop be held on the report (September 1993), and in October appointed a subcommittee of the board to review the report and make recommendations. Since the report sets out a variety of funding mechanisms and does not make specific recommendations about which should be used when, it will be up to the board to make final decisions in this area. The board will also have to decide priorities among categories of regional facilities and make specific site decisions. Committee members expect these to be difficult decisions that will require extensive staff and committee presentations to the board to fully educate all of its members.

Some members of the committee raised questions about how seriously any of the committee members took the process, since it was so heavily staff led. The process demanded relatively little investment from committee members since meetings were short, infrequent, and served largely to comment on what staff had done.

As is true for the other advisory committees, members questioned what would happen after the report was received, and specifically how, if at all, it would be integrated into the RGMS and the self-certification process. Some informants argue that the real decision-making and fireworks will come after SANDAG approval, when jurisdictions will have to make politically very difficult decisions about concrete projects, costs, and funding mechanisms. These skeptics argue that elected officials went along because the committee's work was just a plan, another task force report that may do nothing more than lie on the shelf. In the eyes of these critics, the report has not been put through the jaws of public opinion in front of public officials who have developers and realtors nipping at their heels.

Even skeptical committee members, however, acknowledge that the group had some significant accomplishments. They succeeded in coming to agreement on a relatively narrow list of things that are truly regional facilities. Their report forces the region to confront and acknowledge the existence of a significant funding shortfall for this infrastructure. Some committee members hope their work will in turn lead political leaders to go back to the drawing board to reconsider the level and kinds of services they are realistically able to provide.

Use of Technical Information

Three technical models were used by SANDAG staff in drafting the RGMS: (1) population, employment, and housing projections to the year 2010; (2) PLUM, a projected land use model, based on (1); and (3) TRIPS, a traffic impact model based on these projections. These models were key in the RGMS writing and acceptance processes, because they had a relatively long history of accuracy and local acceptance. Some specific provisions in the RGMS were based directly on the models, such as recommendations for land use and densities around transit stations.

An important measure of the overall implementation of the RGMS is the extent to which localities will use the latest (Series 8) population projections to change local land use policies. The main issue is that there is not enough developable residential land in adopted local plans and ordinances to accommodate all the projected growth. The question becomes: will the localities handle that new growth in accordance with recommendations in SANDAG's RGMS?

Technical information was often used throughout the San Diego process to convince participants that a problem actually existed, an essential first task for consensus building. One staff member described the process at length as it worked in the Technical Committee:

We show them a problem. “We have to fit 3.8 million people into the region in 2015. Your general plans show that would be forcing a large number of dwellings into the back country, into unincorporated area, because your general plans won’t accommodate the growth. Here are the options. Which will we do?” They realize that having a large number of dwellings in unincorporated areas is unrealistic. It won’t happen. It will be translated into demands for plan changes. Then the question becomes how to plan for that now. We prove to them that there is a problem . . . We must convince them that there is a problem. We can't just say SANDAG staff thinks there is a problem.

In this case, technical information was converted into necessary intellectual capital. Output from the SANDAG model, the source of the population forecasts the staff member presented, traditionally had been used to assist individual cities in their planning processes. As such, it did little to further consensus building. However, when that same output was presented to and discussed by a group, and used to alter the way participants thought about their environment, it became part of the intellectual capital of that group. As the staff member noted, “We’ve changed local technical assistance into a policy tool . . . The model had always replicated their policies without question. Now we’re trying to see if they need to change their policies.”

Other committees working on the Regional Growth Management Strategy in San Diego also used data to document that a problem really existed. The economic strategy committee had to begin by developing a common understanding of the health of the economy. One committee member described their process this way: “We started with the development of comparative data. The staff developed statistical information. . . . The report is a thorough evaluation of the current economic situation.” The data painted a picture of an economy in decline and forecasts projected a stagnant standard of living. Another member explained, “For the most part, people in the end accepted the data. The data compared San Diego to different cities; it examined the quality of life. You need something like this so that you can monitor. The dependence of the region on the defense industry became really apparent.”

Similarly, the first task of the committee working on regional infrastructure was to survey the extent of infrastructure needs. At some level members all knew that there were needs but that knowledge was neither salient nor specific. The data the committee collected made it both. As one committee member claimed, “It was good for the region to confront it. It was a great exercise. We needed to acknowledge the shortfall.”

For participants in the economic strategy group the data that served to document the problem also helped to frame it. The data the committee amassed showed not only economic decline, but an economy based heavily on tourism. Committee members argued about the implications of such a dependence, but this definition of a key part of the problem became a focal point for discussion of solutions.

That committee also wrestled with understanding the nature of population growth in the region, and they turned to SANDAG forecasts for help. A member described what happened:

When we first took them around we were told in community planning groups that people didn't believe them. They showed most growth occurring internally, not from in-migration. People don't want to recognize that the demographics of the community are changing dramatically.

Once the group came to accept that this indeed was the nature of growth, that understanding structured their thinking about the economy. This same individual summed up by saying,

There is no question that it was a learning process for everybody. It was an educational process. We were all absorbing information of a relatively technical nature. Now, the second half of the process has been trying to figure out how to take objective information and structure it into action.

Data were also important in helping to develop criteria for evaluating policy alternatives. This was especially true concerning the question of how to finance regional infrastructure. As discussed above, a significant split developed on the committee between those who wanted to rely exclusively on impact fees levied on new development and those who wanted to include other revenue sources. In essence, the debate concerned whether new infrastructure should be paid for by new development or by a combination of future and current residents and businesses. In the end, it was resolved by carefully looking at the data the committee had collected on infrastructure needs and growth patterns. Since the data were widely accepted as both relevant and accurate, they served as a way of evaluating potential funding schemes.

Criticisms of the Strategy

A major question surrounding the RGMS is what kind of "teeth" it really has. It is essentially a voluntary process in which jurisdictions self-certify that they are in compliance with the strategy. The primary incentive is peer pressure. Enforcement comes through SANDAG's conflict resolution process, whereby one municipality can challenge another's compliance with the RGMS. Even that, however, will yield only mediation, a finding of noncompliance, and thus, perhaps, more peer pressure to act consistently with the strategy. Many observers argued that peer pressure would be efficacious in causing action through this process, but at least some doubt whether peer pressure provides sufficient "teeth." Moreover, a critic pointed out that only rich municipalities can afford this type of action to force compliance. Particularly problematic may be issues of affordable housing and increasing density around transit stations. Those skeptical of the power of peer pressure point to the

difficulties SANDAG has had in getting the Port District to participate in the self-certification process.

Another potential incentive comes from state agency action. Because the strategy includes state-mandated standards, such as housing and air quality, the state could “pull the plug” on projects by applying RGMS criteria to them. Even supporters of the RGMS, however, acknowledge there is no guarantee that the state will do this. Nonetheless, these individuals believe this may be an incentive to comply with the RGMS.

Skeptics also point to what they see as the reasonably shallow level of support for the RGMS among the general public, which they think will hamper enforcement. As one explained,

I'm troubled by the fact that SANDAG has been doing work on the regional growth management strategy for two years. They've invited organized groups to participate, yet the general public does not know what they are doing. There is a feeling among elected officials and citizens' groups that SANDAG is doing good analysis, but they don't have the political clout to get it done.

This same individual added that although SANDAG has tried to be inclusive and committee meetings have all been open to the public, a relatively limited cast of characters and organizations actually has been involved. In particular, there has been limited participation among environmental groups and very little participation from the minority community.

A related concern is that the consensus will evaporate when the later phases of the strategy are incorporated. These elements, particularly those involving regional facilities and open space, extend beyond planning and will involve levying new fees or taxes. One participant argued that “when that starts happening, when you start hitting the pocketbook, then people get more interested.” Another predicted that these elements of the RGMS “will be more difficult to come to grips with than the ones we have right now.”

Others have raised concerns about how all of the elements of the growth management process will be integrated. In theory, SANDAG staff and the board will bring all of the advisory committee reports together along with the RGMS, but this has not yet happened and it is not clear how all of the plan elements will be coordinated nor how conflicts among different elements will be resolved.

Accomplishments

Although most of the RGMS has yet to be implemented, Proposition C can already boast of significant accomplishments. First and foremost, it has provided an institutional forum and arena for addressing regional growth management issues. County Supervisor Bilbray, one of the authors of Measure C, says that,

The first objective [of Measure C] was to create a forum for regional discussion of issues. Prior to Prop C there wasn't any sort of neutral ground for everybody to meet and discuss growth concerns, or to raise concerns about what an adjoining agency might be doing. [Discussions had been] so piecemeal that there wasn't any forum to resolve these matters except in court.⁶

By creating a cooperative forum Proposition C has helped keep regional planning and growth management on the region's collective political agenda and provided an institutionalized way of addressing these issues.

Proposition C has also served to focus the attention of local policy makers on existing growth-related mandates that otherwise might be left on the back burner. As one participant explained, "we have a lot of priorities as a local government and we have few resources to deal with those priorities. A lot of these complex and amorphous requirements that are sitting out there on the books don't get the kind of attention they should. I think it helps us focus as staff and requires us to take things directly to our city council that otherwise would slip — probably years in some cases, especially in transportation, air quality, housing."

Several participants argue that the RGMS has increased the capacity of local officials to think regionally, that is, to factor regional criteria into land use and growth management decisions. As one planning official explained,

Each jurisdiction has a small piece of it to fit into the whole. We are asking each jurisdiction to give up a little bit for the good of the region. This was one of the great accomplishments of Proposition C.

He said that although there has been no change in "what" is being done in planning in his jurisdiction as a result of the RGMS, there has been a change in "how" it is done. Now it is done in light of a more comprehensive regional perspective. Or, in the words of another informant, the RGMS "forces public agencies to at least give attention to the balance between what they're doing and what's being done around them. That will have beneficial results."

The RGMS has also increased coordination across previously separate substantive issues, such as transportation, land use, air quality, and housing. One participant said it has created a "melting pot" of single-purpose plans. At times this coordination has not been the direct result of the strategy but of the change in thinking brought about by the RGMS processes. One planner pointed to a new set of transit-oriented development guidelines his jurisdiction had adopted, and explained:

⁶ Debra A. Greenfield, "An Interview with Supervisor Brain Bilbray," *Land Use Forum*, Winter 1992, p. 97.

We were working toward something like that anyway, but I think that the input we've gotten from SANDAG made it really beneficial if not essential to look at the appropriate densities for our anticipated transit stations and to get council acceptance of that. Part of the approval process of our city council was the ability of our staff to say that this is consistent with what SANDAG was doing on the congestion management plan and this is consistent with all these good regional things that are going on.

The consensus-building processes created by Measure C have been extremely successful in developing what Bilbray describes as “an environment where relationships develop and people get in the habit of communication and cooperation, rather than the traditional confrontation.”⁷ Participants testify that social capital in the form of greater understanding and trust is being created through the consensus-building process. One member of the technical committee commented,

We're probably a more trusting and truly cooperative group than we were in the beginning. I don't think we had a lot of conflicts but I think that there was a tendency to be more protective of one's turf in the beginning. As time has gone on people have really not tried to advance their own city's agenda. The emphasis has truly been on the regional questions and not on issues that were truly parochial to their city.

The experience of successfully getting the first phase of the strategy in place has created the social capital in the form of confidence and trust necessary to tackle thornier issues such as the jobs/housing balance. One participant argued,

Just getting the plan in place and getting the process moving and working means that it's occurring and people are participating and cooperating in the implementation of all of these standards. That structure I think creates a better opportunity for us to take on some of these controversial issues and deal with them as the issue and not the process.

Another argued that the acceptance of the strategy by all cities in the county has been crucial to helping the technical committee proceed with its work. He explained that “once the councils got on board and accepted the strategy, [committee members] have been a lot more relaxed. They realized they don't have to be as critical of the process because they now have the backing of their legislative body.”

⁷ Greenfield, 1992, p. 98.

Intellectual capital is also being created. As one participant explained,

Talking has helped because it educates. It educates everybody involved. Environmentalists are being educated about how tough it is to develop. Where are we going to put one-half million people? On the industry level, they are learning that a lot of people in the environmental community are not just making emotional arguments. . . . I [now] respect developers more than I did in past. I don't perceive them as a group as much.

A clear instance of the development of intellectual capital occurred with the regional revenues committee. Although much work still needs to be done to develop policy for regional infrastructure, the committee was able to reduce the range of debated issues by sorting through a variety of claims about what forms of infrastructure should be financed through a regional mechanism, what should be financed through user fees, and what should be considered the responsibility of local governments. Thus, this advisory committee has made significant progress toward defining what is regional.

The measure has also led to more concrete accomplishments. At least some local governments have changed their plans in response to the RGMS. For example, one jurisdiction has made 22 changes to their local environmental regulations, particularly steep slopes, clearing, and so on, in addition to changes in transportation and congestion management as a result of the RGMS.

Keys to Success

The political environment created a powerful incentive for officials in San Diego county to reach consensus on a growth management strategy. Voters had made it clear that the choice was not between growth management and no growth management, but rather between regional planning and ballot box planning. The spate of very restrictive initiatives that had appeared on both the city and county ballots made it clear that even if it did not seem worth it to stakeholders to do something about growth, significant numbers of citizens might at the ballot box. Thus, the default became not the status quo, but potentially much more restrictive controls imposed through the initiative process, or at least an endless series of costly battles to fight those initiatives.

A second aspect of the political environment that created an incentive to reach consensus was the prospect of state-imposed growth management. Most local officials believed that they could fulfill their local political agendas in a home-grown regional process, and that this might avoid a worse alternative: state intervention. One participant explained that he viewed the RGMS as "protection" against the state from "duplicating in an authoritative manner what we have already done in a consensual manner."

Once the consensus-building process got underway, it developed sufficient momentum to create incentives to participate by those who were not enthusiastic to begin with, because they were loathe to be left out of a process that looked like it would achieve success. One participant asserted that most developers got involved in drafting parts of the regional growth management strategy not because they were interested in growth management per se but “because they see it as a way to influence the process.” Their involvement reflects a preemptive, defensive strategy. Another task force member explained her own participation as being motivated by trying to make sure that some specific policy options were not included.

The San Diego process was also able to create a set of incentives for individuals to participate: meetings were often personally enjoyable and provided an avenue for making valuable professional contacts. One participant explained that he was interested in participating because “I love San Diego” and because “I’m interested in it. Professionally I have to work for a client. That limits my scope of work. Here I can speak freely. It’s a good outlet.” Another participant reported that she attended meetings “because politicians and city managers were at the table. My work depends on who I know.”

San Diego started its regional growth management process in 1988 with substantial stocks of social capital. Virtually all participants credit this capital (although they never use the term) as a key to whatever success the region has had in reaching agreements. San Diego’s social capital comes from at least two sources. First, participants started the process of building consensus for growth management with a strong sense of regional identity. They already felt that they were part of a group whose members had linked destinies. As one participant put it, “We recognize that we need each other, and we are supportive of one another. When we tackle things collectively, we will probably come up with a better solution.”

For a variety of reasons, some quite intangible, the leaders in San Diego County have long thought of their communities as forming a region. The geography of the county contributes to this sense, because the county’s borders are quite well defined: a Marine Corps base to the north, the Pacific Ocean to the west, Mexico to the south, and desert to the east. Moreover, the population of the county is concentrated within a few miles of the coast. The political geography of the area also makes its contribution. The region is a single county with fewer than 20 jurisdictions, which greatly simplifies political relationships. As many of the municipalities are only recently incorporated, for the most part there are not long histories of battles among cities or long-term emotional commitments to a municipality. Finally, whatever differences they do have, municipalities in San Diego County are joined together by pride in their differences from their neighbor to the north, Los Angeles, and by a shared conviction that they want to keep it that way. As one person told us, “We have always felt that we are the stepchild. We don’t want to be like LA or Orange County. That gives us an ease in talking about preserving what we have.

This intangible sense of being a region has been reinforced by a second source of social capital: a two-decade-long history of intergovernmental cooperation within the county. As one participant explained, “We have a lot of experience watching entities reach out to one another

to cooperate.” Communities in the eastern part of the county, for example, formed a cooperative fire training association in the 1970s, which was followed by a joint fire and police dispatching system and cooperation on developing a regional park. The City of San Diego runs the sewer system for many communities, and the county operates solid waste facilities for all jurisdictions except the city of San Diego. One planner pointed to the existing consistent countywide transportation sales tax as an important element of Proposition C’s success. “That was instrumental in this being a success. The fact that we realized we were getting benefits from a regionwide tax that we were all sharing.” Another participant put it more generally: “We’ve had a good track record of cooperative work in the region. People want that to continue.”

More important is the existence of a highly successful council of governments, SANDAG, which has engaged in a wide variety of planning and regional administrative activities since the 1970s. Through participation in SANDAG local officials have gotten to know one another and have learned to work together. One explained that before SANDAG was created, officials in her town “didn’t know any of the people in the next town. When we came together at CPO [the original name for SANDAG] all of a sudden we knew at least one person on the neighboring city council. When we had a problem, we knew someone to call. . . . Organizations like SANDAG bring people together. Establishing acquaintanceship is key. It gives us the opportunity to get to know each other, to discuss common problems and to hear what other people are trying to do.”

One of the fruits of San Diego’s stock of social capital is the reliance of its regional growth management strategy on peer pressure for its incentives. The strategy has not yet progressed to the point where it is clear that this will be sufficient, and some have their doubts. On the other hand, the extent of social capital that has been accumulated in San Diego makes it plausible that peer pressure will in fact have an impact. Even a skeptic admitted, “Localities here care what their neighbors think more than in other regions. It is a small community. Planners and city managers go out to lunch monthly. They know each other.”

SANDAG staff crafted the self-certification process in a way that is designed to heighten the impact of social capital. They inserted a provision that a public hearing had to be held before a locality adopted the check list indicating compliance. According to a SANDAG official this was done quite deliberately to capitalize on the likelihood that city councils would be concerned about how they would look in public if they were inconsistent with the strategy.

Because of its substantial stocks of social capital, setting up administrative arrangements for the growth management effort was relatively easy. The blue ribbon committee was able to build on the trust and confidence with which SANDAG was widely held and utilize the existing networks that SANDAG had created. Supervisor Bilbray, describing that decision-making process, argues “. . . SANDAG wasn’t something new and unknown. They had met at SANDAG and discussed certain issues, so it was familiar and more comfortable for them” (Greenfield, p. 97). Similarly, a local official explained her city’s “whole-hearted” support for

the decision to have SANDAG be the planning body in these terms. “SANDAG exists, it works, it has experience. We couldn't see creating another single purpose agency.”

Potentially highly contentious issues of representation were similarly dealt with easily by building on what already existed. SANDAG had a history of operating mostly on a one agency one vote basis. It also had a carefully worked out weighted voting procedure that goes into effect under specified circumstances. The accumulated experience with and confidence in these procedures made it easy to accept them for the growth management process as well.

The consensus-building process was also eased by SANDAG's wide respect as a source of data, and because its staff had a reputation both as technically excellent and as honest brokers. A SANDAG staff member explained that growth management process was not the first exposure committee members had to the SANDAG models. “They've all gotten used to dealing with the SANDAG modelling process. Once they see the figures, they can identify a problem. They know what it really means. . . . They don't challenge the premises because historically the model has been able to forecast in a way planners think reasonable. The model is not outlandish from their experience.”

The history the region has of working together also means that many common definitions already existed. As someone working on the open space committee explained,

The definitional issue was decided for us so it was very easy. These were issues that had been discussed by SANDAG and by individual cities. SANDAG has always had a process for being a forum for discussion. . . . The city [of San Diego] and county are on the cutting edge of defining steep slopes, wetlands. The smaller jurisdictions fell in line. What distinguishes San Diego are distinctive vistas, canyons, and coast lines. People had an easier time understanding what they should be trying to protect. We have had resource protection ordinances in the city and county for a long time. We had the definitions in hand. All 18 cities and the county share a common definition of what they are trying to protect.

San Diego's success is also due, in part, to the incremental nature of the process in which it engaged. Each committee is only advisory to the SANDAG board and, in the end, all elements of the growth management strategy have to be approved by member jurisdictions. This multistage process reduces the consequences of being outmaneuvered in any given committee since a group or jurisdiction has several chances to argue a case as the proposal goes to other bodies.

Perhaps even more important, the first phase of the growth management plan largely involves the coordination of existing federal and state mandates. This has allowed localities to get used to the idea of regional growth management by first dealing with mandates to which they were already subject. As one participant explained, “there's nothing radical about it. It reflects state and federal policies. Nobody is being asked to cut their industrial land by half or increase their low income housing by 100 percent.” It is only now, after the first phase has

been approved, that “home-grown” issues are being addressed. Another participant argued “once we got that process in place, where people understood it, taking that fear out of a regional board controlling all the communities out of people’s minds, then we could come back and deal with some more.”

Finally, the cooperative nature of the process through which the strategy was created has given the product legitimacy. As one participant put it,

People have accepted it because it is a cooperative process. It’s not something being imposed from on high. Politicians and legislators from the cities and county have often stated that this is our creation, we’ve done it cooperatively, we feel good about it because we have respected each other in doing this and that’s why it’s successful, because it’s our baby. I think that’s been the key.

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**Figure 4: San Francisco Estuary Project
Organizational Structure**



Case 4

SAN FRANCISCO ESTUARY PROJECT

by Judith Innes¹

Overview

The San Francisco Estuary Project (SFEP) was part of the National Estuary Program (NEP), which is designed to bring all the stakeholders in a major estuarine system, including public agencies with pertinent responsibilities, into a consensual agreement on the state of the estuary and on a Comprehensive Conservation and Management Plan for it. This is the most complex of all our cases and engaged the most powerful and conflicting political interests in the state. The scope and complexity of the problem, the size of the affected area, the range of technical information needed, the number and diversity of important players, and the political and economic power challenged by the process, were extensive.

The SFEP was an intensive and massive exercise over five years involving hundreds of players in thousands of hours of discussion in committees and subcommittees. It resulted in a consensually adopted plan, the impact of which remains to be seen. The plan, however, may be a less significant achievement than a number of other results of the process. These include agreements on technical descriptions of the estuary and methods of measuring water quality, new networks of relationships among players, education of the players about the estuary and each others' responsibilities, and other consensus processes that built on this one. Though there were complaints that the consensus was "thin" on the plan and that its implementation remains uncertain, there is no doubt that the SFEP has changed both the practices and the politics of water management in California and altered the criteria that will be used from now on for the public agencies. Given the enormous odds against success in this case, the achievements so far seem substantial.

The SFEP was contentious for many reasons, but most of all because it entered the arena of water politics, perhaps the most difficult of all public issues in California. The federal NEP was not designed to deal with the fact that farmers and landowners in distant parts of the state hold rights to the water that would otherwise flow through the estuary. This fact, in combination with the project's coinciding with one of the worst droughts in the state's history, meant that water rights and water quality came to be posed as values that would have to be traded off. The state's responsibility of protecting water rights was to come into conflict with what became a powerful tacit mandate for water quality — The Endangered Species Act. This act, in effect, prohibits the permitting of activities that threaten endangered species where there

¹ Interviews were completed by Michael Neuman and Judith Innes.

is no habitat conservation plan. As the estuary is home to several of these species, this legislation provided a powerful tool for both EPA and environmentalists in pushing for the primacy of the water quality objectives in the NEP. It also played a part in the selection of a water quality indicator linked to biodiversity, rather than to pollutant levels or other more traditional measures.

A major complicating factor in this project was that water rights and water quality issues were simultaneously being reviewed in three other arenas so that four parallel processes were going on at the same time. The state Water Resources Control Board (the Water Board), which is part of the California EPA, was holding administrative hearings on water rights designed to take into account both the needs of public trust resources in the estuary and those of water users. They officially produced Water Right Decision 1630 in April 1993 as the SFEP was ending. During the SFEP, however, a federal standard setting process on Bay/Delta water quality was also going on. In addition, an informal group process known as the Tripartite Process had been voluntarily established by the three major groups with water interests in the state: environmentalists, agricultural interests, and urban water rights holders. Their idea was that they would try to reach agreement quietly among themselves, out of the spotlight. Although they were not official, they met regularly with the EPA Region IX director and to brief him. They did not ultimately succeed, but if they had, their agreement would have a powerful impact on state policy. Many of the same players were involved in all of these activities and therefore they all had alternative opportunities outside the SFEP to influence water policy. According to one frustrated participant, "These things did undermine confidence in the process. It showed certain state agencies and interests wanted to bypass our process."

The situation and the intense controversies surrounding the issue of water flows in the estuary led SFEP organizers initially to agree to defer the issue of flows (and its accompanying questions of water rights) to the state's Bay Delta hearings and to use the information from those hearings in the Comprehensive Conservation and Management Plan (CCMP) rather than to develop information or debate these issues in the estuary project. However, in 1990, when it was clear the Bay Delta hearings were stalled, the SFEP decided to approach the flows issue in three ways: 1) to summarize existing information; 2) to begin to fill critical gaps in knowledge; and 3) to develop management recommendations for inclusion in the CCMP and for consideration by the Water Board. The management committee formed a flows subcommittee and convened technical workshops. The CCMP as a result includes a recommendation that addresses the flows and aquatic resource issues. Decision-making on these issues was going to continue in these alternative arenas regardless, and some of the key players might not come to the SFEP table if flows were on the agenda. Setting this boundary on the SFEP agenda was a calculated risk that the players could resolve many other issues without having to address the flows issue. It was also a recognition that the State Water Board would be making the tradeoffs between the rights and quality issues. Participants knew that the SFEP process and the learning that took place in that among the players might well influence the board's deliberations (as by all reports it did).

The SFEP Context and Structure

The San Francisco Estuary passes through 12 counties and touches four major metropolitan areas on its way to the ocean. Endangered species rely on its habitat; builders hope to develop its wetlands; cities and industries are under pressure to reduce discharges; roads and development generate runoff; boaters and fishermen use its waters; transportation and port activities support the economy but also require dredging, which may release toxic substances; and farmers in central California as well as cities and developers in the southern part of the state rely on water diverted from the estuary. Interest groups and state and federal agencies represent each of these conflicting concerns.

The conflicts were fundamental among the players. State agencies differ among themselves according to their missions to protect one or another of these concerns. The Department of Water Resources is a planning and project development agency. It constructs and operates water supply projects and as such its constituency is primarily urban and agricultural water users. The state Water Resources Control Board and the Regional Water Quality Control Boards are regulatory agencies that deal with water rights and water quality. The state Department of Fish and Game focuses on the issues of habitat and species protection and tends to be more in agreement with environmentalist players than other agencies. Federal agencies such as the EPA and Fish and Wildlife and the Bureau of Reclamation also represent an equally wide range of perspectives. Moreover, the project, sponsored by the EPA, raised suspicions among some state agencies that this was a “conspiracy” to allow federal agencies to set standards and control state agencies’ actions. In addition, the environmentalists and business/development interests represented had been in a highly adversarial mode for many years. The intensity of feelings was high and many of these bitterly opposed players had not sat around a table together before.

When the 1987 Federal Water Quality Act amended the Clean Water Act to enable the development of estuary management programs around the country, it was up to the states to nominate programs. While Republican Governor George Deukmejian did finally nominate both the San Francisco Estuary and Santa Monica Bay, by all reports he did so only reluctantly because of the tremendous political difficulties inherent in the SFEP and the way it was likely to challenge the water users. (See also the Santa Monica Bay case.) The EPA had already begun the Bay-Delta Project in 1986, bringing together agencies and the public to share information. The SFEP built on this beginning. The name was changed to avoid confusion with the Water Board’s Bay Delta Hearings. Because of the state’s lack of enthusiasm for this project, Region IX of the EPA took the lead in establishing and chairing the project.

Following one of the EPA’s suggested structures, the project set up a management committee with a sponsoring agency committee ostensibly above that. The EPA also established a public advisory committee (PAC) with an open membership including many citizens, the mission of assuring public participation and overseeing the extensive public information, and reporting efforts. The project also set up a technical advisory committee (TAC) with the responsibility to supervise and advise on science- and technology-related tasks,

particularly in developing the characterization of the estuary. Membership was originally selected by the EPA and then expanded by the TAC itself. Chairs of both committees were on the management committee. Many of the same agencies and interest groups were on the management committee, TAC, and PAC, but with different individuals representing them. In addition, issue committees were formed once the management committee identified key questions to focus on. These were on aquatic resources and wildlife, land use, wetlands, pollution prevention, and dredging, and later sixth and seventh committees were formed on flows and water use. After a year, the flows subcommittee merged with the aquatic resources subcommittee. A committee on local government disbanded after a time. Each committee had representation from a range of interests, and included both technical and nontechnical people. It was in these smaller groups that much of the substantive debate occurred and where participants built much of their shared understanding and consensus. All of these committee activities were conducted simultaneously and affected one another.

The management committee met bimonthly in half-day meetings, and more frequently and with longer meetings toward the latter part of the process. Attendance was as high as 35 to 40 when important issues were on the table, and was 20–30 on average. The project was officially housed in the EPA, though it was physically located within ABAG (Association of Bay Area Governments) in the East Bay rather than in EPA offices to assure a greater sense that it was not controlled by the EPA. EPA staff served as staff to the committees, along with a number of others borrowed from state agencies.

Participants

At the outset the EPA appointed about 20 people to the management committee, but an early consensus among the members required its expansion. A widely publicized series of public workshops identified other players for the management committee, which increased to 43. Participants, especially those who attended regularly, were largely staff of public agencies and interest groups, and some citizen representatives. The group included a few elected officials. The committee was chaired by Harry Seraydarian, of EPA Region IX. Once this membership was established, the committee remained stable until about two years into the process, when members decided to invite stakeholders representing the Delta Area and the city of Sacramento into the process. The management committee ultimately numbered 49.

While substantial effort was placed into making the membership inclusive of the wide range of interests, there were a few complaints. Most agreed the management committee (MC) was balanced in an interest sense and that different perspectives within the region were well represented. A leading environmental participant said, “We felt there were not as many environmentalists as there should have been.” There was a substantial block of environmentalist groups and environmental protection agencies, but this view seemed to reflect the notion that the project should be biased toward the environment because of its nature. At the same time, a leading developer representative contended it “should have had greater business

representation. The business community is more diverse than the environmental community, yet it had lesser representation.”

However, another contentious issue was how to define the boundaries of the problem, which also affected the choice and weighing of players. As one state agency official asserted,

The MC is not a balanced committee from a geographic perspective, from a statewide sense. It has a regional bias towards the bay and delta. It does not consider overall statewide water issues, which is important, because once water diversion is on the table, it becomes a statewide issue. The state water contractors association, which are the state water project users, represents major diverters from the estuary, but they were not allowed to participate. [Other water user representatives were on the MC, however.]

The notion of including such southern water users infuriated one of the environmental representatives, who felt the SFEP was about the estuary and there was no reason to include others.

These diverse opinions were acknowledged by the MC but the committee agreed the focus was on how to protect the Bay-Delta. They believed the state perspective was brought by the state agencies on the MC. State agencies are responsible for balancing state and regional needs, and Los Angeles Metropolitan Water District/state water contractors were represented on the PAC. Thus it was argued that southern water users were represented, albeit indirectly.

There were a variety of motivations for coming to the table and staying there. A number of players who were wary of environmental regulation, like the Building Industry Association or state water agencies, came to the table explicitly for self-protection and remained in “the damage control mode throughout.” As one member stated, “If we do not participate, decisions might be made that go against our mandates.” When asked “what kept you at the table?” one state water agency player replied,

Fear. Feeling that we had so much at stake that we had to be there. We talked about walking [leaving the process in intentional protest] in some dramatic fashion, with a press release . . . We were afraid EPA would take over some new regulatory power or create another mechanism to regulate activities. But it was hard to say we are not going to play. The SFEP clearly had substantial institutional structure . . . clout . . . recognition.

Environmentalists were sometimes reluctant too. More than one expressed the view that consensus building allows too much compromise. As one said, “I don’t think, from an environmental point of view, that I am happy with consensus. The environment always loses. The other interests weaken the goal of protection.” For a number of the environmental groups, the compromise was just to be at the table instead of bringing lawsuits to enforce legislation,

or lobbying for new laws and regulations. Local governments, in practice, were not well represented, although a number were officially members. Some large jurisdictions sent technical representatives. Two or three local elected officials participated regularly in the management committee and a few others participated in committees, but most did not attend significantly.

Players also indicated, however, that their other principal reason for attending was to get to know the other players and learn what their concerns and issues were. The technical committee members were able to use their meetings as opportunities to exchange scientific information and get updated on one another's research.

Some of the players spoke to us about the challenges of representing their agency or organization within the management committee or other committees. A high-level agency representative told us,

Any agency is itself a consensus group. Internally the managers do not agree, but we try to iron out these differences and present a common face. However, different people from different agencies behaved differently and you could see it. Agencies do have policies but different staff interpret them differently.

Another agency participant who had recognized these differences said he and the other participant from his agency divided up the issues. "We would have disagreed between us, but instead I worked on one set of issues and he worked on another. This way we would accept what each other did and the agency could follow through on what we each said." A third defined his responsibility as representing the governor, his agency, statewide interests, and his personal knowledge and experience. Since his agency and the state did not have a formulated policy on estuary programs before going into the SFEP, and did not develop one along the way, he said he acted in an "ad hoc" way in the SFEP meetings, making sure not to be inconsistent with existing policy.

I probably wouldn't have gotten to be as high up in my agency if I did not know what would be acceptable to the agency. I value my job, but where I have expertise I offer it. I just blurt out what I think. It can be a bit scary. Another player, a lobbyist for an interest group, complained that people were supposed to check back with membership, but frankly, the issue put them [the membership of her organization] to sleep.

Issue Committees

The six issue committees had varying success. Agreement was reached on pollution, dredging, and land use. Substantial agreement also was reached in aquatic resources, although

a minority report was filed for this topic which also happened to overlap substantially with the contentious flows issue.

Wetlands

Two committees, wetlands and land use, which have particular relevance to growth management, were especially difficult. Wetlands proved to be the most contentious of the two. Builders and farmers lined up against environmentalists over how to define a wetland and on whether the policy goal should be no net loss or restoration and increase of wetlands. One problem related to both issues was a lack of technical certainty. Environmentalists distrust wetland creation or restoration policies as the solution because of the technical uncertainties of success, while developers and farmers fought for a limited and precise definition of a wetland and prefer “no net loss of wetlands” to requirements for protecting all of them. Another problem was a general feeling of resentment among business and some local representatives that socioeconomic issues were not given enough attention or priority. This reflected the lack of full consensus on the boundaries and nature of the problem they had to address. But process was also a concern. As one business community representative noted, “The wetlands subcommittee was a disaster. Wetlands is a huge issue in the Bay Area. There was no facilitator and we were upset with each other because another wetlands process we had been involved in had fallen apart.” The wetlands subcommittee members themselves wrote the whole wetlands section, but did not get consensus. Dissenters wrote a minority report in the final Comprehensive Conservation and Management Plan.

Land Use

The land use subcommittee was also contentious, involving many of the same players and issues, but it was somewhat more successful. This committee operated differently and did ultimately reach a consensus on the land use section of the Comprehensive Conservation and Management Plan. This committee began with a consultant whose analysis of demographics did not seem useful to them in providing policy directions. They then chose consultants from the University of California who did an analysis of the effects of land use intensification on the estuary, using different scenarios with elaborate computer maps. A central issue dividing participants concerned regional government, which some contended was the solution but which local officials opposed. Then, as conflict continued, toward the end of the process one of the consultants was hired to facilitate meetings. This effort was successful in the sense that the full committee agreed unanimously on a land use program. The consultants, together with staff, wrote the status and trends report and the management options as well as this program. The process, according to one participant in both committees, was not as “gut wrenching as the wetlands, in which the group wrote everything from scratch.” One success of the effort, according to some, was that it succeeded in focusing attention on urban runoff rather than primarily point-source pollution. This provided an agenda for the Regional Water Quality Control Board to work with local governments on land use issues.

Nonetheless, those we interviewed expressed remarkably little satisfaction with the land use section. As one environmentalist said, “The worst section [of the Comprehensive Conservation and Management Plan] was the land use section.” A top staff person thought the land use section was “weak.” The business representative quoted above, who basically agreed with it, still regarded the land use section as biased “because the Greenbelt Alliance [a major regional environmental advocacy group] had an influence on it, and because BCDC had an influence.” This individual was more comfortable with involvement by researchers from UC Berkeley “because it was an educational institution, supposed to be unbiased.” A local official’s view of the conclusions was, “it is like everything else. No more people, just build straight up. I am not satisfied but I have no answers.” Another local representative complained that the discussion did not pay enough attention to local master plans and the fact that local governments make land use decisions. This individual contended that other participants regarded this point as simply a piece of information, equal to others, instead of the central point. The lack of enthusiasm from all sides may simply reflect that genuine compromises were achieved. As one stated, it got “watered down for consensus purposes.” The process apparently did not get beyond this mutual adjustment effort to some kind of mutual gain position or sense of shared mission.

This project presented several obstacles to greater achievement in the land use area. Although the staff person for the land use committee was trained in city and regional planning as well as water planning, few other staff on the SFEP, and few participants, were sophisticated about land use and local government. Most were oriented to water and to the activities of state and regional agencies. Thus, developing the necessary understanding among the wide array of participants was an uphill battle. A second obstacle was a kind of tacit agreement within the EPA and the Regional Water Quality Boards, acknowledged by several of the players, that they should basically keep hands off local land use issues. Because of their power over permitting for discharges to the bay, even those from storm sewers, the regional boards did have the leverage to force local governments to act, though they have not chosen to use this directly. Finally the limited participation of local government players, especially from small agencies, meant that there were not so many effective spokespeople for the local perspective.

Aquatic Resources and Flows

In 1989, about midway into the process, the state water board withdrew its draft water rights plan and developed a new schedule that would produce a decision only the Comprehensive Conservation and Management Plan was to be completed. The plan to incorporate the board’s findings into the Comprehensive Conservation and Management Plan was not going to work. Moreover, the aquatic resources committee concluded it could not complete its work without discussing flows. Indeed, many of the players had been complaining about the difficulty of completing the estuary project without addressing flows in an integral way in the discussions. Environmentalists threatened to quit the SFEP and threatened to initiate a suit

against the EPA over the issue of water flows. In response, in 1990 the SFEP decided to establish a flows committee. That committee, consisting of carefully selected members, including environmentalists and water agencies, met privately in an attempt to identify the environmental consequences of the freshwater diversions for agricultural and urban uses. It developed the design of a series of technical workshops and supported original research at Stanford and UC Davis. It created a smaller committee — water use. This water use committee was to achieve a remarkable degree of consensus on both the proposition that water flows affect water quality and habitat, and on a conservation and reuse strategy. It did not produce a minority report.

After about a year the larger flows committee merged its efforts with the aquatic resources subcommittee. This subcommittee developed a comprehensive action plan for the CCMP on these issues. Though there was substantial support for this plan, in the end a minority report was filed. The major controversy was complex and much was at stake. Environmentalists accused the state Water Resources Control Board of having an unfair policy of supplying water to all those with contractual and other rights, and only sending residual water into the estuary. One representative of the board contended,

The SFEP was not just a bay issue. The water rights they were dealing with were used by the entire state. Thus it is a water rights issue, not just a water quality issue. Flows are not directly a water quality issue like discharges. It is not just the amount of water, but the timing, where and how, and the facilities.

Views were polarized, with some members of the flows committee apparently saying “Don’t take our water,” and taking a rigid position, whereas the water board’s responsibility was to balance interests. State agency players also had to recognize that the governor might not accept results that took too much from the Central Valley Water Project. While the committee did not solve the political problem of competing demands on the water or competing missions of public agencies, it did reach agreement on the point that flows were linked to water quality, and on the idea of a conservation strategy. Other issues would have to be worked out in other arenas.

The Role and Use of Technical Information

The technical role of the SFEP may, in retrospect, turn out to be the most important contribution to changing the policies and practices of water management for the estuary and, in particular, to coordination among the agencies. Two things are significant. One is that the four-year process of developing the status and trends reports in the issue committees provided the opportunity for mutual learning among scientists, and between scientists and laypeople. The final reports reflected a mutual acceptance of information and put a stop to endless

adversarial arguments in which no one could agree on the basic facts. One of the technical advisory committee members explained adversarial science this way:

It is almost a joke how technical information has been abused in this area. The state water board runs quasi-judicial administrative hearings. Lawyers bring their own technical experts; they cross examine the scientists and find typos in their articles and raise the question of whether the whole article might not be riddled with mistakes. There is no question of peer review. Moreover differing opinions are equally weighted. So if 99 percent of the scientific opinion supports one view and only a few people support another, they are weighed equally. We tried in the TAC to use scientific standards to determine what could be accepted.

The second significant contribution was the development, through the technical workshops, of an index of water quality, the 2 parts per thousand isohaline measure of salinity, which was to become accepted among most of the stakeholders as the appropriate measure for monitoring the estuary's health. This represented a new concept for the bay in water quality monitoring and provided a powerful tool to environmental protection agencies to challenge water user interests, because it directly linked water quality to flows. When the federal government announced in late 1993 that its environmental agencies had agreed to use this measure, it was a reflection of the amount of political and technical support underpinning this indicator.

Technical contributions were provided in several ways, through the TAC, through the issue committees (on which some TAC members served along with nontechnical people), and through a special set of facilitated workshops for scientists from the various agencies.

The TAC had a range of science-related responsibilities,² including advising the management committee on technical matters, identifying management issues and options, developing scopes of work for technical documents, and overseeing the preparation of status and trends reports for the issue areas. The EPA began by inviting TAC members from relevant physical and biological sciences, and engineering in a variety of agencies and research and educational institutions. Academics participated initially, but soon found little incentive to stay. This group had quickly expanded to individuals from additional scientific and engineering disciplines, but did not, despite a request from the U.S. Department of the Interior and others, include an economist or an attorney, nor any social scientists. Effectively, the membership policy represented a decision that the TAC was focused on science, and the requirement to characterize the estuary. It was not a committee that would require the full range of expertise that would be needed for all aspects of the process. The decision also meant that there was a certain culture clash between many TAC members and others involved in the

² See Tuohy, 1993, for a full outline of TAC activities.

process. To avoid conflict of interest issues, private business interests were not represented. When academics and researchers later dropped out, this left primarily agency and interest group staff to serve on the committee.

The process of developing information was not easy in this complex case. As one of the most active TAC members explained, “TAC was to provide scientific credibility for the solutions. It was to rationally identify problems, issues and options. Then the idea was that managers would assess these and make a plan that would work.” The TAC members spent two years deciding on the problem just among themselves.

[A]t the end of a year we had not even defined the playing field. We drank a lot of coffee and tried to figure out the problem. We gave up splitting issues and started clumping. We went from 43 to 23 to five issues. We expanded issues at first then dropped and clustered them. The trouble was, with flows out of it, we were not talking about the main issue. A lot of people left after the first year. We were talking philosophy. We could not agree on what should be studied, and we could not discuss one-third of the problem.

Another respondent related that before this process enabled members to define and agree on the problem, a high-level staffer from a southern California water agency tried to get him fired for publicly presenting information suggesting the estuary was in trouble and that water diversions were linked as a cause. Ultimately the management committee and TAC did achieve basic agreement on the problem, although a vocal member of the development community contended they had never agreed that the problem should focus so much on environmental issues. They felt it was also a question of socioeconomic impacts. Thus the boundaries and definition of the problem were not 100 percent accepted.

The first year was a frustrating one as members grappled with the slippery tasks of conceptualizing research questions, defining a data base, framing their own agenda, and considering how to integrate the findings into a unified characterization of the estuary. In the second year the TAC seldom met, but members participated in the issue committees. In 1989, with new co-chairs, the TAC began to review the status and trends reports from the issues committees, which were all finally sent to the management committee by 1991. The original effort was to be purely scientific, but the group found that was not so simple. In essence, they jointly constructed the information they could agree on. According to one key member,

The status and trends reports were originally meant to be technical only. We tried to be factual in what we put there. But then there was a debate. . . . A technical person from an environmental group wanted to include conclusions on how badly the bay was doing. We did not do it because it was not factual. There were polarities among members, though all are scientists. You have not only environ-

mental advocates, but also people from agencies who work for the discharger community, saying “you cannot draw those conclusions.”

Here is the dilemma. We don’t have a lot of information — not enough anyway to give cause and effect (e.g., petroleum discharge causes fish deaths) or to show that things are worse. The fish might be accumulating more metals but the bay might be getting better, or vice versa. We have ended up getting consensus, tailoring language to make as strong a statement as possible. We negotiated over facts. It is an issue of how to describe an estuary with limited data.

Debates were over what could be concluded or said. Or over caveats that were needed. You can speculate, and you can have differing interpretations that are legitimate. One of the scientists would end up pointing out where there was little argument over conclusions. Minimal information was ultimately used.

An even more difficult task was to incorporate into the status and trends reports a set of “management options.” The issue committees supervising the preparation of these reports included scientists and managers, and the managers insisted on including these. “Scientists,” as one TAC member noted, “don’t like to talk politics.” They wanted to keep the reports to scientific characterization. One technical member complained, in a way that was echoed by a number of others,

The management committee decided there should not be separate technical and lay subcommittees on same topic. These mixed groups did not want to use scientific criteria of relying on peer review and findings that have been well established. They wanted to rely on anecdotal evidence and common sense, gripes, and they wanted to talk about management options. Some scientists felt they could not be tainted with hearsay and dropped out.

A TAC member who regarded himself as a “bridge builder” said, “It is a problem getting scientists and decision-makers together. This meant a delay in the status and trends reports, because they included management options and recommendations and that took time and much blood, sweat and tears.”

The same technical participant acknowledged that he did get some value of working with the nontechnical people: “Yes, you find out what is going on out there. Sometimes it shows lack of knowledge and then you know education is needed.”

Some players contend that the reports contain little that was new or unknown before. But much was done to sort and organize existing information so it could be usable, and to associate it with the estuary and the policy issues surrounding it. One of the lay participants with little scientific background expressed a common view among citizen participants:

The status and trends reports were good — a valuable resource for the future research. Now things are written down. The inventory of research gaps was good. The reports put the information into ordinary language and made the scientific findings accessible to people. They were also useful because they got the scientists to agree on some findings. They think of themselves as gods in their fields and fight over hypotheses and try to block each others' views. Also, I personally did learn some science in this.

Though some technical people remained frustrated by having to interact with players who were not knowledgeable in science or who relied on “anecdotal” evidence, overall it appears that the exercise had beneficial effects for long-term communication among players, and for all to develop a common understanding of the issues and their implications.

The difference in perspective of the technical and management people is clear in the account of a special workshop organized by the TAC. The neat division of labor between technical people and managers simply did not work as planned.

We held a two-day retreat with managers. The idea was for us [TAC members] to tell them the science, and then they would figure out what questions we should answer for them to manage the bay. We spent a half a day on presentations, but by lunch managers had taken it over to talk about what they knew — management. We discovered they did not want to talk about science. They set their own agenda. It was obvious to them we needed a separate, neutral entity to manage the monitoring. They proposed the San Francisco Estuarine Institute, a sort of nonprofit, to do the monitoring of the Bay and the scientific work.

Another TAC member said of the retreat, “We accomplished getting them to talk and trust each other. Managers kept saying ‘tell us how bad the bay is.’ They want to know how much it costs to clean it up and who would do it.”

One engineer found the experience of working with the managers changed him:

Suddenly I became exposed to political realities. I used to work in an experimental mode. You get all the factors right and then systematically carry out the task. I discovered the world was not like that. It has taken me years to change from the rational, logical thinking of an experimental scientist. For example, I used to think if we laid out the monitoring program and ran through it, people would like it. I did not realize people change their minds a lot, and over time, in any case, do not even see the same problem any more.

It was on the flows issue that the SFEP technical work made its most novel and most important contribution to the long-term management of the estuary and coordination of activities affecting it. The SFEP convened a group of scientists, representing both environmental protection agencies and interests, and diverter agencies and interests, to develop a science-based consensus on impacts of freshwater diversion on the estuary's biological resources. They hired a facilitator to help the group come to agreement and set parameters to assess capacity and monitor water quality. Dr. Schubel was a water scientist, consultant, and facilitator who was also director of a marine institute at the State University of New York at Stony Brook. A total of four workshops were conducted. Within the first hour the group concluded they were not going to deal with flows because they could not measure flows precisely. They focused instead on how to measure water quality, much to the frustration of a state water agency representative who contended that the EPA must have manipulated the process so it could attend to its agenda of setting new water quality standards.

Whatever the case, the group of scientists did reach substantial agreement on a new indicator of water quality for the estuary, that became known as the 2 parts per thousand isohaline index.³ Some state water agency people did not join the consensus. One of the technical participants explained,

We have chosen 2 pp thousand as the surrogate for knowing where the mixing zone is. This zone is rich, where a lot of life is generated and there is a high concentration of food. We can't use the number of bass as an indicator when there are so few. Typically, this zone, most agreed, should be near Suisun Bay because if it goes further back into the Delta where there are deep channels, then it does not have the beneficial effects it does in the shallow area. The scientists did a correlation of species and location of the salinity gradient. This was a major achievement of the process to agree on this indicator for monitoring.

In the end, there was a high degree of consensus on the salinity index among the scientists, though there was more disagreement about where the appropriate location was for the mixing zone.⁴

The broad acceptance of this indicator accomplished a number of important coordinative and political results. First, it formally established the agreement that water quality and flows were linked in a fundamental way. The location of this salinity level would be affected by the amount of water flowing through the estuary. This, in itself, was a major breakthrough not because it was a surprise, but because it provided a relatively "scientific" and legitimate criterion for the argument. Secondly, this index came to be more or less understood and

³ San Francisco Estuary Project, 1993.

⁴ *Ibid.*

regarded as important by the lay members of the SFEP management committee. Even if the state water board and other agencies do not adopt it as their official measure of water quality, other agencies are likely to do so. The announcement by four major federal regulatory agencies that they would use it came about eight months later. Whether this will mean they can challenge the water diversion policies remains to be seen. But the amount of discussion and breadth of agreement on this index is likely to give it substantial credibility in any legal proceedings.

Finally, and most importantly, the general acceptance of this indicator was a measure of the degree to which the SFEP members had come to reconceptualize the problem of the estuary as an ecological system in which they all played a part. When they began, some said there was not even agreement that a problem existed, and each of the groups saw it somewhat differently — as a problem of discharges or runoff, or dying fish, or polluted wetlands. The choice of a system or outcome measure like the isohaline standard, rather than an input measure like “end of the pipe” discharges, for example, represents a recognition that the estuary is a collective problem requiring collaborative decision-making.

Staffing

The SFEP was well staffed and financed compared to our other cases, with as many as 19 people at some point on at least a part-time basis. They were largely from the EPA, but included some staff loaned from state agencies and some specially hired consultants. Two facilitators were hired for the management committee during the last year and a half to help the group finalize the plan. A variety of consultants did special analyses and assisted with the technical task of characterizing the estuary.

According to a principal staff director,

The role of the staff was to facilitate group interaction and provide information. They provided administrative support and made the agendas with the chair of the group they worked with. The small work groups left the lobbying and the networking to the staff to handle. Staff did its work one-on-one with the small groups to explain the new changes in the documents on the controversial issues. There was a phone tree, and one staff member handled several management committee members. Sometimes they just passed along information, such as administrative things. Other times, it was more like education or lobbying.

Another EPA player said that “Staff had the idea of using the expertise of the management committee, and mostly assisted them, rather than taking an active, leading role.”

Although not many of our respondents, even when asked, said the staff were biased, there clearly was a problem in having staff come from the EPA. Staff did try to serve members

equally with information, according to most we interviewed, but the environmental protection orientation of the EPA created problems. One of the managers of the process said,

It became an issue as to where the office should be. Environmentalists wanted it at ABAG for separate symbolic identity. They wanted the majority of staff over there. That is why we did it, but we had to move them back here for financial reasons. Nonenvironmentalists did not trust staff because they regarded them as pro-environment. Environmentalists wanted staff to be advocates. Our staff are typically pro-environment advocates in the first place.

Moreover, key EPA staff felt their loyalty split between their EPA boss, who was also the management committee chair, and the overall direction given to them by the management committee. This was particularly a problem when Seraydarian disagreed with the management committee. “The tension has been real difficult at times for staff.”

Two or three of the nonenvironmentalist players complained that the staff lobbied members. One said, “Staff was biased, should have been more neutral.” Remarkably, though no one disputed that staff advocated for environmental protection, most accepted it as legitimate, given the legislative purposes of the project. A level of trust among members and between members and staff was developed in the small groups, according to a number of respondents who carried through the rest of the process.

Consensus Process and Facilitation

The chair ran meetings largely in a consensus-building way, and remarkably, even participants who feared or distrusted the EPA, according to our respondents, accepted his chairing as fair. Nonetheless, they found he “represented his agency when he needed to.” As the issues became more focused, and resolving them more difficult, and as the five-year deadline for plan completion approached, Seraydarian, with concurrence of the management committee, decided to hire a facilitator. The purpose was primarily to help the management committee complete the Comprehensive Conservation and Management Plan, which staff had begun to write. Two people were chosen, who jointly facilitated meetings. One of the facilitators used a computer technology that allowed word-processing changes to the emerging plan to be displayed instantaneously on a screen. The other ran the meetings in a neutral way, keeping to a strict schedule and making sure agreements were reached if possible.

The meeting process for the management committee was difficult due to the size and diversity of the group. Two participants who had been deeply involved made these typical comments: “If nothing else, this was an exercise in frustration.” The size of the group (50) was too big — “unwieldy.” A commitment to be inclusive by one of the early organizers had led to this large size, which was clearly not efficient for working out complex issues. While the relationships may not have become warm among players, by the end of the process they were

trading jocular insults among one another, regardless of their position or role. The meeting process did seem to equalize the participants' opportunity to be listened to, in much the model prescribed by the literature. One mid-level agency participant said,

The SFEP got us sitting around the table. I noticed that the power and prestige of individuals faded as people sat there over time. The deputy director of [a major state agency] had no more clout than [an environmental group]. The organization behind the person faded after a while and it became just two people — bricks banging into each other. The heat affected the whole room and eventually brought compromise. The monoliths were no longer there, but you had strong individual personalities.

Participants were generally pleased with the facilitators, who they thought helped the management committee move along. Their comments were: "Really skilled facilitators. Otherwise, the meetings would have been totally out of control." "I did like Marilyn a lot. She was very good . . . very clear." "She kept us focused and on track." "Marilyn and Jeff weren't touchy-feely . . . they were professional. I learned to respect the facilitator role." "The main problem is we did not get the facilitators soon enough and did not have the subcommittee meetings facilitated." There was some mild criticism, as well: "The facilitator was pretty effective, but could have been better. Some people dominated more than they should have, some people with technical knowledge had trouble getting recognized. A good facilitator would have evened this out."

There was some ambivalence about the group's focus on the language of the plan, which was only possible because the facilitator had the technology to type and show the changes on a large computer screen. Thus the group "tended, at times, to focus on trivia," one member said, but added, "Yet, it was a clearly good way to move the process along. The focus was on the language and not on the content of the policy." Another stated, "Typing on the screen was a great process, really fabulous, really helpful. Yet sometimes it bogged us down." "We got, at the end, rather than substantive dialogue, debate and consensus on wording." The problem was, as one deeply engaged participant noted, "When it comes to implementation of these policies or statements, it depends on who's reading it." According to another member, the group

developed compromise *language* but did not really agree. If it was a piece of legislation, we would still be fighting. In the wetlands committee, for example, we agreed to general language, but each person agreed to different things because the language was ambiguous. "Improve wetlands regulatory system" meant "stream-line" to the developer representative and "strengthen" to the environmentalists.

The criterion for establishing that there was a consensus was, *de facto*, 100 percent

agreement. The facilitator alleviated the tension around this “voting” procedure by using a “six-finger” rule that gave members more than one option for expressing their views. A member would hold up anywhere from one to six fingers to signify his or her view of a proposed idea. The scale went from one finger, representing “I fully agree,” to four “I do not like it but I will not block consensus,” to five “There is no way I will agree to this,” to six “I won’t agree but perhaps further discussion can resolve it.” This scheme gave players a way to express their views, without necessarily having to be obstructionist. As a practical matter over time, however, the important question was only whether a member’s vote was five fingers or something else. And could the five be changed to some other number? A development representative said, “Everyone was relatively happy with the finger voting system, which was relatively good. The facilitator used straw polls often, which worked well.” She felt, however, that in the SFEP, “Consensus meant majority rule and did not mean 100 percent unanimity” — meaning that the six-finger rule could mask some dissent.

One of the principal SFEP staff members, when asked what helped consensus to work well, cited the deadline for completion of the Comprehensive Conservation and Management Plan in five years, the facilitators’ advance work before the meetings to work out disagreements on a one-to-one basis, the arrangement of the rooms with horseshoe-shaped tables so all could see each other, the presence of a facilitator, and the screen. But she said, “It was difficult to get people out of adversarial modes, getting them to place an importance on listening and reaching agreement. There was not an overall culture of cooperation or collaboration. The real cause of some problems was that the participants represented such a diverse and dissenting set of players, with many who had a lack of commitment to the estuary.”

She contended that the hindrances to consensus included: 1) not having the right players; 2) people defending their turf; 3) people voicing personal opinions and not those of their organizations because there was not a requirement to gain the approval of the organization; 4) the broad perspective on issues due to the diverse membership; 5) lack of implementation authority built into the Comprehensive Conservation and Management Plan; 6) the limited representation from local government; 7) lack of participation by the right people for implementation; 8) lack of definition of the authority of the project — whether it was under the EPA or was an independent entity; and 9) the fact that the project was reluctantly taken on by the state.

People continued to sit at the table, nonetheless, so “their ox would not get gored,” and because the EPA led the project. There was potential for things to happen, both good and bad. There was federal funding to make it happen — a total of \$7.5 million over the five years.”

Adoption of the Comprehensive Conservation and Management Plan

At the last meeting of the management committee the Comprehensive Conservation and

Management Plan was adopted by consensus, along with an organizational structure for implementation. In the morning there were still “no” votes, and 100 percent agreement was needed for adoption. In the afternoon the facilitator hurried the committee along, finding words they could agree on, without pursuing the reasons or meaning of the words. Five o'clock that afternoon was the absolute deadline in the federal legislation. The facilitator pressured and cajoled committee members to agree to the final document, though there were still areas where agriculture and building industry were especially dissatisfied. An incentive to agree was that only those who voted for the overall report could prepare a minority report on any issues. It would be the only way to disseminate their views along with the report. The design of the executive council to implement the plan was contentious, as management committee members wanted it balanced between environment- and development-related state or federal agencies, but a balanced four-person committee could not break a tie. Only in this context was it proposed that a public member or local government representative should be on the committee. Several spoke bitterly against local government involvement, noting they had not been much in evidence in the process. Finally, a last-ditch effort to understand the costs and methods needed for implementation had to be cut off for lack of information and time.

Full consensus was reached amid cajoling and teasing of reluctant members, loudly expressed worries of some members about the support of the constituencies they represented, and clear indecision until the last moment by key state agency officials, who said they would not have supported this if other substantial groups had not. The official vote was 100 percent, but in conversations after the meeting that “consensus” seemed to represent little commitment or enthusiasm by at least some players, such as building and business groups, farming interests, and state water agencies. There was a clear tension in the room between members’ desire to see a product after five years of work, and their ambivalence about aspects of that product. Nonetheless, the Comprehensive Conservation and Management Plan covered many issues that had been resolved and most players had bought into most of the plan.

Prospects for Implementation of the Comprehensive Conservation and Management Plan

At the time the plan was adopted there was great uncertainty among the participants about whether and how the plan would be implemented, or indeed how it would make any difference. One participant claimed that 90 percent of what was in the plan was going to happen anyway, and no one claimed it was a radical piece of work. Other things that were in it might happen just because they were good ideas. There was more complaint among players that because of the diversity of players and the 100 percent consensus requirement everything was the lowest common denominator, or left in such general terms that issues would have to be fought out again during implementation. One building industry player said, for example, “The language in the report is not clear on policies. The policies would be hard to implement because the language is too general. We’re having *major fights* about implementation.”

Players focused on the plan itself as the test of the SFEP's success or impact and worried that it would not be implemented, or at least that its controversial parts would not be implemented. A major reason was that it had not acquired sufficient commitment among the state players. "The [plan] may have the right words, but if it does not have commitment to implement, . . . it will sit on a shelf and collect dust." A staff member said, "It has not generated enough commitment for the leaders in the agencies to implement the plan." One of the architects of the process worried that the failure to identify lead agencies to implement each item would seriously limit its implementation potential, as would the plan's failure to set priorities among actions. Indeed, agreement on basic actions was still incomplete by the deadline.

Many believed the Comprehensive Conservation and Management Plan (CCMP) should have force of law, or at least funding, to assure it would be implemented. "The plan is advisory, not mandatory, and thus there is no stick. The EPA has no carrot now that the money has run out for the program, so any implementation will depend on existing programs." Their real worry was based on the evident lack of support from the governor's office. Would he sign the plan given its financial implications, and more importantly, its challenges to the water supply that could go to farmers and the southern urban areas? He was expected to oppose the wetlands section, on which there was a minority report from business and farming. "The SFEP," a key EPA player noted,

has a strong environmental bias and the governor does not. The standards or water quality that we established in the plan may be ones EPA will stand behind, but we can't go to the water board and transform them into water rights. The issue of flows to the estuary versus diversions to water rights holders will still have to be decided. Still, the standards may do enough to give citizens the opportunity to bring lawsuits to challenge state policy.

One state water agency player said, "I'm not real confident that something will come out of the plan. My worry is — will the governor approve of it? The problem is the needs of the state were not considered well. It was too much a Bay Area project and there was no direct representation for the governor." An environmentalist player contended,

Whether the CCMP gets implemented or has any effect depends on the governor, and on an active community pushing it. I do not know what will come of the CCMP and I do not know the governor's position. A commitment from the governor is needed for implementation and that comes down to politics. We'll deal with that later. Legislation will be needed, local implementation, education, regulation and so on.

At the same time, management committee chair Seraydarian's view of implementation

was much less focused on the governor's commitment or on specific legal requirements for action. He could see ways it could have effect in any case:

Some see the purpose of the CCMP as an enforcement tool and look for the teeth. I want to use the plan as a basis for implementing actions, but not as a club. We sent the plan to agencies and asked which parts were priorities from their view. It went to all relevant agencies with a request to identify costs and actions already committed to so we can decide on the next steps. We are working to have regional water quality boards take the lead on implementation. We expect to have a new implementation committee including some interest groups, along with agency people.

A major limitation on the potential for implementation of the plan was that, in part due to time constraints, insufficient information was developed on the cost implications. The staff did get cost information for many state and federal agency proposed actions, but one staffer said, "We did not do a good job on identifying what is now funded and not." Another pointed out, "We have no information on the cost to local governments." A business representative wanted to know the costs for business and the public, including not only the direct costs of required actions, but also the secondary and tertiary effects. The Building Industry Association kept calling for economic impact analysis. Others too complained about the "costs unknown" aspects of the plan.

Epilogue

The day after the Comprehensive Conservation and Management Plan was adopted by the management committee, Governor Wilson directed the state water board to stop its work on the interim water quality standards for the delta (known as decision 1630) contending that the ending of the drought obviated the need for an interim standard and the board should simply continue developing a long-term standard. This reversed the governor's policy adopted in 1992. According to an EPA respondent,

This means that Wilson is pointing the finger at EPA as the culprit in strict water quality standards for the bay, which means fewer withdrawals from the delta to agriculture. Agriculture supported the governor's policy reversal, while urban and environmental interests decried it.

The timing of this seemed to suggest that the Comprehensive Conservation and Management Plan would not get the governor's support.

At about the same time, the Bay Delta Oversight Council began to work on water quality and flows issues. Wilson had appointed this group, drawing its membership from the tripartite

process mentioned above, which included urban, environmental, and agricultural interests in about equal parts. This council was created in response to the EPA's disapproval of a 1991 state plan to reduce the salinity of the delta. This group, which continues to meet, has 20–22 members and its own, separate, technical advisory panel. It too is a consensus group like the SFEP, but it reflects a very different notion of the boundaries of the problem and the appropriate stakeholders. Only one-third come from the Bay Area, while another third are farming interests and another come from southern California.

On November 17, 1993, Governor Wilson concurred in approving the Comprehensive Conservation and Management Plan, which EPA administrator Carol Browner had approved in Washington. The governor's concurrence was modified by a number of conditions, however, which he appended to the plan. In December 1993, a consensual agreement of the four key federal environmental agencies adopted the 2 pp thousand isohaline standard for the location of salinity levels in the estuary as the official way of measuring Bay Delta water quality. While this decision does not automatically mean that water flows to the estuary will take precedence over the water contracts held by water users, it changes the debate and raises questions that the water board and perhaps the courts will have to address in assessing how to trade off the estuary's health with water rights. Finally, at the time this report was written, the first meeting of the Implementation Committee had been held in early February 1994, with members from interest groups and public agencies. Interest in participating was substantial, as players called in seeking to join the committee. The Friends of the Estuary Committee continues to meet to push for action. Estuary project staff are still funded by the EPA, though at reduced levels, and have transferred to a location at the regional water quality board as the lead agency for implementation.

The implementation of the Comprehensive Conservation and Management Plan remains an open question. It is unclear whether National Estuary Program funding can be used for implementation or just for plans, though Congresswoman Pelosi, who has been closely involved in supporting the process, may pursue an emergency amendment to the act to assure implementation. The state agencies are at odds with other players in contending the plan should be brought into conformity with the governor's conditions. Others want to set priority on implementing specific actions. Whatever the outcome, further action as well as controversy lies in the future. The SFEP is not over.

Assessment of Results

The San Francisco Estuary project had several kinds of achievements, each helping to move players towards more coordinated action. It resulted in changes in the activities and expectations of many of the players, and thus far has influenced other activities affecting the estuary. Chair Seraydarian's view was, "I can say we have gotten better coordination through consensus process, though we did not necessarily have consensus on everything." All our evidence supports this.

The Comprehensive Conservation and Management Plan

The SFEP did officially get consensus on the CCMP, with only brief minority reports on two of the issue areas. In other words, a great many issues and policy directions were agreed to. Although some said the consensus was thin on some points, or the language was vague, and the governor only agreed to it with conditions, it remains, nonetheless, the adopted plan for the estuary. It is an official document that has weight for administrative decision-making and for legal challenges by watchdog groups. While it does not have teeth, in the sense that particular players can be forced to act in particular ways, nor does it yet have assured funding, many players will act as it says because they have decided it is good idea. At this writing, the funding issue is being fought out in Washington. While the plan may not be fully followed, it has already made a difference.

Personal and Professional Networks

Participants, who represent most of the key players influencing the water quality in the estuary, developed working relationships with one another, communication networks, and an understanding of each others' perspectives. Many of them use these relationships and understandings to do their estuary-related work as they call each other and coordinate informally over issues before they become conflicts. To quote one active participant,

One major result of the process is I now have networks into 40 different groups representing different values or at least points of view. If they have frustrations they can call me. I get called a lot. I call them a lot too. I am on the phone with the Sierra Club almost every day. I ask them what I can do to help. I try to find out what they are doing and to see what I can do consistent with my agency's objectives, to help.

Agreement on the Nature of the Water Quality Problem

Players also came to a basic agreement on the existence and characterization of the water quality problem of the estuary. This moved the debate from one relying on adversarial science, where players could hide their views behind arguments over research quality and evidence. Agreement on data forced the discussion to the important level of comparing values, of addressing the fundamental questions — for example, of whether the economy or agriculture was more important. They produced a major document, compiling a consensually agreed-on scientific description of the estuary, in a form accessible to managers and the public. They moved from a set of narrow parochial views of the estuary as a place where pollutants are dumped, shipping is conducted, and endangered species try to survive, to an understanding of the estuary as a ecological system where the many activities interact in complex, and not fully accountable ways, to affect all the life systems within it.

Agreement on the Isohaline Index for Measuring Water Quality

They largely agreed on an indicator of biodiversity as a principal monitoring tool. This indicator will be used by the EPA and largely accepted as a legitimate indicator of water quality because of the debate participants went through. Other federal agencies have also announced they will rely on this measure. As one key player summed it up,

We are now moving in a new direction on monitoring, which is good. In the past everyone did their own thing on monitoring and we concentrated on what came to the end of the pipe. That is, dischargers measured what came out of their pipes in great detail and often, but there was little measure of impact, of how the creatures in the bay were doing. We decided as a result of the SFEP, to shift money to look more at the effect on the bay instead of the pipe.

These were achievements from a scientific viewpoint as they brought the management methods more in line with current science, but they also represented a political achievement that sets up conditions for effective coordination in the long run. That is, the selection of this indicator and wide acceptance by stakeholders of the conception of the estuary as a system in which all have a stake was tantamount to an agreement that future estuary management would require collaborative problem-solving.

Spinoffs and Related Projects

An outgrowth of the SFEP dredging committee was a process known as long-term management strategy (LTMS) that involves key players in a consensus-building process to establish policy and environmental impact assessments on dredging. This process, which involved a smaller group of players, most of whom were involved in SFEP, separated the policy-making group from the other players, but nonetheless sought wide participation. The process was not only a result of SFEP activities, but was informed by what the players found to be strengths and weaknesses of that process. They had learned the techniques and learned to work together already. This has been a relatively successful process in achieving policy agreements.

Another result of the process is to restructure the Aquatic Habitat Institute, a nongovernmental preexisting research body, into an institute that can coordinate and do some of the monitoring as an external and trusted scientific group.

Changes in Players' Formal Positions on the Issues

We were not able to find that players had changed their positions on major issues under dispute, but we did find it changed some actions and understandings.

The state water board will do as a result of the CCMP one thing that wouldn't have been done otherwise — sewage waste discharging and monitoring will be

directed to [the] bay as a whole instead of specialized review of individual dischargers, which is expensive.

One participant, who said that after five years “basically no one changed their point of view,” felt that people “did get a better understanding of the issue. For example, I better understood the seriousness of the problem and the issues of the delta and Suisun Bay.”

Boundaries of the Problem and Alternative Decision Arenas

The biggest challenge the SFEP confronted was that decision-making relative to the estuary was being carried on simultaneously in several arenas. While the players did stay on the SFEP just in case its products turned out to be important, they knew they had alternative places they could go to undo decisions made in the SFEP. This lessened potential commitment to the process and meant there was not as much incentive for players to reach agreement as there would be if the SFEP were *the* place where decisions would be worked out. This problem was linked to some fundamental difficulties in setting boundaries on the problem. Unlike most estuary projects, water quality management in the Bay/Delta was linked to water flows, which in turn were determined by an entirely independent set of agencies, criteria, and regulatory processes. While the water board existed in part to make tradeoffs between the values of protecting aquatic resources and protecting farming and other water uses, this decision-making was separate from the estuary project. This ambiguity led to conflicts and disagreements over which were the right stakeholders and questions about the legitimacy of a process which either excluded or included the flows issue. It also led to uncertainty among the players about the importance of the project and, most importantly, placed the governor in the position of having to choose between two unresolved and conflicting agendas — that of the Comprehensive Conservation and Management Plan and that of the water users.

Other disputes about the boundaries of the problem also interfered, at times, with achieving consensus or with achieving implementable strategy. One of the assumptions that seems to have been taken for granted by many players — and it is reflected in the federal estuary project guidelines — was that the project was only about environmental quality issues. Some players, local governments, and development interests felt it should have included more discussion of socioeconomic impacts of decisions. This view made other players very upset in talking with us, as did the view that southern California water users were also stakeholders who should be at the table. The decision not to incorporate these socioeconomic issues meant assurance that these players were not happy with the decisions. They too had alternative arenas in which to fight out decisions — such as the local government land use planning and regulation process, which was entirely separate from the SFEP. The land use section of the report and the wetlands section, for example, would depend to a considerable degree on the voluntary cooperation of local governments or the creation of some type of regional government.

Local Government Commitment

One of the major limitations of the estuary project was that it did not succeed in engaging local governments and getting their commitment to action. It did not even really offer much in the way of strategy pertinent to local governments. Yet, local governments will have to be major players. As one leader of the process said, “It is a problem that local governments did not play much role. Absolutely, the burden falls on them. But there were not local governments there. They seem just not to have shown up. But they are key to implementation.” Another said,

Some municipalities sent technical staff, not the leadership [elected officials]. I felt the commitment was not there from local government. The people who were in the SFEP felt their role was to make a good document, but not to sell it to local governments.

One explanation offered was that it was a lack of public relations, or another that these officials did not really see it as worth their while to attend. Another, from a water agency, pointed out that the regional water quality boards could coerce local governments into participating because of the power they have over permitting, but contended the cities should simply come for the benefit of the bay. The attitudes of many players reflected little understanding of the multiple responsibilities and agendas of cities and their strained financial condition. Since the city leaders were not there they could not explain themselves, nor could they influence the implementation strategy to make it manageable for themselves or to assure local governments would have the incentive to play their parts.

The Consensus Process

The consensus process itself got mixed reviews in this case. It accomplished certain things, as discussed above, but its accomplishments were limited by several factors. First, the early decision to include every player, along with the decision that nothing would be passed without unanimity, meant that, inevitably, some things could never be agreed on even with almost everyone behind them. It also meant that some decisions were really the lowest common denominator. It meant, too, that the management committee ended up being among the largest and most unwieldy among our cases. It also meant that many types of players, with different kinds of stakes, were mixed together — agencies, local governments and more narrow interest groups. Other cases suggest that this is the most difficult kind of group in which to seek consensus.

Finally, the decision to work out the language of the final report in the management committee may have been a mistake. Though parts of the plan were originally drafted in the smaller committees, and staff did some drafting as well, the facilitators devoted their efforts to “wordsmithing” with the management committee. The technique of typing on the large

screen emphasized the wording issues. But in so large a group, developing agreed-upon language inevitably became more important than establishing in-depth understanding or real agreement in principle. This may have contributed to the sense of many players that agreement was thin.

The plan will have various meanings, depending on how the governor and the legislature use it. “Now it is more of a public opinion document,” in the view of one participant. In another’s view, “There is a danger that we have created something so unrealistic that it will fail. The process moved forward by the lowest common denominator. Its ‘good enough, let’s go forward.’” “A great piece of sausage was developed.”

The absolute deadline probably helped the group move to as much consensus as it did, but it also truncated the process abruptly before key decisions about implementation could be made. At the last meeting it became clear that certain types of cost information were crucial but there was no more time to get it. Essentially, the most difficult issues having to do with implementation were scarcely addressed, much less resolved. Those agreeing to the plan might well change their minds once they understood these implications.

Consensus may be a slow process, but it had important political consequences in the views of most participants. One participant pointed out, “The SFEP might make working on implementation and legislation over the next five years easier due to the work of the last five years.” Another echoed this: “The consensus aspects generated a lot of community support for the SFEP. The strength of using consensus was political. But the process has not gotten support outside the estuary.” In another’s view, “The SFEP will probably have broader support” because of consensus. One of those who was most often in disagreement with the others said, “The consensus process was unique and constructive. It kept people at the table constructively.”

Players griped about the process. One, who was always considering walking out, and who came only to protect the interests of her group, said, “I think the only thing we agreed on was that we hate this.” In the first meeting of the implementation committee in 1994, members expressed substantial sentiment that they did not want to use the consensus process they used in the management committee. One critic asked herself, “Are we arriving at consensus for the sake of consensus itself? Are we really moving forward? Is the environment benefiting?” Her worry was that “People get so wrapped up in it and felt this need for consensus so much . . . they will do whatever it takes to get it.” One environmentalist, who was the only player we found with this view, said, “I would rather it not be a consensus project. Voting, majority rule, would result in a stronger document for the resource. Environmental aspects were weakened in order to gain consensus.”

But these same critics saw the other side. The environmentalist acknowledged that “[consensus] gets the governor to sign the plan, then it may have been good.” Another environmentalist concluded, “Consensus is the thing to do. I think that consensus is a good thing. I think consensus is here to stay.” In the end, even the few strong critics supported the

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idea of consensus building as a strategy even if they disagreed with certain aspects of how it was carried out.

The philosopher among our respondents — a technical person whose eyes had been opened to many new perspectives — offered the most thoughtful overall assessment of the SFEP, its results and its effects on him:

We are all in this together is what we have learned. None of us has the resources any more to overwhelm the others. We can't compete in a win/lose situation any more because the cost of losing is so high. We have to try for win/win solutions. Good will is an important ingredient in all this. The SFEP is a good example of how good will was developed over time. Interest groups had argued over the toys, and scientists each said their own type of science needed to be done. There was at the outset no consensus on what were the issues, or what needed to be studied. SFEP changed that. We started seeing ourselves as a neighborhood, making decisions about our backyard. You realize you cannot have everything. *Now the no action solution is no longer acceptable.* The process requires energy and time, but it takes us in the direction it should for a democratic society.

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Case 5

SANTA MONICA BAY RESTORATION PROJECT

By Joshua Langenthal¹

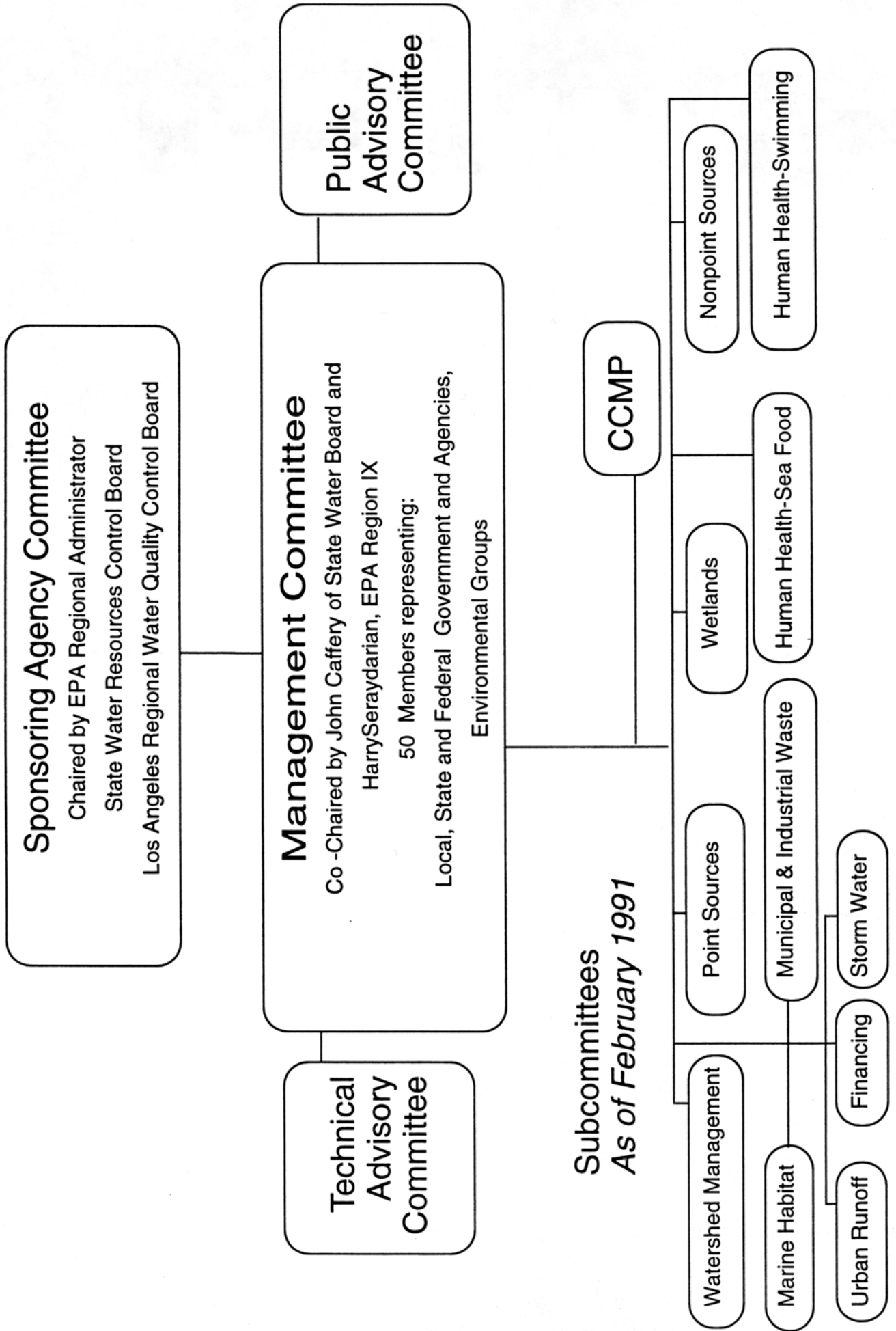
Overview

The Santa Monica Bay (henceforth to be called the bay) is a visible and important natural and economic resource for the Los Angeles region and the nation. It receives more than 50 million user visits a year, over 25 million of which are from tourists, and it supports over 350,000 full- and part-time jobs. The Santa Monica Bay Restoration Project (SMBRP), in its fifth and final year as a National Estuary Project (NEP) site, is a broad-based effort to protect, improve, and restore the bay health for both human use and as habitat for diverse animal and plant ecologies. Using the consensus-based decision-making process set forth in the NEP legislation, the SMBRP is in the final stages of developing a Comprehensive Conservation and Management Plan (CCMP), which is comprised of a scientific characterization of the bay, a management assessment, and an action plan. The Santa Monica Bay, although not actually an estuary, is subject to the same sorts of human impacts that characterize all the NEP sites. The management committee membership is comprised of local, state, and federal agencies; local governments; regional districts; waste water dischargers; and activist groups, including a number of environmental groups.

Unlike other NEP sites — especially the San Francisco Estuary Project (SFEP), where significant natural habitat resources are threatened — issues in the SMBRP primarily concern impacts of pollution and human use of beaches and near-shore waters in the urbanized areas; the protection of natural resources in the nonurban areas is an important but almost entirely distinct task. Although habitat is an issue of concern in the SMBRP, the economic impacts of safe beaches seem to underlie more of the SMBRP work. The extensive development over the past century has eliminated over 80 percent of the coastal wetlands habitat from the bay area; for this reason, the threatened remaining natural resources are increasingly valuable, both in the northern and western upland portions of the watershed, bordered by the Santa Monica Mountains, and those few remaining in the urbanized areas. The SMBRP coastal area, however, is almost entirely urbanized. Thus the foremost threat to the Santa Monica Bay for humans and natural resources is from nonpoint source pollutant runoff, unintentional effluent discharges, hazardous materials spills, and point sources of pollution, rather than the loss of existing resources.

¹ Interviews were completed primarily by Joshua Langenthal, with some assistance by Judith Innes. Source materials are the documents generated by the Santa Monica Bay Restoration Project and related materials.

Figure 5: Santa Monica Bay Restoration Project
Organizational Structure



Santa Monica Bay Restoration Project

For decades prior to the SMBRP, the bay had been extensively studied and monitored by public agencies and private interest groups. In the mid-1980s, the state water board staff attempted to set up an integrated agency management task force for the Santa Monica Bay. Also, the City of Los Angeles initiated and spearheaded a study of bay health in response to pressures from Heal the Bay, a nonprofit environmental advocacy group formed to address violations of Clean Water Act by the City of Los Angeles's Hyperion Sewerage Treatment Plant. The South Coast Association of Governments (SCAG) was the organization that oversaw the development of the bay health assessment. When Santa Monica Bay became a site of the newly created NEP, the federal guidelines for all NEP sites mandated the inclusion of local governments and public interest groups along with local, state, and federal agency decision makers.

Only local governments with bayfront jurisdiction were invited to participate in the SMBRP, despite the impacts that activities in upland cities have on bay health. Local government participation has been constrained by the time and technical limitations of their staffs. Consensus has been reached on many technical issues, and implementation of proposed actions will require the efforts of all SMBRP participants. The relative lack of city participation, for valid reasons, may undermine the future voluntary efforts to implement the recommendations now being developed in the action plan.

Successes and Outputs of the SMBRP

Overall, the Santa Monica Bay Restoration Project has been successful at bringing together previously disparate organizations and getting these organizations to address a variety of issues and problems in a consensus-based approach. The committee meetings have been arenas for new working relationships to form between the both the participating individuals and their organizations. In pursuing the goals of the NEP, the participants have become educated about the agendas and constraints of their co-participants and a more global understanding of the scientific and management issues has developed among people who previously have not had expertise outside of a narrow field. This understanding has helped the individual participants do their jobs, and in some cases has increased the effectiveness of their division or agency, according to respondents. In many ways, this has been the major accomplishment of the early years, as it underlies all other efforts and products that have been developed.

Cooperative efforts have developed both within and outside the SMBRP. Within the project, the development of a "Watershed Planning" and a "Comprehensive Bay Monitoring Program" (chapters 4 and 6 of the action plan) have been voluntarily adopted by participating agencies, serving to coordinate future data collection efforts across agency jurisdictions. Also, starting in early 1990, the SMBRP initiated the countywide, nonpoint source National Pollutant Discharge Elimination System (NPDES) permit in a way that allowed the cities to more easily become co-permittees with the County Department of Public Works, rather than

having this important pollution control issue take place unassisted outside the project. The most notable agreement outside the project has been the development of beach closure protocols for use by the Los Angeles County Department of Public Health in response to increased bacteria counts in waters after storm events.

Many of the scientific and technical goals of the NEP could not have been addressed with the techniques available when the project started. Characterizing the state of the bay in order to develop the CCMP recommendations required both substantive and institutional learning in SMBRP (and apparently in every NEP site). In attempting to address the many diffuse impacts on Santa Monica Bay, new investigative techniques were integrated into the SMBRP. For example, regular scientific investigations focusing on the presence of human viruses and storm drain sampling were pioneered in the SMBRP to begin to address swimming safety and other direct human uses.

Although the SMBRP did not hire facilitators to guide the consensus-building process in its committees, the informal use of the consensus-building process seems to have been a success in and of itself, although acceptance came slowly for many members of the management committee. One of the committee co-chairs is held by a representative of the state water board, and respondents noted the benefits of increased leadership in the committee that came with a change in the state water board representative midway through the project. At this time, however, the consensus model has been accepted enough for use within the SMBRP that it has been promoted in the Malibu Creek Watershed planning pilot project. Each subwatershed draining to the bay eventually needs the development of a specific resource conservation and management plan, even though the SMBRP site is the overall watershed defined by drainage into the bay. Malibu Creek is the pilot project for the subwatershed plans, and the use of consensus-building efforts there also serves to provide practical feedback to the management committee for use of the consensus building at the SMBRP level.

CCMP recommendations focus largely on the development of source controls of pollutants that impact the bay, rather than solely on new development of technology to treat pollutants at the “end of the pipe.” One result of the SMBRP consensus-building effort is the use of mass emissions monitoring of pollutants entering into the bay, although the specifics of the strategy have yet to be finalized. Pollutants enter the bay, in a number of ways; for instance, as a result of storm drain discharge, discharge of treated waste water, or by industrial accidents. The mass emissions strategy is both a method of assessing inputs for setting performance goals to guide the effective use of management measures, and of modifying techniques based on their successes and failures.

There are other technical concerns, such as the financing plan and the legal/ regulatory changes necessary to implement the goals of the CCMP. They are not addressed as such by the technical advisory committee, however, but rather through subcommittees overseen by the management committee. As point sources of pollution have become increasingly well regulated and controlled, the effort to control nonpoint sources of pollution generates greater concern. Nonpoint sources of pollution, such as spills of toxic materials, tend to be the result

of ubiquitous human behavior. The elimination of “problem” behaviors tends to depend on efforts to alter those behaviors, such as education, changing permit requirements at the local level, or providing new opportunities for action, such as developing depots for hazardous household wastes.

The NEP has been the impetus behind the development of new procedures and techniques to get the required goals accomplished. Epidemiological studies never before attempted in a systematic fashion have been developed and incorporated into the CCMP. All of the participants have agreed to use a shared comprehensive monitoring program/protocol, which will provide an increasingly large and standardized data set for all concerned organizations as time passes. Another methodological approach that has been adopted is watershed planning and management, which will increase regulatory coordination across political boundaries. Arrangements between participating organizations have also been developed, which are related to but outside of the SMBRP goals, such as beach closure protocols and alteration of effluent discharge outfalls and flows.

Limitations

Leadership of this effort has not been able to keep all of the cities actively involved in the SMBRP, despite the fact that the effective implementation of the CCMP depends on municipal involvement. The integration of broad interest groups in the NEP decision-making group has not been enough to get many of the cities to increase their understanding of all of the issues involved. The cities do not see the SMBRP as an opportunity to effect the overall system of regulations to which they are subject, although they have been active on point-by-point issues. Rather, the cities seem to expect to be subject to increasing regulations no matter what, and choose to budget their resources on matters more pressing to the municipality. As the SMBRP moves towards adoption of the CCMP, the cities must be reengaged in order to implement the entire package. Environmental groups believe that pursuing these goals should have beneficial economic results for industries and cities, although initially a financial burden on all participants is likely. Some governments have set up fee structures — as yet underutilized or unutilized — that can be used to generate needed revenues, but they too will be subject to antitax/antifee political sentiments.

It is still too soon to tell, however, if the overall CCMP and action plans can be considered a success. The financing plans have not been finished, nor has agreement been reached on some key technical issues, most notably the mass emissions strategy. Also, the Malibu Creek Watershed pilot project is currently incomplete, although it is being written into the post-SMBRP planning effort. The initial five-year project life was not enough time to accomplish all the goals of the NEP, much less implement the action items. Perhaps these issues will be resolved in the near future. Some respondents, however, think the project will be effective because all participants in the SMBRP have invested too many resources in it to let the products be ineffective. Unfortunately, it is also possible that making difficult decisions

is beyond the abilities of the management committee without some sort of constructive pressure from the public, such as awareness campaigns organized by environmental groups. The desired actions, from the environmental health perspective, also may only be attainable through the SMBRP if substantial political capital is invested in consensus-based planning efforts, making them the venue of choice for all stakeholders rather than previous decision-making processes that so often end in the courts. Also, many of the administrative goals desired by the participants have yet to be decided, such as whether depots for household hazardous wastes should be developed by the cities or by county agencies. There are tradeoffs between the development of local expertise and the cost effectiveness of agency centralization.

Reaching consensus on the total CCMP has been hampered where preexisting ideas of correct actions dominated the perceptions of the participants, such as performing a secondary treatment of waste water. There was no moving people away from this desire, although there are other ways to address pollutant inputs into the bay. Where less certainty existed, such as the debate over storm water effluent standards, a hardening of positions can become an obstacle. The SMBRP has needed to keep the discussion firmly focused on the project as a whole so that the details of specific issues do not inhibit consensus and spread division among the participants. Efforts by staff have been able to keep options and dialogue open and flexible in these areas.

The Role of Staff and the Consensus Process

The role of staff has largely been administrative and educational, with some role in the review and analysis of scientific investigations. There are nine full-time line staff, who serve as project liaisons for different committee members and subcommittees. They write up the results of investigations and coordinate meetings. A great deal of the work of the project staff entails checking and coordinating the flow of information between members, such as screening specific issues for committee members before votes so that every participant understands the question clearly and can ask effective questions. The staff has also done a great deal of writing of draft documents for presentation to the committees, distilling the information from previous meetings, so that committee members would have a single text from which to work. Staff members also stay informed of developments that could affect the SMBRP, such as reports or techniques from other NEP sites. The staff does not lead or facilitate discussions, nor do they set agendas for meetings. To some participants, the staff may seem to have a leadership role because they are the nexus for most information transmission to, and sometimes between, members of the committees.

The SMBRP staff gets different degrees of respect from the various members of the SMBRP process. Some of the members tend to feel that staff should play a stronger role and express opinions about preferences between options, although other respondents expressed the opposite view — that the staff role should be to provide invisible support for the committee decision-makers. The members of the management and technical advisory committees who

Santa Monica Bay Restoration Project

are staff in their own organizations sometimes feel vague pressure from the SMBRP staff to pursue the agenda of the SMBRP as a whole, rather than support their own organizational agendas. This is especially true when there is a perception of approaching consensus on an issue that individuals are contesting. In general, the SMBRP staff are perceived as being aligned with the environmental goals of the process, which participants deem proper, considering the legislative origins of the project.

As the project proceeded, the meetings were chaired by committee members and individual staff members had special administrative duties for particular committees. Voting rules were established during the first year of the project. Members expressed a desire to reach complete consensus on every vote, but if that were not possible, a simple majority would be sufficient. For management committee votes, the staff attempted to defuse disagreements ahead of the meetings so that negotiation over issues would not take place in the limited time of its meetings. This staff operating principle tends to mean that less strongly stated recommendations are produced. Although some respondents are bothered by this, the approach does tend to provide some satisfaction to the group as a whole.

History

The SMBRP is a second-tier site of the NEP. When the 1987 amendments to the Clean Water Act were enacted, creating the NEP, the first-tier sites, such as the SFEP, were grandfathered into the NEP from a preexisting U.S. EPA interagency watershed management effort. To include the SMB as an NEP site, a separate application had to be developed for submission to the EPA, the U.S. Congress, and the California Legislature. Apparently, in the effort to pass the 1987 amendments, Congressman Mel Levine was eager to include the Santa Monica Bay in the NEP, despite the fact that it is not technically an estuary. As a member of the subcommittee reporting out the Clean Water Act amendments, Congressman Levine's active participation was crucial to getting the NEP established from the very beginning.

At the state level, the most commonly accepted version of NEP events is that Governor Deukmejian did not particularly want to have an SFEP (primarily because of issues relating to water rights), but faced considerable and diverse pressure to accept the SFEP as an NEP project. Some argued that the San Francisco Estuary belonged in the NEP due to its existence in the original EPA program that was becoming the NEP. The governor reportedly nominated the Santa Monica Bay in response to Los Angeles-based political pressures, perhaps to balance out the SFEP in the internal north-south political struggle within California. The application for the SMBRP was put together in only five months — very little time for such an effort. The case for designating the Santa Monica Bay as an NEP site was contested by some in the federal government because it is not technically an estuary, and there is little coastal habitat at risk and little estuarine life compared to other NEP sites. Despite the minimum of threatened resources, the EPA forwarded the SMBRP and it was accepted on the grounds that the human impacts on Santa Monica Bay are similar to those at all the other NEP sites, and that the reduction of

harmful human impacts is a significant part of NEP goals. Thus, the protection of biological diversity, which has been central to other NEP sites, has not been as central to the SMBRP.

In the mid-1980s, a number of efforts were developing to respond to the unhealthy state of Santa Monica Bay. Prior to the SMBRP, the state water board staff tried to develop an informal working group to address many of these issues. That project involved agencies and districts that had some jurisdiction or mandate in the Santa Monica Bay area, such as the Army Corps of Engineers, the Los Angeles County Public Works, and dischargers such as the city-run Hyperion waste treatment plant and the county-run Joint Water Pollution Control Plant. The aim of this effort was not to promote change in the structure of interagency relationships or in the goals of the various actors in the Santa Monica Bay management scheme of water quality and habitat protection, but simply to hold regular meetings to share information and to brainstorm about cooperative efforts. This effort apparently did not produce any specific accomplishments. One reason attributed to the task force's lack of success is that there had never been specific goals in mind, so participants saw no specific gain or loss from participation or nonparticipation. Moreover, the NEP came onto the scene soon after this project had started.

Also, outside of the government arena, citizens formed an environmental group called Heal the Bay in 1985 in response to the continued discharge into the bay of sewerage effluent with less than full secondary treatment. Heal the Bay challenged the Hyperion Treatment Plant, the discharging facility owned by the City of Los Angeles, and the Los Angeles Regional Water Quality Control Board, which continued to permit the city to operate in violation of the Clean Water Act. The city, the owner-operator of Hyperion, as well as a number of local governments and the state water board, reacted to this pressure and hired the South Coast Association of Governments (SCAG) to write a scientific and management assessment of the state of Santa Monica Bay, an assessment that was to play a critical role in the development of the SMBRP process. The first Santa Monica Bay Project had limited participation and goals compared to the SMBRP, but it laid the foundation for the later efforts by beginning the dialogue of bay restoration and introducing many of the stakeholders to each other before the SMBRP was formed.

As the Santa Monica Bay Restoration Project began, the preliminary steps of the NEP process called for assembly of the management committee, with associated technical and public advisory committees. Since the Santa Monica Bay site is entirely contained within Los Angeles County, in contrast to the SFEP, which encompassed 12 counties, there were many fewer jurisdictions to involve. The SMBRP differs from the SFEP because it is led by the state water board, and administered and staffed by the Los Angeles Regional Water Quality Control Board (referred to here as the regional board). The SFEP was led and staffed by EPA Region IX. These different arrangements seem to be the result of differences in the NEP application/acceptance process. The SMBRP was proposed by the state through the state water board, and the SFEP moved from an existing U.S. EPA project into a different federal project. In both

projects, however, the EPA and the state water board representatives chair the management committee.

Participants

The management committee is numerically dominated by elected officials from municipalities, Los Angeles County, the California Legislature, and federal legislators. These bodies, however, are not the lead implementers of Clean Water Act regulations, nor do their representatives have much specific technical expertise in this area. The other management committee participants can be roughly divided into two categories: private interest groups, such as environmental or development interests, and private wastewater dischargers, such as Chevron; and federal, state, and local agencies that have some measure of regulatory jurisdiction or mission responsibility in the area, such as the Los Angeles County Department of Public Works and Sanitation, the California Coastal Commission and the Department of Fish and Game, and publicly owned water treatment works like Hyperion. The relative lack of significant wildlife and habitat to protect and restore in the urban areas of the bay watershed removed some of the functional roles that were present in the SFEP.

Another major difference in the cast of characters is the absence of the U.S. Army Corps of Engineers from the SMBRP. The reason for their absence is unclear to participants, although it has been attributed by some respondents to the lack of wetlands in the area. The decision structure of the Corps of Engineers is quite decentralized, and they seem to have decided, as the southern California division, to opt out of the process. Some respondents believe that the most probable reason was that the Corps felt that the management committee was too big and the process would be unmanageable. The corps, however, is the federal agency with jurisdiction over wetlands definition and fill permitting (section 404 of the Clean Water Act), as well as dredge-spoils disposal. They have technical expertise in rehabilitation of habitat areas. Without them an important stakeholder and information source, as well as a potential source of funding, is missing from the SMBRP process.

At no time did the SMBRP use a professional facilitator for its work. The state water board chair managed all meetings and the staff operated to assure full voice to all participants. The change in state water board representatives was, reportedly, one of the major steps in promoting project progress. Even though the SMBRP products will consist of recommendations with no legally binding power, there were significant incentives for a broad range of participation. The integrated manner of investigating bay health issues offers a new arena in which to advance organizational agendas in the shaping of a shared agenda. This process can also provide an opportunity for participating agencies to reprioritize their own agendas. Since the SMBRP is actively involved with exploring prospective changes in the existing regulatory structure and in the findings on which some regulations are based, issues of legal compliance underlie the discussions and created another incentive for many of the players to get and stay involved. And SMBRP funding was used to pursue research and actions that can be guided to particular uses, such as the epidemiological investigation of the storm drain outfalls done by

Heal the Bay. Significant funding for future research is also expected to be an outgrowth of the SMBRP.

Some stakeholder organizations in the SMBRP have played strong roles in developing both the characterizations of the bay and the Comprehensive Conservation and Management Plan. The Los Angeles County Department of Public Works, the City of Los Angeles, Heal the Bay, and the state water board are four of the strongest participants. Other important agency participants have been the California Coastal Commission and the Los Angeles County Departments of Health Services and Sanitation. As a whole, the various dischargers of municipal waste water in the bay, such as the City of Los Angeles (Hyperion Treatment Plant), Los Angeles County Sanitation (Joint Water Pollution Control Plant), Las Virgines Municipal Water District (Tapia Treatment Plant), and industrial dischargers Southern California Edison (Redondo and El Segundo), Los Angeles Department of Water and Power (Scattergood Generating Station), and Chevron's El Segundo Refinery, have played a significant role in point source pollution control issues.

Heal the Bay is an extremely significant environmental organization in Los Angeles. It has a large membership and is able to combine scientific investigation, public outreach, and fund raising in a way no other local organization has. Heal the Bay has openly worked closely with SMBRP staff to push the issues of human beach use safety and natural resource preservation and restoration. The active role of Heal the Bay on both the management and the technical advisory committees mirrors their own internal integration of goals and functions. Heal the Bay has been very involved in public outreach events, such as mass beach cleaning, and has been able to mobilize increasing local press coverage, especially the local cable television stations. Their concerns and work with project staff has been generally well accepted by other participants, as has the work of the other environmental groups such as the Surfriders Foundation, the Friends of the Ballona Wetlands, and the American Oceans Campaign. The environmental groups in general form a substantive coalition in the SMBRP, although there is some internal competition within that coalition.

The Los Angeles County Department of Public Works is the operator of the storm drain systems all over the county, and Public Works is also the lead permittee of the National Pollutant Discharge Elimination System (NPDES) municipal storm water permit; all of the cities in the county, including the city of Los Angeles, as well as other agencies, are co-permittees in this NPDES permit, which is enforced by the regional water board. The cities do understand the regulatory stick of NPDES compliance enforcement. Public Works also has a great deal of engineering and systems management expertise, which is quite valuable in its role of de facto leader of the co-permitted cities on storm water issues.

Operators of waste water treatment facilities are often characterized as the villains in environmental management efforts, although they provide necessary functions for the Los Angeles region to function, such as sewerage treatment and power generation. Almost everyone wants full secondary sewerage treatment, as required by the Clean Water Act, and more tertiary treatment and water reuse where possible. In improving effluent standards,

however, the dischargers are faced with limited technology and constraints of both time, dollars, and existing regulations. Dischargers involved in the SMBRP have continually informed the other participants of those limits and pointed to other areas of pollution control where relatively small investments can make a large positive difference in pollution control, such as construction site erosion controls and reduction of household waste streams.

The state water board, as the lead agency in the SMBRP, is also the implementer of numerous environmental regulations and all water law in California. The state board has two members on the management committee; one is co-chair and the other is the technical advisory committee chair. The state board has fewer conflicting internal pressures in regard to the SMBRP than it faces in the SFEP because no water rights are at stake. Historically, the state board has been known to pursue its own agenda in ways that have conflicted with the agendas of other environmental agencies. In the SMBRP, however, these conflicting internal pressures are not significant.

Process

The development of both management and scientific characterizations for the Santa Monica Bay was the next step in the NEP process following selection of the management committee, and proceeded differently from the SFEP. The SFEP contracted out five different status and trends reports during the first year of its life, while the SMBRP chose to use a preexisting bay characterization (SCAG, 1987–88) as the foundation of their characterization of the bay. This alternative research strategy was the natural next step, and was also recommended by some management committee members from state agencies who had experience with the development of the SFEP technical assessment. They believed that the use of the SCAG report would save money, shorten the reporting time, and keep the document focused in the NEP effort, as opposed to the SFEP investigation's reputed "pure research" effort. This decision was to mean that members involved in developing the characterization accepted the SCAG report as largely valid and did not go through the process of negotiation over facts and management options that played such a central role in the SFEP's consensus-building process. The effort devoted to information was more one of selection, interpretation, and presentation than in the SFEP.²

Although there was not as much disagreement in the SMBRP about the project and the facts as there was in the SFEP, some of the environmental groups questioned the adequacy of the SCAG reports. Eventually, the SCAG characterizations were accepted as the foundation of further investigation, although not as final products in and of themselves. Since the characterization reports become the findings for all subsequent recommended actions, it was important for the environmentalist players, both agency and private sector, to push the characterization findings as far as possible where regulatory standards exist, such as

² See SFEP case study and Tuohy, 1993, for a full outline of technical information selection and technical advisory committee activities.

determining pollutant impacts. Other groups, however, such as NPDES permittees, are potentially threatened by new requirements or higher compliance standards that could arise by a characterization report with far-reaching implications. All of the participants interviewed, however, felt that the technical problems that the SMBRP faces are straightforward and noncomplex, relative to the SFEP, because there is a much smaller group of stakeholders and fewer interrelated issues to be resolved, such as multiple endangered species and water rights allocations in competition with development pressures and pollution abatement. The Los Angeles region also does not have the long history of environmental battles that have characterized the environmental management efforts of the San Francisco Estuary.

Many of the next important steps of the SMBRP, after the decision to use the SCAG characterizations, took place in the technical advisory committee and through the project staff. At the beginning of the project, the management committee attempted to write the CCMP itself, as a whole, which proved to be an overwhelming task, in large part due to the incredible amount of details involved. When the state water board representative, the management committee co-chair, changed in 1990, the committee formed subcommittees to address specific issues, such as wetlands or municipal and industrial waste. It was in these subcommittees that many nontechnical participants began their education about technical issues. The technical advisory committee has a partially overlapping membership with the management committee, but the former has almost no elected officials. It is comprised of consulting scientists, engineers, a variety of agency officials, university representatives, environmental advocates, and dischargers. Discussion at meetings focuses on problem identification, assessment, and development of technically feasible actions to be forwarded to the management committee for action. The technical advisory committee does set priorities or rankings for issues such as pollutants of concern, and it makes recommendations on technical strategies, such as mitigation technique options. It strives, however, to leave the discussion of political ramifications to the management committee, including the setting of regulatory or financial priorities. The materials generated by the subcommittees were forwarded to both the management and the technical advisory committees, although the latter was the primary user of the information at that point.

The technical advisory committee was responsible for compiling an accurate assessment of the state of the bay that would feed into the development of appropriate action recommendations in the CCMP. The committee regarded these characterization reports as a relatively straightforward research effort, following the examples and using both the specific and general information developed by the other NEP sites and the SCAG reports, and the management committee was not so closely involved. A dialogue between the technical advisory committee and management committee did develop as the latter began to write up the CCMP and integrate the information into it. The writing effort did not progress much until the management subcommittees were developed. The management committee's attempts to develop the CCMP as a whole were inefficient and time consuming and did not lead

towards consensus. At this stage, the third and fourth years of the project, attendance by city officials in management committee meetings began dropping off.

The technical advisory committee initially focused on increasing the quality and breadth of the technical investigations for the characterization reports. The most important research attempted to pinpoint the effects of pollution and determine its causes. Members investigated and quantified, where possible, suspected pollutant delivery mechanisms, such as storm drain systems; studied proposed effective methods of mitigating pollutant impacts or stopping pollution; and specified the current regulatory and operational jurisdictions for each type of pollutant. Later committee work in years four and five has added the focus on future needs for successful action, such as research, institutional rearrangements among and between actors and, especially, the future of the SMBRP as an institution in and of itself. By 1992, two years before the due date of the CCMP, the management committee issued a 14-point document, "Priority Actions for Bay Restoration," which outlined the concepts deemed necessary. The completion of this document demonstrated both the technical progress of the SMBRP and the overall level of consensus among the participating organizations, although it leaves a great number of details for later negotiation.

Two over-arching issues currently remain unresolved in the technical advisory committee work: watershed management plans, and a mass emissions strategy for modeling and regulating the impact of pollutants in the bay. These issues most likely cannot be resolved at the technical advisory committee level because of their political and economic implications. The watershed management issue is an effort to plan and regulate land use and other behaviors that affect natural factors such as erosion and altered runoff patterns, as well as toxic runoff into streams and the bay from waste-water effluent dischargers, storm drain systems, and the like. Site-specific watershed planning is a keystone of the SMBRP. Watershed planning issues transcend political boundaries, in that a city might bridge a watershed divide or one basin might contain multiple jurisdictions with different regulations, standards, or levels of enforcement. Also, a watershed plan would aim to limit cumulative impacts through uncoordinated development in neighboring municipalities. The watershed plans are most important for the undeveloped areas in the north and west portions of the SMBRP site that contain significant undeveloped natural resources.

Planning Strategies

To prevent or limit unnecessary environmental damage, the management committee has included general principles of watershed management as part of the CCMP and action plan, and a specific watershed management plan is being developed in the Malibu Creek drainage. The Malibu effort is proceeding using a consensus-building process sponsored by the SMBRP. The goal is to develop a watershed plan by bringing together the various stakeholders in the watershed: six recently incorporated cities, the Las Virgines Water District, the Topanga — Las Virgines Resource Conservation District, state resource agencies, federal and county policy-makers, and various public interest groups such as environmental groups and builders.

The Malibu Creek drainage is the largest of the 26 largely undeveloped subwatersheds of the SMBRP. The area faces a great deal of pressure from real estate development interests, which is a potential source of pollution for the watershed streams to transport into the bay. Planning efforts here aim to control the development of the area to prevent increased pollution into the bay and preserve natural resources while respecting the desires of the local communities to pursue their visions of the future. The growth pressures on these undeveloped areas will not be alleviated by watershed planning, but rather the consensus-based planning effort seems to offer the best opportunities for effective use of limited local resources.

Resource conservation planning efforts in the Malibu Creek area began many years before the SMBRP, funded by Soil Conservation Service grants and the California Department of Resource Conservation Districts. In a new effort, the SMBRP decided to become involved with the Malibu Creek effort as a pilot project and funded the use of a consensus-based planning method. The most obvious reason was that the ongoing effort in Malibu Creek offered an excellent opportunity and many of the key players in the Malibu Creek watershed are also stakeholders in the SMBRP. Also, the Malibu Creek area environmental management issues at stake are different from those of the urban parts of the SMBRP. In the urban areas the watershed planning goals can be better characterized as pollution reduction and abatement and, where possible, the restoration of natural resources. There are no current subwatershed planning efforts in the other areas of the SMBRP site, although they are supposed to be developed according to the CCMP.

Apart from the selection of Malibu Creek as a pilot project site, the SMBRP chose to fund a consensus-building effort in Malibu Creek, it seems, as an experiment to see if a substantive and detailed agreement can be reached using a consensus technique. As the SMBRP approaches the end of its tenure, the management committee has yet to approve parts of the plan that are potentially controversial and could prevent approval of the CCMP. The use of consensus-building techniques in the Malibu Creek watershed could provide helpful insights to the management committee and the SMBRP staff in concluding the NEP process.

The mass emissions strategy is a way to model and regulate both the amounts of and the manner in which specific pollutants enter the bay. It has been recommended by the technical advisory committee and adopted by the management committee, as well as by other NEP sites, as the best method to use with the physical pollutant data in improving the health of the Santa Monica Bay. The mass emissions plan focuses on the total suite of pollutants entering the bay and shifts the focus of regulation, based on priority and effectiveness of management practices, among specific pollutants as progress is made addressing them. If a program is ineffective, it can be dropped from the strategy. The specific mass emission plan has not been determined as yet because discussions are ongoing about deciding on the baseline data and on setting standards. Both the baseline data and the standard-setting processes are the keys to a coordinated set of actions by multiple actors in the future. The computer models used to assess, predict, and address pollutant runoff contain a great deal of uncertainty. These models depend on both developing an accurate physical model of the area in question and determining

the location, type, and amounts of pollutants on the landscape. Both of these sorts of information are very difficult and costly to gather accurately and completely.

In the process of developing the characterizations and the plan, the membership of the management and the technical advisory committees has been able to develop personal/professional relationships that have led to other actions (see accomplishments section) outside of, but related to, the SMBRP tasks. Participants have been able to both shape and share in a new assessment of the Santa Monica Bay reality, which respondents have stated makes them personally more effective at their other responsibilities, and in some cases increases the effectiveness of their organizations. In one case, at the prompting of environmental groups, Chevron agreed to relocate an outfall location in the bay. Spending a few million dollars of their own money, Chevron deactivated a near-shore pipe and reactivated an unused pipe outfall further from shore. And when one member of one of the environmental groups wanted a complete cessation of waste-water disposal and was ready to bring a lawsuit, the group as a whole persuaded him away from this course of action.

The public advisory committee is mostly out of the decision making loop. As its goal is to educate the public and promote pollution reduction strategies, it functions to advise the public but not to channel public advice to the management committee. It is a grant-making body as well, and its budget is part of the SMBRP total expenditures. The committee prefers to supplement existing educational and awareness programs in the SMBRP site, rather than develop its own programs. In this way the public advisory committee doesn't compete with community efforts, and funds efforts that are pursued by other members of the SMBRP, usually environmental groups.

The SMBRP goals, in practice, are two-pronged: human health and use concerns, and bay health. In pursuing the bay health concerns, Heal the Bay has played perhaps the largest role in developing a plan to "Restore, Protect, and Manage Bay Habitats and Resources." They are the authors of a plan "How to Heal the Bay," that was adopted almost wholesale into the CCMP and action plan. Because of the personal relationships that have developed between participants, this was not a threat to the SMBRP group effort, but rather an effective use of expertise from within the project.

However, the resources at risk are relatively minimal; given the population of the Los Angeles area, the quality of the remaining habitat can be improved, but there is little prospect of adding to the wetlands inventory. The efforts of other environmental groups have been quite significant, especially the Surfriders Foundation and the Friends of the Ballona Wetlands, but Heal the Bay dominates the environmental arena in the Los Angeles area in both scientific investigation and public awareness efforts. The American Oceans Campaign and the Natural Resources Defense Fund have been able to use the specific lessons of the SMBRP to improve environmental management efforts at a national level.

The overall findings of the bay characterization and the CCMP have been that source control of pollutants — that is, keeping pollutants from getting into the waste stream — is the most effective long-term method to mitigate impacts and restore impaired areas. Source

control programs already address industrial waste through pre-treatment requirements in the NPDES permits in the Clean Water Act. Other possible methods of source control of toxic materials include adding such requirements to local building permits as limits on hill-grading activities, mandated and enforced erosion prevention plans, and restrictions on washing construction wastes into storm drains. Storm drains can be marked to indicate direct drainage to the Santa Monica Bay to increase awareness. Other educational approaches involve getting certain types of products out of the waste stream through specialized disposal or recycling programs, as is often done with automobile engine oil. These are but a few of all the possible methods of reducing nonpoint source pollution that have been mentioned in the SMBRP.

The management committee has agreed to other goals, such as increasing all treated waste-water effluent to secondary levels, but due to limited financial resources among all the players, investment in large, fixed infrastructure projects is constrained. The Los Angeles County Sanitation Department is now pursuing full secondary treatment following legal challenges, but after those facilities are developed, most members of the management committee, especially the cities, are likely to favor options that offer improvements with lower investments.

As the project nears the end of its life, the municipalities' role in implementation comes under increasing scrutiny. Some participants are concerned about the cities' commitment and ability to participate in implementation. While individual agencies and operators may be able to achieve reduction in pollutants and other wastes in point sources by acting alone in response to NPDES permits, the nonpoint sources of pollutants require local government action to achieve the goals of the storm-water NPDES permits. Since a number of city representative did not actively participate, they neither developed relationships with other members nor reached a holistic, detailed understanding of the problems. When the cities are called upon to begin implementing actions from the CCMP, they may very well face a new learning process that the rest of the SMBRP participants have already undergone. They may fail to cooperate in the attempts to implement the CCMP by digging in their heels, by demonstrating a simple lack of understanding, and most obviously, by failing to provide financial resources.

As the end of the SMBRP approaches, the management committee is struggling to finalize agreement on certain parts of the action plan. The financing chapter has still not been approved, nor the mass emissions section of the source control section. Other chapters, such as one on oversight and management of plan implementation, are not explicit or complete. Overall, this effort has accomplished a great deal, but it still has long way to go before many actions are implemented in a coordinated fashion. The project routinely updates the draft CCMP as agreements are reached, which has helped to keep momentum in the face of the other pressing concerns with which participants must cope, such as the recent fires, the earthquake, and budget shortfalls.

Accomplishments

The development of relationships between the participants on the different committees has proved to be one of the most important outgrowths of the SMBRP. Assembling disparate actors with their differing agendas and operating principles/constraints serves to increase the awareness of the overall operating environment. Participants have gained an understanding of the overall scheme and how they fit into it. In this way, the new relationships became viable outside of the SMBRP process. Especially good examples were Chevron's agreement with Heal the Bay and other environmental groups to relocate its effluent outfall pipe, or the Los Angeles County Health Department's response to environmentalists to develop and implement beach warning and closure protocols in the event of increased hazard. These accomplishments have reinforced the new working relationships.

In addition, some new technical investigative methods were used in beach environments to assess human virus pathogen counts in the drain systems. Fecal coliform counts, a standard method of assessing contamination in water, are not a particularly effective method of assessing the presence of pathogens that affect humans, so under the leadership of the Heal the Bay, a method of pathogen sampling in storm drains was developed that should be quite useful in other coastal areas. One hypothesis about the origin of human pathogens in the storm drains and other diffuse sources focuses on the large homeless populations near the ocean that do not have access to bathroom facilities. These sorts of investigations represent a new way to assess human risks and human impacts on the regional environment that have never been requested or required previously because of their high cost and perceived lack of need.

The development of and agreement on the Comprehensive Bay Monitoring Program and watershed planning are significant accomplishments that hold the potential to increase coordination in and of themselves because of standardization and sharing of critical data. Information is crucial to this sort of environmental management work, and shared standards will both develop and set the factual basis for all those involved. These methodologies, if rigorously followed through, could be the foundation of subtle but substantial institutional change among the organizations that base their work upon meeting standards and enforcing compliance. There is currently a voluntary agreement to follow through in their implementation, even if the CCMP, which contains these plans for coordination, is not implemented.

One of the other tangible outcomes has been some insights into the NEP process and areas of weakness that can and should be improved. An entire series of amendments (S.815) for the sections of the Clean Water Act that apply to the NEP process has been introduced in Congress. These amendments were co-authored by a participant in the SMBRP, and address future needs for successful implementation of the CCMPs in other NEP sites. They also introduce changes that improve the process in the NEP of developing the characterizations and CCMPs. Since each state must determine which of its agencies will be implementing the Clean Water Act, implementation choices must be made between providing sets of guidelines for enforcement, top down structures for the states to follow, or some combination. One of the

proposed changes is to extend the five-year life of NEP projects so that the work can be finished.

The participants have concluded that there is still a great deal of important work to be done after development of the CCMP and action plan. The process of bringing together these people in the SMBRP has been useful in and of itself for comprehensively addressing complex issues. The participants also agreed that a fixed time limit or “sunset provision” seems not to be particularly useful in helping this sort of project achieve implementation.

Within the context of this realization, the amendments also tighten up the internal deadlines for reaching initial agreements. For many, if not most, of the participants, this sort of consensus-building effort is completely new. The coming together of elected officials (or their staffs), engineers, environmental and public health bureaucrats, a number of different types of activists, and facility operators to develop a consensual understanding of the physical and management realities has taken a long time to jell into working groups and relationships. The intent of the proposal to amend the legislation is to speed up the learning process, keep the participants involved in a forward-moving and forward-looking project, and also assure that they have enough time to deal with the complexity of the interrelated problems they face in the advancing project.

Case 6

CONTRA COSTA COUNTY MEASURE C

by Judith Gruber¹

In 1988 the revised Contra Costa Transportation Improvement and Growth Management Program (Measure C) was passed by the county's voters. The measure had its origin in a similar measure that had failed in 1986. That measure, placed on the ballot by the county Board of Supervisors, with the concurrence of all of the cities in Contra Costa, would have increased the sales tax in the county in order to pay for specified transportation improvements. The measure had been developed jointly by public officials, primarily members of the Board of Supervisors, and private-sector interests. It was largely a project-based measure with no growth management included. At least one member of the Board of Supervisors had argued for putting growth management into the measure, but various parties objected and the idea went no further.

A variety of explanations were offered for the measure's defeat, including low voter turnout, antitax sentiment, and the difficulty of explaining transportation issues to the general public. Some attributed the defeat to the efforts of a small, but influential, cadre of people who were firmly opposed to the measure because it contained no provision for growth management. These people argued that the measure would not relieve congestion and that in fact, the transportation improvements would encourage new development that would lead to a further deterioration in the quality of local services.

The measure's supporters decided shortly after the defeat that they would go to the voters again with a new sales tax measure. There was an understanding among these players that the group supporting the new measure would have to be expanded in order to achieve success, and that development interests would have to remain in the background. In particular, those who had led the fight against the measure, and local (as opposed to county) elected officials who had by and large played a very small role in developing the first measure, would have to be brought on board.

Because of the failure of the first measure, everyone knew it would be a political act to create the new one. The goal was to design a measure that would pass. Regardless of whether the absence of a growth management component in the first measure was in fact the cause of its defeat, advocates of growth management were able to insist that the new measure would have to address the issue in some way.

¹ Interviews were conducted by Judith Gruber and Robert Thompson.

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Members of the Board of Supervisors who had led the effort to pass the first measure began holding a series of informal meetings with activists from citizens' and environmental groups who had opposed the measure, trying to get them to agree to work jointly on developing a new measure. A key participant from the first measure came up with the idea of linking an allocation of money for local transportation improvements (which became known as return to source funds) to participation in some form of growth management effort. This idea was presented to key members of the Board of Supervisors, who liked it and urged that others be consulted to see what kind of support it could garner. After extensive conversations with elected officials, staff and the development community, there was serious interest in the concept and it became a foundation for the new measure.

The formal structure for developing the new measure, and ultimately for implementing it, emerged from strategy sessions among the failed measure's supporters and from a proposal by the Walnut Creek city manager, who was seeking to secure greater control by city officials in the process. They proposed that the Contra Costa Transportation Partnership Commission be created along with four regional committees, each representing a section of the county. Both the partnership and the regional committees would be supported by technical coordinating committees composed of local agency staff and county staff, as well as representatives of transit organizations and interest groups at the discretion of the parent committee. The 11-member countywide Transportation Partnership Commission was to be composed of two elected officials chosen by each regional committee, two members of the Board of Supervisors (chosen by the board) and one member chosen by the Mayor's Conference. The Partnership Commission became the Contra Costa Transportation Authority (CCTA) after the measure passed.

This new structure marked a shift of power away from the Board of Supervisors toward the cities. Nine of the 11 members of the CCTA were local, not county officials, and the planning process created was a "bottom-up" one in which regional committees would play a major role.

Each region was allowed to structure its committee in whatever way it wanted. This was a compromise decision to allow regions to limit membership to elected officials, or to include planning commissioners and/or representatives of transit agencies. Three of the regional committees already existed. Two had been formed much earlier to deal with subregional transportation issues, and one had been formed before the first measure. One had to be created.

The boundaries of the regions largely follow natural features; they are relatively homogeneous in terms of interests and socioeconomic composition (at least compared to the county as a whole), and residents generally identify with their region. There are considerable differences among the regions in terms of the age and affluence of the communities, the extent of developable land available, and citizen preferences about encouraging or discouraging growth.

The decision to create a new entity to develop and then administer the measure was a deliberate one. There was a great deal of hostility between the cities and the county

government, and many local officials would not have agreed to the measure if the county had been placed in authority. A new transportation agency that did not compete with the cities for development was essential. The decision to have the body composed of elected officials was in part designed to give the body legitimacy in the eyes of the electorate by addressing the perception that the original Measure C was the creation of development interests.

The proposed structure was taken to the Mayor's Conference (where each city in the county is represented) for approval. It was hammered out at a six-hour meeting where the major issues involved the nature of representation on the commission and, particularly, the number of county supervisors who would be on it. Once the Mayor's Conference approved, the plan was presented to the Board of Supervisors and the 18 cities in the county for approval.

Initial opposition to the new proposal centered on the fears of some city council members, who saw the growth management plan as taking power away from local government and giving it to a potentially powerful regional body. Growth areas were afraid of potential restrictions on their ability to approve new projects and of the potential for regional fees. More affluent areas were afraid that affordable housing and other requirements might be imposed upon them. Many city officials were concerned that the county proposal contained a hidden agenda.

Proponents, who included several local elected officials as well as members of the county Board of Supervisors, went to every city council to make a presentation that stressed the importance of regionalism and, most important, that this was the county's only chance of gaining access to state and federal transportation money that increasingly required matching funds. Local elected officials were presented the "carrots" of potentially being able to solve some of their transportation problems through an allocation of return-to-source funds and of representation through the regional committee structure. The "stick" was that a city would be denied its share of the return-to-source funds. Conversations were also held with city managers who were fearful of losing autonomy. In the end, the need for access to money for transportation overrode the fears of local officials and the proposal was approved.

The county lent the new Partnership Commission staff and consultants to help them in the process of developing the new proposal. The partnership began work in 1987, and in August 1988 approved a measure to place before the voters in November.

Transportation Partnership Advisory Committee

In addition to the Partnership Commission and the regional committees, a citizens' advisory committee was formed called the Transportation Partnership Advisory Committee (TPAC). TPAC was formed in order to get a broader base of citizens involved in structuring the new measure. It was intended to be a forum for debate, negotiation, and consensus building. Leaders of the partnership hoped that it would then serve as a network to ensure that the voters would approve the measure when it was placed on the ballot.

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TPAC was composed of approximately 21 representatives of interests from within the county, as well as one representative from each of the four regions. These included representatives from the League of Women Voters, a variety of community-based organizations, business groups including developers, realtors and others, environmental organizations, taxpayers' groups, labor groups, and others.

The composition of TPAC was decided by a subset of the partnership in consultation with partnership staff. They identified the kinds of organizations they wanted to include and let the organizations name the individuals. Their basic principle was to be as inclusive as possible in order to get all groups that had expressed an interest in the sales tax involved in the decision-making process. In the words of one person involved in setting up TPAC, "If you had an issue on the sales tax measure we wanted you in the room. We wanted to get everyone in the room." By design, some opponents of the first measure who were willing to participate were asked to be on TPAC, including the leader of the opposition to the 1986 measure, who was chosen as TPAC's chair. If there was a conscious effort to exclude anyone, it was people who they knew were going to oppose the effort to develop a new measure right from the start. As one participant explained, "People who wouldn't talk we didn't call." A few individuals who were approached decided not to participate (according to some, because they were afraid of being co-opted), but most who were invited did join.

TPAC had staff support from the partnership, and its agendas were designed to review what the partnership was working on. It was structured into subcommittees including education, open space, the project list, and growth management. TPAC tried not to vote, but instead to decide things by consensus. Subcommittee recommendations were by and large accepted, although some subcommittees were more successful than others in their work. Weekly meetings were generally brief — about an hour long — and were facilitated by staff who tried, by and large successfully, to make the process an enjoyable one. The atmosphere was relaxed and people generally got along with each other and seemed to enjoy the process. TPAC met for approximately four months to develop the measure.

TPAC meetings were held immediately preceding meetings of the partnership so that leaders of TPAC could provide feedback to the elected officials on the partnership. Members of the partnership would raise questions about what TPAC was proposing, which would then be discussed at the next TPAC meeting. It was generally a process of developing concepts and working out the details, with frequent feedback between the two groups provided both by staff and the leadership of each group.

When TPAC started work the screen was reasonably blank in terms of what the measure would look like, and there were considerable differences among participants about what they wanted. The givens were that it would be a self-help measure to provide funds for transportation improvements, and that there would be some linkage with growth management.

A series of brainstorming sessions was held with TPAC and elected officials to discuss ideas about why the first measure failed and what people wanted in a new measure. These meetings were facilitated by the chair of the Partnership Commission. Out of those sessions

it was decided that the new measure would have to be keyed to voters, and that meant doing major projects but also providing for transit and growth management. There was basic agreement that the new tax revenues would be used to alleviate *existing* traffic congestion and that new growth would have to pay for facilities required to meet demands generated by that growth.

Many of the people on TPAC were already very knowledgeable about planning, as they had been participating in the countywide effort to update its General Plan that was known as the General Plan Congress. The congress was a large group of almost 70 people that included representatives from all 18 cities. The congress had discussed the issue of growth management, and that discussion provided a backdrop to the adoption of growth management as a component of Measure C. Through their work on the congress many TPAC participants already knew each other. Because of its frequently acrimonious atmosphere, the congress also provided an example of what people did *not* want TPAC to be like.

Much of the serious work of TPAC was conducted by a small, informal working group composed of key TPAC members (including the chair, a representative of environmental interests, and a representative of the development community), leading members of the partnership, staff, and consultants. This group grew out of the informal meetings that had been held following the 1986 measure's defeat. This group worked out the basic proposals that were then passed on to TPAC for discussion and approval. Staff used this subgroup to find out what the real concerns of key interests were and to try to work out ways to accommodate them. It provided a first test of the political waters and a forum for some very focused discussions between developers and environmentalists that could not take place effectively within the larger group.

TPAC made relatively few changes to the proposals that were brought to it by this group. As one member of the group explained, "we very rarely floated a balloon out without having an idea about who might have a question. We'd test it with them first. It wasn't the relationship where we'd do something in isolation and present it to 30 people. We'd do some brainstorming, call some people and test it. Once in a while they'd redirect it."

When the ad hoc group began meeting, no one knew what growth management was. In the words of one participant, "We made it up." Because of the concerns of many of the cities with respect to the local control issue, the growth management strategy that they developed is one that emphasizes such control. Each jurisdiction sets its own performance standards for fire, police, parks, sanitary facilities, water and flood control, incorporates those standards into its General Plan, and then self-certifies that these standards are being met. Level-of-service standards for traffic are spelled out in the measure for five different types of land use.

The expectation is that new development cannot be approved if it would adversely affect those standards unless compensating infrastructure investments are made. Jurisdictions are free, however, to set standards at whatever level they want. Thus, the measure neither controls growth nor limits it. Rather, it requires that as new growth occurs cities and the county demonstrate that adequate transportation infrastructure and critical facilities will be provided

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to meet performance standards that have been set by the jurisdiction involved. This strategy was the result of compromises between those who sought urban limit lines and other forms of growth control, and those for whom such controls would have been a deal breaker.

The measure also requires that the countywide CCTA and local jurisdictions jointly determine traffic standards for “routes of regional significance,” defined as routes that serve travel across the county or between the county and adjacent counties. Local jurisdictions are then required to “jointly determine the appropriate measures and programs for mitigation of regional traffic impacts.”² This provision arose as a compromise between those who wanted uniform level-of-service standards on all roads and intersections in the county, and developers, city officials, and others who considered that to be unrealistic given the diversity of conditions within the county. A series of discussions within the small working group produced the concept that regional committees would define a system of roads that were unique (i.e., routes of regional significance) and would create a plan for those roads in lieu of level-of-service requirements.

A key aspect of the measure was the linking of growth management to access to funds from the new sales tax. This was done by allocating a portion of the moneys raised for what was called “return-to-source funds.” “Return to source” is actually something of a misnomer, since the funds are allocated on a formula basis. These funds are available to municipalities for use for transportation projects, but only to those that are in compliance with the growth management aspects of the measure. All 19 jurisdictions have to go through an annual compliance checklist and self-report whether they are in compliance. This in fact has become the document by which communities certify compliance with all aspects of Measure C.

Another key decision that was originally brokered in this small group was to have a separate bond measure for open space on the ballot at the same time as Measure C. This became known as Measure AA. It appeared on the ballot in both Alameda and Contra Costa counties and required a two-thirds vote for approval. Environmentalists had originally wanted to include open space in Measure C, but this became impossible because the state enabling legislation under which Measure C was being developed would not cover open-space acquisition. Environmentalists agreed to support (or, in some cases, not oppose) Measure C in exchange for financial support for Measure AA from the development community and for the inclusion of growth management in the measure.

The Project List and Budget

The process of coming up with the list of projects and programs that the sales tax would fund was an essentially political one. There were at least two political imperatives at work. First, in order for the measure to be put on the ballot, it needed the approval of a majority of

² Contra Costa Transportation Partnership Commission, “The Revised Contra Costa Transportation Improvement and Growth Management Program,” August 3, 1988.

the cities with a majority of the population in the county. Thus, agreement by the city councils of individual municipalities was essential. This meant that some rough equity in the distribution of projects within the county was important. Second, once on the ballot, the measure would have to be approved by a majority of the voters. This meant that the project list had to include projects that would capture the imagination of the voters. In addition to these political imperatives, the views of transportation planners entered into the process through the technical committee, which put together a skeleton expenditure plan from which the partnership worked.

The task of developing the project list began with the political consultant's draft of a plan based on what the voters had said they wanted in various public opinion polls. Regional committees were asked to develop a list of projects for their region, placing projects of major regional significance at the top, followed by projects of interest only to their area. TPAC then took those lists and formulated an overall recommendation to the Partnership Commission on projects and programs.

Informally, there was a great deal of behind-the-scenes effort by members of the Partnership Commission and staff to put together a politically acceptable project list. These efforts largely involved endless talking to participants about potential projects. They talked to every city council in the county. One region, for example, wanted a project that would have cost half the money the measure would raise. Officials from that region were told that would not work and asked what else they wanted. Municipalities were asked what their bottom line was for approval of the measure. In one region of the county, there was no obvious high-profile project, so staff created a vaguely defined one with an appealing name. In the end, the process was one of quid pro quo among the municipalities and regions.

This informal process also involved adjudicating disputes among individual cities. For example, there was a dispute over one project that two cities wanted and a third strongly opposed. After several months of discussion, language for the measure was worked out that sidesteps the controversy by funding a study as the first order of work.

In creating the project list, the staff took a conservative revenue estimate from the MTC, subtracted fees, contingency, and administrative costs from that and arrived at a net revenue estimate of \$807 million. The staff gave the partnership this figure and told them not to argue about it. There was no argument, the figure was accepted and the expenditure plan added up to \$807 million.

The partnership's consideration of the final project allocations was very contentious. TPAC had done a first cut, but that was only a first cut. There were some givens in terms of funding for specific projects, but many things were up for grabs and commission members had very diverse views. Some wanted most of the funds spent on projects. Others wanted fewer projects and more programs. Some wanted to emphasize growth control, others did not.

One major issue was the percentage of revenues to be devoted to return-to-source funds. The commission went through a variety of return-to-source scenarios. Some regions wanted more of the tax dollars going for projects, others wanted more allocated for return-to-source

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funds that would be under local control. The partnership tried to arrive at a distribution that provided enough for regional projects so that the voters would see “enough bang for their bucks,” while leaving sufficient money on the table for the localities to provide an incentive for compliance with growth management. In the end, they decided on a somewhat arbitrary, compromise figure of 18 percent, splitting the difference between those who had been advocating for 15 percent and those who had been pushing for 20 percent and higher.

Once that figure was decided upon, the commission then had to decide on the allocation of the rest of the funds to individual projects and programs. The commission relied first on the engineering assessments and estimates that had been produced by staff. They then went through a protracted series of negotiations and debates trying to arrive at a consensus allocation, within the constraints of a finite amount of money and the need to create a plan that would ensure some kind of rough regional equity. The process was described by several participants as one in which there was a great deal of “blood on the floor.”

There were also negotiations and tradeoffs between the project list and growth management. Some communities wanted the growth management process to include a strong affordable housing component. Other localities were fearful of an affordable housing component. In the end the question of how much money one region got for projects was negotiated in terms of whether they would agree to include language about affordable housing in the growth management plan.

Overall, the process was characterized by a long series of meetings that produced sufficient compromises to bring virtually everyone on board. Time worked to secure some compromises since, in the words of one participant, “it was down to the wire” in terms of getting the measure approved in time to be on the fall ballot. The partnership had hoped to get a unanimous vote of approval from the localities. In the end, 17 approved, 1 abstained and 1 opposed. Of the two cities that did not approve, one based its objections on the tax aspects of the measure and the consequent construction of new roads, the other on the inclusion of growth management in the measure.

The chair of TPAC, who had led opposition to the first measure, was the chair of the campaign committee. The names of all TPAC members were included on the ballot materials in order to demonstrate the breadth of groups that had worked on the measure, even if they did not officially support it. Some TPAC members had not been keeping their parent organizations apprised of how the measure was developing. Once some of these groups got the final package, significant objections were raised. This was particularly true among environmental groups, many of which chose to neither support nor actively oppose the measure. Some citizens’ groups, unhappy at the prospect of a tax increase, also needed some serious persuading that the inclusion of growth management was worth that price, and in the end some withheld their support. Both Measure C and Measure AA were approved by the voters in November 1988, Measure C by a considerable margin.

The Role of Staff

Staff and consultants played an essential role in the success of the consensus-building process, both at the partnership and at TPAC. Staff were drawn from existing county staff and consisted of one lead staff member, aided by another planner and a secretary. Professional meeting facilitators were not used during the process. The primary staff member was greatly helped by the fact that she knew most of the key people involved through her previous work. Participants consistently described the trust and credibility they had in her. The staff were supported by contributions from the county and from each municipality. The Mayor's Conference had been asked to approve a 2 or 3 cent per capita assessment from each city to fund staff, and they agreed. The secretary was paid for largely from contributions from the private sector.

Additional important support was provided by a former deputy director of public works in the county who was hired as a consultant by the county. He had very close ties to public- and private-sector interests and had provided significant staff support on the first measure as well as assistance prior to being hired as a consultant. Key meetings of the informal subgroup of TPAC took place in his offices, and he wound up assuming a variety of coordinating responsibilities in addition to drafting the expenditure plan, the initial task he was hired to perform. Once the new measure qualified for the ballot, his contract was shifted to the campaign committee since the county could not fund a political campaign. This committee was heavily financed by the business community. Developers, although maintaining a deliberately low profile, also provided other resources as needed, including information, poll data, and market projections. The business community also hired a political consultant shortly after the 1986 defeat, who provided significant support to the effort both as it was being developed and during the campaign.

Staff and consultants served a variety of critical functions. They were an information clearinghouse for participants throughout the process. They attended seemingly endless meetings and spent even more time on the telephone with all participants. In the words of one of the main staff members, they "became the glue" and the catalyst that managed the measure's development. As disagreements erupted, they worked to smooth them over. As individuals became disaffected, they worked to keep them in the process. They were resource people and facilitators who tried to alleviate conflict and be troubleshooters. They also drafted documents and proposals and compiled information.

The Role of Data

There were several sources of data that were used to facilitate the consensus-building process. One was the professional opinions of the technical committee and other staff. City and county engineers presented their professional views on project design and costs. Although there were occasionally differences among the engineers on these issues, these differences

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were relatively few and participants believed they were getting reliable data. Confidence in this technical data was an important ingredient in helping the consensus process along.

A second important source of data was a set of public opinion polls that had been conducted by the development community, first for the 1986 election, then in 1987 testing the importance of growth management and the concept of linkage, and in 1988 exploring support for specific transportation projects. A synthesized version of the data from these polls was made available to TPAC and the partnership. Since there was general agreement that the process of crafting the measure was a political one, these polls provided a reality check about what the voters would likely support. Poll data became a way of rejecting extreme proposals from some communities and provided a context in which negotiations could take place based on things other than pure opinion.

The credibility of the poll data was widely accepted. The polls had been conducted by a well-known firm with statewide experience. Moreover, principals from the firm were available to reassure anyone who had questions about the data.

Implementation

Its first year was largely an organizational one for the Contra Costa Transportation Authority. Three committees were established: administrative, projects and programs, and planing and governmental affairs. There was considerable political jockeying over who would be appointed to the CCTA, since this was now an organization that would control a great deal of money. The Metropolitan Transportation Commission wanted a seat at the table, and after some negotiations was invited to send a nonvoting representative (who apparently rarely attends). A nonvoting transit seat was added as well.

While this administrative work was going on, the city and county engineers became involved in studying which projects were feasible, which they had funds for, and which they had matching funds for. These were largely technical issues that were being addressed by the technical coordinating committee, which was composed largely of city managers, transit managers, and public works directors.

The major task of the growth management committee has been the development of model growth management elements. The process has involved bringing recommendations to the full CCTA for approval, which has not always been forthcoming. One highly contentious issue was a proposed traffic mitigation fee (which at one point was in excess of \$4,000 per unit). The fee proposal was strongly opposed by cities with little developable land, which argued that a fee of that magnitude could make or break a project in their communities. The decision was reached to have each region determine its own traffic mitigation fee.

The CCTA devoted considerable time to developing the compliance checklist that localities use to establish eligibility for return-to-source funds. A particularly contentious area has been the jobs/housing balance and especially housing for all income levels. There was no real debate about including housing on the list because it was part of the measure. However,

some jurisdictions that don't want to commit themselves to affordable housing also don't want to lose return-to-source funds. Other jurisdictions feel strongly about affordable housing and are very resentful of cities that they see as being unwilling to plan for their fair share.

The differences of opinion about affordable housing have led to considerable controversy over what cities would be required to do in the housing area in order to be in compliance, and specifically whether they would have to show evidence that they were doing something to actually implement their housing plan. This controversy is a sign of the fragility of the consensus that was actually reached while crafting the measure. The language that was agreed to requires a plan, but does not explicitly require that housing be built. This deliberate effort to find language that both sides of the housing issue could agree to was successful at achieving consensus on the measure, but its effect was merely to postpone resolving the dispute until the implementation stage. Advocates of housing have been hampered in their efforts by changes in state regulations about housing elements in general plans. They consider a state mandate in this area to be very important as a way of forcing cities to the table to deal with the housing issue.

Regional committees have been spending most of their time developing action plans. The process has been a slow one as committees have attempted to absorb data from transportation models. Primary responsibility for drafting these plans has been shouldered by staff, particularly regional committee staff and their respective technical advisory committees.

TPAC continues to exist as an advisory body to the CCTA, but since the measure passed it has been an organization in search of a mission. It has no staff support. Overall, public involvement in and understanding of the growth management aspects of the measure are minimal. TPAC is considering reviewing each jurisdiction's annual compliance checklist for accuracy as no external check is provided for in the measure. They are also considering looking at how employers are implementing transportation demand management. Members of the CCTA have indicated that they would welcome feedback from TPAC on both matters.

Criticisms of the Measure

Perhaps predictably, the implementation process has proven to be controversial. Many people involved in the measure's development say that it is not being implemented as it was written. They claim that many things, including growth management and even aspects of the project list, have been revised or changed outright from the measure presented to the voters. The complaints of different critics, however, are quite varied and often contradictory. For example, some are concerned that the CCTA has too much power, others that it does not have enough. What follows is not a consensus view but a discussion of the concerns that have been raised by various parties.

Some unhappiness has resulted from turnover among the individuals involved. The person hired to be the director of the CCTA was brought in from outside the county and had no history with the measure, although he had considerable experience with other local sales

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tax programs. Many of the elected officials who were key to the measure's development have either been voted out of office or chosen to step down from the CCTA. In many cases the personal commitment of these individuals was much stronger than was the commitment by their cities. Thus, there has been a dramatic change in the CCTA's membership and that of many of the regional committees, which some observers think has seriously harmed the integrity of the process through loss of institutional memory and loss of commitment.

Action plans for routes of regional significance have taken considerably longer to create and have become a lot more cumbersome than many envisioned. Regional committees have become embroiled in a number of disputes over traffic models, regional fees, and which roads should be designated "routes of regional significance," with some communities resisting such a designation for fear that it will attract people and make traffic worse.

Conflict among the county's regions has erupted over the order in which moneys for projects will be allocated. The sales tax extends over 20 years and projects must be built serially. The CCTA has determined which projects will be given priority, and at least one region thinks it has been greatly slighted. This has created bad relations between the elected officials from that region and the CCTA.

A major strain of criticism comes from those who believe that the regional committees have become too strong, and the countywide CCTA too weak. These critics believe that insufficient attention has been placed on developing a countywide transportation plan as the measure calls for and that too much attention has been focused on developing regional action plans. They point out that the CCTA has not developed a comprehensive countywide transportation plan that would detail countywide priorities and guide the distribution of funds. Instead, the county has four regional plans with few clear ideas about how they fit together. Moreover, these critics express concern that the CCTA has moved away from major regional projects to largely local ones in its allocational decisions.

These same critics argue that because of the regional committee structure, the CCTA has not been able to provide a truly regional voice for the county and that it too often serves as a vehicle for parochial interests. Eight of the 11 authority members are appointed by the regional committees and serve at the pleasure of those committees. These committees, fearful of a powerful regional body that might impinge on local autonomy, have typically given their representatives to the CCTA very short leashes. Thus, in the eyes of some observers, the authority has at times seemed little more than the aggregate of the regional committees serving local interests at the expense of those of the county as a whole.

This has been particularly evident, according to these critics, on the issues of the overall prioritization of projects and the ability to move funds around the county for the good of the whole, as the strategic plan has had to be updated because of revenue shortfalls. Rancorous debate among the regions has erupted over this and at least some think the authority has been unable to allocate money in ways that will best serve the county as a whole.

According to these critics, the strength of the regional committees and the weakness of the CCTA has actually worked to make it more difficult to reach a countywide consensus on

transportation and growth issues because it has weakened the role of the county Board of Supervisors in the transportation field. Four regional voices have been substituted for a single countywide voice, making coordination with the state and with other counties more difficult. Other observers counter that there was never a single countywide voice since cities competed with each other and with the county.

The harshest criticism of implementation probably comes from those whose primary concern had been growth management. Many of these critics believe that Measure C has not delivered growth management at all, and those who are most disillusioned believe, in hindsight, that developers never expected it to. These critics point out that no project has yet been denied or even significantly modified because of Measure C, and cite as a particularly egregious example the controversial development proposal for Dougherty Valley. They note that the CCTA has had virtually no role in reviewing the proposal (although others argue that the CCTA should not play such a role). These critics argue that the project has insufficient water, will create major traffic impacts, and that its approval by the county violates at least the spirit of Measure C since there is no assurance that services will not be degraded by the new development.³ Yet the only enforcement mechanism would be to deprive the county of its return-to-source funds; they strongly doubt that this will happen. Others fear that there is a growing group of developers, city managers and city council members who are seeking to weaken, if not eliminate, the growth management process.

In retrospect, some of these critics believe that the growth management strategy contained in the measure is inherently flawed. In their view the problems lie in the facts that there are no penalties for increasing congestion on roads that are already out of compliance with level of service standards, and that the best way to meet service standards is to build in rural areas where there is immediate circulation of traffic. This, however, increases sprawl and congestion on roads already out of compliance.

From this perspective, the consensus that was seemingly reached was a false one. People with fundamentally different visions were able to agree upon words without fully understanding what they were agreeing to. As one disillusioned participant explains, “we had really worked hard. A lot of us got in over our heads technically. Our enthusiasm for the process got away with us. It was so much fun reaching consensus, doing a big thing. To have been told that it wouldn’t work would have been devastating.”

Achievements of the Measure

In spite of these substantial criticisms, the consensus-building process that developed Measure C was successful in a number of respects. Most obviously, it achieved what it was designed to do: craft a measure that would be successful at the polls. The concept of linking

³ Other major participants in the Measure C process strongly dispute this characterization of the Dougherty Valley project and its relationship to growth management.

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access to return-to-source funds and growth management has worked in that at least thus far all jurisdictions have chosen to comply with the growth management elements in order to receive return-to-source funds. While they were drafting the measure it was not clear to all participants that this would in fact happen; some feared that more affluent jurisdictions might choose to forgo the funds in order to avoid participating in the growth management process.

More subtly, Measure C began the process in Contra Costa County of building the social capital necessary for future coordination. The creation of the regional committees provided a forum for people to meet and communicate in ways that they never had before. People have been pulled out of their city boundaries as they sit on these committees. By being in a room together time after time they have begun to understand one another's positions. As one staff member explained, before the process began "people who had disagreed politically remained adversaries till the end of time. They assumed they would always oppose one another but they would never check to see what your view really was. By getting people in a room and getting them to talk they found out that they had more in common than they thought they did when they were sitting alone."

Even when people did not learn that they had a lot in common, they did learn to live with their differences. The environmental and development communities did not come to agree with each other on many issues, nor did regions of the county that seek growth come to agree with regions seeking to limit it, but many said that they did gain a better understanding of why people took the positions that they did. As one participant said, "My involvement has led me to look at others' views, to look at the other side." Another explained, "by virtue of coming together in a room, unless you don't talk to each other and are absolutely dumb and unresponsive, some appreciation of the other person's view will take place." This too is an important step in the development of social capital.

There is also some incipient cooperation emerging between regions, as regional committees have occasionally met together on issues of common concern. Cities from different regions have begun talking about roads that they share. As one official explained, "It's easier dealing with another region when you know them, when you know the elected officials and can talk to them on a one-to-one basis, which before they never had."

Although it has been highly criticized, there is some evidence that the growth management process is having some positive effects on comprehensive planning. In some regions, transit operators have been brought into the regional committees, and hence the planning process. Downstream impacts of development must at least be considered.

By forcing a simultaneous consideration of land use and transportation, the measure has begun to teach people about the systemic relationships within the region and to create linkages among policies that had not been there before. This has occurred, too, through the debates over affordable housing and the consequent discussion of the relationship between housing and economic development, as well as the discussions of the relationships among transportation, housing, and jobs. As one participant explained it,

“There is a body of knowledge common to all we are now operating from. We are seeing the county geographically the way it is, seeing the interrelationships. Before Measure C people didn’t think of corridors or commuting patterns. This knowledge grew as we worked to put together Measure C. Then it grew as we tried to implement Measure C. There’s been a gradual adding of data, information and perceptions as the group has worked month after month.”

Thus, some critical intellectual capital is also being created, although some of it may be lost as the individuals involved change.

Measure C has also changed the rules of the game in ways that have at times encouraged new cooperation within regions of the county. Several regional committees are characterized by significant differences of opinion among the jurisdictions, but at times representatives have been able to reach agreement in the interest of a unified position from that committee. That is because there is also a larger game being played at the county level, in which a unified region is more likely to receive help. Other regions have formed into much more cohesive entities as the measure “got everyone to talk, everyone to the table.”

Finally, for some, the measure has provided a model and encouragement for coordination in other policy arenas. One local official explained, “We’e looking at the jobs/housing balance, at the garbage issue. We continually refer to the Transportation Authority and say ‘see how well it’s working with the Transportation Authority’ . . . It showed that the process can work.”

Keys to Success

A variety of factors contributed to the success of the consensus-building process that created Measure C. Probably most obvious is the fact that many of the players had just been through a similar, unsuccessful, effort. As a result, people were familiar with what communities saw as their major projects, with the views of the voters and, to a considerable extent, with each other. This all made the substantive work of crafting a measure easier. The experience of the General Plan Congress helped in a similar way. It gave participants a framework and terminology for talking about growth issues and also made it clear that those issues would eventually have to be addressed.

The aftermath of the first measure’s failure created an incentive structure that encouraged most interests to participate. The measure’s failure made it clear that cooperation and compromise would be essential to create a winning measure. The county and private sector had been unable to achieve victory alone and realized that they would have to work with local officials, citizens’ groups, and environmentalists if success was to be achieved. Players understood that if everyone did not get something they wanted, it would not work.

On the other hand, it was also clear that there was a great deal of commitment to forge a winning measure as well as a crying need for transportation improvements in the county.

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Thus, opponents of the first measure could not count on their ability to wage a successful opposition a second time. As a result, they too had an incentive to try to forge an agreement, especially when it became clear that proponents were willing to put growth management on the table. Moreover, knowing that those who wanted growth management were willing to negotiate signaled to environmentalists that a new measure was likely to win, and gave them an incentive to get on board in order to try to achieve some of their own objectives.

The consensus-building process was very inclusive. Many attribute the fact that so many groups supported (or at least did not oppose) the measure to the fact that these groups had been brought inside the process and had been part of the decision making. As one participant explained, “no one could stand up and say ‘nobody talked to me about it.’”

The structure of the consensus-building process seemed to encourage the compromise and bargaining necessary to forge consensus. The final decision-making body, the Transportation Partnership Commission, was a relatively small body (11 members) that included representation from both local governments and the Board of Supervisors. Since there were only two representatives from each region and two from the Board of Supervisors (the last member was from the Mayor’s Conference), no region or group had an automatic majority and bargaining had to take place.

The sheer amount of time spent in meetings at both the partnership and TPAC also seems to have been important in achieving success. Given the paucity of social capital at the start of the process, long and frequent meetings were necessary for participants to build the trust necessary to reach agreements. Meetings were necessary to learn what peoples’ fears were and for participants to gain the confidence that they would not be hurt by compromises. As one participant put it, “Consensus was reached with lots of pizza and long meetings. It took an investment of time. The little ritual of breaking bread together was important.”

The enormous commitment of specific individuals to make the process successful was also extremely important. Staff, several elected officials, and the leadership of TPAC worked tirelessly to do whatever was necessary to keep the process moving. As one person explained, “when we saw someone had problem, we would get on the phone and talk. We wouldn’t let people fall out.”

In the end, time pressures caused by deadlines for qualifying for the ballot provided some needed incentives to come to agreements. As one participant suggested, “otherwise it might have been more comfortable for people not to negotiate, to put it off to the next meeting.” On the other hand, as noted above, it was essential that the group had enough time to allow for the difficult work of building needed social capital before compromises could be reached.

Several substantive decisions were key to keeping major players on board. First was the decision to craft a growth management strategy that was not perceived as a growth *control* measure by the business community and labor, but one that environmentalists and others could also believe would serve their needs. Related to this was the fact that growth management was discussed in terms of general principles, as opposed to very detailed prescriptions. There was

no effort, for example, to agree on a common physical description of the county or of its future. The reliance on general principles enabled a variety of people to believe that their goals could be met through the strategy. These assets in terms of achieving consensus on a ballot measure, however, are also the source of much of the disillusionment with how the measure has proven to work in the area of growth management.

Second was the linkage between growth management and access to return-to-source funds. This created an economic incentive to get and keep local government officials at the table and to agree to the growth management strategy. According to many participants this was the key to making the whole package work. As one explained it, "It all gets down to money. People get interested if it affects their pocketbooks. In Contra Costa the carrot is the return-to-source funds. Without that, they wouldn't ever come together." As far as we know, Contra Costa's Measure C remains the only local transportation sales tax measure in California to directly link growth management requirements to the allocation of local street and road dollars.

Third was the power granted to the regional committees. Although this has created significant problems in the eyes of some, as noted above, it was vital to gaining the acceptance of local elected officials who were extremely apprehensive about creating a powerful regional body. Local officials accurately perceived that they would be able to control the regional committees, and the regional committees appointed the majority of members of the CCTA. Therefore the prospect of a countywide effort became less threatening.

The fact that the proposed structure was one in which substantial control would ultimately rest with the cities also apparently led many local officials to opt out of the debate over the specifics of the measure as it was being framed, since the regional committee structure assured them that they would have significant control. This facilitated the achievement of consensus by limiting the number of players with intense preferences. However, it has undoubtedly also contributed to the belief among many that there has proven to be little substance behind the agreements reached.

Delegating many decisions to regional committees has also helped to facilitate consensus and build capital. The regions are much more homogeneous than the county as a whole, and therefore it is easier for localities within a single region to come to agreement. The needs, vision, and attitudes of the various regions are very different. At least for the present, many (although not all) believe that a common plan for the county does not make sense and that the most that can be achieved is a stitching together of regional plans. This of course limits the degree of coordination that Measure C has been able to achieve, but regional agreements and a history of successful consensus building at that level may make it easier in the future to achieve countywide coordination.

REFERENCE

Contra Costa Transportation Partnership Commission. August 3, 1988. "The Revised Contra Costa Transportation Improvement and Growth Management Program."

Case 7

NATURAL COMMUNITIES CONSERVATION PLANNING

by Robert Thompson

Overview

The Natural Communities Conservation Planning (NCCP) program is a state program administered by the California Department of Fish and Game. Assembly Bill 2172, the NCCP Act, authorizes the department to enter into agreements with private parties, local governments, and federal agencies to prepare Natural Communities Conservation Plans (Fish and Game Code 2805). The goal is to create plans “through a collaborative consensual planning process.” These plans attempt to “identify and provide for the regional or area-wide protection and perpetuation of natural wildlife diversity while allowing compatible and appropriate development and growth.”¹

The state and federal Endangered Species Acts (ESA) have traditionally used a species-by-species approach to protect wildlife. The NCCP program instead focuses on the protection of habitat within large landscape units. By protecting endangered ecosystems or “natural communities,” the program attempts to make conservation planning proactive and comprehensive, thereby obviating the need for future listings. Successful plans would provide a more integrated and functional reserve system for wildlife and also provide greater predictability in the development process. In addition to preserving habitat, the plans might also include management guidelines for property near or contiguous to preserved habitat. For example, buffer requirements or restrictions on exotic plant species may be part of the plan. This case study examines the events that led to the passage of Assembly Bill 2172 and the ensuing planning process that created the NCCP pilot project, which dealt with coastal sage-scrub habitat in southern California.

In 1991 the Wilson administration took office in Sacramento. The new secretary and undersecretary at the California Resources Agency wanted to develop a process for the state ESA that would be similar to the Habitat Conservation Plan (HCP) process that is available under the federal ESA. However, after meeting with staff from the Department of Fish and Game (CDFG), the Resources Agency decided that the HCP approach had serious limitations; HCPs were only prepared after a species was listed as endangered, and process focused too much on individual species rather than ecosystems. Thus, the Resources Agency decided to develop a program that would protect entire natural communities in advance and avoid the

¹ Mantell, 1991, page 4.

need for future listings. The Resources Agency also wanted to develop a program that would be fully integrated with local government planning processes.

When the Resources Agency began discussing the idea of protecting natural communities, they found people in the development community, environmental community, and local government who were interested in the concept. Since late 1989, some environmentalists and developers had been discussing with the United States Fish and Wildlife Service (USFWS) the idea of preparing plans that would protect entire habitats, thereby avoiding the piecemeal, species-by-species listing process. These discussions, however, had not really gone beyond broad concepts. Thus, these parties readily supported the Resources Agency's decision to try to develop and implement the NCCP program.

These developers and environmentalists were particularly concerned about the California gnatcatcher (for which petitions had been filed to have it listed as endangered pursuant to both the state and federal ESAs) and its habitat, coastal sage scrub. Consequently, these environmentalists and developers encouraged the Resources Agency to use coastal sage scrub as the pilot project for the NCCP program. Although the governor did not specifically mention coastal sage scrub when he announced his intention to create the NCCP program, the Resources Agency and Fish and Game did decide to use coastal sage scrub for the pilot NCCP project. By choosing coastal sage scrub, the Resources Agency and CDFG took on a large task. The study area consisted of three counties and numerous cities as well as state and federal lands. Overall, the potential planning area covered 6,000 square miles.

The NCCP/coastal sage-scrub pilot project had to accomplish several major tasks. First, an understanding and working definition of coastal sage scrub had to be developed. To accomplish this task, the existing scientific data on coastal sage scrub and selected species that are associated with it had to be gathered and analyzed. Second, a determination had to be made about how much coastal sage scrub could be lost to development during the planning process. Third, methods had to be developed to provide coastal sage scrub with interim protection during the planning process. Fourth, the planning area had to be broken into biologically justifiable subregions because a single plan for the three-county area was not feasible. Fifth, conservation strategies had to be developed to provide guidance for the subregional NCCPs. Sixth, planning process guidelines had to be created to guide the procedural aspects of the subregional NCCPs. Finally, for the NCCP process to work, an unprecedented level of coordination had to be achieved between the federal, state, and local planning processes.

One of the first steps of the NCCP program was the establishment of a scientific review panel (SRP) made up of leading scientists. Interviewees from both inside and outside of government said that for years there had been a growing consensus among those involved in conservation issues that a panel of impartial scientists could reduce conflicts concerning scientific data within the planning process. The Resources Agency decided to establish the SRP to review relevant scientific data and develop the conservation strategies and guidelines. The CDFG coordinated with the SRP, which acted as an independent body. The members of the SRP were appointed by the Resources Agency, which reviewed suggestions by members

of the environmental and development communities as well as by CDFG. Most participants in the NCCP program felt that the SRP system worked well and reduced arguments over science.

In September 1991, through the efforts of the Resources Agency and CDFG, the state legislature passed the Natural Communities Conservation Act (Assembly Bill 2172), which codified the NCCP concept. In a related matter, the state and federal resource agencies entered into a memorandum of understanding (MOU) that committed all of the signatory agencies to “adopt a coordinated regional strategy that ensures protection of biological diversity.” On December 4th, 1991, the USFWS and CDFG signed another MOU that created a formal, collaborative relationship between the agencies concerning the NCCP/coastal sage-scrub pilot project.

Since early 1991, the Resources Agency informally consulted with people from the development and environmental communities. Later in the year, the Resources Agency put together a somewhat more formal, small advisory group with which the Resources Agency, the CDFG, and the SRP could consult. One official with the Resources Agency referred to this group as the “founders group.” This official stated that the Resources Agency tried to invite participants who were knowledgeable about such issues as conservation biology and local land use. The Resources Agency also tried to get participants who could provide representation geographically as well as representation for the viewpoints of the different interests. Thus, the founders group had representatives from environmental groups, large developers, and local government. Some of the members already knew one another and had previously discussed the concept of a proactive ecosystem or natural community-based planning. Some of the participants said that the founders group had a dual purpose: first, as a resource for developing and testing ideas; and second, as a means of avoiding litigation concerning the NCCP program.

Although support for the concept of proactive, natural community planning was widespread, putting together a workable NCCP program was still a large and complex undertaking. Moreover, serious mistrust had developed between the interested parties during the preceding decade. According to interviewees, letters, journal and newspaper articles, as well as other sources, participants at times criticized the program and one another, both privately and in public. Due to the difficulty and complexity of creating a wildlife conservation planning program that dealt with all levels of government and three counties as well as deeply seated mistrust, a Resources Agency employee cautioned others attempting similar projects to “be prepared for controversy.”²

Despite the complexity of the task, the resource constraints on CDFG, and the dissatisfaction that was at times expressed by both developers and environmentalists, Fish and Game and the Resources Agency kept making progress and started to implement the program at the subregional (local) level in the summer of 1993. Even though the state had not met its

² Mantell, 1993.

initial schedule and the NCCP/coastal sage-scrub pilot project did not contain all of the elements that the Resources Agency had initially proposed, local government and a number of large landowners in Orange and San Diego counties have signed onto the program and are presently preparing subregional NCCPs.

Six reasons seem to account for the program's progress despite its size, complexity, and unprecedented nature. First, both developers and environmentalists disliked the status quo and recognized that a successful program could produce a better outcome: developers could potentially get more predictability in the development process and environmentalists could get more proactive and comprehensive conservation planning. Therefore, enough influential members from both the environmental and development communities stayed with the program and worked to keep it moving. Second, the Resources Agency, the CDFG, and much later, the USFWS all said they were strongly committed to the program. Third, most of the developers, environmentalists, resource agency employees, and local government representatives said that they learned to work together in a new, more cooperative way. Even interviewees who said that they still did not completely trust some of the other participants, acknowledged that they had a better working relationship with "the other side" than they did before they became involved in the NCCP program. Fourth, all of the interviewees said that they trusted the SRP; indeed, aside from the controversy over whether the gnatcatcher should be listed (which was an issue the SRP did not address), none of the participants mentioned a serious scientific controversy. Several, however, said that the SRP was the best part of the process. Fifth, coastal sage scrub was finally given protection. The participants, however, disagree over how this was achieved. The Resources Agency argued that coastal sage scrub received protection through voluntary enrollment agreements that were signed by a number of local jurisdictions and large property owners. On the other hand, members of the environmental community argued that the enrollment agreements did not provide adequate protection and that the interim protection problem was only solved when USFWS listed the gnatcatcher as threatened pursuant to the ESA, thereby giving indirect protection to the coastal sage scrub where the gnatcatcher lived. And sixth, the NCCP program created institutional changes in the USFWS and the CDFG that allowed these agencies to more easily coordinate their activities, which in turn made it easier for local governments to coordinate with both agencies.

The Basic Story

The Emerging Conflict between Land Development and Species Protection

During the 1980s, southern California experienced rapid suburban growth. The conversion of wildlife habitat into subdivisions caused the populations of many species to drop so precipitously that their long-term viability was threatened. As a result, the USFWS began

listing species as either threatened or endangered under the federal ESA.³ Because the federal ESA generally prohibits the “taking” (i.e., killing) of any species that is listed as “endangered” or “threatened” and also prohibits the destruction of a significant portion of that species’ habitat, the presence of a listed species on a project site can stop a proposed development. Consequently, before a developer can “take” a member of the protected species or destroy its habitat, the developer must obtain an “incidental take” permit from the USFWS. The USFWS can issue a permit if a Habitat Conservation Plan (HCP) has been prepared and the USFWS determines 1) that the measures proposed in the HCP will mitigate the impacts of the taking, 2) that the plan will be properly funded,⁴ and 3) that the taking will not “appreciably reduce the likelihood of the survival and recovery of the species in the wild.”⁵ Once a HCP has been approved, development can occur within the area covered by the HCP.⁶

Widespread Dissatisfaction with the Species-by-Species Approach

Even though the HCP process did allow for some flexibility and creativity, neither developers nor environmentalists were completely satisfied with the way it operated. As mentioned above, both sides were dissatisfied with the species-by-species approach. Even if a developer went through the time and expense of preparing a HCP, the process did not provide the developer with absolute certainty, because another species that was not covered by the HCP might be listed in the future. One developer explained:

For [the development] business it is one endangered species after another. We saw wave after wave of single [species] issues. We wondered if there was a way that was less economically destructive. . . . The species-by-species approach consumes a lot of land and you spend a lot of resources on each listing. There is also the uncertainty of future listings.

³ Endangered Species Act of 1973, Pub. L. No. 93-205, 87 Stat. 884 (codified at 16 U.S.C. 1531-1541 (1988)). Some of the species that have been listed in southern California include the least bell’s vireo, the Stephen’s kangaroo rat, and California least terns. Interviewees also estimated that dozens of other species in southern California were or were on the verge of being endangered. For a full explanation of the listing process, see Bonnett and Zimmerman (1991) and Bean et al. (1991). “Endangered species” means any species that is in danger of extinction throughout all or a significant portion of its range. 16 U.S.C. § 1532(c) (1988). A “threatened species” is one that is likely to become endangered in the foreseeable future. 16 U.S.C. § 1532(20) (1988).

⁴ House Conference Report No. 97-837, 97th Congress, 2nd Session, 2871.

⁵ House Conference Report No. 97-837, 97th Congress, 2nd Session, 2870.

⁶ For more extensive discussions of Habitat Conservation Plans see Bean, Fitzgerald, and O’Connell 1991; Beatley 1992; Webster 1987.

Furthermore, the same developer pointed out that during the time that the HCP was being prepared (a process that might take years), the developer could not legally develop any of the species' habitat if that action might result in an incidental take.

A Fish and Game employee also expressed his frustration with the species-by-species approach:

Those of us in the area of species protection have long believed that project-by-project and species-by-species approaches aren't working. . . . This idea was shared by everyone that was working with endangered species. . . . People come at the problem differently and have different solutions, but the consensus is that the piecemeal [approach] will not work.

State and federal agency management and staff also said that the species-by-species approach resulted in the expenditure of tremendous amounts of money to save a few species and that scarce resources could be better spent on advance planning and habitat protection.

Environmentalists were also dissatisfied with the species-by-species approach because a species received no protection until it was in very bad condition, and because they believed that conservation efforts should focus more on habitat protection. For example, one lamented that "Conservationists have not been thrilled with the results of the Endangered Species Act. We always wait until the last minute."

Moreover, because the species-by-species approach was a piecemeal procedure, it failed to create the well-integrated habitat preserve systems that environmentalists and agency biologists thought were necessary to ensure the long-term viability of species.

The Gnatcatcher Spurs a Broader Approach to Species Protection

Interviewees stated and correspondence records showed that by 1989 academic scientists, USFWS employees, and environmentalists were discussing the possibility that the southern California gnatcatcher might be listed as endangered under the state and federal ESAs. Biologists and ecologists had long considered the habitat of the gnatcatcher, coastal sage scrub, to be an endangered ecosystem.⁷

The developers who were interviewed also said that in 1989 they were aware that the gnatcatcher might be proposed for listing, which they said was an alarming prospect because the coastal sage scrub, where the gnatcatcher lived, covered much of the buildable land in Orange and San Diego counties. Consequently, two developer groups formed to discuss ways to avoid listing of the gnatcatcher: the Coalition for Habitat Conservation, which was mainly in Orange County, and the Alliance for Habitat Conservation, which was mainly in San Diego County. One developer explained that,

⁷ See, for example, Westman, 1987.

The goal of [our] group was to find a solution to the gnatcatcher listing that would not be totally disruptive to the economic environment in southern California and specifically to the building industry. We were opposed to listing and advocated a new approach to endangered species: a habitat approach.

Another developer said that the developers got together because local government would never be able to work out the endangered species problem:

I said [to the other developers], “Look, this thing is a big morass. You're never going to get local government to work it out in a broad perspective. . . . Their priorities are much more dispersed and they're much more concerned about the citizens that are going to turn out for the next apartment project. . . .”

The seriousness of the situation and the need for action was demonstrated by the developers' willingness to work together. One said that this level of cooperation was “very unusual in the development community because we are usually rabid competitors.” Other developers made similar remarks.

As a response to these groups, local southern Californian environmental groups and local chapters of national environmental groups formed the Endangered Habitats League (EHL). As will be discussed more thoroughly below, EHL did not become directly involved in the informal discussions concerning natural communities planning until 1991, when it was brought into the process by the Resources Agency.

In late 1989, members of the southern Californian development community, along with their attorneys and environmental consultants, approached some members of the environmental community and the USFWS to discuss ways by which the listing of the gnatcatcher might be avoided through planning. While the representatives from the development community were connected with the Coalition for Habitat Conservation and the Alliance for Habitat Conservation, they did not attend the meetings as representatives of those organizations. These parties tried to reach consensus through discussions that were periodic, informal, and casually structured. The participants in this informal consensus group generally already knew one another from prior projects or through informal networks. Although these talks did not produce comprehensive and specific recommendations for a planning process, interviewees stated and the correspondence record confirms that the developers, environmentalists, and USFWS did reach a general agreement on some fundamental building blocks for a proactive process: first, the planning emphasis should focus less on individual species and more on some type of ecosystem planning or “natural communities” planning; second, a distinguished panel of impartial scientists should be used in some manner to make sure the science “passed the smell test”; and third, development within the planning area could be controlled but not stopped during the planning process. Some of the interviewees, however, said that the discussions never achieved any specificity as to how these goals would be accomplished.

Interviewees also said that the discussions were not progressing because the USFWS was not certain that it had the statutory authority to pursue this type of proactive program.

One developer said that the context of these discussions changed in December of 1990 when, at a meeting at the USFWS regional office in Portland, the Fish and Wildlife Service informed those attending that the Natural Resources Defense Council (NRDC) had filed a petition to have the gnatcatcher listed as endangered under the federal ESA. Although earlier in the fall a small group called the San Diego Biodiversity Project had filed a petition, the interviewees agreed that this initial petition was not well documented. By contrast, the NRDC's petition had been filed jointly with the Manomet Bird Observatory, which had significant scientific credentials. When discussing this petition, the same developer said, "At first blush the NRDC petition looked good. . . . [It had] lots of maps, graphs, charts, and looked impressive." He also said that a pending, credible petition gave an extra urgency to finding an alternative to listing. The NRDC also filed its petition with the California Fish and Game Commission (FGC) in January of 1991, which initiated the listing process pursuant to the state ESA.

The State Takes Over

In 1991, when Pete Wilson took office as governor, the state took on the task of trying to create a program that would replace species-by-species conservation with a proactive planning process that would "protect critical wildlife by focusing on an entire habitat or natural community . . . and designing appropriate conservation strategies that accommodate compatible economic development."⁸

According to one CDFG employee, the idea of natural community planning had been discussed within Fish and Game, but supporters of the idea did not believe that the Deukmejian administration would be supportive. "There were people in the Department of Fish and Game that had been thinking about [natural community planning]," he said, "but the political time has to be right."

The arrival of the Wilson administration did bring a political change in the area of resource management. The new secretary and undersecretary for the Resources Agency had been with the World Wildlife Fund and the Conservation Foundation. The undersecretary said that when he arrived in Sacramento he wanted to create an HCP process for the California ESA, but he quickly realized that a more comprehensive approach was needed. He explained:

The more that we got into discussions with CDFG staff, the more I realized that we had to go further than the HCP process, and I began to see the limitations of HCPs. HCP only comes into focus after listing has occurred and it is kind of a misnomer in that it focuses on the species and not the habitat. Typically, it looks

⁸ Mantell, 1991, op cit.

at a single species. Looking at the trends in California with the number of candidate species at both the state and federal level and at the projected population growth, it didn't take much to see that the state was going to get into this scenario increasingly. And there is a tremendous limitation on resources in the Department of Fish and Game.

Consequently, the Resources Agency and CDFG worked on articulating a Natural Communities Conservation Planning program that would create large, integrated preserve systems of healthy habitat, thereby assuring that all of the species dependent on the habitat would maintain healthy population levels. However, as one state employee explained:

One of the things we have to accept is that the concept of developing viable, self-sustaining systems in the future is another pie-in-the-sky sort of thing. There is just no place that is large enough that it won't require some active management.

Therefore, the state employee felt that a NCCP would involve restrictions on contiguous and nearby parcels, such as conservation easements and restrictions on the planting of exotic species. The Resources Agency and CDFG also envisioned a process that would more easily allow for "appropriate" economic development.

Some of the interviewees who had been working with the USFWS said that they also saw the arrival of the Wilson administration as an opportunity. One developer believed that because Pete Wilson was a "policy guy with growth management experience from San Diego, he would understand the need for a comprehensive, forward-looking approach." Furthermore, the developer thought Wilson had appointed people who were interested in proactive planning. "I had known [Secretary of the Resources Agency] Wheeler and [Undersecretary] Mantell from the Conservation Foundation in Washington, and I said, 'look, here are the right folks.'"

On Earth Day, April 22, 1991, Governor Wilson in his "Resourceful California" speech formally announced that he was launching a NCCP pilot program and described the program as follows:

The program will target one habitat where there are several potentially endangered species. We will bring together developers, environmentalists and public officials to create a plan to protect the endangered wildlife *and* allow needed development. This program will be tested in Southern California and, if successful, will be expanded statewide.

The developers who were interviewed said that they had lobbied the Resources Agency to make coastal sage scrub the pilot project for the NCCP program. A CDFG employee said that coastal sage scrub and the gnatcatcher were chosen,

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probably because we needed people that were willing to play and we had some landowners that wanted to make concessions. . . . There were also other species that were associated with this community that were at risk and were of concern to local government and builders. By including these species, it made people more interested in long-term planning rather than how do you fix it for the gnatcatcher.

Although the state did decide to use coastal sage scrub as a pilot project, a interviewee from the Resources Agency explained that the choice had both potential disadvantages and advantages:

Using southern California was risky. The private land was expensive and the landowners influential. There were lots of jurisdictions. You also had the greatest projected population growth. There were 40 to 60 species on the category one status list [under the ESA]. But if you do it here, you can do it anywhere. Also great landowner interest in getting out from the single species approach. So if it works, it will become a model.

Outline for the NCCP Program

The Resources Agency and CDFG envisioned that the pilot project would protect functioning units of the coastal sage-scrub ecosystem and the “natural community” within it; this would in turn protect all of the species in the natural community and thereby obviate the need to list the gnatcatcher or any other coastal sage scrub inhabitants as endangered. Moreover, the program would allow for compatible development. Developers would know that they could safely develop on the coastal sage scrub outside the preserve system and what type of land use restrictions would be placed on property next to or near the habitat reserves. While the interviewees all favored the concept of proactive, comprehensive conservation planning, getting agreement on the details of the program was the difficult part. A state official explained that no one had ever tried anything in species protection on this scale and with this degree of complexity.

The Resources Agency and CDFG concluded that a single plan could not be prepared for the entire three-county planning area. As one state official explained, “There was no one set of rules that would fit every level in the entire [planning area]. Micromanagement over 6,000 square miles is an oxymoron.” Therefore, CDFG and the Resources Agency conceived of a two-stage NCCP program. An initial “regional NCCP” process would collect biological, geophysical, and political data from which conservation strategies would be developed, subregional planning areas would be identified, and process guidelines would be prepared to regulate the second, or “subregional,” stage. At the second stage, which will be more fully discussed below, local government would develop the actual conservation plans.

The Resources Agency, the CDFG, and later the USFWS all believed that wildlife conservation could only work if local government was in control of and committed to the

conservation program. When asked why the state was creating a new process to deal with the endangered species problem, one state official responded:

I realized that we were not going to be successful [in protecting biodiversity] unless we can get state and localities more capable and engaged at an earlier stage and weave this into the fabric of local land use decision making. Even the state can't just impose this stuff. They have to have some bottom-up involvement as well to be successful.

Both state and federal employees stressed that local acceptance of conservation planning was necessary because their agencies simply did not have the resources to monitor the day-to-day land-use decisions in California's multitude of local jurisdictions. A Resource Agency official stressed that in California land use is principally within local government jurisdiction.

In addition to garnering local acceptance, the CDFG and the Resources Agency believed that the program would have to be based upon scientific data that would be acceptable to all sides. Arguments over science are not uncommon in environmental planning.⁹ In this case, the developers said that they distrusted the USFWS and CDFG biologists because they thought agency biologists were unrealistic and uncompromising. One developer complained that the USFWS biologists in the local office "were more interested in being monkey-wrenchers than problem-solvers." Some interviewees also said that they did not believe government biologists could complete the necessary tasks expeditiously, and that a panel of experts could produce results faster. By contrast, some of the environmentalists said they trusted the agency biologists but not the politically appointed administrators; they believed that the science would get manipulated by the appointees for political purposes.

To achieve the goal of more consensually acceptable science, Fish and Game and the Resources Agency decided to put together the Scientific Review Panel (SRP), which would be a panel of esteemed scientists. According to Undersecretary Mantell, the SRP would have four tasks:

One is to identify the broad area that needs protection from a biological standpoint and that needs attention. Two is identify how that breaks down into subregional planning units. Three, they are developing conservation guidelines for the protection of the broad habitat as well as for the protection of the planning subregions. And fourth, they are advising the Department of Fish and Game as to what additional data are needed urgently to make decisions regarding protection of species and the habitat.¹⁰

⁹ See Ozawa, 1991.

¹⁰ Remarks of Michael Mantell, Undersecretary for Resources, California Resources Agency, before the California Fish and Game Commission, Long Beach, August 30, 1991.

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The Resources Agency and the CDFG took suggestions as to who should be on the SRP from members of the environmental and development communities with whom they had been consulting informally. Members from both the development and environmental communities said that some environmentalists, an academic ecologist, and USFWS put together a list of potential SRP members. On May 8th, 1991, a list of eight “all-stars” was sent out to the CDFG, the developer’s consultants, EHL, and NRDC. According to one environmentalist, the people who garnered complaints were bounced from the list. When Fish and Game and the Resources Agency picked the SRP, the scientists chosen were individuals that had been on the all-star list.

In addition to putting together the SRP during the spring and summer of 1991, Fish and Game and the Resources Agency worked on implementing legislation for the NCCP program and consulted informally with interested parties. For example, in a letter that was mailed to both environmentalists and developers on July 30th, 1991, the Undersecretary of Resources gave a progress report:

The process being developed for Natural Community Conservation Planning reflects discussions we have had with you and many other interested parties. It is being explicitly authorized in legislation currently moving through the California Legislature (AB 2172). . . .

The group of people with whom the state consulted was broader than the group that had been meeting informally with the USFWS, although some of the individuals were the same. For example, the Resources Agency also consulted with local government, NRDC, the EHL, representatives of agricultural and ranching interests, and a larger portion of the development community. Some meetings were also held with these interested parties. According to a Resource Agency official, “This advisory committee was an evolving thing, with no static membership. Sometimes people would come, sometimes people wouldn’t. . . . It was a fairly self-selecting group.”

In September 1991 the state legislature passed the Natural Communities Conservation Act (AB 2172). In a related matter, the state and federal resource agencies entered into a MOU that committed all of the signatory agencies to “adopt a coordinated regional strategy that ensures protection of biological diversity and the maintenance of economic viability throughout California.”

However, in August 1991 some friction developed between certain environmental groups and the Resources Agency when the state Fish and Game Commission (FGC) met to decide whether the gnatcatcher should be listed as a “candidate” for endangered status under the state ESA. At that meeting, the undersecretary of the Resources Agency appeared before the FGC and argued that the gnatcatcher should not be listed as endangered because the NCCP program would provide the bird with adequate interim and long-term protection. Although the FGC did not specifically refer to the NCCP pilot project when it decided not to list the

gnatcatcher, EHL, NRDC, and the Audubon Society stated in interviews that they believed the NCCP program had been improperly used by the Resources Agency, developers, and the FGC as an argument against the listing, which they thought was necessary. On the other side, the undersecretary explained that his actions were intended to strengthen the NCCP process:

Frankly, I had been given the word that no matter what I did the Fish and Game Commission was going to vote against the petition. So I was trying to keep the [NCCP] process going. I was afraid that the landowners would see a great victory [if the gnatcatcher was not listed] and not see any reason to participate in the process. I had long conversations with the Endangered Habitats League and NRDC and they just didn't buy it. They continued to believe that I had some influence over the commission.

The undersecretary also explained, "NRDC and EHL knew what the vote was going to be earlier that week, before I had even decided to go to the meeting."

The disagreement over whether listing should take place involved a dispute over whether interim measures could be developed to protect the gnatcatcher adequately during the time that the regional NCCP and then subregional NCCPs were developed. The EHL, the NRDC, the Audubon Society, and others argued that only listing could provide the regulatory structure that could protect the gnatcatcher. Before the FGC, however, the undersecretary argued that the NCCP program would provide a number of other adequate interim protection measures:

We are in the process of making significant regulatory and recommending significant statutory changes to ensure that [coastal sage scrub] habitat continues to be adequately protected and even further protected and to provide sufficient incentives for landowners to participate and sufficient disincentives for those who choose not to participate. For example, we are in the process of designating coastal sage scrub as a Significant Natural Area under the Significant Natural Area program of the Department of Fish and Game. We are drafting changes to the California Environmental Quality Act, CEQA, regulatory changes that will require formerly ministerial or categorically exempt activities to become discretionary activities, thus fit under the requirements of CEQA and environmental impact report statements.

We are moving towards establishing a permitting program under Section 2000 of the Fish and Game Code and changes in regulations under that provision for wildlife within designated significant natural areas. We are tightening up enforcement penalties so that those who violate the law within the designated significant natural area will pay severe penalties.

The undersecretary also promised that if “milestones are not being met, then the candidacy listing should occur — either on our own motion or on yours as part of an emergency action.” The undersecretary later explained that the Resources Agency was “trying to re-frame the debate from whether a certain species should be listed to what actions should be taken to conserve an entire habitat or natural community.”

The Creation of a More Formal Advisory Group

The NCCP pilot project did not move along as quickly as the Resources Agency had anticipated. When the SRP reviewed the existing data on coastal sage scrub, they discovered that the data were not as comprehensive as they were told it would be. Consequently, the SRP needed more data to complete its assigned tasks. The CDFG also had trouble meeting the tight time schedule. Because the NCCP program was largely a new approach to coordinating state, local, and federal conservation planning, the CDFG had to invent the program from scratch. A state official admitted that Fish and Game was “overwhelmed.” Tom Ried, a private consultant who had previously worked on HCPs, was hired by the Resources Agency to help the CDFG and the SRP with the project. Some of the environmentalists and developers had suggested this particular consultant. After interviewing potential consultants, the Resources Agency hired Ried.

In December 1991 the USFWS and the CDFG signed another MOU. The December MOU “implemented a policy of coordination and cooperation by and between the two agencies regarding the development of conservation strategies for effective, long-term protection of the Coastal Sage Scrub natural community and its associated sensitive species in southern California.”¹¹ The MOU eventually led to the creation of corresponding positions within each agency that allowed for direct communication and cooperation between the agencies on NCCP issues.

Other changes were made to the NCCP pilot project. In the fall of 1991, Carol Whiteside, the former mayor of Modesto, was brought in as part of the Resources Agency’s team to help represent that agency. Several interviewees stated they believed that, as a former mayor, Ms. Whiteside was brought in to help represent the interests of local government. After the FGC meeting, the Resources Agency also put together a more-formal advisory committee composed of local officials, developers, and environmentalists. Carol Whiteside called this the founders group, and noted that the Resources Agency had looked for people who “were knowledgeable and sophisticated about the issue.” She said the Resources Agency also wanted “representation geographically” and “people that we knew and who would be constructive.” Both developers and environmentalists from the founders group said that the group was also seen as an alternative forum within which their differences could be resolved. The members

¹¹ Memorandum of Understanding By and Between the California Department of Fish and Game and the United States Fish and Wildlife Service Regarding Coastal Sage Scrub Natural Community Conservation Planning in Southern California, signed December 4, 1991, page 1.

said that at times they also tried to work out their own differences away from the formal meetings called by the Resources Agency and the CDFG.

The meetings of the founders group were arranged by the Resources Agency and CDFG with the help of the California Environmental Trust, which is a nonprofit organization that agreed to help run the planning process. Meetings of the founders group were fairly informal. There was no attempt to use special facilitation or mediation techniques. Meetings would be set up about a week ahead of time. The participants disagreed as to whether agendas were sent out ahead of time. Documents that the founders group reviewed (such as the Process Guidelines and Conservation Guidelines, which are discussed below) were prepared by the CDFG, the Resources Agency, the SRP, and Tom Ried, the outside environmental consultant.

There were also smaller face-to-face meetings between different combinations of the participants as well as numerous one-on-one telephone calls and conference calls. Votes were not taken; instead, the participants would comment on and discuss proposed elements of the NCCP program that the state brought to the meetings. The founders group did manage to forge agreements on particular issues and particular language used in NCCP documents. Still, the Resources Agency and Fish and Game made final decisions as to the content of the enrollment forms, Process Guidelines, and Conservation Guidelines. As a Resource Agency official explained, “We never said that if they [in the founders group] agreed among themselves that it would be accepted by the state government — much to the unhappiness of the [program’s eventual] opponents.”

Initially, representatives from Orange and Riverside counties also attended meetings. The counties, however, decided that they did not have the time or resources to attend the meetings. When local officials in San Diego County were interviewed, they said they had felt somewhat slighted by the regional NCCP process. San Diego already had three extensive HCP planning processes underway and they wanted representatives from all three processes to participate in the regional NCCP process. A staff person from one of the programs in San Diego County complained that their programs had already developed their own standards and processes, and that the NCCP program had then created another layer without closely consulting with the San Diego programs. This staff member thought that representatives from all of the San Diego programs should have been involved in creating the NCCP program. A Resources Agency official explained that the agency feared the process would become too unwieldy if representatives from all of the San Diego programs were included in the founders group meetings. As will be discussed below, however, Orange and San Diego counties became central participants later during the signing of enrollment forms, the designation of subregions for planning, and the negotiation of planning agreements.

The interviewees disagreed about how well the meetings and the program were run. While interviewees also disagreed about whether agendas were prepared before meetings, they agreed that materials to be discussed at the meetings were not available for review beforehand, which, according to a state official, “was always a point of contention.” One environmentalist complained, “I got the feeling that they didn’t do anything between monthly meetings. They

would whip something out at the last minute.” Similarly, a developer felt that “staff work on the enrollment forms was all very last minute.” The developer also complained that the program “lacked . . . overall day-to-day leadership,” that roles were “ill-defined,” that there was “no synergy,” and that “no one had control of all of the dials.” The above-quoted environmentalist and developer also agreed that a stronger facilitator would have helped the process.

On the other hand, another developer disagreed and said, “The state had high level talent focused on [the NCCP Program]. I don’t think it suffered from lack of attention.” This developer also thought that the meetings were not that important. According to this developer, “Much more work was done through the informal process than at the meetings.”

Many of the interviewees discussed the size of the commitment that was necessary for such a difficult process. A state official stated that CDFG “institutionally was not prepared for this kind of undertaking.” Moreover, some of the participants admitted that they were not able to give the process the time it required. One developer explained, “I helped get it going, but . . . I could not justify the expenditure of time.” One environmentalist lamented that the other environmentalists had a spotty attendance records, which hurt the process.

Biological Survey Guidelines

In February 1992 the SRP and the state issued biological survey guidelines after making revisions based upon comments on a draft version by the founders group and the public. The primary purpose of the survey guidelines was to establish methods and standards for collecting data on three species that had been chosen as representative of the coastal sage scrub natural community. In addition to the gnatcatcher, the survey guidelines focused on the cactus wren and the orange-throated whiptail lizard. The information derived from the surveys would be used by the SRP as well as by local governments when they prepared subregional NCCPs. According to one of the environmentalists, some members of the founders group did have a few problems with an earlier draft of the survey guidelines, but the founders group only needed a few hours to find language on which members agreed. Resources Agency staff, however, said that the founders group did not do this type of negotiated drafting of language. Despite this disagreement over how the Survey Guidelines were produced, no one in the group challenged the guidelines on scientific grounds.

One potential problem with the survey guidelines, however, was that some local governmental bodies had already performed biological surveys that did not conform precisely with the guidelines. Local officials and developers were particularly worried about the cost involved in following the guidelines. For example, local officials in San Diego said they were very worried about this problem when the guidelines were issued. In recognition of this fact, the state decided the survey guidelines did not have to be precisely complied with as long as the data used to prepare subregional NCCPs was of similar quality.

Interim Protection and Disagreements Over the Voluntary Enrollment Forms

The issue of interim protection during the planning process for coastal sage scrub and the gnatcatcher proved to be particularly difficult. The Resources Agency, after consulting with its lawyers, determined that without more scientific data any contemplated interim controls of a statutory or regulatory nature might be held to be either violations of the due process and equal protection clauses of the Constitution or an unconstitutional taking. Thus, the Resources Agency and CDFG backed away from regulatory-type interim protection. Consequently, they began to develop voluntary “enrollment forms.” By signing an enrollment form, private landowners and local governments would voluntarily agree to “enroll” coastal sage scrub of their choosing into the NCCP program and to manage that land in compliance with conservation guidelines that would be developed by the SRP, the Resources Agency, CDFG, and with input from the USFWS. While CDFG was supposed to produce these forms by November 1991, drafts were not ready until 1992. Several environmentalists said that when the Resources Agency decided it could not produce the interim controls that it had outlined at the FGC hearing in August of 1991, it should have requested that the gnatcatcher be listed; they believed that by failing to do this the agency had gone back on a promise.

In late winter and early spring of 1992 the voluntary enrollment forms became a source of controversy within the advisory committee. An early version of the forms had been prepared by CDFG staff and reviewed by the advisory committee, and would have placed special restrictions on coastal sage scrub during an 18-month planning process. Local governments would have needed the consent of the CDFG and the USFWS before approving developments on coastal sage scrub. Environmentalists liked the guidelines because most of them believed that local elected officials were too deferential to the development community. One environmentalist described local governments as “the very entities who are least capable of protecting resources.” While a Resource Agency official admitted that some local governments did not have good track records, he believed that some environmentalists did not understand the central and unavoidable role of local government:

There are some legitimate and some not so legitimate reasons [for distrusting local government]. The legitimate ones are [that the environmentalists] have seen what local governments have done, particularly in southern California over the last decade. [Environmentalists] didn't have a lot of faith in [local government's] ability to follow through. The other side is I have found a serious lack of understanding in environmentalists of the land use decision making process — where to plug in, what buttons to push. It was just dismissed. Local government [according to these environmentalists] was corrupt; it only did what developers wanted them to do. Therefore, they didn't spend any time trying to learn about it and how to work it and didn't take it seriously when we talked about it.

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Employees of the state and federal wildlife agencies were split in their attitudes toward local government and developers; staff-level employees tended to distrust local government and push for greater oversight, while those at the administrative level believed that a strong top-down approach was impractical and that conservation planning could only succeed if local government genuinely “bought into” the NCCP program. According to one Resources Agency official, strong local involvement was needed because “land use is legally *local*.” A land use lawyer for environmental groups, however, complained that the Resources Agency was ignoring the fact that federal and state governments restricted local land-use authority concerning such issues as wetlands, coastal areas, the siting of hazardous waste facilities, and even housing. A state official argued that all of these areas of state involvement in land use were the result of special legislation and that the Natural Communities Conservation Act, as written, did not supersede local land use authority in this manner. On a practical level, interviewees from CDFG, USFWS, and the Resources Agency all argued that local control was necessary because the state and federal government could never “micro-manage” such a huge area.

The role of local government versus the state and federal government and the adequacy of the interim controls continued to be difficult issues. Most of the environmental groups expressed unhappiness over the direction of the NCCP/coastal sage scrub pilot project in this area. For example, in a letter to the Resources Agency dated December 17, 1992, the NRDC, EHL, the Planning Conservation League, and the National Audubon Society protested the direction of the project:

Throughout 1992, the NCCP Program has been incrementally modified to grant more survey and habitat reserve planning to local governments. This is partially in response to budgetary constraints, and is also driven by the political demands of local government and landowners to retain control over local land-use decisions.

They asserted that as the program had developed, it had in their view improperly “relegated CDFG and USFWS to mere commentators.”

The degree of controversy over interim protections can be seen in a letter dated May 27, 1993, from Senator Dan McCorquodale, who had been Senate Floor leader for the Natural Communities Conservation Act, to Secretary of the Interior, Bruce Babitt:

I am . . . very concerned by the total lack of enforceability of effectiveness of California’s Natural Communities Conservation Program. I was the Senate floor leader for the original bill that created this program in 1991. I urged my colleagues to vote for this bill despite the sketchy language in [it] because I had a commitment from the administration that they would support a bill the following year to add the environmental protections and enforcement authority necessary to make

this meaningful program. Unfortunately, the administration did not honor that commitment. Consequently, the state's program does not insure protection of the habitat while the plans are being developed. . . .

Both the Resources Agency and the development community disputed this accusation. They argued that one of the revolutionary aspects of the program was the fact that developers and cities had voluntarily agreed to protect a large percentage of coastal sage scrub under their control. By getting voluntary compliance, a state official explained that "we are beyond the confines of regulation and into negotiation and some sort of shared vision, and that is unusual for government and the private sector." For example, according to the Orange County Director of Planning, when one counted state and federal lands as well as landowner and local agency enrollments, more than 90 percent of the coastal sage scrub in Orange County was voluntary under protection.

The counties of Orange and San Diego and some large land owners were the biggest supporters of the NCCP program and the use of Enrollment Forms. Riverside County, however, chose not to participate in the enrollment program because of fiscal constraints and a perceived lack of authority under the program. In a letter to the Resources Agency, two supervisors wrote:

Our concern is that jurisdictions which enroll in the NCCP take on the responsibility to regulate land use under the new state law. Unfortunately, we are not given adequate or clear legal authority for enforcement. To overcome this effect on local government, implementation must evolve to include specific, enhanced CEQA regulations, and more clear-cut authority to enforce agreements.

Even with these assurances, in these lean economic times, it is difficult to justify the cost of enrollment without state participation in the funding of county-wide NCCP's.¹²

The environmentalists stated that they continued to believe that the Enrollment Agreements were illusory. NRDC has publicly stated that it left the program for this reason. In a recent article, the NRDC stated that "the program foundered, and, in early 1992, because the Wilson Administration refused to support the need for interim protection of the gnatcatcher during the planning process, we resigned from the steering committee . . ." (Reynolds, 1993: 2). In interviews, the Resources Agency disputed this statement and asserted that initially NRDC told them that they were leaving the process because NRDC had neither the resources

¹² Letter from Supervisors Cenicerros and Younglove to Secretary Douglas Wheeler, June 2, 1992. The Resources Agency believed that local governments were particularly concerned about the cost of data collection pursuant to the NCCP guidelines.

or the expertise in conservation biology to participate effectively, and that only later did NRDC say that they had left the program because of the lack of interim controls. The Resources Agency further argued that NRDC was taking a position that would have caused some developer and local government representatives to leave the process. Moreover, even though all of the interviewees mentioned that NRDC “walked out” of the process, the Resources Agency points out that NRDC representatives never completely extricated itself, that it still kept commenting on elements of the program and at times attended meetings. One state official speculated that those who were not fully satisfied with the NCCP program may have stuck with it because “they knew we could keep going without them.” Indeed, even though the EHL was dissatisfied, it did not leave because it believed that it had to continue to represent environmentalists on the founders group.

Litigation Complicates the NCCP Planning Process

The NCCP program was complicated by the fact that the development community and the NRDC were involved concurrently in litigation over three proposed toll roads for Orange County. According to the NRDC, the toll roads would destroy large amounts of coastal sage scrub by inducing growth in undeveloped areas. Throughout the NCCP planning process, the pending listing petitions and the toll road litigation were major topics of discussion as well as sources of friction and distrust between the parties. The developers wanted the NRDC to suspend its petition, and the NRDC wanted the development community to stop work on the toll roads. The NRDC and other environmentalists were reluctant to put the petitions on hold because they did not see any other way to give the gnatcatcher and coastal sage scrub enforceable protection. One agency employee, however, claimed that the NRDC was torn between the allure of ecosystem planning and the desire to stop the toll roads. On the other side, the agency employee claimed that the developers were not being specific enough about what they were willing to do to protect the gnatcatcher during the planning process.

One byproduct of the toll road litigation was that participants from both government and the development community said that they distrusted the NRDC and questioned its motives. One developer believed that NRDC always had a second agenda within the NCCP process, beyond protecting coastal sage scrub:

I believe that the real goal of NRDC is to fundamentally force a regional planning and environmental planning approach to the remaining development in southern California through the Endangered Species Act. And also I believe they were interested in using it as a tool to block the transportation corridors in Orange County.¹³

¹³ For more on the toll road controversy, see William Fulton, 1992.

Components of the Program Are Completed

According to the Resources Agency, they stopped using the founders group as a formal body because too many people wanted to be on it. One official explained, “We stopped [the founders group] meetings because there was such anxiety [among nonparticipants] because people didn’t feel part of it and the two-tiered system. . . . I did sometimes call in landowners or conservationists [to talk about the program], but the founders group stopped meeting.”

To accommodate the growing interest in the development of the NCCP program, the Resources Agency, the CDFG, the USFWS, and the SRP began to hold public meetings to discuss the various elements of the NCCP program as they were developed. These meetings sometimes attracted as many as 100 participants. Another state official explained how the big public meetings were not really “working” meetings and how the members of the founders group were still consulted. “We would realize that the meeting of 100 didn’t get things done, so the night before we would have dinner with the selected people. . . . That and a lot of phone calls.” One environmentalist referred to the big public meetings as “dog and pony shows” where the SRP and outside consultant would tell everyone what was going on and respond to immediate questions and reactions. The environmentalist believed that large meetings could not produce a meaningful dialogue because participants didn’t have a chance to receive materials in advance.

Another important change occurred in January of 1993, when the USFWS assigned Gail Kobetich to oversee its part of the process. Both the Resources Agency and environmentalists had put pressure on the USFWS to assign Kobetich to the project, as he had previously worked on similar conservation projects (one person described him as the “endangered species guru”). Kobetich also had a reputation as a good group process person who looked for workable solutions within the range of what was politically possible. Several interviewees stated that before his arrival they had difficulty working with an “uncompromising” USFWS field office.

In September 1992 the Resources Agency and CDFG published the final process guidelines. These guidelines had been formulated by people from CDFG and the Resources Agency and then drafted by Tom Ried, the hired consultant. Changes were made after receiving comments from the founders and the public. One participant from the founders group described the effort as “torturous” and said that through conference calls they negotiated over particular words and phrases.

Although the process guidelines explained the steps that had comprised the regional portion of the NCCP program, more importantly they explained the process by which local or “subregional” conservation plans would be prepared and how the CDFG and USFWS would approve such plans.

An essential component of the NCCP/coastal sage-scrub pilot project was the designation of subregions for planning at the local level. The actual conservation plans that will control land uses will be prepared by local governments at the subregional level. Subregions are intended to provide local governments with the maximum flexibility in designating planning areas as long as the designation is biologically justifiable. Through the

Natural Communities Conservation Planning

establishment of subregions, both biological and political concerns are taken into consideration. According to the Orange County director of planning, the designation of subregions was a collaborative effort that involved the county, the CDFG, the USFWS, the SRP, the cities, the Resources Agency, conservation organizations, the transportation corridor agencies, affected landowners, and the utilities. He believed that in Orange County everyone was generally satisfied with the way the subregions were designated.

Local governments also proposed agencies to act as lead or coordinating agencies for preparing subregional plans. In Orange and San Diego counties, local jurisdictions, landowners, CDFG, and USFWS also began to negotiate “planning agreements,” which were negotiated documents stipulating how the subregional planning process would comply with the process and conservation guidelines.¹⁴

The last product of the regional NCCP stage was the Natural Community Conservation Guidelines, which a state employee described as conservation biology guidelines and performance standards for the subregional NCCPs. The conservation guidelines were based on the work of the SRP. Multiple drafts of the conservation guidelines were prepared by the CDFG, consultant Tom Ried, and the SRP. These drafts were circulated for comments among those who had been part of the founders group. Comments were also solicited from the public. According to some of the interviewees, the development community initially objected to the conservation guidelines because they thought the guidelines used language that created duties to protect more species. Informal discussions between members of founders group, the state, the SRP, and the private consultant took place through numerous phone calls and faxes. Participants in those discussions stated that the discussions concerning the conservation guidelines were very contentious and that some participants threatened to stop supporting the program. These same interviewees claimed that many of the disagreements and misunderstandings concerning the conservation guidelines eventually were worked out through a conference call in which The Nature Conservancy acted as a facilitator.

The Gnatcatcher Receives Federal Listing

A major contextual change in the NCCP program occurred on March 26, 1993, when Interior Secretary Bruce Babbitt announced that the USFWS would list the gnatcatcher as a threatened species. Environmentalists and some local officials said that the listing made the most contentious issue in the NCCP program — the disagreement over whether adequate interim protection for coastal sage scrub existed — a moot issue. With the listing of the gnatcatcher as threatened, the bird was protected by federal law. Moreover, the bird’s habitat,

¹⁴ The planning agreement must include a map of the planning boundary, a lead or coordinating agency, a list of affected jurisdictions, a list of species of concern to be addressed in the subregional NCCP, identification of parallel permits (which will as a practical matter always include a Section 10(a) permit under the federal ESA), and public participation provisions.

coastal sage scrub, received indirect protect under the federal endangered species act.¹⁵ Resources Agency officials, however, believed that the listing of the gnatcatcher did not have a major impact on the interim protection issues in the NCCP program because the level of voluntary enrollment of coastal sage scrub in Orange and San Diego counties was already high. These officials stated that the listing did have a significant impact in that it elevated the level of partnership between the state and federal resource agencies.

By listing the gnatcatcher as threatened rather than endangered, the USFWS had greater flexibility. This flexibility allowed it to propose a special rule under which the USFWS would allow development to “incidentally take” gnatcatchers if the development was covered by a subregional plan prepared under the NCCP program, provided that the plan met federal standards and was approved by USFWS. Moreover, while subregional plans are being developed, the special rule would allow up to 5 percent of the coastal sage scrub to be developed as long as the developer participates in the planning process and the development does not eliminate future planning options by doing something like severing a wildlife corridor. The decision to allow development of 5 percent of the coastal sage scrub was based upon the work of the SRP, the CDFG, and the Resources Agency, which had already identified this level of development as consistent with the planning process and long-term conservation goals. According to a state official, the special rule of USFWS “essentially delegated implementation of the listing to the NCCP program, which was unprecedented.”

The listing of the gnatcatcher and the issuance of the final special rule largely coincided with the issuance of the final conservation guidelines. With the signing of planning agreements in Orange and San Diego counties, the regional portion of the NCCP/coastal sage-scrub pilot process ended, and now the planning process is ongoing at the subregional level.

Continuing Cooperation Among CDFG, USFWS, and Local Government

A number of the interviewees mentioned that an important outcome from the NCCP program has been the ongoing coordination between the CDFG, the USFWS, and local government in conservation planning. The CDFG and the USFWS now have essentially parallel positions that oversee each agency’s work on the NCCP program. The employees in these positions continue to work closely together and try to coordinate their positions. In October 1993, The Nature Conservancy helped to solidify this working relationship by holding a workshop on teamwork for all USFWS and CDFG employees who work together on NCCP issues. Fish and Game’s lead person stated that CDFG and USFWS were “essentially in lock-step, even if there is some difference of opinion.” When discussing the working relationship of CDFG and USFWS, the lead person from USFWS said, “This type of close cooperation between the Department of Fish and Game and the Service is different. It’s

¹⁵ See *Palila v. Hawaii Department of Land & Natural Resources* cases in the references to this section on p. 208.

working well.” A person from the Resources Agency, however, seemed to think that the coordination between CDFG and USFWS was not as good as it could be.

To help the CDFG and the USFWS work better with local government, the Resources Agency and the University of California at Davis put on a conference for employees of these two agencies on local land-use law and processes. A number of the groups that had been involved in the NCCP program also put on a conference with the University of California at Los Angeles on the NCCP program for local government, developers, environmentalists, and anyone else who wished to attend.

A further level of coordination occurs by having the CDFG and the USFWS employees who oversee the NCCP program sit as members of the advisory committees for the development of subregional NCCPs in Orange and San Diego counties. In San Diego County, local officials said they felt that CDFG and USFWS were now more involved in the multiple conservation planning efforts in the county. Because the CDFG and the USFWS participate at the local level, they should be able to ensure that the locally prepared, subregional NCCPs meet both state and federal requirements. One agency biologist explained how membership on these advisory committees involves walking a fine line:

We can only really advise and do so in such a way that it doesn't look like the agency is putting the subregional NCCP together. Then everyone would say it's the agency's plan, we don't have any buy-in, so let the agency implement it. It is a fine line to walk. So I listen intently and if it looks like people aren't addressing issues that need to be addressed or that will run afoul of the Endangered Species Act, I tell them.

Conclusion

This case demonstrates that even if a concept has broad support, working out the details of a program to implement that concept can be very difficult. Moreover, as the size of the planning area and the “stakes” increase, the levels of complexity and controversy can also increase. Still, if the basic concept is attractive, the stakes are high, and the planning process appears to be moving forward, then interested parties seem to be unwilling to walk away from the process even when they are dissatisfied.

In this case, the group process for the regional portion of the NCCP/coastal sage-scrub pilot project was constantly changing and it never became as structured as group processes in other case studies. In fact, the group processes for the subregional NCCPs, particularly in San Diego County, are much more structured. Despite the less-structured interaction with the interested parties, Resources Agency staff believe that the involvement of these parties was adequate to build a workable program and to avoid any lawsuits to date. Some environmentalists, however, claimed that lawsuits were only avoided because the federal government listed the gnatcatcher as threatened.

Staff played important roles in this case. The scientific review panel performed a critical role by establishing scientifically based principles for planning and by reducing fights over science. The Resources Agency and the Department of Fish and Game (with the help of some developers and environmentalists) were able to get legislation for the program passed. These agencies, along with the SRP and the outside consultant, also drafted the guidelines and performance standards for the subregional plans.

The NCCP/coastal sage-scrub pilot project also created an unprecedented level of cooperation between the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and local government. The person in charge of the NCCP program at CDFG and the person in charge of endangered species problems in California at USFWS both said that they are constantly in close contact. Both now also participate on the advisory committees for a number of subregional NCCPs.

Finally, the creation of a two-stage process, the regional and subregional stages, made an unthinkable task manageable — although still very difficult. Rather than trying to plan for a three-county area from Sacramento, the Resources Agency and Fish and Game used the regional stage to do only what was necessary to create a framework and standards for subregional planning. Furthermore, this bifurcated approach left some of the tough decisions for local government, which must implement them and live with the consequences.

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Case 8

COACHELLA VALLEY HABITAT CONSERVATION PLAN

by Robert Thompson

Overview¹

This case involves a process that lasted for approximately three years, during which developers, a local environmental group, The Nature Conservancy, the U.S. Fish & Wildlife Service (USFWS), the Bureau of Land Management (BLM), the California Department of Fish and Game (CDFG), eight cities, and Riverside County worked out a mutually acceptable solution to the contentious problem of protecting endangered species in a rapidly growing area. From the 1950s through the 1980s, large portions of the Coachella Valley desert were converted into suburban housing and resort communities. By the late 1970s this conversion of desert habitat, along with the disruption of ecosystem functions by highways, railroad tracks, wind breaks, off-road vehicles, agriculture, and flood control projects, was pushing a number of species in the valley toward extinction.

In the mid-1970s a group of biologists and government resource managers was concerned about the loss of sand dune habitat in the Coachella Valley. In the hope of gaining protection for a portion of the dunes, this group worked to get one of the dune's resident species, the Coachella Valley fringe-toed lizard, listed as "threatened" pursuant to the federal Endangered Species Act (ESA). Due to the efforts of this group, the lizard was listed as endangered in 1980.

After the lizard was listed, not much happened until 1983. In that year a local environmental group, the Coachella Valley Ecological Reserve Foundation (ERF) threatened to stop developments within the fringe-toed lizard's habitat unless developers agreed to purchase lizard habitat to replace habitat destroyed by the development. Biologists from the University of California at Riverside (UCR) and the Boyd Deep Canyon Desert Research Center (Deep Canyon), which is part of the University of California Natural Reserve System, formed the core of the ERF. The developer whose project became the earliest focal point of the controversy initially considered fighting the environmentalists in both the legislature and the courts.

Rather than fighting, environmentalists, local government, and the developer took the advice of a USFWS staff member who suggested that the parties try to prepare a plan

¹ The following case study is based primarily on face-to-face and telephone interviews with the participants. The author also consulted Beatley (1992), Bean et al. (1991), and Selzer (1988), as well as newspaper articles and a video entitled, "The Coachella Solution."

Coachella Valley Habitat Conservation Plan

cooperatively that would allow for both development and endangered species protection. The product of that effort was the Coachella Valley Habitat Conservation Plan (CVHCP), which set up three reserves that would be managed for species protection, research, and passive recreation. The effort required cooperation among state and federal agencies, local government, The Nature Conservancy, as well as the development community and the ERF. Representatives from these groups had to coordinate on such issues as the acquisition of scientific data, the location and size of the reserves, the funding of land purchases, and the management of land within and near the reserves.

The level of cooperation in this case is noteworthy considering the extreme level of distrust that existed between the parties at the beginning of the process. The success of the process appears to have resulted from a number of factors. First, if the process failed, the ERF, the USFWS, and the development community all faced the possibility of being put in substantially worse positions; or stated differently, the CVHCP process provided all the parties with the opportunity improve their situation. Second, several of the parties agreed to take risks early in the process and to trust the other parties. Group trust was built when the other parties lived up to their promises. Third, the group was able to create a broadly shared vision that in some respects transcended their individual interests. Fourth, the official meetings of the full group always included lunch, which allowed participants to get to know one another. Consequently, the participants could not easily stereotype one another. Fifth, the participants realized that their respective talents and resources complemented one another; they realized that they were more likely to solve the complex problem working together than individually. In fact, the final Habitat Conservation Plan could only work if all the major stakeholders took part. (One participant described the CVHCP as a house of cards that would have collapsed if anyone had pulled out.) Sixth, those who ran the process continually stressed that the group was making progress, even though at times it was slow, and this emphasis reinforced the idea that working with the group was worthwhile. Finally, peer pressure was an effective tool for keeping the group together when tough decisions had to be made. For example, peer pressure was also important when it came time for the cities to approve the CVHCP; the participants emphasized to each city that if any city failed to approve the CVHCP, then the USFWS would not approve the plan and everyone would be back to square one.

The Coachella Valley Habitat Conservation Plan has largely been implemented successfully. Most of the land for the reserve has been purchased, illegal off-road vehicle riding has been stopped, and some restoration efforts are underway. Moreover, the USFWS, BLM, CDFG, the California Department of State Parks, and The Nature Conservancy have continued to work well together as joint managers of the reserve. Still, there have been problems. Local government has not been involved in the management of the reserve, which has made coordinating with local government more difficult. Moreover, because local government has not stayed involved in the CVHCP, some participants fear that agreeing to needed amendments to the plan will prove difficult. Finally, because the participants at times

used vague language in the CVHCP, there have been some disagreements over what the group intended. So far, however, the participants have managed to resolve their differences.

The Basic Story

The Coachella Valley and the Decline of the Sand Dune Ecosystem

The Coachella Valley is located in Riverside County about 100 miles east of Los Angeles. It is surrounded by mountains on the north, south, and west, which protect the valley from Pacific storms. While the valley receives little rain, there is a large aquifer beneath the desert floor. Natural oases are formed where water percolates up through splits in the bedrock caused by earthquake faults. The availability of ground water has allowed the valley to be turned into an international winter resort community, with wealthy communities such as Palm Springs and Rancho Mirage. In the 1950s approximately 15,000 people lived in the valley and there were about six golf courses. By 1980, the population exceeded 133,000 and the number of golf courses exceeded 60. During the nonsummer months, seasonal visitors can double the population.

The building boom in the valley converted a large portion of the desert into suburban housing and resort communities. The loss of habitat was particularly apparent to biologists from UCR and Deep Canyon. Researchers working at Deep Canyon had produced a series of books on the flora and fauna of the desert. For example, one study produced a book on the numerous species of ants in the desert, and a later book dealt with birds. The scientists wanted to use the same sites for each successive study, but started losing sites to development. In particular, sand dunes were rapidly disappearing, along with their specialized flora and fauna. In addition to the conversion of desert habitat into housing and golf courses, the dunes in many cases had been cut off from their sand sources. The sand that forms the dunes is normally brought down from the mountains by wind and occasional flash floods. Then the wind blows the sand across the valley floor until the wind velocity drops and the deposited sand forms dunes. The construction of highways, railroad tracks, wind breaks, and flood control projects in many cases has severed the flow of this eolian sand. Without replenishment, the dunes will either erode away or be overtaken by vegetation. In either case, the species dependent on the dunes will die off.

Because the UCR and Deep Canyon biologists knew that a number of species were already threatened with extinction, they thought they could use the ESA to create a reserve on the valley floor.² Because the federal ESA prohibits the “taking” (i.e., killing) of any species

² Endangered Species Act of 1973, PL No. 93-205, 87 Stat. 884 (codified at 16 U.S.C. §§ 1531-1541) (1988). For a full explanation of the listing process, see Bonnett and Zimmerman (1991) and Bean et al. (1991). “Endangered species” means any species that is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. § 1532(c) (1988)). A “threatened species” is one that is likely to become endangered in the foreseeable future. 16 U.S.C. § 1532(20) (1988).

that is listed as “endangered” and also prohibits the destruction of a significant portion of that species’ habitat, the presence of a listed species on a project site could stop a proposed development. The biologists decided that because one of them had already done work on the fringe-toed lizard, they would try to get it listed as an “endangered” species pursuant to the federal ESA. Moreover, the lizard was a more appealing animal than other possible candidates, such as the giant red velvet mite and the dune cockroach. These scientists and others formed the Coachella Valley Fringe-toed Lizard Advisory Committee, and due to their efforts the lizard was listed by both the state and federal governments in 1980.

The Confrontation Between Developers and Environmentalists

After the lizard was listed not much happened. Neither the USFWS nor the state had funds to acquire a reserve for the lizard. A biology professor from UCR said that he had tried repeatedly but unsuccessfully to get the southern California office of The Nature Conservancy interested in the problem. He had also tried to get BLM to acquire land for a reserve, but he said BLM told him that it could not acquire the reserve on its own.

Then in 1982 and 1983 a number of factors began to come together. First, the USFWS reviewed the potential impacts of a development in the Coachella Valley because the Department of Housing and Urban Development was involved.³ USFWS issued a “jeopardy opinion” with mitigation requirements that were intended to protect the lizard. When the developer went ahead without complying with the mitigation requirements, USFWS went to court and got a temporary restraining order. The USFWS employee in charge said he believed that the enforcement action sent a message to the local development community that the federal government was serious about protecting the lizard.

Second, The Nature Conservancy received a large grant from the William King Mellon Foundation to acquire wetlands throughout the country. As part of this effort, the Mellon Foundation wanted the Conservancy to acquire some of the palm oases that happened to border lizard habitat. These beautiful oases later became an important focal point for the support of the CVHCP. The presence of the oases and the Mellon Foundation’s interest in the Coachella Valley caused the National Board of The Nature Conservancy later to encourage its western regional office to get involved in the CVHCP effort.

Also in 1982 the ESA was amended, and the local environmentalists believed that the amendments gave them a way to require private property owners to protect the lizard. The local environmentalists formed the ERF. Its most important members were a biologist from UCR and the director of Deep Canyon. While the Endangered Species Act did (and still does) prohibit the taking of a listed species, the 1982 amendments added flexibility to the ESA by

³ Pursuant to section 7(a) of the federal ESA, any federal agency that authorizes, funds, or carries out an action that might have an impact on a species protected by the ESA must consult with FWS. After review, the USFWS issues a biological opinion as to whether the agency’s action will illegally harm the species. The biological opinion can also include mitigation requirements that will avoid permanent harm to the species.

allowing private landowners to obtain an “incidental take” permit from the USFWS. The USFWS could issue an incidental take permit if a Habitat Conservation Plan (HCP) had been prepared and the USFWS determined 1) that the measures proposed in the HCP would mitigate the impacts of the taking, 2) that the plan would be properly funded,⁴ and 3) that the taking would not “appreciably reduce the likelihood of the survival and recovery of the species in the wild.”⁵ Once a plan had been approved, development could occur within the area covered by the HCP.⁶

The Ecological Reserve Foundation thought that possibly it could force a developer or the county to prepare a Habitat Conservation Plan for the lizard. Thus in 1983, when Sunrise Development Corporation (Sunrise) submitted plans for a resort development and the environmental impact report (EIR) indicated that there were no lizards on the site, local environmentalists saw an opportunity. The biologist from UCR described Sunrise’s EIR as “beautiful, with big glossy pictures and not worth a damn.” Deep Canyon’s director said that finding problems with the EIR was a “slam dunk.” Deep Canyon’s director sent a letter to Riverside County and Sunrise arguing that there were indeed fringe-toed lizards on the site and ERF demanded proper mitigation.

Stakeholders Decide to Work Together

At first, a typical battle between scientific experts seemed likely. Sunrise’s attorney described the situation well:

Interestingly, biologists hired by the developers seldom found fringe-toed lizards; when they did, they were in small, isolated, and scarcely populated pockets most often located on the outer perimeter of a proposed project. On the other hand, reports prepared by the environmental groups described the same piece of property as ankle-deep in lizards, and a site essential for the continued existence of the species.⁷

A county planner explained that this battle between experts left the county in a difficult position because the planners were not biologists capable of settling a scientific dispute among biologists.

The first meeting between Sunrise’s attorney and Deep Canyon’s director gave little indication that the problem could be resolved cooperatively. The director described the meeting as “about as friendly as a scorpion convention.” Rather than discussing what each

⁴ House Conference Report No. 97-837, 97th Congress, 2nd Session, 2871.

⁵ House Conference Report No. 97-837, 97th Congress, 2nd Session, 2870.

⁶ For more extensive discussions of Habitat Conservation Plans see Bean, Fitzgerald, and O’Connell 1991; Beatley 1992; Webster 1987).

⁷ Paul Selzer, 1988, p. 30.

side's interest was and looking for potential solutions, each side staked out its position. ERF felt that it was reasonable for Sunrise to replace and protect one acre of lizard habitat for each acre it destroyed. Sunrise's attorney responded that acreage in the habitat area was selling for approximately \$5,000 an acre, which meant that mitigation for the 550 acre project would cost \$2,750,000. Sunrise's attorney informed Deep Canyon's director that for that much money, Sunrise could wage an extensive legal and political battle. The director replied that the environmental community was also willing to fight in court. In short, the meeting did nothing to help resolve the conflict. Summarizing the outcome, Sunrise's attorney explained, "I left the meeting more than ever convinced that dealing with *them* on any reasonable basis was impossible. I conveniently forgot that I had not made one counter-proposal."⁸

Despite the inauspiciousness of this meeting, interested parties were already taking actions that would set the stage for cooperative planning. Representatives from the Ecological Reserve Foundation had already met with the USFWS to discuss the possibility of preparing a Habitat Conservation Plan for the lizard. The USFWS had approved one HCP for San Bruno Mountain in the San Francisco Bay Area, and the USFWS employee in charge of the Coachella Valley thought that such a plan might work well in the Coachella Valley.

The USFWS employee talked to the Riverside County planning director about the San Bruno Mountain HCP and the possibility of doing one for the Coachella Valley. The planning director liked the idea and suggested that the USFWS talk with Supervisor Corky Larson, who represented the Coachella Valley. The USFWS representative contacted both Supervisor Larson and Sunrise's attorney. Both Supervisor Larson and the president of Sunrise had already decided that they wanted to find a long-term solution to the problem. The USFWS representative felt that both the supervisor and Sunrise's attorney immediately saw the potential merit in preparing a Habitat Conservation Plan. A plan that was adopted would give the development community and local government certainty about where they could develop and it would eliminate costly project-by-project environmental studies, mitigation planning, and delays. As for the environmentalists, such a plan would replace haphazard and disconnected mitigation with a coherent and well-managed desert reserve.

While the preparation of a Habitat Conservation Plan offered a potential solution for both parties — developers would have long-term certainty and the environmentalists would probably get a better planned reserve — the HCP process did have two major drawbacks. First, according to the ESA, no fringe-toed lizards could be "taken" by development until the HCP was completed, which might take two to three years. The development community, however, felt that development could not stop during the interim. Indeed, construction was an important component of the local economy. Second, the HCP would not write itself. Someone had to bring the different parties together, run the process, and try to hammer out a workable plan.

⁸ Ibid.

To get beyond these two initial startup problems, the parties had to reach a compromise at the very start that involved risk and trust. Sunrise promised that it would pay its attorney to try to coordinate a HCP as long as USFWS allowed development to continue outside the “critical habitat” area.⁹ Sunrise’s attorney explained the compromise this way:

I said that I’ll talk to my clients and the environmentalists, but we need an informal understanding: If we do this, you [the USFWS] go away. We’ll bust our butts to get it done, but in the interim, you go protect polar bears and manatees.

But before Sunrise could go ahead with its project and future projects, the Ecological Reserve Foundation had to also agree to not push for enforcement of the ESA if Sunrise used its best efforts to put together a HCP for the valley. Deep Canyon’s director and Sunrise’s attorney worked out an agreement whereby the ERF agreed to withdraw its comments on Sunrise’s development without prejudice and the county would, as a condition of approval for the project, require Sunrise to use its best efforts to put together a Habitat Conservation Plan. The development community also agreed to pay a \$750 interim mitigation fee for every acre that was developed in the historic range of the lizard. This amount eventually was lowered to \$600 per acre after approval of the HCP.

Thus, everyone had to take a risk just to get the process going. The USFWS and ERF had to trust Sunrise to use its financial resources and influence with the local government and the development community; if the planning process failed, the development that had occurred in the interim would leave the lizard worse off. On the other hand, Sunrise had to trust the USFWS and ERF not to stop Sunrise’s development after construction had already begun, an action that would have left Sunrise with loan payments and construction costs, but with no salable units.

Early on, representatives of the ERF and Sunrise went to San Francisco to ask the California office of The Nature Conservancy to help with the development of the CVHCP. As has been mentioned above, the Conservancy already was interested in acquiring some palm oases within the critical habitat. The others, however, also believed that the Conservancy could be particularly helpful because it had experience working cooperatively with landowners as well as state and federal resource agencies. In fact, The Nature Conservancy representative did personally know the pivotal people in the USFWS and BLM. The Conservancy also had expertise in land acquisition, conservation biology, and reserve management.

Initially, the western regional office of The Nature Conservancy was reluctant to get involved. TNC had never worked on a project with so many players. Moreover, TNC had never worked on a land deal of the size that was being discussed. However, the Mellon

⁹ “Critical habitat” is the portion of the species’ habitat that the USFWS determines must be carefully protected or managed if the species is to survive. At the time the HCP process started, the USFWS had designated approximately 20 square miles as critical habitat.

Foundation was interested in protecting a portion of the Coachella Valley and it encouraged the national office of The Nature Conservancy to get involved in the lizard issue. In turn, the national office encouraged the western regional office to reconsider its initial reluctance to get involved.

According to Bill Mayhew of UCR, the beauty of the 1000 Palms Oasis was central to getting the Mellon Foundation and the national office of the Conservancy interested in the Coachella Valley. First, a luncheon was held for the board of the Mellon Foundation out at the oasis. The weather was perfect and everyone enjoyed the tranquil beauty of the setting. About a month later, Mayhew said that he was asked to show The Nature Conservancy's national board around the site. When Mayhew met the board members out at the site, he sensed that they were extremely unenthusiastic about acquiring land in the desert. During a walk through the site, however, Mayhew thought that some of the board members started to see the value of the site. For example, one board member was visibly pleased after Mayhew was able to show him birds that he had not seen before. In the end, the national office pressed the western office to get involved in the CVHCP effort.

Early on, the Ecological Reserve Foundation, the county, and Sunrise had decided that the HCP should be developed through a group process consisting of stakeholders. Sunrise's attorney and Deep Canyon's director tried to get every party with an interest in the outcome of the HCP to participate in its preparation. They formed an advisory committee that included the Coachella Valley Association of Governments (CVAG), BLM, CDFG, USFWS, the Coachella Valley Water District, the Riverside County Planning Department, ERF, the Agua Caliente Indian Tribe, Sunrise Development Company, and also The Nature Conservancy. They claimed that anyone representing a group was welcome to participate. Several interviewees felt that the process had not represented small landowners well.

The Advisory Committee at Work

The advisory committee operated on two levels. While the entire committee met almost on a monthly basis, key players interacted and worked together between official meetings. A great deal of work was done by Sunrise, the county, USFWS, The Nature Conservancy, BLM, and the Ecological Reserve Foundation. This smaller group did not necessarily meet as such, but instead interacted in whatever combinations were needed to address a given problem. The BLM, however, did not become an active participant until late in the process.

The advisory committee meetings were always lunch meetings at one of Sunrise's country clubs. One participant characterized the meetings as "nothing fancy." The group did not use a professional facilitator or any special facilitation techniques. Still, all of the interviewees agreed that the informality of the lunches was extremely helpful. The committee members came to see one another as real people. As Sunrise's attorney explained, "Instead of yelling at concepts, now they had to yell at people and they had to yell at specific questions. And they began to understand the position of the other interests and none of them was

outrageous.”¹⁰ According to the director of Deep Canyon, the informal lunches were important because “you get to know people and how they are, on a personal level. So you could appeal to each other on a personal level.”

Through this process many of the participants said that they gained an appreciation of the other participants’ positions. The environmentalists gained an understanding of the developers position. One environmentalist explained, for example, “After a while each side came to see the other side’s view. [The developers] were getting blind-sided. After they had loans, the rules were changed.” On the other side, “[The developers] discovered that the ‘tree-hugger’ we had previously seen only in hearing rooms disparaging our project was, in general, a rational person with real concerns about biological diversity and our ecosphere as a system.”¹¹ Even though parties did not always agree with one another’s priorities and the discussions were still at times “spirited,” the lines of communication always remained open.

Several interviewees stated that it was important for groups to send the same person to most of the meetings because it took time to build personal relationships, understanding, and trust. According to the USFWS representative, who has extensive experience with group planning processes, “It is very important to have the same people showing up to the meetings all the time. The new people aren’t aware of all the nuances and discussions from before and they might be coming from a different perspective than the last person they sent.”

The smaller working group developed agendas for the advisory committee meetings. Sunrise’s attorney would prepare and send out the agendas. The smaller group also reviewed and commented on drafts of the CVHCP that were prepared by consultants who were hired with Nature Conservancy funds and chosen through group consensus. The smaller group worked among themselves in an informal and fluid manner, trying to find solutions to problems before bringing the issue to the larger advisory committee. One participant said that much of this work was performed over the telephone. According to the USFWS representative, if The Nature Conservancy, ERF, Sunrise, and USFWS agreed to a particular solution to a problem, then the rest of the advisory committee would accept the solution. Both the USFWS representative and the Conservancy’s representative said they made sure that all the main players were apprised of any negotiations that took place away from the table. Neither of them completely “showed their hand,” but they kept everyone well enough informed to maintain trust.

The Nature Conservancy representative said that the smaller group would use informal networks to determine how the other advisory committee felt about an issue or proposal. Thus, the smaller group could be confident that a proposal would be approved by the full advisory committee. In fact, the smaller group tried to assure that they never needed to take a vote; instead, decisions were reached through consensus. The Nature Conservancy representative

¹⁰ The Nature Conservancy, 1988.

¹¹ Selzer, 1988, p. 32.

believed that not much work was accomplished in the big meetings. Instead, the large meetings were a way of keeping the stakeholders informed. These meetings also probably helped to maintain trust and to give the wider group of stakeholders a sense of ownership in the CVHCP.

The meetings of the full advisory committee often consisted of reporting on progress, discussing proposals, and reviewing draft documents. Sunrise's attorney and The Nature Conservancy's representative tended to run the meetings, but they did not use any special facilitation methods. Participants did say that Selzer ran the meetings well. An agency participant said that Sunrise's attorney could fight intransigence by being "either accommodating or blustery, whatever it took." Although the Conservancy and the USFWS were critical participants in the planning process, a local planner thought it important that representatives of both organizations said from the onset that they were not there to take over the planning process.

The Nature Conservancy representative said that he always tried to stress the progress that had been made, even when the progress had been limited. He believed that a sense of progress kept the group involved and built a commitment to the process. Later on, when he was appealing to others for their continued support for the CVHCP process, he would point to how far the group had come and how much progress had been made. Indeed, the participants did seem to believe that progress was being made. One environmentalist said, "Often we hashed over the same old ground, but we'd come closer each time." A local planner described the process somewhat similarly: "We started out coarse and refined [the HCP] as we got more information."

According to the interviewees, another key to the success of the CVHCP process was that the participants tried to keep their constituencies apprised of the work of the advisory committee. Several participants said that the planner from Riverside County, Sunrise's attorney, and CVAG staff all did a good job keeping elected officials from the cities and county well informed about the CVHCP's progress. One elected official said that she did not have to attend all of the meetings because the participants kept her well informed. In the end her support was pivotal. Some of the participants also stated that The Nature Conservancy and the Ecological Reserve Foundation were more reliable than other environmental groups with which they had dealt. When speaking about other environmental groups, Sunrise's attorney complained, "These environmental groups will sit in there and agree to stuff or at least not object and then turn around and threatened to sue." But in the case of the CVHCP, he came to trust the environmentalists. Similarly, the state director of BLM stated that he found the Conservancy to be more reliable than some other environmental groups: "If The Nature Conservancy gets involved, these things usually don't fail. They aren't going to walk away and leave you hanging."

The Conservancy's representative stated his belief that it was important in this type of process to learn early on about the complexities of the situation and the interests of the participants. The only way to figure these things out is "to just keep asking questions." For example, the negotiator might not understand why another party has taken a particular position until the

negotiator learns about the interests of the other party that underlie that position. Moreover, by asking questions, the negotiator can assure the other party that the negotiator is interested in the other party's problems and in finding solutions.

Designing the Reserve System

Although the advisory committee quickly agreed that setting aside a reserve for the lizard presented the greatest hope for a long-term solution that would satisfy everyone, there were still several major issues that needed resolution. First, the advisory committee had to decide whether to create one reserve or multiple reserves. Then they had to agree about how big the reserve or reserves should be. They also had to agree about who should pay and how much each party should pay toward the acquisition of the reserve(s). And finally, they had to agree on a plan for the management of any land preserved as well as on zoning for land adjoining the reserve.

According to the environmentalists, the development community initially resisted the idea of having multiple reserves, because multiple reserves could increase the cost and complexity of the Coachella Valley Habitat Conservation Plan. The development community, however, came to accept the superiority of the multiple reserve strategy: if the CVHCP used a single reserve system, then the entire lizard population could be wiped out by a single catastrophic event. While the development community could appreciate the logic of not putting all of one's eggs in one basket, resolution of this issue was made easier when the advisory committee determined that two smaller preserves could be set up easily and cheaply, because in one case the land was already owned by the Coachella Valley Water District, and in the other, the land was mostly owned by the BLM.¹²

Thus, the major focus was on the creation of a large reserve to anchor the two satellite reserves. An important disagreement was over how large the reserve should be. Environmental interests wanted the reserve to be as large as possible, while development interests wanted it to be as small as possible. The participants always had a large aerial photograph of the habitat area at the advisory committee meetings. From this photograph one could actually see how sand eroded down from the mountains and fanned out onto the valley floor, and how that sand was blown over to the dunes. The environmentalists argued that the dunes would eventually vanish unless the sources of eolian sand were also protected. Therefore, the environmentalists claimed that the lizard could only be protected if the reserve extended from the dunes up to where the sand washed and blew down from the mountains, thereby protecting the sand source and the wind corridors. Yet even if the basic process of eolian sand transport was evident, the

¹² The Coachella Valley Water District owned 1,230 acres of suitable habitat. This reserve, however, does not contain a protected sand source. The BLM site, which is known as Edam Hill-Willow Hole, contains 1,407 acres of habitat and 1,062 acres of sand source. Although there were some privately owned parcels in the Edam Hill-Willow Hole reserve, the HCP called for the purchase of these parcels (Beatley, 1992).

importance of each sand source to the dunes was not evident. Was it necessary to protect every sand source, or just a major sand source?

The relative significance of the different sand sources was an important issue to the development community due to the pattern of land ownership in the area that environmentalists and biologists initially wanted to turn into a reserve. Essentially, the developers argued that the area that the environmentalists and biologists proposed for the reserve had to be evaluated from the standpoint of land ownership. The eastern section consisted of 13,000 acres, 10,000 acres of which was owned by a single private owner and the rest by over 200 owners. By contrast, the western section had over 800 parcels. The development community argued that the western section would be too difficult and costly to acquire. Sunrise's attorney estimated that acquiring the western section would increase the overall cost of the reserve ten times. The Nature Conservancy's negotiator, who had extensive experience in land acquisitions, agreed that the western section would be very expensive and difficult to acquire. By supporting Sunrise's position, the environmentalists and agency representatives said that the Conservancy gave the developer's position more credibility. Still, even if the western section would be expensive and difficult to acquire, the advisory group had to decide how important the western section was to the fringe-toed lizard's chances for long-term viability.

To help resolve this issue, the advisory committee commissioned a study of the sand movement to help determine how important each sand source was to the long-term health of the dunes. In other words, the participants agreed on a consultant who would settle the scientific disagreement. While the study confirmed that the dunes could only be preserved if an eolian sand source was protected, it also determined that the western section, which had highly fragmented ownership, was not in the path of the primary sand source for the dunes. Consequently, based on the cost of the western section and the initial determination that section was not the principal sand source, the environmentalists and biologists changed their position and agreed to leave the western section out of the reserve. Moreover, they tended to believe that insisting on the western section might cause the CVHCP process to fail. According to one environmentalists, the development community was insisting that inclusion of the western section in the CVHCP would be a "deal breaker." Because it appeared that the dunes might be adequately protected without the western section, the environmentalists decided to take a risk and agreed to leave it out of the reserve.

Paying for the Reserve

Finding a way to pay for the reserve system and for its management was a major task for the advisory committee. Many participants stated that the key to financing the CVHCP was sharing the burden; no one party thought that it should bear the full burden. The need for financial commitments from a wide range of participants became clear after some of the advisory committee members met with Ed Hastey, the state director of the BLM. According to Hastey, "The problem that I had at the time [of the meeting] was that even though all the players . . . agreed with the concept [of establishing a reserve], BLM was essentially carrying

the total load. Twenty million in land exchanges is too much for BLM.” According to The Nature Conservancy’s representative, the meeting with Hastey made him realize that funding the reserve would require a partnership effort among the state, federal, and private parties.

The Conservancy started the process by committing \$2 million to the acquisition. It also organized the local community for a trip to Washington to lobby Congress for funds. Sunrise’s attorney was particularly impressed with the Conservancy’s “familiarity with Congress and their ability to get into relevant committees and know the staffers.” The USFWS representative referred to the organization of the Washington trip as The Nature Conservancy’s “biggest and most valuable contribution.” The lobbying effort led to a \$10 million appropriation from the Land and Water Conservation Fund. The participants, however, believed that Congress supported the CVHCP in part because the lobbying team had clearly stated that acquisition of the reserve would be a joint effort between state, federal, local, and private entities.

The funding fell into place. The Nature Conservancy had agreed to commit \$2 million. Congress had appropriated \$10 million. The BLM became a strong supporter and agreed to exchange property outside the critical habitat that was worth \$5 million dollars for property within the proposed reserve.¹³ The state Wildlife Conservation Board saw an opportunity to leverage its own buying power, and agreed to commit \$1 million dollars to the CVHCP. According to the Conservancy’s representative, the decision of the state and federal governments and the Conservancy to commit specific amounts to the CVHCP put him in a very powerful position when he asked the development community for its contribution. He could say to the developers, if you come up with the rest of the money, the plan works; if you don’t, the plan fails. To make the CVHCP work, the development community would have to pay \$600 per acre as mitigation on all land developed within the fringe-toed lizard’s historic range until \$7 million dollars were collected. Then, in an estimated eight years, the fee would be reduced to \$100 per acre for further development.¹⁴

The Nature Conservancy also agreed to conduct the land exchanges. First, it purchased an option on the 10,000 acres in the eastern section of the reserve that was owned by a single owner. Second, it agreed to be a third party in BLM’s land exchanges. The Conservancy bought \$5 million worth of land within the proposed reserve and then traded it to the BLM for land outside the reserve that had lower conservation value. It then sold that land to recoup its costs. Because The Nature Conservancy is a private organization, it was able to conduct transactions more quickly than the BLM could have. According to Hastey of the BLM, “If we had to go out there and do all of these exchanges ourselves, we would have never got it done.” Finally, the Conservancy agreed to be the trustee for the developer fees, which are placed in an escrow account until they are needed for land purchases or for other reserve maintenance. The task of fee management, however, has proven to be more costly than expected.

¹³ The BLM ended up contributing land worth more than \$6 million (Beatley, 1992, 13).

¹⁴ In addition to acquiring the land for the reserve, the CVHCP provided for the establishment of a \$2.5 million trust fund that would be used to pay for the maintenance and management of the main reserve.

Building on the Talents of the Group

Once The Nature Conservancy was officially involved, key players said that its representative quickly won their trust. Members of the Ecological Reserve Foundation were familiar with the work of the Conservancy and said that the work of its representative more than met their expectations. Sunrise's attorney Paul Selzer said that he had probably heard of the Conservancy but had little idea as to what the organization did. Soon after meeting with TNC's representative he came to see the Conservancy as a very different type of environmental organization:

It blew me away how businesslike they were. They said you want it, you figure out how to buy it. You don't try to intimidate property owners. . . . It was like dealing with another lawyer on a real estate deal.

The Nature Conservancy representative made certain that Sunrise's attorney understood TNC's philosophy:

Outside the environmental community, those who know The Nature Conservancy believe that we have a strong respect for private property rights, particularly [compared] with their perception of other environmental organizations, which they see as having none. I always reassure people that I respect property rights. Particularly one-on-one; I make it clear that I am here to negotiate a deal. Then I negotiate as hard as I can.

During the planning process, however, the Conservancy did not solely play the role of negotiator. At times its representative acted as a facilitator between the development community and local government on the one side, and the agency biologists and local environmentalists on the other. According to one biologist, "The Nature Conservancy was also good at convincing the developers that something was so." Similarly, another biologist said, "The Nature Conservancy could also calm things down, look at both sides and come up with compromises." The Conservancy, however, could also help the environmentalists see that the developers had a valid point. According to one biologist, "When [TNC] agreed with developers that the portion of the critical habitat that had numerous owners would be just too difficult and expensive to buy, it gave that position credibility with me and environmentalists that it did not have when developers said it." The Conservancy's negotiator said that, while he did not tell everyone everything, he always made sure that everyone knew essentially what was going on so that the trust that had been developed would not be broken by participants believing that secret deals were being cut.

The Conservancy, however, was not the only participant whose skills and reputation aided the process and built trust. Several participants said that Sunrise's owner and attorney were highly respected by the cities and the county. According to a local planner, Sunrise's

owner was a local developer who had built a good reputation with the cities and who had a long-term stake in the valley. Its attorney had a similarly good reputation with local government and the development community. A local politician explained, “With [Sunrise’s Attorney], the developers knew they had someone who understood their interests; it wasn’t just a tree hugger and a tree hugger’s lawyer. . . . [He also] went to each of the cities, and as a developer’s attorney, it was like Nixon going to China, a developer coming forward with an environmental protection plan.”

The Ecological Reserve Foundation brought an expertise in the desert’s ecology to group. A number of participants stated that if the ERF was satisfied with the science behind the HCP, then they trusted the ERF’s judgment. According to a participant from a federal agency, “We didn’t have a problem [with judging the data] in Coachella because Bill Mayhew was the expert, and he used his stature to say there is enough information.”

Local planners were also important to the process. The Coachella Valley Association of Governments provided the group with demographic projections and also helped to convince the cities that they should support the HCP. The planner from the county kept the local supervisor well informed about the plan. The county was also working on a community plan for the area, so the planner was able to bring pertinent demographic and other land use data into the planning process. In fact, the county actually incorporated the CVHCP into its general plan before the USFWS approved the CVHCP.

Fear as a Motivating Factor

Even though the advisory committee ended up working well together, altruism was not the initial driving force. Most of the participants talked about how “fear” or “a balance of terror” was one of the factors that got people involved in the process and kept them at the table. According to a participant from BLM, “There was kind of a balance of terror on both sides. Could the developers take the Fish and Wildlife Service to court? Could the Fish and Wildlife Service shut down development in the valley?”¹⁵ Deep Canyon’s director had a similar assessment: “The biggest developer [Sunrise] carries a big stick and so does the Fish and Wildlife Service. It’s a balance of terror.” The Nature Conservancy’s negotiator echoed these views: “There was a balance of terror. If the development community was not careful someone would step in and enforce the act. I think [the USFWS representative] worried that if USFWS stopped development the backlash would have been terrible.” A local planner stated that the USFWS wanted the process to work because they wanted to prove to critics that the ESA was workable. He believed that the USFWS feared that if it failed, it would prove its critics right.

The Nature Conservancy, as a private organization that prides itself on not being litigious, cannot create the fear factor on its own. In this case, the Conservancy had the luxury

¹⁵ The Nature Conservancy, 1988.

of allowing the USFWS and, even more so, the ERF to play the role of the enforcers. According to Deep Canyon's director, "It was tacitly understood that we would be the bad cop, the black hat, and TNC would be the white hat." Thus, the Conservancy's representative said he could present himself as someone who was there to help the developers and local governments with a legal problem, while at the same time allowing others to stress the negative consequences that might ensue if the effort failed.

But employees of The Nature Conservancy should not assume that local residents, businesspersons, or politicians automatically see it as the good cop or helpful neighbor. In this case, a local planner said that a local politician had "problems with The Nature Conservancy sometimes. [Because] I guess at times there had to be a bad guy." This politician still seemed to lump the Conservancy together with all other environmentalists. This politician also complained about the elitist tendencies of environmentalists.

Taking Risks and Building Trust

As explained earlier, both the development community on the one side and the environmentalists and agency representatives on the other took risks that led to increasing trust. The USFWS and environmentalists agreed not to enforce the ESA even though they had no assurance that the CVHCP would ever be completed. The building industry agreed to pay a \$750 per acre fee even though it had no assurance that the USFWS would issue an incidental take permit.

Early on, The Nature Conservancy also took a risk to get the process going. The group agreed that they needed to hire someone to pull together and synthesize the existing biological studies on the fringe-toed lizard and to survey lizard experts (none of whom had actually worked on this one) about their opinions on how to ensure its long-term viability. The Conservancy agreed to pay \$100,000 for the studies. Even though the survey did not produce a consensus among the experts, the consultant used this information to prepare drafts of the Habitat Conservation Plan. Although some participants believed that the development community would have eventually agreed to pay for the study, most participants stated that the entire process would have been in trouble had not the Conservancy agreed to put up \$100,000. Most participants also said that the organization's willingness to put its own money into the process showed the others that it was committed to the process.

The Importance of a Vision: The 1000 Palms Oasis and Central Park

Within the main reserve area are three natural oases. Although the Coachella Valley is a desert, receiving an average of 4 to 5 inches of rain a year, a large aquifer is located beneath the valley. Within the reserve, water from this aquifer is forced to the surface along breaks formed by the San Andreas fault. This forms the oases. Many of the interviewees said that they thought the 1000 Palms Oasis is particularly beautiful and that it played an important role in developing support for the CVHCP.

According to all of the participants, some local officials were initially hostile to the idea of creating a preserve for the fringe-toed lizard. Some local officials, however, became early supporters of the effort to prepare a Habitat Conservation Plan when they came to see the proposed reserve system as an asset for current residents and a legacy for future generations. For example, one supervisor admitted that initially she “couldn’t care less about the lizard”; in fact, she still questions whether the lizard is endangered. Nonetheless, she became an immediate supporter of the planning process after a member of the Ecological Reserve Foundation compared the proposed reserve to New York’s Central Park. The ERF member explained that although the planners of Central Park had been ridiculed in their day because no one saw the need for it, in time the park became the cherished inheritance of New York residents. The message was clear to the supervisor: “He made me realize that it was necessary to also preserve some place on the [valley] floor. I did a complete flip. . . . It is still something that most people here don’t see the value of, but I do, and they will 40 or 50 years from now.”

This support for preserving a portion of “the old wild desert in its native state” would not have been so strong if the picturesque oases had not been included in the preserve. Participants repeatedly referred to the beauty of the oases when discussing why they thought it was important to preserve a portion of the natural landscape for future generations. For example, the executive director of the Coachella Valley Association of Governments said, “The reserve has some very valuable water areas. . . . Springs bubble up from the fault. You’ve got magnificent stands of some of the old palms along some of the water courses. It’s a delightful area — unless it’s 120 in the shade.”

Implementation

The Nature Conservancy has been instrumental in the implementation of the CVHCP. For example, it has been in charge of acquiring land. Developers pay fees into an escrow account and then funds are transferred to the Conservancy to pay for acquisitions, management and administration. It also employs a reserve manager and maintenance workers.

The management of the reserve, however, has been a team effort. A committee that consists of The Nature Conservancy, State Parks, the Bureau of Land Management, the Fish and Wildlife Service, and Fish and Game — all of whom own portions of the reserve — works together to coordinate management strategies and resources. The director of Deep Canyon also attends management committee meetings, but he is not a voting member. The responsibility for running the committee rotates yearly among TNC, State Parks, BLM, USFWS, and CDFG. Overall, interviewees said that the management committee has learned to work well and flexibly together. Moreover, according to one long-time committee member, when a representative from one of the agencies changes, the remaining committee members have successfully convinced the new member of the importance of cooperation. “When the next people come on we basically indoctrinate them as to how we have been working and how well it has been working,” he explained. “They quickly develop a loyalty to the group and to the project.”

Coachella Valley Habitat Conservation Plan

The one drawback of the management committee has been the lack of local government involvement. While Riverside County has been invited to meetings, it does not attend. The county planning department has suffered large budget cuts. Moreover, the Coachella Valley Habitat Conservation Plan did not give the county a management role or stake in the reserve. None of the reserve has been designated as a county park or open space. Consequently, whenever the management committee has a question that only the county can answer, decisions have to be put off until one of the members contacts the county and reports back to the full committee.

Despite the seeming success of the CVHCP, there have been problems. One problem that seems to have been resolved was the conflict between the objective of species preservation and equestrian use. Although the comparison of the reserve to Central Park helped to create local support for the HCP, it later led to problems because The Nature Conservancy, the state and federal agencies, and the environmentalists thought of the reserve as an area where human activity would be minimized as necessary to protect the lizard, while local government and some residents thought of the reserve primarily as a park for recreation. Thus, a conflict occurred when the TNC and BLM decided to prohibit horses from the dune area of the reserve after determining that riders were breaking reserve rules by riding on the fragile slopes of the dunes. According to a local planner, the dispute initially created some ill-will between local government and the reserve managers. The reserve managers and local government eventually agreed to a compromise pursuant to which a fenced trail was created around the perimeter of the dune area. While local planners seemed satisfied with this solution, the TNC reserve manager felt that the equestrian groups were less than fully satisfied even though they had unlimited access to the majority of the reserve. If local government had been on the management committee, the decision to restrict equestrian use could have been fully discussed and the initial misunderstanding might have been avoided.

Some people also have said that there have been problems in the collection of fees as well. Although the county and cities are supposed to provide USFWS with documentation concerning the collection of fees, according to some interviewees the cities and the county have kept inadequate records, and USFWS has also failed to exercise diligent oversight of the fee program. Some interviewees believed that fees were not always being collected. The county, however, questioned whether there was any basis for this charge.

Regardless of whether fees were being properly collected, the economic downturn in southern California has contributed to a major slump in construction. Consequently, fees have been coming in at a lower than expected rate. Moreover, there was no inflationary clause for the fee; even though cost of acquiring land for the reserve has increased tremendously, the mitigation fee has remained constant. This unexpected shortfall has forced The Nature Conservancy to use funds that the Habitat Conservation Plan intended for the trust fund for current acquisitions and maintenance. Thus, it may not be possible to create a \$2.5 million trust fund. Another shortfall in expected revenues occurred because no one realized that the USFWS would deduct overhead from the \$10 million appropriation.

Some of the problems have resulted from a lack of clarity in the Coachella Valley HCP. For example, at the last moment, some parcels were excluded from the reserve as part of the bargaining process. These changes were not reflected in the CVHCP, so The Nature Conservancy's reserve manager has on occasion tried to buy property only to learn that the parcel was a last-minute exclusion.

The biggest problem, according to some participants, may prove to be the decision to leave out the western section of the main reserve. These participants believe that subsequent investigations indicate that the dunes are in fact much more dependent on the western source of eolian sand than had previously been believed. Moreover, they argue that while the county has zoned the area for low-density development, residents can plant whatever they like and build fences, both of which can create formidable barriers to wind-transported sand. The county, however, believed that since the area is not protected from "catastrophic" storm events, "nature" will periodically reintroduce sand to the dunes.

Conclusion

Overall, the planning process for the Coachella Valley Habitat Conservation Plan produced an unprecedented level of cooperation among groups that had before seen one another as adversaries. More importantly, the process has led to the creation of a reserve system that protects approximately 16,700 acres. The cooperation that began during the planning process has carried over to management of the reserve. The management committee has learned to work flexibly together and to cross agency lines.

The participants did not get together because they were altruistic. Instead, they came together because none of them liked the status quo and the possibility existed that by working together they could achieve an outcome that would leave all of them better off. Even though all of the parties could have sued in court or separately lobbied Congress, the cooperative planning process continued to offer the possibility of the best outcome, so the participants did not seek out alternative arenas or forums.

In fact, the attractiveness of the cooperative planning process increased as participants came to know and understand one another as individuals. Distrust was slowly replaced by trust as the participants agreed to take risks and fulfilled commitments they had made. The cooperative planning process was also empowering. Together, the advisory committee had far greater talent, experience, knowledge, resources, and political connections than any of the individual participants possessed. Moreover, the whole exceeded the sum of the parts because the plan had a great deal of credibility simply because it was supported by the diverse interests on the advisory committee.

The CVHCP does apparently have problems. Even though the plan is complex, it did not deal with all of the details or eventualities. A tension exists between finishing a plan fast enough to keep people involved, and the need for thoroughness. According to Sunrise's attorney, "With HCPs you have to do it fast or it will unravel because you can't keep people's

interest that long.” A local planner also said that there may have been a tendency to put off some of the tough issues and to leave other issues unclear rather than assuring that agreement actually existed. To date, however, none of the problems has proven unresolvable.

An interesting outcome of this case is that it demonstrates how satisfying cooperative planning can be for the participants. Several spoke of how important the process and product were to them. Speaking about the CVHCP, a county planner said, “Career-wise, it was the best thing I have done.” Sunrise’s attorney called the planning process his “most fulfilling role as an attorney.”¹⁶ The local supervisor referred to the establishment of the reserve as the accomplishment of which she was most proud. Thus, through a cooperative planning process, which at times was difficult and contentious, the participants developed a new attitude about resolving environmental problems. Many of the participants said that they have tried to bring this cooperative approach to their work ever since.

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Video

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¹⁶ The Nature Conservancy, 1988.

Case 9

BAY VISION 2020

by Judith Innes¹

Overview

Bay Vision 2020 was a commission in the San Francisco Bay Area that met from December 1989 to May 1991. It aimed to reach consensus on a growth management vision and a regional strategy that could be turned into legislation. It has been followed by the Bay Vision Action Coalition, a smaller group that has crafted specific legislation. The commission produced a report outlining findings about the nature of the growth problem, identifying shared values and goals, and proposing the merger of three major regional agencies and the establishment of a regional commission to supervise these and to develop a regional plan for the area.²

This effort was in some sense parallel to the LA 2000 Committee and the San Diego Regional Growth Strategy, although these three differ in significant ways, including in the recommendations they produced. Some conveners and key players throughout Bay Vision were also significant participants in the Growth Management Consensus Project and the Environmental and Economic Recovery Coalition. Bay Vision was outside of government, but it was funded by government agencies as well as by private foundations and corporations. This case is intrinsically interesting for the present purposes because it is a significant attempt to develop regional growth management for California's second largest metropolitan region. Like all the other cases, it had some limited success and some failure, but unlike the other cases it was not directly a stakeholder-based effort. The initiators were key stakeholders representing environmental, business, and government players, but the commission was more like a traditional blue ribbon committee of leading citizens. Although many commissioners acted to some degree as representatives of certain players, they were not chosen by the organizations to represent them, nor were they designated or authorized to represent particular interests. They were essentially chosen to reflect points of view. Thus, this case provides us with the opportunity to contrast the workings of this familiar model of the citizen commission in

¹ This case is based, with permission, on the extensive and detailed case written by Peter Lydon, "San Francisco's Bay Vision 2020 Commission: A Civic Initiative for Change," 1993. Mr. Lydon was able to attend all the meetings and interview most of the key players in this project. His perspective on the effort in many ways paralleled our own, although it was done independently. He asked many of the same questions we did about process and incentives. His insightful observations and critical reflections have been invaluable. This case is modestly supplemented by Prof. Innes's personal knowledge of the case and discussions with two or three of the principals. Thanks to Peter Lydon and Joseph Bodovitz for their comments on the first draft.

² Bay Vision 2020, *The Commission Report*, May 1991.

American government with the more explicit stakeholder group that was used in most of the other cases.

We are fortunate to have been able to rely on the detailed and extensive case study of Bay Vision done by Peter Lydon (see note 1). Lydon was able to attend all meetings from the beginning of the project, and has provided a more complete firsthand historical account than we could do ourselves in the time span of our research. Since he asked questions similar to ours about process, content, and context, it has been easy to use his case. His insightful observations and critical reflections have been invaluable. This case is essentially a shorter version of the story as recounted by Lydon, with some of our own interpretations of the material.

The Basic Story

Bay Vision 2020 was jointly convened by three major interests in the region. One was a group of locally elected officials led by Santa Clara County Supervisor Rod Diridon. These officials were concerned about the fiscal and governance difficulties of metropolitan balkanization. The group mostly included people who had served on regional agency boards. Diridon's leadership provided the impetus for the Metropolitan Transit Commission (MTC) to contribute an initial \$25,000 as startup support, and later \$150,000. The second group was the Bay Area Council (BAC), under the leadership of Executive Director Angelo Siracusa. The BAC includes large corporations such as Chevron and the Bank of America among its members. Their concerns included the cost of housing in the region and the region's competitive position internationally. The BAC was also engaged in the Growth Management Consensus Project, and its membership was firmly committed to regional growth management.

The third group was made up of environmentalists. They were led by Larry Orman of the Greenbelt Alliance (GBA), a broad coalition of environmental groups and the largest in the Bay Area. The effort was also supported by the regional chapter of the League of Women Voters, which endorsed the legislation that eventually emerged. Finally, an important actor in the creation, design, and implementation of the Bay Vision Commission was Joe Bodovitz, who was to become the project director. He worked for the California Environmental Trust, where he had substantial experience with consensus efforts including advising the LA 2000 effort. He was executive director of the Coastal Commission, of the state Public Utilities Commission, and of the Bay Conservation and Development Commission, all significant regional coordination programs. In addition, he was active in regional discussion forums and his ideas helped instigate Bay Vision.

This was not the first effort in the Bay Area to develop some type of regional governance or coordination. Assemblyman John Knox had led the effort in the late 1960s and early 1970s to establish a Bay Area planning and land use control agency. This effort had wide support at the time, and the legislation only narrowly failed to pass in the legislature. Other efforts, such as the creation of BART (Bay Area Rapid Transit) and the path-breaking Bay Conservation

and Development Commission, bespeak the strong regionalist orientation of much of the Bay Area leadership in that period.

After a hiatus in regionalist activity in the Bay Area from the mid- 1970s to late 1980s, as in almost everywhere across the country, the BAC and GBA began by establishing a Regional Issues Forum (RIF), an informal discussion group of community leaders, including Bodovitz, to work out the issues and shared concerns among large business and environmental interests. These two traditionally opposed pro-growth and anti-growth interests had concluded that both would be better off if they did not continue to struggle on a case-by-case basis. Rather, they wanted to jointly support intensified development in some, largely central, areas and jointly oppose development in other areas, particularly in the peripheral greenbelt. In the late 1980s growth management legislation was at last proliferating in Sacramento, and a new governor was soon to be elected. The timing seemed right for a new regional initiative. Both the RIF and Diridon were converging independently on the idea of creating some type of blue ribbon commission to engage in a public strategic planning exercise.

After some initial tensions, the RIF and Diridon agreed to cooperate in the creation of the commission. They asked Ira Michael Heyman, who was then Chancellor of the University of California at Berkeley, to chair the commission. This choice gave the effort substantial visibility and leadership. They also asked Bodovitz to be the project manager. Heyman's own work as a law professor at Boalt Hall had involved him in preparing significant statewide land use legislation in the past. He is very much a regional activist with an interest in the construction of regional institutions. Bodovitz, on the other hand, was ending his stint as executive director of the BCDC and, in his role as director of the California Environmental Trust, was available to provide administrative support to the commission. Bay Vision raised a budget of about \$600,000 for administrative support and studies, largely in equal parts, from the public sector, large corporations, and foundations approached by environmentalists.

The goal of the commission was to "Adopt a general vision for the Bay Area in the year 2020, and recommend specific actions necessary to make the vision a reality." The two parts of this statement reflect one of the tensions in setting up the commission. Diridon and his group saw the goal more as a visionary one, while the business and economic community wanted to achieve more pragmatic goals.

In the summer of 1989 the conveners began to select commission members. This choice represented a significant decision that was to affect the course of the project and its outcomes. Unlike most of our other cases, the idea was to select a committee of leading citizens, representing geographic areas as well as racial and gender diversity, including people representing a variety of interests. They were not selected to be stakeholders — those formally representing an interest or organization — but rather as individuals, chosen both to represent different viewpoints and to be as diverse as the population. The model is a familiar one in government and is consonant with the progressive reform conception of the blue ribbon committee or citizen commission. The idea is that these articulate leaders will be able to work out what the larger public would want. They operate without pay or conflicts of interest. The

model is that these are good citizens who seek a public interest, while each reflects a particular perspective. The model has worked well for many purposes over the years; for example, for presidential commissions, planning commissions, and blue ribbon advisory committees. Moreover, similar kinds of forums for defining issues and direction have helped provide the foundation and consensus for growth management legislation in other states, such as Vermont.

Individual members were chosen for their personal qualities, according to such criteria as willingness to assume responsibility for the work, ability to work cooperatively, demonstrated leadership in one of the areas of study, stature, ability to look beyond immediate problems, receptivity to others' points of view, and to consider all options. Interest groups were not asked to select members, as they were in other cases. The commission thus had none of the problems of intransigent members so commonly found in other large groups we studied, where the individuals were selected by organizations without regard necessarily for their ability to work cooperatively. The conveners ultimately selected in a consensual way 32 commission members from a list of 400 names they obtained through networking and a letter widely disseminated by the Regional Issues Forum. The final group was ethnically diverse and, not surprisingly, largely well-educated middle and upper class. It had at most one or two who could be characterized as firebrands or radicals.

Of particular importance was the decision that no currently sitting, locally elected officials would be included, although care was taken to include several former local officials, including a former county supervisor and city manager. These could represent the local perspective and knowledge but not commit local governments to any particular view. Diridon's group had insisted on excluding sitting elected officials, although the other conveners would have preferred to include them. Diridon's reasoning was that local officeholders were limited by a short time range and narrow perspective and that this attitude would conflict with the commission's long-range perspective and freedom of action. If they were included there would be a time-consuming and contentious effort of selecting among local officials. The decision was understandable considering the difficulties experienced with local elected officials' participation in some of our other cases. It was, however, to lead to an odd consequence that local elected officials were rather like shadow members of the group, always present but not speaking, while members imagined what they would say if they could. This gap was to lead to criticisms later from members of the Association of Bay Area Governments (ABAG), which then crafted competitive legislation.

Because of the selection methods it was never clear or explicit whether a particular commissioner was speaking for him or herself or for a set of interests. None were asked or expected to check in with those interests on their positions, although some regarded themselves as formal representatives of specific groups and consulted with them regularly. Throughout the year of meetings commissioner attendance was high. A small public audience also observed, without commenting.

This model of a modified blue ribbon committee for the commission permitted civil discourse and constructive discussion, and the achievement of a modest consensus on both

broad substance of growth management and on some significant institutional change. What it did not do was create enough political capital to follow through on proposals and get legislation enacted. The members were community leaders but not necessarily the players whose support would be needed. This meant also that the intellectual and social capital that was created was less valuable in terms of encouraging long-term change than it would have been had these been actors with power. Conversely, had all the players been there, there was no guarantee of agreement — indeed, as the organizers realized, there might be no agreement.

The commission began meeting in Oakland in December 1989, with a target date of completion by January 1991 so that legislation could be on the desk of the new governor. The first sessions were largely educational, with outside speakers talking about growth management in other states, governmental structures, and the ethnic makeup of the population. Some commissioners expressed impatience with the time taken up by these learning efforts, but others were not particularly knowledgeable on growth management and it seemed necessary to equalize and inform participants. Project Manager Bodovitz played a strong role from the first, suggesting formats and procedures that were typically followed. He proposed, with no dissent from commissioners, to meet as a whole rather than break up into committees. The goal was to envision a future that would have the widest possible breadth of acceptance. This decision was, however, to mean that the commission could not grapple in detail with the kinds of thorny issues that were addressed by smaller subgroups in other cases.

Unlike some other cases, no explicit rules were made to define consensus. Rather, Heyman and Bodovitz used their “delicate antennae for the responses of commissioners” to determine when there was or was not sufficient consensus. It was discussed and accepted that not all commissioners would have to agree with every point in the report. Bodovitz in retrospect indicated that two or three or even a few commissioners might disagree with a point, and it would still go in the report. If there were two major segments with unresolved differences it would have been viewed as no consensus, according to Bodovitz. Perhaps because these were not genuine stakeholders, participants did not insist on clarifying this point. It was also understood that the report was only to be a beginning and that areas of disagreement would be noted and described. In any case, both Bodovitz and Heyman, according to observer Lydon, tended to guide discussion so that it would not go too deeply into subjects that could be divisive. They encouraged the group, moreover, to support positions that would be acceptable to a public or legislative majority and generally encouraged the commissioners to take a pragmatic approach. This differed strongly from other cases, where divisive issues were confronted (although usually in subcommittees and working groups) and tacit boundaries fewer. Lydon’s view was that the strategy had a “systematically reductionist effect on the depth and sharpness of the commission’s deliberations. Willingness to criticize the status quo, . . . to assign responsibility, and look far into the future were all diminished.”

Several issues were debated. One was a continuing tension between those who wanted the product to be a “vision” of the future that would inspire wide support, and those who wanted the task to be a more pragmatic one, identifying common ground and changes that

could, as a practical matter, win political support. Some had a vision and wanted to get on with achieving it; others feared that very vision. The result was to be a kind of compromise, with a modest and rather general and noncontroversial vision of a more compact form of development with adequate housing, transportation, air quality, and so on.

The principal issues in defining desirable growth patterns were two. First, should there be a defined “carrying capacity” for the region, and ultimately a regionwide growth cap? Environmentally and agriculturally oriented commissioners saw this as a desirable policy, while ethnic minorities were strongly opposed. Others regarded this as impractical, and quite possibly unconstitutional. This was the same issue that caused the social equity stakeholders in the Growth Management Consensus Project (GMCP) to “go ballistic” because they viewed the population cap as primarily affecting minorities.

A second issue was whether and how greater attention could be given to the needs of urban ethnic minorities. This issue, which was also prominent in the GMCP, is a particularly problematic one because the effects of various growth management strategies on these groups are indirect and poorly understood and because these poorer ethnic minorities are not engaged in the debates themselves. Moreover, policies cut in many directions. Policies that open up suburbs may harm the quality of life in a central city, but many minorities are eager to move out of the cities. Still, the fundamental issue is one of whether investment should favor the central cities or outlying areas. Bodovitz tried to assure members that the issues of racial equity and social impact would be considered by raising issues in meetings, by scheduling speakers on ethnic change, and by commissioning papers on the needs of various urban ethnic groups. Several commissioners pushed the agenda of ethnic or social equity, but the majority of the commission preferred not to address this type of substantive choice. Their opposition was in part due to a sense that to clothe their proposals in a social equity context would damage their political marketability. There was also a sense that these were not the issues they were there to address, but rather issues such as transportation, housing, and air pollution. At most there was some mutual education among the commissioners about these issues.

Two members of the commission stood out from the rest of the group because of their strongly held and distinctive positions. These were the two members from Napa and Solano counties in the north of the Bay Area. Both counties have interests that make regional governance largely undesirable. They are only about 45 minutes from San Francisco or Oakland and each is thinly populated, with substantial space for development. Napa is home to the some of the finest vineyards in the world, and there is considerable local debate about the desirability of more development of housing and business. Pro-development interests dominate in Solano County, and the Interstate-80 corridor and city of Vallejo are developing rapidly. Regional governance could halt or slow Solano development, and could be an unwelcome intrusion in local Napa politics. Moreover, the low population levels of the counties make it unlikely they could swing much influence in a regional decision-making body.

The commissioner from Napa, who was secretary of the County Farm Bureau and the Winegrowers Association, spoke for regional agriculture. While she supported regionalism, including city-centered growth and a greenbelt, her central concern was that a regional government might force unwanted suburban or urban-style growth in her area, or insist on the county providing a share of housing for the rest of the region. The Solano County commissioner, Bob Power, was in the pro-development camp. Indeed, he was a prominent member of the family that was building the massive Nut Tree outlet mall in Vacaville, the type of sprawling, auto-centered development that seemed virtually certain to be opposed by a regional government. While he could agree with the need for regional coordination, notions such as city-centered growth were anathema to him, as was any effort to dilute local land use control. He was isolated on the commission but continually sought, and often achieved, changes that weakened the commission's text in the interest of achieving greater support for the report as a whole. He was to die before the commission made its final decision, so it remains unclear if he would have supported it in the end. In any case, it would be a legislator from Napa and Solano who would play a significant role, ultimately, in defeating the legislation produced by the Action Coalition in the following year.

As previously stated, the local elected officials were the shadow members of the commission. Although they were not there, the effort to be pragmatic meant that commission members were constantly trying to take into account their concerns and reactions to suggested solutions. It was almost as if they had a tacit veto. It was assumed that they would resist changes to the status quo that would reduce the power of local government or cut into local land use authority. Since they were not there, the elected officials were in any case unlikely to become educated on issues that might change this basic perspective. Nor were they to become part of this enterprise in ways that might have made them rethink their position or try to find ways to cooperate for the benefit of the local community. While a few locally elected officials are regionally minded, most are not. ABAG, which is a voluntary grouping of local governments, explicitly does not have any authority over those governments, limiting itself to information gathering and noncontroversial service tasks. Local governments are particularly concerned about ways in which regional governance might effectively implement state fair share housing requirements. The possible advantages that might come from a common strategy for transportation, infrastructure, and land use simply are not evident at this point, since they have not really been discussed in a serious way among the cities. In short, most locally elected officials resist regional governance in principle, although opinion polls were showing at the time that the public in the Bay Area generally supported some type of regional growth management.

Bay Vision discussions revolved a great deal around whether the recommended regional commission's members should be appointed or elected. If they were appointed, how should they be selected and to what degree should they include local office holders? If they were elected, should it be by regionwide or district elections? Bay Vision deliberations assumed that locally elected officials (LEOs) should have substantial representation, but the commissioners

also wanted to assure minority membership and they feared that domination by LEOs would be little more than politics as usual. However, staff argued that regionwide elections would not garner much interest and would be poorly understood by the public. Such elections were likely to produce few minorities and to depend on name recognition of candidates who had substantial funds for an expensive campaign. District elections would also raise questions of minority representation and campaign funding. Moreover, it seemed likely that LEOs would oppose such elections, since they had done so 15 years earlier with the Knox bills. Therefore, Bay Vision made the decision to propose an appointed body made up of a mixture of LEOs and citizens chosen to be representative in various ways. The argument still remained as to what proportion should be LEOs and how they would be selected across the region. The commission proposed that 60 percent of the more than 30 seats go to LEOs. This point continued to be negotiated throughout the later stage of the discussions and the work of the Action Coalition which followed up on Bay Vision.

The second part of the commission's proposals for institutional reform was to merge ABAG, the Metropolitan Transportation Commission, and the Bay Area Air Quality Management District. Each of these is an agency with a regional mandate pertinent to growth management. It is logical that these bodies should work together if the goal is to manage regional growth. The last two have powers already that affect growth patterns and with which local governments have to deal. Exactly how this merger would be done and what the mission of the new agency would be was not defined in Bay Vision's report, but the new regional commission would be responsible for administering the programs of MTC and BAAQMD. The commission was to be given three years to complete a regional plan, which would then be submitted to the governor and legislature.

The issue was raised in the Bay Vision Commission that this would just be another layer of government, although others felt it would streamline government by coordinating existing agency activities. As the merger was not adding any powers to any body that were not already there, it seemed that the proposal should be acceptable, at least potentially, to local government.

It was to turn out, however, that many local governments regarded this consolidation of power as a threat to home rule. Fragmentation, some thought, gave them greater autonomy. Later the ABAG general assembly, made up of local officials, was to prepare its own "Growth Management Platform," which said that any regional body should be made up entirely of local officials, and that there should be a separate public advisory board. The platform also said that there should be assurance that any agency merger would not create additional powers. A special ABAG committee prepared a statement opposing much of the bill that emerged later from the Action Coalition reflecting Bay Vision's proposals, proposing instead voluntary cooperation among localities. An ABAG-based bill (AB 398) was prepared for the 1993 session. Local governments remained divided and ambiguous about their position overall, and there is substantial opposition to the Bay Vision conceptions among them, as well as substantial support.

The commission sent the draft report around for consultation and review by local officials, citizens, and others in late fall and winter of 1990-91. They met with the mayors of San Francisco and San Jose. The last regular meeting of Bay Vision produced agreement on a final report in February of 1991, and the report appeared in May.

The commission agreed to create a smaller successor body, the Bay Vision Action Coalition, to draft legislation. This group included six of the 30 Bay Vision commissioners, along with leaders of the original convener groups who had not been on the commission, including Larry Orman of the Greenbelt Alliance, Angelo Siracusa of the Bay Area Council, and Rod Diridon of the Locally Elected Conveners. It also included a more fluid mix of other participants during its more than a year of meetings. These included elected officials and current and past presidents of ABAG. This group was thus more of a self-selected stakeholder group, similar to our other cases. It also included the ABAG executive director and planning director. This group made some changes to the Bay Vision proposal, including increasing LEO membership on the commission to 67 percent and dropping any land use powers for the commission. Commission membership was increased to 57 to assure all counties at least two members and to provide for public members. It also added a stronger conception of urban limit lines, which was to be a controversial proposal strongly opposed by builder and real estate interests.

It was also to turn out that all three regional bodies opposed the proposed merger. While ABAG staff and leadership had supported it, its General Assembly did not. The MTC's leadership came out in opposition.

The Action Coalition worked closely with Senate legislative staff and prepared SB 797, carried by Republican Senator Rebecca Morgan. She supported the mixed LEO citizen board, despite some opposition from local elected officials, because she wanted to assure ethnic representation. It became clear over the summer, however, that the jurisdictions of the region were divided on the bill. Moreover, three area senators opposed it strongly, including Quentin Kopp of San Francisco; Mike Thompson of Marin, Sonoma, and Napa; and conservative Democrat Daniel Boatwright of Contra Costa, each for somewhat different reasons. Kopp, it is thought by key players, was concerned that the commission would reduce the relative power of San Francisco on the MTC. Thompson represented his constituency's worries about being controlled by a regional body. Larger central cities seemed likely to have more power than outlying areas. In any case the bill, although reported favorably from committee, failed to pass during the final hours of the session during intensive discussions over the budget in 1992. A successor version, SB 153 in 1993, also failed to pass after approval by the Senate Local Government Committee.

Conclusions

One view of Bay Vision's work, in retrospect, was that it was putting off the real decisions to another group by sidestepping the substantive regional plan and passing that task

to the regional commission it was proposing. Our view, however, is that the Bay Vision Commission could not have had the legitimacy or knowledge to prepare such a plan, and that its effort to design a body that could do so was commensurate with their mission and status as a blue ribbon committee. Organizers indeed had anticipated that with the agreement on the directions for legislation of so diverse a group of leaders, actual legislation would be worked out between the governor's office and the legislature. When it became clear this would not happen, the Action Coalition began the more practical, detailed work of writing the legislation. It also began to try to resolve some of the issues that remained open at the end of the commission's work. The Action Coalition as a smaller working group had more capability to do these tasks than Bay Vision. As a stakeholder group, it also had some potential for winning political support for proposals. The social and intellectual capital created among the Bay Vision commissioners has not paid off to the extent it did in other cases, simply because many of these players do not have formal roles in the public decisions to be made in future. For this reason Bay Vision created less political capital for future action than other bodies we studied.

The failure of this legislation thus far is also in some considerable degree due to factors well outside Bay Vision's control — such as the fiscal crisis of California, the general climate for acceptance of growth management, and the lack of gubernatorial support for growth management. But even had these factors been more favorable, we would question whether a truly workable and widely acceptable proposal could have been produced by such a blue ribbon committee, particularly in so short a time. Few members had significant knowledge to begin with in this complex area. People representing implementing agencies were not at the table to discuss their concerns about how a merger would work. Moreover, the crucial stakeholders with the most to lose and with substantial power, such as local governments or local office holders, were not at the table either. Many of these were to oppose the bill in the end and to play a significant part in its defeat.

While this model of deliberations by leading citizens on the problems of the day has been an important one over the years in the United States, this case suggests that for complex, multi-issue, and multi-objective problems involving many players and substantial uncertainty — such as growth management — such commissions may not be highly useful. While Bay Vision leadership had only intended the commission to be a kind of forum for achieving broad consensus on direction and strategy, and not an implementing or negotiating body, it seems to have had substantial opposition from players who were not involved, which undercut its effectiveness as a forum for regional goal-setting. Members lacked some of the knowledge they needed on the interests of players and on how the proposals might really be implemented. The Action Coalition had somewhat more of this kind of knowledge. The work of the coalition may, however, turn out to provide more of the necessary political and social capital needed for long-term reform in the region.

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Case 10

REGIONAL PLANNING IN LOS ANGELES

by Judith Innes

Regional planning in southern California has become a floating crap game. It is not controlled by SCAG or any other single agency. Rather it's centered — if that's the word — in scattered meetings and negotiation and skirmishes that occur all over this 100-mile square region. . . . in the long run this free-floating structure may prove more workable for such a fragmented region.¹

These words from two experts on California planning capture succinctly the messiness and the challenge for coordination of growth management in the Los Angeles area. Physical geography and demographics are major factors that make this the most difficult region of the state in which to achieve coordinated action. This sprawling region has 15 million people and nearly 200 jurisdictions, including six vast counties. It has multiple centers, along with a topography and a congested highway system that discourage a shared sense of place among its people. It has a highly diverse population in ethnicity and culture as well as income. Its problems are accordingly complex and difficult in comparison to other parts of the state. But the problem of coordination is aggravated by the institutions of government themselves and their histories, powers, and practices. Indeed, in recent years state legislation has contributed significantly to the problem as the powers of single-function agencies have been increased. Nonetheless, efforts at coordination and consensus building continue in a limited way for subareas or limited issues around the region.

One effort to create a regionwide governance for growth management was the LA 2000 committee, a diverse group of 85 prominent citizens appointed in 1985 by Los Angeles Mayor Tom Bradley to produce a strategic plan for the city. The vision they developed² spoke consistently of the issues as being regional, although the process was a city initiative. This city sprawls awkwardly around mountains, and other cities are encased within its boundaries or arbitrarily carved from the urban fabric. The 2000 Partnership, which was formed in 1989 to develop strategies and actions to implement the strategic plan, recommended the creation of a comprehensive regional planning body that would link up subregional structures through which local governments would participate in the development of regional plans.

These LA 2000 groups were both consensus-building efforts in the sense that individuals were chosen to participate who represented a range of interests and perspectives, and because

¹ Fulton and Newman, 1993.

² LA 2000 Committee, 1988.

the goal was to reach a shared vision through a collaborative long-term discussion process. The individuals, as in Bay Vision 2020, were not formal representatives of the agencies or interest groups that would be expected to implement any ideas. This project instead was designed in a more traditional way, similar to the blue ribbon committees so familiar in city government. Leading citizens from the business community, major environmental organizations, universities, and a variety of other groups such as the Catholic church were brought together with the hope of developing legislation that could be passed at the state level, in part because it was backed by their prestige and leadership. This model has worked in the past, but in this case the group's effort has not had significant impact in Sacramento. One explanation offered to us was that the window of opportunity passed as the economy began to decline. At the same time, however, alternative efforts to create growth management legislation were intensifying, backed by powerful actors who had been operating through a stakeholder-based consensus process. These processes ultimately produced more political backing for their products than did LA 2000 (see cases 1 and 2 on the Growth Management Consensus Project and Economic and Environmental Recovery Coalition). Nonetheless, the impact of the LA 2000 process continues through the efforts of SCAG — the Southern California Association of Governments, as described below — to develop a regional planning strategy. The parallels between the processes proposed are striking, and because the director of SCAG is married to the former president of the LA 2000 partnership, there seems little doubt that considerable consultation was involved.

The Basic Story

The governmental organization map of the Los Angeles area is a highly fragmented one. The city itself is governed through a weak-mayor model, with district-elected city councilors holding considerable de facto power over land use decisions in their districts. Council members often know little about the other districts and defer to their colleagues on these decisions. Moreover, the districts themselves may have closer linkages and more joint issues with adjacent cities than to other sections of their own city. Thus, the council member in Venice or West Los Angeles has a closer relationship to Beverly Hills or Santa Monica than to the San Fernando Valley or East Los Angeles. In recent years dissatisfaction with city government has led to talk of secession and separate incorporation of some areas of the city. Moreover, council districts are large enough to be substantial cities in themselves, with 300,000 people. Only one other city in the county is bigger than a Los Angeles City Council district. In fact, the city is so large and fragmented that governing it is itself a problem in regional coordination. Moreover, the city is so large and politically important that it can and does go to Sacramento directly for its needs without having to cooperate with other players.³

³ Several other major cities also have independent lobbying organizations in Sacramento.

Los Angeles County is a second problematic factor in the regional landscape. It also has had a tradition of internal fragmentation of decisions as supervisors divide county funds into five parts corresponding to supervisorial districts rather than setting countywide priorities or following countywide plans. Moreover, as with many counties in the state, the cities typically are suspicious of the county. A number of recent incorporations have been motivated by the desire to avoid county governance. An attitude among players in the city of Los Angeles has been often to ignore the county entirely. Indeed, the county has not been a major regional player in the past, for the most part.

This situation, however, has been changed by two recent events that have made the county Metropolitan Transportation Authority (MTA) into the player with the region's most autonomy and financial resources. This agency was created through the merger of the Los Angeles County Transportation Commission and the Southern California Rapid Transit District, which gave planning responsibility to the new agency as well as operational authority over a vast set of transit operations. The MTA operates also as the county's congestion management agency, and county officials, mayors, planning directors, and environmental groups meet monthly to agree on congestion standards and regulatory approaches to reduce auto travel so the county will be eligible for gas tax funding. Finally, a local sales tax is projected to provide the MTA with \$180 billion in funding for a 30-year plan for a 400-mile light rail, subway, and commuter rail network. This is in addition to substantial bond issues and federal transportation funding, which provide \$880 million for a five-year period.

The MTA has become a force to contend with. Local officials are eager to serve on its board of directors. It is trying to work cooperatively with cities to develop ordinances that will help reduce auto-based transportation demand. It is also trying to engage and educate localities, because "land use is important." But the reality is that it is a single-purpose functional agency with loose and largely voluntary connections to the other regional agencies and local governments, and provides at best a limited forum and negotiating arena for these players. It can fund transit projects, but not control land use. Moreover, it is SCAG that is the Metropolitan Planning Organization (MPO) for the region. While MTA staff do serve on SCAG committees of a consensus-building type to prepare the Metropolitan Plan, a staff member we interviewed said it was impossible to keep up with these activities, and in any case regarded them as "a waste of time with 35 cities on them. It is not the way to write the plan."

A second single-function agency that is also a force to contend with in the region is the South Coast Air Quality Management District (SCAQMD). This agency is responsible for developing and implementing an Air Quality Management Plan for the region encompassing Los Angeles, Riverside, and Orange counties, as well as parts of San Bernardino. This agency is backed by state and federal Clean Air Acts. It has a mandate to improve air quality by 15 percent in three years and to bring the region into full compliance with clean air standards by 2010. Its regulations carry the force of law. The agency is much feared by other players in the region because virtually every development or transportation proposal has air quality

implications. Air quality is in some sense the bottleneck issue that potentially can slow development more than any other in the region.

Despite this legal authority, however, the SCAQMD has not been notably successful thus far. The district, along with SCAG and the state Air Resources Board, developed a 20-year plan in 1989 and updated it in 1991. This plan involved traditional regulation of direct pollution sources like refineries, and indirect regulation for employment centers that attract cars. The first plan required local governments to change their land use patterns by doing such things as adopting ordinances to balance housing and jobs. This proposal met with local government opposition⁴ because local officials saw it as unrealistic, intrusive on local land use authority, and inadequate from a practical standpoint. Some felt there was inadequate consultation with them. Orange County set up an elaborate consensus-building process to respond, engaging city technical staff to review and assess the proposals and to provide alternatives.

Measure M was passed in Orange County to establish a county planning body to deal with the need for dialogue among cities and county over services, air quality, and so on. This body operates in more or a less a consensus-building way. Some in the county would like this body to become a COG, while others propose it should be a subregional unit of SCAG.

Many other regional agencies are big players and relatively independent decision-makers with significant influence on land use.⁵ These include, for example, the city water board and two special authorities set up to build toll roads in Orange County. Each of these has powers that can shape growth, but neither has a mandate or the opportunity to negotiate these responsibilities with other players, nor can they modify their objectives in the interests of the region as a whole or the various other concerns.

The only body that does actually have some responsibility and a mandate for broad-based, multipurpose growth planning is SCAG, but many obstacles exist to its playing the role of coordinator and consensus builder for this massive region. Part of the problem is intrinsic to the makeup of SCAG and part seems to be its institutional history and past practices. SCAG is the MPO for the region and as such produces a regional transportation plan every two years. It also does the plans for wastewater treatment for the region under Section 208 of the federal law, as well as a regional housing plan and the air quality element of the regional air plan. At the time of this research it was embarking on its own voluntary effort to produce a regional growth management strategy but without the backing of any legislative mandate or requirement.

SCAG is a deliberative regional forum with neither the funding nor the authority to implement a regional vision. It is a regional body directed by local officials whose first

⁴ See, for example, the detailed response of the Orange County Air Quality Technical Assistance Program (*Effectiveness of Local Government Measures*), which illustrates the limitations of these proposed measures and criticizes SCAQMD for failure to consult local governments.

⁵ For a more detailed account of these agencies and their activities as regional players, see Bollens, 1993.

responsibility is to the citizens at home who elected them. There is no equivalent pressure to San Diego's ballot-box measures for developing an agreed-on regional approach. While many local officials who get involved in SCAG are interested in regional problems and regional solutions, their divided loyalty has not been resolved through traditional meetings with votes and position taking. Moreover, since SCAG is a purely voluntary membership organization of local governments, members shy away from decisive and divisive positions. Nonetheless, a number of cities have withdrawn from SCAG in recent years. There is considerable suspicion of SCAG, especially among outlying areas such as Orange County, where it is regarded as remote and dominated by Los Angeles, despite the fact that an Orange County supervisor was SCAG's president. Paradoxically, there is little evidence that City of Los Angeles planners or political officials have been particularly interested in SCAG and its activities. The city has only one vote on SCAG, despite its size. It is more likely to be heard in Sacramento, where the population of the city counts for a great deal, than in SCAG. Although SCAG has thus far been unable to play a leadership role in the region equivalent to SANDAG, a number of players believe it is the only agency that can ultimately be the regional coordinating body.

In recognition of these problems and in an effort to play a leadership role, SCAG recently reorganized so as to create a bottom-up, consensus-based regional plan. It changed its 20-member executive committee into a regional body three times the size, made up mostly of local officials representing specific areas. This group in turn is to relate to a series of subregional bodies that will coordinate local government concerns. At the time of this research, SCAG was developing a conflict resolution component to help resolve differences as they come in the process. It is too soon to tell if this process will develop common purposes among the subregions and create a greater level of coordination than now exists.

SCAG has succeeded through a consensus-type process, however, in getting agreement for the first time on population projections. These figures are crucial for communities to get their allocations of development and transportation funding, and they have been a significant bone of contention in the past. SCAG also produced a "Regional Comprehensive Plan Discussion Document" in July of 1993, raising issues they thought should be addressed in a regional plan.

At the same time, however, observers say that SCAG and SCAQMD are engaged in a turf war, with each going over the same ground often in parallel meetings and dealing with the same issues of transportation and air quality, independently and in very different styles. The SCAQMD is far more directive and less interactive than SCAG, with its multiple committee process. The former relies on the power of their enabling legislation, whereas SCAG has only the power of persuasion. An uneasy relationship seems to exist with MTA, where linkages and appropriate working relationships are not yet established. The incentives and opportunities for cooperation are not clear to the key agencies, and it remains to be seen whether they will develop such relationships.

Regional Planning in Los Angeles

Whatever the future is for regionalism in the Los Angeles area, it seems clear players and agencies will have to invent it themselves. One reason is that the political power of players in the area is such that they can (as they often have) influence the legislature and stop most legislation they do not like. Another is that the institutional and political history in the region and the capacity and reputations of the agencies have to be carefully integrated into any new cooperative strategy. It seems likely that while simple regional structures or linkages might be effective in some areas, regional coordination in the Los Angeles area will have to take into account the vast differences and distances across the region. Currently the incentives for cooperation among agencies and local governments appear to be inadequate, and indeed to run counter to achieving successful collaboration.

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Case 11

PLAYA VISTA

by Judith Innes

Overview

At the time of our interviews in June 1993, the Playa Vista project was scheduled to involve 5 million square feet of office space, 13,000 dwelling units, ½ million square feet of retail space, and 1,350 hotel rooms in an undeveloped area between Marina del Rey and the Los Angeles airport. The disputes and efforts to achieve agreement on this project were made repeatedly and failed for more than a decade, although lately there has been some movement toward agreement, apparently since our interviews. This a story of an inability to reach consensus, in a case where many players had an interest in agreeing and incentives to do so, and where several key players tried to get the players together. In this case there was no single forum or arena where the players all met face-to-face for discussion, as they did in our other cases. Moreover, there were so many decision points and agencies or courts with authority that agreements reached by many or most players could be undermined by one or another dissatisfied group. Because of the crucial role of the local city councilor in deciding on permits in their district, city council elections also became a target for those who did not share the views of many other players. Now the case has become so visible and politically charged that other players from outside the area are introducing further difficulties in achieving agreements.

This case suggests the need for some type of regional institution, coordinating agency, court, or arena in which final decisions can be made or legitimized when there are conflicts among autonomous jurisdictions, and when individual public agencies make decisions that run counter to those of other agencies. It also suggests that stakeholder-based consensus building can be particularly difficult to do for specific development projects. It may well be easier to agree on broad principles, policies, and plans than on the specifics of a project that will have direct impact on many of the players.

The Basic Story

A 1,500-acre low-lying area of Los Angeles spreads from the ocean up under the bluffs of the Westchester neighborhood, and abuts Playa del Rey, Venice, Marina Del Rey, and Mar Vista. Today it lies largely empty except for a few buildings erected by the Hughes Corporation. While this area looks more like a barren wasteland than a park, nearby residents came to regard it as their open space. It helped maintain a sense that they lived in a low-density, almost rural environment, although the highrises of Culver City loomed only a short distance away, and the planes from nearby Los Angeles International Airport droned overhead.

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Some residents, including City Council President Pat Russell, knew this would not last. In the late 1970s, when Howard Hughes died and 111 potential heirs began to squabble over his vast estate, it became clear the heirs would want to profit from this land. To gain control of any development decisions, Russell and a group of Westchester citizens went to Mayor Bradley to get agreement to annex the unincorporated property from the county. Approximately three-quarters of the property was annexed, with the rest remaining as part of unincorporated Marina del Rey, and thus under direct county control.

Summa Corporation, which Hughes had created to develop the land, agreed reluctantly to the annexation. Summa proposed a massive mixed-use development involving office space, housing, and retail uses. A new General Plan and a specific plan were made for the area in this period, and the issues became contentious in the early 1980s. Neighborhood groups and environmentalists challenged the proposals for their scale, mix of land uses, traffic impacts, and environmental effects. Neighborhoods each had different concerns depending on where they were located. Neighbors on the bluffs in Westchester were concerned about building height, those in one neighborhood were pleased with road patterns and improved access, and those in another feared traffic impacts. Environmentalists were particularly concerned about the impact the development would have on the last remaining wetland in Los Angeles.

During these controversies a professional mediator who was called in to assess whether the situation was ripe for mediation concluded it was not. The city, the county, and the California Coastal Commission, all of which had jurisdiction over sections of the project, were involved for several years in the mid-1980s in trying to work with Summa to develop and build consensus for a new plan. Numerous public hearings and meetings were held. Councilmember Russell sought to get agreement among the parties for what she contended would be a responsible form of development.

At that point the most intractable public issue concerned the wetlands. The first problem was to determine what portion of the site really was wetland, and the Corps of Engineers, Museum of Natural History, and Summa jointly paid for a study that would provide a neutral definition of wetland and identify the wetlands on the site. The next issue concerned how much acreage the developer would give for conservation. Summa offered 72 acres at first and then 213, proposing to commit \$10 million to its development and to give the property to the Audubon Society to manage and build an educational center. The proposal gained Coastal Commission approval in 1986, during Pat Russell's re-election campaign. She then faced a runoff in June of 1987. It appeared the wetlands issue was solved.

At this point, Friends of Ballona Wetlands (FBW), which had first sued in 1984, brought a lawsuit against the city's specific plan. They challenged the official "neutral" wetland designation. This environmental group included a number of residents of the area closest to the wetlands. FBW opposed the re-election of Pat Russell largely on the ground of her support of this Summa project, instead supporting Ruth Galanter for the city council, who was pictured as a stronger environmentalist.

When Pat Russell lost her re-election bid in 1987 to Galanter — some say in great part because of this controversy — the project was in limbo because so many regulatory steps remained. In Los Angeles, city councilors have substantial say de facto over building projects in their districts. In this far-flung, weak mayoral city, where councilors each represent at least 300,000 people, council members focus attention primarily on their own districts. If Galanter did not want the project it would not be given the needed permits. Moreover, the FBW suit continued in the courts. Summa had to go back to the drawing board.

Galanter came into office giving the developer a clear message. She said they should revise the project to save the wetlands, reduce the traffic generation, and meet a number of other neighborhood and environmental concerns. When Maguire Thomas Partners (MTP) took over the project in 1989, they met with the councilwoman to hear the requirements she had in mind and then took their new proposal to every community group they could identify, including those in adjacent cities. They met with the community groups who had expressed opposition to the existing zoning that would have permitted the project. Three concerns were the most common among these groups. Traffic was a major issue, not only because of the sheer size of the project, but because access to the area was primarily on one feeder street which was already heavily backed up. Second, the restoration and expansion of the Ballona Wetlands remained an issue. Third, building heights were a concern since they would affect perceptions and views. Although a few proposed a no-development alternative or a smaller-scale project, the developer tried to address their concerns by changing the mix of land uses to reduce the traffic generated, without reducing the overall scale of the project.

The developer assembled a multidisciplinary team, which then conducted a series of public design workshops that lasted up to 10 days each over a period of six months. Their own fact sheet about this (*Playa Vista: The Planning Process*) professes faith in community participation at an early stage, the building of trust, and the importance of dialogue. They did modify the plan in a number of ways as a result, including providing a ball field, changing the mix of land uses to reduce traffic, and making some changes in road patterns. They were proud of their efforts to engage and work with community members. The effort, however, was not consensus building of the sort we have found in other cases, but more of a traditional architectural community workshop, led and largely controlled by professionals. Some participants referred to it as “one-way communication.” MTP described it themselves as “education” of the community as well a “dialogue” designed to establish trust. During 1990–91, MTP and FBW agreed to settle their differences by the creation of a consensus-building wetlands committee made of their representative along with staff of the city council for the purpose of developing the restoration plan for the wetlands.

In June 1993 as our interviews ended, the draft EIR on the first phase of the plan went forward for approval, but opposition continued and spread beyond the immediate area. State Senator Tom Hayden (whose district did not include Playa Vista) and others were mobilizing opposition. By that time, however, supporters of the new MTP plan outnumbered opponents and included many who had opposed the Summa plan some years earlier. The same day that

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the city council, with Galanter's support, approved the first phase of the revised plan, the council also joined the settlement of the FBW litigation. Senator Hayden had moved on to other issues, including candidacy for governor, and a new set of parties had sued to overturn the city's approval. That lawsuit was expected to go to hearing early in 1994. Nonetheless, a number of issues were resolved, although much remained to be done at the time of our study.

Case 12

MILITARY BASE REUSE PLANNING

by Joshua Kirschenbaum

Background

The conversion of military bases from active military occupation to civilian use is a cumbersome process involving many participants. The federal government is responsible for the disposal of the military property, and the local community is charged with establishing how the property will be reused.

No formal guidelines have been developed to assist local communities in convening reuse planning bodies and to coordinate the interaction of these bodies with the federal government. In disposing of excess federal property, the host branch of the military occupying the base must conform to rigid guidelines for property disposal and toxic remediation of the facility designated for closure. The community affected by the closure then is responsible for organizing itself and determining which reuse options will best facilitate the economic restructuring of the region.

The 1949 Federal Property and Administrative Services Act sets forth the basic statutory framework for disposal of surplus federal properties. Once federal property such as a military base is determined to be excess and the existing tenant branch of the military sees no use for the property, there are four primary methods of disposal: transfer to federal agencies, public benefit conveyances (PBC), negotiated sale, and public sale. Other federal government agencies have the first priority on the property, followed by state and local governments, and finally open public sale. Community property acquisition efforts have focused on the Public Benefit Conveyance process.¹

The potential for free land and/or facilities for affected communities attracts many players to the military base reuse planning process. The economic, political, and social impacts of a closed military facility are not contained by city boundaries. These regional implications force the reuse planning process to incorporate a wide variety of participants.

¹ Public Benefit Conveyances are agreements between the federal agency disposing of property and nonfederal public agencies, or eligible private nonprofit organizations attempting to acquire the property at discounted prices, usually free. The principal categories under which PBCs may occur include correctional facilities, health or educational use, historic monuments, homeless assistance, parks and recreation, public airports, and wildlife conservation. The military has utilized all of these methods of conveyance since the implementation of the 1949 act except for homeless assistance, which was introduced through the McKinney Act in 1987.

Creating a Planning Body

Defining the size of the community to be affected is a critical decision in the process, as it will incorporate the realm of players to become involved. This has been a notoriously unsuccessful process. Communities closest to a base feel they should have a greater role in the conversion planning process than representatives from areas that are affected less. The competitive nature of establishing a reuse planning body often leads to ambiguous responsibility and community paralysis. In response, some regions are setting up consensus-building processes to facilitate the interests of participants. The trouble with establishing reuse authorities is that there are no existing regional government bodies or structures of authority. To further complicate the process, the ad hoc planning organization can involve communities with historic conflicts.

In the following cases, consensus building among multiple planning bodies concerning a single base will be investigated by analyzing the formation of the planning bodies and then looking at how the planning organizations work together. Three case studies of the military base reuse planning process initiated at George Air Force Base, Mather Air Force Base, and Fort Ord will be used to illustrate the various ways of establishing consensus. The cases also suggest that without consensus it is difficult to get action because no overriding authority is available to make decisions and there are many conflicting interests.

George AFB and Mather AFB were designated for closure under the 1988 federal base closure legislation. From this successful impetus, subsequent legislation was enacted to slate military bases for closure in 1991, 1993, and 1995. Fort Ord was designated for closure in 1991.

Influence of Jurisdictions on the Planning Body

The spatial arrangement of military bases and incorporated cities within a county has tremendous impacts on the reuse planning process. Bases may be remotely located in an unincorporated county, surrounded by abutting jurisdictions, or may include incorporated jurisdictions within their boundaries. Alternatively, a base may be located entirely within an incorporated city. A more unusual scenario involves the simultaneous closure of a number of military bases within a series of contiguous jurisdictions.

Fort Ord Army Base represents a military base that includes two incorporated cities and portions of unincorporated Monterey County. George Air Force Base features several incorporated cities within San Bernardino County that immediately surround the base. Mather Air Force Base demonstrates the impacts of closing a military base that is relatively isolated from incorporated cities within unincorporated Sacramento County.

These spatial and jurisdictional relationships are critical for understanding the failures and successes of consensus building at each of the military bases. The number of incorporated cities and their proximity to the base plays a large role in defining the players. At George and Fort Ord, where there are many jurisdictions near the base, more players are involved in the

planning process so consensus building is more difficult. In contrast, at Mather AFB, relatively few jurisdictions were near the base and the consensus building process went considerably smoother.

Critical Factors

These three cases demonstrate that four factors are important to successfully plan the reuse of former military bases:

- Historic disputes among communities are exacerbated through the reuse planning process, as they were at George AFB and to a lesser extent at Fort Ord.
- It makes a difference who convenes the process. Two of the three planning processes (Mather AFB and Fort Ord) were organized by local members of Congress. A local county supervisor organized the process at George AFB. There are tremendous differences in the capacity of the convener. Members of Congress seem better able to facilitate more-collaborative regional reuse planning teams, perhaps because they are disinterested players and because of their potential influence on Department of Defense decisions.
- The type or amount of funding for planning will promote or inhibit the number of regional players who become involved in the planning process.
- The type of on-base facilities will influence which players are involved and which planning questions are asked. For example, both George and Mather AFBs are endowed with air support facilities, whereas Fort Ord contains vast amounts of housing and undeveloped land.

THE CASES

George Air Force Base

Community History

George Air Force Base is in an unincorporated area of San Bernardino County, isolated in the high desert of the Victor Valley. It is adjacent to the city of Adelanto, six miles west of the center of the city of Victorville, which also abuts the base. The cities of Apple Valley and Hesperia are also affected by the base closure. The closure of George AFB demonstrates the dangers in failing to establish jurisdictional cooperation early in the planning process, as the entire process disintegrated as a result of the stakeholders' inability to reach consensus on the power structure of the reuse planning body. This case illustrates in particular how the failure of a regional planning body to address the needs of a community that will be significantly

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affected by whatever decisions are made can be a real obstacle in the redevelopment of former military bases.

The isolated communities in the Victor Valley had developed intense rivalries over a multitude of issues before the George AFB reuse planning issue arose. Victorville had grown as the hub of the Valley. Apple Valley and Hesperia, in contrast, are residential communities that join Victorville on the east side of George Air Force Base. Adelanto is a small city with a population of 10,000 people, representing only 4 percent of the Valley's population of approximately 250,000. It is the closest jurisdiction to the military base, which has inhibited its growth. Many of the city's residents have felt Adelanto has languished in the shadow of the prosperity and growth of the three cities to the east. This has created enormous tension, which set the stage for the demise of the reuse planning process.

Planning Process

When the base was designated for closure, a newly elected county supervisor organized the community planning effort. Congressional representatives for the region did not get involved, which presented additional hurdles for the community. Organizational support from a local member of Congress can facilitate the reuse planning process by brokering the local/federal interaction as an unbiased coordinator for jurisdictions involved at the regional level.

The county supervisor convening the George AFB community planning process was also the county's representative for the local process. This dual responsibility diminished the supervisor's ability to moderate or facilitate the planning process. This supervisor was part of the process, not a disinterested outside agent.

Immediately after the base was designated for closure, the supervisor initiated the reuse planning process by convening officials from the four affected cities and county. This body became known as the Victor Valley Economic Development Authority (VVEDA). Unlike Mather and Fort Ord, no ordinary citizens were involved in the reuse planning process.

Planning Challenge

Without a large participatory planning organization, the consensus-building challenge was between the communities participating in the VVEDA planning process. Adelanto's representatives felt that the city would be underrepresented by having only one of five delegates in the decision-making process. The city contended that the three cities and county would operate as a voting block and Adelanto would never be able to voice or implement its concerns. Only six months into the reuse planning process, Adelanto officials decided the city would pursue its own plan for George AFB. The consequences of this independent action were devastating to the reuse planning process and to VVEDA consensus-building efforts.

Although the county supervisor who had convened the planning process had responded immediately to the announced closure, Adelanto representatives were not impressed with the intensity of the task force's efforts as evidenced by the infrequency of the meetings as the

process got underway. Adelanto officials, foreseeing a day without the military, had always envisioned annexing George after closure to mitigate the negative externalities the city had endured for half a century. Despite these concerns, Adelanto tolerated the joint planning efforts for the first six months, even agreeing to rename the group in preparation for the establishment of a Joint Powers Authority. The Victor Valley Economic Development Association was intended to devise and execute a strategy to reuse George.

As the summer of 1989 progressed, it became evident that Adelanto would abstain from entering into the Joint Powers Authority and, indeed, Adelanto refused to sign the JPA agreement in September 1989. At that point the city formally embarked on an ambitious course of action to plan the reuse of George Air Force Base and future of the Victor Valley on its own terms.

State Intervention

Simultaneous with local efforts, Assemblyman Jerry Eaves was acting in the state legislature to combat the economic impacts of two bases closing in the same county.² Because of this, Eaves requested that the legislature give special consideration to the cities of the Victor Valley in creating a redevelopment authority to alleviate the financial and economic burdens caused by the base closure.

On January 31, 1989, Eaves introduced an addition to the California Health and Safety Code permitting the legislative bodies of Victor Valley to use the Joint Powers Authority to create a redevelopment district on George territories. It waived several of the standard requirements for redevelopment.³ The legislation designated an eight-mile radius around the base that defined the communities involved in the site's redevelopment. The redevelopment agency would function as an organization that collects funding to support redevelopment of the military base. In addition, the county was required to be a partner in the Redevelopment Authority for the redevelopment to proceed. Land use powers would be granted to a single entity that annexed the base.⁴ These conditions of the legislation would prove to have tremendous repercussions for the annexation of George Air Force Base. After nine months of amendment on the Assembly and Senate floors, this legislation was ratified by the governor September 20, 1989. This legislation provided the impetus for the formation of the VVEDA Joint Powers Authority, consisting of the cities of Victorville, Hesperia, and Apple Valley as

² George and Norton Air Force bases were designated for closure in San Bernardino County through the 1988 legislation. The conditions of the Eaves Bill were confined to the county of San Bernardino to prevent abuse of the special authority.

³ The bill authorized "the JPA to perform the functions of a legislative and planning commission, except with regard to land use, planning and development decisions, and carrying out the redevelopment of the project area" (Assembly Bill 419, 1989).

⁴ The funding would be generated through tax increment financing, where the incremental increase in property tax revenue is returned to the redevelopment area.

well as the county of San Bernardino. Adelanto was left to proceed of its own accord after the city backed out of the JPA.

Competition Escalates

With the JPA in place, there were three main obstacles to overcome before the base could be rewarded to VVEDA by the Air Force. First, as the city adjacent to the eastern boundary of George, Victorville had to annex the site in order to obtain land use authority. It was understood that a local entity would provide services more efficiently than the county. Second, the redevelopment project area needed definition and approval by the State of California. Finally, the Air Force needed to transfer the airstrip and related facilities to VVEDA.

Adelanto faced the same challenges as it embarked on its own planning process funded by existing redevelopment agency funds, without the benefit of county, state, or federal support. Within six months after the base was formally designated for closure, two fully developed planning teams were competing for the control of George. The base could not be conveyed to both groups. Besides competing with each other, each planning team had to overcome many hurdles.

The reuse visions of both Adelanto and VVEDA were remarkably similar. Differences in control and methods of acquisition were the catalysts of the interjurisdictional conflict imbedded in the reuse planning process. Through the Eaves legislation, VVEDA was seeking to establish a 55,000 acre redevelopment area to facilitate the financial aspects of the transition of the base, which would be jointly controlled by the three cities and county. Land use authority would be granted to the City of Victorville in order to expedite VVEDA's plan. On the other hand, Adelanto proposed to add a 5,000-plus acre area to their existing redevelopment district. The city also wanted to annex the unincorporated county property so it could have land use authority. However, if Adelanto gained land use planning authority over the site, it was open to allowing the other cities of the valley to be part of a larger redevelopment district as suggested by the Eaves legislation.

VVEDA intended to acquire the airstrip and related facilities needed to operate an airport through a free conveyance sponsored by the FAA. Adelanto hoped to acquire the base through an outright purchase sponsored by a private developer. Throughout the planing process, VVEDA closely abided by federal and state guidelines for base property disposal, whereas Adelanto awaited the Air Force decision on to whom the base would be transferred before completing any extensive analysis.

During the five years of planning, there were many attempts to bring the two groups together by the federal and state governments. All of these efforts were to no avail. Both planning bodies pursued their own course of action. There was little opportunity to reach consensus among the two planning groups. This is ironic since both planning groups were planning similar reuses of the base. In both cases the airstrip would be retained and developed as a international superport.

Intervention Efforts

The county supervisor kept trying to alleviate the hostilities that prevented Adelanto and VVEDA from agreeing upon a compromise. The local member of congress, who was criticized for his failure to become more involved in the planning process, was unable to select which side to support. Although the Congressman expressed confidence that a resolution could be made at the local level, unfortunately this was impossible.

Both sides attempted to establish grounds for a compromise throughout 1990 and 1991 with little success. Adelanto's adamant stance regarding its annexation and control of the future of George Air Force Base prevented any substantive progress in negotiations.

Following Adelanto's split from VVEDA, the Air Force saw the potential problem that lay ahead with two jurisdictions competing for the base. Robert Rauner, former director of the Department of Defense in the Office of Economic Adjustment (OEA), confirmed the initial federal backing of VVEDA and claimed that although Adelanto's action was a setback, he thought the difference would be resolved. The federal government's well-defined preference for VVEDA slowly eroded under the torrential waves of controversy between the rivaling entities.

Exasperated federal officials began to lose patience with the high-desert community as the months rolled by without a resolution. In late 1991, it was obvious that the Pentagon was frustrated with the events transpiring around George. On behalf of the Air Force, John Smith said that the consequences of the two sides not coming together could force the federal government to decide between the competing interests who will get the base. VVEDA began receiving pressure from the Air Force to work with Adelanto, and in the summer of 1992 Air Force representatives came to San Bernardino County in a futile attempt to unite the two parties.

Frustrated with the lack of mediation success, and uncomfortable with the prospect of having to choose between two reuse plans, the Air Force requested Governor Wilson's assistance in resolving the impasse. This was a radical move on behalf of the Air Force and OEA, since the state government has no formal role in the reuse process. Speaking for the state, Wilson responded to the Air Force request by confirming that political support existed for VVEDA throughout the process.

The three-year dispute between the two contenders had weakened the federal government's support of VVEDA and repeatedly delayed its naming of the future controlling body of the base. The continued ambivalence on the part of the Air Force resulted in a growing animosity toward the military's practices on the part of VVEDA participants. The Air Force would ultimately have to award the base to one of the competing agencies, but it was obvious that it could not facilitate consensus among the jurisdictions or make a decision.

Military Base Reuse Planning

Finally, instead of selecting a victor in the three-year competition between VVEDA and Adelanto, the Air Force established a bidding process that would enable one community to acquire the entire base. Both contenders would have to make offers on all additional property not used to support of the airport, on the basis of which the Air Force would choose one entity to control the base. This entity would be rewarded the remaining property, including the airstrip, free of charge.

Reactions to this precedent-setting decision, which was released nine months after its April 1992 deadline, were as immediate as they were emotional. Both sides quickly labeled it as the “Record of Indecision.” Because of the constant feuding and Air Force indecision, the possibility of a timely conversion of George Air Force Base has long passed. As the high desert communities await resolution of this case, the negative impacts of the continual delays and bitter rivalry continue to divide them.

The George case was a landmark in the conversion process and the federal government’s response to community conflict. Although it was frustrated by the local communities’ inability to reach consensus on base reuse, the federal government also was unable to resolve the issue of base disposal. Unfortunately, the bidding war it created will only fuel the intense dispute between the two contenders.

Mather Air Force Base Community History

The Mather Air Force Base reuse planning effort also illustrates the role geography and political jurisdictional lines play in the conversion process and its influence on consensus building. In this case the results were more positive. The base is located 12 miles west of the city of Sacramento in unincorporated Sacramento County. No other city is located closer to Mather. As a consequence the reuse planning process has been relatively unencumbered by conflict between neighboring incorporated cities. However, Rancho Cordova, a small unincorporated community adjacent the base, has played a large role in the planning process. The relative isolation of the base has allowed a regional planning process that included participants representing a wide range of perspectives throughout the county. Nonetheless, the potential for unrestricted visionary planning was constrained by a mandate imposed by the county board of supervisors to maintain a civilian airport use at the facility.

Before the base was formally designated for closure in 1988, there were internal Air Force rumors that the base was obsolete and would be closed in the near future. After learning of this potential closure, local Congressman Robert Matsui organized a planning team to fight the impending action. Although the team did not fight the legislation that would ultimately close the base, it established another planning body to confront the formal closure announcement in 1988. Congressman Matsui picked all of the members of this planning team, consisting of business leaders and retired military personnel.

Planning Process

Once there was a formal closure announcement, Matsui relinquished some of his authority and control of the planning team to the Sacramento County Board of Supervisors. Rather than staffing a new commission to address the closure, Matsui requested that the board of supervisors accept his 28-member coalition in order to plan the reuse of the facility. The board supported this recommendation and the group began the reuse planning as the Sacramento Area Commission on Mather Conversion (SACOM-C). The original Matsui group was expanded to 45 members to include a wider community representation.

SACOM-C's mission is to identify reuse alternatives, debate, evaluate, and make recommendations to the board of supervisors on the conversion of Mather Air Force Base. Through broad representation of community interests, the commission was designed to serve as a vehicle for community involvement. Its only responsibility was to provide recommendations to the county. This body had no planning or land use designation power; the county retained this authority.

The board of supervisors directed SACOM-C to focus on aviation reuse alternatives for the future of Mather so the community could take advantage of the growing aviation industry to create jobs and benefits for the region. The value of the existing facilities (runways and support facilities) was an important factor in maintaining an aviation use of the site. Early in the process it was believed that no other reuse possibilities could generate the economic and social benefit of aviation reuse. Thus, alternative reuse strategies to aviation were not part of the SACOM-C mission, and most of the work of the two-year evaluation revolved around an aviation reuse package.

Criticism of the Process

Though the SACOM-C membership seemed comprehensive and inclusive, it attracted criticism from community players with a variety of political orientations. Its staffing was criticized from the outset by a coalition of activist organizations whose leaders felt their agendas were not represented by the original members of Matsui's committee to save the base. This agglomeration of 38 organizations was known as the Coalition of Peace, Environment and Justice (PEJ), which successfully lobbied Congressman Matsui and the board of supervisors to increase their representation on SACOM-C. As a result, 15 members of the coalition were appointed to various bodies of SACOM-C. While the PEJ members did not represent a true majority of the commission, their nearly perfect attendance at committee and subcommittee meetings afforded them a strong voice in the reuse planning process.

While it is difficult to assess the coalition's influence on SACOM-C's proceedings, the alliance was able to guarantee members' representation and an opportunity for their issues to be heard by the board of supervisors. This expanded the consensus-building capacity of the SACOM-C process and demonstrated that a wide variety of players with conflicting backgrounds could work together.

Rancho Cordova's Response

In contrast, residents of the more conservative, unincorporated community of Rancho Cordova did not take action until late in the process, when they became aggravated with SACOM-C's progress and what they perceived as their underrepresentation. They displayed a similar tenacity, however, as they attempted to alter and provide direction to the process. Feeling that their two members gave them no voice on the commission, they created a 10-person task force to develop their own Mather AFB land use plan, which was published on December 10, 1990. The plan centered on an airport and provided a mixed-use environment to encourage economic and employment stability, growth, and diversity. This document of the Rancho Cordova Chamber of Commerce Mather Reuse Task Force preceded the county's reuse plan and appears to have strongly influenced the county plan.

County Efforts

After SACOM-C's findings were published in January 1991, the commission was disbanded and the county board of supervisors created the Mather Internal Study Team (MIST) to implement its recommendations. MIST was composed entirely of county staff representing the board of supervisors and the departments of airports, public works, planning, parks and recreation, environmental management, general services, and the county executive office. In February, MIST was directed to further refine and study SACOM-C's recommendations as well as examine, and give equal weight to, aviation and nonaviation reuse options. It was also charged with creating a development timeline and incorporating the issues and concerns of Rancho Cordova residents and other affected individuals.

The MIST Plan, published September 24, 1991, provided three reuse alternatives, two of which were related to aviation. All three plans were jointly prepared and supported by MIST, the Rancho Cordova Chamber of Commerce, and the Sacramento County Planning Department. Alternative 1 proposed a mixed aviation, commercial, recreation, residential, and industrial reuse plan. Alternative 2 included fewer acres for residential, commercial and industrial uses, and increased space for recreational activities. Alternative 3, which excluded aviation, was dominated by residential uses, with supporting elements of industrial, commercial, and recreational uses.

During the entire Mather reuse planning process there was evidence of continuing opposition to use of the base for aviation. This did not seem to disrupt the consensus-building process until the board of supervisors had to make a final decision. Two supervisors opposed aviation reuse, for different reasons: Supervisor Illa Collin because the airport would cause excessive noise in adjoining neighborhoods, and Supervisor Grantland Johnson because he wasn't convinced that airport use would provide the greatest economic development opportunities for the county. Three other supervisors — Sandra Smoley, Toby Johnson, and Jim Streng — supported the proposals despite estimates that the facility would lose as much as \$3 million annually during the first four years of operation, and the county was already facing a substantial budget deficit. Johnson's concern was not unprecedented; while the board

went on record in support of aviation reuse three times since 1988, each time they stopped short of issuing formal approval.

Beyond the economic disputes over the feasibility of aviation reuse were other ideological disputes about the future of the Sacramento area. This opposition was articulated by Supervisor Collin. She saw reluctance to remove Mather's 11,300-foot runway and related aviation facilities as a major impediment to successful base reuse planning.

Journalists, architects, and planners thought the community was hypnotized to support the airport reuse option because of its immediate allure. Many concurred that the huge quantity of land, without the various ownership interests that muddles most urban planning, gave Sacramento a one-shot opportunity to do something significant that could inspire the public and serve as a generator of prosperity during a period of economic lethargy. Despite the protests against the airport, the county did approve a civilian Mather Airport that would serve general aviation, nonpassenger commercial aviation, governmental aviation, and aircraft maintenance.

The Mather conversion process demonstrates a participatory structure that was applauded and replicated by other communities dealing with base closure. However, the planning effort was constrained by the perceived advantages of maintaining an airport use on the site. This process clearly demonstrates that all options for reuse need to be identified early in the process to facilitate consensus among the participants. If key decisions, such as approving an airport reuse, are left until the end of the process, a stable, well-structured process could be dismantled.

Fort Ord

Community History

Fort Ord, with 28,000 acres along the beautiful Monterey coast, is large and offers many possibilities for future development. Reuse planning here, however, is complicated by the fact that the military base encompasses three political jurisdictions and is abutted by three other cities. Each jurisdiction also has quite different interests in the outcome of the process, unlike the other cases where one jurisdiction had land use control. In this case a comprehensive community task force with seven advisory groups was formed early in the process to orchestrate the planning process and create a comprehensive reuse strategy.

The Fort Ord reuse planning process could have been the most contested process of the three examined because of the multiple jurisdictions encompassing the base. Most of the base is in Monterey County, but the two cities of Marina and Seaside also have small portions of the site within their respective jurisdictions. These two working-class cities saw the closure of Fort Ord as an opportunity for unprecedented economic development, while the county, which is more conservative about growth, did not want to promote dense, uncontrolled growth on behalf of the cities. In addition to Seaside, Marina, and Monterey County producing annexation plans for portions of the base, the cities of Del Ray Oaks, Sand City, and Monterey

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also developed annexation plans, as they too share common borders with the base. This involved them to a greater extent in the planning process.

Planning Process

As in the Mather planning process, a member of Congress, in this case Leon Panetta, organized a reuse planning body with many committees to address the reuse options for Fort Ord. The formal commission was comprised of elected officials in Monterey County, and its working group committees consisted of local businesses and citizens. This planning group of elected officials and citizens was known as the Fort Ord Community Task Force (FOCTF).

This regional task force was mandated to generate reuse alternatives and a strategy for the base within 18 months of the closure announcement. The planning group also attempted to structure a Joint Powers Agreement between Seaside, Marina, and Monterey County, but as in the case of George Air Force Base, this effort was to no avail. Although the two cities were willing to enter into such an agreement, the county was not. The county did not want to dilute its land use authority over the base by being part of a JPA with the two cities that had minority interests in the base.

The FOCTF planning process afforded numerous opportunities for citizen participation, in part because more than 500 people participated in the development of a strategy for conversion. Nonetheless, the planning staffs and elected officials from Marina and Seaside, the jurisdictions that may be affected the most by the closure, have been critical of the FOCTF process. Both cities have voiced concern over the influence of more-distant cities in the county that were involved in developing a strategy for the transfer of Fort Ord. Seaside and Marina have immediate planning needs, as well as their own interpretation of successful conversion. These sentiments were expressed on two fronts. The cities embarked on their own planning initiatives, and also coordinated their planning efforts through the development of a Joint Powers Authority including both cities.

In addition to the difficulties with the initial JPA involving the county, Seaside and Marina officials felt they were underrepresented on the FOCTF because the regional planning body incorporated views and visions from the entire county and did not give precedence to the two affected communities. However, the cities did not react like Adelanto, their counterpart at George Air Force Base, and divorce themselves from the process. They remained involved in the FOCTF but pursued their own planning processes within their respective jurisdictions. The county also undertook a similar community planning exercise to develop reuse alternatives.

By the end of the first 18 months of the planning process, four plans had been created through various levels of consensus-building procedures. As the formal planning process proceeded through the FOCTF efforts, the two cities and county pursued some unorthodox planning procedures. They held special meetings with the citizens of each jurisdiction to allow each to develop their own visions of Fort Ord in the future without regard to constraints that would impede their development. These three visions, in turn, supplemented the efforts of the

FOCTF, and provided both a foundation and goals for the formal reuse planning process. Through these efforts all of the potential alternatives were placed on the table, and a strategy was developed and disseminated by the FOCTF.

With a strategy in place, the next step for the Monterey County area was to create a working reuse plan for the site. Since the Fort Ord Community Task Force was a regional advisory body and not an official planning body, the Fort Ord Reuse Group (FORG) was formed in October of 1992 to create an initial reuse plan. This group was created after a formal planning body could not be devised through the JPA process. In other communities experiencing closure, the equivalent group would have been comprised of a body with land use planning power (such as the MIST team at Mather), but this was impossible in the case of Fort Ord. The strongest approach upon which the five cities and the county could agree was to sign a paper stating they would work together to get federal funding. Dennis Potter, a senior planner for Seaside, believed this underscored a potential problem for this informal planning arrangement:

The historical tensions that have always been there still are there. And so, it's really one step at a time. We are well aware of the pitfalls. Formal efforts [JPA formation] fell apart. We know we've got to deal with this issue because if we don't, somebody else will, and we may not like that. And that fear drives all of us, that we've got to work together.⁵

The failure of the three jurisdictions to organize an agreed-upon Joint Powers Authority allowed the region's other three cities (Del Ray Oaks, Sand City, and Monterey) to assert more influence in devising a reuse plan. The FORG group did not have land use authority and was employed only to maintain the progress towards developing an initial reuse plan. In light of these potential problems, the Fort Ord Community Task Force still meets periodically to guide FORG process.

The FORG planning process operates on a three-tiered system with the elected politicians as the decision-making, policy body and a working group comprised of city planning staff members from the respective jurisdictions. Coordinating between these two layers is a managerial level, consisting of city and county administrators. A project coordinator has been retained by the group to work out the daily conflicts of the working group. When the group first began to establish the Initial Reuse Plan there were many conflicts among the three land-use controlling jurisdictions stemming from six different visions of the base. In order to complete this document and resolve the differences among the various planning goals, the project coordinator developed a consensus planning process. Consensus of the five cities and county were needed to establish a land use designation within the base boundaries. If

⁵ Interview with Dennis Potter, Seaside economic development planner, 1993.

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consensus cannot be reached, the jurisdiction that controls the property would have the final say in designating a final land use.

FORG was able to complete an Initial Base Reuse Plan (IBRP) on December 17, 1992. This document was based on the original work of the Fort Ord Task Force. Similar to the strategy document, the central theme of the IBRP is the creation of a university campus on the site.

The actual map was the principal component of the Initial Base Reuse Plan. The consensus process developed by the project coordinator resolved 90 percent of the discrepancies within the six-month timeframe, leaving only seven contested parcels. The land uses for these parcels would have to be determined through a future process. The selected land uses of the disputed areas were designated by the jurisdiction with land use control over the area. In addition to the land use descriptions, the plan contained information on existing infrastructure maps, environmental cleanup concerns, economic impacts, habitat acquisitions, and acquisition strategies.

Through this process, the FORG group proceeded to develop a final reuse plan for the base involving the most complicated combination of involved jurisdictions. The process was guided by fear of not creating a plan that would satisfy the needs of the included jurisdictions. In fact, the State of California established a JPA to proceed with the final planning efforts for the base.