

**CAN MEDIATION HELP RESOLVE NAPA COUNTY'S
TOP TEN PUBLIC POLICY DISPUTES?**

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I. Introduction

In Napa County, in California, and on a national level our systems for making public decisions are increasingly trapped in gridlock. Opposing factions battle each other in court, in the hearing room, and at the ballot box. In fact, these traditional ways of making decisions often fail to produce outcomes that are truly stable. After all, if one side is dissatisfied with the decision, there is usually another round of skirmishing.

A major casualty of this adversarial style of decision making is the natural resource base which we so treasure here in Napa County. Another casualty can be the loss of the trust and mutual respect which are essential to building effective public policy. Yet, over the past ten years, communities like Napa have come to rely more often on new techniques to resolve disputes. These techniques, which we call mutual gains bargaining, are based upon face-to-face negotiation among the groups who have a stake in the decision. In many cases, a professional facilitator or mediator helps the groups find effective solutions and translate them into formal agreements. Mediation can help to build consensus in both site-specific disputes and broader regulatory and policy-oriented matters, such as new laws and regulations.

We offer this short paper as a point of departure for further discussion and action on these ideas. We begin by characterizing one persistent dispute in Napa Valley: the Wine Train. Then, we describe how Napa County has resolved conflicts in the past. Next, we discuss how a mediation process might work to produce an agreement that can stand the test of time. Finally, we consider several other public policy disputes that might be amenable to mediated negotiations, and we conclude with some ideas for next steps.

II. The Wine Train

In 1987, Vincent DeDomenico, a San Francisco resident, joined with Napa residents, including Alvin Lee Block, M.D., and Yvonne Frauenfelder, to purchase the Southern Pacific Railroad line right-of-way to operate the Wine Train between the City of Napa and St. Helena. They proposed six Wine Train round trips per day, with meals, and with some possibility of commuter service, including connections to Amtrak via bus connections to the Martinez station.

Conflicts arose among the Wine Train's owners, track neighbors, and municipalities over who was to bear responsibility for maintaining track crossings and installing safety devices at crossings.

To enhance the downtown tourist trade, the City of Napa approved the Soscol station despite the objections of city residents who live along the tracks. The residents argued that noise, traffic congestion, and vibrations make a Redwood and Highway 29 north Napa location more favorable.

Some Upvalley wineries and businesses characterized the Wine Train operation as a tourist attraction causing serious environmental harm. They pointed to increased traffic, disrupted traffic and emergency services, air and noise pollution, and fire and collision hazards. A compromise reached during the regulatory process, pending final review, permits the Wine Train to operate a maximum of twelve round trips weekly without discharge of passengers other than in the City of Napa. The compromise allowed the Wine Train to begin generating income and at the same time it provided the opportunity to develop actual data about Wine Train impacts on the Valley.

Later, CalTrans proposed an unsightly Highway 29 "Great Wall" overpass to accommodate the Wine Train tracks, potentially increasing both the costs to taxpayers for road construction and the Wine Train operating expenses (which might increase because of the elevation rise over the overpass).

Regulatory and litigation challenges continued to consume time and resources. The Interstate Commerce Commission assumed and then rejected jurisdiction over Wine Train operations. The California Public Utilities Commission (CPUC) then took over this jurisdiction. Local legislators gained passage of a bill overturning a century-old environmental impact report exemption for train operations. Local agencies asserted local regulatory jurisdiction over Wine Train station construction. St. Helena purchased an abandoned train station to prevent the Wine Train from acquiring the site, and then that city and the Town of Yountville contributed to a litigation fund challenging Wine Train regulatory approval.

The CPUC rejected the Wine Train's first Environmental Impact Statement (EIS) as inadequate after numerous well-attended public hearings. The first draft of the second EIS apparently suggests that five round trips daily would be an environmentally acceptable and preferable option. Some Upvalley wineries and others citizens have pledged a \$30,000 legal fund to contest the EIS if it is approved by the CPUC. CPUC Administrative Law Judge Lemke has volunteered to serve as a mediator in settlement negotiations while reserving the right to make a decision if the disputing parties cannot achieve

compromise. Settlement hearings have been postponed until final revision of the second EIS.

III. How Napa County Has Resolved Its Disputes in the Past

The Wine Train is not the only Napa Valley conflict having broad implications for the Napa community. Two recent disputes, one resolved by order of a vote of the Board of Supervisors, the other by face-to-face negotiation, illustrate the contrast between consensual agreements and imposed resolutions.

Hall of Records Preservation Conflict

Under great debate recently was the plan to build a new Hall of Records in Napa County. County Superior and Municipal Court judges favored razing the existing Hall of Records building and constructing a new facility to provide courtrooms, support services, and a secure location for holding and transferring prisoners for trial. Initially, the Board of Supervisors indicated its agreement with this project.

Local preservation activists requested that the Hall be preserved while required environmental review was occurring. They insisted that the County had a legal and moral obligation to pursue all appropriate alternatives to avoid the Hall's destruction. These supporters disagreed with the judges' position that restoring the existing structure would result in inadequate facilities or would lead to excessive costs. Just before a scheduled public hearing at which preservationists intended to present substantial testimony, the Board of Supervisors reversed its earlier position in favor of restoring the Hall.

Local court officials have stated they will try to work with these constraints despite their belief that costs will increase substantially and that the end product will be less desirable. Clearly, this imposed decision is not as satisfactory as a negotiated agreement might have been.

Garbage Transfer: A Successful Resolution?

While Napa County has relied upon imposed solutions to resolve conflicts, as in the Hall of Records case, it has also used a more consensual approach, as illustrated by the garbage transfer station dispute, which we describe next.

"When Napa Garbage Service issued a legal challenge last January to Napa's plan to jointly build and operate a garbage-transfer station with Vallejo and Napa County, the city hired a legal consultant and said the matter would clear up in about ten days. It's almost two months later, and attorneys for the city and garbage company are still trading nasty letters, and the city has not signed on to the plan."

"Napa County and the cities of Napa, Vallejo and American Canyon had hoped to have the project completed by the time the landfill closes to avoid either directly hauling trash to another dump or building an interim facility

to handle garbage. Both options are costly. 'It's unlikely the closure of American Canyon landfill and the transfer station can happen at the same time. There may be a period where there's a gap,' said Trent Cave, director of the Napa County Department of Environmental Management. . . . 'We hate each other, but we can't afford to get a divorce,' said Napa City Councilmember Cindy Watter [describing the relationship between the City of Napa and the Napa Garbage Company]. Napa Valley Register, Tuesday, March 9, 1993, pp. 1-2.

Principal agreement on basic issues was apparently reached on March 19, 1993, allowing the City of Napa to sign the Joint Powers Agreement overseeing the transfer station development. Napa City attorney John Cook reports that the issues were "resolved amazingly quickly once the parties began talking."

While this conflict was resolved in a mutually agreeable fashion, we assert that parties to the debate would have benefited from a mediated solution. After all, the conflict nearly escalated to litigation before the parties "began talking." They were locked into an antagonistic and stressful relationship for a long time before they saw the need for open dialogue. Also, once they began talking, they could not be certain that the other parties would remain open to discussion or to the idea of mutual gains. They had no formal process which would guarantee them results.

In the next portion of the paper, we discuss the mechanisms and benefits of mediation.

IV. How Mediation Can Help Resolve Public Policy Issues in Napa

The core idea in mediation is that parties with a stake in an environmental issue should sit down at the negotiating table to search for solutions that meet their mutual interests. Several questions need to be addressed in order for mediation to work. We first begin with the pre-negotiation steps.

Who are the parties with a stake in the dispute? What are their interests? Who can speak for their interests? The parties, or stakeholders, will include a mix of public agencies, organized interest groups, and unorganized groups.

Who would convene the dialogue and under whose auspices? An organization that can be a neutral meeting ground should serve as the host auspices for the negotiation. It may be a good idea to ask a senior figure in the community, such as a retired public official, to call the parties together for the initial meeting.

What does the evidence show regarding the technical aspects of the issues at stake? Is the information sufficient? Do all the stakeholders understand and have access to relevant information? So far, parties taking part in the Wine Train debate have produced a good deal of contradictory information. We advocate that these parties abandon their use of "adversarial science" and instead channel their energies into a procedure we call joint fact-finding, in which they would jointly carry out several tasks:

- pool available information;
- determine the issues that require additional analysis;
- identify experts who can provide this information;
- summarize areas of agreement and work to narrow areas of disagreement;
- "translate" information into a form that citizens can readily understand.

Of course, in the case of the Wine Train, the fact-finding process would have to be meshed with the ongoing environmental review process, in which the first EIS has already been rejected as inadequate.

The next phase would be the negotiation process itself. The key here is that negotiators must commit to presenting multiple options, as opposed to coming forward with just one possible solution. These options could address such issues as the timing and frequency of trips; ongoing studies to monitor potential environmental impacts; mitigation measures to be adopted at various points along the Wine Train's route; and pledges to reconvene to monitor the effectiveness of mitigation.

Ideally, the participants would jointly evaluate the options and a package of solutions that truly address the needs of each stakeholder group. This package of solutions would constitute a written draft agreement. We suggest that a single agreement be drafted with help from all the parties (as opposed to entertaining competing versions of facts and recommendations). We call this document a single negotiating text. This agreement would then be circulated by each participant within his or her respective organization. Then, the parties involved would ratify the agreement with their signatures, constituting a sort of environmental peace treaty.

Finally, and most important, is the post-negotiation phase, where the informal agreement, ratified by all the negotiators, would be translated into a formal, legally binding agreement. Several options are available for this step.

The process we have just sketched has worked in a variety of cases, with adaptations to match the circumstances. In fact, it may be useful to consider several other current issues in Napa County where such an approach could work. We have created the following list of important concerns confronting Napa County citizens and elected officials.

V. Napa's Top Ten Unresolved Public Policy Disputes

We have identified ten pending public policy issues which we believe could benefit from a mediated approach. They are:

- Napa River Corridor development;
- downtown Napa development;
- viewshed ordinance;
- minimum parcel sizes in the agricultural watershed and preserve;
- wine industry planning and development;

- Highway 29 traffic congestion;
- meeting school district needs with shrinking resources;
- affordable housing development applications;
- expansion of RUL line and housing development;
- Napa Sanitation District sewer expansion.

1. Napa River Corridor Development

The portion of Napa River which runs through downtown Napa remains substantially undeveloped. Flood control projects of earlier years were either rejected by Napa residents or failed to receive adequate federal funding. Recent studies have determined that a number of the parcels on both sides of the river, as well as the sub-surface areas under certain city streets, are contaminated with toxic and hazardous substances.

Despite a pending lawsuit regarding possible City of Napa responsibility for cleanup of the reportedly contaminated Third Street/Main Street corner, the County of Napa bought the site from Napa National Bank for a nominal amount when the City of Napa elected not to acquire the property on similar terms. The County's purchase of the corner is partly motivated by its desire to address parking problems for county employees in the vicinity of the government center. In the currently depressed real estate market and in the face of the general unavailability of financing for commercial development projects, other would-be developers of river-front property also face substantial parking shortages or substantial parking mitigation fees.

Individual projects face difficult hurdles in obtaining approvals. Costs of hazardous or toxic substance remediation may be prohibitive on an individual basis. Identifying responsible property owners and holding them liable is a burdensome and expensive process.

2. Downtown Napa Development

Conflicts have recently arisen over the allowable development in the Airport and Gateway areas and its possibly adverse effect on downtown merchants. A recent factory outlet proposal in this area generated controversy over whether downtown Napa merchants would be adversely affected by this competition or whether development in this area would at least prevent the loss of tax dollars and jobs to other communities. Meanwhile, Napa merchants outside downtown object to favorable treatment of downtown merchants regarding promotions, sign regulations, capital improvements, and other issues.

3. Viewshed Ordinance

A proposed viewshed ordinance in Napa County attempts to address environmental and aesthetic values and has raised concerns of property owners. Local agencies and groups have begun to formulate positions regarding the draft viewshed ordinance presently being circulated. The traditional regulatory process provides that the decision-making process take place in Planning Commission and Boards of Supervisors hearings rather than

in negotiated agreements. There have been numerous litigation challenges to previous regulatory actions in similar contexts.

4. Minimum Parcel Sizes in the Agricultural Watershed and Preserve

The existing standard provides for a 40-acre minimum parcel size in the Agricultural Preserve District and 40- to 160-acre minimums in the Agricultural Watershed, Open Space (AWOS) zoning district. Existing physical constraints criteria establishing where in this 40-160 range divisions will be permitted can be interpreted as ambiguous, opening them to challenges by both opponents and proponents of subdivision applications in these areas. This issue brings to light the conflict between the need to preserve agricultural and open space lands and the necessity of respecting private property rights.

5. Wine Industry Planning and Development

Within the last few years, the County of Napa adopted its winery definition ordinance as well as erosion control standards which increased costs and regulation of hillside vineyard development. Also, for the first time in its history, the County rejected a winery permit application.

At the same time, the wine industry has been feeling the pinch of economic recession, limited availability of capital, increased taxation of alcoholic beverages, stricter regulation, and drastically increased vineyard development and operation costs caused by a phylloxera infestation. Winery use permit application proceedings often become protracted and end up in litigation (e.g. Atlas Peak Winery, Clos Pegase Winery). Environmental protection measures also contribute to increasing costs.

6. Highway 29 Traffic Congestion

Development applications in St. Helena increasingly raise issues about impacts of new development on Highway 29 congestion. CalTrans and local officials struggle over traffic light installation. Bypass routes and circulation patterns in St. Helena lead to additional conflicts. CalTrans highway-widening proposals may result in the destruction of old tree groves along the highway corridor.

7. Meeting School District Needs with Shrinking Resources

A recently proposed \$21.9 million school bond addressing roofing, heating, wiring, plumbing, and middle-school capacity problems failed to achieve a 2/3s favorable vote and was defeated. Opponents contended that neglected maintenance, administrative waste, budget surplus and excessive unused property made the bond measure unnecessary. The school district and a public task force responded that these problems arise from age and overcrowding, not inadequate maintenance, and they also pointed to very low

administrative cost figures and a higher percentage of dollars committed to the classroom when compared to other California school districts.

Now the School District and the community confront the challenge of making needed repairs from existing resources, while working under the constraints of possibly substantial reductions in State of California funding for education in Napa Valley. Numerous programs may be adversely affected by the budget squeeze, resulting in conflicts between the viability of these programs and the School District's use of its existing facilities.

8. Affordable Housing Development Applications

A proposal to build a 100% affordable housing project and an upper valley center for Napa Valley College had to go to fourteen public hearings to receive final approval. Several hundred citizens appeared at the initial hearing to raise their concerns about traffic, maintenance, and water and sewer burdens on the community caused by development projects there and on Pope Street in St. Helena. Ultimately, the proposal was approved by unanimous vote, but other affordable housing projects face similar obstacles from neighbors and other concerned citizens.

9. Expansion of RUL Line and Housing Development

The Napa Citizens Advisory Committee has been meeting extensively in its deliberations over a new Napa City General Plan. The committee recently voted to limit the time period for its investigation to the year 2010, consistent with the population estimates regularly available, but the Napa City Council directed the committee to extend its time line through the year 2020. This change may lead to a controversial expansion of the existing Rural Urban Limit (RUL) line. Among the issues to be addressed in the new general plan are the Stanly Ranch development proposals, development in North Napa and Southeast Napa, the impacts of development in American Canyon, and, possibly, the impact of closure and conversion of Mare Island Naval Shipyard.

10. Napa Sanitation District Sewer Expansion

The Napa Sanitation District, by vote of its directors appointed by the City and County of Napa, recently approved a proposed \$86 million expansion of the treatment plant. Project bids have now come in approximately ten percent higher than the engineer's estimates. The City of American Canyon reports that it may not be able to afford to issue bonds for its share. Opponents of the expansion charge that decisions of this magnitude should not be made without a vote of the public and also argue that a treatment plant expansion of this magnitude is also growth-inducing.

VI. Conclusions and Next Steps

Our top ten list shows that there is no shortage of contentious public policy issues in Napa County. If, as a result of this paper, there is interest in pursuing mediation, we stand ready to help. There are several ways to begin.

One option would be to begin exploratory discussions with parties themselves in one or two of these cases. If any of these parties expresses interest in mediation, then we could begin work on the steps we outlined earlier.

Another approach would be to ask Napa County decision makers (the County Board of Supervisors, NVUSD Board, or City Councils) seriously to consider which conflicts might lend themselves to a mediated approach. These agencies could choose to organize or participate in mediation or could require contesting parties to use the process before returning for further proceedings.

A third option is to boost local knowledge about mediation, by offering a training program to Napa County elected officials, staff, and citizens. The idea would be to acquaint them with negotiation techniques and how they would apply to local environmental and public policy issues. In our courses, we use simulated cases to give participants hands-on practice in negotiation. (CONCUR also offers regular training courses at UC Berkeley.)

MORE ABOUT THE AUTHORS

Charles W. Meibeyer, Attorney - Mediator

Chuck Meibeyer, an Attorney-Mediator in Napa, is a local real estate and business attorney who opened the North Bay Mediation Center in 1992. The center provides mediation services in all forms of disputes including commercial and land use conflicts, disputes involving small business owners (including families), employers and employees, and disputes regarding real property ownership and development.

Chuck, who received his Bachelor's degree with an emphasis in Psychology at the University of Michigan in 1975 and graduated from the Boalt Hall School of Law at the University of California, Berkeley in 1982, is a former president of both the Napa County Mental Health Association and the Napa Valley Unified Education Foundation and is presently serving on the Napa Valley Unified School District Board of Trustees.

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CONCUR was formed in 1986 when Principals Scott McCreary and John Gamman decided to join forces. They each earned their doctorates at the Massachusetts Institute of Technology where they emphasized Environmental Policy and Dispute Resolution. They also served as Associates at the Program on Negotiation (PON) at Harvard Law School. Prior to their Ph.D. work, Scott and John both worked as practicing environmental planners in California and have over 25 years of combined experience.

Their clients include environmental groups, high technology firms, government agencies at all levels, and nonprofit scientific and research organizations. Both Scott and John are very familiar with local general plan law and planning practice, as well as regulations concerning air and water pollution. In addition to its domestic work, CONCUR has completed assignments in the all regions of the United States, Canada, the Caribbean, Latin America, Europe, Africa, Asia, and the South Pacific.

A 1972 graduate of Napa High School, Scott McCreary also holds a B.A. in Biology and Environmental Planning from UC Santa Cruz (1976) and a Master's Degree in Landscape Architecture with an Environmental Planning emphasis

from UC Berkeley (1979). He has taught several graduate and undergraduate courses at UC Berkeley in environmental planning and dispute resolution.

CONCUR Services

CONCUR provides services in environmental policy analysis, natural resource planning, and conflict management. Our conflict management services include mediation and facilitation of public policy dialogues, conflict assessments and issue audits, and strategic planning. We also lead a variety of training courses in negotiation and mediation, and can design a course especially for local officials and others involved in public policy in Napa County.

Upcoming CONCUR Training Courses

CONCUR has two training courses coming up this Spring. The first course, on the use of negotiation techniques to resolve complex environmental and public policy disputes, is scheduled for April 30 and May 1, 1993, at UC Berkeley. The second course, which teaches the application of facilitation and mediation skills to environmental disputes, meets on May 19 and 20. For both courses, the format is a dynamic mix of short lectures, simulation exercises, debriefing, and discussion of several actual case studies. The courses are well suited for professionals and local public officials who want to learn more about collaborative problem solving and dispute resolution techniques.

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