

**REGIONAL SOLUTIONS TO ENVIRONMENTAL PROBLEMS:
STRATEGIES FOR OVERCOMING INSTITUTIONALIZED NIMBYISM**

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by

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Challenges in California Environmental Policy Making

Anyone who is active in public policy in California knows that our system for making environmental decisions is both highly fragmented and very open. Several factors contribute to this situation:

- Government agencies at the local, state, and federal level have specific roles in environmental management issues.
- Agency responsibility is divided by environmental medium: air, land, water supply, and water quality.
- Many environmental issues cross city, county, and other municipal boundaries and jurisdictions.
- There are hundreds of private groups with a stake in environmental issues-- corporations, small business, neighborhood associations, trade associates, national environmental groups and grass roots activists.
- Our government systems allow for citizen intervention in policy making: through public hearings in the administrative process; through the filing of lawsuits and amicus briefs in the judicial process; and through both the initiative process and lobbying on specific bills in the legislative process.
- A preoccupation with the continuing recession, coupled with partisan gridlock between the Governor and the legislature, has stymied new initiatives on issues ranging from growth management to resolving the statewide allocation of water.

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Governmental Fragmentation in Bay Area Environmental Management

The extent of governmental fragmentation is apparent by scanning the way we regulate air, water and land resources here in the Bay Area. Table 1 (excerpted from a 1990 briefing report we prepared for the Bay Vision 2020 Commission) lists government agencies responsible for air, water and land management. Federal standards regulate air quality; both federal and state standards regulate water quality; and water supply regulation is more fragmented. Responsibility for land use is almost entirely delegated to local governments.

The fragmentation documented in this and other studies was a source of impetus for the Commission's recommendation to consolidate or merge some of the functions of the existing regional agencies.

A Partial Response State Growth Management Legislation

Two bills that most closely represent the conclusions of the Bay Vision Commission, and its successor, the Bay Vision Action Coalition, are:

- SB 153 (Petris) - This calls for the merger of three existing regional agencies: Association of Bay Area Governments (ABAG), the Bay Area Air Quality management District (BAAQMD), and the Metropolitan Transportation Commission (MTC). It also calls for the establishment of the Bay Area Regional Commission that would prepare regional conservation and development strategies for the SF Bay Area, requiring urban growth boundaries, infrastructure planning, and greater use of mass transit.

The bill, originally introduced by Becky Morgan, died on the Senate Floor at the close of the 1993 legislative session. It will be reviewed in January.

- AB 398 (Valerie Brown) - This is similar to SB 153 in directing the development of regional strategy. The intent of the bill is to establish a system that coordinates the development and conservation policies of local governments and agencies through the emphasis of sub-regional planning and decision-making. This would be guided by broad-based land use, transportation and economic development policies. The growth management strategy would 1) include proposals for urban growth boundaries, 2) recommend fiscal strategies to carry out its goals, and 3) emphasize both economic vitality and economic protection.

The bill was passed by the Assembly. It has been sent back to the Senate Local Government Committee from the Senate Appropriations Committee. Staff of Bay Vision 2020 predicts that the bill is likely to pass in the next session of the Senate and, due to strong influence of builders, be vetoed by the Governor.

One consequence of the lack of legislative action has been a rupture of the original coalition that pushed for the Bay Vision Commission. The Commission is slated to reconvene soon to consider its options. In fact, this state legislation is really only a partial response, since the main focus is on linking air quality and land use; water quality and water supply are still treated as separate subjects with separate institutional homes.

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New Sub-regional Partnerships of Environmental Management

While ambitious realignment of regional government agencies has failed to garner the necessary political support over the past three years, we have seen several examples of sub-regional partnerships for environmental management that reach across government jurisdictions and environmental media. The Bay Vision Action Coalition, for example, is now considering whether to promote a sub-regional, rather than a regional approach. This would build on the work of the county Congestion Management Agencies to integrate transportation and land-use planning. Such an approach would also encourage counties to view themselves as a sub-region (i.e., the North Bay counties and South Bay counties). However, drawing such boundaries would not be easy and the geographic areas important to planning for economic vitality, reducing transportation congestion, protecting agriculture, etc., do not generally follow existing city and county boundaries.

South Bay Copper Reduction Dialogue: For example, CONCUR is currently facilitating a dialogue (known as the South Bay Copper Reduction Dialogue--SBCRD) in the South Bay involving the Santa Clara Valley Water District, and the cities of San Jose, Palo Alto, and Sunnyvale. The municipalities have been charged by the Regional Water Quality Control Board to reduce copper influent into the South Bay by 950 pounds by the year 1998.

While the dialogue is in its early stages, it appears that the SBCRD has several noteworthy aspects. First, it is sub-regional, rather than being limited to a single municipality. The sub-region implied by this effort is the watershed that drains into South San Francisco Bay, along with the cities, unincorporated County land, and utility districts that occupy part of the land area of the watershed. Second, the dialogue explicitly examines the linkage between water supply, land use (as least as far as individual uses are concerned), and water quality.

Third, the dialogue represents a voluntary negotiation with municipalities sitting down face-to-face with regulators, environmentalists, and industry. Fourth, the dialogue has actually enhanced understanding of the cross-media nature of the copper problem. As we have begun to move into the fact-finding phase of the dialogue, it has become apparent that the one of the largest contributions of copper to the area comes from vehicle brake pads. Therefore, the copper problem is directly linked to our transportation system of using individual cars. Moreover, some of the copper is airborne from diesel exhaust which is later deposited.

Implementation of the Land Use Program of the San Francisco Estuary Project Comprehensive Conservation and Management Plan: One of the more ambitious regional environmental management initiatives of the 1990s is the San Francisco Estuary Project (SFEP), a collaborative venture of EPA, the State of California, ABAG, and 45 other organizations. The five-year project produced a series of technical reports and a policy plan known as the Comprehensive Conservation and Management Plan (CCMP) for the Estuary. While members of the Management Committee signed the final report, it is still unclear whether the Governor will sign the document. Nevertheless, individual members of the Management Conference are moving ahead with implementation of some of the 140+ actions.

CONCUR was involved in crafting the agreement for the land use portion of the CCMP. The Land Use Program recommends that local governments prepare watershed protection plans emphasizing protection of wetlands, streams, and reduction of non-point sources of pollution.

With support from EPA, we are now completing two working papers that outline strategies for implementing the Land Use Program. Recognizing the resistance to broad-brush regional planning, one of our working papers presents a system for watershed classification. This system would enable local planners and state officials to target those drainage basins where

natural resources are most at risk or where the greatest impacts of non-point pollutants are expected.

A second working paper develops specific institutional arrangements for watershed protection in the SF Estuary. Here, our recommendations are four fold:

- Build on Storm Water Management Plans (SWMP) now required by the Regional Water Quality Control Board. With the assistance of the SFRWQCB, local governments should consolidate storm water related ordinances into one comprehensive storm water ordinance, as is currently planned in several Bay Area Counties.

- Amend General Plan guidelines to incorporate a series of watershed protection measures in applicable elements of the General Plan. To be effective, watershed protection guidelines should appear in the land use, circulation, open space, transportation and conservation elements of General Plans. Incorporation of watershed protection guidelines to implement BMPs at the General Plan level will ultimately improve a municipality's ability to successfully implement its SWMP.

- Strengthen Cumulative Impact Assessment Under CEQA

The environmental review process required by CEQA should serve to inform decision-making agencies of project compliance with the requirements of the local SWMP and monitor development within watersheds. The CEQA process provides two areas in which this can occur. The first is the required discussion of any inconsistencies between the proposed project and the applicable general and/or regional plan; the second area is the EIR section addressing cumulative impacts.²

The EIR process is the ideal mechanism to bring the cumulative impacts to light so that they can be considered in permit decision-making. Local officials, planners, and non-governmental organizations, which view themselves as stewards of the watershed, should watch the cumulative impact sections of EIRs so that as watersheds become increasingly developed, more stringent measures can be applied to new developments and redevelopment. Certain project characteristics should raise a red flag to decision-makers that the project under consideration may have a negative impact on the watershed. These indicators include:

- Addition of impervious surface area
- Encroachment into wetlands and/or riparian zones
- Potential for erosion and sedimentation
- Increases in non-point source runoff (monitored or modeled)

A procedure could be established within the plan review or advanced planning units of local planning departments to ensure that the presence of these characteristics would trigger a review. This would ensure that appropriate BMPs have been incorporated into the design of the project.

- The Necessity for Coalition Building: If any of these recommendations are to be implemented, it will be necessary to build coalitions among multiple municipalities, public policy professionals, land use and environmental interest groups, and perhaps at least the tacit support of the Governor and legislature.

Some Observations on the Potentials and Limitations of Negotiation-Based Decision Making

² CEQA does little to define and explain cumulative impacts. According to Michael Chiriatti, Staff Analyst for the Governor's Office of Planning and Research, it is unclear whether recent CEQA amendments will rectify this deficiency. The first round of amendments, adopted in June, do not address cumulative impacts; the second round, which is currently undergoing public scrutiny and comment, has not yet been adopted.

• In our view, almost every successful solution to a complex environmental dispute is based, at some point, upon negotiation. For the reasons sketched at the beginning of this talk, the traditional "decide-announce-defend" sequence seldom works for high stakes issues among a sophisticated group of policy makers and advocates.

But this does not mean that negotiation, or assisted negotiation (facilitation and mediation) always delivers successful outcomes. On the contrary, California has actually seen a series of failed negotiations on issues ranging from growth management to wetlands management, forest policy, and water allocation. The reasons for this failure usually include one or more of the following factors:

- failure to recruit the full range of affected interests;
- failure to frame the issue in a manner that maximizes opportunities for an agreement;
- insufficient technical information and expertise on the part of the negotiators or the convenor of the dialogue;
- inadequate attention to preparation for each negotiation;
- miscalculation of the incentives parties have to negotiate;
- unwillingness on the part of political leaders to endorse a negotiation-based model of policy development; and
- an inadequate linkage between informal negotiation and the formal administrative or legislative decision-making process.

Changing the Environmental Policy Landscape Through Training and Education

If we cannot change environmental institutions through legislation, we can affect these institutions by providing new tools to key staff and stakeholders. One set of tools is policy analysis; another is negotiation and dispute resolution. A variety training courses in negotiation are offered. CONCUR also has two upcoming courses on negotiation and facilitation of environmental and public policy disputes. The introductory course, *Using Principled Negotiation Techniques to Resolve Environmental and Public Policy Disputes*, will be held October 29-30 at UC Berkeley. The advanced course, *Using Facilitation and Mediation Skills to Resolve Environmental and Public Policy Disputes*, will be held November 19-20, also at UC Berkeley. The courses are a dynamic mix of short lectures, role-playing simulations and discussions.

Continuing the Dialogue on Regional Solutions to Environmental Issues

CONCUR is interested in contributing to the ongoing debate about resolving environmental issues in the Bay Area. Contact Scott McCreary at CONCUR's Berkeley office: 1832 Second Street, Berkeley, CA 94710; (510) 649-8008. John Gamman can be reached at CONCUR's Santa Cruz office at 340 Soquel Avenue # 102, Santa Cruz, CA 95062; (408) 457-1397