

## California, the Economy and the Environment: Local Group Action Plays an Essential Role

by Tracy Knorr

### I. Regulating: Environmental Protection from the Top Down

California is endowed with areas of scenic beauty and environmental importance. It is also a state with many diverse groups, each with its own agenda. Business groups and environmental groups often wind up in conflict, and the state can only go so far to balance competing interests. Because of the need to integrate competing interests, regulations are often broad in scope. Environmental regulations passed by the California Legislature may be too broad to meet specific needs; and even the best regulations are subject to abuse.<sup>1</sup>

John T. Ronan, III, of the California Manufacturers Association succinctly summarized the clash of interests in his speech at the UC Davis Environmental Law Society Conference on February 12, 1994. The perception in the business world is that the jobs are flowing out of California, "in part due to regulatory impediments imposed by environmental laws and other regulatory laws."<sup>2</sup> Developers see the regulatory burden in California as a serious problem, and developers are closely tied to the government through interest groups. These interest groups are presently using the recession in California to generate a wave of sentiment against environmental and other regulation.

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At the UC Davis Environmental Law Conference, Paul Thayer, consultant to the Assembly Committee for National Resources, commented that the forces that shape environmental laws are reflective of larger social divisions. Thayer noted a direct correlation between the State's economic health and the willingness to pass environmental laws. The bad economy makes jobs to the primary concern, and puts the environment on the back burner.<sup>3</sup>

Business groups contend that the economy suffers as a result of environmental regulation. But there is something which business interests, politicians, and environmental advocates often overlook. One of California's biggest resources is its environment. The best tactic for environmental concerns in hard times is to remind the polity and the government that business is neither the only concern, nor is it the only source of revenue.

Millions of tourists visit California every year to revel in its scenic beauty. Millions of tourists mean millions of dollars for the service industry. The California Coastal Act of 1976 was an important step taken to preserve the environment.<sup>4</sup> It was also a recognition that preserving the coastline has the economically beneficial effect of preserving a landscape treasured by tourists.

However, regulations like the California Coastal Act of 1976 are by their nature broad in scope, and may not meet specific local needs. Because California's Legislature must incorporate the interests of so many groups, and because business groups often have the strongest lobbying position due to their financial resources, statewide environmental regulation is often vague on specifics, particularly specifics on how to pay for things. It took a healthy economy and environmentally sympathetic public sentiment to create regulations like the California Environmental Quality Act (CEQA). CEQA was passed in the 1970s when the California economy was booming and healthy, and remains the state's premier environmental legislation.<sup>5</sup> Now, in poor economic times, CEQA is being reshaped by both the courts and the Legislature.<sup>6</sup>

During the 1970s, local environmental groups were formed. These groups were able to target specific environmental goals and implement solutions efficiently on a community level. These local groups remain the foot soldiers on the environmental front, and continue to be effective while the big guns like CEQA are under hostile fire.

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The government is the macrocosm, and the localities are the microcosms. Statewide regulation addresses a different type of problem than that addressed by local groups.

Through regulation, the California Legislature seeks to make business people conduct their activities with an awareness of environmental consequences. On a general, policy level, regulation is essential.

However, a regulatory framework must reflect all of the varied interests the legislature has to integrate into its decision-making process. Areas that localities may feel are critically important and deserve environmental protection may not receive state attention in time. Local groups can address environmental needs that the state may be unable to further, by targeting specific areas for conservation efforts, and addressing needs that slip through the regulatory framework.

## II. Filling the gap where regulation falls short

Two groups on the Monterey Peninsula illustrate how local groups can step into the gap created when governmental regulation may not be adequate to further specific environmental goals. These two groups have shown skeptics that when money is the bottom line, the environment can still hold its own. The Monterey economy is vitally affected by tourism, a large portion of which is tied to the environment in the form of the area's beautiful scenery. The Big Sur Land Trust and the Monterey Peninsula Regional Park District work to preserve land in open space first and foremost because environmental health is essential to the health of a community. But an important byproduct of this preservation is to keep the tourists coming back. By focusing on the positive aspects of conservationism as an economic proposition, the Big Sur Land Trust and the Monterey Peninsula Regional Park District have been able to act and implement local environmental goals.

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The Monterey area exemplifies the visual splendor typical to California. Monterey County is known for the Seventeen Mile Drive. Tourists pay seven dollars to drive this beautiful stretch of wooded coastline. Drivers down the coast through Big Sur experience exhilarating views of the ocean crashing against jagged cliffs on Highway One. This scenery is a profitable resource, one that does not lose its profitability with the vacillations of the economy.

### A. Conservation Combining Public and Private Efforts

Local groups often spring up because of a few determined individuals who get things started. The founders of the Monterey Peninsula Regional Park District originally met opposition from local government. Sean Flavin, one of the founding members of the District, commented in a recent interview that in 1970, time of the genesis of the

organization, "the County Parks and Recreation Department was short of funds, and budgetary constraints limited the ability to do more [for preservation]".<sup>7</sup> The founding members of the Monterey Peninsula Regional Park District felt that there was a need to do more, a need for a funding source oriented more to acquisition rather than just preservation. The local government in Monterey was focused on a policy of development and preservation of existing parks.

To meet this need, a study committee was formed. The model used was the East Bay Regional Park District, formed in 1931. The East Bay Regional Park District was created pursuant to California Public Resources Code §§ 5500 et. seq.<sup>8</sup> This statute had not been used by any other agency. The Monterey Peninsula group was able to use the steps set out in the statute to set up what is now the Monterey Peninsula Regional Park District. "Paralleling (their) efforts were those of the Mid Peninsula and Marin counties to form similar regional agencies and there were...exchanges of information and strategies."<sup>9</sup>

The Monterey group was able to get the district proposal on the ballot in 1971 via a "successful petition drive."<sup>10</sup> The idea was met with skepticism and hostility by developers, city councils, and even the existing County Parks and Recreation Department, which opposed the group as redundant. "[The Monterey Peninsula Regional Park District] was opposed by the Monterey Peninsula Taxpayer's Association and every City Council except Carmel."<sup>11</sup> Despite this opposition, the measure passed by a 57% vote. The initial hurdles are higher today: that 57% vote would be inadequate to meet the 2/3 "supermajority" requirement imposed by Prop 13.

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The vote created a special assessment added to each year's taxes for district residents, based on property ownership. In an article in a publication in honor of the One Hundred Year Anniversary of the Ventana Chapter of the Sierra Club, Flavin noted that 20 years after the genesis of the Monterey Peninsula Regional Park District, despite the reduction in revenue from Prop 13 which froze property tax values at their 1975 level and reduced the rate to one percent, the results speak for themselves. The last acquisition by the Monterey Parks and Recreation Department (that called the Monterey Peninsula Regional Park District "redundant") was the Jacks Peak Park in the late 1960s. In contrast, since then the Monterey Peninsula Regional Park District has acquired five critical park areas and preserves totalling over four thousand acres, in addition to other smaller parcels.<sup>12</sup> Efforts

on the Monterey Peninsula led to the dunes along Highway 156 leading in to Monterey being preserved. The dunes are the first thing one sees upon driving in to Monterey. While hotels and development might have created jobs in the short run, by preserving the dunes, the scenic beauty of the Peninsula is emphasized. More tourists are likely to want to come back for another look in successive years because of Monterey's beautiful ocean scenery than to look at a string of buildings typical of urbanization everywhere.

Flavin characterized the District's work as an effort "to preserve our unique scenic heritage ...[It is] ongoing...and never...finally won."  
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### B. Private Non-Profit Conservation Efforts

The 1970's saw voters recognize the importance of the coastline as an environmentally sensitive and economically critical aspect of our state. "Proposition 20 focused the voters' attention on the need to preserve the coastline, of which the Monterey Peninsula is exemplar".<sup>14</sup> Proposition 20 was a stepping stone to other legislation and initiatives. Proposition 70 was enacted in 1988, allotting monies to buy "viewshed lands" along the coast.

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The Big Sur Land Trust (BSLT) formed in the 1970's, is a dynamic organization that uses many innovative conservation techniques to preserve coastal lands. BSLT gains state funding

for acquisition of land for some of its conservation projects through the mechanics created by Prop. 70.

Under the provisions of Proposition 70, \$25 million was made available for the purchase of properties that lie within the viewshed of Highway One in Big Sur to keep these scenic lands forever in open space. Since 1989, the Land Trust has worked in partnership with landowners and the County to acquire a number of parcels, protecting over [163] acres of viewshed.<sup>15</sup>

BSLT is a private non-profit public benefit organization, formed in the wake of the California Coastal Act of 1976.<sup>16</sup> The Coastal Initiative of 1972 created conflict between advocates of local control versus those who supported regional planning. The California Coastal Act

of 1976 represented a compromise position. Pursuant to the Act, each city along the coast was to draft its own local plan, but plans had to be consistent with a state standard. Local Control Plans (LCP's) were approved and certified by the Coastal Commission.

Big Sur was recognized as an area of unsurpassed importance, and as such was to be made a regional planning experiment. The Big Sur pilot project took longer than expected, but the seed for the Big Sur Land Trust was planted as a result of the project's extensive planning process.<sup>17</sup>

In 1976 five families formed the idea for the BSLT, and the primary question was whether the community at large should be involved, or if the entity should be private. In the end, the difficulty of meeting all of the needs encompassed by the Big Sur area through a community effort led to private incorporation. The purchase of a coastal parcel near the Esalen Institute was the BSLT's first acquisition.

Today, BSLT uses many innovative conservation techniques to preserve scenic and environmentally important lands on the Big Sur Coastline.<sup>18</sup> Conservation easements and charitable remainders are the two primary ways that land is protected by BSLT. Conservation easements give BSLT an easement in gross, extinguishing the right of the owner to develop his or her land; the landowner retains the underlying title and can still convey the property subject to the interest of BSLT.<sup>19</sup> Donations to BSLT afford landowners significant estate tax burdens, making environmental preservation a win-win proposition.

Though conservation easements and charitable remainders are the tools most commonly used, the Land Trust also actively campaigns and solicits donations to purchase lands it finds critically important and in danger. BSLT recently acquired the Point Lobos Ranch, "after four years of complex negotiations with the property owners and the State of California."<sup>20</sup> This acquisition involves BSLT as "guarantor" of the state's financial obligations.

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The state allocated \$1.5 million from funds set aside for Proposition 117 (California Wildlife Protection Act of 1990) for the acquisition of Point Lobos Ranch as critical mountain lion habitat. The ultimate use of the property will be as a park, managed by the state. In the interim, BSLT "hold[s] the property in protective open space while

leasing it to the State until enough payments from Proposition 117 funds ... satisfy the purchase price".<sup>21</sup>

Perhaps only BSLT could have been in the position to facilitate this transaction. It is a stable private entity not hindered by the usual red tape, and financially strong enough to back up its promises. Similarly, as a stable private organization, the BSLT made a low interest loan to the owners of the Odello Ranch, scenic artichoke fields near Highway One where it crosses from Carmel onto Big Sur coast. BSLT made this loan as consideration for obtaining the purchase option on the Odello Ranch at a price below fair market value. (a bargain sale).

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***AB3417 seeks to re-direct funding from Proposition 117 away from wildlife habitat preservation projects.***

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BSLT is not immune from the influence of the polity. The Odello option put on hold the construction of a proposed 82 home site. That construction still looms if the funds do not become available to complete the purchase. BSLT is depending on the approval of the California Parks and Wildlife Initiative, (Proposition 180), on the June 1994 ballot to provide needed funds for the project. "CalPaw '94" is a citizen initiative bond measure that will provide nearly \$2 billion to fund conservation projects in every city and county in California. Specifically, "\$32,600,000 will be allocated for critically important projects" in Monterey County.<sup>22</sup> These projects include the Odello Ranch purchase.

Even more troublesome is the eventual fate of the Point Lobos Ranch acquisition. AB3417, a recent bill proposed by Assemblyman Trice Harvey of Bakersfield, would re-orient the Proposition 117 funding, redirecting the funds to other sources.<sup>23</sup> If Harvey's bill passes both houses it will go on the November 1994 ballot as a referendum. If Proposition 117 funding is redirected, the entire Point Lobos project is in jeopardy. Brian Steen, the Executive Director of BSLT, says that if Harvey's bill is passed, BSLT will seek an exemption for the Point Lobos Ranch funding. \$8.9 million remains unpaid on the mortgage for Point Lobos Ranch. Proponents of Harvey's bill urge that the money spent on wildlife habitat and environmental preservation is better spent elsewhere. However, the funding for mountain lion habitat conservation under Proposition 117 is not taken from the general funds of the State. This funding was earmarked by the people of California for projects like the Point Lobos Ranch.

The success of local groups in furthering their environmental goals through land use planning is evident: land preserved is land saved from development. However, the economy and the polity do have an influence on local issues. The Monterey Regional Park District has a stable tax base, but is dependent on ballot initiatives for further funding. Today's post-Prop. 13 required 2/3 supermajority on any taxing measure is a much more difficult hurdle to clear than those faced by local groups in the 1970's. The Big Sur Land Trust is still in a strong position today even in California's slack economy, due to the affluence and high level of environmental awareness of the local populace. However, as evidenced by the precarious position of the Odello Ranch transaction, and the proposed bill to re-direct Prop 117 funding, BSLT's efforts are not free of outside influences and burdens.

Public awareness is key to any conservation effort. Economically aware, bureaucracy-free, locally controlled groups such as the Monterey Peninsula Regional Park District and the Big Sur Land Trust present a positive image and represent a shift in paradigm from command-and-control regulation to cooperative conservation.

*Tracy Knorr is a IL at King Hall.*

#### NOTES

1. J. William Yeates, Remy & Thomas, address to the UC Davis Environmental Law Society's conference on California Business, Communities, and the Environment: Towards a Cooperative Future, Feb. 12, 1994.
2. John T. Ronan, III, address to the UC Davis Environmental Law Society's conference on California Business, Communities, and the Environment: Towards a Cooperative Future, Feb. 12, 1994.
3. Paul Thayer, address to the UC Davis Environmental Law Society's conference on California Business, Communities, and the Environment: Towards a Cooperative Future, Feb. 12, 1994.
4. Cal. Pub. Res. Code §§ 30000 et seq. (West Supp. 1994)
5. Cal. Pub. Res. Code § 21000 et. seq. (West 1986)
6. "The basic purposes of the [California Environmental Quality] Act are as follows: (1) to inform government decision makers and the public about the potential environmental effects of proposed activities; (2) to identify the ways that environmental damage can be avoided or significantly reduced; (3) to prevent significant, avoidable environmental damage by requiring changes in projects, either by the adoption of alternatives or imposition of mitigation measures; and (4) to disclose to the public why a project was approved if that project would have significant environmental effects." Daniel J. Curtin, Jr., California Land Use & Planning, 13th Ed., p. 77 (1993).
7. Sean Flavin in interview, Feb. 16, 1994.
8. Cal. Pub. Res. Code §§ 5500 et. seq. (West 1984).
9. Sean Flavin, "Preservation of Monterey Peninsula's Scenic Open Spaces", The Ventana, Vol. 30 No. 6, August/Sept. 1992.
10. Id.
11. Id.
12. Id.



13. Id.
14. Id.
15. Big Sur Land Trust Newsletter, Vol. 10, No. 2, Spring 1993, p. 2.
16. Calif. Pub. Res. Code §§ 30000 et seq. (West 1984).
17. Zad Leavy in interview, February 16, 1994
18. Zad Leavy in interview, February 16, 1994
19. Stephen J. Small, Preserving Family Lands: A Landowner's Introduction to Tax Issues and Other Considerations, p. 15 (1988).
20. Big Sur Land Trust News, p. 1 (Fall 1993).
21. Big Sur Land Trust News, p. 4 (Fall 1993).
22. Big Sur Land Trust News, p. 3 (Fall 1993).
23. Brian Steen, "Point Lobos Funding Threatened", The Monterey Peninsula Herald, April 17, 1994.

