

California's Civil War Regional Management in the Bay Area

by Geoffrey Pay

In California and specifically the Bay Area, population growth and consequential development have exacerbated the need for regional management. As early as the 1930s, citizens of the Bay Area have actively sought regional solutions to the problems posed by such growth. Efforts to establish regional government and to adopt regional objectives, however, have met with continuous challenge. To date, local governments have been unwilling to diminish their control over land use decisions. Due to this constraint, comprehensive regional management in the Bay Area has not emerged. This paper will analyze the effect of local sovereignty on the laws and policies affecting the present and future role of regional land use management in the Bay Area. By doing so, the writer hopes to achieve two goals: (1) to provide a better understanding of the constraints imposed by local control from the regional and local perspectives; and (2) to evaluate methods of satisfying regional needs given these constraints. For the reasons discussed below, the existing relationship between local and regional control must change.

Growing Pains

Many growth patterns have proved beyond the control of local government. Congested transportation arteries, inefficient land use, and unsuccessful redevelopment demonstrate the weaknesses of piecemeal regional planning. Often the solutions to these problems such as mass transit and open space preservation lie outside the means available to local governments. As these problems grow progressively worse due to rapid population increases, decentralized growth, and inner city abandonment, local planners may soon find these problems beyond their power to correct.

Several communities throughout the Bay Area suffer from the effects of undesirable growth patterns and lack of adequate local control. In Oakland, many wealthy residents have relocated, leaving the city with a smaller tax base. At the same time, the number of less mobile immigrants and low-income groups has risen, increasing demand for certain city services. The migration of wealthier residents to outlying communities such as Livermore and Pleasanton poses equally significant problems for the environment as pressure to build more houses and roads increases. Local response to these trends has been slow to nonexistent. Instead of forging ties with other communities to coordinate efforts and promote more acceptable development patterns, many local governments following local sentiment have adopted an independent, pro-growth attitude. Unchecked, this approach will leave its trace on the land, the economy, and society for years to come.

In order to begin tackling problems on a regional scale, philosophical and administrative changes must take place at the local level. Clearly, the current model of decision-making no longer suffices. In the words of Lois Wolk, former Mayor of Davis, "When everyone is in control, no one is in control."¹ She observes that many city leaders simply do not have the time or the inclination to consider interests outside of their local constituency. Already, local leaders find it difficult to conform their policies with the new and established municipalities of the Bay Area. As the twenty-first century approaches and with it certain growth, this task may become insurmountable. The challenge squarely before local governments is to create a new decision-making model that addresses regional goals.

Is the Bay Area ready to adopt a more regional approach to its problems? Current growth patterns suggest that local governments should support the creation of a regional entity less susceptible to local control and more responsive to regional needs. By funding a regional entity that can efficiently deal with regional issues, communities stand a better chance of solving mutual problems. Nonetheless, history suggests that local sovereignty will continue to play a dominant role in regional land use management. The doctrine of local sovereignty did not disappear when the State's founders replaced the Spanish.² Judging from the direction of regional management, home rule will survive the current debate as well.

The Home Rule Debate

For over a century, the relationship between state and local governments in California has adhered to home rule. The concept of home rule follows in many respects the federalist structure of our country. Under this concept, local governments retain sovereignty over areas of local importance so long as such authority does not conflict with the laws of the state. City charters often enumerate these powers, which include the ability to enact and enforce city ordinances, to remove nuisances, and to create and maintain public schools. In addition to these enumerated powers, cities have the authority to implement many police powers deferred by the state. In the area of land use, California commonly defers zoning decisions to local municipalities.³

Cities have not always enjoyed such autonomy from state legislative direction and control. Following the ratification of the California Constitution in 1849, the courts upheld the role of the State Legislature in many decisions directly affecting local interests. Under the doctrine of legislative supremacy, cities acted as instrumentalities of the Legislature, which had the authority to increase, restrict, or repeal the powers of municipal corporations.⁴

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In her article, "Home Rule: A New Look for the 21st Century," Betsy Strauss suggests that California began adopting a more favorable attitude to home rule beginning in 1874. In that year, Justice McKinstry, "an ardent advocate of home rule," accepted a seat on the California Supreme Court.⁵ Justice McKinstry's views received legislative endorsement in 1879 when several provisions were added to the State Constitution, restoring local sovereignty

as the rule in California. (According to Strauss, these provisions directly countered abusive lobbying in the Legislature. Before the amendments, any party could obtain redress against a city by persuading the Legislature to pass special laws favorable to their claims. By these means, parties could often circumvent local rules.)⁶

Demand for political accountability and independent local decision-making have skewed regional power disproportionately to the side of local governments. For many residents, home rule preserves the very nature of their community from the onset of a generic regionwide landscape. Many local governments simply do not trust regional agencies to protect local concerns. Moreover, public awareness of regional agencies and their duties remains low, creating fears that they lack accountability to local communities.

The lack of accountability is a troubling issue for regional agencies. Too often, regional agencies are unaware of local sentiments outside those expressed by their contacts at that level. Clearly, regional agencies need to establish more effective links with the public. Some regional agencies in the Bay Area, such as the San Francisco Bay Conservation and Development Commission (BCDC) have shown that local voice can be successfully incorporated into a regional management program.⁷ In its day-to-day activities, BCDC maintains an active relationship with permit applicants and the general public through private conferences as well as open commission meetings, informational mailings, and phone inquiries. The news media and many public interest groups also monitor BCDC's activities and disseminate their findings to a large Bay Area audience. In addition, several representatives of local government serve on the commission itself, listening to testimony directly from applicants and the interested public at regularly scheduled hearings and meetings.⁸

Another component of home rule that regional agencies encounter is demand for local autonomy. Many local residents and officials fear that, once established, regional agencies will continue to wrest decision-making power from their hands. In order to quell such anxieties, regional agencies have adopted strict limits on their authority. At BCDC, a system of checks curtails conflicts with local government. Most significantly, BCDC cannot issue a permit for work performed within its jurisdiction unless all local discretionary approvals have been obtained.⁹ In addition, BCDC, like other regional agencies in the Bay Area, was created to address specific environmental concerns and thus narrowly defines its mission. These and other

restraints represent a regard at the regional level for the traditional duties of local government. Finally, more regional administrators are focusing on the lessons from states such as Florida, where consensus-building plays an essential role in their growth management policy and implementation strategy.¹⁰ Basically, the consensus-building approach offers local governments the opportunity to participate in regional decision-making. Under such a program, regional bodies act as mediators and technical advisors rather than administrators. Such programs have greatly affected the direction of regional management strategies in California.

While the procedural issues concerning accountability and local autonomy can be alleviated to some degree through administrative design and a greater awareness of local concerns, the substantive conflicts between local and regional interests are not as easily dismissed. These conflicts arise when communities act in their own self-interest to the region's detriment. In California, fiscal policy perpetuates the differences between regional and local interests by increasing intracity rivalries. For example, Proposition 13, which withstood constitutional challenge in 1992,¹¹ directly affected local government's ability to raise revenues from land ownership. By freezing property tax assessments for longtime residents, Proposition 13 restricted municipal income. This has led to competition between cities for alternate sources of revenue such as sales tax. Much of this competition takes the form of pro-growth development policies that compete with rather than complement those of neighboring communities. In the end, economic objectives often outweigh regional and environmental goals.¹²

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Admittedly, regional management programs cannot provide the same leadership in fiscal policy that they can in an area such as land use. These programs could, however, cultivate awareness of regional issues to the extent that state legislators might recognize potential problems before they become law. Absent a regional focus, many administrative and rule-making bodies lack an understanding of the issues and an ability to address larger goals.

The Direction of Regional Management

The issues of accountability and local sovereignty have had a direct impact on the direction of regional management.¹³ In the area of land use planning and regulation, two accepted models have emerged: single-purpose regulatory agencies and consensus-building groups. Each addresses home rule principles but their management styles contrast in many ways. Where local communities, the region, and the state agree to certain goals, such as the prevention of Bay fill, a regulatory approach is more effective. With respect to amorphous issues, however, such as sprawl, which affect each locality differently, the consensus-building approach makes better sense.

Applying these models to the Bay Area has yielded somewhat mixed results. Single-purpose regulatory agencies like BCDC and consensus-building groups like the Association of Bay Area Governments (ABAG) are two notable examples. The following section evaluates the strengths and the weaknesses of these two organizations.

As a model of regulatory action in the Bay Area, BCDC can point to many accomplishments. Since its creation in 1965, BCDC has effectively limited Bay fill and expanded public access to the shoreline.¹⁴ With the San Francisco Bay Plan, the McAteer-Petris Act, and related documents, BCDC provides a clearly defined, widely accepted vision of shoreline development and ecosystem management. In addition, through the powers vested in it by the state, BCDC has successfully implemented its policies and regulations on a regional scale. As mentioned above, BCDC also has an impressive track record with public participation.

Despite these accomplishments, operational constraints hamper BCDC's effectiveness as a leader in regional management. In the 1993 annual report to Governor Wilson and the California Legislature, BCDC Chairman Robert Tufts described some of the financial constraints leaving many of BCDC's core programs unfulfilled.¹⁵ In addition to financial constraints, the lack of coordination between BCDC and other agencies continues to lower the quality of projects reviewed by the staff. Under its regulations, BCDC has ninety days after the filing of an application to issue or deny a permit. Without advance notice, BCDC cannot properly consider complex projects that entail difficult choices. Often, these projects have the effect of compromising the goals set forth in the Bay Plan.¹⁶

The state's current antipathy to regional management programs also hamstring these agencies. In an effort to curtail state spending and reduce onerous permitting requirements, one state senator, the Governor, and the California Department of Transportation (Caltrans) have all issued proposals to merge BCDC's functions with another state agency, the California Coastal Commission.¹⁷ Studies suggest that such a proposal would accomplish little cost-savings and more importantly would seriously undermine protection of San Francisco Bay and its surrounding shoreline.¹⁸

For most land use issues, however, clear consensus between the different levels of government on a single regulatory goal appears is the exception rather than the rule. Given California's existing climate, these issues call for management programs similar to the regional planning councils mentioned in the previous section.

ABAG is wisely moving in this direction. By reshaping its role into a consensus-building group, ABAG has stepped back from the goals many Bay Area leaders envisioned when it first convened in 1961. Originally conceived as an advisory committee focused on regional matters including "water pollution, the development of bay tidelands, an inventory of open space, [and] the desirability of uniform building codes," ABAG eventually took on responsibility for establishing a general plan for the Bay Area.¹⁹ In 1970, the commissioners of ABAG endorsed the resulting general plan but stopped short of formally adopting it, fearing that such a plan might restrict local decision-making.²⁰

Unfortunately, this decision rendered the plan somewhat toothless; in his book describing the Bay Area's development, Mel Scott describes the commissioner's decision as "more a symbol of progress toward regional unity than a plan all communities in the region intended to consider seriously."²¹ Today, ABAG continues to perform advisory planning as well as other activities. By establishing strong partnerships with regional agencies and local governments and apportioning grants to address regional objectives, ABAG hopes to foster a community more responsive to regional concerns. In one such partnership with the Metropolitan Transportation Commission, the Bay Area's regional transportation agency, ABAG has played an integral role in planning transportation networks and promoting alternatives to single occupancy vehicles.²²

As consensus-building groups, Florida's regional planning councils may offer a more effective means of addressing regional concerns. Florida's law allows such councils to act as conflict mediators, hearing arguments from both sides of proposed projects. As one planner puts it, "[T]his approach allows solutions more adapted to individual localities and proved to be a more efficient way of resolving differences than more standard bureaucratic procedures."²³

Conclusion

Changes in regional management will not occur overnight. Currently, the state has no interest in taking on new regional management duties. Since 1992, Sacramento has shifted its attention from implementing effective growth management programs to restructuring immigration, affirmative action, and the state government itself. Unfortunately, a comprehensive state land use plan, stronger growth management legislation, and additional funds for regional management do not appear likely in the near future. The state does not have enough funding for existing services, much less new ones.

With so little active leadership in the area of growth control and regional management at the state level, important changes must begin with local government. City leaders can no longer afford to blindly adopt the principle, "Growth is good." While plans for comprehensive regional management continue to languish, local governments must become more adept as partners in controlling growth.

Clearly, the need for change has not disappeared. Existing regional management programs have already lost a considerable amount of their initial momentum, and many critical issues remain unresolved. According to Governor Wilson, "Growth is inevitable, but the manner by which it occurs in California is by no means set. The challenge lies in conserving our quality of life and environment while also maintaining economic vitality. We stand at the edge of a

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new century. It is up to us to exhibit the initiative, the wisdom, and the spirit of cooperation necessary to meet its challenges."²⁴ Reading these words, local leaders must ask themselves, "Do we have what it takes?" The future of the Bay Area lies in their hands.

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NOTES

1. Lois Wolk represents city government at the local and county levels. Currently, she serves as a member of the Davis City Council and the Yolo County Local Agency Formation Commission (LAFCO). Lois Wolk, Remarks at the UC-Davis Environmental Law Society Annual Conference: Regional v. Local Planning Panel (March 25, 1995).
2. Ever since the Spanish colonization of California, local or home rule has played an integral role in the management of land resources. Under the orderly system of land ownership and land use established by these local colonial governments in the Laws of the Indies, the Spanish settlements brought a more stable agrarian society to the West. Spiro Kostof, *The City Shaped* (1991).
3. Donald Hagman and Julian Juergensmeyer, *Urban Planning and Land Development Control Law* § 3.8 (1986).
4. See, e.g., *City of San Francisco v. Canavan* (1872) 42 C 541. In this case, the court upheld a legislative enactment that enabled the Governor to direct the City's efforts to construct a city hall. In her article describing past and present challenges to home rule in California, Betsy Strauss, the City Attorney of Fairfield and a lobbyist for the League of California Cities, describes this case and other legal developments. Betsy Strauss, *Home Rule: A New Look for the 21st Century*, 1 CEB Land Use Forum 125, 126 (Winter 1992).
5. *Id.* 126.
6. See, e.g., *Creighton v. Board of Supervisors* (1871) 42 C 446. Here, a contractor was denied payment by the City of San Francisco for failing to conform to rules established under the City's charter. The contractor successfully lobbied the State Legislature to pass a law requiring the City to pay him for his work. In a suit brought against the City, the court held that the law was valid and that the Legislature could appropriate moneys of municipal corporations to pay individual claims.
7. BCDC is a state agency that came into existence in 1969 as the result of a citizen-initiated movement to prevent further filling of San Francisco Bay. Within its jurisdiction, which includes roughly San Francisco, San Pablo, and Suisun Bays, the surrounding 100-foot shoreline band, and any other tidal marshes, rivers, and streams that are part of the Bay system, BCDC reviews projects pursuant to the San Francisco Bay Plan, the McAteer-Petris Act, and other Bay-related policies and regulations. The twenty-seven-member Commission has thirteen representatives of local government, five appointees each of the Governor and state agencies, and two appointees each of the legislature and federal agencies. David Salvesen, "Keeper of the Bay," *Urban Land*, July 1993, at 33.
8. Rice Odell, *The Saving of San Francisco Bay* (1992).
9. Cal. Gov. Code § 66632 (Deering 1989).
10. Judith E. Innes, *Growth Management: California Struggles to Save the Dream*, *supra* note 4 at 82, 84.
11. *Nordlinger v. Hahn*, 112 S.Ct. 2326 (1992).
12. This analysis of Proposition 13 comes mostly from comments made by Harriet Steiner, city attorney of Davis and general counsel for the Sacramento Area Council of Governments. Harriet Steiner, *supra* note 1.
13. In 1992, Bay Area legislators defeated a bill that would have provided stronger regional leadership. Senator Rebecca Morgan sponsored SB 797, a comprehensive growth management bill for the Bay Area that would have created a comprehensive regional government. Following the recommendations of the Bay Vision 2020 project, Morgan's bill proposed the consolidation of three existing agencies (the Metropolitan Transportation Commission, the Bay Area Air Quality Management District, and the Association of Bay Area Governments (ABAG) into a single regional organization, the Bay Area Regional Council. Although it came close, SB 797 failed to pass due, in part, to the cool reception of the Bay Vision report by the region's smaller cities and counties. Peter Detwiler, *Growth Management: Planning for a New California*, *supra* note 4 at 87, 90.

14. Bay filling has been effectively reduced from a rate of 2,500 acres annually in the 1960s to about five acres per year today. Salvesen, *supra* note 7 at 33.
15. San Francisco Bay Conservation and Development Commission, 1993 Ann. Rep. 1 (1994).
16. One recent example involves the planned I-80 flyover lane to be constructed near the toll plaza of the Bay Bridge. Due to the urgency of this project and the rigidity of the California Department of Transportation's (Caltrans) design process, BCDC narrowly approved a design that impedes views to the Bay and encroaches upon habitat located along the Emeryville Crescent. Although Caltrans and the Sierra Club ultimately presented several alternatives to the flyover project to the Commission, changing the specifications would have delayed the project for an unacceptable amount of time. Ben Wildavsky, "I-80 Car Pool Lane Gets An Ok," *San Francisco Chronicle*, November 13, 1993, at A18.
17. Pia Hinckle, "Wilson Wants BCDC Gone," *San Francisco Bay Guardian*, Jan. 18, 1995, at 6.
18. Although an amendment to the McAteer-Petris Act transferring its duties to the Coastal Commission has yet to be proposed, the Governor's budget proposal for 1996 calls for dividing BCDC's budget between the California Coastal Commission and the Regional Water Quality Control Board. At the request of the Governor, Joseph Bodovitz, a former Executive Director of BCDC and current director of the California Environmental Trust, undertook a study to reevaluate BCDC's role in the Bay Area. This report largely supported BCDC's role as an effective agency and cited approval for its performance from the business and the environmental community. Telephone interview with Steven McAdam, Assistant Executive Director, San Francisco Bay Conservation and Development Commission (April 3, 1995).
19. Mel Scott, *The San Francisco Bay Area: A Metropolis in Perspective* (1985).
20. The plan drawn up by ABAG's staff included many compromises to local governments. The staff did prevail, however, in setting a target goal of "3,400,000 acres, of a total of 4,500,000 acres in the Bay Area, to be kept permanently free of urban encroachment." The plan further suggested that "[E]fforts should be made to center growth compactly in existing central cities and in a number of outlying cities and small towns." *Id.* at 313.
21. *Id.*
22. Gary Binger, *supra* note 1.
23. Innes, *supra* note 10 at 82, 84.
24. Pete Wilson, *Shaping California's Growth*, *supra* note 4 at 81.