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Prospect for Regional Planning in California

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Prospects For Regional Planning In California

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Because the environment is being seriously threatened by overpopulation, overdevelopment, and pollution, there has been an increasing awareness of the need to control land usage through comprehensive regional planning. While California has failed to effectively respond to that need in the past, it appears that the Legislature is now moving in that direction and the establishment of at least some comprehensive regional planning agencies is imminent. In this article, the authors discuss various approaches to regional planning, problems of enforcement of regional plans, and alternatives available for controlling the regional planning process. The authors conclude their analysis by setting forth recommendations for basic criteria necessary for effective regional planning legislation in 1973.

Schemes lightly made come to nothing,
but with long planning they succeed.

Proverbs 15:22

In this, the age of the "quiet revolution in land use control,"[1] when regional planning agencies are being established to cope with many

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1. F. BOSSELMAN AND D. CALLIES, QUIET REVOLUTION IN LAND USE CONTROL 5 (1971). This book describes emerging state and regional land use control agencies in several states.

serious environmental problems,[2] when local agency formation commissions are regulating local boundaries in an attempt to control urban sprawl,[3] and when the Legislature is mandating an increasing number of local planning responsibilities,[4] California is faced with a bewildering number of conflicting planning jurisdictions, none of which have the responsibility or the capability to adequately carry out comprehensive regional planning. While several existing state laws permit the establishment of regional planning agencies, these laws are cumbersome and the agencies that they authorize, if created, would be virtually ineffectual. Therefore, the comprehensive regional planning that has been accomplished thus far has been the result of actions taken by voluntary associations of governments (also called councils of governments) which have been organized under very general enabling acts. Although the output of such associations has varied in quality, none of their regional plans are directly enforceable, nor are any of the associations under an obligation to perform any particular kind of planning (except as a condition for federal grants).

From the foregoing, it would appear that the state, by failing to enact comprehensive regional planning laws, has abdicated its responsibility to federal and local governments. However, considerable state legislative activity in the field of regional planning is currently taking place and it may be expected that legislation will be enacted in the near future which will establish comprehensive regional planning agencies in several areas of California. In view of the imminent enactment of such legislation, this article will analyze the existing need and requirements for regional planning and regulation, the lack of effective state involvement, the alternative methods of organizing regional agencies, and the methods of enforcing regional plans. Finally, suggested criteria for regional planning legislation in the 1973 session will be proposed.

Present Requirements for Regional Planning and Control

A. General Considerations

Much has been written in recent years about the need for regional

2. *E.g.*, San Francisco Bay Conservation and Development Commission, CAL. GOV'T CODE §66600 *et seq.*; Regional Water Quality Control Boards, CAL. WATER CODE §13200 *et seq.*

3. J. GOLDBACH, BOUNDARY CHANGE IN CALIFORNIA: THE LOCAL AGENCY FORMATION COMMISSIONS 50 (1970). The author contends that local agency formation commissions have obtained a "slippery hold on general planning for the county as a region."

4. *E.g.*, CAL. GOV'T CODE §65302, *as amended*, CAL. STATS. 1970, c. 65, at

planning in large urban (and even rural) areas. These areas, which are presently fragmented into hundreds of small, overlapping, often single-purpose entities, provide services and regulate private activity with little concern for their respective impact on the remainder of the region.[5] The cliché that air pollution, traffic congestion, and urban blight do not respect municipal boundaries is indicative of this unfortunate situation. For example, the San Francisco Bay Area consists of 9 counties, 92 cities,[6] and 508 independent special districts,[7] all of which influence regional development in one way or another. Many decisions which are advantageous to any one of these decision-making entities may be very disadvantageous to the region at large. Yet, over the years, this problem has been recognized only to the extent of certain functions, such as air pollution, water pollution, bay fill control and coastline protection. In these areas the response has been to create single-purpose regional planning agencies.[8] However, the proliferation of such regional agencies has itself caused a fragmented planning process with each component making plans based solely on the perspective of its own functional responsibilities and geographical limitations. Therefore, it has been increasingly recognized that a permanent regulatory structure is needed to manage the conflicts among the various planning and implementing agencies and to formulate comprehensive plans to guide the development of the respective regions.[9]

B. *Federal Requirements for Regional Planning*

Many federal grant-in-aid programs condition federal aid to local or state agencies upon the existence of a regional plan for the area in which the grant is to be made. For example, in order for aid to be given for open space preservation or for water and sewer projects (which, because of a state bond issue, are 80% matching grants)[10],

80, c. 717, at 1343, c. 1353, at 2517, c. 1590, at 3310; CAL. STATS. 1971, c. 775, at 1524, c. 1632, at 3513, c. 1803 at 3900; CAL. GOV'T CODE §65302.1, *enacted* CAL. STATS. 1971, c. 1026, at 1972.

5. *E.g.*, R. WARREN, GOVERNMENT IN METROPOLITAN REGIONS: A REAPPRAISAL OF FRACTIONATED POLITICAL ORGANIZATION (1966).

6. E. BROWN, CALIFORNIA ROSTER (1971) (Roster of California government officials published by the Secretary of State).

7. CONTROLLER'S ANNUAL REPORT OF FINANCIAL TRANSACTIONS CONCERNING SPECIAL DISTRICTS (Fiscal Year 1969-70). The Los Angeles region has 795 special districts. These figures do not include school districts.

8. *E.g.*, BOSSELMAN AND CALLIES, *supra* note 2, at 109.

9. *E.g.*, S. SCOTT AND H. NATHAN, ADAPTING GOVERNMENT TO REGIONAL NEEDS: REPORT OF THE CONFERENCE ON BAY AREA REGIONAL ORGANIZATION (1970); TOWARD A BAY AREA REGIONAL ORGANIZATION: REPORT OF THE CONFERENCE (1968); S. SCOTT AND J. BOLLENS, GOVERNING A METROPOLITAN REGION: THE SAN FRANCISCO BAY AREA (1968).

10. *See* Legislative Analyst's analysis in *Proposed Amendments to the Constitution —Propositions and Proposed Laws, Together with Arguments,* General Election, Tuesday, Nov. 3, 1970, at 3 (available from the office of the Secretary of State).

there must be an areawide planning process through which a plan containing housing, water and sewer, and open space elements has been developed.[11]

A second example of federally conditioned grants is the Federal Water Pollution Control Act of 1972[12] containing a very strong regional planning requirement. The governor of each state is required to identify industrial areas within his state which have substantial water quality control problems. He then must designate a planning agency within each such area, which includes on its governing body local elected officials or their designees.[13] If the governor fails to act, local officials can appeal to the federal government for recognition of a planning agency.[14] There is strong incentive for the designation of these agencies, since the federal government will pay 100% of their planning costs[15] and large federal matching grants for construction of sewage treatment facilities are conditioned upon conformity of the proposed facilities with the plan formulated by the designated agency.[16]

In addition to the conditioning of grants to local and state governments upon fulfillment of designated regional planning requirements, the federal government also has grant programs designed to act as incentives for regional planning. For example, the "701" planning assistance program,[17] administered by the Department of Housing and Urban Development, expends one third of its California grant money[18] in aid to comprehensive regional planning agencies. In order to be eligible for such assistance, a regional planning agency is required to develop a plan which contains a number of elements specified by the Department.[19] There are also other grant programs which encourage (but do not require) regional planning for such subjects as health services,[20] older Americans,[21] and public works development.[22]

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11. United States Department of Housing and Urban Development Circulars MPD 6415.1A, 6415.2A, and 6415.3.
12. Pub. L. No. 92-500 (Oct. 18, 1972).
13. Pub. L. No. 92-500, §208(a) (Oct. 18, 1972).
14. *Id.* §208(4).
15. *Id.* §208(f)(2).
16. *Id.* §204(a)(1). In California, the Regional Water Quality Control Boards would not qualify for designation under the federal act since their membership does not contain elected local officials. Therefore, either a comprehensive planning agency or a single-purpose sewage planning agency, such as the Bay Area Sewage Service Agency (CAL. WATER CODE §1600 *et seq.*), would have to be designated.
17. The Housing Act of 1954 §701, 40 U.S.C. §461 (1970).
18. Figures provided by the California Council on Intergovernmental Relations.
19. The Housing Act of 1954 §701(g), *as amended*, 40 U.S.C. §461(b) (1970).
20. Comprehensive Health Planning and Public Health Services Act of 1966, 42 U.S.C. §246 (1970).
21. Older Americans Act of 1965, 42 U.S.C. §3023 (1970).
22. Public Works and Economic Development Act of 1965, 42 U.S.C. §3121 (1970). Other federal grant programs which encourage regional planning include the Rural Development Act, §106, Pub. L. No. 92-419 (Aug. 30, 1972), the Safe Streets

An even stronger incentive was proposed in the National Land Use Policy Act of 1972.[23] This legislation, which passed the Senate but not the House, would have required states, in order to be eligible for planning funds, to remove from local control, planning decisions that have areawide impact.[24] This would have included, according to a Senate committee analysis, "that 10% of land use decisions which [have an] impact upon citizens who are not represented by the decision-maker."[25] In order to qualify for funding, the state would have had to have developed a plan within five years which conformed with the provisions of the Act. Although not expressly stated in the text, it seems that the intent of this proposed legislation was to allow states to delegate authority for the areawide planning decisions to regional planning agencies.[26]

It must be noted that although present federal law requires regional planning to be undertaken, it does not require that the plan that is developed be enforced. Therefore, the existing structure consisting of voluntary associations of governments, satisfies the minimum requirements of current federal law. If the National Land Use Policy Act is eventually passed, regional agencies may have to be vested with regulatory power in order to be utilized by the state to fulfill the mandate of the Act.

C. *Court Decisions Indicating a Need for Regional Planning and Control*

There has been, to date, no federal or state court decision which mandates regional planning or land use control based upon constitutional or other nonstatutory grounds, nor is such a decision to be expected. However, there have been decisions by courts in California and other jurisdictions which, by utilizing regional standards for evaluating local land use regulations, require local regulations to be adopted within the framework of a comprehensive regional scheme. Regional

Act, 42 U.S.C. §3721 *et seq.*, the Highway Act of 1962, 23 U.S.C. §134 (1971), the Clean Air Act of 1970, 42 U.S.C. §1857c (1971), the Natural Resource Recovery Act of 1970, 42 U.S.C. §3254a (1971), and the Coastal Zone Management Act of 1972, §§305, 306, Pub. L. 92-583 (Oct. 27, 1972).

23. S. 632, 92nd Cong., 2nd Sess. (1972); REPORT OF THE SENATE COMM. ON INTERIOR AND INSULAR AFFAIRS, S. Rep. No. 92-869, 92nd Cong., 2nd Sess. (1972); SENATE COMM. ON INTERIOR AND INSULAR AFFAIRS 92ND CONG., 2ND SESS., NATIONAL LAND USE POLICY BACKGROUND PAPERS (Comm. Print 1972).

24. S. 632, 92nd Cong., 2nd Sess. §303 (1972).

25. REPORT OF THE SENATE COMM. ON INTERIOR AND INSULAR AFFAIRS, *supra* note 23, at 51.

26. *See, e.g.*, The President's message to Congress, Aug. 10, 1970, reprinted in *Hearings on S. 3354, Before the Senate Comm. on Interior and Insular Affairs* 91st Cong., 2nd Sess. 518, 526 (1970). It was apparently the intent of the Senate Committee to give much flexibility to the states in the administration of their land use programs. *Hearings on S. 632, National Land Use Policy, Before the Senate Comm. on Interior and Insular Affairs* 92nd Cong., 1st Sess. 113 (1971).

planning, in such situations, becomes indispensable if a locality's land use control is to be assured validity.

The idea of subjecting local land use regulation to judicial scrutiny as to its regional as well as local impact was enunciated in dicta in the landmark case of *Village of Euclid v. Ambler Realty Co.*[27] In *Euclid* the U.S. Supreme Court, while upholding Euclid's zoning, and while presuming the validity of such ordinances, warned that "it is not meant by this . . . to exclude the possibility of cases where the general public interest would so far outweigh the interest of the municipality that the municipality would not be allowed to stand in the way."[28]

In recent years, several courts have agreed with the Supreme Court's dicta in *Euclid* and have struck down zoning which tends to exclude people (usually those of lower income or racial minorities) from the community.[29] These courts have held that a regional public interest which indicates a need for low or moderate income housing in a community cannot be frustrated by the self interest of those already living in the community. These cases usually involve a suburban municipality which enacts ordinances tending to limit the migration of new residents into the community. The courts have found common elements to these cases: a crucial housing shortage in the region, an increasing trend of blue collar jobs to be located in the suburbs, and a marked lack of low or moderate-income housing in the suburbs.

An example of a state court which followed *Euclid's* logic was *Oakwood at Madison, Inc. v. Township of Madison* which stressed the unreasonableness of a zoning ordinance as it related to the general welfare of the state and region.[30] The community, the New Jersey Superior Court said, "must not ignore housing needs of its own population and of the region . . . . General welfare does not stop at each municipal boundary."[31]

The Supreme Court of Pennsylvania, also following *Euclid's* reasoning, overturned a zoning ordinance which made no provision for apartment buildings when the court found that there was a regional need for that kind of housing in the area of the township.[32] The court held

27. 272 U.S. 365 (1926).
28. *Id.* at 390.
29. It has been suggested that courts are becoming increasingly reluctant to invoke the traditional judicial presumption of validity for zoning ordinances. Comment, *The General Public Interest v. The Presumption of Zoning Ordinance Validity: A Debatable Question* 50 J. URB. L. 129, 132-38 (1972).
30. Oakwood at Madison, Inc. v. Township of Madison 117 N.J. Super. 11, 283 A.2d 353 (1971).
31. *Id.* at 20, 283 A.2d 358.
32. Appeal of Girsh, 437 Pa. 237, 263 A.2d 395 (1970).

that the township could not "stand in the way of the natural forces which send our growing population into hitherto undeveloped areas in search of a comfortable place to live."[33] The court further stressed the need for a planning mechanism to resolve such problems when it indicated that the decision might have been contrary "in an ideal world [in which] planning and zoning would be done on a *regional* basis, so that a given community would have apartments, while an adjoining community would not."[34]

Although there has not been a direct holding on the question of exclusionary zoning in California, the supreme court did hold in *Scott v. City of Indian Wells*[35] that a city could not ignore the impact of its zoning on land outside the city and must give adequate notice and the right to be heard to owners of such property. The court agreed with the *Euclid* Court's dicta concerning a city's lack of authority to enact zoning ordinances contrary to the general welfare of the region.[36] The court went on to say that "in today's sprawling metropolitan complexes, municipal boundary lines rarely indicate where urban development ceases. We have come to recognize that local zoning may have even a regional impact."[37] Using this logic, it is possible that the Supreme Court of California could, in a proper case, invalidate local zoning on the basis of regional unreasonableness.

Furthermore, once it is shown that a zoning ordinance is inconsistent with the regional welfare, it is arguable that a court would adopt a regional plan as its standard and require compliance with that portion of the plan which relates to the question under consideration. However, most courts express reluctance at becoming zoning appeals boards and would probably not attempt to administer regional plans.[38]

In view of the fact that the judiciary seems willing to void only local planning that conflicts with regional interest and does not appear willing to mandate that regional planning must occur, a legislative solution to the need for regional planning appears to be the most promising approach.

No Effective State Involvement

California has only one mandated comprehensive regional planning agency—the Tahoe Regional Planning Agency[39]—which was estab-

33. *Id.* at 244, 263 A.2d 398.
34. *Id.* at 245 n.4, 263 A.2d 399 n.4.
35. 6 Cal. 3d 541, 492 P.2d 1137, 99 Cal. Rptr. 745 (1972).
36. *Id.* at 548 n.7, 492 P.2d at 1141 n.7, 99 Cal. Rptr. at 749 n.7.
37. *Id.* at 548, 492 P.2d at 1141, 99 Cal. Rptr. at 749.
38. Comment, *Exclusionary Zoning From a Regional Perspective*, 1972 URBAN L. ANNUAL 239, 242.
39. CAL. GOV'T CODE §66800.

lished by an interstate compact between California and Nevada.[40] The agency is comprised of a variety of state and local appointees from each state;[41] it has the authority to enact a regional plan[42] and enforce it by disapproving local plans and activities;[43] and it is financed by assessments made against the counties in which it is located.[44] Other than the Tahoe agency, the state mandates no comprehensive regional planning. Most state-mandated planning is done by numerous overlapping single-purpose agencies (there are over 100 in the state),[45] each with a varying degree of authority to enforce its plan.[46]

Although the state has not itself established comprehensive regional planning agencies, it has enacted several laws which were either designed for the voluntary establishment of such agencies or which have been used for that purpose.

There are two California laws designed *specifically* for *voluntary* formation of regional comprehensive planning agencies: the Regional Planning Law,[47] first enacted in 1953,[48] and the District Planning Law, enacted in 1957.[49] While the Regional Planning Law technically mandates the establishment of planning districts, it provides that the districts may not function until activated by a resolution of 2/3 of the counties and 2/3 of the cities in the district which in effect make the formation of such districts voluntary.[50] Under the law, a district is to be governed by a board composed of city and county officials and one citizen-at-large from each county, appointed by the other members.[51] A district that adopts a plan has no power to enforce it, but such a district may levy a tax of one half cent on each $100 of assessed valuation in the district for support of the board.[52]

The District Planning Law, on the other hand, allows counties to form planning districts by resolution of each county in the proposed

40. Pub. L. 92-148 (Dec. 18, 1969).
41. CAL. GOV'T CODE §66801 art. III(a).
42. CAL. GOV'T CODE §66801 art. V(b).
43. CAL. GOV'T CODE §66801 art. VI(e).
44. CAL. GOV'T CODE §66801 art. VII(a).
45. CALIFORNIA COUNCIL ON INTERGOVERNMENTAL RELATIONS, DRAFT ON STATE POLICY ON REGIONAL ORGANIZATION 2 (Sept. 1, 1972).
46. The State has enacted legislation mandating regional planning by single-purpose agencies in many fields. For example, planning is now required at the regional level for air pollution control (CAL. HEALTH & SAFETY CODE §39270 *et seq.*), water resources (CAL. WATER CODE §13000 *et seq.*), transportation in the San Francisco Bay Area (CAL. GOV'T CODE §66500 *et seq.*), health services in order to carry out federal law (CAL. HEALTH & SAFETY CODE §437.7), conservation of the San Francisco Bay (CAL. GOV'T CODE §66600 *et seq.*), and the coastline (CAL. PUB. RESOURCES CODE §27000 *et seq.*).
47. CAL. GOV'T CODE §65060 *et seq., enacted,* CAL. STATS. 1963, c. 1811, at 3669.
48. CAL. STATS. 1952, c. 1895, at 3691.
49. CAL. GOV'T CODE §66100 *et seq., enacted,* CAL. STATS. 1957 c. 2001, at 3561.
50. CAL. GOV'T CODE §65061.4.
51. CAL. GOV'T CODE §§65063.1, 65063.5.
52. CAL. GOV'T CODE §§65069.1, 65069.2.

district. Its governing body is composed entirely of local officials.[53] Similar to the Regional Planning Law, the District Planning Law provides no enforcement power and allows a tax rate of one cent on each $100 of assessed valuation.[54]

No district has ever been formed under either of these voluntary acts, probably because the requirements for formation are onerous and the resulting agency would have few, if any, powers greater than those possessed by the now existing voluntary associations of governments.

Consequently, regional planning in California is performed by numerous associations of governments, created largely because of strong federal requirements.[55] The associations are completely voluntary in nature and operate under agreements adopted by each of their members. Most voluntary associations are formed under what has been called the Joint Powers Act,[56] which simply provides that any two governmental entities may, by agreement between them, create an agency (or authority) which may exercise any power common to the contracting entities.[57] One association which does not utilize the Joint Powers Act is the Sacramento metropolitan area's association of governments (the Sacramento Regional Area Planning Commission) which utilizes the Area Planning Commission Law.[58] This law allows one or more entities to create a planning commission to plan for matters of common interest,[59] and it is as unstructured as the Joint Powers Act.

The Joint Powers Act and the Area Planning Commission Law are distinguishable from the Regional Planning Law and the District Planning Law in that the latter two were designed specifically for regional planning associations while the former two are merely general association provisions.

Although the associations created by use of the Area Planning Commission Law and the Joint Powers Act have the power under state law to formulate regional plans and policies, the only enforcement power they have is derived from the federal government and requires the existence of a federal grant in the area(s) in which regulation is attempted. In order to exercise this enforcement power, these planning

53. CAL. GOV'T CODE §66201.
54. CAL. GOV'T CODE §66361.
55. See text accompanying notes 10-16 *supra.*
56. CAL. GOV'T CODE §6500 *et seq.* This act is used not only for planning purposes, but for a wide variety of other purposes, including the provision of centralized computer facilities and the financing of capital improvements. See Taber and Whittaker, *Joint Powers Revenue Bonds—A Tool for Intergovernmental Cooperation,* 23 HAST. L.J. 793 (1972).
57. CAL. GOV'T CODE §6502.
58. CAL. GOV'T CODE §65600 *et seq.*
59. *Id.* at §65601.

associations are certified by the federal Office of Management and Budget to act as regional clearinghouses. This designation gives the associations the responsibility of reviewing federal grant applications by local agencies to determine whether the applications conform to the regional plan. Section 401 of the Intergovernmental Cooperation Act of 1968[60] provides that "to the maximum extent possible, consistent with national objectives, all federal aid for development purposes shall be consistent with, and further the objectives of state, regional and local planning."[61] Therefore, the federal government usually will not approve a grant for a project which a regional agency finds to be in conflict with the regional plan.[62] The plan is thus enforced by denial of federal money to projects in violation of it.

Although associations of governments are granted some enforcement power by the federal grant review procedure described above, the present associations have the following deficiencies:

1. They are voluntary associations and the members are free to withdraw whenever they choose.[63]

2. They have no taxing power[64] and must depend on federal grants[65] and voluntary contributions from their own members.[66]

3. They have no police power[67] and, except for the grant review procedure, they must depend on the moral obligation of their members to enforce their plans.

4. State law establishes no standards or guidelines for the preparation of comprehensive regional plans.

Although the federal government has mandated the creation of regional planning agencies and has specified in detail the organization of such agencies and the contents of their plans, it has not pre-empted the field; rather it has entered the field only because of the absence of state action. For example, it is the policy expressed by the Office of

60. Intergovernmental Cooperation Act of 1968, 42 U.S.C. §4231 (1970).
61. *Id.*
62. Executive Office of the President, Office of Management and Budget Circular No. A-95, at 9 (Rev. Feb. 9, 1971), requires federal agencies to assure that any federal plan or project is consistent or compatible with state, regional and local development plans and programs identified in the course of consultations. Exceptions will be made only where there is clear justification.
63. However, if a member withdraws, it is still subject to the association of government's regional plan and the association of governments retains its power to recommend federal grants.
64. Legislative Counsel Opinion No. 3060 (Feb. 19, 1968); Legislative Counsel Opinion No. 16421 (Oct. 17, 1968) (relating specifically to the property tax).
65. *See, e.g.*, notes 18-23 and accompanying text *supra.*
66. *Hearings on Regional Planning in the San Francisco Bay Area, Before the California Senate Committee on Local Government*, Apr. 10, 1972, at 32.
67. Letter from Attorney General Thomas Lynch to Phillip G. Simpson, Executive Assistant to the California Council on Intergovernmental Relations, (Oct. 13, 1972).

Management and Budget that if a state develops a regional planning program, the federal government will acceed to it.[68]

California has to date abdicated its authority to the federal government by its inaction. Thus, if California is to have a voice in its own planning and future development, it is essential that a procedure implementing effective regional planning be adopted.

Enforcement Power of Regional Agencies

In order for effective regional planning to take place, the regional agency must have some positive police power to enforce its plans and policies. The advisory agency approach heretofore used by the voluntary regional planning agencies has proved itself to be insufficient to cope with the increased responsibilities which now must be delegated to such agencies. Some form of positive regulatory power, exercised either directly (the permit power) or indirectly by requiring the actions of other agencies to be consistent with the regional plan (planning management), must be granted to any new regional comprehensive planning agency.

A. The Advisory Agency Approach

The weakest form of regional agency that the Legislature could mandate is the advisory agency. Two recent bills would have established such agencies for two regions in the state. The first was a bill introduced in the 1971 California legislative session which would have created a regional planning district encompassing the north coastal counties.[69] This bill passed the Legislature but was vetoed by the Governor. The second, a 1972 bill which was introduced but not passed, would have created a regional planning agency in the Los Angeles metropolitan area.[70] In both bills, the agencies would have had the power to formulate a regional plan and to review federal grant applications[71] (the same powers now possessed by voluntary associations

68. Office of Management and Budget Circular A-95, *supra* note 62, at 12, states that one of its objectives is to encourage the states to exercise leadership in delineating and establishing a system of planning and development districts or regions in each state, which can provide a consistent geographic base for the coordination of federal, state, and local development programs.

69. S.B. 920, 1971 Regular Session, *as amended,* Nov. 3, 1971. The boundaries of the regional planning district would have been designated by the Council on Intergovernmental Relations to include at least three of the following counties: Del Norte, Humboldt, Mendocino, Lake and Sonoma. *Id.* §67504.

70. S.B. 776, 1972 Regular Session, failed to clear the Senate Government Organization Committee; S.B. 37, 1972 Regular Session, which was an identical bill, was referred to interim study by the Senate Committee on Local Government. *Hearings on Regional Planning in Southern California, Before the California Senate Committee on Local Government,* Sept. 15, 1972.

71. S.B. 37 and S.B. 776, 1972 Regular Session, §67635 (identical bills); S.B. 920, 1971 Regular Session, §67528.

of governments), but no further enforcement powers would have been granted.[72] However, the contemplated agencies would have had two advantages over the present association of governments approach: (1) local agencies could not have withdrawn from the prescribed jurisdiction of the agency; and (2) each agency would have had its own modest taxing or member assessment power.[73] This would free the agency from having to rely on voluntary member contributions.[74] Since no new control powers were to have been granted under this form of organization, there is no need for legislation of this type unless, as in the case of Los Angeles and the North Coast, there are or would be problems in maintaining the voluntary membership of local agencies in the association.[75] The fact that these bills merely require membership in a planning organization was pointed out by the Governor in his veto message on the north coast bill in which he said that there is no need to mandate upon local agencies that which they could already do voluntarily.[76]

Those who sponsored the bills disagreed with the Governor and contended that it is essential to have broad representation via mandatory membership even though the planning agency would have no more powers than the current associations of governments.

All parties concerned seem to have overlooked the fact that the effect of mandatory membership can be achieved under the existing association of governments procedure, since a significant number of local governments can be coerced into remaining in an association. For example, although the City of Los Angeles and the County of Los Angeles desired to withdraw from the Southern California Association of

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72. See S.B. 37 and S.B. 776, 1972 Regular Session, §67620(e) (identical bills), which would have specifically denied the agency power to enact ordinances enforceable against local agencies or individuals. S.B. 920, 1971 Regular Session, *as amended,* July 27, 1971, contained a limited enforcement provision when it passed the Senate, but the provision was amended out of the bill before it passed the Assembly. S.B. 920, 1971 Regular Session, *as amended,* Oct. 27, 1971. This provision would have required the submission of the area development plan to each local agency in the region for its approval. If a local agency approved the plan, it was prohibited from constructing any public facility or improvement in substantial conflict with the plan.

73. S.B. 37 and S.B. 776, 1972 Regular Session, §67605 (establishing jurisdiction of the agency) and §67607.1 (mandating participation by local agencies).

74. The lack of any provision by the state for financing of regional planning is an important deficiency in existing law. See *Hearings, supra* note 66, at 24-25.

75. In the case of the North Coast, Sonoma County wished to withdraw from the Association of Bay Area Governments, but felt it would do so only if there was a north coast association which it could join. No such association was or is now in existence.

In the case of the Southern California Association, many significant cities are not members, 1971 ANNUAL REPORT OF THE SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS, and the County of San Bernardino has threatened to withdraw. See *Hearings, supra* note 70, at 73.

76. JOURNAL OF THE CALIFORNIA SENATE, 9235 (Reg. Sess. 1971).

Governments, they were forced to remain members because of a threat of withdrawal of federal grant money if they were no longer members.[77] Furthermore, even if a local government does withdraw, or refuses to join, the functioning of the association is not impaired, so long as the association retains the membership of governments which represent at least 75 percent of the population of the region.[78] Solano County, for example, has never been a member of the Association of Bay Area Governments ABAG, yet ABAG performs comprehensive regional planning for that county, reviews and comments upon its grants, and even receives a contribution equivalent to the amount of its membership fee by making an in lieu charge for processing Solano's grant applications.[79] The only difference Solano's nonmembership makes is that Solano has no voice in the association's affairs, which is solely to Solano's detriment, not the association's.

It seems reasonable to conclude that, except for possibly providing a basis upon which a more powerful agency could be built in the future, there is little need to create by legislation a purely advisory regional planning agency in any region of the state. Moreover, such an advisory agency would suffer from most of the drawbacks of the associations of governments discussed above relating to resolving the problems posed by conflicting local and regional planning jurisdictions.

B. Positive Implementation Power

Since regional planning without the existence of an agency which can enforce the regional plan is of negligible value, it is important that proposed regional planning agency legislation contain enforcement provisions. This section will consider the two methods of enforcement which are most often proposed: direct enforcement of the plan by permit authority, and indirect enforcement of the plan by planning management.

Some proposed legislation[80] and existing laws[81] provide for direct implementation of a regional plan by the regional planning agency. Usually such authority is given to single-purpose regulatory agencies,

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77. Letter from Ray Remy, Executive Director of the Southern California Association of Governments, to Stephen L. Taber, Oct. 16, 1972, on file at the Pacific Law Journal Office.

78. Dep't of Housing and Urban Development Circular, MPD 6415, 114, at 8, makes this requirement a prerequisite for sewage treatment and open space grants.

79. *Hearings, supra* note 66, at 32.

80. S.B. 1368, 1972 Regular Session; S.B. 1400, 1970 Regular Session.

81. *E.g.*, the San Francisco Bay Conservation and Development Commission, CAL. GOV'T CODE §66600 *et seq.*, and the Tahoe Regional Planning Agency, CAL. GOV'T CODE §66801 *et seq.*

rather than to multi-purpose agencies.[82] Under a permit scheme, public or private activity of a specified type (*e.g.*, filling of the Bay, emissions into the atmosphere, construction of a hospital) is prohibited unless a permit is first obtained from the regional agency. Upon application, the regional agency has the power to deny the permit if it finds that the project is inconsistent with the goals of its regional plan.

Agencies presently exercising direct regulatory powers in enforcing their regional plans include air pollution control districts[83] (San Francisco Bay Area Air Pollution Control District is the only regional district, the others are county districts), Water Quality Control Boards,[84] Comprehensive Health Planning Councils,[85] and the San Francisco Bay Conservation and Development Commission.[86]

In contrast, under a planning management authority scheme (the first of which was created under the Tahoe Regional Agency Compact,[87] and which has been proposed for other single and multi-purpose regional planning agencies),[88] a regional agency sets a general policy which is then implemented by other governmental entities. Under this method of enforcement, a regional agency has power to require that the activities of such entities conform to the regional plan.

An example of planning management is found in the Tahoe compact, which provides that the regional agency is to formulate regulations which are "general and regional in application, leaving to [local government] the enactment of specific and local ordinances, rules, regulations, and policies which conform to the [regional plan]."[89] The regional agency has been given the power to initiate a court action to insure conformity of local ordinances with the regional plan.[90]

On the other hand, A.B. 1057, introduced but not passed in 1971, and bills modeled after it,[91] provide for administrative, rather than ju-

82. However, A.B. 711, 1969 Regular Session, would have provided for direct regulation by permit by the comprehensive agency. The effectuation sections of A.B. 220, 1972 Regular Session, A.B. 1057, 1971 Regular Session, and A.B. 2050, 1971 Regular Session, provide that the agency may enact rules and regulations which "must be complied with by affected private persons." The agency would be able to halt private action which is in conflict with the regional plan by a cease and desist order. However, no permit procedure is set forth nor would one be likely to be developed. The power to enact rules and regulations has proved to be an effective tool in the hands of an agency such as the Bay Area Air Pollution Control District, CAL. HEALTH & SAFETY CODE §24300.

83. CAL. HEALTH AND SAFETY CODE §§24368 *et seq.*, 39313.

84. CAL. WATER CODE §§13240, 13242.

85. CAL. HEALTH AND SAFETY CODE §437.7 *et seq.* Area Health Planning Agency approval is required before anyone may construct hospitals or related facilities.

86. CAL. GOV'T CODE §66600 *et seq.*

87. CAL. GOV'T CODE §66801.

88. A.B. 220, 1972 Regular Session; A.B. 1057, 1971 Regular Session; A.B. 3050, 1971 Regular Session.

89. CAL. GOV'T CODE §66801, art. VI(a).

90. *Id.*, art. IV(b).

91. *E.g.*, A.B. 220, 1972 Regular Session; A.B. 3050, 1972 Regular Session.

dicial enforcement of conformity. Under the provisions of these bills, the director of the regional agency sends the local agency a notice of nonconformity, at which time the local agency must either correct its ordinance or request a hearing to be held within 90 days. Following the hearing, the regional board may issue a cease and desist order, the violation of which may be enjoined by a superior court.

For a planning management scheme to be effective, it should grant the regional agency control over a broad enough range of local activities to allow it to effectively implement its planning goals. Certainly, the regional agency should be able to require that local planning, zoning, and subdivision regulation conform to the regional plan. Additionally, the regional agency should be able to control many other local government activities, including the establishment and location of transportation routes, utility services,[92] and schools, because decisions affecting such local activities very often determine where and to what extent urban development will occur. Therefore, if legislation were to give a regional agency power to require conformity of *local plans, ordinances and regulations relating to planning or to the regulation and control of development*, it could justifiably be interpreted as giving the agency the power to require conformity of all action *tending to influence* the direction of urban development, rather than only that action *designed to regulate* development.

The advantages of planning management as opposed to direct enforcement through permit authority are: (1) it is efficient, in that only one set of regulations relating to private activity (those of the local agency) need be enforced; and (2) it allows the regional policy to be implemented in a different manner in each local jurisdiction, thus allowing flexibility in providing for special situations which may arise. Also, planning management enforcement would escape the permit authority requirement that each significant development and environmentally important action be submitted to the regional agency for approval. The necessity for such approval could be an administrative nightmare and might cause the regional agency to be bogged down in fine details.

The disadvantages of planning management are several. It does not allow the regional agency to directly enforce its own regulations, thereby not allowing it the benefit of fashioning regional policies on a case-by-case basis. The result is that all detailed planning and all

92. *Hearings on Bodega Harbor Subdivision, Before the California Assembly Committee on Planning and Land Use,* Oct. 13, 1971. The Committee investigated a recreational subdivision which was made possible by the formation of a special district to provide sewage treatment.

enforcement occurs at the local level with the regional agency fashioning only a vague and general policy. It may be expected that the local entities will place their provincial interest above regional considerations and thus defeat the purpose of regional planning. Furthermore, the local planning process might not be capable of properly enforcing the provisions of the regional plan, especially if the regional plan is very technical in nature.[93]

Balancing the advantages and disadvantages of the two methods, permit authority and planning management, it seems that direct regulation by permit is probably not necessary to effectuate a *general* regional plan if there are competent regulatory agencies already in existence. For example, the land use plan need not be enforced by a system of regional zoning, building, and subdivision regulations which in turn are enforced by permit requirements. Such a procedure would not only come into conflict with the procedure now provided by local agencies, but would also constitute an extraordinarily large burden on the regional agency. It would also appear completely unnecessary, since the incorporation of general regional standards into local plans by planning management is much easier than setting up duplicative regulatory systems.

The same is true with regard to matters regulated by single-purpose regional agencies. It is better to incorporate the standards of the regional general plan into the single-purpose plan (using the umbrella approach discussed herein) rather than to provide for concurrent regulation. However, if ever a single-purpose regulatory agency were to be consolidated with a comprehensive planning agency, the comprehensive agency would have to be given the regulatory powers of the single-purpose agency, including the permit power, since the enforcement responsibility must be vested in some agency. For the same reason, if the comprehensive agency were given the responsibility to provide planning in an area not occupied by another agency, it would have to be granted sufficient regulatory power to either effectuate the plan without the assistance of another agency or to compel some other agency to assume the responsibility of enforcement.

In conclusion, the nature of the enforcement power granted to a comprehensive regional planning agency should depend on the nature of the plan to be enforced. If the plan is general and involves activi-

93. This was a factor in the decisions to give the Vermont Environmental Board and its regional commissions direct control over most development and all subdivisions in the state to effectuate the state's land use and development plans. The lack of sophisticated local controls in the face of increased recreational development was offered as the reason for such strong action by the state. BOSSELMAN AND CALLIES, *supra* note 1 at 55.

ties which are already regulated by another unit of government, planning management authority is proper. On the other hand, if the plan is specific and there is no other agency which can adequately enforce it, permit authority is required. In all cases, the power should be sufficient for enforcement of the regional plan.

Resolving Conflicts among Regional Planning Authorities

The establishment by statute of comprehensive regional agencies will inevitably create problems of intergovernmental conflict between the comprehensive regional agency and already existing single-purpose regional agencies. The conflict has not been serious with regard to the present associations of government because these comprehensive agencies have had no enforcement authority. However, when such agencies are given enforcement power, there could be serious conflicts with other agencies. There appear to be three methods of resolving such conflicts.

A. The Umbrella Agency

An umbrella regional planning agency (for purposes of this article) is an agency without the power to *directly* enforce its plan, but whose plan is enforced by single-purpose regional agencies which themselves have planning and enforcement powers. Such agencies are currently provided for by law (*e.g.*, water quality control boards, the Bay Conservation and Development Commission, air pollution control boards and coordinating councils, health planning councils and others), each of which formulates and enforces its own plan for its own functions. While the purpose of the umbrella agency would not be to absorb this fractionalized planning and enforcement process, it would provide for the formulation of a single comprehensive plan—a general development guide for the entire region—and it would require the plans and activities of the regional-single purpose agencies to conform with its overall plan.

In order for the umbrella agency method to operate, there must be in existence, regional single-purpose agencies to implement the plan. It would also seem necessary that, except where sub-regional planning is needed, the single-purpose agencies have their respective jurisdictions coterminous with that of the umbrella agency, so the single-purpose agencies are able to coordinate their activities effectively with the comprehensive plan. Unfortunately, however, there is no present requirement that single-purpose regional planning agency jurisdictions conform with any uniform standards; consequently, California is at

present divided in over 100 different ways[94] and most of the resulting regional boundaries do not correspond with any of the others. While in some cases nonconforming regional divisions are necessitated by physical characteristics (such as air and water basins), most of the existing nonconformity is the result of a lack of coordination by those drawing the boundaries of single-purpose agencies and by a lack of any requirements for conformity. For example, the California Council on Intergovernmental Relations, mandated by state law,[95] established regional planning district boundaries as early as 1965.[96] These boundaries were to be observed by other agencies for purposes of regional planning. However, the districts have seldom been utilized and no effort has been made to require regional planning to conform to them.

Only one pure umbrella planning agency has been seriously proposed, and it was never introduced as legislation. This proposal was an alternative Bay Area regional agency conceived in 1971 by an organization called Action for a Regional Environmental Agency.[97] The proposed agency[98] would have had the power to formulate a regional plan and require that the plans of single-purpose regional agencies conform with that plan. The agency would have had no power to directly enforce its plan against local agencies or individuals. This proposal was set aside in favor of A.B. 1057 and was not introduced because, for political reasons, a bill was needed which would not affect the organization or financing of existing units of government.

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94. California Council on Intergovernmental Relations, Compilation of Regional Boundaries as Established for Use by State Agencies, Mar. 24, 1971.

95. CAL. GOV'T CODE §65018.2, *enacted*, CAL. STATS. 1959, c. 1641, at 4016, *repealed*, CAL. STATS. 1969, c. 138, at 327. CAL. GOV'T CODE §34216, *enacted*, CAL. STATS. 1969, c. 138, at 325.

96. Minutes of the February 1965 meeting of the California Planning Advisory Committee, on file with the California Council on Intergovernmental Relations. The history of regional boundaries in California is recounted in S. Taber, The California Council on Intergovernmental Relations: An Advisory Agency in Transition 13-16 (1971) (unpublished thesis on file with the office of the Public Administration Program, U.C.L.A.).

97. Action for a Regional Environmental Agency is a regional civic organization composed of business, labor, and education leaders.

98. This proposal (on file with the California Senate Committee on Local Government) included the following provisions:

1. Retention of all single-purpose regional agencies and addition of others (*e.g.*, open space) when the need arises.
2. The creation of a comprehensive planning umbrella agency with a directly elected governing body and a complicated interrelationship between the umbrella agency and the single-purpose agencies.
3. The formulation of a regional plan and the power of the umbrella agency to review single-purpose agency plans to ensure conformity.
4. Right of appeal by interested parties from decisions of the single-purpose agencies to the umbrella agency.
5. Consolidation of the staffs of the umbrella agency and the single-purpose agencies under one executive director.

Other recent regional legislative proposals have fallen short of providing an umbrella approach because, although they would have left intact the existing regional planning agencies and would have provided for the adoption of comprehensive regional plans, they would not have provided a method of requiring enforcement of such plans by single-purpose regional planning agencies.[99]

B. Consolidated Planning Agency

A consolidated planning agency is one which enacts its plan and enforces it directly against individuals and governmental entities at the local level, without going through a single-purpose regional agency. A pure consolidated agency would be one which consolidates all regional planning and enforcement into itself (*planning* here is used to mean policy planning, rather than purely functional planning). Therefore, if a totally consolidated planning agency were to be created, single-purpose planning agencies would be abolished and their functions would be transferred to the consolidated agency. The agency would then have the responsibility to develop air pollution control plans, water quality plans, a San Francisco Bay plan, a comprehensive health plan, criminal justice plans, and all other plans which single-purpose agencies may now prepare. The consolidated agency would also be given the authority to utilize all of the enforcement powers currently delegated to single-purpose agencies.

One advantage of the consolidated agency approach is that a truly comprehensive planning process may be achieved. For example, with the same agency preparing both the air quality plan and the urban growth plan, coordination between the plans (to minimize air pollution through the placement of new development) would be accomplished in a way that would be impossible under the umbrella approach in which the comprehensive agency merely supervises the planning done by the single-purpose agency.

Another possible advantage is that the consolidation of regional agencies into one agency, by eliminating some of the duplication of effort and centralizing certain administrative and other common services now provided separately by each agency, would result in greater efficiency. While there have been no estimates of the savings which would be generated by consolidation, they are probably minimal considering the current low budgets and functional diversity of existing single-purpose regional agencies.

99. For example, A.B. 220, 1972 Regular Session, and A.B. 1057, 1971 Regular Session, made no provision for regulation of the single-purpose regional agencies.

Despite the aforementioned advantages, no legislation has yet been proposed which would have required the consolidation of all regional agencies into a comprehensive planning agency. In fact, of the many recent regional planning bills, only A.B. 1057 in 1971 provided for the consolidation of *any* regional single-purpose agencies into a comprehensive agency. Under that measure, the proposed comprehensive agency could have adopted an ordinance terminating the existence of the Metropolitan Transportation Commission, a regional transportation planning agency, and would have assumed all duties of the commission.[100] In addition, the bill would have required the Bay Area Sewage Services Agency (BASSA), which has the responsibility to plan for and effectuate regional sewage treatment, to merge with any "multi-functional regional organization which encompasses the entire region . . . and which has been delegated substantially the same responsibilities."[101] It is questionable, however, whether the agency proposed in A.B. 1057 would have complied with this standard, since it would not have possessed some of the responsibilities possessed by BASSA such as the responsibility to construct and operate sewage treatment facilities if local agencies did not comply with its plan.

On the other hand, the agency proposed in A.B. 1057 would have left intact and would have had no control over many regional planning agencies, such as the Bay Conservation and Development Commission, the Bay Area Air Pollution Control District, the Bay Area Water Quality Control Board, the comprehensive health planning agency, and the various "regional" criminal justice councils.

This lack of consolidation of single-purpose planning into the comprehensive agency is indicative of the political and legal obstacles which have prevented the establishment of a consolidated planning process. Each single-purpose regional agency which has heretofore been established has been created to solve a particular problem for a particular "clientele." For example, those who were concerned about the filling of San Francisco Bay worked for the establishment of the Bay Conservation and Development Commission. Now that the Commission is in operation and has shown itself to be successful, its supporters are very reluctant to allow it to be absorbed into a larger agency which has not yet proved itself.[102] Consequently, many people believe that it is a better strategy to establish a comprehensive planning

100. A.B. 1057, 1971 Regular Session, *as amended*, Oct. 26, 1971, at 59.
101. *Id.*
102. Letter from William D. Evers, Vice Chairman of BCDC and spokesman for Bay Area conservationists, to Stephen L. Taber, Aug. 11, 1972, on file at the Pacific Law Journal.

agency without disturbing the existing regional planning agencies, and to consider consolidation after the comprehensive agency has become established.

Another obstacle to consolidation could conceivably be the federal statutory requirements for the organization and composition of some single-purpose regional planning agencies, which seem to prevent certain regional planning activities from being assumed by a general purpose agency. For example, the federal law requires that a comprehensive regional health planning agency include representatives of both providers and consumers of specified health services.[103] Likewise, criminal justice planning councils must consist of representatives of local law enforcement agencies.[104] These federal requirements are made even more rigid by state law enacted to implement them.[105] However, despite the appearance of the law, the federal government has shown itself willing to accept the consolidation of criminal justice and health planning functions into a general purpose planning agency, which may then establish general policy so long as matters of a more technical nature are submitted for final determination to an advisory committee constituted according to the federal mandates.[106] Therefore, consolidation is probably not as infeasible as it initially appears to be.

Although consolidation of all regional planning functions into one agency is conceded to be desirable and legally possible, it is not generally pursued because of the political obstacles. However, if a regional comprehensive agency is to be effective, it must either be consolidated with single-purpose agencies, or act as an umbrella agency as previously described. Although no legislation has ever been introduced which would have accomplished either alternative, unless final authority over regional conservation and development regulations is granted exclusively to a comprehensive agency, a chaotic maze of conflicting regulations will inevitably result.[107]

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103. 42 U.S.C. §246 (1970).
104. 42 U.S.C. §3723 (1970).
105. CAL. HEALTH AND SAFETY CODE §437.7 requires the planning agency to be a nonprofit corporation.
106. Letter from Lizette Weiss, Public Information Officer of the Association of Bay Area Governments, to Stephen L. Taber, Oct. 12, 1972, on file at the Pacific Law Journal.
107. There could conceivably be several regional agencies regulating land use with no method to resolve conflicts among them. A.B. 1057 would have provided that the power to regulate land development would belong to at least the following agencies:
1) The Comprehensive Agency
2) The Regional Water Quality Control Board
3) The Bay Area Air Pollution Control District
4) The Bay Conservation and Development Commission
5) The Coastal Commissions

C. *Consolidation of Local Government*

In the preceding discussion it has been assumed that the structure of local government would not be affected except insofar as its functioning would be regulated by the regional plan. However, it has been contended that the best means to provide for regional planning would be to consolidate counties or consolidate cities with the counties in which they are located. Although the general consolidation of counties has been proposed from time to time in order to provide the economy of scale lacking in small, rural counties,[108] consolidation as an alternative form of regional government was first proposed in 1969 as a means of coping with the regional problems of the Tahoe Basin.[109] Although a hearing was held on the matter by the Senate Committee on Local Government, consolidation was not pursued further after the creation of the Tahoe Regional Agency. Tahoe, however, presents a unique problem because even a consolidated county would cover only the California side of the basin. Despite the failure of this proposal for the Tahoe Basin, there has been continuing interest in county consolidation for other regions of the state.[110]

In order to be presented as an alternative to regional planning agencies, something more than a mere consolidation of counties with boundaries coterminous with regional boundaries would have to be proposed. Under existing law, a county has no planning and zoning power over territory within the jurisdiction of its cities[111] and has no power to regulate independent local entities within its jurisdiction.[112] In order to function properly as a regional agency, a consolidated county would thus have to be granted regulatory powers such as those proposed in this article for regional planning agencies.[113]

A consolidated county having the powers of a regional planning

108. G. Paschall, The Case for County Consolidation in California (1968) (unpublished masters thesis on file in the library of the California State University at Sacramento). See also Bollens, *The California Courts: A Relic or a Vital Force?* in THE ROLE OF THE COUNTY IN REGIONAL PLANNING. (U.C. Extension, Davis 1964).

109. *Hearings on County Boundaries, Before the California Senate Commitee on Local Government,* Apr. 1 & 2, 1969.

110. See notes 119-120 *infra.*

111. People v. Velarde, 45 Cal. App. 520, 526, 118 P. 59, 61 (1920) ("we shall assume that none of the police power that the Constitution has directly granted to the county can be exercised within the limits of any incorporated city or town in the county . . .").

112. The county does, however, have power over the formation of cities (CAL. GOV'T CODE §34300 *et seq.*) and districts (CAL. GOV'T CODE §56291).

113. See text accompanying notes 80-93 *supra.* This power is not without some precedent. New York gives counties the power to coordinate zoning of cities where it impacts on an area outside the city. If the county turns down the zoning of a city, the city may re-enact the zoning ordinance only by a majority vote following the adoption of a resolution giving the reasons for taking action contrary to the county's decision. N.Y. GEN. MUNIC. LAW §239(1) (McKinney 1965).

agency could possibly offer advantages which a regional agency could not. First, it would eliminate one "layer of government," consolidating the regional level with the county level. This would arguably result in greater efficiency and visibility of government. Secondly, regional planning would be done by an agency which would have full rather than limited powers to implement the planning. Because of the broad regulatory and taxing authority of a county, it would be able to do things that no proposed regional agency would be able to do, such as incur indebtedness,[114] conduct redevelopment and public housing projects,[115] and carry out other public functions in accord with the regional plan.

The consolidated county concept does pose some problems, however. First, counties in metropolitan areas would become extremely large if they were to encompass entire regions. The Los Angeles consolidated county, for example, would have over ten million people[116] and the San Francisco consolidated county would have over four and a half million.[117] Next, there would be serious political opposition to such a drastic change in intergovernmental relations, especially from cities and special districts which would become subject to the control of a county. And, finally, consolidation would require a majority vote in each county,[118] which means that one small county could defeat the entire consolidation.

Nevertheless, while county consolidation is not presently considered a feasible alternative, the idea is still alive. The California Council on Intergovernmental Relations presented it as an alternative means of solving areawide problems in a 1970 report[119] and in a 1972 speech, Governor Reagan appeared to favor the idea.[120] Also, the Speaker

114. CAL. GOV'T CODE §29900(b) authorizes a county to issue bonds for "any purposes for which the board of supervisors is authorized to expend the funds of the county."

115. A county may activate a housing authority and a redevelopment agency. CAL. HEALTH AND SAFETY CODE §§33101, 34240. The Board of Supervisors may designate itself as the redevelopment agency or housing authority. *Id.* §§33200, 34290.

116. On July 1, 1972, the six Southern California Association of Governments counties had a population of 10,205,400. CALIFORNIA DEPARTMENT OF FINANCE, ADVANCE REPORT ON POPULATION ESTIMATES FOR CALIFORNIA COUNTIES (1972).

117. On July 1, 1972, the nine bay area counties had a population of 4,761,100. CALIFORNIA DEPARTMENT OF FINANCE, ADVANCE REPORT ON POPULATION ESTIMATES FOR CALIFORNIA COUNTIES (1972).

118. CAL. CONST. art. XI, §1(a).

119. CALIFORNIA COUNCIL ON INTERGOVERNMENTAL RELATIONS, ALLOCATION OF PUBLIC SERVICES RESPONSIBILITIES 23 (1970).

120. See Excerpts of Remarks by Governor Ronald Reagan, Sacramento Host Breakfast, Sept. 8, 1972, at 10. The Governor has announced the formation of a "major task group [which] will have the responsibility of looking at the geographic boundaries of California's 58 counties to see if constructive changes might provide better government at less cost." Excerpts of Remarks by Governor Ronald Reagan, County Supervisors Association of California 78th Annual Meeting, Palm Springs, Nov. 15, 1972, at 7.

of the Assembly has appointed a select committee on county boundaries (this action, however, was prompted by S.B. 262, which was introduced primarily to split, not consolidate, counties) and the County Supervisors Association and the California Real Estate Association are conducting respective studies on government reorganization, including county consolidation.

Control of the Planning Process

In California, one of the most controversial issues involved with regional planning is the question of who should control the planning agency.[121] The schemes used most often by California and other states can be broken down into four basic categories: (1) state control through a department of the state government; (2) control by a commission appointed at the state level; (3) control by a commission appointed by local agencies within the region; and (4) control by a body directly elected by the people of the region. A governing board drawing membership from two or more of the above categories is also often encountered.

Control of the regional planning process by a department of state government is not often considered in California, probably because of the state's strong home rule tradition.[122] However, there are many important functions of regional concern involving state services which are planned for at the state level.[123] Although other states have utilized this procedure for environmental planning and control (including Massachusetts[124] and Wisconsin),[125] regulation is carried out in most states by an agency separate from the state government administration.

Control of regional planning by a commission with members appointed at the state level is used to a limited extent in California:[126] the San Francisco Bay Conservation and Development Commmission has, of its 27 members, four representatives of state agencies, five public representatives appointed by the Governor, and one representative each appointed by the Rules Committee of the Senate and the

121. Scott and Hawley, *Organizing to Solve Regional Problems in the San Francisco Bay Area,* INSTITUTE OF GOVERNMENTAL STUDIES, PUBLIC AFFAIRS REPORT, Vol. 9, No. 2 (U.C., Berkeley, Apr. 1968).

122. However, a joint committee of the Legislature has recommended that, as an alternative to regional government, the state act directly to solve such regional problems as transportation and solid waste disposal. See *Joint Committee on the Organization and Financing of Local Government, Findings and Recommendations Relating to Problems of Organizations and Financing of Local Government* 31 (Nov. 1972).

123. *E.g.,* highway planning, CAL. STREETS AND H'WAYS CODE §252, and parks and recreation, CAL. PUB. RESOURCES CODE §541(e).

124. Wetlands Protection, 130 MASS. GEN. LAWS ANN. §105 (1958).

125. WIS. STAT. ANN. §§59.971, 144.26 (Supp. 1970).

126. See SCOTT AND BOLLENS, *supra* note 9, at 25.

Speaker of the Assembly;[127] regional water quality control boards[128] are appointed by the Governor, with the condition that such appointees must be residents of or have a principal place of business in the region; and the Tahoe Regional Agency also contains state representatives (one appointee of the Governor of each state and one department head from each state in addition to the locally appointed members).[129]

Control of regional planning by an agency chosen at the local level is much more prevalent in California. This trend seems desirable since California is large in both population and area, and contains four distinct, large urban regions and several smaller ones. With the existence of great diversity and differing political attitudes between those regions, it is essential that regional planning be locally controlled. It is for this reason that all proposals for general purpose regional planning agencies have contained provisions for control by a board elected or appointed from within the region.

One method of local selection is the so-called *constituent unit* formula (whereby members of the governing body are selected by the locally elected officials of the various counties) based on the ratio of county population to the total population of the district. This form of control is widely used throughout California for regional planning by existing voluntary associations of governments. It is also the primary basis for selection of the governing bodies of the Bay Conservation and Development Commission,[130] the Los Angeles-Ventura Mountain and Coastal Commission,[131] the Tahoe Regional Agency,[132] the Bay Area Air Pollution Control District[133] (and the basin-wide air pollution control coordinating councils in the other regions),[134] the Golden Gate Bridge and Transportation District,[135] and the Bay Area Rapid Transit District.[136] Additionally, it is the form of control most often proposed for statutory comprehensive regional planning agencies.[137]

There are many groups, however, including conservationists[138] and

127. CAL. GOV'T CODE §66620.
128. CAL. GOV'T CODE §13201.
129. CAL. GOV'T CODE §66801, art. III(a).
130. CAL. GOV'T CODE §66620.
131. CAL. PUB. RESOURCES CODE §22020.
132. CAL. GOV'T CODE §66801, art. III(a).
133. CAL. HEALTH AND SAFETY CODE §§24352, 24352.1.
134. CAL. HEALTH AND SAFETY CODE §39272.
135. CAL. STREETS AND H'WAYS CODE §27122.
136. CAL. PUB. UTIL. CODE §28733.
137. *E.g.*, A.B. 220, 1972 Regular Session; S.B. 37, 1972 Regular Session; S.B. 776, 1972 Regular Session; A.B. 3050, 1971 Regular Session; S.B. 920, 1971 Regular Session.
138. Holly O'Konski, President, League of Women Voters of the Bay Area, Statement to the Assembly Local Government Committee, Sept. 12, 1972, at 2.

the real estate industry,[139] who have reservations about the constituent unit system. It has been contended that representatives of local agencies would not have the necessary time to devote to regional affairs and would place provincial interests above regional interests. Additionally, since the directors would run in local elections on local issues, this would give the voters no opportunity to express themselves on regional affairs. Finally, because only a portion of the local officials would be members of the regional governing board, there would be many citizens of the region without a representative on the governing board.[140] The proposal put forth by conservationists and others is that the policy-making body of the regional planning agency should be directly elected by the people of the region.[141] This proposal has been included in the regional planning agency bills introduced by Assemblyman Knox in 1970 and 1971[142] and resulted in a compromise between the two systems of local control.

Conclusion

In California virtually no effective action has been taken toward the development of a regional planning process and the state has thus essentially abdicated its role in establishing and regulating regional planning. State legislation is now being proposed, however, which would establish comprehensive regional planning agencies in several regions of the state.

In order to provide an adequate structure for meeting the needs of California regions, this legislation should meet the following criteria:

1. The agency created should be truly comprehensive in that it should either consolidate into itself the existing single-purpose regional planning agencies or it should have the power to require such agencies to conform their plans and activities to the comprehensive regional plan.

2. The agency should possess the power to enforce its plan, either by direct regulation (permit power) or by requiring other agencies, either regional or local, to enforce it (planning management).

3. The agency should be controlled from within the region. It is likely that any legislation introduced will provide for some amount

139. Testimony of Dugald Gillies, California Real Estate Ass'n, in *Hearings on the Southern California Regional Planning Agency, Before the California Senate Committee on Local Government,* Sept. 15, 1972, at 65-66.

140. For the arguments for and against constituent unit representation and direct election, see Scott and Hawley, *supra* note 121.

141. SCOTT AND BOLLENS, *supra* note 9, at 26.

142. A.B. 1057, 1971 Regular Session, *as amended,* Oct. 26, 1971; A.B. 2310, 1970 Regular Session.

of "constituent unit" representation (that is, a governing body composed of local officials from within the region). However, in order to insure a broader range of participation and representation, at least a majority of the governing body should consist of directly elected representatives of the public.

Regional planning and land use control are essential because of the existence of severe environmental problems which cannot be solved by the present fragmented planning process. It is time for the Legislature to take the initiative in enacting strong regional planning laws.