

An Initial Look At Prospects for Using Mediation to Resolve Coastal Resource Management Disputes in Israel

**Presented at the Workshop on Environment, Development, and Conflict
Resolution**

Ma'ale Hachamisha, January 20-22, 1999

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I. INTRODUCTION

This presentation draws upon my work in coastal resources and my practice at CONCUR, the environmental mediation firm I co-founded. There are three topics which I will address in my presentation.

First to set the context, I want to examine some of the sources of complexity in coastal resource management disputes nationally and internationally. Second, to illustrate how mediation can be used to resolve coastal resource management disputes, I want to present a brief case study of planning for the Tijuana Estuary Research Reserve on the US-Mexico border. It is a noteworthy case study because it involved two rounds of collaborative planning, the second using a structured process of single text negotiation. Third, I want to pose some questions to begin the discussion on resolution of coastal land use conflicts in Israel.

II. SOURCES OF COMPLEXITY IN COASTAL ZONE MANAGEMENT

I want to begin by suggesting that it is really no surprise that the coastal zone is such a "dispute-rich" environment. Consider some of the features that create complexity in coastal resource management.

A. Natural Systems

The first and most obvious feature of the coast is its complexity of natural systems. The coast is where more aquatic systems intersect than any other place on the globe. Some of the systems include ocean circulation basins, estuary watersheds, long shore currents (currents that bring sand along the coast), migratory species, airsheds, as well as many cultural resources.

B. Economic Sectors and Stakeholder Groups

Many economic sectors are represented in which a large number of public and private stakeholders contend over and have an interest in coastal resources.

C. Relative Importance of Coastal Dependency

The diversity of economic sectors raises the whole question of coastal dependency. Certain economic activities are inherently coastal dependent: they require a coastal location in order to function. Obviously, some of those sectors include ports and shipping, commercial fishing, national defense, and tourism. Many other kinds of economic activities are not inherently coastal dependent but could benefit from being near the coast. Residential development, water supply, oil and gas supply may benefit from coastal locations and also impact those other coastal dependent activities.

D. Institutional Complexity/Lack of Clarity of Institutional Roles

Institutional complexity is intense in the coastal zone. This is no surprise given the large number of economic sectors that use the resources, and given the reality of land use planning in many countries where there is national, regional and local land use planning, so there is a tendency towards institutional complexity. As a corollary to institutional complexity, there is a very large propensity for confusion or lack of clarity about the roles and responsibilities of respective agencies.

E. Acutely Finite Resources

Add to this the fact that coastal land is an acutely finite resource. Of course it is possible to reclaim land and create new land. But to a large extent we have a finite resource that perhaps has been neglected for a period of time in national development and is now being increasingly contested, valued and the source of high stakes disputes.

F. Complex Relationship Between Site-Specific and Policy Level Decisions

The allocation of coastal resources on a site-specific level requires that a basic choice be made about policy priorities. In order to make a wise decision about whether to permit a specific use on a site, environmental decision makers must either implicitly or explicitly make a decision about what use takes precedence. Is national security the overriding consideration? Oil and gas development? Recreation and tourism? Site specific development choices have embedded in them a choice about regional or national level policy priorities. They also require that there be some effort to understand and mitigate the impacts both of coastal development on-site and off-site.

G. Tendency to Generate Redirected Impacts

One striking feature of coastal zone resource allocation decisions is the strong tendency to generate redirected impacts, thus elevating the perceived level of conflict. For example, if a particular structure (say a marina) is built on the shoreline, that structure might interfere with the long shore current and undermine another site's opportunity to have sand for bathing beaches or other uses. There are many other examples. Sometimes coastal development generates a new project that produces debris, which has to be dumped somewhere, perhaps at another coastal site. The impacts are thus redirected. Coastal development also has the potential to redirect not just physical impacts, but also the pattern of economic costs and benefits.

H. Implementation Challenges

There are many implementation challenges inherent in coastal resource management. Some of these implementation challenges arise from the fact that there are so many different agencies involved, each with different roles and responsibilities in the coastal zone. Other sources of implementation challenge flow from the great difficulty of forecasting impacts with certainty. We don't know, for example, what the long term impacts of a change in coastal land use (such as the marina example given above) will be on migratory fish and wildlife species, on public access, or on the local economy. The time frame for planning coastal zone resources has to be long, for example, two decades. All of these sources of complexity create challenges to our standard ways of making coastal decisions. For that reason, there is a good basis on which to consider some of the supplemental techniques. What I have tried to do in this portion of my presentation is to layout the various sources of complexity inherent in trying to resolve coastal resource management disputes.

III. TIJUANA ESTUARY CASE STUDY

What I would like to do is to indicate a particular site where negotiation-based techniques were used – the Tijuana River Estuary National Research Reserve. It is located near the border with Mexico, a few miles north of the city of Tijuana. The estuary is bounded on the north by the very fast-growing city of San Diego, and to the east by a large interstate highway. It is one of the largest wetland complexes still intact in southern California, which is an area under intense coastal development.

A. Initial Debate Over Policy Priorities

Tijuana Estuary is one of the largest estuaries in southern California. A marina was proposed to be located at the mouth of the estuary in 1979-80. An analysis was completed on a regional level suggesting that there was indeed substantial demand for new marina berths and that something had to be done to create space for future boat owners. At the same time, this site was increasingly being recognized as one of the last remaining intact wetland habitats in southern California. In fact, it was one of just two wetlands in southern California that were not already bisected by a freeway or significantly modified in some way. So there was a very tough decision to be made about how to value the estuary as a potential marina location versus its value as a reserve. The way this issue was handled was that the site-specific issue was re-framed and this problem was viewed not in a statewide context but in a sub-regional or area-planning context. There was another site a couple of miles to the north in San Diego Bay that had potential for marina expansion. So that marina demand was relocated just to the north.

B. Decision to Establish a National Wildlife Refuge and National Estuarine Research Reserve

The land on which the original marina would have been built was purchased by the Fish and Wildlife Service at a cost of 7.5 million dollars. A major motivation in the creation of the reserve was the presence of several endangered bird species including the light-footed clapper rail, California least tern, least Bell's vireo, California gnatcatcher, western snowy plover, California brown pelican, and peregrine falcon. So very substantial compensation was put forward in this case.

Moreover, the site was designated as one of about 25 sites in the US to (then called National Estuarine Sanctuaries) foster research on estuarine conservation. Once the threshold decision was made to redirect the marina and establish the reserve, a whole series of secondary questions were triggered. Decisions needed to be made about whom would be involved in establishing the boundaries in the management structure for this particular site.

C. Initial Phase of Collaborative Planning: Participation in the Process of Defining Reserve Boundaries

The first choice to be addressed was what do we do about the landowners that hold land within this proposed boundary? Do we bring them into the planning process or not? Obviously some of them had very strong stakes in developing their land and might at first be viewed as opponents to establishing a research reserve. Nevertheless the decision was made to bring them into the planning process. A series of alternative boundaries for the research reserve were put forward and the landowners were given a voice in the process of delineating final boundaries. One of the reasons this was possible, was the understanding that a considerable sum of money was available to purchase their interests in the property. So their cooperation could be a gateway to access this compensation.

In addition, there was the challenge of designing an administrative structure that included not only the national agencies but also the US Navy, which was one of the land owners, as well as the State park agency and local municipalities. So a new management authority was created to carry out the research reserve.

A number of years went by, during which buffer land was acquired to protect wetland habitats and an interpretive center was built.

D. Second Phase of Collaborative Planning: Single Text Negotiation of Management Plan

There was a need for a newly updated management plan, which was already 15 years old, and was failing to come to grips with some of the planning issues which were emerging. One of those issues was concern about erosion and degradation of water quality. Another was the new impetus by the Border Patrol to stem the flow of illegal immigrants who were coming across the border. The agency, an arm of the U.S. State Department, had proposals for erecting fences and roads and needed to be brought into the planning process. Although this site was on the US-Mexico border, there was very little participation in this research reserve by Mexico. So we needed to enlarge the participation both in the management and the government.

When this planning effort was launched there was a very explicit agreement to use a negotiation-based planning process and also a need to reconcile the competing demands of recreation, research and restoration. The way my firm began this planning process was with a conflict assessment as the preparation phase. We said we have the resource management agencies, which obviously have a stake, and we also have the resource users, some of whom have not been that happy with the way the resource agencies have been conducting themselves. What do we do about this? How do we enlarge the playing field to include some of the other players? So we set about interviewing the agency staff whom we knew should be part of the process and they told us of other stakeholder representatives who they thought should be part of the planning process. We approached them and asked them whether they

wanted to be part of the planning process. They said that they would and they joined us.

At the same time we needed to create a structure for collaborative planning. We needed to figure out how to complete the task of plan writing within a negotiation framework. We used several strategies. First, we negotiated the table of contents for the plan. We asked what are the issues that we need to address? So chapters were identified for research, for resource restoration, for public use and recreation, and for education. Second, we needed to establish a way these people could work together, so we set up drafting teams of 3-5 people each. Below is a list of the organizations whose representatives took part in the plan writing process. They include national agencies, state agencies, local government as well as interest groups:

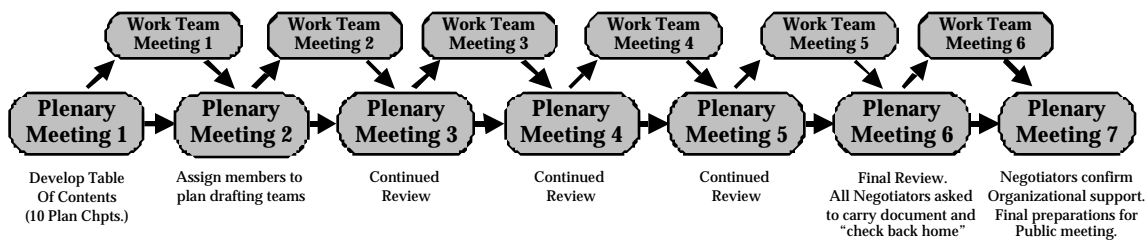
Table 1: Organizations Participating in the Management Plan Updating Task Force

National Oceanic and Atmospheric Administration
US Fish and Wildlife Service
California Department of Parks and Recreation
City of San Diego
City of Imperial Beach
San Diego County, Parks and Recreation Department
State Coastal Conservancy
California Coastal Commission
Southwest Wetlands Interpretive Association
Citizens Against Recreational Eviction
Tijuana River Valley Equestrian Association

A third strategy we employed was creating room for trade-offs. If you take issues one at a time, how can you create trade-offs between them? The solution to this particular problem lay in the structure of the negotiated planning process. We sent the teams off to prepare working drafts of their documents. CONCUR served as the Secretary for assembling these chapters, and we brought them back to plenary meetings of the full 18-member group. At these plenary meetings, which were mediated by our firm, we looked for some of the conflicts and trade-offs being put forward in these different chapters.

The other way the trade-offs were made was that we made sure the composition of each drafting team was representative of the full range of interests involved in the planning process. This planning process took place over about 8 months in 7 plenary meetings of the task force. Between the plenary sessions, we covered numerous work team meetings where participants drafted the text. After that there were many other meetings and 5 complete drafts. At the end a 200-page document was produced. All of the members were prepared to support it. We asked them, prior to the final meeting, to "sell the agreement back home" to their supervisors, constituents and colleagues. Thus they came back to the final meeting with the support of their home organization.

Figure 1: Structure of the Mediated Negotiation Process for the Comprehensive Management Plan for Tijuana Estuarine Research Reserve



We then had to go out to a public meeting, because this was a supplement to the formal public process. What we found was that we had engaged so many agency staff and private citizens who had a deep stake in this issue that the plan authors outnumbered the other members of the public at the meeting. We only received 25 comments at the public meeting, all of which were quite minor and very easy to address. We delegated some of these comments back to the work teams so that they would continue to have responsibility for writing the plan. The end point was a two-tiered ratification. This means we not only asked the negotiators to sign the plan but we also asked their supervisors, indicating their support for implementation and underscoring the accountability and linkage between individual negotiators and their supervisors.

Some implementation challenges are going to arise. There has to be a way to anticipate unforeseen circumstances. So we have written into the plan a process of adaptive environmental management, wherein some of the restoration projects in the research reserve will be framed as experiments. The experiments will be carried out, data will be collected, and findings will be brought back to the management authority. They will in turn use that information to reevaluate how the restoration is taking place.

The other challenge we faced in implementation was to change the governance structure. With the advent of the Border Control as a major player, they needed to be added. As well, we wanted to step up the profile and importance of the research and recreation communities. So new seats on the management authority, the permanent governance structure, were created to represent the new interests that came forward in this round of planning. This is a case that we are just wrapping up now. Obviously I am optimistic that this process will produce the kinds of outcomes that we are looking for but there are certainly some implementation challenges that lie ahead.

To recap the experience of this case, among the lessons learned were:

- Negotiation-based planning processes require a clear structure
- Establishing a table of contents for a plan helps create the necessary structure
- Dual expertise in environmental management and negotiation is essential
- A negotiation single text establishes the vehicle for drafting a management plan
- A step to "sell the agreement back home" is essential to confirm institutional approval of a plan developed through mediated negotiation

IV. QUESTIONS TO CONSIDER IN ASSESSING PROSPECTS FOR USING MEDIATION TO RESOLVE RESOURCE DISPUTES IN ISRAEL

I would like to end this presentation by posing seven questions for you to consider in helping to frame a discussion on the potential use of mediation techniques for coastal resource disputes in Israel.

- 1) Do the sources of complexity that I mentioned in the introduction resonate with your experience: the complexity of coastal systems; the number of stakeholders; the probability of re-directing impacts; and institutional complexity?
- 2) In your view, what are there some strategies available to untangle some of these sources of complexity?
- 3) On the question of participation, which government agencies and private stakeholders should be involved in making coastal resource decisions? When during the process of planning, putting forward alternatives and reviewing information should they be involved?
- 4) What information is needed to support wise, efficient decision making for coastal resources? By what process should that information be gathered, discussed and used to support decisions?
- 5) What can be done to identify and avoid redirected impacts, to get out of this cycle of making site specific decisions, redirecting the impacts to other sites, escalating distrust and accelerating concerns about environmental impacts?
- 6) What can we do to strengthen the stability of implementation? How can we make sure that coastal resource decisions once made are implemented?
- 7) Are there elements of the process that I described in conjunction with the Tijuana Estuary case that you believe might hold promise for some of the cases in Israel?

V. CONCLUSION

As this conference proceeds, we may see several strategies emerge that could be employed in Israel to develop and test the use of negotiation techniques to help resolve coastal resource disputes. I look forward to participating in this on-going dialogue with all of you. Thank you.

References for Further Reading:

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* *The Draft Comprehensive Management Plan for the Tijuana River National Estuarine Research Reserve and the Tijuana Slough National Wildlife Refuge is available for viewing on-line at: <http://www.r1.fws.gov/planning/plnhome.html>.*