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# The Dangers of Preemptive Legislation: The Case of LNG Facility Siting in California

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In 1977, when the accumulation of well-intentioned regulations made it difficult to site a liquified natural gas (LNG) facility in California, the legislature, with the full support of Governor Edmund G. Brown, Jr., passed a law, Senate Bill 1081 (Chapter 855, Statutes of 1977), that said, in effect, "notwithstanding any previously enacted legislation or regulatory requirements, California will designate an LNG terminal site within a year." The state's attempt to preempt local regulatory authority, to say nothing of the legislature's willingness to circumvent its own facility siting, coastal protection, and environmental impact assessment laws, seems to have failed. This case study describes the circumstances leading up to the enactment of S.B. 1081 and analyzes the dangers associated with preemptive legislation. Had California confronted the real weaknesses in its energy facility siting process, the state could have identified positive steps that would have accelerated site selection without triggering the staunch opposition that now threatens indefinite delay.

Natural gas is a very important component of California's energy supply. When the governor and the legislature found themselves hamstrung in their attempt to site an LNG terminal, they sought to "cut through the red tape." While their frustration may have been justified, efforts to preempt laws and regulations designed to protect public

safety ought to be based on more than a temporary shift in administrative priorities or frustration with procedural delays. If there is a generally shared view that previously enacted laws and regulations were poorly conceived, then it should not be difficult to win public support for modifications of those laws and regulations. If earlier intentions have been met or are no longer relevant to the coalitions involved, it should be possible to shift resources and rechannel political energies toward new objectives. If new information or scientific findings suggest that previously set standards are no longer pertinent, it is likely that a technical challenge aimed at implementing appropriate modifications will succeed. In the case of California's effort to site an LNG facility, none of these conditions held. The governor was primarily concerned about convincing the private sector that he was not opposed to further economic and energy development. State energy officials were motivated, for the most part, by a fear that Canadian natural gas supplies might be cut off. Private industry stoked these concerns with dire predictions about energy shortages and job losses. State legislators were looking for a way to respond to constituents fearful of the risks associated with siting an LNG facility "in their backyard."

Instead of seeking ways to improve previously enacted statutes or to facilitate their speedy and effective implementation, the legislature and the governor sought to preempt them. Instead of searching for new ways to work with local officials and resident groups likely to be adversely affected by the siting of an LNG facility, the legislature and the governor blocked their involvement. In their headlong rush to override previously enacted regulatory requirements, the governor and the legislature short-circuited mandated environmental reviews, leaving those opposed to the proposed facility and those likely to be adversely affected by it no choice but to seek redress through the courts.

### Natural Gas and LNG

Natural gas, the most commonly used fuel gas in the United States, is composed primarily of methane and higher molecular weight hydrocarbons. It is an attractive fuel source because it burns so cleanly, because its pipelines are convenient, and until recently, because it was available at a reasonable price (Shreve and Buick 1977). While domestic production of natural gas declined between 1973 and late 1978, abundant reserves exist abroad. Nearly 25 percent of all energy used in the United States in 1978 was derived from natural gas.

Liquified natural gas is natural gas cooled to -259 degrees Fahrenheit. The liquid takes up only 1/600th the volume of the gas. This facilitates storage and shipment. It also multiplies the explosive properties of the gas. The current fleet of LNG tankers in use poses a potential threat fifty times that of the atomic bomb dropped on Hiroshima. Still larger tankers, that could carry twice as much LNG, have been proposed. LNG terminal sites pose even greater hazards than tankers at sea. If an accident were to occur, a vapor cloud drifting over a populated area could ignite and cause catastrophic damage.

The odds of an LNG accident occurring are highly disputed. There are currently more than 150 plants in the United States and Canada where natural gas is liquified and stored during seasons when the demand for natural gas is low (Drake and Reid 1977). These "peak shaving" plants have excellent safety records (Lom 1974). When the demand for natural gas rises, LNG is revaporized and distributed through existing pipelines.

There are currently three LNG receiving terminals operating in the United States — at Everett, Massachusetts; Cove Point, Maryland; and Elba Island, Georgia. More than 100 LNG shipments have been made to these terminals over the past eight years without an accident. In 1976, more than 4.7 billion cubic feet of LNG were imported, mostly by tankers from Algeria, but also by truck from Canada. Gas company representatives also point to Japan's flawless safety records when documenting the risks inherent in the use of LNG. Japan imports 80 percent of its gas in liquid form.

The only major LNG accident in the United States occurred in October 1944. An LNG storage tank at a peak shaving plant in Cleveland, Ohio, ruptured and leaked 4,200 cubic feet of LNG into the streets and sewers. It ignited, killing 130 people, injuring 225, and causing \$7 million in property damage. The accident stopped almost all LNG use in the United States for twenty years. Not until the mid-1960s, after significant advances in LNG technology were made, did utilities begin using LNG again.

LNG is viewed, in some quarters, as an attractive solution to the country's energy supply problem. Federal government projections suggest that LNG might supply as much as 15 percent of all our natural gas needs by 1985 (more than forty tankers would have to enter U.S. harbors on a regular basis to make the necessary deliveries).

### **The Importance of LNG to California**

Twelve million people in Southern California are served by natural gas; nine out of ten homes use gas for water heating; three out of four use gas for cooking. In addition, more than 190,000 industrial and commercial consumers depend on gas and are not equipped to use alternate fuels. Also, given the smog problem in Southern California, other economically competitive fuels are much less attractive because they do not burn as cleanly (California State Legislature Assembly Subcommittee on Energy 1976).

Up until the late 1960s, adequate gas was supplied to Southern California via intrastate wells, two interstate pipelines, and imports from Canada. In 1970, 642 billion cubic feet of natural gas came from California wells, 1,262 billion cubic feet came from Southwestern U.S. pipelines (in Texas, Oklahoma, and New Mexico), and 294 billion cubic feet were imported from Canada. By 1975, California marketed production had dropped to 368 billion cubic feet, Southwestern U.S. pipelines gas had fallen to 1,159 billion cubic feet, but Canadian imports had risen to 365 billion cubic feet. End-use sales over this five year period

fell by 14 percent because supplies were inadequate (California State Legislature Assembly Subcommittee on Energy 1976).

One reason it was difficult to secure adequate supplies in the mid-1970s was that California had difficulty competing with intrastate buyers in the producing states. Interstate regulated prices were set at one-third to one-half the price of gas sold in the intrastate markets of the producing states. Deregulation, however, increased supplies from the Southwest and made it profitable to tap gas from offshore wells in the Gulf of Mexico (which until recently had to be sold at the cheaper prices of the interstate market). In 1977, Pacific Lighting Corporation estimated that at best deregulation would only increase supplies from ten to twenty percent (California State Legislature Assembly Subcommittee on Energy 1976).

In 1976, Southern California Gas Company and Pacific Lighting Corporation predicted that California's failure to obtain new supplies of natural gas would cause serious industrial and commercial dislocations. They predicted that the curtailment of deliveries to customers without the capacity to use alternate fuels would occur as early as the fall of 1979. Industry forecasts estimated that as many as 700,000 people would be unemployed as a result. An increase in the supply of LNG was perceived as the only means of preventing industrial shut-downs and maintaining the level of regional employment. The dire unemployment prognoses did not come to pass, but they were very much in the headlines in 1977 when S.B. 1081 was before the legislature.

#### **The Effort to Site an LNG Plant Along the Coast**

In 1972, the Pacific-Alaska LNG Company, a subsidiary of Pacific Lighting Corporation, made the first application to site an LNG terminal in California. At the time, the uncertainties associated with acquiring the permits necessary for constructing and operating an LNG facility in California were unknown. Federal, state, and local agencies played reactive roles, waiting to evaluate the site selections presented by private industry. Pacific Lighting Corporation and Southern California Gas Company actually wanted to build two LNG terminals to ensure continuity of service. In September 1973, while environmental impact studies (to accompany the initial application to site a facility in Los Angeles) were being prepared, Western LNG Terminal Associates, another subsidiary of Pacific Lighting Corporation, filed an application with the Federal Power Commission (FPC) to begin environmental studies at three sites: Los Angeles (as a terminal for Alaskan LNG), Oxnard (as a terminal for Indonesian LNG), and Point Conception (as a contingency site). Each proposed facility was intended to handle 4 billion cubic feet per day of natural gas.

**Los Angeles:** Pacific Lighting Corporation and Southern California Gas Company favored Los Angeles as a site for an LNG terminal. The proposed terminal was to be in a protected harbor with high berth availability (Gatzke, Landis, and Pollock 1978). Minimal environmental

impact was expected because the site was in an already developed area. For these and other reasons, Los Angeles would be the least costly site to build. Pipeline costs would also be minimal because of the proximity of existing lines (Resource Planning Associates 1977).

In May 1972, Pacific-Alaska LNG Company submitted an application to the Los Angeles Harbor Department. A few months later, the Board of Harbor Commissioners appropriated \$220,000 to compile data and to undertake experimental work that could be used in preparing a Draft Environmental Impact Report (EIR). A Draft EIR was completed in November 1974. Pacific-Alaska LNG Company applied to the FPC for a permit to purchase, liquefy, ship, and store natural gas in Los Angeles. The utility company hired Science Applied, Inc., to conduct a risk assessment and an analysis of safety systems. That report was finished in December 1976 and helped to justify the proposed Los Angeles terminal site.

Opposition groups formed in the neighborhoods surrounding the proposed site. The San Pedro and Peninsula Home Owners Coalition and the Point Fermin Residents Association adamantly opposed the project. They argued that the risk of an accident was too great and that the construction of the terminal would adversely affect property values. They objected primarily on the grounds of safety, indicating that they were not opposed to LNG in general, only to the proposed site.

In September 1976, the FPC issued a Draft Environmental Impact Statement recommending the elimination of Los Angeles Harbor as a potential site. The FPC felt that the area's vulnerability to earthquake damage (because of its nearness to the Palos Verde fault) exceeded acceptable limits.

Despite the potential earthquake exposure, the Los Angeles City Council's Industry and Transportation Committee approved in December 1976, by a vote of twelve to two, Western LNG Terminal Associates' application to lease land on Terminal Island. The following day, the Italian oil tanker San Sansenina exploded and burned in Los Angeles Harbor. Shock waves from the explosion were felt in several sections of the city, alerting people to the possible risks of dangerous cargoes.

Within a few days, the City Council formed a Hazardous Cargo Task Force to prepare a risk assessment for Los Angeles Harbor. Meanwhile debate began in Sacramento over the advisability of siting an LNG terminal in a densely populated area such as Los Angeles. The risk assessment prepared by Science Applied, Inc., became the center of this debate (and was later attacked at state assembly subcommittee hearings). Assemblyman Terry Goggin called for a one year delay in the selection of an LNG terminal site. In the meantime, the Los Angeles City Council approved a twenty-five year lease for an LNG terminal by a vote of thirteen to two.

In Sacramento both the state and the assembly considered bills to streamline the energy siting process. Debate focused on the overall safety of LNG, the dangers of siting a terminal in a densely populated

area, and the need to build a terminal before natural gas shortages occurred causing serious unemployment and industrial dislocations.

In August 1977, the Los Angeles City Council voted to oppose any state legislation that would prevent the construction of an LNG terminal in Los Angeles Harbor. Nevertheless, in September 1977, the state legislature passed and Governor Brown signed S.B. 1081. This law preempted existing state and local siting laws, superceded mandated environmental reviews, and prohibited the siting of an LNG terminal in a densely populated area. Thus, after more than four years and countless studies, the state legislature passed a law that disqualified Los Angeles as a possible site for an LNG terminal.

Oxnard: The proposal to site an LNG terminal at Oxnard lacked local support (Bingham, Freeman, and McCreary 1978). In April 1977, a poll by a local newspaper, the *Ventura Star Press*, found people four to one against the proposed facility. Many residents and the state Department of Food and Agriculture were concerned that prime agricultural land would be destroyed by further industrialization that would be encouraged because of the availability of new natural gas supplies. In addition, Oxnard residents were worried about the catastrophic consequences of an LNG accident. Located within four miles of the proposed site were twenty-seven schools with a total of approximately 20,000 students.

The Ventura County Concerned Citizens, the Ventura County Environmental Resource Agency, the Environmental Coalition of Ventura County, and the local chapter of the League of Women Voters argued that an LNG plant should not be located in such a densely populated area. Consultants hired by the adjacent town of Port Hueneme charged that the Oxnard site was not safe for other reasons. Port Hueneme residents were in the unenviable position of potentially suffering all the negative consequences of a proposed LNG terminal (e.g., high risk of accidents, pollution, and loss of property values) with no say in the decision and no chance to secure any of the property tax benefits. The Sierra Club opposed the site because two important defense installations were within four miles of the proposed site: the Pacific Missile Range and the Naval Construction Battalion Center. An LNG terminal would be a good target for a sabotage operation.

Still, the Oxnard site offered a number of advantages. While additional berth space would be needed for LNG tankers, no unusual construction costs were anticipated. In addition, the terminal, if approved, could be built before predicted natural gas shortages occurred.

In March 1975, Western LNG Terminal Associates filed an application with the city of Oxnard for a special use permit to construct an LNG terminal and regasification facility. Soon thereafter, the city hired Socio-Economic Systems to prepare an EIR for the project. The Oxnard City Council decided it should have more firsthand knowledge about LNG receiving terminals, so several of the representatives, at their own expense, flew to Japan to visit a similar facility. Members of the Planning Commission went to San Diego to see an LNG peak

shaving plant.

The hotly disputed Draft EIR was released in August 1976. The city's Public Works Department and the Environmental Resources Agency charged that the Draft EIR was inadequate because it did not thoroughly address disaster possibilities, possible mitigation measures, or possible impacts on wildlife or air quality. Socio-Economic Systems prepared an addendum to the Draft EIR. The final EIR was approved by the Oxnard City Council by a vote of four to one in June 1977.

In the meantime, two new groups formed to oppose the LNG project: the Campaign Against Utility Service Exploitation (CAUSE) and Citizens United for Responsible Energy (CURE). But, as in Los Angeles, local decision making was entirely preempted by the passage of S.B. 1081. The Oxnard Site was excluded from consideration because of the high population density surrounding it. Many local officials, on both sides of the LNG controversy, were outraged by the state's usurpation of local powers.

**Point Conception:** Prior to the passage of S.B. 1081, Point Conception was the least favored of the three proposed sites (Nickell, Smith, and Smith 1978). From the start, the only apparent advantage of Point Conception was the very low population density surrounding the site. On the other hand, weather conditions at Point Conception were sure to hinder vessel access. Berths for LNG ships were minimal and Point Conception was not close to any existing pipelines for natural gas. The need for extensive pipeline rerouting and expansion of berth spaces made Point Conception the most costly of the three sites. In addition, the risk of an accident was increased by the proximity of the site to a seismic fault (Resource Planning Associates 1977).

The nearby Santa Barbara oil spill in 1969 made Point Conception residents extremely sensitive to the risks of energy-related accidents. Local opposition had previously formed to prevent oil company development in Santa Barbara County. Several new groups formed to oppose the LNG terminal: the Point Conception Preservation Committee, the Bixby Ranch Landowners Association, and the Hollister Ranch Landowners Association. They did not want to gamble on an LNG accident, and they wanted to protect the rural character of the area.

In August 1976, Western LNG Terminal Associates filed an application with the Santa Barbara County Planning Department for a change in the County General Plan to allow for development of an LNG terminal at Point Conception. The Santa Barbara County Office of Environmental Quality hired Arthur D. Little Company to prepare an EIR and with Resource Planning Associates to prepare a gas supply and availability study. An assessment of state energy needs (and gas supplies) had already been completed by the utility companies, but the Office of Environmental Quality wanted an independent analysis.

In March 1977, the Planning Department formed a Citizen's Advisory Task Force on LNG to review the EIR and other relevant materials and to advise the Board of Supervisors regarding the siting question. The passage of S.B. 1081 undercut further local effort.

The city of Los Angeles would have accepted an LNG facility. At least, its elected officials seemed inclined to do so. The city undertook a fairly sophisticated analysis of the risks and impacts likely to be involved. Opposition groups formed in the neighborhoods surrounding the proposed site, but the City Council was not swayed by their arguments. The proposed Oxnard site lacked local support. Residents feared the facility and worried about the effects of further industrial development associated with new cryogenic industries. Oxnard also commissioned an elaborate impact review. Local officials made an extraordinary effort to educate themselves about the technology and the risks involved. Point Conception was the least favored of the proposed sites. Even the industry representatives were not especially pleased with the costs involved in preparing the site. A number of groups concerned about protecting the rural character of the area banded together to oppose the facility. The County commissioned not only an elaborate impact assessment but its own analysis of state energy needs as well. In sum, there was no evidence to suggest that existing laws, administered locally, were not adequate. Concerned groups had more than ample opportunity to express their views. Local officials had no difficulty coping with the technical complexity of the issues involved.

#### The Pre-S.B. 1081 Siting Process

Prior to the passage of S.B. 1081, utility companies did all the long range planning and decided which technologies were appropriate. The utilities selected sites, acquired land, and then sought federal, state, and local approval. Public agencies participated in the siting process only after the utility companies submitted applications for the required licenses and permits.

Throughout the 1970s, the increasing politicization of environmental concerns led to the adoption of numerous regulations aimed at protecting environmental quality. The addition of each new regulatory review created a new opportunity for interest groups to question, delay, and possibly stop proposed energy projects. The passage of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) reinforced the popular notion that adverse environmental impacts should be taken into account in choosing project locations and that individuals should be given ample opportunity to indicate all the ways in which they might be affected by these impacts.

Even today, the EIR/EIS review processes do not come into play, for the most part, until after sites are selected and land is acquired by private applicants. This means that the public, and especially those adversely affected by a facility, are put in the position of "spoilers." The public review process (both before and after S.B. 1081) begins when the utilities feel they have just about completed their work.

Because the processes of impact assessment and site selection occur sequentially, site selection takes almost twice as long as it would otherwise. And, in the end, site approval is by no means guaranteed. A lawsuit filed at the end of a multilayered review process can delay and

ultimately “kill” a project, suggesting that not everyone who should have participated in the “bargaining process” from the beginning was, in fact, involved or that the mechanisms for balancing competing interests in the course of the review process were not adequate to the task of achieving consensus.

Although the Pacific Lighting Corporation first considered the Point Conception site in 1968, it did not contact Santa Barbara County until eight years later when it submitted a request for general plan and zoning changes. During those eight years, the utility conducted in-house studies of alternative sites. But the public evaluation process, requiring a similar consideration of alternative sites, could begin only after the zoning change request had been submitted.

In addition to the problem of sequential private and public reviews of alternative sites, five other problems contributed to the delay and confusion associated with the pre-1081 siting process: (1) the lack of an overarching state energy policy deprived decision makers of a backdrop against which to evaluate specific projects; (2) the lack of a proper forum within which to consider the full range of costs and benefits of proposed projects meant that the impacts were often misconstrued; (3) a lack of agreement concerning the range of technical analyses required to make an informed siting decision left groups arguing about the facts and not just their different views; (4) the failure to develop a credible energy needs assessment left each project vulnerable to the charge that it was unnecessary; and (5) the failure to ensure timely and adequate public participation at each step in the siting process aroused more adverse feeling than might otherwise have been directed at a particular project. The legislature should have been addressing these problems, not merely the problem of delay.

**No State Energy Policy:** Very few states have an energy policy that can provide a framework within which to consider particular project or site proposals. Without such a policy that enumerates production and conservation objectives, disagreements over the desirability of alternative energy sources or the relative desirability of alternative technologies will be played out every time a new project is proposed. Centralized policy formulation is difficult, but in the absence of a state policy, continual debate about the broad issue of energy confounds the effort to make site specific decisions. Efforts to judge proposed LNG terminal sites in California become occasions to debate the relative merits of LNG as an energy source for the state.

**No Forum In Which to Weigh Benefits and Costs:** Private utilities linked the need for an LNG terminal to the maintenance of regional employment in Southern California. They charged that unless an LNG facility was built quickly there would be serious job losses. Facility siting agencies, however, are rarely charged with implementing employment policies. While some jobs may have been lost, its not clear that building an LNG facility was the best or only way to save them. The task of the energy agency is to maximize energy supplies, with some consideration of the direct cost implications for rate payers. It would be inappropriate

ate for the energy agency to seek the most effective way of promoting job development regardless of the implications for energy supply. In selecting sites for energy facilities, the private sector rarely weighs the full costs of environmental damage against the benefits associated with each site. All too often, costs of only one kind are compared to a narrow range of benefits in one policy arena, while other costs and benefits are considered in other arenas.

The primary users of the additional natural gas sought for California will be the residents of Southern California, regardless of which terminal site is selected. Yet, the people likely to be adversely affected by an accident or by the impacts of a new facility will probably be those who live in the area immediately surrounding the new installation. Thus, not only are different sets of costs and benefits considered in separate policy arenas, but benefits to one political jurisdiction and costs to another are rarely considered together.

**Different Views About the Role of Technical Analysis:** The Los Angeles City Council failed to consider potential seismic hazards (identified subsequently in the EIS) when it made its decision to approve the proposed LNG project. The project was ultimately rejected by the FPC because of this hazard. The representatives from the Oxnard City Council who visited the LNG terminal in Japan did so in an attempt to better understand the technologies involved in LNG processing. In preparing an EIR for the proposed Point Conception Site, Santa Barbara County evaluated the project so thoroughly that the process of impact assessment became surprisingly costly and time consuming. The assessment produced twenty-five volumes of technical reports and included an extensive review of alternative sites along the entire coastline, both on and off shore, and reconsidered the overall need for natural gas in California. Each municipality in which a proposed site was located defined differently the kinds of technical analyses it needed and judged the technical findings differently. State agencies, as will be discussed below, also made very different judgments about the required data and studies. In some instances, disputes over the appropriateness of a particular site could be traced to a reliance on different types of data.

**Lack of Credible Needs Assessments:** The process by which utilities and state and federal agencies assess energy needs often lacks credibility. A great deal of criticism has been directed (both in California and elsewhere) at forecasting methods that do little more than extrapolate from past trends, that are internally inconsistent and insensitive to end-use needs, and that consider only a limited range of technical options. A lack of agreement on the need for additional energy supplies makes consensus on particular projects difficult to achieve.

**Inadequate Public Participation:** In California, the adequacy of public participation in the consideration of alternative sites has been challenged. In Los Angeles, the City Council ignored the objections of people living adjacent to the proposed site. In Oxnard, the residents of the adjacent town of Port Hueneme were not included in the review

process. The only option for residents who feel that their interests are not adequately considered is to bring legal action in an effort to stop construction. One way of gaining a legal and political foothold from which to mount such a challenge is to point to an inadequate process of public participation. It need not be argued that a more adequate process of public participation would have resolved disagreements. Just a claim that "due process" has been ignored will yield sympathy for a political challenge to a particular siting decision.

#### **The Intent and Passage of S.B. 1081**

In July 1976, the Assembly Subcommittee on Energy held LNG hearings on the safety, reliability, and financing of LNG. The hearings were held in Los Angeles and chaired by Assemblyman Terry Goggin. Testimony was given by representatives from the utility companies, all levels of government, environmental groups, the shipping industry, and the financial community. By January, Goggin had introduced Assembly Bill 220 "to enact the California Natural Gas Act of 1977 which would provide for the siting of loading, regasification, and storage facilities for liquified natural gas pursuant to the issuance of a special LNG site and facility certificate by the California Coastal Commission."

In March 1977, Assemblyman Dannemeyer introduced an alternative bill that would give the Public Utilities Commission (PUC) instead of the Coastal Commission "exclusive authority with respect to approving an application to locate a liquified natural gas facility in a particular location." Dannemeyer's bill was opposed by local officials in Los Angeles, Oxnard, and Point Conception.

In September 1977, Governor Brown signed a compromise bill, Senate Bill 1081 (Chapter 855, Statutes of 1977), sponsored by Senator Alquist. Overall project approval authority was delegated to the PUC, removing all consideration of costs and benefits from local hands and from the hands of the Coastal Commission and locating them exclusively in an energy agency. The bill included a detailed timetable for decision making and mandated remote mainland siting of California's first LNG terminal.

The decision about acceptable levels of risk was essentially settled by establishing population density requirements in rings around hypothetical terminal sites: no more than 27 permanent residents would be allowed within one mile and no more than 1800 permanent residents within four miles of an approved site. This was the aspect of the law that eliminated Los Angeles and Oxnard from further consideration.

Under S.B. 1081, utilities were required to make application to the PUC requesting approval of an LNG terminal site. The PUC established safety regulations. The state Energy Commission was required to complete a natural gas needs assessment. Sites were researched and recommended by the Coastal Commission; that is, the Coastal Commission identified, evaluated, and ranked sites for an LNG terminal and

submitted its recommendations. These were supposed to be submitted by 31 May 1978, although that deadline was missed. S.B. 1081 gave the PUC final decision making power. The PUC was supposed to approve only the top ranked site unless construction could not be completed in time to meet LNG needs. In that case, the PUC was empowered to choose a lower ranked site. (See Fig. 1)

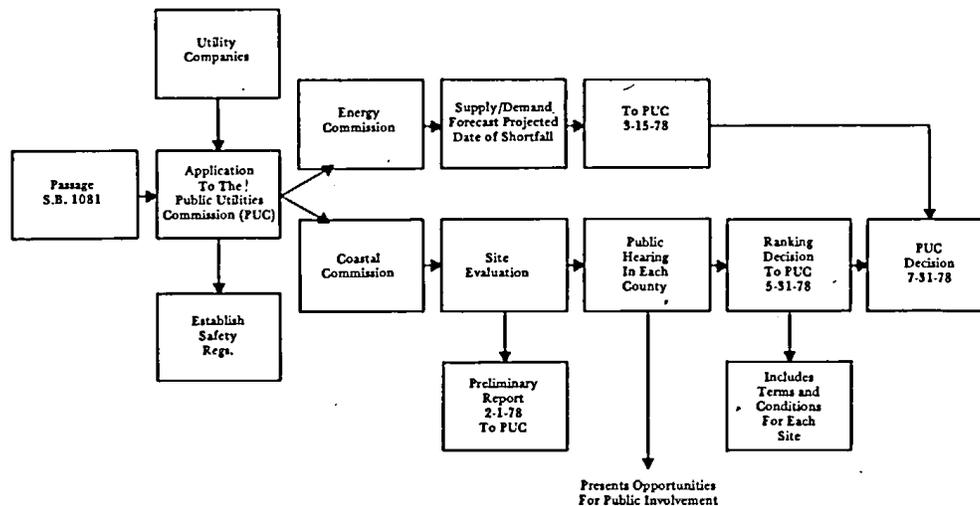
This altered the role of the Coastal Commission. Formerly, it analyzed utility company proposals. Under S.B. 1081, it was required to select sites that will, in all probability, have environmentally degrading consequences.

Because of the density restrictions, Point Conception was the only site of the three proposed in September 1974 that could still be considered. Consequently, the PUC and the utility companies viewed it as the favored location for the LNG receiving terminal. Of all the possible remote sites, Point Conception would be available most quickly, and most of the environmental studies that the utilities would normally undertake had been completed prior to the passage of S.B. 1081. In addition, S.B. 1081 required that Point Conception, the site favored by the utility companies, be included in the Coastal Commission's ranking of sites.

Figure 1.

California's LNG Siting Process After Senate Bill 1081  
(Chapter 855, Statutes of 1977)

(Local Involvement Preempted by State Legislation)



After the enactment of S.B. 1081, opposition to an LNG terminal at Point Conception increased dramatically. The Bixby Ranch Landowners Association filed suit in federal court to enjoin state officials from implementing S.B. 1081, alleging that it was unconstitutional for the state government to designate an LNG site since a federal statute gives exclusive siting power to a federal regulatory agency. This challenge was dismissed. The Santa Barbara Board of Supervisors voted four to one to intervene in the federal siting hearings in Los Angeles (at which representatives recommended the study of offshore sites). The Point Conception Preservation Committee, Santa Barbara Citizens for Environmental Defense, the Hollister Ranch Owners Association, and the Sierra Club also pushed for offshore site consideration because of their concerns about safety and their worries that a terminal would encourage additional development.

The pre-S.B. 1081 siting process in California was similar to siting processes in most other states. Siting decisions were made on a one-by-one basis without any reference to an overall state energy policy. The full array of costs and benefits associated with each technology at each proposed site were not considered simultaneously. Public participation in the setting of energy policy priorities and in the evaluation of proposed sites was limited. The state government waited for private industry to suggest sites and then more often than not, deferred to the industry's needs assessments and site analyses. S.B. 1081 did little to respond to these shortcomings, nor did it give the state what it needed most — a more effective way of mediating among the conflicting concerns and desires of different interest groups.

#### **The Attempt to Implement S.B. 1081**

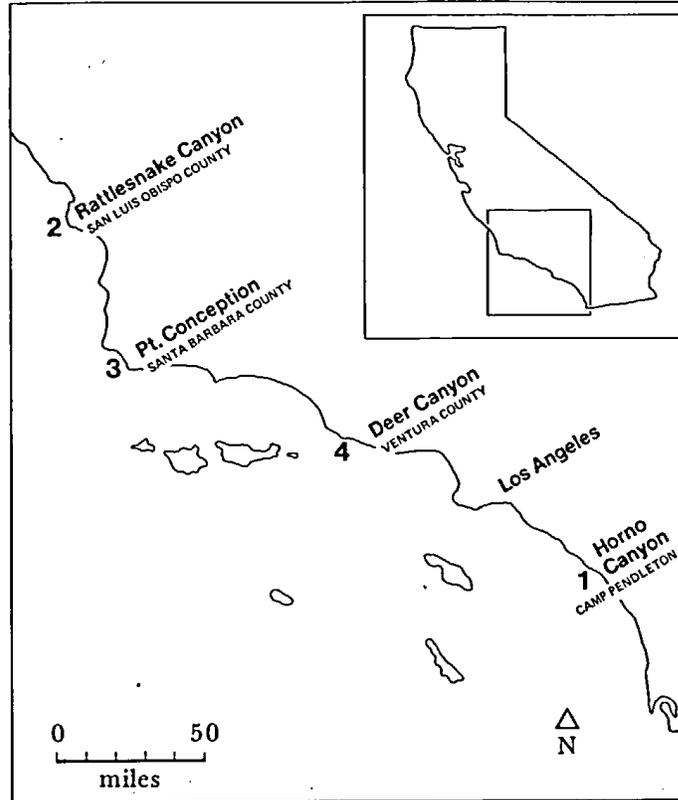
Pacific Lighting Corporation and the Pacific Gas and Electric Company mounted an extensive campaign to site the facility at Point Conception. They hired Winner/Wagner Associates, a public relations firm, to promote Point Conception as the number one site. But, if anything, the utilities' campaign had a negative effect on the Coastal Commission's ranking. The Commission evaluated eighty-two sites including eighteen nominated by the public. Only four sites were included in the final ranking released on 31 May 1978 by the Coastal Commission:

1. Horno Canyon on the Camp Pendleton military reservation in San Diego County
2. Rattlesnake Canyon in San Luis Obispo County
3. Point Conception in Santa Barbara County
4. Deer Canyon in Ventura County (See Fig. 2)

The criteria used by the Coastal Commission in selecting and ranking sites includes: potential impacts on marine and land resources, public access, public service impacts and requirements, impacts on archaeological resources, and impacts on public views. In addition, remoteness and the potential cost of the facility were important considerations. The Coastal Commission included terms and conditions for each recom-

Figure 2.

This map shows the California Coastal Commission's final selection and ranking of LNG terminal sites, released on 31 May 1978.



mended site to ensure that adverse environmental impacts would be minimized and that public health and safety would be protected. The staff reported that "there is no possible remote onshore terminal site that will not cause major adverse impacts to natural marine wildlife resources, public recreation areas, and other resources protected by the California Coastal Act of 1976." (*Los Angeles Times* 1978a)

The Coastal Commission's recommendations encountered tremendous resistance. The Navy and the Marine Corps were opposed to the site at Camp Pendleton because they felt it would endanger the lives of the 44,000 base residents and the people who used the heavily traveled Route 5. In addition, Camp Pendleton "is the only remaining beach in Southern California suitable for Marine and Navy amphibious training. To build an LNG terminal there would cause maritime hazards." (*Los Angeles Times* 1978b) Pipelines, from the terminal would infringe on troop maneuvers. The existence of the San Onofre nuclear power plant five miles away further complicates the use of the Camp Pendleton site.

A native American Indian group opposed the Rattlesnake Canyon site. Archaeologically significant materials had been discovered on that site; these would inevitably inhibit construction. Adverse wind and wave conditions would necessitate the construction of a \$175 million breakwater. In addition, Rattlesnake Canyon is within five miles of the Diablo Canyon nuclear power plant.

The utility companies were angry that Point Conception was ranked third, rather than first, on the Coastal Commission's list. An active earthquake fault had been discovered near the site during the commission's selection process. The Coastal Commission had eliminated another site, Las Varas, from consideration for the same reason, but retained Point Conception because S.B. 1081 required that the Coastal Commission rank the site selected by Western LNG Terminal Associates before the enactment of S.B. 1081.

Deer Canyon in Ventura County, ranked fourth, was considered most likely to create adverse environmental impacts. Its proximity to the popular Leo Carillo State Beach and Point Mugu State Park made it a particularly undesirable selection.

Ultimately, even with the discovery of the fault, the PUC felt that California's pressing need for natural gas made Point Conception the only possible site that could be constructed in time to prevent gas shortages. On 31 July 1978, the PUC provisionally authorized, by a vote of five to zero, Point Conception as California's first LNG terminal site and granted a permit for the \$570 million project to Western LNG Terminal Associates.

The PUC felt that Camp Pendleton and Rattlesnake Canyon, the two sites ranked higher on the Coastal Commission's list, would take too long to build. Camp Pendleton's use was being resisted by the Department of Defense; extensive delays were expected. In addition, the Department of Defense felt it was near too many people as well as too near the San Onofre nuclear power plant. Rattlesnake Canyon was found unsuitable because of the need for an expensive breakwater to deal with the hostile marine environment.

In November 1978, the state Lands Commission approved a thirty year lease for the proposed LNG terminal at Point Conception. The Federal Energy Regulatory Commission (FERC) was the only remaining regulatory body that needed to approve the site before construction could begin. FERC hearings opened in mid-December 1978.

Meanwhile, in May 1978, a group of approximately fifty Chumash Indians occupied the proposed LNG site at Point Conception. They claimed that the site was on a sacred Indian burial ground. Kote Lotah, leader of the Indian group said, "this land is our western gate to the spiritual world, like the gates of heaven." (*Los Angeles Herald Examiner* 1978) An anthropologist testifying at the FERC hearing compared construction of an LNG terminal at Point Conception to "selling popcorn in a cathedral or building a terminal at the center of Mecca." (*Oxnard Press Courier* 1979) In response to these claims, the chief archaeologist for the Institute of Archaeology at the University of California, Los Angeles, stated that "no human skeletal remains have been found during excavations at the proposed site and that a search of available literature has revealed no reference to burial grounds at or near the proposed terminal location." (*El Monte Mid Valley News* 1979). In addition, a University of Santa Clara anthropologist testified that he could find "no inherent contradiction between traditional Chumash

religious values and the placement of an industrial facility in the Little Cojo area [Point Conception].” (*El Monte Mid Valley News* 1979).

Seven months later, on 13 August 1979, Judge Samuel Z. Gordon handed down a 355 page opinion noting that the Indians’ argument seemed specious and urging the Department of Energy “to bless the Point Conception plan.” (*New York Times* 1979a). The U.S. Air Force requested that hearings be reopened because of the proximity of the Vandenberg Air Force Base. The Air Force was concerned about the possibility of a rocket or jet falling on the LNG terminal.

On 12 October 1979, the FERC approved the siting of the LNG terminal, having dismissed the Air Force’s concerns. Thus, after six years and more than a dozen state and federal regulatory reviews, Pacific Gas and Electric Company and Pacific Lighting Corporation received a green light to build the LNG terminal at Point Conception. They were required to do further seismic, and wind, and wave studies, but these were not preconditions to the permit.

The Chumash Indians, together with the Hollister Ranch Owners Association, the Bixby Ranch Landowners Association, the Sierra Club, and Santa Barbara Citizens for Environmental Defense filed an application for a rehearing by the FERC. The rehearing was denied. Then, in December 1979, while undertaking various trenching studies at the Point Conception site, Western LNG Terminal Associates announced that they had discovered two additional faults. The Chumash Indians and the Santa Barbara groups filed an action in the Federal Circuit Court of Appeals. They contend that the rights of the Chumash Indians have been denied, in violation of the American Indians Religious Freedom Act. They also assert that two preconditions for the approval of an LNG plant under the terms of the Natural Gas Act have not been met, namely, fundamental findings of need and safety. The issue of need is once again open to review. Deregulation of natural gas prices appears to have caused a glut of natural gas in California. When prices were deregulated, domestic suppliers “discovered” substantial additional supplies. The issue of safety is, of course, open to review in light of the new seismic dangers discovered subsequent to FERC approval. Finally, these same groups contend that the EIS prepared for the Point Conception site was inadequate under the terms of both the National Environmental Policy Act and the Historic Preservation Act. The Council on Environmental Quality has sent a letter to the FERC indicating that the EIS was indeed inadequate.

If Western LNG Terminal Associates’ study of sea conditions and seismic dangers requires alterations in the original terminal design (for instance, if a sea wall has to be built), the plaintiffs in the federal suit are likely to demand that a new EIR as well as a new EIS be prepared. Western LNG Terminal Associates has offered the Chumash tribe sixty acres of land adjacent to the proposed terminal site if they will agree to drop the suit, but they have refused the offer.

The LNG facility siting process is not yet over in California. Court action could drag on for years. FERC approval may be with-

drawn in light of the new seismic dangers recently discovered on the site. The site that the PUC thought was "best" may, at the very least, be unnecessary and, at worst, too dangerous to build on. The siting process mandated by S.B. 1081 did not yield the definitive decision its drafters intended. The technical analyses and the balancing of costs and benefits, which should have been part of the siting process, appear to have been inadequate.

### Conclusions

S.B. 1081 preempted municipal participation in the LNG siting process. Los Angeles might well have accepted an LNG terminal. Officials in that city obviously calculated the risks of an accident differently from the members of the state legislature and officials in Oxnard and Santa Barbara. S.B. 1081 also put the Coastal Commission in a difficult position, requiring that body to propose an LNG terminal site incompatible with its general mandate to protect the coastline. In the end, the Coastal Commission's rankings were ignored by the PUC, suggesting that the full range of environmental costs was never balanced against the economic advantages sought by those who called for quick action to avert possible LNG shortages.

The ready availability of adequate natural gas supplies in California in January 1980 raises questions about the utilities' call for quick action in the first place. The recently announced U.S. agreement with the Mexican government regarding American importation of Mexican LNG raises further doubts about the credibility of the needs assessments that spurred the passage of S.B. 1081 (*New York Times* 1979b).

S.B. 1081 not only sought to speed up the regulatory review process, but it also sought to short-circuit required environmental reviews. Had environmental impact review requirements been pursued by the state, further seismic studies might well have been prerequisite to granting of a permit, and archaeological findings and issues of concern to particular interest groups might have been reviewed more carefully. Perhaps further study and negotiation could have suggested mitigation measures or compensation acceptable to the Chumash Indians and the environmental groups in Santa Barbara. While it is difficult to imagine how the results of a siting process could ever please everyone, it is not hard to see how efforts to preempt normal procedures and guarantees stimulate suspicion, ill will, and law suits that might otherwise not arise.

Environmental regulations, public participation requirements, and rules regarding the consideration of certain technical analyses have been adopted because they are important. We depend on the government to guarantee public safety. Efforts to "cut red tape" threaten to undermine the delicate system of checks and balances through which we determine levels of risk and weigh costs and benefits.

There are, undoubtedly, ways of eliminating delay caused by dilatory administrators, but efforts to preempt regulations because of current anxiety about dwindling energy supplies ought to be resisted. As it turned out, there was no immediate shortage of natural gas in

California (as the industry claimed there would be). There is now sufficient time for California to complete a careful review of its state energy objectives and to implement a siting review that balances as wide a range of costs and benefits as possible and provides the requisite opportunities for public participation at each step in the policy-making and siting process. This should happen even if the FERC fails to reverse its earlier decision or if pending legal action is unsuccessful.

The facility siting problem still remains in California as well as in other states. New ways must be found to bring all the parties with a stake in each siting decision to the bargaining table. Their negotiations must be informed by technical analyses that they believe to be credible. Negotiations must seek to balance state-wide needs with local concerns. Existing regulations must be accepted as constraints on the bargaining. Negotiations of this sort, perhaps involving mediation, may produce the definitive siting decisions for which California is searching.

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