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David W. Owens

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Comment

Public Participation in Local Land-Use Planning: Concepts, Mechanisms, State Guidelines and the Coastal Area Management Act

I. INTRODUCTION

The nature, extent, and methodology of citizen participation in governmental planning and decision-making is an important issue in contemporary American society. Experience with local blue-ribbon planning advisory committees in the 1950's¹ has been followed by many statutory requirements for participation by members of the public in the design and implementation of governmental programs. Such statutory directives were most visible in the War on Poverty legislation of the mid-1960's.² Federal requirements for public participation have remained in legislation following the demise of the War on Poverty and the cooling of the social action fervor of the 1960's, though of a considerably muted nature. Unfortunately, however, "citizen participation" in the 1970's has become a statutory cliché, often mandated

1. See M. SCOTT, *AMERICAN CITY PLANNING SINCE 1890* (1969). See also R. DAHL, *WHO GOVERNS? DEMOCRACY AND POWER IN AN AMERICAN CITY* 130-37 (1961).

2. The foremost example was the Economic Opportunity Act of 1964, Pub. L. 88-452, 78 Stat. 508. This Act contained perhaps the most visible, controversial, and strongest statement of the extent of citizen participation to be required in federally financed local programs. The Act required local community action programs to be "developed, conducted, and administered with the *maximum feasible participation* of residents of the areas and members of the groups served." *Id.* § 202(a)(3) (emphasis added). See also Berger & Cohen, *Responsive Urban Renewal: The Neighborhood Shapes the Plan*, 1 URBAN L. ANNUAL 75 (1968); Note, *Citizen Participation in Urban Renewal*, 66 COLUM. L. REV. 485 (1966). In the period following 1964, this requirement was modified and somewhat weakened. Currently the language is in a section related to activity of the governing boards of local community action programs. 42 U.S.C. § 2791(f)(1) (1970). However, the guidelines for assuring a minimum level of participation of the poor in community action programs still state that "[a]n essential objective of community action is extensive and intensive participation by the poor and residents of poverty areas in the planning, conduct, and evaluation of programs which affect their lives." 45 C.F.R. § 1060.1-2(a)(1) (1973).

A second prominent example is the Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. §§ 3301-74 (1970). Here the operative provision requires "widespread citizen participation" as a precondition to federal funding of local Model City programs. *Id.* § 3303(a)(2). For details of what "widespread citizen participation" was to be in practice see Model Cities Administration, Dep't of Housing and Urban Development, CDA Letter No. 3 (Oct. 30, 1967). Cf. *North City Area-Wide Council, Inc. v. Romney*, 456 F.2d 811 (3d Cir.), cert. denied, 406 U.S. 963 (1972).

by state and federal legislation, though infrequently as a result of thoughtful consideration of the concept.

Yet when the governmental activity involved is the regulation of private land uses and the control of urban development, public participation requirements have a continuing validity and should be given especially close attention.³ As local and state governments become more serious about establishing land use planning programs and as the plans become more effective, this point becomes ever more important.⁴ Effective land use planning involves making basic choices about the character and timing of future growth and development. The social, economic, and environmental impacts of these decisions extend far beyond individual landowners or developers and affect every resident of the planning area. Such planning is a political process and involves a number of value judgments about the future character of the area. Furthermore, as states reassert their authority over land use to protect state interests,⁵ the use of mandatory citizen participation provisions in legislation can be employed to maintain some local control in land use policy decision-making. For these reasons, the issue of public participation is one which should be given careful consideration in the design of legislation mandating land use planning.⁶

In April 1974 the North Carolina legislature passed the Coastal Area Management Act of 1974 (CAMA).⁷ This Act, which became ef-

3. See A. SCOVILLE & C. NOAD, *CITIZEN PARTICIPATION IN STATE GOVERNMENT: A SUMMARY REPORT* 9 (1973).

4. It is clear that "[t]he current extraordinary preoccupation with citizen participation has . . . been generated in part by the growing impact of government on the individual citizen . . ." Hanes, *Citizen Participation and Its Impact upon Prompt and Responsible Administrative Action*, 24 SW. U.L.J. 731, 732 (1970). Cf. Reich, *The Law of the Planned Society*, 75 YALE L.J. 1227, 1228 (1966).

5. See generally F. BOSSELMAN & D. CALLIES, *THE QUIET REVOLUTION IN LAND USE CONTROL* (1971).

6. To a certain extent, this was done with the federal Coastal Zone Management Act of 1972. 16 U.S.C. §§ 1451-64 (Supp. II, 1974). In submitting programs for federal approval, the states must show that they have "developed and adopted a management program for its coastal zone . . . with the opportunity of full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, public and private . . ." *Id.* § 1455(c)(1). The guidelines issued by the National Oceanic and Atmospheric Administration (NOAA), the agency administering this Act, reinforce this point. There it is stated that "[p]ublic participation is an essential element of the development and administration of a coastal zone management program . . ." 38 Fed. Reg. 15592 (1973). The guidelines then list ways in which this general statement is to be carried out. See Shabman, *Toward Effective Public Participation in Coastal Zone Management*, 1 COASTAL ZONE MANAGEMENT J. 197 (1974).

7. N.C. GEN. STAT. §§ 113A-100 to -128 (Supp. 1974). A detailed look at the bill's legislative history may be found in an article by one of the bill's principal authors,

fective on July 1, 1974, established a comprehensive system for the designation of areas of environmental concern and requires permits to be obtained before any development in those areas can take place. The CAMA also requires the development and adoption of land-use plans in all coastal counties.⁸ Further, the Act creates a Coastal Resources Commission (CRC), which, among other duties,⁹ must prepare and adopt State guidelines setting standards for the preparation of these local plans.¹⁰ Both the CAMA and the guidelines adopted by the CRC contain provisions relating to public participation in the preparation of the required local land use plans.¹¹ Unfortunately, the

Heath, *A Legislative History of the Coastal Area Management Act*, 53 N.C.L. REV. 345 (1974).

8. The Act mandates local planning in coastal counties. The more customary practice, however, is to allow rather than require local planning—the course adopted by the American Law Institute. See ALI MODEL LAND DEVELOPMENT CODE § 3-101(1) (Proposed Official Draft No. 1, 1974); Bosselman, *The Local Planner's Role Under the Proposed Model Land Development Code*, 41 J. AM. INST. PLANNERS 15 (1975). Nevertheless, several other states have enacted legislation requiring local planning. See, e.g., CAL. GOV'T CODE § 65101, 65013.2 (West 1966).

The North Carolina counties may prepare the plans themselves or delegate this responsibility to their area's lead regional organization. If any county fails to prepare a plan, the Act directs the Coastal Resources Commission (CRC) to prepare and adopt a land use plan for that county. All twenty of the coastal counties covered by the CAMA have filed required formal letters of intent to develop land use plans; thus, the CRC will not directly prepare any county land use plans. However, staff members for the CRC indicate that ten to fifteen of the counties will delegate their plan-making responsibilities to lead regional organizations (LRO). Telephone interview with staff of Dr. Thomas Linton, Executive Secretary, Coastal Resources Commission, Nov. 20, 1974. This delegation has been encouraged by the requirement adopted by the Department of Natural and Economic Resources that all localities receiving planning grants under the CAMA must employ a full-time planner who has a master's degree in planning and at least one year of local planning experience. DEP'T OF NATURAL AND ECONOMIC RESOURCES, RULES AND REGULATIONS RELATING TO GENERALLY APPLICABLE GRANT CRITERIA AND PROCEDURES FOR FIRST-PHASE COASTAL RESOURCES PLANNING 4 (1974). A number of the smaller coastal counties do not have such in-house planning capabilities.

9. Other CRC duties include approval of local land use plans, designation of geographic areas of environmental concern, adoption of criteria for local implementation and enforcement programs, and issuance of permits for any major developments in areas of environmental concern. N.C. GEN. STAT. §§ 113A-107(b), -110(f), -113(a), -114(a), -117(a), -118(c), -124(c) (Supp. 1974).

10. *Id.* § 113A-107. All local land-use plans must be consistent with these guidelines. *Id.* § 113A-108.

11. See text accompanying notes 66-83 *infra*. The focus of this analysis will be on state mandated participation in this required local land-use planning process, rather than participation in the overall management program established by the CAMA. Therefore, issues of standing and participation through citizen suits are beyond the scope of this treatment. In these important fields see J. SAX, *DEFENDING THE ENVIRONMENT: A STRATEGY FOR CITIZEN ACTION* 57, 100-07 (1971); Ayer, *The Primitive Law of Standing in Land Use Disputes: Some Notes from a Dark Continent*, 55 IOWA L. REV. 344 (1969); Jaffe, *The Citizen as Litigant in Public Actions: The Non-Hohfeldian or Ideological Plaintiff*, 116 U. PA. L. REV. 1033 (1968); Note, *Standing on the Side of the Environment: A Statutory Prescription for Citizen Participation*, 1 *ECOLOGY L.Q.*

legislature, and to a lesser extent the CRC, in mandating citizen participation made only perfunctory obeisance to the concept of public participation.

To create a program of public participation that goes beyond this somewhat superficial exercise, it is necessary first to understand the basic theories, definitions, and issues involved in the concept of public participation. Also, the participatory mechanisms through which the chosen policy may be implemented must be considered.

II. CONCEPTUAL ISSUES

Legislators, when approving provisions mandating public participation, frequently do so with little consideration of what the term means and why it is to be included as part of the governmental program under consideration. Occasionally, there is a debate over the type of participation program that should be adopted, but this initial focus on the definitional question ignores the more basic question of why there should be any public participation at all. Generally, the theoretical basis for mandating public participation is raised only in a negative sense by those who challenge the validity of the concept. They contend that the citizenry is adequately represented by elected officials and that public participation beyond the act of voting is superfluous and unnecessarily contributes to governmental inefficiency.

Beyond this debate, the theoretical basis for mandating public participation is rarely explicitly raised,¹² even though it is the foundation for all that follows. The choice of theory largely dictates which definition of "public participation" will be adopted, which tools of participation will be appropriate, and in which stages of the planning process citizen participation will be necessary. Legislative silence on theoretical bases is responsible for much of the confusion and disagreement that seems to arise whenever an evaluation of a public participation program is made.¹³

561 (1971). However, judicial review can play only a limited role in this field given the complex and on-going nature of planning activity. See generally Schoenbaum, *The Efficacy of Federal and State Control of Water Pollution in Intrastate Streams*, 14 ARIZ. L. REV. 1, 31 (1972); Wright, *The Courts and the Rulemaking Process: The Limits of Judicial Review*, 59 CORNELL L. REV. 375 (1974).

12. Of course, the underlying theory is implicit in all that takes place, particularly with the definitional choice.

13. Another factor responsible for disagreement is the perspective from which the evaluation is made. There are two basic perspectives from which participation can be viewed: a "social control perspective" and an "influence perspective." W. GAMSON,

A. Theories of Participation

There are at least three basic theories of citizen participation. Perhaps the most commonly adopted theory is the democratic notion of the right of the governed to participate in their government.¹⁴ This theory underlies the definition of "public participation" as citizen influence¹⁵ and stresses the necessity for providing an *opportunity* to participate to those who are so inclined. In some instances, a duty on the part of the government to encourage participation may be perceived, but participation on the part of individual citizens is usually entirely optional. That is, the participatory mechanisms chosen are permissive, as opposed to prescriptive.¹⁶

A second theory of participation is that citizens themselves should make the governmental decisions that affect them. This theory underlies the definition of "participation" as citizen power.¹⁷ It holds that, insofar as possible, governmental decision-making authority should be returned to the people. Strategies such as community organization to achieve power sharing¹⁸ or a decentralization of governmental programs to promote neighborhood governance¹⁹ are based on this theory.

A third general theory of participation stems from a concept of

POWER AND DISCONTENT 2-17 (1968). The social control perspective of the authorities, which is essentially a systems maintenance view, sees public participation as a tool for regulating conflict within the established system. By reducing discontent and demands for substantive changes in power holding, the view is that collective goals can be met in the most "efficient" manner, with current leadership roles being preserved. *Id.* at 2-10. See generally G. ALMOND & S. VERBA, *THE CIVIC CULTURE: POLITICAL ATTITUDES AND DEMOCRACY IN FIVE NATIONS* (1965). On the other hand, the "influence perspective" views participation from the position of partisans attempting to influence governmental decisions. Here, analysis begins by examining the ability of individual interests to impact upon decision-making.

14. See, e.g., Verba, *Democratic Participation*, 373 ANNALS 53, 57-58 (1967). See also C. PATEMAN, *PARTICIPATION AND DEMOCRATIC THEORY* (1970); J. TUSSMAN, *OBLIGATION AND THE BODY POLITIC* (1960).

15. See text accompanying notes 33-37 *infra*.

16. While examples of truly prescriptive participation in public planning in the United States are rare, use of mechanisms employing involuntary feedback (such as polls) in which response is not dependent upon the initiative of the individual are increasingly being used. See, e.g., A. SCOVILLE & C. NOAD, *supra* note 3, at 4-8, 20-21.

17. See text accompanying notes 38-43 *infra*.

18. See, e.g., S. ALINSKY, *REVILLE FOR RADICALS* (1945).

19. See generally Aleshire, *Planning and Citizen Participation: Costs, Benefits, and Approaches*, 5 URBAN AFFAIRS Q. 369 (1970); Babcock & Bosselman, *Citizen Participation: A Suburban Suggestion for the Central City*, 32 LAW & CONTEMP. PROB. 220 (1967). A recent study concluded that even though many communities have instituted neighborhood governance programs, community control remains largely a rhetorical rallying point, not a present reality. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, *THE NEW GRASS ROOTS GOVERNMENT?* 21 (1972).

democracy as elite competition²⁰ coupled with a preceived need for "functional apathy"²¹ on the part of the public to assure societal stability. This theory is related to the citizen involvement definition of "participation."²² Under this theory participation consists of governmental programs designed to influence the populace. Citizens are allowed to participate when they can provide information, aid in implementation, or otherwise serve the needs of the decision-makers without causing undue delay or an appreciable drop in agency efficiency. This position is similar to that taken by those who concede the desirability of a limited amount of public participation in the administrative process, but who wish to avoid delay and frequently remind participants that "the ultimate responsibility for the protection of the public rests with the administrators."²³

A major factor in one's choice of a participation theory is his judgment of the public's competency to participate in plan-making.²⁴ Some feel that plan design is a professional undertaking that should

20. See, e.g., J. SCHUMPETER, *CAPITALISM, SOCIALISM, AND DEMOCRACY* 269-73 (1950).

21. See, e.g., B. BERELSON, P. LAZARSFELD & W. MCPHEE, *VOTING* 305-23 (1954).

22. See text accompanying notes 28-32 *infra*.

23. Hanes, *supra* note 4, at 739. A fourth potential basis for public participation is the emerging concept of active public participation in planning as a tool toward development of a self-guiding society. See A. ETZIONI, *THE ACTIVE SOCIETY: A THEORY OF SOCIETAL AND POLITICAL PROCESSES* (1968). For a simplified version of the rather complex ideas presented by Etzioni see W. BREED, *THE SELF-GUIDING SOCIETY* (1971). See also D. GODSCHALK, *PARTICIPATION, PLANNING, AND EXCHANGE IN OLD AND NEW COMMUNITIES: A COLLABORATIVE PARADIGM* 152-92 (1972); Friedman, *Notes on Societal Action*, 35 J. AM. INST. PLANNERS 311 (1969). The concept envisions a society running itself through the activity of citizens and government working closely together. Godschalk summarizes Etzioni's formulation of the concept as follows:

The mechanism of self control . . . [is] "societal guidance," the combination of upward-directed "consensus formulation" and the down-ward-directed "social control" processes. Consensus consists of agreements built through exchange between decision-makers and cohesive social groups. Social control consists of flows of symbolic and material power and communication from decision-makers to performing units. Consensus formulation and social control are inter-dependent processes; each affecting and being affected by the other in a continual state of tension.

D. GODSCHALK, *supra* at 153.

The implications for planning in such a society are at least twofold. First, a higher level of public participation than is currently existent with most governmental programs is required; secondly, the level of sophistication relating to the quality and nature of citizen activity on the part of both the authorities and the citizens must be raised for effective planning to take place. Several planning theorists have begun to grapple with the issues of how such planning is to take place. See J. FRIEDMAN, *RETRACKING AMERICA: A THEORY OF TRANSACTIVE PLANNING* (1973). Also, the issue of how planners and citizens are to relate and plan in a society where everyone in effect has the role of planner must be resolved. See D. MICHAEL, *ON LEARNING TO PLAN AND PLANNING TO LEARN* (1973).

24. See generally D. GODSCHALK, *supra* note 23, at 30-36.

be handled by professional planners answerable only to the elected governing body.²⁵ Those of this view, if they believe any public participation is needed, would most likely adopt a citizen involvement approach to participation. Others, particularly those adopting the power-sharing theory of participation, feel that the public should participate by right in every stage of plan-making and have a key role in making critical policy decisions. Another complicating factor is added by the technical complexity of plan-making.²⁶ The dilemma raised is that of maximizing expertise in decision-making while maintaining a participatory democracy.²⁷

B. Public Participation Definitions

Related to the choice of a theoretical basis is the meaning of the term "public participation." There are practically as many definitions of the term as there are persons using it, each definition being based on different conceptualizations of what public participation should be. Here four basic definitional groupings will be considered: citizen involvement, citizen influence, citizen power, and citizen-government exchange.

(1) Citizen Involvement

This first definition of "public participation" looks only to whether citizens are nominally involved in the planning process—there is no sharing of power and rather than citizens influencing policy-makers, the objective is generally exactly the opposite. This has often been the approach adopted by traditional planning agencies, where the implicit definition of "public participation" is that citizens should be "used as instruments for the attainment of specific ends. Citizen participation . . . is a *strategy*"²⁸ for achieving the planning organization's goals.

25. Such feelings and disputes are by no means limited to the planning profession. See, e.g., Gittel, *Professionalism and Public Participation in Educational Policy-Making: New York City, A Case Study*, 27 PUB. AD. REV. 237 (1967).

26. One commentator noted that, "As the decisions come more and more to be made by experts who possess a monopoly of the relevant information and skills . . . , what kind of citizen influence will be possible?" Verba, *supra* note 14, at 74.

27. See Burke, *Citizen Participation Strategies*, 34 J. AM. INST. PLANNERS 287 (1968). The problem has taken on increased significance given the widespread use of administrative agencies to deal with environmental and planning matters. See Large, *Is Anybody Listening? The Problem of Access in Environmental Litigation*, 1972 WIS. L. REV. 62. A related issue is the capacity of non-professional citizens to produce innovation in plan-making. See Rein, *Social Planning: The Search for Legitimacy*, 35 J. AM. INST. PLANNERS 233 (1969).

28. Burke, *supra* note 27, at 288.

There are several such strategies that may be involved. The first is an "education-therapy" strategy.²⁹ Citizens are allowed to participate to teach them to work within and to appreciate the established system and to educate them on problems as perceived by the planning staff.³⁰ Another strategy is staff supplement. Citizens provide information to the planning staff and occasionally some technical expertise, but they are rarely allowed to play any policy-making role.³¹ Finally, citizens may be involved for purposes of cooptation to prevent anticipated obstructionism and divert threats to organizational stability.³² For example, it is not uncommon for a token minority member, minister, environmentalist, or other "community leader" to be placed on planning advisory boards to placate the represented interest and to build support for the produced plan while sharing as little power as possible.

(2) Citizen Influence

The second basic definition of "public participation" is a classic one adopted by a number of political scientists in their analysis of political participation. Verba posited that "we may define participation

29. *Id.* at 288-89.

30. Burke maintains that this is a "rarely viable strategy." *Id.* at 288. Still, it is considered by many to be a valuable and reasonable basis for public participation because "those who participate will acquire a better understanding of the problems of government and of other segments of the community, a higher sense of personal responsibility, and other intangible benefits." Hanes, *supra* note 4, at 736. A related strategy is one designed to change the behavior, attitudes, or norms of those participating to reflect what the professionals believe they should be.

31. Closely related to this strategy is the use in administrative proceedings of citizen involvement to gather information. The public hearing has long been denounced as a "haphazard and unsatisfactory device for giving and receiving information." D. TRUMAN, *THE GOVERNMENTAL PROCESS: POLITICAL INTERESTS AND PUBLIC OPINION* 372 (2d ed. 1972). Still, it continues to be used as such in this context and termed "public participation," with many planners agreeing with the commentator who wrote: "Participation by representative groups of citizens . . . can inform the agency and presumably assist it in reaching a decision which will further the public interest or accommodate the public convenience and necessity. This is the most valid reason for citizen participation." Hanes, *supra* note 4, at 736.

32. See Burke, *supra* note 27, at 291. An example of this use of citizen participation for cooptation is found in Dahl's report of New Haven's Citizens Action Commission, a blue-ribbon planning advisory group "shrewdly selected to represent many of the major centers of influence or status in the community." R. DAHL, *supra* note 1, at 131. Dahl contended the entire operation was a democratic ritual, and that "[e]xcept for a few trivial instances, the 'muscles' never directly initiated, opposed, vetoed, or altered any proposal brought before them" *Id.* Rather, their function, while billed as participation, was actually to give "legitimacy and acceptability to the decisions of the leaders, [and they] created a corps of loyal auxiliaries who helped to engender public support for the program and to forestall disputes." *Id.* at 133.

as referring to acts by those not formally empowered to make decisions—the acts being intended to influence the behavior of those who have such decisional power.”³³

Several points of this definitional approach should be noted. First, Verba identified the participants as those not *formally* empowered to make decisions. There is no emphasis on participation by any particular class of citizens, such as those without previous ability to influence decisions, as is the case with the citizen power definition. Secondly, the acts covered are those that are “intended to influence the behavior” of the decision-makers. Verba made it clear that actual affectation of the behavior of decision-makers is immaterial on the question of whether there is participation. That point goes only to the issue of whether the participation was successful, not whether there was in fact participation. Also, the requirement that the acts be intended to affect decisions places “ceremonial” and “support” participation outside of this definition.³⁴

This definition of “participation” has been the one perhaps most widely adopted in the planning field. Even in participatorily innovative federal programs such as the Model Cities Program,³⁵ the emphasis has been on providing citizens with an opportunity to influence the decisions that will affect their lives.³⁶ Also quite common are the “consultation projects” of local planning agencies that provide citizens influence through participation in a less direct manner. Citizens are queried about their values, positions, and ideas, and these are used in plan formulation. However, the citizens are given no direct power to make planning or policy decisions. That power remains with the professional planning staff and the formal decision-makers.³⁷

33. Verba, *supra* note 14, at 55. Verba's definitional approach is summarized in D. GODSCHALK, *supra* note 23, at 10-13.

34. Therefore the actions of the advisory panel described in note 32 *supra*, would not be classed as participation, as that Commission was presented with pre-made decisions to which they merely affixed a ceremonial rubber stamp.

35. A HUD study of the Model Cities Program concluded that the primary innovation in the planning process achieved by the program was an increased level of citizen participation. U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, *THE MODEL CITIES PROGRAM: A COMPARATIVE ANALYSIS OF THE PLANNING PROCESS IN ELEVEN CITIES* 61 (1970).

36. An example is this Model Cities Administration participation directive: “The neighborhood citizen participation structure must have clear and direct access to the decision making process of the City Demonstration Agency so that neighborhood views can influence policy, planning and program decisions.” Model Cities Administration, *supra* note 2 (emphasis added).

37. See, e.g., Routh, *Goals for Dallas: More Participation than Power-Sharing*, 5 CITY, March-April 1971, at 49.

(3) Citizen Power

One product of the intense social action movements of the mid-1960's was a searching reevaluation of the above traditional definitions of "public participation." A number of those who participated in the federally financed programs with strong participation requirements, from their partisan influence perspective, felt they were being manipulated by local decision-makers.³⁸ In this setting, a new definition of "public participation" emerged—one based upon the normative issue of power-sharing in a plural setting. Arnstein offered the following as a statement of this new definition:

[C]itizen participation is a categorical term for citizen power. It is the redistribution of power that enables the have-not citizens, presently excluded from the political and economic processes, to be deliberately included in the future. It is the strategy by which the have-nots join in determining how information is shared, goals and policies are set, tax resources allocated, programs are operated, and benefits . . . are parceled out. In short, it is the means by which they can induce significant social reform. . . .³⁹

38. See generally Arnstein, *Maximum Feasible Manipulation*, 4 CITY, Oct.-Nov. 1970, at 30.

39. Arnstein, *A Ladder of Citizen Participation*, 35 J. AM. INST. PLANNERS 216, (1969). Clearly, this redefinition of "public participation" would radically alter the range of activities which could be classed as genuine participation relative to previous definitions. Arnstein made this explicit by presenting a "ladder" of eight steps of public participation based upon relative degrees of power redistribution, the "ladder" being divided into three main headings:

Nonparticipation:

1. Manipulation—as with the example of the advisory commission given by Dahl in note 32, *supra*. Arnstein labels these as "Mickey Mouse" devices which are simply a "public relations vehicle [for] . . . power-holders." Arnstein, *supra* at 218.
2. Therapy—where powerholders "educate" or "cure" participants, as with the education-therapy and behavioral change strategies above. See notes 29-30 *supra*.

Tokenism:

3. Informing—one-way output through which citizens are told of their rights.
4. Consultation—where, for example, attitude surveys, public hearings, and neighborhood meetings are employed to gather citizen positions. Generally one-way input, with only a requirement that the citizens be heard, not that they be heeded.
5. Placation—as where several members of a powerless group are placed on decision-making boards, but remain in a distinct minority. Closely related to the cooptation strategy discussed above. See note 32 *supra*.

Citizen Power:

6. Partnership—citizens share power through meaningful representation in significant proportion on planning and decision-making boards.
7. Delegated power—citizens are given actual authority to make decisions on certain elements of plans or programs through, for example, veto powers, majorities on decision-making boards, or subcontracts for various parts of the project.

Several points should be made about this definition of public participation.

First, it recognizes that preparation of a plan in fact involves advocacy of a particular value set; that planning is a political and social process, not merely an exercise of technical expertise.⁴⁰ In this respect, one has to "view any planner as serving a specific client group, even when such a group is labeled 'government' Government decisions represent the interests of the group in power first, and a total public second."⁴¹

Secondly, the definition restricts its view to participation only by the "have-nots" of society because "studies consistently show that higher-class persons are more likely to participate in politics than lower-class persons."⁴² It is felt that the government and the planners employed by it are likely to be more responsive to the needs and values of those persons of relatively higher socio-economic status who placed them in power. Therefore, public participation is to be designed to inject the values of those left out of the political process—the "have-nots."⁴³

Finally, the key element in this definition is power. It is concerned with the redistribution of decision-making authority to those who will be directly affected by the particular governmental decision.

(4) Citizen-Government Exchange

The final definition of "public participation" considered is one which seeks, for analytic clarity, to reduce the participation concept to its essential elements. This view contends that "the process of partici-

8. Citizen control—citizens actually govern the entire program, being in charge of policy, planning, and program decisions.

Arnstein, *supra* at 217. This approach is summarized in D. GODSCHALK, *supra* note 23, at 13-16. See also Burke, *supra* note 27, at 292.

40. See Bolan, *The Social Relations of the Planner*, 37 J. AM. INST. PLANNERS 386 (1971); Reich, *supra* note 4, at 1228. See also Plager & Handler, *The Politics of Planning for Urban Redevelopment: Strategies in the Manipulation of Public Law*, 1966 WIS. L. REV. 724.

41. Bolan, *supra* note 40, at 387.

42. L. MILBRATH, *POLITICAL PARTICIPATION: HOW AND WHY DO PEOPLE GET INVOLVED IN POLITICS* 116 (1965). Milbrath statistically demonstrated that income, educational status, and occupational status are all positively correlated to political participation. The lower the socio-economic status, the less likely it is that an individual has been involved in any form of political participation. *Id.* at 114-28.

43. Others do not necessarily impose a condition of low socio-economic status, but rather concentrate on involving those who, for whatever reason, have not previously participated. See, e.g., Cunningham, *Citizen Participation in Public Affairs*, 32 PUB. AD. REV. 589 (1972).

pation, in its most fundamental and general terms, is a *process of exchange* between citizens and government."⁴⁴

This definition does not look to the motivating factors or results of participation, be they citizen involvement to achieve agency objectives or a redistribution of decision-making authority. Nor does it key its definition to the participation of any particular segment of the community. It is, as opposed to the previous three definitions, relatively value free in terms of initial evaluative bias. With this definition, to conclude that there is public participation is only the starting point for analysis, not the conclusion of it.

III. MECHANICS OF PUBLIC PARTICIPATION

Once it is decided that the public should participate in governmental planning and decision-making, a program must be devised to effectuate this participation. The range of tools chosen should reflect the underlying theory of public participation adopted. For example, the public meeting may be a useful tool for providing citizens with a mechanism to influence decisions, but virtually ineffective as a power-sharing device. On the other hand, establishing a planning advisory committee with veto power concerning major decisions is useful in carrying out a power-sharing theory, but inappropriate if the governmental desire is to shape citizen opinion into a predetermined form. This again points to the need for an explicit legislative decision about the theory and definition of public participation to be followed before the task of designing a particular participation program is undertaken. Other factors affecting the choice of tools include the substantive nature of the governmental program involved, the time in the planning process, and the resources available for allocation to the participation effort at that stage of the program.⁴⁵ For example, the public hearing may in some instances be useful as a device for giving a final formal review of a plan before adoption, but totally ineffective for eliciting the sentiments of the general population on long-range developmental objectives in the early stages of the planning process.

44. D. GODSCHALK, *supra* note 23, at 22.

45. The costs of an effective participation program can be staggering. For example, in the 1971-1973 period, Vermont spent around \$275,000 on participation in state land use planning. There it is estimated that a comprehensive program would cost about one dollar per capita per year, with the figure being as high as \$1.60/capita/year in the early years of the program. A. SCOVILLE & C. NOAD, *supra* note 3, at 2-3.

Most participation programs use a variety of tools. In establishing public participation requirements for wastewater management programs, the Environmental Protection Agency has divided tools for participation into three classes, depending upon the underlying relationships involved between the public and the planning agency.⁴⁶ These classes are: The one-way output relationship in which the planning staff disseminates information (and obtains feedback from the public); the one-way input relationship in which the public generates a flow of ideas and data into the planning process (and obtains feedback from planners); and the two-way interactive relationship in which the public and planner interact during the planning process.⁴⁷

While many of the tools in each of these categories can be used in implementing any of the theories chosen, there is relationship between these categories and the theories outlined above. A one-way output relationship is inherent in the citizen involvement definition and "functional apathy" approach to public participation. On the other hand, strong use of one-way input devices are needed in implementing a power-sharing theory of public participation. A strong democratic approach to public participation implies a need to use both one-way input and two-way interactive tools, as the government is required to listen to and work with citizens in arriving at planning decisions. These relationships are, however, far from a one-to-one match. For example, even if power sharing is the goal of the participation program, it will be necessary to disseminate data to the public through one-way output devices to provide them with the information necessary for public decision-making. The emphasis should be on systematically selecting from each category those tools useful for establishing a participation program designed to implement the chosen theory.

A. Tools for Public Participation

(1) One-Way Output

Depositories can be used to provide public access to a range of

46. U.S. ENVIRONMENTAL PROTECTION AGENCY, GUIDELINES FOR FACILITIES PLANNING 68 (1974).

47. *Id.* at 68-69. This range of tools, while each is capable of being applied in different ways with differing degrees of emphasis, seems to be suggestive of an acceptance of a citizen influence definition of public participation. The advantages and disadvantages of each for use in an areawide waste treatment management program are set out in D. Godschalk, Public Participation in Areawide Waste Treatment Management, Sept. 1974, at 22-32 (preliminary draft prepared for Triangle J Council of Governments).

planning materials. Proposals, alternatives, and educational materials, periodically up-dated, can be placed at several points of ready access, such as school and public libraries. While depositories are relatively inexpensive and can convey a large amount of detailed information, it is clear that this material will be used primarily, if not only, by those members of the public already interested in land use planning issues and possessing considerable sophistication in terms of community involvement.

Exhibits are used to provide less detailed information to a larger segment of the population. They may be visual presentations made available for display at local focal points, such as shopping centers, commercial establishments, libraries, schools, and the like. When larger budgets are available, slide shows and film presentations can be used. Exhibits are often used as educational devices and are thought to be particularly useful in raising public consciousness vis-a-vis land use problems and issues in the early stages of the planning process.

The news media can also be used as a type of exhibit. Press releases and feature stories can present generalized information to a large public through established circulation systems. Although the cost is high and special expertise is required, special television shows can be produced to introduce the public to land use issues.⁴⁸

Mailings and newsletters are a relatively inexpensive way to reach a particularized audience with the exact information the planning agency wants to convey. Mailing lists can be established for interested individuals and groups who wish to periodically receive some detailed information about critical issues and decisions during the planning process.⁴⁹ Newsletters can be used to convey a more general level of information, but still more detailed than exhibits, to a broad audience.⁵⁰ Newsletters and mailings are of use in disseminat-

48. In North Carolina, the Department of Natural and Economic Resources is coordinating a public information program which will produce television shows on the CAMA and land use issues as they relate to coastal areas for airing on public and commercial television. Meeting on Public Information and Citizen Involvement in the Coastal Area Management Program, Dep't of Natural & Economic Resources, Raleigh, N.C., Sept. 20, 1974.

49. The State has adopted a version of this tool for use in the permit-letting system for areas of environmental concern. Upon receiving an application for a requisite permit for development, the Secretary of the Department of Natural and Economic Resources is required to mail a copy of the application or a description to any citizen or group who has requested receipt of notification. N.C. GEN. STAT. § 113A-119(b)(i) (Supp. 1974).

50. In the Vermont land planning program, it was suggested that "some type of

ing information throughout the planning process.

Publications can also be a quite effective means of presenting information to the public. Short, clear statements of issues and alternatives in layman's language are generally most useful. Unfortunately, in the past many planning programs have produced overly long jargon-filled reports made available only at the end of the planning process. Better designed publications available at earlier stages in the planning process can be produced and could be highly informative to the public.⁵¹ Much of the same information can be presented to the public through use of public presentations.

Speeches are another device frequently used to present information to the public. Planning staff can be made available for speaking engagements with civic clubs, interest groups, schools, and other community groups. Though the speeches are often given to relatively small groups, they are useful in presenting tailored information in a personalized fashion and can be used to stimulate further participation by members of the receiving audience.

(2) One-Way Input

The traditional legal method for obtaining public input into the planning process is the public hearing. In recent years, however, commentators have increasingly attacked the suitability of the public hearing as a device for obtaining citizen input.⁵² The hearing is usually held on only one occasion, frequently in a location with poor accessibility for many citizens. Often only special interests and directly

newsletter reaching every family in the state would provide the most effective medium for informing the general public." A. SCOVILLE & C. NOAD, *supra* note 3, at 4. Some communities have included brief land use newsletters in tax, telephone, or water bills in an effort to reduce mailing costs while still reaching a large proportion of the community.

51. In the Tucson, Arizona, land use planning program, a short newspaper supplement prepared for mass distribution was effectively used to explain to the public several development alternatives and the implications of the choices to be made. PIMA COUNTY PLANNING DEPARTMENT, *TELL TUCSON WHERE TO GO!* (1973). In North Carolina, a similar document is to be distributed after the plan has been adopted. See text accompanying notes 76-77 *infra*. See also the discussion of the use of the "public brochure" in Sellevold, *Public Involvement in Planning—U.S. Army Corps of Engineers*, in *SOCIAL AND ECONOMIC ASPECTS OF WATER RESOURCE DEVELOPMENT* 56 (1972).

52. See, e.g., Jowell, *The Limits of the Public Hearing as a Tool of Urban Planning*, 21 AD. L. REV. 123, 140 (1968); Plager, *Participatory Democracy and the Public Hearing: A Functional Approach*, 21 AD. L. REV. 153, 158 (1968). See also S. TILLEY, *CITIZEN PARTICIPATION IN NORTH CAROLINA'S COASTAL AREA MANAGEMENT PROGRAM* 2-5 (1974). *Contra*, Ruckelshaus, *The Citizen and the Environmental Regulatory Process*, 47 IND. L.J. 636, 641 (1972).

affected parties appear. It also generally requires middle-class skills for effective participation. Further, serious problems are involved in any attempt to order the preferences or complaints stated at the hearing. Thus, while the public hearing may serve a valid protective function for individual land owners in the latter stages of the planning process and may occasionally elicit novel suggestions and give some reading of the intensity of public feelings, its use as a device for obtaining broad public input in the planning process is severely limited.

A second means for obtaining one-way public input is the survey.⁵³ While participation in a public hearing is a matter of choice on the part of the participant, thereby providing "self-selection feedback," a properly designed survey uses involuntary feedback to assure that a full range of community views will be represented. An additional advantage of the survey is that most of its costs are borne by the public, making it easier for low-income citizens to participate. Also, public opinion on specific questions and issues can be obtained. This makes the survey device particularly useful in the early parts of the planning process—the problem identification and goals setting stages.⁵⁴ However, properly designed, pretested, and administered statistical polls are expensive. And the measures usually taken to reduce costs also often greatly reduce the particularly beneficial attributes of the survey technique. For example, mailing a questionnaire to everyone in a set geographic area and depending upon mail-back for response (where even a response rate as high as fifty percent is quite unlikely) would destroy the statistical validity of the sample with the result being that no generalizations to any larger public than that actually responding could be made.

A special form of survey which might be used to obtain public input is the referendum. Once the planning process has narrowed the

53. See generally C. MOSER & G. KALTON, *SURVEY METHODS IN SOCIAL INVESTIGATION* (1972); C. ROLL & A. CANTRIL, *POLLS: THEIR USE AND MISUSE IN POLITICS* 40-44 (1972).

54. Such a course was recommended in A. SCOVILLE & C. NOAD, *supra* note 3. These authors also recommended use of polls in the later stages of the planning process, particularly after the plan to be proposed has been narrowed to two or three major policy alternatives. A poll would then be used to simulate a referendum on the proposals. Use of polls to obtain information concerning public attitudes on coastal land use issues has been recommended for the Maine coastal planning program. J. ARMSTRONG, H. BISSELL, R. DAVENPORT, J. GOODMAN, M. HERSHMAN, & J. SORENSEN, *COASTAL ZONE MANAGEMENT: THE PROCESS OF PROGRAM DEVELOPMENT* 164 (1974). A similar program was recently undertaken by the Vermont Natural Resources Council. *Id.* at 163.

choices to two or three major developmental policy decisions, the choice of which alternative to follow could be put before the voters. This action would explicitly politicize the choice and in all likelihood generate widespread public debate and interest.⁵⁵

Further, if the referendum were held in conjunction with local elections, candidates would be forced to take positions on the alternatives, and perhaps slates supporting each alternative would develop. As a result the voters often would choose a local governing body sympathetic to the alternative chosen and in any case one with a mandate to effectuate certain developmental policies. The whole process would make explicit many issues which already implicitly underlie local elections. However, as voter turnout in local elections rarely exceeds sixty percent of those eligible to vote and is often considerably below even that figure, significant portions of the community would still not be participating in the planning process.

Two other methods of informal one-way input should be noted. Information solicitation can provide needed data for planners, but has limited use when dealing with the general public. Secondly, clipping files from local news sources can provide useful background information, particularly in the start-up phases of planning.

(3) Interaction Mechanisms

Advisory groups have often effectuated public participation in a manner which allows citizen interaction with planners and decision-makers. Many of the first uses of this tool involved "blue ribbon panels" of community elites whose real function was to sell pre-made planning decisions to the general public. A shift occurred during the 1960's, when many of the War on Poverty's Community Action Programs established advisory boards made up, not of community elites, but largely of the consumers of the services provided. In the land planning process, advisory boards can be established, with representatives from all segments of the community, that can provide planners with specialized information about the area and the wishes of the people, as well as providing continuing reaction to the work and proposals of the planners.⁵⁶

55. The referendum device under consideration here involves choice of developmental policy and should not be confused with "referendum zoning," wherein all zoning changes must be approved by the voters. This latter technique has recently been successfully challenged as an unconstitutional exclusionary zoning device. See *Forest City Enterprises v. City of Eastlake*, No. 73-901 (Ohio Sup. Ct., March 19, 1975).

56. For a critical view of the use of the advisory board see Frauenglass, *Environ-*

The task force is a specialized form of advisory group. A working group is formed to perform a specific task, such as to develop a goals statement or to work out the form and implications of objectives in a certain program area. The task force is most useful in terms of participation for those highly interested in a specific area or already possessant of a certain level of expertise in that subject. They are generally less suitable vehicles for participation by the general public.

Informal contacts and interviews with interested parties and other members of the public can provide planners with supplemental information and allow interaction on a less structured, one-to-one basis. These tools also allow the planner to seek representatives of those interests not appearing to be participants with the use of other tools being employed in the participation strategy. An extension of this idea would be to have staff members act as liasons with interested and willing citizen groups. The planner would be in regular contact with the group, informing them of the progress of the planning process, impending decisions to be made, and how these decisions will affect the interests of that group. This device may or may not be used as part of an advocacy planning strategy.⁵⁷

Public meetings are another frequently used device for obtaining public participation.⁵⁸ Properly organized and run public meetings can

mental Policy: Public Participation and the Open Information System, 11 NATURAL RESOURCES J. 489, 492-93 (1971).

57. The advocacy planning concept involves rejection of governmental preparation of a single unitary plan. Rather, the planner explicitly becomes an advocate for an interest group and presents that group's interests in plan design and implementation, thereby making the planning process a plural one.

This concept of advocacy planning was first presented to professional planners in the mid-1960's by Paul Davidoff. Davidoff, *Advocacy and Pluralism in Planning*, 31 J. AM. INST. PLANNERS 331 (1965). See also Peattie, *Reflections on Advocacy Planning*, 34 J. AM. INST. PLANNERS 80 (1968). But see Keyes & Teitcher, *Limitations of Advocacy Planning: A View from the Establishment*, 36 J. AM. INST. PLANNERS 225 (1970). The latter article, however, for the most part does not comment on the validity of the concept, but rather on the perceived lack of necessary practical skills held by advocate planners being produced in the course of contemporary planning education.

58. In a highly publicized venture, Dallas, Texas made extensive use of the neighborhood public meeting in the goals-setting phase of their land use planning process. See EXCELLENCE IN EDUCATION FOUNDATION, GOALS FOR DALLAS: ACHIEVING THE GOALS (1970); SOUTHWEST CENTER FOR ADVANCED STUDIES, GOALS FOR DALLAS: MUTUAL AIMS OF ITS CITIZENS (2d ed. 1967); Routh, *supra* note 37. The process of setting community goals and objectives lasted over four years and cost in excess of \$500,000. The participation program involved conferences, newspaper articles, and three series of neighborhood meetings. The highest level of participation by the public was reached in the second round of these neighborhood public meetings—over a five-month period there were 456 meetings with a total attendance of over 50,000 citizens.

combine the one-way output characteristics of the public presentation with the one-way input characteristics of the public hearing to form a truly interactively public meeting.

Public meetings can also be structured as workshops, seminars, or as lectures with general discussion following. Simulation games allow the public to play the roles of planners and decision-makers, face the issues which arise in the land planning process, be confronted with the choices which have to be made, and graphically see the results of these decisions. Such games can also be used both to educate the participants and to provide information to the planners relative to citizen decisions on critical policy questions.

B. Timing of Public Participation

In designing a strategy of public participation, the issue of at what points in the planning process public participation is to be allowed and encouraged must be considered. There are a number of options available, and the timing strategy chosen should reflect the choice of theory and definition made at the outset.

The traditional land-use planning process is a cyclical one consisting of several general steps, such as problem identification, the setting of community goals and objectives, preparation of technical planning studies, alternative policy formulation, policy choice, and implementation of that choice.⁵⁹ In the past, public participation was often limited to a single point in the process—the final stages of policy choice. The public would be presented with the plan at a public hearing and be allowed to comment upon it prior to formal adoption and implementation.

Such an approach is still supported by a number of observers, particularly attorneys dealing with the planning process. While noting that planning agencies should encourage participation at the plan formulation stage, Sax maintained that public participation at that

Dubbink, *Unique Goals for Dallas Program Systematically Involves Thousands of Citizens*, 4 AM. INST. PLANNERS NEWSLETTER, Dec. 1969, at 5-7. These meetings were specifically designed to obtain citizen input and opinion. However, the meetings were run under standardized procedures with close control by meeting organizers. They in effect became one-way output educational devices.

59. Planners are increasingly becoming aware of the interrelated nature of these steps and integrating them more into a continuing process. For example, Etzioni noted that plans separated from implementation considerations are likely to be ineffective, contending that such products are "likely to be rejected, ignored, or radically altered" ETZIONI, *supra* note 23, at 486.

time "is attractive, but its practical implementation elusive."⁶⁰ He sees the problem as largely one of ripeness and concludes:

It is unlikely that a [planning] process so amorphous can be reduced to any satisfactory set of rules which would truly bring a broader range of citizen perspective into the actual process of decision-making. So much in the real planning process is done by informal conversation and consultation, and there is a kind of wishfulness in feeling that by legal rules or institutional manipulation the "insider perspective" can be reformed and legislated into that all-embracing public interest perspective which is our ideal.⁶¹

Despite this skepticism, the recent trend is to open the earlier stages of the planning process to wider public participation.⁶² Furthermore, the Environmental Protection Agency is attempting to accomplish just what Sax labeled wishful thinking—establish a set of legal rules that will require public participation at all stages of the planning process.⁶³

IV. THE NORTH CAROLINA SCHEME FOR PUBLIC PARTICIPATION IN LOCAL PLANNING UNDER THE COASTAL AREA MANAGEMENT ACT

There is no indication in the CAMA that the legislature considered the conceptual underpinnings for public participation or adopted any of the various definitions discussed above. In fact, the CAMA is virtually silent on public participation relative to the mandated local land use planning.

Most legislative attention regarding maintenance of a degree of local control in development regulation was focused on providing a sufficient role in the overall planning and management program for local governmental units. Still, the Act does attempt to mandate a limited amount of public participation in the local land use planning process. The CRC, which must review and approve all local plans, has extended the statutory requirements in the course of setting stand-

60. SAX, *supra* note 11, at 100.

61. *Id.* at 102.

62. See, e.g., Bolle, *Public Participation and Environmental Quality*, 11 NATURAL RESOURCES J. 497, 501 (1971). The goals-setting procedure in Dallas is an example of this. See note 58 *supra*.

63. See U.S. ENVIRONMENTAL PROTECTION AGENCY, DRAFT GUIDELINES FOR AREA-WIDE WASTE TREATMENT MANAGEMENT 12-6, 12-7 (1974). The agency established a matrix that explicitly sets out the participation devices that are required or suggested for use at each step of the planning process.

ards for the local planning process. There are three sources of provisions for public participation in planning process mandated by the CAMA: the CAMA itself; the CRC's guidelines for local planning;⁶⁴ and a CRC promulgated handbook for use by elected officials in designing participation programs.⁶⁵

A. Statutory Provisions

The single participatory act required by the CAMA is a public hearing prior to the formal adoption or subsequent amendment of the plan.⁶⁶ This provision requires no participation in the plan-making process, only the presentment of a plan produced by professionals and the government to the public for comment. The public hearing per se is a tool of dubious value in effectuating meaningful public participation.⁶⁷ This tool allows very little interaction between the planner and citizen. Thus, the major statutory provision providing for public participation does little to accomplish that purpose.

Recognizing the deficiencies of the public hearing as the only tool for public participation, several states have passed coastal area management acts that provide additional mechanisms for public participation.⁶⁸ For example, the Washington Shoreline Management Act of 1971,⁶⁹ in addition to requiring a public hearing, requires the State and local governments to provide citizens with a "full opportunity for involvement"⁷⁰ in the development and implementation of shoreline protection plans. The governments are instructed "not only [to] invite but actively [to] encourage participation by all persons"⁷¹

64. N.C. COASTAL RESOURCES COMMISSION, STATE GUIDELINES FOR LOCAL PLANNING IN THE COASTAL AREA UNDER THE COASTAL AREA MANAGEMENT ACT OF 1974 (1975) [hereinafter cited as CRC GUIDELINES].

65. N.C. COASTAL RESOURCES COMMISSION, HANDBOOK FOR ELECTED OFFICIALS ON PUBLIC PARTICIPATION IN THE DEVELOPMENT OF LAND USE PLANS IN THE COASTAL AREAS OF NORTH CAROLINA (1975) [hereinafter cited as CRC HANDBOOK].

66. N.C. GEN. STAT. § 113A-110(e) (Supp. 1974).

67. See text accompanying note 52 *supra*.

68. However, as with North Carolina, several of the state land use statutes contain no further provision for public participation in addition to the public hearing. See, e.g., VT. STAT. ANN. tit. 10, §§ 6001-91 (Cum. Supp. 1972). Further, a number of statutes contain no provision for public participation in planning at all beyond general statutory clichés about its desirability. See, e.g., CAL. PUB. RES. CODE §§ 27000-650 (West Supp. 1974); DEL. CODE ANN. tit. 7, §§ 7001-14 (Supp. 1974); FLA. STAT. ANN. §§ 380.012-.10 (Supp. 1973-74); R.I. GEN. LAWS ANN. §§ 46-23-1 to -12 (Supp. 1973). Of course a number of these acts do not mandate local planning as does North Carolina; thus a direct comparison of their participation requirements should not be made.

69. WASH. REV. CODE ANN. ch. 90.58 (Supp. 1974).

70. *Id.* 90.58.130.

71. *Id.*

in this process.

Another example of a quasi-statutory mandate for widespread public participation can be found in the Environmental Protection Agency's Rules for Public Participation in Water Pollution Control.⁷² These rules are formally adopted minimum guidelines for public participation in all EPA water pollution programs and contain a directive that "[p]articipation of the public is to be provided for, encouraged, and assisted to the fullest extent practicable consistent with other requirements of the [Federal Water Pollution Control] Act"⁷³ Although these statutory provisions are very general they at least express a recognition of the desirability of public participation and establish a preference for it.

The North Carolina Act contains no comparable provision. It can be fairly said that the CAMA envisions little if any public participation in the plan-making process. This may not have been a deliberate policy choice by the legislature, but perhaps resulted from the failure to consider fully the theory and mechanics of public participation.

B. *Administrative Provisions*

The CRC from the outset expressed a commitment to expand the required role of public participation in the local land use planning process.⁷⁴ Yet for the most part the adopted guidelines contain only

72. 40 C.F.R. §§ 105.1-9 (1974).

73. *Id.* § 105.2.

74. One of the Commission's first official actions was to adopt a policy statement noting that, while final determination of policy must be made by elected officials, "it is important to employ effective methods to secure the views of a wide cross section of citizens, representing not only each different geographical area of the county, but those who can ably represent the varying economic, social, ethnic, and cultural interests as well." Coastal Resource Commission, Proposed Guidelines for Local Planning Under the Coastal Area Management Act, August 29, 1974, at 2 & Errata Sheet. This provision also appears in the adopted guidelines. CRC GUIDELINES, *supra* note 64, at 3. A further indication of this point is found in the report of a subcommittee of the Commission which, in studying the first draft of the guidelines, bemoaned their lack of sufficient participatory directives. The members "expressed the strong conviction that the single most important key to the success of this planning process is active and widespread involvement by the people who live in the coastal counties." Coastal Resources Commission, Report of the Sub-Committee on Land Use Plans (Northern Counties), October 22, 1974, at 6. The subcommittee went on to make this concluding recommendation: "Therefore we strongly recommend to the Commission the adoption of a policy statement calling on planners and local officials to devote the bulk of their time and effort to developing and implementing methods of securing widespread citizen input in all phases of the planning process, even if it means foregoing steps normally associated with conventional planning processes." *Id.* at 7.

general references to the desirability of public participation. Very little guidance is given about the specific tools to be used or the points in the planning process at which public participation is to be required.⁷⁵ As is the case with the CAMA, the guidelines do not reflect a consideration or adoption of either a particular theory or definition of public participation.⁷⁶

The one participatory device specifically mandated by the guidelines is the preparation and widespread distribution⁷⁷ of a "concise synopsis" of the plan.⁷⁸ The synopsis is to be a short document written in laymen's terms that summarizes and explains the produced plan. By its nature this document can be prepared only *after* the plan has been adopted. Its primary purpose seems to be educating the public on what the government is doing for them.

This approach to guidelines for public participation is generally more conservative than that followed in several other recently adopted or drafted similar guidelines. One example of a stronger approach is the set of guidelines prepared for Washington's Shoreline Management Act of 1971.⁷⁹ There specific guidelines for public participation in plan-making are explicitly set out in the body of the guidelines, rather than being included in an extra-legal handbook as is the case in North Carolina.⁸⁰ Local governments are encouraged to use the methods suggested, which include citizen advisory committees, public meetings, newsletters, media usage, and public hearings.⁸¹ If the

75. The general desirability for public participation is expressed by the CRC in several contexts in the guidelines, such as with the development of goals and objectives and identification of major land use issues. CRC GUIDELINES, *supra* note 64, at 1, 3, 8-9, 11-12, 22-23.

76. However, one clue to the Commission's feelings in this respect may be found in the minutes of their meeting of January 14-15, 1975. Following adoption of a motion to use the term "public participation" wherever the term "citizen involvement" was used in the earlier draft of the guidelines, there is entered this cryptic note: "There was discussion with regards to 'citizen involvement' carrying certain connotations which have been established through federal use which are not preferred in this document. The Commission stated its desire for a fresh 'undenoted' approach in order that people do not get the wrong idea of what the Guidelines are suppose [*sic*] to do." Coastal Resources Commission, Minutes of Meeting, Jan. 14-15, 1975, at 2.

77. It is suggested that a copy of the synopsis be provided every citizen in the county, the recommended mode of distribution being a mailing to all listed taxpayers. CRC GUIDELINES, *supra* note 64, at 20.

78. *Id.* at 17.

79. WASH. AD. CODE §§ 173-16-010 to -070 (1972).

80. See text accompanying notes 84-94 *infra*.

81. The general participation approach suggested is as follows:

1) Appointment of a citizens advisory committee with both environmental and commercial interests. The committee itself is not to be a substitute for general citizen involvement and input, but is to be more of an organizing body. Citizen input is to

suggestions are not followed by the localities, they must justify their reasons for not doing so to the State reviewing authority.⁸²

A second example of a more innovative approach to guidelines for participation is found in the draft guidelines proposed by the Environmental Protection Agency for areawide waste treatment management program planning.⁸³ The guidelines list, for each step in the planning process, those specific participatory mechanisms that are required. The chart also suggests devices that may be used in addition to those required. Such an approach would provide the specificity that is lacking in the North Carolina guidelines and would give local planners the information necessary to determine the minimum level of participation necessary for compliance with the CRC Guidelines.

C. Handbook Provisions

The third source of State directives on public participation in the local planning mandated by the CAMA is the CRC's *Handbook for Elected Officials*.⁸⁴ This handbook, though mentioned in the guidelines, is not an official part of them. It is merely to be "transmitted with the Guidelines as an aid to those charged with the implementation of the Guidelines"⁸⁵ The tools of public participation included in it are only examples, and, if none of the suggested mechanisms seem suitable, local governments are encouraged to devise their own procedures.⁸⁶

be sought in seven specific areas, including problem definition, goal formulation, collection of information on existing policies and conditions, and generation of policy alternatives for shoreline use.

2) The committee is to sponsor at least three public meetings during the plan-making process. The meetings are to be held in the evenings at accessible locations, with free public discussion allowed. Records of all meetings are to be kept by the local government and are to be made available for public inspection.

3) The committee is to publish a newsletter after the first meeting and before the second which is to include the date, time, and location of future meetings and hearings and a phone number through which additional information can be obtained.

4) Publicity of the plan-making process is to be made through use of public postings, newsletters, local media, and announcements to community groups.

5) At least one public hearing is to be held after the draft of the plan has been completed. WASH. AD. CODE § 173-16-040(1).

82. *Id.* North Carolina's comparable review provision is a statement in the guidelines that, before approval of any land use plan, the plan must include a statement outlining the methods employed in securing public participation and the degree of participation evoked. CRC GUIDELINES, *supra* note 64, at 12. However, the guidelines give no indication as to what methods the CRC considers appropriate.

83. See note 63 *supra*.

84. CRC HANDBOOK, *supra* note 65.

85. Coastal Resources Commission, Minutes of Meeting, Jan. 14-15, 1975, at 4.

86. CRC HANDBOOK, *supra* note 65, at 1. Therefore any scheme set out herein could hardly be said to be *mandated* by the State.

The handbook divides the participatory process into two stages—"informing the public" and "public involvement." The first stage is an educational one and its purpose is to insure that citizens understand land use problems and procedures. Accordingly, the tools suggested are those of the one-way output category⁸⁷—media presentations, speeches, exhibits, film and slide shows, information programs in schools, newsletters, pamphlets, documentaries, and other reports.⁸⁸

The second stage, "public involvement," is designed to get individual citizens to take an active part in the land-use planning process. It is in this part of the handbook that, for the first time in the North Carolina scheme, the theoretical basis for public participation is discussed. However, this discussion is rather vague and is quite brief. It is simply stated that the ultimate objective of the participation program is to have the citizen "understand the problem, help prepare the long range plan, and thus be a part of the process and already involved when the time comes for implementation."⁸⁹ While not entirely clear, this seems closest to the democratic theory of participation and a citizen influence definition,⁹⁰ although there are strong elements of the citizen involvement definition⁹¹ in that the citizen's role includes being educated and "helping" in the planning process, rather than clearly influencing decision-making.

The basic participatory device suggested for use here is the advisory committee, a two-way interactive device.⁹² The handbook notes that the public hearing, the only tool directly required by the CAMA, is of "questionable effectiveness" for eliciting the type of participation envisioned.⁹³ The timing issue is also noted for the first time, with the handbook stating that participation should take place at each step of the planning process.⁹⁴

V. CONCLUSIONS AND RECOMMENDATIONS

The requirements for public participation in the preparation of the

87. See text accompanying notes 48-51 *supra*.

88. CRC HANDBOOK, *supra* note 65, at 4-11.

89. *Id.* at 13.

90. See text accompanying notes 33-37 *supra*. This is reinforced by other statements in the handbook stressing the need for having participation at *all* stages of the planning process and for involving a wide range of citizens of all geographic, age, ethnic, sex, economic, and religious groups. CRC HANDBOOK, *supra* note 65, at 13-14.

91. See text accompanying notes 28-32 *supra*.

92. See text accompanying notes 56-58 *supra*. Other tools suggested include: personal interviews, questionnaires, neighborhood planning councils, and public meetings.

93. CRC HANDBOOK, *supra* note 65, at 12-13.

94. *Id.* at 13.

local land use plans mandated by the Coastal Area Management Act of 1974 are quite limited. The CAMA requires only an opportunity for public comment at a hearing to be held after the plan has been formulated and makes no reference to participation in the plan-making process. The guidelines adopted by the CRC contain only vague general statements concerning the desirability of obtaining public participation and only require distribution of a summary of the plan following its adoption. This total lack of specificity in the body of the guidelines means that the entities preparing the plans can have no real idea about what the CRC will consider as an acceptable minimum level of public participation.⁹⁵ The only concrete materials on public participation are presented in the CRC's *Handbook for Elected Officials*, and this model is offered as an example, not a mandated scheme.

It seems that in large part the total participation program is written from the social control perspective of the authorities, rather than from the viewpoint of citizens who wish to have an impact on governmental decision-making.⁹⁶ While the entire scheme seems to have been adopted with no basic participatory theory or operational definition in mind, positions on these points are necessarily inherent in the participation program that emerged. Clearly, any definition of "public participation" as citizen power is rejected. The guidelines emphatically state that decisions in plan-making are to be made not by citizens, but by local elected officials and the CRC.⁹⁷

On the surface, the scheme seems to adopt the citizen influence definition of "public participation," basing participation on the traditional democratic ideal. This is reflected in the CRC policy statement that before making final determination of policy issues, local elected officials should obtain the views of all the county's citizens.⁹⁸ However, a different picture emerges when the following points are considered: the lack of any participation requirements in the plan-making process in the CAMA; the general matter-of-course allusions to public

95. For example, would an extra public hearing be sufficient to meet the requirement? A public meeting? A single blanket invitation to "participate" that is issued to all citizens through publications in a local newspaper? Or is something more required? As written, it is impossible to answer these questions by reference to the guidelines.

96. See note 13 *supra*. This is evidenced by the CRC's statements in their adopted handbook that a "successful citizen involvement program must begin at the top, with those in charge becoming actively involved Equally obvious is the fact that successful programs of public participation are invariably carefully organized and monitored." CRC HANDBOOK, *supra* note 65, at 19.

97. CRC GUIDELINES, *supra* note 64, at 3.

98. *Id.* at 1.

participation in the body of the guidelines; the relegation to the status of suggestions in an unofficial handbook of the only substantive material on participation; and the handbook's heavy emphasis on educating citizens. A definition of "public participation" as citizen involvement seems to be implicit in these facts. There is no sharing of power and most of the citizen-government exchange that is envisioned seems to be designed to influence citizen attitudes and decisions, not governmental decision-making. The public participation program is basically, though perhaps not entirely, a public relations campaign by the local governments intended first to raise citizen consciousness as to land use issues and problems and secondly, to build public consensus around the plan designed by planning experts.⁹⁹ The role of the general public is to be a passive one, with minimal involvement in the plan-making process.

Whether such a limited participation program meets the standard of providing the "opportunity of full participation by . . . interested parties, public and private"¹⁰⁰ required for funding under the federal Coastal Zone Management Act of 1972 is debatable. At best though it probably represents very close to the minimum requirements for public participation that the State could provide and still receive federal funding for the local planning required by the CAMA.¹⁰¹ In any event, the State requirements for public participation in the local land use planning process need to be greatly strengthened. As CRC members have recognized, any coastal management plan designed and adopted without significant citizen input is doomed to failure. It must be realized that public participation is not a political luxury, but a practical necessity.¹⁰²

While the CRC Guidelines alone might provide the necessary framework for requiring a more active role for citizens in the local planning process, the CAMA should be amended to mandate inclusion of a participation element in the plan-making process.¹⁰³ In so doing, the

99. The guidelines for the Washington Shoreline Management Act also place a great deal of importance on the use of public participation to build consensus on the local plan. See WASH. AD. CODE § 173-16-040(1)(f).

100. Coastal Zone Management Act of 1972, 16 U.S.C. § 1455(c)(1) (Supp. II, 1972).

101. In July 1974 North Carolina received \$300,000 as a first-year grant under this Act. News and Observer, July 8, 1974, at 24, col. 5.

102. See A. SCOVILLE & C. NOAD, *supra* note 3, at 9.

103. It is in part because of this lack of statutory direction that the CRC staff was initially reluctant to include any public participation requirements in the proposed guidelines. Interview with Mr. William Swindaman, Land Policy Staff, Office of State Planning, Nov. 20, 1974.

legislature should carefully consider the theory of public participation they wish to employ and adopt a provision specifically incorporating that theory. This is essential since the choice of participation theory is determinative of the remaining decisions that have to be made regarding the choice of tools to be used and the stages in the planning process at which these devices should be applied. The legislative enactment should be more than a standard statutory cliché or vague paean to public participation.

Specifically, the legislature should embrace the democratic theory of participation and adopt the citizen influence definition of public participation for use in local land use planning under the coastal area management program. The citizen involvement definition, which is currently being followed, is sterile, undemocratic, elitist, and ineffective. It assumes that citizens are incompetent to significantly participate in decisions that will vitally affect their lives. Such a theory should be forcefully rejected.¹⁰⁴ The directive adopted should require that citizens be given a real opportunity to influence the land policy decision-making process. Otherwise, citizens have no motivation to participate and will not do so.

Further, the provision adopted should be compatible with the following policies. First, *all* segments of the community should have an equal voice in planning decisions. Secondly, public participation should be part of the on-going planning process, rather than limited to comment on a pre-made plan. Finally, the entities responsible for plan-making, adoption, and implementation should have an affirmative duty to see that such participation takes place.

To accomplish these goals a statutory provision similar to the following should be added to the Act.

All individuals and community groups in the local planning area shall have full opportunity for involvement in the process of the development and implementation of required local land use plans. This involvement shall be designed to provide clear and direct access to the decision-making process of the entities responsible for plan-making, adoption and implementation in order that public views can significantly influence policy, planning and program decisions. To this end, the entities responsible for the plan-making, adoption, and implementation required by this Article shall pro-

104. On the other end of the spectrum, for both political and practical reasons, the citizen-power definition is probably currently infeasible for use in North Carolina. A possible exception to this, and one which should be studied, would be use of the referendum. See text accompanying note 55 *supra*.

vide for, encourage, and assist, to the fullest extent practicable, public participation in their plan-making and implementation process. Adequate showing of such a participatory program to the Coastal Resources Commission shall be a prerequisite to that body's approval of local land use plans and implementation programs.

The CRC guidelines should also be revamped to effectuate the policy enunciated in this statutory provision. They should be designed to require use of those tools at each stage of the planning process necessary to provide citizens with the opportunity to influence planning and policy decisions.

To assure that such participation is allowed and encouraged in each locality, these standards should be made a part of the formally adopted guidelines, not appended as mere suggestions. While recognizing that the guidelines will not form an immutable model which must be precisely followed in every locality, those preparing plans should be strongly encouraged to follow the basic model. In addition, they should be given the technical and financial assistance necessary to accomplish the program, and be required to explain and justify any changes made in this participation model before their plan is approved.¹⁰⁵ Also, in order that the participation will indeed affect local decision-making, the guidelines should include an explicit statement that those preparing the plan not only allow public participation, but actively consider citizen input in all planning, policy, and program decisions.¹⁰⁶

The CRC should also carefully consider the various tools of participation that can be used and should adopt a table showing, for each step in the planning process, which tools are required, and which additional tools are suggested for use where time and resources permit.¹⁰⁷ Such a table, adopted as part of the formal guidelines, would provide the clarity and specificity which are lacking in the present guidelines.

Certain relatively low-cost tools should be mandated for use

105. It should be made clear that these requirements apply to whomever prepares the local plan, be it a county, a municipality, a lead regional organization, or the CRC itself.

106. *Cf. Calvert Cliffs' Coordinating Comm., Inc. v. AEC*, 449 F.2d 1109, 1117-19, 1128 (D.C. Cir. 1971). *See also Scenic Hudson Preservation Conf. v. FPC*, 354 F.2d 608 (2d Cir. 1965), *cert. denied*, 384 U.S. 941 (1966); Reich, *supra* note 4, at 1248-51.

107. Such a matrix would be similar to that proposed by EPA in their draft guidelines for areawide waste treatment management programs. U.S. ENVIRONMENTAL PROTECTION AGENCY, DRAFT GUIDELINES FOR AREAWIDE WASTE TREATMENT MANAGEMENT 12-6, 12-7 (1974).

throughout the planning process. These could include: depositories which could be periodically updated and kept at accessible locations such as school and public libraries; exhibits at local focal points; presentations in the local news media; speeches to school, civic, church, special interest, and neighborhood groups; a newsletter to all interested citizens; and a planning advisory committee with representation from all segments of the local community. In addition, use of the public brochure¹⁰⁸ and neighborhood meetings should be suggested for use where at all practicable. Also, use of statistical surveys to ascertain citizen opinion, goals, and objectives should be suggested, although the high cost will prohibit its use in many communities.

In latter stages of the planning and implementation process, other tools that require a more substantial commitment of time and resources should be required. The planning staff should establish liaison with interested citizen groups; workshops and seminars should be required to delve into planning issues in more detail; and a series of community public meetings should be held prior to the mandated formal public hearing.

Such an on-going program of public participation would mix input, output, and interactive devices in such a manner to enable citizens to have a significant impact on local decision-making. It reflects the fact that public participation must be more than a manipulative public relations program. Although some citizen education and consciousness raising is a necessary first step in any participation program, it is essential that this step be undertaken with the express intention of so doing in order to equip the citizens to have a voice in those planning decisions which will so vitally affect their lives. Unless planners, local governments, and citizens understand and accept this principle, effective public participation in governmental decision-making will be impossible. This suggested program will be difficult to implement, but is a necessary component of a successful land use management program.¹⁰⁹

DAVID W. OWENS

108. The public brochure is a document similar to the presently required synopsis, but prepared and distributed *before* the plan is made.

109. See Bolle, *supra* note 62, at 504.