

# Public-Private Partnerships to Advance Sustainability & Resilience

Ira Feldman  
greentrack strategies  
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## Recent pronouncement

- ***...The post-WWII development model is now defunct. The new model of investment emphasizes the use of public-private partnerships (PPPs), new project preparation facilities, new forms of investor risk protection, and financialization...***

## Monaghan (2010)

- *“Local sustainability faces a perfect storm... leaders in local government are going to be asked to do a lot more work on environmental and social sustainability but with much less money.”*
- *“empower local authorities to address the challenges they now face by offering ... cost-neutral and powerful ways for leaders in local government to advance sustainability ... a myriad of innovative strategies.”*

## Meister (2013)

- “Public-private collaborations offer a strong model that leverages the strengths of both government and business to help meet the growing need for investments in climate and disaster resilience building.”
  - “Government policies can help create an enabling environment and ...overcome the barriers that would otherwise inhibit private sector action.”
  - “Public-private collaborations can ...manage risks and unlock opportunities, providing benefits both business and government.”

## Ira Feldman's inquiry...

- *“Public Private Partnerships are increasingly viewed as an important vehicle for advancing sustainable development and resilience...”*
- Why is this statement so prevalent?
- What is the genesis of this belief?
- Has it been documented as true?

## PPP initiatives

- UNCITRAL (International Trade and Law)
- Law, Justice and Development Forum of the World Bank
- US Chamber of Commerce (Partnerships and Resilience)
- Numerous others...

## Facilitators

- Environmental Law Institute
- American Bar Association, Government & Private Sector Innovations (GPSI) and Energy Infrastructure Committees
- Environmental Section of the Maryland State Bar Association
- ACCO

## June ABA-ELI agenda

- R!SE Initiative -- international
- Congressional P3 Panel – US national
- Prince George's County P3 Project -- local
- Renewable Energy P3s
- American Institute of Architects
- World Bank Group

## Sardonis (2013)

- *Environmental public-private partnerships have grown tremendously in recent years and the public-private partnership (PPP) model has significant potential...*
- *However, **no established framework** exists for evaluating environmental public-private partnerships or determining if the partnerships are successful.*

## Saussier (2012)

- There is no clear definition of PPP's (OECD 2008)
- The term "PPP" covers a range of different structures where the private sector delivers a public project or service.
- Generally, projects are more affordable, because payments are spread all over the length of the project
- PPP's maximize the use of private sector skills

## Saussier

“PPP’s are associated with both promises and failures...”

Different types of PPP’s have their own advantages and drawbacks:

- Difficulties to enforce (incomplete) contractual agreements
- Disconnect between price and costs over time
- Non-verifiable dimensions of the contract
- Opportunistic behaviors might arise

## A confluence of thinking

- Business must be part of the solution
- Government need not always be the lead
- Multi-stakeholder approaches add value and legitimacy

## ...and continuing challenges

- The “rules of the game” have not yet been defined
- The several “communities of practice” are not yet fully aware of the need to merge their approaches
- A challenging interdisciplinary mix – law, finance, development, etc.

## Sustainability threads

Within the sustainability space, identified two distinct threads of discourse on PPP's...

1. Type II partnerships, as introduced at the 2002 Johannesburg World Summit on Sustainable Development (WSSD), and their progeny.
2. Innovative financing vehicles in a time of austerity, especially for municipal governments.

## Type II Partnerships

Impact of Type II Partnerships from WSSD  
(2002)

until Rio+20 (2012):

- Several lists purporting to track “partnerships”
- Incomplete, inconsistent metrics of success
- Many anecdotal stories, some report robust partnerships between E-NGOs and corporates, but also some describe “greenwashing”

## Post-2015 Development Agenda

Components of the process:

- Sustainable Development Goals (SDGs)
  - Partnerships White Paper (2015)
- Financing for Development (FfD)
  - “blended finance”
- Metrics and Indicators (2016)



## World Bank Institute (2012)

- ***“Our vision is to provide governments, PPP policy makers and practitioners, parliamentarians, local governments, civil society organizations, banks, private sector developers, and users of infrastructure services with **the necessary skills and expertise to properly design and implement PPP’s.**”***

## World Bank Institute

- “PPP’s can:
  - mobilize additional sources of funding and financing for infrastructure—important at a time of financial austerity,
  - help improve project selection by subjecting them to the market test of attracting private finance, and
  - ensure planning for the adequate maintenance of assets.”

## World Bank Institute

- ***“PPP’s are not a panacea.*** Governments need new skills to implement them properly. Without these skills, policymakers risk selecting the wrong projects to be PPP’s, they may not design them correctly, end up bearing too many costs or risks, and they may not regulate them properly.”

## Meister: Resilience in Action (2013)

- “Adaptation to climate change” as a subset of sustainable development activities
- Report summarizes lessons learned from over 100 public-private collaborations around the world
- ***“New forms of formal and informal partnerships between government and business are emerging which overcome traditional market barriers to deliver resilience-building solutions.”***

## Meister: Resilience in Action (2013)

- “While PPP’s can offer the potential for greater transparency...
- ... they can also be a source of corruption and rent-seeking both during the procurement phase and implementation, ***if there is insufficient transparency and governance is weak.***”

## Roger Feldman’s “P3 Balance”

- 1) The three different concepts: “P3s” “Sustainability” “Resilience”, must be integrated if P3s are to achieve the desired integrating purposes**
- 2) Each concept has different meanings or nuances when applied in different circumstances
- 3) Each is subject to combination through organizational and contractual arrangements in different forms to achieve the objectives of the involved parties**
- 4) Definitional overlaps of the terms need to be clarified in order to relate the three concepts in relation to each particular fact situation.

## The P3 Balance

- Shares three common objectives:
  - A built environment that performs well (“Infrastructure”)
  - A natural environment that is environmentally healthy (“Sustainability”)
  - A civil society that is safe or can recover from physical shocks from natural or (“Resilience”)

## The P3 Balance

- Achieving these three objectives necessarily reflects (or fails to reflect) some balance between governmental power, community involvement and private initiatives. (“Public Private Partnerships” or “P3s”)
  - Therefore: **“P3s” are not a single inherently unique organizational structure. Each reflects the striking of a balances between this triad of factors to achieve desired results** (the “P3 Balance”)

## The P3 Balance

- The P3 Balance reflects trade-offs in responsibility and authority for provision and/or assumption of risk for scarce resources.
  - Provision of Capital
  - Provision of Skills for Execution of Specific Development and Operation Tasks
  - Authority for Management Integration of Project or Program Development and Satisfactory Community Response to Related Requirements

## The P3 Balance

- There is an increasing consensus that the current P3 Balance for creating Infrastructure, Sustainability and Resilience ***through our legal organization (political and contractual)*** to make these tradeoffs is not working satisfactorily.
  - Infrastructure adequacy is in a net declining and deteriorating mode relative to changing growth requirements.
  - Sustainability is undermined by infrastructure deterioration or failure to preserve the balance of supply of scarce natural resources to requirements.
  - “Resiliency” of Infrastructure, particularly when challenged by unanticipated events (physical or manmade), is considered insufficient.

## The P3 Balance

- 1) Therefore there are an increasing number of suggestions and initiatives to readjust the P3 Balance.
- 2) *The suggestions are linked by the fact that they involve the reallocation of authority and responsibility over the scarce capital and operating funds, skill and management resources and societal organization required to deal with all three challenges.***
- 3) Consequently, when we speak of balancing P3s for Infrastructure, Sustainability and Resiliency, ***we are talking about readjusting three interlocking systems for coping with current realities through the most efficient use of resources.***

## Contact

Ira Feldman  
president & senior counsel  
greentrack strategies  
202-669-1858  
[ira@greentrack.com](mailto:ira@greentrack.com)  
SKYPE: irafeldman