
A Negotiation Credo for Controversial Siting Disputes

Lawrence E. Susskind

Prisons, half-way houses, AIDS hospices, solid and hazardous waste treatment plants, landfills, housing for low-income families, power plants, transmission lines, sewage treatment facilities—all are “Locally Unwanted Land Uses” (LULUs) in somebody’s eyes.

LULUs are the targets of individuals or groups who believe they stand to “lose” if a facility is built. They worry about changes in the character of their neighborhood, possible loss of property value, explosions, threats to water supplies or air quality, increased risk to health and safety, threats to endangered habitats and species, or other disruptions to their everyday lives. Those who stand to gain, on the other hand, are fearful that potential tax ratables will be lost. They are angered by any challenge to the rights of property owners to use their land as they like, and annoyed at what they see as a tendency to put environmental concerns above immediate human

needs and long-term economic progress.

Government officials are under pressure from both potential gainers and losers to “do something” about the siting of LULUs. While it is often clear that there is a need for many of these facilities, it is apparent to those who have followed these controversies closely that the process of making and implementing facility siting decisions is often unfair and unproductive. Many of the groups most directly affected are not given a meaningful opportunity to get involved in the process until it’s too late to affect the outcome. Technical considerations are sometimes given short shrift while political priorities are served. Some neighborhoods are occasionally asked to accept far more than their “fair share” of LULUs, while promises regarding the mitigation of adverse impacts are not always kept. Quite often, financial constraints or scheduling deadlines are used as excuses to cut off public debate.

Lawrence E. Susskind is Professor of Urban and Environmental Planning at the Massachusetts Institute of Technology and Associate Director of the Program on Negotiation at Harvard Law School, 513 Pound Hall, Harvard Law School, Cambridge, Mass. 02138.

The single most important cause of siting controversies is the lack of trust among the affected parties. Mistrust is often created by the underlying assumption that communities or regions designated as sites must accept their plight as long as the government has provided what it perceives as adequate technical justification and acted in accordance with all procedural requirements. As it turns out, even if a majority of the appropriate elected officials decides that the benefits to the community will outweigh the potential losses, the facility may still not be sited. Indeed, even if government health and safety standards are sure to be met, potential losers should not be expected to shoulder the risks and costs without guarantees that mitigation efforts will be effectively monitored and controlled.

To deal with the many complex challenges posed by LULU disputes, a distinguished group of siting experts from across the United States has proposed a set of guidelines—a “Facility Siting Credo”—that offers a practical, common sense approach to resolving these controversies. The prescriptive advice offered in this Credo evolved from a series of workshops held over the last year that brought together academic researchers and officials from the public and private sectors, all of whom have had extensive experience in LULU disputes.

The workshop program was a collaborative project of the Risk and Decision Processes Center of the Wharton School at the University of Pennsylvania, the MIT-Harvard Public Disputes Program, and MIT’s Center for Technology, Policy, and Industrial Development. Professor Howard Kunreuther of the Wharton School and I served as co-chairs of this project, and worked closely with two doctoral degree candidates—Thomas Aarts of the

Wharton School and David Laws of the Department of Urban Studies and Planning at MIT—to edit the workshop discussions into the 13-point Credo.

If public officials, citizen activists, industry leaders, and technical experts adopt this Credo, we might—as a nation—be able to engender greater trust among the affected groups by dealing with our differences in a fashion that produces fairer, wiser, and more efficient siting results more often. Following is the “Facility Siting Credo”:

1. *Seek consensus through a broad-based, participatory process.*

It is imperative to make a serious attempt to elicit and address the concerns of *all* those likely to be affected—by altering designs to avoid adverse environmental impacts, by working out fair compensation for impacts that cannot be mitigated, and by devising shared monitoring and management arrangements to ensure that regulatory requirements are upheld.

Representatives of affected stakeholder groups should be identified and involved at each stage of the siting process—problem identification, needs assessment, risk assessment, impact assessment, technology selection, and, most importantly, final decision-making. This can be accomplished by interviewing or surveying key spokespeople or groups, establishing broadly representative task forces or advisory committees endowed with the resources they need to participate effectively, and by commissioning expert analyses using advanced analytic tools. Those affected by siting decisions should have a meaningful chance to review the criteria for site selection.

Efforts to seek consensus can undercut charges of unfairness, thus winning support from uncommitted segments

of the community. The support of those who start out as neither opponents nor proponents is necessary for a successful siting effort. Additionally, a promise to seek (although not necessarily achieve) consensus provides everyone with a guarantee that the best possible advice will be considered before any action is taken.

2. *Work to develop trust.*

All too often, technical analyses upon which many facility siting decisions are based are not shared with the public in a timely fashion. And, when they are publicized, the information is often not communicated effectively or generated in a way that enhances its believability. In almost all instances, secrecy is counterproductive. Try to recognize potential sources of mistrust before the siting process begins (often these include negative feelings toward government itself). Be prepared to admit past mistakes. And, most importantly, avoid exaggeration. For example, do not promise that "the incinerator will emit no odors" if there is some chance that it will; instead, indicate that odors will be rare, and specify what will be done to contain and control them if they do occur. Trust can best be built by not making promises that cannot be kept and not demanding commitments that cannot be fulfilled.

Groups with different points of view should have a chance to criticize the recommendations of project developers and the analyses upon which their proposals are based. Joint fact-finding mechanisms should be created so that all stakeholders can play a role in specifying the forecasts about risks, costs, and benefits they need to make informed decisions. Sometimes, in order to ensure that information is shared effectively, it helps to appoint a neutral body to serve as a clearinghouse.

3. *Get agreement that the status quo is unacceptable.*

All LULUs are aimed at solving existing problems. Too often, these problems are poorly defined and not adequately publicized. Those who advocate building new facilities ought to be precise about the definition and scope of the problem they are trying to solve. More specifically, they should be able to demonstrate unequivocally that the problem addressed by the facility is a serious one (in the eyes of unbiased experts as well as public officials) and that there is general agreement among affected groups that some action is required.

To convince the public of the scope of the problem, a careful investigation must be made of the consequences if nothing is done. Specifically, all groups need to understand the current and future costs (e.g., including the risks to different populations) of doing nothing.

4. *Choose the facility design that best addresses the problem.*

It is important that problems such as the accumulation of hazardous waste be addressed with a facility design that all stakeholders agree is appropriate. Developers too readily rely on "outside experts" whose technical reports generally fail to include the views of neighborhood residents in a meaningful manner. In fact, the "expert" reports often provoke objections from excluded segments of the population and legitimate their claim that they know more about the problem than the experts (even if they are not well-versed about the possible solutions).

Before making a facility siting decision, a comprehensive list of alternative approaches to the problem (including taking no action) should be made public. For each option, positive and negative consequences (both short

and long-term) should be spelled out in language that nonexperts can comprehend. Efforts should then be made to determine each stakeholder's reaction to these estimates of benefits and costs.

5. *Seek acceptable sites through a volunteer process.*

It is usually a mistake to claim that there is a single "technically best" site as siting criteria are sufficiently subjective that it is impossible to rank sites precisely. Certainly, there are technically unacceptable sites that should be eliminated; having done this, it makes sense to look at volunteer sites that are acceptable.

Encourage neighborhoods, communities or regions to volunteer as possible candidates. They should be able to express interest in volunteering for a facility without moving toward irreversible commitments at the outset. Volunteers must be given substantial incentives to consider hosting a LULU, and they must be guaranteed that technically unsuited sites will be eliminated from consideration.

We ought to be able to make it attractive to host a LULU. Industrial developers have pursued this approach for decades—offering tax benefits as an incentive for permitting commercial and industrial development. Communities have competed avidly for such tax abatements, despite the negative impacts associated with them.

6. *Consider a competitive siting process.*

Assuming that attractive proposals can be crafted, facility sponsors should consider a competitive process of site selection. Auctions, for example, in which neighborhoods or communities bid against each other (specifying what they want as fair compensation or incentives for hosting a facility) have been effective. Community representatives should have a chance to negoti-

ate incentive packages with facility sponsors. Such negotiations are most effective if incentive packages are first proposed by potential volunteers, based on their perception of likely benefits and costs.

Charges that such incentives constitute bribery are easily blunted as long as the search for volunteers is preceded by: (1) an open process establishing the need for the facility and specifying its likely impacts; (2) a public guarantee that the site selected will meet basic technical and environmental requirements; and (3) a public promise that incentives will benefit everyone in a community and not just a few individuals. It also helps if a neighborhood or community decision to accept a facility is ratified by a binding referendum.

7. *Work for geographic fairness.*

It is extremely unlikely that technical criteria will eliminate all LULUs from a particular neighborhood or community. It is inappropriate to locate too many LULUs in a single locale—even if a community is willing to accept them. Geographic fairness ought to be a siting goal unto itself. Some municipalities have established point systems that give neighborhoods credit for LULUs already accepted as well as new facilities sited. These point systems should be widely discussed before they are adopted. Sometimes geographic fairness may suggest siting multiple smaller facilities rather than a single larger facility in order to meet a need.

8. *Keep multiple options on the table at all times.*

It is never a good idea to have a list with only one possible site for a LULU, even at the final stage of a siting process. Potential host communities feel more discriminated against if they are the only place being considered. Moreover, negotiations regarding pos-

sible incentive packages tend to produce the most reasonable results if a facility sponsor is not held hostage by the only possible site. It may cost more to keep multiple sites under consideration, but in the end it is worth it.

9. *Guarantee that stringent safety standards will be met.*

No neighborhood or community (particularly one including many households of modest means) should be asked to trade health or safety for economic benefits. All LULUs must be required to meet legally established health and safety standards. Based on risk assessments and impact assessments, potential LULU hosts need to have an opportunity to specify additional health, safety, and environmental standards that they would meet through mitigation, changes in facility design, substitute technologies, modifications in planned operations, public education, training of facility operators, and the like.

The key to ensuring that risks are minimized and standards are met is monitoring and control procedures. The design of an effective monitoring system is an important part of the siting process. Potential LULU hosts must be assured that they will have the resources they need to participate in or purchase rigorous monitoring. This may need to include a promise to train local personnel.

Maximum operating thresholds should be established in a written siting agreement. All restrictions should be spelled out in detail (e.g., who can and cannot use the facility under various sets of circumstances). The host neighborhood or community should be guaranteed carefully prescribed shutdown powers if operating thresholds are not met. Facility sponsors (including government agencies) may be required to post bonds that

need not be returned until all siting requirements are met.

10. *Fully compensate all negative impacts of a facility.*

If a facility must be shut down temporarily for repairs (or permanently because it cannot meet specifications), who will have liability for meeting the ongoing needs that the facility serves? A schedule of contingent compensation payments (owed under various sets of operating circumstances) should be negotiated. Exactly how future liability will be assessed and allocated should be described in a written siting agreement.

11. *Make the host community better off.*

Try to provide enough benefits so that nearby residents feel they are better off with the facility than without it. Incentives can take many forms—in lieu of tax payments, promises to make long sought-after neighborhood improvements, property tax reductions, service priorities or cost reductions (such as reduced electricity costs for those near power plants), and promises that other LULUs will not be placed in the same area. Assuming that the benefits of building a facility are substantial (or there wouldn't be a need) there ought to be a way to "tax" some of the gainers to protect potential losers and finance incentive packages.

12. *Use contingent agreements.*

Whether a decision to host a LULU is voluntary or not, siting agreements ought to be put in writing. Contingent commitments should be spelled out. For example, if proponents claim that something is not going to happen, they should spell out in writing how such an unlikely occurrence will be dealt with if it does occur. All points negotiated with a community or neighborhood should be explicitly

incorporated into the operating permits for the facility. For example, promises regarding hours of operation should be specified along with a requirement that changes in the hours of operation are contingent on re-approval by a licensing authority. All kinds of contingencies can be spelled out regardless of whether or not all the groups involved agree on what will or won't happen.

13. *Set realistic timetables.*

When it comes to facility siting, it is often necessary to "go slow to go fast." Opponents have numerous administrative and legal means of slowing or even halting siting processes that they feel excluded them. A good siting process allows all

parties adequate time to consider the full range of options and to weigh the technical evidence as it comes in.

As important as the siting of a facility may be, preempting joint factfinding and open public debate almost always backfires. On the other hand, it is appropriate and helpful to set and enforce "hard" deadlines. When timetables are realistic, it is a lot easier to keep to them.

* * * *

Your criticism and comments on these prescriptions would be most welcome. Is the advice in this Credo practical? What other advice would you give?