FINDING COMMON GROUND: CREATING A DIALOGUE WITH THE COMMUNITY

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ABSTRACT

The following paper discusses citizen participation in the siting of public facilities that are perceived as generally beneficial but locally undesirable. More specifically, the paper draws on experiences from eight years in the field of public policy mediation and several recent policy and siting disputes over geothermal development on the Island of Hawaii.

Since the 1960's community interest groups have raised concerns about the quality of life in their communities and have challenged, both legally and politically, the siting of many public projects. Whether it is agreed or not that such projects are necessary from a greater societal point of view seems to have little bearing. The difficulties of siting remain the same. Unless ways are found to resolve such siting issues in a more mutually acceptable manner, society may well face gridlock in meeting some of its basic infrastructural needs in the 1990's.

Recently, practitioners in the field of Alternative Dispute Resolution have attempted to work with communities, government agencies, and developers to encourage a more comprehensive, interest-based methodology for resolving public policy and siting disputes. Unlike private disputes, public siting disputes with contentious environmental issues would seemingly not be good candidates for informal resolution. The use of mediation/facilitation in these types of disputes, however, has shown promise and is continuing to be developed and refined today for this purpose.

Mediation is a voluntary process of dispute resolution that is based on maximizing mutual gains and meeting the interests of all parties rather than on positional battles. Facilitation, in turn, is the use of a neutral third party to manage discussions and the sharing of information. Both processes recognize that it is the responsibility of the disputants to settle their dispute but that the intervention of a neutral third party is advantageous in assisting the parties to reach a desirable outcome or resolution.

Normally the environmental issues at stake in these kinds of disputes deal with irreversible effects, are difficult to quantify in terms of costs and benefits related to the environment, raise questions relating to the legitimacy of representation, particularly those representing the public interest, and, often exclude the government agency responsible for implementation in the dispute resolution process.

Geothermal development provides a good example of a facility siting problem that meets these criteria. First, there is no basic disagreement that the US can no longer be dependent on oil. In fact, there appears to be general agreement that dependency is both economically and environmentally unsound. There is, however, great disagreement about the technologies the US should employ to cut dependence on oil, and, when, where, and how these technologies should be employed. Historically, the policy-making system employed to locate alternative energy facilities and make decisions on which
technologies will be used has been adversarial in nature. Too often it is the old DAD (Decide-Announce-Defend) system which is no longer guaranteed to provide a desirable outcome.

Although the author has been involved with three geothermal cases on the Island of Hawaii, this paper will deal predominantly with the "Geothermal Roundtable" discussions that were run as a citizen participation process by the Center for ADR in 1980-81. The other cases involved mediation of particular geothermal permits and although some of the experiences and points of view expressed in this paper are relevant to them, space does not permit a full discussion of these mediations.

GEOTHERMAL ROUND TABLE

DISPUTE

The State of Hawaii has had as a cornerstone of its public policy for the last several years energy self-sufficiency. In line with this policy is the support of exploration and development of indigenous sources of energy. Geothermal is one such source of energy being pursued by the current administration. This administration and the energy development community in Hawaii feel that geothermal is the most commercially viable, in the near term, of the energy alternatives being considered for development. Meanwhile, the "community" especially those located in the area proposed for geothermal development as well as interested environmental groups, are not convinced that geothermal is the way to proceed.

The State is supporting the concept of both the development of geothermal to provide power to the Island of Hawaii and the shipment of geothermal energy to Oahu via an undersea cable. Permits are currently issued or pending for the development of 25MW for the Island of Hawaii, the exploration for 100MW and development of 25MW for use on the Island of Hawaii or shipment to Oahu, and exploration by the University of Hawaii aimed at assessing the development potential of the resource with an eye towards developing 500MW for shipment to Oahu. There is strong feeling among the County and public interest representatives that the Island of Hawaii in general, and the people of the Puna district specifically, will not receive any benefit from the development of geothermal energy for shipment to Oahu and, to the contrary, will be detrimentally impacted by the development. The public interest groups expressed grave reservations about the costs and wisdom of shipping geothermal energy from the Island of Hawaii to Oahu.

Several elements unique to the development of geothermal on the Island of Hawaii further complicate, hinder, and shape the dispute and, as a result, shaped the final outcomes of the Roundtable discussions recently concluded. One of these is that a portion of the proposed geothermal development is located on state conservation land within an area of Hawaiian rainforest. Environmental groups nationwide are concerned about the impact of rainforest loss on worldwide ecosystems. National organizations and the US government are exerting influence to stop the destruction of Amazonian rain forests. During the period when Roundtable discussions were taking place, local and national groups began to organize to stop the destruction of the Hawaiian Rainforest as the only rainforest area within the US. Their stand was, and continues to be, a position that argues that the US cannot influence third world countries to save their rainforests when it pursues a policy of destroying our own.

A second set of issues which distinguishes geothermal energy development on the Island of Hawaii from development elsewhere are the issues of culture and religion. Native Americans throughout the country are reestablishing their cultures and identities. Native Hawaiians are a part of this movement. Part of their culture and heritage includes the worship of the volcano goddess Pele. It is their belief that any drilling into the ground to tap geothermal energy is a desecration. This belief makes the idea of geothermal drilling and development on the Island of Hawaii or anywhere else in the state unacceptable to them on religious grounds. This group (The Pele Defense
Fund) has litigated on this and other issues concerning geothermal over the past several years.

PROCESS

The Geothermal Roundtable was jointly convened by the Department of Business and Economic Development (DBED) and the Puna Community Council (PCC) to discuss how geothermal would proceed in the Puna District of the Big Island. Joint sponsorship for the Roundtable process was deemed essential and was indeed very instrumental in creating an atmosphere of collaboration and commitment by all parties to work diligently and progress as far as they possibly could in resolving as many areas of dispute as possible.

In the Roundtable’s development phase, interest groups that needed to be at the table were identified and a set of ground rules that all parties agreed to were adopted by the parties. Interest groups included representatives from the PCC, DBED, geothermal developers, county administrative and legislative agencies, the Department of Land and Natural Resources, the Department of Health (DOH), other state administrative and legislative agencies, the Pele Defense Fund, and public utility companies. At a later date, a chair at the table was added for an environmental representative since PCC did not feel comfortable representing these interests. This representative was selected by the environmental groups of the Island of Hawaii.

Ground rules that laid out the parameters for the meetings were then developed and agreed to by members of the Roundtable. These included an agreement that the deliberations would not include discussions of the threshold decision of if there would be geothermal development but rather, how and when such development would ensue. Other agreements included controls on videotaping, and on participation by the media and the general public. A series of 5 meetings were then held over a period of 13 months which resulted in the sharing of a great deal of information and contributed to several actions.

RESULTS

Over the duration of these meetings, many issues were clarified and most parties seemed to gain a better understanding of the true areas of disagreement. Roundtable discussions also seemed to contribute to several outcomes.

The first was the crystallization and movement towards the concept of a master plan for geothermal energy development within the Puna district. The Roundtable provided a forum to develop this idea and to allow participants to outline what they felt needed to be included in such a master plan. It also gave the parties a chance to participate in developing the content of the Request for Proposals (RFP) for this master plan that was later sent out by DBED. Such a master plan was envisioned by the group to address the orderly development of geothermal and the cumulative and ancillary impacts of this development on the community and geothermal proceed. These include issues such as transmission lines, public service impacts and needs, and system reliability.

A second outcome was consensus on the ultimate closing of the HGPA plant. Built by the University as a two-year demonstration project, this plant had been left to run with minimal attention several years longer than its intended life. It’s rusting bulk and antiquated technology were not only an eyesore to the community but provided constant H2S emissions which served to aggravate the community’s belief that geothermal development is a health hazard and a nuisance. It became clear through Roundtable discussions, mediations, and public hearings, that in retrospect, the best things that the State could have done for the geothermal industry would have been to shut down the HGPA plant much sooner than it did.

A final outcome of the Roundtable discussion was that it crystallized and focused the views of both the community and the county regarding air quality regulations proposed by the DOH. These proposed regulations had already been heard by the public via the public hearing process. Despite vocal
opposition that the regulations were far less stringent than the community and county thought appropriate, the DOH seemed intent on adopting them with the idea of amending them later if more stringent regulations were necessary. During a Roundtable meeting where this was discussed, the DOH Director committed to the group that he would not adopt the current proposed standards but would go to hearing on the more stringent standards that the community had been suggesting.

Ultimately, the Roundtable served as a forum for these issues until it became clear that progress under its initial ground rules was no longer possible. The public interest and county parties in the Roundtable are now working with the State Administration to develop a vehicle whereby they can reassess the need for geothermal in the overall view of an integrated energy plan for the State of Hawaii.

In general, the Roundtable appears to have succeeded in accomplishing the original goals defined by the parties, these being the sharing of information and establishing a venue for discussion on geothermal issues. The Roundtable exceeded these goals when it contributed significantly to several more concrete outcomes. The dialogue that was established (and is continuing informally among the parties) did not exist prior and greatly facilitated an understanding of the issues at hand. It appears to have clarified the participants' interests with respect to geothermal and spurred needed actions at the State level.

GENERAL COMMENTS ON CITIZEN PARTICIPATION IN SITING FACILITIES

What, then, do we learn about citizen participation? Partial but by no means complete lists of items which are relevant and should be the responsibility of the various groups involved in any dispute follows.

Developers of public projects and projects in general should understand and accept certain truths about communities:

1) A developer entering a community for the first time carries all the baggage of past developers and developments in that area good or bad;

2) Communities have generally had bad experiences with enforcement of permits once granted by a government entity;

3) Communities often feel that they are not heard or listened to and that their concerns are too often dismissed as "frivolous" or "uneducated";

4) Communities need the time and the resources to understand and be comfortable with the science involved in many siting proposals; and,

5) There is likely to be an element of any community that sees any change as bad.

Community members need to understand and accept certain truths about developers:

1) Developers are not inherently bad and for the most part have an interest in doing socially responsible projects and being good neighbors;

2) They have certain fiduciary responsibilities inherent in their corporate nature which are legitimate and must be recognized and dealt with in any participation process or dispute resolution;

3) They react more favorably to reasoned arguments that are put forth in a non-threatening tone and volume;

4) Communities have a responsibility for the accuracy of information they release;

5) Developers have an obligation to live up to the existing regulations and conditions of permits but are not responsible for enforcement; and

6) A concerned community has the responsibility to participate and educate itself about the issues at hand.

Government agencies involved in siting issues have a responsibility to:

1) Participate in community/developer dialogues
in a full and meaningful way.

2) Take seriously their ability and responsibility to enforce rules and regulations and agreements;

3) Share information and regulatory concerns they may have during the process;

4) Be willing to honestly assess a proposed project and share its assessment with parties; and

5) Clearly state but not hide behind the limitations of their participation in any process.

A key to dealing with these and many other relevant concerns or issues that arise, (and that all sides to a dispute must recognize), is the need to accept and legitimize each party’s point of view and then to either deal with it or defer it on grounds that are acceptable to that party. Reasons for deferring an issue may be that other information is needed prior to being able to adequately address or deal with it, or that other parties are involved who aren’t present and therefore this is not the forum to discuss it. Any deferral of an issue based on an incomplete forum needs to either have a forum designed to address it or be referred to the proper existing forum.

Enforcement and the design of enforcement systems can be key to community support of a proposal.

ADR practitioners can help developers, communities and government agencies to design and implement participation and consensus building programs. A successful program depends largely on the participation of all parties in good faith to reach the highest degree of consensus possible. It should by no means be construed that following this kind of participation process will guarantee support for a particular project. However, it is the author’s opinion that a process so designed would greatly improve a projects’ chances of success and would, through the participation and reconciliation of diverse interests, create a better project at implementation than might have happened otherwise. In the long run, the legacy of the application of ADR in this field may be to leave to future generations wiser projects and project designs.

In designing a citizen participation process for any public facility siting, all parties must be willing to invest time and interest. They must be willing to sit with each other with an open mind and the understanding that the feelings expressed by the various parties are legitimate. Any citizen participation process should identify and include representation from all stakeholders in the dispute. Areas in dispute must be defined and differing values and assumptions must be confronted. The group must work together to generate a sufficient number of alternatives and options concerning the proposed project for consideration. These options must then be weighed with respect to costs and benefits, and a fair determination of compensation or compensatory actions must be identified. Finally, the parties must be willing to see that the bargains made are implemented and that the parties uphold their commitments.