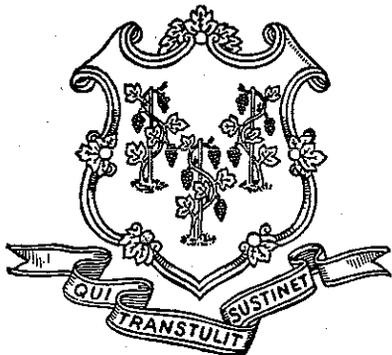


SITING CONTROVERSIAL LAND USES

Connecticut

General Assembly



LEGISLATIVE
PROGRAM REVIEW
AND
INVESTIGATIONS
COMMITTEE

JANUARY 1992

**CONNECTICUT GENERAL ASSEMBLY
LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE**

The Legislative Program Review and Investigations Committee is a joint, bipartisan, statutory committee of the Connecticut General Assembly. It was established in 1972 to evaluate the efficiency, effectiveness, and statutory compliance of selected state agencies and programs, recommending remedies where needed. In 1975, the General Assembly expanded the committee's function to include investigations, and during the 1977 session added responsibility for "sunset" (automatic program termination) performance reviews. The committee was given authority to raise and report bills in 1985.

The program review committee is composed of 12 members. The president pro tempore of the senate, the senate minority leader, the speaker of the house, and the house minority leader each appoint three members.

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LAND USES**

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COMMITTEE**

JANUARY 1992

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EXECUTIVE SUMMARY

The state, either directly through its public works process or through quasi-public agencies, has responsibility for locating a number of locally unwanted land uses (LULUs) from prisons to a low level radioactive waste disposal facility. It is also involved in developing state-supported group homes, halfway houses, and other community-based services that are often resisted by proposed host towns or neighborhoods. In addition, through the Connecticut Siting Council, the state regulates the siting of certain public utility structures (e.g., power generating plants, electric transmission lines, telecommunication towers and antennas) and waste management facilities that frequently arouse controversy. In January 1991, the Legislative Program Review and Investigations Committee voted to undertake a study of state policies and procedures for siting controversial land uses.

The primary purpose of the committee's study was to determine how to improve the balance between the often conflicting goals of efficiency and equity when locating publicly needed but locally unwanted land uses. The program review committee found that programmatic and technical requirements along with cost considerations drive most siting decisions in the state processes reviewed. Like other states, Connecticut has relied on its authority to force siting and attempted to overcome community resistance to the most objectionable facilities with compensation packages or financial incentives. Equity issues in terms of trying to distribute negative impact among all beneficiaries of controversial land uses are rarely considered.

In contrast, the committee found that several theoretical models such as point systems and auctions, promote equity in siting controversial land uses. They are, however, difficult to implement. In addition, the program review committee found that siting equity is difficult to define or measure.

It is clear the state must intervene and, if necessary, override local control of land use to get publicly needed facilities established. It is also evident local resistance frequently results from a lack of trust in government to act fairly or to adequately protect the public from possible health, safety, or economic harm. In the absence of a workable equity-based model, the committee concentrated on identifying ways to promote fairness in siting decisions by state government.

The program review committee adopted a series of recommendations that it believes will improve state siting decisions by increasing consideration of equity issues and providing greater accountability for those decisions. A list of the committee's recommendations regarding controversial land use siting follows.

RECOMMENDATIONS

PUBLIC FACILITIES

Statewide Planning

1. The state plan of conservation and development shall include a policy that the direct and indirect costs associated with hosting a public facility sited by the state or other entities on its behalf will be shared by the facility's beneficiaries to the extent reasonably possible.
2. An inventory of locally unwanted land uses including but not limited to state institutions and facilities, and facilities regulated by the Connecticut Siting Council, shall be developed and maintained by the Office of Policy and Management (OPM). Additional facilities to be included in the inventory shall be identified with the advice and assistance of representatives of local cities and towns. Within the limits of existing resources, a map showing the locations of the facilities included in the inventory shall also be developed by the policy and management office and updated annually.

State Land Planning

3. In consultation with the Department of Public Works, the Office of Policy and Management shall prepare a comprehensive plan for the development and use of state-owned properties. The state land use plan shall be prepared and adopted in the same manner as the state conservation and development plan. The planning process shall additionally include provisions for participation by representatives of the communities in which state-owned properties are located. The initial plan shall be submitted for legislative approval on or before November 1, 1994 and shall be revised every five years thereafter.

Consensus on Facility Need

4. Public education programs focusing on the need for locally unwanted land uses should be developed by state agencies responsible for siting controversial facilities and carried out on an on-going basis around the state.

Accountability

5. State agencies and quasi public agencies that site controversial facilities on the state's behalf shall establish in writing facility siting policies and

procedures that include specific site selection criteria and methods. Written siting criteria should address technical or programmatic requirements, requirements to avoid or mitigate risks to public health, safety, and welfare, and to the extent reasonably possible, fairness in terms of avoiding concentration of facilities with adverse impact.

Public Participation

6. State and quasi public agencies responsible for siting controversial facilities should consider using neutral mediators to facilitate public participation in their siting processes.

Voluntary Acceptance

7. State and quasi public agencies responsible for siting controversial facilities should, as a first step, implement a voluntary approach for selecting suitable sites. If the voluntary approach fails, siting processes based on the Connecticut Siting Council model should be developed and used.

Low Level Radioactive Waste Disposal Area Siting

8. The Connecticut Hazardous Waste Management Service shall apply to the U.S. Nuclear Regulatory Commission for a license to construct the state's low level radioactive waste disposal facility at or contiguous to an existing installation in Connecticut that in the 12 months preceding the application generated no less than 2 percent of the total curies of low level radioactive waste generated in the state. If and only if such application is finally denied by the commission, the service shall evaluate and select one or more other potential sites for the facility.
9. In evaluating other potential sites for the facility, the service shall consider, in addition to the factors currently listed in statute (in C.G.S. Section 22a-163c), the risk to private and public water supplies.
10. The property limits of any of the other potential sites selected by the service shall be at least two kilometers from the boundaries of any highly developed area as defined and identified in United States Geological Survey topographic maps.
11. The property limits of any of the other potential sites selected by the service shall be at least two kilometers from the property limits of any public school.

COMMUNITY RESIDENCES

- 1. The Connecticut Law Revision Commission shall review the Federal Fair Housing Amendments Act of 1988 to assess its impact on Connecticut protective zoning laws related to group homes and other pertinent laws, and recommend any necessary statutory changes by January 6, 1993.**

- 2. The Office of Policy and Management shall create and maintain a statewide registry listing all community residences, which shall be defined as neighborhood facilities, funded by state agencies and housing persons receiving services or treatment for a physical or emotional condition or disorder or housing persons who require assistance in being reintroduced into the community. State agencies that sponsor community residences shall be required to submit the following information to OPM for the registry:**
 - municipality where residence is sited;**
 - region served;**
 - residence address (where applicable) & number of beds;**
 - population served (mental health, correction, etc.);**
 - licensing agency (mental health, correction, etc.);**
 - operating agency and address including phone number; and**
 - funding agency.**

All information compiled by the registry relevant to siting decisions shall be considered by the state agencies that sponsor community residences. OPM shall develop regulations for the registry that take into account federal laws on confidentiality and protect client privacy.

- 3. Each state agency that sponsors community based residential services shall develop indicators of need for such services to be used in aiding siting decisions at regional and local levels.**

- 4. Siting guidelines that describe the criteria and method used to determine appropriate locations for community residences should be developed by each state agency that funds or supports them. These guidelines should be drafted according to the needs and concerns of the populations sponsored by the different state agencies.**

INTRODUCTION

The state, either directly through its public works process or through quasi-public agencies, has responsibility for locating a number of locally unwanted land uses (LULUs) from prisons to a low level radioactive waste disposal facility. It is also involved in developing sites for state-supported group homes, halfway houses, and other community-based services that are often resisted by proposed host towns or neighborhoods. In addition, through the Connecticut Siting Council, the state regulates the siting of certain public utility structures (e.g., power generating plants, electric transmission lines, telecommunication towers and antennas) and waste management facilities that frequently arouse controversy. In January 1991, the Legislative Program Review and Investigations Committee voted to undertake a study of state policies and procedures for siting controversial land uses.

The purpose of the committee's review was to determine how to site locally unwanted but publicly needed land uses in an efficient, effective, and equitable manner. The study focused on generally evaluating current state siting policies and procedures in terms of fairness. Alternative siting systems were also examined in an effort to identify either a model process or measures that promote equity as well as efficiency.

In addition to procedures for locating state public works projects, which are not subject to local zoning controls, siting processes that preempt or override municipal decisions on land use for certain power and telecommunication facilities, ash residue landfills, hazardous waste facilities, and a statewide low level radioactive waste disposal area were examined. In general, siting of community-based services has been left to local control with little state involvement beyond funding and licensing. However, statutory policies concerning the siting of two types of group homes have been established and were reviewed during the committee study.

The siting of transportation projects, while often controversial, was not included in the scope of the committee review. This was because projects like highways and bridges, which are part of an established transportation system and subject to considerable federal influence, appeared to require different siting approaches than discrete, independently located public facilities.

A variety of research methods and sources were used to carry out the committee review of controversial land use siting. An extensive literature review was conducted (sources consulted are listed in Appendix A) and siting experts and practitioners from Connecticut and other jurisdictions were contacted and interviewed by committee staff.

Structured interviews were held with officials and staff from state agencies with siting responsibilities. Relevant state statutes and regulations were reviewed.

Agency documents and files concerning the siting of a number of controversial land uses were also examined. Committee staff observed several meetings of the Connecticut Siting Council and of the Connecticut Hazardous Waste Management Service, the agency responsible for siting a low level radioactive waste facility in the state. Information on locations of existing controversial land uses in Connecticut was gathered and compiled in map form.

A survey to elicit data and opinions on a wide range of siting issues was designed and mailed to chief elected officials for each Connecticut municipality. The committee also held a public hearing in September 1991 to gather information and comments on the state's role in siting controversial facilities.

The committee report is organized into three chapters. Chapter I provides an overview of siting issues, alternative systems, and Connecticut siting policies and activities. Current siting processes in Connecticut are described in detail in Chapter II. Program review committee findings and recommendations concerning the siting of controversial land uses are presented in Chapter III.

It is the policy of the Legislative Program Review and Investigations Committee to provide agencies subject to a study with an opportunity to review and comment on the recommendations prior to the publication of the final report. Formal responses to this study were received from the Connecticut Hazardous Waste Management Service, the Connecticut Resources Recovery Authority, the Connecticut Siting Council, the Department of Mental Health, and the Office of Policy and Management, and are contained in Appendix F.

CHAPTER I

OVERVIEW

The siting of many land uses necessary for achieving generally accepted public purposes often generates controversy and opposition from towns proposed as their locations. Despite their social benefits, controversial facilities are unwanted because of real or perceived negative side effects on the host community, such as health and safety risks, diminished property values and other economic harm, or adverse environmental and social impact. In addition, a town may fear that by accepting one unwanted land use, they will be targeted for more controversial facilities.

Local opposition can become so strong and widespread that the state must intervene in the siting process and, if required, preempt or override municipal controls over land use to insure that needed facilities are developed. In communities forced by state action to accept an unwanted facility, resentment over the loss of local control in determining their character and future development can cause even greater conflicts. Siting problems are compounded if the process used to select locations for locally unwanted land uses is viewed as biased, flawed, or unresponsive to local concerns.

Ideally, state siting processes for controversial land uses should balance two goals: efficiency and equity. The process should allow the timely siting of necessary facilities at a reasonable cost with adequate protection of public health, safety, and welfare. At the same time, the process should be fair; decisionmaking should be objective, and the burden of hosting unwanted facilities should be dispersed among all communities that benefit from them.

In the past, approaches to siting unwanted land uses generally focused on efficiency goals. Developers of controversial projects, including state governments, seeking the path of least resistance, would choose sites in poorer communities that lacked resources to effectively oppose the decision or would be susceptible to offers of compensation.

More recently, siting processes for controversial facilities have incorporated methods intended to prevent or resolve conflicts such as negotiating and mediating with proposed host communities. Other efforts include permitting the public to participate in the process by holding open meetings or hearings, establishing advisory groups, and providing for public review and comment on site criteria and the selection process itself as well as on proposed sites. To promote objective decisionmaking, an independent organization may be established to develop and apply siting criteria or to approve proposed sites.

Providing incentives such as payments to cover the costs of hosting a facility is another common approach taken to overcome local resistance to accepting unwanted land uses. Many types of incentives are available including mitigation, compensation, rewards, and participation. Each type is described in greater detail in Table I-1.

To date, no single model for locating controversial facilities has been developed, although features that contribute to successful siting have been identified. These include objective decisionmaking, opportunities for public participation, fair compensation, and equitable distribution. Several alternatives for siting locally unwanted facilities that incorporate some or all of these features are highlighted below. Three of the alternatives--point system, lottery, and auction--are theoretical models that have been suggested by academic researchers, while one is the actual process now in use in New York City.

In considering siting issues, it is important to recognize that no system has been devised that can overcome local opposition if a facility is perceived as unnecessary or totally unacceptable. This is because communities and their residents have legal (e.g., lawsuits) and extra legal (e.g., civil disobedience) options that can be used to delay and ultimately stop the siting of a controversial project.

Point Systems

To promote more equitable distribution of undesirable facilities, some land use planners have suggested using point systems. Under such systems, point values are assigned to various controversial facilities that need to be sited before the selection process is initiated. Towns (or regions or neighborhoods) are permitted to openly trade proposed facilities of equal point value. For example, a municipality may negotiate with other towns to accept multiple halfway houses in exchange for not being considered as a prison site. Points could also be assigned to desirable facilities and negotiations could occur using combinations of wanted and unwanted land uses. If a town wanted to host a new courthouse, for example, it may have to accept the siting of several group homes as well.

By tallying up point values, scores representing the overall "burden" unwanted facilities place on each community (or neighborhood or region) also can be developed. For future siting decisions, towns with heavy concentrations of undesirable facilities, as indicated by high point scores, could be eliminated as potential sites while low-scoring communities could be required to accept new facilities until a goal of overall equity is achieved.

Table I-1. Types of Siting Incentives.

TYPE	DESCRIPTION	EXAMPLES OF POSSIBLE STRATEGIES	EXAMPLES OF IMPLEMENTATION MECHANISMS
<i>Mitigation</i>	Actions geared toward preventing, reducing, or eliminating adverse impacts before they occur	Buffers/land use management Emergency preparedness Safety design Public education Socioeconomic impact mitigation Land value guarantees	Purchase of easements Development of contingency plans Establish acceptable risk levels Distribute information Develop job-training Property dedication program
<i>Compensation</i>	Payments or retributions for actual damages in the event of an accident or anomalous event	Trust funds Insurance programs Assumption of liabilities	Excise taxes on wastes Government-backed policies Contracts with local governments
<i>Rewards</i>	Actions designed to award benefits to the communities assuming risks from facility	Direct monetary payments Bonus community services Tax incentives Subsidies Infrastructure development Avoidance of other unwanted facilities	Block grants Employment/training programs Eliminate sales tax Reduced interest rates Public works projects Government grants Executive order
<i>Participation</i>	Actions that allow public access to decisionmaking and facility management	Monitor public concerns Citizen control Access to information	Attitude survey Representation on governing board Citizen monitoring of facility

Source: adapted from J.H. Sorensen, Environmental Management, Vol. 8; No. 4, pp. 287-294.

While point systems offer advantages in terms of equity issues, they assume that consensus can be reached over the point values to be assigned to facilities as well as what constitutes a desirable or undesirable land use. Also, for trading to occur among communities, there need to be several facilities requiring siting simultaneously, which may not always be the case. In addition, an effective point system requires relatively sophisticated land use planning at a statewide or regional level to coordinate siting decisions, scoring, and trades.

Lottery Systems

Under a lottery system, sites for essential but undesirable public facilities would be selected at random and enforced by law. The community selected by lot to host the facility would then be exempt from another forced siting until all other suitable sites have been recipients of equivalent types of facilities.

The main advantage of a lottery system is its objectivity. Also, local opposition may be reduced by the fact that the burden of hosting controversial facilities would be more widely distributed. These features alone, however, may not be sufficient to overcome resistance to siting decisions, particularly if residents resort to legal actions or civil disobedience.

Auctions

Some economists have suggested sealed bid auctions as both an efficient and fair way of selecting sites for controversial facilities. The auction process requires each candidate community to submit a sealed bid that represents the minimum amount of compensation (monetary and in-kind) it requires to accept an undesirable facility. The community with the lowest bid receives the facility along with compensation that is financed by the other bidders. Payments from the other communities are based on their own bids (calculated as each one's bid amount divided by the total number of communities required to pay compensation).

Through this mechanism, the host community is guaranteed to receive compensation at least equal to its bid amount. The incentive to exaggerate the level of compensation required to host a facility is limited by the fact that high bidders will be required to contribute higher payments to the community chosen as the site. In addition, all communities that benefit from the facility share direct responsibility for paying for its localized costs.

One drawback to the process is that poorer communities are more likely to submit low bids and, therefore, receive undesirable facilities. To address this equity issue, a two-stage auction approach has been proposed. In the first stage, each community submits a bid and one is chosen at random through a lottery process. The

bid is announced and a second auction for all but the community whose bid was picked is held. If a lower bid is received during the second-stage auction, that community receives the facility; otherwise, the randomly selected bidder remains the "winner." Payments to the host community are calculated in the same way, based on first-stage bids.

Since the chances of being selected as a facility site initially are equal, the two-stage auction is more fair to poorer communities. Also, if not selected by the random process, poorer communities could increase their bids during the second stage to reduce their chances of being low-bidder without raising the amount they would be required to pay in host community compensation.

To insure an effective bidding process, advocates recommend coupling the auction process with a program to fully educate and inform candidate communities about the facility's impact, both positive and negative. Mechanisms such as referenda to allow public participation in evaluating adverse effects and determining required compensation are also suggested. In addition, application of the auction method may be limited in cases where some risks from a facility are unknown or where required compensation cannot be quantified and compared.

New York City Siting System

Another system for promoting greater equity in locating controversial facilities was recently implemented in New York City. Like other jurisdictions, New York City has had numerous problems in siting needed but undesirable public facilities and the trend had been to locate them in poorer areas where opposition is usually minimal and development costs relatively low. Dissatisfaction within communities with high concentrations of controversial facilities led to calls for changes in the city's siting process.

In response, city officials, after considering several alternative siting procedures, including a point system, developed a comprehensive planning and siting justification process that was adopted as part of the city charter. The charter requires that the mayor's office, beginning in 1990, draft guidelines for siting facilities that serve municipal purposes. All siting must be determined by a "statement of needs" document issued by the mayor's office and containing site recommendations for the succeeding two fiscal years. Recommended locations for new, modified, or relocated facilities are listed by borough. Alternative sites may be proposed by borough presidents within 90 days of the document's publication, provided the alternatives are consistent with established siting guidelines.

The intent of the guidelines is the equitable distribution of municipal services, both wanted and unwanted, among all New York City communities. To insure fairness in siting, the guidelines require that ratios of services provided (e.g., drug

treatment programs, hospital beds, etc.) to population for each community be compared to similar citywide average ratios. If a proposed project will push a community's ratio over the citywide average, the city may proceed only after proving there is an urgent need for the facility or the site proposed is the only feasible alternative. There are also rules for early negotiation under which the mayor can bring together affected groups to form a consensus on site selection prior to seeking approval of project.

Specific criteria must be considered when the city sites a facility. These include: 1) compatibility of the facility with existing city and noncity land uses; 2) extent to which neighborhood character would be adversely affected by a concentration of city or noncity facilities; 3) suitability of the site for providing cost-effective delivery of intended services; 4) consistency with locational and other criteria identified in the mayor's statement of needs document; and 5) consistency with other city plans.

It is too early to judge the impact of the city's new siting process as the guidelines only took effect in July 1991. The system is expected to reduce conflict since interested parties will be brought into the decisionmaking process and the city will no longer be able to site facilities without first consulting affected communities. In addition, site decisions will be based on more objective data and justified in writing. Higher development costs are also anticipated as facilities are located in more affluent sections of the city (to comply with guidelines on service-to-population ratios) and siting decisions may take longer because of public review and participation requirements.

Siting in Connecticut

In Connecticut, like other states, most land use decisions are left to the control of local authorities. There is no formal, comprehensive state policy regarding siting of controversial facilities nor any single state agency responsible for overseeing locational decisions about state owned or regulated public facilities. Instead, state siting procedures, both informal and statutory, have been developed as needed for specific types of public facilities. The major processes that have been established by the state for siting locally unwanted but necessary land uses are described in detail in the following chapter.

There are two state policies, intended to provide general guidance for locating and evaluating the impact of proposed public projects, that can influence the siting of controversial facilities. The first is the Connecticut conservation and development policies planning process and the second is the Connecticut Environmental Policy Act. In addition, there is a central state agency--the Connecticut Siting Council--whose primary role is to regulate, in terms of public need and environmental considerations, siting decisions about certain controversial facilities (i.e., energy, telecommunication,

hazardous waste management, and low level radioactive waste disposal). Both policies and the siting council are discussed more fully below.

Conservation and Development Policies Plan. The state Conservation and Development Policies Plan (CDPP) is an advisory document intended to guide future development of the state and establish a comprehensive state growth policy that balances economic, environmental, and social needs. In addition to statewide conservation and development goals, the plan includes a locational guide that identifies in map form the suitability of each geographic location in the state for certain broad land uses (e.g., urban growth area, preserved open space, etc.).

State agencies are responsible for considering the CDPP whenever the purchase, development, or improvement of real property or transportation equipment involving more than \$100,000 in state or federal funds, either directly or through grants, is proposed. Conformance of such proposals with the conservation and development plan is reviewed by the Office of Policy and Management (OPM). OPM is required to provide agencies with advisory statements commenting on the extent to which proposed actions conform with the plan and must submit advisory conformance statements to the state bond commission for its consideration prior to the allocation of project funds. Regional planning organizations and municipalities are encouraged but not required to use the state plan to guide conservation and development decisions.

The original CDPP was developed in 1971 under executive order. The planning process became statutory in 1976 and is supervised by the Office of Policy and Management. The plan is subject to revision every five years by OPM in consultation with all appropriate state, regional, and local agencies and persons, and must be adopted by the General Assembly. Revision of the current plan, adopted in June 1987, is now underway.

In addition to the formal revision, interim changes can be initiated by OPM or by an application from a person, local government entity, or state agency, subject to the written approval of the legislature's planning and development committee. OPM is required to notify the chief elected official, planning and zoning authority, and General Assembly members representing an area subject to a proposed change and to hold a public hearing in the affected municipality(ies), if requested by the local officials. The planning and development committee must also hold a public hearing on the proposed change prior to approving or disapproving it.

Compliance with the state plan is monitored by the Office of Policy and Management. OPM staff review state agency projects and plans as well as bond commission funding requests for consistency with the CDPP. Each year, as required by statute, OPM issues a report to the legislature on progress in implementing the plan and the extent to which applicable state actions are in conformity with the plan. In

its most recent report, which covered calendar year 1990, the policy and management office found nearly all of the activities it reviewed to be consistent with the state plan.

Connecticut Environmental Policy Act. The Connecticut Environmental Policy Act (CEPA) establishes a comprehensive review process for all state actions that may have a significant environmental impact. Under regulations adopted by the Department of Environmental Protection (DEP), environmental impact is broadly defined to include a proposed action's affect on "...physical, biological, social, and economic surroundings and conditions ...including land, air, water, mineral, flora, fauna, noise, objects of historic or aesthetic significance, and community or neighborhood characteristics." State agencies are required to identify which of their activities may have significant impact in accordance with DEP regulations and submit a list to the Office of Policy and Management for review and approval.

Significant actions, which typically include state construction of new facilities as well as capital improvements to existing property, land acquisition, and state financial assistance for housing, business, industry, restoration or demonstration projects, are subject to the environmental assessment provisions of act. Sponsoring agencies are required to prepare a detailed evaluation of the environmental impact of a proposed project prior to deciding whether or not to proceed. By statute, the evaluation must include the following information:

- description of the project;
- direct and indirect environmental consequences;
- unavoidable environmental effects and irreversible or irretrievable resource commitments;
- alternatives including not proceeding with the proposed action;
- proposed mitigation measures;
- analysis of short- and long-term economic, social, and environmental costs and benefits;
- effect on energy use and conservation; and
- effects on sacred or archeological sites of state or national importance.

DEP regulations provide further detail on the content, scope, and form of evaluations as well as review procedures. Among the specific factors to be considered in an evaluation are consistency with the state plan of conservation and development and with regional and municipal plans.

Environmental impact evaluations must be submitted to the Council of Environmental Quality, the Connecticut Historical Commission, the Department of Environmental Protection and other appropriate agencies as well as the town clerk(s) of any affected municipality(ies) for review and comment. Agencies must also publish

notice of an evaluation's availability for public inspection and hold a public hearing on it if requested by 25 people.

The document and all comments received must be forwarded to the Office of Policy and Management for review. OPM is responsible for determining whether the evaluation satisfies all requirements and may require revision of inadequate evaluations. However, the decision whether or not to proceed with the project after completing the evaluation process is left to the agency.

Connecticut Siting Council. The Connecticut Siting Council was established in 1971 to regulate the placement of power facilities such as electrical generating plants and transmission lines (P.A. 71- 575). The intent of the council's enabling legislation was to create an orderly, well-documented, and fair siting process overseen by an objective agency with the ability to resolve conflicts between the benefits (e.g., an adequate, reasonably priced energy supply) and costs (e.g., adverse environmental impact) of proposed facilities. To carry out its mandate, the council was authorized to issue permits concerning public need and environmental compatibility and to override local land use decisions, if necessary.

Over the years, the council's jurisdiction has been expanded to include site regulation of telecommunication towers (e.g., for cable television and cellular telephones), hazardous waste facilities, and, most recently, the state's low level radioactive waste disposal area. The council also has an indirect role in the siting of certain ash residue landfills, the facilities designated to accept the waste produced by the state's trash to energy (resources recovery) plants; it serves as the arbitrator in determining local compensation packages for communities selected to host regional ash residue landfills.

The council's primary purpose is to balance the need for the facilities it oversees with the need to protect the environment, including public health and safety. Developers of new or modified facilities regulated by the council must obtain a certificate of environmental compatibility and public need from the council prior to beginning construction. The siting council certification process for each type of facility under its jurisdiction is described in detail in the following chapter.

Council membership varies with the type of proceeding conducted. Permanent members for all council activities include designees of the speaker of the house and the president pro tempore of the senate and five public members appointed by the governor. For power and telecommunication projects, the commissioner of environmental protection and the chair of the Public Utilities Control Authority or their designees also serve as council members. For proceedings concerning hazardous waste facilities, low level radioactive waste disposal areas, and ash residue landfills, the permanent members are joined by the commissioners of health services and public safety (or their designees) and four ad hoc members who represent the communities

affected by the proposed facility. Ad hoc members are appointed by the chief elected officials of the municipalities they represent.

The council's major activities include reviewing applications for certification, often with the assistance of outside consultants, visually inspecting sites and alternative locations, conducting public hearings on proposed projects, and issuing findings of fact, opinions, and decisions and orders at the conclusion of each certification proceeding. Development and management plans, required of all facilities granted certificates, are also reviewed and monitored by the council. Responsibility for overseeing completed facilities is shared by the council, the state environmental protection department, and officials of the sited municipalities.

At the time of the program review committee's review, the council was assisted in its work by a full-time staff comprised of 10 individuals--a director, 4 analysts (2 environmental, 1 economic, and 1 siting), and 5 administrative support personnel. Legal services were provided by the state attorney general's office. The agency's budget for FY 91 totaled nearly \$577,000. All council expenses are funded from fees paid by applicants and an assessment paid by electric utility companies in the state.

A review of the siting council's activities, summarized in Table I-1, shows that the bulk of the projects it had processed through November 1990 concerned telecommunication tower applications (64 percent). The majority of these 85 projects (60 percent) involved cellular phone antennas. The 20 electrical generation projects processed by the council represent a wide variety of facilities, including cogeneration, hydroelectric, trash-to-energy, nuclear, tire-burning, and wood-burning plants. Most (25) of the 27 transmission line projects submitted to the council were electric lines, while 2 were gas lines. Only one hazardous waste facility project has come before the council, and it was withdrawn before any final action was taken.

Nearly all projects submitted to the council are granted certificates. Of the 128 projects decided as of November 1990 (4 were pending at the time), 86 percent were eventually approved. Only 10 projects were denied, while the applications regarding the remaining 8 projects were either withdrawn, dismissed, or returned.

By statute, the council is required to complete its review process within 6 or 12 months of receiving an application, depending on the type of facility, unless an extension is authorized. Analysis of council records through November 1990 showed that the certification process for all types of facilities processed averaged 165 days; the longest processing time was 403 days, while the shortest was 33 days.

Table I-1. Siting Council Activities (through November 1990)		
Projects Processed	Number	Percent of Total
Generator and related facilities	20	15%
Telecommunication	85	64%
Transmission Lines	27	21%
TOTAL	132	100%
Source of Data: Connecticut Siting Council.		

Survey of Local Officials

To obtain information about local experiences with state siting processes, the program review committee staff designed a questionnaire that was mailed to the chief elected official of each Connecticut city and town. Completed surveys were received from 99 (59 percent) of the state's 169 municipalities. A copy of the committee questionnaire and cover letter, along with a tabulation of responses, are provided in Appendix B. Survey responses are highlighted below.

Respondents to the committee questionnaire were primarily mayors, first selectmen, or council chairpersons, although 20 percent of the surveys were completed by other individuals such as town managers, planners, or other administrative staff. Communities of all sizes and from all areas of state were represented and municipalities where controversial facilities are located as well as those without unwanted land uses returned completed questionnaires.

Local officials were asked to indicate whether certain land uses, including transmission lines, communication towers, several types of power plants and waste disposal facilities, prisons, and four types of community residences (group homes for mentally retarded or mentally ill persons, correction halfway houses, and drug/alcohol residential treatment centers) have been located within their communities over the past 10 years, and if so, to rate how satisfied residents were with the process used to pick the site for each land use. In general, the majority of respondents reported satisfaction with their siting experiences, although the numbers of sited facilities, and, therefore, responses, were limited to less than a dozen in many cases.

Respondents were also asked, in three separate questions, to rate their perceptions of the potential risk to public health and safety, potential economic harm,

and potential adverse impact on community image posed by the same types of facilities and residences. As expected, there was general consensus that hazardous waste facilities, low level radioactive waste disposal areas, and nuclear power plants pose significant health, safety, economic, and image risks. Between 81 and 94 percent of the respondents rated these facilities as posing high or moderate risks in all three categories. Prisons were also viewed by substantial numbers of respondents (85 to 86 percent) as posing high or moderate economic and image risks. In contrast, recycling centers, transfer stations, communication towers, and group homes for mentally retarded persons were viewed by most respondents (86 to 90 percent) as presenting low or negligible risk to the health and safety of a community. These land uses were also perceived as posing little economic or image harm by the majority of respondents (63 to 78 percent). For all land uses listed, except transmission lines, economic and image risk were viewed as more significant (rated as high or moderate by more respondents) than potential health and safety risk.

Another major purpose of the committee survey was to elicit local opinions about the Connecticut Siting Council. Over three-quarters (76 percent) of the respondents reported that they were familiar with the council and many (44 percent of those familiar with the council) had had direct dealings with the siting agency. Respondents familiar with the siting council were asked to evaluate: the quality of its work; the simplicity, fairness, and integrity of its process; the objectivity of its members; and opportunities for presenting local concerns to the council.

Ratings were generally positive. Nearly 60 to almost 70 percent rated the council as good or excellent in terms of work quality (67 percent), integrity (67 percent), objectivity (60 percent), and opportunities for local input (59 percent). However, evaluations of the fairness of the council process were about evenly split between ratings of excellent or good (53 percent) and fair or poor (48 percent). In addition, the simplicity of the council process was rated as fair or poor by 66 percent of the 62 respondents who evaluated that aspect of the agency.

Despite the somewhat mixed ratings of certain agency operations, almost three-quarters (72 percent) of the 60 individuals who responded to a question asking whether the siting council is the best mechanism for balancing the statewide need for facilities and local environmental concerns answered yes. However, several respondents did add that they believed some modifications were needed to allow more local input in the siting council process. Similarly, override of local authority and insufficient consideration of local concerns were among the most frequently cited major drawbacks of the council reported by local officials. Independence, objectivity, impartiality, and fairness, were mentioned most often as the major benefits of the council.

CHAPTER II

CURRENT CONNECTICUT SITING PROCESSES

In Connecticut, the state's role in siting controversial land uses varies from determining the location of some facilities by preempting or overriding local land use decisions (e.g., prisons or power plants) to directing and funding the development of other land uses (e.g., group homes or halfway houses). Siting processes for six types of public facilities--prisons, power facilities, telecommunication towers, hazardous waste facilities, a low level radioactive waste disposal area, and ash residue landfills--have been established in statute, while other state siting policies and procedures are less formal. Descriptions of current statutory processes as well as the general public works process for locating state-owned and operated structures and the overall siting process for regional solid waste facilities are presented below.

An overview of siting processes for several types of state funded community residences, including group homes for mentally ill and mentally retarded persons, which are subject to statutory zoning protection, is provided in a separate section of this chapter. In addition, recently adopted state policies for developing affordable housing are briefly discussed in Appendix C as an example of using incentives rather than preemption to site locally unwanted land uses.

The siting process for any land use typically involves the following basic steps: identify need; determine site requirements (technical considerations); establish site criteria; determine siting approach (e.g., solicit volunteers, comprehensive screening, etc.); review and compare potential sites; select final site; and submit site for required review/approval (e.g., local zoning, state or federal environmental permits, etc.). How these steps are implemented varies, particularly for controversial facilities, in terms of state and local decisionmaking roles, the formality of the process (i.e., statutory or administrative), criteria for selecting and evaluating sites; opportunities for public participation, and incentives to host communities for accepting the land use. The descriptions presented below and in the following section highlight these key aspects of each siting process examined.

Public Works Projects

In general, each state agency determines its own facility needs and individual projects are coordinated and prioritized through the statewide capital planning and bonding processes overseen by OPM and the public works department. The Department of Public Works (DPW) has overall responsibility for managing the planning, design, and construction of all state facilities except for highways and bridges.

State facilities are exempt from local land use requirements. The commissioner of public works has broad statutory discretion for locating state facilities, although siting decisions must conform with the state conservation and development plan as well as state building, fire and safety codes, and state environmental policies (e.g., inland wetlands). In addition, the commissioner must comply with statutory provisions about the co-location of human service facilities. All major public works projects are also subject to the environmental impact evaluations requirements of the Connecticut Environmental Policy Act.

The department has no written procedures for identifying and evaluating suitable locations. However, the same basic steps are used to site all state facilities, except for certain corrections department projects that are discussed separately below. Agency requests for new facilities, once authorized, are reviewed in detail by DPW. Facility requirements including site criteria are developed jointly by public works employees, agency staff, and for major projects, the consultant hired by DPW to design the facility. Primary siting considerations are programmatic requirements, cost, and environmental limitations.

Site screening is carried out by public works staff, beginning with an examination of the state's inventory of property for suitable locations. If no existing properties meet facility siting requirements, the department will solicit new property in accordance with state procurement laws and regulations. Once a site is selected, DPW staff usually meet with municipal officials to discuss the project and what local services, such as sewer, water, and fire and police protection, may be required. While there is no requirement that the state negotiate compensation with the host community, the department attempts to reach a written agreement with a town about state and local obligations concerning the facility.

Towns are entitled by law to annual grant payments in lieu of taxes (PILOT) on state-owned properties within their boundaries. Municipal PILOT grant payments equal 20 percent of the local property tax that would be paid for a state facility, subject to certain minimum and maximum amounts. As described below, the rate for PILOT grants for correctional facilities was recently increased to 100 percent. In FY 91, PILOT grants paid to municipalities for state-owned properties totaled just over \$20 million.

Prisons

In general, correctional facilities, like other state institutions, are planned and built through the normal public works process. When a massive prison construction and expansion program was initiated in the mid-1980s to address Connecticut's inmate overcrowding problems, controversy and local opposition to siting decisions was anticipated. To minimize siting problems as well as land acquisition and construction costs, most of the facilities planned were sited at existing correction

department properties. Project locations were determined by agency staff in accordance with program needs. However, a special siting procedure, jointly overseen by the Office of Policy and Management and the Department of Public Works, was established administratively to select locations for four new prison facilities in Western, Eastern, and North Central Connecticut.

During 1986 and 1987, a selection committee comprised of OPM, public works, and correction department staff, with the assistance of outside consultants, developed and implemented the siting process for new prisons. The process, which was based on formal site selection criteria, included several stages of site screening and three methods for identifying potential sites. The criteria given primary consideration were economic factors (e.g., site cost, availability of utilities and services, etc.), physical constraints and general location (e.g., access to major transportation routes, compatibility with adjacent land uses, etc), and environmental concerns (e.g., wetlands, soil constraints, etc.).

Proposed final sites were chosen during 1987 based on scores developed by an outside consultant who gathered necessary field data and applied the criteria. Final sites were selected during 1988 following environmental studies. Meetings were held with local officials of the affected communities, and if requested, public meetings were scheduled to afford residents the opportunity to comment on the proposed sites following the announcement of site finalists. Additional opportunities for public participation on final site decisions were available during the environmental impact evaluations process carried out for each proposed facility.

Once a site was selected, the state, represented by OPM staff, approached local officials to discuss the facility's impact and possible mitigation measures. Financial compensation for local costs associated with hosting a new prison, such as sewer and water service, were also discussed. The goal of these negotiations was a written agreement outlining the obligations of each party, which would then be subject to legislative approval and authorization.

Resistance to the prison projects varied among the three communities selected under the administrative siting process to host the new prisons. Local concerns were successfully addressed in Suffield and Montville through the negotiations process. The third community selected, Newtown, initially pursued court action to block the prison project but eventually negotiated an agreement with the state.

All four facilities sited under the administrative process were under construction at the time of the committee's review. Their capacities and anticipated completion dates were as follows: Western Correctional Institution (Newtown)--300 beds, 1991; Reception Center (Suffield)--300 beds, 1991; North Central Correctional Institute (Suffield)--500 beds, 1992; Eastern Correctional Institution (Montville)--400 beds, 1993.

Emergency facilities. In 1989, the statutory public works process was amended to expedite certain correction department capital projects due to the urgency of prison overcrowding problems. Under P.A. 89-353, as amended by P.A. 90-261, prison construction projects that meet specified criteria (i.e., initiated prior to December 31, 1991, and costing less than \$20 million) can be certified as emergency facilities and, thereby, be exempted from some statutory advertising and bidding requirements as well as the state environmental impact evaluation process.

The legislation also established a statutory process for negotiating compensation packages with towns that host emergency correctional facilities or significantly expanded prisons. Whenever the state decides to build such an emergency facility or to increase the population of an existing facility beyond a certain level, the mandatory negotiating process is triggered. The "triggering" levels are: for a facility existing on July 1, 1989, an increase of 150 percent or more of its population on that date; for a facility opened after July 1, 1989, an increase of 150 percent or more its population on July 1 of the year after its opening; or at a facility that has already been increased by half, an increase of half again of its population.

The statutory process requires the Office of Policy and Management and the chief elected local officials of the affected municipalities to evaluate the impact of emergency or expanded correctional facilities. A written agreement to mitigate the impact on host towns, including but not limited to new or expanded sewage or water services, traffic improvements, public safety equipment, or any other costs a town will incur as a result of the new or expanded facility, must be negotiated. If the parties cannot reach agreement, unresolved issues must be submitted to a mutually designated arbitration panel whose decision is nonbinding. The General Assembly also authorized \$20 million to fund the costs of negotiated agreements.

Prison projects that had been certified as emergency facilities as of November 1991 are listed in Table II-1. Written agreements have been executed for all eight. To date, agreements have been reached for all emergency projects without the need for arbitration.

An analysis of executed agreements regarding both new and expanded correctional facilities in six communities is summarized in Table II-2. As the table indicates, the incentive packages developed by the towns and the state vary widely. The broad range of items included in the agreements reviewed also appears to illustrate that concerns over controversial facilities like prisons differ depending on the community. The compensation provided under negotiated agreements for both emergency and other correctional facilities is given in addition to the grant payments in lieu of taxes that communities receive for state property. To provide an additional incentive to towns for accepting prisons, the PILOT rate for correctional facilities was increased from the standard 20 percent to 100 percent in 1988 under P.A. 88-292.

Table II-1. Emergency Correctional Facility Projects.

FACILITY	LOCATION	SIZE (BEDS)	COMPLETION DATE
Montville Dorm	Montville	300	1990
Brooklyn Dorm	Brooklyn	300	1991
Camp Maloney	Cheshire	100	1991-1992
Webster	Cheshire	300	1990
Willard	Enfield	300	1990
Gates Dorm	East Lyme	200	1991
Camp Hartell (expansion from 100 to 200 beds)	Windsor Locks	add 100	1990
Northeast	Mansfield	350	1990

Power and Telecommunications Facilities

A statutory process for siting power facilities, such as electric generating plants, electric and fuel transmission lines, and electric substations and similar facilities, was established in 1971 (P.A. 71-575). Under the process, the Connecticut Siting Council reviews and approves or denies proposed facility sites. The process was extended to CATV and public service and state-operated telecommunication towers in 1977 and cellular system antennas in 1984 when these facilities were added to the council's regulatory jurisdiction.

By law, the siting council has final siting authority over power and telecommunication facilities. Municipal land use authorities may regulate the siting of electric generating plants and substations, but the council is authorized to override local decisions (by a vote of six of its members). The council has exclusive jurisdiction over the other types of facilities.

A certificate of public need and environmental compatibility must be obtained from the council prior to the construction or significant modification of a regulated power or telecommunication facility. Specific steps in the certification process and a time frame for completing them are established in statute and council regulations.

Table II-2. Items Included in Negotiated Agreements for Prisons.

	Montville	Enfield	Mansfield	Cheshire	Newtown	Suffield	Windsor Locks
State Assurance of its Compliance	X	X	X	X	X	X	
Water	(discuss)					X	
Sewer	X	X		X	(discuss)	X	
Traffic/Roads	X	X		X		X	
Screening	X			X		X	
Public Safety Equipment	X	X	X	X	X	X	X
Emergency Notice	X					X	X
Inmate Release	X					X	
Inmate Classification			X	X			X
Restrict Name/Signs	X				X	X	
Prison Operations				X			
Other			comply with Mansfield Training School agreement & citizens' committee agreement	visitor transport program; correct site problems; no bldg. at DMR center	transfer Fairfield Hills Hospital land to town; take action so elig. for 100% PILOT	town take wood; state not use local landfill; notify before expand	inmate work detail for town; inmate evac plan; inmate transportation policy
Anti-Litigation Clause	X		X	X	X	X	

Prior to submitting a certification application to the council, the developer of a power or telecommunications facility must consult with municipalities selected as proposed or alternate locations. Municipalities proposed as sites then have the opportunity to hold hearings on the proposed facility and to issue recommendations for consideration by the council, or in the case of electric generator plants and substations, requirements (subject to council override) about the project.

Applicants are responsible for documenting the need for the facility, the site selection process used, and the environmental effects of the proposed project. Technical reports containing this information must be provided to the affected municipalities at the time of the initial consultation and submitted with the application for council certification. A number of items to be included in the application, such as maps, complete site data, estimated projects costs and schedule, as well as justification for the adoption of the site selected (with a comparison of alternatives), are detailed in statute and regulation.

The council's siting process calls for extensive notification and review of certification applications. Copies of applications must be available to the general public and provided to the officials of affected municipalities including state legislators, federal agencies with jurisdiction, and a number of state agencies. Public hearings on proposed facility applications also must be held by the council prior to making a final decision on certification. To maximize opportunities for local citizen input, at least one hearing must be held after 6:30 p.m. in the county where the proposed facility is located.

The siting council is required to issue its decision to grant, grant with conditions, modifications, or limitations, or deny a certificate within 6 or 12 months of receiving an application, depending on the type of facility. Extensions, however, are permitted under certain conditions. Council decisions can be appealed to the courts.

Statutory factors governing council decisions include the following:

- 1) public need for the facility and the basis of the need;
- 2) probable environmental impact and conflicts with state policies on the natural environment, ecological balance, public health and safety, scenic, historic, and recreational values, forests and parks, air and water purity, and fish and wildlife; and
- 3) why any adverse impact or conflicts with state policies are not sufficient to deny certification.

For electric transmission line facilities, three additional factors must be considered: what part will be overhead; conformance with a long-term electrical system plan; and conformance with state and federal regulations and guidelines for overhead parts. Undue hazards to persons or property also must be considered for both electric and fuel transmission lines.

Hazardous Waste Facilities

Issues related to siting facilities that treat, store, or dispose of hazardous waste were studied by an interim committee of the legislature during 1980. In the following year, the committee's recommendation that final authority over hazardous waste facility sites be placed with the Connecticut Siting Council was enacted through Public Act 81-369. Under the act, facilities established after July 1, 1981, are required to obtain a certificate from the siting council in addition to necessary Department of Environmental Protection permits and local zoning approvals. Furthermore, the council was authorized to override local decisions concerning hazardous waste facilities.

During the consideration of a hazardous waste facility, council membership is expanded to include four ad hoc voting members, three of whom are electors from the municipality in which the proposed facility would be sited and one who is an elector of the neighboring town most likely to be affected by the proposed site. Ad hoc members are appointed by their municipalities' chief elected officials. For hazardous waste facility proceedings, override of local land use decisions requires the affirmative vote of eight council members; other actions require the support of a simple majority of the quorum present.

Many steps of the statutory hazardous waste siting process are virtually the same as those followed for power and telecommunications facilities, particularly in terms of notification requirements, public hearings, decisionmaking, appeals, and deadlines. However, more extensive review and information is required for hazardous waste facilities. For example, applications for hazardous waste facilities must include a detailed description of provisions for mitigating the effect of the facility on public safety and the environment, and must note the incentives offered and benefits accruing to the host municipality, as well as provide site selection justification, complete site data and maps, cost estimates, various impact analyses, and an assessment of the need for the facility.

In addition, the siting process for hazardous waste facilities, unlike power and telecommunication facilities, incorporates a mechanism for negotiating incentives for development of projects. Under the siting law, host communities can choose whether to negotiate a compensation package with the facility applicant or accept a statutorily established assessment. The total cost of negotiated items, however, cannot exceed the amount that would be paid to a community as an assessment. The assessment formula and the items subject to negotiation are presented in Table II-3.

Table II-3. Hazardous Waste Facility: Assessment Formula and Negotiated Incentives.

<p>Assessment Formula</p>	<p>Payment is whichever amount is larger, based on the following schedules:</p> <p>1) \$ 0.05/gal or \$ 3.50/yd waste received OR 2) Percentage of quarterly gross receipts at the following rates:</p> <p>10% \$0 up to \$1.25 million 5% over \$1.25 to \$2.5 million 2.5% over \$2.5 million</p>
<p>Negotiated Incentives</p>	<p>1) diminished property value of abutters 2) "greenbelt" buffer 3) town open space/recreation facilities 4) fire equipment 5) road repair 6) access routes to facility 7) direct financial payment 8) any other item</p>

Negotiations must be conducted with a local project review committee, which is comprised of four to nine electors from affected municipalities appointed by their local chief elected officials. The applicant is required to deposit up to \$50,000 with the council for use by the committee in obtaining technical and professional assistance. The siting council is responsible for resolving disputes between the committee and the applicant, using, if necessary, arbitration. Items negotiated by the parties must be incorporated into the council's certification decision.

Factors that must be considered by the council in deciding whether or not to grant certification are, like power and telecommunications facility criteria, established in statute. The factors are listed in Table II-4. Before granting a certificate, the council is further required to make findings concerning a number of topics, which are also listed in Table II-4. In addition to examining all items shown in the table, the council must find that the applicant is in compliance with a variety of financial responsibility requirements prior to granting a certificate.

Table II-4. Hazardous Waste Facility: Siting Council Decision Factors

- 1) Impact on public health, safety and welfare including:
 - a) risk/impact of accident during transportation
 - b) risk/impact of fire, explosions from improper storage, treatment, disposal
 - c) consistency with state conservation and development plan, regional/municipal plans, and existing or proposed development
 - d) protection of public from adverse economic and other impacts
 - e) risk/impact on public/private drinking water supplies
 - 2) Population density and proximity to residential areas
 - 3) Data on permitted and illegal discharges in area
 - 4) Proximity to schools
 - 5) Availability of other sites
 - 6) Other criteria consistent with assuring maximum public safety
- In addition, no certificate shall be granted unless council finds:***
- 1) Public need for the facility in terms of engineering and economic reasons for the proposed technology and site versus alternatives
 - 2) Nature of the facility's probable environmental impact
 - 3) Why, if a land disposal facility is proposed, no other management method is appropriate
 - 4) Significant single and cumulative effects on and conflicts with state policy on:
 - a) natural environment
 - b) ecological balance
 - c) public health, safety, and welfare
 - d) scenic, historic, and recreational values
 - e) forests and parks
 - f) air and water purity (present and future water supply sources)
 - 5) Adverse effects/conflicts found are not sufficient for denial

To date, only three applications for hazardous waste facility certification have been received by the council. All three were submitted by the same developer concerning the same facility. Two of the applications were withdrawn soon after submission due to technical flaws. The last application reached the council's public hearing stage but was withdrawn due to procedural deficiencies.

Low Level Radioactive Waste Disposal Area

A complex and comprehensive siting process has been established for perhaps the most controversial type of facility in Connecticut--a low level radioactive waste disposal area. Low level radioactive waste (LLRW) is ordinary industrial and research waste that has been contaminated by radioactivity. It includes a broad range of dry and solid materials that vary widely in level of radioactivity, from barely measurable to very hazardous. Discarded protective clothing and tools from nuclear power plants or medical and research facilities as well as used radioisotopes and much of the waste from decommissioned nuclear power plants are among the types of materials considered LLRW. Most often, LLRW is defined in law and regulation by what it is not; exclusions include spent fuel from commercial or defense nuclear reactors as well as waste from mining or milling uranium.

Most of the low level radioactive waste generated in Connecticut comes from the state's four nuclear power plants. Other sources include medical and educational institutions (e.g., hospitals and universities), private medical and industrial research facilities, and several private industrial and fuel fabrication plants. Many generators in the state manage some or all of the LLRW they produce on site. However, about 45,000 cubic feet annually is shipped to the three commercial disposal facilities now operating in the U.S., which are located in South Carolina, Washington, and Nevada. In 1989, about 91 percent of Connecticut LLRW shipped off-site was disposed of in South Carolina.

Federal mandate. Federal law enacted in 1980 and amended in 1985 (P.L. 96-573 and P.L. 99-240) requires each state to manage and dispose of its own LLRW. The legislation encourages regional cooperation and permits states that form interstate LLRW compacts to restrict the use of their disposal facilities to member states. Deadlines for certain activities (e.g., entering a compact, developing a siting plan, choosing a site, opening a facility) and penalties for noncompliance were also established under federal law. States that fail to make satisfactory progress in meeting the federal mandates can be banned from shipping waste to LLRW disposal facilities operating in other states.

Progress in meeting federal low level radioactive waste policy mandates varies significantly among the states. While many states have entered into compacts and California is considered closest to selecting a facility site, others are still planning a site selection process and some (e.g., New York and Michigan) have chosen to challenge the federal law.

Connecticut, along with New Jersey, belongs to the Northeast Interstate Low Level Radioactive Waste Management Compact, which was adopted in 1986. Under the compact, both states are designated as "hosts" and each is directed to develop a disposal facility. Recently, Connecticut, along with several other states, was threatened with being denied access to the three currently operating disposal facilities for noncompliance with federal mandates. However, after submitting evidence and

assurances of significant facility development progress, continued access was granted to Connecticut early in 1991.

State requirements. In response to federal mandates, a process for siting a LLRW disposal facility in Connecticut was established in 1987 by P.A. 87-540 and modified in 1988 by P.A. 88-361. The state siting law placed primary site selection responsibility with the Connecticut Hazardous Waste Management Service (CHWMS), a quasi-public agency overseen by a gubernatorily appointed board of directors. The service was created in 1983 to promote and encourage the appropriate management of hazardous waste in the state. Its main duty, in addition to management planning and disposal siting for low level radioactive waste, is to prepare the state's hazardous waste management plan.

Legislation enacted in 1991 (P.A. 91-337) added the secretary of policy and management and the commissioners of health services, environmental protection, and transportation or their designees as nonvoting, ex-officio members to the service board of directors. The four ex-officio members, however, are authorized to vote on the final site selection for the LLRW facility. By statute, an 11-member group comprised of representatives of waste generators, municipalities, business and environmental groups, and the general public advises the service's board on the suitability of LLRW disposal facility sites. Table II-5 presents board and advisory committee membership in detail.

Table II-5. Board and Advisory Committee Membership		
	CHWMS Board of Directors	LLRW Advisory Committee
Total	10 members (6, with each from a different congressional district, plus 4 ex officio)	11 members
Type	2 scientific community 2 general public (no interest in hazardous waste disposal industry) 2 business community 4 ex officio: OPM secretary DOHS commissioner DEP commissioner DOT commissioner (or designees)	2 LLRW generators 1 from citizen environmental group knowledgeable about LLRW 1 business 1 muni. < 15,000 pop. 1 muni. > 15,000 pop. 1 institution 1 geologist 3 public members
Appt.	All by governor	3 by governor; 2 by speaker; 2 by pres. pro tempore; 2 by sen. min. leader; 2 by ho. min. leader

As required under the siting law, the service developed a LLRW management plan prior to selecting sites. Site selection factors, summarized in Table II-6, and a site screening process that requires the service to first evaluate general areas using broad analysis and then continually narrow down potential sites through technical refinement based on more detailed analysis are also specified in statute. In addition to choosing the site, the service is responsible for selecting both the waste management method to be used at the facility site and the developer/operator for the facility. The developer is forbidden by law from having participated in the site selection process.

Once a final site is chosen by the service, responsibility for acquiring it, through condemnation if necessary, rests with the Department of Public Works. The department, which is the owner of the site, then must lease it to the service for at least seven years; the service may then lease the site to the developer. The developer is responsible for obtaining all necessary permits and approvals for the facility, including a certificate from the Connecticut Siting Council, prior to operation. The law requires the LLRW developer to apply for local land use agency approvals but permits the siting council to override local decisions upon appeal by the developer.

Table II-6. LLRW Disposal Facility: Statutory Site Selection Factors.

- 1) Economic feasibility, including proximity to concentrations of LLRW generators
- 2) Potential compliance with federal and state laws (including but not limited to environmental)
- 3) Risk posed to public health, safety, and welfare (including risk from accidental release at facility or during transportation, and from water, air, land pollution, and fire and explosions)
- 4) Effect on existing and planned local land use and development and on local public facilities and services
- 5) Adverse effects on agricultural and natural resources and availability of mitigation resources
- 6) Any other factor deemed appropriate by the service

The process for council certification of low level radioactive waste facilities is essentially the same as that for hazardous waste facilities, with several modifications called for in the LLRW siting law. For example, the LLRW developer is required to provide \$100,000 (versus \$50,000 for a hazardous waste facility developer) for use by the local project review committee--a group of electors from the host town(s) and

the neighboring municipality most likely to be affected that are appointed by the respective chief elected local officials to review and monitor the proposed facility. Also, more extensive information is required by statute in the certification application for a LLRW facility than other siting council facilities (e.g., 27 items versus 15 items for a hazardous waste facility).

The certification decision factors that the council must consider are essentially the same as those established for hazardous waste facilities. (See Table II-4, above.)¹ The council is additionally required to adopt regulations that establish minimum distance between active parts of the LLRW facility and other land uses. Compliance with a wide array of financial responsibility requirements is also mandatory for LLRW facility certification. The LLRW siting law further adds that certification must not be granted if any state or regional compact agrees to take all of Connecticut's low level radioactive waste.

In addition to outlining the site selection process, the low level radioactive waste facility siting law mandates a compensation package for the facility's host community. The types and levels of host community compensation provided by statute are summarized in Table II-7. Under P.A. 337 of the 1991 legislative session, the service is also authorized to negotiate with potential host communities and neighboring municipalities concerning mitigation of the facility's social and economic impacts.

Table II-7. Host Community Compensation for LLRW Disposal Facility.	
Assessment	Percentage of quarterly gross receipts as follows: 10.0% - \$0 up to \$1.25 million 5.0% - over \$1.25 to \$2.5 million 2.5% - over \$2.5 million
Mitigation	Up to \$150,000 for items such as: buffer belt; open space/recreation; fire equipment; road repair; <u>plus</u> cost of full-time monitor (municipal employee)
Compensation	Costs for annual well-testing; annual payment in lieu of taxes at industrial rate; property value guarantee within two-mile radius (five years)
Participation	Full access to facility and its records

¹ The following three factors required for hazardous waste facilities are not listed for LLRW facilities: data on permitted and illegal discharges in the area; proximity to schools; and availability of other sites.

Site selection process. The service's site selection process was developed with the active participation of the LLRW advisory committee over the course of about three years. The service also relied upon technical advice from the U.S. Department of Energy and the experience of other states concerning siting processes. Two engineering firms were engaged to review draft site selection plans from a technical perspective. The consultant hired to carry out site screening and evaluation, Battelle Memorial Institute, a Columbus, Ohio firm with LLRW siting experience in several other states, also helped to refine the draft process.²

To obtain public input on the siting process and criteria, the service held a workshop and several hearings on its draft site selection plan, which was released in May 1989. Copies were also made available to the public for written and oral comments. The advisory committee met at least three times specifically to discuss and comment upon the draft plan. When the final site selection plan was issued in November 1990, it included a second volume of all comments received and the service's response to them. As part of its public information effort, the service also held a series of briefings for state and local officials, and staff appeared on television and radio talk shows.

Once the site selection process was finalized with the adoption of the final plan, Battelle assumed responsibility for implementing it. As the primary contractor, Battelle's duties include: site screening, including solicitation of volunteer sites; evaluation and comparison of sites to identify candidate sites from which to choose three finalists; site characterization at the three sites to identify the preferred site; and continued site characterization at the preferred site (for a total of 12 months of site specific study) and, possibly, at the two alternative sites. Battelle is also responsible for conducting environmental impact evaluations at all three sites in accordance with the Connecticut Environmental Policy Act.

Battelle initially examined the entire state and by March 1990 had identified just over 700 possible areas for the LLRW facility site. Further screening narrowed this number down to 8 sites, which were recommended to the board for consideration in selecting the three finalists. The three candidate sites, which are located in Ellington, South Windsor, and East Windsor, were announced on June 10, 1991.

The sites were chosen by the board based on geographically anonymous site information presented by Battelle during a workshop held the preceding weekend. According to the service, the decision to keep the town locations of potential sites unknown until the three finalist sites were selected was intended to eliminate political considerations from the siting process.

² Battelle was hired in April 1990 through a request for proposal (RFP) process. A developer/operator was also named in February 1991. The service selected Chem-Nuclear, the company that runs the Barnwell, South Carolina LLRW disposal facility, again through an RFP process, to build and operate the Connecticut facility.

Selection of the final site was scheduled to occur by January 1, 1992, the original statutory deadline for submission of an application for the siting of a LLRW disposal facility to the siting council. However, the service's siting schedule has been modified due to the discovery of several errors in Battelle's application of the site criteria. On-site testing to further characterize the candidate sites will be delayed while an independent quality review of the site screening process is conducted.

Local resistance to the announced site decisions, while anticipated, has been intense. Citizen groups opposed to the facility have been formed, and they are actively challenging the siting process. Legislation enacted during the June 26, 1991 special session (P.A. 91-1) provided communities selected as potential facility hosts with grants of \$100,000 per site to cover expenses related to legal and technical review of the site selection process as well as independent evaluation of the proposed sites. Connecticut, through the state attorney general's office, has also joined New York state in its U.S. Supreme Court appeal challenging the federal LLRW siting law.

Criteria. To guide the siting process, the service developed more than 90 criteria to meet a wide variety of public health, safety, and welfare requirements and the state's responsibility to provide LLRW disposal capacity in a fiscally responsible manner. The subjects covered by the criteria are presented as ranked by the LLRW advisory committee in Table II-8. The rankings were developed at an all-day workshop with the assistance of a consultant.

Table II-8. LLRW Siting Criteria Subject Areas.			
<u>HIGH RANK</u>	<u>MED. HIGH RANK</u>	<u>MEDIUM RANK</u>	<u>LOW RANK</u>
Water Quality	Demography	Site Size	Air Quality
Hydrogeology	Transportation	Accidental Release	
Geology		Adverse Economic Impact	
Hydrology		Land Use	
		Natural Resources	
		Environmental Resources	
		Habitat Areas	
		Site Acquisition Cost	
		Cultural/ Aesthetic	

For screening purposes, the criteria are organized into three functional categories: exclusionary, which eliminate land areas from any further consideration; avoidance, which eliminate areas from further consideration except under compelling circumstances; and preference, which indicate land areas that are better than others but not necessarily their suitability or unsuitability. For example, under the hydrology criteria, land that is classified as wetlands under federal law would be excluded from consideration, land classified as tidal or inland wetland under state law would be avoided and land that is neither a federally or state classified wetland would be preferred.

Solid Waste Facilities

The siting of solid waste facilities, such as landfills, resources recovery plants, transfer stations, and recycling centers, is regulated by the Department of Environmental Protection and local land use authorities. Resources recovery facilities, which burn municipal solid waste to produce energy, are, as power generators, also subject to the Connecticut Siting Council certification process.

With two exceptions, proposed solid waste facilities must obtain local zoning approval as well as both construction and operating permits from DEP. In the case of resources recovery plants, local decisions can be appealed to the siting council and overridden. In addition, for an ash residue disposal area, which is a special type of landfill with a separate siting process described below, a negotiated agreement between the developer and the host community or an arbitration award can be substituted for local approval.

Broad siting policy is established within the state solid waste management plan prepared by the environmental protection department. The plan guides the development of facilities proposed by municipalities, private companies, and the Connecticut Resources Recovery Authority (CRRRA), the quasi-public agency created in 1973 to develop and manage solid waste disposal systems and resources recovery authorities in the state. While the plan identifies needs, sets goals, and outlines strategies, specific site locations or siting criteria are not included. General site requirements are, however, detailed in DEP permit regulations for solid waste facilities.

To carry out its mission, the Connecticut Resources Recovery Authority, in conjunction with private enterprise and municipalities, is developing a variety of solid waste management facilities throughout the state. CRRRA facilities, which must be financially self-sufficient, are funded primarily through the issuance of special revenue bonds. At present, the authority has constructed and is operating 3 resources recovery facilities and has established 12 transfer stations, 2 regional recycling centers, and 7 regional landfills. Another resources recovery plant is under construction and should be operational in 1992. Locations of current CRRRA facilities are shown in Table II-9.

Table II-9. Locations of CRRRA Facilities (August 1991)

<u>RESOURCES RECOVERY</u>	<u>TRANSFER STATIONS</u>
Hartford (Mid-Connecticut)	Torrington
Bridgeport	Watertown
Wallingford	Ellington
Preston (Southeastern)*	Essex
<u>REGIONAL RECYCLING CENTERS</u>	Shelton
Hartford	Trumbull
Stratford	Milford
<u>LANDFILLS</u>	Fairfield
Hartford	Westport
Shelton	Norwalk
Wallingford	Darien
Montville	Greenwich
Waterbury	
Ellington	
Meriden	

* under construction

The authority has not established formal siting policies or procedures, although locational decisions are guided by the state solid waste management plan, DEP permit regulations, and its own annual plan of operations, which must be approved by the commissioner of environmental protection. A similar approach is taken to selecting sites for all facilities CRRRA develops. As a first step, the service area for the proposed facility is determined. The "center" of the area, in terms of geography or users, is identified and suitable parcels of land are sought. In general, the authority seeks out industrial areas with good highway access and little or no wetlands present. Locations in residential areas or near schools or churches also tend to be avoided. For most facilities, the authority commissions consultants to conduct project site screening studies to identify appropriate sites.

Once an appropriate site has been identified, CRRA representatives meet with local officials to assess community acceptance of the proposed facility. If the authority decides to pursue the location, the acquisition process, beginning with appraisals, will be initiated in accordance with the authority's written procurement standards. By law, CRRA is authorized to acquire property for its facilities through purchase or, if necessary, condemnation.

As required by the authority's procurement standards, the chief elected official of the proposed host community is notified prior to the purchase (or condemnation) of the selected site. Negotiations between CRRA and the host community over local compensation, usually in the form of payments in lieu of property taxes, often begin at this point in the process.

Upon selection of a final site, applications for local zoning approvals, DEP permits, and, in the case of resources recovery plants, siting council certification, are prepared. In general, consultants are hired to conduct on-site investigations and technical studies and gather information required by regulatory agencies. The public hearings conducted in conjunction with the local zoning, DEP permit, and siting council certification processes provide citizens with opportunities to comment on proposed CRRA facilities.

In recent years, the authority has increasingly met with local opposition to its proposed facilities. Siting of the latest resources recovery plant in Preston was especially difficult, and legal challenges by the municipality significantly delayed construction of that facility. Although adverse local zoning decisions on resources recovery plants can be appealed to the Connecticut Siting Council, the authority has chosen to discontinue the following six projects due to host community resistance: New Haven, Midstate (Middletown), Stratford, Housatonic (Danbury), Eastern-Central (Cromwell/Portland), and expansion of the Bridgeport facility.

Ash Residue Landfills

Ash residue is the residual material left after combustion at a resources recovery facility or solid waste incinerator. In 1989, the Connecticut Resources Recovery Authority was authorized to establish up to four disposal areas for ash residue without first obtaining local zoning approval (P.A. 89-384). The authority still must obtain any necessary permits from the Department of Environmental protection and is required to reach a written agreement, either through negotiation or arbitration, with the host community if local zoning approval for the landfill is not received.

A statutory process for selecting sites and for negotiating host community agreements was also created by P.A. 89-384. Under the act, site screening responsibility for ash residue landfills rests primarily with DEP. In January 1989, the department issued a report that contained detailed siting criteria for ash disposal areas

and identified 13 potential sites for such facilities. To identify the list of potential sites, DEP applied the criteria to all undeveloped land in the state through a four-stage review process that successively narrowed the number of possible locations. Field visits (but not comprehensive on-site investigations) were conducted during the third stage of the review process.

The ash residue landfill siting criteria, which were presented for public comment as part of the hearing process on the department's draft solid waste management plan, include four types of factors: hydrogeology (e.g., groundwater, bedrock, soil types); site specific (e.g., size, slope); environment (e.g., floodplains, wetlands, endangered species); and area land use (e.g., housing, wells, historic areas). The criteria give preference to undeveloped land and land adjacent to landfills.

CRRA, when locating the four ash residue landfills, is limited to the sites listed in the 1989 DEP report or a location found by DEP to meet its siting criteria. The authority's siting decisions are further constrained by the following statutory requirements:

- not more than two sites east and two sites west of the Connecticut River;
- only one site per regional planning area;
- no site within four miles of any CRRA ash residue disposal area existing on January 1, 1989; and
- no site in a municipality in which a resources recovery facility and ash residue disposal area are already located.

If the authority intends to establish an ash residue landfill without local zoning approval, it is required to notify the affected municipality and file an application to negotiate with the Connecticut Siting Council, which under P.A. 89-384 is responsible for overseeing the negotiations process. CRRA is required to negotiate with a local negotiating committee appointed by the local chief elected official regarding 12 items specified in statute. The negotiations items are listed in Table II-10. The law further provides that the total compensation negotiated must not be less than the equivalent of \$5 per ton of ash deposited in the landfill. The authority is also required to deposit \$50,000 with the siting council at the start of negotiations for use by the local committee.

Negotiations must conclude within 180 days, and agreements reached by the parties are binding. If no agreement is reached, the parties are required to submit final offers to the siting council for arbitration within 60 days of the negotiating deadline. Within 60 days of receiving the final offers, the council must, after holding a hearing,

issue and arbitration award by majority vote. The council's award may be appealed to court.

The statutory negotiations process has yet to be used. At the time of the committee study, CRRA had sited four ash residue landfills, all of which received local zoning approval. Three, located in Hartford, Wallingford, and Shelton, were operating and predated the statutory siting process. Approval of the DEP permit for the fourth landfill, which was sited last year in Montville with local approval, was pending.

Table II-10. Ash Residue Disposal Areas: Statutory Items for Negotiation.

- 1) Compensation to persons for substantial economic effects (shown by a property value study conducted before and after construction)
- 2) Reimbursement to local negotiating committee for costs that exceed initial \$50,000 allotment
- 3) Screening and fencing
- 4) Facility operations such as noise, dust, debris, odors, and hours
- 5) Traffic flow and patterns
- 6) Site closure costs and post-closure use
- 7) Payments for road repairs
- 8) Establishment of a greenbelt buffer
- 9) Purchase of fire equipment necessary to the site
- 10) Payments for actual police and fire costs
- 11) Funding of a municipal site monitoring program
- 12) A municipal compensation plan

COMMUNITY RESIDENCES

Introduction

Development of community residences such as group homes, substance abuse treatment centers, and halfway houses, while recognized as meeting local needs, is often resisted by communities. A number of state agencies implement part of their policies and programs through community residences established to serve their clients. In most cases, private nonprofit agencies are responsible for siting and establishing community residences, which are subject to local zoning control in most cases. The state's role in the siting process for community residences, unlike the public facilities discussed above, is primarily funding their development.

The state has extended zoning override protection to only two types of community residences it funds: community residences for persons with mental retardation or mental illness. These residences, developed under the aegis of the Departments of Mental Retardation (DMR) and Mental Health (DMH), are protected by statute from being banned by local zoning requirements when nonprofit agencies seek to establish them in areas zoned for single-family and multi-family housing. No such zoning override applies to siting of other state supported residences.

The siting processes for community residences sponsored by the Departments of Mental Health and Mental Retardation are described below. Descriptions of siting programs for halfway houses funded by the Department of Correction (DOC) and for substance abuse treatment centers funded by the Connecticut Alcohol and Drug Abuse Commission (CADAC), neither of which are subject to zoning override protection, are also provided for comparison purposes. As the following descriptions reveal, there is no comprehensive process for the siting of community residences, although similar steps are used by most agencies to site their facilities.

DMH Community Residences

There are three statutory requirements for siting a DMH community residence. The total number of residents for all community residences in a municipality cannot exceed 0.1 percent of the municipality's population (C.G.S. Sec. 19a-507b(a)). A residence can be excluded from a residential area restricted to single-family homes (C.G.S. Sec. 8-3g). A community residence cannot be sited within 1,000 feet of any other type of community residence (C.G.S. Sec. 19a-507b(a)).

Community residences receiving funding from the Department of Mental Health are operated by private nonprofit agencies contracted by the department. Agencies are responsible for siting and establishing their residences and obtaining the necessary licenses for operation from state and local authorities. DMH does not provide written siting and licensing instructions to agencies it contracts to establish community residences.

An agency siting a residence must submit a funding application to DMH and an application for a license to operate a community residence to the Department of Health Services (DOHS). Copies of the licensing application must be sent to the appropriate regional mental health board, the regional mental health director, and the governing body of the municipality where the residence will be sited. The licensing application must also list the address of the proposed residence and all other DMH funded residences in the municipality, and demonstrate that the proposed residence conforms to statutory siting requirements. The state health services department is prohibited from issuing a license until all parties have had 30 days to review the application.

Among health services licensing requirements are statements of ownership and operation, a certificate of public liability insurance, and a local fire marshal's annual certificate of compliance. The sponsoring agency must also show that it is in compliance with local building codes. There are also requirements mandating minimum living space per resident and minimum toilet and bathing facilities per specified groups of residents.

A resident of a municipality hosting a community residence may petition the commissioner of health services, through the chief executive officer or the legislative body of the municipality, to deny an application for a license to operate a community residence on the grounds that the residence would violate the 0.1 percent population limit established under statute. A resident of a municipality may also petition the commissioner to revoke a license to operate a residence on the grounds that the residence is not in compliance with any relevant statutes or departmental regulations.

There are currently 26 group homes housing 242 clients located in 15 towns throughout the state. DMH is moving toward housing arrangements where clients obtain their own leases and receive mental health services including counseling and other services, such as help in applying for federal assistance, on an as-needed basis. This type of arrangement gives residents more autonomy and independence and allows them further integration into their host communities. There are currently 50 supervised apartment/supported housing programs based in 24 cities and towns throughout the state. Clients may live in those cities and towns or in surrounding areas, depending on their preference.

DMR Community Residences

Two statutory criteria, established in 1984 by Public Acts 84-517 and 84-341, must be followed when siting a community residence for mentally retarded or autistic residents. First, a residence housing six or fewer residents and necessary staff persons must be considered equal to a single-family residence for zoning purposes. Second, no residence may be located within 1,000 feet of any other type of

community residence without the approval of the municipality where the residence is being sited.

The Department of Mental Retardation has no formal guidelines for siting community residences for its clients. The department primarily contracts with nonprofit agencies to establish and operate community residences. It is the responsibility of contracted agencies to locate sites for residences and obtain the necessary licenses to operate from DMR.

Siting of a community residence begins when DMR issues a request for proposal (RFP) to nonprofit or other private agencies that operate community residences, inviting them to establish a residence in a city or town where the department believes a need exists for a residential program. The need for placement is determined by the six DMR regions based on: 1) court orders or consent decrees; 2) requests from families with mentally retarded members; 3) emergency placement situations; 4) deinstitutionalization goals; and 5) budget constraints. An agency will respond to the RFP, locate a suitable house and apply to DMR for a license to operate a community residence. It is also the responsibility of the agency to comply with local zoning codes and regulations concerning single-family residences.

The agency must apply to DMR for a license to operate a community residence. It must also apply to the municipality hosting the residence for a certificate of occupancy. However, no state statute or regulation requires a nonprofit or other private organization to notify a municipality when it plans to establish a community residence for the mentally retarded.

DMR will grant a license to an agency upon the agency's receipt of the certificate and inspection of the proposed residence to insure compliance with departmental regulations regarding community residences. DMR has two types of licensing criteria: one for the physical plant and another for the agency operating the community residence. Buildings must comply with local fire and safety codes in addition to providing adequate living space for the residents. Among other requirements are provisions for bathing and bathroom access. The agency must also demonstrate financial stability, list names and titles of professional staff and aides, and show pre-approved access to medical and dental care for the residents.

DMR reserves the right to approve or deny a license to operate a community residence. Denial of a license may be appealed within 20 days of the denial. Residents of a municipality being considered for a community residence cannot petition the commissioner of mental retardation to deny a pending license to operate a residence. However, a resident of a municipality hosting a community residence may petition the commissioner of mental retardation, with the approval of the legislative body of the municipality, to revoke the license of the residence on the

grounds that the residence is not operating according to statute or departmental regulations.

The department also operates group homes that it owns and maintains. In these cases, the community residence is sited and acquired through the Department of Public Works process described earlier in this chapter. The public works department will arrange for the lease or purchase of a house and perform all necessary renovations. DMR will then assume control of the house, place clients in the house, and begin using it as a community residence.

According to DMR, at the time of the committee review there were 437 private and 95 public community residences housing 2,740 clients, and located in 128 towns throughout the state. The department was in the process of creating 30 homes for 141 residents from the Mansfield Training School. It was also closing a facility in New Haven and creating 8 or possibly 9 community residences, 2 private and 6 or possibly 7 public, for 52 residents. At present, DMR does not see a need for much further expansion of community residences. The department hopes that a shift will be made toward "supported living services". Under this type of arrangement, DMR clients will live in homes of their choice such as leased apartments or privately owned homes. DMR will contract with private agencies to provide services to clients in their homes. At the time of the committee review, there were 561 people receiving this type of service.

DOC Halfway Houses

Most inmate halfway houses in Connecticut are funded by the Department of Correction, which contracts with private nonprofit agencies to create and operate them. The department has no formal guidelines for siting halfway houses. It is the responsibility of the agencies to locate suitable buildings and satisfy the zoning requirements of the municipalities that will host them. DOC will not authorize the use of or fund a halfway house until after it has met local zoning and building regulations. The agencies must also comply with DOC requirements regarding halfway houses.

The siting of a halfway house normally begins when DOC issues an RFP inviting nonprofit agencies to establish a house in a municipality where the department has determined a halfway house is needed. DOC may also approach or be approached by an agency in order to start the process of establishing a halfway house. An agency that is approved by DOC signs a contract with the department and receives a grant to operate a halfway house.

An agency will then locate a suitable building and apply to the municipality for a certificate of occupancy. The building selected must pass local building, health, and fire codes before the certificate will be granted. Challenges to halfway house siting are normally made by the municipalities themselves or by residents of the

municipalities who take the agencies to court in order to block the siting of a house in their community. Towns have the authority to approve or deny an agency's request to site a halfway house within their boundaries.

According to the DOC policy manual, siting should be based on individual program needs. The manual also suggests that agencies take into account certain factors such as: 1) the agency's relationship to the local community; 2) proximity to employment, professional, and agency resources; 3) access to community recreation; 4) access to commercial shops; and 5) access to public transportation. A facility that is not reasonably close to public transportation must provide alternative means of transportation for its residents.

Most agencies select buildings in areas already zoned for multiple family housing and convert them for use as halfway housing. If the house is being funded by DOC with a grant from the federal government, the contract between DOC and the agency must be approved by the municipality. DOC is currently moving away from this type of funding as it adds to the time needed to site and establish a halfway house. The department also works with the Judicial Department to obtain contracts for funding halfway houses throughout the state. DOC also works with the Connecticut Alcohol and Drug Abuse Commission, which accepts referrals who require residential substance abuse treatment and counseling services.

Upon the approval of a halfway house by a municipality, DOC will perform an inspection of the facility to insure that the house meets departmental guidelines for halfway houses. The DOC policy manual lists a number of requirements for halfway houses contracted to receive inmates. The agency operating the house must have a written set of bylaws or directives and a statement of the goals of the facility. Sleeping quarters should have no more than four people per room. First aid equipment meeting Red Cross standards must be readily available to staff of the agency. All halfway houses must have staff on duty 24-hours per day. According to DOC, the policy manual is currently being updated.

Once the inspection is completed and all DOC requirements are met, the agency is allowed to take in residents and begin operations. There are currently 20 halfway houses serving 575 clients in 13 cities throughout the state. DOC is in the process of preparing a three-year strategic plan for the creation of more houses.

CADAC Residential Treatment Centers

Community residences funded or operated by the Connecticut Alcohol and Drug Abuse Commission are facilities that provide treatment to drug and alcohol dependent persons in a residential setting. The commission also receives clients referred by the Departments of Correction, Children and Youth Services, and Mental Health.

Most residential treatment centers within the state of Connecticut are operated by private nonprofit organizations with funding from CADAC. The process of creating a community residence begins when CADAC issues a request for proposal to agencies and municipalities that may be able to provide certain treatment services. Agencies that respond will receive a copy of CADAC funding regulations, Department of Health Services regulations, and federal regulations on confidentiality. All community residences must fit into CADAC's "Three Year Plan" for addressing the needs of the state in providing treatment for drug and alcohol abuse.

Unlike other state agencies that fund community residences, CADAC has written guidelines regarding community residence siting. The agency must identify a site using such criteria as zoning appropriateness, community acceptance, and convenience for delivery of services. A community residence funded by the commission is also subject to the "1,000 Foot" rule that governs the siting of community residences for the mentally retarded and mentally ill.

Once a site is secured, the agency must apply to the Commission on Hospitals and Health Care for a certificate of need. The certificate confirms that a need exists within the community for the type of treatment to be provided by the proposed facility. The agency may then apply to CADAC for building funds to rehabilitate the structure selected to become a community residence.

After the certificate of need is granted, and the building, if necessary, has been rehabilitated, the agency must apply to the host municipality for a certificate of occupancy. The municipality will inspect the building to ensure compliance with fire and safety codes, in addition to zoning requirements. Once the certificate of occupancy is granted, the state health services department must perform a licensing inspection of the facility. Among the department's licensing requirements are statements of ownership and operation, a certificate of public liability insurance, and a local fire marshal's annual certificate of compliance.

CADAC will authorize the operation of a community residence only after DOHS has granted an agency a license to operate a community residence. The commission has a number of requirements that applying agencies must meet to receive funding. These include adherence to federal laws on confidentiality, job descriptions for employees, admission criteria, and intake procedures.

At the time of the committee review, there were 45 residential facilities in Connecticut with a total of 1,256 beds and CADAC had plans for an additional 4 facilities. According to CADAC staff, there has been some opposition in siting residential facilities, but not a significant amount. The average amount of time for siting a CADAC funded facility was estimated as two years.

CHAPTER III

FINDINGS AND RECOMMENDATIONS

The primary purpose of the Legislative Program Review and Investigations Committee study of the state's role in siting controversial land uses was to determine how to improve the balance between the often conflicting goals of efficiency and equity when locating publicly needed but locally unwanted land uses. The program review committee found that programmatic and technical requirements along with cost considerations drive most siting decisions in the state processes reviewed. Like other states, Connecticut has relied on its authority to force siting and has attempted to overcome community resistance to the most objectionable facilities with compensation packages or financial incentives.

Equity issues in terms of trying to distribute negative impact among all beneficiaries of controversial land uses are rarely considered. Only the ash residue landfill process and mentally retarded and mental health community residence policies contain provisions that require geographic dispersion or set saturation limits.

In contrast, the committee found that several theoretical models such as point systems and auctions, described earlier in Chapter I, promote equity in siting controversial land uses. They are, however, difficult to implement. Point systems, for example, require consensus about the relative negative impact of various facilities plus an inventory of all existing facilities subject to point values. Sophisticated system planning and simultaneous siting are also necessary ingredients to most alternative mechanisms for selecting public facility sites. Auction type processes, in which potential host communities bid against each other for unwanted facilities and compensation is based on bid amounts, are of limited use for site-restrictive facilities and are complex to administer.

Processes that emphasize equity over efficiency are also likely to increase the costs of developing controversial land uses due, for example, to higher land acquisition costs in affluent areas or greater host community compensation requirements. Efforts to be equitable, particularly in times of limited public resources, may end up making a project economically unfeasible.

Finally, siting equity is difficult to define or measure. A siting process may be considered fair if all potential locations are treated equally through objective decisionmaking. Another goal may be that direct and indirect costs associated with hosting an unwanted land use are shared by all beneficiaries of the facility or that distributional equity--every community has its "fair share" of unwanted facilities as indicated by set ratios--is achieved. However, what is viewed as a burden to one community may be welcomed by another. Furthermore, the costs of hosting a facility

cannot always be quantified or even identified in order to determine proper compensation, and "fair share" is not easily measured.

It is clear the state must intervene and, if necessary, override local control of land use to get publicly needed facilities established. It is also evident local resistance frequently results from a lack of trust in government to act fairly or to adequately protect the public from possible health, safety, or economic harm. In the absence of a workable equity-based model, the committee concentrated on identifying ways to promote fairness in siting decisions by state government.

The program review committee believes the recommendations presented below will improve state siting decisions by increasing consideration of equity issues and providing greater accountability for those decisions. Recommendations are presented in two separate sections--one covering public facilities such as state institutions and environmental or energy related projects, and one concerning community residences. In the first section, state planning improvements are suggested, and attributes of successful siting are discussed. Recommended changes to existing siting processes, based on application of these attributes, are also discussed. Findings and recommendations concerning increased fairness in the siting of community residences are presented in the second section.

PUBLIC FACILITIES

Statewide Planning

There is no overall state policy regarding the fair siting of publicly needed but locally unwanted land uses. Neither the state's comprehensive planning process nor its resulting statewide land use document (the state conservation and development plan) address equity concerns over the placement of controversial facilities.

Existing criteria for the siting processes reviewed during the committee study emphasize technical requirements of a facility along with health, safety, and environmental concerns. Except for the ash residue landfill process, none take into account the presence of other unwanted land uses within a proposed host community or formally seek to avoid concentrating facilities that can have a negative impact on public health, safety, or welfare in a particular area. In fact, the public works siting process promotes concentration because existing state-owned properties are preferred as sites for new or expanded facilities such as that evidenced by state prison locations.

It is commonly perceived that some areas of the state host a disproportionate share of controversial public facilities. At present, there is no single source of information on the current distribution of locally unwanted land uses in the state or even a generally accepted definition of what constitutes a LULU. Thus, even if decisionmakers wanted to consider siting equity, the tools needed to analyze it are not available.

As a first step to improving fairness in locating controversial public facilities, the program review committee believes the state's comprehensive planning effort should include consideration of siting equity. To permit effective evaluation of siting equity, the state also needs to develop information on the distribution of locally unwanted land uses.

Therefore, it is recommended that the state plan of conservation and development shall include a policy that the direct and indirect costs associated with hosting a public facility sited by the state or other entities on its behalf will be shared by the facility's beneficiaries to the extent reasonably possible. An inventory of locally unwanted land uses, including but not limited to state institutions and facilities, and facilities regulated by the Connecticut Siting Council, shall be developed and maintained by the Office of Policy and Management. Additional facilities to be included in the inventory shall be identified with the advice and assistance of representatives of local cities and towns. Within the limits of existing resources, a map showing the locations of the facilities included in the inventory shall also be developed by the policy and management office and updated annually.

The conservation and development plan is the state's guiding document on land use throughout Connecticut and is intended to establish a comprehensive growth policy that balances economic, environmental, and social needs. Requiring the plan to recognize the importance of sharing responsibility for public facilities that benefit the general population but may entail risks to the communities where they are located is consistent with this intent.

The plan must be considered by state agencies whenever they undertake or fund major actions, including large capital projects, and conformance with plan policies is monitored by the Office of Policy and Management. Including equity concerns within the document, therefore, is an effective way to promote fairness in state siting decisions on locally unwanted land uses. In addition, as the conservation and development planning process now includes a mechanism for local participation, communities could be involved in developing strategies for achieving the goal of siting equity.

The recommended policy only requires that equity be addressed to the extent reasonably possible. Other siting factors that may result in concentration of facilities, such as the need to locate facilities near their client base or users, related services, and existing infrastructure (e.g., transportation, sewer and water, etc.), or the need to consider the financial viability of a project, would not be overruled.

The recommended inventory of locally unwanted land uses is key to effective implementation of equitable siting. It will serve as an objective source of data on current distribution, and along with mapping, aid siting decisionmakers in locating future public facilities. In addition, progress in implementing the state's fair siting policy can be easily measured by examining the information in map form.

Locations of most of the land uses sited through the state processes included in the study were analyzed by the program review committee staff. Results of this analysis are shown in the maps in Appendix D. While inconclusive in terms of determining equitable distribution (since a number of land uses that may be considered controversial, such as state institutions other than prisons and facilities that predated the establishment of the Connecticut Siting Council, are not included), the results do illustrate the benefits of mapping locations.

The maps in Appendix D were prepared with computers by the Natural Resources Center of the Department of Environmental Protection. The center already works with the Office of Policy and Management in developing the state conservation and development plan and has assisted other state agencies with various siting and land use projects. It can be expected, therefore, that the policy and management office could work with the center to produce the mapping recommended above.

State Land Planning

As noted above, the public works siting process tends to concentrate state land uses due to the priority given to state-owned land in locating new or expanded state facilities. While this approach is efficient in terms of time and money, and sometimes required for programmatic reasons, towns have little recourse regarding such decisions. If the proposed use is particularly objectional, legal action, which is costly both to the town and the state, may be pursued. In general, towns selected to host public works projects can only seek compensation after a siting decision is made. In many cases, such compensation is limited to what municipal officials can negotiate for direct costs of any local services provided and payment-in-lieu-of-taxes at the rate of 20 percent of assessed property value.

Given the size of some state properties, such as institutional and higher education campuses, a considerable portion of land within a town can be beyond local control. Use of the state land can also change quickly if an agency must respond to an urgent need or emergency situation. Finally, siting decisions on state-owned property are often based on the historic use of land rather than what it might be best suited for under present conditions.

The program review committee believes that better and more locally acceptable decisions could be made if there was more coordinated, long-term planning regarding the development of state-owned lands. **Therefore, the committee recommends that the Office of Policy and Management, in consultation with the Department of Public Works, shall prepare a comprehensive plan for the development and use of state-owned properties. The state land use plan shall be prepared and adopted in the same manner as the state conservation and development plan. The planning process shall additionally include provisions for participation by representatives of the communities in which state-owned properties are located. The initial plan shall be submitted for legislative approval on or before November 1, 1994, and shall be revised every five years thereafter.**

In the view of the committee, the recommended state land use plan is a logical extension of the state conservation and development planning process. Existing OPM staff, familiar with land use planning and working with localities, would have primary responsibility for implementation. This new responsibility should not significantly interfere with current planning duties of the policy and management staff because of its limited scope and recommended timeframe, which is different from the state conservation and development plan schedule.

Development of a long-range, comprehensive state land use plan will benefit both the state and communities where state properties are located. The state will have fuller knowledge of its existing property resources, permitting both better facility management and more informed siting decisions for future facilities. It is also likely

that the state will encounter less local resistance to proposed new uses for state land. Communities will also be better informed about the use of state land within their boundaries and will additionally have the opportunity to actively participate in state land use decisionmaking.

The recent experience of the Mansfield Training School task force is evidence of the merits of a state-local cooperative approach to land use planning. The committee recommendation is also consistent with current efforts within the OPM comprehensive planning division to develop facility master plans with the state higher education institutions.

Siting Process Attributes

After reviewing existing processes and theoretical alternatives, the program review committee found no workable model for siting controversial land uses that achieves a balance of efficiency and equity. In addition, it was found that no single set of procedures can guarantee successful siting in every case. Oftentimes, it seems the ability of state government to locate publicly needed but locally unwanted facilities has less to do with the process used than the nature of the facility proposed or the past experience of the community chosen to host the facility.

Low level radioactive waste disposal areas and hazardous waste facilities, for example, encounter almost universal opposition due to the magnitude and uncertainty of their risks and the public's resulting fear and mistrust. A satisfactory solution to the problems of establishing such facilities has yet to be developed by either siting practitioners or theoreticians. Connecticut's low level radioactive waste experience, described as a case study in Appendix E, exemplifies how a process that seems to incorporate all of the components necessary to win community acceptance of an unwanted facility can fail to engender public trust.

The state's recent prison siting experience shows how public response to the same process can vary. Three communities--Suffield, Newtown, and Montville--were selected as locations for new correctional facilities using the same criteria and evaluation method. Public meetings on the proposed facilities drew large and angry crowds in Suffield and Newtown, but only a handful of citizens in Montville. The difference in reaction was explained by some involved in the process by the fact that Montville, unlike Suffield or Newtown, already hosted a jail and its residents, therefore, were less concerned about negative impact.

Coincidentally, Montville is also the location of a Connecticut Resources Recovery Authority ash residue disposal area that was sited with the approval of the local land use commission; no negotiation or arbitration through the siting council, as provided in statute, was required. Staff at the authority attribute local acceptance of the facility in part to the fact that many in the community work in the nuclear industry

and, therefore, are better informed about and more comfortable with the potential risks posed by properly managed hazardous materials.

Despite the lack of a practical model process and the seemingly unique situation presented by each controversial siting decision, the committee did identify certain attributes common to successful siting experiences that foster fairness and trust. These attributes, described in more detail below, include consensus on facility need, accountability, public participation, a voluntary approach, and compensation for negative impact. The committee found the presence of these attributes does not insure siting success, but their absence is likely to result in greater local resistance and siting inequities.

The attributes described can only serve as guidelines for developing a siting process. Specific components need to be tailored to particular siting situations. In applying the attributes to current state processes for siting public facilities, the committee found improvements were needed in several areas. Recommended changes to processes included in the committee's study are also discussed in the following sections.

Consensus on Facility Need

Fairness principles dictate that the public benefits from a particular facility outweigh the burden it places on the community selected to host it. Consequences, both positive and negative, should be investigated by both policymakers and siting agencies prior to initiating a siting process and communicated to the public. As siting experts have noted, the status quo must be viewed as an unacceptable option to justify the establishment of a locally unwanted land use.

Academic research and the committee's review of state siting experiences demonstrate that consensus on need is essential to gaining local acceptance of a controversial facility, particularly if the siting decision will be forced. For example, the obvious and urgent need for new prison facilities, according to individuals responsible for siting them, helped to defuse legal challenges from the proposed host communities. In contrast, the need for a low level radioactive waste disposal area within Connecticut has been seriously questioned by citizens and elected officials and the resulting lack of support for the proposed facility has contributed to site selection problems.

Effective efforts to educate the public as to the purpose of a facility can build consensus early in a siting process and reduce local resistance to controversial land uses. According to developers of hazardous waste projects in other states and in Canada, extensive public information programs were a key ingredient to the success of their siting activities.

Several agencies, such as the Connecticut Hazardous Waste Management Service and the Connecticut Resources Recovery Authority, have made attempts to promote public awareness of the need for the facilities they site. Agencies have noted, however, that until a proposed site arouses citizen interest, participation by the general public in informational programs is usually limited. The committee believes that more attention to public education activities would increase participation and would improve siting efforts by agencies responsible for siting controversial facilities in Connecticut. **It is recommended that public education programs focusing on the need for locally unwanted land uses be developed by state agencies responsible for siting controversial facilities and carried out on an on-going basis around the state.**

The program review committee recommendation is intended to direct state agencies to place greater emphasis on disseminating information and building consensus on need early in the siting process. As experts have noted, more research is needed to develop effective means of communicating costs and benefits, particularly when proposed facilities are unfamiliar, highly technical, and pose uncertain risks. There are, however, a number of mechanisms that have been used effectively in other jurisdictions. These include media campaigns and workshops or public forums on the problems that controversial facilities are intended to address, especially when sponsored by groups independent from the siting process (e.g., academic institutions, environmental, or public service organizations, etc.). Public tours of existing facilities, if any, have also helped to increase public understanding of the purpose as well as the impact of an undesirable but necessary land use.

Accountability

The credibility of a siting process is directly associated with its success. Local resistance to controversial public facilities often stems from a lack of trust in government to be fair, implement mitigation measures, and comply with agreements about compensation. All the recent siting literature emphasizes the need to restore trust, and experts advocate powersharing through public participation and open decisionmaking, which are discussed in the following section, to achieve this goal. Public confidence in a siting agency is also fostered when its decisions are made on an objective basis, using accurate and reliable data, and procedures for selecting sites are formally established and followed.

When public trust is lacking, the fact that a siting agency can be held to set standards and challenged for nonconformance provides accountability. Statutory or written site selection policies and procedures govern most of the public facility processes reviewed by the committee. In addition, siting decisions for certain facilities (i.e., power, including resources recovery, telecommunication, hazardous waste and low level radioactive waste disposal facilities) are subject to independent review and approval by the siting council. However, the program review committee found that two state siting agencies, the Department of Public Works and the

Connecticut Resources Recovery Authority, lack written site selection procedures. In addition, although the Connecticut Hazardous Waste Management Service, with public input, adopted a formal site selection plan that details the criteria and methods to be used for a low level radioactive waste disposal area, there is no legal requirement that it do so. There is also no requirement for written procedures for siting a hazardous waste management facility, which the service is authorized to develop on the state's behalf, if necessary.

The program review committee recommends that state agencies and quasi-public agencies that site controversial facilities on the state's behalf shall establish in writing facility siting policies and procedures that include specific site selection criteria and methods. Written siting criteria should address technical or programmatic requirements, requirements to avoid or mitigate risks to public health, safety, and welfare, and to the extent reasonably possible, fairness in terms of avoiding concentration of facilities with adverse impact.

The committee recommendation would require by statute that the Department of Public Works, the resources recovery authority, and the hazardous waste management service formalize their siting processes, thereby promoting accountability to the public for their decisions. The program review committee believes this requirement is especially important for quasi-public agencies, which are subject to few state controls or public review processes. Unlike state departments, for example, quasi-public agencies are not required to comply with environmental impact assessment provisions of the state environmental policy act.

The committee does not believe siting policies and procedures should be developed as regulations since criteria and methods will vary depending on the type of facility. In addition, the lengthy process for promulgating regulations could add unreasonable time and expense to development of needed public facilities.

Under the committee recommendation, residents of proposed sites as well as the general public, at a minimum, would be able to review written documentation of the basis for state siting decisions. Ideally, agency siting policies and procedures would be developed with input from all stakeholders in the facility. Advisory groups and opportunities for public review and comment could be used for this purpose. Public participation would aid in identifying local concerns over adverse impact and developing criteria to address them. This could avoid conflict and criticism later in the siting process.

Public Participation

The main goal of allowing the public to participate in and affect the outcome of siting processes for controversial facilities is to develop trust. Sharing information and decisionmaking power with the public also makes siting agencies more

accountable to the public. When local control over land use decisions is preempted or overridden by the state, mechanisms that permit communities to ensure their concerns over risks and costs will be adequately addressed are required to gain local acceptance.

In general, experts have found the greater the potential negative impact of a facility, the greater the need for public participation in siting decisionmaking. Conflict can be reduced or even avoided when the public is involved early in the process, helping to develop site criteria and mitigation measures that are based on community's perception of risk as well as technical factors. Giving the public full access to technical data, along with opportunities to independently review site evaluation methods and procedures, also promotes powersharing. Allowing the public to be involved in monitoring the facility once it is operating can be another effective way of promoting trust and accountability. In some siting processes reviewed by the committee, host communities are granted access to the facility and its records, and several authorize the community to order a shut-down if certain facility operating conditions are not met.

The state siting processes reviewed by the committee all incorporate opportunities for public participation to some extent. The low level radioactive waste disposal area process, as noted in the discussion presented in Appendix E, provides for public input at each phase of the siting process and after the facility is operational. The siting council is mandated to hold public hearings regarding the facilities it regulates, which allows for local input on siting decisions, and in two cases (for hazardous and low level radioactive waste facilities), affected communities share in decisionmaking through municipal representatives that are added as ad hoc members to the council. Except for public works projects, most controversial facilities included in the committee's review are subject to approval or at least formal consideration by local land use control boards. The local review process, even if decisions are later overridden by the state, provides another avenue for identifying community concerns over a facility's location and design.

The public works process was found by the committee to have few formal opportunities for public participation. In practice, however, agency staff generally meet with local officials to discuss proposed projects, identify local siting concerns, and, if necessary, negotiate agreements to address those concerns. Also, most major public works projects are subject to state environmental impact evaluation requirements, which include provisions for extensive review and comment, and, under certain conditions, public hearings. The committee believes its earlier recommendation on state land use planning along with the requirement for written siting guidelines proposed above will provide for additional, and earlier, community participation in the public works siting process.

Public participation in a siting process increases the chances that conflicts can be cooperatively resolved by communication and negotiation. However, productive participation can be difficult to achieve when a proposed facility provokes strong emotions or when communities have had bad experiences dealing with government agencies in the past. It was found, based on review of the siting literature and experiences in other states, that the use of neutral mediators can bring about more effective public participation in such cases.

In at least two states, consultants with academic backgrounds in dispute resolution have been retained to provide mediation services and technical assistance in implementing low level radioactive waste facility siting. According to siting staff in Maine, the use of mediation consultants in their process to date has aided effective public participation. In New York, use of a mediation consultant is expected to improve low level radioactive waste facility siting agency relationships with community groups, which were seriously damaged during the initial site selection process.

Statewide offices responsible for promoting the use of neutral mediators to resolve public policy disputes currently exist in at least six states (Massachusetts, New Jersey, Minnesota, Wisconsin, Hawaii, and Ohio). Mediation services provided by offices in New Jersey and Massachusetts have been successful in resolving facility siting conflicts in those states.

The program review committee believes mediation services could prove beneficial to resolving conflicts between Connecticut siting agencies and the public over the siting of controversial facilities. **Therefore, it is recommended that state and quasi-public agencies responsible for siting controversial facilities consider using neutral mediators to facilitate public participation in their siting processes.**

The primary role of a mediator is to moderate discussions between parties with differing interests and assist parties in reaching agreement. The mediator's independent, third party status can promote trust in a negotiating process. Many times, the use of mediation can prevent parties in a dispute from pursuing costly legal action. For these reasons, the committee believes mediation is an appropriate tool for managing conflict and building consensus in siting processes for controversial facilities.

Under the program review committee recommendation, the state agencies would retain the services of a neutral arbitrator as needed for their siting processes. The pool of possible mediators includes: members of professional organizations such as the American Arbitration Association, retired judges, consultants that specialize in conflict management, or staff from statewide mediation offices in surrounding states.

Voluntary Acceptance

A major factor in community opposition to forced siting decisions, particularly when a facility is believed to pose high risks, is the loss of control over those risks. Social science research has shown that people view imposed risk versus risk that is voluntary as significantly more dangerous. It is not surprising, therefore, that a community faced with the forced siting of what is perceived as an unacceptable level of risk will vehemently resist the decision.

Recognizing that communities are often unresponsive to incentives or opportunities for participation when siting decisions are forced, some siting experts have suggested facility developers use a voluntary acceptance approach instead. A voluntary approach was used successfully to site a hazardous waste facility by the government of Alberta, Canada, and appears promising for establishment of a hazardous waste incinerator in Washington state, landfills in New York state, and a disposal facility for low level radioactive contaminated soil in Ontario, Canada.

Under the typical voluntary approach, communities are sent information from a developer about a proposed facility with the offer to provide more information at their request. At the invitation of interested communities, informational public meetings are held. No site selection efforts occur until one or more communities express an interest in hosting the facility and communities may opt out of the process at any time. It is made known that incentives are available and subject to negotiation. However, to avoid being viewed as a bribe, financial compensation generally is not discussed until a community is seriously considering accepting the facility.

Informed consent is an important element to the voluntary approach. Risk information is fully shared, and some processes even provide communities funding, with no strings attached, for an independent assessment of facility impact. In at least one process, the developer required that a community's decision to accept the facility be indicated through a local referendum.

The committee believes that, overall, the voluntary approach is more equitable than imposed siting for controversial facilities, provided that communities are fully informed about potential adverse impact, measures to mitigate health and safety risks are not compromised, and unavoidable costs are adequately compensated. **It is recommended that state and quasi-public agencies responsible for siting controversial facilities should, as a first step, implement a voluntary approach for selecting suitable sites. If the voluntary approach fails, siting processes based on the Connecticut Siting Council model should be developed and used.**

The voluntary approach promotes fairness by giving communities full control over whether or not to accept a controversial facility. If fully informed about possible adverse impact, those most affected are freely choosing to accept the risks posed by

the facility in exchange for the benefits it brings. Mitigation measures and compensation required to make the facility acceptable are established by the community. Use of a binding local referendum can insure that acceptance of a facility and the incentives offered with it is the choice of the majority in the community. Given the recent experiences of siting hazardous and low level radioactive waste facilities in Connecticut and other states, it may be the only method available at present to successfully site the most undesirable public facilities.

One criticism of the voluntary approach is that it may concentrate unwanted land uses in communities that are economically depressed since they are the most likely to respond to the employment opportunities, tax revenues, and other financial incentives offered. Proponents, however, have pointed out that policies requiring geographic fairness can and should be implemented to avoid such concentrations.

The incentives required by volunteer communities for some types of facilities may be so costly that a project becomes financially unfeasible. It is also possible that no communities volunteer or no volunteered sites prove suitable. In these cases, an alternative siting approach must be implemented. The committee believes the Connecticut Siting Council model is the best practical fallback for the voluntary approach for a number of reasons.

Based on interviews and the results of a committee survey of local officials, it was found that the council model is generally accepted as an appropriate mechanism for overriding local land use authority, primarily because it is viewed as providing objective and independent decisionmaking. The council model is comprised of a statutory process that incorporates many desirable attributes including determination of need, formal site evaluation criteria, and public participation. By law, the council can (and based on committee staff review of council files does) require that sites as well as facilities be modified or actions be taken to mitigate adverse impact on the environment, public health, or safety. Since the costs of implementing council mitigation measures are added to the facility's development and operating expenses, fairness is promoted in that all beneficiaries of the facility share both direct and indirect costs.

As pointed out in the previous chapter, the current siting council process has been effective in getting needed facilities established in a timely manner. The model has not been fully tested in that it has yet to be applied to the most controversial types of land uses it can regulate--hazardous and low level radioactive waste facilities. In addition, recent council actions to override local decisions on several controversial resources recovery plants (i.e., wood burning and tire burning facilities) were angrily contested by the affected communities.

The high level of local opposition to such facilities indicated a need for greater public participation in the council's process for approving them. Now, under

legislation enacted in 1989 (P.A. 89-104), developers of facilities regulated by the siting council must consult with proposed host communities and provide them with any technical reports on facility need, site selection, and adverse environmental impact prior to submitting a certification application to the council. A summary of the consultation along with all recommendations received from the town must be provided to the council.

Overall, the program review committee believes that the siting council model offers credibility, along with opportunities for local input and attention to mitigation of adverse impact. Mechanisms for providing host community compensation are easily incorporated into the siting council model, as demonstrated by the hazardous and low level radioactive waste facility processes. Finally, while the present model focuses on balancing need and adverse environmental impact, it could be designed to address factors such as economic impact and geographic fairness, if required to meet local concerns.

Compensation for Negative Impact

Siting equity requires that communities not be subjected to undue risk or unfairly burdened because they host a controversial facility. The two primary means of achieving this goal are: mitigation, or measures intended to avoid or reduce adverse impact on a host community; and compensation, which is aimed at making a community at least as well off as it was before the controversial facility was sited. It is essential both to fairness and siting success that compensation not be substituted for efforts to reduce health, safety, environmental, and economic risk.

Compensation for the negative impact of facilities sited under the processes reviewed in this study is handled in several ways. By statute, host communities of the most controversial land uses--hazardous and low level radioactive waste facilities--are provided a wide range of financial benefits and may negotiate for others. These benefits include direct payments, funding for local services such as fire, police, and road repair as well as facility monitoring by the municipality and land value guarantees. The Connecticut Resources Recovery Authority is required by law to negotiate with host communities forced to accept its ash residue landfills regarding 12 specified compensation and mitigation items.

There are no statutory requirements about negotiating compensation for other CRRA facilities or for public works projects other than emergency correctional facilities. However, the authority and the Department of Public Works, as standard practice, negotiate written agreements concerning compensation for hosting unwanted land uses. Under its agreements, CRRA generally provides compensation in the form of payment in lieu of taxes. Public works agreements typically address payments for local services required by the facility. Some of the compensation packages recently negotiated by the state for new and expanded prisons also included

mitigation items such as landscaping to screen the facility from view, and restrictions on the type of inmates housed. In addition, while all public works facilities are statutorily required to make payments in lieu of taxes to host communities, the rate for prisons was increased from the standard 20 percent to 100 percent of assessed value.

Only the statutory process for power and telecommunication facilities does not specifically provide for host community compensation. The private developers of such facilities are subject to local property taxes and may, on their own, offer other benefits to communities to gain local acceptance of a proposed land use. In addition, individuals who believe they have suffered an economic loss due to the facility can seek damages through legal actions against the developers.

Based on its review of the siting literature, the committee believes compensation and mitigation guarantees that fully address a community's concerns over adverse impact serve as an incentive for acceptance of controversial facilities. In general, combinations of both financial and nonmonetary compensation and guaranteed mitigation are needed to reduce community opposition, as the prison siting experience shows. As the committee's analysis of prison siting agreements also demonstrates, concerns about the same type of facility will vary among communities. Therefore, the most effective compensation packages are achieved through negotiations between facility developers and affected communities.

As described above, each of the existing state siting processes permits negotiation of compensation benefits to some extent. The program review committee believes that its earlier recommendation calling for a voluntary approach to selecting sites for controversial facilities will provide even greater opportunities to develop community incentives for accepting a controversial facility.

To develop effective compensation packages, a thorough understanding of the costs and benefits of a controversial facility is required. In addition to assuring that the full range of adverse impact will be identified, this permits more creative approaches to compensation. For example, if a facility will create employment opportunities, a certain portion of jobs can be reserved for residents of the host community. For facilities with uncertain risks, insurance policies or trust funds, financed by the developer, can be used to pay for future damages from accidents or unanticipated adverse impact. In the opinion of the committee, policymakers and siting agencies need to devote more attention, early in the siting process, to investigating adverse impact and considering compensation approaches.

The program review committee believes one area that requires more study is compensation for a controversial facility's impact on property values. It is clear that proximity to some types of facilities does have an adverse effect on home sales and selling prices, at least temporarily. Academic research has shown there is a negative

effect on the marketability of properties near certain undesirable land uses (e.g., landfills, transfer stations, nuclear waste dumps), but has not fully determined how much of an effect or for how long. Existing research has found the negative effect is greater on properties closer to controversial facility. In addition, at least one recent study has indicated what has been shown by a number of siting experiences--that just the announcement of a controversial facility's location can depress a community's real estate market.

Compensating adverse impact on property values is difficult for a number of reasons. Ideally, payments should be based on detailed economic analysis of the actual impact (in dollars) on property values that is due to the facility (versus other market influences) and how this impact varies with distance from the facility. Economic studies of this nature are difficult and expensive. For simplicity, it could be assumed that all devaluation in property values is due to the facility. However, without limits on eligibility, costs could become prohibitive or abuses could occur. For example, developers could take advantage of the program to sell unoccupied homes at a loss without any risk. Granting compensation to any property owner who decides to sell could even accelerate devaluation and create "ghost towns." Compensation can be limited just to individuals with proven economic hardship (e.g., job transfer, family hardship, business difficulties, etc.), but a mechanism for evaluating claims would have to be established. This requires many decisions including who should be eligible (within what proximity), who should hear claims (the siting agency, an arbitrator, etc.), whether to allow appeals, and in what form compensation should be provided (purchase, loans, etc.).

The committee found that in a number of siting processes, adverse impact on property values is compensated, generally with land value guarantees. Through this form of compensation, property owners within a certain distance of a undesirable land use who attempt to sell their property and receive less than fair market value are provided payments equal to the difference. To the committee's knowledge, land value guarantees have only been used to compensate property owners once a facility is operating and not before.

Economic hardship experienced by property owners near *announced* sites of controversial land uses could be similarly compensated, but this raises a serious issue: compensation would be provided when there is no risk since the facility is only proposed and may, in fact, never exist. The adverse economic impact, however, is very real for a property owner who has an immediate need to sell but is unable to find a buyer or must accept an unreasonably low purchase price. Sales below fair market value also have implications for the tax base of the community. The committee believes that satisfactory solutions for providing interim compensation to property owners suffering economic hardship due to a site announcement can be developed for specific situations. However, a systematic approach to this issue demands that substantive economic research be conducted to produce an accurate predictive model

regarding adverse financial impact. And finally, a comprehensive policy to govern fairness questions must be crafted through the legislative process.

Low Level Radioactive Waste Disposal Area Siting

The scope of the program review committee study called for an overall review of state siting policies and procedures for locating controversial land uses rather than a detailed evaluation of each siting process for a particular type of facility. However, during the course of the committee's review, a number of concerns about specific aspects of the state's process for siting a low level radioactive waste disposal area were raised by several committee members, as well as other legislators representing districts that contained proposed sites for the facility. At the committee's meeting to discuss and adopt recommendations about siting controversial land uses, amendments to the low level radioactive waste disposal facility siting statutes were proposed by committee member Representative Kevin Rennie to address these concerns.

After discussion, the program review committee determined that policy changes in the low level radioactive waste disposal facility siting law were warranted and voted to adopt the following recommendations as proposed by Representative Rennie:

- 1) The Connecticut Hazardous Waste Management Service shall apply to the U.S. Nuclear Regulatory Commission for a license to construct the state's low level radioactive waste disposal facility at or contiguous to an existing installation in Connecticut that in the 12 months preceding the application generated no less than 2 percent of the total curies of low level radioactive waste generated in the state. If and only if such application is finally denied by the commission, the service shall evaluate and select one or more other potential sites for the facility.**
- 2) In evaluating other potential sites for the facility, the service shall consider, in addition to the factors currently listed in statute (in C.G.S. Section 22a-163c), the risk to private and public water supplies.**
- 3) The property limits of any of the other potential sites selected by the service shall be at least two kilometers from the boundaries of any highly developed area as defined and identified in United States Geological Survey topographic maps.**
- 4) The property limits of any of the other potential sites selected by the service shall be at least two kilometers from the property limits of any public school.**

COMMUNITY RESIDENCES

As noted in the previous chapter, the state's role in developing community residences is primarily funding their development. The siting of community residences, for the most part, is controlled by local land use authorities. The state can and has developed community residences on its own, thereby exempting itself from local zoning regulations. The state's shift to using nonprofit agencies to site and establish community residences was based on a number of factors--the most important being a desire to privatize services for residents. It was believed by the state agencies sponsoring community residences that private agencies would be able to site them faster and more efficiently than state agencies. The state would then assume a managerial role through funding and licensing residences. It was also felt that community residences should not be a vehicle for financial gain and that nonprofit agencies would be the best agents for this policy.

The program review committee found that statutory zoning override protection for community residences for mentally retarded persons and mentally ill adults has been highly successful and allows them to be sited in many areas of the state. Maps presented in Appendix D confirm the extent of development and siting of these community residences. Prior to enactment of the zoning protection legislation in 1984, there were 54 residences for mentally retarded residents. Since 1984, 358 residences have been sited. Other factors, such as consent decrees and a shift in the department's philosophy have led to the growth in group homes for persons with mental retardation and mental health clients, but the zoning protection statute facilitated their rapid development. At present, 532 community residences are located in 128 of Connecticut's 169 towns and cities.

The legislation providing zoning protection for DMR and DMH funded group homes is coupled with measures to address local concerns about group home overdevelopment in neighborhoods. One restriction is a statute mandating the total number of adult mental health clients served in all community residences in a municipality cannot exceed one-tenth of one percent of the town's population. Equity concerns are also addressed through the "1,000 foot rule", a statutory limitation on the distances between all group homes in a given community.

The program review committee found that the Federal Fair Housing Amendments Act of 1988, which prohibits housing discrimination against persons with disabilities, however, has raised questions over such arbitrary limits. The act makes it a federal violation to restrict housing for persons with disabilities through special use permit requirements, dispersion rules, and limitations on the number of residents in a group home. Even neutral regulations restricting housing for unrelated adults may be unlawful, if they have the effect of limiting housing availability for people with disabilities. It may be found that state laws safeguarding against overdevelopment are, in

fact, in violation of federal law. Therefore, it may become necessary to create new siting guidelines and processes to meet future needs for community residences.

According to DMH and DMR, because of their shift away from community residences and reliance on the special zoning provisions to provide housing for their clients, assessing the impact of the federal law on Connecticut statutes is not a priority. No challenge has been raised in Connecticut about the effect of the federal law. The program review committee believes, however, the impact of the federal law on state statute should be addressed. **Therefore, it is recommended that the Connecticut Law Revision Commission review the Federal Fair Housing Amendments Act of 1988 to assess its impact on Connecticut protective zoning laws related to group homes and other pertinent laws, and recommend any necessary statutory changes by January 6, 1993.**

In evaluating the DMR and DMH community residence siting processes, the committee also examined the siting of two other types of state sponsored residences: those sponsored by the Connecticut Alcohol and Drug Abuse Commission and the Department of Correction. Problems, which the program review committee believes are representative of community residences subject to local zoning, were found with these siting processes. Given the time constraints of the study, however, the committee was unable to develop sufficient information to determine if alternative siting methods are required to meet state siting goals.

All nonprofit agencies contacted during the review, along with CADAC, agreed it takes, on average, two years to site and establish a CADAC or DOC funded community residence, from application for zoning approval to commencing of operations, due to resistance from towns and communities. The committee was made aware of several instances in which the only recourse left to a nonprofit agency siting a needed DOC residence was to go to court to overturn a municipality's decision denying zoning approval. The committee was unable to document the extent of such difficulties associated with siting CADAC or DOC sponsored community residences as the two departments do not compile data on residential programs that are denied by local municipalities.

Lack of understanding coupled with fears for local neighborhoods produced a major hurdle for a Norwalk-based nonprofit agency contracted by DOC in 1988 to develop a halfway house for released female inmates. Although the building selected passed Norwalk building, fire, and safety codes, approval for a special permit was denied by the town's zoning board on the grounds the halfway house would have an adverse impact on the local community. The nonprofit appealed the board's decision in Superior Court.

The board's denial was overturned in 1990 by the court, but the nonprofit was forced to pay legal fees, rent on the building (\$21,000 per year), and insurance on the

property, even though it could not be used during time spent in litigation. The nonprofit was never reimbursed for its costs as DOC (and CADAC) policy is not to fund halfway house programs until they receive approval from their host municipalities.

The program review committee found that, overall, the state's passive role in the siting of community residences other than those sponsored by DMR and DMH, is inefficient and does not promote equity. While establishment of community residences may be totally thwarted by restrictive local zoning, inequity in siting can be perpetuated. This occurs when CADAC, DOC, or other state sponsored community residences are sited in areas that offer the least resistance.

One argument used by people opposed to having community residences sited in their neighborhoods is the perceived adverse impact they feel those residences will have on the property values of their homes. The impact of community residences on local property values has been the subject of studies in such states as New York, Maryland, and Massachusetts. The most recent study conducted by the Michaelian Institute for Sub/Urban Governance at Pace University examined the impact of group homes for mentally disabled people on property values in Westchester County, New York. The study found that there was no correlation between proximity to group homes and property appreciation in their host communities. The program review committee found that the results of the Michaelian Institute study mirrored those of similar studies conducted in other states.

Statewide Registry

The program review committee found the only state agencies that routinely work together in siting community residences are DMR and DMH. One department will consult with the other when siting in an area to ensure it is not siting a community residence within 1,000 feet of a residence sponsored by the other department. Some screening is also performed by the Department of Health Services when it reviews licensing applications for DMH and CADAC funded facilities. However, there is no statewide coordination to avoid overdevelopment or promote equity in siting. Neither is there an ongoing compilation of the distribution of community residences, therefore, it is not possible to judge if concentrations are a problem. The committee believes a statewide inventory of community residences would foster interdepartmental cooperation and coordination of siting decisions.

Therefore, it is recommended that the Office of Policy and Management shall create and maintain a statewide registry listing all community residences, which shall be defined as neighborhood facilities, funded by state agencies and housing persons receiving services or treatment for a physical or emotional condition or disorder or housing persons who require assistance in being reintroduced into the community.

State agencies that sponsor community residences shall be required to submit the following information to OPM for the registry:

- **municipality where residence is sited;**
- **region served;**
- **residence address (where applicable) and number of beds;**
- **population served (mental health, correction, etc.);**
- **licensing agency (mental health, correction, etc.);**
- **operating agency and address including phone number; and**
- **funding agency.**

All information compiled by the registry relevant to siting decisions shall be considered by the state agencies that sponsor community residences. OPM shall develop regulations for the registry that take into account federal laws on confidentiality and protect client privacy.

Under the committee recommendation, state agencies funding or licensing community residences would be required by statute to provide and use information that would aid in determining where to site their residences without overdeveloping communities or neighborhoods. Agencies could protect their clients by withholding information that would compromise the health or safety of any resident at a given facility. Inter-agency coordination of their siting activities would, therefore, be improved.

Need Indicators

The program review committee found there is no uniform system for determining need for a community residence within a municipality. Without such a system, it is difficult to demonstrate benefits of certain residential-based services to a proposed host community. One state agency, DMR, has criteria for determining need that include: 1) court mandates; 2) requests from families with mentally retarded members; 3) emergency placement situations; 4) deinstitutionalization goals; and 5) budgetary constraints.

The committee believes that establishing objective indicators would be an effective tool in demonstrating the need for development of residential-based services in a particular area. **Therefore, it is recommended that each state agency that**

sponsors community based residential services shall develop indicators of need for such services to be used in aiding siting decisions at regional and local levels.

Indicators of need could be developed using: 1) census data; 2) data on existing community residences and numbers of beds in existence for specific populations; and 3) departmental data on the number of clients requiring services in a residential setting. The data could be developed into ratios that would illustrate: 1) the ratio of persons requiring beds to the local population in a given community; and 2) the number of beds required to the number of beds currently in use. This would be an objective determinant of the need by a specific population for community-based residential services in a specific town or region.

Siting Guidelines

The program review committee found that CADAC is the only state agency with established written siting guidelines for its community residences. Its guidelines instruct a nonprofit agency on how to obtain necessary municipal and state certificates in order to site and establish a community residence. When asked for siting guidelines DMR and DMH referred to statute, while DOC noted it was not a policy of the department to write guidelines for siting halfway houses. Not having written guidelines calls into question the consistency and fairness of a department's siting policies and might further alienate a community already opposed to the siting of a community residence.

The committee recommends that siting guidelines describing the criteria and method used to determine appropriate locations for community residences should be developed by each state agency that funds or supports them. These guidelines should be drafted according to the needs and concerns of the populations sponsored by the different state agencies.

Written siting guidelines offer greater accountability for state agencies establishing community residences. Agencies should use their guidelines to explain siting methods, policy, and rationale. With knowledge of policy guidelines, communities would have a better understanding of what agencies are trying to accomplish with residential-based programs.

Alternative Siting Processes

The program review committee examined, but found unsuitable, the possibility of extending the zoning protection given to mentally retarded and mental health group homes to CADAC, DOC, and other state agency sponsored community residences. While the committee did not find enough evidence to support recommending changes at present, it may be necessary to have a process in the future that permits faster development of community residences and fosters geographic fairness. Two options

the committee believes should be considered as alternative siting processes for community residences are outlined below.

The program review committee believes there should be a way to facilitate development of community residences needed to meet public policy goals. For example, a zoning override process similar to the Connecticut Siting Council mechanism could have brought a swifter, less costly resolution to the siting dispute discussed earlier. Such a process would be an alternative to lengthy lawsuits used to counter local restrictions, but would not preclude them.

One alternative considered by the committee was a zoning arbitration process limited to CADAC and DOC and comprised of three components: 1) a provision allowing towns to propose alternate sites for community residences when nonprofit agencies apply for local zoning approval; 2) strict deadlines for negotiation and for going to arbitration if negotiations are unsuccessful; and 3) a hearing process utilizing an arbitrator contracted by the agency involved in the siting dispute. The arbitrator would have to balance the need for a specific program with local concerns and render a decision within a specific time period.

There are advantages and disadvantages to such a zoning arbitration process. The first provision would allow towns to be more active participants in the siting process. The second provision would help address their needs and concerns while allowing nonprofit agencies to pursue siting goals. The last provision would ensure a swifter resolution of siting disputes while reducing legal costs associated with siting. Towns may not want to participate in the siting process, however, and resist any efforts to include them in the process. They may also refuse to cooperate with a zoning arbitrator by claiming he or she is an employee of the same agency seeking to site a community residence in their communities. As stated earlier, this process would not preclude a nonprofit agency or town from going to Superior Court to overturn a decision, and would add another layer to the process of litigating a siting dispute.

Another, and in the program review committee's opinion, more preferable option is to utilize a proposed statewide independent executive branch Office of Administrative Hearings (OAH) to hear local zoning appeals involving CADAC or DOC siting decisions. Legislation introduced in 1991 to establish an administrative hearings office was unsuccessful, but it is expected that proposals to create the office will come before the Judiciary Committee for consideration during the 1992 session.

The office would operate in the following way. All contested cases would be heard by an administrative law judge from OAH, unless the head of the agency sponsoring the community residence decided to hear the case. If the agency head rendered a decision, it would be considered final, but appealable to the superior court. If a proposed decision was rendered by an administrative law judge, the decision would become final with no right of appeal, unless either party sought review by the

agency head, or the agency head decided to review the proposed decision. The review must be based on the record and conducted by the agency head after which, he or she must issue a final decision. This decision would be appealable to the Superior Court.

There are pros and cons to an Office of Administrative Hearing deciding zoning disputes. Arguments for the OAH to have this role are: 1) it would provide an independent source for hearing siting disputes; 2) the hearing officers or judges would be immune to agency influence or interference with the hearing process, since they would not be employees of, or contracted by, the agencies involved in the zoning disputes; 3) it could minimize the number of lawsuits brought in court; 4) legal costs could be reduced, if deadlines are followed; and 5) it could bring quicker resolutions to siting disputes for the same reason.

The arguments against using the OAH for local zoning disputes are essentially the same as the reasons cited against creation of the office. These reasons include: 1) some judges may be forced to hear cases outside their field of expertise; and 2) the office would be another layer in the legal process and a possible waste of time since decisions by the judges could be appealed to the Superior Court, which already hears zoning appeals.

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APPENDIX A
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APPENDIX B

**LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE
SURVEY OF LOCAL CHIEF ELECTED OFFICIALS
AND SUMMARY OF RESPONSES**

SURVEY COVER LETTER

August 15, 1991

Dear Chief Elected Official:

The Legislative Program Review and Investigations Committee of the General Assembly is conducting a study of the siting processes for a wide variety of controversial facilities, such as prisons, toxic waste disposal areas, and community residences for mentally retarded clients. The primary purpose of our study is to determine how well current state siting policies and procedures balance the public need for such facilities with local health, safety, and welfare concerns and what changes might improve the process for evaluating and selecting sites.

As part of our study, we are asking the chief elected official in each Connecticut city or town (in office as of January 1, 1991), as spokesperson for their community, to complete the enclosed questionnaire and return it to us in the envelope provided by August 30, 1991. Please rest assured your response will remain anonymous; the results of this survey will be compiled in a way that will make the identification of any individual impossible. If you have any questions about the survey or our study, do not hesitate to contact Jill Jensen, the committee staff person supervising this project, at 240-0300.

The information you provide will help us identify any problems with current siting processes and give us a better understanding of local concerns. Thank you for your cooperation.

Sincerely,

Michael L. Nauer
Director

Enc.

LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE SITING SURVEY

1. Title of individual completing this survey:

15% 1) Mayor
64% 2) First selectman
20% 3) Other _____

(N = 98)

2. Please indicate whether any of the facilities listed below have been *located in your community* within the last ten years. For facilities *located* in your community, also indicate how satisfied the residents were in general with the process that was used to pick the facility site. If more than one of the same type of facility has been sited in your town, rate your most recent siting experience. (Circle your answers in the chart below.)

FACILITY	LOCATED IN COMMUNITY	RESIDENTS' SATISFACTION WITH PROCESS			
		VERY SATISFIED	SATISFIED	DISSATISFIED	VERY DISSATISFIED
a) Transmission lines for electricity or fuel	(N = 51) YES NO	10% 1	75% 2	10% 3	6% 4
b) Communications tower (e.g. for cable tv, cellular phones, etc.)	(N = 51) YES NO	14% 1	59% 2	22% 3	6% 4
c) Resource recovery plant ("trash-to-energy")	(N = 4) YES NO	25% 1	50% 2	25% 3	- 4
d) Power plant (electrical generation)	(N = 8) YES NO	38% 1	50% 2	13% 3	- 4
e) Trash transfer station	(N = 35) YES NO	46% 1	46% 2	9% 3	- 4
f) Ash residue landfill	(N = 8) YES NO	17% 1	33% 2	33% 3	17% 4
g) Other regional landfill	(N = 7) YES NO	29% 1	14% 2	43% 3	14% 4
h) Regional recycling center	(N = 12) YES NO	55% 1	27% 2	18% 3	- 4
i) New or expanded prison	(N = 6) YES NO	50% 1	33% 2	17% 3	- 4
j) Group home for mentally retarded	(N = 54) YES NO	23% 1	65% 2	10% 3	2% 4
k) Group home for mentally ill	(N = 17) YES NO	6% 1	53% 2	35% 3	6% 4
l) Corrections halfway house	(N = 5) YES NO	- 1	80% 2	20% 3	- 4
m) Community residence for drug and alcohol treatment	(N = 11) YES NO	22% 1	44% 2	22% 3	11% 4

Note: As it appeared some respondents misinterpreted the wording of this question, responses were not tallied or analyzed for this item.

3. Please indicate whether any of the facilities listed below have been *planned for your community* within the last ten years. For facilities *planned* for your community, indicate how satisfied the residents were in general with the process that was used to pick the facility site. If more than one of the same type of facility has been planned for your town, rate your most recent siting experience. (Circle your answers in the chart below.)

FACILITY	PLANNED FOR COMMUNITY	RESIDENTS' SATISFACTION WITH PROCESS			
		VERY SATISFIED	SATISFIED	DISSATISFIED	VERY DISSATISFIED
a) Transmission lines for electricity or fuel	YES NO	1	2	3	4
b) Communications tower (e.g. for cable tv, cellular phones, etc.)	YES NO	1	2	3	4
c) Resource recovery plant ("trash-to-energy")	YES NO	1	2	3	4
d) Power plant (electrical generation)	YES NO	1	2	3	4
e) Trash transfer station	YES NO	1	2	3	4
f) Ash residue landfill	YES NO	1	2	3	4
g) Other regional landfill	YES NO	1	2	3	4
h) Regional recycling center	YES NO	1	2	3	4
i) Low level radioactive waste disposal area	YES NO	1	2	3	4
j) Hazardous waste facility	YES NO	1	2	3	4
k) New or expanded prison	YES NO	1	2	3	4
l) Group home for mentally retarded	YES NO	1	2	3	4
m) Group home for mentally ill	YES NO	1	2	3	4
n) Corrections halfway house	YES NO	1	2	3	4
o) Community residence for drug and alcohol treatment	YES NO	1	2	3	4

4. Given what you know about the facilities listed below, rate each according to your perceptions of the *potential risk to the health and safety of the residents* of a town in which it is sited.

FACILITY (N=)	HIGH	MODERATE	LOW	NEGLIGIBLE
a) Transmission lines for electricity or fuel (95)	(8%) 1	(22%) 2	(45%) 3	(24%) 4
b) Communications towers (cable tv, cellular phones, etc.)(90)	(3%) 1	(11%) 2	(36%) 3	(50%) 4
c) Resource recovery ("trash to energy") plants (88)	(15%) 1	(28%) 2	(49%) 3	(8%) 4
d) Nuclear power plants (88)	(47%) 1	(28%) 2	(24%) 3	(1%) 4
e) Power plants other than nuclear (87)	(12%) 1	(36%) 2	(39%) 3	(14%) 4
f) Ash residue landfills (87)	(21%) 1	(38%) 2	(31%) 3	(10%) 4
g) Other regional landfills (88)	(24%) 1	(39%) 2	(30%) 3	(8%) 4
h) Regional recycling centers (91)	(3%) 1	(7%) 2	(35%) 3	(55%) 4
i) Trash transfer stations (89)	(2%) 1	(10%) 2	(40%) 3	(47%) 4
j) Low level radioactive waste disposal areas (87)	(51%) 1	(30%) 2	(16%) 3	(3%) 4
k) Hazardous waste facilities (87)	(64%) 1	(26%) 2	(7%) 3	(2%) 4
l) Prisons (88)	(30%) 1	(34%) 2	(30%) 3	(7%) 4
m) Group homes for the mentally ill (90)	(2%) 1	(24%) 2	(36%) 3	(38%) 4
n) Group homes for the mentally retarded (87)	(0%) 1	(13%) 2	(37%) 3	(50%) 4
o) Corrections halfway houses (87)	(12%) 1	(46%) 2	(28%) 3	(15%) 4
p) Community residences for drug or alcohol treatment (86)	(8%) 1	(40%) 2	(33%) 3	(20%) 4

5. Given what you know about the facilities listed below, rate each according to your perceptions of the *potential economic harm* (e.g, reduced property values) to the residents of a town in which it is sited.

FACILITY (N=)	HIGH	MODERATE	LOW	NEGLIGIBLE
a) Transmission lines for electricity or fuel (94)	(9%) 1	(30%) 2	(30%) 3	(32%) 4
b) Communications towers (cable tv, cellular phones, etc.) (91)	(8%) 1	(22%) 2	(32%) 3	(39%) 4
c) Resource recovery ("trash to energy") plants (90)	(34%) 1	(33%) 2	(27%) 3	(6%) 4
d) Nuclear power plants (90)	(59%) 1	(23%) 2	(12%) 3	(6%) 4
e) Power plants other than nuclear (89)	(25%) 1	(35%) 2	(30%) 3	(10%) 4
f) Ash residue landfills (90)	(38%) 1	(38%) 2	(18%) 3	(7%) 4
g) Other regional landfills (89)	(33%) 1	(40%) 2	(20%) 3	(7%) 4
h) Regional recycling centers (90)	(8%) 1	(27%) 2	(36%) 3	(30%) 4
i) Trash transfer stations (91)	(10%) 1	(25%) 2	(34%) 3	(31%) 4
j) Low level radioactive waste disposal areas (89)	(66%) 1	(24%) 2	(7%) 3	(3%) 4
k) Hazardous waste facilities (89)	(74%) 1	(20%) 2	(3%) 3	(2%) 4
l) Prisons (91)	(50%) 1	(36%) 2	(10%) 3	(4%) 4
m) Group homes for the mentally ill (88)	(16%) 1	(30%) 2	(34%) 3	(21%) 4
n) Group homes for the mentally retarded (90)	(9%) 1	(23%) 2	(41%) 3	(27%) 4
o) Corrections halfway houses (90)	(29%) 1	(41%) 2	(18%) 3	(12%) 4
p) Community residences for drug or alcohol treatment (90)	(26%) 1	(37%) 2	(21%) 3	(17%) 4

6. Given what you know about the facilities listed below, rate each according to your perceptions of the *potential adverse impact on the image of a community* in which it is sited.

FACILITY (N=)	HIGH	MODERATE	LOW	NEGLIGIBLE
a) Transmission lines for electricity or fuel (94)	(2%) 1	(15%) 2	(42%) 3	(42%) 4
b) Communications towers (cable tv, cellular phones, etc.)(90)	(2%) 1	(20%) 2	(32%) 3	(46%) 4
c) Resource recovery ("trash to energy") plants (89)	(35%) 1	(30%) 2	(25%) 3	(10%) 4
d) Nuclear power plants (88)	(61%) 1	(22%) 2	(11%) 3	(6%) 4
e) Power plants other than nuclear (87)	(33%) 1	(24%) 2	(30%) 3	(13%) 4
f) Ash residue landfills (89)	(46%) 1	(32%) 2	(12%) 3	(10%) 4
g) Other regional landfills (88)	(44%) 1	(28%) 2	(21%) 3	(7%) 4
h) Regional recycling centers (89)	(8%) 1	(25%) 2	(33%) 3	(35%) 4
i) Trash transfer stations (90)	(13%) 1	(23%) 2	(31%) 3	(32%) 4
j) Low level radioactive waste disposal areas (87)	(72%) 1	(20%) 2	(6%) 3	(2%) 4
k) Hazardous waste facilities (88)	(74%) 1	(17%) 2	(8%) 3	(1%) 4
l) Prisons (87)	(59%) 1	(26%) 2	(14%) 3	(1%) 4
m) Group homes for the mentally ill (89)	(16%) 1	(24%) 2	(37%) 3	(24%) 4
n) Group homes for the mentally retarded (92)	(9%) 1	(26%) 2	(33%) 3	(33%) 4
o) Corrections halfway houses (89)	(24%) 1	(36%) 2	(27%) 3	(14%) 4
p) Community residences for drug or alcohol treatment (89)	(21%) 1	(29%) 2	(32%) 3	(18%) 4

7. If a facility must be sited and all towns in the state refuse to have it located within their boundaries, who should choose the site?

- 20% 1) A state agency that also will regulate or oversee the facility
- 50% 2) An independent siting board with statewide authority
- 9% 3) An independent siting authority with regional authority
- 21% 4) Other (describe _____)

(N = 94)

8. Sometimes, financial compensation and other types of incentives are provided by the state or facility developer to offset local costs and address residents' concerns related to hosting an undesirable facility. In your opinion, how strong an incentive would each of the items listed below be to your community if it were selected to host an undesirable facility?

INCENTIVES (N =)	VERY STRONG	STRONG	SOMEWHAT STRONG	WEAK	NOT AN INCENTIVE
a) Funding for costs of independent experts and gathering of information during the review of facility design and operating plans (N = 93)	(37%) 1	(17%) 2	(18%) 3	(11%) 4	(17%) 5
b) Assessments (e.g., a share of facility fees or revenues) (N = 94)	(37%) 1	(17%) 2	(22%) 3	(11%) 4	(13%) 5
c) Establishment of a trust fund or liability insurance to cover potential damages during facility operation (N = 91)	(43%) 1	(19%) 2	(15%) 3	(10%) 4	(13%) 5
d) Guarantees on surrounding property values (N = 96)	(46%) 1	(22%) 2	(14%) 3	(6%) 4	(13%) 5
e) Funding to cover the costs of local services required by the facility (e.g., police, fire, sewer, water) (N = 95)	(48%) 1	(20%) 2	(11%) 3	(6%) 4	(15%) 5
f) Funding for unrelated community services or improvements (e.g., payments for local schools, recreational facilities, etc.) (N = 93)	(30%) 1	(27%) 2	(23%) 3	(11%) 4	(10%) 5
g) Funding for independent monitoring of the facility once it is operating (N = 93)	(40%) 1	(27%) 2	(14%) 3	(7%) 4	(13%) 5
h) State payments in lieu of local property taxes at a rate of 100 percent of facility's value (N = 93)	(51%) 1	(24%) 2	(11%) 3	(5%) 4	(10%) 5

9. As you may know, proposals to build or expand power plants, transmission lines, communication towers, and hazardous waste facilities are subject to the review and approval of the Connecticut Siting Council, which can override local land use commission decisions concerning these projects. How familiar are you with the Connecticut Siting Council?

- 28% 1) Very familiar
- 47% 2) Somewhat familiar
- 24% 3) Not very or not at all familiar -----> **IF YOU ARE NOT FAMILIAR WITH THE COUNCIL, PLEASE SKIP TO QUESTION 12 BELOW**

(N = 95)

9A. How did you come to know about the Siting Council?

- 44% 1) Direct dealings with the Siting Council
- 44% 2) What you've heard or read about the Siting Council
- 11% 3) Other (describe _____)

(N = 72)

10. How would you rate the Connecticut Siting Council in terms of the items listed in the chart below:

	EXCELLENT	GOOD	FAIR	POOR
a) Quality of its work (N = 60)	(7%) 1	(60%) 2	(20%) 3	(13%) 4
b) Simplicity of its process (N = 62)	(2%) 1	(32%) 2	(48%) 3	(18%) 4
c) Fairness of its process (N = 61)	(7%) 1	(46%) 2	(33%) 3	(15%) 4
d) Integrity of its process (N = 60)	(12%) 1	(55%) 2	(23%) 3	(10%) 4
e) Objectivity of council members (N = 58)	(3%) 1	(57%) 2	(29%) 3	(10%) 4
f) Opportunities to present local concerns (N = 61)	(18%) 1	(41%) 2	(21%) 3	(20%) 4

11. What do you see as the major benefit of the Siting Council?

11A. What do you see as the major drawback of the Siting Council?

11B. Do you believe the Siting Council is the best mechanism for balancing statewide need for the facilities it oversees and local environmental concerns? 73% YES 27% NO (N = 60)

11C. IF NO, what is the best mechanism? _____

12. Please feel free to add any other comments or suggestions about the state's process for siting controversial facilities on the back of this questionnaire or attach a separate page. **Thank you for your participation.**

APPENDIX C OVERVIEW OF CONNECTICUT'S AFFORDABLE HOUSING POLICIES

Development of affordable housing is often resisted by cities and towns. Low- and moderate-income housing may be viewed as objectionable or undesirable to many citizens who fear an influx of "questionable" residents or an adverse impact on surrounding property values. In Connecticut, rather than preempt local zoning rules and regulations, the state has pursued a policy of offering incentives for towns to create affordable housing. As towns are generally not in the business of developing housing, the incentives offered to date by the state have not been used by a majority of the municipalities.

The construction of affordable housing in Connecticut is determined by the zoning rules and regulations of the individual towns and municipalities in the state. The right of the towns to establish their respective zoning regulations was granted by the legislature in keeping with the doctrine of "home rule." Many towns have instituted stringent zoning requirements in order to preserve their "character." The "home rule" doctrine is often invoked in defense of local autonomy.

Since 1988, state law has required municipal planning commissions to consider the need for affordable housing when preparing development plans for their towns. Affordable housing is defined as housing for which individual persons and families pay 30 per cent or less of their annual income, where that income is less than or equal to the area median income for the area in which the residence is located. Median income is determined by the Federal Department of Housing and Urban Development. Towns that develop affordable housing are eligible for assistance from the state in developing housing plans and state funds to match those of private contributors who donate money to affordable housing trust funds.

Towns have broad discretion to approve or deny residential development projects. By law, developers are able to counter town's rejection of their projects through the affordable housing land use appeals process. Under this process, a developer can appeal a decision by a town's planning and zoning commission to reject his or her affordable housing proposal. The appeal is heard in state Superior Court. The burden of proof falls on the town to prove that: its decision was necessary to protect substantial public health, safety, or other matters it may legally consider; and these interests clearly outweigh the need for affordable housing, and cannot be protected by making reasonable changes to the project.

A developer can use this procedure only if a town has little or no affordable housing and he or she plans to set aside at least 20 percent of the proposed project for low- and moderate-income people. Towns are exempt from the procedure, if 10 percent or more of their housing receives government assistance or if the sale or rental of 10 percent of their housing is restricted to low- and moderate-income people.

A developer in an exempted town can still appeal to the Superior Court, but the developer must prove that the town was wrong in denying his or her proposed project. Trammell Crow, a Texas-based developer, recently brought suit against the town of Trumbull after the town denied the developer's petition to construct affordable housing units in an area zoned for industry. Other developers have brought suits against the towns of Ridgefield, Madison, Branford, Orange, and Colchester, but none have been resolved at the time of the committee's review.

One method being explored for creating affordable housing is "inclusionary zoning". Under this method, a town may modify its zoning regulations to make it easier for developers to construct affordable housing units. One of the approaches allowed under statute is "cluster housing", where a group of units are built in a small area to keep construction costs down by utilizing less land. Another approach is to permit smaller sidewalks and lots, again utilizing less land and lowering construction costs. A third approach to encourage the construction of affordable housing is through "density bonuses", under which a developer is allowed to build an affordable housing unit for each housing unit he builds that exceeds the maximum allowable number of units for a given town.

Inclusionary zoning was broadened by the legislature during the 1991 regular session with the passage of Public Act 91-204 (effective October 1, 1991). The act extends the eligibility for density bonuses that municipalities may offer to developers to encourage them to build more housing units per acre than local zoning ordinances would allow. It also allows municipalities to set aside reasonable numbers of housing units for affordable housing through deed restrictions. A municipality can also contribute to a housing trust fund to finance the creation of affordable housing units. Municipalities are further permitted to adopt inclusionary zoning through other measures such as zoning regulations or through special permits.

Another method for creating affordable housing without state preemption of local zoning is through financing under the Connecticut Housing Finance Authority (CHFA). CHFA underwrites the cost of building affordable houses by issuing bonds and making low-interest loans to developers with the proceeds. The proceeds are regulated by federal law. CHFA will also finance loans made by banks to low- and moderate-income first-time home buyers by purchasing their mortgages. Home buyers deal directly with their banks, which act as intermediaries between the homeowners and CHFA.

Another incentive to develop affordable housing is the Connecticut Partnership Program, created in 1988. It allows towns that form housing partnerships to get priority for certain state funds. The Department of Housing helps the partnerships assess town housing needs, set priorities, and develop long-range plans. Towns can also create special trust funds for housing and seek private and federal support. The state will match 50 percent of any private contribution.

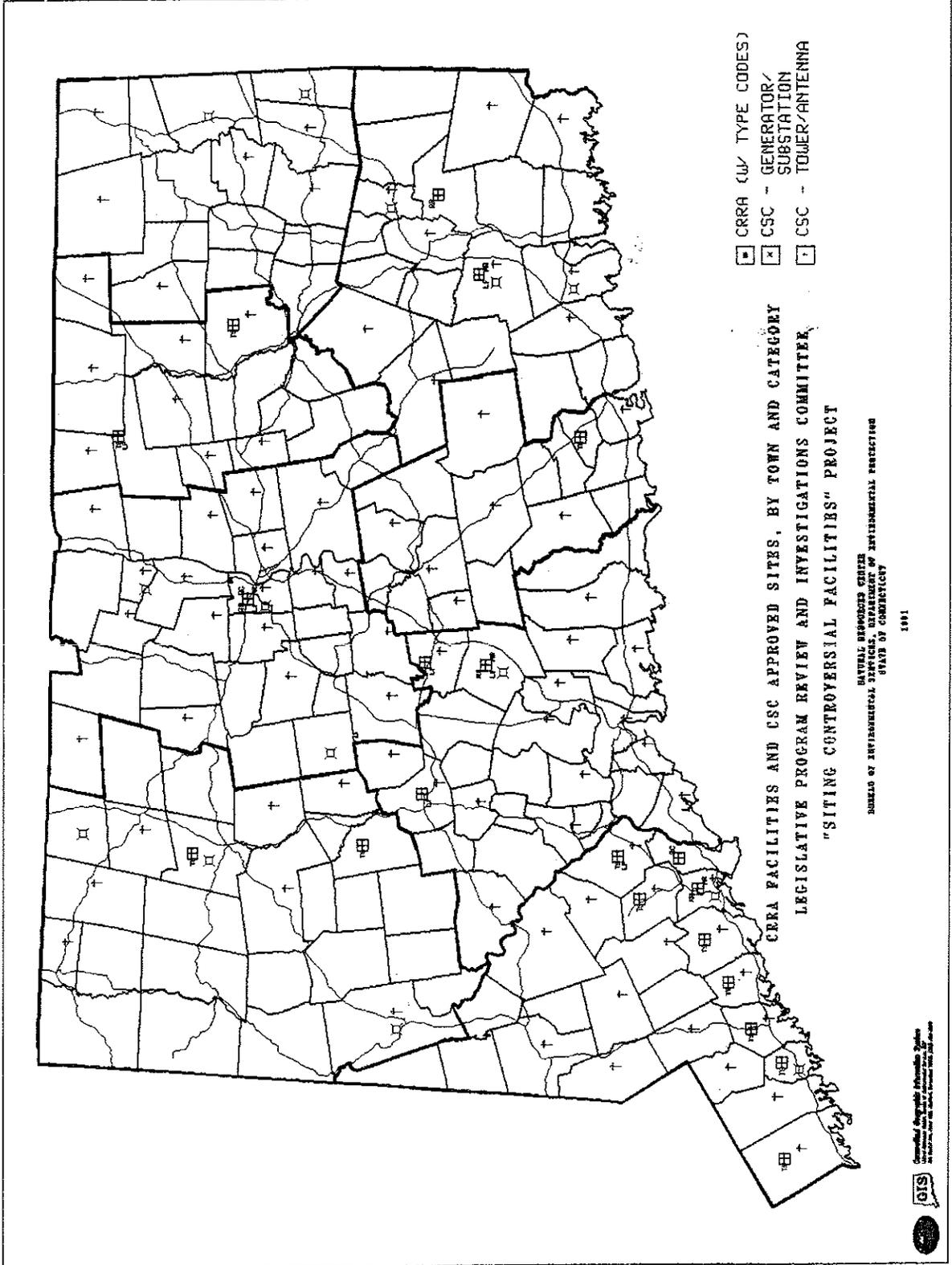
APPENDIX D

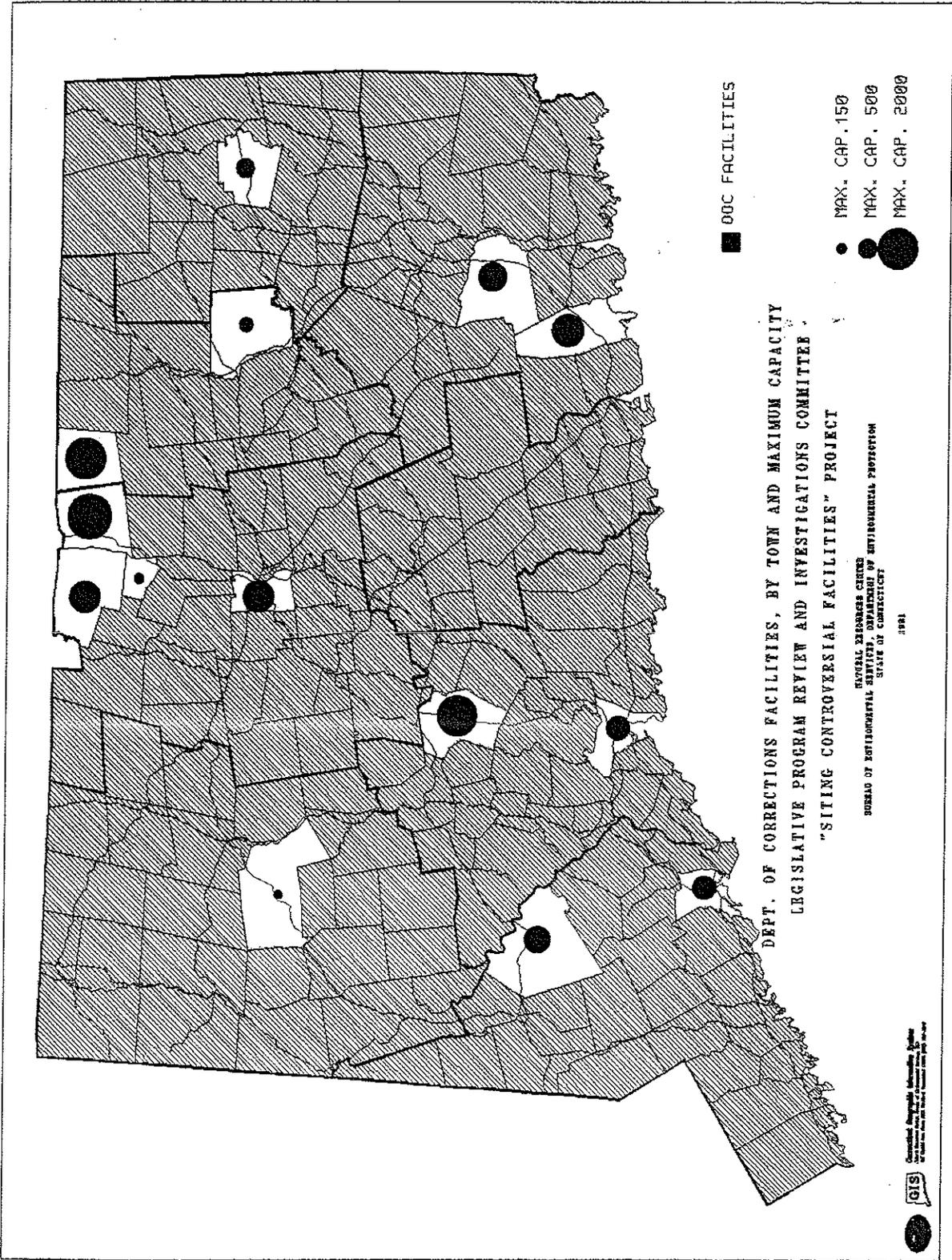
MAPS OF SELECTED CONTROVERSIAL LAND USE LOCATIONS

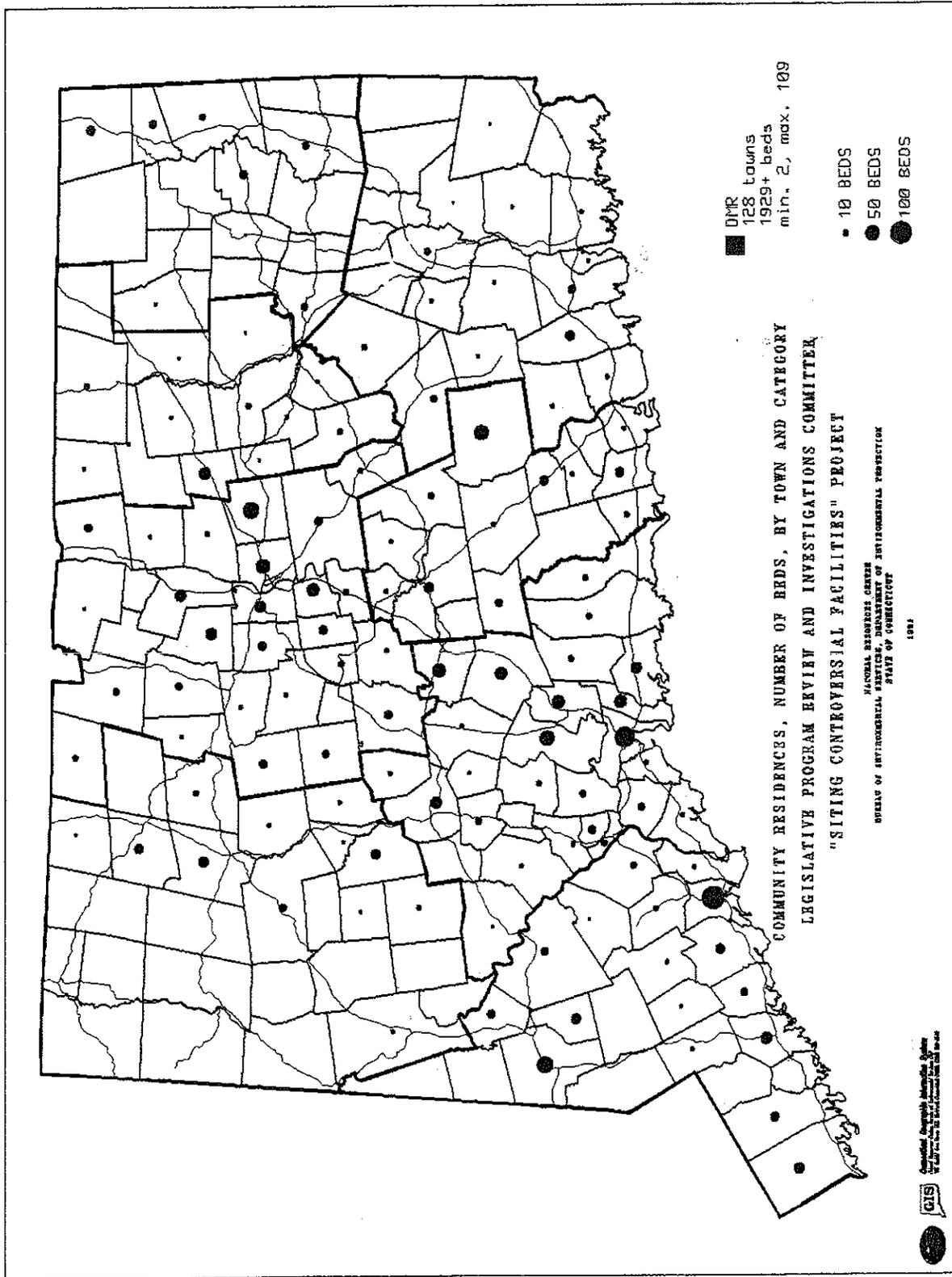
The maps included in this appendix are photocopies of color maps prepared for the Legislative Program Review and Investigations Committee by the Department of Environmental Protection Natural Resources Center, based on information supplied by the committee staff. Color originals may be viewed at the committee staff office.

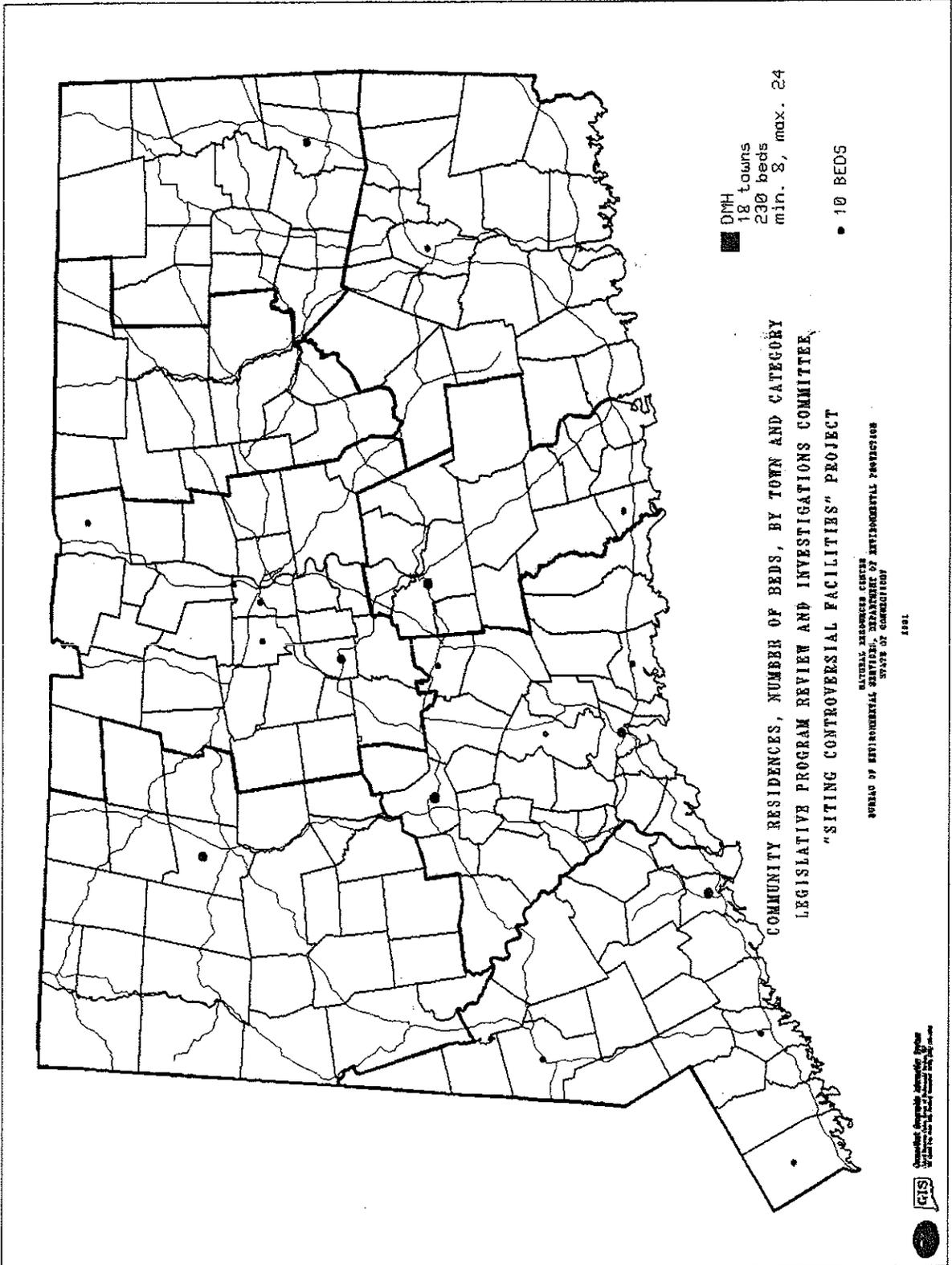
Seven maps are presented. The first shows the current sites of Connecticut Resources Recovery Authority (CRRRA) facilities (i.e., resources recovery plants, landfills, and ash residue landfills) as well as certain power (generator and substation) and telecommunication (tower/antenna) facility sites approved by the Connecticut Siting Council (CSC) and either operating or under construction as of September 1991. Sites of state correctional institutions in 1991 are shown in the second map, with the symbol indicating the total number of beds (based on actual or planned maximum capacity) located within the community. More than one Department of Correction (DOC) facility, therefore, may be represented by the symbol shown on the map.

The next four maps show locations of four types of community residences sponsored by, respectively, the departments of mental retardation (DMR), mental health (DMH), and correction (DOC) and the Connecticut Alcohol and Drug Abuse Commission (CAD). For each of these maps, the symbols indicate total numbers of beds located in a municipality as of mid-1991 and, therefore, represent the presence of one or more community residences. The final map is a composite of the previous four individual community residence maps.









DMH
 18 towns
 230 beds
 min. 8, max. 24

• 10 BEDS

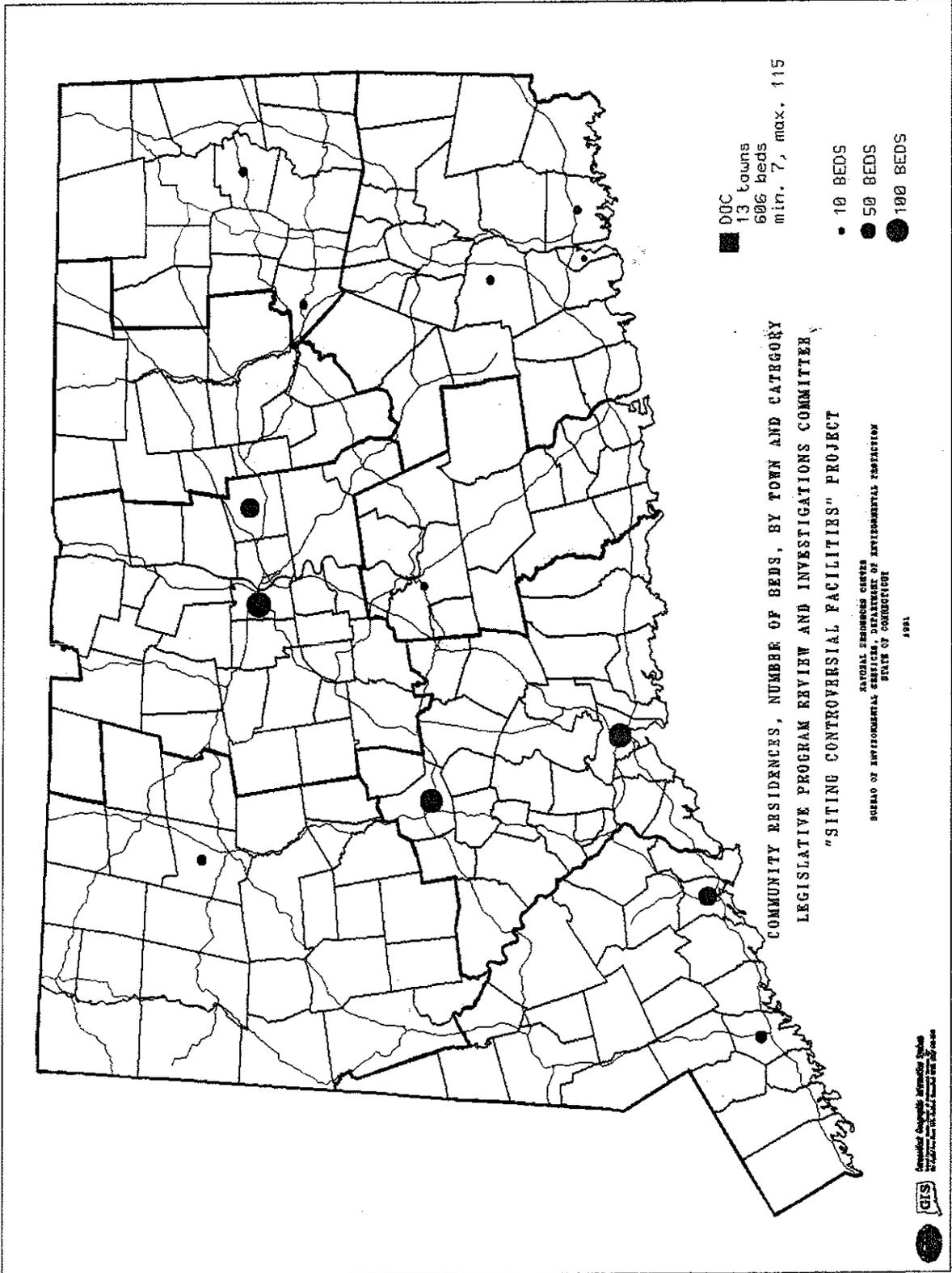
COMMUNITY RESIDENCES, NUMBER OF BEDS, BY TOWN AND CATEGORY
 LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE
 "SITING CONTROVERSIAL FACILITIES" PROJECT

NATIONAL RESEARCH CENTER
 BUREAU OF ENVIRONMENTAL QUALITY
 STATE OF CONNECTICUT

1981

Connecticut Geographic Information System
 A Division of the Department of Environmental Protection





■ DOC
 13 towns
 606 beds
 min. 7, max. 115

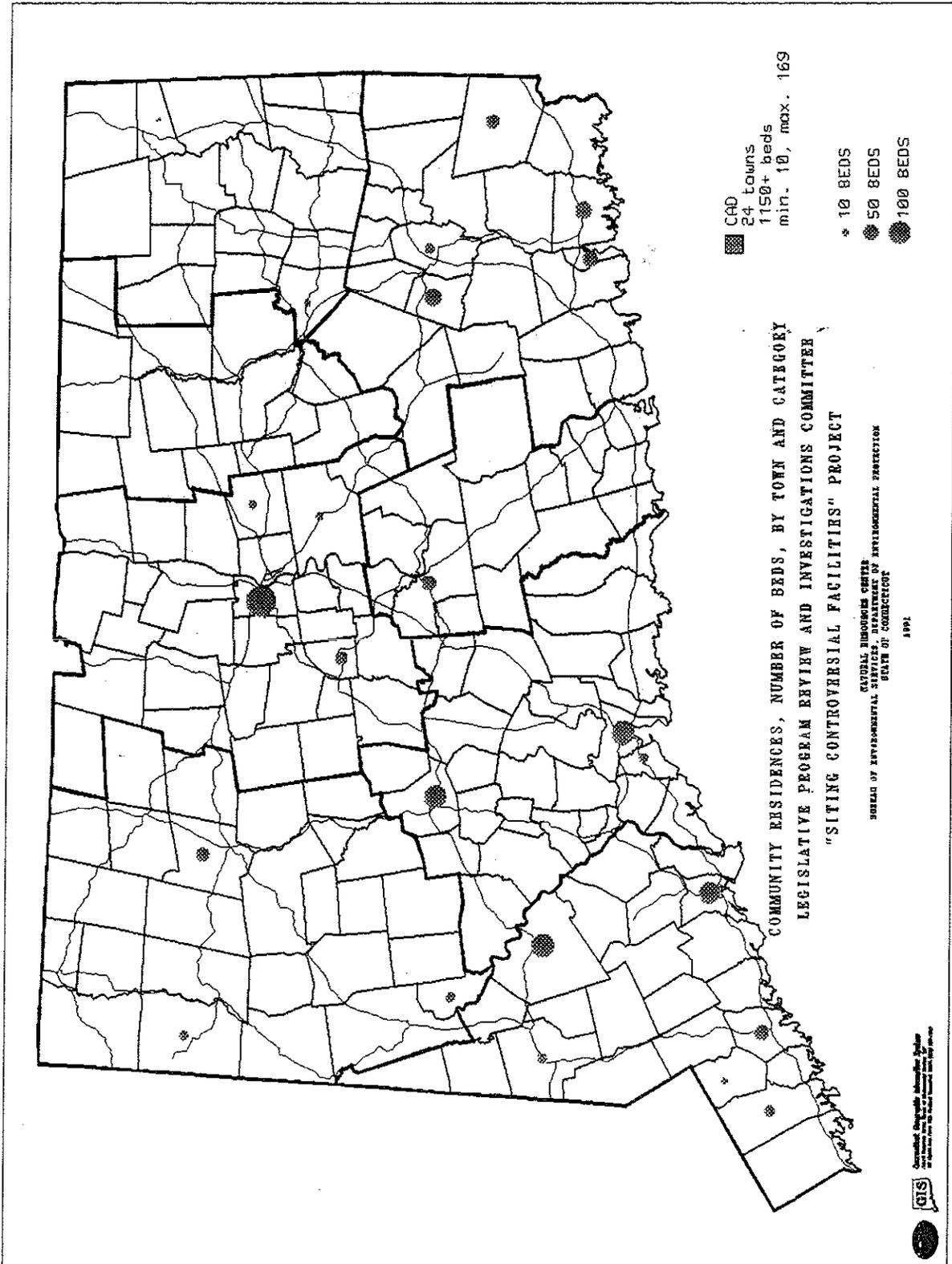
● 10 BEDS
 ● 50 BEDS
 ● 100 BEDS

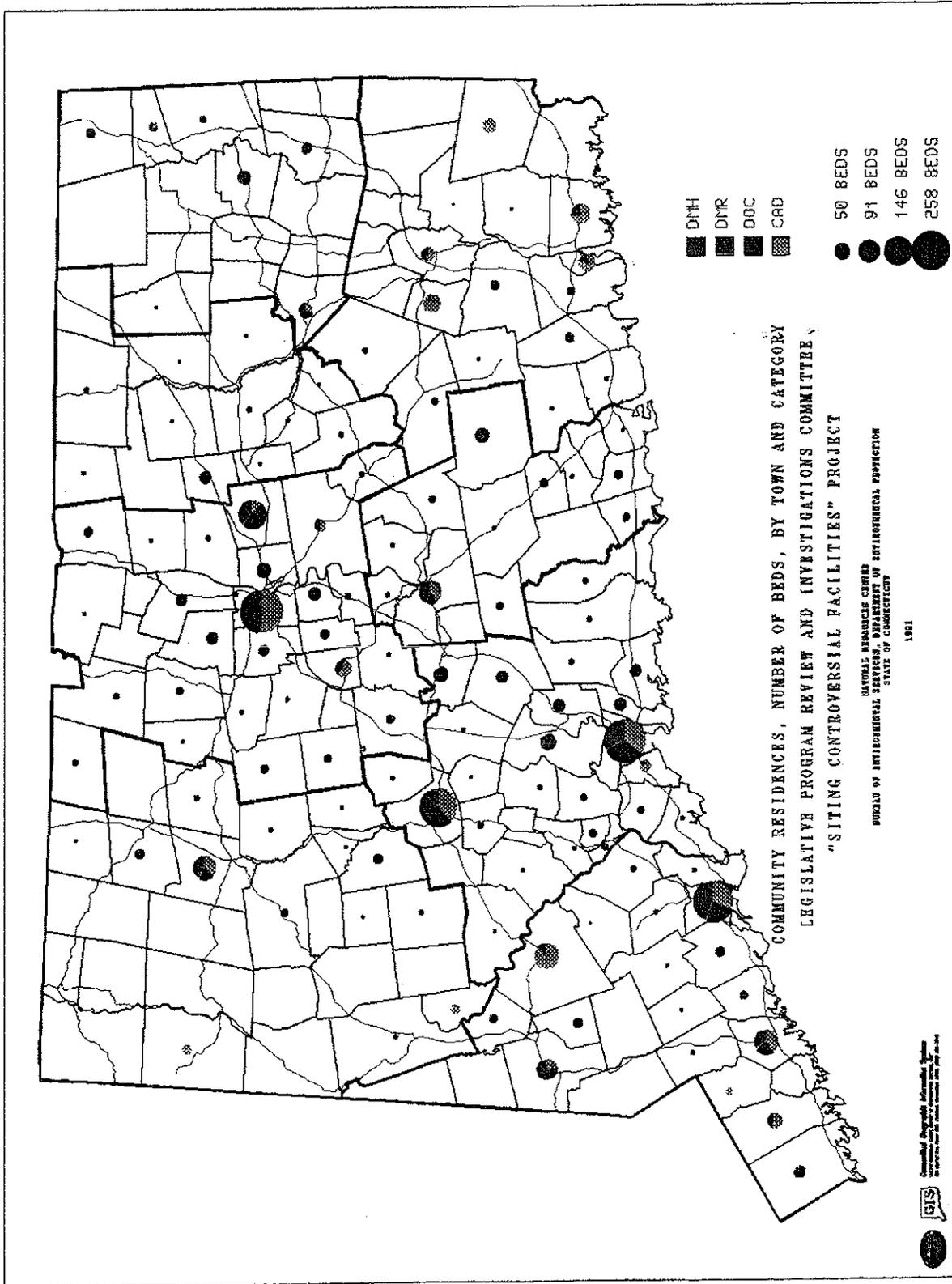
COMMUNITY RESIDENCES, NUMBER OF BEDS, BY TOWN AND CATEGORY
 LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE
 "SITING CONTROVERSIAL FACILITIES" PROJECT

REGIONAL EMERGENCY CENTER
 BUREAU OF ENVIRONMENTAL CHEMICAL, DEPARTMENT OF ENVIRONMENTAL PROTECTION
 STATE OF NORTH CAROLINA

1991

GIS
 Geographic Information Systems
 Environmental Protection Agency





APPENDIX E

CASE STUDY: LOW LEVEL RADIOACTIVE WASTE FACILITY SITING

The siting process for the state's low level radioactive waste disposal area was occurring at the time of the program review committee study and amidst great controversy. Therefore, it was selected for closer review as a case study to gain a better understanding of the problems in implementing siting policies and procedures. The detailed and specific data necessary to fully assess the process and develop recommendations were not gathered, as this was beyond the study's scope. This appendix contains primarily descriptive information and presents only committee findings about implementation of the current low level radioactive waste disposal facility siting process.

The initial phase of the site selection process for Connecticut's low level radioactive waste disposal area was completed in June 1991 with the announcement of three candidate sites for the facility. (See Chapter II for an overview of the complete siting process.) Since that announcement, opposition to the proposed sites from the potential host communities has been intense. The methodology used by the siting agency, the Connecticut Hazardous Waste Management Service, has been seriously questioned and landowners have refused to cooperate with planned on-site testing. Subsequent to the announcement of candidate sites, members of a citizen opposition group blocked entrance to and effectively canceled a public meeting of the service board of directors.

At the state level, efforts to find an out-of-state solution to LLRW disposal have been pursued with renewed energy, and the governor has directed the commissioners of agriculture, environmental protection, and health services to review and report by February 1, 1992, on the public health, safety, and welfare impact of the service's candidate site decisions. Proposed legislative changes to the statutory siting process during the 1992 session of the General Assembly are guaranteed. In addition, amendments to the federal low level radioactive waste law, which would essentially eliminate any of the three proposed sites from consideration, have been proposed by members of Connecticut's congressional delegation. Connecticut has also joined in a legal challenge of the constitutionality of the federal law that mandates, for all practical purposes, establishment of a disposal facility in a state.

Strong resistance to low level radioactive waste facility siting is predictable. It represents one of the most difficult siting problems and nearly all states are facing situations similar to Connecticut's. Radioactive waste is greatly feared by the public and the risks associated with a disposal facility are uncertain. Leaks and mismanagement have occurred in the past at sites in other states (e.g., West Valley, New York; Maxey Flats, Kentucky; and Sheffield, Illinois), although federal regulations

concerning radioactive waste disposal have since been revised. New technology for disposal is, however, unproven for the most part.

The federal policy that could require densely populated states with less than ideal geology and climate to host a LLRW disposal facility has been questioned, particularly when the three existing licensed facilities have sufficient capacity to receive all waste generated nationwide. Some opponents even question the need for state operated facilities, believing that the nuclear industry should bear full responsibility for solving its own waste disposal problem.

As discussed in Chapter II, Connecticut's low level radioactive waste process incorporates nearly all elements that are associated with model siting practices. These include: a written plan outlining siting criteria and methodology, which was developed with public hearings, formal review and comment, a written response to all comments, and the assistance of an advisory committee comprised of representatives of the major stakeholders; documentation of the site selection process that was made available to the public; the holding of informational meetings and open, participatory siting agency board meetings; and efforts aimed at public information about risk.

More review and public participation is provided through requirements that the final proposed site be subject to local zoning, state environmental impact evaluation, Department of Environmental Protection permitting, and Connecticut Siting Council certification processes. The host community is also given actual decisionmaking power through the addition of representatives from the host municipality(ies) as ad hoc members to the siting council during certification proceedings. Once the facility is completed, the host community has full access to it and its records.

The siting law also provides for host community compensation in the form of a share of the facility's receipts plus payment in lieu of taxes at the industrial rate. Up to \$150,000 is available to cover the cost of mitigation measures negotiated by the community, and funding is available for the cost of a full-time municipal employee to monitor the facility. In addition, under 1991 legislation, funding is available to towns chosen as candidate sites for independent review of the site selection process and has been used by a citizens' committee of representatives from the three potential host communities for that purpose.

As siting experts have noted, facilities that handle materials as feared as radioactive waste are unlikely to encounter siting success even with provisions for public participation and compensation. This is because a level of risk viewed as unacceptable by residents is being imposed on a community. Consequences are high, even if the probability of an accident is low, and the community cannot be fully compensated for potential harm. The perceived unfairness of the process combined with a general distrust of government to adequately protect the public generates extreme opposition from communities selected as facility hosts. The program review

committee believes that the inherent problems of siting a low level radioactive waste disposal area have been compounded in Connecticut by two main factors: 1) a lack of attention to public perception of risk; and 2) the failure of the service to follow its established site selection procedures.

The committee found that the service's site selection process relies almost exclusively on technical considerations of risk. The process is based on the assumption that a low level radioactive waste facility can be safely operated in relatively close proximity to people, provided it is: 1) properly designed; 2) well-managed; and 3) located on a site with certain physical characteristics. In developing its siting plan, the service also came to the conclusion that site characteristics such as geology and hydrology, along with facility design, were the most critical factors in assuring the facility's safety. Thus, in evaluating potential sites, more emphasis is to be given to physical characteristics of the land than to its demography (population, land use, etc.).

Under the criteria adopted by the service, densely populated areas must be avoided and a site that places a facility farther away from people is preferred. However, the minimum required distance between the facility's security fence and any other land use including a home or school (the buffer zone), under the service's criteria and Connecticut Siting Council regulations, is 300 feet.

Much of the public outcry about the results of the service's site selection process is due to the close proximity of the three proposed sites to homes, schools, and operating farms. All three sites are surrounded by residential areas and in one case, several occupied homes are located within the site boundaries. Eleven schools are within two miles of the sites.

It is clear from residents' response to the selected candidate sites that the assumptions and criteria used by the service do not reflect the public's perception of risk posed by the facility. While the assumptions may be scientifically valid and reflect federal Nuclear Regulatory Commission (NRC) policies, the committee believes they underestimate the public's distrust of government and fear of nuclear materials. It is not surprising, therefore, that host communities feel so threatened by the service's siting decision. As experts have noted, siting processes for facilities with high and uncertain risk that rely on technology for safety and do not take into account public perception of risk are unlikely to succeed.

The committee found that the service took a minimalist approach in setting distance standards. For example, it chose to use a 300 foot buffer zone rather than the 1.2 mile distance between a site and the residential property limits of the nearest existing urban community or residentially zoned or planned land use as recommended in NRC guidelines. The service also chose to narrowly interpret other regulatory

agency guidelines governing proximity to densely populated areas, existing and planned land uses, and area of population growth.

These decisions were based primarily on the service's fear that in a densely populated state like Connecticut, if requirements were too stringent, no site would be found. As was the case in Michigan, federal sanctions can be applied to states that establish unreasonable siting standards, and therefore have not made a good faith effort to find a site. However, the minimalist approach has been difficult for the public to accept as it appears the state's safety standards in terms of proximity to people are less than those recommended by the federal licensing agency. Furthermore, a state comparable to Connecticut--New Jersey--is following NRC guidelines to site its facility.

The service has justified its position for less stringent proximity and demography criteria by saying that if the site and facility can meet the performance objectives required for licensing, it is safe regardless of the number of persons surrounding it. Compliance with performance objectives is based on what scientists have set as an acceptable radiation exposure level. To most of the general public, there is no acceptable level of exposure, making any justification based on meeting performance objectives suspect.

During its initial site screening, the service relied on maps and available published data for all factors considered including demography. Towns were not contacted individually for more current land use information or details on soil and water conditions, primarily to preserve a geographically blind site selection approach. For similar reasons, field visits of potential sites were not conducted, although a "flyover" to confirm aerial photographic information was carried out during the final stages of candidate site screening.

This reliance on available data, known to be out-of-date, and avoidance of contact with towns has been perceived by the public as a lack of concern for accuracy or the human impact of the siting decision. This perception was reinforced by the fact that information on certain land uses (existing and planned schools, hospitals, nursing homes, and occupied dwellings) within two miles of the facility, a factor considered during siting council review, was not gathered prior to selecting the potential sites. The service's decision to use a geographically blind approach also alienated the sited communities in another way. To preserve the anonymity of the potential candidate sites until the end of the process, even local officials were not informed of the selection of their town as a candidate site until minutes before the public announcement.

Pressure to meet the federal siting timetable and avoid sanctions led the service to deviate from its stated procedures for the sake of expediency. Whether or not the deviations compromised the site selection process, expediency is an unacceptable

excuse to residents concerned about health and safety risks. It has also been difficult for the public to accept that federal sanctions would be imposed on Connecticut when most other states are even farther behind in meeting siting deadlines.

The service decided to alter the siting process outlined in its plan when initial site screening steps did not reduce the number of potential sites to a manageable number for more in-depth evaluation. To expedite the site evaluation process, the service made the decision to apply one preference criteria (concerning the slope of the land) as an exclusionary requirement. While this decision may be scientifically defensible, the committee found, and the service acknowledges, it is possible that sites more suitable overall were deferred from further consideration. The technical data necessary to determine if the siting process was compromised by this decision were not gathered and analyzed by the committee staff since such analysis would be well beyond the scope of this study. However, it is certain that the public would be better able to accept even the same outcomes of the process, if it were shown that sites more remote from people had been considered but found technically unsuitable.

The program review committee believes public trust in the siting process was seriously damaged when the service failed to follow its siting plan. The committee found that the service's credibility was damaged further when it failed, as promised and called for in its plan, to release its site selection report, which contains all documentation of how the candidate sites were selected, at the time the sites were announced to the public. For practical reasons, some lag time between site announcement and publication of supporting materials is inevitable. However, release of the site selection report was delayed until October 1991, primarily to allow the service time to investigate the impact of errors in the way its technical consultant had applied certain screening criteria. This delay left the public without information they needed to understand and evaluate the selection process for three months. In addition, it gave the appearance of withholding critical information from affected residents.

Changes in the site selection process are not a matter of noncompliance with law as the service's plan is not statutorily required. While the public can question and criticize the service's site selection process and decisions, there is no clear way to legally hold the agency accountable to its plan. In addition, it appears the only way to force the service to redirect its approach during the site selection process is through legislative action.

The committee found that under current law, outside technical review of the integrity of the process to which the service must respond comes late in the overall process. Whether or not the site selected is suitable will ultimately be judged by regulatory agencies, but only after the final site and facility design are selected. The site could be rejected at this late stage because of process flaws or failure to adequately protect the public from harm, but this is likely to provide little consolation

to residents in the sited communities who suffered emotional and economic harm during a lengthy selection process.

The success of a siting process, in the opinion of the program review committee, is built on three key elements:

- 1) **Legal compliance** -- rigid adherence to the letter and spirit of the law;
- 2) **Technical efficacy** -- assurance of reasoned, sound, and defensible technical and scientific decisions; and
- 3) **Public Perception** -- belief that the siting agency is honest, fair, acting in the public's best interests, and conducting a clearly defined process according to plan.

In an emotionally charged project, such as siting a low level radioactive waste facility, there can be no weakness in any of the elements. Two of the three elements of Connecticut's LLRW siting process were clearly diminished by actions of the siting agency. By changing screening criteria late in the process the service compromised the technical efficacy of its plan and eroded public perception of its process. Public distrust was created by the service's failure to comply with its self-imposed procedures. Moreover, by focusing almost exclusively on the technical aspects of potential sites, the service fueled a perception that the site selection process ignored human values and needs.

APPENDIX F
AGENCY RESPONSES



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February 6, 1992

Hon. Joseph H. Harper, Jr.
Hon. Robert D. Bowden
Co-Chairmen, Legislative Program
Review and Investigations Committee
Room 506
State Capitol
Hartford, Ct 06106

Dear Gentlemen:

I have read your committee's final report on siting controversial land uses and I appreciate the opportunity to comment on it before its publication. I believe that your committee and staff have done a thorough study of the role of the state and quasi-public agencies in siting controversial land uses and have made some positive recommendations to that end.

I would, however, like to concentrate my comments on the findings and recommendations that relate directly to quasi-public agencies, particularly the CRRA. I offer these comments only in the hope of enhancing the utility of this report and not simply to be contrary-minded to your staffs' hard work.

Statewide Planning

The concept of "siting equity" as discussed in the report is both sound and reasonable. I concur that there exists a common perception that certain areas of the state host a disproportionate share of controversial facilities. The recommendation that the Office of Policy and Management conduct a statewide inventory and map of these facilities will assist the public in assessing their distribution. The CRRA has maps of both the Authority's resources recovery facilities and all such projects throughout the state that we would be happy to provide to OPM (see attached).

It was with the same concept of siting equity in mind that the CRRA lobbied for, and the General Assembly agreed to, when Public Act 89-

384 (An Act Establishing A Process For Siting Ash Landfills) was enacted. As your report notes, this legislation set out specific geographic and proximate criteria to be used when siting four ash landfills (eg. two sites east of the Connecticut river and two sites to the west).

I was pleased that this recommendation "only requires that equity be addressed to the extent reasonably possible" since "other siting factors may result in the concentration of facilities." CRRA's experience in successfully siting solid waste management systems clearly illustrates when circumstances warranted locating related facilities within close proximity.

The best example I can offer to underscore this point is the Mid-Connecticut solid waste management system. The Mid-Connecticut system includes a 2000 ton per day resource recovery facility, a 1000 ton per day regional recycling facility and a landfill which accepts ash, bulky and bypass waste. All of these facilities are located in the City of Hartford within close proximity of one another and either they existed previously or replaced facilities of similar use. (The resource recovery facility was constructed on the site of a former utility power station, the landfill was constructed at the site of the old Hartford landfill, and the recycling facility was constructed on the site of a former lumber warehouse, in an industrial zone.) These facilities were sited primarily because of existing infrastructure, the central location and transportation concerns.

To compensate Hartford for hosting three solid waste management facilities, the CRRA negotiated a payment in lieu of taxes (PILOT) agreement with the city. This agreement entails annual PILOT payments to the city along with other benefits. The cost of this agreement is entirely borne by the municipalities and businesses that utilize the facilities. Similar agreements are in place for CRRA's other projects. Therefore, the concept of sharing the "direct and indirect costs associated with hosting a public facility.... by the facility's beneficiaries", has long been the practice of the CRRA.

Consensus on Facility

I agree that educating the public within the vicinity of a proposed facility's need must be effective and done early in the process. However, until the site selection process is narrowed to a few sites, public participation will be minimal since no definite target has been pinpointed on the map. Until the public is aware that a controversial facility might be sited in their town or in their neighborhood they will not, at least in our experience, show much interest. A coordinated,

statewide public education program focusing on the need for these type of facilities might help alleviate some concerns of the public.

Accountability

The committee's recommendation to require quasi public agencies to establish written "facility siting policies and procedures that include specific site selection criteria and methods" certainly seems, on the face of it, to be reasonable. However I respectfully caution the committee from being too restrictive in their recommendation. I am particularly concerned by the comment that the committee "believes this requirement is especially important for quasi-public agencies, which are subject to few state controls or public review processes."

The CRRA for instance is governed by a board of directors that consists of six members appointed by the General Assembly and four members who are appointed by the Governor that are municipal officials, in addition to four ex-officio members who are state officials. Any purchase of real property for the purpose of siting solid waste management facilities must be made according to very strict procurement policies and approved by a two-thirds vote of the board of directors.

Siting decisions are governed by the Department of Environmental Protection's statewide solid waste management plan and ultimately their permit process when proposing a site for any of our facilities from the large resource recovery facilities to very small transfer stations. When siting a resource recovery facility, the Authority is also required to receive approval from the Connecticut Siting Council. Additional statutory requirements that affect siting have recently been enacted by the General Assembly with the support of the Authority such as the ash landfill legislation and the requirement that the DEP commissioner make a written determination of need for resource recovery and ash landfills (P.A. 89-386). Any new siting criteria of general applicability should not conflict with the already considerable body of restrictions and guidance in this area.

Moreover, I would encourage your committee and staff to recall that quasi-public agencies were expressly created to obviate the bureaucratic red tape associated with state agency projects so that the necessary facilities could be constructed and operational much more expeditiously. I must point out that on that score, the CRRA has been very successful in both the siting, constructing and operating solid waste facilities. New, restrictive, statutory siting requirements may

result in the delay or denial of essential public facilities such as roads, prisons and hazardous waste facilities.

Voluntary Acceptance

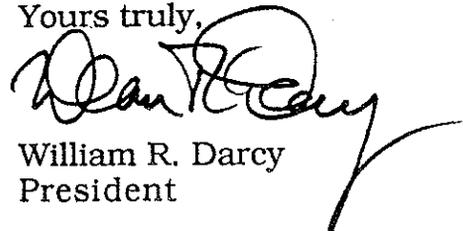
Prior to the 1989 session of the General Assembly, I sent a letter to each municipality in the state of Connecticut inquiring as to their availability of suitable sites for ash landfills and their interest in hosting such a facility. I did not receive one response to my letter and the CRRA subsequently submitted our proposed bill to the legislature that eventually became P.A. 89-384. Since that time the Authority has received the approval of the local zoning board in Montville for the development of an ash landfill there without having to utilize the override authority provided to CRRA by that Act.

Requiring a "voluntary approach" to siting facilities as a first step in the process is fine but will, in all likelihood, yield minimal results. A significant amount of taxpayers' money and the success of siting a facility could be put at risk if a siting process is put on hold because of requiring a considerable length of time for "volunteers" to step forward. With the NIMBY syndrome omnipresent, there are very few profiles in courage with regard to siting controversial facilities.

Conclusion

Again I want to thank you for the opportunity to comment on this report. I believe many of the recommendations contained within this report are constructive and deserve your attention. I would only urge caution when structuring any legislative proposals stemming from the recommendations of this report, so that current siting procedures of quasi-public agencies that have proven to be successful, are not compromised or hindered.

Yours truly,



William R. Darcy
President

cc: Committee members and staff
Enclosure



STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

136 Main Street, Suite 401
New Britain, Connecticut 06051
Phone: 827-7682

February 7, 1992

Jill E. Jensen
Principal Analyst
Legislative Program Review
and Investigations Committee
State Capitol
Room 506
Hartford, CT 06106

Dear Ms. Jensen:

Thank you for the opportunity to comment on the final legislative program review report regarding the siting of controversial land uses.

Overall, the report was well written and is fairly accurate in reflecting the jurisdiction and practices of the Connecticut Siting Council. However, I would like to provide some brief comments for your consideration.

Recommendation No. 4 on page ii (also stated on page 49) identifies a need for public education programs focusing on the need for an unwanted facility to be carried out by State agencies on an on-going basis. While this may be appropriate for some State agencies, this recommendation may be inappropriate for the Council because the Council must remain neutral and objective in regulation of proposed facilities. Nonetheless, once a facility is proposed and a formal proceeding established, the Council provides as much procedural education on the process as possible through explicit hearing notices, publicly noticed meetings, pre-hearing conferences, presentation of written and oral directions for participation within the proceeding, local public hearings, and interviews with the press to explain the Council's process and procedure.

Recommendation No. 5 on page ii (also stated on page 50) requiring written facility siting policies has already been performed by the Council with statute, regulation, application guidelines adopted during public meetings, and other written documents intended to summarize the Council's procedure established by statute and regulation.

Recommendation No. 6 on page iii (also on pages 51-53), suggests the use of neutral mediators to facilitate public participation. Although the Council does have the ability to contract for and hire professional mediators, the agency considers itself neutral and encourages public participation

through the pre-application siting review process, pre-hearing conferences, pre-hearing discovery through interrogatories, presentation of evidence subject to cross examination by all parties and intervenors, oral or written presentation of comments from anyone who wishes to address the Council, and public hearings scheduled in the community of the proposed facility.

Language on page 11 of the report fails to include the Council's jurisdiction over electrical substations and telecommunications equipment owned or operated by the State or a public service company.

On page 12, the report states that development and management plans are required of all facilities granted certificates. Although in reality this is true in almost every case, it is the Council that requires on a site specific basis whether a development and management plan is required for a certified facility. Consequently, nearly all facilities certified by the Council have development and management plans required prior to the commencement of construction.

The report notes on page 12 that nearly all projects submitted to the Council are granted certificates. While this is true, the Council theorizes that this is because the Council's regulation review process is so stringent that only extremely well prepared applications and well justified projects come before the agency. Inappropriate, unjustified, or unprepared applications are often dropped by project developers during or prior to an application to the Council, or are procedurally rejected or dismissed by the Council before a final decision is rendered.

The report, on page 19, incorrectly describes the Council's authority to override local decisions by a vote of six of its eight members. The Council consists of nine members, but a vote to override requires six members of the [voting] Council, not necessarily all nine members. A Council quorum of five members would be required to establish a hearing or meeting. This same concern arises again on page 22 where the report states that an override of local land use decisions for a hazardous waste proceeding requires the affirmative vote of eight of the thirteen members; other actions require support of seven members of the expanded Council. For hazardous and low level radioactive waste procedures, the Council has the authority to override local orders by a vote of eight of the members of the [voting] Council, not necessarily all thirteen members as stated in the report. Other actions would require a simple majority vote of the quorum present, not necessarily a vote of seven members as stated in the report.

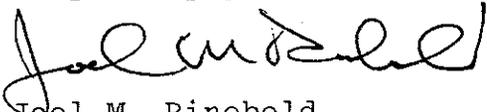
Although the footnote on the bottom of page 28 of the report is correct, it may be appropriate to also state that the Council's regulations require identification and a demonstration that the health and safety of all persons within existing and planned

Jill E. Jensen
February 7, 1992
Page 3

schools, hospitals, nursing homes, and occupied dwellings within two miles of a low level radioactive waste facility would not be jeopardized.

Again, I thank you for the opportunity to provide comments on your excellent report. Compliments to the Committee and staff!

Very truly yours,



Joel M. Rinebold
Executive Director

JMR/bd

cc: John J. C. Herndon
William J. Cibes, Jr.

5865E



STATE OF CONNECTICUT
DEPARTMENT OF MENTAL HEALTH

February 7, 1992

Michael Nauer, Ph.D.
Director
Legislative Program Review and
Investigations Committee
Room 506
State Capitol
Capital Avenue
Hartford, CT 06106

Dear Dr. Nauer:

Thank you for the opportunity to comment on the Legislative Program Review and Investigation Committee's Final Report on Siting Controversial Land Uses.

As highlighted in our previous testimony, I want to reiterate the need to separate definitively the "Public Facility" vs. "Community Residence" issues. Although the Committee has attempted to discuss community residences separately from public facilities, the current organization of the report leaves the impression that these siting issues are comparable. For example, in Chapter II "Community Residences" follow immediately after "Ash Residence Landfills". Surveys of city and town officials, however, are perhaps the best example of the unintended connection between persons with disabilities and public facilities. Although the survey was conducted prior to the Committee separately considering these issues, the display of survey results directly shows as comparable public facility activities and programs for persons with disabilities. I would strongly urge the reorganization of the report in a manner that separates these issues, if that is the intent of the Committee.

Of generic concern is the exclusionary approach of the Committees' sole focus on "community residences", which are only one type of mental health facility. There are several other types of community mental health facilities such as outpatient clinics, psychosocial rehabilitation centers, etc. which have encountered local opposition to proposed siting. It would seem that the exclusion of these types of mental health facilities is inconsistent with overall siting concerns. There does not appear to be an obvious rationale for this exclusion.

On page 37 the statement is made that the "Department of Mental Health does not provide written siting and licensure instructions to agencies it contracts to establish community residences." In the past, when a community agency intended to develop a community residence under CGS Section 19a-507b(a) and CGS Sec. 8-3g, they would be referred to the Department of Health Services, the state agency responsible for licensure of the Department of Mental Health community residences. At that time the Department of

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Health Services would provide agencies copies of licensure application guidelines, i.e. published regulations and statutory language. In addition any agency beginning a new program received a Department of Mental Health grant application package replete with funding guidelines. It is misleading, therefore, to imply the Department does not inform agencies about the guidelines when the parameters of siting and licensure are provided by the state agency that has cognizance over such matters.

Finally, the intent and provisions of the federal Fair Housing Act are that coordinating mechanisms such as a state registry, arbitration hearings, etc. may be discriminatory when involving disabled persons. As an alternative, I would suggest that the principle of non-saturation of communities be endorsed and assured by state agencies administratively. It is now an opportune time, if the State decides on a major reorganization of human service agencies, to implement a non-saturation policy as part of this reorganization.

Again, we appreciate the opportunity to comment on the final report. Please feel free to contact me if I can provide any additional information.

Sincerely,



Albert J. Solnit, M.D.
Commissioner

AJS:gro

MEMORANDUM

TO: Michael L. Nauer, Director
Legislative Program Review & Investigations Comm.

FROM: Susan Shimelman, Under Secretary
Policy Development & Planning Division, OPM



DATE: February 7, 1992

SUBJ: Review of the Legislative Program Review report on Siting
Controversial Land Uses

Thank you for the opportunity to review and comment on the Committee's findings on Locally Unwanted Land Uses (LULU). Overall we believe that the recommendations outlined in the report will provide an improved information base for siting such uses. We also support the need to develop policies and criteria in siting locally unwanted land use facilities. We do, however, have some comments regarding specific recommendations in the report.

Our comments will address the recommendations outlined in the executive summary of the report (pages ii-iv).

PUBLIC FACILITIES

Statewide Planning

1. *The state plan of conservation and development shall include a policy that the direct and indirect costs associated with hosting a public facility sited by the state or other entities on its behalf be shared by the facility's beneficiaries to the extent reasonably possible.*

While we generally agree with the policy expressed, we do not believe that the C&D Plan is the appropriate vehicle for stating state policies regarding LULUs. The C&D plan is a document for broad land use planning issues. We believe that this type of statement is too specific for inclusion in the Plan and is generally not relevant to the other types of issues addressed in the Plan.

A more appropriate vehicle might be a separate policy plan dealing exclusively with the siting of both public and residential state facilities. Such a plan could include siting policies as well as specific siting criteria for use by state agencies. Given the time constraints for responding to these recommendations, we have not been able to give much thought to how such a plan would be developed, although a participatory process would be essential. A more flexible alternative might be to include LULU siting policies and processes in specific state agency plans.

2. *An inventory of locally unwanted land uses including but not limited to state institutions and facilities, and facilities regulated by the Connecticut Siting Council, shall be developed and maintained by the Office of Policy and Management (OPM). Additional facilities to be included in the inventory shall be identified with the advice and assistance of representatives of local cities and towns. Within the limits of existing resources, a map showing the locations of the facilities included in the inventory shall also be developed by the policy and management office and updated annually.*

We agree that an inventory of LULUs would prove useful in the siting of new facilities. However, this recommendation raises some significant issues that should be reconciled before any such inventory is undertaken. For instance, it would be impossible to effectively inventory LULUs without a formal definition. Without such a definition, how could one achieve consistency from town to town?

There would also be significant problems in generating the map itself. OPM does not currently have the mapping capability that would be required to carry out this recommendation. An inventory of this magnitude should be maintained on a fairly sophisticated GIS computer system. If OPM is to develop such an inventory, it should have a GIS system of its own. Such a system would prove useful not only for siting LULUs but for doing the geographic-type analysis that OPM is increasingly being called upon to perform.

A third problem associated with this recommendation is the implicit assumption that OPM can achieve this inventory without acquiring additional resources. We view this as a significant undertaking entailing site visits to towns, close coordination with other agencies, significant cross-referencing of data, and input and maintenance of the data base. If this inventory and map is to become the responsibility of OPM, the appropriate resources should be made available to accomplish it.

State Land Planning

- 3) *In consultation with the Department of Public Works, OPM shall prepare a comprehensive plan for the development and use of state-owned properties. The state land use plan shall be prepared and adopted in the same manner as the state conservation and development plan. The planning process shall also include provisions for participation by representatives of the communities in which state-owned properties are located. The plan is to be submitted for legislative approval on or before November 1, 1994 and shall be revised every five years thereafter.*

This recommendation presents some difficulty in that proposed uses of state-owned properties are dependent on the programmatic needs of a number of agencies. A generalized, resource-based land use plan might be possible without programmatic direction, but this would only provide a broad framework that might or might not contribute to better siting decisions.

DPW has proposed an "assets management" strategy involving programmatic analysis that we believe will be a fundamental component of such a planning process. Agency roles and the possibility of shared resources will need to be investigated before such a plan can be clearly defined.

Consensus on Facility Need

4. *Public education programs focusing on the need for locally unwanted land uses should be developed by state agencies responsible for siting controversial facilities and carried out on an on-going basis around the state.*

We agree with this recommendation. Public information programs can only serve to lessen the public's apprehension regarding these sites. State agencies could delineate their education plans as part of the plan outlined in recommendation 3 above, if such is developed.

Consensus on Facility Need

5. *State agencies and quasi public agencies that site controversial facilities on the state's behalf shall establish in writing facility siting policies and procedures that include specific site selection criteria and methods. Written siting criteria should address technical or programmatic requirements, requirements to avoid or mitigate risks to public health, safety, and welfare, and to the extent reasonably possible, fairness in terms of avoiding concentration of facilities with adverse impact.*

We agree that state agencies and quasi public agencies that site controversial facilities should establish facility siting policies and procedures. These policies should be consistent with the broad state policies outlined in any plan as previously recommended.

Public Participation

6. *State and quasi public agencies responsible for siting controversial facilities should consider using neutral mediators to facilitate public participation in their siting processes.*

We agree and believe, when appropriate, this should be one of the steps used in the siting process to be defined in the OPM-DPW land use plan (recommendation 3).

Voluntary Acceptance

7. *State and quasi public agencies responsible for siting controversial facilities should, as a first step, implement a voluntary approach for selecting suitable sites. If the voluntary approach fails, siting processes based on the Connecticut Siting Council model should be developed and used.*

We agree that some kind of voluntary approach to siting would be best. However, perhaps a regional approach can be used as an alternative to, or in conjunction with the Siting Council model. This would bring a little more local control to the siting process and might help in increasing public acceptance of the facilities.

Low Level Radioactive Waste Disposal Area Siting

8. *The Connecticut Hazardous Waste Management Service shall apply to the U.S. Nuclear Regulatory Commission for a license to construct the state's low level radioactivity waste disposal facility at or contiguous to an existing installation in Connecticut that in the 12 months preceding the application generated no less than 2 percent of the total curies of low level radioactive waste generated in the state. If and only if such application is finally denied by the commission, the service shall evaluate and select one or more other potential sites for the facility.*

9. *In evaluating other potential sites for the facility, the service shall consider, in addition to the factors currently listed in statute (in C.G.S. Section 22a-163c), the risk to private and public water supplies.*
10. *The property limits of any of the other potential sites selected by the service shall be at least two kilometers from the boundaries of any highly developed area as defined and identified in United States Geological Survey topographic maps.*
11. *The property limits of any of the other potential sites selected by the service shall be at least two kilometers from the property limits of any public school.*

These four recommendations represent very specific siting criteria as called for in recommendation number 5 above.

Community Residences

1. *The Connecticut Law Revision will review the Federal Fair Housing Amendments Act of 1988 to assess its impact on Connecticut protective zoning laws related to group homes and other pertinent laws, and recommend any necessary statutory changes by January 6, 1993.*

Agree.

2. *The Office of Policy and Management shall create and maintain a statewide registry listing all community residences, which shall be defined as neighborhood facilities, funded by state agencies and housing persons receiving services or treatment for a physical or emotional condition or disorder or housing persons who require assistance in being reintroduced to the community. State agencies that sponsor community residences shall be required to submit the following information to OPM for the registry:*

- o municipality where residence is sited;*
- o region served;*
- o residence address (where applicable) & number of beds;*
- o population served (mental health, correction, etc.);*
- o licensing agency (mental health, correction, etc.);*
- o operating agency and address including phone number; and*
- o funding agency.*

All information compiled by the registry relevant to siting decisions shall be considered by the state agencies that sponsor community residences. OPM shall develop regulations for the registry that take into account federal laws on confidentiality and protect client privacy.

We agree that if an equitable distribution of community residences, consistent with state policy and siting criteria is to be effectively implemented, a registry should be developed and maintained. As stated previously, necessary resources should be made available. We would recommend that submitted siting information include the proposed need for the facility and the specific siting criteria used.



3. *Each state agency that sponsors community based residential services shall develop indicators of need for such services to be used in aiding siting decisions at regional and local levels.*
4. *Siting guidelines that describe the criteria and method used to determine appropriate locations for community residences should be developed by each state agency that funds or supports them. These guidelines should be drafted according to the needs and concerns of the populations sponsored by the different state agencies.*

We agree with these recommendations and that this information should become part of an overall state siting plan.

RESPONSE TO
LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE
REPORT ON SITING CONTROVERSIAL LAND USES
February 11, 1992

COMMENTS

By The

CONNECTICUT HAZARDOUS WASTE MANAGEMENT SERVICE

On

SITING CONTROVERSIAL LAND USES

The Connecticut Hazardous Waste Management Service (the Service) appreciates the opportunity it has been provided by the Legislative Program Review and Investigations Committee to comment on the Committee's report entitled Siting Controversial Land Uses (January 1992). The Service is particularly interested in the report because the Service is responsible for selecting a site for a low-level radioactive waste (LLRW) disposal facility in Connecticut, clearly one of the most controversial land use sitings the State of Connecticut will ever undertake.

While the Service differs with some of the recommendations and analyses in the report, we commend the Committee for undertaking an extremely difficult task. Many of the recommendations are very positive and the report is, for the most part, responsible, fair and unbiased.

The Service has been the subject of two prior reports by the Program Review and Investigations Committee and was impressed with the high degree of objectivity and the manner in which the Committee conducted itself on those occasions. However, the Committee's recommendation and case study regarding LLRW disposal facility siting represent to us a departure from the objectivity that characterized the other reports and the bulk of this report. The Service urges the Committee to re-evaluate the recommendation on LLRW disposal facility siting. For the case study, the Committee should perform the further research and analysis to provide a complete and correct description of the LLRW disposal facility siting process conducted by the Service or it should eliminate the case study altogether.

The recommendation on LLRW facility siting designates a site for a disposal facility in contravention to all of the other recommendations contained in the report. However, the Service has not and does not plan to take a position on proposed legislation that would implement the Committee's recommendation.

COMMENTS ON THE BODY OF THE REPORT

Contrary to what the report states on Page 26, the four ex-officio members of the Service's Board of Directors do not become voting members until after the final site selection for the LLRW disposal facility. In addition, if the Nuclear Regulatory Commission (NRC) does not approve the license application for a facility at that site, the ex-officio members revert to non-voting status until after another site is selected for the facility.

The report is correct in stating that the facility developer is forbidden by law from participating in the site selection process (Page 27). However, the report should have noted that the developer may provide technical assistance to the Service in the selection process.

The report correctly states that the Connecticut Siting Council can override decisions by local land use agencies (Page 27). While there is a description of the composition of the Siting Council for a LLRW facility application earlier in the report (Pages 11 and 12), it would have been useful to have repeated it here. In addition, the report should have noted that overriding a local disapproval requires the affirmative vote of eight of the thirteen members of the Siting Council, four of whom will have been appointed by the chief elected officials of the town where the facility would be located and the neighboring town that would be most affected by the facility.

In Table II-7 on Page 28, the first example of a "Mitigation" item is listed as "buffer belt". It should have been listed as "greenbelt buffer" just as it is for hazardous waste facilities in Table II-3 on Page 23. The buffer referred to in the table is in addition to the buffer zone for the facility required by the state and federal regulations.

While the report correctly states on Page 29 that Battelle will conduct environmental impact evaluations at the three sites, it also correctly states on Page 50 that quasi-public agencies such as the Service are not required to comply with environmental impact assessment provisions of the Connecticut Environmental Policy Act. The apparent discrepancy could have been resolved if the report had noted that the Board of Directors of the Service took the unusual and unprecedented step of deciding voluntarily to have environmental impact evaluations that comply with the spirit of the Connecticut Environmental Policy Act prepared on the sites. The Board took this step because of its commitment to protection of the public health and safety and the environment and to provide state and local agencies and the public an additional opportunity for involvement in the siting process.

The Service agrees with the Committee's recommendation regarding the use of neutral mediators to facilitate public participation in siting processes (Pages 52 and 53). The Service will immediately begin an analysis of its activities to identify opportunities where such mediators could be used.

COMMENTS ON APPENDIX E, "CASE STUDY: LOW-LEVEL RADIOACTIVE WASTE FACILITY SITING

General Comments

The thrust of the Appendix is the Committee's assertion that the inherent problems of siting a LLRW disposal facility have been compounded in Connecticut by two main factors: 1) a lack of attention to public perception of risk; and 2) the failure of the Service to follow its established site selection procedures (Pages E-2 and E-3)

With regard to the first factor, the report is substantially correct that the Service's site selection process relies almost exclusively on technical considerations of risk. The appendix makes it seem that the Service just decided on its own to do so. It would have been useful if, in the appendix, the description of the development of the Site Selection Plan that appears above or that is on Page 29 of the report had been repeated. In developing criteria, the Service relied heavily on the Low-Level Radioactive Waste Advisory Committee, a committee whose members are appointed by the governor and legislative leaders. In addition, the Service undertook an extensive public review and comment process and ultimately received comments on the draft Plan from over 60 individuals and organizations. Many of the modifications suggested by those who commented were incorporated into the final Plan. This effort involved the public directly in the process of developing the criteria that would be used in site screening. Therefore, if the Plan reflects a reliance on technical considerations of risk, it does so with the concurrence of the concerned public who commented on the draft Plan.

We note that the Committee's recommendation that quasi-public agencies should establish written facility siting policies and procedures (Page 50) stresses technical requirements and risks to public health and safety, not public perceptions of risk. The Service agrees with the report's statement that the assumptions and criteria used by the Service do not reflect the public's perceptions of the risk posed by the facility (Page E-3). Unfortunately, if the criteria for siting any facility that would dispose of a hazardous material reflected the public's perceptions of risk, no such facilities would be built in Connecticut.

With regard to the second factor (i.e., that the Service deviated from its stated procedures for the sake of expediency), the Service considers this allegation to be unsubstantiated and incorrect. There is no reference in the report to the procedure from which the Service supposedly deviated. The Service did not deviate from its stated procedures as can be verified by reviewing the Site Selection Plan (see Pages 13, 17, 20, 22 and 23).

The Service wrote the Site Selection Plan prospectively, prior to examining the nature and quality of available site screening data. The Plan was intended to be a general and evolving guideline to site selection. This is reflected at various places in the Plan.

The Service takes particular offense at the suggestion that it misapplied the slope preference criterion. Nowhere does the Site Selection Plan state how preference criteria would be applied, or that all preference criteria would be applied in the same way. Before

applying the slope criterion, the Service staff consulted with the Low-Level Radioactive Waste Advisory Committee, which played a significant role in the development of the procedures and criteria in the Site Selection Plan. No Advisory Committee member present at the meeting at which it was discussed objected to the proposed use of the slope criterion to defer sites. The Site Screening Report describes the technical reasons for using the slope criterion to defer sites. Service staff have explained the use on the slope criterion in numerous public meetings and to the staff of the Program Review and Investigations Committee. Yet none of this appears in the report. In addition, the report incorrectly states that the slope criterion was used to exclude sites. The slope criterion was used to defer sites. Deferred sites remain available for subsequent consideration by the Service whereas excluded sites do not.

The reference to "expediency" with regard to the slope criterion is particularly troublesome to the Service as it had previously undertaken an unplanned, long and costly process to digitize wetlands after Step 1 screening yielded far more potentially suitable areas than had been anticipated. The Service took the time and devoted the resources to conduct a sound siting process. It did not take shortcuts for the sake of expediency.

The harm done to the process and the Service by the report's inaccurate and misinformed identification of these two "problems" is compounded in the conclusion to the appendix (Page E-6). The conclusion states that two of the three key elements of a siting process were clearly diminished by the Service by changing screening criteria late in the process. The Service categorically denies, and the appendix fails to establish, that the Service changed screening criteria in the process. As documented above, this simply did not happen.

Specific Comments

The report correctly indicates at the bottom of Page E-1 and the top of E-2 that the federal regulations have been revised since the facilities at West Valley, New York, Maxey Flats, Kentucky and Sheffield, Illinois, were developed. These are the three of the six commercial LLRW disposal facilities in this country that have been closed and that have "leaked". The report also states that new technologies for waste disposal are, for the most part, unproven. The report should, however, have noted that the Board of Directors of the Service has rejected the use of the technology employed at the three sites which have leaked. The report should also have mentioned that the disposal technologies being considered by most states developing new disposal facilities have been in use in France for over 20 years for waste disposal and in Canada for waste storage.

On Page E-2, the report mistakenly includes "state environmental impact evaluation" as a requirement for LLRW disposal facility siting. As noted earlier, quasi-public agencies are exempt from requirements for state environmental impact evaluation. However, the Board of Directors of the Service decided voluntarily to prepare environmental impact evaluations and to comply with the spirit of other aspects of state environmental policy law.

The report states that much of the public outcry about the selection of the three candidate sites is due to the close proximity of homes, schools and operating farms (Page E-3). Rather than using the term "public", the report should have stated that it is referring to the outcry in the communities affected by the candidate site selection decision. There does not appear to be a similar "outcry" elsewhere in the state.

The report correctly states that eleven schools are within two miles of the sites. However, the report fails to mention that a facility will not be built at all three sites. It will be built at one site. The facility will not have eleven schools within two miles of it. The potential impact of a facility at any of the sites on any school will be assessed and the site will be rejected if judged to be unsafe.

The report characterizes the approach followed by the Service in setting distance standards as "minimalist" (Page E-3) and indicates that the Service chose to narrowly interpret other regulatory agency guidelines. It would present a more accurate view of what the Service did if the report had also mentioned that the Service applied its avoidance criteria as though they were exclusionary in order to provide an additional measure of safety in site screening. The report could also have documented the areas in which the Service's criteria are more stringent than state and federal laws and regulations. For example, it could have indicated the characteristics and factors that the Service prohibits from the buffer zone, but which would be permitted under state and federal requirements.

On Pages E-3 and E-4, the report refers to a guideline developed by the NRC related to one of its regulatory requirements. The requirement and the guideline are designed to give urban communities space in which to grow before their growth might start to impinge on the LLRW disposal facility. The guideline recommends that a LLRW disposal facility not be sited within 1.2 miles (2 kilometers) of the "residential property limits of the nearest existing urban community". In addressing the NRC's regulatory requirement, the Service eliminated land classified as "long term urban potential" in the state Plan of Conservation and Development rather than drawing an arbitrary 1.2 mile circle around some existing demographic feature. The Service is convinced that its implementation of the NRC requirement is superior to the way the NRC suggests in its guideline. Finally, as the NRC explained in an October 16, 1991, letter to Connecticut Attorney General Richard Blumenthal, NRC guidelines are merely one suggested means for complying with NRC regulations. Siting agencies are free to come up with alternative ways of complying with the regulations. That is precisely what the Service has done.

The report indicates that New Jersey, a state comparable to Connecticut, is following NRC guideline on demography (Page E-4). New Jersey plans to exclude from consideration land that is 1.2 miles from "highly developed areas" as identified on United States Geological Survey (USGS) quad maps. The USGS designates an area as "highly developed" where the density of buildings is so great that it would be difficult to map each building. With regard to use of this classification, it is an open question as to whether or not "highly developed areas" correspond to "residential property limits of the nearest existing urban community" which is the phrase in the NRC guideline. Further, implementing the NRC guideline in this way will not necessarily result in sites which have

fewer people around them than the three candidate sites identified by the Service. New Jersey recognized this in setting the maximum number of residences it will allow to be taken for its planned 250 acre site at 30. The Service set a comparable number at 5 residences on a 160 acre site.

Although the report describes the maps and data on which the Service relied for its screening process as "out-of-date", it is interesting to note that the consultants retained by the candidate communities have, for the most part, used the same sources in preparing their reports.

The report recounts the perceived shortcomings in the use of a geographically neutral approach to candidate site selection, but does not indicate any of the positive attributes of such an approach, such as eliminating political and parochial influences from the site selection process.

The report states that the Service used slope to defer sites because of pressure to meet the federal siting timetable and avoid sanctions. The report also states that it has been difficult for the public to accept this explanation when most other states are even farther behind in meeting siting deadlines. Had the Service ever used the reason cited, the public would have been justified in not accepting it. Since early 1990 it has been clear that Connecticut would not meet the 1992 federal milestone and that it would not have a disposal facility in operation in time to meet the 1996 milestone. Whether or not most other states are farther behind than Connecticut is irrelevant.

With reference to the use of the slope criterion, the report correctly states that the Service acknowledges that it is possible that sites more suitable overall were deferred from further consideration (Page E-5). What the report does not state is that, for any criterion or group of criteria, it is possible that sites more suitable overall were deferred. It is the nature of stepwise site screening using objective, threshold-based criteria that sites just over the threshold and which, therefore, are deferred or eliminated may be more suitable overall than some sites that meet the threshold and are carried forward. To have a fair, objective process using standards applied in consistent, objective fashion, makes this unavoidable.

The report states that it is certain that the public would be better able to accept even the same outcomes of the process if it were shown that sites more remote from people had been considered but found technically unsuitable. This statement ignores the fact that at least three of the sites considered by the Board as possible candidate sites were more remote from people than the three selected sites, but were found to be technically less suitable. This has not appeared to have had any impact on acceptance of the candidate site selection decision in the three affected towns, but it appears to have had an impact on acceptance in the rest of the state.

The report describes the delay in the release of the Site Screening Report and the Service agrees that this delay was unfortunate because it led some to question the Service's credibility. However, the report should also note that, immediately after the

announcement of the candidate sites, the Service voluntarily made substantial portions of the site selection documentation available to the towns for their review.