Using Assisted Negotiation to Settle Land Use Disputes

A GUIDEBOOK FOR PUBLIC OFFICIALS

Lawrence Susskind

and the Consensus Building Institute

Using Assisted Negotiation to Settle Land Use Disputes

A GUIDEBOOK FOR PUBLIC OFFICIALS

This report was prepared by the Consensus Building Institute
with support from the Lincoln Institute of Land Policy.

Lawrence Susskind
President, Consensus Building Institute (CBI), and
Professor of Urban and Environmental Planning,
Massachusetts Institute of Technology

Ole Amundsen
Associate, Consensus Building Institute

Masahiro Matsuura
Associate, Consensus Building Institute

Marshall Kaplan
Executive Director, Institute for Policy Research and Implementation,
Graduate School of Public Affairs, University of Colorado at Denver

David Lampe
Research Consultant, Institute for Policy Research and Implementation,
Graduate School of Public Affairs, University of Colorado at Denver

Special thanks to the CBI interns who also assisted:
Robyn Champion, Cassel Kroll, Laura London, Dan Moss,
Eric Paley, Cheri Peele, Shirley Sperling, and Terry Wade

LINCOLN INSTITUTE OF LAND POLICY
CAMBRIDGE, MASSACHUSETTS

Contents

Guidebook

Introduction 1

Glossary 2

Study Summary 3

Why Use Assisted Negotiation? 4

Some Questions about Its Use 5

What Are the Risks? 6

What Kinds of Preparations Are Required? 8

Selecting a Qualified Neutral 11

What Are the Tasks of the Neutral? 12

Phases and Steps in Assisted Negotiation 14

Overcoming Obstacles along the Way 16

Problem-solving Strategies 17

Case Studies

I. Undertaking a Conflict Assessment: West Chester, Pennsylvania 7

II. Selecting Stakeholders: Louisville, Kentucky 9

III. Training the Participants: Hampton, Virginia 10

IV. Setting an Agenda and Sticking to It: Rowley, Massachusetts 13

V. Establishing an Advisory Committee: Island City and LaGrande, Oregon 18

Appendices

A. CBI Study Results 19

B. Resources for Dispute Resolution 24

C. Further Readings 26

D. About the Study Sponsors . . . . . **Inside Back Cover**

113 Brattle Street
Cambridge, MA 02138-3400
ISBN 1-55844-134-4

Second Printing, August 2003

Book and Cover Design: Studio N

Introduction

- Are you about to update your community's master plan?
- Are you planning to run a public meeting on a controversial project?
- Are you negotiating with a developer over the details of a subdivision plan?
- Are you trying to balance environmental and economic development interests?
- Are you dealing with transboundary disputes with neighboring communities?

If you answered "yes" to any of these questions, this Guidebook may help you learn how other communities and regional agencies throughout the United States are approaching these kinds of land use disputes in a new way.

Land use issues are becoming more and more complex, and it is often difficult for public officials to balance the contending forces of environmental protection, economic development and local autonomy. Polarization all too often leads to litigation, and the courts are not interested in reconciling legitimate differences in perspective.

We have found that sharing ideas and experiences among peers is a potent source of innovation in dispute resolution, as in other situations. For example, elected officials are more likely to pick up new ideas from one another than they are from the published work of academics or policy analysts. Similarly, business leaders and neighborhood activists are more highly influenced by the suggestions and recommendations of their respective colleagues.

To gain insight into these various perspectives in the case of land use disputes, we undertook an in-depth investigation of 100 communities around the United States that used assisted negotiation. Since different stakeholders perceive events differently, we interviewed all major players in each of the 100 case studies in order to provide outsiders with a full and rich understanding of the process.

Complementing the quantitative results of more than 400 interviews, five selected case studies in this Guidebook illustrate how assisted negotiation has been used effectively. Each case is linked with a different step in the assisted negotiation process.

While facilitation and mediation do not always produce settlements, they appear to be an important supplement to the traditional administrative, political and legal tools typically used to resolve land use disputes. With the right kind of help, it is possible to:

- write new comprehensive plans that can gain community-wide support;
- find consensus even in the face of serious conflict;
- balance environmental and economic concerns; and
- improve relationships with neighboring communities.

We hope that this study of the attitudes and experiences of citizens, developers, public officials and other stakeholders who have used assisted negotiation to solve land use disputes in different parts of the country will prove instructive to others in similar circumstances.

Glossary

Arbitration is a voluntary but highly structured adjudicatory process. Arbitrators make binding decisions.

Assisted negotiation is a catch-all term for processes that use a neutral party to assist participants in resolving disagreements or reaching consensus. Arbitration, facilitation and mediation are all forms of assisted negotiation.

BATNA (Best Alternative To a Negotiated Agreement) is the most likely outcome if no agreement is reached through negotiation.

Conflict assessment is a way to gather essential information to determine whether or how an assisted negotiation effort should proceed.

Consensus refers to a settlement that all the stakeholders can live with. Consensus does not necessarily imply that all the participants are completely satisfied.

Consensus building is a set of techniques used to help diverse stakeholders reach agreements. Nonpartisan professionals facilitate this process.

Facilitation is a general term for problem-solving conversations assisted by a neutral party. The role of the facilitator is to keep the parties on track during meetings.

Mediation is a way to resolve disputes that relies heavily on the assistance of a trained neutral acceptable to all parties. Unlike an arbitrator, a mediator is not responsible for deciding anything. As a general rule of thumb, mediation includes the tasks of facilitation.

Single-text procedure is a way to articulate a written agreement and is often used in international treaty making. Parties negotiate on only one draft agreement prepared by a neutral.

If you answer "yes" to at least 6 of the 8 questions below, then you should consider using assisted negotiation:

1. Are the issues in your land use dispute clearly defined?
2. Are the key parties willing to talk about a possible settlement?
3. Is the outcome of the dispute uncertain if no agreement is reached?
4. Are the stakes high?
5. Are the issues of significant public concern?
6. Is the public frustrated with how the dispute has been handled thus far?
7. Is the government agency involved losing public trust?
8. Are some of the parties involved likely to have long-term relationships?

Study Summary

The Consensus Building Institute (CBI) initiated a study in 1997 to evaluate the use of assisted negotiation in local land use disputes throughout the United States. The research team contacted 25 leading land use mediators to solicit cases (both successes and failures) that would be instructive for public officials in other communities. All of the disputes took place between 1985 and 1997.

CBI used several criteria in selecting 100 of the 147 suggested cases for further study:

- a neutral party had to be involved in trying to resolve the dispute;
- the case had to take place at a local or regional level; and
- the case had to involve multiple parties engaged in a serious dispute.

CBI staff completed over 400 confidential interviews with key participants in each case. The findings and recommendations presented in this Guidebook are based on the experiences of participants in all 100 cases. Eight of the cases were selected for intensive on-site investigation by CBI's research partner, the Institute for Policy Research and Implementation at the University of Colorado at Denver. Four of these eight cases are summarized in this Guidebook, as well as another case study from CBI's research.

Most participants in the study had a positive view of assisted negotiation: 86 percent of participants viewed the process either very favorably or favorably and 85 percent thought the mediator or facilitator played a crucial or important role in contributing to the success of the process. (See Figures 1 and 2.)

Nearly two-thirds of the disputes were settled, but even in the unsettled cases, 64 percent of participants who viewed their dispute as unresolved thought that the assisted negotiation process had helped the parties make significant progress.

FIGURE 1. How Would You Rate the Process in General?

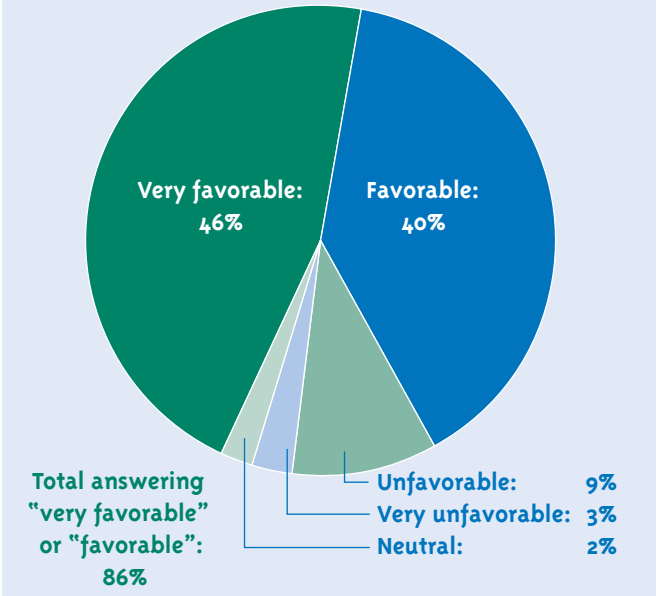
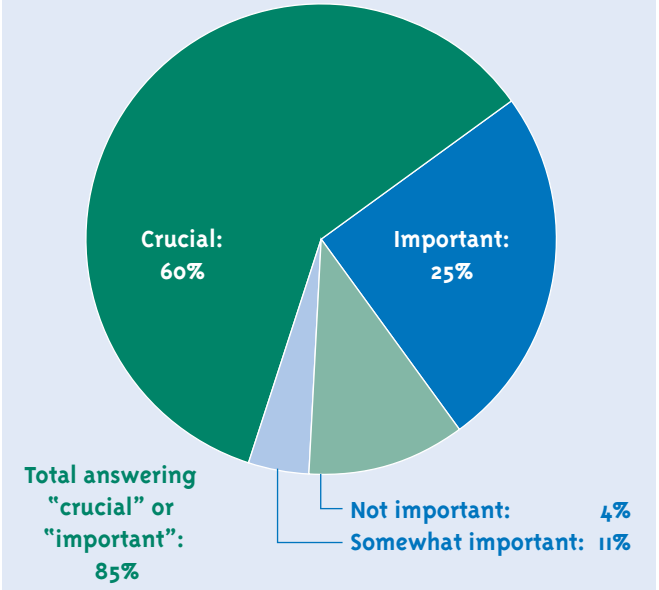


FIGURE 2. How Important Was the Mediator?



An explanation of the study methodology and analysis of the results are summarized in Appendix A to this report starting on page 19.

Why Use Assisted Negotiation?

Obtain the best available information

Assisted negotiation can address extremely technical matters through joint fact-finding. Its purpose is to develop a shared base of knowledge and to focus discussions on the interpretation of the information available, not to debate the facts themselves. This process should ensure that the best available information is taken into account.

Save time and money

The parties can realize cost savings by reducing the need for dueling expert witnesses and legal advisors. Assisted negotiation, more often than not, appears to save the parties money while producing agreements that are at least as satisfying as those generated through more traditional means. By addressing issues in greater depth, future conflicts may be avoided.

Increase compliance

Many agreements reached through assisted negotiation include self-enforcing mechanisms to ensure compliance. Increased trust achieved through the search for mutually beneficial outcomes encourages parties to comply with the spirit of the agreement as well as the letter of the law.

Improve relationships

Assisted negotiation brings together a wide range of stakeholders. The relationships built as a result of face-to-face communication help combat stereotypes and increase understanding.

Resolve future problems more easily

When relationships are enhanced, future conflicts are more likely to be contained and managed effectively.

Minimize political risks

Assisted negotiation processes reduce the vulnerability of public officials to charges of acting unilaterally or of being out of touch with the public interest.

Increase confidence in government

If the community believes that the issue was handled fairly, the public will have increased confidence that other difficult issues will also be handled well.

Some Questions about Its Use

Is assisted negotiation always legal?

The federal Alternative Dispute Resolution Act of 1998 formally recognizes and encourages the use of assisted negotiation. Many states have enabling legislation to encourage the use of assisted negotiation in land use disputes. However, assisted negotiation is not a substitute for public involvement, required public hearings or other types of mandatory consultation. Also, federal officials should take into account the Federal Advisory Committee Act (FACA) when agreeing to get involved in local land use decisions involving federal agencies.

Isn't it expensive?

Not really. While there are costs involved, they amount to a lot less than the cost of litigation if no agreement is reached. Several states have grant programs to help underwrite the costs of assisted negotiation. Increasingly, foundations are also providing funds. Parties in an assisted negotiation process often agree to share the costs involved.

Isn't assisted negotiation just a fad?

No. The 1973 settlement of a dispute over flood control on the Snoqualmie River in the state of Washington is widely viewed as the first public policy dispute that was mediated successfully. The steady growth of the use of assisted negotiation has been accompanied by an increasing amount of theoretical work on resolving such conflicts. Today, many leading universities, law schools and business schools offer courses in assisted negotiation, and the process is widely accepted in both private and public sectors.

Won't elected officials be giving away their legal authority to act if they agree to participate in consensus building efforts?

Often assisted negotiation processes involve informal discussions or processes that parallel formal decision making. Hence, public officials are not delegating their decision-making authority. Rather they are participating in focused discussions that can help improve formal decision making.

What if the parties don't trust each other?

It is not unusual to distrust other parties in a conflict. Often, by improving communication and meeting in a less formal setting, distrust can be diminished. The use of ground rules can safeguard against untrustworthy behavior.

What if legal precedents need to be set?

There may be issues that need to be clarified by a court decision. However, by entering into an assisted negotiation process, parties do not give up their right to sue subsequently or to file an appeal in court.

What Are the Risks?

Assisted negotiation may take considerable time

Overcoming years of distrust to produce an agreement is not easy. A consensus can reduce the risk of protracted litigation, but it is much harder to find a solution acceptable to almost everyone. Decisions produced by assisted negotiation may still have to be approved through formal decision-making processes, such as a public hearing or a public comment period.

Lack of experience may cause misunderstanding and resistance

Some public officials may feel awkward about opening up decision making to all stakeholders. It is important to offer training for all participants and to stress that all final decisions remain with those who have statutory responsibility.

Organizations must be committed to the process

A land use dispute can be made worse if a party is allowed to walk away from its promises. Public agencies, in particular, are vulnerable to this concern because of staff changes resulting from the political cycle. If participants invest a considerable amount of time in the process only to see the public agency not honor its commitments, the process will only increase the level of public cynicism. Representatives from other parties, like community organizations and private companies, should also keep their promises as organizations. It is important to think hard about whether your organization can really stick to its agreements, before agreeing to participate.

Professional neutrals must be chosen with care

Neutrals have different styles and different levels of ability. For example, some neutrals have passive styles that may not be "strong enough" for certain situations. Also, the cost of their services will vary, so you should consider your budget constraints. The field of assisted negotiation is extremely competitive, so you should be able to find a neutral who meets your needs.

Conflict Assessment

Conflict assessment is the key tool for anticipating the risks and problems associated with assisted negotiation. The chart below illustrates how a conflict assessment is usually conducted (typically by a professional neutral).

INITIATE a conflict assessment

- Make a preliminary list of issues to explore
- Develop an interview protocol
- Arrange confidential, one-on-one interviews with all relevant stakeholders

GATHER information through interviews

- Explore stakeholders' key concerns and interests
- Assess stakeholders' willingness to "come to the table"
- Identify additional stakeholders to interview

ANALYZE interview results

- Summarize concerns and interests without attribution
- Map areas of common and opposing interests
- Identify potential opportunities for mutual gain
- Identify obstacles to reaching agreement
- Estimate the potential success of a facilitated dialogue

DESIGN a joint problem-solving process (if appropriate)

- Identify stakeholder groups that would need to be involved
- Draft a work plan for addressing key issues
- Draft ground rules for constructive communication
- Estimate the costs of supporting the process

SHARE the assessment with interviewees

- Distribute a draft report
- Ask interviewees to verify its accuracy and completeness
- Incorporate suggested changes and finalize the report
- Assist the sponsor and others in agreeing on whether to proceed with a facilitated problem-solving process

Not In My Backyard: West Chester, Pennsylvania

Case Summary

A proposed homeless shelter divided the residents of West Chester, Pennsylvania. For two winters in the early 1990s, a temporary shelter was operated by a local nonprofit organization, Safe Harbor, Inc. The shelter was hosted by a different church each month to avoid permit requirements that would otherwise have been imposed by the county government.

During this time, Safe Harbor evaluated several potential sites for a permanent facility and in 1994 found an abandoned downtown garage that had the necessary space to serve the homeless population. Local business owners were alarmed at the prospect of a downtown shelter and felt deeply frustrated by the fact that a shelter was allowed under existing zoning. To calm these fears, Safe Harbor held two public breakfasts with business leaders. However, the meetings were very tense and did little to reduce the concerns of the shelter's opponents.

In response to growing tensions, Chester County Commissioner Andrew Dinniman suggested mediation. A team of three mediators was hired by the county government to do a conflict assessment and to mediate the dispute. A series of four meetings focused on the lessons that could be learned from other communities with downtown shelters and on the design of the shelter.

Through a combination of one-on-one meetings and group meetings, the mediators were able to encourage participants to clearly state their concerns. A major issue was that Safe Harbor was proposing a 24-hour facility offering a range of services that went beyond just a bed for the night. Shelter advocates argued that job training and counseling services were a crucial part of an effective shelter program.

As part of the agreement that emerged, Safe Harbor promised to confine its operation to evenings, while stating that a 24-hour shelter was still a long-term goal. Further, Safe Harbor issued a statement of commitment to the surrounding community as a way of pledging to be a good neighbor. The representatives of the business community signed an agreement recognizing that there was a "pressing need" for a shelter and that the proposed location was the most appropriate one. The agreement ended with a motto coined by one of the original opponents: "Together we can do it." The shelter has been operating smoothly for four years and has been allowed to expand its operations to 24 hours a day.

> **"We felt that mediation was a good way to reach out to the business community one more time, to demonstrate that we were responsible, that we cared about them, and that we were willing to meet some of their concerns."**
>
> *Jane Varley, Vice President, Safe Harbor*

Commentary

Before the parties had their first mediation session, Wendy Emrich of PennAccord Associates prepared a conflict assessment. Although the major participants were easily identified, Emrich thought that a conflict assessment was needed to build trust in the mediation process. At the time mediation was suggested, tensions were high and many influential citizens felt that they had wasted their time attending previous informal breakfast meetings. It was very important that stakeholders believed that the mediation process was worth their time.

Emrich began by holding a confidential meeting with each key party. During the meetings, she asked if there were other people who should be consulted, and she subsequently conducted phone interviews with these additional sources. Based on the recommendations generated by the pre-mediation meetings and interviews, an agenda was fashioned and several outside experts were identified and invited to make presentations. Through the conflict assessment process, the parties gained confidence that their concerns would be addressed and they became more willing to participate in the mediation sessions.

What Kinds of Preparations Are Required?

Identify stakeholders

You should have a good sense of all the possible stakeholders because the neutral will use your initial list to prepare a conflict assessment. In addition, you should think carefully about who will represent your organization in the dialogue.

Evaluate your and others' BATNAs

Best Alternative To a Negotiated Agreement (BATNA) is the most likely outcome if no agreement is reached. If your BATNA looks better than all possible negotiated agreements, you should not join in an agreement. In addition, consider the BATNAs of the other parties. If they seem to estimate their BATNA higher than any negotiated agreement, they will be reluctant to come to the table.

Articulate your interests and explore the interests of others

Interests are not the same as positions. Parties usually commit to positions, which are based on their interests. For example, a party might say "This use of land is not acceptable!" This statement is a position. "Because we think economic growth is imperative" may be their interest. You should be clear about your interests to be an effective negotiator. Also, you should try to estimate the interests of other parties.

List your and other officials' mandates and constraints

Your organization may be restricted by legislation from agreeing to certain things. For example, you may be required to hold a public hearing before agreeing to a proposal. Thus, you should make a list of your constraints before beginning an assisted negotiation. If other officials can affect your decisions, you need to think about their mandates as well.

Think carefully about constitutional rights and values

It is very difficult to resolve disputes over rights or values using assisted negotiation. For example, those who believe strongly in private property rights might not agree to negotiate at all because they may not recognize the legitimacy of government planning. Questions involving constitutional rights should be clarified in court before assisted negotiation can be used effectively.

Mobilize your organization to be prepared

What information have you gathered? In assisted negotiation, you and other parties will investigate scientific and technical issues together. You need to be prepared to say what you know about technical matters and how you came to hold these views.

Preparation Checklist

1. Did you make a list of all the obvious stakeholders?
2. Did you analyze what no agreement really means for you and for them?
3. Did you list your most important concerns and the likely concerns of other parties?
4. Have you thought of things you can prepare to meet your interests as well as theirs?
5. Did you make a list of your and other organizations' mandates and constraints?
6. Are you sure that the dispute does not involve important constitutional questions?
7. Have you shared items 1 to 6 above with others in your organization and can you move forward with a clear mandate?

Regional Infrastructure Investment: Louisville, Kentucky

Case Summary

For twenty years the residents of Louisville, Kentucky, and the surrounding region were embroiled in a debate over selecting a location for a new bridge over the Ohio River. The city of Louisville wanted a downtown bridge, but other interest groups supported a suburban location. Several transportation studies were conducted, yet none was accepted by all the stakeholders.

Elected officials and staff at Kentuckiana Regional Planning and Development Agency (KIPDA covers both Kentucky and Indiana) decided in 1994 to use a facilitated process to produce a definitive solution to the bridge impasse. The search for a facilitator was part of a larger Request for Proposal (RFP) for the Ohio River Major Investment Study (ORMIS).

While the RFP process was under way, the KIPDA staff took the lead in selecting participants for a core group known as the Transportation Policy Committee. This committee then selected the 45 members of the ORMIS committee, and divided the committee into voting and nonvoting members. At this point, a facilitation team was hired.

Since the ORMIS committee had members with different levels of technical training and very different interpretations of the transportation data, the facilitation team held small breakout sessions to review technical matters. Also, facilitators worked privately with several stakeholders, offering guidance on how to participate more effectively in the discussions. Since the contract for the facilitators was part of the larger technical study, the facilitation team was well positioned to supply technical information to participants. Based on stakeholders' recommendations, a variety of new modeling assumptions were used to forecast the impact of different proposals. For the first time in the history of the dispute, light rail was considered as an alternative means to reduce congestion. The ORMIS process explored a much wider range of alternatives than previous studies.

"We, the KIPDA staff, didn't want people with little or no knowledge of transportation issues to have the same vote as the more experienced members. This was probably a mistake."

Norm Nezelkewictz, former Executive Director, KIPDA

After a year and a half, the ORMIS committee recommended building both a downtown bridge and a suburban bridge. In addition, a major downtown highway interchange would be modified and improvements would be made to the city bus service. The ORMIS committee report is nonbinding and leaves many implementation and funding issues unanswered. Currently, preparation of the Environmental Impact Statement is getting underway for the two proposed bridges.

Commentary

Significant problems arose in the ORMIS process around the selection of stakeholders and the allocation of voting privileges. Many stakeholders believed that advocates for opposing bridge sites had stacked the membership of the committee. Thus, one of the first recommendations from the facilitation team was to expand the ORMIS membership. The core group voted in favor of this recommendation and six stakeholders were added. However, there were still some stakeholders who felt left out, including the City of Prospect, which hosts one of the potential bridge sites. City officials wanted to participate, but were told that their interests would be represented by the Jefferson County League of Cities. Several participants believe that the City of Prospect may file a lawsuit regarding the bridge project.

ORMIS members were divided into voting and nonvoting categories. While the facilitator recommended that the committee change this practice, his recommendation was not accepted. The result was considerable suspicion on the part of nonvoting members that their views were not being considered seriously.

CASE STUDY III: TRAINING THE PARTICIPANTS

Highway Location and Comprehensive Planning: Hampton, Virginia

"Training creates norms and expectations on the part of participants that carry the process through difficult times."

Bill Potapchuk, trainer

Case Summary

The City of Hampton, Virginia, has integrated facilitation and consensus building activities into its regular planning process to update its comprehensive plan (comp plan) and draft neighborhood plans. However, the use of facilitation did not come easily for Hampton.

Since the 1950s, the city has debated the inclusion of a proposed east-west highway in its comp plan. Each time the city's planning department has proposed the highway, residents in surrounding neighborhoods have forced its removal from the comp plan. Residents were particularly upset that they were not consulted more fully by the planning department. Finally, in 1987, the city manager decided to use a facilitated consensus building process to resolve the highway issue.

An initiating committee was formed by representatives of the neighborhood associations, business interests and the city government. A professional facilitator was hired to train the stakeholders and city staff on how to participate in and run the process. After the initial training, the assistant city manager, Mike Monteith, was assigned the role of facilitator. The committee formed a working group with expanded membership to focus on the entire comp plan. The working group met once a week for a year. During the first six months, the city trained the stakeholders in the basics of transportation planning.

Since the highway issue had been very heated, Monteith established ground rules so that participants would "value each other." According to participants, the facilitator was crucial in coordinating the flow of information among different city departments and members of the working group. When a representative asked a technical question, the facilitator tracked down the appropriate city employee or found a consultant to address the issue. Between this joint fact-finding effort and the training provided by the city, all stakeholders were able to fully participate in detailed discussions of proposed alternatives. According to local planning officials, the end result was a comp plan that was substantially better than all previous plans.

The solution came from a neighborhood representative on the working group. The city bought the land it needed for the highway, yet classified it as park land. If the city wants to use the land for a highway in the future, it will have to reclassify the land, triggering a public involvement process. Furthermore, the group created criteria to determine if a new highway is needed. A community panel will review each application of the criteria. Both the planning commission and the city council approved the updated comp plan.

Commentary

A key element in the success of the Hampton effort was the training offered to stakeholders at different points in the process. The city hired Bill Potapchuk, now with the Program on Community Problem-Solving, to run a series of training exercises, the first with the initiating committee. Since the highway problem had been around for years, participants needed to learn how to think about it in a new way. Potapchuk helped the parties see the opportunity to address not only the proposed highway but other issues facing the community as well.

With the convening of the working group, the second phase of training began. For some participants it was both their first exposure to shaping public policy as well as their first experience in a facilitated process. Potapchuk began by walking the participants through the various steps in a consensus building process. Through a series of presentations, participants learned about their roles in the process. Role-playing exercises were also used to help stakeholders practice negotiation techniques.

Selecting a Qualified Neutral

The case studies and interviews in this study confirm that hiring a professional neutral is as straightforward as hiring any other contractor or consultant. Often municipalities issue a Request For Proposals (RFP) from potential facilitators or mediators. Following are some items that should be addressed:

- background information on why the assisted negotiation process is needed and a review of events leading up to the process;
- a list of expected tasks and services to be performed under the contract;
- the expected products of the process;
- the criteria by which responses to the RFP will be evaluated.

Nearly 30 states have offices of dispute resolution and most of them maintain a list of qualified neutrals. Many universities and law schools also have programs in dispute resolution and offer assisted negotiation services. (See page 24 for a list of dispute resolution resources.)

Things to consider in reviewing candidates

- Is the candidate perceived as neutral by all potential stakeholders?
- Is the candidate able to hear your concerns, as well as those of other stakeholders?
- Can the candidate separate personal values from the concerns and interests of the parties?
- How does the candidate intend to deal with participants who lack confidence or lack the technical training to participate in the process?
- What substantive knowledge does the candidate have about the issues involved?
- How has the candidate approached similar problems in the past?
- Does the candidate have any expectations regarding his/her role and the desired outcome?
- How does the candidate view his/her responsibility for meeting logistics?
- How does the candidate estimate the cost of his/her services?

What Are the Tasks of the Neutral?

In many cases people are confused over whether they need a mediator or a facilitator. When considering the use of a professional neutral, it is important to think in terms of how much responsibility you want the neutral to have for the process. A mediator is usually responsible for the resolution of the dispute, while a facilitator is more focused on the efficiency of meetings. Also, consider how much interaction you want the professional neutral to have with the participants.

What both a mediator and a facilitator do:

- **Identify stakeholders:** They make an assessment of who has a stake in and should participate in the process.
- **Manage meetings:** They are proficient in increasing the efficacy of meetings, especially in confrontational settings.

What a mediator does, and what a facilitator might do:

- **Bring stakeholders to the table:** By explaining the assisted negotiation process, a mediator can try to persuade those who are reluctant to participate.
- **Meet with the press:** A mediator can serve as the spokesperson for the process. The mediator provides an objective assessment of the process and minimizes misunderstandings resulting from press coverage of the issues at hand.

What a mediator does, but a facilitator does not do:

- **Conduct shuttle diplomacy:** Mediators often meet with the parties privately to convey confidential messages and to explore "trades" agreeable to all.
- **Prepare a draft agreement:** Mediators often produce a draft for the participants to consider.

FIGURE 3. Tasks of Mediators and Facilitators

	Mediator	Facilitator
Identify stakeholders	Yes	Yes
Bring them to the table	Yes	Maybe
Manage meetings	Yes	Yes
Meet with the press	Yes	Maybe
Conduct shuttle diplomacy	Yes	No
Prepare a draft agreement	Yes	No

Mixed-use Development: Rowley, Massachusetts

Case Summary

After the collapse of the real estate market in New England in the early 1990s, the Ipswich Savings Bank found itself holding 97 acres of developable land, known as Ox Pasture, in Rowley, Massachusetts. Although the land was zoned for commercial use, the bank, through the Rowley Investment Corporation (RIC), proposed to build a 100-unit residential development, of which 25 percent would be classified as affordable housing.

The development proposal raised concerns among local public officials since the land represented one of the last areas available for commercial development in Rowley. Due to a state law which makes it hard to turn down affordable housing proposals, RIC was allowed to circumvent many local zoning restrictions. After a year and half of review, the local Zoning Board of Appeals rejected RIC's application, citing wetlands and traffic safety concerns. The case was appealed to the State's Housing Board of Appeals, which recommended that the parties try to reach a mediated solution.

The parties decided to use mediation for different reasons. In RIC's view, mediation was perceived as faster and less costly than going through various legal appeals. On the other side, local officials didn't like the prospect of having a state agency impose such an important local development decision. So, they agreed to enter mediation.

The Massachusetts Office of Dispute Resolutions arranged for the mediation services of Edith Netter, an experienced mediator and land use attorney. The parties met over the course of nine months before reaching an agreement. In addition to the group meetings, Netter met separately with the Rowley Zoning Board of Appeals (ZBA) and the bank president in order to handle more delicate issues.

The parties agreed to a mixed-use development of 40 single-family homes, with a 20-acre commercial/industrial park. A quarter of the homes would be affordable. In addition, a significant portion of land was set aside as open space. Surrounding wetlands were protected. To insure compliance, both parties agreed to jointly select an outside engineer to review the plans and monitor construction. While construction has not yet started, all of the parties remain confident that the agreement has successfully addressed all of the issues that blocked the project earlier.

> **"Whether it's a mediation or a large-group consensus-building process, I find that if you agree on ground rules and what the issues are, people will stick to them. Because the parties know what to expect, they are able to resolve their issues and move on."**
>
> *Edith Netter, mediator*

Commentary

In the first session, mediator Edith Netter got the participants to agree on the issues to be discussed during the mediation process. According to Netter, "I said up front to the parties, 'We'll deal with all of the issues but let's get them all out on the table.' I think that it's pretty unfair when parties bring up new issues towards the end of the process." The agenda served to focus the attention of the parties. Although the process lasted longer than expected (nine months), the participants perceived that the mediator kept them on track throughout the deliberations.

This was a noticeable improvement over previous public hearings. Several public officials involved thought that in the public hearings the same issues kept resurfacing with no closure. By contrast, Netter kept the parties focused and greatly minimized attempts to re-raise previously resolved issues.

Phases and Steps in Assisted Negotiation

In *Breaking the Impasse*, authors Susskind and Cruikshank suggest three phases in the process of assisted negotiation: pre-negotiation, negotiation, and post-negotiation. Each involves several steps that need to be completed. CBI's nationwide study of land use disputes underscored the importance of addressing each step effectively.

Phase I: Pre-negotiation

- **Getting started:** First, a professional neutral conducts a conflict assessment to clarify the issues involved and determine the stakeholding parties in a dispute. The neutral begins by interviewing the known stakeholders and looking for issues or other stakeholders who may have been overlooked.
- **Selecting representatives:** The neutral may caucus with a stakeholder group to assist in selecting an appropriate representative or spokesperson. Agreements made through assisted negotiation can be easily jeopardized if a representative lacks the authority to make commitments.
- **Drafting ground rules and setting an agenda:** The neutral helps establish ground rules, which can include meeting logistics, deadlines and the way to recognize the next speaker at a meeting. An agenda should also be agreed to by all participants.
- **Identifying facts:** Participants will come to the process with different levels of technical expertise. The neutral can help parties identify which facts are clearly known and which are open to debate. Then, the neutral can help to locate experts to inform all the parties.

Phase II: Negotiation

- **Inventing options:** A neutral can help the group invent options for mutual gain by facilitating brainstorming and creating subgroups for in-depth discussion of specific issues.
- **Packaging offers:** When neutrals find that participants have no additional options to suggest, it is time to begin building an agreement. The key to reaching agreement is to trade things valued differently by the stakeholders. However, parties might be reluctant to make offers because they worry about appearing weak. Thus, mediators often explore possible "packages" privately with the parties.
- **Writing agreements:** Without a written agreement, participants are free to interpret commitments differently and might not act as others expect. Furthermore, a written agreement gives each representative something to bring back to his/her constituency. Mediators prepare a single text and circulate the draft agreement to the parties for review, rather than allowing the parties to prepare their own drafts.
- **Binding the parties:** A successful agreement includes mechanisms to bind the parties to the agreement, thus reducing the probability that parties will disavow the agreement later on. Neutrals can suggest appropriate mechanisms based on their experience.
- **Ratifying the agreement:** The agreement needs to be ratified by the organizations that sent the representatives. Neutrals can help the representatives gain support for ratification by reinforcing how effectively they argued for the interests of their constituents.

Phase III: Post-negotiation

- **Linking the informal agreement and the formal process:** The agreement reached in a mediation process is not a formal decision. It may be necessary to take the negotiated agreement through a variety of formal reviews, depending on the governance structure of the groups, agencies and organizations involved.
- **Monitoring:** Agreements often include contingency clauses to bind parties, stating what should be done if various circumstances arise. To keep such clauses intact, a monitoring process is often necessary. Monitoring responsibilities should be shared by all participants.
- **Renegotiating:** Sometimes changing circumstances lead parties to want to renegotiate an agreement. The same neutral may be called in again. He/she not only has substantive and procedural knowledge of the negotiated agreement, but also can remind the parties of their earlier intentions and commitments.

Sample Ground Rules

The following lists summarize ground rules developed by a coalition of representatives from four Maine towns concerned about air quality and public health issues because of a paper mill in one of the towns.

Administrative Ground Rules

- **Representation:** Identification of key stakeholder groups and provisions for adding additional coalition members as needed
- **Role of Members:** Expectations about regular attendance, preparation for and participation in discussions
- **Role of Alternates:** Rights and responsibilities of alternate representatives from major stakeholder groups
- **Role of Other Members of the Public:** Guidelines for attendance and participation
- **Communication and Decision Making:** Protocol and procedures for speaking and reaching agreement
- **Role of Facilitators:** Responsibilities and tasks of the outside facilitators
- **Subcommittees:** Established for in-depth discussions of specific issues
- **Outreach:** Mechanisms for sharing information with the media and the general public
- **Meeting Summaries:** Prepared and distributed by the facilitators; amended and approved by the members

Behavioral Ground Rules

- Listen when someone else is speaking to encourage respect among all members
- Give others a chance to express their views
- Describe your own views, rather than the views of others
- Encourage discussion, not speeches
- Speak to the point, not the person
- Stay on track with the agenda
- Signal a time-out if ground rules are not being followed
- Use a timer to limit individual comments
- Ensure that facilitators can enforce the ground rules
- Post a list of outstanding issues and disagreements

For More Information

The Consensus Building Institute's website (www.cbuilding.org) offers other examples of ground rules that have been used in public dispute resolution efforts. Look under the section "What We Do" and the subsection "Theory Building."

Overcoming Obstacles along the Way

During the course of an assisted negotiation process, it is likely that problems will arise. The issues involved are complex, and the politics surrounding the issues are often difficult, so it should be no surprise when obstacles emerge. Few of these problems have not been encountered before, and there are techniques for dealing with tough situations. The following mini-cases illustrate some typical obstacles and creative solutions.

Difficult participants and distrust

Comprehensive Plan, Jefferson County, Montana

To deal with parties who could stall a negotiation by raising objections just to spite the other parties, the mediator in this case established an interesting ground rule: parties could raise an objection, but they also had to put forward a positive alternative. This ground rule prevented parties from vindictively blocking progress and encouraged the search for better solutions.

The power of numbers

Comprehensive Plan, Camp Sherman, Oregon

Most participants defined density of residential development in terms of the number of houses. To move participants away from that kind of thinking, the mediator asked participants to define density in other ways. Gradually, they redefined density in terms of their perceptions of design as opposed to a fixed number of houses.

Skepticism toward assisted negotiation

Pine St. Barge Canal Superfund Site, Burlington, Vermont

Participants were reluctant to take ownership of the negotiation process and wanted the mediator to be a "chairman" and tell people what to do. In response, the mediator proposed protocols that defined roles and outlined how the process would work. Once the stakeholders understood their roles, they were better able to focus on the substantive issues.

Internal stakeholder disagreements

Crane Valley Project, California

To make sure that representatives were truly reflecting the interests of their organizations, the mediator used a single-text approach: writing out options and working with this text until everyone agreed with the language. At the beginning of each meeting, the participants had to ratify the minutes and minor agreements reached previously. By getting tentative agreements along the way, the mediator made sure the stakeholders did not get too far out in front of the organization they represented.

Problem-solving Strategies

Distrust among the parties

- Focus the parties on common goals, not past history
- Have informal times such as coffee breaks or a group lunch to allow participants to get to know each other away from the negotiation table
- Have the neutral represent the process to the press

Difficult personalities

- Meet one-on-one with participants
- Establish ground rules to ensure common courtesy and respect
- Use role-playing exercises to teach more effective communication

Value conflicts

- Recognize the credibility of different views
- Seek to identify overarching values that are shared
- Use maps or other graphics to outline concerns in a value-neutral format

Lack of experience with consensus building

- Explain why the parties are gathered and the roles of the neutrals and other participants
- Provide training to all participants
- Present case studies of similar negotiation processes that have dealt with similar issues

Technical issues

- Explain all technical terms and acronyms
- Focus on building databases and forecasts that parties can agree on
- Consider the use of one set of outside experts to review data or collect data for technically disadvantaged participants
- Break complex issues into smaller parts
- Consider options over different timeframes such as, short-term, medium-term or long-term

Perception of strong BATNA

- Get parties to imagine their worst-case scenario
- Suggest that the parties consider the long-term benefits and long-term relationships at stake
- Educate stakeholders about other sources of power that might change other parties' BATNA

Growth Pressure and Transboundary Disputes: Island City and LaGrande, Oregon

"The settlement addressed the deeper issues between our two communities. These development issues would have kept popping up. With the mediation we resolved . . . the issue of the 120 acres and addressed the poor relationship between our towns."

Colleen Johnson, Mayor of LaGrande

"The mediator made us look at the big picture and was helpful in suggesting alternatives."

Dale Delong, Mayor of Island City

Case Summary

In 1992, a development proposal for a Wal-Mart sparked a lengthy dispute between the City of LaGrande and Island City in eastern Oregon. The dispute revolved around conflicting claims over a 120-acre parcel of unincorporated land located between the two communities. Each community viewed the parcel as offering major economic development benefits. Beneath the competition for the land, public officials in LaGrande resented the uncompensated use of many of their municipal services, such as use of the public library, by residents of the neighboring bedroom community of Island City. After two years of fruitless appeals and negotiations, county officials suggested using mediation.

The county received support from the state in the form of a roster of available mediators and a $5,000 grant to cover the cost of mediation. Both communities agreed to the selection of Richard Forester. He prepared a conflict assessment that helped to clarify the range of issues and identify who should be invited to the mediation sessions from both communities. Next, the mediator met individually with the parties and held four joint sessions over a two-month period.

Instead of deciding the fate of the 120 acres directly, the participants focused on the issues behind the annexation. They formed small groups to rank the issues that were most important and least important. The mediator's experience in land use law provided the parties with an objective assessment of their chances of winning in court. His assessment led the parties to reexamine their alternatives and increased their motivation to reach an agreement through mediation.

Both communities realized that resolving the issue was crucial since, as neighbor communities, they had an interconnected future at stake. LaGrande dropped its claim on the land in exchange for limited payments for library and park services from Island City. Both communities agreed to establish common development codes and impact fees to control development.

Commentary

Often mediated agreements anticipate future conflicts and set up a process to handle such disagreements. In the LaGrande v. Island City mediation, the parties realized that other growth and development issues would come up in the future. To address unforeseen issues, the stakeholders agreed to set up an intergovernmental panel, known as the Urban Growth Advisory Committee, made up of two elected officials from each community and one county commissioner.

The committee met, shortly after signing the mediated Wal-Mart agreement, to review the purpose of the committee, and met again in the summer of 1998 to address annexation of another parcel of unincorporated land. This parcel is receiving significant attention from developers who wish to build a residential subdivision. The Committee will consider which community is in a better position to provide sewer and other services to the proposed site. Without an intergovernmental panel, this issue could have triggered another legal battle between the two communities, undoing all previous progress.

Appendix A: CBI Study Results

Research Strategy

CBI undertook this study of land use disputes that used assisted negotiation in order to assess the quality of the settlements reached. We wanted to know whether or not relationships among the participants were enhanced so that future interactions would be more productive, whether confidence in government had increased, and how participants evaluated the negotiation process in general. Our approach contrasts with other studies that have analyzed the success of negotiated settlements based on time or money saved or other quantitative measures.

We also wanted to gather sufficient contextual information to help public officials and citizen activists determine whether assisted negotiation could be a useful tool for a particular land use dispute in their community. Thus, we asked participants in relatively recent mediation efforts about their satisfaction with those efforts, about actual outcomes versus their judgment of likely outcomes without mediation, and about stakeholder relationships after mediation. In-depth interviews allowed us to probe answers and ask follow-up questions.

In the absence of a national registry of completed or attempted mediation cases, we relied on initial interviews with 25 of America's leading mediators to identify cases for further study. We asked for nominations of both successful and unsuccessful efforts to resolve land use disputes. We stratified our sample of mediators to be sure we had representatives from across the country, and we included mediators who had experience with many kinds of land use disputes.

The Cases

We selected 100 of the 147 cases recommended by the 25 mediators. We omitted 18 Canadian cases because of the different legal and political systems compared to the U.S. cases. We did not include eight cases that involved state or national level regulatory negotiations since they lacked a site-specific component. Another eight were excluded after a key participant refused to participate, and 15 cases were disqualified because a third-party neutral was not directly involved.

CBI staff conducted more than 400 interviews consisting of between 23 and 26 questions each, depending on the outcome of the case and the participants' role. The interviews lasted an average of 40 minutes. The actual questionnaire and summaries of our findings are available on CBI's website **(www.cbuilding.org)** under the project heading Lincoln Institute of Land Policy.

Our research partners at the Institute for Policy Research and Implementation at the University of

FIGURE 4. Geographical Distribution of 100 Case Studies

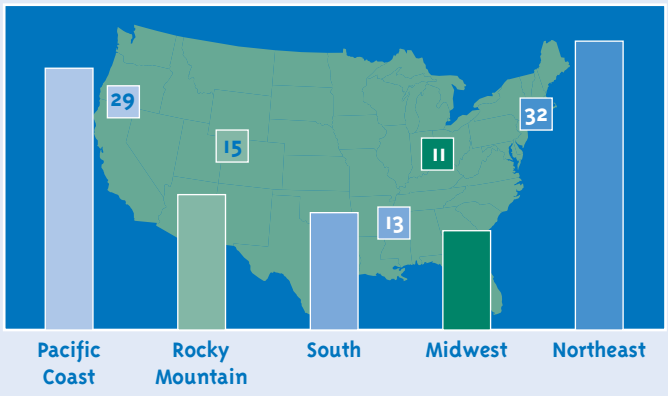


FIGURE 5. Six Types of Land Use Disputes

Colorado at Denver selected eight of the 100 cases for in-depth, on-site case studies. Four of these eight cases, and one additional case, are summarized in this Guidebook, and all eight cases are presented in full in a Lincoln Institute working paper by David Lampe and Marshall Kaplan (see Further Readings, page 26).

Summary of Key Findings

The following summaries and accompanying charts highlight the key findings of the study. In general, the findings hold true for all four categories of respondents (proponents, opponents, regulators and mediators) and all six types of land use dispute cases, with only slight variations in responses by region.

1. Cases Referred from Other Processes

Nearly three-fourths of respondents (71%) stated that their case was referred to mediation from another process that was not producing satisfactory results. The predominant reasons mentioned for dissatisfaction were cost and time of litigation; lack of communication and public involvement; poor outcomes resulting from rigid and narrow planning decisions; and public cynicism toward government.

2. Mediation Initiated by Government Officials

Most of the mediated cases (78%) were initiated by government officials, especially at the state level. Even in disputes among private parties, public officials often suggested the use of assisted negotiation when they became involved through the regulatory process. The interview process suggested that these officials had learned about assisted negotiation through personal experience, seminars and initiatives by other government agencies. (See Figure 6.)

FIGURE 6. Who Took the Initiative in Using Assisted Negotiation?

	Percentage
State Government	**29%**
Local Government	**17%**
County Government	**14%**
Federal Government	**10%**
Proponent	7%
Regional Government	**5%**
Elected Representative	**3%**
Court	3%
Opponent	2%
NGO	1%
Not Identified	9%
Total initiated by government officials:	**78%**

3. Obstacles Encountered in the Mediation Process

Three broad categories (and 18 sub-categories) of obstacles were identified in the process of achieving a good settlement using assisted negotiation: tensions among stakeholders (52%); procedural obstacles (28%); and problems regarding substantive issues (20%). (See Figure 7, page 21.)

4. Evaluation of the Mediation Process

Overall, most study participants (86%) had a positive view of assisted negotiation (see Figure 1, page 3). They thought the negotiated results were better than what they imagined the outcome would have been if they had pursued "normal" channels instead of consensus building. In situations where the parties were not satisfied with the outcome, they felt that the process did not justify the time and effort involved or that it was a burdensome step in the regulatory process that increased costs. Specifically, disputes involving

development and growth issues generated less positive reactions than did other types of land use disputes. (See Figure 8.) Among stakeholders, government officials were the most inclined to view the process favorably. (See Figure 9, page 22.)

5. Implementation of Settlements

Among the respondents who stated that some sort of settlement was reached in their cases, most thought the agreement was well implemented (75%), was more stable than what could have been achieved without mediation (69%), and was creative in producing the best possible outcome for all parties (88%). Furthermore, 92% of respondents whose cases were settled thought that their own interests were well served, and 86% thought the interests of all parties were met by the settlement.

6. Importance of the Mediator

Overall 85% of respondents thought the mediator was crucial (60%) or important (25%) in achieving agreement among the parties (see Figure 2, page 3). Participants in both settled and unsettled cases thought the mediators made an important contribution to the quality of the dialogue and the effectiveness of the settlements that emerged. (See Figure 10, page 22.) Eighty percent of respondents thought they could not have reached an agreement without the assistance of a neutral professional.

FIGURE 7. Summary of Obstacles

Tensions among Stakeholders	**52%**
Distrust among Parties	15%
Entrenched Positions	12%
Conflicting Values	8%
Personality Issues	8%
Stakeholder Ability to Represent their Group	4%
Perception of Strong BATNA	4%
Negotiating in Bad Faith	1%
Procedural Obstacles	**28%**
Distrust or Lack of Experience with the Process	6%
Time and Cost of the Process	5%
Outside Influence of the Political Process	5%
Identification of Stakeholders	5%
Neutrals	2%
Communication	2%
Distributive Bargaining	2%
Issues and Substantive Obstacles	**20%**
Technical Planning Issues	11%
Technical Modeling	4%
Access to Information	4%
Property Rights Issues	1%

FIGURE 8. Evaluation of the Mediation Process by Type of Dispute

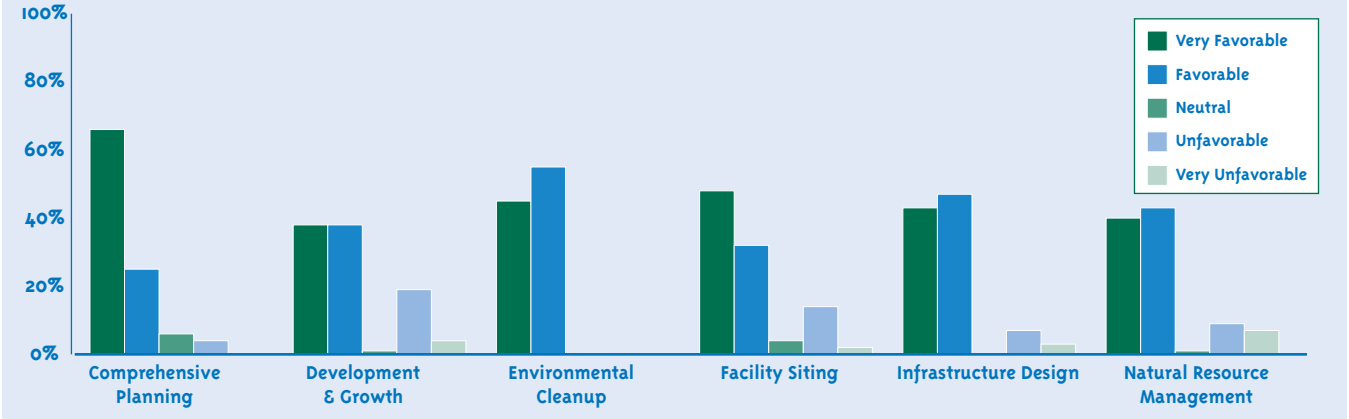


FIGURE 9. Evaluation of the Mediation Process by Stakeholder Category

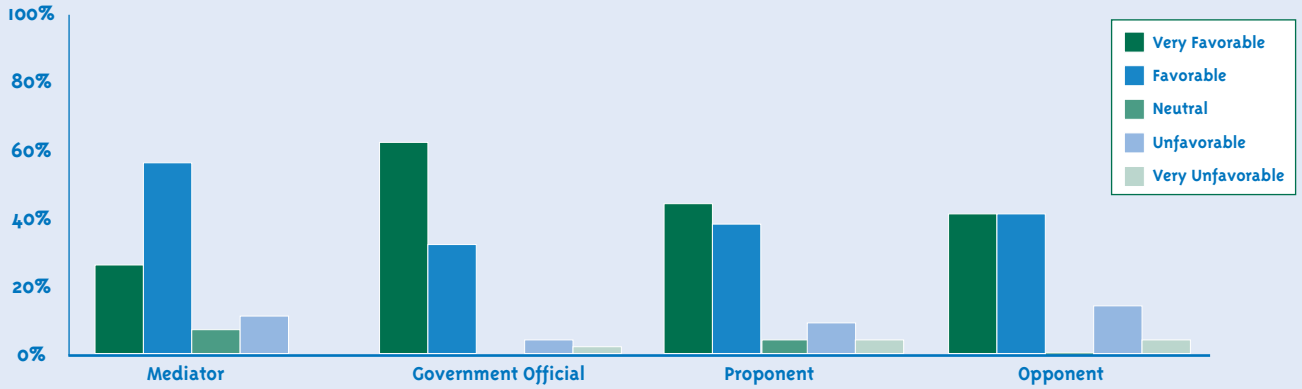


FIGURE 10. How Important Was the Mediator?

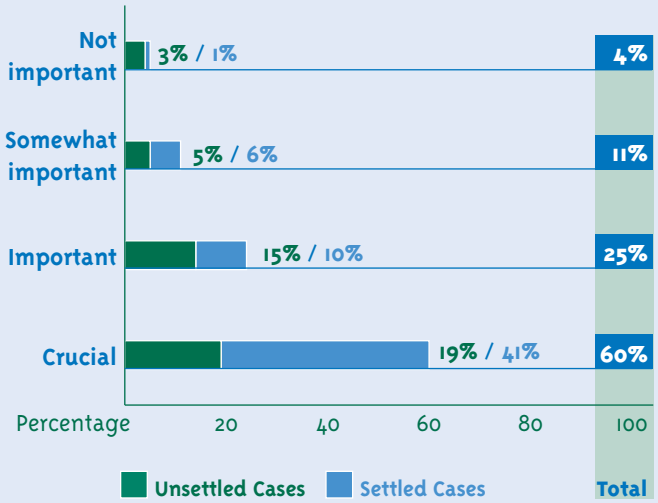
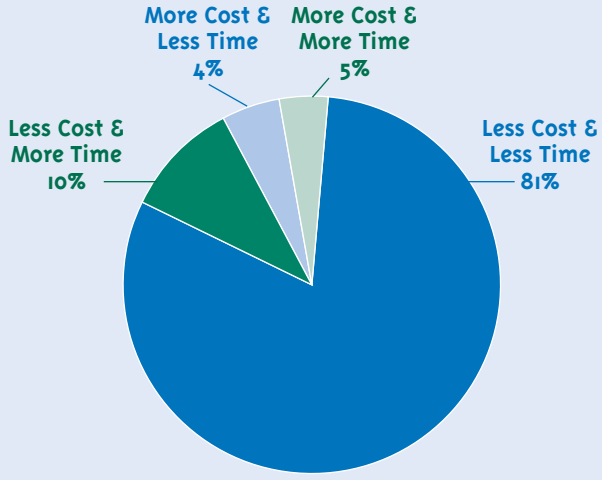


FIGURE 11. Cost and Time of Mediation vs. Other Processes



7. Cost and Time of Mediation

In general, participants thought that assisted negotiation took less time (81% + 4% = 85% combined) and cost less (81% + 10% = 91% combined) than confrontational strategies such as litigation or administrative appeals. (See Figure 11.)

8. Progress in Unsettled Cases

Even in the nearly 40% of all cases that were not settled, the majority of respondents (64%) thought that the assisted negotiation process had helped the parties make significant progress toward resolution of the conflict in a number of respects. These included informal and partial agreements that became a starting point for future negotiations; enhanced relationships among stakeholders; avoidance of political and interpersonal attacks; and increased public confidence in the working of government. In some instances improved relationships allowed the parties to improve communication and avoid future misunderstandings. In other cases the parties were able to rework their agreements at a later time when new information could be shared or new circumstances arose. The process also helped prevent subsequent disputes because the parties had learned a new model of how to work things out and achieved a higher level of trust and respect.

9. Recommendations on the Use of Mediation

When asked about their recommendations on when to use or not use mediation, study respondents offered these comments:

Mediation is most helpful when:

- Each participant views the outcome as very important
- The issues are relatively clear
- The relevant laws are flexible enough to permit a negotiated settlement
- The mediation is started at an early stage of conflict, before going to public hearings
- The actual decision makers are willing to participate or formally designate representatives
- There is no inherent danger to the safety of participants

Mediation should not be used when:

- Public health or safety requires that action be taken immediately
- Precedent setting is important
- Participants do not recognize the other side's rights
- The party providing financial support insists on complete control over the process
- The process is being used as a means to delay real action or create an illusion that something is being done

Appendix B: Resources for Dispute Resolution

State Offices of Dispute Resolution and Other Contacts

ALABAMA

- Judy Keegan, Administrator
  Alabama Center for Dispute Resolution
  Phone: (334) 269-1515 Ex. 111
  Fax: (334) 261-6310
  Email: adr@alabar.org

ALASKA

- Margaret King, Resource Solutions
  University of Alaska
  Phone: (907) 257-2716
  Fax: (907) 257-2707
  Email: mjkingbk@aol.com

ARIZONA

- Kirk Emerson
  Udall Center For Studies in Public Policy
  University of Arizona
  Phone: (520) 621-7189
  Fax: (520) 621-9234
  Email: emersonk@u.arizona.edu
- Director-Designate
  U.S. Institute for Environmental Conflict Resolution
  c/o The Morris K. Udall Foundation
  Phone: (520) 670-5299
  Fax: (520) 670-5530

ARKANSAS

- Melanie Ewell, Coordinator
  Arkansas Alternative Dispute Resolution Commission
  Phone: (501) 682-9400 Ex. 1332
  Fax: (501) 682-9410

CALIFORNIA

- Susan Sherry, Director
  California Center for Public Dispute Resolution
  Phone: (916) 445-2079
  Fax: (916) 445-2087
  Email: sacjean@saclink.csus.edu

COLORADO

- Cindy Savage, Director
  Office of Dispute Resolution
  Colorado Judicial Department
  Phone: (303) 837-3672
  Fax: (303) 837-2340
  Email: csavage@usa.net

FLORIDA

- Robert Jones, Director
  Florida Conflict Resolution Consortium
  Florida State University
  Phone: (850) 644-6320
  Fax: (850) 644-4968
  Email: flacrc@mailer.fsu.edu
- Janice Fleischer
  Florida Conflict Resolution Consortium
  Florida Atlantic University
  Phone: (561) 297-3185
  Fax: (561) 297-2626
  Email: fleischerj@igc.org
- Chris Pedersen
  Florida Conflict Resolution Consortium
  University of Central Florida
  Phone: (407) 823-5174
  Fax: (407) 823-5651
  Email: cpederse@mail.ucf.edu
- Sharon Press
  Florida Dispute Resolution Center
  Supreme Court Building
  Phone: (850) 921-2910
  Fax: (850) 488-0156
  Email: press@mail.fl.courts.org

GEORGIA

- Ansley Boyd Barton, Director
  Georgia Office of Dispute Resolution
  Supreme Court of Georgia
  Phone: (404) 527-8789
  Fax: (404) 527-8711
  Email: bartona@mindspring.com

HAWAII

- Elizabeth Kent, Director
  Center for Alternative Dispute Resolution
  Supreme Court of Hawaii
  Phone: (808) 522-6464
  Fax: (808) 522-6440
  Email: ekent@hawaii.edu

INDIANA

- Lisa B. Bingham
  Indiana Conflict Resolution Institute
  Indiana University
  Phone: (812) 855-1465
  Fax: (812) 855-7802
  Email: lbingham@indiana.edu

IOWA

- C. Gregory Buntz, Director
  Iowa Peace Institute
  Phone: (515) 236-4880
  Fax: (515) 236-6905
  Email: iapeacei@ac.grin.edu

KANSAS

- Jason Oldham, Coordinator
  Office of Judicial Administration
  Phone: (785) 291-3748
  Fax: (785) 296-1804
  Email: oldham@lawdns.wuacc.edu

MAINE

- Diane E. Kenty, Director
  Court Alternative Dispute Resolution Service
  Phone: (207) 442-0227
  Fax: (207) 442-0228
  Email: dekenty@aol.com

MASSACHUSETTS

- Fredie Kay, Executive Director
  Office of Dispute Resolution
  Phone: (617) 727-2224 Ex. 315
  Fax: (617) 727-6495
  Email: fkay@anf-cbo.state.ma.us

MICHIGAN

- Doug Van Epps
  State Court Administrative Office
  Phone: (517) 373-4839
  Fax: (517) 373-8922
  Email: vaneppsd@jud.state.mi.us

MINNESOTA

- Roger S. Williams, Director
  Office of Dispute Resolution
  Phone: (651) 296-2633
  Fax: (651) 297-7200
  Email: mnodr@igc.apc.org

MONTANA

- Matthew McKinney, Director
  Montana Consensus Council
  Phone: (406) 444-2075
  Fax: (406) 444-5529
  Email: mmckinney@mt.gov

NEBRASKA

- Kathleen Severens, Director
  Office of Dispute Resolution
  Supreme Court of Nebraska
  Phone: (402) 471-3730
  Fax: (402) 471-2197

NEW HAMPSHIRE

- James S. Varn, Director
  Program on Consensus and Conflict Resolution
  University of New Hampshire
  Phone: (603) 862-2051
  Fax: (603) 862-3060
  Email: jsv@christa.unh.edu

NEW JERSEY

- Eric Max, Director
  Office of Dispute Resolution
  Phone: (609) 292-1773
  Fax: (609) 292-6292

NEW YORK

- Allen Zerkin, Coordinator
  Program in Negotiation and Conflict Resolution
  Phone: (212) 998-7494
  Fax: (212) 995-3890
  Email: ajznoazark@aol.com

NORTH CAROLINA

- Leslie Ratliff, Coordinator
  North Carolina Dispute Resolution Commission
  Phone: (919) 715-1701
  Fax: (919) 733-1845
  Email: leslie.ratliff@aoc.state.nc.us
- John Stephens, Coordinator
  Institute of Government
  University of North Carolina
  Phone: (919) 962-5190
  Fax: (919) 962-0654
  Email: stephens@iogmail.iog.unc.edu

NORTH DAKOTA

- Larry Spears, Executive Director
  North Dakota Consensus Council
  Phone: (701) 224-0588
  Fax: (701) 224-0787
  Email: spears@agree.org

OHIO

- Maria L. Mone, Executive Director
  Ohio Commission on Dispute Resolution and Conflict Management
  Phone: (614) 752-9595
  Fax: (614) 752-9682
  Email: CDR_mone@ohio.gov
- Eileen Pruett, Coordinator
  Ohio Office of Dispute Resolution
  Supreme Court of Ohio
  Phone: (614) 752-4700
  Fax: (614) 466-6652
  Email: pruette@sconet.state.oh.us

OKLAHOMA

- Sue Darst Tate, Director
  Oklahoma Administrative Office of the Courts
  Phone: (405) 521-2450
  Fax: (405) 521-6815
  Email: tates@OSCN.net

OREGON

- Susan Brody
  Oregon Dispute Resolution Commission
  Phone: (503) 378-2877
  Fax: (503) 373-0794
  Email: susan.e.brody@state.or.us
- Greg Wolf
  Governor's Dispute Resolution Advisor
  Phone: (503) 378-6511

TENNESSEE

- Ann Barker, Director
  Commission on Alternative Dispute Resolution
  Administrative Office of the Courts
  Phone: (615) 741-2687 Ex. 135
  Fax: (615) 741-6285
  Email: ib271r1@smtpaoc.tsc.state.tn.us

TEXAS

- Jan Summer, Executive Director
  Center for Public Policy Dispute Resolution
  University of Texas
  Phone: (512) 471-3507
  Fax: (512) 232-1191
  Email: jsummer@mail.law.utexas.edu

VIRGINIA

- Geetha Ravindra, Executive Director
  Department of Dispute Resolution
  Supreme Court of Virginia
  Phone: (804) 786-6455
  Fax: (804) 786-4542
  Email: gravindra@courts.state.va.us

Dispute Resolution Websites

Consensus Building Institute
www.cbuilding.org

National Institute for Dispute Resolution
www.nidr.org

Oregon Dispute Resolution Commission
www.odrc.state.or.us

Policy Consensus Initiative
www.agree.org

Society of Professionals in Dispute Resolution
www.spidr.org

State Support for Assisted Negotiation

To encourage and guide public officials in the use of assisted negotiation, many state legislatures have passed authorization language that allows the use of these procedures. The authorization statutes differ from state to state. For example, in **Oregon**, the legislature passed ORS 183.502 permitting all state agencies to "use alternative means of dispute resolution" instead of litigation for controversial issues. In **Pennsylvania**, the authorization for assisted negotiation is folded into the municipal code (section 10908.1).

The reasons and motivations for the authorization language also vary. In some states the purpose of the authorizing language is to assure local officials that they can use these methods. In **Texas**, the state legislature passed the Government Dispute Resolution Act to explicitly foster the use of assisted negotiation by state agency personnel. In other states the authorization has a more substantive purpose. In the state of **Maine**, the legislature created a mediation option for land use disputes as a direct response to proposed "takings" legislation.

In **Montana**, legislators are considering a statute that would allow local land use decisions to be made via community-based negotiations. Although the state has a well-used office of dispute resolution, the Montana Consensus Council, the majority of land use decisions do not take advantage of this office, and there is growing frustration with how land use decisions are made.

Appendix C: Further Readings

Bacow, L.S., and M. Wheeler. *Environmental Dispute Resolution.* New York: Plenum Press, 1984. Through the use of case studies, Bacow and Wheeler illustrate aspects of bargaining and negotiation between the government, environmental advocates, and regulatory agencies. They provide documented examples of opportunities and obstacles to negotiation in a variety of regulatory contexts, including permitting, enforcement, grantmaking, and rulemaking.

Bingham, Gail. *Resolving Environmental Disputes: A Decade of Experience.* Washington, D.C.: The Conservation Foundation, 1986. Bingham draws lessons from successful mediation efforts. Short summaries of 50 selected case studies provide a concrete picture of the use of assisted negotiation.

Carpenter, Susan, and W.J.D. Kennedy. *Managing Public Disputes: A Practical Guide to Handling Conflict and Reaching Agreements.* Jossey-Bass Publishers, 1988. Carpenter and Kennedy articulate step-by-step advice on how public officials can deal with difficult public disputes.

Consensus Building Institute. *Consensus Building Handbook.* Sage Publications, Forthcoming in 1999. This comprehensive handbook offers in-depth descriptions of how to structure a consensus-building process.

Dukes, Franklin. *Resolving Public Conflict: Transforming Community and Governance.* Manchester University Press, 1996. Dukes summarizes major topics in the theory, history, and practice of conflict resolution in the public sector.

Lampe, David, and Marshall Kaplan. "Resolving Land Use Conflicts through Mediation: Challenges and Opportunities." Lincoln Institute of Land Policy Working Paper, 1999. Eight case studies describe in detail the mediation process used to resolve specific land use disputes. The cases were part of the CBI study reported in this Guidebook.

Moore, Christopher. *The Mediation Process: Practical Strategies for Resolving Conflict.* Jossey-Bass Publishers, 1996. Moore offers a theoretical review of the mediation process, and covers other types of disputes such as family conflicts.

Oregon Department of Land Conservation and Development. *Collaborative Approaches to Decision Making and Conflict Resolution for Natural Resource and Land Use Issues.* Self-published; phone: (503) 373-0050. A prescriptive guidebook written in the context of Oregon's Dispute Resolution Program.

Susskind, Lawrence, and Jeffrey Cruikshank. *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes.* Basic Books, 1987. The authors suggest consensual approaches as alternatives to the conventional decision-making process that has triggered public disputes. They illustrate how to structure negotiations with or without the help of neutrals.

Susskind, Lawrence, and Patrick Field. *Dealing with an Angry Public: The Mutual Gains Approach to Resolving Disputes.* Free Press, 1996. Susskind and Field discuss the mutual gains approach with an emphasis on the importance of maintaining good relationships with the public and the media.

Susskind, Lawrence, Mieke van der Wansem and Armand Ciccarelli. *Mediating Land Use Disputes.* Cambridge, MA: Lincoln Institute of Land Policy, Forthcoming in 1999. This policy focus report examines both theoretical and policy issues in land use dispute mediation and highlights several case studies.

Appendix D: About the Study Sponsors

Consensus Building Institute (CBI)
131 Mount Auburn Street, Cambridge, MA 02138-5752
Phone: 617/492-1414
Fax: 617/492-1919
Email: mieke@cbuilding.org
Web: www.cbuilding.org

The Consensus Building Institute (CBI) is a not-for-profit organization created by leading practitioners and theory builders in the field of dispute resolution. CBI serves public agencies and private sector clients worldwide by providing dispute resolution services, training in negotiation and consensus building techniques, and evaluative research. Since 1993, CBI has worked in 11 countries and 28 states to provide consensus building advice and assistance to more than 100 agencies, corporations and associations.

CBI plays a key role in helping to build the intellectual capital in the dispute resolution field through pioneering work on global environmental treaty-making, documentation of "best practices" in the dispute resolution field, joint training in negotiation, design of simulations and other advanced training techniques, and the mediation of multi-party, multi-issue public disputes. CBI is associated with the Public Disputes Program of the Program on Negotiation at Harvard Law School and the Environmental Policy Group at the Massachusetts Institute of Technology.

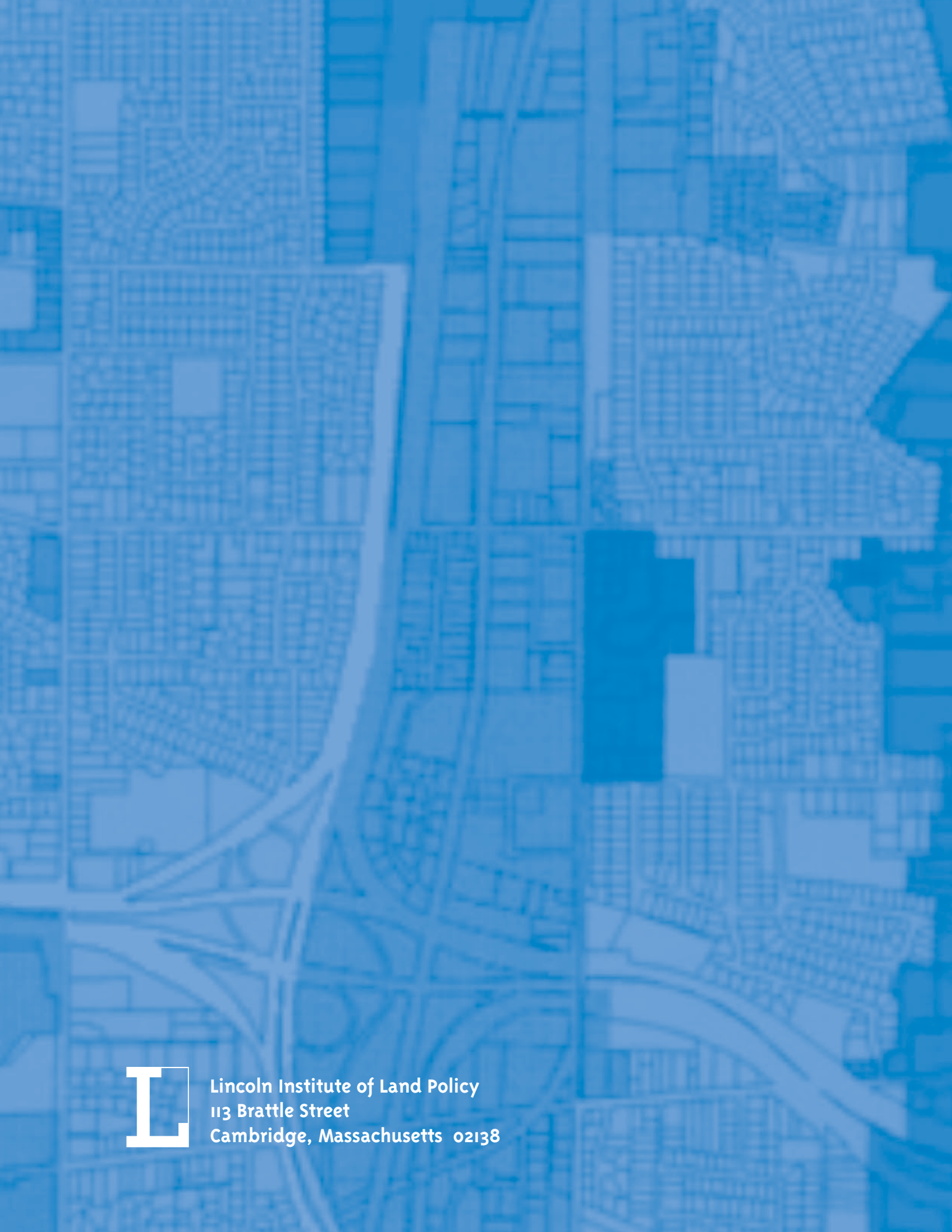
Institute for Policy Research and Implementation
Graduate School of Public Affairs, University of Colorado at Denver
1360 Lawrence Street #51, Denver, CO 80204-2051
Phone: 303/820-5602
Fax: 303/534-8774
Email: mkaplan@carbon.cudenver.edu
Web: www.cudenver.edu/public/gspa

The Institute for Policy Research and Implementation at the University of Colorado at Denver is a multi-disciplinary "think and action" institution. It houses the Center for Human Investment Policy, the Center for Public Private Sector Cooperation, the Northwest Survey Research Program, the International Center, the Center for Affordable Housing and Educational Quality and the Aspen Global Forum. It was formed with the support of public and private sector leaders. The Institute's agenda focuses on applied research, leadership training, conflict resolution and technical assistance. The Institute works with international and national as well as state and local government agencies, community groups, NGOs and private sector firms. It is staffed by expert faculty and practitioners.

Lincoln Institute of Land Policy
113 Brattle Street, Cambridge, MA 02138-3400
Phone: 617/661-3016
Fax: 617/661-7235
Email: help@lincolninst.edu
Web: www.lincolninst.edu

The Lincoln Institute of Land Policy is a nonprofit and tax-exempt educational institution established in 1974. Its mission as a school is to study and teach land policy, including land economics and land taxation. The Institute is supported by the Lincoln Foundation, established in 1947 by John C. Lincoln, a Cleveland industrialist who drew inspiration from the ideas of Henry George, the nineteenth-century American political economist and social philosopher.

Integrating the theory and practice of land policy and understanding the multidisciplinary forces that influence it are the major goals of the Lincoln Institute. Through its research, courses, conferences and publications, the Institute seeks to advance and disseminate knowledge of critical issues in land and tax policy. The Institute does not take a particular point of view, but brings together experts, policymakers and citizens with a variety of backgrounds and experience to study, reflect, exchange insights and work toward consensus in creating more complete and systematic land and tax policies. The Institute's objective is to have an impact—to make a difference today and to help policymakers plan for tomorrow.



Lincoln Institute of Land Policy
113 Brattle Street
Cambridge, Massachusetts 02138