MANAGING Natural Resource DISPUTES

A COMPREHENSIVE GUIDE TO ACHIEVING COLLABORATIVE AGREEMENTS

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Chapter 1

IN SEARCH OF A BETTER WAY

THE HEADLINES TELL THE STORY:

“WILDLIFE MANAGERS FACE THREATS”
(Nevada Appeal News, December 15, 1999)

“LAKE SHOWDOWN: WATER USERS VS. PROPERTY OWNERS”
(Tahoe Daily Tribune, November 15, 1999)

“STATE, PAIUTES FEUD OVER WATER RIGHTS”
(Reno Gazette-Journal, February 14, 1999)

“UNR SCHOLAR CAUGHT IN RANGE WAR”
(Reno Gazette-Journal, October 1, 1999)

“Interior Secretary urges Southern California to make peace”
(Associated Press, December 4, 1999)

“Nevada ranchers win fight for right to graze”
(Reno Gazette-Journal, July 5, 1999)

“Environmentalists sue to place cutthroat trout on endangered list”
(Associated Press, June 9, 1999)

THE STORY IS THAT NATURAL RESOURCES AND DISPUTES GO HAND IN HAND. IT IS NOT HARD TO EXPLAIN. Natural resource disputes arise when perceived scarcity Collides with deeply rooted and competing beliefs about the resource (Rubin et al. 1994).

1 “…conflict means perceived divergence of interest, or a belief that the parties’ current aspirations cannot be achieved simultaneously.” P5. We use the term disputes to mean an episode in a continuing conflict.
Natural resource disputes are not ordinary disputes. The very language used to describe them is the language of combat. There are water wars, hostilities, showdowns, feuds and a Sagebrush rebellion. These disputes often persist for years and seem to defy conventional approaches to resolution such as court orders, decisions by government officials and legislation (Susskind and Cruikshank 1987; Susskind 1997).

A casual observer might wonder: “How did the situation get so desperate?” “Isn’t there a better way?” Many suggest there is a better way. It involves people with diverse interests working together to find mutually satisfying agreements through collaboration. By satisfying, we mean an agreement in which each person can say “I liked the decision,” “I liked the process,” and “I liked how I was treated during the process.” A satisfying agreement comes from voluntary action rather than a coercion or acceptance of the lesser of two evils.

The goal of collaboration is to manage the dispute to achieve an outcome that is more constructive than destructive. A destructive outcome results in harm and involves exploitation and coercion. A constructive outcome fosters communication, problem solving, and improved relationships (Coser 1956; Deutsch 1973).

This bulletin provides guidelines for collaboratively managing natural resource disputes. The guidelines emphasize characteristics of natural resource disputes and special challenges they present. This information will equip you with valuable knowledge to determine whether to participate, and if so, how to participate in a collaborative process to manage a resource dispute.

THE SPIRAL OF UNMANAGED CONFLICT

**Figure A Below Shows A Typical Sequence of Events** that occurs with natural resource disputes. The image is that of a spiral. With each turn the conflict intensifies, the parties become increasingly polarized, and the options for resolution diminish.

As you step through the following sequence of events, think about a natural resource dispute you remember clearly. How did events play out? Where are you now? Which options are available early but are no longer available? How might you break out of the spiral?

1. **The Problem Emerges.** A resource agency announces a plan regarding the use of a resource. Traditional users of the resource fully support the plan. However, this is the first that community members are made aware of the impending action. They are concerned about the potential impacts on their community and try to get more

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2 Words that appear in bold-faced print are defined in the Glossary.
3 This discussion is adapted from Carpenter and Kennedy 1988, Chapter 1, pages 11-17.
information. They do not get satisfying answers to their questions. With increasing anxiety they begin to imagine worst possible outcomes.

2. **Sides Form.** More people become aware of the issue and believe they have a stake in the outcome. A group of concerned citizens come together. The media cannot resist framing the issue as adversarial. More people get involved.

3. **Positions Harden.** After repeated attempts to communicate with the resource agency, the citizens believe their concerns do not matter at all. The resource agency says they have no choice in the matter; they are merely following policy. Fearful they will not be able to influence the outcome through dialogue the citizens’ group turns to the courts. Lawyers are hired and positions are formalized in lawsuits. People tend to seek out others who reinforce their positions and avoid those with differing views.

4. **Communication Stops.** Once the dispute reaches the courts, direct communication between the citizens’ group and the resource agency ceases. Communication is now in the hands of the attorneys. The attempt to resolve the dispute slows to a snail’s pace, typical of legal proceedings.

5. **Resources are Committed.** Legal proceedings are costly. Technical experts are hired to shore up positions, further adding to costs. Staff time and energy are diverted from other projects and devoted to winning rather than problem solving.
<table>
<thead>
<tr>
<th><strong>LEGISLATION</strong></th>
<th><strong>LITIGATION</strong></th>
<th><strong>NONVIOLENT DIRECT ACTION</strong></th>
<th><strong>WILLINGNESS TO BEAR HIGHER COSTS</strong></th>
<th><strong>APPEALS TO ELECTED REPRESENTATIVES AND AGENCY OFFICIALS</strong></th>
<th><strong>TAKEOVER BY MIGHTY LEADERS</strong></th>
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<th><strong>TASK GROUPS TO STUDY ISSUES</strong></th>
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<th><strong>EMERGENCE OF LEADERSHIP</strong></th>
<th><strong>ISSUES PUT ON AGENDA OF OTHER MEETINGS</strong></th>
<th><strong>INFORMAL CITIZEN MEETINGS AND LETTERS</strong></th>
<th><strong>TELEPHONE CALLS</strong></th>
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<tr>
<td>Law enforcement measure</td>
<td>Litigation</td>
<td>Reallocation of resources to block adversaries</td>
<td>Willingness to bear higher costs</td>
<td>Appeals to elected representatives and agency officials</td>
<td>Emergence of headlines</td>
<td>Entry of high-level managers in decision</td>
<td>Building support in power structure</td>
<td>Media campaign in trace and other papers</td>
<td>Single press release</td>
<td>Counterletter</td>
<td>No response</td>
<td></td>
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<tr>
<td>Sense of Crisis Emerges</td>
<td>Perceptions become distorted</td>
<td>Conflict goes outside the community</td>
<td>Resources are committed</td>
<td>Communication stops</td>
<td>Positions harden</td>
<td>Issues and positions are sharpened</td>
<td>Individuals take sides on an issue</td>
<td>People become aware of specific issues</td>
<td>Increased anxiety</td>
<td></td>
<td></td>
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<tr>
<td>Sanctions become issues</td>
<td>New ideas are stalemated</td>
<td>Unrealistic goals are advocated</td>
<td>Threats become issues</td>
<td>Issues shift from specific to general single to multiple</td>
<td>Issues become polarized</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td>Motivation based on revenge</td>
<td>Momentum of conflict beyond individual's control</td>
<td>Process as source of frustration</td>
<td>Sense of urgency</td>
<td>Militant hostility</td>
<td>Inability to perceive neutrals</td>
<td>Power explicitly exercised</td>
<td>Stereotyping</td>
<td>Rumors and exaggerations</td>
<td>Hardening of positions</td>
<td>Intensification of feelings</td>
<td>Expression of feelings</td>
<td>Increased anxiety</td>
</tr>
</tbody>
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Figure A. Reprinted from Figure 1, p.12, Chapter 1, Carpenter & Kennedy 1988
6. **Conflict Goes Outside the Community.** As resources are stretched to the limit, the citizens’ group seeks outside support. They appeal to political leaders and national organizations that are sympathetic to their cause. If political and interest based coalitions are formed, the issue is absorbed into a larger agenda and local citizens lose control. The attacks become more vicious as the outsiders are less likely to be concerned about maintaining long-term civil relationships. Outsiders attack from a safe distance. They do not have to worry about running into a neighbor with a differing opinion in the grocery store.

7. **Perceptions Become Distorted.** Stereotypes are formed. There are good guys and bad guys. There is no shade of gray; only black and white. Even neutral parties are suspect. You hear comments such as “If you are not on my side you must be on their side.”

8. **Sense of Crisis Emerges.** A sense of utter hopelessness sets in. No one can make a decision. The parties resort to threats and intimidation. Heels dig in. The goal is to win at all costs. Groups are motivated more by getting even than rational thinking.

9. **Outcomes Vary.** More litigation may ensue. The parties may pursue a political solution. Or the agency may make a unilateral decision. In all cases, the result is that the community loses control the final outcome. The dispute intensifies with animosity and distrust. The next dispute that arises which involves these parties will be more difficult to manage even if a collaborative approach is tried.

The initial dispute might have been averted if the resource agency had openly and genuinely involved the public early in the decision-making. However, as the spiral escalates, simple options that were available earlier are no longer appropriate. At each turn it becomes more difficult to break the spiral.

**WHAT IS COLLABORATION?**

“**COLLABORATION IS A PROCESS THROUGH WHICH PARTIES WHO SEE DIFFERENT ASPECTS** of a problem can constructively explore their differences and search for solutions that go beyond their own limited vision of what is possible” (Gray 1989,p. 5). Defining features of collaboration are:

> ✓ **The participants are interdependent.** Interdependence means that participants’ actions affect each other. Interdependency is required for the participants to be willing to work together. If one party can achieve what it wants independently, it will do so. Sometimes all the interdependencies are not apparent at first but they become known as the process unfolds.

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4 This list is adapted from Gray 1989, Carpenter and Kennedy 1988 and Susskind and Cruikshank 1987.
✓ **The participants are willing to deal with their differences constructively.** Each participant must understand and accept the values, interests and needs of the other participants. Participants meet face to face rather than working through attorneys. In exploring their differences, the participants often come to understand their shared concerns. This understanding can then become the basis for creative solutions. Adversarial behavior ultimately gives way to problem solving behavior.

✓ **The participants share responsibility for the process and outcome.** In conventional approaches both process and decisions are imposed upon the affected parties. In legal proceedings the judge rules. In the political arena the majority rules. In administrative actions an official has final decision-making authority. In these arenas, the procedures are set by inflexible rules and outcomes are unpredictable. In a collaborative process the participants create their own rules, using whatever works best for them. Each situation is unique. Likewise, they create their own solution. Agreements are reached voluntarily.

✓ **Decisions are made through consensus.** Consensus means a decision that all can support. Consensus is reached when each side feels that its concerns have been addressed. Not everyone will be equally satisfied with the decision. However, everyone should be able to say, “I can support the decision.” Consensus leads to decisions that last because participants are more committed to implementing the decision.

✓ **Collaboration is an evolving process.** This means the process changes over time. It often starts as a fairly unstructured and disorganized group of participants. Over time, it can develop into a highly structured and more cohesive organization to deal with future disputes.

✓ **The resource manager’s role changes.** Rather than deciding which of the competing positions is correct, the resource manager brings all the affected parties together to try to find a mutually acceptable solution. The focus is on problem solving. Appropriate resources are committed to the effort.

The table below summarizes how collaborative approaches differ from conventional approaches. Conventional approaches include court order, decisions by a government official or litigation (From Susskind and Cruikshank 1987, p.78.)
## COMPARISONS BETWEEN CONVENTION AND COLLABORATIVE APPROACHES

<table>
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<th>COLLABORATIVE APPROACH</th>
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<td>OUTCOMES</td>
<td>Win/lose: Impaired relationships</td>
<td>Improved relationships; all better off than without agreement</td>
</tr>
<tr>
<td>PARTICIPATION</td>
<td>Mandatory</td>
<td>Voluntary</td>
</tr>
<tr>
<td>STYLE OF INTERACTION</td>
<td>Indirect (through lawyers or hired associates)</td>
<td>Direct (participants deal face to face)</td>
</tr>
<tr>
<td>PROCEDURES</td>
<td>Same ground rules and procedures in all cases</td>
<td>New ground rules and procedures designed for each case</td>
</tr>
<tr>
<td>DECISION-MAKING</td>
<td>Decision imposed by final ruling of judge of official</td>
<td>Decision made by consensus of all participants</td>
</tr>
<tr>
<td>ROLE OF INTERMEDIARIES</td>
<td>No role</td>
<td>Various roles such as facilitator or mediator</td>
</tr>
<tr>
<td>COST</td>
<td>Low to moderate in the short term; potentially very high in the long term</td>
<td>Moderate to high in the short term; potentially low in the long term if successful</td>
</tr>
<tr>
<td>REPRESENTATION</td>
<td>Elected or appointed officials</td>
<td>Ad hoc; specially selected for each negotiation</td>
</tr>
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## COLLABORATIVE PROCESS AND NEGOTIATION

A **COLLABORATIVE PROCESS CAN BE VIEWED AS AN ONGOING SERIES OF NEGOTIATIONS** (Gray 1989). Negotiation is the most common form of social interaction. People negotiate over where to go for dinner, which movie to view, or how to split household chores. To be successful in personal, social, and business situations requires effective negotiation.
Most are familiar with the image of hard-bargaining negotiators. They start with outrageous demands, make threats and use other tactics to get what they want. One side typically starts high, the other low. After several rounds of demands and counter-demands, the negotiators split the difference. In this form, negotiation is viewed as a game in which each side tries to get the best deal. Neither side exhibits concern for the other.

Negotiation can also be a form of problem solving. In this form each side attempts to meet the other side’s interests as well as their own. By thoroughly understanding their own interests as well as the other’s interests, both sides are often able to arrive at solutions which neither alone could have envisioned. In this type of negotiation each side recognizes and accepts the legitimate interests of the other.

Both sides are committed to dealing with differences constructively in order to advance their own self-interest. This has been called “principled negotiation” (Fisher et al. 1991).

The behaviors necessary to succeed in these two forms of negotiation are very different. In hard-bargaining negotiation the other side is viewed as an adversary; in **principled negotiation** the other side is viewed as a partner. In hard-bargaining negotiation a win for me means a loss for you; in principled negotiation each side must gain in order for an agreement to be reached. In hard-bargaining negotiation information is concealed; in principled negotiation information is shared freely. In hard-bargaining negotiation bluffing is used to gain concessions; in principled negotiation objective criteria are used to make fair decisions (Nierenberg 1977; Fisher et al. 1991).

Although negotiation is the basic unit of collaboration process some may find it hard to perceive collaboration as negotiation. This, no doubt, has a lot to do with the stereotypical image of hard-bargaining negotiation. This image is ingrained in our culture. It may take some time to shake off this image and view collaborative process as a series of negotiations where problem solving is the goal. Consensus does not emerge at the end of a collaborative process; rather it is constructed upon a series of agreements along the way (Strauss 1999).

Collaborative process can take on many forms. They may be simple or highly structured. They may proceed easily without expert assistance or they may require a high degree of expert help. They may be ad hoc, formed to solve a specific problem, or they may be long-term to deal with ongoing issues. They may arise spontaneously or be convened by a higher authority. Every process is unique.

The major factors that influence the form of a collaborative process are the motivation of the participants and the expected outcome (Gray 1989). Are the participants coming together to advance a common goal or to resolve a dispute? Do they expect to share information or do they expect to reach formal agreement? Clearly, a collaborative
process will be less complicated when like-minded individuals come together to share information or to achieve a common goal than when participants with a long-standing dispute try to iron out a binding agreement. In this bulletin, we focus on using collaborative process to resolve disputes with the expectation of reaching an agreement.

**WHY COLLABORATE?**

**EXPERTS OFFER TWO MAJOR REASONS FOR CHOOSING COLLABORATION.** First, many believe conventional approaches to dealing with natural resource disputes are ineffective. They result in winners and losers and establish dynamics in which the losers eventually try to get even or sabotage the implementation of the decision. Sadly, the example of the unmanaged dispute described in the beginning of this chapter is the norm (Deutsch 1973; Carpenter and Kennedy 1988; Gray 1989; Susskind and Cruikshank 1987).

Second, people are demanding more involvement in public decisions that affect them. In the past the dispute described in the beginning of this chapter may have been averted if the public was involved early in the decision-making. However, people have become increasingly cynical about government efforts to involve the public. People now perceive these efforts as empty exercises that are performed by decision-makers so they can claim they have followed “the letter of the law”. People increasingly believe decisions have already been made before public involvement has even begun and that their input is not given serious consideration (Erdman and Susskind 1997; Bingham 1997; Susskind and Field 1996).

Additionally, since the 1970’s a variety of natural resource disputes have been managed using collaborative process (Bingham 1986). As a result of these experiences the following benefits have been cited:

- **Better decisions are possible:** Bringing all the affected parties together can result in a more comprehensive analysis of the problem. The people most familiar with the problem invent the options. Collaboration unleashes a creative potential that enhances the opportunity to discover novel and innovative solutions.

- **Decisions are more likely to be implemented:** The process ensures that all interests are considered and are reflected in the agreement. Participants are thus more willing to accept the solution and implement it.

- **Collaborative processes promote better relationships:** Over time, the participants’ willingness to manage differences constructively builds

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understanding and trust. Understanding and trust lead to increased capability to deal with future problems.

✓ **Decision-making is more transparent:** Many still harbor the image of influential power broker in smoked filled back rooms making decisions that affected the general public, such as natural resource decisions. Certain laws, such as open-meeting laws, have been enacted to counter this perception and to make decision-makers more accountable. A well-designed collaborative process can provide an open forum where all parties are accountable and where responsible medial can be used to educate the public along the way.

**AN ALTERNATIVE NOT A CURE ALL**

**IN THIS CHAPTER WE HAVE OFFERED COLLABORATIVE PROCESS** as an alternative to conventional approaches for dealing with natural resource disputes. It is not, however, a cure-all (Gray 1989).

Natural resource disputes are very complex. They generally involve multiple parties with diverse and competing interests. In addition, they typically involve multiple issues that are both technical and legal challenges. Often the natural resource in question is not well understood, even by the professionals. Moreover, the disputes are often fuelled by highly emotional, deeply held and often conflicting beliefs. Natural resource disputes often have a history of intractability, meaning previous attempts at resolution have been unsuccessful. And finally natural resource disputes, by definition, involve a limited resource. Often there is no opportunity to create options that satisfy fully all interests.

Given this backdrop, participants must approach collaborative processes that involve natural resource disputes with careful preparation. Applying collaborative process successfully to such complex situations requires and understanding of the process as well as the factors that can influence the process. In the next chapter we describe the typical activities that occur in every collaborative process and highlight the challenges participants are likely to encounter when applying such a process to natural resource disputes.
Chapter 2

OVERVIEW OF THE COLLABORATIVE PROCESS

Experience has shown that many similar activities emerge with every collaborative process. The way in which each process unfolds will depend upon a variety of factors, such as complexity of the issues, incentives for collaboration, and expected outcome.

TYPICALLY, A COLLABORATIVE PROCESS IS DESCRIBED AS FALLING INTO THREE general steps with each step encompassing certain characteristic activities. Because a collaborative process can be viewed as an on-going series of negotiations, we will describe a three-step model that includes:

• Pre-negotiation
• Negotiation
• Post-negotiation (Susskind and Cruikshank 1987).

The purpose of this chapter is to familiarize you with the activities that typically occur in each step.

PRE-NEGOTIATION

THE MAJOR ACTIVITIES IN THE PRE-NEGOTIATION STEP ARE ASSESSMENT AND PREPARATION. Careful assessment and thorough preparation are key factors in improving the probability of a successful collaborative process.

Assessment involves determining whether the conditions are ripe for negotiations. The key question addressed in a situation assessment is: “Should we proceed or not?” If the answer is “Yes” then the situation assessment can also be used to lay the groundwork for deciding how to proceed with the collaborative process.

Typically, a situation assessment will ask questions about the parties, their interests, and their alternatives. It will also review the dispute history, whether each party will be able to influence the outcome, and the dynamics of the dispute. And finally, it will assess the potential for agreement.

If a written situation assessment is prepared, the results of the assessment should be shared and discussed with all potential participants. If an assessment is not written, then each party should at least answer the questions found in the Table below.
### Typical Questions Addressed in a Situation Assessment

1. Who are the parties directly or potentially involved?

2. What do they say they want (their positions)?

3. What do they really want (their interests)?

4. Are the issues primarily over what is being done (substance) or how it is being done (process) or both?

5. What is the dispute’s history and setting? Is the dispute part of a long-running dispute, or is it a new issue?

6. What are the dynamics of the dispute? Is it rapidly escalating, involving more and more people or issues, or more extreme tactics? Is it simmering under the surface? Is misunderstanding, rumor, or fear fueling the dispute?

7. How are the parties approaching the dispute? Are they using persuasion to influence or are they using coercive strategies to force a solution?

8. What are each party’s sources of influence?

9. Are the issues negotiable? Are the parties willing to compromise? Would the parties agree to participate in a collaborative process?

Natural resource disputes generally involve highly contentious, complex issues and many parties. Hence, experts often recommend hiring a professional to perform the situation assessment. Although this may be costly and time consuming, they believe that a carefully prepared situation assessment is the key to negotiation success and, in the long run, will save time (SPIDR 1997; Susskind 1997; Burgess and Burgess 1997; Carpenter and Kennedy 1988; McKearnan 1997).

Preparation involves acquiring the necessary skills, knowledge and resources to allow each party to participate in the negotiation on an equal footing with the other parties. Clearly each party must assess its situation before deciding to participate in a negotiation. Each party must decide whether negotiation can lead to a better alternative than the status quo; whether there can be a fair agreement; whether there

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6. Adapted from Burgess and Burgess 1997 p. 75.
is parity among the parties in terms of skills and resources; and whether the other parties are willing to collaborate. Information gleaned from the situation assessment can be very useful in this regard.

Even after reviewing the situation assessment a decision to proceed should be considered conditional. There is still much to do. A number of questions must be answered before proceeding. Some are:

- Who else should be at the table?
- Do we agree on the issues to be discussed?
- Do we have sufficient information to make informed decisions?
- If not, how do we acquire the information needed?
- Where will the meetings be?
- Who will pay for the costs associated with the process?
- How will we deal with the media?
- How will we relate to each other?
- How do we address the issues raised in the situation assessment?
- Do we need a facilitator?

Questions such as these address process, or how things will get done. They must be answered before dealing with the substance, or what is being negotiated. Some suggest that the parties meet face to face to decide how the negotiation will proceed to test the water before making a final commitment to negotiate. If the parties cannot agree on the process then it is unlikely that they will be able to agree on the substance of the dispute. Discovering this before making a firm commitment to negotiation can prevent a serious mistake. *Once a decision to negotiate is made it is very difficult for a party to back out without negative repercussions.* The party that backs out runs the risk of being labeled the “spoiler”. Or worse, others might continue to negotiate and argue that the party that walked out had an opportunity to participate but declined. Hence, instead of a consensus solution the result will be a majority solution (Susskind and Cruikshank 1987).

Another important reason for meeting face to face is to enable the parties to own the process. Just as decision-making through consensus is a defining characteristic of collaborative process, so is taking responsibility for the process. This is important because process can affect the outcome. By not paying attention to process, ground rules may be established that can inadvertently favor one participant over another (Ball and Reid 1999). For instance, a ground rule to have closed meetings may interfere with a public agency’s ability to inform the public about the issues at hand. *Participants must approach process as seriously as they approach substance of the dispute.*

Assessment and preparation occur together rather than separately. One affects the other. Part of assessing the situation, for instance, is to determine whether each
participant is truly able to influence the outcome. A participant that does not understand all the technical aspects of the issues will be at a serious disadvantage when it comes to evaluating potential solutions. In this case all the participants may choose to spend time on education in the pre-negotiation step. Alternatively, the party lacking technical expertise may choose to hire a technical expert to be part of their team in negotiation.

The pre-negotiation step often is the most difficult to accomplish. There simply is no cookbook to follow. Additionally, careful assessment and preparation take a long time. Once a decision is made to collaborate, parties are often eager to jump directly into the negotiation step. However, the value of time spent up-front assessing the situation and preparing for negotiations cannot be overstated.

**NEGOTIATION**

*THE MAJOR ACTIVITIES IN THE NEGOTIATION STEP ARE creating options and securing commitment.* The negotiation step is generally more formal than the pre-negotiation step. Ideally, many tasks were completed prior to beginning the negotiation step. They include:

- The issues have been clearly defined
- All relevant parties have been identified
- Representatives have been selected
- All parties agree to come to the table
- Ground rules have been established
- All parties agree to use the same information
- A situation assessment has been conducted, either formally or informally
- Each party has decided the situation is "ripe" for negotiation.

We stress that ideally all of these tasks are completed prior to the negotiation step. It may not be possible in all situations to complete all these tasks prior to the negotiation step. A collaborative process involving natural resources can be very dynamic. New issues may emerge during the negotiations. With new issues new parties may appear or additional information may be needed. Or developments may occur that can influence the alternatives. At such times it may be best to take a time out from the negotiations and re-assess the situation. The key is the collaborative process remains flexible so that it can adapt to new situations as they arise.

*Creating options* occurs then the participants exchange information about their underlying interests and collectively identify the issues that emerge in light of this information. The participants **brainstorm** to find alternative ways to deal with the
issues and they work together or individually to evaluate alternatives. Once a preferred alternative is selected, it is fine-tuned until all parties can agree to it.

Sometimes the agreement reached is an “agreement in principle” that lays the foundation for a more detailed agreement. By working through the details the participants can ultimately reach a formal written agreement. As the saying goes, the devil is in the details. Working out the details is the nitty-gritty work of negotiation. It is tedious and, depending on the issues, can take months or years.

Regardless of the tedium, a formal written agreement is necessary for two reasons. First it assures all parties have a common understanding of the agreement. In the absence of a written agreement the parties may walk away from the negotiations each with a slightly different recollection or interpretation of what was agreed upon. Considering that natural resource disputes often involve numerous parties, the havoc created with multiple interpretations would make any agreement impossible to implement.

Second, a formal written agreement serves to assure all parties are committed to the actions called for in the agreement. Commitment is secured when each party ratified the agreement. Ratification sanctions the agreement and makes it legally operative. If there is no way to make the agreement binding, there is no way to assure that the commitments will be honored.

Negotiation is as much a science as it is an art (Raiffa 1982). The science of negotiation provides a theoretical framework for approaching negotiations. One popular approach is principled negotiation7. Principled negotiators follow four principles:

1) Separate the people from the problem: Negotiators are emotional humans with different perspectives and values. Try to build a working relationship with the other negotiators independent of whether you agree or disagree. Mutual respect is an essential ingredient. Sage advice is “attack the problem, not the people.”

2) Focus on interests, not positions: differences in interests define the real problem. Interests can include economic well being, security, having control over one’s life and a sense of belonging. People listen better if they think you understand them and are sympathetic to their interests. Achieve this by showing you genuinely appreciate their interests.

3) Invent options for mutual gain: In a relaxed atmosphere, brainstorm potential solutions among yourselves and, if possible, with the other side without judging and criticizing the ideas.

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4) Insist on objective criteria: Establish fair standards and procedures for evaluating the options that are independent of each negotiator’s demands and pressures.

The **art of negotiation** refers to the knowledge of such principles as well as learned interpersonal communication skills. An “artful” negotiator possesses a healthy dose of self-awareness and a basic understanding of human behavior. Skills necessary for implementing the art of negotiation include inter-personal skills, communication skills, and empathy. Just as a painter becomes an artist after continually practicing the skills, one can also become skilled in the art of negotiation.

**POST-NEGOTIATION**

*THE MAJOR ACTIVITIES IN THE POST-NEGOTIATION STEP ARE implementation and monitoring.* The details of these activities should be addressed during the negotiation step and spelled out in the agreement.

**Implementation** involves assuring that the provisions of the agreement are carried out. Responsibility for implementation can take on many forms. For example, responsibility can be assigned to:

- The parties involved in the negotiation
- A party that was not part of the negotiation
- An existing government agency
- A new party created for the sole purpose of implementation

Often people who were involved in negotiating the agreement are not the same people assigned with implementing the agreement. Consequently, problems may arise because those assigned with implementation do not have a shared history or understanding of the terms of the agreement. To assure a smooth transition, involve those who will be responsible for implementation as early as possible in the negotiation. Ideally, a few of the original participants in the negotiation should be involved in the implementation.

What needs to be done to enable implementation may also take many forms. Implementation may require a law, or a legally binding contract, or administrative action taken by a governmental agency. Each situation will be unique. However, it is important to anticipate the issues associated with the implementation and work out the details during the negotiation step. *Implementation is the point where a collaborative process is especially susceptible to collapse* (Gray 1989, p.92).
**Monitoring** involves keeping track of compliance and evaluating the outcome. Monitoring necessitates asking:

- “Are the parties living up to their commitments?”
- “Is the agreement producing the desired outcome?”

The first question addresses compliance. What happens if a party breaches its commitment to the agreement? Noncompliance may occur willfully or, more likely it will reflect a differing interpretation of a provision of the agreement. It is often said that within any agreement lie the seeds to the next disagreement. No matter how finely crafted, you can expect there will be disagreement over the intent and language of the agreement.

The issue of compliance is often difficult to broach. It may suggest lack of trust and dampen the good feeling associated with the collaborative effort. Nevertheless, distrust is a major factor in many natural resource conflicts. It should not be denied or ignored. In addition, even if good faith efforts have been made throughout the collaborative process, organizations may not always follow through on their commitments. Reasons for not following through may include policy changes, new personnel, scarce funding, or obstacles not considered in the negotiation.

The second question addresses whether or not the anticipated outcome is being achieved. This question breeds other questions, such as:

- Is the implementation of the agreement contributing to the recovery of an endangered species?
- Are the economic and cultural values of a rural community being preserved?
- Are there unintended consequences occurring that lead to a new set of issues?

These questions and other like them reflect the fundamental interests of the parties involved in the agreement. The parties expect their interests to be met. They enter into the agreement with reasonable expectation that this will be the case.

However, with natural resource agreements there are no guarantees. Natural resource systems are extremely complex and very dynamic. Our ability to predict the outcome of a change in management of a natural resource is limited. We lack full knowledge about the natural resource system, and in some cases we are limited by current measurement technology.

Monitoring the results of the agreement can be very complex and costly. Monitoring may involve establishing an extensive data collection and analysis system. It may take many years to detect the results of the agreement. This can breed many more questions such as:
✓ What happens if the expected beneficial outcomes do not come to pass?
✓ What if there are unanticipated negative outcomes?
✓ How will unanticipated outcomes be addressed?

**EFFECTIVE AGREEMENTS**

_EFFECTIVE AGREEMENTS MUST ANTICIPATE THE FUTURE._ They must address what happens if there are disagreements concerning implementation and they must address what happens if the expected outcome does not occur. Hence, they must allow the conflict management process to remain flexible and functioning long after the agreement is reached.

Flexibility can be achieved by incorporating provisions in the agreement that provide for dispute resolution procedures and periodic review of results. The agreements must also provide a way to maintain an on-going relationship among the parties. This is especially important in natural resource conflicts where parties often continue to maintain an on-going relationship with the resource but not necessarily with each other due to large geographic areas separating people in some disputes.

Some agreements provide a provision for re-negotiating all or part of the agreement in the event something goes wrong. Re-negotiation could be limited to situations where there is an apparent violation of the terms of the agreement. Or it could be invoked if a party feels its interests are being threatened because beneficial results do not come about as expected or unanticipated negative consequences occur.

Creating an opportunity for bringing the parties together to revisit the agreement or parts of the agreement makes good sense. Much time and energy has been put into reaching the agreement. The parties should be concerned with trying to hold it together should something go awry. Even if implementation of the agreement is going well, it is a good idea to reconvene on a regular basis to exchange information, celebrate success and address any new issues that might arise. At a minimum maintaining relationships are at stake. A commitment to collaboration is a commitment to meeting the needs of all the parties, not just our own.

**RIPENESS**

_THE TERM RIPENESS WAS INTRODUCED AS A PRE-REQUISITE_ for proceeding to the negotiation step of a collaborative process. To a large extent the term needs no further definition. We know intuitively what it means. When fruit is ripe it is ready to pick, mature, and it is at its peak flavor. Just a gentle nudge and it will fall gently into place.
As with fruit, ripeness is a function of timing. A situation is ripe when all the parties are ready to take their dispute seriously and will do whatever is necessary to bring it to a close. Often, ripeness occurs at a point of stalemate where each party believes it is no longer possible to achieve what it wants through coercive means. It is the point at which all parties are convinced there is more to gain through collaboration (Rubin 1995).

How can we tell if a situation is ripe for negotiations? Unfortunately, it is not as easy as picking fruit because disputes involving natural resources are complex and dynamic. However, the following factors have been identified as prerequisites for a successful outcome. \(^8\)

- The key parties are identifiable and are they willing to negotiate.
- There is a legitimate spokesperson to represent each party.
- Each party is able to influence the outcome.
- The issues are well understood and there are sufficient data so that the parties can make reasonably informed decisions.
- There are deadlines and they are reasonable.
- The dispute can be framed so that it does not focus solely on deeply held values.
- A “safe” environment has been created so individuals can freely participate without fear of repercussions.

These factors are considered generic because they pertain to any party considering negotiation. They provide helpful guidelines in determining your chances of a successful outcome.

If you represent a citizens’ group, you may need to consider additional factors. For instance: \(^9\)

- The group can “speak with one voice”.
- Team members have the time to devote to the process.
- The group has a clear understanding about how decisions will be made.
- There is a process in place for ratifying an agreement should one be reached.
- The group has a way to keep its constituents informed.

If you are a government resource agency official you may have additional factors to consider. For example: \(^10\)

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\(^8\) Adapted from Susskind and Cruikshank 1987 and SPIDR 1997.

\(^9\) For a more detailed discussion see Ball and Reid 1999.

\(^10\) Adapted from SPIDR 1997.
✓ Agencies are willing to share control over process and the resolution of the dispute with the affected parties.
✓ Other agencies, departments, levels of government, and elected officials that are involved with or affected by the outcome of the process have been identified and support collaboration.
✓ Agency leaders are willing to show visible support including participation in meetings through consistent and appropriate representation.
✓ Agency officials have completed an assessment to determine whether sufficient conditions are in place for negotiations to occur.
✓ Ground rules are agreed upon by all participants and not established solely by the sponsoring agency.
✓ If an agency sponsors the process, it ensures the facilitator selected is neutral and independent of the sponsoring agency and remains accountable to all participants.
✓ Involved agencies must have a high level of commitment to implement any agreement reached.
✓ Agencies are open to informal, voluntary and flexible consensus-based processes to guide negotiations rather than to overly rigid rules.

TO GO OR STAY?

IN THIS CHAPTER WE HAVE GUIDED YOU THROUGH A THREE-STEP PROCESS citing certain activities that predictably occur during each step. As you can see, engaging in a collaborative process that involves a natural resource dispute can be major undertaking. Depending on the complexity and scope of the issues, number of interests, history of the dispute and relationships among the parties, reaching agreement can take years and can be costly. This is not to mention the emotional tax placed on the participants. And in the end there is no guarantee that agreement will be reached or successfully implemented.

Whether you decide to go or stay, it is important to face such an important decision with as much information and understanding possible. You will want to make your decision wisely. Knowing what to expect in a collaborative process is an essential first step.
Chapter 3

DEALING WITH PEOPLE

People bring to natural resource disputes competing values about how natural resources should be managed. If you participate in a collaborative process to manage natural resource disputes, dealing with people can be the most challenging aspect.

HOW YOU DEAL WITH PEOPLE CAN GO A LONG WAY IN ENSURING THE SUCCESS OF A COLLABORATIVE PROCESS. It is important to understand that people approach disputes differently. This affects the collaborative process. It is important also to recognize that disputes spawn adversarial behavior that complicates how we chose to communicate with one another to express our interests. We must learn how to communicate so that we can build and maintain productive relationships. Productive relationships are critical to the collaborative process especially after agreements are reached and implemented.

DISPUTE RESOLUTION APPROACHES

CONFLICT THEORISTS RECOGNIZE FIVE DISTINCT DISPUTE RESOLUTION APPROACHES. These approaches are comprised of some combination of two basic human motives: concern for self and concern for others. The five approaches are:

- **Competition** (Win/Lose): *Individual has high concern for personal goals but low concern for building a relationship with others.* This person may insist on his/her way of doing things. They tend to want to coerce and control individuals or activities to reach their desired outcome.

- **Accommodate** (Lose/Win): *Individual has low concern for personal goals and high concern for relationship building.* This person evaluates whether the relationship is worth more than their concerns, or if they lack the ability to influence the outcome. This person tends to agree and appease rather than engage in information gathering or dialogue. This person might also be described as passive.

- **Avoidance** (Lose/Loose): *Individual has low concern for personal goals and low concern for relationship building.* This person is either being neutral or isolating him/herself from repeated defeats. This person tends to withdraw or flee from a dispute through denying, ignoring, or delaying activities to engage in dispute resolution.

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11 For a more detailed discussion see Wilmot and Hocker 1998.
✓ **Compromise** (Win Some/Lose Some): *Individual has some concern for personal goals and some concern for relationship building.* This person feels it is better to get some of what they want and share of the loss. This person is comfortable with splitting the difference or bargaining and that in resolving a dispute there is a little something for everyone.

✓ **Collaborate** (Win/Win): *Individual has high concern for personal goals and high concern for relationship building.* This person has minimal trust, interdependent interests, and desires a positive working relationship. This person sees the dispute as a mutual problem that motivates all parties to gather information, identify alternatives, comfortably disagree with one another, and engage in open dialogue.

Often, the approach with which we feel most comfortable and familiar originates from memories of when we felt best about ourselves. (Wilmot and Hocker 1998). Those individuals who compete successfully in high school sports or scholastics, for example, may feel most comfortable using a competitive approach to disputes. Alternatively, we may use an approach familiar to us based upon earlier traumatic experiences. Those who at some point in their lives were dissuaded from confronting and questioning others even when they disagreed may take the role of the appeaser-often accommodating the demands of others at high costs to themselves.

Our attitudes towards conflict are shaped early in life forming our patterned approach to conflict by the time we are adults. Thus when confronted with conflict, we tend to lean towards engagement or avoidance (Wilmot and Hocker 1998). Neither can be labeled as good or bad. Each has a place in tactical approaches to disputes.

It is possible, through an increased awareness of patterns we use to approach dispute, to reshape and tactically select the way in which we approach it. Each of the five approaches listed can be tactically drawn upon to fit particular circumstances during a dispute.

Awareness of the various approaches encourages us to try on different styles and to remain flexible in our approach. As individuals we must be able to recognize when we avoid and engage conflict and what our motives are for what we say and do throughout the dispute.

**UNDERSTANDING ADVERSARIAL BEHAVIOR**

*RESOURCE DISPUTES, LIKE ALL DISPUTES, ARE CHARACTERIZED BY ADVERSARIAL BEHAVIOR.* People who display adversarial behavior can be described as uncooperative, argumentative, hostile, combative and antagonistic. It is human nature to view those individuals with competing interests that are significantly different from your own as the enemy.
Adversarial behavior is the most familiar response to disputes (Carpenter and Kennedy 1988). The higher the stakes involved in the dispute the more adversity you may encounter. It is important therefore, in collaborative processes, to understand that dealing with people can be challenging at times. Individuals you have always known to be rational and settled in their behavior can become adversarial. It is a good idea to understand why people behave as adversaries during disputes and what approaches might lessen adversarial behavior.

People can become adversarial for a variety of reasons. There at least five reasons. These include: 12

1. Individuals become adversarial when taken by surprise. Even if an issue has surfaced and perhaps has been featured in the local news, sometimes a dispute does not become real until livelihoods are seriously threatened or court summonses are served. The announcement of proposals, solutions or legislation to resolve a dispute is likely to be met with combative opposition if individuals feel they have not been adequately involved in the process to reach the decisions nor have had sufficient control over the decisions made.

2. People may consciously choose to be adversarial when stakes are high. People may feel that adversarial behavior is the best way and perhaps only way to communicate their interests. They may fear that a show of willingness to collaborate with others will only enable others to perceive them as weak. This in turn might affect their ability to negotiate in a hard bargaining environment.

3. It is fairly common for individuals in a dispute to behave as their opponents behave. If one party in a dispute behaves in an adversarial way it can set in motion a chain reaction. Blame seeking, name-calling, stereotyping individuals, and circulating subversive rumors about individuals are actions that tend to be mirrored by opponents in adversarial environments. The mirroring can become brutally competitive with one side not wanting to be outdone by the other. Others may react simply to defend themselves or to “one-up” the first action.

4. Some individuals take an adversarial approach to disputes because that is what is most familiar. Individuals may feel that courts and lawyers are the most comfortable way to deal with disputes. They may feel that in every dispute there must be a winner and a loser. This is certainly a customary and socially acceptable approach to dealing with disputes. There may be a history of litigation that is difficult to break. Arbitration, however, often yields unpredictable results. Scientific research, public testimony, and passionate presentations never guarantee that all issues will be adequately heard or satisfactory decisions reached.

5. In some cases individuals may feel that the process in which they are engaged offers no better alternative than to be adversarial. Past experiences are important

teachers. If individuals have never experienced an alternative strategy for managing disputes other than adversarial behavior, they simply know of no other way. They may feel trapped further by the details of the particular issue. The dispute, for example, may have escalated quickly to a political arena where individuals involved feel that any decision to be made is already out of their hands.

Experts suggest that collaboration is a logical response to an agitated situation (Gray 1989). Litigation tends to further enhance polarization. Collaboration, alternatively, can produce an environment more conducive to problem solving. To deal effectively with adversarial people it is necessary to understand your own reactions to adversity (Ury 1993).13

When confronted with adversarial behavior a natural reaction is to:

- **Strike back:** When you strike back you may feel that you are giving the adversarial person a “taste of their own medicine.” This reaction rarely diminishes a hostile environment. It tends, instead, to aggravate hostility. Also, adversarial people tend to be good at being difficult. When you strike back you play their game in which case they are likely to have an advantage.

- **Give in:** When you feel that it is inappropriate or uncomfortable to strike back you may take the opposite stance and simply give in to the demands of the adversarial person. This reaction, however, does not help us to satisfy our interests. Giving in may simply strengthen and reward adversarial behavior.

- **End the relationship:** In some cases it may be necessary to end a relationship if you feel it is destructive to you personally or to the collaborative process. The costs of ending a key relationship should be evaluated carefully, however. Particularly in resource disputes where you have little control over who is involved, ending a relationship could be quite costly. Additionally, once you end a relationship it may be difficult if not impossible to resume the relationship.

When dealing with adversarial people it is important therefore not to react to their behavior. In order not to react it may be necessary to distance yourself from your emotions. In Getting Past No (1991), Ury popularized the concept by describing it as **“going to the balcony.”** *Going to the balcony* simply describes the mental imagery used to distance yourself emotionally from the combat zone. It refers to the mental process of stepping back from the combative situation and seeing it objectively. According to Ury, from the balcony, you can assess the conflict in a more detached way. This allows you to consider the situation more constructively and explore solutions in a more detached way.

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To use this approach effectively, it is necessary to *go to the balcony* before negotiations begin. This enables you to prepare objectively. Ask yourself what the goal is and remain focused on the goal. The goal is an agreement that satisfies your interests. It must also satisfy others as well. Throughout negotiations you must go the balcony at every opportunity in order to avoid reaction to your opponent’s behavior.

**IDENTIFYING UNFAIR TACTICS**

*In "going to the balcony" it is necessary to be able to identify or name unfair tactics that you are likely to confront in dealing with adversarial people.* Ury (1993) categorizes **unfair tactics** into three groups. People can use the following three tactics to sway the negotiations in their favor:

- **Inflexible:** They refuse to negotiate further, become inflexible. They want you to feel trapped and to believe there is no other way but their way.

- **Attacks:** They try to intimidate and threaten you so that you give into their demands.

- **Tricks:** They try to deceive you by lying, manipulating information, and otherwise mislead you into believing that your decision is best for you when it really satisfied their interests and not necessarily your own.

In dealing with adversarial people it is essential that you identify which tactic is being used. If you can identify the tactic you can dilute its effect. Identifying the tactic will enable you to remain more objective. If you can remain objective, you will be able to more effectively *go to the balcony* to consider your next move.

Looking for unfair tactics does not mean being overly suspicious but rather attuned to people’s behavior. It is possible to misunderstand others’ behavior. It becomes critical, therefore, to not jump to conclusions when observing behavior but to keep a mental record of what is being said and done. Adversarial people tend to use more than one tactic.

In dealing with adversarial people try to keep your feelings in check. This will help you to prevent losing control and reacting to their tactics. One way to refrain from reacting is to take a “time-out.” Simply take a break or tell a story to reduce the tension. Finally, never make decisions in the heat of the moment. Instead, make a point to *go to the balcony* and make your decisions there.
BUILDING & MAINTAINING PRODUCTIVE RELATIONSHIPS

IN ORDER FOR A COLLABORATIVE PROCESS TO FUNCTION in a healthy fashion, the participants must build and maintain productive relationships. Poor relationships will open the process to sabotage and verbal attacks. If participants are engaged in productive relationships they are likely to become more focused on addressing the real issues (Susskind et al. 1999)

Consensus based activities, such as establishing ground rules for behavior during meetings, can go a long way in building productive relationships. Even working together to select meeting dates and organize agendas offers a way for participants to find common ground on which to build relationships.

Other strategies that can help to build relationships include small-group discussions, meal sharing and informal gatherings. Informal gatherings offer opportunities for people with diverse interests to tell personal stories and share their views in a non-threatening atmosphere.

Field trips or site visits are also an excellent tool to help participants build relationships. Field trips and site visits enable participants to get a clearer picture of the resource, which allows a more realistic understanding of issues involving that resource (Susskind et al. 1999). During these outings, informal conversations are likely to occur which help to ease feelings of uneasiness in working with others with very different views. Another way to build relationships is to break the overall problem into various sub-issues. Task groups who volunteer or are assigned to various sub-issues should represent the full group’s diverse views (Susskind et al. 1999). Each face-to-face encounter, whether it is meetings, site visits, or informal gatherings, can contribute to relationship building among participants. If the encounter is successful, each participant should feel that his/her viewpoint was acknowledged and understood by fellow participants.

Productive, long-term relationships enable an agreement to be implemented more easily. Especially in situations where previous resource management behavior is entrenched in a tradition of adversity, an agreement that introduces new management practices will be easier to implement if productive relationships can see it through the bumps of adjustment. Long-term relationships also increase participants’ confidence that the agreement will be implemented (Susskind et al. 1999).
EFFECTIVE COMMUNICATION

EFFECTIVE COMMUNICATION IS THE KEY TO PRODUCTIVE RELATIONSHIPS. Achieving effective communication is not easy. If a dispute is to be managed constructively, however, it is essential that all participants in the collaborative process make an effort to understand the issues from all perspectives and views. In order to accomplish this the participants must practice effective communication.

To communicate effectively is to speak with an intent to build productive relationships with others. It requires individuals to practice great care in choosing their words and the time for speaking those words. Sometimes saying too much can create more problems than not saying enough (Fisher et al. 1991). Words are powerful tools that can be used to build or tear down relationships. When emotions are turbulent it is better to hold your tongue than risk damaging relationships. Words shape important decisions. Once words are spoken it is difficult to take them back. When engaged in communication you must strive to make the experience effective.

Think carefully before speaking and encourage others to do the same. Many collaborative processes suggest establishing ground rules to encourage effective communication among participants in a collaborative process (Schwarz 1994; Fisher et al. 1991). The ultimate goal is to encourage productive behavior based on effective communication.

Several exemplary lists of “ground rules for effective groups” have been devised and are used widely in collaborative processes. Some ground rules may focus simply on improved communications during meetings. These may include rules such as:

✓ Do not repeat your statements.
✓ Do not interrupt others speaking.
✓ One person may speak at a time.
✓ Give others a chance to be heard.
✓ Respect individual viewpoints.
✓ Phrase statements of concern with “I” or “we” rather than “you” or “they”.
✓ Stick to the prepared meeting agenda and the time restrictions.
✓ Document the process.

Another list that follows illustrates ground rules that are appropriate for groups responsible for solving problems dealing with complex issues. The ground rules are:

✓ Test assumptions and inferences.
✓ Share all relevant information.
✓ Focus on interests, not positions.
✓ Be specific-use examples.
Agree on what important words mean.
Explain the reasons behind one’s statements, questions, and actions.
Disagree openly with any member of the group.
Make statements, and then invite questions and comments.
Jointly design ways to test disagreements and solutions.
Discuss undiscussable issues.
Keep the discussion focused.
Do not take cheap shots or otherwise distract the group.
All members are expected to participate in all phases of the process.
Exchange relevant information with non-group members.
Make decisions by consensus.
Self-critique (Schwarz 1994).14

Ground rules are ideal behaviors that the group strives toward during the collaborative process. As such, they may seem difficult if not impossible to follow at all times. Respect individual viewpoints and discuss the undiscussable, for example, is an intimate, delicate, and perhaps for some, invasive process that requires trust to exist first among participants. Trust takes time and occurs in small steps. Depending on the individuals or groups involved, a social history of distrust around natural resource disputes may exist. This can make trust building difficult at best.

To disagree openly with any member of the group, to use another example, may not be perceived by some participants to be a strategic behavior. To disagree openly may reveal information that is being withheld for very specific reasons, such as, stalling in order to collect more data to disprove another’s theory for a solution.

Ground rules are a necessary piece for moving the collaborative process forward. Depending upon the unique circumstances and individuals involved, however, devising a list of ground rules may not provide a foolproof flagship for a trouble free process. Parties involved in a dispute may want to device and revise ground rules continually as a way to discuss the undiscussable. If ground rules are not working or are not being followed then participants in the process must ask each other why.

Continually examining and revising ground rules may help participants learn how to be more open with one another about the simple act of communication with one another. It is important to recognize, however, that in resource disputes where the stakes are high, effective communication is not a simple act and sharing perceptions of the problem or solution may appear at times an impossible feat. Still, effective communication lays the foundation for building and maintaining productive relationships. Productive relationships are key to the health and function of a collaborative process.

Schwarz 1994 provides a detailed discussion of ground rules.
Chapter 4

DEALING WITH SCIENTIFIC INFORMATION

Natural resource disputes often involve complicated, highly technical issues. Often this forces participants in a collaborative process to rely upon scientific information in order to make the best decision. It is necessary to understand the limitations of scientific information and the problems associated with reliance upon scientific data and experts. Joint fact-finding offers participants an opportunity to diminish this reliance and instead to look to one another for solutions.

NATURAL RESOURCE SCIENCES DO NOT PRODUCE EXACT INFORMATION NOR ARE THEY PREDICTABLE. Whether you’re dealing with watersheds, range ecosystems, wildlife populations, or forest composition, these living systems are constantly changing. There is so much we do not understand or know regarding natural resource systems. Although today we are far more knowledgeable than ever before regarding natural resources, our understanding will never be complete due to the complexity and variability of natural resource systems. Some would even describe our ability to understand large resource systems as deficient (Myers 1984).

LIMITATIONS OF SCIENCE

IN AN EFFORT TO RESOLVE NATURAL RESOURCE DISPUTES, PEOPLE LOOK TO SCIENTIFIC INFORMATION. Scientific information can provide answers regarding costs, benefits, and risks associated with resource management options. Unfortunately, when dealing with natural resource disputes science cannot provide all the answers.

Even the best technical and scientific analysis “will have an irreducible element of uncertainty” (Burgess and Burgess 1998). There are at least three complicating factors regarding scientific uncertainty. These are:

1) insufficient measurements or observations,
2) conflicting measurements, and
3) disagreements over theoretical frameworks (Moomaw 1999 p. 831).

It is not realistic to eliminate all complications or confusion prior to negotiating an agreement to a natural resource dispute. Reliance upon scientific information, however, can encourage further disagreements. It is important to identify and anticipate the problems associated with scientific information and to effectively address these problems.
WORKING WITH DATA

*DATA IS AN ESSENTIAL INGREDIENT FOR MAKING INFORMED DECISIONS ABOUT* the natural resource. Almost any type of negotiation involving natural resource disputes will involve working with data. Dealing with data and the complexities of the resource, however, can also cause problems during a collaborative process. Anticipating some of the more obvious problems will prevent mistakes.

1. **Misunderstanding the data:** Data can help people make informed decisions regarding what they care about in the negotiation. Data should be clearly understandable by everyone in the negotiation—not just the scientists. Make sure you understand what the data imply and how they impact your interests.

2. **Contradictory data:** In some cases data are understandable but contradictory. For example, one set of data may indicate the need to increase forage on the range while another indicates range forage is adequate. How do you arrive at informed decisions in a negotiation when contradictory data sets produce different answers to the problem?

3. **Lack of data:** Lack of data can prevent participants from making an informed decision. For example, in a negotiation involving development of an elk management plan, participants may have only an outdated report on herd population numbers. They may lack critical data on available forage, population sizes of competing species, or hunter tags issued per year. Allow enough time to acquire sufficient data to make informed decisions.

4. **Too Much Data:** In contrast to lack of data is the problem of too much data. This can lead to what is commonly called analysis paralysis. In *analysis paralysis* negotiations stop because participants are unable to make a decision. They continually feel the need for more information until all uncertainty has been eliminated. It is common for participants in a negotiation to experience analysis paralysis. People tend to prefer to have too much information rather than not enough. To alleviate this problem, participants must understand what information is necessary to make an informed decision and what information is extraneous.

WORKING WITH EXPERTS

*AFTER CONSIDERING THE POTENTIAL PROBLEMS WITH DATA,* another challenge may involve the technical experts who analyze the data. An expert may not be viewed as credible or unbiased by the parties. For example, a scientist may conduct research on the environmental impacts of mining, while at the same time serve as president of a local environmental advocacy group opposed to mining. It is important that all parties view the expert as credible.
An expert will have different roles and responsibilities depending upon two main conditions. These are:

1. The participants hire an expert to perform a specific task, such as data collection or analysis. This is an **expert outside the process**.
2. The expert is an active member of the collaboration. This is an expert **inside the process**.

**Expert Outside the Process:**

- **Good communication skills.** Experts should be able to explain scientific information in non-technical language, free from professional jargon. A responsibility of the expert is to make the information easy to understand. Practicing good communication skills may also mean producing two written documents, one in technical form and another written solely for the lay public.

- **No decision-making authority.** The expert is not responsible for deciding which option is best. In a collaborative process, decision-making should be the responsibility of the participants. The expert’s role is to provide objective information. The expert may identify a number of possible options, but only if the negotiation parties decide this is an important task for the expert to perform.

**Expert Inside the Process:**

- **Equal Collaborator.** When an expert is a participant in the negotiation, then s/he should be an equal collaborator in the process. Often times, an expert can seem arrogant and insensitive to people with differing values and needs (Glimp 1996).

  *We (scientists) must learn to be true colleagues in the decision-making process. Our knowledge does not give us the right to make decisions, but we have an obligation to see that responsible parties use it to support informed decisions.* (Glimp 1996, p.4).

An expert inside the process is not an expert but rather a peer. In essence, scientists who participate in a collaborative process should learn to “leave their degree at the door” (Zimbelman et al. 1995).

- **Respect local experts.** In any collaborative process there are numerous sources of expertise. It is important not to overlook the range of expertise available. Typically we tend to think only of the content expert as a hydrologist, biologist, or other technical scientist. Other types of content experts include those knowledgeable about cultural, historical, and social issues. For example, families who have worked the land for six generations are not only experts on ranching, but are also highly knowledgeable about the history of the land and local culture.
Often the best way to provide expert information about the resource is to ask the local residents.

**ADVOCACY SCIENCE**

*ADVOCACY SCIENCE IS BEST DESCRIBED AS SCIENCE THAT IS USED TO SUPPORT OR ADVOCATE A POSITION.* In a collaborative process, participants may produce scientific information that reflects their solution to the problem (Susskind et al. 1999). Advocacy science happens when opposing parties hire their own expert to collect and analyze data.

Relying on scientific information to promote a solution creates further disputes. Each party wants the resource managed to achieve particular objectives that reflect their specific interests. In advocacy science, individuals take sides according to which interpretation of information promotes their interests. Taking sides splits rather than unites the group proving detrimental to collaborative processes.

Advocacy science tends to create contradictory data because each side will adopt the data interpretation that promotes their interests. Advocacy science follows a decision-making style favored by lawyers. It tends to present data and outcomes that favor one side of a dispute. The use of advocacy science can also convince the public that the technical aspects of an issue cannot be resolved (Susskind et al. 1999). A useful tool that offers an alternative to advocacy science is **joint fact-finding**.

**JOINT FACT-FINDING**

*JOINT FACT-FINDING DEALS WITH THE SUBSTANCE OF THE DISPUTE* by influencing how scientific information is collected and interpreted. “Join fact-finding assumes that parties with conflicting interests will interpret material differently.” (Erhmann and Stinson 1999, p.377). Specifically, joint fact-finding requires that parties work together to:

- define the problem that necessitates technical analysis,
- determine the questions that should be asked,
- determine who the experts should be,
- describe the best way to seek information and answer questions,
- identify limitations of the analytical methods to be used, and
- select the best way to proceed after the scientific information is compiled.

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15 For a more detailed discussion on Joint fact finding see Chapter 9, Joint Fact-finding and the Use of Technical Experts (Susskind et al. 1999).
Joint fact-finding can occur in two ways. One way could involve participants hiring experts together and analyze the data. Another approach may require each party to hire their own expert. In many instances, experts don't agree and may take opposite positions on a particular issue, advocating one side over another. Hence, participants will be faced with contradictory information and fall prey to advocacy science. Each expert hired should expect to work as part of a team, if required, to gather and analyze data. The experts hired must be viewed as unbiased by all parties and be able to explain the results in a non-technical manner.

Conditions that merit joint fact-finding include situations where participants have a low level of trust of one another. Also when there is extensive disagreement about the quality of the information, the validity of how it was developed, and now much is needed, then joint fact-finding was warranted.

Joint fact-finding is most advantageous when it occurs during the pre-negotiation phase. It can be incorporated into the pre-negotiation step as part of the assessment to determine if parties are ready to negotiate. Table 1 presents a collection of possible questions to ask during joint fact-finding.

Joint fact-finding forces participants to learn about the scientific foundation of resource disputes. It also provides the opportunity to fill in any information gaps that may exist. Through joint fact-finding participants can strengthen their relationships and increase their understanding of one another’s interests in the resource(s).

Additionally, joint fact-finding is likely to produce credible, creative, and more durable agreements (Ehrmann and Stinson 1999).

Joint fact-finding can be costly and time-consuming. A single participant should never dominate this effort simply because s/he has access to more resources or time. Joint fact-finding challenges parties early on to decide how scientific information might fit into an agreement.

**Framework for Joint Fact-Finding**

**Step 1. WHAT INFORMATION CURRENTLY EXISTS?** How the problem is defined helps to outline what information is necessary or what may be lacking.

☑ If some information exists, is it sufficient to make an informed decision?
☑ Does the information answer the problem as we have defined it?
☑ Is it relevant to the negotiation?
☑ How much information is adequate to make a decision:
☑ Is too much information already available?
☑ If only some information exists, what types of information are missing?
Step 2. **WHAT ADDITIONAL INFORMATION WILL BE NEEDED?** Refer back to how the problem is defined. It will highlight what information is needed and what questions should be investigated. Additional information to be collected may simply mean retrieving existing reports or contacting specific agencies.

- If new information is necessary, who will collect it?
- How will expert(s) be selected?
- How will the information be collected (methods)?
- Who will manage the joint fact-finding process?
- What are the roles and responsibilities of the participants?
- Will the information collected become public knowledge or be kept confidential until agreements are reached?
- Who pays for the collection of information?
- What are the time frames for collection, analysis and reporting?

Step 3. **HOW WILL THE GROUP USE THE INFORMATION?** Once the information is collected and analyzed, how will the group discuss the results and use them to make a decision?

- Will the expert(s) provide a range of possible options?
- What will the group do if participants interpret the analysis differently?
- Will participants agree on an alternate agreement if the first choice fails?
- How many people need to be in agreement to make a decision?
- When will the group reconvene to insure the agreement meets expectations?
- What is the follow-up procedure if the decision proves incorrect?
Chapter 5

GETTING STARTED

Getting started in a collaborative process to manage a natural resource dispute requires forethought. First, some form of interventions must occur to break out of the spiral of unmanaged conflict. Also, to help participants feel more comfortable about working together, you may have to "break the ice." From the beginning it is a good idea to have in mind some guidelines to follow to create an effective process.

DISPUTE MANAGEMENT ENCOMPASSES VARIOUS COLLABORATIVE APPROACHES that suggest intervention is a first step in a process to seek a satisfying solution.

The word intervention means to come in or between so as to modify (American Heritage Dictionary 1981). To intervene into a dispute means to come between competing interests with the intent of providing a means to move from a destructive to a constructive approach to dispute management.

INTERVENTIONS

THE HISTORY OF DISPUTE INTERVENTION IS LONG. Different forms of documented dispute intervention have been practiced by various cultures for over 2,000 years (Burgess and Burgess 1997). In natural resource disputes, there are basically three forms of intervention that are grounded in collaborative processes. These are convening, facilitation, and mediation.

Convening formally initiates a collaborative process. It is a type of intervention that involves early design of a process to fit a particular dispute. A convener can be a hired professional facilitator or mediator. In resource disputes, government agencies frequently play the role of convening to bring various interests together to hear about changes in management plans or to address arising issues. At least initially, a convener can also be a local individual interested in or impacted by the issue with simply the desire to talk with others about the problem(s). Convening the process involves recognizing a need to bring public attention to a dispute, identifying potentially affected participants, exploring a commitment to collaboratively manage the dispute, identifying issues, and establishing ground rules for behavior and communication.

Facilitation is the detailed management of meetings to enable participants to focus issues and goals (Elliot 1999). Facilitation is a kind of assisted negotiation (Burgess and
Burgess 1977). The facilitator focuses on the meeting or process rather than on the issues being negotiated. Facilitators help to set agendas as well as work with the participants to create and enforce ground rules. During meetings, facilitators work to ensure that all participants have an opportunity to be heard. They often record statements on easels (or have an assistant perform this task) to provide a public record of discussions. This activity also helps to keep the participants focused and aware of any shared interests. When necessary, a facilitator brings closure to discussions and reminds participants to stick to the agenda items and time schedule. Some of the skills facilitator practices include:

- Active listening—paraphrasing what people say to help clarify comments for everyone.
- Questioning-asking open-ended questions to stimulate discussion.
- Reframing-refocusing comments so they address the problem and not verbally attack people, or state solutions.
- Monitoring-adjusting to the group’s needs and direction.

A facilitator does not make decisions for the participants and must remain neutral regarding issues of the dispute. Typically, a facilitator restricts his/her functions to group settings and does not meet face to face with individual participants (Burgess and Burgess 1997).

**Mediation** occurs when a neutral party intervenes in negotiations to help participants. A mediator performs many of the same tasks as a facilitator. Additionally, a mediator manages dynamics outside meetings as well as during meetings. A mediator can perform the situation assessment to help determine whether and/or how to proceed. Unlike a facilitator, a mediator meets face to face with individual participants to practice a sort of shuttle diplomacy to find areas of common ground. The mediator’s role is to help participants communicate, define the problem based on interests, consider a range of options and finally draft a satisfying agreement. The mediator has no decision-making authority.

There must be a great deal of trust in the mediator as the mediator delves deeply into the issues being negotiated by the participants. Selection of a mediator often brings about conflict among participants as one or more may view this person as an ally or a hindrance to reaching decisions quickly that satisfy at least one agenda. Hence, choice of a mediator should be given careful consideration. It is vital to the integrity of the collaborative process that mediators remain devoted to helping participants consider others’ views objectively in order to later make informed yet personal choices. It is inappropriate, for example, for the mediator to advocate a particular alternative or policy resolution. A mediator is more effective in helping varied interests if s/he remains impartial and instead tries to maintain an arena where all parties can influence the outcome. Although the goal for many may be to find a solution to the problem, the
questions asked, level of participation in discussions and the quality of the collaborative experience are more important to the mediator.

**BREAKING THE ICE**

*Once dispute intervention occurs, there are many awkward moments* that follow when the parties first meet face to face. The awkwardness stems from differences that exist among participants in terms of their interests, values, and perceptions. There are **icebreaker** exercises, however, that can be used early on to help ease moments of distress in the initial stages of the collaborative process.

**Round-robin** introductions, for example, are commonly used to warm the room at the beginning of meetings and to give each participant an opportunity to speak, represent their interest, and become more aware of who others are seated at the table.

Some round-robin exercises ask participants, as an example, to state if they could have dinner with anyone in the world, deceased or living, who would that person be and why. This exercise usually creates some moments of humor to alleviate tension as well as provides often touching and thought-provoking personal insight into the mind of each individual who has chosen to participate in the process.

A **shared vision** is an exercise that can be used similarly to warm a chilly atmosphere. A shared vision can initiate productive communication and begin the search for common ground. A shared vision can help to clarify how the collaborative process should be structured, why it exists, and what it seeks to accomplish. The vision can later be used as reminder of earlier discussions to illustrate growth and change in the process or to bring the focus of discussions back to their origins (Schwarz 1994). It requires the parties to focus on what they do want rather than what they do not want. This in turn requires identifying the issues and defining the problem in precise terms (Schwarz 1994).

The term shared vision is used frequently in the world of collaborative processes and has become to some extend, trendy. Many people do not understand what it means. Perhaps it is easier to explain what a shared vision is not. It is not a form of coercion to force individuals to relinquish their interests in order to reach agreement or to simply get along with other participants. It is not an exercise intended to produce feelings of warmth and affection among participants. It is not used to paint a view of the world that is unattainable and therefore frustrating to use as a guide for negotiations designed to reach an agreement. It especially is not an exercise that can be used to seek blame and point fingers at responsible parties for why one participant’s vision of the resource(s) is not a part of the current reality. It is not an exercise to exclude a party that does not share a majority view.
What a shared vision can be is the beginning of relaxed, informal communication about what each participant envisions for the resource(s), with the past, present, and future in mind. Reaching agreement on the shared vision can set the tone for further collaboration and serve as a guidepost to identify issues, design approaches to research the problems, evaluate alternative solutions, and create a lasting agreement. When managing natural resource disputes, developing a shared vision of the natural resource can help participants focus on their interests rather than their solutions to the problem. Participants often begin negotiations by stating what their solutions are. Unfortunately this approach leads to further conflict because it tends to polarize rather than identify common ground among participants.

Participants often discover through creating a shared vision that they surprisingly have more in common than expected. A shared vision often helps to make communication more open, which helps to build mutual respect and trust. Fostering mutual respect and trust early in the collaborative process will help pave the way for building productive relationships.

A shared vision can reflect the shared values of the group and serve as a roadmap to follow or an endpoint to strive toward. It is far easier to reach agreements and deal with differences when all participants are pulling in the same direction (toward the vision) rather than in scattered directions.

A shared vision can serve also to help participants reframe the issue. To reframe the issue means to change one’s perception from an *us versus them* problem, into a problem that needs solving. This exercise can go a long way in moving a group toward reaching agreement.

A shared vision should not be forced. If it does not come easily, that is ok. Stop and try again later in the process when participants are more comfortable and have learned more about the resource and each other.

There are various ways for participants to create a shared vision. Individually or as a group, participants can draw maps of the impacted area, which explain the dispute and perceived boundaries. Alternatively, they can sketch pictures to illustrate the past, present and future of the resource. They can verbally described their vision or discuss elements of their vision, which can be transcribed by a recorder or rendered in an illustration by an artist. Alternatively, their verbal description can serve as a mission statement for the negotiation. Whatever the physical form, the vision becomes shared when all participants support the vision or key elements that comprise the vision.

A vision may be broad and all-encompassing or narrow and specific depending upon the particulars of the resource dispute that the negotiating group wants to accomplish. Two examples include:
✓ Our shared vision is a sustainable and functional ecosystem that respects the needs and values of past cultures and as well as those of contemporary cultures.
✓ Our shared vision is a healthy rangeland that sustains private livestock grazing as well as enhances the public’s enjoyment of recreation and thriving wildlife populations.

Creating a shared vision can be a difficult exercise. It asks people to picture what the natural resource could be like, while knowing what it is. Thinking of problems as they could be, rather than what they are, can be a stretch of the imagination for some people. However, the exercise can be an important step toward building agreements for managing a natural resource dispute. Use of a skilled facilitator may help to elicit better participation so that all participants ultimately feel their interests are represented in the resulting vision.

**TEN PRINCIPLES OF EFFECTIVE DISPUTE MANAGEMENT**

**ONE OF THE DEFINING CHARACTERISTICS OF COLLABORATIVE PROCESSES** is that all participants are responsible for the process as well as the outcome. This cardinal rule ensures greater ownership of the process. When designing the process it is helpful to keep in mind the following Ten Principles of Effective Dispute Management.

Principles are accepted rules of conduct or law. Principles can serve to establish conduct. As such, **principles of dispute management** act as guidelines for knowledgeable, ethical conduct in managing resource disputes. For those of us who are involved in a collaborative process to manage a dispute, it is easy to fall prey to reactionary behavior. It is easy to get lost in data and technical research agendas in the hopes of finding solutions to disputes. It is easy to become obsessed with following meeting rules or missing opportunities to share issues, learn about others’ interests, or assert your own interests. In short, it is easy to lose sight of what the original goal is of a collaborative process to manage disputes.

The ten principles of dispute management that follow provide one example of ethical guidelines for managing disputes. It is not the last word on dispute management. It serves, however, as an exemplary list of checks and balances to help you stay on course when engaging in a collaborative process to manage disputes.

**Principle 1** – **Natural resource disputes are a complex combination of human relationships, process, and substance.** It is a common mistake to focus only on the substantive issues often ignoring human relationships and procedural details of the collaborative process. Building and maintaining positive relationships with others

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16 The following discussion is adapted from Developing and Effective Program of Conflict Management: Ten Principles, in Managing Public Disputes (Carpenter and Kennedy 1988). Chapter 3, pp. 52-67.
involved in the dispute is as important as understanding the data and technical issues associated with the problem. Procedural details comprise how the collaborative process operates. You must continually assess if the collaborative process is accomplishing prescribed and mutual agreed upon goals. You must be prepared to take steps to alter the process if goals are not being met satisfactorily.

**Principle 2** – *In order to find a satisfying solution you must understand the problem.* This may require one-on-one discussions with individuals affected by the dispute. It may also require visits with those who are not as directly involved but perhaps more informed. Investing the time to understand the problem results in more productive problem-solving meetings.

**Principle 3** – *Carefully plan your strategy and follow it through.* Heated disputes usually put pressure on those involved to find solutions quickly. Even though these pressures may be great you must strategize a sequence of steps that will best address the situation. A standard strategy at a minimum requires participants to:

- define the problem constructively,
- determine mutually satisfying procedures to negotiate,
- identify issues and interests of those involved,
- develop options to solve the problem,
- agree on the solution, and
- decide how to implement the agreement.

**Principle 4** – *You must build constructive, working relationships.* Even if the best technical experts are hired to determine possible solutions, the resulting information will not be helpful unless people can use it cooperatively. Basic criteria for cooperatively using any information include trust, information sharing, following through on resolutions, and implementing agreements. Poor communication among individuals involved in a dispute eventually leads to mistrust, polarization, and a breakdown of the collaborative process.

**Principle 5** – *Negotiations begin with defining the problem.* Participants in a collaborative process must agree on a constructive definition of the problem prior to resolving the dispute. Ideally, the problem should be owned mutually by all stakeholders. Its definition should include a broad range of explicit issues and may synthesize several definitions. How a problem is framed can define the range of possible solutions.

**Principle 6** – *Participants in the dispute management process should help to design that process as well as the solution.* It is common for dispute managers, technical experts, politicians, and other individuals with leadership roles in the dispute to offer solutions. Rarely are these solutions warmly received. Participants in the process must be continually involved in finding solutions, agreeing on a range of options, and building
an agreement that is mutually satisfying and can be implemented. They own the problem and must create the solution.

**Principle 7 – For solutions to be lasting they must be based on interests rather than positions.** Interests define the problem. It is very common, however, for interests to gel into positions. Positions are steadfast decisions that we make based upon our interests. Positions are the trenches we dig for ourselves to remind us of what we cannot tolerate rather than what we can. Positions suggest that others’ needs are unreasonable. If positions determine the direction of the negotiations, resulting agreements are not likely to be either mutually satisfying or long lasting. In order to focus on interests rather than positions, participants should ask themselves why others have taken a particular position (Fisher et al. 1991). This enables them to get closer to the underlying interests. Focusing on interests enables more options and solutions to emerge. Focusing on interests also gets to the heart of the problem.

**Principle 8 – The dispute management process must be flexible.** Keeping the process flexible does not imply it lacks structure. Any collaborative process must be carefully thought through prior to beginning it. The initial plan serves as a rough draft that provides direction but can be modified as participants and issues require.

**Principle 9 – Anticipate problems that might arise.** Even with carefully planned processes you may encounter unexpected disasters. Negotiations are naturally dynamic. It is difficult to predict exactly what will be said when. Still, having an idea of the potential problems that might occur will help you to prepare for attacks, outbursts and suggestions to suddenly alter the agenda or change the goals of the process. Sometimes problems that arise can be used as opportunities to reshape the process if it is floundering. In this way the participants can take more ownership of the process by addressing problems as they arise.

**Principle 10 – Poorly designed and managed collaborative process can worsen the dispute, creating more polarization, fear, tension, and related disputes.** Collaborative processes must be carefully structured to manage disputes so that key interests are involved, the problem is constructively defined, education and issue sharing occur, and relationships are nurtured. Yet, the process must remain flexible enough to constructively meet unexpected issues and complications as they arise.

The ten principles presented are helpful guidelines to follow in structuring a collaborative process to effectively manage disputes. If the process is already underway, these principles can serve as a system of checks and balances to fine-tune procedures, correct problems, and improve communication.

Some additional guidelines to follow to achieve effective dispute management include:
✓ educate all participants on the steps of the collaborative process;
✓ jointly design agenda and procedural rules to make each meeting effective and productive;
✓ help participants establish predictable, efficient means of communication during meetings and between meetings;
✓ allow adequate time between meetings for participants to meet with their constituents;
✓ make the decision making process clear to participants;
✓ share new information;
✓ if necessary break the problem into smaller solvable pieces;
✓ acknowledge value differences;
✓ be inclusive in involving all potentially affected individuals;
✓ engage in joint fact-finding;
✓ keep the public informed; and
✓ maintain a good, working relationship with the press.

A final and important rule of thumb is if you need help in managing the dispute, structuring a process, or participating, ask for help (Carpenter and Kennedy 1988). Natural resource disputes are complex. Collaborative processes to manage resource disputes require knowledge, technical support, and stamina. It is not uncommon for participants engaged in a collaborative process to seek help from outside the process in order to improve it.
Chapter 6

APPROACHES TO CONSIDER

Collaborative processes can take many forms. Each process will be unique. However, certain approaches have been applied generally to natural resource disputes. Some popular approaches include Public Issues Education and Holistic Resource Management. Various forms of Public Participation, as implemented by government agencies according to legislative directive, also offer elements of collaboration. Coordinated Resource Management provides opportunities for further collaboration with government agencies in resolving resource disputes.

COLLABORATIVE PROCESSES CAN TAKE MANY FORMS. Each process will be unique. However, certain approaches have been applied generally to natural resource disputes. Some popular approaches include Public Issues Education and Holistic Resource Management. Various forms of Public Participation, as implemented by government agencies according to legislative directives, also offer elements of collaboration. Coordinated Resource Management provides opportunities for further collaboration with government agencies in resolving resource disputes.

PUBLIC ISSUES EDUCATION

PUBLIC ISSUES EDUCATION (PIE) REFERS TO EDUCATIONAL PROGRAMS DESIGNED to enhance the public's capacity to comprehend and address public issues. Public issues are controversial topics that arise from differences in people's values, roles, ideas, and interests (Dale and Hahn 1994). The controversy that surrounds public issues typically relates to choosing the best action or solution to the problem. Public choices are often equated with government policy decisions. Through education and citizen involvement, however, individuals, agencies and corporations can make decisions about public issues and also shape public policy.

A primary goal of PIE is to gather a diverse audience to develop a shared understanding of the issues, alternatives, and consequences (Dale and Hahn 1994). Structured collaboration is required in order to achieve a shared understanding, however.

PIE programs have received a great deal of attention from Cooperative Extension educators around the United States in addressing natural resource disputes. There are various descriptions of PIE approaches but most are based on the idea of Alternatives
and Consequences. In other words, in order to resolve a public issue, the public identifies alternative solutions and evaluates the consequences of each alternative prior to making a decision.

Some PIE programs begin in a somewhat informal fashion based upon the severity of the issue and the demands for solutions. If an Extension Educator anticipates the need for PIE, however, s/he can plan and implement a PIE program in an orderly sequence of stages coinciding with the evolution of a public issue.

The PIE approach is characterized by stages of issue evolution. These are:

- **Stage 1:** Public develops an awareness of a public issue.
- **Stage 2:** Public becomes more involved and involves others affected by the issue and are drawn into discussions.
- **Stage 3:** Clarifying the concern and framing it as a public issue is the goal of the third stage of the issue evolution cycle. Focus groups, panel discussions, public forums, and/or study groups are used to help clarify the specifics of the issue.
- **Stage 4:** Public identifies and/or creates alternatives to resolve the issue. In addition to scientific or technical information provided by subject matter specialists, participants may conduct their own research to identify alternatives.
- **Stage 5:** Public examines the consequences of alternatives created in stage 4.
- **Stage 6:** Public takes into account alternatives and consequences to choose how to best address the issue through public policy.
- **Stage 7:** The choice is implemented in the form of a policy that is decided upon by lawmakers but shaped by the public. Alternatively, the public can design a formal agreement. The public learns and/or understands how the agreement or new policy will be implemented. They need to look for changes in public opinion that might occur during its implementation.
- **Stage 8:** Public evaluates the effectiveness of the implemented policy or agreement. The final stage offers an additional opportunity to evaluate the entire educational process. The final stage of the issue evolution cycle offers a chance to begin the cycle anew – with more information and experience.

The most obvious benefit, although it is hard to measure, is the learning that takes place among citizens about one another, the issue, alternative actions and consequences, and how a locally created policy or action might be implemented. Specifically this learning includes:

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✓ first hand knowledge of shaping public policy at the local level,
✓ expansion of civic leadership to the broader public,
✓ increased ability to consider perspectives and information from diverse sources,
✓ increased capacity for integrated factual knowledge with personal experiences,
✓ increased ability to see the inter-dependence of natural resource issues, and
✓ improved skills in building inter-personal and public relationships to view public issues (Dale and Hahn 1994).

Increasingly, cooperative Extension is adopting **Interest-Based Problem Solving** as a collaborative approach to resource disputes. The “steps of a collaborative process” presented in Chapter 2 of this bulletin are very similar to an Interest-Based Problem Solving approach.\(^\text{18}\)

**HOLISTIC RESOURCE MANAGEMENT**

**HOLISTIC RESOURCE MANAGEMENT (HRM) IS A COLLABORATIVE PROCESS** that focuses on defining manageable goals for resources. It emphasizes the idea that sustainable resource management includes land, people, and financial resources. Each element is interdependent and cannot be considered an isolation. Each individual’s whole to be managed is related to neighbors and world events.

HRM originally was designed in the 1980s for individuals involved in land use decisions, agriculture, and wildlife management. It encouraged individual decision-makers to include every possible partner in a team effort to manage the whole.

HRM has evolved as a process so that it has broader applications currently.\(^\text{19}\) Now referred to simply as **Holistic Management**, the process focuses on collaboration with others to make clear decisions that are focused on a vision of the future with an economical, environmentally, and socially sound plan for getting there.

To practice Holistic Management a three-part goal must be established. The three-part goal includes:

1. human values which shape our quality of life,
2. forms of production or the resource base, and
3. description of the future landscape.

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\(^{18}\) To find out more about this approach, read *Interest-Based Problem Solving Process and Techniques* (1996) by Kelsey Gray. Western Regional Extension Publication #0134, Washington State University.

Holistic Management assumes that lack of a clear three-part goal is the most common problem people face in practicing resource management. To formulate goals, HRM guidelines suggest:

- Involve all people you identify within the whole to be managed. This is not always a straightforward exercise and may take time.
- Invest time to build relationships based on trust and acceptance of others.
- The resource management goal must clearly state what you want but not how you plan to get there.
- The goal must be written in short phrases or statements.
- The goal must be reviewed often and modified as you clarify your awareness of each person’s needs involved and also needs of the resource (Savoy and Butterfield 1998).

Holistic Management emphasizes continual testing of resource management decisions against the three-part goal to determine if the decisions are right. In fact it assumes the decisions we make about resource management are more likely to be wrong.

When management goals are not reached the problem can be due to an attempt to describe the future landscape before defining explicitly a desired quality of life and existing forms of production. This often happens when individuals who are involved are not intimately connected with forms of production, such as universities, government agencies, and environmental groups whose primary interest is the landscape (Savory and Butterfield 1998).

**PUBLIC PARTICIPATION WHEN THE FEDERAL GOVERNMENT IS INVOLVED**

**NUMEROUS LEGISLATIVE ACTS IMPLEMENTED SINCE THE 1970’S REQUIRE PUBLIC PARTICIPATION.** The Federal Land Management and Planning Act, the National Forest Management Act, and The National Environmental Policy Act (NEPA) have been interpreted by court decisions to modify its procedures in order to offer the public early involvement in agency decisions (Swanson 1994).

NEPA, in particular, requires Federal agencies to follow a systematic approach to analyze the environmental effects of proposed Federal actions ‘significantly affecting the quality of the human environment’ (Swanson 1994). The analysis must be interdisciplinary and include technical information about social, economic, environmental and other considerations. The analysis must involve the public and be documented as Environmental Impact Statement (EIS) or an Environmental Assessment (EA). The EIS must identify and consider a range of alternative actions although they are not required to select the alternative with least impact.
The overall purpose of public participation for a Federal action is to give the opportunity for the public to participate at some level in management decisions that may impact the public. Although federal agencies are required to proactively involve the public in agency planning and decision-making, the level of involvement is decided by the lead agency based on their needs and objectives. The lead agency is the agency that is responsible for the proposed action. Even though the public may formally participate in the analysis of alternatives, the lead agency in the final analysis retains full decision-making authority. Four levels of public participation available are described below (CDR 1999). Too often, the agencies have not involved the public until the decision has largely been framed. An increasing number of agency professionals, however, are recognized the benefits of public involvement at all levels.

1. **Public Scoping.** Public scoping involved gathering public comments on proposed actions through advertised solicitation and formal meetings. Comments may be submitted verbally or in writing. The lead agency uses public scoping to gather different perspectives on a proposed action. Public scoping only permits one-way communication—where the public provides comments to the lead agency. Public scoping is usually considered the legal minimum requirement by government agencies for public participation. The lead agency is not required to use the comments to direct analysis.

2. **Public Interaction.** Public Interaction is intended to garner public input at multiple stages of a proposed action. It enables the public to have interaction with the lead agency and to provide detailed feedback on proposed actions or policies. This type of public participation involves two-way communication between the lead agency and the public. However the lead agency still retains final decision-making authority.

3. **Public Recommendations.** Public Recommendations involve interested parties negotiation recommendations to provide the lead agency. Participating in a negotiation offers the public more influence in the decision-making process. Although the lead agency still retains final decision-making authority, the agency is under some pressure to accept the recommendations from the negotiating group.

4. **Collaborative Decision-Making.** Collaborative decision-making required interested parties to negotiate a consensus-based solution to the dispute. This level of participation enables greater decision-making authority to those involved in the negotiation. The resulting agreement is presented to the lead agency or a federal or state government representative for consideration into the final decision.

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20 These four levels of participation are modified based on CDR, 1999.
COORDINATED RESOURCE MANAGEMENT

IN CONTRAST TO PUBLIC PARTICIPATION AS IMPLEMENTED THROUGH NEPA, COORDINATED RESOURCE MANAGEMENT (CRM) IS A VOLUNTARY collaborative process involving natural resource agencies and other resource managers, landowners, and users. CRM is based on the idea that if people communicate and have a cooperative attitude, they can collaboratively resolve resource disputes. As a collaborative team, they can create and implement resource management plans over a large planning area or they can target specific resource disputes. CRM seeks to achieve compatible management of fish and wildlife, livestock, recreation and other resource uses. Historically, CRM has targeted locations with a mixture of public and private land ownership and interests. It can be used whenever and wherever there are resource conflicts but is especially encouraged in disputes involving resource agency decisions (Swanson 1994).

Necessary elements of CRM include:

- Diverse participation of groups, land owners, and resource agencies who have an interest in the resource(s),
- Participants express needs and interests rather than positions,
- Through consensus decision-making, all have equal opportunity to develop their ideas for resolving the dispute, a focus on the collective needs of interests in the resource and the opportunities that resource(s) offer,
- Commitment to the successful resolution of resource disputes to improve long term resource management.

Similar to other collaborative processes, CRM often selects an unbiased facilitator to oversee the process, run meetings, and assist with communication maintenance. Additionally, CRM processes typically organize a “tour” of the area to provide participants a chance to learn about the resource dispute first hand.

Ideally, CRM produces a plan that when implemented and monitored will address all goals for resource management adequately. It is ratified through signatures. The plan must include details about specific strategies such as habitat improvement, grazing patterns, resource monitoring frequency and scope and any other action the team takes to manage the resource.

- Technical review team (TRT): the most frequently used tier. TRTs function at the small watershed, ranch, or allotment unit. They include technical experts, landowners, resource agencies, permit holders, and interest groups.
- Steering Committee (SC): SCs usually represent broad areas such as Conservation Districts, Bureau of Land Management (BLM) Resource Areas, and counties. The area should be large enough to include multiple wildlife
management areas, ranches, and watersheds. SCs have jurisdiction over TRTs. SC membership should include policy makers, organizational representatives, and other decision-makers. SCs form policy, and provide guidance but do not develop technical solutions. Within SCs there are options for various sub-groups to participate through example, standing committees, executive committees, and ad hoc committees. These sub-groups can screen issues and completed technical projects before they are presented to the SC. The larger the area under a SC the more useful are sub-groups within a SC.

✔ State Executive Committee (SEC): SECs are comprised of head of Federal and State agencies representing various states involved as well as other organizational heads. The top managers are brought together under the auspices of authority for CRM. These are:

- The Public Rangelands Improvement Act, Section 12 (1978),
- The National Interagency Memorandum of Understanding (1987) between Cooperative Extension, Forest Service, Bureau If Land Management and Soil Conservation Service, and
- Administrative Dispute Resolution Act (1990).

The most recent authority for CRM, the Administrative Dispute Resolution Act (1990) encourages alternative means of dispute resolution in lieu of adjudication to resolve disputes. Specifically its purpose is to “authorize and encourage Federal agencies to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes and for other purposes” (Cleary and Phillippi 1993, p.3-2).

The sequence of steps is:

1. **Initiate a CRM**: When a landowner, Conservation District, or agency recognizes the need for a resource plan they can request others to work with them. For large areas, several individuals and/or agencies are involved. Agencies with responsibility for the largest part of the garget area take a primary role.

2. **Develop an analysis of the management situation**: An interdisciplinary team coordinates with the primary agency to write an analysis (ID team) outlining the resources and issues of concern. The existing situation is outlined as well as the desired future condition. It includes possible management practices and their environmental, social, and economic consequences. An effort is made to involve the public concerns though public meetings, and press releases. The analysis, when completed, is made available to potential CRM members.

3. **Select or recruit CRM team members**: The SEC recruits CRM team. In lieu of a SEC, a Conservation District or community leaders, the primary agency, and landowner can recruit participants. The CRM team is typically comprised of field
professionals, representative of the primary agency, other involved agencies, environmental interests, landowners, and other interest groups.

4. **Select or recruit a facilitator:** The Primary agency and SEC recruit a neutral facilitator. The tasks performed by this person include “meeting management, communication, role clarification, team building, working with diverse audiences and sometimes difficult people, visioning, goal and objective setting, decision making, and group maintenance” (Cleary and Phillippi 1993, p. 8-5)

5. **Send information to the CRM team:** The primary agency mails “pre-tour packet” to the CRM team two weeks before the first meeting. The packet contains maps of the area and detailed information including present management activities, constraints, and desire future conditions. Unresolved issues are highlighted. It should be clear that the CRM team will be free to develop their own plan for resource management in the planning area. They may use all or parts of the listed possible management practices or develop completely new ideas. If they succeed in developing a plan by consensus, it will become the ‘proposed action’ upon which the primary agency will conduct any needed environmental analysis” (Cleary and Phillippi 1993).

6. **Tour the planning area:** Often the tour provides the first meeting for the CRM team. A facilitator is on hand to develop ground rules and the team’s role. They also discuss time lines and commitments. The tour can occur on foot, horseback or vehicle. Each CRM member may describe his/her vision for the resource. Gaps in the earlier situation analysis may be noted and a list made to acquire additional needed information.

7. **Write the CRM plan:** The meeting that follows the tour focuses on goals for resource management based on common ground and consensus. Objectives are written as specifically as possible. At any point the agencies involved can make a final decision on any proposed action. The agency representative must communicate any disagreements with the CRM plan as soon as possible.

8. **Analyze the CRM plan:** Based upon consensus in reaching a plan, the ID team analyzes the effects of the proposed CRM plan as it pertains to agency actions. It is evaluated as one of a range of alternatives.

9. **Review and approve the CRM plan:** The primary agency, as part of the SEC, must concur with the CRM plan and agree to use it as the proposed action.

10. **Continue scooping and NEPA documentation:** The consensus reached proposed action, as well as other alternatives, is circulated to affected interests for their review. Analysis of the proposed action and alternatives is documented as an EA. If, due to public comment, the primary agency changes their mind, the change to the proposed action is presented to the CRM team for new consensus.

11. **Make a decision:** After the EA is completed, the primary agency determines the impact of the proposed action on the “human environment.” The agency then
issues a ‘finding of no significant impact (FONSI)’ and a notice of decision describing the proposed action as the alternative of preference.

12. **Consider appeals**: The public may obtain a copy of the EA and appeal the decision. If significant changes are suggested, the CRM team may reconvene.

13. **Implement and monitor**: The plan should be implemented following its completion. Continual monitoring is recommended to determine if the plan meets management objectives:

14. **Conduct annual reviews**: The information gathered from monitoring is used in periodic reviews by the CRM team, which meets annually or semiannually.

   "Experience has shown that when key people do not continue to meet and make management actions by consensus, the plan is more likely to fail. No matter how well thought out, almost every plan needs fine tuning and some may need major adjustment." (Cleary and Phillippi 1993, p.8-10)

15. **Evaluate and re-plan**: The passage of time, new information, or a change in agency goals will necessitate the need for additional planning or a new plan. Whether the CRM steps are to be repeated is determined by how much the new plan may differ from prior documented plans.
Appendices

✓ CHECK IT OUT: A REAL-LIFE AGREEMENT

A real-life agreement is presented here to illustrate features of an effective agreement as described in Chapter 2. It provides an interim solution to a long-standing dispute among federal, state and local agencies and interests.

Memorandum of Agreement

Regarding Beach Road in Oak Bluffs

November 21, 1996

Section I-Statement of Purpose

This agreement is made this ____ day of __________, among the Massachusetts Department of Environmental Protection (“DEP”), the Massachusetts Highway Department (“MHD”), the Massachusetts Department of Environmental Management (“DEM”), the town of Oak Bluffs and Edgarton (the “Towns”) and the Dukes County Commissioners (“DCC”), because they have mutually agreed that is in the public interest to proceed promptly with the actions called for herein.

The Parties responsible for implementing the agreement are identified.

The below Agreement sets forth an interim, short-term alternative to attempt to reduce storm drainage to Beach Road agreed to by all parties named herein at the second of two “Interim Erosion Control Workshops” help on January 10, 1996. Although all parties have conceptually agreed to this Interim measure, the proposed represents the preferred choice of MHD. These workshops were developed and held by MHD and facilitated by Greg Sobel, consultant to MHD. This interim temporary alternative is an attempt to protect the roadway until a long-term erosion control measure and storm damage reduction is implemented, pursuant to applying for and obtaining all applicable permits. This alternative is also seen as an opportunity to gain new information concerning sand transport at Sylvia State Beach that may be valuable to future management of this resource as well as the ongoing long-term study.

The purpose of agreement is clearly stated. The Parties view the agreement as an opportunity to gain new information that may be valuable to future management of the resource.

In the spirit of cooperation and partnering the representatives of the following private organizations and public agencies participated in the Interim Erosion Control Workshops in support of the process utilized to determine the alternative outlined in this document: Representative Eric T. Turkington; State Senator Henri Rauschenbach; Friends of Sengekontacket ("the Friends"); Martha’s Vineyard Commission ("MVC"); Oak Bluffs Conservation Commission; Edgartown Selectmen; Edgartown Conservation Commission; Edgartown Shellfish Warden and Edgartown Harbormaster, Author Gaines and Graham Giese of Woods Hole Oceanographic Institute/Sea Grant Program and Marine Policy Center; MHD; DEM; DEP; MCZM; U.S. ACOE; MDFW and NHESP.

Participants in the collaborative process who support the agreement but bear no direct responsibility for implementation are identified.

In entering into this agreement, it is the Parties’ objective to facilitate resolution of interim storm damage minimization to Beach Road and Sylvia State Beach, while providing an opportunity for completion of MHD’s analysis of long-range alternatives to protecting Beach Road and managing the barrier beach complex, while at the same time adhering to Wetlands Protection Act and other applicable regulations.

Section II – Background

Sylvia State Beach is located on the island of Martha’s Vineyard in the Towns of Oak Bluffs and Edgartown. Sylvia State Beach, owned by “DEM” and maintained by the “DCC” is a barrier beach as defined in the Mass. Wetlands Protection Act regulations at 310 CMR 10.29 and identified in the Mass. Coastal Zone Management Barrier Beach Maps as BB # Ob-1. Sylvia State Beach (SSB) is bordered to the East by Nantucket Sound and Sengekontacket Pond to the West. There are two fixed inlets into the pond, one at the northern end of the barrier beach and the other centrally located on the barrier beach.

The barrier beach is approximately 2.5 miles in length. This agreement is intended to address erosion in the area beginning at the northern inlet in the vicinity of the existing Stone Groin Field and extending approximately 500 feet past the southern inlet or 7000 feet.

Beach Road, a State Highway under the jurisdiction and maintenance of the MHD, runs the length of Sylvia State Beach. It provides an important link for emergency and other vehicles between Oak Bluffs and Edgartown. It is a paved two-lane roadway with a paved shoulder for parking adjacent to the beach as well as paved bike path offset from the road. Longshore sediment volume and transport to SSB may have been reduced and interrupted over the years through construction of a variety of coastal engineering structures (jetties, groins, seawalls, etc.) northeast of the pond and through channel construction and maintenance. Erosion of the beach, particularly that area immediately down drift of the last two stone groins, coupled with Beach Road’s low elevation relative
to storm surge and waves, has resulted in storm damage to Beach Road. The road has in the past been temporarily closed to traffic during and immediately following moderate to major coastal storm events due to storm overwash and the need for maintenance and repair of the storm damaged roadway. Beach Road along Sylvia State Beach has not sustained significant damage since the December 1992 Northeaster due, in part, to the dune building, plantings, beach nourishment and management efforts coordinated by the Friends through the Friends of Sengekontacket Barrier Beach Task Force.

In 1993, a portion of the pond was dredged by the DEM and the towns to improve navigation, water circulation and water quality apparently reduced by the formation of sand shoals within the pond. This project included beach nourishment of SSB with the dredged material providing temporary shore and road protection. On several different occasions MHD has placed several thousand cubic yards of beach nourishment material to provide additional temporary protection of Beach Road from storm damage.

The Long Term Alternative Study requirement is embodied in Memorandum of Understanding entered into between the MHD and DEP on December 2, 1993 and amended on November 15, 1994 and again on June 21, 1995. Condition number 7 required MHD to develop a long-term plan to address the issues of road maintenance and wetlands protection along Beach Road. As discussions between the agencies proceeded would need to be identified, permitted and implemented until an approved long-term alternative was found.

Section III – Interim Short Term Alternative

The interim short-term alternative, selected by MHD and agreed to by all participating parties herein is as follows:

1. Temporary Adjustable Wooden Groin Construction

MHD, DEM and the Towns will construct one to three temporary adjustable wooden groins (TAG).

The temporary adjustable groins shall be strategically placed on Sylvia State Beach down drift of the existing groins at approximately the same 400-foot intervals as the existing groins. This interim alternative shall have a life expectancy not to exceed 10 years. The groins shall be comprised of non-leaching treated timber or other such temporary materials. The groins shall be constructed, monitored, and maintained in combination with the beach nourishment outlined below. If the groins are determined to be causing accelerated erosion or other adverse impacts, additional beach nourishment, groin adjustment, groin removal or other immediate appropriate measures may be required of the applicant.
The parties recognize there may be unanticipated negative consequences to the preferred alternate and acknowledge additional actions may be required.

2. Beach Nourishment/Groin Cell Renourishment
DEM, MHD and the Towns will conduct a beach nourishment project. The beach nourishment shall be engineered so as to provide an adequate volume of sediment to fill the above-referenced groins to entrapment design. A series of permanent control points shall be installed along the groins. The control points shall be installed at points where 25% and 50% of the groin cell volume would be eroded. Once the nourished beach within a cell or cells has eroded to the 50% mark, renourishment, adjustment of the TAGs or other appropriate remediation measures, as determined by the Technical Advisory Group established herein and approved by the permitting Agencies, will be required and performed by the Towns and DCC with cooperation and assistance from DEM and MHD. Any renourishment or other approved remediation measure shall be initiated within sixty (60) days, completed as soon as possible, but not later than six (6) months from approval. Groin adjustment shall be completed within sixty (60) days. The sediment necessary for the beach nourishment/renourishment shall be obtained primarily from the dredging project described below or any other compatible island source (e.g., other permitted dredge projects, borrow pits, etc.).

Objective engineering standards are used to determine when to add sediment to the beach. A multi-agency technical advisory team is established to oversee work, providing a forum for ongoing communication among the Parties.

3. Dredging of Sengekontacket Pond
The Towns, DEM and MHD will work cooperatively to dredge Sengekontacket Pond. The dredge materials, if of a compatible nature, shall be used for beach nourishment and groin filling project(s) described above. Dredging of Sengekontacket Pond shall provide the primary means of obtaining sand to be used for beach nourishment as described in Section 111.2 above. An advantage of obtaining sand by this means is that pond dredging is expected to have a number of collateral benefits to the pond, including: enhancement of water quality and circulation; improved navigability; improved public access, via boats, to the coast; and enhancement of pond fisheries. It is anticipated that an added benefit is the dredge materials that will be utilized for the beach nourishment/groin construction project, including periodic renourishment, may also provide a level of protection to Beach Road until such a time as the long-term study has been completed, and a preferred alternative chosen, permitted and implemented.

Because the dredge materials shall be used as materials for the beach nourishment project the Towns shall coordinate with the MHD and DEM relative to the beach nourishment project described above.
The dredging plan design, review and permit filing shall follow the same outline and timeline procedures as established for the groin construction and beach nourishment above.

It is understood that MDH and DEM will be responsible for filing and obtaining all necessary federal, state and local permits for complying with other applicable requirements relative to the dredging.

Responsibilities of each Party are clearly stated.

4. **Annual Maintenance and Monitoring**

Upon the completion of the construction of the groins, dredging of the pond and the beach nourishment project, the parties to this agreement shall review the total project annually for operations, functions, and maintenance. Beach profiles and quarterly reports shall be prepared by MHD with the cooperation and assistance of the Towns, DCC, MHD and the Friends. Beach Profiles and quarterly reports shall be submitted to the Technical Advisory Committee, DEP, MCZM and the Conservation Commissions for review, comment and approval. Maintenance of the groins with regard to repair, adjustments, etc. shall be the responsibility of the DCC with assistance and advice from DEP, OHD, DEM, CZM, and the Conservation Commissions. Beach nourishment maintenance as well as maintenance dredging will be the responsibility of the Towns in cooperation with the DCC and financial assistance from MHD and DEM. The Friends will assume a role in the planning, facilitation, and implementation of the monitoring and research activities to evaluate the effectiveness of this interim alternative.

If any repairs or modifications become necessary, the parties to this agreement shall meet to discuss the appropriate measures to be taken to address the repairs or modifications. The mechanism and responsibility for adjustments of the groins shall be outlined in the design plan for the groins. The maintenance and monitoring shall be performed as described in the Final Monitoring and Maintenance Program (M.M.P.) dated September, 1996 and attached as Appendix #1. [Eds. Note: This appendix is not included here.]

The Towns, MHD, DEM, and DCC shall be responsible for initiating the annual review meetings and undertaking any necessary repairs or modifications relevant to the project. The Towns shall be responsible for implementing any repairs or modifications that the parties agree to.

If Beach Road is damaged or lost because of the non-permanent nature of the above described measures. MHD will, in compliance with the Wetlands Protection Act, take minimal steps necessary to reopen the roadway, and will inform and work with DEP and the Town Conservation Commissions to establish the necessary actions to reopen the roadway. At the request of MHD, DEP and the Conservation Commissions shall reopen the issue of alternative short-term measures, which may be taken to protect Beach
Road, until a long-term solution is agreed upon, permitted and implemented and will include all parties to this agreement.

Provision for annual maintenance and monitoring program identifies who will do it and how it will be done. If repairs are necessary, the Parties will reconvene to work out appropriate actions.

4. **Education and Facilitation**
   See Appendix #2.

**Scheduling**

Notwithstanding this document, MHD, DEM and the Towns shall proceed with the design, monitoring and maintenance plan, permitting and construction pursuant to the following schedule:

- **April-June 1996** – a Section 404 permit application shall be filed with the U.S. Army Corps of Engineers for the temporary wooden groins, dredging of Sengekontacket Pond and Beach Nourishment as well as other applicable Federal, State and Local permit applications, including a Notice For Project Change with MEPA.
- **August – October** – The issuance of the U.S. ACOE, Section 404 permit, Order of Conditions, Chapter 91 permit/license, 401 Water Quality Certificate, CZM Federal Consistency, other applicable permits.
- **October 1996** – for Advertisement of Project
- **November 1996** – for contract initiation and groin construction.
- **November 1996** – commence dredging.
- **March 15, 1997** – for completion of project.

Lays out schedule.

**Section IV - Permits Required**

- Natural Heritage Sign-Off
- Order of Conditions – Oak Bluffs and Edgartown
- Local Wetlands by-law – (Dependent upon applicant)
- Chapter 91 Permit and License
- 401 WQC – dredging and Groins
- MEPA – Project Change or new Certification
- CZM Federal Consistency
USACOE – 404 Permit
Martha’s Vineyard Commission – D.R.I.
DEM Authorization

Identifies permits needed for implementation.

**Section V – Estimated Costs and Contributions**

As stated in Section III, Item I the interim alternative shall have a life expectancy not to exceed 10 years. However, as outlined below, the financial commitment of the participating parties dedicates funding for a three-year period. The provisions set forth under this agreement to reconvene if repairs or modifications become necessary. If said repairs or modifications occur subsequent to the three-year funded maintenance program then MHD, DEM and the Towns will need to address the financial aspect of such repairs or modifications.

1. **Total Construction**
   a. Estimated Cost: $666,667
   b. Contribution MHD/DEM (75): $500,000
      Towns (25%): $166,667
Town of Oak Bluffs
The town of Oak Bluffs will contribute, subject to Town Meeting approval, the sum of $83,000 or 12-½% of the total cost of the project, whichever is the lesser amount. Further the town of Oak Bluffs will, at the earliest possible time, bring before a Town Meeting the request for the above-mentioned funds.

Town of Edgartown
The town of Edgartown will contribute, subject to Town Meeting approval, the sum of $83,000 or 12-½% of the total cost of the project, whichever is the lesser amount. Further the town of Edgartown will, at the earliest possible time, bring before a Town Meeting the request for the above-mentioned funds.

2. Annual Maintenance Program (Three Years)
a. Estimated Costs: $100,000
b. Contribution MHD/DEM (75%): $ 75,000
   Towns (25%): $ 25,000

Dukes County will contribute the sum of $25,000 per annum or 25% of the total cost of the maintenance of the project whichever is the lesser amount.

Financial responsibilities of the Parties are spelled out.

3. Education and Facilitation
See Appendix #2

Section VI – Dispute Resolution

1. The Parties shall attempt to resolve informally any disagreements concerning implementation of this Agreement or any work required hereunder.
2. If a Party objects to this agreement, to any written approval, disapproval, claim, demand or determination of one or more of the other Parties made in accordance with this Agreement, said Party shall notify DEP and MHD in writing of its specific objections within seven (7) days of receipt of said written approval, disapproval, claim, demand or determination.
3. The MHD will then reconvene the workgroup for discussions, meetings, fact-finding, mediation, and any other activities which will facilitate resolution of the objection. At mediation, and any other activities which will facilitate resolution of the objection. At any time, the objecting Party may be required to submit a more complete written statement of its objections and the factual and legal basis for such objections.
4. After the dispute has been resolved or the date for completion of dispute resolution has passed, the Facilitator, or his/her designee, shall issue a written statement setting forth the agreement or his or her findings and the final determination in the matter. Such agreement or determination will be incorporated as a modification, if applicable, pursuant to Section U below.
5. Entering objections pursuant to this section shall not be cause for delay of the implementation of any work not specifically the subject of the written notice of objections unless it is functionally dependent to the work objected to. Deadlines for other work which is specifically the subject of written notice of objections shall be extended the amount of days equal to the number of days which the project has been delayed during "dispute resolution."

Dispute resolution provision included. The Parties reconvene if informal attempts to resolve disputes do not work.

Section VII – Modifications

1. This agreement may be modified or amended by written agreement of the Parties.
2. In the event that unanticipated circumstances beyond control of any party to this agreement, prevents that party from complying with deadlines proved herein, including but not limited to delays in obtaining federal, state, and local permits, any party responsible for undertaking work described above may request in writing, that this agreement be modified pursuant to this section so that the activities outlined in this agreement can be performed.

The agreement may be modified at a later date. Unanticipated circumstances may require it.

Section VIII – Reservation of Rights

1. Notwithstanding the parties’ performance pursuant to this agreement, nothing in this agreement shall be construed as or shall operate as barring, delaying, diminishing, or adjudicating or in any way affecting any legal or equitable right of the DEP or Conservation Commissions, to take any action at any time, including actions under c. 131, b 40 and regulations promulgated there under, with respect to the subject matter covered by this agreement, or in any way affecting any other claim, action, or demand which any Party may have with respect thereto.

Appendix #2

Although the Friends bear no responsibility, financial or otherwise for the work outlined in this agreement the group has offered to extend its proactive involvement. The Friends will coordinate communications between the Barrier Beach Task Force members and the island based media. Leadership for planning public forums and special presentations for the general public and to disseminate information, will be the responsibility of the Friends in cooperation with the Towns and agencies.

The Friends will be accessible to the community for their views on the beach and this Interim proposal and building support for volunteer effort, such as vegetative
plantings, as needed. The Friends will facilitate communication between the community, Towns, island based agencies, Executive Office of Environmental Affairs Agencies and MHD.

The Friends has long recognized the importance of environmental education to enhance the public understanding of these natural assets. Fortunately, several organizations have existing programs within the barrier beach complex. The Friends will continue to support these programs and promote the development of new initiatives utilizing applicable information published in the “Guidelines for Barrier Beach Management in Massachusetts.”

The agreement formalizes an on-going role for the citizens’ group, Friends of Sengekontacket. This role can serve as an important link to the community and help avert future disputes through education and dialog.

✓ CHECK IT OUT: CHECKLISTS FOR CITIZENS’ GROUPS

Citizens’ groups face special challenges when participating in a collaborative process. Working through the following checklists will help them decide whether they are ready to participate and what they need to do to prepare themselves for negotiation.

Citizens’ groups face special challenges when evaluating and assessing their involvement in a collaborative process, especially when it comes to making a decision to participate in what could be a time consuming and resource intensive negotiation. Citizens’ groups often depend on volunteers with many commitments for their time and attention. They may not have clear lines of authority for decision-making. They may not have access to professionals that are available to the other groups to analyze and evaluate data. They may not have professionals skilled in collaborative process. These factors can influence the success of negotiation where skills and resources do make a difference (Carpenter and Kennedy 1988; Susskind and Cruikshank 1987).

Taking time to use the following checklists\(^{22}\) should assist citizens’ groups in determining their readiness to negotiate. The checklists are

- Evaluating the “How” of Negotiation
- Evaluating Group Dynamics
- Evaluating the “What” of Negotiation
- Getting a Handle on the “What” of Negotiation

\(^{22}\) (Ball and Reid 1999)
This type of assessment and preparation is critical to increasing the probability of a successful negotiation and agreement. By thinking about the questions posed in the checklists before negotiations groups can set process ground rules during the pre-negotiation step that will support their effort in the negotiation. Such preparation will enhance their ability to participate effectively in the negotiation. Additionally, these questions will help groups avoid potential problems during negotiations.

**Evaluating the “How” of Negotiation**

Ideally, the questions that follow should be answered with a “YES” to indicate that your group is ready to negotiate. A ”NO” is a "red-flag" indicating the issue needs some attention before proceeding.

1. _____ Can your group effectively “speak with one voice”?

   “Speaking with one voice” is a negotiating strength. Hence, it may be an advantage for different interests in the community to be represented by a single group that can “speak with one voice”. However, if the interests within the community conflict or if there is tension among those who represent the different interests in the community, it may be better for the community to speak with more than “one voice” to assure an equitable representation of all interests.

   If your group chooses to “speak with one voice”, sufficient time must be allocated for the team members to negotiate among themselves to develop internal consensus about the issues, their “one voice”. This internal negotiation may be more difficult than the external negotiation with the other parties but is an essential step.

2. _____ Is everyone who is in a position to undermine an agreement either represented or supportive of the negotiation?

   Citizens’ groups must decide who will be on their negotiating team to represent their constituents’ interests. Although it may be easier to put together a negotiating team with members who are all in agreement, in the end, those not included can sabotage the process. Being inclusive at the beginning may assure a sustainable agreement at the end.

3. _____ Do team members have the time and resources to attend meetings?

   Team members should have a reasonably clear idea of how much time will be involved to participate in the negotiation. Not only is time necessary for the external negotiations with the other parties, but time must also be allocated for internal group meetings as well as individual study and learning. Often with citizens’ groups, members have other jobs and cannot devote their full attention to the issues at
hand. It may be necessary, therefore, to hire individuals who can spend the time necessary to represent the community effectively in the negotiation.

4. _____ **Are there any legal or procedural constraints such as compliance with open meeting laws or the need to have group members vote for ratification that must addressed?**

Such concerns may impose limitations on how and when negotiations are held, who can participate, and how they should be structured. If your group makes decisions by consensus, time must be left for the negotiating team to consult with constituents. If the team represents the public, time must be allocated for public education.

5. _____ **Does the team have at least one skilled person responsible for monitoring and coaching?**

In negotiations, the process is constantly changing. People easily overlook the importance of process, the “how”, and focus, instead, almost exclusively on the issues, the “what”. To assure an equitable and constructive negotiation, every group must be sensitive to and effectively participate in designing and monitoring the process.

6. _____ **Is the team willing to devote a portion of every session to an overview, review or discussion of process?**

The “what” of negotiations often includes strong emotions that can easily overshadow review and discussion of process. Participants may believe it is a “waste” of time to discuss process concerns. It can help later on, however, if at the beginning, your group acknowledges the importance of process and group dynamics throughout the pre-negotiation and negotiation steps. This ongoing overview may take only a few minutes at the beginning of every session but should be done regularly.

7. _____ **Does the team have a level of expertise in negotiation that is comparable to the level of expertise of other parties at the table?**

If there is a disparity in level of expertise among the parties, the citizens’ group must assure that differences in skill levels are addressed through ground rules or by hiring skilled personnel. This may involve bringing in an outside coach. Your group should not depend on the facilitator to bridge the gap in expertise (Susskind 1997). Training may also be helpful.
**Evaluating Group Dynamics**

The following checklist can be used to evaluate a group’s readiness to negotiate through its ability to function as a cohesive unit. It can also be useful during the negotiation for ongoing evaluation and monitoring, both of the citizens’ group’s internal process and of the external process of the larger group. If group members check the fist alternative under any of the major headings, the group is well advised to discuss the concern before moving ahead with substance issues. The first alternative, in each case, is an indicator of a potential problem and should be seen as a “red flag” that deserves attention.

1. **Listening**

   _____ Members don’t really listen to one another – they interrupt and don’t try to understand others.

   _____ All members really listen and try hard to understand.

2. **Open Communication**

   _____ Members are guarded in discussions.

   _____ Members express both thoughts and feelings openly.

3. **Mutual Trust and Confidence within Group**

   _____ Members are suspicious of each other’s motives.

   _____ Members trust one another and do not fear ridicule or reprisal.

4. **Attitude within Group toward Differences**

   _____ Members avoid arguments, smooth over differences, and suppress or avoid conflicts.

   _____ Members not only respect and accept differences, they actively search for differences and work through them openly – they are not pressured to conform.

5. **Mutual Support Present**

   _____ Members are defensive about their ideas.

   _____ Members are able to give and receive help.

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23 The Field Program Associate in the Partnership for Rural Improvement, Northwest Educational Laboratory, (NWREL), 1978
6. **Level of Involvement and Participation**
   
   _____ Discussion is dominated by a few.
   
   _____ All members are involved, free to participate in any way they choose.

7. **Control of Decision Making Clear**
   
   _____ The chairperson controls subject matter and discussions.
   
   _____ All members accept responsibility for productive discussion and decision

8. **Procedures in Place to Respond to Changing Circumstances**
   
   _____ Members find it hard to change procedures that do not work for the group.
   
   _____ Members readily change procedure in response to new situations.

9. **Member Resources Fully Utilized**
   
   _____ Member’s knowledge, abilities, and experience are not utilized.
   
   _____ Member’s knowledge, abilities, and experience are fully utilized.

10. **Goals are Clear and Understood**
    
    _____ Goals are neither clear nor understood.
    
    _____ Goals are clear, are understood.

**Evaluating the “What” of Negotiations**

Ideally, the questions that follow should be answered with a ‘YES’ to indicate that your group is ready to negotiate. A “NO” is a “red flag”, indicating that the issue needs some attention before proceeding.

1. _____ **Does your group agree on the problem and can your group state the problem succinctly?**

   The problem statement is especially important as your group meets with other parties. The problem statement can keep your group from getting “bogged down” in issues and concerns that may be raised by the other parties but which are not of core concern to your group. The problem statement can be a compass for your group in preparing for negotiation and as the negotiation progresses.
2. Can your group defend what it says with relevant data?  
A statement of your interest without supporting documentation will not convince the other parties that your interest is legitimate. Part of the pre-negotiation preparation should include an understanding of what are necessary to support your interest statement.

3. Does your group have resources to gather needed data?  
If additional data are needed, but your group lacks resources for collecting those data, your group will be at a serious disadvantage. Your group should seriously consider whether it is prudent to proceed. If your group decides to proceed, then it will need to address how to remedy the disadvantage.

4. Will the other parties accept your data?  
While data may be available, the other groups may not agree the data is valid. A citizens’ group should assess both its own data and data that might be used during the negotiation and determine whether the data are acceptable to everyone. If there is disagreement over validity of data, it may be necessary to do joint fact-finding before negotiations begin (Susskind and Cruikshank 1987).

5. Does the facilitator have sufficient background in the issues to be addressed?  
Where issues are relatively uncomplicated, the facilitator may not need to have a background in the substance of the issues, or what the negotiation is about. Where issues involve a complex legal history or are very technical, it may be important that the facilitator have a background in similar issues. Your group should ask sufficient questions of the professional’s background to be comfortable with his technical expertise. Your group could also consider using co-facilitators where one is process oriented and the other is substance oriented (Susskind 1997).

6. If your group represents a community-wide constituency, are local media or other resources available to educate and inform the public about the issues?

**Getting a Handle on the “What” of Negotiations**

In situations where the issues are complex and the conflict long standing, it becomes especially important that a group clearly define the overarching problem and the group’s objectives. This will help the group stay “on course” if there is a tendency to get lost in smaller issues or concerns. The steps listed below should leave the group with a succinct problem statement and a list of related objectives to be achieved during the negotiation. Going to the table without such a focus can easily derail a negotiation.

1. **Brainstorm the Issues. Develop a “wish list”.**  
This is not the time to worry about duplication or the length. The goal is to get as
many thoughts and ideas written down as possible. It is important that all points of view are reflected in the list.

2. **Develop a Problem Statement.**
This should be a succinct statement of not more than two sentences capturing the essential problem(s) to be addressed in the negotiation. It is not that reference be made to items on the “wish list” to develop the problem statement.

3. **Evaluate whether each item in the list is essential or not essential to solve the problem as defined in the problem statement.**

4. **Decide whether the problem statement fully captures all those items previously listed as essential. Redefine the problem statement if necessary.**

5. **Remove those items from the “wish list” that are listed as not essential.**

6. **Check the wish list a second time. Look for overlapping or duplicated concerns and reword the statements as appropriate.**

**√ CHECK IT OUT: GUIDELINES FOR GOVERNMENT AGENCIES USING COLLABORATIVE AGREEMENT-SEEKING PROCESSES.**

*The Guidelines that follow are directed towards overcoming the concerns and problems that have been identified. They propose a set of best practices for use of collaborative decision-making process.*

**Guideline 1**
**An Agency Should First Consider Whether a Collaborative Agreement-Seeking Approach is Appropriate**

Before a government agency, department or official decides to sponsor an agreement seeking process, it should consider its objectives and the suitability of the issues and circumstances for negotiation. In particular, before the sponsoring agency convenes a collaborative process, it is essential for the agency to determine internally its willingness to share control over the process and the resolution of the issue.

If after an initial screening negotiation appears plausible, agency staff and management next should discuss whether they are willing to negotiate. An important consideration is

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24 The unabridged recommendations can be purchased from SPIDR. They can be reached at :http://www.SPIDR.org, Report and Guidelines of the SPIDER Environment/Public Disputes Sector Critical Issues Committee, Adopted by the SPIDR Board January 1977.
the relationship of such a collaborative approach to the agency’s statutory decision making responsibility:

✓ What would be the role of the agency or department in the talks? Would the negotiations occur primarily among the stakeholders with agency staff in the role of technical advisor? Or should the agency participate as a negotiating entity? Collaborative processes have succeeded under both options, but the agency’s role should be clear.

✓ What form might an agreement take to be consistent with the agency’s responsibility as final decision maker? For example, in some collaborations, consensus is expressed as an agreement that the agency or department translates directly into regulation or other official action. In others, the product is a consensus recommendation which the agency then considers in making a decision.

Misunderstanding between the agency and stakeholders can occur if the agency calls a meeting for one purpose, but tries to achieve another. One example is convening a process for information sharing and then expecting agreements to emerge. Another is holding meetings under the guise of consensus building, when information gathering is the sole and intended purpose, or portraying a public relations (opinion changing) initiative as a collaborative process. Misuse of collaborative processes diminishes the likelihood of their future use. The same cynicism that sometimes marks public reaction to government’s efforts to solve problems can extend to improperly used collaborative processes.

**Guideline 2**

**Stakeholders Should Be Supportive of the Process and Willing and Able to Participate**

In order for an agreement-seeking process to be credible and legitimate, representatives of all necessary parties – those involved with or affected by the potential outcomes of the process – should agree to participate, or at least not object to the process going forward. If some interests are not sufficiently organized or lack resources and these problems cannot be overcome, the issue should not be addressed through collaborative decision-making.

When decisions are made in consensus-based forums, influence from non-agency parties increases. To preserve the legitimacy of the process, all interests must be adequately represented and have joint control over the shape of the process and its outcomes.

Determinations about representation are easiest when stakeholders are obvious, and when they are prepared to participate effectively in the discussions. Reaching
agreement may be difficult, but at least there is no question about the legitimacy of the process.

The agency should specifically examine whether other agencies, departments, levels of government, and elected officials have a stake in the issues and seek their support for the process. The involvement of other governmental entities is often critical to successfully resolving the issues and implementing the agreements.

The burden of assuring that participants have the ability to participate effectively falls most heavily on the sponsoring agency or department. Training or orientation in how the process works, and support systems – expertise, information resources, or financial support to enable participants to get to meetings or to communicate with their constituencies – can be provided if acceptable to all parties as part of the process.

**Guideline 3**

**Agency Leaders Should Support the Process and Ensure Sufficient Resources to Convene the Process**

Agreement-seeking processes need endorsement and tangible support from actual decision-makers in the sponsoring agency or department with jurisdiction and, in some cases, from the administration or the legislature. The support and often the involvement of leadership are necessary to assure other participants of the commitment of authorized decision makers who will be responsible for implementation. Their support helps sustain the process through difficult periods and enhances the probability of reaching agreements.

Sponsoring agencies also need to ensure that there are sufficient resources to support the process from its initiation through the development of an agreement. As part of the pre-negotiation assessment, sponsors need to determine how they will meet evolving resource needs and provide funds and staff to accomplish the goals of the negotiation.

When leaders show visible support, including consistent involvement in meetings and substantive discussions, other participants are reassured that their investment of time and resources is worthwhile. If agency leaders do not provide support, caution should be exercised in initiating collaborative agreement-seeking processes. Without this support, the likelihood of success is greatly diminished. The sponsoring agency needs to ensure that it is appropriately represented at the table, and is prepared to support its representative. It is also important for the sponsoring agency to be consistent, and to extent possible, to speak with one voice throughout the process.

Multi-party negotiations can require considerable staff time and funds. Participants may need technical assistance beyond what the agency can provide. Negotiators collectively may want the advice of outside experts. If a key party lacks sufficient staff or other resources, it may be important to provide them with organizational or technical
assistance within the process. If resources cannot be secured to assist key parties to participate, either as part of the process, or by agreement or with help from other parties, then the agency should use means other than collaborative agreement-seeking to reach a decision.

**Guideline 4**

**An Assessment Should Precede a Collaborative Agreement-Seeking Process**

Before an agency, department, or official initiates an agreement-seeking process, it should assess whether the necessary conditions are present for negotiations to take place. Presence of the factors in guidelines 1-3 are best ascertained as part of a deliberate assessment.

There are three phases to successful agreement-seeking process: Phase 1, the assessment and preparation, or pre-negotiation phase, involves determining whether the necessary factors to ensure legitimacy are present as well as planning and preparing for the process. Phase 2 involves engaging in negotiations to try to reach an agreement. Phase 3 involves implementing the agreement.

During the pre-negotiation phase, an assessment is conducted to help the agency and other participants determine whether or not to proceed. Potential participants need to agree to participate before an agency decides to pursue an agreement-seeking process. It is here at the beginning of the process when an experienced facilitator may be of greatest service. Unfortunately, agencies often call on the facilitator only after they have invited all the participants and scheduled the first meeting.

The assessment involves ascertaining whether key considerations are met. A facilitator often plans an integral role at this stage, consulting with the agency to help clarify its objectives, and interviewing potential parties to ascertain their views. This phase provides an opportunity for the facilitator to develop agreements among all participants about the scope of the issues, objectives and design of the process, role of consensus as a decision rule, and timeliness. While the assessment can take weeks, experience demonstrates that it is key to success and saves time overall.

**Guideline 5**

**Ground Rules Should be Mutually Agreed Upon by All Participants and Not Established Solely by the Sponsoring Agency**

All participants should be involved in developing and agreeing to any protocols or ground rules for the process. Once ground rules have been mutually agreed upon, the facilitator should see that they are carried out, or point out when they are not being followed and seek to remedy the problems. Any modification to ground rules should be agreed upon by all participants.
Ground rules should clearly state the purpose and expectations for the process and the end product, how the process will be conducted and decisions made, the roles of the participants, including the sponsoring agency or department, the role of the facilitator, and other matters that are important to assure participants of the fairness of the process.

**Guideline 6**

**The Sponsoring Agency Should Ensure the Facilitator’s Neutrality and Accountability to all Participants**

It is preferable for all parties to share in selection of the facilitator. When that is not possible, the agency or department has a responsibility to ensure that any facilitator it proposes to the participants is impartial and acceptable to all parties. The facilitator should not be asked by the sponsoring agency, or any other participant, to serve as their agent, or to act in any manner inconsistent with being accountable to all participants.

A credible process is often either established or undermined n the early stages by such factors as how and by whom the facilitator is selected, how and by whom the participants are identified and invited, and how and by whom the process is planned and structured. Under these conditions, a facilitator for an agreement-seeking process should be independent of the sponsoring agency.

When the agency engages a facilitator for a public policy dispute, the participants may not be involved in the selection process because of procurement requirements or because participants have not yet been identified. Under these circumstances, ground rules can include procedures to enable participants to review the facilitator’s qualifications, to evaluate performance, and/or to replace the facilitator at any time during the process if participants feel that she or he is biased or ineffective.

The selection criteria for facilitators or mediators should be based on experience, skill, ability, and acceptability to participants, and not solely on costs. Lump sum or fixed price contracts may not be the best mechanisms for hiring this kind of professional. Until the assessment is complete and a process designed, it is very difficult to predict the exact number of hours needed to work with participants toward reaching agreement. Procurement mechanisms ought to be flexible enough to allocate additional time and funds as warranted, so as not to slow down or halt the negotiation process.

Contracts should be negotiated and executed before the facilitator begins any work. Facilitators and sponsoring agencies should assume that all contracts could be read by all participants without destroying trust on any side. Contracts should assure that the facilitator has latitude to act independently of the sponsoring agency and should not constrain his or her ability to communicate with all participants.
**Guideline 7**
The Agency and Participants Should Plan for Implementation of the Agreement from the Beginning of the Process

There are two aspects of implementation: formal enactment and actual implementation. Planning for implementation is integral to the process.

Many agreements developed through collaborative processes are in fact a set of guidelines that need formal adoption. Implementation can be problematic if steps are not taken from the beginning to ensure linkages between the collaborative process and the mechanisms for formalizing the agreements reached. The agreement itself should set out clear steps and stages for implementation: clarifying tasks, resources, deadlines, and oversight responsibilities.

**Guideline 8**
Policies Governing These Processes Should Not be Overly Prescriptive

Policymakers should resist enacting overly prescriptive laws or rules to govern these processes. In contract to traditional processes, consensus-based processes are effective because of their voluntary, informal and flexible nature.

The kinds of processes encompassed by these guidelines occur within the framework of traditional policymaking practices in a representative democracy. They are adjuncts to – not replacement for – traditional practices. Collaborative approaches are based on participants’ willingness to come together voluntarily to explore ways to reconcile competing and conflicting interests. This kind of exploration is not likely to happen in an atmosphere where people are required to participate or where their manner of participation has been narrowly prescribed.

Therefore, when legislation, rules and guidelines are developed concerning these processes, they should be limited to encouraging the use of collaborative agreement-seeking processes, and setting broad standards for their use. Overly prescriptive or burdensome guidelines can act as a disincentive to participation.\(^{(c)}\)

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**CHECK IT OUT: FORMULATING GROUND RULES FOR AGREEMENT-SEEKING PROCESSES**

*Ground rules usually address the following issues:*

1. The purpose and scope of the process.
2. Participation: role of agency staff; whether participation of alternates is permissible; provision for inclusion of new parties; observes; other interested parties.
3. The roles of participants: whether all participants will have relatively equivalent status.
4. Decision rules: the meaning of consensus as well as what will happen if consensus is not reached.
5. The end product: gaining ratification; what the agency will do with the agreement; the degree of commitment by participants to abide by any agreement.
6. Understanding about participants’ activities in other proceedings: whether ‘good faith’ participation will constrain the activities of participants or their constituents in other forums, such as a legislative session, administrative hearing or judicial proceeding.
7. Responsibilities of representatives for keeping their constituencies informed and gaining ratification of agreements reached at the negotiating table.
8. Informing those not at the table: who will be kept informed of progress and how this will happen.
9. Organization and conduct of the meetings: agendas; record keeping; responsibilities of the facilitator.
10. Selection and removal of the facilitator: the role of participants in the selection, evaluation or payment of a mediator or facilitator. Provision for replacing the facilitator if the participants feel he or she is biased or ineffective.
11. Withdrawal of a participant: If a participant withdraws, everyone left at the table should determine whether the process can go forward.
12. Communications with the media: how and by whom.
13. The timetable or schedule.
15. Information: provisions for sharing information; confidentiality.

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The following "best practices" should govern facilitators or mediators as they conduct agreement-seeking processes:

1. Facilitators or mediators should not participate in any process that is misrepresented as to its purpose or that is intended to circumvent legal requirements.

2. Facilitators or mediators should serve as advocates for the principles that underlie collaborative decision-making processes, including structuring and managing the process to ensure representation and effective participation by all key stakeholders, whatever their cultural, racial, religious or economic backgrounds.

3. Facilitators or mediators should not be advocates for any participant’s point of view on any substantive issue.

4. Facilitators or mediators should protect the confidentiality of private communications with any of the participants.

5. Facilitators or mediators should gain the agreement of all participants to the ground rules for the process and to any subsequent modification to them. Once ground rules have been mutually agreed upon, facilitators or mediators should enforce them impartially.

6. Facilitators or mediators should address situations where it appears that any participant is not acting in good faith.

7. Facilitators or mediators should not be inhibited by any attempt of the sponsoring or funding agency to control the process though them, such as inhibiting their ability to communicate or manage communications with other participants. As a last resort, if the matter cannot be resolved satisfactorily, they should withdraw from the process.

8. Facilitators or mediators should advise the parties when, in their opinion, the process no longer appears to be meeting its objectives.

9. Facilitators or mediators should withdraw from the process if their continuing involvement is not acceptable to the group.

10. Facilitators or mediators should not be engaged to carry out other kinds of non-neutral activities for the sponsoring agency at the same time they are under contract to facilitate an agreement-seeking process. If facilitators or mediators should disclose when they have continuing or frequent contractual relationships with one or more of the participants.

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References


Susskind, Lawrence. 1997 “Multi-party Public Policy Disputes: A Separate Breed,” *Dispute Resolution Magazine,* Fall.


Accommodate – a lose/win approach to dispute resolution that suggests individual has low concern for personal goals and high concern for relationship building.

Adversarial behavior – behavior in a dispute situation that is described as uncooperative, argumentative, hostile, combative, and antagonistic.

Advocacy science – science that is used to support or advocate a position.

Alternatives and consequences – refers to a public issues education approach that requires the public to identify alternative solutions and to evaluate the consequences of each alternative prior to making a decision.

Analysis paralysis – a condition that occurs due to an abundance of scientific information that can cause negotiations to stop because participants are unable to make a decision.

Art of negotiation – refers to negotiation skills that combine self-awareness, effective communication skills, and a basic understanding of human behavior.

Assessment – a formal activity that asks specific questions to determine whether the conditions are ripe for negotiations.

Avoidance – a lose/lose approach to dispute resolution that suggests individual has low concern for personal goals and low concern for relationship building.

Brainstorm – to find alternative ways to deal with the issues.

Collaborate – a win/win approach to dispute resolution that suggests an individual has high concern for personal goals and high concern for relationship building.

Competition – a win/lose approach to dispute resolution that suggests an individual has high concern for personal goals but low concern for relationship building.

Compromise – a win some/lose some approach to dispute resolution that suggests individual has some concern for personal goals and some concern for relationship building.

Conflict – an ongoing disagreement based on differences in interests and beliefs.
**Convening** – a type of intervention that involves the early design of a collaborative process to fit a particular dispute.

**Coordinated Resource Management** – voluntary collaborative process involving government agencies and other resource managers, landowners, and users working as a team to resolve resource disputes through creating and implementing resource management plans.

**Creating options** – occurs when participants in a collaborative process exchange information about their underlying interests and collectively identify the issues that emerge in light of this information.

**Dispute** – an episodic controversy or debate about what should or needs to happen.

**Dispute resolution approaches** – approaches to disputes, as recognized by conflict theorists, which are based on human motives of concern for self and concern for others.

**Effective communication** – speaking purposefully and constructively through careful choice of words and timing so as to build productive relationships with others.

**Expert inside the process** – an individual who is active member of the collaborative process but who possesses skills and knowledge to collect and analyze information pertinent to the decision-making process.

**Expert outside the process** – an individual who is hired to perform a specific task, such as data collection or analysis.

**Facilitation** – the detailed management of meetings to enable participants to focus on issues and goals.

**Focus groups** – an information gathering technique that requires a group of individuals to discuss their viewpoints about an issue or problem.

**Going to the balcony** – a concept coined by Ury that describes the mental imagery of an individual may use to distance him/herself emotionally from a dispute in order to see the situation more objectively.

**Holistic Resource Management** – a collaborative process that focuses on defining manageable goals for natural resources that emphasize land, people and finances.

**Icebreaker** – an exercise used to ease tension and feelings of awkwardness among participants in the initial stages of a collaborative process.
Implementation – assuring that the provisions of an agreement are carried out.

Interest-Based Problem Solving – a collaborative approach that emphasizes identifying interests and issues and seeking solutions.

Interests – what negotiating parties really want in an agreement to resolve a dispute.

Intervention – in a dispute situation, to come between competing interests with the intent of providing a means to move from destructive to constructive management.

Joint fact-finding – a method used in collaborative processes that requires participants to work together to define the problem, determine questions to ask, describe the best way to answer the questions, select the scientific experts to do the technical work, identifying limitations of analysis used, and choose the best way to use the resulting information.

Mediation – a method of alternative dispute resolution that involves a neutral party intervening in negotiations to help participants.

Monitoring – keeping track of compliance with an agreement that has been implemented and evaluating the outcome.

Panel discussions – formal public discussions that involve a panel of experts who share information about a particular topic or issue in order to clarify it.

Positions – what negotiating parties say they want in an agreement to resolve a dispute.

Preparation – acquiring the necessary skills, knowledge and resources to allow each party to participate in the negotiation on an equal footing with other parties.

Principled negotiation – a theoretical framework for approaching negotiations based on four principles which are: separate the people from the problem; focus on interests rather than positions; invent options for mutual gain; and insist on objective criteria or fair standards and procedures for evaluating options.

Principles – accepted rules of conduct or law that can serve to establish common guidelines for right and ethical conduct.

Principles of dispute management – guidelines for knowledgeable, ethical conduct to manage public disputes.

Process – refers to how the issues are being negotiated.
**Productive relationships** – relationships between humans that are characterized by high levels of trust, effective communication, compassion, and independence.

**Public forums** – meetings that enable the general public to participate and give input with the intent of shaping decisions that potentially affect them.

**Public issues education** – educational programs designed to enhance the public’s capacity to comprehend and address public issues.

**Ratification** – an action that sanctions the agreement and makes it legally operative.

**Science of negotiation** – provides a theoretical framework for approaching negotiations.

**Shared vision** – an exercise to help participants in a collaborative process to envision what parties want the future to look like.

**Study groups** – an information gathering technique that is organized and conducted by citizens who have an interest in a particular issue in order to learn more about the issue.

**Substance** – refers to the issues at the center of the dispute or what is being negotiated.

**Unfair tactics** – adversarial strategies used to influence an outcome in a dispute.

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