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CAHA

CAPE HATTERAS NATIONAL SEASHORE

Workshop on Mutual Gains Negotiation and Negotiated Rulemaking

Presented by the Consensus Building Institute
and Fisher Collaborative Services

with support from
the US Institute for Environmental Conflict Resolution

Manteo, North Carolina
February 8 and 9, 2007

Fisher Collaborative Services

RegNeg Workshop Location

Roanoke Island College of the Albemarle (COA) Campus
 (former Manteo Middle School, across the street from the Chesley Mall)
 205 Hwy 64 South Business, Manteo, NC 27954
 Park in parking lot at south end of building. Meet in auditorium at south end of the building.

Accommodations on Roanoke Island/Manteo:

		<u>Range</u>
Booth's Guest House	252-473-3696	\$60 to \$120
Burrus House Inn Suites	252-475-1636	\$150 +
Cameron House Inn	252-473-6596	\$110 to \$150 +
Clemons' Cottage	252-256-2662	\$150 +
Dare Haven Motel	252-473-2322	\$60 to \$110
Duke of Dare Motor Lodge	252-473-2175	\$60 to \$110
Elizabethan Inn	252-473-2101	\$110 to \$150 +
Island Guest House	252-473-2434	\$80 to \$110
Island House of Wanchese	866-473-5619	\$110 to \$150 +
Outdoors Inn	252-473-1356	\$60 to \$110
Pirate's Cove Realty	800-537-7245	
Roanoke Island Inn	877-473-5511	\$110 to \$150 +
Scarborough House Inn	252-473-3849	\$80 to \$150
Scarborough Inn	252-473-3979	\$80 to \$150
Tranquil House Inn	800-458-7069	\$150 +
The Inn at Kimbeeba	866-473-6365	\$80 to \$150 +
Wanchese Inn	252-475-1166	\$80 to \$150
White Doe Inn	800-473-6091	\$150 +
Whispering Bay Waterfront	252-473-5323	\$150. +

Nags Head Accommodations:

First Colony Inn	800-368-9390	\$110 to \$150+
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On-line information about accommodations and Outer Banks area

www.outerbanks.org



National Park Service
U.S. Department of the Interior

Outer Banks Group:

· Cape Hatteras National Seashore
· Fort Raleigh National Historic Site
· Wright Brothers National Memorial

1401 National Park Road
Manteo, NC 27954

252-473-2111 phone
252-473-2595 fax

National Park Service News Release

FOR IMMEDIATE RELEASE: DATE January 29, 2008
CONTACT: 252-473-2111 ext. 148

Cape Hatteras National Seashore Announces Public Scoping Meeting Schedule for Off-Road Vehicle Management Plan/Environmental Impact Statement

On December 11, 2006, the National Park Service (NPS) published a Notice of Intent (NOI) to develop an ORV Management Plan/EIS (plan/EIS) for Cape Hatteras National Seashore in the Federal Register. The plan/EIS will guide the management of America's first national seashore for the next 15 to 20 years. The NOI officially opened the public scoping period for the planning process and is the first step in involving the public in the environmental analysis process. Scoping includes holding meetings and providing opportunities for the public to comment so that their concerns are identified early and the analysis is focused on important issues. Because the plan/EIS will analyze many complex ecological and social issues, public participation is encouraged and needed.

Superintendent Mike Murray announces the following public scoping meeting schedule to solicit public input on the ORV management plan / EIS. Meetings will be held at four locations as described below. Each meeting will consist of an open house session, followed by a brief presentation, and an opportunity to provide public comment for the record in a public hearing style.

Buxton, North Carolina

Monday, February 26, 2007 - 2:00 pm to 6:00 pm

Fessenden Center – Located on Route 12, on the right side as you enter Buxton Village

2:00 pm to 3:00 pm Open House

3:00 pm to 3:15 pm NPS Presentation

3:15 pm to 5:15 pm Public Comment

5:15 pm to 6:00 pm Open House

Kill Devil Hills, North Carolina

Tuesday, February 27, 2007 - 6:00 pm to 9:00 pm

Wright Brothers National Memorial First Flight Centennial Pavilion, 8 ½ Milepost Hwy. 158, Kill Devil Hills, NC.

6:00 pm to 7:00 pm Open House

7:00 pm to 7:15 pm NPS Presentation

7:15 pm Public Comment

Open house will resume after public comment as time allows.

Raleigh, North Carolina

Wednesday, February 28, 2007 - 6:00 pm to 9:00 pm

McKimmon Center (North Carolina State Campus)

1101 Gorman Street, Raleigh, NC 27695

Agenda will be the same as February 27, 2007

Washington, DC

Thursday, March 1, 2007 - 6:00 pm to 9:00 pm

American Geophysical Union Building

2000 Florida Avenue, NW, Suite 400, Washington, DC 20009-1231
Agenda will be the same as February 27, 2007

Public participation is vital in assisting with the planning process. There are a number of ways to be involved:

- Attend a public scoping meeting
- Submit your comments electronically to <http://parkplanningnps.gov/caha>
- Submit written comments by mail to: Superintendent, RE: Off-Road Vehicle Management Plan/EIS, Cape Hatteras National Seashore, 1401 National Park Drive, Manteo, NC 27954.

Faxed comments will not be accepted. Please be sure to include your full name, e-mail address or mailing address with comments so we may add you to our mailing list for information on the planning process. In order for your comments to be the most useful in developing the draft plan/EIS, comments must be postmarked by March 16, 2007.

The NPS practice is to make comments, including names, home addresses, home phone numbers, and email addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish this request to be considered, you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. The NPS will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of, or officials of, organizations or businesses, available for public inspection in their entirety.

“Since the public comment period opened on December 11, we have received numerous e-mails and letters from the public about ORV management at Cape Hatteras National Seashore,” said Superintendent Murray. “I greatly appreciate the level of interest in the ORV management issue and encourage the public’s continued involvement as we proceed with development of the ORV management plan.” More information about the ORV management planning and negotiated rulemaking processes will be available as it is developed and will be posted on the park planning website at: <http://parkplanningnps.gov/caha>



MICHAEL WHEELER

Salt Harbor: Confidential Information for Easterly

You are the owner of the Easterly, a successful bed-and-breakfast inn, located in the picturesque seaside village of Salt Harbor. You purchased the old hotel almost twenty years ago, partly as an investment and partly to restore an old sea captain's house to its former glory.

Your task today is to try to negotiate the purchase of an neighboring piece of land. Here is the key background.

You operated the Easterly at a loss for a number of years. The old structure needed a lot of repairs, and it was hard to find capable staff. Over the past decade, however, Salt Harbor has experienced a real revival and you have had the good fortune to hire a manager who has done an excellent job building the reputation of the inn. Some of your guests now make reservations a full year in advance, in order to enjoy Salt Harbor in the prime season, and the inn is now busy most of the year.

As a result, you have actually been able to make a profit in recent years. Moreover, the value of your real estate has increased substantially, even after you take into account the investments you have had to make in improvements.

In the midst of this success, you are facing a challenge, however. Brims – a regional chain of coffee shops – has bought the vacant parcel of land that sits on the side of your inn facing the harbor. They have already filed for a permit to build a one-and-a-half story structure that would block the views from the inn's porch and some of its best rooms. While the operators of the chain have pledged that their building will be "in keeping with the character" of Salt Harbor, you have no doubt that it will have a seriously detrimental impact on your inn.

With 20-20 hindsight, you wish that you had purchased the lot at the same time that you bought the Easterly, but the reality is that your finances were stretched at the time and it made much more sense to put what money you had into refurbishing the old inn. This past year you simply did not know that the parcel was on the market.

In any event, you have always been under the impression that because the lot was small, it was unbuildable – that is, that it did not meet the minimum size requirement set by local zoning laws. In fact, the lawyer you consulted tells you that you may still be right. Acting on her advice, you have filed a formal objection to the issuance of the building permit. Such challenges are heard by various municipal regulatory boards, and can end up in court if either the permit seeker or the challengers are dissatisfied with the local rulings. In a nutshell, Brims claims that because the lot they purchased was created before the current zoning came into effect, it is "grandfathered." In other words, they argue that because the lot was legal when it was split off from an adjoining parcel, it is still legal now.

Professor Michael Wheeler developed this case from published sources. HBS cases are developed solely as the basis for class discussion. Cases are not intended to serve as endorsements, sources of primary data, or illustrations of effective or ineffective management.

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CAPE HATTERAS NATIONAL SEASHORE
WORKSHOP ON MUTUAL GAINS NEGOTIATION
AND NEGOTIATED RULEMAKING

February 8 and 9, 2007

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GOALS

- Provide an opportunity for diverse stakeholders to get to know one another.
- Learn common terms and techniques in collaboration and negotiation to “set the stage” for the regulatory negotiation to follow.
- Learn more about regulatory negotiation as a process.

DAY I, Thursday, February 8

- 9:00 Welcome, Mike Murray, Park Superintendent
- 9:15 Purpose and Agenda for the Workshop
- 9:30 Introductions
- 9:45 Regulatory Negotiation: What is it and how does it work?
- Brief presentation and discussion
- 10:15 Exercise 1: Win as Much as You Can
- A short, four-person exercise highlighting the tension between creating and claiming value in a negotiation.
- 11:00 Break
- 11:15 Exercise 2: Salt Harbor
- A two-person negotiation over a small parcel of land in a resort community, highlighting key points about distributive bargaining.
- 12:30 Lunch
- 1:30 Clear and Effective Communications
- A presentation, short exercises, and discussion on techniques for effective communication in a collaborative setting.
- 2:30 Exercise 3: Ted Wiley
- A four-person negotiation highlighting the opportunities for integrative (also called mutual gains) negotiation.

- 4:15 Questions from the Day
- 4:30 Adjourn
- 5:30 Social Hour
- 6:30 Dinner *[participants are encouraged to have dinner together and a meeting spot will be arranged]*

DAY II, Friday, February 9

- 8:30 Welcome to Day II
- 8:45 Discussion: Opportunities, Concerns, and Ideas about Regulatory Negotiation
- 9:30 Creating Value in Public Sector Negotiations
- A presentation and numerous case examples of creating value in public sector, multi-party negotiations
- 10:00 Break
- 10:15 Mediation: What is it? What is the mediator's role?
- Brief presentation and discussion about the role of mediators in regulatory negotiation and public sector processes.
- 11:00 Exercise 4: Sweetwater
- A series of short scenarios and challenges to building agreement among diverse stakeholders. Includes small group discussion and sharing lessons learned and best advice.
- 12:30 Looking Forward: The Promise of Collaboration, Mike Murray, Park Superintendent
- 1:00 Adjourn

The Consensus Building Institute

Patrick T. Field

Patrick Field is Managing Director of North American Programs at the Consensus Building Institute (CBI), Associate Director of the MIT-Harvard Public Disputes Program, and Training and Curriculum Director for the Western Consensus Council, Helena, Montana.

CBI is a nonprofit dedicated to improving the art and science of consensus building for the public sector in the United States, Canada, and worldwide. Mr. Field has facilitated hundreds of public meetings, workshops, citizen advisory meetings, technical workshops, and policy and management meetings. He has helped build agreement among state and federal agencies, communities, and citizens for the \$250 million cleanup of the Massachusetts Military Reservation Superfund site. He co-mediated a comprehensive agreement to resolve issues of air quality and cancer risk in four rural Maine communities surrounding a paper mill. He is currently co-mediating the Superfund cleanup of a major industrial site in southwestern Connecticut, facilitating a national pilot on reducing air toxics in Boston, Massachusetts, and facilitating the Community Advisory Group providing input to U.S. EPA on remediation of an industrial Superfund site in New York.

Mr. Field has designed numerous teaching materials and taught negotiation and consensus building to over a thousand commercial, non-profit, local, state, provincial, tribal, and federal officials. These training audiences include the Alberta Environmental Appeals Board, the Indian Taxation Advisory Board, the Land Trust Alliance, Stop and Shop Grocery Corporation, U.S. Fish and Wildlife Service, U.S. Federal Energy Regulatory Commission, U.S. Department of Interior, Capital One, and the Town of Masshpee, Massachusetts.

Mr. Field holds a Masters in Urban Planning from the Massachusetts Institute of Technology and is co-author of the award winning book, *Dealing with an Angry Public*, as well as numerous journal articles and research papers. He was born and raised on a ranch in rural western Colorado and currently resides in Watertown, Massachusetts.

Robert C. Fisher

Fisher Collaborative Services LC
P.O. Box 7423, Alexandria, Virginia 22307
703.765.0999 rcf@fisheres.com

Robert Fisher specializes in environmental, land use, and transportation mediation. He facilitates constructive dialogue to help people make informed decisions, resolve conflict, and build productive working relationships. He has worked with all levels of government, businesses, communities, non-profit groups, and individuals. He has experience on such diverse subjects as: architecture and design, biotechnology, construction, environmental cleanup and permitting, historic preservation, intergovernmental coordination, interpersonal and group dynamics, land use and development, litigation settlement, natural resources, nanotechnology, NEPA, public decision-making and policy, water resources, wetlands, and transportation and infrastructure planning.

Examples of his recent activities include: mediating land use and environmental issues at a ski resort on federal land; facilitating intergovernmental planning and decision-making on the InterCounty Connector highway in Maryland; facilitating dialogue about the ethics of genetically modifying and cloning animals; facilitating a planning charrette involving over 95 senior executives from federal and state transportation and resource agencies, trade associations, and transportation planning and non-profit groups; mediating agreement on a 10-year development plan between an urban university and community groups; and facilitating strategic planning and visioning for non-profit organizations.

Mr. Fisher is an adjunct professor at the Institute for Conflict Analysis and Resolution at George Mason University teaching Leadership and Conflict Resolution. He also has designed and taught training courses in ADR, collaborative leadership, consensus building, facilitation, multi-party decision-making, negotiating environmental compliance, and public involvement.

Before starting his own firm in October 2006, he served as a senior mediator and general counsel of RESOLVE, a non-profit organization specializing in environmental and public policy dispute resolution. He also practiced law in Washington, D.C. for over 12 years with international law firms and the Securities and Exchange Commission.

Mr. Fisher received his law degree from the Antioch School of Law and B.A. in Urban Studies from the Elliot School of International Affairs at the George Washington University.

The Consensus Building Institute

Ona Ferguson

Ona Ferguson is a Senior Associate at the Consensus Building Institute (CBI), a not-for-profit organization that provides mediation and dispute system design services to public and private clients worldwide.

Ms. Ferguson facilitates meetings about environmental and public policy issues. Recent projects include designing and facilitating the founding meetings of the National Community Land Trust Network, facilitating a symposium on air quality in Boston, co-facilitating a task force on solid waste planning for the State of Maine and moderating public forums on rethinking urban transportation at the Museum of Science in Boston. Ms. Ferguson co-manages a coalition of private and public agencies working together to improve air quality in the Boston area through voluntary programs, convening and facilitating meetings and calls. Ms. Ferguson assists the lead facilitator of a community advisory group that works with EPA and GE to oversee the dredging of PCBs from the Hudson River. Ms. Ferguson has facilitated small group dialogues on issues as diverse as managing federal lands, diversity among high school students, and regional collaboration across state and municipal boundaries.

Ms. Ferguson has co-authored multiple situation and conflict assessments, including an assessment of the potential for negotiated rulemaking of off-road vehicle use on Cape Hatteras National Seashore, an assessment of a multi-stakeholder urban development dispute and a stakeholder assessment for the North American State of the Carbon Cycle Report. She has developed and delivered courses on communication skills for land trust employees, and manages an ongoing series of courses on resolving land use disputes that is supported by the Lincoln Institute of Land Policy. Ms. Ferguson has assisted with the development of training materials for an international program on sustainable development and has developed and prepared an MIT graduate research project on land use planning in Massachusetts. She has developed case studies for trainings on natural resource disputes and has co-written role-plays about joint fact-finding, environmental disputes and corporate negotiation.

Ms. Ferguson has a Master of Environmental Management from the Yale School of Forestry and Environmental Studies, where she studied land use law and policy, and a B.A. from Smith College.

Regulatory Negotiation

February 8-9, 2007



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What Is Regulatory Negotiation?



- Also called "Negotiated Rulemaking" or "Reg-Neg"
- Negotiated Rulemaking Act of 1990 -- an alternative to traditional procedures for drafting proposed federal regulations
- Parties who will be significantly affected by a rule participate directly by negotiating the text of a proposed rule

What Is Regulatory Negotiation?



- Congress determined the usual rulemaking procedures may discourage affected parties from meeting and communicating with each other
- Traditional rulemaking – usually no opportunity for the exchange of views among the affected parties, even when hearings are conducted

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What Is Regulatory Negotiation?



- A multi-party consensus process in which a balanced negotiating committee, in a cooperative setting, seeks to reach agreement on the substance of a proposed agency rule, policy, or standard
- The negotiating committee is comprised of representatives of those interests that will be affected by, or have an interest in, the rule, including the rulemaking agency

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Regulatory Negotiation

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Reg Neg Act Criteria



- Need for a Rule
- Limited number of identifiable interests significantly affected by the rule
- Reasonable likelihood a balanced, representative committee can be convened and willing to negotiate in good faith to reach consensus

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Reg Neg Act Criteria



- Reasonable likelihood of timely consensus
- Process will not unreasonably delay issuance of the rule
- Agency will commit adequate resources to support the committee
- Agency, to the maximum extent possible consistent with legal obligations, will commit to publishing consensus as the proposed rule

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Potential Results



- Implementing the rule is easier
- Likelihood of litigation challenging the rule is diminished

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Potential Disadvantages



- Time and concentration intensive
- Have to work with adversaries and find ways to address their concerns
- Have to work with both the big picture and the details
- Easier to say “no” than look for and create opportunities to say “yes”

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Potential Advantages



- Participate directly and immediately in the decisions
- Identify the true issues within the advocated extremes to attempt to accommodate fully the competing interests
- Rank concerns and make trades to maximize respective interests
- Directly address all aspects of the problem in looking for workable solutions
- Focus on interests rather than positions

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How It Works



- Duties
 - consider matters proposed by Agency and those the committee determines are relevant to the proposed rule
 - Attempt to reach consensus
 - Facilitator - impartially assist the committee in conducting discussions and negotiations
- Committee Procedures - adopt procedures and ground rules
- Report
- Committee Records - Federal Advisory Committee Act

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How It Works



- Channel resources and efforts toward problem solving
- Deal with conflicts openly and constructively
- Negotiate and consensus are the keys to the process

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Negotiating Consensus



- Strongest decision making process a group can use
- Built by identifying and exploring all parties' interests, and by creating a package agreement that satisfies those interests to the greatest extent possible
- Does not necessarily mean unanimity -- and do not necessarily have to embrace each part of an agreement the same as other parties, or have every interest satisfied to the fullest extent

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Negotiating Consensus



- Look at the combination of gains and trade-offs under the current circumstances and given the available alternative options
- Consensus is reached when all committee members agree their major interests have been taken into consideration and addressed in a satisfactory

↳ committee will determine when this occurs.

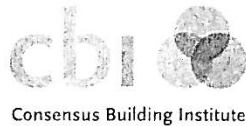
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Avg 1-2 yrs for process

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Exercise 1: Win As Much As You Can

February 8, 2007



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Win As Much As You Can



- Play in groups of 4.
- Talking permitted only prior to certain rounds.
- No talking before the first 4 rounds.

PAYOFF SCHEDULE:

4X:	lose 1 point each
3X, 1Y:	Xs each win 1 point, Y loses 3 points
2X, 2Y:	Xs each win 2 points, Ys each lose 2 points
1X, 3Y:	X wins 3 points, Ys lose 1 point
4Ys:	win 1 point each

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WIN AS MUCH AS YOU CAN
Instructions for Players

- Ensure that each of the four players is assigned a number from 1 to 4.
- Prepare two sheets of paper: Mark one with an "X" and the other with a "Y".
- For each of the ten successive rounds, play either with the X or the Y at the same time as the other players. Keep your choice face-down on the table until every player has decided.
- Keep score for each round on the scoresheet:
 - Write down your own choice -- X or Y
 - Write down the pattern of choices in your group -- e.g. 2X, 2Y
 - Write down your payoff for the round
 - Write down your cumulative payoff
- You must play each of the ten rounds.
- Just before playing rounds 5, 8, and 10, you may briefly confer with the other players in your group before making your decision.
- Rounds 5, 8, and 10 are bonus rounds. Payoffs (and losses) should be increased as follows:
 - Round 5: Multiply times 3
 - Round 8: Multiply times 5
 - Round 10: Multiply times 10
- You may not talk before playing the first four rounds, or before rounds 6, 7, and 9.

Payoff Schedule:

4 Xs	Lose 1 point each
3 Xs 1 Y	Win 1 point each Lose 3 points
2 Xs 2 Ys	Win 2 points each Lose 2 points each
1 X 3 Ys	Win 3 points Lose 1 point each
4 Ys	Win 1 point each

Win As Much As You Can

Score Card

ROUND	YOUR CHOICE (Circle One)	GROUP'S CHOICES	YOUR PAYOFF	YOUR TOTAL (CUMULATIVE)
1	X or Y	X Y	1	1
2	X or Y	X Y	-1	0
3	X or Y	X Y	3	3
4	X or Y	X Y	-2	1
5 Bonus	X or Y	X Y	*3 = 1x3	4
6	X or Y	X Y	2	6
7	X or Y	X Y	-2	4
8 Bonus	X or Y	X Y	*5 = 1x5	9
9	X or Y	X Y	1	8
10 Bonus	X or Y	X Y	*10 = -30	22

-12

Win As Much As You Can

Payoff Schedule

4 Xs	Lose 1 point each
3 Xs 1 Y	Win 1 point each Lose 3 points
2 Xs 2 Ys	Win 2 points each Lose 2 points each
1 X 3 Ys	Win 3 points Lose 1 point each
4 Ys	Win 1 point each

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Exercise 2: Salt Harbor

February 8, 2007

Eastern - in
Bringing - coffee



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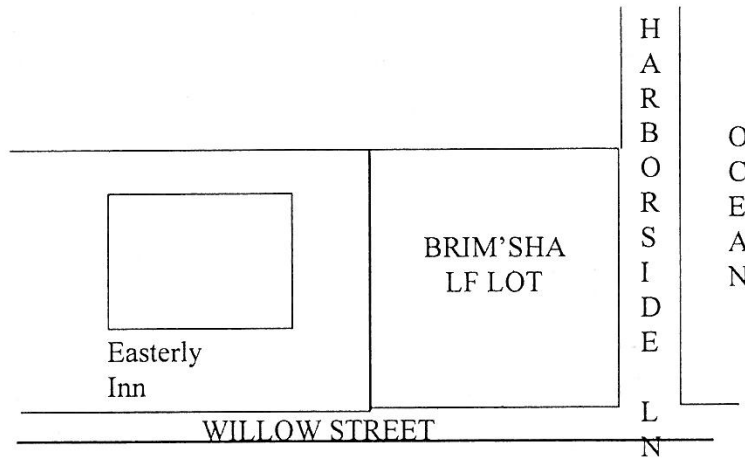
Salt Harbor Instructions



1. Plan your strategy carefully
2. Do *not* exchange cases
3. Straight cash deals only
4. Strive for the best possible deal for your role
5. Note either your agreed *sale price* or *last best offers*

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Salt Harbor Background

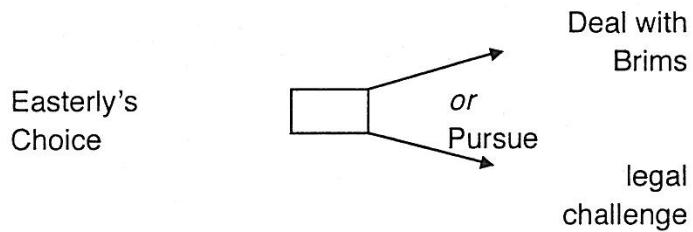


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BATNA



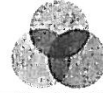
Best Alternative To a
Negotiated Agreement



Akin to : *walk-away or fallback*

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Brim's Alternatives



1. Do nothing
2. Sell to Commercial Buyer
3. Sell to Residential Buyer
4. Fight at Local Boards
5. Fight in Court

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Brim's Assumptions



1. 80/20 chance of winning in court
2. Losing only blocks business use
3. Residence still could be built
4. Residential value of lot = \$125,000 +/- 20 percent
5. Brims paid \$100,000 plus \$10,000 in related expenses
6. Cost of litigation c. \$20,000
7. Stupid to waste years in court before opening a shop in Salt Harbor
8. Alternative site for Brims will cost \$165,000

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Easterly's Alternatives



1. Do nothing
2. Sell Inn
3. Fight at Local Boards
4. Fight in Court
5. Seek a proxy buyer
6. Open your own coffee shop

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Easterly's Assumptions



1. 50/50 chance of winning in court
2. Winning only blocks business use
3. Residence still could be built
4. Residential value of lot is roughly \$100,000
5. Cost of litigation c. \$25,000
6. Negative impact of any building on the Inn = \$350,000 +/- 10 percent
7. Alternative site for Brims would cost +/- \$200,000

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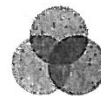
BATNA Checklist



1. What are our plausible options, if this deal falls through?
2. Considering all the costs & benefits, which of those option is the best?
3. How good does this deal at hand have to be to beat that best option?
4. Likewise, what will it take to beat the other party's best non-agreement alternative?

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BATNA Pitfalls



1. VICTIM'S VIEW: I have weak/no alternatives
2. MEGLOMANIA: They think like we think
3. OVER-CONFIDENCE: I am sure to win
4. LACK OF INFORMATION: Let's speculate
5. LACK OF ADAPTABILITY: I'm sticking to my guns

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Zone of Possible Agreement



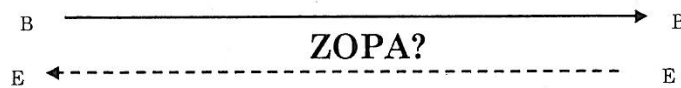
ZOPA
Z
ONE
O
F
P
OSSIBLE
A
GREEMENT

Or, BARGAINING RANGE

DEFINED BY THE PARTIES' PERCEIVED "NO-AGREEMENT ALTERNATIVES" (BATNAs)

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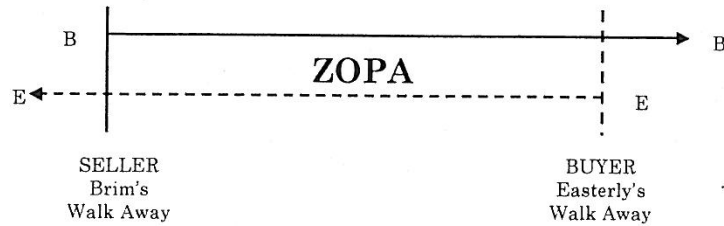
What defines the ZOPA?



Where's the Bargaining Range?

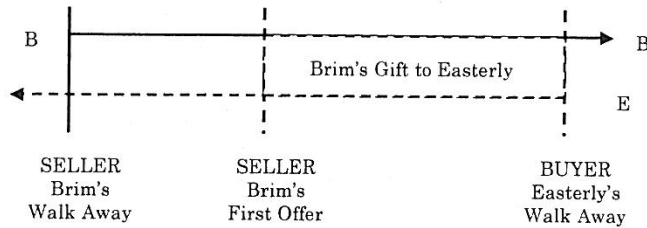
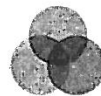
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BATNAs define the ZOPA



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First Offers



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Salt Harbor First Offers



1. First offers anchor the negotiation
2. First offers seek to claim value and to entice counteroffers
3. With limited information, the first offer gives away valuable information
4. Don't let first offers supplant solid preparation & careful analysis
5. Don't legitimize extreme first offers with a counter
6. Don't react, adapt to the new information

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Common Mistakes



1. Confusing your aspiration with your walk away.
2. Failure to calculate the other's walk away.
3. Offering too soon.
4. Acting on fear of greatest potential loss.
5. Anchoring on the wrong referent point.

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Distributive Lessons



- Set high aspirations
- Manage information
 - Frame your facts
 - Give, get and guard
 - Use (and beware of) anchors such as first offers
- Concede according to plan
 - Evaluate BATNA
 - BATNAs frame the ZOPA
 - Seek to claim value within the ZOPA Set opening offer, target and walk-away
 - Leave room for concessions
- Analyze with a “cold, hard” eye to avoid emotional mistakes

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Salt Harbor: What Really Happened



Note: Brims had stronger case and less time pressure

1. Easterly lost early challenges
2. Easterly offers “to make Brims whole” (i.e., \$120K)
3. Brims rejects; no counter
4. Easterly loses more appeals; goes to court
5. Responding to call, Brims asks Easterly for “best offer”
6. Easterly offers \$220K
7. Brims refuses!
8. Deal at \$220K plus extras

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Communication

Techniques to Manage Difficult Conversations



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1

Communication is . . .



“You communicate not what you say, but what people hear.”

Lynn Scarlett
Undersecretary, U.S. Department of Interior

Ask, don't assume



- Ask before you draw conclusions
- Ask open ended questions
- Listen and explore
- Don't grill and investigate
- Seek to learn more first, not to tell, educate, or admonish

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70-20-10 Rule



- We radically overestimate how much time we spend listening
- In stressful conversations, at first:
 - Spend 70% of the time listening
 - Spend 20% of the time asking questions
 - Spend 10% of the time paraphrasing

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Hierarchy of Intervention



- LISTEN
- QUESTION
- EMPATHIZE
- RESTATE
- SUMMARIZE
- REFRAME
- EXPLAIN
- PROBLEM-SOLVE



Increasing Action
& Increasing
Risk

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COMMUNICATION



- LISTEN
 - DO: Use non-verbal cues: eye contact, open body posture, sitting/standing
 - DON'T: Interrupt, quiz, explain or advise
- QUESTION
 - DO: Ask clarifying ("do you mean that . . .") and open-ended questions ("what do you want to happen?")
 - DON'T: Quiz or Interrogate (On the night of, were you . . . ?) -- this is not "The Spanish Inquisition"

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COMMUNICATION



- **EMPATHIZE**
 - **DO:** acknowledge, express understanding (“It sounds like you feel cheated”)
 - **DON'T:** necessarily agree or take sides (“That’s terrible. You’re right”)
- **RESTATE**
 - **DO:** Use their own words and yours -- goal is to ensure you understand
 - **DON'T:** Jump to conclusions based on your own perspective or seek to recraft the issue in your favor

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COMMUNICATION



- **SUMMARIZE**
 - **DO:** Summarize in an organized & concise fashion
 - **DON'T:** Expound, evaluate, or analyze
- **REFRAME**
 - **DO:** Reframe to defuse, to allow others to hear, to highlight. “Those cheats just want a fast buck” --> “So you are looking for a fair deal.”
 - **DON'T:** Restate in way that minimizes or distorts the speaker’s tone or meaning. “I want to kill him” --> “So you’re irritated.”

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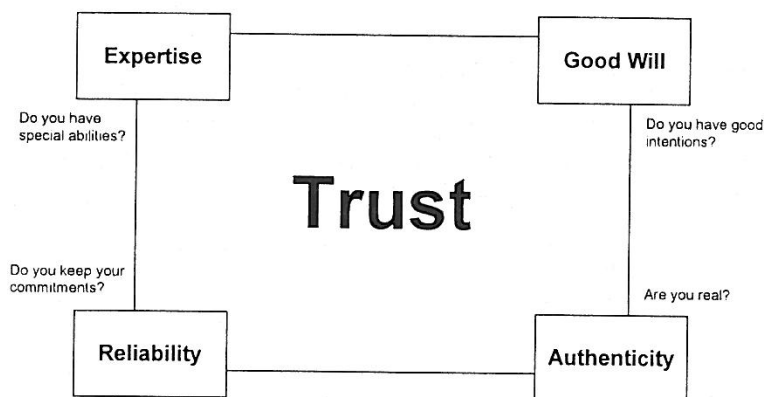
COMMUNICATION



- **EXPLAIN**
 - **DO:** Ask if they want you to share your understanding; state your understanding --> "It's my understanding that; share facts and information
 - **DON'T:** Expound; defend; seek to convince or correct; speculate
- **PROBLEM-SOLVE**
 - **DO:** Focus on interests and possible actions; consider and generate options; make suggestions; listen for ideas
 - **DON'T:** seek to "fix it" too soon; focus on what can't be done; offer unrealistic options

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The 4 cornerstones of Trust



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Building Trust



- Share information
- Share of yourself
- Follow through on promises and commitments
- Be clear and consistent
- Say what you mean; mean what you say
- Behave as you want them to behave
- People rarely think of themselves as untrustworthy

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The Leap of Faith



“The chief lesson I have learned in a long life is that the only way you can make a man trustworthy is to trust him.”

Henry L. Stimson
Secretary of War, 1940 to 1945

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Reframing



Restating to the speaker what you hear underneath the layers, in neutral, positive terms, focusing on the underlying interest

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Reframing - Steps



- Listen to the statement
- Work to understand the speaker's message
- Ignore/remove the "accusation," "attack" or other "noise" from the statement
- Restate the message to the speaker including the real issue or interest in neutral, positive terms

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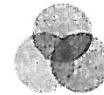
Reframing - Steps



- “So, what’s important to is”
- “You’re concerned about...”

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Reframing



- Not about avoiding or minimizing conflict - often the differences need to come out

Approaches

- Name it
- Use examples
- Focus on the real problem

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A bird's eye view?



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Ted Wiley: Integrative Bargaining

February 9, 2007



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Integrative Bargaining



- Integrative bargain allows for joint gain and not zero-sum outcomes
- Explore Interests:
 - Objective and subjective, short term and long term
 - Common, competing, and independent
- Evaluate Alternatives
- Obtain and convey essential information
- Generate creative options

Key Points



- Listen, listen, listen
- Interest, interests, interests
- Ideas, ideas, ideas
- Explain, explain, explain
- Package, package, package

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Create Value, Not Compromise



- Collect Information About Their Interests
- Clarify Their Interests, Beliefs, Constraints
- Communicate Your Interests
- Create Multiple Options Without Committing
 - *Improve your BATNA and Theirs*
- Capture Differences ... *That Can Lead to Mutual Gains*



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Multiple Interests



- Take into account **multiple interests** when communicating
 - Substantive (I want to 150 residential permits)
 - Procedural (I want a fair process)
 - Personal (I need for me respect, dignity. . .)
 - Psychological (I am anxious, angry . . .)
 - Cultural (I am a member of . . .)
 - Cognitive (I understand/misunderstand . . .)

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Joint Gains



Why do negotiators leave value uncreated?

- Failure to really know own interests and capabilities
- Failure to probe for the full set of other's interests
- Failure to build trust, communicate, share information
- Excessive "value-claiming" by one or both sides
- Information as two-edged sword: essential to solve joint problem, but a source of vulnerability

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Negotiation Power



Negotiation Power comes from:

- The power of a good BATNA
- The power to affect their outcomes
- The power of knowledge
- The power of persuasive skill
- The power of compelling criteria
- The power of a good relationship
- The power of an elegant solution
- The power of a good analytical theory of negotiation

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Creating Value, Not Compromise

February 9, 2007

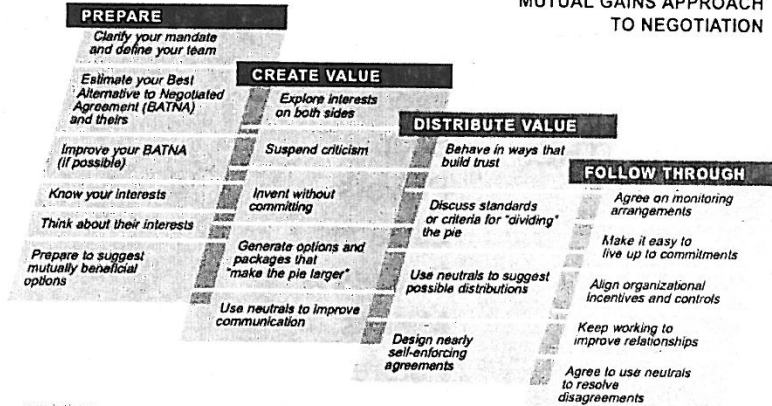


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An Alternative...



MUTUAL GAINS APPROACH TO NEGOTIATION



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rvices

Value Creating Moves



- **Set the Table**
- **Uncover interests**
 - Interests are the foundation of viable options
- **Invent options**
 - Invent, create, explore, imagine, "what if?"
 - If you view negotiation as compromise, that's what you'll get
 - Squeeze out value, not each other
 - Separate inventing from committee (for a while)
- **Package options**
 - Don't trap the negotiation by issue-by-issue resolution
 - Make multiple offers
- **Seize on differences**
 - Differences are the currency of negotiation

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Unlock Value

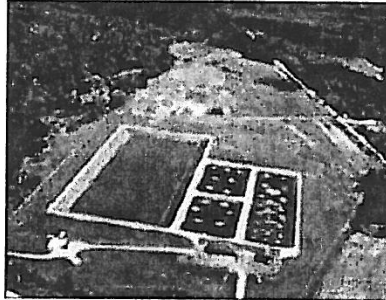


- **CHANGE THE:**

Process
Information
Scope
Players
Linkages
Frames
Metrics
Future

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Change the Process



- **Case:** Application/Disposal of sewage sludge
- **Problem:** Stakeholders believe harmed by land application of sludge. Do not trust reg. agency nor water utility research organization.
- **Solution:** Develop new public partnering protocols, hold summit to scope 5 year research agenda, convene group to write research RFPs, select joint oversight committees.

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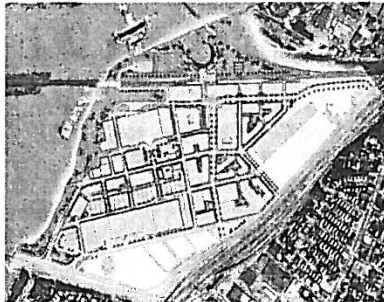
Create new Information



- **Case:** Wind Energy Siting in Vermont
- **Problem:** Town meeting and planning processes not sufficient to address such complex proposal.
- **Solution:** Undertake joint fact finding to: identify issues of concern, bring experts and information to bear on those issues, use innovative decision tools, convene public to deliberate with more information

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Change the Scope & Players



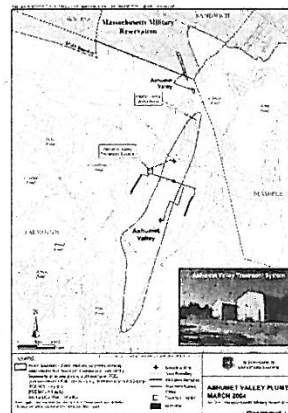
- **Case:** Assembly Square: Major redevelopment of 150 acre urban parcel
- **Problem:** Decade-long stalemate over “smart growth”, big box development, & wetlands
- **Solution:** Bring in new planners, state, new developers, swap parcels for different uses, add mass transit to long-term plan and funding; interject broker

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Link and/or “De-Link”



- **Case:** Cleanup of inorganics in groundwater
- **Problem:** Air Force and EPA in fight over how to treat inorganics in groundwater (GW) cleanup
- **Solution:** Local Town joins in, proposes to de-link GW & pollution - re-link to underlying shared interest -- cleaner ponds - - fund general inorganic cleanup of septic, not plume.

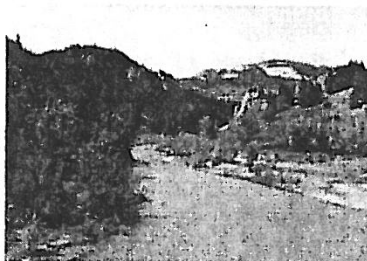


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Reframe the issue(s)



- **Case:** In-Stream Flows in Montana
- **Problem:** Farmers want to protect water rights; environmental advocates want to protect and improve in-stream flows. Fight ensues over rights.
- **Solution:** Reframe the issue: lease, not sell, water rights to environmental advocates & agencies to preserve in-stream flows



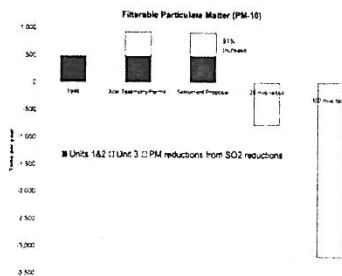
The Montana Stream Access Law opened up most of the rivers in Montana to floating and fishing.

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Expand the Metrics



- **Case:** Xcel Settlement, Comanche Power Station, Pueblo, CO
- **Problem:** Increased emission of particulates goes up overall (other criteria pollutants do go down).
- **Solution:** Identify additional metrics related to particulate matter from different measurement point that tell broader story.

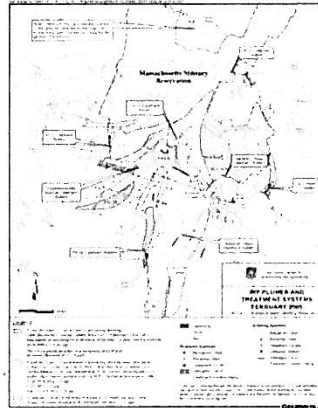


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Prepare for Multiple Futures



- **Case:** 30 year Groundwater Superfund cleanup
- **Problem:** AF doesn't want to install remedy without cause. EPA wants to be protective in uncertain future.
- **Solution:** Contingent remedy -- if contaminant levels exceed X in Y wells over Z sampling events, AF will install additional treatment system



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Creating value is hard because



- People value losses greater than gains
- Players anchor too early & often on the wrong things
- Players limited by "focusing" bias
- Reactive Devaluation reduces the perceived value of offers
- Claiming value tends to swamp creating value

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Remember . . .



- Create value, don't compromise it
- Interests are the foundation of agreement
- Invent multiple options, not offers
- Trade across differences
- Package issues to accommodate trade-offs

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Glossary of Terms

Developed by the Consensus Building Institute

January 2007

Alternative Dispute Resolution (ADR)

The processes used to resolve disputes that would otherwise be litigated. ADR processes include mediation, arbitration and various hybrids.

Arbitration

The resolution of a dispute by an impartial party granted the authority by the participants or another decision making entity (such as the legislature or the courts) to hear evidence and then render a decision. Arbitration may be binding (the parties decide it will be the forum of last resort) or non-binding (the parties retain their right to go back to court).

Assisted Negotiation

A catch-all term for processes that use a neutral, such as a facilitator or mediator, to assist participants involved in negotiations aimed at settling a disagreement or resolving a conflict.

Best Alternative to a Negotiated Agreement (BATNA)

The best alternative a party in a negotiation is likely to have if they cannot reach agreement via a specific negotiation. For instance, if a settlement negotiation fails, a party will be forced to live with the outcome of litigation. Their BATNA in the settlement negotiation is the most likely outcome of litigation.

Collaborative Problem Solving

A learning process through which a group of people share knowledge and ideas on a face-to-face basis. The premise of collaborative problem solving is that if you bring people together in a constructive dialogue with good information they will produce a workable solution to whatever challenge or disagreement they may face. A collaborative problem solving process may or may not result in consensus.

Conflict Assessment

A procedure by which the true scope of a conflict or a agreement and the prospects for successful mediation can be ascertained. Confidential interviews with key stakeholders must be undertaken by a neutral party. Based on the results of the interviews, the neutral prepares a draft report mapping elements of agreement and disagreement and spelling out how an assisted negotiation effort might proceed. Based on a review of the draft by the stakeholders, the neutral can make an informed recommendation to the convenor about the appropriateness about whether or not to proceed with mediation. Such assessments are sometimes called stakeholder analyses.

Consensus

In the context of public dispute resolution, the term consensus is used in a number of ways. As a decision-making tool, consensus refers to a collaborative process in which all people who have a stake in a particular issue jointly decide how to address the issue and resolve whatever disagreements they may have. As a decision-making outcome, consensus typically refers to overwhelming agreement (as contrasted with majority rule). To consent typically means that the stakeholders can "live with" a final package of proposals even though they may not all be equally satisfied with every component of an agreement.

Consensus Building

The set of techniques used to help diverse stakeholders reach agreement. Non-partisan neutrals typically facilitate this process.

Convenor

The person or group responsible for organizing a collaborative problem solving, consensus building, or dispute resolution effort. The convenor typically initiates a conflict assessment as a first step.

Facilitation

The use of an impartial individual or team to promote effective information exchange, negotiation, and group decision-making. A facilitator must remain non-partisan throughout any joint problem-solving effort. A facilitator typically works with all of the parties on a face-to-face basis, but does not shuttle back and forth among them. A facilitator has no decision-making authority. A facilitator manages meetings.

Interests

Interests are the underlying needs that a person or group brings to a negotiation. Interests are typically contrasted with (stated) positions, particularly demands that a party enunciates in the course of a negotiation.

Mediation

The use of an impartial individual or team to assist parties in resolving their differences or in finding common ground. A mediator must remain non-partisan throughout any joint problem-solving effort. A mediator typically meets privately with all of the parties prior to any negotiation and often shuttles back and forth among the parties throughout the problem-solving process. A mediator has no decision-making authority. Mediation, in contrast with facilitation, is typically used when the parties seek a resolution to their differences and not just a constructive dialogue.

Negotiation

The act of two or more parties voluntarily coming together in an effort to meet their interests through a process of give and take, trading across various issues or items that they value differently, and ultimately seeking some form of resolution that leaves them both better off than if they had pursued their interests through unilateral action.

Positions

A position is a favored method of meeting an individual's or a group's interests. Positions are often expressed as "I want, I don't want, I will or will not." Positions tend to narrow the focus of a dialogue, force people into the mindset of having to compromise, and often get in the way of creating value or inventing ingenious solutions.

Public Dispute Resolution

The theory and practice of negotiation, facilitation, mediation, and collaborative problem solving applied to public issues (i.e. when at least one of the stakeholders or parties is a public official or a unit of government).

Public Participation

Any process aimed at engage citizens in governmental efforts to make public decisions (i.e. allocate public resources, set public policy, or formulate standards). The objectives of public participation may be to inform and educate, seek input and advice, build agreement, and/or resolve disputes.

Single-text Procedure

A method of drafting a written agreement. Rather than each "side" or party advancing its preferred solution in a written form, a neutral – after meeting separately with each party – produces a unified draft that the parties continue to modify until agreement is reached. The common draft is revised through several iterations managed by the neutral.

Sponsor

The individual, group, or organization that is considering initiating a dispute resolution or a consensus building process. Same as a convenor.

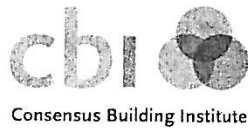
Stakeholders

Individuals or groups with an interest in or who are affected by a decision-making or problem-solving process. In a public disputes context, this would include government agencies, legislators, and other decision makers with the authority to implement any agreement that is reached as well as individuals and groups who may later seek to block or support such an agreement.

Mediation

The Role of Mediation in Regulatory and Public Sector Negotiation

February 9, 2007



Fisher Collaborative Services

Collaborative Approaches to Decision Making



- Voluntary
- “Owned”
 - Participants “own” the process
- Informed
- Problem Defined Jointly
 - A common definition of the problem is developed and used
- Informed
 - Parties educate one another and seek needed information together
- Creative
 - Multiple options are developed
- Consent Sought

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Mediation



- The use of an impartial individual or team to assist parties in resolving their differences or in finding common ground.
- A mediator remains **impartial** throughout the joint problem-solving effort.
- A mediator may meet **privately** with parties and subgroups.
- A mediator has **no decision-making** authority.
- A mediator works for the process and **is responsible to the whole group**, not to one participant or interest.

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What mediators do



- Set agendas
- Monitor groundrules
- Facilitate meetings
- Prepare meeting summaries
- Help surface underlying interests
- Help surface options, packages, constraints
Caucus with parties to explore options, BATNAs, trade offs
- Shuttle among parties
- Summarize and synthesize options, ideas, draft agreements in writing

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Our Commitment to You



- Work hard on the behalf of collaboration
- Work diligently to understand your needs, concerns, and ideas
- Be fair and non-partisan
- Be honest
- Protect confidentiality
- Adapt and adjust to the needs of the group

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A Few Things to Consider



- Making sausage isn't pretty, so they say
- You won't always like us
- Our job is to be fair, respectful, **and firm**, when needed
- We monitor the groundrules, but **enforcement** is a joint responsibility
- We aren't judges, so we can't compel parties to "do" something

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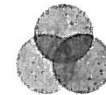
Questions for Us



- What do you want us to do as mediators?
- What do you not want us to do?
- What are your concerns about our role?

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Bibliography



- *Collaborative Approaches to Decision Making and Conflict Resolution for Natural Resource and Land Use Issues; a Handbook for Land Use Planners, Resource Managers, and Resource Management Councils.* Oregon Dept of Land Conservation and Development, June 1996.

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Land-use Planning in Sweetwater County

Best Practices for Common Problems

Draft of February 2007

Instructions

This purpose of this exercise is to identify best practices or effective strategies for responding to some common problems that emerge (1) initiating a collaborative process; (2) during the process itself; and (3) implementing the outcomes, and to understand why these problems emerge. In many cases, these common problems can be avoided by carefully designing the process.

Everyone should start by reading the Background and Process, pages 3-4.

The participants should then read each scenario, one at a time. After reading each scenario, in small groups, the participants should answer the question at the end of each scenario.

Each scenario should last about 10 - 20 minutes.

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Background

Sweetwater County is the fastest growing county in the Rocky Mountain West. To keep pace with rapid social and economic change, the County Planning Board and County Commissioners have initiated a process to amend the county's comprehensive land-use plan. Some residents support the planning effort, but others fear it will strip them of private property rights. The board and commission anticipate a contentious series of public meetings, and have hired an independent, impartial team to facilitate a multi-party dialogue on the land use plan.

The Issue

Sweetwater County adopted its first comprehensive land-use plan in November 1991. This plan avoided restrictive or regulatory language in favor of broadly stated policies or goals, such as preserving historic sites and conserving natural resources and water quality.

Since 1991, the county's population has mushroomed. The planning board and county commissioners were concerned about increased pressures on county services, including fire protection, schools, and roads. Water and air quality were at risk. Also, new regulations, such as the 2000 state subdivision law and the 2002 Growth Policy Act, called for stronger and more specific guidance than the 1991 plan provided.

In 2003, the planning board decided to revise the 1991 plan. It held seven public workshops to listen to citizen concerns and explore planning options. The board also gathered data from local and federal agencies to identify existing conditions and problems. The board then developed a draft plan, which was reviewed and revised by county departments affected by the plan and by an interagency working group, including the U.S. Forest Service and the Bureau of Land Management, which collectively manage about 50% of the land in Sweetwater County.

This draft plan was at once far more comprehensive and particular than the 1991 version. Among other objectives, it set criteria for subdivision development, delineated Community Growth Areas, and protected existing land uses such as farming and ranching.

The Process

To ensure that the draft plan reflected the interests of citizens, the Planning Board and County Commissioners have invited representatives of local interest groups to review the draft plan and suggest amendments. This Comprehensive Plan Advisory Committee (CPAC) was asked to: (1) review and clarify proposed policy statements; (2) develop a meaningful dialogue among the various groups; (3) identify areas of common interest; (4) identify potentially controversial issues; and (5) resolve controversial issues to the extent possible.

Two representatives from each of the following “interest groups” were invited to participate in the process:

- Farming and ranching
- Traditional land users (timber and mining)
- Downtown business
- Outdoor recreation
- Advocates for fishing and wildlife
- Open space conservation
- Builders and developers
- Surveyors and engineers
- Preservation and environmental quality

Clarifying the Roles and Responsibilities of Public Officials

In August 2004, the first meeting of the CPAC was convened. In addition to the CPAC members, over 75 citizens packed the local high school cafeteria on a sweltering hot summer evening. Things did not go smoothly. Several of the participants at the table, supported by a loud contingent of citizens in the audience, wondered why the county commission was not represented on the CPAC. "Shouldn't the ultimate decision-making body be part of this conversation, learning with us as we move through the plan and explaining their interests and positions?" The County Commissioners explained that they did not want to unduly influence the deliberations of citizens, and would try to make as many of the meetings as possible.

Another group of CPAC participants and citizens in the audience asserted that neither the county commissioners nor the federal land management agencies should have an undue influence in how the county manages its lands and resources. "In our system of representative democracy, these people are supposed to do what we tell them to do," claimed some people. "They should simply provide us with the best available information and implement whatever decisions we come to."

What are the various roles that public officials - elected officials, appointed officials, and professional staff - could and/or should play in collaborative, consensus-oriented processes?

Dealing with Staff Reluctant to Engage the Public

It's all well and good that the Commission and Board have decided for intensive public involvement for reviewing the plan. However, the County's planning staff, considered top notch, is incensed. They have expressed the following concerns to their planning director.

- Staff believe the plan is a top notch piece of professional planning work. After countless iterations and improvements, now, the Commissioners and Board throw in yet another step. Don't they trust the professionalism of the staff? Why didn't they form the CPAC sooner?
- Staff feel like they have stretched their own and their planning consultant's budget to the maximum possible. With all the other things they have to do, how are they supposed to now take on this extra, public effort?
- What's the matter with the standard approach? Isn't it the job of the Commission and Board to hold hearings, consider suggestions, and then transparently, in public, in regular proceedings, make revisions and final decisions?
- A few staff are concerned that this effort is just window dressing. The Commission and Board know that the group won't be able to come to consensus. But, the elected officials know they can take credit for "trying public involvement" and they they'll do what they want anyway. It all seems like a waste of time and resources.

If you were the Planning Director, what would you say to your staff to get them "on board" with a more meaningful public participation process?

Dealing with Parties Reluctant to Participate

The County knows that one of its most vocal critics is a nationally known preservation and environmental quality group called Planet Protection. It has a state office in the capital, about 100 miles away. They have sued not only the federal agencies, but the County and even private land owners around endangered species issues and water quality permits. The group does have some support among local citizens. In fact, one of its biggest contributors is a local retiree who is quite wealthy and moved into the community about ten (10) years ago. And, one of the County Commissioners generally holds similar views, though doesn't belong to the group.

The County finds this group quite difficult to deal with. However, the County believes that Planet Protection has to be asked to the table, and, even encouraged to participate. The process is advisory only, and better to have them in the tent than trying to tear it down from the outside. The County has heard that the organization has been modifying its stand somewhat after losing a series of high-profile lawsuits nationally. It apparently has a new Executive Director who, from rumors, is quite capable and reasonable. The problem is, despite repeated calls to participate, Planet Protection has said no.

Should you give up? Keep trying? If so, how? Why won't they participate?

Coordinating Multiple Jurisdictions

In addition to the county land use plan, the USFS and the BLM are each starting processes to revise and update their land use management plans for public lands and resources. After learning about the multiple processes – all of which will address some common problems, such as road maintenance, public access, weeds, and so on -- nearly all of the citizens and stakeholder groups plead with the 3 agencies to work together and develop a joint land use management plan, particularly around the issue of fire management adjacent to subdivisions.

The three jurisdictions agree that it makes sense to think about a regional, collaborative effort – at least on some issues – but explain that their budget cycles do not line-up and thus prevent them from getting started and working together on a common plan. There also appears to be some unspoken concern among the agencies about who has control over what. In short, there seem to be too few incentives and too many obstacles to regional collaboration.

What are the opportunities for regional collaboration in this type of situation? What are the barriers? And what are some practical strategies to build on the opportunities and overcome the barriers?

Ethical Issues for Facilitators and Mediators

After being hired by Sweetwater County to help design and facilitate the land-use planning process, the facilitator/mediator learns that the County Commissioners have very strong ideas on who should sit at the table, and what the ultimate outcome of the planning process should be. The commissioners explain to the facilitator/mediator – “We trust that you understand our interests and will do your level best to move the dialogue in that direction.”

The facilitator/mediator is an active member of two professional associations -- the Association for Conflict Resolution and the International Association for Public Participation – both of which have codes of conduct that urge practitioners to treat all participants, including the decision-makers, as equal partners in the process.

What should the facilitator/mediator do? How might such uncomfortable situations be avoided in the future?

Dealing with Difficult People

During the third meeting of the CPAC, after the group reluctantly adopted a set of ground rules and agreed on the scope of work as presented by the planning board and county commission, a small but vocal coalition of CPAC members, representing the farming, ranching, and other traditional land use interests, presented the group with an “interim land-use plan”. This plan promoted local control over federal lands within a county. The coalition asserted that Sweetwater County's draft plan did not adequately address federal land issues and had been developed with too little citizen involvement. They claimed that several key interests, particularly farming and ranching, were not adequately represented in the draft plan.

Some of the CPAC members responded that the presenters were out-of-order and violated the agreed-upon ground rules. Other CPAC members heckled the coalition and threatened to walk out of the meeting.

To complicate matters, a new county commissioner – who was elected after the process started – has stepped forward and said that she cannot accept the plan in its current form. “The plan needs more regulatory teeth to implement the lofty goals and aspirations that have been articulated.” Another commissioner responds that “The plan should only be a guide, not a regulatory tool.”

Take these difficult people one at a time. What are some practical strategies for dealing with each difficult group or person? What should be done “right now” at the meeting, and what might be done in the future to avoid such situations?

Dealing with a Breakdown in Trust

(Note: this scenario must be done after the Dealing With Difficult People scenario on page 10.)

Despite everyone's best efforts, the process has been bumpy. The last meeting with the hecklers, the strong statement from the new commission, and general sore feelings has led to a crisis. A few days after the meeting, the facilitator hears from several folks. "I just don't trust the process anymore. And, I really don't trust those other guys." People make the following claims.

- The ranching and farming representatives set the CPAC up. The outburst from other farmers wasn't a spontaneous splinter group, but a planned effort to subvert the process by the CPAC agricultural representatives.
- The environmentalists did an "end around" to the new County Commissioner and got her to raise the "regulatory teeth" issue, one several CPAC members thought had been discussed and addressed within and by the CPAC already.

Trust seems to have broken down after a difficult meeting. What should the convener (the Commission and Board), the process manager, and/or participants do to help get things back on track?

Managing Scientific and Technical Uncertainty

Representatives from the fishing and wildlife, preservation and environmental quality, and open space conservation interest groups have argued from the beginning of the process that the comprehensive land-use plan should be based on sound scientific and technical information, not politics. Based on their own research, and the views of a professor at the local university, they are very concerned about some of the information on demographic and economic trends, and social and environmental impacts. The representatives have asked the CPAC to spend the next six months reviewing the scientific and technical information on which the plan is based.

How should the group respond to the concerns of these folks? What are some practical strategies to promote a common understanding of the scientific and technical information (and uncertainties) that underlie natural resources and environmental decisions?

Engaging the General Public

After several months of hard work, the CPAC has reached preliminary agreement on a number of issues and an overall plan. Many of the participants – including the public officials – are now suggesting that the group’s effort should be presented to the broader public. Although all CPAC meetings have been open to the public, the daytime meetings, long deliberations, complex issues, and general length of the process seem to have scared the public away. After that first, “robust” meeting, things have been pretty quiet outside of the CPAC. The CPAC needs to design an effective public process to share its draft findings. The CPAC has discussed the following issues.

- Some CPAC members are concerned that the broader public is not only disengaged, but not interested and pretty uninformed. At this point, after all this hard work, they are pessimistic they can get the average citizen to the meeting and then both educate the public and get meaningful feedback.
- The farmers and ranchers are concerned that their constituencies have been disengaged and are fearful that at any public, “close to final” meeting, the extremists within their ranks will cause trouble.
- The CPAC isn’t sure whether to hold one or two large public meetings for everyone or to present their findings and receive feedback in smaller, “sector” meetings with co-sponsors such as the Farm Bureau, the Chamber of Commerce, Rotary, the local Conservation League, and others.
- The local builder has mentioned that she expects property rights groups to potentially come out in force. They haven’t really been members of the CPAC and, in past years on federal lands issues, they have been highly disruptive and even threatening.
- The CPAC isn’t sure whether they should just listen in these meetings as comments are made, or engage in a dialogue, and try and answer questions, explain their reasoning, and so forth. And, though the CPAC has worked well together, none of the members trust that just one or two individuals could speak on behalf of the group.

- The CPAC isn't sure if and how to involve the Board and the Commissioners at this point. They ought to hear the public input, but, the public input is really for the CPAC to complete its work.

Give these points, what kind of effective public process would you recommend to the CPAC? How do you ensure a broad, diverse turnout? How do you ensure useful, meaningful input is obtained?

Dealing with the Media

The CPAC has finally reached a new level of trust, after lots of hard work and difficult times. People are working together. They are acknowledging one another's interests. They are creating inventive options and really starting to think "outside the box." Unfortunately, last meeting, all sorts of trouble broke loose during the meeting.

Probably mistakenly, the County decided to mention an important new water treatment construction project for some outlying suburbs at this last meeting. This was driven by some resident interest and numerous regulatory concerns and threatened fines due to water quality. The County received a large grant to help offset many of the costs, but the outlying communities will have to pay additional property tax. Thus, it's quite controversial. It's not related directly to the land-use planning process, but seemed important to let the group know. Several members of the press were there, and as soon as the announcement was made, the CPAC pummeled the County planner with questions. The public attendees tried to jump in too. And, the media, feeding on the controversy, rushed in with their cameras and microphones. You couldn't believe it, but one reporter turned off the window air conditioner in an already hot room because he didn't think he could get a good quality sound recording. The facilitator just did not succeed in managing the chaos.

What should the facilitator maybe have done to manage the meeting better? What should you do going forward?

Reaching Closure – Or, Knowing When and How to Pull-out

After meeting for 10 months, the CPAC is close to reaching agreement on a set of options and recommendations for the planning board and county commission. They have labored over the draft plan in detail, reviewing complex proposals and agreeing on language during months of joint sessions and subcommittee work.

As the CPAC appears to be nearing a hard-won agreement (closure), one of the *preservation and environmental quality* representatives stands up and says, “Since the previous meeting, I have reviewed the data on which the plan is based and have consulted my constituents, and we have some real concerns that the data may be flawed. We cannot buy in to the emerging agreement at this point.” He goes on to cite several flaws in the methodology and assumptions used to project population growth and housing needs in Sweetwater County – information the CPAC agreed to accept because it seemed to be the most credible data available.

A representative of *builders and developers* snaps back, “Why didn’t you bring this up before? A month ago you agreed these were the best studies out there. I didn’t hear your concerns and reservations when we agreed to use the information.” A representative of *downtown business* chimes in, “This is ridiculous. At the eleventh hour we can’t have someone who has already agreed to this plan suddenly decide the data it’s based on are bad. Let’s face it folks, we have to make a decision despite incomplete and imperfect information. I don’t want to keep studying this thing to death.”

To complicate matters, a new county commissioner – who was elected after the process started – has stepped forward and said that she cannot accept the plan in its current form. “The plan needs more regulatory teeth to implement the lofty goals and aspirations that have been articulated.” Another commissioner responds that “The plan should only be a guide, not a regulatory tool.”

A representative of the *farming and ranching* group jumps in. “Hell, let’s take a vote right now he says. If we get a majority, that’s good enough consensus for me.”

Is it time to walk away from the process – and if so, how should participants do that? Or, how might this group reach closure?

Last minute pull-outs and litigation

Just as the collaborative process was ending, Planet Protection pulls out of the process without much of a clear explanation (and fortunately, you thought at the time, not much hoopla either).

But sure enough, as soon as the master plan is completed, the County Commission reviews and approves it in its formal process, and submits the plan for the 45 day time period for final public review, Planet Protection files a Notice of Intent to Sue. The group claims that the County's new master plan does not meet all requirements of the state's governing statute. County officials are furious. Those who advocated for Planet Protection to be involved are embarrassed and humiliated. Other stakeholders write to the local paper: "After twenty hard-working people donated countless after-work and weekend hours developing a plan to best serve the County, a paid participant in the collaboration filed litigation to stop the project. What's the point of collaboration when a vocal and outside minority views it as 'it's still my way or the highway?'"

Was it all for nothing? What can they be thinking? What could have been done before the Notice of Intent to Sue? What might be done now?

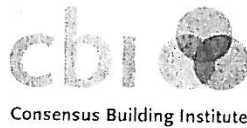
Show the Public how They Influenced the Final Decisions

The CPAC has deliberated, held a final public involvement process, and forwarded recommendations to the Commission and the Board. The Board and Commission, in turn, have completed their work and are putting the finishing touches on the revised master plan. The Commissioners, after spending all this extra time (their time, their staffs' time, and the CPAC's time) and money, want to be able to justify that the process was worth it. And, they want to show how the CPAC's work and the public involvement process influenced their final decisions.

How best can the elected officials show that this effort was not simply "window dressing," but was meaningful public input that influenced final decisions?

Best Practices for Common Problems

February 9, 2007



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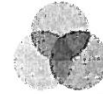
Common Problems & Best Practices



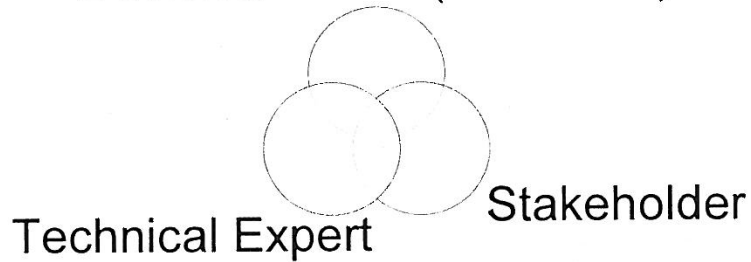
- 1) Clarifying the Roles of Public Officials
- 2) Coordinating Multiple Jurisdictions
- 3) Managing Scientific and Technical Information
- 4) Dealing with Difficult People
- 5) Reaching Closure – Or Knowing When and How to Pull-out
- 6) Engaging Unaffiliated Citizens

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The Roles of Public Officials



Decision-maker (Convener)



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Decision-maker (Convener)



- Initiate the forum
- Provide an opportunity for meaningful dialogue
- Provide logistical support
- Set a respectful, optimistic tone
- Help frame the issues for discussion
- Provide legitimacy and authority

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Technical Expert



- Demonstrate a willingness to work together
- Be open-minded, willing to listen, to teach and to learn
- Contribute scientific and technical information
- Contribute other resources

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Stakeholder



- Articulate your interests and priorities, including those of the broader public interest
- Articulate the sideboards or constraints you are faced with -- time, money, legal mandates, information, etc.
- Ensure that any agreement is consistent with the laws and regulations

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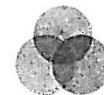
Stakeholder (cont.)



- Ensure that any decisions can be defended and implemented within the agency.

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Managing Scientific and Technical Information



- Clarify the Source of the Dispute
 - Lack of data
 - Disagreement over the nature of the problem
 - Different approaches to collecting and analyzing data
 - Competing interpretations of what the data mean

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Principles to Manage



- Scientific and technical information is a “necessary” but “insufficient” ingredient.
- Experts and expertise are critical, but the stakeholders must understand scientific and technical issues.
- The “scientific method” is only one way of knowing.

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Strategies to Manage



- Agree on what you know, don't know, want or need to know.
- Clarify the nature of the dispute - identify areas of agreement and disagreement
- Agree on what level of uncertainty is acceptable.
- Invite outside technical experts
 - Multi-disciplinary panels
 - Independent fact finder
 - Peer review

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Strategies to Manage (cont.)



- Conduct joint fact-finding
 - Create a subcommittee with technical expertise
 - Agree on what questions should be asked
 - Jointly review draft studies
 - Ask more questions
 - Articulate the worst case scenario
- Seek out precedents.
- Adopt a learning, adaptive attitude.
 - Use contingent agreements

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Dealing with Difficult People



- Validate their viewpoint
- Clarify the interests motivating the behavior
- Enforce the ground rules
 - Establish a culture of integrity early and often
- Conduct a round-robin discussion to focus on accomplishments
- Call a time-out; meet privately with the person

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Reaching Closure



- Call a break. Let people cool off
- Acknowledge the person's frustration and clarify the nature of the concern
- Remind them of their "rights" and "responsibilities" for participation
- Is it possible to create "contingent agreements?"

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Reaching Closure (cont.)



- Clarify areas of agreement and disagreement; how to resolve disagreements?
- Consider majority and minority reports.
- Discuss the consequences of partial agreement.
- Include a provision in ground rules on how to deal with this type of situation

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When to Pull Out? (1)



- Progress is too slow
- There are too many disagreements
- Ground rules are not being followed or enforced
- The objectives change and no longer address your interests

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When to Pull Out? (2)



- Your views are not being heard or incorporated
- You feel like you are not having much influence
- You have better options away from the table
- This is not a wise use of your time
- The consequences of staying are worse than leaving

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When to Pull Out? (3)



- The right people are not at the table
- Some people are not participating in “good faith”
- You sense a preconceived outcome

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How to Pull Out? (1)



- Acknowledge accomplishments
- Clarify your concerns (process, substance, behavior)
- Offer solutions or conditions under which you would be willing to continue participating
- Validate concerns and explore options with the facilitator

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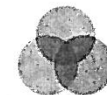
How to Pull Out (2)



- Give other participants a chance to respond
- Carefully consider the consequences of withdrawing
 - Opportunity to learn
 - Relationships
 - Long-term influence on framing a problem or solution

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How to Pull Out? (3)



- Inform other participants, in writing, of your reasons for withdrawing
- Anticipate and address the public perception of your withdrawal
- Leave strategically, not angrily

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Engaging Unaffiliated Citizens

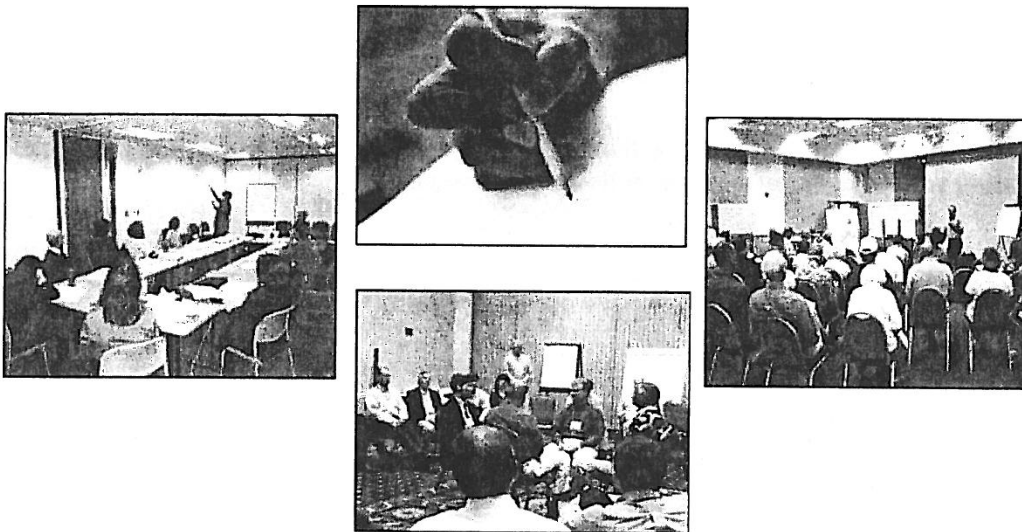


- Use multiple means
 - Newsletters
 - Editorials
 - Open Houses
 - Public Hearings
 - Citizen Panels/Juries
 - Web-based technologies
- Move from informing and educating to engaging in dialogue

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Workshop Evaluation



The U.S. Institute for Environmental Conflict Resolution evaluates all of its services. As a part of this evaluation we ask the participants who have been involved in an Institute training/workshop to provide us with information about their experience. Your responses will be part of the Institute's ongoing evaluation effort, and the data compiled will provide much-needed information that will be used to improve our programs and services. The average estimated reporting burden for this questionnaire is 6 minutes. This estimate includes time for reviewing the instructions, completing, and reviewing the questionnaire. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Institute. Please note your responses to this questionnaire are confidential. The identity of individual respondents is not recorded. The Office of Management and Budget (OMB) number that is displayed on the cover is currently valid and authorizes this collection of information.

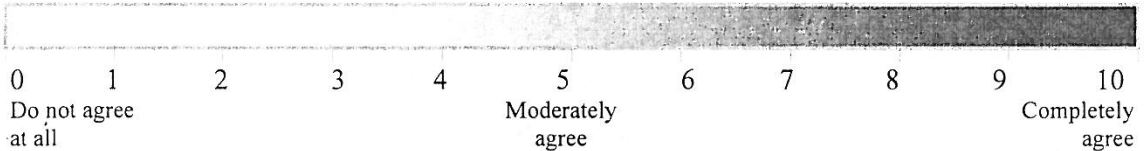
Please hand in your completed questionnaire at the end of the training/workshop or return to:

U.S. Institute for  **Environmental Conflict Resolution**
Morris K. Udall Foundation

130 South Scott Avenue, Tucson, Arizona 85701
Telephone: 520.670.5299 Fax: 520.670.5530
Website: www.ecr.gov

1. What was the primary objective of this training/workshop?

Rating Scale



2. Using the scale above, please tell us about your experience at this training/workshop by rating your agreement with the following statements:

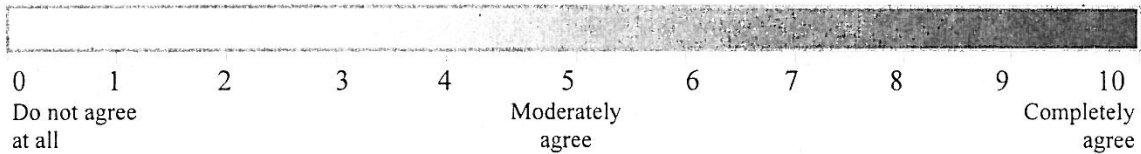
RATING	
_____	a. The primary training/workshop objective was achieved.
_____	b. This training/workshop was worth my time.
_____	c. This training/workshop addressed an important skill/topic that I face in doing my job or is important for my future plans.
_____	d. This training/workshop addressed an important topic for my organization. <input type="checkbox"/> Check if <i>Not Applicable</i> (i.e., I represented myself at this training/workshop)
_____	e. Overall, I have benefited from participating in this training/workshop.
_____	f. I would recommend this training/workshop to others.
_____	g. The facilities were suitable for the training/workshop activities.
_____	h. This training/workshop was an important opportunity for the exchange of experience and information.
_____	i. What I take away from this training/workshop will have a <u>positive impact on my effectiveness in the future</u> .
_____	j. What I take away from this training/workshop will have a positive impact on how my organization functions in the future. <input type="checkbox"/> Check if <i>Not Applicable</i> (i.e., I represented myself at this training/workshop)

3. What were the most important things you learned or accomplished at this training/workshop and why were they important to you?

4. Do you feel this training/workshop can bring about positive change (e.g., I will use my new skills/knowledge to...)? Please check the most appropriate box and elaborate in the space provided.

<input type="checkbox"/> Yes	<input type="checkbox"/> Possibly	<input type="checkbox"/> No
<i>Please tell us how:</i> <hr/> <hr/> <hr/> <hr/>		<i>Please tell us why not:</i> <hr/> <hr/> <hr/> <hr/>

Rating Scale



5. Using the scale above, please rate the trainer(s)/facilitator(s) on the following:

RATING	
_____	a. The trainer(s)/facilitator(s) was familiar with the topics discussed.
_____	b. The presentation/delivery of materials was effective.
_____	c. The materials (e.g., handouts) were a valuable supplement to the training/workshop.
_____	d. The material was covered within the scheduled timeframe.
_____	e. The trainer(s)/facilitator(s) interaction with the participants added value to the training/workshop.
_____	f. There was good interaction between the trainer(s)/facilitator(s) and the participants (asking questions, providing input, keeping the group on track, etc.)
_____	g. The trainer(s)/facilitator(s) encouraged everyone to participate.

6. Using the space below describe anything that stood out to you that added to or detracted from the trainer(s)/facilitator(s) effectiveness.

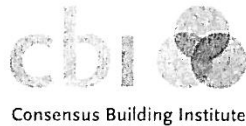
7. Please tell us how this workshop/training could have been more effective?

THANK YOU FOR TAKING THE TIME TO COMPLETE THIS QUESTIONNAIRE. PLEASE HAND IN YOUR COMPLETED QUESTIONNAIRE AT THE END OF THE TRAINING/WORKSHOP.

PERSONS WITH DISABILITIES WHO REQUIRE ALTERNATIVE MEANS FOR COMMUNICATION OF PROGRAM EVALUATION INFORMATION SHOULD CONTACT THE U.S. INSTITUTE AT (520) 901-8548.

Exercise 1: Win As Much As You Can

February 8, 2007



Consensus Building Institute

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Win As Much As You Can



- Play in groups of 4.
- Talking permitted only prior to certain rounds.
- No talking before the first 4 rounds.

PAYOFF SCHEDULE:

4X:	lose 1 point each
3X, 1Y:	Xs each win 1 point, Y loses 3 points
2X, 2Y:	Xs each win 2 points, Ys each lose 2 points
1X, 3Y:	X wins 3 points, Ys lose 1 point
4Ys:	win 1 point each

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WIN AS MUCH AS YOU CAN
Instructions for Players

- Ensure that each of the four players is assigned a number from 1 to 4.
- Prepare two sheets of paper: Mark one with an "X" and the other with a "Y".
- For each of the ten successive rounds, play either with the X or the Y at the same time as the other players. Keep your choice face-down on the table until every player has decided.
- Keep score for each round on the scoresheet:
 - Write down your own choice -- X or Y
 - Write down the pattern of choices in your group -- e.g. 2X, 2Y
 - Write down your payoff for the round
 - Write down your cumulative payoff
- You must play each of the ten rounds.
- Just before playing rounds 5, 8, and 10, you may briefly confer with the other players in your group before making your decision.
- Rounds 5, 8, and 10 are bonus rounds. Payoffs (and losses) should be increased as follows:
 - Round 5: Multiply times 3
 - Round 8: Multiply times 5
 - Round 10: Multiply times 10
- You may not talk before playing the first four rounds, or before rounds 6, 7, and 9.

Payoff Schedule:

4 Xs	Lose 1 point each
3 Xs 1 Y	Win 1 point each Lose 3 points
2 Xs 2 Ys	Win 2 points each Lose 2 points each
1 X 3 Ys	Win 3 points Lose 1 point each
4 Ys	Win 1 point each

Win As Much As You Can

Score Card

ROUND	YOUR CHOICE (Circle One)	GROUP'S CHOICES	YOUR PAYOFF	YOUR TOTAL (CUMULATIVE)
1	X or Y	X Y	1	1
2	X or Y	X Y	-1	0
3	X or Y	X Y	3	3
4	X or Y	X Y	-2	1
5 Bonus	X or Y	X Y	*3 = 1x3	4
6	X or Y	X Y	2	6
7	X or Y	X Y	-2	4
8 Bonus	X or Y	X Y	*5 = 1x5	9
9	X or Y	X Y	1	8
10 Bonus	X or Y	X Y	*10 = -30	22

-12

Win As Much As You Can

Payoff Schedule

4 Xs	Lose 1 point each
3 Xs 1 Y	Win 1 point each Lose 3 points
2 Xs 2 Ys	Win 2 points each Lose 2 points each
1 X 3 Ys	Win 3 points Lose 1 point each
4 Ys	Win 1 point each

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Exercise 2: Salt Harbor

February 8, 2007

Eastery-inn
Bringing coffee



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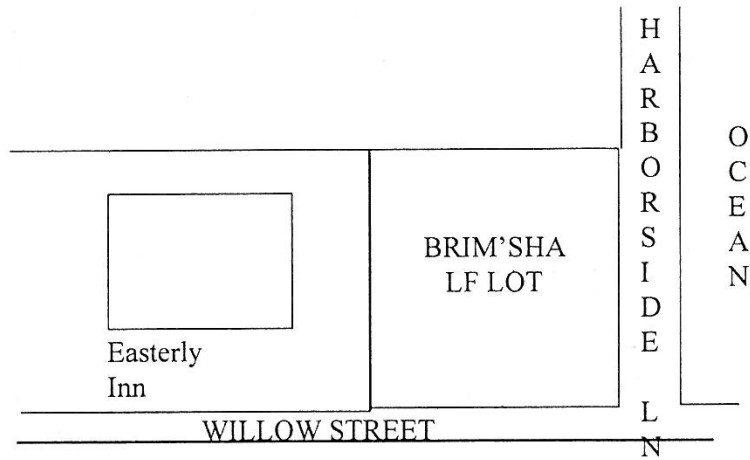
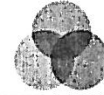
Salt Harbor Instructions



1. Plan your strategy carefully
2. Do *not* exchange cases
3. Straight cash deals only
4. Strive for the best possible deal for your role
5. Note either your agreed *sale price* or *last best offers*

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Salt Harbor Background

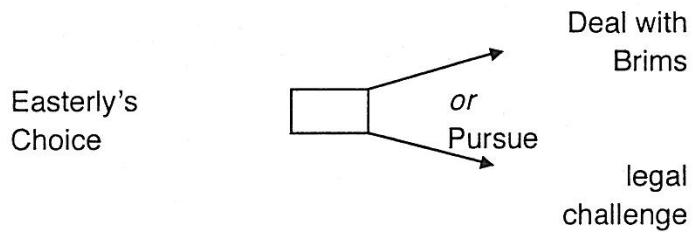


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BATNA



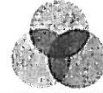
Best Alternative To a
Negotiated Agreement



Akin to : *walk-away or fallback*

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Brim's Alternatives



1. Do nothing
2. Sell to Commercial Buyer
3. Sell to Residential Buyer
4. Fight at Local Boards
5. Fight in Court

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Brim's Assumptions



1. 80/20 chance of winning in court
2. Losing only blocks business use
3. Residence still could be built
4. Residential value of lot = \$125,000 +/- 20 percent
5. Brims paid \$100,000 plus \$10,000 in related expenses
6. Cost of litigation c. \$20,000
7. Stupid to waste years in court before opening a shop in Salt Harbor
8. Alternative site for Brims will cost \$165,000

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Easterly's Alternatives



1. Do nothing
2. Sell Inn
3. Fight at Local Boards
4. Fight in Court
5. Seek a proxy buyer
6. Open your own coffee shop

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Easterly's Assumptions



1. 50/50 chance of winning in court
2. Winning only blocks business use
3. Residence still could be built
4. Residential value of lot is roughly \$100,000
5. Cost of litigation c. \$25,000
6. Negative impact of any building on the Inn = \$350,000 +/- 10 percent
7. Alternative site for Brims would cost +/- \$200,000

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BATNA Checklist



1. What are our plausible options, if this deal falls through?
2. Considering all the costs & benefits, which of those option is the best?
3. How good does this deal at hand have to be to beat that best option?
4. Likewise, what will it take to beat the other party's best non-agreement alternative?

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BATNA Pitfalls



1. VICTIM'S VIEW: I have weak/no alternatives
2. MEGLOMANIA: They think like we think
3. OVER-CONFIDENCE: I am sure to win
4. LACK OF INFORMATION: Let's speculate
5. LACK OF ADAPTABILITY: I'm sticking to my guns

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Zone of Possible Agreement



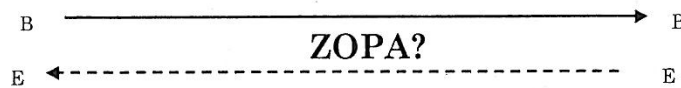
ZOPA
Z
ONE
O
F
P
OSSIBLE
A
GREEMENT

Or, BARGAINING RANGE

DEFINED BY THE PARTIES' PERCEIVED "NO-AGREEMENT ALTERNATIVES" (BATNAs)

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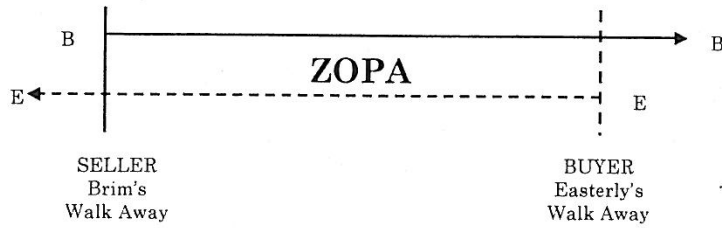
What defines the ZOPA?



Where's the Bargaining Range?

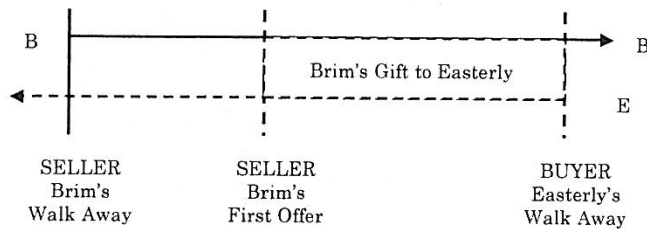
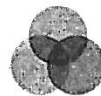
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BATNAs define the ZOPA



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First Offers



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Salt Harbor First Offers



1. First offers anchor the negotiation
2. First offers seek to claim value and to entice counteroffers
3. With limited information, the first offer gives away valuable information
4. Don't let first offers supplant solid preparation & careful analysis
5. Don't legitimize extreme first offers with a counter
6. Don't react, adapt to the new information

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Common Mistakes



1. Confusing your aspiration with your walk away.
2. Failure to calculate the other's walk away.
3. Offering too soon.
4. Acting on fear of greatest potential loss.
5. Anchoring on the wrong referent point.

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Distributive Lessons



- Set high aspirations
- Manage information
 - Frame your facts
 - Give, get and guard
 - Use (and beware of) anchors such as first offers
- Concede according to plan
 - Evaluate BATNA
 - BATNAs frame the ZOPA
 - Seek to claim value within the ZOPA Set opening offer, target and walk-away
 - Leave room for concessions
- Analyze with a “cold, hard” eye to avoid emotional mistakes

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Salt Harbor: What Really Happened



Note: Brims had stronger case and less time pressure

1. Easterly lost early challenges
2. Easterly offers “to make Brims whole” (i.e., \$120K)
3. Brims rejects; no counter
4. Easterly loses more appeals; goes to court
5. Responding to call, Brims asks Easterly for “best offer”
6. Easterly offers \$220K
7. Brims refuses!
8. Deal at \$220K plus extras

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Communication

Techniques to Manage Difficult Conversations



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1

Communication is . . .



“You communicate not what you say, but what people hear.”

*Lynn Scarlett
Undersecretary, U.S. Department of Interior*

Ask, don't assume



- Ask before you draw conclusions
- Ask open ended questions
- Listen and explore
- Don't grill and investigate
- Seek to learn more first, not to tell, educate, or admonish

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70-20-10 Rule



- We radically overestimate how much time we spend listening
- In stressful conversations, at first:
 - Spend 70% of the time listening
 - Spend 20% of the time asking questions
 - Spend 10% of the time paraphrasing

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Hierarchy of Intervention



- LISTEN
- QUESTION
- EMPATHIZE
- RESTATE
- SUMMARIZE
- REFRAME
- EXPLAIN
- PROBLEM-SOLVE



Increasing Action
& Increasing
Risk

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COMMUNICATION



- LISTEN
 - DO: Use non-verbal cues: eye contact, open body posture, sitting/standing
 - DON'T: Interrupt, quiz, explain or advise
- QUESTION
 - DO: Ask clarifying ("do you mean that . . .") and open-ended questions ("what do you want to happen?")
 - DON'T: Quiz or Interrogate (On the night of, were you . . . ?) -- this is not "The Spanish Inquisition"

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COMMUNICATION



- **EMPATHIZE**
 - **DO:** acknowledge, express understanding (“It sounds like you feel cheated”)
 - **DON’T:** necessarily agree or take sides (“That’s terrible. You’re right”)
- **RESTATE**
 - **DO:** Use their own words and yours -- goal is to ensure you understand
 - **DON’T:** Jump to conclusions based on your own perspective or seek to recraft the issue in your favor

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COMMUNICATION



- **SUMMARIZE**
 - **DO:** Summarize in an organized & concise fashion
 - **DON’T:** Expound, evaluate, or analyze
- **REFRAME**
 - **DO:** Reframe to defuse, to allow others to hear, to highlight. “Those cheats just want a fast buck” --> “So you are looking for a fair deal.”
 - **DON’T:** Restate in way that minimizes or distorts the speaker’s tone or meaning. “I want to kill him” --> “So you’re irritated.”

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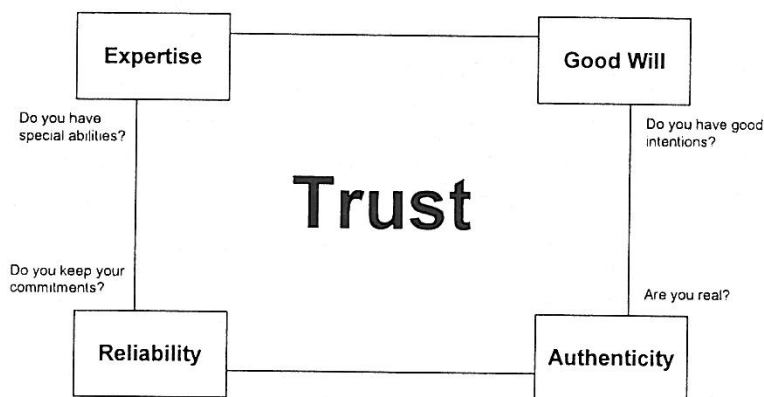
COMMUNICATION



- **EXPLAIN**
 - **DO:** Ask if they want you to share your understanding; state your understanding --> "It's my understanding that; share facts and information
 - **DON'T:** Expound; defend; seek to convince or correct; speculate
- **PROBLEM-SOLVE**
 - **DO:** Focus on interests and possible actions; consider and generate options; make suggestions; listen for ideas
 - **DON'T:** seek to "fix it" too soon; focus on what can't be done; offer unrealistic options

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The 4 cornerstones of Trust



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Building Trust



- Share information
- Share of yourself
- Follow through on promises and commitments
- Be clear and consistent
- Say what you mean; mean what you say
- Behave as you want them to behave
- People rarely think of themselves as untrustworthy

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The Leap of Faith



“The chief lesson I have learned in a long life is that the only way you can make a man trustworthy is to trust him.”

Henry L. Stimson
Secretary of War, 1940 to 1945

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Reframing



Restating to the speaker what you hear underneath the layers, in neutral, positive terms, focusing on the underlying interest

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Reframing - Steps



- Listen to the statement
- Work to understand the speaker's message
- Ignore/remove the "accusation," "attack" or other "noise" from the statement
- Restate the message to the speaker including the real issue or interest in neutral, positive terms

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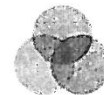
Reframing - Steps



- “So, what’s important to is”
- “You’re concerned about...”

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Reframing



- Not about avoiding or minimizing conflict - often the differences need to come out

Approaches

- Name it
- Use examples
- Focus on the real problem

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A bird's eye view?



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Ted Wiley: Integrative Bargaining

February 9, 2007



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Integrative Bargaining



- Integrative bargain allows for joint gain and not zero-sum outcomes
- Explore Interests:
 - Objective and subjective, short term and long term
 - Common, competing, and independent
- Evaluate Alternatives
- Obtain and convey essential information
- Generate creative options

Key Points



- Listen, listen, listen
- Interest, interests, interests
- Ideas, ideas, ideas
- Explain, explain, explain
- Package, package, package

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Create Value, Not Compromise



- Collect Information About Their Interests
- Clarify Their Interests, Beliefs, Constraints
- Communicate Your Interests
- Create Multiple Options Without Committing
 - *Improve your BATNA and Theirs*
- Capture Differences ... *That Can Lead to Mutual Gains*



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Multiple Interests



- Take into account **multiple interests** when communicating
 - Substantive (I want to 150 residential permits)
 - Procedural (I want a fair process)
 - Personal (I need for me respect, dignity. . .)
 - Psychological (I am anxious, angry . . .)
 - Cultural (I am a member of . . .)
 - Cognitive (I understand/misunderstand . . .)

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Joint Gains



Why do negotiators leave value uncreated?

- Failure to really know own interests and capabilities
- Failure to probe for the full set of other's interests
- Failure to build trust, communicate, share information
- Excessive "value-claiming" by one or both sides
- Information as two-edged sword: essential to solve joint problem, but a source of vulnerability

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Negotiation Power



Negotiation Power comes from:

- The power of a good BATNA
- The power to affect their outcomes
- The power of knowledge
- The power of persuasive skill
- The power of compelling criteria
- The power of a good relationship
- The power of an elegant solution
- The power of a good analytical theory of negotiation

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Creating Value, Not Compromise

February 9, 2007

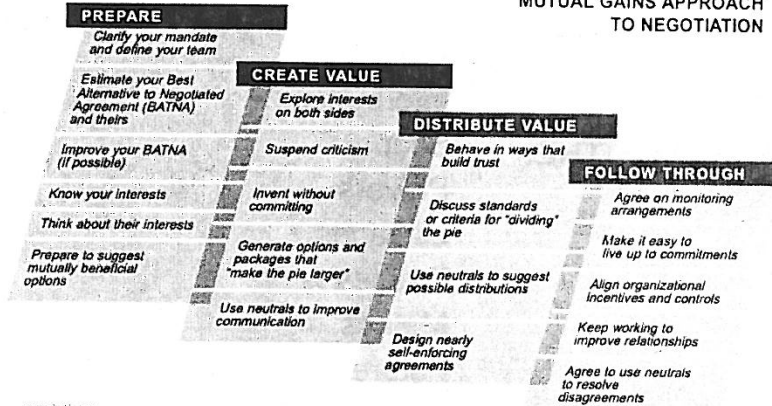


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An Alternative...



MUTUAL GAINS APPROACH TO NEGOTIATION



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services

Value Creating Moves



- **Set the Table**
- **Uncover interests**
 - Interests are the foundation of viable options
- **Invent options**
 - Invent, create, explore, imagine, "what if?"
 - If you view negotiation as compromise, that's what you'll get
 - Squeeze out value, not each other
 - Separate inventing from committee (for a while)
- **Package options**
 - Don't trap the negotiation by issue-by-issue resolution
 - Make multiple offers
- **Seize on differences**
 - Differences are the currency of negotiation

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Unlock Value

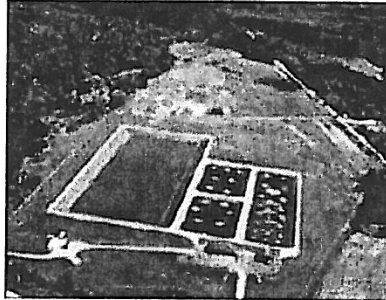


- **CHANGE THE:**

Process
Information
Scope
Players
Linkages
Frames
Metrics
Future

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Change the Process



- **Case:** Application/Disposal of sewage sludge
- **Problem:** Stakeholders believe harmed by land application of sludge. Do not trust reg. agency nor water utility research organization.
- **Solution:** Develop new public partnering protocols, hold summit to scope 5 year research agenda, convene group to write research RFPs, select joint oversight committees.

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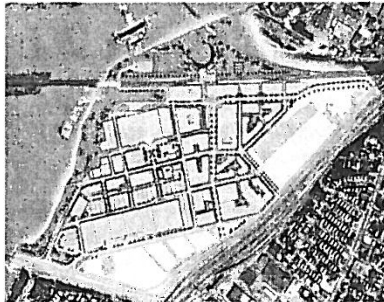
Create new Information



- **Case:** Wind Energy Siting in Vermont
- **Problem:** Town meeting and planning processes not sufficient to address such complex proposal.
- **Solution:** Undertake joint fact finding to: identify issues of concern, bring experts and information to bear on those issues, use innovative decision tools, convene public to deliberate with more information

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Change the Scope & Players



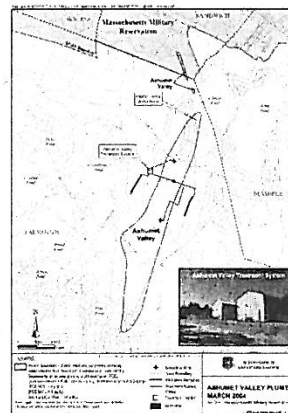
- **Case:** Assembly Square: Major redevelopment of 150 acre urban parcel
- **Problem:** Decade-long stalemate over “smart growth”, big box development, & wetlands
- **Solution:** Bring in new planners, state, new developers, swap parcels for different uses, add mass transit to long-term plan and funding; interject broker

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Link and/or “De-Link”



- **Case:** Cleanup of inorganics in groundwater
- **Problem:** Air Force and EPA in fight over how to treat inorganics in groundwater (GW) cleanup
- **Solution:** Local Town joins in, proposes to de-link GW & pollution - re-link to underlying shared interest -- cleaner ponds - - fund general inorganic cleanup of septic, not plume.

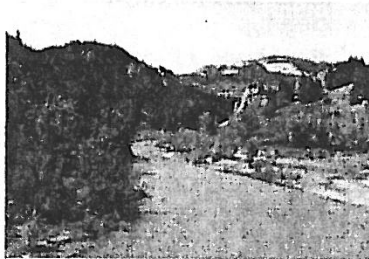


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Reframe the issue(s)



- **Case:** In-Stream Flows in Montana
- **Problem:** Farmers want to protect water rights; environmental advocates want to protect and improve in-stream flows. Fight ensues over rights.
- **Solution:** Reframe the issue: lease, not sell, water rights to environmental advocates & agencies to preserve in-stream flows



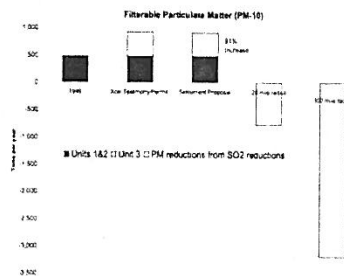
The Montana Stream Access Law opened up most of the rivers in Montana to floating and fishing.

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Expand the Metrics



- **Case:** Xcel Settlement, Comanche Power Station, Pueblo, CO
- **Problem:** Increased emission of particulates goes up overall (other criteria pollutants do go down).
- **Solution:** Identify additional metrics related to particulate matter from different measurement point that tell broader story.

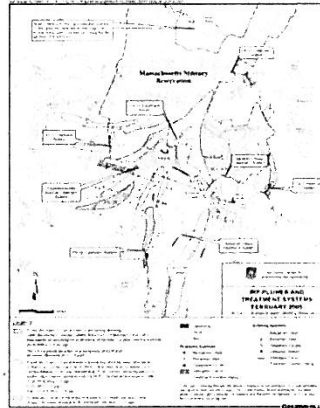


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Prepare for Multiple Futures



- **Case:** 30 year Groundwater Superfund cleanup
- **Problem:** AF doesn't want to install remedy without cause. EPA wants to be protective in uncertain future.
- **Solution:** Contingent remedy -- if contaminant levels exceed X in Y wells over Z sampling events, AF will install additional treatment system



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Creating value is hard because



- People value losses greater than gains
- Players anchor too early & often on the wrong things
- Players limited by “focusing” bias
- Reactive Devaluation reduces the perceived value of offers
- Claiming value tends to swamp creating value

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Remember . . .



- Create value, don't compromise it
- Interests are the foundation of agreement
- Invent multiple options, not offers
- Trade across differences
- Package issues to accommodate trade-offs

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Glossary of Terms

Developed by the Consensus Building Institute

January 2007

Alternative Dispute Resolution (ADR)

The processes used to resolve disputes that would otherwise be litigated. ADR processes include mediation, arbitration and various hybrids.

Arbitration

The resolution of a dispute by an impartial party granted the authority by the participants or another decision making entity (such as the legislature or the courts) to hear evidence and then render a decision. Arbitration may be binding (the parties decide it will be the forum of last resort) or non-binding (the parties retain their right to go back to court).

Assisted Negotiation

A catch-all term for processes that use a neutral, such as a facilitator or mediator, to assist participants involved in negotiations aimed at settling a disagreement or resolving a conflict.

Best Alternative to a Negotiated Agreement (BATNA)

The best alternative a party in a negotiation is likely to have if they cannot reach agreement via a specific negotiation. For instance, if a settlement negotiation fails, a party will be forced to live with the outcome of litigation. Their BATNA in the settlement negotiation is the most likely outcome of litigation.

Collaborative Problem Solving

A learning process through which a group of people share knowledge and ideas on a face-to-face basis. The premise of collaborative problem solving is that if you bring people together in a constructive dialogue with good information they will produce a workable solution to whatever challenge or disagreement they may face. A collaborative problem solving process may or may not result in consensus.

Conflict Assessment

A procedure by which the true scope of a conflict or a agreement and the prospects for successful mediation can be ascertained. Confidential interviews with key stakeholders must be undertaken by a neutral party. Based on the results of the interviews, the neutral prepares a draft report mapping elements of agreement and disagreement and spelling out how an assisted negotiation effort might proceed. Based on a review of the draft by the stakeholders, the neutral can make an informed recommendation to the convenor about the appropriateness about whether or not to proceed with mediation. Such assessments are sometimes called stakeholder analyses.

Consensus

In the context of public dispute resolution, the term consensus is used in a number of ways. As a decision-making tool, consensus refers to a collaborative process in which all people who have a stake in a particular issue jointly decide how to address the issue and resolve whatever disagreements they may have. As a decision-making outcome, consensus typically refers to overwhelming agreement (as contrasted with majority rule). To consent typically means that the stakeholders can "live with" a final package of proposals even though they may not all be equally satisfied with every component of an agreement.

Consensus Building

The set of techniques used to help diverse stakeholders reach agreement. Non-partisan neutrals typically facilitate this process.

Convenor

The person or group responsible for organizing a collaborative problem solving, consensus building, or dispute resolution effort. The convenor typically initiates a conflict assessment as a first step.

Facilitation

The use of an impartial individual or team to promote effective information exchange, negotiation, and group decision-making. A facilitator must remain non-partisan throughout any joint problem-solving effort. A facilitator typically works with all of the parties on a face-to-face basis, but does not shuttle back and forth among them. A facilitator has no decision-making authority. A facilitator manages meetings.

Interests

Interests are the underlying needs that a person or group brings to a negotiation. Interests are typically contrasted with (stated) positions, particularly demands that a party enunciates in the course of a negotiation.

Mediation

The use of an impartial individual or team to assist parties in resolving their differences or in finding common ground. A mediator must remain non-partisan throughout any joint problem-solving effort. A mediator typically meets privately with all of the parties prior to any negotiation and often shuttles back and forth among the parties throughout the problem-solving process. A mediator has no decision-making authority. Mediation, in contrast with facilitation, is typically used when the parties seek a resolution to their differences and not just a constructive dialogue.

Negotiation

The act of two or more parties voluntarily coming together in an effort to meet their interests through a process of give and take, trading across various issues or items that they value differently, and ultimately seeking some form of resolution that leaves them both better off than if they had pursued their interests through unilateral action.

Positions

A position is a favored method of meeting an individual's or a group's interests. Positions are often expressed as "I want, I don't want, I will or will not." Positions tend to narrow the focus of a dialogue, force people into the mindset of having to compromise, and often get in the way of creating value or inventing ingenious solutions.

Public Dispute Resolution

The theory and practice of negotiation, facilitation, mediation, and collaborative problem solving applied to public issues (i.e. when at least one of the stakeholders or parties is a public official or a unit of government).

Public Participation

Any process aimed at engage citizens in governmental efforts to make public decisions (i.e. allocate public resources, set public policy, or formulate standards). The objectives of public participation may be to inform and educate, seek input and advice, build agreement, and/or resolve disputes.

Single-text Procedure

A method of drafting a written agreement. Rather than each "side" or party advancing its preferred solution in a written form, a neutral – after meeting separately with each party – produces a unified draft that the parties continue to modify until agreement is reached. The common draft is revised through several iterations managed by the neutral.

Sponsor

The individual, group, or organization that is considering initiating a dispute resolution or a consensus building process. Same as a convenor.

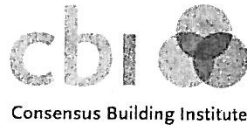
Stakeholders

Individuals or groups with an interest in or who are affected by a decision-making or problem-solving process. In a public disputes context, this would include government agencies, legislators, and other decision makers with the authority to implement any agreement that is reached as well as individuals and groups who may later seek to block or support such an agreement.

Mediation

The Role of Mediation in Regulatory and Public Sector Negotiation

February 9, 2007



Fisher Collaborative Services

Collaborative Approaches to Decision Making



- Voluntary
- “Owned”
 - Participants “own” the process
- Informed
- Problem Defined Jointly
 - A common definition of the problem is developed and used
- Informed
 - Parties educate one another and seek needed information together
- Creative
 - Multiple options are developed
- Consent Sought

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Mediation



- The use of an impartial individual or team to assist parties in resolving their differences or in finding common ground.
- A mediator remains **impartial** throughout the joint problem-solving effort.
- A mediator may meet **privately** with parties and subgroups.
- A mediator has **no decision-making** authority.
- A mediator works for the process and **is responsible to the whole group**, not to one participant or interest.

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What mediators do



- Set agendas
- Monitor groundrules
- Facilitate meetings
- Prepare meeting summaries
- Help surface underlying interests
- Help surface options, packages, constraints
Caucus with parties to explore options, BATNAs, trade offs
- Shuttle among parties
- Summarize and synthesize options, ideas, draft agreements in writing

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Our Commitment to You



- Work hard on the behalf of collaboration
- Work diligently to understand your needs, concerns, and ideas
- Be fair and non-partisan
- Be honest
- Protect confidentiality
- Adapt and adjust to the needs of the group

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A Few Things to Consider



- Making sausage isn't pretty, so they say
- You won't always like us
- Our job is to be fair, respectful, **and firm**, when needed
- We monitor the groundrules, but **enforcement** is a joint responsibility
- We aren't judges, so we can't compel parties to "do" something

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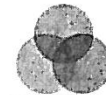
Questions for Us



- What do you want us to do as mediators?
- What do you not want us to do?
- What are your concerns about our role?

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Bibliography



- *Collaborative Approaches to Decision Making and Conflict Resolution for Natural Resource and Land Use Issues; a Handbook for Land Use Planners, Resource Managers, and Resource Management Councils.* Oregon Dept of Land Conservation and Development, June 1996.

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Land-use Planning in Sweetwater County

Best Practices for Common Problems

Draft of February 2007

Instructions

This purpose of this exercise is to identify best practices or effective strategies for responding to some common problems that emerge (1) initiating a collaborative process; (2) during the process itself; and (3) implementing the outcomes, and to understand why these problems emerge. In many cases, these common problems can be avoided by carefully designing the process.

Everyone should start by reading the Background and Process, pages 3-4.

The participants should then read each scenario, one at a time. After reading each scenario, in small groups, the participants should answer the question at the end of each scenario.

Each scenario should last about 10 - 20 minutes.

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- Showing the public how they influenced the final decisions - p 18

Background

Sweetwater County is the fastest growing county in the Rocky Mountain West. To keep pace with rapid social and economic change, the County Planning Board and County Commissioners have initiated a process to amend the county's comprehensive land-use plan. Some residents support the planning effort, but others fear it will strip them of private property rights. The board and commission anticipate a contentious series of public meetings, and have hired an independent, impartial team to facilitate a multi-party dialogue on the land use plan.

The Issue

Sweetwater County adopted its first comprehensive land-use plan in November 1991. This plan avoided restrictive or regulatory language in favor of broadly stated policies or goals, such as preserving historic sites and conserving natural resources and water quality.

Since 1991, the county's population has mushroomed. The planning board and county commissioners were concerned about increased pressures on county services, including fire protection, schools, and roads. Water and air quality were at risk. Also, new regulations, such as the 2000 state subdivision law and the 2002 Growth Policy Act, called for stronger and more specific guidance than the 1991 plan provided.

In 2003, the planning board decided to revise the 1991 plan. It held seven public workshops to listen to citizen concerns and explore planning options. The board also gathered data from local and federal agencies to identify existing conditions and problems. The board then developed a draft plan, which was reviewed and revised by county departments affected by the plan and by an interagency working group, including the U.S. Forest Service and the Bureau of Land Management, which collectively manage about 50% of the land in Sweetwater County.

This draft plan was at once far more comprehensive and particular than the 1991 version. Among other objectives, it set criteria for subdivision development, delineated Community Growth Areas, and protected existing land uses such as farming and ranching.

The Process

To ensure that the draft plan reflected the interests of citizens, the Planning Board and County Commissioners have invited representatives of local interest groups to review the draft plan and suggest amendments. This Comprehensive Plan Advisory Committee (CPAC) was asked to: (1) review and clarify proposed policy statements; (2) develop a meaningful dialogue among the various groups; (3) identify areas of common interest; (4) identify potentially controversial issues; and (5) resolve controversial issues to the extent possible.

Two representatives from each of the following “interest groups” were invited to participate in the process:

- Farming and ranching
- Traditional land users (timber and mining)
- Downtown business
- Outdoor recreation
- Advocates for fishing and wildlife
- Open space conservation
- Builders and developers
- Surveyors and engineers
- Preservation and environmental quality

Clarifying the Roles and Responsibilities of Public Officials

In August 2004, the first meeting of the CPAC was convened. In addition to the CPAC members, over 75 citizens packed the local high school cafeteria on a sweltering hot summer evening. Things did not go smoothly. Several of the participants at the table, supported by a loud contingent of citizens in the audience, wondered why the county commission was not represented on the CPAC. "Shouldn't the ultimate decision-making body be part of this conversation, learning with us as we move through the plan and explaining their interests and positions?" The County Commissioners explained that they did not want to unduly influence the deliberations of citizens, and would try to make as many of the meetings as possible.

Another group of CPAC participants and citizens in the audience asserted that neither the county commissioners nor the federal land management agencies should have an undue influence in how the county manages its lands and resources. "In our system of representative democracy, these people are supposed to do what we tell them to do," claimed some people. "They should simply provide us with the best available information and implement whatever decisions we come to."

What are the various roles that public officials - elected officials, appointed officials, and professional staff - could and/or should play in collaborative, consensus-oriented processes?

Dealing with Staff Reluctant to Engage the Public

It's all well and good that the Commission and Board have decided for intensive public involvement for reviewing the plan. However, the County's planning staff, considered top notch, is incensed. They have expressed the following concerns to their planning director.

- Staff believe the plan is a top notch piece of professional planning work. After countless iterations and improvements, now, the Commissioners and Board throw in yet another step. Don't they trust the professionalism of the staff? Why didn't they form the CPAC sooner?
- Staff feel like they have stretched their own and their planning consultant's budget to the maximum possible. With all the other things they have to do, how are they supposed to now take on this extra, public effort?
- What's the matter with the standard approach? Isn't it the job of the Commission and Board to hold hearings, consider suggestions, and then transparently, in public, in regular proceedings, make revisions and final decisions?
- A few staff are concerned that this effort is just window dressing. The Commission and Board know that the group won't be able to come to consensus. But, the elected officials know they can take credit for "trying public involvement" and they they'll do what they want anyway. It all seems like a waste of time and resources.

If you were the Planning Director, what would you say to your staff to get them "on board" with a more meaningful public participation process?

Dealing with Parties Reluctant to Participate

The County knows that one of its most vocal critics is a nationally known preservation and environmental quality group called Planet Protection. It has a state office in the capital, about 100 miles away. They have sued not only the federal agencies, but the County and even private land owners around endangered species issues and water quality permits. The group does have some support among local citizens. In fact, one of its biggest contributors is a local retiree who is quite wealthy and moved into the community about ten (10) years ago. And, one of the County Commissioners generally holds similar views, though doesn't belong to the group.

The County finds this group quite difficult to deal with. However, the County believes that Planet Protection has to be asked to the table, and, even encouraged to participate. The process is advisory only, and better to have them in the tent than trying to tear it down from the outside. The County has heard that the organization has been modifying its stand somewhat after losing a series of high-profile lawsuits nationally. It apparently has a new Executive Director who, from rumors, is quite capable and reasonable. The problem is, despite repeated calls to participate, Planet Protection has said no.

Should you give up? Keep trying? If so, how? Why won't they participate?

Coordinating Multiple Jurisdictions

In addition to the county land use plan, the USFS and the BLM are each starting processes to revise and update their land use management plans for public lands and resources. After learning about the multiple processes – all of which will address some common problems, such as road maintenance, public access, weeds, and so on -- nearly all of the citizens and stakeholder groups plead with the 3 agencies to work together and develop a joint land use management plan, particularly around the issue of fire management adjacent to subdivisions.

The three jurisdictions agree that it makes sense to think about a regional, collaborative effort – at least on some issues – but explain that their budget cycles do not line-up and thus prevent them from getting started and working together on a common plan. There also appears to be some unspoken concern among the agencies about who has control over what. In short, there seem to be too few incentives and too many obstacles to regional collaboration.

What are the opportunities for regional collaboration in this type of situation? What are the barriers? And what are some practical strategies to build on the opportunities and overcome the barriers?

Ethical Issues for Facilitators and Mediators

After being hired by Sweetwater County to help design and facilitate the land-use planning process, the facilitator/mediator learns that the County Commissioners have very strong ideas on who should sit at the table, and what the ultimate outcome of the planning process should be. The commissioners explain to the facilitator/mediator – “We trust that you understand our interests and will do your level best to move the dialogue in that direction.”

The facilitator/mediator is an active member of two professional associations -- the Association for Conflict Resolution and the International Association for Public Participation – both of which have codes of conduct that urge practitioners to treat all participants, including the decision-makers, as equal partners in the process.

What should the facilitator/mediator do? How might such uncomfortable situations be avoided in the future?

Dealing with Difficult People

During the third meeting of the CPAC, after the group reluctantly adopted a set of ground rules and agreed on the scope of work as presented by the planning board and county commission, a small but vocal coalition of CPAC members, representing the farming, ranching, and other traditional land use interests, presented the group with an “interim land-use plan”. This plan promoted local control over federal lands within a county. The coalition asserted that Sweetwater County's draft plan did not adequately address federal land issues and had been developed with too little citizen involvement. They claimed that several key interests, particularly farming and ranching, were not adequately represented in the draft plan.

Some of the CPAC members responded that the presenters were out-of-order and violated the agreed-upon ground rules. Other CPAC members heckled the coalition and threatened to walk out of the meeting.

To complicate matters, a new county commissioner – who was elected after the process started – has stepped forward and said that she cannot accept the plan in its current form. “The plan needs more regulatory teeth to implement the lofty goals and aspirations that have been articulated.” Another commissioner responds that “The plan should only be a guide, not a regulatory tool.”

Take these difficult people one at a time. What are some practical strategies for dealing with each difficult group or person? What should be done “right now” at the meeting, and what might be done in the future to avoid such situations?

Dealing with a Breakdown in Trust

(Note: this scenario must be done after the Dealing With Difficult People scenario on page 10.)

Despite everyone's best efforts, the process has been bumpy. The last meeting with the hecklers, the strong statement from the new commission, and general sore feelings has led to a crisis. A few days after the meeting, the facilitator hears from several folks. "I just don't trust the process anymore. And, I really don't trust those other guys." People make the following claims.

- The ranching and farming representatives set the CPAC up. The outburst from other farmers wasn't a spontaneous splinter group, but a planned effort to subvert the process by the CPAC agricultural representatives.
- The environmentalists did an "end around" to the new County Commissioner and got her to raise the "regulatory teeth" issue, one several CPAC members thought had been discussed and addressed within and by the CPAC already.

Trust seems to have broken down after a difficult meeting. What should the convener (the Commission and Board), the process manager, and/or participants do to help get things back on track?

Managing Scientific and Technical Uncertainty

Representatives from the fishing and wildlife, preservation and environmental quality, and open space conservation interest groups have argued from the beginning of the process that the comprehensive land-use plan should be based on sound scientific and technical information, not politics. Based on their own research, and the views of a professor at the local university, they are very concerned about some of the information on demographic and economic trends, and social and environmental impacts. The representatives have asked the CPAC to spend the next six months reviewing the scientific and technical information on which the plan is based.

How should the group respond to the concerns of these folks? What are some practical strategies to promote a common understanding of the scientific and technical information (and uncertainties) that underlie natural resources and environmental decisions?

Engaging the General Public

After several months of hard work, the CPAC has reached preliminary agreement on a number of issues and an overall plan. Many of the participants – including the public officials – are now suggesting that the group’s effort should be presented to the broader public. Although all CPAC meetings have been open to the public, the daytime meetings, long deliberations, complex issues, and general length of the process seem to have scared the public away. After that first, “robust” meeting, things have been pretty quiet outside of the CPAC. The CPAC needs to design an effective public process to share its draft findings. The CPAC has discussed the following issues.

- Some CPAC members are concerned that the broader public is not only disengaged, but not interested and pretty uninformed. At this point, after all this hard work, they are pessimistic they can get the average citizen to the meeting and then both educate the public and get meaningful feedback.
- The farmers and ranchers are concerned that their constituencies have been disengaged and are fearful that at any public, “close to final” meeting, the extremists within their ranks will cause trouble.
- The CPAC isn’t sure whether to hold one or two large public meetings for everyone or to present their findings and receive feedback in smaller, “sector” meetings with co-sponsors such as the Farm Bureau, the Chamber of Commerce, Rotary, the local Conservation League, and others.
- The local builder has mentioned that she expects property rights groups to potentially come out in force. They haven’t really been members of the CPAC and, in past years on federal lands issues, they have been highly disruptive and even threatening.
- The CPAC isn’t sure whether they should just listen in these meetings as comments are made, or engage in a dialogue, and try and answer questions, explain their reasoning, and so forth. And, though the CPAC has worked well together, none of the members trust that just one or two individuals could speak on behalf of the group.

- The CPAC isn't sure if and how to involve the Board and the Commissioners at this point. They ought to hear the public input, but, the public input is really for the CPAC to complete its work.

Give these points, what kind of effective public process would you recommend to the CPAC? How do you ensure a broad, diverse turnout? How do you ensure useful, meaningful input is obtained?

Dealing with the Media

The CPAC has finally reached a new level of trust, after lots of hard work and difficult times. People are working together. They are acknowledging one another's interests. They are creating inventive options and really starting to think "outside the box." Unfortunately, last meeting, all sorts of trouble broke loose during the meeting.

Probably mistakenly, the County decided to mention an important new water treatment construction project for some outlying suburbs at this last meeting. This was driven by some resident interest and numerous regulatory concerns and threatened fines due to water quality. The County received a large grant to help offset many of the costs, but the outlying communities will have to pay additional property tax. Thus, it's quite controversial. It's not related directly to the land-use planning process, but seemed important to let the group know. Several members of the press were there, and as soon as the announcement was made, the CPAC pummeled the County planner with questions. The public attendees tried to jump in too. And, the media, feeding on the controversy, rushed in with their cameras and microphones. You couldn't believe it, but one reporter turned off the window air conditioner in an already hot room because he didn't think he could get a good quality sound recording. The facilitator just did not succeed in managing the chaos.

What should the facilitator maybe have done to manage the meeting better? What should you do going forward?

Reaching Closure – Or, Knowing When and How to Pull-out

After meeting for 10 months, the CPAC is close to reaching agreement on a set of options and recommendations for the planning board and county commission. They have labored over the draft plan in detail, reviewing complex proposals and agreeing on language during months of joint sessions and subcommittee work.

As the CPAC appears to be nearing a hard-won agreement (closure), one of the *preservation and environmental quality* representatives stands up and says, “Since the previous meeting, I have reviewed the data on which the plan is based and have consulted my constituents, and we have some real concerns that the data may be flawed. We cannot buy in to the emerging agreement at this point.” He goes on to cite several flaws in the methodology and assumptions used to project population growth and housing needs in Sweetwater County – information the CPAC agreed to accept because it seemed to be the most credible data available.

A representative of *builders and developers* snaps back, “Why didn’t you bring this up before? A month ago you agreed these were the best studies out there. I didn’t hear your concerns and reservations when we agreed to use the information.” A representative of *downtown business* chimes in, “This is ridiculous. At the eleventh hour we can’t have someone who has already agreed to this plan suddenly decide the data it’s based on are bad. Let’s face it folks, we have to make a decision despite incomplete and imperfect information. I don’t want to keep studying this thing to death.”

To complicate matters, a new county commissioner – who was elected after the process started – has stepped forward and said that she cannot accept the plan in its current form. “The plan needs more regulatory teeth to implement the lofty goals and aspirations that have been articulated.” Another commissioner responds that “The plan should only be a guide, not a regulatory tool.”

A representative of the *farming and ranching* group jumps in. “Hell, let’s take a vote right now he says. If we get a majority, that’s good enough consensus for me.”

Is it time to walk away from the process – and if so, how should participants do that? Or, how might this group reach closure?

Last minute pull-outs and litigation

Just as the collaborative process was ending, Planet Protection pulls out of the process without much of a clear explanation (and fortunately, you thought at the time, not much hoopla either).

But sure enough, as soon as the master plan is completed, the County Commission reviews and approves it in its formal process, and submits the plan for the 45 day time period for final public review, Planet Protection files a Notice of Intent to Sue. The group claims that the County's new master plan does not meet all requirements of the state's governing statute. County officials are furious. Those who advocated for Planet Protection to be involved are embarrassed and humiliated. Other stakeholders write to the local paper: "After twenty hard-working people donated countless after-work and weekend hours developing a plan to best serve the County, a paid participant in the collaboration filed litigation to stop the project. What's the point of collaboration when a vocal and outside minority views it as 'it's still my way or the highway?'"

Was it all for nothing? What can they be thinking? What could have been done before the Notice of Intent to Sue? What might be done now?

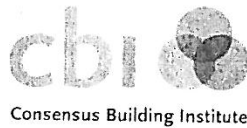
Show the Public how They Influenced the Final Decisions

The CPAC has deliberated, held a final public involvement process, and forwarded recommendations to the Commission and the Board. The Board and Commission, in turn, have completed their work and are putting the finishing touches on the revised master plan. The Commissioners, after spending all this extra time (their time, their staffs' time, and the CPAC's time) and money, want to be able to justify that the process was worth it. And, they want to show how the CPAC's work and the public involvement process influenced their final decisions.

How best can the elected officials show that this effort was not simply "window dressing," but was meaningful public input that influenced final decisions?

Best Practices for Common Problems

February 9, 2007



Consensus Building Institute

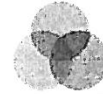
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Common Problems & Best Practices

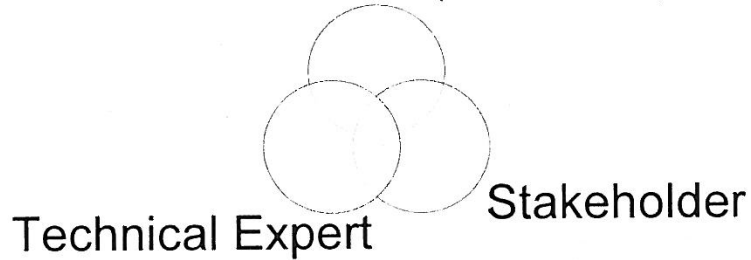


- 1) Clarifying the Roles of Public Officials
- 2) Coordinating Multiple Jurisdictions
- 3) Managing Scientific and Technical Information
- 4) Dealing with Difficult People
- 5) Reaching Closure – Or Knowing When and How to Pull-out
- 6) Engaging Unaffiliated Citizens

The Roles of Public Officials



Decision-maker (Convener)



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Decision-maker (Convener)



- Initiate the forum
- Provide an opportunity for meaningful dialogue
- Provide logistical support
- Set a respectful, optimistic tone
- Help frame the issues for discussion
- Provide legitimacy and authority

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Technical Expert



- Demonstrate a willingness to work together
- Be open-minded, willing to listen, to teach and to learn
- Contribute scientific and technical information
- Contribute other resources

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Stakeholder



- Articulate your interests and priorities, including those of the broader public interest
- Articulate the sideboards or constraints you are faced with -- time, money, legal mandates, information, etc.
- Ensure that any agreement is consistent with the laws and regulations

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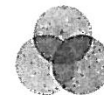
Stakeholder (cont.)



- Ensure that any decisions can be defended and implemented within the agency.

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Managing Scientific and Technical Information



- Clarify the Source of the Dispute
 - Lack of data
 - Disagreement over the nature of the problem
 - Different approaches to collecting and analyzing data
 - Competing interpretations of what the data mean

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Principles to Manage



- Scientific and technical information is a “necessary” but “insufficient” ingredient.
- Experts and expertise are critical, but the stakeholders must understand scientific and technical issues.
- The “scientific method” is only one way of knowing.

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Strategies to Manage



- Agree on what you know, don't know, want or need to know.
- Clarify the nature of the dispute - identify areas of agreement and disagreement
- Agree on what level of uncertainty is acceptable.
- Invite outside technical experts
 - Multi-disciplinary panels
 - Independent fact finder
 - Peer review

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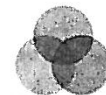
Strategies to Manage (cont.)



- Conduct joint fact-finding
 - Create a subcommittee with technical expertise
 - Agree on what questions should be asked
 - Jointly review draft studies
 - Ask more questions
 - Articulate the worst case scenario
- Seek out precedents.
- Adopt a learning, adaptive attitude.
 - Use contingent agreements

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Dealing with Difficult People



- Validate their viewpoint
- Clarify the interests motivating the behavior
- Enforce the ground rules
 - Establish a culture of integrity early and often
- Conduct a round-robin discussion to focus on accomplishments
- Call a time-out; meet privately with the person

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Reaching Closure



- Call a break. Let people cool off
- Acknowledge the person's frustration and clarify the nature of the concern
- Remind them of their "rights" and "responsibilities" for participation
- Is it possible to create "contingent agreements?"

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Reaching Closure (cont.)



- Clarify areas of agreement and disagreement; how to resolve disagreements?
- Consider majority and minority reports.
- Discuss the consequences of partial agreement.
- Include a provision in ground rules on how to deal with this type of situation

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When to Pull Out? (1)



- Progress is too slow
- There are too many disagreements
- Ground rules are not being followed or enforced
- The objectives change and no longer address your interests

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When to Pull Out? (2)



- Your views are not being heard or incorporated
- You feel like you are not having much influence
- You have better options away from the table
- This is not a wise use of your time
- The consequences of staying are worse than leaving

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When to Pull Out? (3)



- The right people are not at the table
- Some people are not participating in “good faith”
- You sense a preconceived outcome

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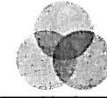
How to Pull Out? (1)



- Acknowledge accomplishments
- Clarify your concerns (process, substance, behavior)
- Offer solutions or conditions under which you would be willing to continue participating
- Validate concerns and explore options with the facilitator

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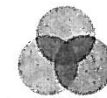
How to Pull Out (2)



- Give other participants a chance to respond
- Carefully consider the consequences of withdrawing
 - Opportunity to learn
 - Relationships
 - Long-term influence on framing a problem or solution

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How to Pull Out? (3)



- Inform other participants, in writing, of your reasons for withdrawing
- Anticipate and address the public perception of your withdrawal
- Leave strategically, not angrily

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Engaging Unaffiliated Citizens

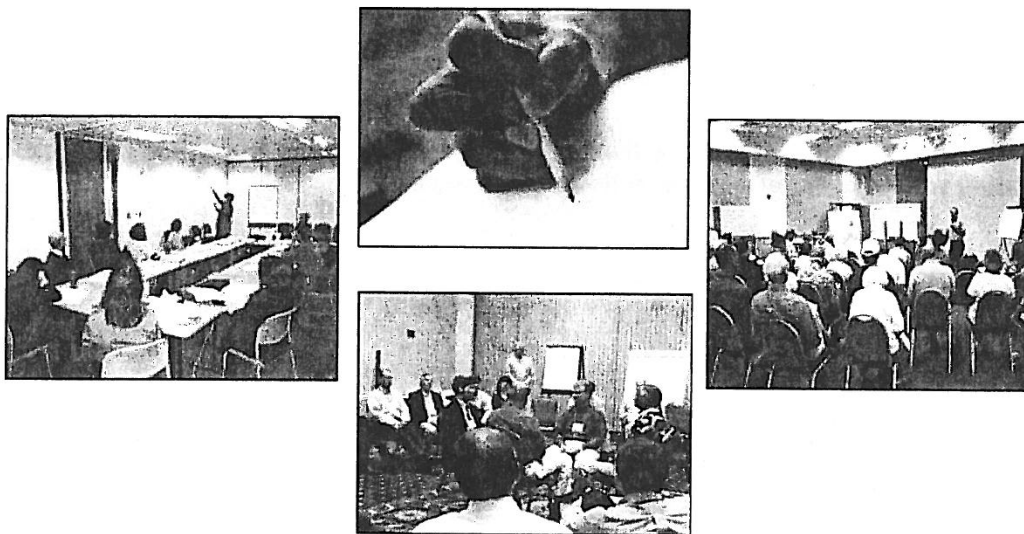


- Use multiple means
 - Newsletters
 - Editorials
 - Open Houses
 - Public Hearings
 - Citizen Panels/Juries
 - Web-based technologies
- Move from informing and educating to engaging in dialogue

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Workshop Evaluation



The U.S. Institute for Environmental Conflict Resolution evaluates all of its services. As a part of this evaluation we ask the participants who have been involved in an Institute training/workshop to provide us with information about their experience. Your responses will be part of the Institute's ongoing evaluation effort, and the data compiled will provide much-needed information that will be used to improve our programs and services. The average estimated reporting burden for this questionnaire is 6 minutes. This estimate includes time for reviewing the instructions, completing, and reviewing the questionnaire. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Institute. Please note your responses to this questionnaire are confidential. The identity of individual respondents is not recorded. The Office of Management and Budget (OMB) number that is displayed on the cover is currently valid and authorizes this collection of information.

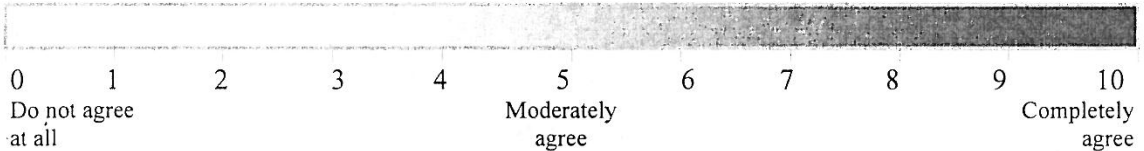
Please hand in your completed questionnaire at the end of the training/workshop or return to:

U.S. Institute for  **Environmental Conflict Resolution**
Morris K. Udall Foundation

130 South Scott Avenue, Tucson, Arizona 85701
Telephone: 520.670.5299 Fax: 520.670.5530
Website: www.ecr.gov

1. What was the primary objective of this training/workshop?

Rating Scale



2. Using the scale above, please tell us about your experience at this training/workshop by rating your agreement with the following statements:

RATING	
_____	a. The primary training/workshop objective was achieved.
_____	b. This training/workshop was worth my time.
_____	c. This training/workshop addressed an important skill/topic that I face in doing my job or is important for my future plans.
_____	d. This training/workshop addressed an important topic for my organization. <input type="checkbox"/> Check if <i>Not Applicable</i> (i.e., I represented myself at this training/workshop)
_____	e. Overall, I have benefited from participating in this training/workshop.
_____	f. I would recommend this training/workshop to others.
_____	g. The facilities were suitable for the training/workshop activities.
_____	h. This training/workshop was an important opportunity for the exchange of experience and information.
_____	i. What I take away from this training/workshop will have a <u>positive impact on my effectiveness in the future</u> .
_____	j. What I take away from this training/workshop will have a positive impact on how my organization functions in the future. <input type="checkbox"/> Check if <i>Not Applicable</i> (i.e., I represented myself at this training/workshop)

3. What were the most important things you learned or accomplished at this training/workshop and why were they important to you?

6. Using the space below describe anything that stood out to you that added to or detracted from the trainer(s)/facilitator(s) effectiveness.

7. Please tell us how this workshop/training could have been more effective?

THANK YOU FOR TAKING THE TIME TO COMPLETE THIS QUESTIONNAIRE. PLEASE HAND IN YOUR COMPLETED QUESTIONNAIRE AT THE END OF THE TRAINING/WORKSHOP.

PERSONS WITH DISABILITIES WHO REQUIRE ALTERNATIVE MEANS FOR COMMUNICATION OF PROGRAM EVALUATION INFORMATION SHOULD CONTACT THE U.S. INSTITUTE AT (520) 901-8548.

**Questions and Answers about the Relationship between
National Environmental Policy Act (NEPA) Planning and Negotiated
Rulemaking
for the Cape Hatteras National Seashore ORV Management
Plan/EIS/Rulemaking**

February 5, 2007 Draft

1. What is NEPA? Why would the park conduct both a NEPA planning process and a negotiated rulemaking?

NEPA was passed by Congress in 1969. Some call it compliance because it's a legal requirement for federal agencies. However it's much more accurately described as a required environmental planning process. NEPA set environmental policy goals, imposed analysis and public review requirements on federal decision-makers, and created the Council on Environmental Quality or CEQ.

The NEPA process is mandated by the National Environmental Policy Act, implementing regulations of the Council on Environmental Quality, and NEPA guidance from the Department of the Interior and the National Park Service (NPS). *NPS Management Policies 2006* also requires parks to use the NEPA planning process. Any federal action or federal decision being considered that would, if implemented, have an impact on the human environment, *including rulemaking*, may trigger the need for NEPA review.

The Negotiated Rulemaking Act provides authority for federal agencies to establish negotiated rulemaking committees to conduct negotiated rulemaking under certain circumstances, but does not require it. The Council on Environmental Quality, the Department of the Interior and the NPS encourage use of collaborative processes such as negotiated rulemaking where appropriate. For this project the NPS thinks that conducting NEPA planning and negotiated rulemaking at the same time is the best opportunity to produce a widely accepted special regulation for ORVs.

2. What's the difference between the Plan and the special regulation?

Although the scope of the plan would encompass the substantive content of the special regulation, the plan would be broader. For example the plan could include areas such as communication, interpretation, monitoring and evaluation, and other topics that would not be included in the special regulation. The regulation would meet the requirements of Executive Order 11644 of 1972, amended by Executive Order 11989 of 1977, and of Title 36 section 4.10 of the Code of Regulations implementing the Executive Orders by providing that routes and areas designated for ORV use shall be promulgated as special regulations. Or, simply said...the rule establishes routes and conditions to use those routes....the plan is broader, encompassing communication, interpretation opportunities, etc. For example, those NPS parks that allow personal watercraft have a plan for personal watercraft management that

Prepared for the Collaborative Workshop, February 8-9, 2007 by the NPS Environmental Quality Division

includes both the substantive content of the special regulation for personal watercraft use in the park and other park management activities related to personal watercraft.

3. How would the National Environmental Policy Act (NEPA) process relate to the Negotiated Rulemaking process?

For the ORV Management Plan/EIS/rulemaking, the negotiated rulemaking and NEPA planning would be carried out concurrently (at the same time) and the NEPA planning process would be coordinated with the negotiated rulemaking in order to share information about possible options and alternatives and their impacts and implications between the two processes.

4. Why would the NPS start the NEPA process before a negotiated rulemaking committee is established?

NPS experience at Golden Gate National Recreation Area, another national park that is undertaking the NEPA process concurrently with the negotiated rulemaking process, has shown that although it takes longer to begin the negotiated rulemaking process than to begin the NEPA process, once a negotiated rulemaking committee is established, it can quickly use information already developed through the NEPA process, allowing a shorter overall time to conclusion of both processes. The NEPA process would be gathering and organizing data and information and getting public comment, but not making decisions on alternatives or issues, during the process of establishing the negotiated rulemaking committee.

5. Why would the NPS NEPA process develop preliminary alternatives or elements of alternatives for public comment before the negotiated rulemaking committee is established?

It is helpful during NEPA public scoping to have preliminary alternatives or elements that could be developed into alternatives to help stimulate and focus public comment. Providing preliminary alternative elements to the public for comment gives the public the opportunity to share in the NPS discussion from internal scoping. At the public scoping stage of the planning process NPS would not have made any decisions on whether these elements would be carried forward as part of any alternative in the Draft EIS.

6. How would the environmental, economic, social, recreational and other aspects of ORV management be evaluated during the process and does the negotiated rulemaking committee have any role in these evaluations?

In addition to a discussion of these issues within the Negotiated Rulemaking Advisory Committee (perhaps by one or more subcommittees), an environmental review and assessment will be conducted by the National Park Service under the National Environmental Policy Act (NEPA). If the committee identifies aspects of ORV management where there is disagreement on the "facts" there may be an opportunity for the committee to engage in "joint fact finding" to develop or review data together. This often is some of the same information that the NEPA planning process also needs for analysis of the impacts of the alternatives. Ultimately the NPS

is responsible for the adequacy of the NEPA impact analysis, but the NEPA team and the committee would share information relevant to both processes.

7. How would consensus recommendations of the Committee be used by the NPS in the NEPA process?

The NPS, to the greatest possible extent consistent with its legal obligations, would use the committee's consensus on the content of a proposed special regulation as the basis for its proposed special regulation and as the preferred alternative in its Environmental Impact Statement.

8. What happens if Committee members are unable to reach consensus?

The neutral facilitation team would provide the NPS with a report presenting those items on which the committee reached consensus and outlining those items on which the committee members disagreed and why. Depending on the topics of the consensus, NPS could include it in one or more alternatives in the NEPA process and, to the extent consistent with legal and policy obligations, could include it in the preferred alternative and the proposed rule. The partial consensus (about 75 % of the topics) reached by the committee on the Fire Island National Seashore negotiated rulemaking is being used by that park in their NEPA document and proposed rule.

9. How long would it take to complete the negotiated rulemaking process, the NEPA process, and the process move from proposed to final rule?

The NEPA EIS process generally takes 18 months to 3 years. NPS experience with other rulemakings suggests that the various additional OMB clearances required for a rulemaking may require additional time beyond the NEPA process. The Federal Advisory Committee Act limits the term of a committee to two years; however the committee charter may sometimes be renewed. Although the negotiated rulemaking and NEPA processes are complex, NPS expects that a final rule, barring unforeseen circumstances, could be published in the Federal Register and take effect in 2009. Usually regulations take effect 30 days after publication in the Federal Register.

0074153



SAMPLE PREPARATION MEMO

Issues to be Considered:

1. Ted Wiley's compensation
2. Marketing
 - What will Erive do
 - e.g. offer to help Ted Wiley with Revitalade endorsement
 - What could Ted Wiley do
 - e.g. appearances at Erive's youth sports camps
3. Duration of the contract
4. Incentives to ensure that Ted Wiley plays well and acts responsibly off the court
5. Work-related benefits and incentives
 - e.g., free sneakers, limousine, personal trainer
6. Joint efforts to help inner-city youth
7. Other joint gains?

TED WILEY: Preparation Memo

ALTERNATIVES

Ted Wiley's Alternatives to an Agreement:

- Continue to play for the New Jersey Hoops, without an endorsement contract
- Hire a public relations firm to help him change his unsportsmanlike image
- Look for another endorsement deal, e.g. with Revitalade
- Continue to volunteer at youth sports clinics
- Seek funding to start his own youth sports clinics

[Discussion from the perspective of Ted Wiley's representative:]

None of these alternatives is appealing to Ted. He would much prefer reaching an agreement with Erive. His best alternative to a negotiated agreement with Erive seems to be to look for another endorsement deal. We must determine how likely such an alternative would be for this season, especially since most endorsers have already signed contracts with other stars and Ted's poor reputation makes him an unappealing candidate. Before going in to the negotiation, however, I will want to discuss with Ted what might be done to improve his alternatives. For example, he could start talking to public relations firms about a campaign to clean up his reputation, and simultaneously seek the endorsement contract with Revitalade. I would be stronger in the negotiation if Ted and I could improve his BATNA by having already set up a meeting with Revitalade.

TED WILEY: Preparation Memo

ALTERNATIVES

Erive's Alternatives to an Agreement:

- Use the 7th year player Harvey Harmony (at \$1.6 million over two years)
- Look for another star with more appeal to youth
- Cancel the marketing campaign and absorb the costs
- Start a large-scale publicity campaign featuring Harvey Harmony
- Attempt to resume negotiations with Shane Nottanae

[Discussion from the perspective of Erive's representative:]

Canceling the marketing campaign right now would be devastating to Erive's bottom line and to their efforts to gain a foothold in the footwear market. It is probably impossible to find another endorser because all of the top stars have already been signed by other companies. Our BATNA is to use Harvey Harmony, a 7th year player, for our marketing campaign. This is taking a chance since he lacks appeal with youth. We should improve our BATNA before going into the negotiation with Ted's agent by starting negotiations with Harmony's agent right away. In fact, tonight I will call Harmony's agent and ask him to come to my office first thing in the morning.

TED WILEY: Preparation Memo

INTERESTS

Ted Wiley's Interests:

- Get an endorsement contract, earn more revenue
- Clean up his reputation for unsportsmanlike conduct
- Improve his leverage in contract negotiations with the New Jersey Hoops
- Get an endorsement contract with Revitalade (contingent on getting the deal with Erive)
- Have a successful basketball season
- Establish a precedent of reasonable compensation for future endorsement contracts
- Continue to promote sports opportunities for children, particularly his inner-city youth

[Discussion from the perspective of Ted Wiley's agent:]

Before going into the negotiation, I must **prioritize** these interests. Ted seems most interested in *getting* the endorsement deal and less interested in what the actual compensation is. Of course, I recognize that Ted would be happier earning more money than less. He is also concerned, however, that the world views him as a successful player with a good reputation off the court. Since he desperately wants to clear his reputation, any option Erive's representative and I come up with should take into account how the media and the public will view Ted. In addition, anything that Erive and I can do to help Ted obtain the Revitalade endorsement will be beneficial to Ted.

TED WILEY: Preparation Memo

INTERESTS

Erive's Interests:

- Sell sneakers and earn profit
 - minimum of 200,000 in order to break even
 - target of 500,000 to 1 million
- Make inroads into footwear and sneaker markets
- Find a star who is available for marketing campaign beginning in 3 weeks
- Maintain reputation for quality products at reasonable prices
- Gain brand name appeal among youth
- Not be tied, long-term, to a player who doesn't become a star
- Have enough money left-over from endorsement deal to spend on community-related efforts and internal capital needs

[Discussion from the perspective of Erive's representative:]

Erive's highest priority interest is to get the best possible star to endorse their product so the marketing campaign will be a success. They need to sign a contract immediately, as they have already spent money on a marketing campaign which is due to shoot in three weeks. In addition, Erive needs to make a profit – they must sell 200,000 sneakers in order to break even and believe they can sell at least 500,000 shoes with the right star.

If we reach an agreement with Ted Wiley, both parties will have an interest in him playing great basketball and cleaning up his reputation on and off the court. There also seems to be a shared interest in promoting sports opportunities for youth.

TED WILEY: Preparation Memo

RELATIONSHIP

What interest does each party have in pursuing a good working relationship?

- A good relationship could help Ted clean up his reputation: both parties need to be able to work well together during the two-year endorsement contract to ensure that Ted plays well and improves his reputation. Since a success is important to both, neither wants to create a situation in which would cause Ted to fail.

How should that be reflected in the negotiation?

- An ideal negotiation in this situation is an amicable one in which the parties feel like this is a joint problem to be solved by taking into consideration the best outcome for all involved. Pushing to the last dollar could possibly prevent agreement and would be counter-productive since both parties are worse off without an agreement.

What interest do the parties have in a long-term relationship?

- The possibility of a long-term contract should be discussed as a future possibility to keep our options open. I should go back to my client to find out if there is an interest in such a contract. That is not crucial to this negotiation, however.
- Other long-term relationships could be beneficial to the parties since both Erive and Ted have a certain amount of fame and expertise. They may be able to help each other out.

TED WILEY: Preparation Memo

COMMITMENT

What would be possible good outcomes of this meeting:

- Firm contract
- Agreement in principle to be shown to Ted and Erive
- Agreement to hire public relations firm to begin working on Ted's reputation immediately

In reaching this agreement, the commitment must be:

SUFFICIENT: it must cover all interests such as compensation, marketing, etc.

REALISTIC: it must be an agreement that both parties can perform

OPERATIONAL: its terms must be such that can be carried out as soon as the parties sign the contract. Everyone must know exactly what he or she is to do.

Among the possible outcomes, I believe my client would prefer a firm contract. I have the authority to commit to a two-year. I would need to consult with my client before agreeing to anything of a more long-term nature.

COMMUNICATION

I will be much more persuasive if I can show the other party that I am listening to them and that I understand what they are saying. Once they recognize that I hear them, they can hear what I am saying. If they do not believe that I am listening/understanding them, they will spend all of their energy advocating their position and it will be twice as hard for me to persuade them.

--- How can I show that I'm listening:

Paraphrase what they say and repeat it back with: "If I've heard you correctly, I think you've said that"

Maintain good eye contact

Ask questions

Acknowledge their concerns even if I disagree with them:

"I understand why you see this as a problem. Let me add my perception of the situation."

First, it is important for me to remember that I can acknowledge what they say without agreeing with them. Second, I must not lead them to believe that my acknowledgements of what they say mean that I am agreeing with them. For example, if I tend to nod my head when I am listening attentively, I must tell them explicitly that I hear what they are saying but that I do not necessarily agree entirely. Third, by the tone I set in the negotiation, I can disagree without being disagreeable.

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TED WILEY: Preparation Memo

0074163

PROGRAM ON NEGOTIATION AT HARVARD LAW SCHOOL
AN INTER-UNIVERSITY CONSORTIUM TO IMPROVE THE THEORY AND PRACTICE OF CONFLICT RESOLUTION



(Illustrative components of agreements)

- Financial arrangements:

- X% of profits to go Ted
- X% of profits above Erive's break-even point (200,000 sneakers) go to Ted
- X% of profits on sales above 500,000 sneakers go to Ted
- Ted begins earning profit once Erive sells 200,000 sneakers
- After break-even point, X% of profits above 200,000 sneakers, Y% of profits above 500,000 sneakers, and Z% of profits above 500,000 sneakers

- Marketing efforts:

- Erive agrees to pay \$X to public relations firm to improve Ted's public image
- Ted agrees to make appearances at Erive's youth sporting camps
- Erive uses Ted's appearances at sporting camps in marketing campaign
- Erive contacts Revitalade on Ted's behalf; discusses possibility of joint marketing efforts
- Erive arranges for media coverage of Ted

- Incentives for improved play and off-court behavior:

- Ted receives bonus if there are no further incidents that hurt his reputation
- Ted's compensation is penalized for each reputation-harming incident
- Erive pays for personal fitness trainer and lifestyle coach for Ted.

0074165

PROGRAM ON NEGOTIATION AT HARVARD LAW SCHOOL
AN INTER-UNIVERSITY CONSORTIUM TO IMPROVE THE THEORY AND PRACTICE OF CONFLICT RESOLUTION



SOME POSSIBLE CRITERIA FOR ESTABLISHING COMPENSATION

The following are some of the possible standards by which one can establish a salary for Ted's endorsement deal with Erive (all amounts are for two-year contracts). Note that some of the numbers (what Erive is willing to pay and what Ted is willing to accept) are not independent or objective standards.

<u>STANDARDS</u>	\$
Keni sneaker deal with Walt Winge (not publicly disclosed)	\$6 million
Average deal for 3 rd to 5 th Year All Stars last year	\$6 million
Average deal for 3 rd to 5 th Year All Stars 2 years ago	\$5 million
What Erive is willing to pay for Ted	\$4 million
Average deal for first-round draft picks 2 years ago + 25% for inflation	\$3.5 million
Average deal for 3 rd to 5 th Year All Stars 4 years ago	\$3.4 million
Average deal for 4 th Year All-Star, 2 years ago + 25% for inflation	\$3.125 million
What NoLimit paid Stevie Madison 4 years ago + 50% for inflation	\$3 million
What Erive would have paid Shane Nottanae	\$3 million
Average deal for first round draft picks, two years ago	\$3 million
Average deal for 4 th year All Stars, 2 years ago	\$2.5 million
Average deal for 3 rd – 5 th year All Stars 3 years ago	\$2.135 million
What NoLimit paid Stevie Madison 4 years ago	\$2 million
Average price for 3 rd – 5 th year All Stars 4 years ago	\$1.7 million
What Erive would pay for Harvey Harmony	\$1.6 million
25% of what first round draft picks earned 2 years ago +25% for inflation	\$875,000
25% of what first round draft picks earned last year	\$812,500
25% of what first round draft picks earned 3 years ago + 37.5% for inflation	\$776,552
25% of what first round draft picks earned 4 years ago +50% for inflation	\$637,500
What Ted would be willing to accept	\$0

This case was written by Jake Erhard under the supervision of Robert C. Bordone, Thaddeus R. Beal Lecturer on Law at Harvard Law School and Deputy Director of the Harvard Negotiation Research Project, for the Harvard Negotiation Research Project. Copies are available at reasonable cost from the Program on Negotiation Clearinghouse, and may be ordered online at www.pon.org or by telephone at 800-258-4406 or 617-495-1684. This case may not be reproduced, revised, or translated in whole or in part by any means without the written permission of the Director of Curriculum Development, Program on Negotiation, Harvard Law School, 513 Pound Hall, Cambridge, MA 02138. Please help to preserve the usefulness of this case by keeping it confidential. Copyright © 2003 by the President and Fellows of Harvard College. All rights reserved. (7/05).

0074167

PROGRAM ON NEGOTIATION AT HARVARD LAW SCHOOL
AN INTER-UNIVERSITY CONSORTIUM TO IMPROVE THE THEORY AND PRACTICE OF CONFLICT RESOLUTION



CONFIDENTIAL INSTRUCTIONS FOR ERIVE'S VICE-PRESIDENT OF BUSINESS DEVELOPMENT

You have been Vice President of Business Development at Erive Corp. for only six months now. You were brought on to oversee the launch of a new basketball footwear line. To this point, things have not gone particularly well, but your upcoming negotiation with Ted Wiley's agent has the potential to reverse the tide.

Your employer, Erive Corp., is a 25-year old, privately-owned sporting goods company based in Boulder, Colorado. Erive sells sporting gear, equipment, and apparel for two sporting disciplines: soccer and outdoorsmanship. Though not large relative to the major diversified sporting goods companies, Erive maintains significant market share within its niches and has a reputation for offering extremely high quality and durable products. In recent years, Erive has been delighted to see its products - particularly its footwear - make significant inroads into the urban casualwear market. Erive attributes this phenomenon to a number of factors: the quality, comfort, and aesthetic appeal of its products; its cult-like aura in the outdoorsman and soccer segments; and the general increasing popularity of casual sportswear among America's youth.

Erive also believes that its public-spirited image has contributed significantly to its inroads into the urban casualwear market. Erive's founder and your boss, Patricia Peak, is a huge believer in the practical and spiritual virtues of sports and the outdoors. As a result, she has taken it as a crusade to provide under-privileged children with opportunities to participate in sports. Among other things, Erive sponsors youth summer camps and inner-city youth soccer leagues. Through Erive, Peak is always looking for new ways to bring children in touch with sports, and to serve the public generally.

In view of Erive's increasing popularity, Peak decided last year to create a division dedicated to basketball footwear. This is what brought you to Erive. Though the market is dominated by two huge companies, Keni and Sadida, Peak believes that Erive can thrive. Erive already has significant brand-name appeal among urban youth, who represent the largest segment of the basketball products market. Peak also believes that the major basketball gear companies unconscionably gouge their consumers, charging, for example, upwards of \$100 per pair of basketball shoes that cost a fraction of the price to develop, manufacture, and market. Peak is convinced that Erive can offer products of comparable quality and cultural appeal at half the

prices currently offered by the major players, thereby capturing significant market share. Finally, Peak feels that Erive can successfully leverage its youth sporting efforts to advertise and market its basketball line.

Based on your efforts, Peak, though initially resistant, has also come to appreciate the importance of NBA player endorsements in marketing basketball footwear. The history of branded basketball footwear confirms the pivotal role of high-profile, reputable NBA stars in the success of the brand. Regrettably, Erive is at something of a competitive disadvantage in this market. For starters, virtually every major young NBA player with solid prospects has already signed a shoe deal with one of the established industry competitors. Moreover, whereas the major companies annually allocate tens, if not hundreds, of millions of dollars to marketing and endorsement deals, Erive has earmarked \$15 million to be spent over the next two years on the initial launch and marketing effort. Of that, close to \$11 million is required to execute the actual campaign - i.e., buy advertising space, pay the creative development team, fund the support infrastructure, etc. This leaves \$4 million for a player endorsement and, if any remains, for Erive's basketball-related community efforts and for internal capital needs.

Up until two weeks ago, you thought you had pulled off the marketing coup of the century. Prior to this year's NBA draft, you thought you had come to terms with Shane Nottanae, a sensational Duke University graduate, for a two-year endorsement deal worth \$3 million in total (\$1.5 million per year). Based on his preliminary indication of commitment, you went ahead and laid the groundwork for the marketing campaign to commence with the beginning of this year's NBA season, which happens to be four short weeks away. Everything was set, and all that remained was for Shane to shoot the print and TV advertisements. Unfortunately, you never got Shane to sign the contract. Just two weeks ago he backed out of your arrangement, claiming that Keni had made him a deal that he and his family "couldn't refuse." You were devastated. You had already made advance payments for much of the advertising time and space, and for the artistic and production talent. You fear that if you can't land a replacement soon, the money will be completely wasted, and your career with Erive, if not within the industry, will be doomed.

Through your contacts among sports agents, you learned this week that Harvey Harmony had recently terminated his relationship with Sadida and was searching for a new endorsement deal. Harmony is entering his 7th year as an NBA professional. Early in his career he was a stand-out player, making the All Star team in his first four seasons. But in the last couple of years he has been plagued by injuries, and his performance level has suffered considerably. Though he is still recognized as a fine NBA talent, you are skeptical of his worth as an endorsement candidate, particularly for your nascent, youth-focused basketball division. Nevertheless, Harmony has broad-based name recognition and a blue chip reputation. The marketing department determined that Erive should be willing to offer Harmony up to a total \$1.6 million for a two-year endorsement contract. But the consensus is that a younger and more talented player would be vastly preferable.

Yesterday, as you were about to call Harmony's agent to inquire into a potential deal, Peak appeared in your office to tell you about an "intriguing" young NBA player she had just met at a youth basketball clinic in Denver, Ted Wiley. Peak suggested that Wiley might be the ideal endorsement candidate, particularly given the time pressure the company is under. At first, you couldn't believe your ears. Wiley, about to enter his second year in the NBA, had a truly exceptional year last season

TED WILEY: Confidential Instructions for Erive's Vice-President of Business Development

- he was named to the NBA All Rookie Team. But his reputation is troublesome. In fact, most major sponsors, and many NBA teams, consider him too risky to bother with at all.

Wiley's bad image is a product of his antics as a college player. Wiley dropped out of the University of Ames after his freshman year, during which he played extremely well but was rumored to get along poorly with his teammates and his coach, the legendary Billy Day. After that, he spent the next two years at three schools. He earned a reputation as a fantastic athlete with a very bad attitude by regularly skipping practices and quarreling with teammates and coaches. Along the way, he also had his share of run-ins with the law, including a shoplifting conviction and a marijuana possession charge that was ultimately dropped. When Wiley finished at Buckeye State Junior College and declared himself eligible for the draft, most NBA teams considered him untouchable. Not surprisingly, he wasn't drafted by any team, but was eventually signed to a two-year deal by the New Jersey Hoops, a perennially poor NBA team that figured it would take a chance on him. In light of Wiley's sensational rookie season, the Hoops' gamble appears to have paid off. Today, he is widely regarded as a player with the skills and physical abilities to someday be one of the league's premier superstars, provided he can clean up his act.

Though you have your doubts about Wiley, there is reason to believe that a deal with Wiley could be a success. Four years ago, an upstart basketball shoe manufacturer, NoLimit, signed a first round draft pick with a checkered past, Stevie Madison, to a two-year endorsement contract. The deal proved to be wildly fortuitous for both parties; Madison became a consistent All Star point guard, and NoLimit has grown into a formidable presence in the footwear industry (though Erive feels that NoLimit is mismanaged and, like the big players, can be outwitted in the marketplace). Today, Madison has a much more lucrative contract with NoLimit, and the company sponsors a number of NBA players. A few months back, you had lunch with a colleague from NoLimit who wondered aloud whether NoLimit should attempt to sign Wiley in light of his spectacular year.

Figuring out what to offer Wiley will prove to be no simple matter. However, you feel pretty certain that Erive should stick with a two-year contract. Contracts of this length are virtually standard in endorsement deals for NBA players in their first two seasons in the league: sponsors don't want to be tied to a player who might not pan out; and players don't want to be locked into a contract that underpays them when they blossom into mature players.

Four years ago, NoLimit gave Madison, early in his rookie season, a two-year contract paying him a total of \$2 million (\$1 million per year). At the time, many thought NoLimit overpaid. Generally speaking, endorsement contracts are very idiosyncratic. However, your office has managed to collect the following market data on sneaker endorsement contracts for rookie NBA players who were selected in the first round of the college draft, and for All Star players in their 3rd through 5th years:

1.5 mil
2.5%

Average per year endorsement amount (\$)		
	1 st Round Draft Picks	3 rd - 5 th Year All Stars
Last year	1,625,000	3,000,000
Two years ago	1,400,000	2,525,000
Three years ago	1,115,000	2,135,000
Four years ago	850,000	1,700,000

\$7,500,000
per year
\$1,000,000
yr

NOTE: A later round draft pick will typically make 50% to 75% what a first round pick might make. An undrafted player, if he signs an endorsement deal at all, usually fetches 25% of what the average first rounder makes.

1.5
\$750,000

7 in 100
1,000
300,000
1200,000

Of course, Wiley is neither a rookie nor an established fourth year All Star player. Nor does he currently have the cachet and perceived marketability that both marquee rookies and established All Stars possess. In fact, many still consider him untouchable. Last year, in your previous position at one of the major sneaker companies, your marketing department determined that they "wouldn't touch Wiley for more than 5 cents on the dollar." However, he has since proven himself to be a phenomenal player, and, according to Peak, he is committed to behaving like a professional.

For a lead endorsement deal of the type Erive is seeking, the company will need to sell 200,000 pairs of sneakers to break-even. Erive plans to price its shoes at about \$50 per pair. Of that \$10 per pair will be spent on manufacturing and shipping, and another \$10 per pair will be allocated to administrative expenses. The remainder represents funds available to cover future research & development and profit. Selling 200,000 pairs of shoes in a year is no small task. However, shoes associated with All Star NBA players have been known to sell at rates in excess of 500,000 per year. Superstar players can consistently sell 800,000 to 1,000,000 shoes per year.

\$30
\$30,000
1,000,000

200,000
30
600,000

Peak thinks that if everything works out, Wiley's shoe line should sell just as an All Star player's would. In any event, notwithstanding your guarded optimism around Harmony, Peak is convinced that Wiley is the only available up-and-coming player with the potential to make the new Erive line a big success. Yesterday you scheduled a meeting with Wiley's agent to discuss a two-year basketball shoe deal. Peak has authorized you to offer up to the entire remaining two-year marketing budget of \$4 million, should that be necessary. In no event, she has underscored, should the total value of the contract exceed \$4 million. If you can sign him for less than the \$4 million, the savings will be used to fund youth and community programs and internal capital needs.

Prepare for your negotiation with Wiley's agent.

All Rookie Team
Contract terminate

406,222
is 25%
of 1,625,000

302
to make
ob
2.1 mil yr
\$1,000,000 yr
\$1,000,000 yr



APPENDIX

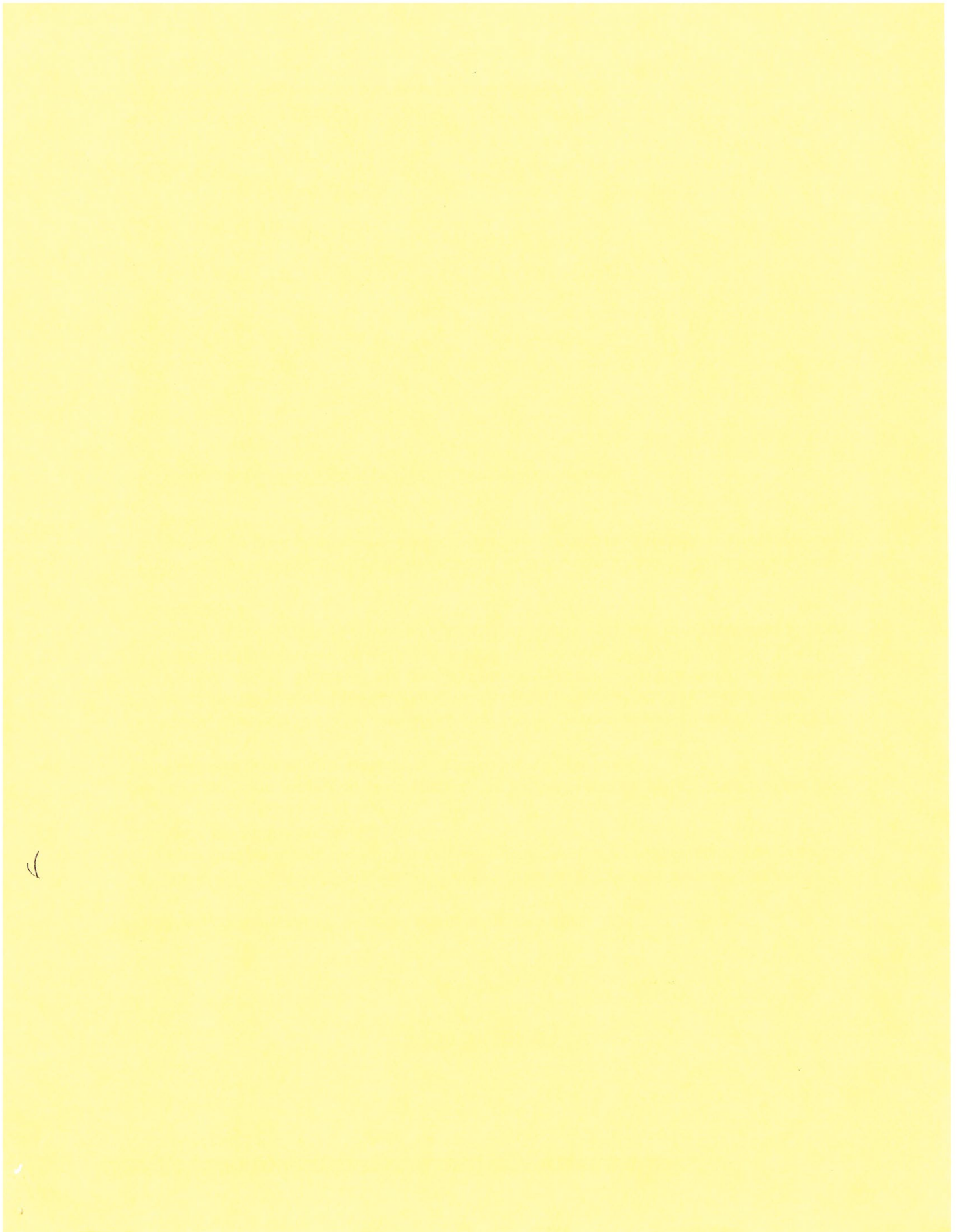
The following definitions may be useful in preparing your case:

- *All Rookie Team*: Making the All Rookie Team is, for present purposes, functionally equivalent to making the All Star Team. Only the best first-year players at each position make the All Rookie Team.
- *All Star Team*: Among all of the teams in the NBA, the best six players at each of the five basketball positions are annually selected to the All Star Team.
- *Draft*: Each year, the NBA conducts a *draft* for the amateur basketball players seeking to enter the NBA. A draft has seven rounds. In each round, each NBA team selects players in a preset order. Typically, the best players are selected in the first round of the draft. Undrafted players may deal privately with NBA teams once the draft is complete. Usually, such players are able to command a salary that is only a fraction of what drafted players receive.
- *NBA*: The National Basketball Association, or NBA, is a league of 29 basketball teams manned by paid, professional athletes. Michael Jordan, for example, is a former NBA player.
- *Rookie*: A *rookie* is a player in his first year as a professional.

Handwritten notes and calculations:

- \$300,000
- up to 2.5 million
- 2.1 million over 2 yrs
- 1.5 Sal 750,000/yr.
- \$400,000 = 400,000
- \$200,000 (4 camps) 25,000 each yr.
- 7 in year 2
- Basketball camp
- 41,000 pro
- 5000
- Shoe 1.5 mil
- \$200,000
- \$200,000
- \$100,000 shoes
- B' camp
- \$1 Mill for camps
- \$1,000

0074173



RegNeg Workshop Location

Roanoke Island College of the Albemarle (COA) Campus
 (former Manteo Middle School, across the street from the Chesley Mall)
 205 Hwy 64 South Business, Manteo, NC 27954
 Park in parking lot at south end of building. Meet in auditorium at south end of the building.

Accommodations on Roanoke Island/Manteo:

		<u>Range</u>
Booth's Guest House	252-473-3696	\$60 to \$120
Burrus House Inn Suites	252-475-1636	\$150 +
Cameron House Inn	252-473-6596	\$110 to \$150 +
Clemons' Cottage	252-256-2662	\$150 +
Dare Haven Motel	252-473-2322	\$60 to \$110
Duke of Dare Motor Lodge	252-473-2175	\$60 to \$110
Elizabethan Inn	252-473-2101	\$110 to \$150 +
Island Guest House	252-473-2434	\$80 to \$110
Island House of Wanchese	866-473-5619	\$110 to \$150 +
Outdoors Inn	252-473-1356	\$60 to \$110
Pirate's Cove Realty	800-537-7245	
Roanoke Island Inn	877-473-5511	\$110 to \$150 +
Scarborough House Inn	252-473-3849	\$80 to \$150
Scarborough Inn	252-473-3979	\$80 to \$150
Tranquil House Inn	800-458-7069	\$150 +
The Inn at Kimbeeba	866-473-6365	\$80 to \$150 +
Wanchese Inn	252-475-1166	\$80 to \$150
White Doe Inn	800-473-6091	\$150 +
Whispering Bay Waterfront	252-473-5323	\$150. +

Nags Head Accommodations:

First Colony Inn	800-368-9390	\$110 to \$150+
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On-line information about accommodations and Outer Banks area

www.outerbanks.org



National Park Service
U.S. Department of the Interior

Outer Banks Group:

· Cape Hatteras National
Seashore
· Fort Raleigh National
Historic Site
· Wright Brothers National
Memorial

1401 National Park Road
Manteo, NC 27954

252-473-2111 phone
252-473-2595 fax

National Park Service News Release

FOR IMMEDIATE RELEASE: DATE January 29, 2008
CONTACT: 252-473-2111 ext. 148

Cape Hatteras National Seashore Announces Public Scoping Meeting Schedule for Off-Road Vehicle Management Plan/Environmental Impact Statement

On December 11, 2006, the National Park Service (NPS) published a Notice of Intent (NOI) to develop an ORV Management Plan/EIS (plan/EIS) for Cape Hatteras National Seashore in the Federal Register. The plan/EIS will guide the management of America's first national seashore for the next 15 to 20 years. The NOI officially opened the public scoping period for the planning process and is the first step in involving the public in the environmental analysis process. Scoping includes holding meetings and providing opportunities for the public to comment so that their concerns are identified early and the analysis is focused on important issues. Because the plan/EIS will analyze many complex ecological and social issues, public participation is encouraged and needed.

Superintendent Mike Murray announces the following public scoping meeting schedule to solicit public input on the ORV management plan / EIS. Meetings will be held at four locations as described below. Each meeting will consist of an open house session, followed by a brief presentation, and an opportunity to provide public comment for the record in a public hearing style.

Buxton, North Carolina

Monday, February 26, 2007 - 2:00 pm to 6:00 pm

Fessenden Center – Located on Route 12, on the right side as you enter Buxton Village

2:00 pm to 3:00 pm Open House

3:00 pm to 3:15 pm NPS Presentation

3:15 pm to 5:15 pm Public Comment

5:15 pm to 6:00 pm Open House

Kill Devil Hills, North Carolina

Tuesday, February 27, 2007 - 6:00 pm to 9:00 pm

Wright Brothers National Memorial First Flight Centennial Pavilion, 8 ½ Milepost Hwy. 158, Kill Devil Hills, NC.

6:00 pm to 7:00 pm Open House

7:00 pm to 7:15 pm NPS Presentation

7:15 pm Public Comment

Open house will resume after public comment as time allows.

Raleigh, North Carolina

Wednesday, February 28, 2007 - 6:00 pm to 9:00 pm

McKimmon Center (North Carolina State Campus)

1101 Gorman Street, Raleigh, NC 27695

Agenda will be the same as February 27, 2007

Washington, DC

Thursday, March 1, 2007 - 6:00 pm to 9:00 pm

American Geophysical Union Building

2000 Florida Avenue, NW, Suite 400, Washington, DC 20009-1231
Agenda will be the same as February 27, 2007

Public participation is vital in assisting with the planning process. There are a number of ways to be involved:

- Attend a public scoping meeting
- Submit your comments electronically to <http://parkplanningnps.gov/caha>
- Submit written comments by mail to: Superintendent, RE: Off-Road Vehicle Management Plan/EIS, Cape Hatteras National Seashore, 1401 National Park Drive, Manteo, NC 27954.

Faxed comments will not be accepted. Please be sure to include your full name, e-mail address or mailing address with comments so we may add you to our mailing list for information on the planning process. In order for your comments to be the most useful in developing the draft plan/EIS, comments must be postmarked by March 16, 2007.

The NPS practice is to make comments, including names, home addresses, home phone numbers, and email addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish this request to be considered, you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. The NPS will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of, or officials of, organizations or businesses, available for public inspection in their entirety.

“Since the public comment period opened on December 11, we have received numerous e-mails and letters from the public about ORV management at Cape Hatteras National Seashore,” said Superintendent Murray. “I greatly appreciate the level of interest in the ORV management issue and encourage the public’s continued involvement as we proceed with development of the ORV management plan.” More information about the ORV management planning and negotiated rulemaking processes will be available as it is developed and will be posted on the park planning website at: <http://parkplanningnps.gov/caha>