BEYOND THE TOWN HALL: INNOVATIONS IN PUBLIC POLICY DISPUTE RESOLUTION

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Target audience: This session is directed to dispute resolution professionals who have traditionally worked with smaller groups and are interested in learning about challenges of applying the mediated problem solving approach to larger groups. This session is also relevant to people outside the ADR profession with an interest in community consensus-building.

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Musicians Garth Brooks and Billy Joel once recorded a song, "Shameless," that included these lyrics: ***"Swore I'd never compromise. Oh, but you convinced me otherwise..."*** **and** ***"I don't have the power now, but I don't want it anyhow, so I gotta let it go."***

These lyrics have great resonance to the field of public policy dispute resolution. Often, parties to public policy disputes develop deeply entrenched positions and deep-seated feelings of hostility towards opposing interest groups and viewpoints, and they refuse to consider any change to that position or solution that seems to run counter to it. But even when such positions become hardened and groups solidified, eventually the various stakeholders may cross paths, particularly in a local setting. ADR professionals should consider ways to convene opposing groups of stakeholders in a way that allows for civil dialogue, possible collaboration, and win-win solutions, so that they may be convinced to compromise.

Meanwhile, elected officials and public administrators may assume that they can resolve public disputes without engaging the parties themselves, or engaging them only using a public hearing after a decision has essentially been made. But whether or not a governmental entity cedes the bully pulpit to the public, the public may easily bully their way onto the pulpit--via protests, lawsuits, ballot measures, and recall elections, among other tools. Because the public can influence the dispute resolution process one way or the other, it behooves governmental entities to engage affected stakeholders or parties to a dispute in a manner that is proactive, thoughtful, inclusive, and fair.

Done effectively, public policy dispute resolution enables affected parties to participate actively in decision-making processes, in ways that are convenient to and respectful of their schedules and preferences, and in a manner that enables them to get their core interests satisfied.

Bringing people into the process

When a governmental entity determines it wants to include the public in its decision-making, a carefully organized process will help to assure its success.

Understand why

Success hinges on the governmental entity's understanding of why it is engaging stakeholders and the level of authority and decision-making the stakeholders are being handed. Processes can range from education of stakeholders to recommendations for decision-makers to use, to making the actual decisions. Participants often find themselves bewildered when they believe one thing about their level of engagement and authority, only to find out at

Stakeholder: Any person who has an interest in the issue, including those who can be impacted by the decisions made.

the end that the organization meant something entirely different. To minimize the potential for this confusion, the organization must first understand its own intentions.   It then must convey its intentions and expectations to the participants it is seeks to involve. Many call this phase of preparation an *internal* assessment. Often, organizations wrestle internally with the level and authority of public engagement. The organization must resolve this internal debate before moving forward.

Conduct an *external* assessment (if warranted)

Simple public involvement processes do not necessarily warrant a full-blown assessment. However, if the governmental entity is expecting the process to involve stakeholders in significant collaboration, over difficult issues, it first should conduct an assessment. Typically conducted by a third-party neutral , an assessment will engage those persons who would be affected by the outcome, determine what issues are important to them, understand obstacles to moving forward, assess their willingness or their concerns about engaging in a participatory process, and make recommendations about whether to move forward and the best processes to use to move forward. An assessment may identify the people who should participate if the goal is to use a representative group rather than an open stakeholder participation process. The assessment process often begins the trust-building process needed for long-term stakeholder engagement. It may identify technical needs as well.

Engage participants

If the goal is to involve stakeholders in an open-participation process, and size of the group is not of concern, standard processes to advertise the meetings or input points can be used. It may be important, however, to take extra measures to assure a good cross-section of stakeholders even in large and unlimited group sizes. If the goal is to engage a representative group of stakeholders to work through a thorny policy issue or dispute to make recommendations or actual decisions, the more appropriate processes typically involve representative groups. In these situations, the interests that can be impacted by the decisions are carefully identified. Usually one person is chosen by that interest to represent them at the table. This representative likely is speaking on behalf of many people and/or groups (such as industry, environmental groups and citizens, etc.). She brings information to the process from the interests she represents, and takes information from the process back to her constituency. Ultimately, the representative will seek buy-in from her stakeholder group to shape and support the final group recommendation. Good communication skills and an ability to work well with others characterize the most successful representatives. If a group of stakeholders will be working together over a period of time, they should assist in developing the processes to be used, including how decisions will be made, and their meeting rules and protocols.

> *Representative: A person who participates at the table in a collaborative process on behalf of a larger group of stakeholders, often identified around interests. The representative typically is responsible for bringing the interests and concerns of his constituency to the process, and to bring back to his constituency information from the table.*

Provide resources to enable success

Effective public input processes are supported by personnel from the governmental entity or neutral technical and legal experts. These people, who do not directly participate in the decisions but regularly attend meetings, act as resources to the stakeholder group. They answer participants' questions and clarify information and expectations. Governmental representatives also ensure that the ideas and options considered by the group are not constrained by governmental resources (financial and other) or existing laws or commitments. For example, a stakeholder group addressing parking problems in a residential

area adjacent to a burgeoning commercial zone needs to know *during the
process* whether their options and ideas would ultimately be rejected by the
governmental entity because they conflict with existing ordinances, zoning
categories, contractual agreements or other policy decisions.

The group faces an important decision when it chooses whether to engage a
neutral dispute resolution professional to facilitate the process. While some
groups can successfully self-facilitate, a neutral facilitator allows full and fair
participation by all members. In addition to considering the routine tasks of
arranging meeting space and communication tools for use by the group,
planning should address practical obstacles to diverse participation, such as
translators or mechanisms for remote participation such as video conferencing.
These resources can be critical to having effective representation in the group,
but they can change the flow of the discourse.   It is easy for an energized
conversation to proceed too fast for a translator or someone participating from a
remote location. A facilitator can help guide the process during such times.

Identifying a Process that Achieves Your Goals

The internal assessment referenced above requires the governmental entity to
consider and define what level of public involvement it seeks to support policy
development or promote conflict resolution. The external assessment allows
consideration of the expectations of stakeholders about the willingness to be
involved in a participatory process, and the appropriate type of process.
Sometimes deep-seated conflict and distrust warrant starting with a process that
merely builds trust or removes obstacles to more robust forms of engagement.

Communication and Consultation Processes[1]

The governmental entity may seek information such as varied community
perspectives, an exchange of information, an understanding of interests,
concerns, and priorities, or an improved understanding of issues related to a
policy or conflict. These processes principally promote communication.
Consultation processes are set up to gather public input in the form of opinions
or suggestions for action. In these processes, plans are developed and refined.
These processes are not agreement- seeking but are beneficial for airing issues
and beginning to define the scope of a project or policy. These processes require
the assistance of dispute resolution professionals, designing the process and
ensuring its constructive progression.

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[1] The Policy Consensus Institute developed general categories to describe ways on
engaging the public. These are communication processes, consultation processes and
consensus processes. A Practical Guide to Consensus.

Here are examples of communication or consultation processes:

Neighbor Summit   After a series of small group discussions across a community about how to attack a city's issues, the city invites the general public to a summit. City departments set up booths where the public can discuss local issues with city staff. Then, all participants have the chance to choose priority issues for the summit and discuss them within a small group using a format that allows each person to contribute ideas and the group to pick a few consensus suggestions. Those suggestions are then displayed around the room, and all participants can support ideas they like using stickers that help reveal popular ways of resolving local issues.

Three general categories of processes to engage the public are Communication, Consultation and Consensus processes. Within these categories are a myriad of approaches and procedures that facilitate meaningful public involvement.

Addressing Growth   In a city challenged mightily by exceedingly high growth, the public was invited to a workshop in which they had considered how the city should direct that growth. Participants were briefed on growth trends and challenges, and then were given "game pieces" of different colors (the darker the color, the more dense the population). The deliberative exercise in small groups required people living in different parts of the city to consider tradeoffs. The maps developed in small groups were compiled into four growth scenarios for the city, which the general public could then review in a survey.

Consensus Processes

Deeper public participation would be required if the governmental entity sought assistance with decision-making and problem solving. In these processes, the stakeholders seek to reach agreement on policy recommendations (including proposed rules or ordinances) and often strengthen relationships and improve understanding among opposing parties. Generally, consensus processes have an advisory function. Governmental entities are creatures of statute or charter, with elected or appointed officials charged with making final decisions. These officials generally cannot delegate their decision-making authority to a

stakeholder group. Nonetheless, a rigorous consensus process involving affected parties can help the governmental entity adopt a more innovative and durable policy or make a decision on a difficult issue that will be supported by those affected.

Consensus is both a process and a decision rule, just as majority voting is a decision rule. But, it is a decision rule that seeks to address the needs and concerns of all participants, not leave some participants out of the process at the end of the day. A consensus agreement from a stakeholder group can be a powerful mechanism for shaping the decisions of policy makers. Stakeholder groups often need education about what consensus means and how it can be achieved. Early in a consensus process, the participants should define what consensus means for them. One sample definition is:[2]

> *Consensus is reached when all members participating in a meeting at which there is a quorum agree that their major interests have been taken into consideration and addressed in a satisfactory manner so they can support the decision of the group.*

Consensus is challenging and achievable. Some guiding principles for consensus include:

- Everyone actively participates.

- Participants have a common base of information.

- Participants create an atmosphere where everyone can share views.

- Participants respect disagreement as illuminating problems, improving decisions.

- Participants use disagreement to discover unmet needs, and to find a way to meet them.

- Participants are specific about concerns with a proposal, they explain why it matters, and are open to options to address concerns.

The definition of consensus and the guiding principles can be incorporated in the stakeholder group's ground rules or operating protocols. Those ground rules may also describe, among other things, what a decision rule will be if consensus is not achievable, the role of subcommittees or small working groups, the selection and use of outside experts, expectations about communicating with constituents and the media, and the selection and participation of alternates.

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[2] Definition and principles developed from CDR Associates materials

Here are examples of a consensus process:

> Texas SB 3 Basin and Bay Area Stakeholder Groups   The Texas
> Legislature, by statute, created a consensus-based stakeholder
> process to advise an agency charged with developing rules related
> to environmental flow standards for future water rights permits.
> This process, employed in seven river basins, was structured to
> foster quality decisions that integrated science and human values
> and concerns: first by engaging an expert science team for each
> river basin as a separate entity to provide a scientifically based
> recommendation, and then by passing the task of integrating the
> science with policy decisions to a basin-wide representative
> stakeholder group. Conflict was inherent in these processes, as
> each representative expressed their constituents' needs for scarce
> water resources. Through facilitated, six-month consensus
> processes, several basin stakeholder groups reached agreement
> or near agreement on complex recommendations for permitting
> standards.   The successful groups underwent joint education on
> the detailed scientific report, identified group goals and interests,
> and then developed recommendations for specific flow standards.
> These recommendations were considered in the agency's
> proposal and adoption of rules.   A flow chart illustrating the way
> one of these stakeholder groups integrated policy decisions with
> scientific inquiry is provided as Attachment 1.

> Texas Instream Flow Program Workgroups   The Texas Legislature
> directed three agencies to perform scientific and engineering studies to
> determine stream flow conditions necessary for supporting a sound
> ecological environment. Together, the agencies hosted facilitated
> workgroups in three river basins. At these meetings, representatives of
> varied interests in each basin educated the agencies and each other and
> shared information on each sub-basin's unique characteristics. Google
> Earth images brought these long basins to life. Working in sub-groups
> and as a whole, each workgroup developed study goals and objectives, as
> well as identified various study biological indicators and potential study
> sites. Based on the consensus recommendations of the workgroup, the
> agencies developed a draft study design for each basin, which was
> reviewed by the workgroup prior to being finalized.

Conclusion
Inevitably, every public policy dispute will need its own, distinct approach
to resolution. Even comparable stakeholders in different communities

(business owners, residents, etc.) bring different values, attitudes, experiences, and priorities to a dispute resolution process.

What remains constant is the need for both ADR professionals and public officials to consider those specific characteristics in devising a plan for involving the public in finding common ground. Some decisions may be ill-suited for extensive public involvement, perhaps due to security or public safety concerns best left to be addressed by government agencies alone. Other decisions may benefit greatly from extensive public involvement in order to ensure that elected officials have the needed support to act in a way that may draw controversy.

Those in a position to help convene such dispute resolution processes with the public can now draw upon an array of resources—for planning a process, choosing tools to include in the process, conducting stakeholder meetings in a fair and inclusive way, and evaluating processes. Given the current challenges facing civic dialogue, with often vicious rhetoric directed against elected officials and political opponents, there may be no better time than the present for ADR professionals and government agencies to partner. The skills and techniques that ADR professionals possess, combined with an urgent need to recalibrate political conversations and an abundance of available resources to do so, make the present day seem like a ripe era for a revolution in the field of public policy dispute resolution and consensus building.

Figure 3: Developing Environmental Flow Standards
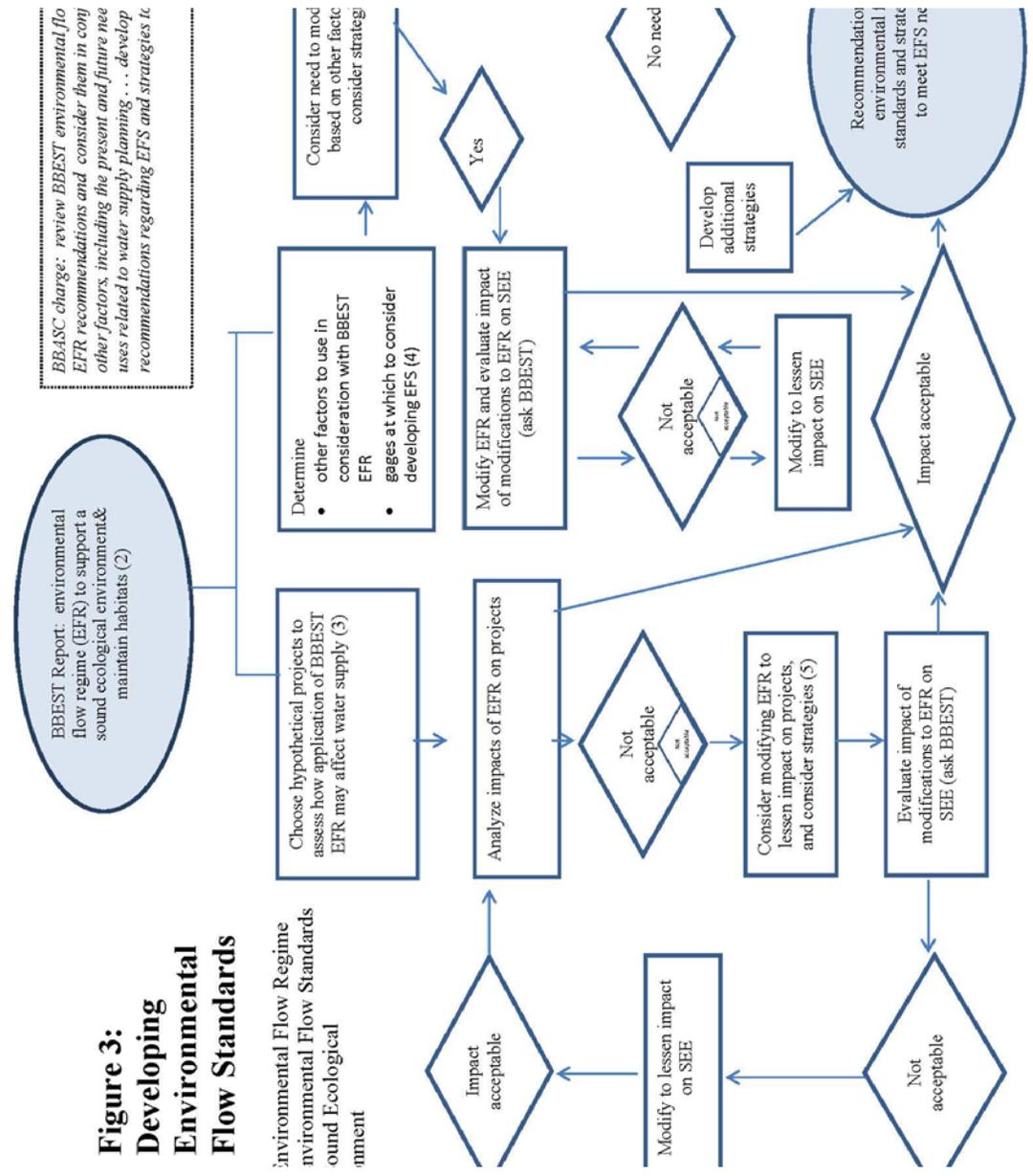
Resource List

Books

Butcher, J. (2007). <u>Group Decision-Making by Consensus: Let's Discuss It</u>.
Ottawa, Canada: Associates In Planning Inc.

Carpenter, S.L., and Kennedy, W.J.D. (2001). <u>Managing Public Disputes: A
Practical Guide for Government, Business, and Citizens' Groups</u>. San Francisco:
John Wiley & Sons, Inc.

Clark, S., and Teachout, W. (2012). <u>Slow Democracy</u>. White River Junction, VT:
Chelsea Green Publishing.

Creighton, J.L. (2005). <u>The Public Participation Handbook: Making Better
Decisions Through Citizen Involvement</u>. San Francisco: Jossey Bass.

Gastil, J. and Levine, P., eds (2005). <u>The Deliberative Democracy Handbook:
Strategies for Effective Civic Engagement in the Twenty-first Century</u>. San
Francisco: Jossey-Bass.

Kaner, S. (2007). Facilitator's guide to participatory decision making. San
Francisco: Jossey-Bass.

Schwarz, R.M. (2002). <u>The Skilled Facilitator: a Comprehensive Resource for
Consultants, Facilitators, Managers, Trainers, and Coaches</u>. San Francisco:
Jossey-Bass.

Susskind, L., McKearman, S. and Thomas-Larmer, J. (1999). <u>The Consensus Building
Handbook: A Comprehensive Guide to Reaching Agreement</u>, Thousand Oaks, CA, SAGE
Publications.

Websites
International Association for Public Participation, http://www.iap2.org
http://www.iap2.org/associations/4748/files/IAP2%20Spectrum_vertical.pdf

National Coalition for Dialogue and Deliberation, http://ncdd.org
http://www.ncdd.org/files/NCDD2010_Engagement_Streams.pdf

The Policy Consensus Initiative and National Policy Consensus Center,
www.policyconsensus.org
 Includes the publications- <u>A Practical Guide to Consensus and A Practical Guide
to Collaborative Governence.</u>

Article

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"Public should be part of every politician's policy"
Austin American Statesman, December 10, 2012
By Larry Schooler

In his acceptance speech, President Barack Obama included this applause line: "The role of citizen in our democracy does not end with your vote. America's never been about what can be done for us. It's about what can be done by us together through the hard and frustrating, but necessary work of self-government. That's the principle we were founded on."

With that, the president has created an opportunity for the nation to rethink the "public" in "public policy." Once in office, presidents —and, indeed, other officeholders at virtually all levels of government — seem strikingly less interested in what their constituents have to say than they do during their campaigns. The meetings and conversations they have with the public on the campaign trail become less frequent or disappear; the social media might continue, but the conversation typically becomes one-way.

This need not be so. The National League of Cities reports that the vast majority of local elected officials regularly use public engagement processes such as community forums and workshops, neighborhood councils and online discussions. They see important benefits such as "developing a stronger sense of community, building trust between the public and city hall and finding better solutions to local problems." Similarly, the American Planning Association found that 75 percent of Americans believe engaging citizens through local planning is essential to economic recovery and job creation. After all, if a city responds to the needs and market demands from its citizens, that city would more likely see development occur that adds to the tax base, entices new residents and creates jobs in the process.

Elected officials ignore their publics at their own peril. The exclusion of the public from participating in their democracy can prove costly. Some sue to be heard and bleed the public's coffers in legal fees. Others mount recall elections, which also prove costly, tend to divide the community, and drive politics into gridlock.

But in other cases, the public seizes the opportunity to participate directly, and the results are profound. A visually impaired man is alerted to a mobile booth on a college campus where he can participate in his community's future and, with the help of a staff person, spends a half-hour completing a very visual land use exercise. His and others input evolves into a preferred community growth scenario for the next 30 years. A woman who buried her husband decades earlier works for several months with a facilitated citizen task force to upgrade the condition of local cemeteries and influences key leaders to rethink their approach. Thousands participate, online and in person, in conversations about how to spend

the public's money on bonds for capital improvement projects, using "play money" to decide in small groups what kinds of projects deserve funding. Elected officials then place bond referenda on a ballot that almost perfectly reflect the public's input.

The president's speech suggests that he longs for re-creating these kinds of moments on a national scale, like others have done around the world. In its Core Values, the International Association for Public Participation argues that governments should seek out and facilitate the public's involvement in policymaking; provide the public with the background information they need to participate; and demonstrate to the public how their input affected an outcome (or why it didn't). The White House could easily embrace these and other principles in unveiling a policy and a set of tools to engage the public in dialogue — complementing their earlier work on tools like WeThePeople.org.

The First Amendment to the U.S. Constitution prohibits Congress from making any law that abridges or impedes the right of the people "to petition the Government for a redress of grievances." It therefore behooves officeholders to fenableanyone to offer input.Public hearings aren't enough; elected officials need input from others who hold a deep stake in the outcome of a decision but prefer to talk in smaller groups, at lower volumes, with fewer diatribes and more offers of compromise.

Undoubtedly, it would take investments in time, money, and other resources to enable people around the country to discuss issues, review alternative approaches, and offer direct input to decision-makers. But practitioners, training, and tools abound—from text-message based polling and moderated online discussions to game-based planning processes and dialogue facilitation teams.

Perhaps Americans divided on their candidates and other social issues could then unite around this common vision: to enable all Americans affected by a decision to affect that decision.