Best Practices for Government Agencies

Guidelines for Using Collaborative Agreement-Seeking Processes

Report and Recommendations of the
SPIDR Environment/Public Disputes Sector Critical Issues Committee
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This report focuses on best practices for users in the United States and Canada. While it may be applicable in other countries, it may need to be tailored to the political frameworks and particular institutions in those contexts.

This is intended as the first in a series of cooperative efforts between theoreticians and practitioners to serve the needs of the emerging practice of conflict resolution in the public policy arena. This report has been reviewed and improved immeasurably by practitioners and government agency and department dispute resolution managers.

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INTRODUCTION

These guidelines for best practice are proposed by the Society of Professionals in Dispute Resolution for government-sponsored collaborative approaches that seek agreement on issues of public policy. The processes these guidelines address have the following attributes:

- participants represent stakeholder groups or interests, and not simply themselves,
- all necessary interests are represented or at least supportive of the discussions,
- participants share responsibility for both process and outcome,
- an impartial facilitator, accountable to all participants, manages the process, and
- the intent is to make decisions through consensus rather than by voting.

Who Can Benefit from These Recommendations?

These recommendations are directed primarily towards federal, state, provincial, and territorial government officials to help ensure successful use of collaborative processes for decision-making. They may also be useful to local government, although consideration must be given to how stakeholder-based processes may affect more inclusive citizen participation strategies.

Background

Negotiation and consensus building have long been used to resolve policy conflicts. Governments, businesses, interest groups and individuals negotiate and use cooperative approaches to decision making every day, whether formal or informal, by choice or out of necessity. These activities are not new.

What is relatively new is the intentional application of these processes, assisted by an impartial facilitator, to a wide range of multi-party, multi-issue disputes and controversies. In the 1970s mediators began helping parties settle environmental disputes, usually over site-specific issues, but also over land use and the allocation of natural resources. The use of collaborative efforts has evolved to developing policies and regulations for a broad array of issues. From about 40 cases in the 1970s, the number grew to over 400 during the 1980s, and the trend is continuing. An approach that began as a foundation-funded experiment has increasingly become a component of governmental decision making.

Reasons for this growth vary, but these factors stand out. First, consensus-based agreement seeking processes have proven successful in a wide array of applications, particularly where several agencies or levels of government have jurisdiction, power is fragmented, and there are a variety of stakeholders with conflicting views, (e.g., resolving complex multi-party issues, developing regulations, policy making, strategic planning.)

Second, the public is demanding more say in the policy making processes of government, which has accelerated the use of consultation and consensus-building as ways of working out decisions that can be implemented. Consensus-based approaches have the advantage of building agreements that last. The focus on collaboration and seeking mutually acceptable outcomes contributes to improved understandings among participants, which in turn enables them to work out differences and arrive at better solutions. These consensus-based approaches are increasingly being viewed as a cornerstone in efforts that call upon governments to be more efficient and effective.

Current Uses of Collaborative Processes: Concerns and Questions

Along with the growth in use of these processes, a number of concerns and questions have emerged regarding the appropriate use of these processes. These include:

Concerns about how collaborative processes are used by agencies who are the authorized decision maker(s):

- How can regulatory agencies share control over processes and products while retaining their mandates?
- How do the cultures of bureaucratic agencies adjust to decision making by consensus?

- By seeking consensus among stakeholders, might public officials in some cases essentially be avoiding the tough decisions they have been mandated to make?
- If public officials purport to be seeking agreement with stakeholders, but actually only seek advice or input, might they contribute to cynicism about government?

Concerns about participation:

- Who decides who can participate and how is it decided?
- How might increasing reliance on collaborative processes affect the ability of some groups to participate? Could they be spread too thin?
- How can agencies prevent participants from feeling co-opted or coerced?
- What if all interests cannot be identified? What if some interests cannot be represented? Does the collaborative process still go forward?
- If agreement is reached, will traditional opportunities for public comment be diminished?

Concerns about the proper use of mediators and facilitators:

- In the eyes of other participants, can an agency or department staff person serve as an impartial facilitator?
- When government agencies hire the mediator, how can selection and procurement be conducted to ensure the mediator's credibility with all parties?
- How can the mediator be accountable to all when under contract with an agency?

Concerns about maintaining the effectiveness of collaborative processes:

- How will governments' need for routine, consistency, and due process affect collaborative processes? Will governments prescribe, bureaucratize, and mandate an approach that has succeeded to date largely by being adaptive, flexible, and voluntary?
- Given the workloads and time pressures some government agencies are under, will more be expected from collaborative processes than they can deliver? Will there be enough time, money, and staff for such processes to succeed?
- How can consensus-based efforts produce effective, practical decisions that satisfy more than just the lowest common denominator?
- Will sufficient attention be given to strategies and resources needed to implement agreements reached?

Terminology of Collaborative Processes

As the use of collaborative approaches for resolving public issues has expanded, so has the terminology for naming and describing them. As a first step in sorting out the terminology, the Committee distinguished agreement-seeking processes from two other

primary purposes for discussions between government agencies and the public—information exchange and advice. Given these objectives, the following chart highlights the differences in outcomes that can be expected:

PURPOSE	OUTCOMES
1. Information exchange	Improved communication and understanding; lists of concerns and/or options; better definitions of problems or issues
2. Feedback/Consultation	Opinions or suggestions for action are obtained; plans or drafts are refined
3. Agreement-seeking or decision-making	Agreements on actions or policies are reached; consensus is developed

Only processes in the third category are the subject of this report, but even labels for them abound. Some derive from labor/management bargaining. Others combine words that describe some attribute of collaborative consensus-based public policy processes. The list below gives a sense of the hybrids that may be found.

cooperative decision making
collaborative agreement-seeking processes
collaborative consensus-based forums
consensus-based processes
shared decision-making
negotiated processes
mediated negotiation
mediated agreement-seeking processes
policy dialogue
facilitated consensus forum
collaborative agreement-seeking processes
negotiated rulemaking
collaborative decision making
environmental conflict resolution
consensus-building
joint decision-making
environmental mediation
multi-party negotiations
mediated approaches
public policy mediation
joint problem-solving
facilitated joint decision making
facilitated negotiations
regulatory negotiation

The imprecise nature of these terms underscores the need for participants in each case to define their process clearly. As for labeling a particular process, participants usually refer to it in concrete, case-specific terms, such as "resolving the Westside urban growth issue", "trying to establish a new policy for nursing homes", "the airport noise negotiations", or "the

harbor development roundtable." Regardless of the label, type of public issue being discussed, or venue within which it occurs, the essential activity is the same—people representing different interests trying to find a solution that works for all through negotiation, assisted by someone acting impartially who manages the process.

Central to this activity is a search for consensus, a concept that in itself can generate controversy, and that participants should also define for themselves. Commonly, the term is used in the practical sense of, "Do we have an agreement everyone can live with—and that is doable?" Politicians often recognize a similarly practical but lower threshold for consensus, as in, "Do we have enough agreement to keep us out of trouble and to allow us to move forward?" The important principle is that these processes do not operate by voting or majority rule. Either the parties reach agreement (according to their definition) or they do not. If they do not, they may decide to explain how they disagree, but a majority/minority report is not a desired product of a collaborative effort.

Finally, this report employs the term *facilitator* for someone who manages a negotiated process. While *facilitator* and *mediator* are sometimes used interchangeably, facilitator is a more general term than mediator. Facilitators manage meetings for purposes other than negotiating agreements.

RECOMMENDATIONS FOR BEST PRACTICE

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

Recommendation 1: An Agency Should First Consider Whether a Collaborative Agreement-Seeking Approach Is Appropriate

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

The decision to try to resolve a public issue by bringing together representatives of affected interests entails several important preliminary steps. The first is for or department staff to consider whether the issues might be suitable for negotiation, and if so, whether negotiation might meet the agency's objectives and responsibilities.

There are many factors to be taken into account in making the determination: suitability of the issues, ripeness for decision, time available, political climate, and the nature of past and present controversies over the issues among the key interests. Appendix 1 provides a check list of factors to be considered as part of an initial screening.

If after an initial screening negotiation appears plausible, agency staff and management next should discuss whether they are willing to negotiate. An important consideration is the relationship of such a collaborative approach to the agency's statutory decision making responsibility:

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

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

Misunderstanding between the agency and stakeholders can occur

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

If agency management supports the idea of negotiation, then the next step is to begin discussing the possibility of a collaborative approach with representatives of other stakeholders.

Recommendation 2: Stakeholders Should Be Supportive of the Process and Willing and Able to Participate

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

When decisions are made in consensus-based forums, influence from non-agency parties increases. To preserve the legitimacy of the process, all interests must be adequately represented and have joint control over the shape of the process and its outcomes. Because collaborative decision-making processes have such potential power, they should be used only when people representing necessary interests can be sufficiently identified and are willing and have the resources to participate effectively. To

proceed otherwise could undermine the effectiveness of collaborative processes.

Determinations about representation are easiest when stakeholders are obvious, and when they are prepared to participate effectively in the discussions. Reaching agreement may be difficult, but at least there is no question about the legitimacy of the process. When the issues at stake affect all of society, or at least a large segment of it, the identification and organization of stakeholders is much more difficult. If some interests are obvious but others are not so clear, or if interest groups are disorganized or lack sufficient power, time, or money to participate effectively, there are real dilemmas to be confronted about whether or not it is appropriate to convene a collaborative decision-making process.

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

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

Recommendation 3: Agency Leaders Should Support the Process and Ensure Sufficient Resources to Convene the Process

Agreement-seeking processes need endorsement and tangible support from actual decision-makers in the sponsoring agency or

department with jurisdiction and, in some cases, from the administration or the legislature. The support and often the involvement of leadership is necessary to assure other participants of the commitment of authorized decision makers who will be responsible for implementation. Their support helps sustain the process through difficult periods and enhances the probability of reaching agreements.

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

In order to undertake an agreement-seeking process, agency or department leaders need to believe the issue is of high enough priority for them to lend their support and the resources needed to achieve a useful and implementable outcome. If leaders are aware of obstacles that could stand in the way of success, including political obstacles, they need to be willing to address those obstacles and help create the kinds of incentives that make it worthwhile for other stakeholders to participate.

When leaders show visible support, including consistent involvement in meetings and substantive discussions, other participants are reassured that their investment of time and resources is worthwhile. If agency leaders do not provide support, caution should be exercised in initiating collaborative agreement-seeking processes. Without this support, the likelihood of success is greatly diminished.

The sponsoring agency needs to ensure that it is appropriately represented at the table, and is prepared to support its representative. It is also important for the sponsoring agency to be consistent, and to the extent possible, to speak with one voice

throughout the process (especially as the time for decision-making on key issues.) Agencies should develop internal support for initiating and participating effectively in agreement-seeking processes.

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

Recommendation 4: An Assessment Should Precede a Collaborative Agreement-Seeking Process

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

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

During the pre-negotiation phase, an assessment is conducted to help the agency and other participants determine whether or not

to proceed. Potential participants need to agree to participate before an agency decides to pursue an agreement-seeking process. It is here at the beginning of the process when an experienced facilitator may be of greatest service. Unfortunately, agencies often call on the facilitator only after they have invited all the participants and scheduled the first meeting.

Primary factors contributing to the legitimacy of agreement-seeking processes include willingness by all key parties to participate, appropriate structure and management of the process, and existence of sufficient resources both to support the process and to develop an implementation plan. The assessment involves ascertaining whether these factors are present. A facilitator often plays an integral role at this stage, consulting with the agency to help clarify its objectives, and interviewing potential parties to ascertain their views. This phase provides an opportunity for the facilitator to develop agreements among all participants about the scope of the issues, objectives and design of the process, role of consensus as decision rule, and timelines. The assessment is thus essential for evaluating the factors in recommendations 1 through 3. While the assessment can take weeks, experience demonstrates that it is key to success and saves time overall. (See Appendix 2 for guidelines for conducting an assessment.)

Recommendation 5: Ground Rules Should Be Mutually Agreed Upon by All Participants, and Not Established Solely by the Sponsoring Agency

All participants should be involved in developing and agreeing to any protocols or ground rules for the process. Once ground rules have been mutually agreed upon, the facilitator should see that they are carried out, or point out when they are not being followed and seek to remedy the problems. Any modification to ground rules should be agreed upon by all participants.

Ground rules should clearly state the purpose and expectations for the process and the end product, how the process will be conducted and decisions made, the roles of the participants, including the sponsoring agency or department, the role of the facilitator, and other matters that are important to assure participants of the fairness of the process. Appendix 3 contains guidelines for formulating ground rules.

Jointly agreed upon ground rules or protocols establish joint ownership and control over the process. Without this sense of parity and investment amongst all participants, it will be more difficult to instill confidence in the legitimacy of either the process or the outcomes. Ground rules also guide and empower the facilitator. These procedural safeguards are a straightforward mechanism to help ensure that the process is, and is perceived, as credible.

Recommendation 6: The Sponsoring Agency Should Ensure the Facilitator's Neutrality and Accountability to all Participants

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

The impartiality and process management skills of a facilitator are particularly important in agreement-seeking processes. It is here that the facilitator serves as an advocate for and guardian of the underlying principles of collaborative agreement-seeking processes. Appendix 4 provides a list of best practices that govern facilitator or mediator conduct in agreement-seeking processes.

When the issue at hand is highly contentious or when participants have limited trust in other participants, a facilitator plays a particularly important role in establishing and maintaining the credibility of the process. A credible process is often either established or undermined in the early stages by such factors as how and by whom the facilitator is selected, how and by whom the participants are identified and invited, and how and by whom the process is planned and structured. Under these conditions, a facilitator for an agreement-seeking process should be independent of the sponsoring agency.

If an agency or department considers using a facilitator from within government (whether inside or outside the sponsoring agency) several questions should be asked: Is it likely participants will regard the facilitator as unbiased and capable of being equally accountable to all participants? Will the facilitator be able to act independently, or will he or she be under the direction of the agency? Will participants feel comfortable consulting or confiding in the facilitator when the going gets tough?

If an outside facilitator is to be engaged, that decision should be made early enough to enable them to conduct the pre-negotiation assessment and planning. Ideally, participants in the process should be involved in selecting and paying the facilitator. For many policy-making processes, however, it is common for the agency to pay the facilitator. Other participants need to be aware of this arrangement and comfortable that it does not jeopardize the impartiality of the facilitator.

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

feel that she or he is biased or ineffective.

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

Contracts should be negotiated and executed before the facilitator begins any work. Facilitators and sponsoring agencies should assume that all contracts could be read by all participants without destroying trust on any side. Contracts should assure that the facilitator has latitude to act independently of the sponsoring agency and should not constrain his or her ability to communicate with all participants.

Recommendation 7: The Agency and Participants Should Plan for Implementation of the Agreement from the Beginning of the Process

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

One of the key reasons agencies decide to sponsor collaborative agreement seeking processes is to improve implementation. Many agreements developed through collaborative processes are in fact a set of recommendations that need formal adoption. Implementation can be problematic if steps are not taken from the beginning to ensure linkages between the collaborative process and the mechanisms for formalizing the agreements reached.

The implementation phase of an agreement should be taken into account as part of the assessment and preparation phase. The likelihood for successful implementation is greater when those responsible for implementing the agreement are part of the process, or are kept informed about the process. The agreement itself should set out clear steps and stages for implementation: clarifying tasks, resources, deadlines, and oversight responsibilities.

Recommendation 8: Policies Governing These Processes Should Not Be Overly Prescriptive

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

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

Therefore, when legislation, rules and guidelines are developed concerning these processes, they should be limited to encouraging the use of collaborative agreement-seeking processes, and setting broad standards for their use. Overly prescriptive or burdensome guidelines can act as a disincentive to participation. Flexibility in designing and carrying out these processes is a factor necessary to their success. While there are situations when enabling legislation or rules can play a role in

overcoming agency reluctance to initiate mediated approaches, over-codifying them will diminish the effectiveness of these flexible tools.

CONCLUSION

These recommendations are intended to help agencies and practitioners conduct more effective collaborative agreement-seeking processes. They represent an effort to harvest lessons from the experience of facilitators and mediators over the past two decades and apply them to the challenges and barriers to success that have been observed. It is hoped the recommendations will help lay a foundation for widespread adoption of these approaches by ensuring their quality and integrity.

Appendix 1

Agency Checklist for Initial Screening to Determine Whether to Proceed

If the following factors are present, an agency can proceed toward the assessment phase:

1. The issues are of high priority and a decision is needed.

2. The issues are identifiable and negotiable. The issues have been sufficiently developed so that parties are reasonably informed and willing to negotiate.

3. The outcome is genuinely in doubt. Conflicting interests make development or enforcement of the proposed policy difficult, if not impossible, without stakeholder involvement.

4. There is enough time and resources. Time is needed for building consensus among conflicting interests, and resources are necessary to support the process.

5. The political climate is favorable. Because these kinds of negotiations discussions occur in the political context, leadership support and issues of timing, e.g. elections, are critical to determining whether to go forward.

6. The agency is willing to use the process.

7. The interests are identifiable. It will be possible to find representatives for affected interests.

APPENDIX 2

Guidelines for Conducting the Assessment and Preparation Phase of an Agreement-Seeking Collaborative Process

The sponsoring agency should seek the assistance of a facilitator experienced in public policy collaborative processes to conduct this phase of the process before initiating other activities. The following tasks should be accomplished:

1. The agency and facilitator should jointly evaluate whether the objectives of the sponsoring agency are compatible with and best addressed by a collaborative process.

2. Develop a statement outlining the purpose of the collaborative

process, and its relationship to the sponsoring agency's decision-making process for communication to other potential parties.

3. Assess whether sufficient support for a collaborative process exists at the highest possible levels of leadership within the sponsoring agency.

4. Identify parties with an interest in the objectives and issues outlined by the sponsoring agency, and examine the relationships among the various interest groups and the agency.

5. Interview potentially affected interest groups and individuals to clarify the primary interests and concerns associated with the issues, and related informational needs.

6. Assess deadlines, resources available to support the process and the political environment associated with the issues and stakeholder groups.

7. Evaluate the influences of racial, cultural, ethnic and socio-economic diversity, particularly those that could affect the ability of interest groups to participate on equal footing.

8. Identify if assistance is needed by any interest group(s) to help prepare for or sustain involvement in the process.

9. Clarify potential obstacles to convening the process (e.g., non-negotiable differences in values, unwillingness of key stakeholders to participate, insufficient time or resources).

10. If no major obstacles are apparent, propose a design for the process including the proposed number of participants (based on the range and

**number of major
interest groups); the process for identifying and selecting stakeholder representatives; structure of the process (e.g., a committee with work groups); projected number and frequency of meetings; a preliminary overview of the process (e.g., identify issues, clarify interests, joint fact-finding, brainstorm options); summary of resources anticipated and available to support the process; potential roles of the sponsoring agency, other participants and the facilitator; proposed meeting protocols; draft agenda for the first meeting; etc.**

**11. Prepare a report highlighting the results of the assessment as the
basis for the sponsoring agency to decide whether or not to proceed. This may
include actions by the sponsoring agency to respond explicitly to requests
from other interest groups to include additional objectives or issues in the
process. Under most conditions, the assessment report should be shared with the
other process participants as well.**

12. Pursue commitments of potential participants based on the assessment, proposed agency objectives, preliminary process design and their willingness to participate in the collaborative process in good faith.

13. If a major stakeholder group chooses not to participate, evaluate the implications of their non-participation with the sponsoring agency and other participants, recognizing that the process may not be able to proceed.

**14. Allow the participants an opportunity to concur with the sponsoring agency on
the person(s) selected to facilitate the process.**

15. Incorporate participant responses into the proposed process design, meeting protocols and meeting agenda for initiating the next phase of the process.

Steps 12-15 may occur as part of an organizational meeting of all parties during which the parties jointly decide to proceed and plan future phases together.

After completing the assessment and preparation phase, resolving any major obstacles to the process and obtaining the commitment of the sponsoring agency and major stakeholders to proceed, conditions are appropriate for moving forward.

Appendix 3

Formulating Ground Rules for Agreement Seeking Processes

Ground rules usually address the following issues:

1. The purpose and scope of the process.

2. Participation: role of agency staff; whether participation of alternates is permissible; provision for inclusion of new parties; observers; other interested parties.

3. The roles of participants: whether all participants will have relatively equivalent status.

4. Decision rules: the meaning of consensus as well as what will happen if consensus is not reached.

5. The end product: gaining ratification; what the agency will do with the agreement; the degree of commitment by participants to abide by any agreement.

6. Understandings about participants' activities in other proceedings: whether 'good faith' participation will constrain the activities of participants or their constituents in other forums, such as a legislative session, administrative hearing or judicial proceeding.

7. Responsibilities of representatives for keeping their

constituencies informed and gaining ratification of agreements reached at the negotiating table.

8. Informing those not at the table: who will be kept informed of progress and how this will happen.

9. Organization and conduct of the meetings: agendas; record keeping; responsibilities of the facilitator.

10. Selection and removal of the facilitator: the role of participants in the selection, evaluation or payment of a mediator or facilitator. Provision for replacing the facilitator if the participants feel he or she is biased or ineffective.

11. Withdrawal of a participant: If a participant withdraws, everyone left at the table should determine whether the process can go forward. If the participants want some other default procedure, they should agree to it beforehand and include it in the protocols.

12. Communications with the media: how and by whom.

13. The timetable or schedule.

14. Provision for use of caucuses.

15. Information: provisions for sharing information; confidentiality.

Appendix 4

Best Practices for Facilitators or Mediators in Agreement Seeking Processes

The following guidelines should govern facilitators or mediators as they conduct agreement-seeking processes:

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

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

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

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

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

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

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

8. Facilitators or mediators should advise the parties when, in their

opinion, the process no longer appears to be meeting its objectives.

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

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