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**Quality and Implementation of Agreements:
Are Products of Environmental Public Policy Conflict Resolution and Consensus-
Building Efforts Being Implemented? How Do They Compare to Products of
Traditional Forums?**

by

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Introduction

The implementation of environmental/public policy conflict resolution and consensus-based agreements is difficult because often the long-term nature of the agreements requires constant attention to maintain consensus. Nevertheless, valiant efforts are being made all over the globe to keep the agreements alive and productive. However, evidence of that is hard to locate. Only a few initiatives have attempted to centralized data on these efforts, and follow up research is sorely needed. While the agreements and the processes that produce them are generally thought to be superior to traditional conflict resolution forums, at least in building community support and long term commitment to agreements, most of that evidence is anecdotal. This article explores the obstacles and efforts to gathering information on implementation and the need for further research and data compilation to support and encourage this most democratic form of conflict resolution.

Although a plethora of materials and courses exist on how to facilitate or mediate environmental/public policy conflict resolution and consensus-based decision making processes, including illustrative case studies, very little study exists regarding the quality and the actual implementation of the agreements that come out of such processes.ⁱ This paper is designed to set the stage for further research into the quality and implementation of agreements resulting from collaborative consensus-based processes. We will explore what constitutes “quality” and “implementation”; what to look for in a process that bodes well for its success and what hinders or promotes implementation. We touch on subjects that are related to quality and implementation: Does “quality” apply to an agreement only when it is implemented? What basics should be sought in an agreement to help assure implementation? What are the indicators of implementation? When does implementation begin and how do we measure it; how far out from the agreement do we look?

For ease in reading and writing this document, we will refer to environmental/public policy conflict resolution and consensus-building efforts as “collaborative processes” and will refer to the products of these processes as “agreements” although the actual products may include a variety of documentations such as: resolutions, recommendations, contracts and settlements.

The Answer

Our personal experiences, numerous dialogues with colleagues, and initial research reflects a concurrence that agreements based on collaborative processes are being implemented across the US and the world and that they are more likely to lead to short and long-term

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successes than more traditional forums. Traditional forums use either a single decision making authority or a “majority rule” approach. Therefore, one or more losing parties often can delay, or continue to re-fight the same battles repeatedly by resorting to judicial or legislative efforts to amend or subvert the product. Conversely, collaborative processes typically do not leave significant opposition because the key stakeholders are involved in the process of designing the agreement and are more likely to learn to creatively build agreements that address stakeholder interests. This second attribute is what assists in maintaining the consensus after the agreement is finalized and must be implemented.

However, in spite of the general consensus among practitioners that agreements resulting from collaborative processes are of high quality and are being implemented, what is also apparent is that we have little or no empirical research or robust data compilation regarding the implementation of these agreements in the field.ⁱⁱ In fact, the dearth of empirical evidence compelled us to use our own knowledge and experience of specific cases and relationships with other practitioners to get a sense of implementation trends. It is our hope that the suggestions made in this paper will be used to establish and fund initiatives that will rigorously compile information on collaborative agreement implementation and act as clearinghouses to make the information available to potential conveners, practitioners, stakeholders, and funders. Funding for dedicated staff to do the follow up would better ensure that the necessary data would be collected and updated regularly.

A significant benefit of such initiatives would be the education of policy makers and their advisors about the successful implementation of collaborative processes. The authors’ experience is that there is a poor understanding among policymakers of the potential of collaborative processes. This lack of understanding of the benefits of collaborative process, especially their consequences for implementation, constitutes a major funding challenge as policy makers are not inclined to give financial support to processes they do not understand or benefits they cannot appreciate. Key policymakers could be educated about the positive long lasting effects of collaborative processes that would increase their comfort level with engaging in such processes

The Traditional Forum And The Collaborative Process

The notion of majority rule is embedded in democratic processes. We are familiar with traditional processes that utilize decision making by majority vote, whether at the ballot box or in a legislative body at federal, state or local level. In “traditional” forums, decision making is not a collectively shared responsibility. Typical traditional forums do not encourage or reward innovation; change in course, or flexibility. Traditional forums are reliant upon the priorities of the decision making authority, not on the combined priorities of the group. Further, traditional forums usually result in a “winner” and a “loser.” And, as has been previously noted, losers tend to continue to fight and make implementation at best, more difficult and costly, and, at worst, impossible.

When we refer to “traditional” forums, we include:

1. decision making by one individual/small entity, e.g., chair, official, administrator, executive committee

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2. decision making by majority rule using Robert’s Rules of Order or a similar strictly structured decision making procedure
3. decision making by a convener subsequent to input gained in public hearings
4. decision making by hired or appointed neutral, including litigation, e.g., judges, arbitrators, neutral evaluators

Collaborative processes allow more flexibility in issue discussions in which issues that were not initially anticipated often can be explored. Traditional forums are generally narrower in their approach to discussing issues. Participation in a collaborative process teaches the benefits of consensus-building and collaboration as the parties deliberate, often resulting in the participants becoming more flexible themselves. Traditional forums rely on the power of the majority or decision maker and therefore are more rigid in their approach. They are less likely to welcome into the deliberations discussions of “outside” issues that may be related to their work but have not yet surfaced as high priority or high conflict (both of which tend to gain public attention).

Further, collaborative processes are more transparent. They are supportive of the notions of self-determination and empowerment of the parties. They encourage the public voice to be heard, either directly or through representatives. Traditional forums, unlike collaborative processes, rarely involve public participation nor do they seek to elicit the input of those with extreme ideological viewpoints. Collaborative processes often provide for public comment and opinion to be heard and considered. The process welcomes diverse views in an effort to anticipate and resolve all the pitfalls of the issues in conflict.

The Complexities of the Collaborative Process

This discussion is not an exploration of court-based mediation processes involving only a few parties who are together for one or more relatively short sessions. That process, and its subsequent implementation in a court-based setting, is very different and easier to identify than implementation in the environmental/public policy arena. Court-based agreements tend to be issue specific and enforceable through court order; hence, implementation is assured through court process. It should be noted, however, that some large collaborative processes and agreements result from efforts to resolve massive litigation.

The processes we focus on, while structured, are far more complicated. They require a different type of “relationship” to develop among the parties who often meet regularly for months or years. Multiple parties or stakeholders represent diverse and often adverse interests and additional parties may be added during the course of the negotiations as “necessary parties” are identified. Parties’ interests are often hiding behind very strong positions. Often, the issues are not clear in the beginning or some may have “hidden agendas.” Some of the parties may even be battling with one another in court while they come to meetings to collaborate on the same or similar issues.

Further, environmental and other public policy questions primarily get referred to a commission, task force or other group for recommendations. The referral is usually made by a chief executive, a legislative body or sometimes, by both. Often, the chief executive,

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(e.g., governor, mayor, major federal agency head or even the president) makes the appointments.

Efforts to resolve conflicts in the public policy arena are rarely convened by the private sector (e.g., chambers of commerce, leagues or foundations). Parties are requested, not mandated as in a court setting, to participate and become members of the group. Professional facilitators are often used to assist in designing meeting agendas and facilitating the meetings or portions of the meetings.

Finally, collaborative processes generally promote a consensus approach to decision making and, while they are sometimes initiated in an effort to anticipate and prevent conflict, they are, more often, initiated to resolve conflicts. In the public policy arena, the policy conflict creates “heat” for the elected officials who then deflect that pressure away from them by establishing a commission, task force or other collaborative body to assist in resolving the conflict.

In summary, the processes that we discuss in this paper share the following common traits:

1. A convening authority
2. “Voluntary”ⁱⁱⁱ participation and collaboration of the parties
3. Multiple stakeholders representing diverse (and often adverse) interests
4. Additional parties may be added during the process
5. Decision making is based on consensus^{iv}
6. Potential or actual conflict is present
7. Some issues are not clear or freely articulated
8. For those issues which are clear, solutions are not
9. Parties use a third party neutral (practitioner)- either a facilitator or mediator^v
10. Parties meet on a regular basis over an extended period of time

Throughout this paper, our primary example of a highly successful effort will be the Governor’s Commission for a Sustainable South Florida (GCSSF). The GCSSF, created by the late Florida Governor Lawton Chiles in March, 1994 in the face of evident deterioration of Florida’s Everglades Ecosystem, a regional ecosystem under serious growth pressures. Public support **was strong** for saving the Everglades. The Governor created the GCSSF in order to protect state and local interests on both a public and private level. The group consisted of 42 members representing diverse stakeholders. Although the main focus of the Commission was the restoration of the Florida Everglades, the largest environmental restoration project ever attempted anywhere in the world, the Governor also included in the scope of the group’s work consideration of the quality of life, the economy and the environment to focus on how the South Florida region could be made sustainable.

The GCSSF was originally appointed for a two year term, but at the end of the initial period, the value of the members’ work and their recommendations was recognized and the Governor extended the term to July 1, 1999.^{vi}

The Life Cycle of a Collaborative and the Dilemma

Every collaborative effort has a life cycle: the initial forming and organization of the group, maturation and trust building, issue generation and suggestions for resolution, final agreement and implementation.

Groups may not be “emotionally” healthy or functional and therefore, not successful. Others may have short life spans and their efforts to collaborate may be hindered or

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ignored. Still others may collaborate well, but have no champion to support and assist them in implementing their goals.

When a group is formed initially, interactions can often be difficult. Stakeholders may come to a collaborative setting for the first time with little process familiarity. Their histories with one another may include lawsuits and deep-seated mistrust. They may be at the table because they were “requested” to be there by an authority who could not be denied or they may be there as a forum of last resort in an attempt to try anything to stop the hostilities and move forward.

As the group matures, working together with a skilled practitioner, parties learn to trust one another more and share information, although the process often takes time and patience. Eventually, however, a successful group will begin making progress by discussing the issues, designating their core values, drafting a mission/vision statement and moving into goals and objectives.

As the group grows, it discusses the details of goals and objectives. This is often a difficult stage in the process because it means pen is put to paper and real commitment must be made by the stakeholder groups. Discussions can be heated and long, but are a necessary step if the group is to be healthy and the products of their hard work balanced and able to be supported both internally and externally.

Finally, the agreement is finalized. However, without implementation of that agreement, the valuable time and considerable effort expended by each member will have been wasted.

Here is the dilemma. Collaborative efforts on complex issues often require many years to be fully implemented. The legacy that a healthy functional group leaves to its successors and heirs is the agreement that has been crafted. Successful efforts at implementation of the elements of that agreement require continuing attention to collaboration and consensus-building. Measuring the extent of an agreement’s implementation as well as its challenges is vital to determining what processes are most successful. It is one thing to make claims based on anecdotal and experiential evidence that collaborative process is superior. It is quite another to have the empirical data to back it up. Research is needed into what is being implemented and what processes lead to successful long-term implementation.

The Notion of Quality

In order to discuss implementation, we must consider the notion and elements of “quality”. While the inference may be that the “quality” of an agreement is predicated on whether the agreement can ultimately be implemented, we think that “quality” collaborative processes can still encounter obstacles to implementation beyond their control. Much has been written and taught about how to facilitate a “quality” collaborative group or process. In our experience, there are certain characteristics of an effort that create more likelihood that an agreement will lead to implementation. The existence of these characteristics should be considered in any research designed to follow implementation efforts and make conclusions on their ultimate success or failure.

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First and foremost, the effort must have an appointing or convening authority who wants the advice of others and cares about the issues.

The **composition of the group** is crucial. All major stakeholders who can stop or hinder the effort must be at the table along with those with whom they are in conflict. There must be the unquestioned ability of the members of the group to represent the interests of key public agencies and non-governmental and private sector stakeholders who are essential to a consensus agreement. Each group will have its own unique set of vital stakeholders. In the case of the GCSSF, the appointees included five federal agency officials, the heads of several state and regional agencies, local government representation, two legislators recommended by the legislative leadership, ten representatives of agricultural and business interests, ten environmental and public interest representatives and two Native American tribes. Additional parties were added as it became clear that their concurrence was needed.

Each person selected should be a statesman-like representative of his/her interest group who has the ability to negotiate rationally and effectively. Those representatives chosen must be **committed** not only to the process, but to **participating consistently** and, ultimately, they must be willing to support implementation. Representatives who do not attend meetings either hold the group up by needing to be “brought up to speed” or are not representing their interest groups well because they are not well informed.

Great attention must be given to **balance** among the stakeholders. For instance, if the composition of the group is heavily weighted to one interest, the process will not be seen as fair. Keeping a bi-partisan approach during deliberations helps to ensure later success in implementation in the event of administration changes. Representatives must be taken from all sectors affected: public, private, individual groups, federal, state, local, agencies, organizations, tribes, etc.

The **chair or chairs need to be well respected and knowledgeable** with experience in collaborative negotiations and a commitment to inclusion and the transparency of the process.^{vii} Additionally, the chair or other head must be able to resist the pressure to move too fast. This leads to the next requirement: **time**. A collaborative group needs time to build relationships, to allow new members who may join later in the process to “mature” and get up to speed, to have the group build a sound knowledge base, and to deliberate in a meaningful manner.

The assistance of a **professional facilitator** or other process expert should be utilized regularly.^{viii} **Rules** need to be adopted to guide discussions and interaction of the members of the group. In the case of the GCSSF, at the first meeting, the Commission adopted rules recommended by the facilitator that included rules of civility. This is always important, but in the case of the GCSSF, its importance was magnified because the interest groups represented had been locked in bitter multi-year multi-level litigation as well as a recent state legislative battle. Emotions were still running high.^{ix}

A dedicated staff is needed to support the efforts of the group.^x

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Ongoing communication with the convening authority will generally assure the approval of interim and final work products.^{xi}

Transparency will assure public awareness of the process thereby diffusing potential negative sentiment as the process continues. Transparency should include, whether or not mandated^{xii}, public involvement. This gives voice to all views throughout the process. The GCSSF had a time slot set aside at every meeting for “public comment”. This enabled other points of view, not directly represented on the Commission, to be heard. The most extreme ideological views of the environmental, development and agricultural communities were fully vented even though such views had deliberately not been given direct voice on the Commission in order to enhance the chances of an honest collaboration.

Finally, the group must have **political support** that does not depend on a specific administration’s approval. Bi-partisan representation on the group and transparency to create public pressure to move forward assist in gaining this kind of cross party political support.

At the conclusion of the process, any agreement reached must be written in such a way as to best ensure the implementation of its terms. As a refresher, we think the agreement should contain the following basic elements:

1. Contain signatures or other assurances of those who must support and promote the agreement
2. Reflect agreement among all stakeholders of the meaning of the terms of the agreement^{xiii}
3. Be easily explained
 - a. Implementation may be hindered if those responsible for promoting the agreement have trouble explaining it to those who are charged with implementing it^{xiv}
4. Contain statements of goals and objectives
 - a. Considerations of feasibility
 - b. Considerations of practicality
5. Identify benchmarks/Performance measures or a process for setting these
 - a. They encourage data to be collected
 - b. They give direction to politicians and others who may be responsible for implementation
6. Provide for adaptive management measures
 - a. Regular “monitoring” of the terms of the agreement
 - b. Keep “correcting” the course to accommodate changing research/needs
7. Contain funding/Economic measures^{xv}
8. Designate of responsible parties/agencies, to implement the agreement
9. Where applicable, provide for education of new policymakers and new administration of the importance of proper implementation and the consensus support the agreement has

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Challenges to Implementation

Some agreements contain provisions for the implementation of their recommendations or findings and some do not. Still others contain provisions for developing a method of implementation. Common sense would dictate that inclusion of some method for monitoring implementation would lead to agreements with a better chance for success. Another experienced practitioner described a situation in which she was the facilitator. The agreement itself did not have a method for implementation; however, subsequent to the agreement being reached, a non-profit organization was formed whose purpose was to hold workshops to develop implementation strategies to ensure the success of the agreement. This facilitator now builds funding for that type of mechanism into her grants and mediation agreements.

Implementation of actions that are called for immediately subsequent to the agreement is generally easier. The foundation for those items is set during the meeting stage. However, those items with longer-term goals often require a series of actions over a period of time (from months to years) and need continued support and consensus; therefore, they become increasingly more difficult to implement. In all cases, while researchers should be looking at actions which are immediate to the agreement, the real test of implementation will be the success of those items requiring more foundation building and yielding more recommendations, legislation, resolutions, and programs at each stage of development.

Additionally, in examining whether agreements are being implemented, it is important to explore how “implementation” is manifested. While “implementation” is usually interpreted as specific actions that follow the making of the agreement, implementation is also evident in the new relationships formed by the parties and how those relationships impact future work. Often a “transformation” occurs when a group works collaboratively and transcends the original initiative. In determining if collaborative processes are being implemented, an important measure would be to note if collaborative efforts increase in the region in which a collaborative process was successfully completed.

The responsibility for overseeing implementation’s initiation and monitoring can pose a considerable challenge. Outside of interagency agreements arrived at by a consensus of agency representatives, collaborative agreements usually are not self-implementing but must be approved and implemented by others.^{xvi} Agreements can represent enthusiastic consensus of the group and contain important recommendations, but to be implemented must also respond to the priorities and needs of the convening authority and other policy makers to whom the recommendations are presented.^{xvii} Implementation is critically dependent on who convenes and will support the group. A collaborative work product that addresses a policy issue that lacks public constituencies may never be implemented. This should not imply the agreement itself was not a “quality” agreement but that the process was lacking in “quality” because it did not ensure a necessary element for implementation: an appointing or convening authority that wants the advice of others and cares about resolving the issues.

Levels of Implementation

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With such support, implementation can be extended far beyond the original focus of the group and expand the positive impacts and benefits of the process. As an example of what we call “linear progressive” implementation, the GCSSF’s Initial Report was followed by its developing a Conceptual Plan for Everglades Restoration. The Conceptual Plan was immediately approved by the Governor, the South Florida Ecosystem Restoration Task Force (SFERTF) (a federally established interagency task force) and by Congress in the Water Resources Development Act (WRDA) of 1996. WRDA directed the US Army Corps of Engineers (USACE) to consider the Conceptual Plan in its development of the Comprehensive Plan that was to be submitted to Congress. The GCSSF then worked interactively with the ACOE and its multi-agency team, reviewing a series of options for comprehensive restorations and commenting on them. The recommendations of the GCSSF were incorporated into the ACOE Comprehensive Plan. Congress overwhelmingly approved the Plan in WRDA 2000.

Implementation can also take a non-linear form and have new, previously non-existent projects or initiatives spring up as a result of the work of the group.^{xviii} Once again, referring to the GCSSF, whose initial mandate dealt with Everglades Restoration, a recommendation for “brownfields”^{xix} legislation was made that brought incentives for rehabilitation of urban infill properties. That legislation had wide appeal and was adopted and then even expanded before approval.

The Commission also recommended that the state encourage good planning practices by local governments through the creation of “sustainable communities” that would integrate economic, environmental, and social issues and further six broad principles of sustainability including limiting urban sprawl, restoring key ecosystems, creating quality communities and jobs, and advancing the efficient use of land and other resources in their local comprehensive plans. Enacted in 1996 by the Florida legislature, the legislation created a five-year pilot program for five communities. A new administration did not pursue reauthorization of the program, once again demonstrating the need to have issues be a priority to implementing authorities.

The Commission also advocated that the state, regional planning councils, and the local governments should implement an “Eastward Ho!” initiative to encourage and support infill development and redevelopment in the region’s historic urban core. By redirecting a portion of future regional growth eastward and away from the Everglades, the Commission hoped to stem the tide of western development that threatened the remaining Everglades. In the face of budget cuts and considerations by the new administration, this initiative has been left in the hands of the regional councils and local governments and has attracted federal funding for the redesign and redevelopment of several blighted urban areas. Eastward Ho! is an example of an initiative whose concepts are being implemented despite not having the political support of the state policy makers because it has support of local policy makers.

Obstacles to Political Change

These examples show the complexity of implementation and some of the obstacles facing implementation. Each change of administration, at federal, state or local level, can prevent full implementation of a collaborative agreement. The realities of a cultural and political

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climate can negatively affect an agreement’s implementation. Often one administration calls for and completes the collaborative effort, and, before it can be implemented, another administration takes over and the effort is no longer funded, supported or encouraged. In fact, it might be intentionally sabotaged in this way.

Maintaining support is vital to any public policy initiative. Typically, the recommendations or agreement terms will take years to implement. The Plan approved by the GCSSF has 68 components and is anticipated to take approximately 30 years to complete. Each component will likely carry with it its own potential for future controversy.

Therefore, it becomes critical to continue efforts to maintain the consensus and to provide the means of continuing to resolve future issues that will arise as the project itself is implemented. One of the ongoing issues with the Plan devised by the GCSSF is whether future policymakers who must support proper funding and protect the Plan from being compromised will understand and support the need for and continued use of a meaningful consensus maintenance process. ^{xx}

We are speaking here about continuing the collaborative process to maintain a positive atmosphere and, more specifically, providing financial resources to support that process. Without the funds to support implementation, the best work products may never be implemented. In the case of the GCSSF, Congress and the Florida Legislature committed to the 50/50 sharing of the funding of the Plan, estimated to require expenditures of 7.8 billion dollars over 30 years to implement fully.

Practitioner Responsibility to Parties And Process

This is the situation the practitioner faces. Initially, s/he has to create an atmosphere that both encourages and nurtures the parties’ relationships and trust. Simultaneously, s/he must assist them in their directive to make recommendations and agreements and, after spending months or years with the group in getting to agreement, help them consider the specifics of implementation and encourage them to incorporate implementation tactics into the final documentation. Remarkably, many agreements do not contain a plan for implementation.

What, then, is the responsibility of the practitioner working with a collaborative group to ensure that the agreement is implemented? Does the practitioner in a public policy setting have the responsibility to “be the guardian of durable solutions” in the words of Joseph Stulberg?^{xxi} What happens when the parties have been working for hours, weeks, months or maybe years to reach consensus on the substance of their agreement and have finally executed an agreement document? As one practitioner said, “Often the parties are so happy they reached agreement they don’t want to think about how they get it implemented and monitored.” They don’t want to work on the details of the future. They want to revel in the accomplishment of the present. How does the facilitator remind them that their job is far from over? What is the practitioner’s continuing responsibility, if any?

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One practitioner has suggested inclusion of a provision in the agreement to retain the facilitator to ensure an implementation process is put into effect. Others suggest this puts the practitioner in a conflict of interest because it may suggest that s/he is trying to get more work by incorporating his/her services in the group’s agreement. Research and discussions should address how far the responsibility of the practitioner extends and when it is no longer appropriate to “nudge.”

These questions go beyond the scope of this paper but need to be considered in the context of implementation. We recommend a more in-depth look at the realities and possibilities of practitioner responsibility in the public policy arena.

Recommendations

While the obvious aspect of “implementation” is whether the decisions or recommendations of collaborative processes are followed or acted upon, another aspect is what tangential benefits the process produces. These could be both tangible and intangible. For example, did member relations change during the process (e.g., contentious to collaborative)? Did member relationships produce other collaborative efforts unrelated to the original process? What indirectly related projects were completed as a result of the process studied? What coordination with other collaborative processes was accomplished as a result of the work of the studied process? Could community acceptance of collaborative processes in general be measured after this process was complete? What legislation was passed as a direct or indirect result of the process studied?^{xxii} What funding was obtained due to the efforts of the process studied?

As has been previously noted, at present what is known about collaborative processes is primarily anecdotal. Long-term studies are needed. The practice of environmental/public policy conflict resolution would benefit greatly from empirical, rigorously collected data.

Funding recommendations:

1. Long term funding for research groups to compile reliable data on the long-term results of collaborative efforts and traditional processes.
2. Funding for organizations providing direct services to pay for interns/assistants who can follow a collaborative effort from beginning to end and document its progress and what elements contributed to its success or failure.
3. Funding for groups (maybe sections of organizations like Association for Conflict Resolution or the American Bar Association’s Section on Dispute Resolution to follow ADR legislation, with a specific mandate to research legislative history to see if the legislation was originally initiated by a collaborative effort.
4. Funding to assist collaborative efforts to exist despite political support or climate. Often, in our experience, groups of diverse stakeholders would like to organize and collaborate but lack the funding to do so (staff and facilitators are not cheap). This is a real problem if there is no political champion who will push

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to have funding provided by the municipality, agency, or non-governmental organization (NGO).

5. Funding to provide staff and facilitators for collaborative groups and require reporting and accurate history recording in the process.
6. Funding for universities that award ADR degrees to encourage Masters and Ph.D. candidates to do this kind of research for their theses.

Conclusions

Traditional forums do work but not always satisfactorily. They often paper over rather than solve serious and difficult policy conflicts. Granted, some groups using a majority rule approach have sufficient skills, resources and leadership to come together and develop recommendations that win support of the convener who then successfully puts the proposed solution into law. At times, even though a strong minority objects, the majority can be successful in putting into law a very controversial measure. Our view and the view of our colleagues, however, is that a collaborative approach has greater potential for developing a quality solution, particularly when conflicts exist that can be resolved satisfactorily only through careful consideration and accommodation of the legitimate interests of diverse stakeholders.

The more complex and difficult the issue, the more likely a lasting solution can be reached by a collaborative process. Particularly when a proposed solution must truly resolve a conflict rather than simply overpower a substantial minority, the collaborative process is more likely to achieve lasting conflict resolution.

Under traditional processes, the minority often continues to do better in the courts or in legislative halls, and the battles may continue to be re-fought well into the future. Having said this, it should also be noted that even in a large consensus process, some will likely continue to resist the consensus. In the case of the GCSSF, while most dissenters were mute during state and Congressional enactments, some are currently becoming more vocal, raising issues relating both to implementation progress and the Plan itself. In our diverse society, this is almost inevitable. If, however, the Plan had not been fashioned by the consensus process but instead had been imposed only by a majority over strong opposition, almost all familiar with the process agree it would have had no chance of adoption. After all, approval required the concurrence of the executives at federal and state levels and both houses of Congress and of the state legislature. That formidable gauntlet could not have been run without an overwhelming agreement among the interests.

These authors believe it would be a disservice to a democratic society, or to any society for that matter, to be denied the benefits of relationship building and mutual support and gain that collaborative processes inspire. Political realities often hinder what would otherwise be a successful effort. Democracy is collaboration. Democracy is relationships. It is because of our commitments to “the will of the people” that democracy is so appealing. We must nurture public participation, self-determination and empowerment. Collaborative efforts do that. They allow all an equal voice.

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Endnotes

ⁱ Although see Lampe and Kaplan research

ⁱⁱ One such effort, the Community Based Collaboratives Research Consortium, located at www.cbrc.org, is attempting to gather information on collaborative processes and follow them. The site is rich with examples and is an excellent resource. Its only weakness is that it relies on those with direct involvement with the cases to continually update the information, which, again, may prove difficult.

ⁱⁱⁱ The notion of voluntarism is beyond the scope of this paper, but could be the subject of later discussions. People are often at the bargaining table because of political appointment or pressure, which has a different dynamic from parties initiating the process and contacting a neutral to structure it for them. For this paper, both are considered voluntary.

^{iv} See Greg Bourne’s article in this volume.

^v The authors make no attempt to distinguish between mediation and facilitation in this context. From Lampe and Kaplan: “At times, in many of the cases, the words facilitation and mediation appeared to be used interchangeably by participants in the dispute resolution process. The boundary lines between facilitation and mediation may be more important to the professional groups that employ them than to the individuals involved in resolving conflicts or the disputants at the conflict-resolution table.”

^{vi} Another example of a successful collaborative effort is the Sacramento River Watershed Program found at www.sacriver.org.

^{vii} Richard Pettigrew, co-author of this paper, was the Chair of the GCSSF.

^{viii} In the case of the GCSSF, the (Florida) Governor directed the Florida Conflict Resolution Consortium (FCRC), a state public policy dispute resolution entity based within the state University system, to serve as facilitators to the group. Robert Jones, Director of the FCRC, was lead facilitator for the five years they were convened.

^{ix} While the Florida legislature had just passed Everglades legislation establishing a process to resolve water quality technical issues that were designed to overcome adverse effects of contaminated irrigation flows into the Everglades ecosystem, there was great controversy and residual bitterness particularly in the environmental community. Further, a federal Reconnaissance Study, part of a federal restudy of the entire water management structure in South Florida had identified certain options to fix the overall water flows through the agricultural area of the Everglades that greatly threatened the sugar and vegetable growing industry as well as the communities dependent on the sugar industry and farming for their jobs.

^x The GCSSF had its own small staff but could call on state agency staff or outside expertise as needed.

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^{xi} The Florida Governor designated a key staff member of his own staff to act as liaison to the GCSSF. This staff member attended most meetings of the Commission; thereby guaranteeing constant communication with the Governor.

^{xii} Florida, like many other states, has a government-in-the-sunshine rule which requires all meetings involving government decision makers to be noticed and open to the public. However, the rule does not require public comment, only that the public be allowed to observe.

^{xiii} The *Consensus Building Handbook*, Susskind, McKearnan, and Thomas-Larmer, SAGE Publications, Inc., 1999.

^{xiv} It has been suggested that sample language be developed to assist practitioners in their work with groups that are drafting agreements. While this may be good subject matter for another paper, it is beyond the scope of our work. However, the authors feel “boilerplate” language can be dangerous for a practitioner to introduce into a process; whereas, advanced training for practitioners on how to help groups make their agreements clear and uncomplicated would be most beneficial.

^{xv} Colby, Bonnie G., “Negotiated Agreement Checklist: Economic and Financial Considerations”, 5/15/02 Review Draft, bcolby@ag.arizona.edu, University of Arizona, (520) 621-4775.

^{xvi} In the case of the GCSSF, the Initial Report was partly implemented by direction of the Governor to agencies under his control. Other recommendations were submitted by the Governor or his agencies to the Legislature.

^{xvii} The GCSSF's Initial Report (submitted after the first eighteen months) did not address the issue of energy and, at the insistence of some on the Commission, this omission was noted and the report stated that the Commission desired to include energy in its future deliberations. While the Governor's office informally approved the Commission's decision to address the subject, it was not explicitly addressed in the Commission's charges and the Governor was not willing to assign it the high priority he assigned to other work products of the Commission and it therefore was not implemented.

^{xviii} Janice Fleischer, co-author of this paper, is the facilitator for the South Miami Dade Watershed Study Advisory Committee, a collaborative effort that was formed due to the success of the GCSSF. Many more examples exist in the South Florida area due to the work of the GCSSF. Among them the Miami-Dade County Agricultural Land Retention Study and Eastward Ho!

^{xix} Federal definition: “The term 'brownfield site' means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.” The Oregon State definition of a brownfield is, “Brownfield site” means a site that is generally abandoned,

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idled, or under-used industrial or commercial property where expansion or redevelopment is complicated by actual or perceived environmental contamination." It is important to note that a "brownfield" is not to be confused with a "Superfund" Site. Brownfield contamination is often at a level that can be isolated or cleaned up and then reused.

^{xx} The local sponsor of the project, the South Florida Water Management District, has established an Advisory Committee on Water Resources patterned after the GCSSF model but it has not yet fully committed itself to a consensus process as we have defined it.

^{xxi} *Taking Charge/Managing Conflict*, Joseph B. Stulberg, Wooster Book Company, 2001.

^{xxii} The Everglades restoration effort achieved a major breakthrough by putting into legislation the approval of the agreed plan and its future funding. In the 2002 session of the Florida legislature, some of the stakeholders and key legislators provided a secured source of bond funding with the Governor's eventual support. This better ensures that the state funding required over the next decade will in fact be available despite future budgetary crunches since state funding will not depend on annual appropriations from general revenue.

Notes on the Authors

Janice M. Fleischer, J.D. is the Program Manager of the Institute for Community Collaboration, a collaboration and consensus-building program of the South Florida Regional Planning Council. Previously the Coordinator of the South Florida Office of the Florida Conflict Resolution Consortium, a university based program established by the Florida legislature, Ms. Fleischer has provided conflict prevention and resolution through training, facilitation and mediation services in the area of public policy since 1996. Ms. Fleischer practiced law from 1978 until 1990 when she became a Florida Supreme Court certified mediator and began mediating court based cases full time before entering the public arena. She is a Florida qualified mediation trainer. She taught mediation at the University of Miami School of Law; has served, since its inception, on the Southern Division of the Florida Mediator Qualifications Board, is Past-President of the Florida Association of Professional Family Mediators; served as Region III Vice President of The Society of Professionals in Dispute Resolution (SPIDR) and is a Vice-Chair of the Legislative Committee of the Section of Dispute Resolution of the American Bar Association. She has served as faculty for the National Judicial College.

Richard A. Pettigrew, a former Speaker of the Florida House of Representatives and Senator, was appointed by Governor Chiles in 1994 to chair the Governor's Commission for a Sustainable South Florida. Under his leadership over the ensuing five-year period, the Commission developed, among other things, consensus recommendations concerning Everglades restoration. The Commission's work was instrumental in Congress's adoption in 2000 of the US Army Corps of Engineers' *Comprehensive Everglades Restoration Plan* being adopted by Congress and approved by the State of Florida in 2000. Florida's share of funding the initiative was provided the same year. He has also lectured extensively before

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business, environmental and other groups concerning the consensus process used by the Commission to arrive at unanimous votes for all the Commission’s final reports on restoration issues. He has been honored by numerous organizations for his service as Chair of the Commission.

Mr. Pettigrew is currently the sole proprietor of a law firm established in 1998 to provide environmental consulting services to selected clients. In addition, he is a state-certified mediator and arbitrator in Florida. His experience includes facilitating a process for the South Florida Water Management District in connection with proposed US Environmental Protection Agency permitting requirements for a storm water treatment facility, and mediating lawsuits involving state and local agencies. From 1981 through September 1998, he was partner in Morgan, Lewis & Bockius, LLP, an international law firm. In this capacity, he was in charge of the Miami office’s Environmental Practice Group and Government Regulation Section, providing client services concerning hazardous waste, petroleum, and other pollution issues, as well as land use matters.

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