

# Resolving Land Use Disputes Clinic

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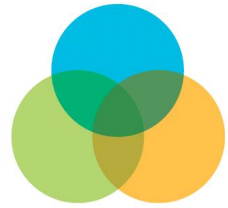
Ona Ferguson, Merrick Hoben,  
Matt McKinney, Ric Richardson

March 9, 2007



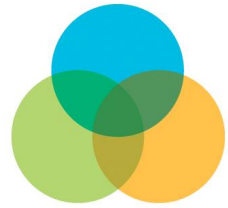
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# Agenda



- 8:45 Characteristics of Land Use Disputes
- 9:15 Getting Past No: Strategies to Resolve Land Use Disputes
- 9:30 Integrating Collaborative Methods into Land-use Decision-making
- 10:00 Break
- 10:15 Analysis and Problem Solving of Participant Land Use Conflicts
- 11:45 Adjourn

# Question



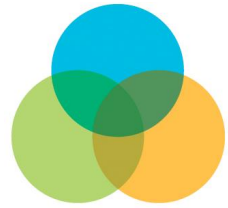
- What makes land use disputes complicated?
- What is unique about land use disputes as opposed to disputes about other subjects?

# Characteristics of Land Use Disputes



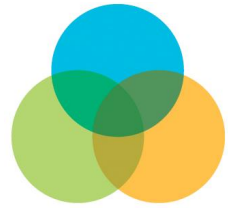
- Competing values and rights
- Fundamental ideological beliefs
  - How the world “is” or “ought to be”
  - Who has a moral or legal right to do something
  - Attempt to force one belief or value system on another

# Characteristics (cont.)



- **Clash of interests**
  - Substantive (allocation of resources, goals)
  - Procedural (who is involved, how, when)
  - Psychological (perceptions of trust, fairness, respect)
- **Complex information**
  - Lack of information & misinformation
  - Different views on what information is relevant
  - Different procedures to collect and assess data
  - Different interpretations of data
  - Different level of comfort with risk and uncertainty

# Characteristics (cont.)



- **Structural factors**
  - Competing missions and mandates
  - Institutional procedures
  - Time constraints
  - Unequal control of power, authority, and resources
  - Changing demographic, economic, and political variables
- **Negative relationships**
  - Historic tension
  - Lack of trust, misperceptions among groups

# Getting Past No

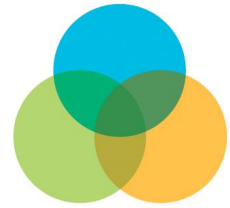
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Strategies to Resolve Land-use Disputes



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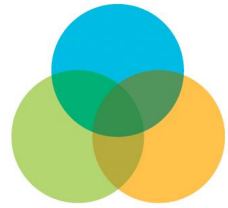
# The Changing Concept of Land Use Planning



	<b>Conventional Approach</b>	<b>Facilitative Approach</b>
<b>Planning Task</b>	Provide technical data and advice	Integrate interests and data
<b>Product</b>	Technically viable plan	Technically and politically viable plan
<b>Primary Clients</b>	Decision makers (maybe developer)	All stakeholders
<b>Role of public participation</b>	Provide input and advice	Build understanding and agreement
<b>Skills</b>	Technical	Dialogue and deliberation

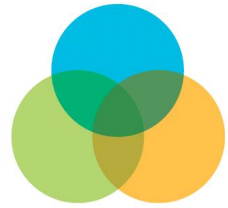


# Definitions



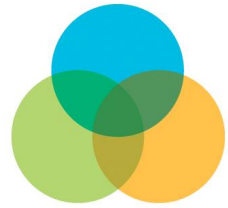
- Negotiation
- Mediation
- Arbitration

# Claims of Supporters



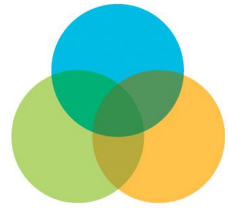
- Avoids problems caused by litigation
- Encourages better communication
- Offers opportunities for joint gains
- Builds trust
- Dispels cynicism
- Fosters efficient use of resources / better compliance
- Resolves underlying issues
- Develops shared knowledge base
- Increases confidence in govt officials
- Empowers disadvantaged groups

# Claims of Opponents



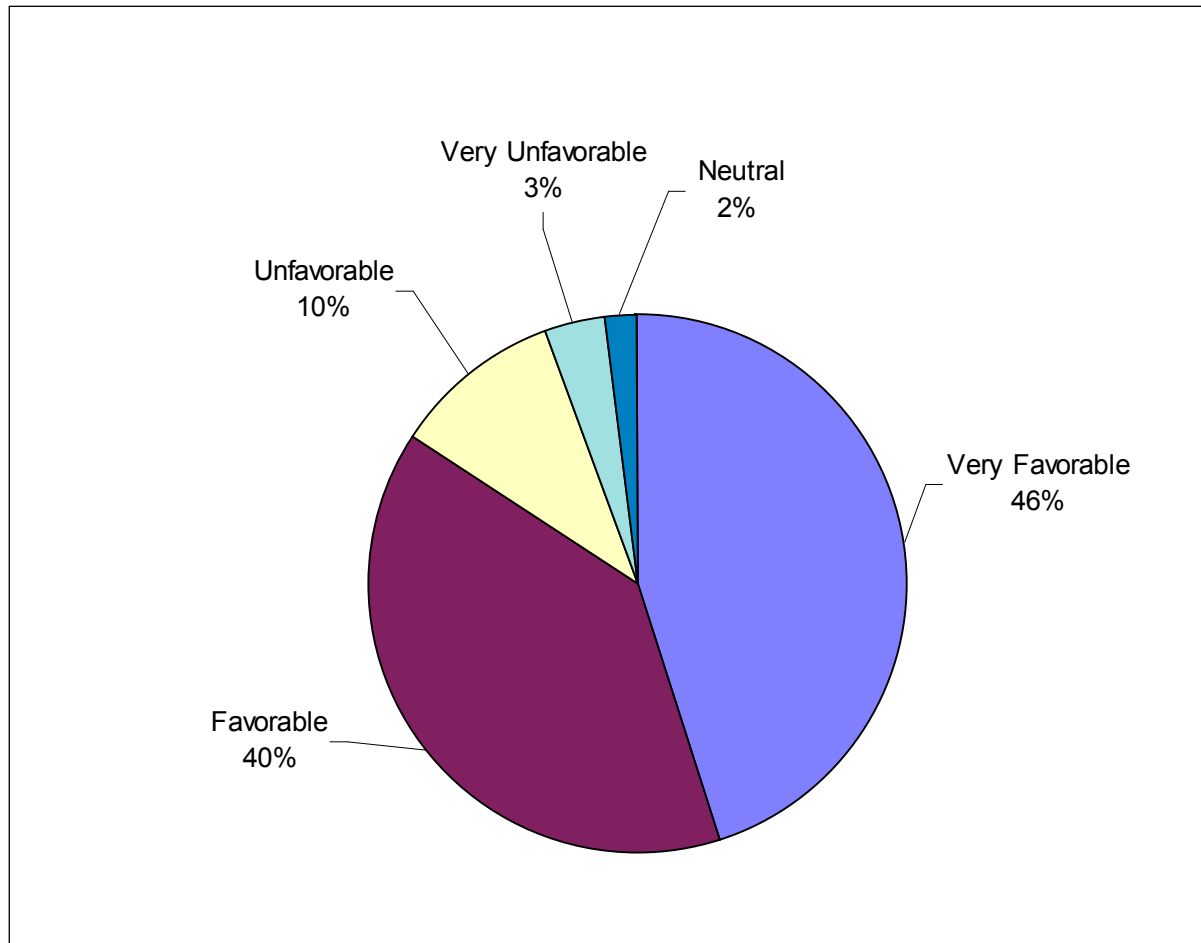
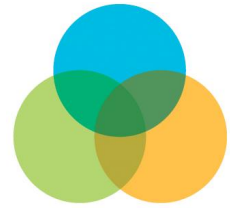
- Neither faster nor less expensive
- Cannot alter stakeholder competitiveness
- Results in “lowest common denominator agreements”
- Lacks a code of ethics
- Must ultimately be litigated

# Analysis of Experience

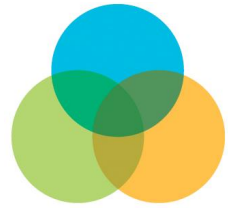


- LILP/CBI evaluation of 100 cases across the country in land development, comprehensive planning, transportation, environmental disputes, and community development
  
- Participant Questions
  - How satisfied were stakeholders with both the mediation process and its outcome?
  - Were underlying issues resolved and relationships improved using mediation?
  - Did the mediation process consume less time and money than traditional processes?
  - How important was the mediator?

# Satisfaction with the Process

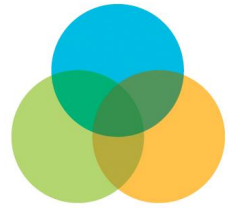


# Satisfaction with the Outcomes



- 77% stated they reached agreement
- 92% believed their interests were well served
- 86% said that all parties' interests were well served
- 88% stated their outcome was creative
- 75% percent thought their settlement was implemented as intended
- 69% thought their settlement was more stable than the alternatives

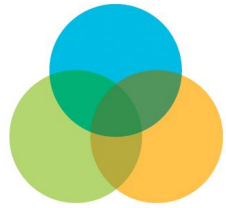
# Impact on underlying issues and relationships



Even though dispute not completely resolved:

- 33% reached minor agreements
- 23% improved relationships
- 22% clarified other stakeholders' interests
- 12% increased knowledge of the issues

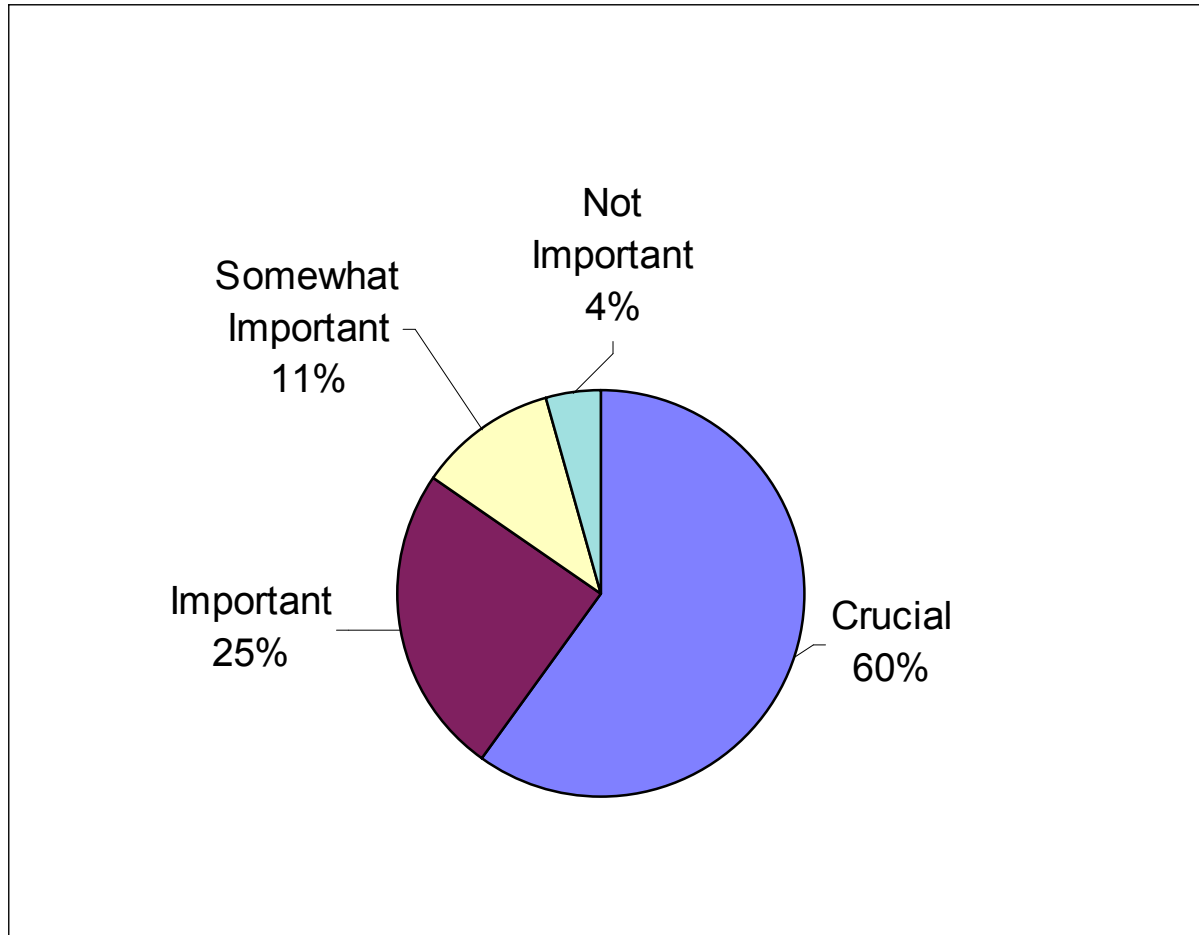
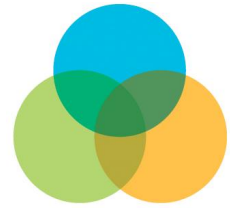
# Cost and Time of Mediation vs. Other Processes



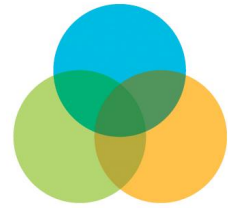
81% said negotiation consumed less time and money than traditional adjudicatory appeals



# How important was the mediator?



# Obstacles



## Obstacles among stakeholders

- Distrust
- Entrenched positions
- Conflicting values
- Personality conflicts
- Agents ability to represent client's interests
- Perception of BATNA
- Negotiating in bad faith

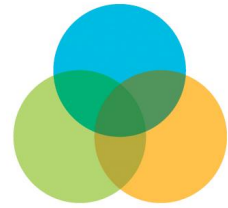
## Procedural obstacles

- Lack of experience with process
- Time and cost of the process
- Political influences
- Identifying and engaging stakeholders

## Substantive obstacles

- Planning
- Modeling
- Access to information
- Property rights

# Obstacles



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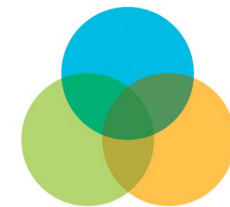
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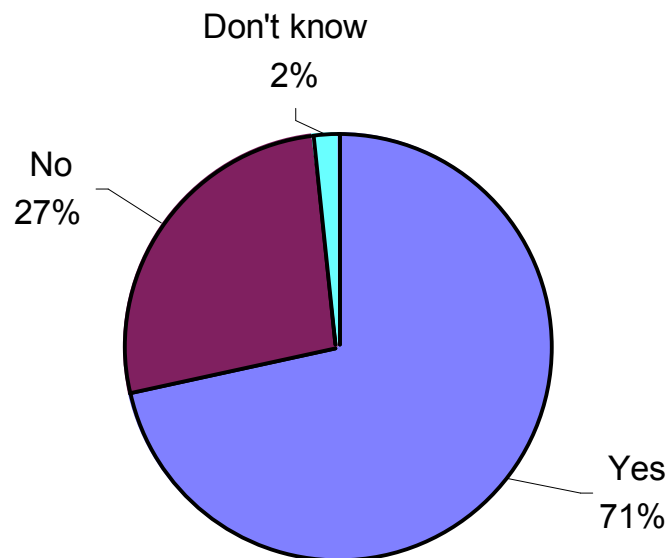
## Substantive obstacles

- Planning
- Modeling
- Access to information
- Property rights

# Negotiation and Mediation: The Forum of Last Resort



## Case referred to Mediation from other process



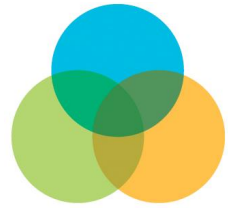
# Integrating Collaborative Methods into Land-use Decision-making

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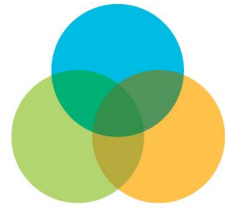
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# The Challenge



- We know negotiation & mediation works on a case-by-case basis
- Move beyond ad hoc applications and design systems to deal with an inevitable stream of disputes
- Use collaborative methods as the forum of first resort, rather than a forum of last resort

# Systems to Resolve Recurring Multi-party Disputes



## Theory of Dispute Systems Design

3 approaches to resolve any dispute

- Power
- Rights
- Interests

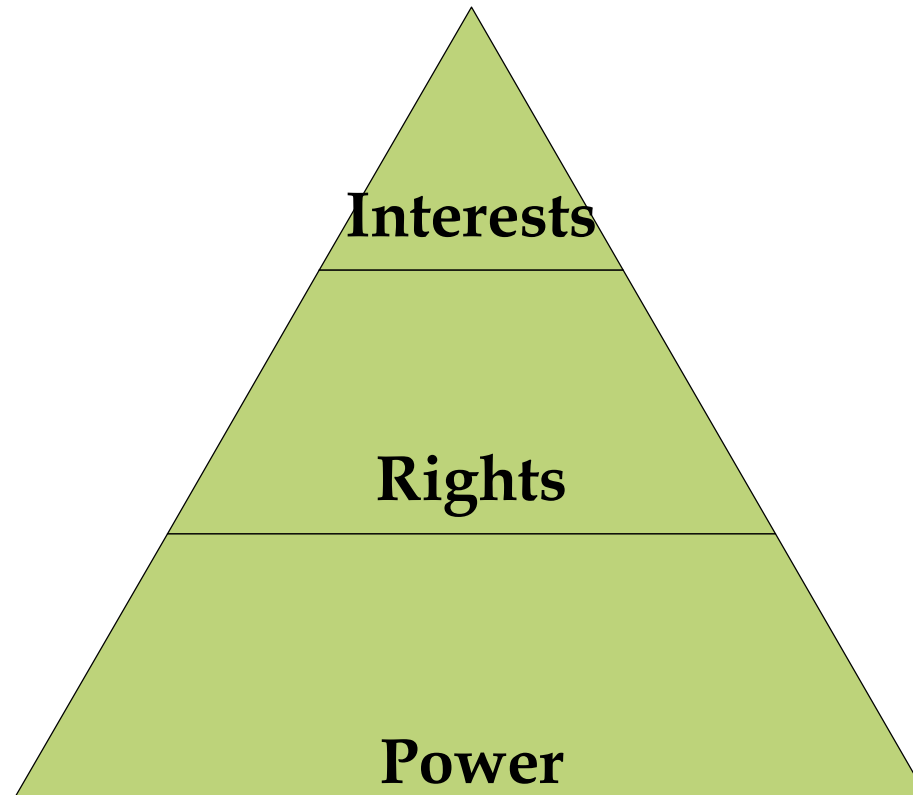
Which approach is best?

- Satisfaction with the outcomes
- Sustainability of the outcomes
- Transactions costs
- Impact on relationships

Proposition -- Reconciling interests:

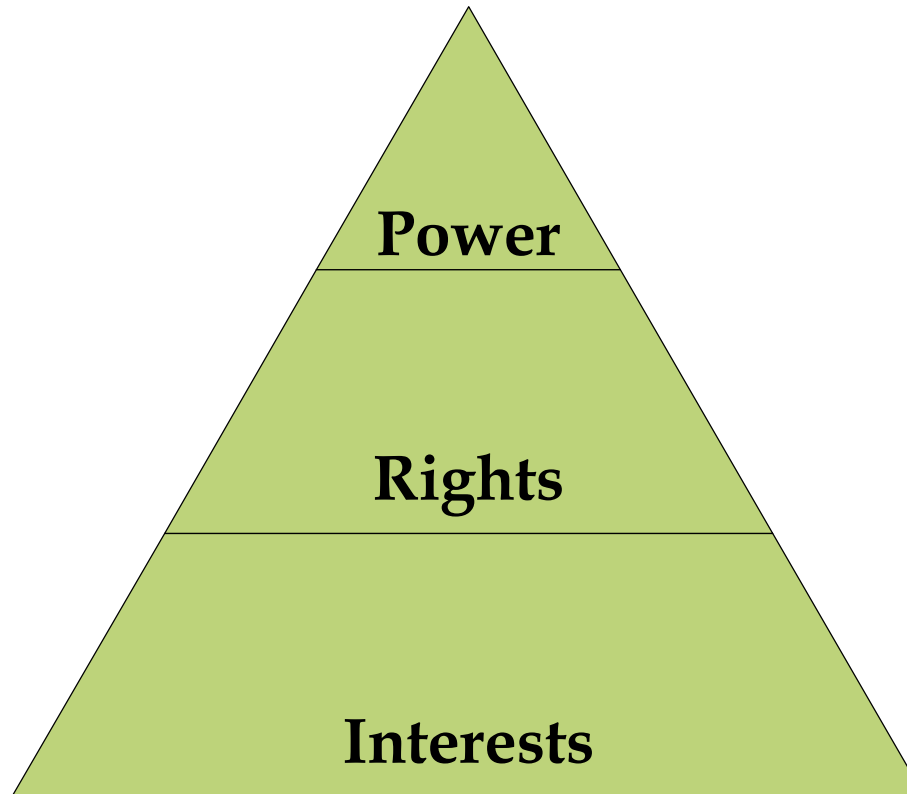
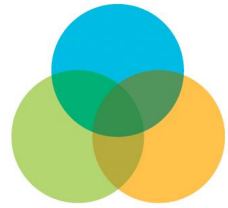
- Tends to be less costly than ...
- Determining who is right, which in turn is less costly than
- Determining who has more power.

# A Distressed System

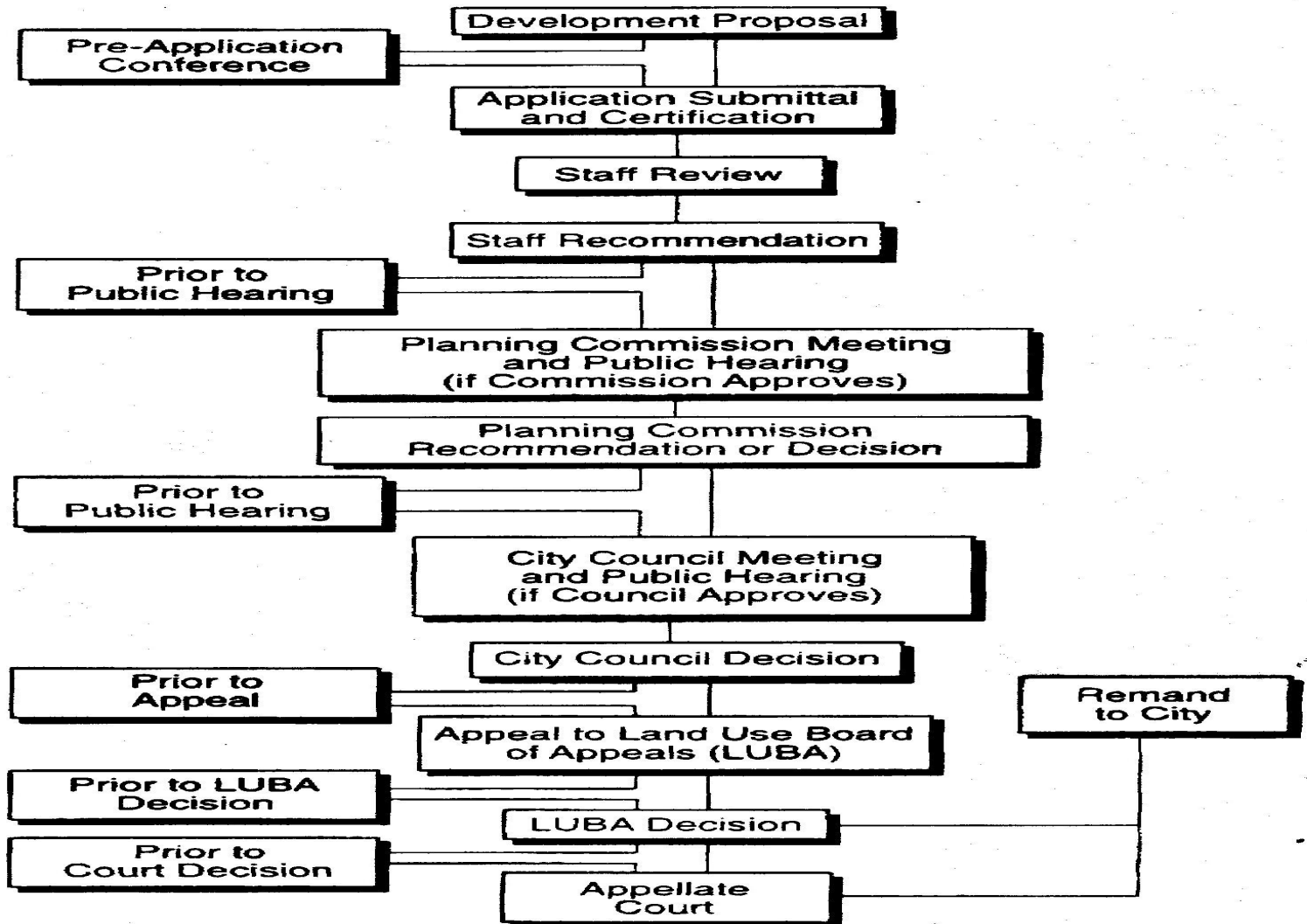
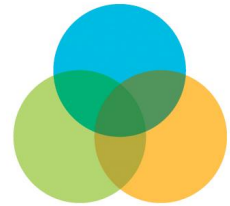




# An Effective System



# Integrating Collaborative Methods



# Scope of the Study

25 land use dispute resolution programs, representative sample, not comprehensive



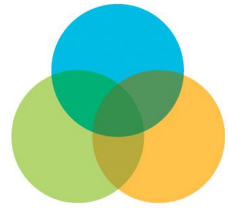
## State Programs (18)

- California
- Colorado
- Connecticut
- Delaware
- Florida (2)
- Georgia (2)
- Hawaii
- Idaho
- Maine
- Massachusetts
- Minnesota
- North Carolina
- South Carolina
- Vermont
- Oregon
- Washington

## Local Programs (7)

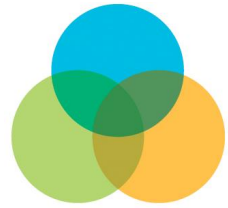
- Denver
- Colorado Springs
- Baltimore
- Bozeman
- Albuquerque
- Warwick, NY
- Austin

# Geographic Distribution



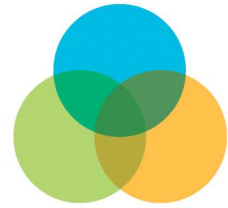
- Northeast (7) - Connecticut; Delaware; Maine; Baltimore; Massachusetts; Warwick, NY; Vermont
- Southeast (6) - Florida [2]; Georgia [2]; North Carolina; South Carolina
- West (7) - California; Colorado; Denver; Colorado Springs; Hawaii; Idaho; Bozeman
- Southwest (2) - Albuquerque; Austin
- Northwest (2) - Oregon, Washington
- Midwest (1) - Minnesota

# A Preliminary Analysis



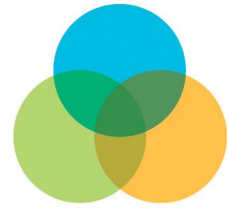
- What Type of Issues?
- Who Participates?
- When in the Process?
- Program Design
  - Somewhat Common Elements
  - Best Practices
- Next Steps

# What Type of Issues?



- **Site Specific Development Disputes**
  - Neighbors and environmental groups oppose proposed site development
- **Community Planning and Growth Policy Conflicts**
  - Landowner disagrees with rezoning resulting from annexation
  - Community, neighborhood or redevelopment planning effort opposed by neighbors or developers
  - Appeal of a local regulatory decision or state planning initiative
- **State Interagency and Intergovernmental Plan Approvals**
  - Infrastructure plan is inconsistent with adjacent jurisdiction or state policy
  - A local plan conflicts with a state agency plan or policy
- **Natural Resource and Conservation Disagreements**
  - Protest over development of land designed for conservation or open space
  - State conservation efforts opposed by local landowners

# Who Participates?



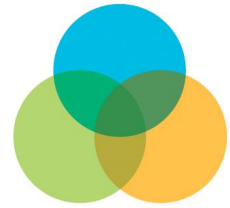
## Intergovernmental and Interagency (10)

- California
- Colorado Springs
- Delaware
- Denver
- Georgia
- Minnesota
- Hawaii
- Oregon
- Vermont
- Massachusetts

## Property Owners, Citizens and Regulatory Bodies (15)

- Austin
- Albuquerque
- Baltimore
- Bozeman
- Connecticut
- Delaware
- Florida (2)
- Georgia
- Idaho
- Maine
- North Carolina
- Oregon
- South Carolina
- Warwick, NY

# When in the Process?



## Pre-application (6)

- Austin
- Bozeman
- Albuquerque
- Denver & Colorado Springs
- North Carolina

## On Appeal (11)

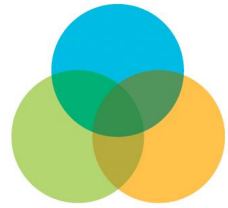
- Connecticut
- Florida
- Maine
- Idaho
- Baltimore
- South Carolina
- Vermont
- Georgia (2)
- Washington
- Warwick, NY

## Anytime in the Process (8)

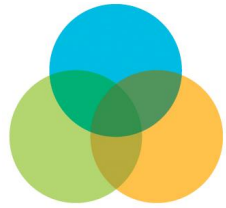
- California
- Florida
- Vermont
- Idaho
- Massachusetts
- Delaware
- Colorado
- Oregon



# Program Design: Somewhat Common Elements



- Use a screening tool to select cases
- Parties select the mediator
- Parties share costs of mediation
- Require land use expertise or other mediator qualifications
- State or local list of qualified mediators
- Agency provides staff mediators or contracts with others
- Legal proceedings are put on hold during mediation
- Time frame for mediation set in ordinance or statute
- Agency provides mediator training, education, research and evaluation, and dispute resolution systems design
- Requirement for co-mediation with junior and senior mediators
- Convene public meeting meeting to review outcome



# Program Design: Best Practices

- Provide a sequence of opportunities
  - Pre-application meetings
  - Unassisted negotiation
  - Mediation (throughout the review\_
  - Non-binding recommendations (mediators, citizens, other)
  
- Supportive role of state agencies:
  - Authorize (if necessary)
  - Maintain rosters
  - Provide training
  - Encourage and support
  - Promote public review and citizen participation

# Land Use Disputes Clinic

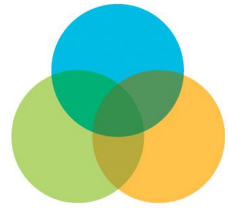
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Finding Solutions to  
Participant Challenges



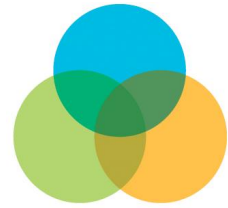
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# Land Use Disputes Clinic Survey



1. What is the nature of the conflict?
2. Who are the stakeholders? Who's the decision-making authority?
3. Is anyone working to resolve the conflict now? If so, how?
4. What aspect of the situation would you like help with?

# The Consensus Building Institute



- Consensus Building Institute (CBI) is a 501(c)3, not-for-profit organization dedicated to helping organizations of all kinds reach better agreements
- CBI has extensive experience in the public and private sectors and CBI staff are actively involved in mediating some of the world's most complex business and political disputes
- CBI advocates use of the “Mutual Gains Approach” to negotiation developed at the Program on Negotiation at Harvard Law School
- CBI has a global network of full time staff and affiliates

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