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*Consensus Building to Write Environmentally  
Responsive Rules for Maine's New Transportation  
Policy*

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1994

CONSENSUS BUILDING TO WRITE ENVIRONMENTALLY RESPONSIVE  
RULES FOR MAINE'S NEW TRANSPORTATION POLICY

Sondra Bogdonoff

The writing of Maine's transportation policy represents an innovative approach to broad based citizen participation in a policy arena (transportation) where public involvement has traditionally been limited. Through consensus building and shared stakeholder power, environmental concerns were integrated into transportation policy planning at the state level. The process offers a possible alternative to the gridlock and high expense associated with the use of litigation to resolve conflict.

In 1991 the Maine Department of Transportation (MDOT) was mandated by public referendum to write new rules governing transportation policy. They were charged with creating a new policy that would be multi-modal, environmentally responsive and that would improve public participation. Using a process of negotiated rulemaking, 58 stakeholders, from environmental, state, and business interests, arrived at rules within the designated one year period. There was wide spread citizen support for the new rules and for the process by which they were written. MDOT is in the process of implementing the rules, which include institutionalization of the process at the regional level.

The rule writing group, the Transportation Policy Advisory Committee (T-PAC), provides a model for consensus building and public participation for state government

1. People come to the bargaining table only if they believe negotiations will produce an outcome for them that is as good or better than the outcomes that would result from other available methods of pursuing their interests.
2. The acceptability of negotiation is determined by relative power. If the imbalance of power is too great, the less powerful party will seek an alternative context in which to press its claim.
3. Fifteen parties is considered the general practical limit on effective negotiated rulemaking efforts.
4. The issues must be readily apparent and the parties must be ready to address them.
5. Consensus building will be stymied if deeply held beliefs or values are in conflict. If values are incontrovertible, there is no room for negotiation.
6. There must be two or more issues on the table so that parties can trade across issues or items that they value differently, thereby arriving at a win-win solution.
7. The pressure of a deadline is necessary for successful negotiations.
8. Some method of implementing the final agreement must be available and acceptable to the parties.

## Background - Preconditions for Negotiated Rulemaking

The referendum dictated a specific direction and a set of considerations and time constraints. The referendum campaign raised new issues, identified spokespeople and, with the referendum's passage, changed the traditional balance of power within the state. More than any other influence, the referendum victory determined the preconditions for success, and set the stage for negotiations.

### The Referendum - History

Groups in Maine with a concern for the environment and the economy felt excluded from formulating transportation policy and influencing investment decisions. The Natural Resources Council of Maine (NRCM) was the most active of the environmental groups within the state on transportation issues. They were frustrated with the State Legislature and with MDOT's lack of responsiveness. When NRCM was unable to block legislative and agency approval of a proposal to widen the turnpike in the southern part of the state, they made a decision to go directly to the people of Maine with a citizen initiated public referendum.

NRCM believed it was critical that the referendum address the way in which transportation planning was conducted. The referendum, with new proposed transportation policy, was more complicated and harder to pass than one to

simply stop the widening. Maine Audubon, other environmental groups, and alternative transportation advocates, joined with them to form the Campaign for Sensible Transportation.

The new policy included in the referendum, named the Sensible Transportation Policy Act, directed the Maine Department of Transportation (MDOT) to cease being a "Department of Highways and Bridges" and to become a multi-modal agency concerned with the movement of people and goods by the most efficient, least damaging means possible. It required that alternative modes of transportation demand management techniques be given preference to highway construction and widening. MDOT would be required to take into consideration energy costs, air pollution, land use impacts, and the needs of all citizens, young and old, urban and rural. The Act linked transportation policy to the environment and to the economy. MDOT was directed to write the specific rules to accomplish these goals.

The expensive, hard fought and divisive referendum campaign resulted in the solid defeat of the turnpike widening and a mandate for a new transportation policy. The referendum passed in part because of an effective last minute campaign that played on the public's discontent with state government and its spending priorities.

### The Effect of the Referendum

By taking the transportation issue into the public arena, decisions historically internal to MDOT became open to public influence. MDOT was alerted to a new set of citizen issues, and a new era of transportation planning. This changing environment was reflected in federal transportation policy, enacted soon after the passage of the referendum, which strongly reinforced a multi-modal approach and provided more flexibility in federal funding. The federal Intermodal Surface Transportation Efficiency Act (ISTEA), combined with the referendum, provided a fundamental departure from the way Maine had done its transportation planning and investing for the last forty years.

The balance of power had shifted. The referendum victory highlighted the erosion of public confidence in the MDOT. At the same time, the victory gave environmentalists the power they believed they needed to get to the negotiating table and be taken seriously by MDOT. Critically, the referendum campaign made everyone aware of their interdependency. Both the MDOT and the environmentalists realized they had to deal with each other to have any chance of moving their own agenda, or the state's, forward.

The referendum served another function; it provided an important "exhaustion" factor. A lot of time, money and

energy had been spent in bitter argument. The campaign had been dehumanizing, turning everyone into "good guys" or "bad guys". Weary of conflict, people were receptive to the alternative negotiation offered.

#### Decision to Use Negotiated Rulemaking

In the week after the referendum victory, NRCM and a delegation of others from the Campaign for Sensible Transportation, went to MDOT Commissioner Connors. They proposed that the rules and regulations required by the new Maine law not be written by his Department as charged by the Act and as they traditionally would be. Instead, they asked that Commissioner Connors invite all the parties on both sides of the referendum to participate in the writing through a process of negotiated rulemaking (Reg-Neg). This seemed a natural extension of the referendum to NRCM in the light of their victory.

MDOT took the suggestion seriously. They contacted Philip Harter, by general agreement the "father" of Reg-Neg, and invited him to Maine. Although that visit didn't take place, a conference call between Harter and MDOT staff helped allay their fears about losing control of rules they would be responsible for implementing.

Commissioner Connors had been a strong and vocal opponent of the referendum. His consideration and ultimate support of negotiated rulemaking set a tone of cooperation



and conciliation that provided the opening for a new dialogue.

### The Rule Writing Process

The Department of Transportation advertized for neutral facilitators to guide and mediate the rule writing effort. They ultimately hired the team of Ann Gosline and Jonathan Reitman, both of whom had alternative dispute resolution practices. Although technically MDOT was the client, the extent of the agency's control remained minimal throughout the negotiations.

### The Rulewriting Process - The Beginnings

The facilitating team of Gosline and Reitman started in late February to meet with indispensable key players to formulate an agenda and identify key issues. MDOT had a file of people who had expressed interest in the transportation rules. Ads were placed in newspapers around the state inviting other participants. Gosline and Reitman limited participation in the rule making process to individuals representing a group. They believed a workable total would be about 25-30 representatives, in line with Harter's recommendations.

### Why People Came to the Table

Various constituents had different concerns and reasons for participating in the negotiations. Morale at MDOT was

at a low point. Environmental efforts to intercede in transportation policy in the past had caused long delays and lengthy and expensive legal battles for MDOT. This was combined with severe cutbacks in state support including non-optional furlough days. The referendum victory had further weakened their credibility. They were open to negotiation and they wanted to be involved. MDOT was there to make sure the rules were grounded in reality and were workable.

The business community grudgingly agreed to an open process. They were there to defend themselves, protect their interests, and to keep their concern for the economy in the forefront. Business representatives worried that the results of the rules would be to stifle MDOT and that valuable tax dollars would be consumed in endless planning.

The proponents of the referendum believed they had proved they belonged at the negotiating table. Most had little actual experience in consensus building outside their constituencies. This meeting was for them a first real chance to directly impact state planning.

#### The Rulewriting Process - First Meetings

The first meeting of the Transportation Policy Advisory Council (T-PAC) was on April 3, 1992. Fifty-eight representatives of various groups were present. Commissioner Connors outlined three requirements. First, the rules

needed to be written by September, in time for public hearing before the rules would take effect in December. Second, that all parties be in complete agreement to the rules in their entirety. Third, that the rules be workable in the judgement of MDOT.

The facilitators, Gosline and Reitman, presented their view of the process and an explanation of dispute resolution using negotiated rulemaking. They provided a list of proposed protocols and ground rules for the group. These included: Acknowledging wounds from past involvements; Being active listeners; Welcoming and holding differences without judgement; Discussing interests, not just positions; Respecting the pace of each member of the group; "Walking a mile in their shoes," and Tolerating imperfection.

Gosline and Reitman brought to the first meeting a plan for a two tier structure composed of a steering committee and associate members. The whole group would participate in discussions on the rules, but the steering committee would take responsibility for drafting the rule, and would have to approve it by consensus. The facilitators had chosen 20 participants who they proposed would form the steering committee for T-PAC.

The balance of representatives on the steering committee was immediately questioned. Proponents of the referendum thought they were outnumbered. After intense debate, the group agreed to add three balance seats. Three

individuals, whom the group believed could broadly represent the referendum proponents' point of view, were invited to join the steering committee. The meeting was awkward and tense. People were unfamiliar with the process and concerned about consensus as a model. Basic trust was minimal.

#### Building an Information Base

At the second meeting, the group identified the need to develop a common base of knowledge; to level the information playing field. A subcommittee worked with the facilitators to design an information sharing plan for two all day meetings.

The first information session opened with a group exercise conducted, at the request of Gosline and Reitman, by one of the participants. He asked everyone to stand and divide into groups, according to a long list of personal characteristics that had everyone moving from one side of the small room to the other. They divided in various combinations of left and right handed persons, people who liked dogs versus cats, middle children versus other standing in one's family, belief in the prospective fortunes of the Red Sox, and so on. Although some T-PAC members said they "just wanted to get out of there" when Reitman announced the exercise, the outcome was light and humorous. For the first time, participants recognized a tentative basis for mutual understanding.

Various constituencies made presentations. MDOT

educated the group in the intricacies of the transportation department, federal regulations and the myriad regulatory systems within which they operated. Other group members made presentations that included possible models gleaned from other governmental jurisdictions and examples from other arenas, such as utility regulation. Some people were impatient with this period and saw no immediate relevance of much of the information. In retrospect, participants acknowledged a common data base served to break down some barriers and to build a larger context for the negotiations.

#### The Task

Following the information meetings, the facilitators asked members of the steering committee to, in essence, "put their cards on the table". Several groups, including MDOT, business, and environmental groups, wrote vision statements of their goals for transportation. They produced widely divergent papers, in both language and focus. Although this increased the tension in the group, perspectives were brought into the open. All the stated goals were put together in one list arranged under sections of the rules. From there the group worked to agree to a list of goals. The list formed the basis of the work that came afterwards and remained an appendix to the final rules.

The facilitators wanted the steering committee to divide into task forces according to different sections of

the Act. Each sub-group could write a draft and then return to the full group to assemble the final set of rules. The steering committee was resistant to that plan, in part because the referendum proponents felt they would be outnumbered and outvoted if the larger group broke into smaller components.

June was half over and there was no agreement on how to approach the task of rule-writing. A breakthrough came with the idea to divide not along functional lines, but according to voluntary "affinity groups" of like-minded people. Over the course of several meetings, the half-dozen affinity groups reduced themselves to just three, the environmental, the business, and the MDOT group. The larger T-PAC group divided along the same lines, although a few people remained unaffiliated, and a few attended meetings of two of the affinity groups.

Attempts to translate the vision goals into specific language led to a frustrating impasse. The facilitators talked to Harter, who had written extensively on Reg-Neg. He suggested the facilitators write a framework draft document that the steering committee could work from. The idea was rejected by the group, largely due to lack of trust that this process would allow various views to be aired fully.

The three affinity groups in the steering committee resolved the issue by deciding among themselves to pick

negotiators from each group, who under the guidance of Gosline and Reitman, would do the final drafting. How the drafting would be accomplished was still not clear. Finally, the facilitators circulated a general outline of the rules, based on the referendum. There was some agreement on the basic format the rule would take. Following that general outline, the environmental negotiators wrote a first draft. MDOT countered with their version. The business negotiators reviewed and gave input on both drafts. The versions were put side by side, where they could easily be compared. Where agreement was close, resolution came quickly. In difficult places, the process of working out an agreement went word by word.

September 30, 1992, six months after they began, the full T-PAC group approved the final rules. A press conference was called and a group from T-PAC talked of their process and what they had accomplished. The group described themselves as laying the groundwork for the equally important implementation phase.

#### Role of the Facilitators

The facilitators were available day and night; for 9 P.M. calls, Sunday meetings - anytime anyone wanted to talk. There were times when they took the initiative and went to key players. They met at the negotiator's work places and talked on their turf. Key players had a chance to say

things that they wouldn't say at the negotiating table. At times, when someone had taken an extreme position, they would give them feedback on how others perceived their stance and encourage them to give a little. They carried ideas and alternatives back and forth between constituencies outside the meetings as well as during frequent affinity group caucuses.

The facilitators were a good team, with different skills and personal strengths. They consistently forced leadership back on the group. Only out of the process and the frustration did they think the group could gain a depth of commitment. The facilitators held the vision of success for the group and projected faith that the task could be achieved. Their attitude and encouragement became critical at those times when things were closest to falling apart.

#### The Structure

The T-PAC group evolved for itself a three-tier pyramid. The 58 representatives from constituent groups formed the T-PAC membership. All decisions were arrived at after discussion in this entire group. The 23 member steering committee, which represented T-PAC members in the rule-writing process, was charged with actual consensus authority for the larger group. Two to three members from the three affinity groups within the steering committee formed a drafting group, who with the facilitators, did the



actual rule writing. Information passed up and down the pyramid as well as between members.

This operational structure was not what the negotiators intended, but what T-PAC itself evolved. Because they were decisions made and supported by the group, they were effective in moving the process forward.

#### Analysis of the Structure

The pyramid structure allowed a large number of people to be involved in the process. There was a natural progression from the beginning, when the most people were involved and the whole group met monthly, to those few negotiators, who at the end, worked on the draft rules nearly full time. The affinity groups continued to meet on a regular basis throughout the process. Over the final few months, the entire T-PAC group did not meet until the end.

One of the difficulties with the pyramid structure was communication. As the work load and the time commitment increased, keeping the whole group informed and involved became difficult. Some of those people in the larger group felt left out. The facilitators did circulate to the full group several drafts of the rules and asked for feedback at various times during the process. In retrospect, the facilitators thought more deliberate communication would have been helpful, specifically in having the full group endorse the use of a drafting committee. Although the decision evolved naturally and worked, it was never formally

sanctioned.

The structure inherently demanded a tremendous personal investment of time, energy and trust by the drafting group. At the end they were under severe pressure from both their constituencies and each other. They had two equally important jobs to balance. One was to represent and negotiate responsibly for their constituents. Their second job was to inform, educate and bring along their constituents in the process of consensus building. At times, this later function appeared to be the harder of the two jobs. From the beginning there were uninvolved members of the stakeholder groups who considered it unforgivable to be sitting at the same table with the "enemy." There were moments when some of their constituents were concerned that they were selling out, and on the other side, concerns that they were being unreasonably stubborn and uncompromising.

#### Why Negotiated Rulemaking Worked

T-PAC was supported by preconditions for success. The referendum set the priorities of the rules, and made clear a set of values and goals. These were not negotiable. Within those parameters their effort was further helped along by several conditions. The task was clearly defined, the time frame immediate and concise, and if this group didn't get it done, MDOT would. Everyone, including MDOT, stood to lose if that happened. The participants were clear about their

responsibility and the importance of their task. The end result would be law.

The effort was supported at the top by the organizations involved. They gave their representatives the power to negotiate, and the time to do the work. MDOT Commissioner Connors monitored T-PAC's progress, but, by tacit agreement, MDOT kept its hands off, not wanting to undermine either its own negotiators, or the process itself. In the long term this was important in maintaining the facilitators' credibility. It also allowed the working group to develop its own authority and legitimacy as a rule-making body, with the facilitators accountable to T-PAC, not to MDOT alone.

#### Conference Model for Systems Change

T-PAC's success in many ways reflects the findings of Marvin Weisbord. He has found that when organizations focus on conflict, they fence off access to common ground. Through his studies of whole system change, he has developed a conference model to promote consensus and change. He has identified three critical specifications for success:

1. The whole system must be in the room
2. There must be the broadest possible data base.
3. People must be task-focused and willing to self-manage their work. (Weisbord, 1992, p. 66)

Although the facilitators' decision to limit

participation to groups eliminated unaffiliated citizen participation, representation was quite broad and all major stakeholders were there. Commissioner Connor's support for the process from the beginning, and the public's interest in the outcome, brought stakeholders to the table and kept them there.

Education was a key ingredient in the process. Through careful listening to each other, it became clear that neither side had really understood or appreciated the other's position. In fact, MDOT's process for approval of major projects, which already required public involvement, was more stringent than the plan environmentalists were pushing. There had simply been so few major projects that no one outside of MDOT was aware of the process the agency actually used.

#### Building Trust Among Participants/ Personal Change

T-PAC required risk and leadership by many people who had to personally engage in a process they were unfamiliar with, and work with people they only knew as adversaries, for an end result no one could visualize. To succeed in their task and reach consensus on the transportation rules would have been satisfaction enough, but something more happened. People sat across from former "enemies" and not only gained mutual respect, but developed admiration and even affection for one another.

During negotiations, small relational changes happened and people began to see each other as individuals, not just representatives of a particular viewpoint. At a break in the discussions, an environmentalist and a business leader discovered they shared a common love of gardening. An animated conversation over ways to rid tomato plants of aphids caused a lasting change in their relationship.

This process was not about one person, one star, one leader, but about a group working together. At numerous points some one individual in the group came up with the necessary knowledge, trust, or plain perseverance to move the group forward. Several participants afterwards noted "how they never knew where the next good idea would come from."

Their success may also be about the effectiveness of collaborative male and female involvement. The negotiating teams for the affinity groups, and the facilitators as well, included a man and a woman. Participants appreciated the strengths both genders brought to the process. Each identified their partners in the drafting sessions as indispensable. There were times when they relied on each other and times, as one of MDOT's negotiators put in, "When Tom's feet were stuck in concrete and I could say, 'You've got to move, Tom' and of course there were times when I refused to budge and he needed to push me."

The amount of plain work - studying, telephoning,

attending meetings, meetings, and more meetings, became another cause for the mutual respect and trust group members ultimately had for each other. Their shared involvement and commitment became a bond between them.

### The Media

An editorial in a local paper brought forward a request from the press to attend drafting committee sessions. Some of the group were concerned over how freely they would be able to speak and how the press might undermine delicate negotiations. Their concerns were balanced by others who felt exclusion would raise a red flag and give a negative image of T-PAC. Other T-PAC members, who routinely conduct business in a public arena, felt that open meetings were critical to the success of T-PAC and helped to assuage the fears of others.

The group agreed to open meetings. The length and complexity of the meetings made dull press for most reporters and their interest faded quickly. For the reporters who diligently covered most of the meetings, the process instilled in them the same sense of responsibility and collaboration as in the participants. The reporting was generally both fair and supportive.

### Implementation of the New Rules

The rules were put out for public comment, and

Commissioner Connors traveled around the state, explaining the rules and inviting comments. He outlined to the public the basis of the rules and explained that they were not self-executing. Their success relied on the involvement of the public. The new rules divided the state into regional areas, each of which would have an advisory group, modeled on T-PAC. He asked for volunteers to help form the Regional Transportation Advisory Committees (R-TACs) that would "put flesh on the bones of the rules".

#### Institutionalization of the Process

The new transportation rules themselves reflect the process out of which they came, one of shared power and responsibility. They provide a process and a planning model, not a product. Commissioner Connors calls the rules "a living document". The Regional Transportation Advisory Committees (R-TACs), mandated by T-PAC, institutionalize the T-PAC process at the regional level. The new rules take this system of conflict resolution into a widening circle of community involvement and regional organizations.

The rules call for the division of the state into regional areas, each with its own Regional Transportation Advisory Committee (R-TAC). Members from T-PAC met with the same facilitators in the months following T-PAC to come up with the regional boundaries and the general composition of the R-TACs. Five hundred people responded to Commissioner

Connors' request for volunteers. He has appointed the groups, and they met for the first time in December, 1993.

The R-TACs are modeled on T-PAC, and include a balanced representation of various stakeholders, and a commitment to decision making by consensus. The general composition of the groups are; 5 or 6 municipal members, 3 or 4 environmentalists, 3 or 4 representatives of alternative modes of transportation, 3 or 4 business representatives, and 2 or 3 public-at-large members.

The R-TACs will advise the MDOT on transportation issues and goals critical to their region. They will determine multimodal preferences for their region, identify important social, economic, and land use issues within their region, and assist MDOT in developing an early and effective public participation process. Within the parameters of the Sensible Transportation Act and federal guidelines, they will have substantial authority to decide options and goals.

MDOT has hired four new people who were picked for their interpersonal skills and conflict resolution experience. Under initial supervision by one of MDOT's T-PAC negotiators, they will act as liaison between MDOT and the R-TACs. Members of the R-TACs have received conflict resolution training and will have access to facilitators.

The T-PAC, R-TAC process has been attracting national attention. In December, 1993, the US Department of Transportation came to Maine to look at the R-TACs as a



potential national model.

#### Changes Within Maine - A Ripple Effect

As a result of T-PAC, lines of communication between MDOT, the business community, and environmentalists opened up. There is more respect and understanding. Other issues of possible consensus grew out of the process - transportation funding issues, the implementation of the Clean Air Act, and broader environmental priorities.

The key players in T-PAC are the key players in many other circles of interest and concern - economic development, natural resources, and government policy. History is important in this state where distances are great and the number of people is small. The development of relationships across traditional boundaries has had a ripple effect, carrying a new level of collaboration and communication into other areas of mutual interest.

#### New Initiatives

Throughout the state there has been growing interest in workshops and speakers on conflict resolution. Although this is a national trend, the success of T-PAC has played a part in providing a concrete example, and in educating people in the process.

In December, 1993 there was a statewide Conference on Conflict Resolution sponsored by the Maine Consensus Project

and attended by more than 300 policy makers. The Maine Association of Dispute Resolution Professionals (MADRP) saw its membership grow in 1992 from three to 50 professionals committed to conflict resolution.

T-PAC drove consensus building into a much wider range of issues. Probably the most direct attempt to duplicate the T-PAC process is the Maine Environmental Priorities Project - Comparative Risk Assessment. The stakeholders's goal is to list environmental threats, rank them as to seriousness, and then develop risk management strategies. The 37 member steering committee is made up of environmentalists, consumers, lobbyists, and municipalities, working within a two year time frame.

In the private sector, New England Telephone is just beginning a collaborative planning process. They are putting together a group of stakeholders to do long term visioning for the telecommunications industry in Maine.

Change within the Maine Department of Transportation Frustration with the current system, the referendum, ISTEA at the federal level, societal changes - in both new visions of transportation, greater public concern for the environment, and new "whole systems" approaches - all were having an effect on MDOT. T-PAC, in both its process and its product, clarified and helped to move change along faster.

### MDOT and the Negotiations

MDOT put together a working group of people from different departments within MDOT to act as the planning and reporting committee for the rule making process. They originally interviewed and picked the facilitators. Bringing this group together was already a departure from previous policy. The group had representatives from the Legal Division; Location and Survey; Design; Technical Services; Environmental Services; and Planning Office in the MDOT. Most had never met. Their job was to advise the negotiating team and report back to their departments. They were the communication link within MDOT. Their first challenge was learning about each other, and each other's departments.

Most of the MDOT group attended early T-PAC sessions. As the meetings progressed it became clear that the major changes would be in the process by which a project was chosen. Many of MDOT's concerns and some individual involvement in T-PAC faded. For those continuing, T-PAC became nearly a full-time job. For the others, "check in" meetings became the norm. Although the intention was to have this group within MDOT be a formal reporting group, the pace and time demands made that impossible. The three from the original group who continued to advise their negotiators met three times a week if not daily, toward the end.

### Implementation Within MDOT

I talked to most of the original MDOT group in January of 1993, immediately after the final approval of the rules. They had a cautious attitude and concerns as to how they were going to implement the new rules. As one of them said "Civil engineers look for civil engineering solutions". These were problems for planners and economists. MDOT was being asked to do things that they hadn't done before and couldn't necessarily carry out with resources within the department. The real cost figures were unknown. They were expected to have a draft plan by January 1994, and a final state plan by 1995.

Those inside MDOT understood what a huge undertaking implementing the new rules would be. New systems and new procedures would be required. The law had changed, but the culture inside MDOT had not. Although Commissioner Connors was committed, the organization as a whole was not structured in a way to allow change to easily happen.

### Cultural Change Within MDOT

T-PAC pushed MDOT to improve the planning process and become a more pro-active organization. In the past, MDOT had been mainly a technical outfit, a group of engineering specialists. They tended not to coordinate issues between departments, but rather to pass a project on through the various departments. They are now initiating use of an

integrated design team. There will be one project manager responsible for an entire project, who will follow it from beginning to end. They are looking at new ways to present their projects, and to develop better communication skills and better public relations.

Perhaps the cultural change that has taken place is best exemplified in the MDOT's negotiations with contractors. The chief engineer, in talking about past relationships, said "There have always been conflicts - they want to do less for more, we want more for less. We just assumed conflict was a necessary ingredient - a healthy sign." Now, they have hired facilitators, including Gosline and Reitman, and are sitting down with their various contractors, inspectors, etc. before jobs start and working out expectations and common goals.

As MDOT has reorganized, they have relied on their participants in T-PAC to provide guidance and supervision. They have been able to help facilitate the transition, in part because they understand and were a part of the process that mandated the change. Members of the T-PAC advisory group have been more visible within MDOT. They have been willing and able to carry the experience of T-PAC into new responsibilities within MDOT.

#### Implementation Problem Areas

The law creates an opportunity for more public

involvement and provides a broader more democratic process, but it is too early to assess the result. How effectively public participation will work remains to be seen. The new inclusion of public input before plans are made has led to criticism that MDOT is now too vague. Public suspicion still remains. The design staff gets frustrated with the ongoing public input and response system. To be efficient, MDOT needs closure, a point where enough is enough. Where that point is, is still not clear.

Although MDOT has respect for the planning process, they are primarily focused on results. The new process lengthens projects and makes them more cumbersome. The ten-year plan, and two-year schedule mandated by T-PAC, locks them in, in a way they were not before. Projects need to begin earlier, and take longer. They have lost some of their flexibility and ability to act.

The greatest obstacle to be overcome at this stage of implementation is the greater complexity of the new rules. The new rules increase the costs, introduce new relationships that need to be attended to, and require development of new skills. Although the prospect of getting projects approved and built has improved, there are new internal demands. This increased complexity has emerged in comparable cases across the country. "Although collaboration may make environments more predictable in some respects, they also cause new dependencies to be created, thus

increasing environmental complexity and concurrently reducing participating organization's control over the environment." (Wood and Grey, 1991, p. 158).

### Summary and Conclusions

The Maine Department of Transportation was mandated by public referendum to write multi-modal, environmentally responsive transportation rules. The rule writing committee (T-PAC) of 58 stakeholders, under the guidance of two facilitators, arrived at new rules within a six month period.

T-PAC is an example of collaboration and consensus building producing innovative solutions. Their experience supports the contention that a mediated process can be a vehicle for change and new ideas. Not only was the process in itself a new way to write policy, the process itself generated innovation.

T-PAC isn't an end in itself, but rather the beginning of a new transportation policy. The group met its immediate objective of writing the new rules. The rules and the process have led to a re-organization and cultural change within MDOT and the greater Maine community. Some questions and hesitations remain. The ability of MDOT to operate under the new system will not be clear for some time. Whether consensus techniques and public participation can produce effective results over time remains in question.

What is clear is that their success has bolstered the use of and understanding of consensus techniques, which makes the transportation policy's ultimate success that much more likely.

Perhaps T-PAC's most important contribution will be in its transformation from a temporary process to a permanent structure. The relative importance of individual group interests has shifted to a broader domain of state transportation policy. Over time that new consciousness will change the context of the way people in Maine approach other policy issues.



## Bibliography

- Amy, Douglas, The Politics of Environmental Mediation, (New York, Columbia University Press, 1987.
- Grey, Barbara, Wood, Donna-Ed., The Journal of Applied Behavioral Science, Special Issue: Collaborative Alliances: Moving From Practice to Theory, Part 1&2, V.27, #1&2, June 1991, March 1991 (Newbury Park, Sage Periodicals Press, 1991). Published for NTL Institute.
- Grey, Barbara, Collaborating: Finding Common Ground for Multiparty Problems, (San Francisco, Jossey-Bass. 1989.)
- Harter, Philip, "Negotiating Regulations: A Cure for Malaise", S. Breyer and R. Stewart, Administrative Law and Regulatory Policy 592 (2nd ed. 1985)
- Rahim, M. Afzalur, Theory and Research in Conflict Management, (New York, Praeger, 1990.)
- Susskind, Lawrence, and Cruikshank, Breaking the Impasse, (New York, Basic Books, Inc., 1987.)
- Susskind, Lawrence, McMahon, "The Theory and Practice of Negotiated Rulemaking", Yale Journal on Regulation, V.3, #1, Fall 1985, p. 133-165. (New Haven, Yale Law School, 1985)
- Weisbord, Marvin, Discovering Common Ground, (San Francisco, Berrett-Koehler, 1992)