

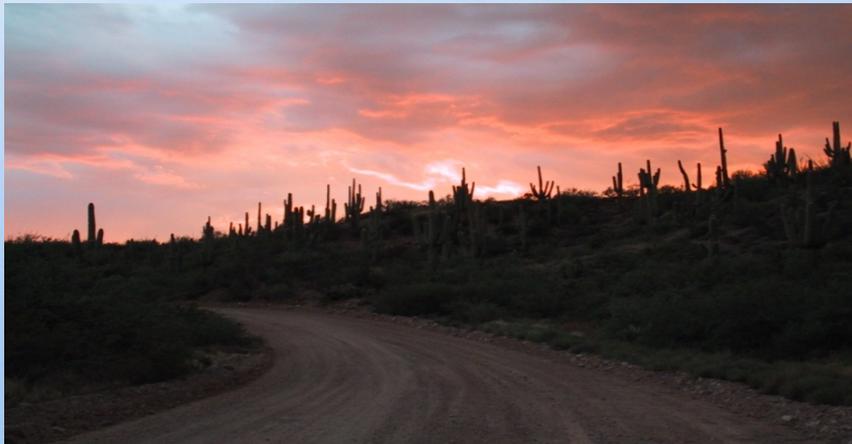
U.S. Institute for **Environmental Conflict Resolution**



Morris K. Udall Foundation

Introduction to the Foundation and
Approaches to Environmental Conflict
Resolution

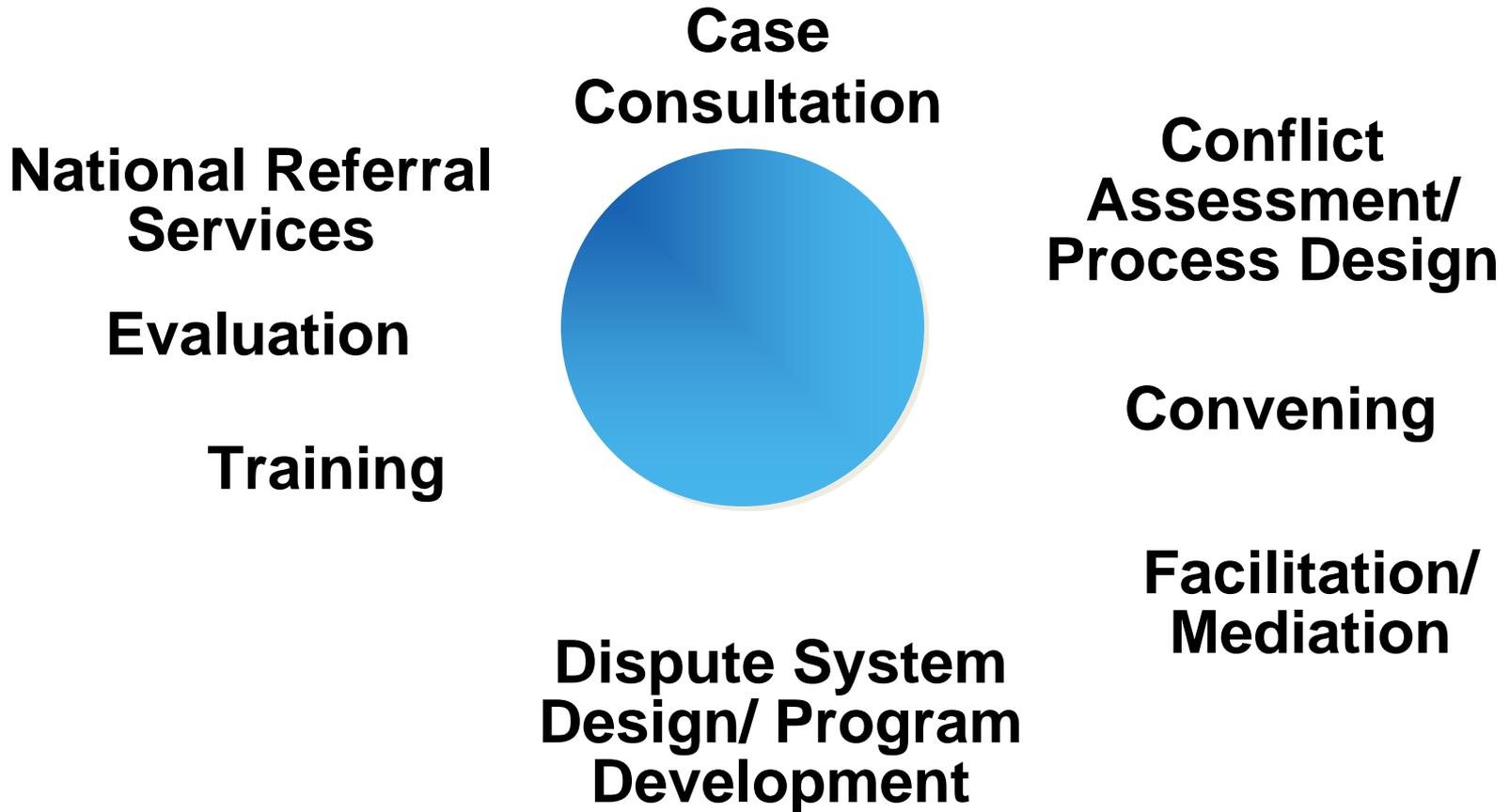
Presented by
Jeff Silvyn, General Counsel
September 25, 2009



U.S. Inst. ECR Mission

- To assist parties through mediation and other collaborative, non-adversarial processes
- Reach agreements and resolve disputes
- Concerning environmental, natural resources, and public lands issues
- Involving a federal agency or interest

Services



Survey Results

23 responses

1. Length of experience with ECR

0-2 yrs. 9

3-5 yrs. 5

5+ yrs. 9

2. Type of experience

Represented party 10

Served as neutral 1

Other 10



Survey Results

3. Biggest barriers to ECR

Lack of funding	5
Resistance at agency	6
Resistance of other party	9
Concern about delay	4
Other	5



Survey Results

4. Benefits of ECR

Reduce costs	8
Resolve faster	6
Better outcome	5
Better relationships	12
Other	5



Survey Results

5. Greatest challenge to resolution

Lack of resources	2
Lack of time	1
Difficult people	4
Lack of agency commitment	4
Lack of other party commitment	3
Outside pressures	3
Poor process	0
Poor neutral services	0
Other	3

Survey Results

6. Preferred learning topic	
Benefits of ECR	2
When ECR appropriate	5
Overcoming resistance to ECR	4
Resources for ECR	5
What to expect in ECR	3
When to use independent neutral	2
Other	1



ECR is a highly adaptable tool used to...

Settle disputes

License operations

Issue permits

Site facilities

Negotiate rules

Develop plans

Set policies

Identify priorities



ECR Can Prevent and Resolve

PROACTIVE USE



- Issues may be controversial but disputes haven't developed yet
- Involve stakeholders early to work to avoid or minimize the potential or anticipated conflict

REACTIVE USE



- A contentious issue has already developed into a dispute or impasse
- Parties agree to work collaboratively to find a solution

Spectrum and Context for ECR

Frame issues;
Provide advice;
Develop policies,
plans, regulations

Implement
policies, plans,
regulations

Enforce and
interpret policies,
plans, regulations



UPSTREAM

DOWNSTREAM

Policy dialogues, advisory
bodies, planning groups
(facilitation)

Dispute resolution
(mediation)

Traditional ADR

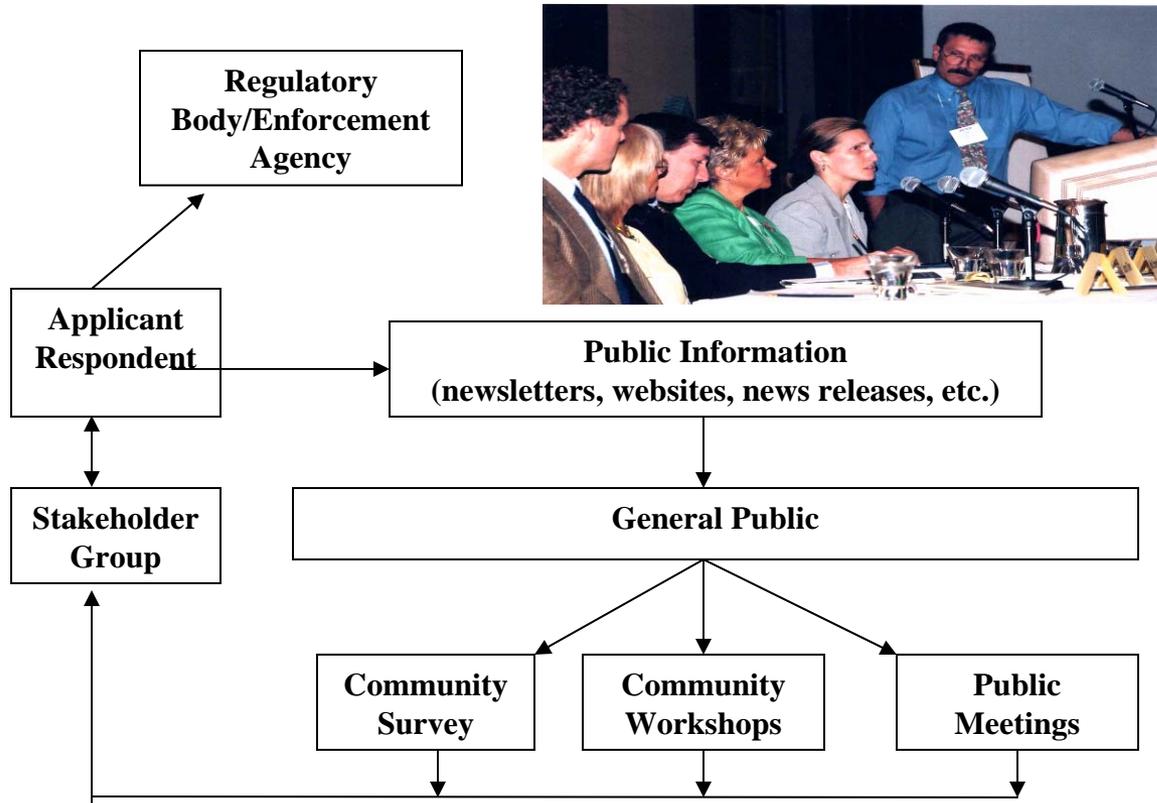


Spectrum of Engagement in Decision-Making

Increasing Degree of Influence 

Inform	Consult	Involve	Collaborate
Agency provides others with information to assist them in understanding the problem being addressed, the options considered, and the final decision made.	Agency informs others about a decision-making process and also seeks their feedback on analysis and proposed actions.	Agency works directly with others to ensure their issues and concerns are understood, considered, and directly reflected in the options developed and decisions made. Feedback is provided on how their input influenced the final decision.	Agency works directly with others to share information, explore options and potential solutions, and to seek agreement on decisions and actions, while retaining ultimate authority for the final decision. Legal and policy constraints must be considered and addressed in the collaborative process.

Example Structure of a Community Involvement Program



ECR Goal: Minimize the costs of conflict...

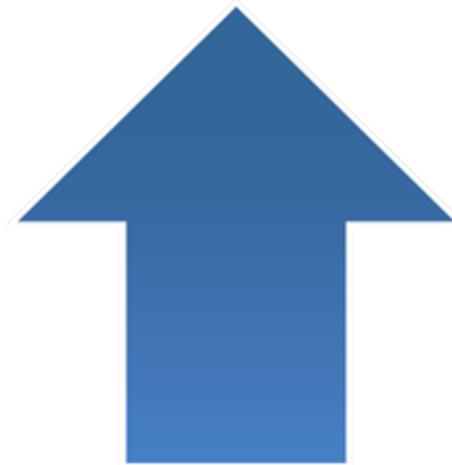


Minimize

Poorly informed decisions
Appeals and litigation
Project delays
Damage to relationships
Lost opportunities

Maximize

Workable solutions
Timely cost-effective solutions
Informed solutions
Productive working relationships
Buy-in and commitment to solutions
Opportunities for improvement



...Maximize the benefits of collaboration

When is ECR appropriate?

Evaluation Framework



ECR works best when

- ✓ Issues identifiable and high priority to all key stakeholders
- ✓ Outcomes doubtful/genuinely in question
- ✓ Unsatisfactory results otherwise possible
- ✓ Negotiable solutions need to be tailored
- ✓ Joint inquiry useful to resolve technical issues (rather than “dueling experts”)
- ✓ Process design necessary to coordinate conflict resolution
- ✓ Confidential communication by neutral could help parties make progress in negotiations
- ✓ Favorable political climate supports collaborative process

ECR works best when

- ✓ Multiple parties needed to resolve or implement agreement (no single party can effectively resolve on its own)
- ✓ No single party has complete control over situation
- ✓ Can create balance of power among stakeholders
- ✓ On-going relationship preservation critical
- ✓ Affected interests can be identified and represented by available representatives
- ✓ Willingness and capacity of all necessary parties to engage
- ✓ Adequate time & resources available, but time pressure exists

ECR Is Less Likely To Be Appropriate When...

- ✘ Timing not right for negotiation: emergency, imminent decision pending, no deadline
- ✘ Primary focus is constitutional/legal rights or fundamental values: need legal clarification, establish judicial precedent
- ✘ Parties believe other approaches better serve their interests
- ✘ Issue(s) not perceived as a priority
- ✘ Key parties won't participate
- ✘ No appropriate entities available to represent interests
- ✘ Highly polarized —face-to-face discussion not possible/safe
- ✘ Sponsor or party/parties won't commit to implement agreements reached

ECR Process Design

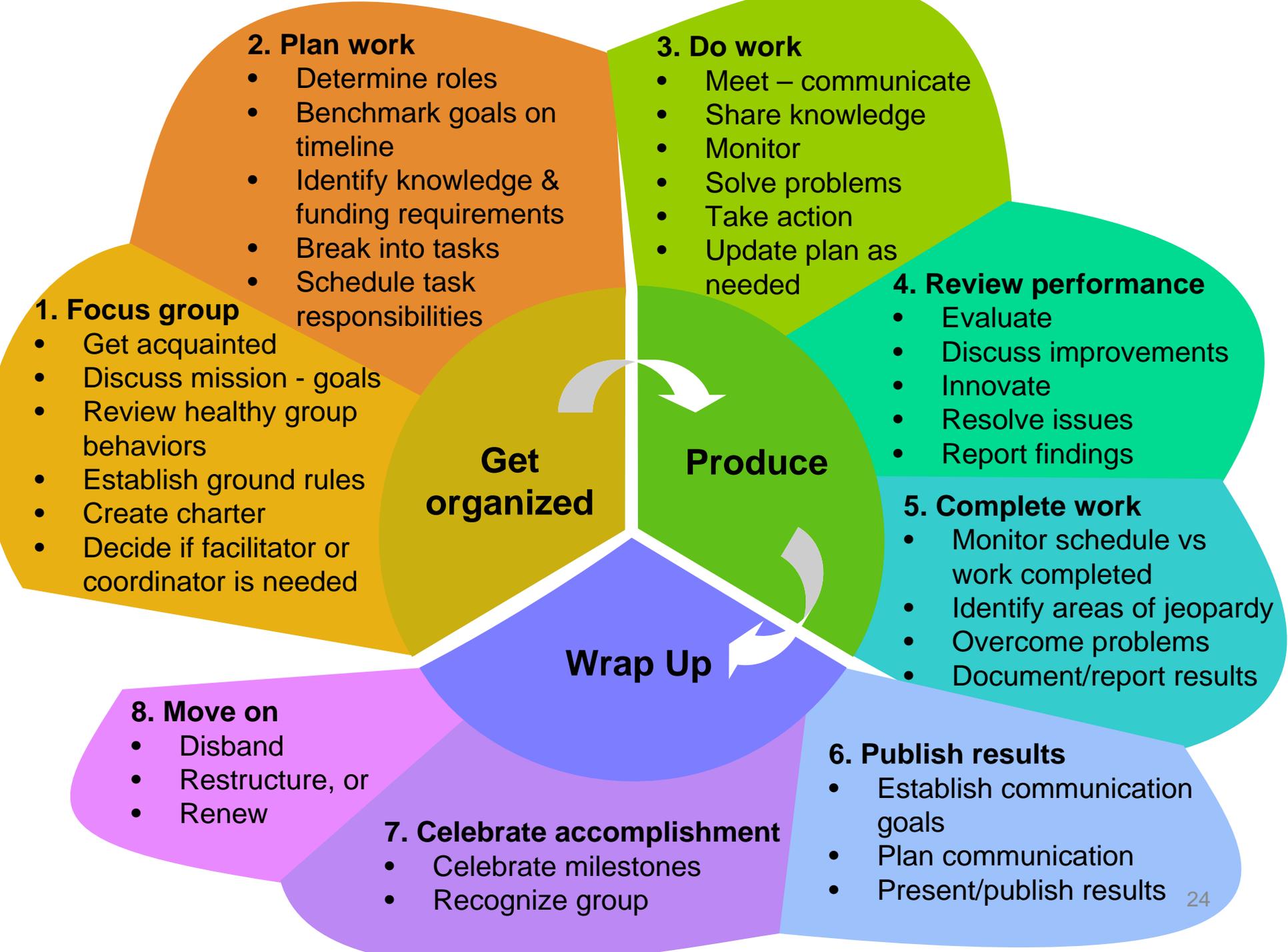
Key Elements of Effective Collaboration

- Preliminary analysis and assessment
- Clearly articulated goals
- Proper representation of all affected stakeholders
- Clear sideboards and ground rules
- Clarity on the decision rules & process
- Agency commitment to using the results
- In some situations, professional facilitation by a credible third party neutral

Basic Principles for Engagement in ECR and Collaborative Problem Solving

- Informed Commitment
- Balanced, Voluntary Representation
- Group Autonomy
- Informed Process
- Accountability
- Openness
- Timeliness
- Implementation

Managing the Process



Things to Expect During a Collaborative Process

- Need and benefit of common vision
- A portion of participants will be “process-averse”
- Change and uncertainty
- Personnel changes
- Interagency or multi-governmental groups or teams may require separate, neutral facilitation assistance

Things to Expect During a Collaborative Process

- Continuous need to work to maintain trust
- Expect parties to advocate for their important interests
- Need for outreach and communication to constituencies
- Ongoing identification of tasks and clear and consistent guidance
- Mutually defined performance standards