HIGHWAY MEDIATION IN JAPAN: Its Prospects and Pitfalls

by

Masahiro Matsuura

B. Eng. Degrees in Civil Engineering
University of Tokyo, 1996

Submitted to the Department of Urban Studies and Planning
in Partial Fulfillment of the Requirements for
the Degree of

Master in City Planning

at the

Massachusetts Institute of Technology

June 1998

© 1998 Masahiro Matsuura
All rights reserved

The author hereby grants to MIT permission to reproduce and to distribute
publicly paper and electronic copies of this thesis document in whole or in part.

Signature of Author .......................................................... Department of Urban Studies and Planning
May 20, 1997

Certified by .................................................. Professor Lawrence E. Susskind
Department of Urban Studies and Planning
Thesis Supervisor

Accepted by ................................................. Professor Lawrence S. Bacow
Chair, MCP Committee
Department of Urban Studies and Planning

JUN 22 1998
Highway Mediation in Japan: Its prospects and pitfalls

by

Masahiro Matsuura

Submitted to the Department of Urban Studies and Planning on May 21, 1998 in Partial Fulfillment of the Requirements for the Degree of Master in City Planning

ABSTRACT

In Japan, disputes over highway projects from residents are now drawing more attention than ever. However, these disputes are rarely resolved through conventional processes using the decide-announce-defend approach. In many cases, dissatisfied opponents try to impede their implementation through litigation and physical obstruction. In the United States, oppositions against interstate highway projects started in late 1960s. Political actions and environmental legislation enabled urban residents and environmentalists to stop highway projects. In response, consensual approaches to resolving public disputes, including mediation and consensus building, were developed. They are intended to resolve or forestall disputes with an assistance of non-partisan professionals under informal settings. Since mid-70s, they have been successfully applied to resolving disputes over and making decisions on highway projects. However, informal negotiation among various stakeholders has not yet been used in highway disputes in Japan. A thought experiment was conducted to identify prospects and pitfalls to identify problems in using the consensual approach in Japan. It crystallized four major concerns of Japanese highway professionals. Following the thought experiment, the author proposes five strategies to promote the consensual approach in planning highways in Japan.

Thesis Supervisor: Lawrence E. Susskind
Title: Ford Professor of Urban and Environmental Planning
# TABLE OF CONTENTS

## Introduction

### Chapter 1
Theory of Mediation and Consensus Building

- Fundamental Theories of Dispute Resolution ........................................... 10
- Collaborative Public Decision-Making ....................................................... 18
- Mediation/Consensus Building in Public Decision-Making .......................... 23

## Chapter 2
Highway Planning Process in the United States and Japan

- Highway Planning in the United States .................................................. 36
- Highway Planning in Japan ................................................................. 50
- Comparison of the Processes ............................................................... 59

## Chapter 3
Case Studies

- Introduction ............................................................................................. 65
- Route 2A in Lexington, MA ................................................................. 66
- Yokohama Circular Highway Project South .......................................... 72
- Comparison of Processes and Outcomes .............................................. 81

## Chapter 4
Alternative to the Conventional Process in Japan

A Thought Experiment

- Introduction ............................................................................................. 90
- Consensus Building Proposal ............................................................... 91
- Questionnaire and Response ............................................................... 99
Chapter 5
Conclusion

Four Strategies to Promote the Consensual Approach to
Highway Planning in Japan

Bibliography

ABBREVIATIONS

BATNA Best Alternative To Negotiated Agreement
BTPR Boston Transportation Planning Review
CAA Clean Air Act
DEP Department of Environmental Protection
DoT Department of Transportation
EIA Environmental Impact Assessment
EIS Environmental Impact Statement
FHWA Federal Highway Administration
GBC Greater Boston Committee on the Transportation Crisis
ISTEA Intermodal Surface Transportation Efficiency Act
JH Japan Highway Public Company
LCC Lexington Conservation Commission
MCCH Metropolitan Central Connection Highway (Japan)
MHD Massachusetts Highway Department
MIS Major Investment Study
MPO Metropolitan Planning Organization
MoC Ministry of Construction (Japan)
MoDR Massachusetts Office of Dispute Resolution
NAH National Highway Act (Japan)
NDAH National Development Arterial Highway (Japan)
NEPA National Environmental Policy Act
NGDP National General Development Plan
NIMBY Not In My BackYard
NLC National Land Council
NPS National Park Service
NREA National Road Exclusive for Automobiles (Japan)
SIP State Implementation Plan
TCP Transportation Control Plan
TIP Transportation Improvement Program
UMTA Urban Mass Transportation Administration
YCH Yokohama Circular Highway
ZOPA Zone of Possible Agreement
No man, when he hath lighted a candle, covereth it with a vessel, or putteth it under a bed; but setteth it on a candlestick, that they which enter in may see the light.


Acknowledgments

This thesis could not be complete without contributions from the following people. I would like to thank: Professor Larry Susskind for giving me a lot of invaluable advice as my academic and thesis advisor; Professor Shiroyama for participating as my thesis reader; Ms. Freed for giving me a permission to use her research on the Route 2A case; Mr. Ishikawa, Mr. Togashi, and other MoC staff for helping my case study on the YCH project and the thought experiment; Professor Tanishita for sending a lot of information on Japanese highway planning; those who responded to the thought experiments for their comments, Marjorie for helping my study at EPG; my friends at MIT for cheering me up; and my parents and Maki for their continuous support and patience throughout my two years of my study at MIT.
Introduction

In Japan, highway disputes are increasing in number and escalating in substance. Highway projects are protested mainly because of their environmental impacts — noise and air pollution — caused by increased traffic. On the other hand, more highway constructions are needed because of increasing ownership of private automobiles and dependence of business activities on trucks. Traffic congestion on the existing arteries is causing health problems on people living nearby these arteries.

Therefore, conflicts between local needs and regional/national needs are unavoidable. Currently, national government tries to represent the national needs. Most of all the highway projects in Japan are prepared by the national government with their "objective" analysis. Local oppositions become apparent only after the authorities announce projects to local residents. In the face of oppositions, the officials persistently follow the conventional Urban Planning and Environmental Impact Analysis process, which usually do not lead to a settlement of the conflicts. Frustrated opponents often bring cases to courts or try to obstruct the implementation of the projects. Such conflicts are beneficial to neither officials nor opponents.

The United States also experienced disputes over interstate highway projects in the late 1960s. Urban residents and environmentalists could not tolerate the ideal of suburbia — living in suburbs and commuting on highways — that evoked demolition of urban and natural environment. Political actions and new legislation, such as the National Environmental Policy Act (NEPA), gave them leverages to stop highway projects. Some oppositions were so harsh that forced some projects to be canceled. For example, Massachusetts governor Sergent announced a moratorium on major highway projects around Boston in 1970. Public officials recognized a need for a consensus with diverse stakeholders after the harsh battles through litigation and politics.

In response to environmental disputes over public policies, mediation came into light. Mediation is an informal measure to resolve disputes with assistance of non-partisan
professionals in dispute resolution. The history of mediation in the United States dates back to the early 20th century, but its application to environmental disputes began in the 1960s. Its first application to highway dispute was the I-90 case in the State of Washington.1 Since then, mediation has achieved great successes in settling highway disputes. Professional neutrals have also been involved in highway planning, such as public involvement process of the Intermodal Surface Transportation Efficiency Act (ISTEA), to forestall future disputes. Such efforts are called consensus building.

"Considering the successes in the United States, is it possible to use mediation and consensus building in planning highways in Japan?"

"What are prospects and pitfalls?"

"What should be done to promote the consensual approach?"

This thesis attempts to investigate the possibility of using mediation and consensus building in Japanese highway planning. It focuses on the perception of professionals in Japan—government officials, professors, lawyers/activists, and consultants—to answer the questions above.

Chapter One is a brief summary of the consensual approach. General concepts of conflict management and negotiation are first summarized. Shortcomings of the conventional decision-making process and merits of the consensual approach—mediation and consensus building—will be discussed. Distinction between consensus building and public involvement will be clarified. Finally, obstacles to using the consensual approach will be discussed.

Chapter Two discusses the highway planning process in the United States and Japan. The evolution of participatory processes of the interstate highway program in the

---

US is chronologically summarized. This includes brief discussions about environmental legislation in 1970s and a historically important case in Boston. Highway planning process in Japan is also reviewed. The final part of this chapter discusses obstacles to using the consensual approach in Japan.

Chapter Three introduces two case studies: Route 2A case in Lexington, Massachusetts and Yokohama Circular Highway (YCH) South Project case. A protracted dispute over Route 2A widening project was mediated in only nine months. It was a highly successful highway mediation in the United States. On the contrary, the YCH project is still under attack by the local residents and in litigation. It is a typical controversial highway project around Tokyo metropolitan region. These two cases are compared according to four criteria proposed by Susskind and Cruikshank (1981). Then, possible obstacles to using mediation/consensus building in these cases will be discussed.

Chapter Four is a thought experiment. The author proposed an alternative consensus building process to the actual process in planning the YCH project. The proposal has been evaluated by professionals in highway planning in Japan. It substantiated their four major concerns.

Chapter Five proposes five strategies to promote the consensual approach to highway planning in Japan using the analysis in the previous chapters. The strategies are:

- Remove misperceptions about the consensual approach.
- Encourage government officials to try the consensual approach in less controversial small projects
- Encourage professors and other neutral individuals to assist informal negotiations
- Mobilize political actions to encourage the use of the consensual approach
- Integrate the consensual approach into the formal environmental mediation procedures

---

Chapter 1

Theory of Mediation and Consensus Building
Types of Conflict Management

In most societies, cooperation among individuals is crucial to maintain peace. However, these people think, behave, and believe differently, and these differences create conflict. Subgroups also have different views, giving rise to conflict among groups.

People have devised many measures to resolve conflicts and promote cooperation. Moore (1996)³ categorizes various measures (see Figure 1-1).⁴ The least active measure is conflict avoidance, in which people just ignore existing conflict for various reasons and let it continue. Conflict avoidance occurs between those who put a high value on harmony, like family members. Although such a strategy would avoid raising tensions among stakeholders, it leaves the benefits of exploring differences unattended. In other word, conflict avoidance does not yield an optimal solution.

The most active and coercive response is violence, in which people use physical force to try to change other side’s behavior or beliefs. Its extreme is war. As we see in many societies, violence is often condemned by law, and we can hardly legitimize such a strategy.

Moore argues that the conflict management strategies to the right in Figure 1-1 are more likely to generate win-lose outcomes. In his definition, a win-lose outcome means that some parties fully satisfy their interests and others do not. Such an outcome is not undesirable per se, although it should be probably avoided in public policy debates.

Private decision making by parties | Private third-party decision making | Legal (public), authoritative third-party decision making | Extralegal coerced decision making

Conflict avoidance | Informal discussion and problem solving | Negotiation | Mediation | Administrative decision | Arbitration | Judicial decision | Legislative decision | Nonviolent direct action

Increased coercion and likelihood of win-lose outcome

Figure 1-1: Continuum of Conflict Management and Resolution Approaches

(Moore (1996))
Negotiation

Negotiation is “the most common way to reach a mutually acceptable agreement” in the face of conflict. According to Moore’s criteria, negotiation, including informal discussions and mediation, is unlikely to produce win-lose outcomes. However, that is not necessarily a truth. The risk of reaching a win-lose agreement through negotiations has been extensively discussed.

Whether a negotiator wins or loses is not defined by the outcome relative to the other’s outcome. That kind of scoring system is often found in sport games; those who scored more wins, irrespective of how much one scored. Instead, the concept of winning and losing is defined by the outcome relative to the Best Alternative To Negotiated Agreement which is often abbreviated as BATNA (Fisher and Ury(1991)).

BATNA is an expected outcome to a negotiating party if the parties can not reach an agreement. For example, it can be a settlement by court or an agreement with still other parties. If a party’s outcome is perceived to be better than its BATNA, the party is considered to be a winner, no matter how better the outcome is than its BATNA. Given this definition, win-lose outcomes through negotiation are not desirable to the losers, because they could have moved to other leverages to pursue their interests. In other words, they should have pursued a strategy that would lead them to their BATNA.

Fisher and Ury (1991) describe how to negotiate to reach a Win-win outcome. The centerpiece of their argument is to separate a party’s positions from its interests. Through what they call principled negotiation, parties identify what is their and their adversaries’ interests, and trade what the others value more with what they values more. Such trades increase both parties’ utilities. This approach is also called the mutual gains approach. It draws on Pareto, an economist in the early 20th century.

---

6 Moore, Op. Cit., p. 8
Figure 1-2: Two-Party Negotiation Arithmetic

(a)

(b)
However, there is a limit to such trades. When all the parties have exhausted all the possible trades, the state is called Pareto Optimal, which is assumed to be one of the most efficient outcomes. There are multiple Pareto Optimal solutions; this collection is called Pareto Frontier. Any outcome cannot be more efficient as Pareto Optimal solution.

Figure 1-2 mathematically illustrates how the *mutual gains approach* works in two-party (person A and person B) negotiation. Each party is assumed to benefit certain utilities from the status quo, and their *interest* is to increase their own utilities. In the diagram (a), each party is claiming their *positions* that the other party cannot accept, because each of the position would give other party a less satisfaction than the other’s BATNA. If they stick to their positions, they will not be able to reach an agreement. For example, if they bring this case to court, the court only chooses one of their positions, and inevitably one of them will “lose” because the outcome is worse than BATNA for the loser.

If they could focus on their interests and BATNA, and could find trades between them, both of their utilities would increase, which is illustrated in the diagram (b). Their initial positions are same as those of the case (a), but they realized that the court decision could be much worse than their BATNA. They also realized that there is a *zone of possible agreement (ZOPA)*, which is represented by the area surrounded by the line of BATNA and the efficiency frontier. So they disengaged from their positions, and began to offer other options. Finally, they could reach an agreement the satisfactions of which to both A and B are almost same as those from their initial position.

**Assisted Negotiation**

**—Facilitation, Mediation, and Arbitration—**

Although all disputing parties seem to be able to resolve their differences through negotiation and reach a creative settlement, they often face an impasse along the way. The process that bogs them down or cause stalemate is *escalation*. All the negotiation has
creating and claiming aspects. Even though the negotiators understood that the “pie” can be enlarged by cooperative actions, the latter aspect of negotiation can be too attractive to overclaim one’s share of the enlarged pie. Bazerman(1993) lists four complementary reasons for the overclaiming.10

First, once negotiators make an initial commitment to a position, they are more likely to notice information that supports their initial evaluation of the situation. Second, their judgment is biased to interpret what they see and hear in a way that justifies their initial position. Third, negotiators often increase their demands or hold out too long to save face with their constituency... Finally, the competitive context of the negotiation adds to the likelihood of escalation.

Negotiators in general lack enough skills to deal with the problems innate in the negotiation itself, especially faced with complicated conflicts.

In such cases, they can seek an assistance by professional neutrals. Negotiation with an assistance is generally called assisted negotiation. The basic assumption of assisted negotiation is that one or more individuals without direct relationships with the outcome of a negotiation assist the disputing parties to reach a settlement.

The positive effects of assistance may vary by the level of the intervention by the neutrals. Rubin (1994)11 summarizes as follows:

The mere presence of a third party, either in contractual or emergent intervention, is likely to profoundly change the interactions between Party and Other. Under most circumstances, such change is likely to be beneficial.

(continued)


The roles of professional neutrals are so diverse that they range from moderating meetings to drafting an agreement. Basically, their level of intervention varies according to the types of their services. In general, assisted negotiation is categorized into three forms: facilitation, mediation, arbitration. However, these three forms are not definitive and mutually exclusive.\(^\text{12}\)

In facilitation, a facilitator’s intervention is usually limited to the management of meetings. Doyle \textit{et al} (1976)\(^\text{13}\) says:

The facilitator is a meeting chauffeur, a servant of the group. Neutral and nonevaluating, the facilitator is responsible for making sure the participants are using the most effective methods for accomplishing their task in the shortest time.

For example, he or she tries to ensure the full participation of stakeholders, sets up the meeting place, summarizes the dialogue with the help of recorders, and makes sure all the participants have equal voice. However, the facilitator does not meet with the participants outside the meetings. His/her service is limited within the time of meeting.

According to Moore \textit{ibid.}, mediation is “generally defined as the intervention in a negotiation or a conflict of an acceptable third party who has limited or no authoritative decision-making power but who assists the involved parties in voluntarily reaching a mutually acceptable settlement of issues in dispute.”\(^\text{14}\) Compared to the facilitator, a mediator is assumed to take more responsibility in helping disputants reach an agreement. Before holding meetings, mediator tries to contact all possible stakeholders to identify those who can influence the outcome from an agreement. Between meetings, a mediator can confidentially meet with the participants to identify possible deals between them.

\(^{12}\) see Figure 1-1. Moore, \textit{Op. Cit.}, does not include “facilitation” in his categories.
\(^{14}\) Moore, \textit{Op. Cit.}, p.15
Arbitration is somewhat different from these two systems in that an arbitrator is assigned with the decision-making authority. Disputing parties first agree to bound by the decision of an arbitrator of their choice. After hearing their arguments, the arbitrator renders a settlement. Arbitration is somewhat akin to the court system because an arbitrator dictates his settlement. It has been used mostly for private-sector disputes, such as those related to real estate transactions.
Collaborative Public Decision-Making

Flaws of Conventional Decision-Making Process

Traditionally, public officials have sought to gain public support for their projects by relying on technical expertise. The key assumption in this approach is that the planners can provide the best solution to problems (Susskind and Ozawa (1984)\textsuperscript{15}). In addition, the planner's scientific and technical analysis is assumed to be objective and complete. This approach is called "decide-announce-defend" or "plan-announce-defend-implement" (O'Hare \textit{et al} (1983)\textsuperscript{16}, Susskind and Laws (1994)\textsuperscript{17}, and Urban Land Institute (1994)\textsuperscript{18}).

Such conventional approaches have been criticized by the advocates of collaborative decision-making process. Urban Land Institute \textit{ibid.} argues as follows:

When these strategies are used, the interests of concerned citizens and groups are delegitimized, if not altogether ignored. Many of these groups will fight back, attacking the process, the outcome, and the individuals responsible. If the opposition is well organized and the backlash strong enough, policy gridlock results. The traditional process thus becomes stuck in the defense stage, implementation is impossible unless the fighting ends and a degree of consensus is established.

In more general terms, Susskind and Cruikshank (1987)\textsuperscript{19} criticize adjudicative measures like judicial and administrative decisions, and referendums as insufficient in

\textsuperscript{16} O'Hare, M., Bacow, L., and Sanderson, D., \textit{Facility Siting and Public Opposition}, Van Nostrand Reinhold, New York, 1983
\textsuperscript{19} Susskind, L., and Cruikshank, J., \textit{Op. Cit.}
facilitating win-win outcomes in distributional disputes.\textsuperscript{20} They list five major flaws in the representative democracy in the United States as follows:\textsuperscript{21}

- **The Tyranny of the Majority**
  Those who can form a strong coalition become influential, and minorities might lose

- **Lack of Long-Term Commitment**
  Fluctuations in politics leads to short-term solutions.

- **Shortcomings of the Voting Process**
  It can deal only with Yes-No questions. It is not an effective tool to express specific interests.

- **Technical Complexity Overwhelms Sloganeering**
  Commitment to a single slogan might disband when people face technical issues in detail.

- **The Winner-Takes-All Mind-Set**
  Court cannot and wouldn’t facilitate compromisory settlement, and yields binary judgments. Court also wouldn’t take scientific study.

\textsuperscript{20} They do not discuss much about another type of disputes that “center primarily on the definition of constitutional or legal rights” because they “hinge primarily on interpretations by the courts of guaranteed rights,” Susskind and Cruikshank, \textit{Op. Cit.}, 1987, p. 17
\textsuperscript{22} Urban Land Institute, \textit{Op. Cit.}, p. 17
In addition, the existence of the nonobjective judgments also can de-legitimatize the image of non-partisan planners. Susskind and Dunlap (1981) illustrates how nonobjective judgments can affect the presentation and decision-making process of the environmental impact assessment. Assumptions in creating forecasting models can be influenced by perceptions of those who produce them, even if they do not have direct interests with a project that is being evaluated. It can also lead to advocacy science with which contending parties use scientific facts that support their position as Ozawa and Susskind claim.

... it is usually assumed that scientific experts stand apart from the “political” area in which decision makers and affected interests operates.

... political objectives can prevail as easily as technical ones. Several authors have observed that decision makers (and affected interests) tend to place especially heavy weight on scientific advice when it happens to support a decision they prefer on other grounds, and that they tend to place little weight on such advice when it conflicts with their political preferences.

Consensual Approach to Negotiated Agreement

In response to these flaws of conventional process, an alternative approach to public decision-making has been proposed. Susskind and Cruikshank suggests a consensual approach to negotiated agreement. Compared to the conventional process, the approach encompasses informal negotiations between all stakeholders of a public decision. Although the approach is supplemental to the formal process, a consensus must be reached.

---

through negotiation. To reach a consensus, *principled negotiation*, which is described before, needs to be applied, and they claims that *assisted negotiation* is often necessary. They argue four good outcomes of negotiated settlements as follows.\textsuperscript{26}

1) **Fairness**

Negotiated settlements are likely to produce better perception of the participants about fairness. However, they are not focusing on the fairness of an outcome of a negotiation, but its process. They agrees:

... there is no single indicator of substantive fairness that all parties to a public dispute are likely to accept. In our fieldwork, therefore, we avoid ironclad determinations of fairness. We simply affirm that in a public dispute, a good process produces a good outcome

2) **Efficiency**

The approach facilitates a trust between the parties and a climate where they listen to each other, which are indispensable for an efficient outcome to be reached. In addition, a consensus can forestall a potential protracted lawsuits. However, some trade-offs between fairness and efficiency are inevitable.

3) **Wisdom**

Through collaborative inquiry into the fact, the best available resources can be applied without the risk of advocacy science.

4) **Stability**

As all the stakeholders participate in the process, the agreement is owned by the participants, which substantially contributes to the stability of an agreement.

\textsuperscript{26} Susskind and Cruikshank, *Op. Cit.*, 1987, pp.21-33
In addition, Innes et al (1994)\textsuperscript{27} focuses on long-term effect of consensus, using fourteen case studies of consensus building efforts in California. They discuss that these efforts created Social, Intellectual and Political Capital. They define these terms in the following manner:

Social capital, in the form of trust, norms of behavior, and networks of communication, creates the potential for serious discussion to take place among otherwise conflicting stakeholders. Intellectual capital, in the form of shared and agreed-upon facts and understandings, provides common basis for discussion and moves the players toward agreement on policy issues. Political capital, in the form of alliances and agreements on proposals that provide mutual gains, creates the possibility that proposals will be adopted and implemented in the political arena.

As we see, consensual approach is likely to produce better outcomes than the conventional process is, if the decision at stake does not encompass constitutional or legal rights. In the next section, we will investigate the use of assisted negotiation in making public policy decisions in more detail.

Mediation/Consensus-Building in Public Decision-Making

In this section, I will discuss how the consensual approach can proceed with an assistance of professional neutrals, especially in the context of mediation and consensus-building. This part extensively draws on Susskind and Cruikshank's "Breaking the Impasse." Then, I will discuss the definition of mediation and consensus building.

Consensual Approach with Assisted Negotiation

Susskind and Cruikshank define three phases in reaching a consensus through negotiation. They are Pre-Negotiation, Negotiation, and Post-Negotiation Phase. The level of intervention by intermediaries may differ according to the type of assistant parties seek, but in this section, I will discuss the mediation and consensus-building process. These two process may slightly vary in the early stages of the process, but I will discuss the general aspect of these two process. You can find the process in more detail in Chapter 4, where I suggest an alternative to the conventional process in Japan.

**Pre-Negotiation Phase**

Before starting discussing the substantive issues of dispute, disputing parties, with the help of professional neutrals, should finish a comprehensive preparation. Skipping over this preparation would result in the repetition of the dispute they had experienced. Pre-negotiation phase has four steps. In *getting started*, stakeholders need to start dialogue. The possibility of intervention by third party neutrals can be raised by any of the relevant

Table 1-1: Three Phases of the Consensual Approach

<table>
<thead>
<tr>
<th>Prenegotiation Phase</th>
<th>Negotiation Phase</th>
<th>Implementation or Postnegotiation Phase</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Getting Started</td>
<td>• Inventing Options for Mutual Gain</td>
<td>• Linking Informal Agreements to Formal Decision Making</td>
</tr>
<tr>
<td>• Representation</td>
<td>• Packaging Agreements</td>
<td>• Monitoring</td>
</tr>
<tr>
<td>• Drafting Protocols and Setting the Agenda</td>
<td>• Producing a Written Agreement</td>
<td>• Creating a Context for Renegotiation</td>
</tr>
<tr>
<td>• Joint Fact Finding</td>
<td>• Binding the Parties to Their Commitments</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Ratification</td>
<td></td>
</tr>
</tbody>
</table>

(Susskind and Cruikshank (1987)²⁸)

parties, disinterested third parties, or the neutrals by themselves. In cases where they have already experienced harsh battles through court or media, they might be reluctant to see each other’s face. An experienced neutral can contact potential stakeholders to invite them to the table, arguing the voluntary nature of the process. The dialogue is initiated by the neutral, not by any of the stakeholders, and thus all stakeholders can save their face. While bring them to the table, he or she also should identify the interests and concerns of the parties.

In *representation*, stakeholding organizations should identify representatives. The neutral should encourage them to choose a representative with an authority. If a representative cannot gain support of his/her constituency after reaching an agreement with other representatives, the process can be totally fruitless. When the outcome of the potential agreement seem to affect broad public, the neutral should identify the stakeholders currently not involved in the process and invite them. Otherwise, the stability of the agreement is at stake: it can be protested by these people in the future.

In *drafting protocols and agenda setting*, all participants of the process should agree to protocols and an agenda. Protocols define the logistics of the process. It might include the place to hold the meetings, the deadline to reach an agreement, and the way to
recognize a person to speak. The neutral can bring draft protocols based on his/her experience in the past, which can help the participants proceed faster. Agenda is a list of issues to be discussed in the meetings. At the outset, the participants may find difficulties in reaching an agreement on their agenda, but the neutral can also prepare a draft with the result of interviews he/she conducted. They can add or subtract some items from the agenda later. Protocols and agenda will be the most important tools for the neutral to manage the meetings afterwards.

*Joint fact finding* is a process in which the participants work together to answer “What do we know, and what don’t we know about the issues, contexts, and experience relevant to dispute?” As the participants often have to investigate scientific and technical issues, the neutral can accommodate professionals to assist their investigations. When pros and cons of certain projects are putting forward scientific facts that support their position, this process can disengage them from the pitfall of advocacy science, which was discussed in the previous section.

*Negotiation-Phase*

When they shared the understanding of current conditions and forecast methods, they should start inventing possible actions to be involved in the agreement. In *inventing options*, the neutral uses a technique called brainstorming to help them create maximum possible numbers of options so that the final agreement will be the most creative solution (see the next section for more about brainstorming). No one should make comments evaluating other’s proposals to facilitate the discussion. Some proposals may seem to be benefiting only one party, but whether one party accepts the proposal should be left for the negotiation later on.

When the participants exhausted their options, they should start *packaging* their agreement. In principle, packaging is the process of exchanging the item that the

---

30 Susskind and Cruikshank, *Op. Cit.*, 1987, p.113
disputants value differently to attain a Pareto superior condition, which was described in the previous chapter. Assume that two options, A and B, were found in the inventing options stage, and both of them could be implemented at once. If party #1 values Option A higher than Option B, and if party #2 does vice versa, they can reach an agreement to implement both A and B. Such agreement would be better than having no agreement. In other words, they could find a solution that is better than their BATNAs. However, either of them might be reluctant to make a first offer because the other party might expect the party to make more generous offers. In such cases, the neutral can caucus with each party confidentially, and look for a possible package that both parties might agree keeping the gathered information confidential. When the neutral could find one, he/she can propose as a package before them.

Even if they could reach a firm agreement orally, the should produce a written agreement because they should 1) clearly understand the agreement and 2) bring the agreement to their constituencies. However, if each participant brought his/her own drafts, the substance of the draft could be worded to favor his/her own interests, and thus they would have to reach an agreement on their agreement. Instead, the neutral assistant should prepare the draft for them, and edit it according to responses from the parties. This approach is called single text approach. They have to include some clauses on the ways to ensure that the agreement will be observed. In binding parties to commitments, they have to devise a measure to evaluate the agreement’s performance and enforce the agreement when it is not realized.

Then, the people represented at these negotiation should bring the written agreement back to their constituencies. In ratification, the written agreement should be authorized by the groups or organizations that sent the representative. As the neutrals and participants of the process checked whether each representative really represents his/her constituency in the representation stage, it is unlikely that the written agreement will be denied at this late stage. However, the neutrals should assist each representative in gaining support for the
written agreement. He/she can explain how well the representative negotiated, and how creative the agreement is.

**Post-Negotiation Phase**

Even though they signed an agreement, the government’s formal action should follow in linking the informal agreement to the formal processes of government decision making. The agreement and the government’s formal decision-making are different. Government officials are often not allowed to confer their authority to other parties, and the process to reach an agreement cannot be a formal process. Thus, the government should make a formal decision based on the agreement.

*Monitoring implementation* is often important in this phase, especially when the parties reached an agreement that is contingent on its outcomes. For example, a party might guarantee to mitigate environmental damages when they are significant. If so, all parties should check conditions of the environment and how the agreement is being observed. In such cases, the parties should include a monitoring plan in their agreement to forestall future conflicts.

The final step is creating a context for renegotiation. When something goes wrong afterwards, they should reconvene to discuss problems to prevent the whole effort from being in vain. The agreement should stipulate when and how the parties will renegotiate.

**Mediation and Consensus Building**

Both mediation and consensus building should follow the process described above. The major differences of these process could be 1) the stage of planning process they are used, 2) the difficulties in raising the stakeholders’ interests in the process, and 3) their historical background.

Mediation often associated with Alternative Dispute Resolution (ADR), which refers to the methods of revolving dispute outside the court system. Compared to consensus building, mediation is aimed to help disputing parties settle a dispute that reached an
impasse. Therefore, it can be used as a remedy to the protracted disputes as a result of the decide-announce-defend approach.

Consensus building effort is aimed to avoid a potential dispute in making public policies. The agencies or government which hold the authority to decide a certain policy or project should initiate the consensus building process before making decisions. The agreement with the diverse stakeholders will be the basis of their final policy or project; thus even internal decisions, as is often seen in the decide-announce-defend approach, should not be made in advance. Consensus building is sometimes considered to be a type of facilitation, but I contend that it be more like a mediation in that the level of neutral’s intervention is not limited to the actual meetings.

This aspect of consensus building can evoke a difficulty in bringing the people with a stake in the outcome of the process to the table. Although the professional neutrals should strive to identify all these people, they might find little benefit from using their resources, such as their time and cost to participate. This could result in the few participation of the stakeholders, and thus makes process less accountable. The problem has been debated for a long time in relation to the public participation effort.

The last point is the history of mediation and consensus building. Mediation has long been extensively used in all over the world. In the United States, mediation was institutionally used for labor-management relations early in the 20th century. There is no record of the historical aspect of consensus building efforts, but it seems to have started in 1970s. Its application to making federal regulations, which are often called regulatory negotiations or “Reg-Negs,” started in the late 1970s.

---

31 Massachusetts Office of Dispute Resolution, Facilitation and Process Consultation, leaflet.
32 Moore, Op. Cit., deals consensus building efforts as mediation. p. 29
33 Moore, Op. Cit., p.23
34 I assume the Alewife Task Force starting in 1975 was the first case. For Alewife case, see Susskind, L., The Importance of Citizen Participation and Consensus Building in the Land Use Planning Process, Environmental Impact Assessment Project, Laboratory of Arch. and Planning, MIT, 1977
Consensus Building and Public Involvement

The term public involvement and consensus building are often understood in a same way because both techniques are assumed to be used before disputes occur, and they are basically composed of interaction between several stakeholders. However, the Consensus Building Institute (1995)\textsuperscript{35} clarifies the difference between consensus building and public involvement. There are three key issues.

1. Commitment of participants
Public Involvement: "... the goal of public involvement is often to share information with the public and then invite comment."
Consensus Building: "... consensus building creates a forum where multiple stakeholders can participate in shared decision-making."
However, this does not suggest that the formal authorities are given to such forums. The report claims that "consensus building aims to supplement conventional governmental decision making by offering stakeholders a way of voicing their ideas and concerns."

2. Participation
Public Involvement: "... are usually open to anyone who wants to participate... these effort typically engage the public on ad hoc, meeting by meeting basis."
Consensus Building: "... an agency identifies a group of individuals who can represent various stakeholder group, often with the help of a professional neutral. These individuals are then invited to participate in multiple meetings over a period of months or years."

3. Professional Neutral
Public Involvement: Not necessary
Consensus Building: "... more often relies on the services of a professional neutral who can help identify representatives of stakeholder groups, facilitate meetings, and mediate among diverse parties in both face-to-face meetings as well as in individual caucuses."

\textsuperscript{35} Consensus Building Institute, \textit{Partnering, Consensus Building, and Alternative Dispute Resolution: Current Uses and Opportunities in the U.S. Army Corps of Engineers}, Cambridge, 1995
The first definition has gone too far to narrow the definition of public involvement. Although many public involvement efforts might be used for gathering information from the public, that is not necessarily the case.

The second orientation needs some additional comments. Anyone who wants to participate in the consensus-building forums should be allowed to do so, but the professional neutral can try to adjoin him/her to an existing group that has been in the forum. Otherwise, limitation of entry contradicts with the concept of the *consensual approach*. In sum, a professional neutral actively identifies and invites stakeholders, but anyone still can participate in the forum.

The third definition is quite clear. The existence of professional neutral is crucial in consensus building efforts, although public involvement does not necessarily call for him/her. Considering that the consensus building is a form of assisted negotiation, the importance of a neutral is natural.

Susskind also draws a line between consensus building and *citizen involvement*. In the article, he focuses on the role of planner, as he puts:

> The traditional approaches to citizen involvement presume that the land use planner is a technician working for a public agency or elected official. Consensus building puts the land use planner into a role much like that of the chairman of the task force, whose job it was to structure a bargaining process and mediate. 36

The common feature in both CBI’s report and Susskind’s article is the importance of neutrals in facilitating the dialogue between stakeholders. Such neutrals work as moderator or facilitator to manage the consensus building effort. However, some literature about public involvement also discuss the uses of professional neutrals. Federal Highway Administration summarizes techniques for public involvement used for highway planning.

and facilitation and mediation are among the list.\textsuperscript{37} It is not that public involvement does not utilize any neutral person.

Therefore, the difference between consensus building and public involvement can be defined as follows: \textit{Consensus building requires a neutral to manage the effort, while such a person is optional in public involvement effort.}

\textbf{Theoretical Obstacles to Using the Consensual Approach}

Although I have discussed the advantages of the consensual approach over the conventional process, there are some conditions that preclude or impede the application of the consensual approach. Theoretically, there are three fundamental obstacles to the use of the consensual approach:

1) \textbf{Strong BATNA}

When planning authorities perceive that the conventional process without collaborative negotiations will achieve better outcomes than the consensual approach, they will certainly choose to pursue the conventional process. For example, absolute dictators trying to relocate native tribes would not negotiate because they don't fear their substantial oppositions. In the same way, public officials will not negotiate if they believe that their proposals are the best possible solution and no one has leverages to challenge them. In such cases, their BATNAs — unilateral actions — might be better than any possible outcomes through negotiation. When a party does not need a consensus with other parties, the consensual approach might not be taken seriously by the party as an alternative to the conventional process.

2) Misperception of BATNA

However, their evaluation of BATNAs might not be correct. Courts might order injunction of administrative decisions. Opponents to unilateral decisions by officials can attack them through politics and media. They can also physically disrupt their implementation. Even in situations where the consensual approach has a possibility of improving their decisions, officials are unlikely to use it when they don’t consider the effects of these actions because they miscalculated their BATNAs.

3) Misperception of efficient frontier/sticking to position

In addition, the assumption that the officials’ decisions are the best solutions might not be correct. How can they be confident that their decisions are better than any negotiated outcome without negotiation? However, when the officials believe that their decisions are the best possible solutions, they won’t use the consensual approach because it will not add any value to their decisions. They might also reject the approach to avoid risking their position that the original decisions are the best. Officials’ misperception about possible negotiated outcomes —efficiency frontier— can impede the use of the consensual approach.

Practical Obstacles to Using the Consensual Approach

These theoretical obstacles can be interpreted in more practical terms. There are also some additional problems arising from the current structure of administrative procedures. Public officials can be reluctant to use the consensual approach because of the following reasons:

1) No Legal Mandate

If legal precedents assure that officials do not have legal mandate to reach a consensus with protesting parties, they might find no benefit in using the approach. In other words,
officials might not consider the consensual approach when they do not fear that litigation in the future might reject their unilateral decisions.

2) No Cost of Delay

Even if officials are free from litigation, they might worry that the implementation of their decisions can be obstructed by their opponents. For example, opponents to infrastructure development projects often prevent officials and construction workers from entering the project sites. Such disruptions can delay the implementation and lead to higher costs. However, if officials do not have to worry about such costs, they might stick to the conventional approach.

3) No Political Interference

Elected officials or members of legislatures may request project managers to ease protests against projects because of their campaign pledge or coming elections. However, if officials are free from such political pressures, they might not change their way of making decisions.

4) No Public Involvement/Participation Requirements

As a part of planning process, public involvement/participation is often required by laws. The level of participation may vary, but officials have to face angry public if their proposals are controversial. However, there are still many public decisions that do not require any public involvement/participation. Some officials might not consider the consensual approach seriously when interactions with public are not required.

5) Official’s Fear Losing Decision-Making Authority

Although consensus building ensures that officials will retain their authority, they might fear losing it. If they believe that their decision should be the best based on their
expertise, they might feel that their authority or dignity is threatened because the consensual approach requires joint fact finding by all parties.

6) Problems Finding a Qualified Mediator

Even if officials are inclined to use the consensual approach, it is simply impossible if they can’t find professional neutrals to assist their efforts. Some officials might find difficulties in finding a mediator if they don’t know whom to contact at all. There might not be trained neutrals in the region where the officials’ jurisdiction. These troubles might discourage officials from using the approach.

7) Very Little Experience with Mediation

Officials might have trouble in understanding the consensus building/mediation process without hands-on experiences. They might reject the consensual approach based on misunderstandings.

8) No Promise of Definitiveness

The consensual approach does not promise officials to reach an agreement with all stakeholders. Officials might be unwilling to invest their time in the process that might end in vain. Even though the conventional process will not produce better outcomes, it can be completed according to their schedule.
Chapter 2

Highway Planning Process

in the United States and Japan
Highway Planning in the United States

Early Days to the Emergence of Interstate Highway Program

The history of modern highway planning in the United States dates back to 1916, when the Bureau of Public Works was founded. The bureau later became the Federal Highway Administration (FHWA) when the federal government organized the Department of Transportation (DoT) in 1962. In 1921, the first Federal Highway Act was authorized and launched federally aided highway programs. 38

However, the enactment of the Federal Aid Highway Act of 1956 was actually the beginning of the highway era of the United States. The act, authorized under the Eisenhower administration, introduced “Interstate and Defense Highway” projects. The overall project involved 41,000 miles of national highway networks at an estimated cost of $27 billion at that time 39. The interstate highways were planned as freeway, although there was a debate over the funding sources. Its companion, Highway Revenue Act created the Highway Trust Fund, and federal tax revenues related to automobile operation, such as gas taxes, were to be transferred to the fund. The fund was to be used solely for highway construction and maintenance purposes, and thus the act earmarked the tax revenues for highway programs. This was the first time in the history of the US congress to authorize designation of tax revenue for a specific purpose (although the fund later became available for mass transit projects) 40.

Around this time, pro-highway lobby was one of the two or three most powerful lobbies in American politics. Altshuler et al. 41 indicate seven reasons:

1. It represented a large sector of the American economy:
   Roughly one-six of all American businesses were involved in auto industries.
2. It had geographical distribution:
   These businesses and workers were evenly distributed geographically.
3. It had leadership:
   The supporters were the nation's largest companies.
4. It was equipped to forge strong ties between its national and local components:
   Other business sectors had huge financial stakes with auto industries.
5. It included organized labor:
   Union workers in auto industries also had a stake in highway development
6. It had money:
   The oil and auto industries, contractors, and dealers assisted.
7. It had a receptive popular audience.
   Highways are publicly associated with economic development, not with environmental degradation.

At the time when the Interstate Highway project emerged, people in general were not concerned, or not sure about the environmental problems it might evoke in the future. Highway was a part of the American dream that people envisioned.

The Emergence of 3C Process

The earliest trace of public input provision in highway planning is found in 1962 Federal Highway Act. The Section 9 of the act stipulates that:

After July 1, 1965, the Secretary shall not approve under section 105 of this title any programs for projects in any urban area of more than fifty thousand population unless he finds that such projects are based on a continuing, comprehensive transportation planning process carried out cooperatively by states and local communities in conformance with the objectives stated in this section. 42

---

This provision is called 3C process, abbreviating three key words: continuing, comprehensive, and cooperative. However, at the time it was enacted, this 3C provision did not include inputs from public in general as a part of the process. In Institutional Memorandum 50-2-63, "Cooperative" was defined to include not only cooperation between the federal, state, and local levels of government but also among the various agencies within the same level of government. 43

To facilitate the coordination between departments, agencies, and local governments, the Bureau of the Budget issued Circular A-95 in 1969. This circular required state governors to designate a regional agency or council to review and comment on federally funded projects. So called A-95 organizations were usually comprised of elected officials of local governments, planning departments, sub-regional or regional agencies, civil rights agencies, and environmental control agencies. 44 There was no requirement for direct input from citizen, but it could be a leverage for interested citizens by influencing the elected board members.

The first requirement of direct public participation in the highway planning process emerged in 1968. The Federal Highway Aid Act of 1968 required one public hearing "on the economic, social, and environmental effects of proposed highway projects." This was the first public input requirement in the federal highway planning procedure. This hearing requirement was expanded in the early 1969. FHWA revised Policy and Procedure Memorandum 20-8, and required two public hearings that are "corridor public hearing," and "highway design public hearing." However, the two hearing process "did not provide adequate opportunity for citizen involvement and, worse, provided a difficult atmosphere for dialogue." 45

Later in the same year, the 3C process was revised to require public participation in all phases in the planning process. This revision later became a basis for the more extensive public involvement programs implemented in the mid-1970s.

NEPA and CAA — An leverage to stop highway project —

In 1970, the National Environmental Policy Act was enacted. It ordered every federal agencies to take efforts to preserve the environment. In addition to declaring the position of considering environmental impacts of federal actions, it requested Environmental Impact Assessments (EIA) for major projects. Figure 2-1 and 2-2 is a general description of the current process. When a project is found to create major impacts on the surrounding environment, the responsible agencies should prepare an Environmental Impact Statement (EIS).

However, the EIA process itself stopped few project based on the impacts found in the process. Instead, environmentalists and citizens concerned with infrastructure projects used the EIA process, in conjunction with Administrative Procedure Act and Freedom of Information Act, as a leverage to stop the projects. Between 1970 and 1975, 6946 EISs were prepared by the federal agencies, and 654 of them were brought to courts. DoT prepared 3049 EISs, and 172 were litigated.

Courts ordered injunctions based on failures in EIA process or EISs. For example, Daly v. Volpe rejected an EIS for interstate highway 90 project in Washington because it did not discuss the impacts of the project location properly.46 It ordered the Department of Highways to prepare an EIS again, and also ordered an injunction against the project (this dispute was finally resolved by mediation).47 Courts sometimes went further to reject EISs

---

47 In 1976, the Office of Mediation at the University of Washington became involved in the dispute, and parties reached an agreement that year. See, Patton, L. and Cormick, G., Op. Cit.
Figure 2-1: Decision to Prepare an EIS Using NEPA Process

Figure 2-2: Steps in Preparing an EIS Using the NEPA Process
based on their contents. However, “the significance of the courts’ enforcement of NEPA has diminished as a result of decisions made by the U.S. Supreme Court during the Reagan and Bush administrations.”

The Clean Air Act Amendments (CAA) of 1970 were also a huge step toward the environmental protection. The act created the Environmental Protection Agency (EPA), and requested its administrators to set ambient standards of air quality and to ensure its achievement by mid-1975. The act also requested each state to prepare state implementation plans (SIP) to meet the standards. When it was found to be difficult to realize the plan only by controlling stationary source, states had to create transportation control plan (TCP).

Interpretations of the enforcement of the CAA by the courts were so strict that some civil suits led EPA to change its actions. In Sierra Club v. Ruckelshaus, the supreme court reversed a grant by EPA to extend the implementation of TCP for two years, which was the maximum permitted by the act.

However, the actual enforcement of the TCPs were frustrated by the counter-actions by the Congress and states. Some disincentives to use private automobiles, such as parking surcharges, were banned by the Congress.

CAA itself could not be used as a measure to stop a particular highway project, because the SIP and TCP were concerned only with the overall quality of air. However, it assisted the anti-highway groups by demanding the enforcement of the strict standards.

**Moratorium in Boston**

Around mid-1960s, urban residents and environmentalists began protests against the social and physical destructiveness of the Interstate Highway projects. Massachusetts

---

governor Sergent's moratorium on new highway construction marked one of the greater success of highway revolt. This was the first time in the United States that so many major projects in a region were canceled due to oppositions from public. It led to the first comprehensive public participation effort in highway planning.

In the post war Boston, "housing was overcrowded, and much of it was old and substandard." 53 The concept of urban renewal pervaded through the area in which highway development would take an important role. The Department of Public Works originally created a highway plan of the Greater Boston area in 1948. In the mid 1950s, it started to include the uncompleted projects of the plan into the federally funded interstate project, which would substantially ease its financial burden.

By the mid 60s, Route 128, Central Artery, South East Expressway, North East Expressway, and Massachusetts Turnpike had been built. These projects were faced with some oppositions, but they were not enough to obstruct the implementation of these projects. 54 There were four major projects remaining to be implemented: the South East Expressway (I-95), Inner Belt (I-695), I-95 North, and Route 2 Extension.

In the early 1960s, citizens of Cambridge, mobilized by its politicians, began a protest against the Inner Belt project, which would relocate about 1,500 homes in the area. Cambridge is a home to Harvard University and Massachusetts Institute of Technology (MIT), and professionals of planning and architecture in these institutions were connected

---

Figure 2-3: Highway Projects in Boston before the Moratorium

Most of these plans were canceled.
with local community groups. In due course, these professionals joined and assisted the communities, and succeeded in delaying the implementation.56

In 1966, demolition for the Southeast Expressway started in Jamaica Plain and Roxbury. Local residents began protests here too. By the time, the highway projects were attacked by anti-highway leaders like James Morey, Justin Gray, Frederick Salvucci, and John Culp57. Their arguments were that 1) the projects would destroy neighborhoods, 2) they used faulty methods.58 In the next year, the Urban Planning Aid organized the Greater Boston Committee on the Transportation Crisis. This was a coalition of the activists and communities fighting against the Inner Belt, Southeast Expressway, and I-95 North with assistance of the professionals at MIT and Harvard. It conducted independent studies and criticized the projects.

Later, the movement became more political rather than the technical investigations. In 1969, the GBC launched a series of demonstrations requesting a review of the projects by a task force. In August, newly appointed governor Sergent accepted the idea of the task force which was chaired by Alan Altshuler of MIT. The task force held meetings with community groups and government officials, each of them protesting and supporting the highway projects. Early in 1970, the task force concluded that all these projects needed restudy, following the meetings, although there was a question about the effectiveness of the restudy in the late stage of planning. The task force firmly recommended a moratorium to the governor, which would stop all the highway projects within I-128. Finally in February, he announced the moratorium, and ordered a restudy of the projects.59

The process was followed by Boston Transportation Planning Review (BTPR). BTPR incorporated participatory process, and significantly altered the projects. Some of them, like the Southwest corridor, transformed into public transit projects.

---

Improved 3C Process — MPO and Guidebooks for officials—

The Federal Aid Highway Act of 1970 required more coordination between local governments and state highway departments. The influence of local officials in highway planning continued to grow.

Following the enactment of the Federal Aid Highway Act of 1970, the FHWA produced “Process Guidelines” in 1972 (23 CFR 795), based on discussions at a Highway Research Board Workshop. These guidelines required each state to prepare an Action Plan, and “the involvement of other agencies and the public” was also among the items to be described in it.\(^60\)

The Federal Highway Act was amended in 1973. It created Metropolitan Planning Organizations (MPOs) to coordinate local land use plans and state highway plans.\(^61\) MPO-like organizations existed even in the 1950s, and the its number increased after the 3C process was required. Initially, the majority of MPOs were regional councils.\(^62\)

In 1975, FHWA and Urban Mass Transportation Administration (UMTA) jointly issued regulations requiring MPOs to take a regional planning process as a condition of the funds from federal government. According to the regulation, MPOs were required to create a plan with long-range element and shorter-range “Transportation Systems Management Element.” Following these plans, they also have to create Transportation Improvement Program, which should contain all highway and transit projects to be implemented within the coming five years. These plans had to follow the 3C process, and thus the inputs from the public was necessary.\(^63\)

\(^{60}\) Weiner, Op. Cit., p.47
\(^{62}\) Association of Metropolitan Planning Organizations, “About MPOs,” from AMPO web site (http://www.narc.org/ampo/)
\(^{63}\) Weiner, Op. Cit., pp. 54-55
The FHWA produced a guidebook called “Effective Citizen Participation in Transportation Planning” in 1976. This guidebook has two volumes. Volume I: Community Involvement Processes gives general explanation about the participation and the planning process. It reasons that the purposes of public participation are; 1) to see that the decisions of government reflect the preferences of the people; and 2) that it helps create better plans, it increases the likelihood of implementing the plan, and it generates support for the agency. It also reviews the practice of transportation planning, and interestingly, admits that the planning is no longer the exclusive province of professional planners. Volume II is a glossary of techniques, and table 2-1 is the list of techniques described in it. Among the 37 techniques, two were about the use of intermediaries: “Arbitrative and Mediative Planning” and “Coordinator or Coordinator-Catalyst.” Although their use is not considered indispensable, it is noteworthy that the concept of mediation/consensus-building appeared more than twenty years ago.

In 1977, FHWA also issued another guidebook: “Community Involvement in Highway Planning and Design: A Manual of Techniques.” This manual was initially an instructional manual for a FHWA-sponsored training course, “Community Involvement in Highway Planning and Design, Phase II.” Its predecessor, Phase I, was conducted from

---

64 Federal Highway Administration, Effective Citizen Participation in Transportation Planning, Washington DC, 1976
October 1973 to May 1974, and the course was called “Synergy,” taken from the name of the firm which developed and conducted the course. The Synergy approach was composed of four concepts: 1) Active Listening, 2) Congruent Sending, 3) The Facilitator Role, and 4) The Recorder Role. It is amazing that the concept of facilitation with a recorder was applied to the highway planning in the 1970s, although the manual assumes public officials to take the facilitator's role. “Employing a Coordinator or Coordinator-Catalyst,” which basically refers to a professional facilitator, is still one of the sixty techniques in the manual.

Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991

In 1991, the Congress passed the Intermodal Surface Transportation Efficiency Act (ISTEA). This act was considered to be a big change in the history of highway planning process partly because it required “public involvement” in highway planning. 23 CFR 450.212(a) (see appendix) declares “public involvement processes shall be proactive and provide complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement.” Compared to the previous public hearing requirements and the rather abstract 3C requirements, ISTEA process has incorporated an additional requirement of “demonstrating explicit consideration and response to public input during the planning and program development process,” which means that sponsors of the process have an obligation to respond to the opinions expressed by the public.

ISTEA process has three major components: the long-range plan, the Transportation Improvement Program (TIP), and Major Investment Study (MIS). Each state and MPO are required to prepare the long-range plans and TIPs. In all of the three processes, MPO or other responsible organization is obliged to take public involvement efforts.

66 23 CFR 450.212(a)
67 23 CFR 450.212(a)(5)
Long range plan
The long range plan should encompass transportation projects for the coming 20 years. The plan should at least 1) define the goals and objectives; 2) analyze existing conditions; 3) assess transportation needs; 4) consider socioeconomic and travel demand projections; 5) evaluate alternatives; 6) examine the impacts; 7) define project scopes and design concepts; and 8) include a financial plan. Thus, this is a rather general plan visioning the future developments, but “any subsequent capital projects funded through the TIP process must be consistent with the goals, policies and priorities set in the long range plan.”

ISTEA does not stipulate specific requirements on the way to conduct public involvement in planning a long-range plan, but the general public involvement requirement applies. Thus the responsible organization should facilitate some mechanisms to seek public review, and respond to the comments in the final draft of the plan. If a MPO is in an area classified as a nonattainment area by Clean Air Acts Amendments of 1990 (CAAA), the comment period in this process should be at least 30 days.

Transportation Improvement Program (TIP)
TIP is a shorter-range plan. It must include: 1) all projects to be funded with federal transportation funds during the 3-year period of the TIP; 2) only projects that are consistent with the regional transportation plan; and 3) all regionally significant projects proposed for implementation during the timeframe of the TIP. It should be updated at least biennially. Again, ISTEAA does not stipulate any public involvement requirement during the TIP process. In case a MPO is in an area classified as a nonattainment area, one formal public

---

68 Central Transportation Planning Staff (CTPS), *The 1997 Transportation Plan for the Boston Region*, pp. ES-1-3
69 Younger, K., “Public Involvement,” *ISTEA Planners Workbook Ed. Franko M.*, Surface Transportation Policy Project
70 23 CFR 450.316(b) (1)-(iv)
71 CTPS, *Transportation Improvement Program and Air Quality Conformity Determination FY 1998-2003*, pp. 3-1, 3-2
meeting should be annually held during TIP development process, and the comment period should be at least 30 days.
Highway Planning in Japan

Overview of the Highway System

Japan had been without any highway until 1958. In 1957, the National Highway Act (Kosoku-Kokudo-Jidousha-Ho) and the National Development Linkage Highway Construction Act (Kokudo-Kaihatsu-kansen-Jidoshado-Kensetsu-Ho) were enacted. The next year, the first highway in Japan, Meishin-Kosoku-Doro, was built between Ritto and Amagasaki, which extended for 44 miles. Since then, the Japanese highway system has kept on growing as the country prospered economically (See Figure 2-5). In 1969, Toumei-Kousoku-Doro project was completed, and Tokyo and Osaka, the first and second largest city, was then connected by the highway system. At the end of 1996, the total length of Japanese highway system was about 3,800 miles (See Figure 2-6).72

Except for intra-city highways, Japanese highway system is developed by the Road Bureau in the Ministry of Construction (MoC), and operated by Japan Highway Public Company (JH).73 The system basically has two types of highway: National Development Arterial Highway (NDAH: Kokudo-Kaihatsu-Kansen-Jidousha-Do) and National Road Exclusive for Automobiles (NREA: Ippan-Kokudo-Jidousha-Senyou-Douro).74 Currently, most of the existing and planned highways are NAH.

The budget for all types of road, not only for highways, is earmarked. At the national level, all the Volatile Oil Tax and half of the Gas Tax should be used for road developments, which are stipulated by acts. At the prefectural level, Diesel Gas Tax and Automobile Acquisition Tax are also earmarked for the prefectural road development budgets.75

72 Ministry of Construction, Road Bureau, Douro-Gyosei (Road Administration), 1997, pp. 279-306
73 Tokyo, Osaka, Nagoya, and Fukuoka have intra-city highways. They are built by these city governments, and operated by separate authorities.
74 There are many other categories of highways, but they are too complicated to explain here.
75 MoC, Op. Cit., p. 75
Figure 2-5: High-Level Arterial Road Network Plan

Figure 2-6: Development of Highway Network in Japan

---

Toll from the highway users is also an exclusive source of the budget. At the outset, the highway system was planned to become free. However, currently collects toll for all the highways. The initial plan was to collect toll and use the revenue to develop additional highways until the development of the national highway system finishes, which is called “Toll-Pooling System.” However, the development has not yet completed, and thus all the highways are now toll road.

In the 40 years of highway development, its planning process has not changed almost at all. Thus, I will not look at the history of highway planning process in Japan, but each component of the process.

Highway Planning at the National Level

National Planning

All highway projects first appear in the High-Level Arterial Road Network Plan (Koukikaku-Kansen-Douro-Mou-Keikaku). This plan is created solely by MoC, and then its Road Council authorizes. The latest plan was decided in 1987, and the total length of the planned network was 8,700 miles. It only indicated the origin and destination of the highways.

NDAH projects, which consists a major part of the highway projects, are described in the National Development Arterial Highway Construction Act of 1987 (Kokudo-Kaihatsu-Kansen-Jidousha-Do-Kensetu-Ho). This means that the NDAH projects were authorized by the national diet. The act has a list of highways that should be developed in Japan, and the total length is 7,160 miles. The list includes both implemented and planned highways, and 3,686 miles of them had been built at the end of 1995. This act also only defines the origin, destination, and major cities on the route of the highways.

Other highway projects, including NAER, appear in the National General Development Plans (NGDP: Zenkoku-Sougou-Kaihatsu-Keikaku). The plan is formally
created by the Prime Minister, but the actual planning is done by the National Land Council (NLC: Kokudo-Shingikai). The membership of NLC is by the appointment of Prime Minister. It is composed of university professors in the relevant fields, leaders of national organizations, and CEOs of major Japanese companies. In this plan, highway projects are listed only with their origin and destination.

Then, the Road Council creates Five-Year Road Development Plan. The plan stipulates the road development projects to be implemented in the coming five years, but this one also does not refer to specification of the projects. Instead, it just indicates the origin and destination. However, the most updated plan indicated the need of solicitation of public view through “public involvement” processes. The council conducted a national survey of public opinion about the road development policy in general.

Before planning the details, the MoC should prepare Basic Plans (Kihon-Keikaku). The issuance of Basic Plans indicates that the project will be soon implemented, but again, these plans are fairly general without any site-specific information. In case of the NDAH projects, they need to be approved by the NDAH Construction Council.

These national plans only indicate a general picture of the highway network system, and does not indicate exactly when and how each project will be implemented. Therefore, few controversy about specific highway projects become apparent, and the legitimacy of these plans has rarely been attacked.

**Urban Planning**

Before implementations of highway projects, the Urban Planning process is held at the local level. The Urban Planning Act of 1968 (Toshi-Keikaku-Ho) requires all

(continued)

79 Interview with Prof. S. Morichi
prefectures and municipal governments (cities/towns/villages) within Urbanized Area to have Urban Plans. The major components of prefectural Urban Plans are the boundaries between Urbanized Area and Urbanization Adjustment Area and major infrastructure projects. Those of municipal governments are the local zoning ordinances, major infrastructure projects, and community plans. Highway projects are of course considered to be major projects, and thus they should be amended to both of these Urban Plans.

The Urban Planning Act was amended in 1985, and required all the municipalities to prepare Local Master Plans (Sichoson-Master-Plan). All subsequent Urban Plans should be in accord with the goals set in their Local Master Plans.

Information Meetings

First, the Urban Planning process by the municipalities is held. Urban Plan proposals should be created by the municipal governments taking some measures to reflect the concerns of residents, like public hearings. However, the governments have to take such measures only when the governments find a necessity to do so. In general,

---

81 In Japanese law, zoning ordinance is not authorized by local legislatures. Planning divisions of local
information meetings (setsumei-kai) are held, but formal public hearings (kocho-kai) are rarely held. In many cases, the sponsors of the projects, in cooperation with the municipalities, prepares a detailed plan, and proposes it in the information meetings. The last part of each information meeting is usually devoted to a “questions and answers (shitsugi-outo)” session. In the session, participants of the meeting are supposed to raise questions about the proposed plan, and the sponsor of the project answers to it. However, what is often seen in these meetings for controversial projects is the proponents demonstrating their opposition to the project, and the authorities making ambiguous comments. Anyway, the local governments have a discretion whether to “reflect” the opinions and concerns discussed in the formal proposal.

**Announcement**

After these meetings, the municipal governments should formally announce a proposal to amend the projects to their Urban Plan. The proposal should be reviewed by public, and anyone can send comments to the municipal government within two-week review period. The announcement does not have to be made through newspapers or local media.

**Governor’s Authorization**

Then, the prefectural governor should formally authorize the proposal. Before the authorization, the governor refer it to the Prefectural Urban Planning Council which is described later. The council receives the summary of the public comments created by the local governments.

(continued)

governments create draft amendments, and authorized through Urban Planning process.
Local Urban Planning Council

A circular of Vice-Minister of Construction requests municipal governments to organize Local Urban Planning Councils to consult planning issues. The council members are appointed by mayors, and they usually involves aldermen/women, leaders of organizations within its jurisdiction, selectmen/women, and university professors.

Usually, the council reviews the proposal, and gives authorization, although this council does not have any legal veto power. In the review process, the local government submit the summary of comments. In some cases, proponents of the project are allowed to make presentations in the council meetings.

Formal Announcement and Decisions

After the council grant the proposal, the local governments formally announce the amendment of the project. There is no need for authorization by local legislature.

Prefectural Urban Planning Process

Highway projects have to be amended in the Prefectural Urban Plan. Generally, after all municipal governments affected by the projects amended them, the prefectural process starts. The process is almost same as that of local government, and the major difference is the Prefectural Urban Planning Council. The Urban Planning Act requires all the prefectural government to organize the council to formally authorize the amendments. The members of the council are appointed by the governor, and they are usually mayors, leaders of prefectural organizations, selectmen/women, and university professors.

The summary of comments are generated by the prefectural government, and should be submitted to the council meetings. Failure to do so can lead to the enjoinment of the amendment. For example, a court rejected an amendment because of the insufficient information supplied to the council meeting.
MoC’s report argues that council should be closed to the public, although another report suggests to use the council to listen to the opinion of the residents. Some records show such presentations have been allowed in some cases. Council occasionally suggests “additional opinions” to the proposal, especially when oppositions are outstanding. However, the MoC argues that the governments should respect such opinions, although do not have to change the plan.

**Environmental Impact Assessment**

The National Environmental Impact Assessment Act was enacted in 1997 and has not yet been applied widely. Its predecessor, the environmental impact assessments guidelines in the Executive Order of Prime-Minister have been applied to the national projects for more than a decade. In addition, prefectural governments have developed their own EIA process since 1973. In 1995, 50 of 57 prefectures and quasi-prefectural city governments had their own processes. In this section, the local EIA processes will be discussed. The processes are defined in their local ordinances or guidelines. The projects which need to go through the EIA process are described in the ordinances and guidelines, and their target is usually more wider than the national guideline. These local EIA processes are somewhat different reflecting local environmental issues, but most of them follow a basic three-step format.

**Preliminary Environmental Impact Statement**

Before starting the EIA process, the sponsor of the project or the local government prepares an *Preliminary Environmental Impact Statement* (Pre-EIS: *Kankyo-Eikyo-Hyoka-Junbisho*). Local ordinances stipulates the issues to be described in the Pre-EIS according to the nature

---

of the projects. If the Pre-EIS is prepared by the sponsor of the project, the prefectural governments request them to submit researches plans for the Pre-EIS. The Pre-EIS are publicized for several weeks for public reviews and comments.

*Information Meetings for Pre-EIS*

Information meetings, like the Urban Planning process, are held after the Pre-EIA was publicized. This meeting is sometimes conducted at a same time with the information meeting of Urban Planning process.

*Final Environmental Impact Statement*

After the public review and comment process, the sponsor of the process publish *Environmental Impact Statement* (*EIS: Kankyo-Eikyo-Hyouka-Sho*). The summary of public comments to the Pre-EIS and the responses to the comments should be included in the EIS.

---

84 *Supra*, p.19
Comparision of the Processes

Is there any significant difference in the highway planning processes between the United States and Japan? What are the major obstacles to using the consensual approach in each process? What stimulated the development of the consensual approach in the United States and what will be the major obstacles in Japan?

I identified how public officials in each country will find the eight obstacles discussed in Chapter 1, and Table 2-1 is the summary. If an obstacle is "high," it is likely to impede the use of the consensual approach, and vice versa.

By comparing the significance of incentives/obstacles in the US and Japan, three major differences are found. These differences — no legal mandate, no political interference, and difficulties in finding qualified mediators— have impeded and will be obstacles to the application of the consensual approach in highway planning in Japan.

No Legal Mandate

Since the enactment of NEPA, many highway projects are brought to court with charges against failures in their EISs. Highway officials responded to these litigation by preparing massive EISs so that they would not miss any information that could be deemed necessary by courts. However, these court battles were everlasting. Environmentalists refined their strategies to fight in courts to stop highway projects. They also mobilized legislatures to enact environmental legislation to gain more power through the court battles.

In Japan, the Urban Planning Act stipulates that the local governments should take some measures to reflect public opinion into their draft amendment plan "if the officials find its necessity." The clauses allowing discretion of officials precludes lawsuits against the official decisions. Usually, appeals against Urban Plan are rejected based on 1) lack of standing as plaintiffs; and 2) immaturity. The Administrative Litigation Act permits only those who will legally benefit from requesting a rejection of administrative decisions
Table 2-1: Obstacles to using the consensual approach in the United States and Japan

<table>
<thead>
<tr>
<th>Obstacle</th>
<th>US</th>
<th>JAPAN</th>
</tr>
</thead>
<tbody>
<tr>
<td>No legal mandate</td>
<td>L: ISTEA does not require a consensus, but opponents can litigate EISs and other plans.</td>
<td>H: Courts rarely order injunctions based on failures in Urban Plans and EISs</td>
</tr>
<tr>
<td>No cost of delay</td>
<td>M: It depends on the emergency of projects.</td>
<td>M: It depends on the emergency of projects.</td>
</tr>
<tr>
<td>No political interference</td>
<td>L: Newly elected officials or referendums can change whole process.</td>
<td>H: Politics have few influence on the process [but interfere with the substance].</td>
</tr>
<tr>
<td>Public involvement/participation requirements</td>
<td>M: ISTEA requires public involvement, but officials have discretion.</td>
<td>M: The Urban Planning Act requires public participation for each project, but officials have discretion.</td>
</tr>
<tr>
<td>Officials’ fear to lose decision-making authority</td>
<td>M: At the project level, they may fear that the project would completely be stopped.</td>
<td>M: At the project level, local officials may fear strongly.</td>
</tr>
<tr>
<td>Difficulties in finding qualified mediators</td>
<td>L: Mediation firms exist. State offices of dispute resolution can assist.</td>
<td>H: No professional mediator/facilitator exists.</td>
</tr>
<tr>
<td>Very little experience of mediation</td>
<td>M: Mediation is becoming popular, but many officials do not have experiences.</td>
<td>H: Almost no informal mediation effort in highway planning.</td>
</tr>
<tr>
<td>No promise of definitiveness</td>
<td>M: Still not definitive, but many successful precedents exist.</td>
<td>H: Officials may feel high risks because no precedent exists.</td>
</tr>
</tbody>
</table>

H: high, M: medium, L: low
to become a plaintiff. In cases related to the Urban Planning Act, this condition precludes those who do not have any title in project sites and rejects their standing as plaintiffs. Courts also rejected some appeals because they were not substantial, which is called the immaturity case. For example, a zoning ordinance is considered to be immature. Judges advised plaintiffs to bring their cases again when they are actually forced to obey the ordinance.

The absence of legal mandates allows officials in Japan to make decision without a fear of losing litigation in the future. They might not be interested in forestalling possible lawsuits through the consensual approach because they will not lose anyway.

No Political Interference

The history of highway planning in the United States indicates that the planning process has been highly influenced by the politics. For long-range plans, the moratorium in Boston was one of the epoch-making event. Public opposition against intra-city highway projects developed into a political pressure to start an extensive restudy of these projects. The newly elected governor Sergent finally announced the moratorium. It was followed by BTPR in which the long-range transportation plan of the Boston area was reconfigured through public participation process. The recent consensus building effort in creating Maine Transportation Plan was initiated by a state referendum. These examples show that the political pressures have nourished reforms in highway planning process.

In the United States, project-specific plans can also be influenced by politics because the localities have organizations administering their land use, such as planning boards. Their members are usually elected. Thus, local politics can affect the decisions made by higher authorities, and politicians can inject themselves into the decision-making process at the higher level.

On the contrary, Japanese politics rarely affects the highway planning process, while their intervention into substances of the plans seems to be prevalent. A few years ago, there was a debate over a construction of river dam in Japan. The Minister of Construction then was a member of the Social Democratic Party, which claimed for more public participation in infrastructure decision-makings. He implied a temporary suspension of the project reflecting the national concern about its environmental impacts. However, he finally authorized the project with a comment; “Ministry of Construction cannot be stopped.” There have not been such an example in the realm of highway planning, but this example shows how politics are poor in reforming the process in Japan.

Local politics are also poor in intervening the highway planning process. They seem to have informal paths to negotiate with national governments, and such negotiations behind public eyes are called Nemawashi in Japanese. Thus, local politicians do not have an incentive to increase the chance of public participation.

These poor performance of Japanese politics in pressuring the officials resulted in the perpetuation of the conventional process. In other words, they could be more mobilized to encourage the use of the consensual approach.

**Difficulties in Finding Qualified Mediators**

The thirty-year development of mediation in the public policy field in the United States have created organizations encouraging the use of the consensual approach. Many universities now institutionalized dispute resolution programs. Private mediation firms and non-profit organizations provide mediation services to the public sector. Twenty states have created state offices of dispute resolutions. Following the initial contacts from the disputing parties, the offices typically initiate mediation efforts using their expertise and commissioned mediators. They have roasters of professional neutrals who can help the disputing parties.
These institutions reduce the problems of finding qualified mediators. For example, the recent successful mediation of Route 2A dispute was made possible with assistant of Massachusetts Office of Dispute Resolution.

Although mediation has been used for interpersonal disputes for long, informal mediation for disputes over public policy is not common in Japan. A formal environmental mediation procedure exists, but this is rather an appeal system than an informal process. The mediators at the national level are lawyers and retired public officials appointed by the national diet. Thus, there is almost no professional mediator or facilitator available for informal mediation/consensus building effort using the consensual approach. Considering mediation requires professional skills, the unavailability of professional neutrals in Japan is a big obstacle impeding the use of the consensual approach.

---

Chapter 3

Case Studies
Introduction

How can mediation and consensus building be used to resolve highway disputes? How do officials manage the highway planning process in Japan? What better outcomes might be achieved by using a consensual approach to highway planning?

This chapter will discuss two cases of highway planning. One is a highway widening project in the United States that used mediation after the project was rejected by local officials. This case study will show how mediation works in an actual setting and the good outcomes it can help to achieve. The other is a highway construction project in Japan. This case was basically decided using only the conventional approach to highway planning, and the project is still being protested by local residents. This case study will also be used to structure a thought experiment in the next chapter.

By comparing these two cases, I will try to show how the United States experiences with mediation could be helpful in Japan.
Overview

Route 2A, which is also called Marrett Road, in Lexington, Massachusetts is a two-lane road starting from I-95/Route 128 and going west. On both sides of the road, there are woods and grassy plains. The view is attractive to nature-loving people. Route 2A is also the entrance to the Minute Man National Historic Park, where the natural environment is well preserved.

There are a lot of curves and slopes on Route 2A due both to its old-fashioned design and the typical hilly topography in New England. These add to the attractiveness of the old winding road, but have caused many tragic accidents. Between 1991 and 1994, there were 31 accidents on the road, including two fatalities. Other statistics shows that the number of accidents rose by 98 percent. During the same period, the level of traffic increased only by 34 percent. Traffic congestion is another problem. The two-lane road handles more than 144,000 vehicles daily. Every morning, it is jammed with commuters driving into the central Boston area.

The Route 2A project included a plan to widen a section of the road between I-95 and Massachusetts Avenue from three to five lanes. The section between I-95 and the entrance to the Historic Park would become a five-lane road with a center stacking lane for turns. The plan also involved some relocation of connecting roads.

The Massachusetts Highway Department (MHD) planned the project for more than 12 years in collaboration with the town of Lexington. The actual design was completed by the town in accordance with an agreement between MHD and the town. This project was

---

87 Information contained in this chapter draws much on case studies completed by Rachel Freed and Meighan Matthews. I would like to thank them to give me a permission to use their efforts here.
88 Boston Globe, "Lexington panel fears state won't listen to its vote on Rte. 2A," August 7, 1994
89 Freed, R., The Road: A Case Study of the Marrett Road Mediation and Implementation Processes, Final project at University of Massachusetts at Boston, p. 4
90 Boston Globe, "Critics fault plan to widen Route 2A," May 22, 1994

66
reviewed by the local Design Advisory Committee and the Route 2A Ad Hoc Committee.\textsuperscript{91} The most worrisome environmental impact of the project involved the disturbance of 8,980 square feet of wetland.\textsuperscript{92} This wetland affects the water quality of a reservoir serving the nearby city of Cambridge.

\textbf{Initial Efforts toward Mediation}

MHD received approval from the town’s board of selectmen and also support from the Federal Highway Administration in 1994. However, 2 out of 3 members of the Lexington Conservation Commission (LCC) voted against the project. They were concerned about environmental impacts, including aesthetic aspects of the proposed road widening. MHD immediately appealed to the state Department of Environmental Protection’s (DEP) wetland division for a Superseding Order of Conditions. This gave DEP control because it could override the LCC’s rejection.

After a site review, a DEP officer, Rachel Freed who had some experiences with mediation suggested using mediation instead of continuing the adjudicatory process.\textsuperscript{93} She referred the case to the Massachusetts Office of Dispute Resolution (MoDR) with a suggested list of possible participants. In March 1995, the initial convening effort was taken by MoDR Program Coordinator, Meighan Matthews. MoDR invested 36 hours of staff time over three months. Freed and Matthews worked together to identify the people that should be involved in the mediation effort. Matthews also called the stakeholders to explain the general outline of the proposed mediation process, including how payment would be handled. She worked out a schedule for the first meeting. MHD was reluctant to participate, but the MoDR director Freddie Kay called the department and persuaded them to come. MoDR selected Brad Honoroff of The Mediation Group from its panel of professional mediators, to assist the parties.

\textsuperscript{92} Freed, \textit{Op. Cit.}, p. 7
\textsuperscript{93} Freed, \textit{Op. Cit.}, pp. 8-11
Major Stakeholders

Board of Selectmen, Town of Lexington

They initially proposed the project design and wanted the project implemented as designed. Town officials and engineers, other than LCC members, “(didn’t) think there (was) as much of an environmental threat as opponents postulated, and said the area (had) a history of danger to drivers and pedestrians.” Traffic congestion was also one of their concerns.

Massachusetts Highway Department (MHD)

MHD had been working together with the town to solve the problems associated with the roadway. They insisted that the project meet the state and federal standards, and considered the initial proposal as the best option given the constraint.

Lexington Conservation Commission (LCC)

LCC rejected the proposal. From an environmental conservation perspective, they were concerned about the size of wetland disturbance and other aesthetic issues. One of its member said, “I would like to deny the plan as presented, personally, because I think it’s overkill. They are relocating road which destroys the area and cutting down hillsides and trees and destroying wetlands.”

National Park Service (NPS)

The section of Route 2A is an entrance to Minute Man National Park, and the Park Service was concerned with the aesthetic aspect of the project: most of the park users must drive through the section of Route 2A from I-95. In addition, NPS found a habitat for elderberry beetles, which is a rare species, and argued that the project should be reduced in size to protect the threatened habitat.

---

95 Boston Globe, Op. Cit., August 7, 1994; from a comment of Angera Frick, a member of LCC
City of Cambridge

The city of Cambridge had a reservoir next to the wetland, and the city was concerned about the impacts on its water supply. In the previous year, Cambridge, LCC, and MHD had a dispute over the maintenance of a MHD's garage nearby because the road salt stored in the garage affected the water quality in the reservoir.96

Massachusetts Department of Environmental Protection (DEP)

DEP held the power to approve or reject the project. Freed, who suggested the possibility of mediation, attended the meetings for DEP.97

Mediation Effort

The first meeting was held in June 28, 1995.98 About twenty representatives from the six stakeholding groups participated. At the first meeting, they worked at an Agreement to Mediate, including a set of ground rules. DEP indicated that it would accept a mediated agreement as a basis for its decision as long as the parties would not appeal.99 No formal stakeholder analysis was prepared by the mediator.100

The participants explained their concerns and views about the project. At this stage, the relationships among some of the parties seemed contentious. The town engineer explained the initial proposal. To analyze the plan and alternatives, some of them decided to hire engineers to help examine the project. The full group considered a three-lane alternative, and all the parties found that the alternative would not be safe enough. Then, they reframed their discussion from a polarized widen versus not-widen dispute to an investigation of how to achieve better safety.101

After several meetings, the mediator strongly suggested forming small groups.

---

96 Boston Globe, September 12, October 3, and November 21, 1993
100 Interview with Brad Honoroff
The parties created an Environmental Working Group. According to the interviews Freed conducted, "most of them identified the small-group meetings as one of (the) most productive and important parts of (the) mediation." Before starting the small group work, they agreed that all agreements would be made by the full group meeting.

Traffic experts also met separately. The Park Service agreed with the assumptions that the town engineer used. They proposed an alternative in these meetings, but the subgroup reached the conclusion that the alternative was impractical in terms of its environmental impacts.

In the first meeting of the Environmental Working Group, MHD proposed a four-lane alternative. This alternative needed to be worked out with NPS. With a request from NPS, the mediator set up a meeting between NPS and MHD. In part, this meeting helped to restore deteriorated relationships between these parties. They also began to negotiate issues other than this project outside this mediation effort. Some town officials in Lexington became upset when MHD dropped the five-lane proposal, but the mediator assuaged their concern.

In the full meeting after the environmental group internally reached an agreement, all the parties basically accepted the four-lane option with an additional storm detention area. Some further changes were made in their proposal. MHD and the town proposed paving the shoulder of the road, but it was "resoundingly" rejected. They finally agreed to use environmental-friendly materials to cover the shoulder of the road. They also decided to organize a communication and implementation team to ensure that the agreement would be observed afterwards.

(continued)

101 Freed, Op. Cit., pp. 27, 28
102 Freed, Op. Cit., p. 31
104 Freed, Op. Cit., p. 34
105 Interview with Brad Honoroff
106 Freed, Op. Cit., pp. 36-42
107 Freed, Op. Cit., pp. 36-37
To address some issues that were not directly related to the project, other bilateral agreements between the City of Cambridge and MHD, and the Park Service and MHD, were also concluded. These side agreements satisfied their principal interests and encouraged them to consent to the four-lane agreement.\textsuperscript{109}

DEP used the agreement as a basis of their permit and coordinated the communication and implementation of the agreement.\textsuperscript{110} Some parties tried to renegotiate and in this phase. One party is now dissatisfied with the way DEP handled its claims.\textsuperscript{111} However, no lawsuit has been filed, and all permits have been issued. At this moment, no major construction work has began, but it is about to start.\textsuperscript{112}

\begin{thebibliography}{11}
\bibitem{111} Interview with a representative of LCC conducted by the Consensus Building Institute.
\bibitem{112} Interview with a representative of MHD
\end{thebibliography}
Overview of the Project

Yokohama Circular Highway Project South involves the construction of a national highway connecting Yokohama-Yokosuka highway at Kanazawa, Yokohama, and Route 1 at Totsuka, Yokohama. The length of the proposed highway is 5.2 miles, and its use will be limited to automobiles.

The proposed site is at the southern end of Yokohama City. Yokohama City is the second largest city in the Kanto plains, with population of 3.34 million.

Existing routes around the proposed site have been suffering from traffic congestion, and the highway was planned to alleviate it. It will be a part of a circular bypass surrounding Yokohama City, which is called Yokohama Circular Highway (YCH). Also, this section of YCH will be a part of Metropolitan Central Connection Highway (MCCH), an outer bypass surrounding Tokyo Metropolitan Area.

Major conflict arose in two residential areas surrounded by hills. The highway will be built underground through the residential areas. However, there is a small valley dividing these areas, where the highway will cross the valley at grade. Another regional road runs along the bottom of the valley. Thus, the highway will have to go over it by a bridge with a short open-cut section.

In conjunction with this project, a community road (Kamigo-Kuden Line) will be built through one of the residential areas.

---

113 Leaflets by MoC, Yokohama Road Construction Office
Figure 3-1: Yokohama Circular Highway South Project\textsuperscript{10}

---

CHRONOLOGICAL REVIEW

Era of Residential Development

In the late 1970s, residential developments were planned around the proposed highway site by private developers. The Yokohama City administration, at that time, had a plan to build a road cutting through these developments. The city's plan was not based on any formal decision. Thus, the administration was not sure whether the plan would be a national highway project, or just a community road built by the city. The city did not have formal authority to force the developers to change their original plans so that a site for the potential road could be accommodated. It used Gyousei-Shido, a key administrative tool. The city informally asked the developers to keep a strip of land undeveloped, and

---

117 Interview with Togashi, A., Project manager of the YCH project at MoC, Yokohama Road Construction Office
118 Gyousei-Shido is informal guidance to private parties without authoritative powers. However, disobedience to it can implicitly lead to bad treatments by the authorities. Its legitimacy is debated in light of
they agreed to do so.

A problem occurred when the developers started to sell individual lots. They found that the lots could not sell if they told their customers that the strip of land might be a site for a highway, so they kept this secret. The city government, not sure about how the land would be used, could not do anything to stop them. There was no legal basis for forcing Gyosei-Shido. New residents looking for a better environment away from Tokyo were attracted. They did not know that the land would be developed into a highway.

Planning at the National Level

The overall MCCCH project first appeared in the 3rd Metropolitan Master Plan in 1976. This plan was officially determined by the Prime Minister, but was created by the planning division of the National Land Council. In this plan, the MCCCH project did not take any concrete form, but its name appeared: "... the developments of Metropolitan Central Connection Artery, Northern Trans-Kanto Road, ... should be promoted." The project appeared in the subsequent Metropolitan Master Plans. The MCCCH project was also included in the 10th Five-Year Road Development Plan in 1985, and also in the 4th National General Development Plan in 1987.

Preliminary Negotiation

In 1988, the local office of MoC and Yokohama City jointly began information sessions following the decision of the central government. This was a voluntary process that was not stipulated by law. The information sessions were held in a typical format. The authorities first explained the plan with the detailed alignment of the highway. Then, "question and answer" sessions followed.

(continued)


119 Summary sheet obtained from MoC, Kanto Regional Construction Bureau

120 Interview with Togashi, A., pers. com.
Community groups in the area formed two groups to protest against the project: Renkyo and Allied Four Community Groups.

Following the process, the authorities changed their plan in three ways:

- reduced the size of Sakae interchange (12ha to 9ha)
- canceled the community road within the Shodo area.
- reduced the size of the tunnel outlet.

These changes were achieved through negotiations between the MoC and the city only, and did not involve the opposing parties in the actual alteration of the plan.

Urban Planning/Environmental Impact Assessment Process

_Urban Planning Process by Yokohama City_

First, the city tried to start preliminary sessions in August, 1990 with assistance of local community groups, but the community groups resisted such meetings. Even when the city government could arrange a meeting place, opponents physically obstructed the meeting. City officials were not given a chance to explain their plan.

Formal sessions started on December 12. Again, the opponents obstructed the meetings. They blocked city officials from holding the meeting: they forcefully closed the entrance of meeting halls so that no one could attend. What the officials did in response was to explain the plan through amplified speakers outside the hall, which was suddenly stopped because the residents near the hall claimed that it was extremely noisy. Finally, no meeting was actually held in the scheduled manner.

On the other hand, an organization supporting the project, which is composed of business interests organizations in Yokohama, held a meeting to demonstrate their support. Simultaneously, the city accepted formal letters of opinions from December 14, 1990 for two weeks. About 430,000 letters are submitted. Two thirds of them opposed to the project. Each opponent submitted more than two letters, and the actual number of the opponents was found to be less than the proponents. On the contrary, about 60% of the opinion supporting the project came from outside the city.
The Urban Planning Council did not warrant any of these statements, and authorized the city's original plan as proposed on May 28, 1991. At the final meeting, opponents rushed into the city hall to demonstrate their opposition, but the city lined up about 100 officials in the staircase to stay them from coming into the meeting hall.

**Urban Planning Process by the Prefecture**

The Kanagawa prefecture started its urban planning process following the decision by the Urban Planning Council of Yokohama. The prefecture did not hold any information session. Instead, they held formal public hearings. About five thousand people applied to appeal their opinion, but the hearing sessions were again disrupted by the opponents. Prefectural Urban Planning Council reviewed the comments from the public, and authorized the amendment. The prefectural government formally announced the amendment to its Urban Plan in 1995.

**Environmental Impact Assessment Process by the Yokohama City**

Yokohama city then started Environmental Impact Assessment (EIA) process while the prefecture was proceeding the Urban Planning process. On May 27, 1992, The city and prefecture jointly announced that they will initiate the EIA process. First, the city published their preliminary EIS and accepted *letters of opinion* for 45 days. Meanwhile, the city tried to hold information sessions for the preliminary EIS. Again, these sessions were physically obstructed by the opponents. One of the sessions lasted for 11 hours, and the opponents enclosed the officials within the hall until early in the morning, when the police came to help them out. The opponents argued that the information session cannot be accepted as a valid session, but the city stopped holding meetings claiming that the meeting was valid. The opposing groups sent protest notes to relevant authorities claiming that the city should resume the session.

The opposing groups submitted about 120 thousand *letters of opinion*, although the total was 140 thousand. According to the ordinance, the city should respond to these
letters in the final EIS. The city published the final EIS in December, 1993. The city again accepted letters of opinion for 20 days, and the opposing groups submitted 260 thousand letters.

The final EIS was reviewed by EIA review board. In June 1994, the board announced its evaluation of the EIS, stating that the process was fair, although the following additional mitigationary measures should be taken.

1. Build another fan to remove emission from the tunnel
2. Reduce the size of open-cut area, add louvers on the open-cut sections
3. Control the emission from the tunnel while reverse-layer exists
4. Use technology to avoid subsidence
5. Create subsidiary wetland, and conserve specific Japanese straw.

The opponents, however, were not satisfied with these conditions, and apparently offended to know that the process was legitimized.

The city officially announced the EIS in April 1995, and the EIA process ended.

**After the Formal Process**

Following the formal process, the city started informal negotiations with the opponents again, but absolutely no progress has been made through this dialogue. The opponents also petitioned to the Minister of Construction and the head office of the Environmental Agency.

In addition, they initiated the following lawsuits asking for an injunction against the project, and two of them have not yet been settled:121

1) Hoax Leaflet Problem: The city distributed a leaflet in which a map showing a section extending 200m would be built underground, which was not true. The group (Renkyo) requested an audit of the city, claiming that the expenditure on this “hoax leaflet” was not legitimate. The request was rejected, but the group brought the case to a court. The
group lost the case, but it is not clear whether the group has a plan to appeal. (Administrative Suit)

2) Land Price Problem: In 1983, the city purchased part of the site from M—Real Estate for 9,000 yen per square meter. Between 1986 and 88, the city purchased other parts of the site from other companies for 170,000 yen per square meter. The group raised question about this difference in price, and again requested an audit. The city rejected the call again, and the group sued. No judgment has been secured. (Administrative Suit)

3) Developers, who sold the lots to the residents, are being sued. They are being charged with negligence of telling important facts.” (Civil Suit)

Recently, the groups physically obstructed the city’s surveying effort.

(continued)

Interview with Minagawa, S., leader of the protesting groups; selectman of the Yokohama City Assembly
Comparison of Processes and Outcomes

Introduction

Although the scale of these two projects is quite different, they both involved a dispute over highway construction with some environmental impacts. I believe the differences in the two cases tell us something about the advantages of mediation. First, I will analyze obstacles in using mediation in the Route 2A case and possible obstacles if mediation is introduced to the YCH case. They are compared to identify what conditions should be improved to use mediation in the YCH dispute. Then, I will use the four criteria suggested by Susskind and Cruikshank: Fairness, Efficiency, Wisdom, and Stability — to discuss and compare the two results.122

Obstacles to using mediation

First, I analyzed the obstacles when mediation was introduced into the Route 2A case. As the conflict perpetuated for more than a decade, most of the stakeholders were interested in dispute resolution except for the highway department. MHD was reluctant to participate in the effort at the outset. MoDR had troubles in persuading its officials to come to the table before the first meeting. However, there seemed to be no other big problems in starting the mediation effort. Obstacles arose only from the MHD’s unwillingness to participate.

Then, I examined possible obstacles when mediation was introduced to the stakeholders in the YCH case. Officials of MoC might be reluctant to initiate or participate in mediation. However, MHD was also reluctant in the Route 2A case. In this point, these two cases have a similar characteristic. The major difference between these cases would be

122 Susskind and Cruikshank, Op. Cit., pp. 21-33
See also p. 16 of this thesis

81
<table>
<thead>
<tr>
<th>Obstacle to using mediation</th>
<th>Route 2A</th>
<th>YCH</th>
</tr>
</thead>
<tbody>
<tr>
<td>No legal mandate</td>
<td>MHD did not have any obligation to obey the LCC's denial.</td>
<td>It is unlikely that MoC and the city will lose lawsuits against the project</td>
</tr>
<tr>
<td>No cost of delay</td>
<td>Many fatal accidents happened. Immediate action was necessary.</td>
<td>Only traffic congestion around the site is big problem.</td>
</tr>
<tr>
<td>No political interference</td>
<td>Elected members of LCC voted against the project. A senator came to a meeting.</td>
<td>Local politics are inactive about this case. The party in power supports the project.</td>
</tr>
<tr>
<td>Public involvement/participation requirements</td>
<td>No further public involvement process was required</td>
<td>No more public participation is required by laws.</td>
</tr>
<tr>
<td>Officials' fear to lose decision-making authority</td>
<td>At the outset, MHD was reluctant to come to the table</td>
<td>Officials believe that the decision at the national government can't be changed.</td>
</tr>
<tr>
<td>Problems in finding a qualified mediator</td>
<td>MoDR took initial efforts. It found a mediator from its environmental panel of neutrals.</td>
<td>No professional mediator/facilitator exists.</td>
</tr>
<tr>
<td>Very little experience of mediation</td>
<td>Some stakeholders were skeptical at first.</td>
<td>No one knows mediation.</td>
</tr>
<tr>
<td>No promise of definitiveness</td>
<td>The dispute had continued for more than a decade. Definitiveness is not important.</td>
<td>Officials don't think this disputes can be settled and won't expect definitiveness.</td>
</tr>
</tbody>
</table>

H: high, M: medium, L: low
the treatment of the official’s unwillingness to participate. In other words, the success of the Route 2A case lies in the way highway officials were motivated to come to the table.

By comparing the obstacles in using mediation in these cases, I found two major obstacles that might be unique in the YCH case (see Table 3-1):

No Political Interference

LCC was composed three “elected” officials, and the LCC’s denial of the proposal by MHD and the town triggered the whole dispute. Without the denial, the case would not have been referred to DEP, and mediation would not have been used. LCC was not an organization to evaluate the proposal from the standpoint of environmental protection. Thus, those who were concerned with its environmental impacts could achieve their goal by mobilizing the members of LCC. In this way, LCC worked as an instrument to deliver the aspiration of the environmentalists to have their opinions heard.

In addition, a State Senator came to a meeting, and this changed the tone of MHD.¹²³ This was an explicit form of political interference to encourage the use of the consensual approach.

On the contrary, few political interference to the YCH case has been made. The leader of the protesting groups stood for the last election and won a seat in the municipal assembly of Yokohama. However, he has not yet build any coalition with other representative to substantiate his opposition against the project. The political party in power of the local legislature, Liberal Democratic Party, is in support of the project. The city does not have any other representative organization that has power to vote against official’s decisions. Therefore, political pressure is much weaker in the YCH case.

Difficulties in Finding Qualified Mediators

MoDR and DEP had handled disputes over wetland preservation through an institutionalized program. Thus, they had an expertise to initiate mediation efforts.
MoDR explained mediation to the participants, persuaded them to come to the table, and managed to set a schedule for the first meeting in lieu of the stakeholders. The office had an environmental panel of neutrals and could find an mediator in the list. Without these initial efforts by MoDR, this mediation could have taken a longer time.

The existence of mediation firms around Boston area is another factor that eased the difficulties in finding mediators. Currently, there are at least ten mediation firms.\textsuperscript{124}

In Japan, informal mediation has not yet been used in settling highway disputes. Each prefecture and the national government have independent organizations for formal mediation procedures, but they do not work on informal efforts.

**Four good outcomes of the consensual approach**

**Fairness**

In the Route 2A case, the dispute continued for more than a decade, while the stakeholding groups were relatively obvious. MoDR and DEP went to great efforts to identify the full range of stakeholding groups, and identified NPS and the city of Cambridge which had not been directly involved in the dispute. Without this preparation before the actual mediation, these parties might have been left out. The legitimate concern of the city of Cambridge to protect the quality of its water supply was achieved not only through mediation, but also by the side agreement with MHD. The mediation effort achieved full participation of all stakeholders in the Route 2A case. Thus, the process was fair in terms of participation.

In addition, the participants identified safety as their most important concern in planning the road. Although an alternative to reduce the number of lanes to three would have been highly attractive to the environmental faction, they agreed to withdraw it because it would not be safe enough. Thus, the mediation process encouraged the participants to

\textsuperscript{(continued)}

\textsuperscript{123} Interview with a representative of LCC, \textit{pers. com}.

Table 3-2: Comparison of Four Good Outcomes

<table>
<thead>
<tr>
<th></th>
<th>Route 2A</th>
<th>YCH</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Fairness</strong></td>
<td>✓ All stakeholders participated (including those without direct influence)</td>
<td>✓ Proponents other than authorities did not have a chance to voice their concerns.</td>
</tr>
<tr>
<td></td>
<td>✓ Key concerns of highway users — safety — was given high priority.</td>
<td>✓ The process did not identify the full range of people affected by the proposed highway.</td>
</tr>
<tr>
<td><strong>Efficiency</strong></td>
<td>✓ It resolved a ten-year dispute in less than a year</td>
<td>✓ Nothing productive happened through the required procedures.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓ Lawsuits followed.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓ (The process itself might have been shorter than mediation)</td>
</tr>
<tr>
<td><strong>Wisdom</strong></td>
<td>✓ Participants fully understood traffic forecasts.</td>
<td>✓ Disputes over traffic and air quality forecasts were left unattended.</td>
</tr>
<tr>
<td></td>
<td>✓ Agreement included innovative ideas.</td>
<td>✓ Other issues were not considered.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>✓ (The project was innovative)</td>
</tr>
<tr>
<td><strong>Stability</strong></td>
<td>✓ Communication and implementation teams were created</td>
<td>✓ Implementation was impeded by the opponents.</td>
</tr>
</tbody>
</table>

consider the interests of the broader public, and they strove to find an agreement that would be viewed as fair by all sides.

The planning process of the YCH project was not fair in several regards. Most of the meetings were disrupted by the opponents, and both authorities and protesting groups did not have a chance to express their concerns. They did rely on various media which
succeeded in polarizing the sides and framing the discussion in “Yes or No to the project” terms. Legitimate stakeholders, such as other abutters that bore sufferings from the traffic jam were ignored. Such people might welcome the project because it would alleviate traffic, but they might also dislike it because it would destroy the environment. The conventional process did not identify the full range of people with diverse interests in the highway planning decision.

Efficiency

The mediation effort in the Route 2A case was obviously efficient. The conflict about the highway design continued for 12 years, and the Town of Lexington and MHD could not take steps to stop the road accidents. With the assistance of a mediator and MoDR, they resolved the dispute in nine months.

In the YCH case, the dispute was not settled through the required Urban Planning and EIA processes, although some changes were made in the initial proposal through the information meetings. One of the information meetings was disrupted by the protesting group, and both officials and the groups were locked in the meeting hall until the dawn of next day, without any constructive discussion. Other meetings were also disrupted, and nothing productive happened in these sessions. These meetings were obviously inefficiently managed, and the resources both parties invested in these efforts were wasted.

After the process finished, the protesting groups filed three lawsuits against the city of Yokohama. One has been dismissed by a district court, but two others are still under deliberation. If one of the process’s purposes was to achieve acceptance of the project, the process was inefficient in that respect.

Wisdom

Several meetings in the Route 2A case were spent on discussions about traffic. They first listened to the explanation by the town’s traffic engineer, and each party questioned and analyzed the assumptions and forecasts relying on their own expertise.
They all understood and agreed some other alternatives were not acceptable because of poor performance in regard to safety. Thus, they developed and shared a way to evaluate project alternatives.

They also decided not to pave the shoulder along a part of the road. Instead of paving with conventional materials, MHD agreed to cover with glass or gravel, which they called “soft materials.” This innovative and wise solution would not have been possible if the department had stuck to its technical standards.

The YCH dispute involved some incompatible assumptions in the technical analysis. Although the authorities prepared a forecast of environmental impacts for their EIS, the protesting groups prepared their own scientific studies of air quality which supported their argument. They also attacked the traffic forecast prepared by the authorities. Both sides were trapped by the pitfalls of advocacy science. The conventional process, including the EIA process, did not identify the most useful information to minimize future risks, and both sides still believe in only their own analyses. Advocacy science impairs the development and incorporation of wisdom.  

The conventional process did not added any innovative features into the plan. Since productive discussions did not occur among the parties, the outcome is no wiser than the initial proposal. However, I would say that the proposal itself was fairly innovative because almost all parts of the highway were to be built underground.

**Stability**

The Route 2A case is still thought of as the most successful highway mediation effort in New England in the past few years.  The agreement included a mechanism to ensure enforcement. The stakeholders organized a “communication and implementation team,” which was managed by DEP. However, there were some minor difficulties during implementation. The parties tried to renegotiate the agreement, and one of them is

---

126 Interviews with several mediators and professionals
currently not satisfied with the way DEP dealt with them.\textsuperscript{127} However, the mediation process settled the major dispute, and the actual constructions started in September 1997.

It might be too early to discuss the stability of the YCC project because no construction has begun. However, the protesting group successfully stopped the city's surveying effort. The city had to survey the site during the New Year holiday season to avoid the disruption. If the level of contention on the resident's side is sustained, the protesting groups will probably try to use more radical measures to stop the project, which will put the implementation of the project in doubt.

\textsuperscript{127} Interview with a representative of LCC, \textit{pers. com.}
Chapter 4

Alternative to the Conventional Process in Japan

— a thought experiment —
Introduction

Although mediation and consensus building have been used successfully to settle highway disputes in the United States, there is still a question as to whether these techniques can be applied in the Japanese context. Different planning processes and other considerations, such as Japanese culture, might impede their successful application. Misunderstandings of the consensus building process might also hinder its acceptance. In this chapter, I will conduct a thought experiment to identify the likely problems associated with the application of consensus building techniques to the case discussed in the previous chapter.

In this experiment, I prepared a proposal describing what could have happened if consensus building was used in the planning of the Yokohama Circular Highway South project before the conflict crystallized. The proposal, with a short description of the actual process, was circulated to Japanese professionals with experience and knowledge in highway planning. My questionnaire asked 1) their general attitude toward public participation; 2) whether they think consensus building can be used in Japan; 3) what the problems in its application might be; 4) what can be done to improve its applicability; and 5) how they perceive its advantages and disadvantages. Their responses provide the basis of my advice regarding the use of consensus building in highway planning.
Consensus Building Proposal

Purpose and Assumptions

My consensus building proposal was prepared for professional consideration. Therefore, it is not the actual proposal put forward in this thesis. Instead, their reviews and comments are an integral part of my proposal along with other conclusions discussed in the previous chapters.

There are several key assumptions in the consensus building process. First, I assumed that the actual dispute of the YCH case would be completely avoided if the authority used the consensus building process successful in the United States. This is an assumption that should be tested by the professionals in Japan. However, their disagreement with the proposal does not imply that consensus building is totally inapplicable in Japan. Instead, their comments on how to revise the process to fit the Japanese context will be thoroughly examined and integrated into my final proposal.

There are some elements that cannot be understood until the consensus building process is actually used in Japan. Professional mediators or facilitators practicing informal mediation/facilitation to settle policy-related disputes do not exist in Japan. Thus, the second assumption of the proposal is that the actual person who will take the facilitator's role is left to the reviewer's inference. Costs and time necessary to reach an agreement are also difficult to calculate before actual application. These elements vary significantly — even among the past mediation efforts in the United States. Thus, the third assumption is that the cost and time involved in using consensus building are not knowable.

Proposal

The English version of my proposal was prepared with the assistance of Professor Lawrence Susskind. It suggests using a forum, called a Consensus Building Advisory Committee, to facilitate dialogue among diverse stakeholders before starting a formal
processes. The proposal is comprised of three elements describing 1) how the committee should be created; 2) how the committee meetings should be conducted; and 3) what might happen and what should be done after reaching an agreement. Then, it was translated into Japanese and mailed to the 14 professionals in Table 4-2.

Creating An Advisory Committee

To help initiate a credible consensus building effort, the authorities should have created an Advisory Committee.128 The aim of the Advisory Committee should have been to think about who should have been asked to participate. It should also have set a ground rules and an agenda stipulating the way in which meetings would be conducted, as well as a time table and a budget support to ensure adequate involvement of all stakeholders.

A professional facilitator129 should be invited to assist the Committee. The facilitator needed be perceived by all stakeholders as non-partisan. He/she should have been asked to conduct the process not as a delegate of the authorities, but as a neutral manager. The authorities would still have retained the formal decision-making authority, but they would sit at the table as participants.

Before the first meeting of the Advisory Committee, the facilitator should have contacted a whole range of local community groups, elected councilors, and distinguished figures in the area. With information collected through fast-hand observation, secondary sources, and interviews, the facilitators should have been able to identify the interests of the various stakeholding groups.

The facilitator should then have invited people to attend the first Advisory Committee meeting. He/she should have announced the meeting of the Committee through various media to inform all possible participants.

For preparation, the facilitators should have helped the community groups to choose their spokespeople. The facilitator might have tried to reduce the number of

128 Shimon-Inkai in Japanese
129 Giji-Sokushin-Sha in Japanese
participants involved by combining several groups with similar views and interests.

Then, the facilitator should have submitted draft ground rules to the Committee. The ground rules must have stipulated the ways in which the meetings would be conducted. They could also have suggested a time table, acceptable behavior of the participants, and rules for dealing with the media. The participants would have had a chance to review a draft of the ground rules before the first meeting.

Finally, the facilitator should have prepared a draft agenda for the Advisory Committee to consider. The agenda would have stipulated the items to be discussed by the Committee. By that time, the facilitator should know the interests of the participants through interviews and meetings, and should be able to suggest an agenda for the Committee to finalize. In addition, the authorities should have promised to follow the recommendation of the Advisory Committee if an informal consensus was reached.

The Structure of the Advisory Committee

The aim of the Advisory Committee would be to reach an agreement on the project. However, this process would produce recommendations. The authorities would use the recommendations as the basis for their decision-making.

The Committee would also produce newsletters to inform the public of its work. At the outset, the facilitator could take the initiative to publish the newsletters, but he/she would gradually try to have the Committee members assume their responsibility.

Membership:

Before holding the first meeting, the facilitator and the participants should check the membership of the Committee. They should search for people with other interests that are not represented on the Committee, and make sure to invite them to the first meeting so that the process will be viewed as fair. Its size does not have to be limited, but the facilitator should encourage the Committee to stay as small as possible and to avoid augmenting the influence of a particular party by mobilizing as many people as possible.
(meetings should be open to public). There have been successful cases where the number of committee members has exceeded 50.

The Committee and facilitator should also check to determine whether each representative really represents his or her constituents. Some of the members might not be in a position to commit to an agreement because they lack authority within their organization. If so, the Committee should try to replace such members, or should be aware of the limits on their authority. In addition, the facilitator should try to understand how much skill and knowledge each member has so that he/she can organize the following activities appropriately.

First Meeting:

The first meeting of the Consensus Building Advisory Committee should be held at local an elementary school or community hall. The facilitator should lead the meeting according to the ground rules and the agenda approved by the Committee. Anyone who wants to participate should be invited to the meeting, but the facilitator should chair the meeting to avoid disorder. If he/she finds someone with a view that is substantially different from any of the committee members, the group can add that person as a member. The facilitator should explain why and how an agreement will yield a better outcome for all the participants than a legal battle or ongoing political demonstrations.

Stakeholder Analysis:

The facilitator should prepare a Stakeholder Analysis. This is a report describing 1) a list of the concerns of all categories of stakeholders, including those who don’t participate in the Committee, 2) a list of stakeholders who should be invited to join the Committee, and 3) suggested goals, tasks, and activities of the Committee. This should be prepared by the facilitator based on comprehensive interviews. A Stakeholder Analysis gives the participants an overview of the different concerns and interests of all stakeholding groups so that they can make sure that all concerns are addressed by the Committee. It
also helps them understand the process of consensus building that the Committee will follow.

Orientation:

The facilitator can also advise the Committee members on inviting distinguished professionals to offer lectures on relevant issues. These professionals should be selected because they are neutral with respect to the outcome of the process. In addition, their expertise should be considered to be superior to those of the stakeholders. The facilitator can help the Committee to find appropriate experts.

Such lectures can bring those participants without enough scientific knowledge up to a level where they can debate the issues more effectively.

Role Playing Exercises:

Role Playing Exercises can help the participants become more effective negotiators. Every participant of a simulation has to play the role according to a set of assigned rules, not to their actual positions. For example, those who are protesting the project will be assigned to play a role of the authorities. This exercise can help the Committee members build understanding of the other party's positions.

Subcommittees:

Following discussions in the Committee sometimes in several meetings, the facilitator should be able to identify a few key issues that need to be negotiated. The facilitator should advise the participants to form subcommittees, in which the participants will discuss intensively these topics. For example, they can form an Air Quality Subcommittee and a Natural Environment Subcommittee. The facilitator should also chair these meetings of the subcommittees according to the general ground rules approved by the groups.

The general meetings of the Committee should be held periodically even after the
subgroups are formed. The discussions in each subgroup should be used to update the general meetings.

Joint Fact Finding:

The members of each subcommittee should jointly investigate current conditions, and forecast the potential impacts of the various project options, and consider the pros and cons of moving forward in different ways. For example, the circulation of air around the area and the projection of the air quality will be investigated by the participants.

Consultants and professors assisting the authorities and proponents should participate in this process to elucidate their assumptions through modeling and forecasting. Contending parties tend to agree with scientific evidences only which support their own arguments. This is called advocacy science. To disengage the parties from advocacy science, the differences in assumptions should be clarified.

A skilled facilitator should be able to divert the participants' attention from the contending interests to fact-finding. He/she should be careful not to let the participants advocating the evidence that supports their own interests.

Brainstorming:

The Committee with the help of subcommittees should invent as many options as possible before trying to frame an agreement. The aim of the effort should be to create an alternative that is satisfactory to all the parties. During this process, the options proposed by the participants should not be evaluated until the facilitator determines that no more options can be invented. With such a condition, the participants become more creative without the fear of personal attack.

To help the participants to invent options, a technique called brainstorming should be used. The facilitator is extremely important in this technique. In brainstorming sessions, the facilitator collects the ideas for options from the participants. A recorder, who keeps a record of the comments, is often used to assist the facilitator to build a group
memory. The facilitator admonishes those who make rebuttals or criticisms against options that are suggested. The facilitator also pays attention to the fairness and the effectiveness of the meeting. For example, he/she should use the skill and the ground rules to direct the attention to those who make few comments, or to deal with people who cause problems.

For example, the parties might suggest more greenery on the road, reduced number of lanes, development of a park, and improvements in public transportation. The formal Urban Planning process has not started, and it is not painful for the authorities to change their initial proposal. In fact, it is normal to change the plan at this stage.

Packaging—Dealing with Differences—:

When the facilitator finds that the participants have no additional options to suggest, he/she should start meetings to negotiate the final agreement. The key to reaching an agreement is the mutual gains approach. The participants should try to identify items they value differently, and combine several of them into a package. For example, the residents may put much higher value on cleaner air than on the traffic volume. The authorities may want to secure as much traffic volume as possible even at a great expensive. If so, they both may agree with a plan to build another ventilation fan for the cleaner air and one more lane for the higher traffic volume.

Some participants might be reluctant to make an initial offer to settle because they worry about being perceived as weak. In such cases, the facilitator should contact each participant privately, and identify what kind of deal is possible. He/she should keep the information gathered through the interviews confidential. When the facilitator identifies a possible deal among the parties, he/she should suggest the deals in the Committee. In this manner, the facilitator can assist the parties in reaching an agreement that is beneficial to all the parties, without making any of them look weak. The facilitator should take care to remain neutral during the process. In other words, he/she should not be seen as advocating more strongly for one proposal than another.
Drafting/Signing Recommendations:

The facilitator should draft the final agreement using what is called a single text approach. He/she should bring a draft around to the parties, and ask each to improve it. The agreement should be titled “Recommendations of the Advisory Committee.”

The recommendations should be signed by all the Committee members after they have had a chance to present the draft to their constituents. The facilitator should help each representative in gaining support for the agreement within their organization.

The Formal Urban Planning and Environmental Impact Assessment Process

Even if the parties do reach an agreement, the authorities still need to go through the formal Urban Planning and Environmental Impact Assessment processes. The authorities should propose a plan that builds on the consensus reached and is in line with the Recommendation offered by the Committee.

In the Urban Planning process, the authorities should hold brief informational sessions in accordance with the usual practice. Contrary to what usually happens, it is unlikely that community groups will protest against a plan if they helped to create it.

In the EIA process, the authorities should try to use the data collected through the joint fact-finding process of the Committee. These data will save time and cost in preparing the Environmental Impact Statement. In addition, the community groups might revolt if different data are produced by the EIS.

Monitoring

The members of the Advisory Committee should confirm that their forecasts were reasonable and participate in post-implementation monitoring efforts. Monitoring needs to be conducted by all the relevant parties. The Committee may include a clause in its agreement to create a Monitoring Committee. All members of the Committee should be involved. It is desirable to stipulate compensatory measures in the recommendations in case significant discrepancies from the forecast become apparent.
Questionnaire and Response

Questionnaire

To figure out the problems likely to arise in applying the consensus building process, I prepared the following questionnaire to go with the proposal (see Table 4-1). The questionnaire has two parts; one focused on attitudes toward public participation, and the other deal with the response to my specific proposal. The first part identifies the professionals' views about the need for public participation in general. It also clarifies how open each individual is to my proposal because they are not, they are less likely to accept my proposal. The second part identifies the specific problems in the application of consensus building to the highway planning process in Japan. This part also questions their perceptions of the advantages and disadvantages of the process in light of the four criteria suggested by Susskind and Cruikshank. Negative responses to the proposal identify their major concerns and the obstacles to encouraging the use of consensual approaches in Japan.

The proposal and questionnaire, with a short explanation of the actual process in the YCH project, were sent to professionals working on highway-related planning or projects in the following four categories:

- Government officials
- Professors
- Activists/Lawyers
- Consultants

They were chosen from my personal contacts and other second-hand contacts. Government officials are MoC employees in the Road Bureau with several different backgrounds. Some of them are working in its headquarters, and others are in local field

---

Table 4-1. Questionnaire about the Proposal

I. I will ask you general questions:
1. How long practical experience do you have?
2. Do you think that some improvements are necessary for consensus building efforts in highway planning process in Japan? Please choose one from the below:
   - Strongly necessary
   - Somewhat necessary
   - Mostly unnecessary
   - Not necessary at all
3. Which phrase below best fits your opinion about the direct participation of citizens or residents in consensus building efforts in each highway design process
   - Should be increased
   - No change
   - Should be decreased

II. I will ask about the Consensus Building Process proposal
1. Do you think that the Consensus Building Process proposal can be realized? Choose one that most fits your opinion: Yes / No / Don’t know
   (If your answer is “No,” please skip to Question 3)
2. (If you answered “Yes” for Question 1)
   How might the Consensus Building proposal be changed to enhance successful implementation?
3. (If you answered “No” for Question 1)
   What are the major problems that makes the proposal impossible?
4. (If you answered “No” for Question 1)
   How might the Consensus Building proposal be changed to make it possible?
5. Compared with the actual process, what advantages and disadvantage do you see in the proposal in regard to the four key words: Fairness, Efficiency, Wisdom, and Stability?
6. Who might be able to perform the professional neutral’s role in Japan?
7. Please indicate other people I should talk to about these ideas.
Table 4-2: List of Interviewees

<table>
<thead>
<tr>
<th>Government officials</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ Yusho Ishikawa, MoC, Road Bureau, Planning division</td>
</tr>
<tr>
<td>✓ Mitusio Arino, MoC</td>
</tr>
<tr>
<td>✓ Shinji Fukushima, MoC, Kanto Regional Construction Bureau</td>
</tr>
<tr>
<td>✓ Atsuhide Togashi, MoC, Kanto Regional Construction Bureau, Yokohama Road Construction Office</td>
</tr>
<tr>
<td>(The current project manager of the YCH project)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Professors</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Members of Road Council</strong></td>
</tr>
<tr>
<td>✓ Shigeru Morichi, Professor, University of Tokyo, Department of Civil Engineering</td>
</tr>
<tr>
<td>✓ Haruo Ishida, Professor, Tsukuba University, Department of Social Engineering</td>
</tr>
<tr>
<td>✓ Tetsuo Yai, Assoc. Professor, Tokyo Institute of Technology, Department of Engineering</td>
</tr>
<tr>
<td><strong>Other Professor</strong></td>
</tr>
<tr>
<td>✓ Hideaki Shiroyama, Visiting Professor, Massachusetts Institute of Technology</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Activists/Lawyers</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ Shohei Sakawa, Lawyer</td>
</tr>
<tr>
<td>(worked with community groups to fight against some infrastructure projects in the Osaka region)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Consultants</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ Kotaro Nagasawa, Mitsubishi Research Institute</td>
</tr>
</tbody>
</table>

offices. Three professors were members of the Road Council, which promoted public involvement in their policy report. Some other professors were the members of a research team set up by JH which conducted research on public participation issues in several countries. Activists/lawyers are individuals or groups that have been working to protest several kinds of national infrastructure projects. Consultants are those who have conducted research on public involvement policies or who are practicing neighborhood planning. Most of these people are nationally recognized figures with a prospect of changing the national policy on handling disputes over infrastructure projects.

Ten individuals have responded to the questionnaire: four from MoC, four professor, one lawyer, and one consultant (see Table 4-2). One of the officials gave a general comment. Table 4-3 shows the summary of their responses.
Table 4-3 (a): Summary of Responses

<table>
<thead>
<tr>
<th></th>
<th>Government Officials (3)</th>
<th>Professors (4)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Years of Experience</strong></td>
<td>8.7</td>
<td>19</td>
</tr>
<tr>
<td><strong>Is it necessary to improve the process?</strong></td>
<td>Moderately Necessary: 2</td>
<td>Strongly Necessary: 3</td>
</tr>
<tr>
<td></td>
<td>Almost Unnecessary: 1</td>
<td>Moderately Necessary: 1</td>
</tr>
<tr>
<td><strong>Should residents have more chances of participation?</strong></td>
<td>No: 3</td>
<td>Yes: 4</td>
</tr>
<tr>
<td><strong>Is it likely that the proposal can be realized?</strong></td>
<td>No: 3</td>
<td>Yes: 2 (Yes/No: 1)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>What should be changed to make it more likely?</strong></th>
<th><strong>What are the problems that makes it impossible?</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Clarity the way to select committee members</td>
<td>Issues to be discussed: “Build or not” or design aspects only?</td>
</tr>
<tr>
<td>Use of survey to identify proponent’s views</td>
<td>Some organization might just resist participation</td>
</tr>
<tr>
<td>Improve the measure to involve public officials</td>
<td>Trained facilitator doesn’t exist</td>
</tr>
<tr>
<td>Deal with value disputes</td>
<td>Facilitator’s work is too much</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>What should be changed to realize it?</strong></th>
<th><strong>What are pros and cons in terms of the following criteria?</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Require a deadline</td>
<td><strong>Fairness</strong></td>
</tr>
<tr>
<td>Assume an implementation of the project</td>
<td>- Evaluation with a broad range of opinions</td>
</tr>
<tr>
<td>Don’t require an unanimous agreement</td>
<td>- Transparency of the process</td>
</tr>
<tr>
<td></td>
<td>- Disruptions can’t be avoided with the proposal</td>
</tr>
<tr>
<td></td>
<td><strong>Efficiency</strong></td>
</tr>
<tr>
<td></td>
<td>- Implementation is easier if realized</td>
</tr>
<tr>
<td></td>
<td>- Take too long time to reach an agreement</td>
</tr>
<tr>
<td></td>
<td><strong>Wisdom</strong></td>
</tr>
<tr>
<td></td>
<td>- More information will be shared</td>
</tr>
<tr>
<td></td>
<td>- Evoke misunderstandings with more information</td>
</tr>
<tr>
<td></td>
<td><strong>Stability</strong></td>
</tr>
<tr>
<td></td>
<td>- If realized, mutual trust and possibility increase</td>
</tr>
<tr>
<td></td>
<td>- (but not likely to reach an agreement)</td>
</tr>
<tr>
<td></td>
<td><strong>Who can take the facilitator’s role?</strong></td>
</tr>
<tr>
<td></td>
<td>- Professors</td>
</tr>
<tr>
<td></td>
<td>- Local officials</td>
</tr>
<tr>
<td></td>
<td>- Consultants</td>
</tr>
<tr>
<td></td>
<td>- Professors</td>
</tr>
<tr>
<td></td>
<td>- Officials</td>
</tr>
</tbody>
</table>

*Silent majority*

*NIMBY syndrome*
<table>
<thead>
<tr>
<th>Years of Experience</th>
<th>Activists/Lawyers (1)</th>
<th>Consultants (1)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>25</td>
<td>15</td>
</tr>
</tbody>
</table>

**Is it necessary to improve the process?**
- Strongly Necessary: 1
- Moderately Necessary: 1

**Should residents have more chances of participation?**
- Yes: 1
- Yes: 1

**Is it likely that the proposal can be realized?**
- Yes: 1
- No: 1

**What should be changed to make it more likely?**
- Choose an appropriate person for the facilitator
- Clarify investments in the joint fact finding efforts (time/size of research)
- Committee members should have strong characters and knowledge

**What are the problems that make it impossible?**

- Existence of a person perceived as neutral by all stakeholders
- Effort to reduce the number of members will aggravate some groups
- Facilitator's work is extremely hard

**What should be changed to realize it?**
- Clarify payment structure
- Secure facilitator
- Reduce workload of facilitator
- Set up support staff for facilitator
- Enforce those resist to participate

**What are pros and cons in terms of the following criteria?**

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Pros</th>
<th>Cons</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Fairness</strong></td>
<td>Better than the conventional process Possible unfair outcomes</td>
<td>Depends heavily on the facilitator's personality</td>
</tr>
<tr>
<td><strong>Efficiency</strong></td>
<td>Can avoid conflicts afterwards Paternalistic decision-making might be more “efficient”</td>
<td>Facilitator's proposals may escalate the conflict</td>
</tr>
<tr>
<td><strong>Wisdom</strong></td>
<td>The best consequence of consensus building</td>
<td></td>
</tr>
<tr>
<td><strong>Stability</strong></td>
<td>(Depends on the discussions in the committee)</td>
<td>(Depends heavily on the facilitator’s skill)</td>
</tr>
<tr>
<td><strong>Who can take the facilitator’s role?</strong></td>
<td>Professors Consultants (He doubts the existence of skilled person who can finish the tasks.) (Too hard for lawyers)</td>
<td>Members of Eminent Domain Committee Heads of local school boards Local professor</td>
</tr>
</tbody>
</table>
General Attitude Toward Public Participation

Eight out of nine professionals, including two government officials, identified that the current process could be improved. Thus, they recognize that the current practice is not perfect and are inclined to consider alternative ways to build consensus. The one who answered in the negative tone was the project manager of the YCH project who actually conducted the process.

However, their perception about the need for more direct participation was split between government officials and others. All three government officials thought there wasn’t a need, and others thought there was. This indicates that the government officials are more reluctant to accept the idea of face-to-face meetings with stakeholders.

Response to the Consensus Building Proposal

General Response

Although they seem to be open to the idea of improved public participation efforts, five out of nine, including all the officials, responded that the proposal would probably not work. A lawyer and two professor agreed that it would work. The majority of responses doubt the prospect of my proposal, but these negative responses do not indicate that consensus building cannot be used in Japan. A professor indicated a need to study successful application of the consensual approach in the United States to explore the possibility of using it in Japan. Their concerns need to be investigated thoroughly to modify my proposal and develop strategies for promotion.

What are the Problems?

The responses pointed diverse problems associated with the application of the consensual approach. For example, one professor could envision difficulties in settling value disputes. However, there are four key problems raised in most of the responses.
1) Difficulties in finding qualified mediators

Almost all the interviewees indicated difficulties in finding qualified facilitators or mediators in Japan. As I mentioned, professional facilitators or mediators for public policy disputes do not exist in Japan. Thus, assistance should be sought from someone who engage in other professions and can be perceived impartial and neutral by all the stakeholders. Many responses raised the difficulties in finding such a person in Japan. They suspected that no one would be perceived neutral by all.

In addition, four interviewees worried that the facilitator’s workload would simply be too much. Even the lawyer, who answered most positively, questioned this point. Such a fear could have developed because the proposal did not suggest a possibility of using a team of facilitators and assistants. Some others focused on the facilitator’s personality. They argue that facilitators/mediators should have a strong character to accomplish their work.

2) Representation

Two government officials raised the silent majority problem. It is a notion that the majority of stakeholders tend not to express their concerns because they do not have incentive to do so. They suspected that arguments of conspicuous groups would prevail and the agreement would be unfairly beneficial to these groups. However, my proposal argues that the committee will involve all stakeholders, which implied the full representation of such silent people. Although these answers partly ignored my proposal, they implied their strong concern about the representation of the silent majority.

A professor questioned that some parties would not participate if the project is unlikely to be suspended. There were some other responses similar to this argument. Opponents’ participation might be a big issue in Japan considering their past efforts to disrupt the participatory processes. Some professors also indicated that people in general do not have ability to debate public issues effectively.
3) The NIMBY Syndrome

The third issue is the official's strong perception of disputes as nothing more than the *NIMBY (Not-In-My-BackYard)* syndrome\(^{131}\). One official argued that the highway disputes will not be settled because most of the residents are only interested in shifting the project site and would simply try to push them out of their communities. Other two officials also mentioned NIMBYism.

4) Official's Fear/National Planning

The fourth issue is the fear of the project being denied by the agreement. Especially the officials contend that the project should be planned from a broad perspective and should not be abandoned based only on a local decision.

This problem is also raised by professors in another way. They argued that participation should be taken at the national or regional levels. In fact, the majority of professors are the members of Road Committee which used *public involvement* in creating a national plan.

*What can be done?*

Some interviewees suggested some possible improvements in the process while doubting the prospects for my proposal.

Many interviewees considered that a unanimous agreement would be impractical and should not be considered as a ground rule because some participants might not agree to any agreement. They suggested that the authorities should have the power to force the committee to reach an agreement because some members would not agree with any alternatives. These suggestions might reflect their misunderstanding about the process because the authorities still retain their right to act unilaterally. One of the government officials also mentioned the use of a deadline which had already been included in the proposal.

\(^{131}\) It is also called *LULU (Locally Unwanted Land Use)* syndrome
Two officials and a professor suggested that the consensus building process should proceed with the assumption that the project will be implemented. This derives from their fear that the project might be canceled through the process. However, no one mentioned such an assumption might discourage the participation of some parties.

The consultant was particularly concerned with the facilitator’s hard work, including his/her security. He suggested a possibility of a team of facilitators, which should have been made explicit in my proposal.

**Pros and Cons of the Proposal**

Most of the responses acknowledged the four good outcomes of the negotiated settlement. However, they also indicated that such a settlement would not be possible in Japan.

**Fairness:** In general, they valued the transparency of the process and the integration of diverse interests. Officials worry that the agreement can be unfairly beneficial only to the participants, especially strong ones. A consultant and a professor thought fairness depended on the facilitator.

**Efficiency:** They agreed that the implementation of the project would go smoothly if the agreement were reached. Instead, they thought the process was inefficient in that the consensus building process would take more time than the conventional process.

**Wisdom:** Most interviewees considered consensus building was most effective in this aspect. Information-sharing aspects of the proposal were perceived well, even by the government officials. One of the official feared that technical information would create more misunderstandings by residents.

**Stability:** They agreed that the agreement would be stable, although many of them doubted the possibility of reaching such an agreement.

*Who can take the facilitator’s role?*
The professionals suggested some candidates, but many of them also indicated that it might be impossible to find a person who can actually take the mediator’s role. As is found in the responses to the previous questions, they were highly concerned with the problems in finding qualified mediators.

Conclusion

Four key problems and concerns of the professionals have been identified. They must be fully attended before these officials would consider the actual application of the consensus building process to a highway dispute in Japan. Some of their concerns were based on misunderstandings, but they should not be dismissed. Instead, my proposal must address these misunderstood elements more clearly and explicitly next time.
Chapter 5
Conclusion
— Five Strategies to Promote
the Consensual Approach to Highway Planning in Japan—
Introduction

I have discussed the prospects and pitfalls of using the consensual approach in highway planning. The analysis in Chapter 2 suggests three major differences between the United States and Japan: No Legal Mandate, Political Interference and Difficulties in finding qualified mediators. The thought experiment identified four key concerns that professionals in Japan have: Difficulties in finding qualified mediators; Representation; Strong perception of disputes as nothing more than the NIMBY syndrome and; Fear of the project being denied by the agreement.

Given these findings, what should be done to promote the consensual approach in Japan? I will propose five strategies to promote its uses in highway planning in Japan.

Strategy 1

Remove misperceptions about the consensual approach.

As we have seen in the thought experiment, many officials misunderstood some important aspects of the consensual approach. One of the officials suggested setting a deadline, even though that is typically included in the ground rules of a consensus building process. These misperceptions might be based on assumptions of the traditional public participation efforts.

All public officials were concerned about the silent majority, and they suspected such a majority would not be represented on an Advisory Committee. However, one feature of all consensus building process is to ensure that such silent people are included. In the conventional process, those protesting against highway projects mobilize to raise concerns about the negative impacts of proposed highways. Those who want to express their support, or those who want to discuss particular problems in a constructive manner often feel reluctant to come to such sessions because they want to avoid such controversies. Thus, the problem of the silent majority is created by the conventional process! Instead, mediation tries to bring all possible stakeholders, both for or against the project together, to eliminate the possibility of leaving out legitimate concerns. In other word, the mediator's
Some interviewees worried that consensus building would lead nowhere and disruptions by opponents would continue. If the process is poorly managed, such a disastrous situation could prevail. However, government officials still retain their authority to proceed with their initial proposal if an agreement can not be reached through mediation. The officials insisted in the thought experiment that the national highway projects be implemented because they were decided on at the national level. In other words, the officials working on project planning do not have authority to withdraw projects. Thus, in mediation, they should enunciate their limited authority, and if mediation cannot resolve the conflict by a set deadline, that should trigger the conventional process.

These misperceptions, especially those of government officials, must be rebuffed in order to promote the use of the consensual approach in Japan. Possible strategies include 1) introduction to mediation for government officials with an emphasis on their concerns; 2) publication of literature on mediation in Japanese; 3) seminars for public officials to learn more about mediation. These misperceptions are not obstacles.

Strategy 2
Encourage government officials to try the consensual approach in less controversial or small projects.

After learning how mediation really works, government officials should use the consensual approach in actual highway planning. However, they may well feel that it is too risky to use a new approach in major highway projects. Officials at field offices might not have the authority to withdraw a whole project, and they might suspect that anti-highway groups would not come to the table without a possibility of stopping a project.

At this moment, it might be too burdensome for some officials to apply the consensual approach to a whole stretch of highway. Instead, they should try on a part of a project they are planning. For example, they can initiate a consensus building effort to design a bus stop on a highway. With the assistance of a facilitator, the officials might
negotiate with stakeholders such as neighbors, elderly community groups, and disabled persons. It is unlikely that discussions over a bus stop would become a huge dispute that could bog down a highway project. Free from the risks they fear, officials could experience and understand how the consensual approach can achieve a productive outcome.

The consensual approach should also be promoted to the government officials in other fields. Participatory community development by municipal governments is now growing in popularity. Officials involved in community development should be encouraged to use facilitators to assist with their participatory planning efforts. Compared to the officials in highway departments, they should be more eager to use the consensual approach.

As the application of the consensual approach spreads, the likelihood of official acceptance should increase. Hands-on experience should be convincing. Successful applications will dispel the doubts of officials without experience with mediation. They might gradually want to use mediation in more confrontational situations like the YCH project.

Another important side effect of small scale experiments would be the cultivation of professional facilitators and mediators. Individuals trying to take the facilitator’s role in Japan would be more motivated to start their career in less confrontational situations with lower stakes. Most of the interviewees in the thought experiment questioned the availability of professional neutrals in Japan. However, the number of professional neutrals will probably increase as the demand for neutrals enlarges, and the problem with availability will be reduced.
Strategy 3

Encourage professors and other neutral individuals to assist informal negotiations

To deal with the shortage of professional mediators in Japan, professionals in the public policy field in general should be encouraged to take the role of facilitator/mediator. Many interviewees in the thought experiment mentioned professors as a good candidate. Current or past members of the Prefectural Eminent Domain Council and the Prefectural Environmental Dispute Coordination Commission also seem to be possible mediators. These members are now working as non-partisan neutrals in formal procedures. The latter has achieved several successes in mediating highway disputes through the formal process. Private consultants might be able to take the facilitator’s role in less controversial projects, such as the bus stop example above. Public officials of MoC might find difficulties to take the role because of the small likelihood to be accepted as a non-partisan neutral. Officials in other agencies, such as Environmental Agency, might be a possible option.

These people might reluctant to invest their resources to become facilitators/mediators because informal mediation and consensus building in highway planning has scarcely used in Japan. However, considering their success in the United States, these approaches will probably draw more attentions even in Japan in a few years. For professors in public policy departments, mediation should be a good topic for their research. For private consultants and individuals, the skill of facilitation and mediation will be profitable in the future. The skills of facilitation can also be applied to increase the effectiveness of their business meetings. They should be aware that the chances to take the mediator’s role are attractive enough to give it a try.

The concerns found in the thought experiment, especially those expressed by a consultant, involved personal risks and payment structure. Considering the recent assaults against elected officials by militant pro-development factions in Japan, it is reasonable that

people are afraid to become involved in public disputes. Thus, they should start from less controversial cases. Of course, those who are willing to deal with controversial projects should be respected, but encouraging the ordinary professionals to do so may jeopardize their curiosity to use the consensual approach in other non-controversial projects. Payment can be structured flexibly because consensus building is an informal process. Professors might be willing to do so pro bono if they consider their experience as a part of their research. If the professionals want a specific price list, the payment structures of the state offices of dispute resolutions in the United States will give them a direction.

Strategy 4

Mobilize political actions to encourage the use of the consensual approach

As seen in Chapter 2, political interference with highway planning processes stimulated the move to the consensual approach in the United States. Although there have been some frustrating experiences, effort should be made to convince public officials to try the consensual approach.

Some readers may find the difficulty of political interference in the Japanese culture, but that assumption is not true. For example, there was a referendum in a rural town that banned a construction of a nuclear power plant proposed by the national government. Even in Japan, such local protests have been able to mobilize political actions to stop particular projects. However, they only succeeded in rejecting what they do not like but failed in achieving what they want. These radical actions did not produced good outcomes of the consensual approach described in Chapter 1.

Instead, these political interference should be used to encourage the use of consensual approach. For example, a newly elected mayor of the city of Musashino canceled a construction project of a waste management plant and ordered his subordinate to use a participatory process to restudy the best site for the plant even in the early 1980s. A change in mayoral position can influence the planning process within his/her jurisdiction. Although there have not yet been any example, a mayor can use the consensual approach in
amending a national highway project to the city’s Urban Plan because the formal Urban Plan process is conducted by each municipal government. However, governors might not be able to take such action because they are to amend the prefectural Urban Plan in lieu of the Minister of Construction, which is stipulated by the Urban Planning Act.

Those advocating environmental protection from highway projects should reframe their opposition against the projects. They should mobilize the politicians to give pressures on the officials to use the consensual approach rather than to stop the whole projects. Such an action is more likely to be accepted by the highway officials, and they should be able to achieve their sincere desire to protect their environment.

Proposal 5:
Integrate the consensual approach into the formal environmental mediation procedures

Finding an appropriate mediator is not an easy task. Even after mediation and consensus building are extensively used in small or less controversial projects, public officials without any connection with mediators may have difficulties in reaching them. Thus, the difficulty in finding qualified mediators might remain as it is for these officials. To clear the problem, the network of mediators should be substantiated to make them available throughout Japan.

Currently, Japan has formal environmental mediation process based on the Pollution Dispute Resolution Act. Prefectural and national independent commissions conducting mediation and other dispute resolution efforts with quasi-judicial status. They are institutionalized to deal with appeals seeking relieves from pollution before going to courts. They can also deal with non-existent pollution as “possible pollution,” and some infrastructure projects have been between mediated though the process. Such appeals have been increasing recently.\(^\text{133}\)

I suggest that these formal mechanism be transformed to facilitate informal

\(^{133}\) Kougai-to-Choosei-Iinkai, Kogai-Funso-Shori-Hakusho (in Japanese), 1997, p. 60
mediations of environmental disputes, including highway disputes. Currently, the formal mediation should be conducted between only appellants and defendants, but this condition should be changed to allow the participation of other stakeholders representing diverse interests. Past mediation efforts through this mechanism could not involve those who didn't appealed. In addition, the commission cannot be involved in disputes without any appeal, but they should be able to take more proactive measures in setting up mediation efforts.

I envision the state offices of dispute resolution in the United States as a model. The reformed commission will take initial efforts to initiate mediation and send appropriate mediators from their appointed mediators. If the Pollution Dispute Resolution Act is improved to allow the commissions to conduct informal mediations, they will be available throughout Japan. As seen in the Route 2A case, existence of such institutionalized organization promoting mediation can alleviate the difficulties in finding qualified mediator substantially. However, the current practice of the commission should be investigated in more details.
Bibliography


Central Transportation Planning Staff, *The 1997 Transportation Plan for the Boston Region* Central Transportation Planning Staff, Transportation Improvement Program and Air Quality Conformity Determination FY 1998-2003

Commonwealth of Massachusetts, *Inner Belt and Expressway System* (Folio), 1962

Consensus Building Institute, *Partnering, Consensus Building, and Alternative Dispute Resolution: Current Uses and Opportunities in the U.S. Army Corps of Engineers*, Cambridge, 1995


Freed, R., *The Road: A Case Study of the Marrett Road Mediation and Implementation Processes* (Final Project), Dispute Resolution Program, University of Massachusetts at Boston, 1997


Matthews, M., "Case Study: Route 2A/Lexington," *MoDR Report May 1996*


Ministry of Construction, City Bureau (Japan), *Toshi-Keikaku-Ho-no-Unyo* (in Japanese), Gyosei, Tokyo, 1995

Ministry of Construction, Road Bureau (Japan), *Douro-Gyousei* (in Japanese), 1997


Younger, K., "Public Involvement," *ISTEA Planners Workbook* Edited by Franko, M., Surface Transportation Policy Project

**LEAFLETS**

Association of Metropolitan Planning Organizations, *About MPOs*, from the AMPO web site at http://www.narc.org/ampo/


Massachusetts Office of Dispute Resolution, *Facilitation and Consultation*