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Honor Earth Day by resolving land use and environmental disputes with mediation

By Gideon Kracov and Malissa Hathaway McKeith

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On this Earth Day, many Californians are concerned about delays to housing development caused by zoning lawsuits and advocate for the need to streamline the construction of clean energy and water infrastructure projects. One solution that has been overlooked is the use of methods other than litigation, referred to as alternative dispute resolution (ADR), to speed resolution of California's environmental, land use, and related public policy disputes.

California is regularly criticized for its inability to address a housing crisis that requires an estimated 150,000 new units each year and to deliver the critical infrastructure (public transit, renewable energy, grid upgrades, electric vehicle charging, water delivery, wildfire and flood resilience, etc.) to meet our ambitious climate goals. As one example, a recent Daily Journal headline reports that *"To Save San Francisco, a Democrat Wants to Scrap Environmental Reviews."* Though the land use and environmental bar settle many cases on their own – often before there is a lawsuit– on this Earth Day California can build its sustainable future more expeditiously and with less conflict if litigants and government agencies adopt facilitated ADR.

The value of ADR, including mediation, is well-established. Mediation is a non-binding, confidential process that expedites resolution with the help of a qualified neutral – usually a lawyer or former judge with subject matter knowledge – who helps parties to better understand their options and craft voluntary agreements. The California Judicial Council's analysis of mediation programs concludes that they bring "substantial benefits to both litigants and the courts. These benefits included reductions in trial rates, case disposition time, and the courts' workload, increases in litigant satisfaction with the court's services, and decreases in litigant costs." The federal courts in California require the parties in nearly *all civil cases* to attend an ADR session before trial. In the Los Angeles Superior Court, the parties in *every* personal injury and employment case must attend a Mandatory Settlement Conference, and judicial officers often urge the parties to reach a deal.

Thirty years ago, California lawmakers recognized that ADR, and specifically mediation, would aid in resolving land use, environmental, and related public policy litigation – but this option is rarely used. The Planning and Zoning Law in Government Code section 66030 *et seq.* provides "lawsuits can delay development, add uncertainty and cost to the development process, make housing more expensive, and damage California's competitiveness. This litigation begins in the superior court, and often progresses on appeal to the Court of Appeal and the Supreme Court, adding to the workload of the state's already overburdened judicial system . . . it is, therefore, the intent of the Legislature to help litigants resolve their differences by establishing formal mediation processes for land use disputes." The law authorizes permissive mediation in ten specified types of litigation matters including the California Environmental Quality Act (CEQA – the state law that requires analysis and mitigation of a project's environmental impacts and creates a private right of enforcement), general plan decisions, land annexation, public utility actions, mitigation fees, zoning matters, and an expansive catch-all

(with emphasis added) for *"the approval or denial by a public agency of any development project."*

Yet today, these decades-old Government Code mediation provisions of the Planning and Zoning Law are rarely invoked, largely because the provisions are permissive. Many attorneys and government agencies are unaware of this option even though land use, environmental, and related public policy cases are particularly suited to incorporate the culture of ADR and mediation. Mandatory mediation, on the other hand, is now commonplace in construction and real estate contract disputes and saves parties millions in litigation fees and costs. Requiring a neutral third party to facilitate resolution is a core reason why those disputes often resolve early, and the Legislature should amend section 66030 *et seq.* to make mediation mandatory in land use disputes to help get them settled.

CEQA's early settlement meeting process in Public Resources Code section 21167.8 also could achieve faster resolution with the use of mediation. It requires that the parties meet and attempt to settle the litigation within 45 days of service of the CEQA petition. However, this mandatory early settlement meeting is often *pro forma*, abbreviated, and does not meaningfully assist in resolving the dispute. The early meeting usually is over the phone, the litigants do not attend, no neutral mediator participates, and it finishes in less than half an hour. To make matters worse, once finished, the parties in CEQA cases cite the early settlement meeting to exempt themselves from any further ADR or mediation requirement. And while it is true that Public Resources Code section 21167.8 states that "if the litigation is not settled [at the early meeting], the court, in its discretion, may, or at the request of any party, shall, schedule a further settlement conference before a judge of the superior court," this rarely occurs.

Land use, environmental and related public policy disputes can be complicated and often fraught with emotion. It is precisely for these reasons that facilitated mediation can help build understanding and trust among the parties. On this Earth Day as California builds for its future needs and protects the planet, ADR and mediation provide the following benefits:

Participation. ADR and mediation bring the litigants with authority to settle to the table – no small feat. Depending on the case, this can include plaintiffs/petitioners (individuals, non-profits, community associations, etc.) and respondents/real parties (often city attorneys and representatives from public agencies or a private project proponent). By having the clients personally attend the ADR or mediation session, they learn about the litigation process, focus on key settlement issues and engage in efforts to reach resolution. While zoom and remote meetings are becoming the norm for reasons of convenience, there are advantages to convening in-person in a welcoming space. Time, travel and personal presence make for a more meaningful investment in reaching a deal. If emotions are high and repairing the parties' relationship will help settle the dispute (for example if the litigants are neighbors), joint sessions can be considered with a mediator trained in facilitation. Counsel can also set the timing of the ADR session, to ensure it occurs at the right stage of the case (pre-litigation, before or after administrative record preparation, trial briefing, etc.). Indigent or non-profit parties can select free, court affiliated ADR providers, mediators who offer reduced cost services, or newer mediators willing to work *pro bono* to gain valuable experience.

Facilitation. A skilled mediator will maximize the chance to settle by utilizing skills that promote better understanding and trust. Unlike the busy superior court judge with a docket of hundreds of cases, the mediator will have time to separately call or zoom counsel beforehand to distill the key issues. Not only is *ex parte* contact allowed during mediation, it is a best practice to understand the litigants' interests and settlement positions. The mediator performs "shuttle diplomacy" between the parties – the value of this practice is beyond question after decades of demonstrated success in all types of civil matters. Moreover, the expansive mediation confidentiality rules of California Evidence Code section 1115 *et seq.* enable parties to speak candidly to the mediator and protect all communications from disclosure. This is more absolute confidentiality than is provided by the familiar Evidence Code section 1152 rule for offers to compromise. Confidentiality creates an environment of trust within each mediation room that enables counsel and the parties to tell the mediator things they would never tell each other. The skilled mediator then strategizes with the lawyer and client about what to communicate to the other side.

Innovation. ADR and mediation are particularly valuable in land use, environmental, and related public policy disputes that have lasting implications beyond just distributive bargaining over money. These cases may involve mitigation conditions important to petitioners including construction design features, air and water quality, traffic impacts, community benefits, or conservation matters such as tree and open space protection. Mediation allows for creative brainstorming of the non-monetary terms. Selecting a mediator with a background in these types of cases is important. She will spend time with the parties to float ideas, alternatives, and proposals, and then sort feasible choices. Mediators are not judges, juries or arbitrators – and not all cases will settle. However, a trusted mediator motivates parties to reveal their core interests and demands – among even the most reluctant participants.

Evaluation. An unbiased third-party mediator can evaluate the disputed issues, litigation costs and remedies. She will explore personal connections in common with counsel and litigants to build rapport. She can employ techniques such as use of clarifying questions so that the parties will be more open to listening and receiving feedback. Any insurance and indemnity issues can be assessed. She can communicate frankly to the parties and counsel about their arguments and assumptions, especially as new information is disclosed. The mediator can work with counsel to set expectations, assess the merits, and guide the parties to abandon arbitrary litigation aims or settlement terms. For example, if a party in a CEQA case insists on complete victory or a drawn-out trial, a mediator with subject-matter expertise can discuss the complex and increasingly contested remedy provisions of Public Resources Code section 21168.9 and identify a range of logical outcomes.

Resolution. The US Environmental Protection Agency's environmental collaboration and conflict resolution (ECCR) data shows mediated cases are resolved in one-third less time than litigated cases and require 79% fewer staff hours than litigation. Best practices include preparing a draft term sheet before the mediation begins so that litigants identify the key components of a settlement. A good mediator will ensure client representatives have authority to settle. Where the case does not settle, or certain terms remain unresolved, the mediator can ensure the parties agree to next steps with a timeline. The goal of mediation is to resolve disputes sooner and never to encourage delay unless the parties jointly agree to stay or toll the action to save costs. The tenacious, flexible mediator does not give up, and will extend her "shuttle diplomacy" for days or weeks after the mediation session as the parties finalize a deal.

Conclusion. Land use, environmental and related public policy lawsuits, like all other civil cases in California, will benefit from an enhanced culture of ADR and mediation. Litigants, judicial officers, public agencies and the Legislature should revisit the too-often forgotten Government Code section 66030 *et seq.* mediation provisions of the Planning and Zoning Law. ADR tenets such as use of a neutral mediator should be incorporated into the CEQA early settlement meeting pursuant to Public Resources Code section 21167.8. Where cases do not resolve at the CEQA early settlement meeting, courts should consider ordering a further settlement conference with a mediator. The extra effort is worth it. By fostering a culture of ADR and mediation, we can streamline resolution of these disputes for the benefit of the parties, their lawyers and all Californians on Earth Day.

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From White Knight Lawyers to Community Organizing

Citizens for a Better Environment -- California

by Richard Toshiyuki Drury and Flora Chu

The recent attention to "environmental justice" has brought support from mainstream environmental organizations and the broader legal community, with dozens of lawsuits filed on behalf of community groups in the last five years. However, not all of this attention has been welcomed by the environmental justice community. Many long-time activists believe that litigation is a disempowering tool that transfers power from community members who are directly affected by pollution to a handful of lawyers speaking for the community. Many highly mobilized community groups have withered as they pumped all of their resources into protracted litigation. Environmental justice activists have railed against "white knight" lawyers who move active community struggles into the courtroom where the community is no longer able to direct or even participate in the battle.

This article outlines a community-based environmental justice strategy pursued by the West County Toxics Coalition (WCTC) in Richmond, California, with legal and technical support from Citizens for a Better Environment (CBE) and other Bay Area groups. After taking part in, and analyzing, the campaign, we conclude that while existing legal strategies for environmental justice are inadequate at best, lawyers can best use their skills by helping to open channels for community action. Lawyers are often most effective not when they attempt to solve the problems of the community through litigation, lobbying or advocacy, but rather, when they work together with affected community groups to help them identify effective ways to solve their own problems through community organizing. This role will usually not involve litigation. Instead lawyers are more likely to identify industry or governmental targets that the community might be able to pressure through community action. Lawyers may also be able to identify and make more accessible so-called "public" fora (generally used only by industry, government, and professional environmentalists) so that they may be used as organizing opportunities where the community can speak for itself. Finally, lawyers should be "translators" of legal documents, processes, and technical terminology.

To achieve the goal of environmental justice, lawyers must serve not as "white knights" out to save the victim community, but as resources to be integrated into a broader struggle for community empowerment.

The West County Toxics Coalition Struggle

Chevron USA, Inc. is the nation's most profitable oil company. The Chevron refinery is the largest industrial complex in the City of Richmond, currently processing 245,000 barrels of oil per day. The refinery is also Richmond's largest polluter, releasing 68,000 pounds of air pollutants *each day*, including numerous highly toxic and carcinogenic chemicals. The Chevron refinery has a long history of serious accidental and ongoing chemical releases, which have had a disastrous effect on the neighboring community of North Richmond. In response to the toxic threat, for the past decade North Richmond residents have organized to combat Chevron and other polluters, forming the West County Toxics Coalition.

In mid-1993, Chevron quietly unveiled its "Clean Fuels" project. Research by staff scientists at CBE revealed that the so-called "Clean Fuels" project was actually "green" cover for a massive refinery expansion. The result would be hundreds of tons of additional pollution in the Richmond skies and entirely new accident risks for the low-income, African American fenceline communities. While the project would produce cleaner burning fuels for the rest of California, it would also mean more pollution and accident risks for local residents — once again transferring pollution from across California into the already overburdened City of Richmond.

In a series of meetings at the WCTC office in Richmond, CBE's scientists and lawyers discussed this information with active community members. The community leadership was clearly concerned about the project's local health and safety impacts — but the concern was far deeper than that. Community members saw this project as being only one in a long line of similar projects that had the cumulative impact of bringing upon Richmond an ever worsening spiral of urban blight, toxic health risks, residential flight, and declining property values.

The CBE staff discussed with community members various approaches to address the problems identified. The attorneys examined legal avenues, the scientists technical approaches, and the community members community organizing strategies. In the end, we settled on a hybrid strategy that incorporated all three of these approaches — law, science, and community organizing.

The community members drafted a detailed plan for the project, including state-of-the-art pollution control and safety equipment. But the revolutionary elements of the package were those designed to remedy the project's impacts on the quality of life in North Richmond. These measures included local hiring commitments, a community health clinic (long a priority due to toxic chemical-related health problems), funding for the local school system, restoration of waterways and other areas surrounding the refinery, and the creation of a

community development fund to redirect Chevron's corporate giving to the areas the refinery had the most directly impact on.

Members of the community groups approached every neighborhood association and many other groups in the City of Richmond to obtain their support for the WCTC plan. Without exception, every neighborhood association signed on in support of the plan, even groups from the wealthier white areas of the city that had little history of working with the predominantly African American North Richmond community. WCTC members engaged in direct door-to-door community organizing in support of the plan. Coalition members also met with every local politician who would vote on the Chevron project. Our message to public was that the "environment" is not just fish and wildlife, but also the urban habitat where people live, work and play. Just as the city would require Chevron to restore or protect a wetland or animal habitat threatened by a proposed project, so the city should require the oil giant to protect the human environment of North Richmond which would become more polluted and more dangerous as a result of the refinery expansion.

While the community members were engaged in their intensive organizing, the CBE scientists identified technologies to make the refinery cleaner and safer. The scientists also identified numerous deficiencies in Chevron's health risk assessment, accident risk calculations, estimates of pollution to be generated by the project, and other aspects of the Chevron proposal.

The third leg of our strategy was legal. The legal team developed a "permit condition" strategy. Chevron would have to obtain a conditional use permit from the city in order to proceed with the refinery expansion project. Our strategy was to get the city to add the community's entire plan as a permit condition for Chevron's project.

Our primary legal vehicle was the California Environmental Quality Act (CEQA). CEQA is similar to the federal National Environmental Protection Act (NEPA), except it applies also to non-governmental projects that will impact the environment. In a nutshell, CEQA requires that prior to granting a permit for a proposed project a governmental agency must issue an environmental impact report (EIR) analyzing the project's adverse impacts, and discussing ways to minimize those impacts. The agency must circulate the EIR for public comment, and must consider and respond to public comments, usually through a public hearing process. In light of those public comments, the agency must decide whether to allow the project to proceed, and must impose "feasible" measures to reduce or eliminate the project's adverse environmental impacts.

CEQA was an ideal statute for our campaign because it created a public forum for decisions that would otherwise have been made behind closed doors between government and industry. Each of the public hearings held on the Chevron project were opportunities for community organizing. WCTC and other groups brought to the hearings progressively larger turnouts of one hundred or more supporters, about half of whom testified. The time between meetings was an opportunity for additional community outreach, lobbying of city officials, and media work.

To the surprise of Chevron, and even of some in the community coalition, in a 6-3 vote, the city planning commission adopted the entire community package after weeks of one-on-one meetings between community activists and planning commissioners, a series of legal and scientific opinion letters, and hours of testimony at the public hearing from supporters of the package from every corner of Richmond. It was one of the first major defeats for Chevron in its almost 100 years in the city and was cause for tremendous celebration by the community groups.

For the first time Chevron found itself on the defensive. Now Chevron had to lobby the nine city council members to reverse the planning department's decision. The oil company scrambled to save the estimated $60 million cost of the community package, engaging in a letter writing campaign, lobbying and media work. Chevron brought in San Francisco's largest law firm to barrage the city with letters.

The crucial element lacking in Chevron's campaign was community support. Less than five percent of refinery employees live in Richmond and there has long been tension between the predominantly white refinery workers and the neighboring African American community. Chevron found a single community group that relied heavily on Chevron money to take a high profile position in support of Chevron at public hearings. Ultimately, though, the most important showing of public support came from Chevron workers, even though only one in twenty lived in Richmond. Chevron strongly encouraged workers to attend the final city hearing on the project, convincing many that their jobs were at stake. Throughout our campaign, we had made overtures to union leaders, providing evidence that Chevron intended to bring in non-union workers from out of state to construct the project. In the end, the unions sided with Chevron. Over 1,000 angry pipefitters and refinery workers packed the city council hearing to sing Chevron's praises, dwarfing the community groups' otherwise impressive turnout of almost 200, and intimidating many active community members.

As is often the case, the public hearing turned out to be a sideshow. Chevron had cut a deal with key city council members, unveiled only minutes before the hearing. While the compromise package included many of the key elements of the community proposal, including funding for Richmond schools, a community health clinic, and an emergency warning siren system, important elements were lacking, such as advanced pollution control technology, safety equipment, and the community development fund. Nevertheless, it was an unprecedented victory for the community that would require Chevron to direct almost five million dollars toward community projects. The

package would never have materialized without the community organizing and other work that forced Chevron into the position of having to make serious concessions.

Despite the landmark victory, the community groups were determined to fight on. It seemed that the most discouraging aspect of the compromise package was that community leaders like Henry Clark of the WCTC had been excluded from the negotiations leading up to the deal. Community leaders also felt that the community development fund, pollution control and safety measures were bottom line issues that could not be sacrificed.

Our strategy up to this point had been to select fora that were open to the public, allowing community members to speak for themselves, and emphasizing our strengths in community organizing and mobilization. After the city council decision to accept Chevron's compromise package, the obvious choice would have been to file a CEQA lawsuit alleging deficiencies in the city's environmental impact report for the project and a failure to require Chevron to adequately mitigate the project's impacts. But a CEQA lawsuit would shift the focus from community members to lawyers. Once in court our legal team would take center stage, filing motions, pleadings, and making oral arguments on behalf of the community. Such a litigation strategy ran directly counter to our goal of having the community speak for itself. It also played to Chevron's strengths since Chevron had a law firm of over 400 lawyers and a substantial in-house legal team that would almost certainly attempt to "paper" us into submission. Our strengths on the other hand were in organizing and mobilizing people outside of the courtroom.

The legal team and community leadership discussed the pros and cons of litigation for hours over the course of numerous evening meetings. The final decision was left to the WCTC board, without the participation of the legal and technical "experts." In a close vote, the board decided not to file the CEQA lawsuit. We later learned that Chevron was infuriated by our decision not to sue. Chevron had its legal team primed for battle and thought that they would have won in court.

Instead, the community opted to move the battle to an obscure and little used forum that had been identified by a member of the legal team. The attorney noted that Chevron still needed to obtain a permit for the project from the Bay Area Air Quality Management District (BAAQMD). While this process was usually uneventful, the attorney discovered a citizen appeal process that had not been invoked for nearly a decade. Crucial to our strategy, the process was completely open to the public. Any interested member of the public was allowed to testify on the project, making this another excellent forum to continue the community organizing campaign.

The law students of Boalt Hall's Environmental Law Community Clinic and Golden Gate Law School's Environmental Law and Justice Clinic worked with CBE's scientists to develop a strong legal case based on the federal Clean Air Act. The students filed a 70-page appeal with the Air District arguing that the Chevron project failed to incorporate best available control technology (BACT), in violation of the Clean Air Act. Chevron, believing that we had given up our fight when we decided not to file a CEQA lawsuit, was taken completely by surprise. We had successfully caught Chevron off guard and moved the battle once again into a participatory public forum. Finally, Chevron agreed to come to the negotiating table with the community leadership.

In a series of marathon sessions, Chevron's Richmond plant management met with WCTC's Henry Clark, other community leaders, and CBE's refinery experts — without attorneys. Rather than filtering all negotiations through the lawyers, we cut the lawyers completely out of the process, forcing the Chevron management to meet face-to-face with the community leadership. The direct negotiations generated a landmark agreement only minutes before the Air District hearing was to commence. Valued at over ten million dollars together with the earlier city council compromise agreement, the package included five million dollars in corporate giving to programs designed to benefit the low-income neighborhoods near the refinery, $2.1 million for a community health clinic, $400,000 to the Richmond schools, a job training and local hiring commitment for residents of the "fenceline" communities, restoration of natural areas near the refinery, installation of advanced pollution control technology to reduce toxic chemical emissions, and numerous other provisions.

The agreement was monumental not just for its pollution control and safety elements, but especially for its inclusion of community development elements like the jobs program, school funding and health care clinic. While the substance of the agreement was impressive, the process used to arrive at the agreement was at least as significant. Throughout the campaign, community organizing played the central role and was our primary leverage. The scientists and lawyers served as resources for the community members, rather than leaders of the campaign. Perhaps the single most important role played by the lawyers was in identifying public fora, decision makers, and pressure points around which the community could organize.

Some of our mainstream environmental allies, steeped in the "impact litigation" tradition, did not understand the significance of the campaign that did not create any new case law for others to follow. Our "impact" was in creating a model for community directed collaborations between lawyers, scientists, and individuals directly affected by pollution.

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About the CPRC

On this page:

CPRC Mission Statement

Providing EPA with expert collaboration and conflict resolution services.

About the CPRC

Bringing people together to address environmental challenges is central to how EPA does business. EPA has a long history of success in seeking input from the public, working with stakeholders to reach common ground, and providing mediators and facilitators to reach mutually acceptable agreements on contentious issues.

The Conflict Prevention and Resolution Center (CPRC) supports EPA's regulatory, enforcement, and voluntary programs by providing alternative dispute resolution (ADR) services to the entire agency. Expert CPRC staff, specialists in ADR in the EPA's 10 regions, as well as professionals engaged through the CPRC's Conflict Prevention and Resolution Services contract, help EPA and its stakeholders exchange ideas and information, identify areas of concern and common interest, develop recommendations, prevent and overcome disputes, and reach agreements. Every office at EPA has access to this contract to quickly hire professional neutral facilitators and mediators to assist with preventing and reducing conflict associated with their environmental projects. The CPRC supports ADR across the Agency, pursuant to EPA's ADR Policy.

CPRC History

EPA started to use ADR in the mid-1980s when the EPA's enforcement program issued guidance on ADR use and with the establishment of the Regulatory Negotiation Project in 1986. The first contract to provide ADR services, and more broadly conflict prevention and resolution services, was awarded in 1988. The EPA created the Consensus and Dispute Resolution Program in about 1990, and after more than a decade of success and enhancements, established the Conflict Prevention and Resolution Center in 1999.

Since its establishment, the CPRC has supported offices throughout EPA to tackle difficult environmental problems and work with the public to solve them. As articulated in the 1999 EPA Administrator's memo establishing the CPRC, the center was established to "fulfill [EPA's] obligations under the Alternative Dispute Resolution Act (ADRA) and other relevant laws and policy directives aimed at ensuring effective use of ADR in the federal government." It was created to "build on existing ADR efforts at the EPA . . . to assist Agency offices in identifying appropriate non-adversarial and collaborative ways of preventing and resolving disputes and making neutral third parties more readily available for this purpose." More information about the laws underlying the CPRC's work can be found here.

Success Stories

Here are a few recent successes supported by the CPRC. Learn more by reading CPRC's annual reports.

Helping States and Tribes Protect their Waters - The CPRC supported an initiative by EPA's Office of Water (OW) to what waters a state or tribe may assume permitting responsibility for under an approved Clean Water Act (CWA) section 404 program. OW launched this initiative in response to concerns expressed by states and tribes that section 404 and its implementing regulations lacked sufficient clarity to enable them to estimate the extent of waters for which they would assume permitting responsibility and thus estimate the associated implementation costs. For this project, expert CPRC staff helped OW design a stakeholder assessment, establish a balanced federal advisory subcommittee, and engage a neutral facilitator to lead discussions among experts from states, tribes, academia, interest groups, the regulated public, and federal agencies. Through this process, the participants converged on an understanding of the issue, relationships between stakeholders improved, and a super-majority reached an agreement on recommendations to the EPA. These recommendations will make it easier for states and tribes to assume 404 permitting responsibility as Congress intended.

Listening to Communities at Superfund sites - EPA's Superfund office worked with the CPRC to help residents in the USS Lead Superfund Site area in East Chicago, IN, to understand the cleanup effort and become more involved in activities at the site. The Superfund office worked with CPRC to hire a neutral facilitator through CPRC's Conflict Prevention and Resolution Services contract, who conducted a situation assessment to understand the issues most important to the community and recommend steps to inform and engage the broad diversity of community members. One key recommendation was to conduct facilitated monthly meetings on topics of interest to the community, including upcoming cleanup activities. These meetings have helped strengthen the relationship between the site's residents and the EPA cleanup team, and have also provided EPA with important information about residents' specific concerns related to the cleanup.

Recovering from Natural Disasters - At the request of EPA's Region 2 Office in New York, the CPRC supported a series of workshops to help federal, state, county, and municipal governments organize their efforts to rebuild Suffolk and Nassau counties in Long Island, NY following Hurricane Sandy. The neutral facilitator engaged through CPRC's Conflict Prevention and Resolution Services contract planned meetings, developed educational materials, facilitated roundtable discussions, and created reports to help the parties achieve their Smart Growth, environmental justice, resilience, and Transit Oriented Development goals on their path to recovery.

Measuring the Impact of ADR

EPA is committed to measuring the success of its ADR programs and is continually improving them to better meet the needs of EPA offices, Regions, and external stakeholders (e.g., state agencies, industry, environmental advocacy groups). A recent study by CPRC found that, when compared to litigation, ADR saves EPA time and money and increases staff capacity to execute the agency's mission. Specifically, based on quantitative data collected on 185 individual ECCR cases before EPA's Office of Administrative Law Judges, Environmental Appeals Board, and the Federal Courts:

- Mediated cases were resolved in 1/3 less time in litigated cases.
- Mediated cases required 30% fewer staff members to support than litigation.
- Mediated cases required 79% fewer staff hours than litigation

In addition to these time and money savings, EPA recognizes that ADR produces many intangible benefits including improved relationships with stakeholders and broader stakeholder support for EPA programs. Evaluation, including through annual reporting, is an important way the CPRC identifies these savings and benefits and is key to systematic improvement of ADR programs.

You can read a new report released by the Office of Management and Budget and the Council on Environmental Quality titled "Environmental Collaboration and Conflict Resolution (ECCR): Enhancing Agency Efficiency and Making Government Accountable to the People." This report was based on more than a decade of experience and research and highlights successful EPA ECCR projects.

Annual Reports

Each year, the CPRC submits a report on the EPA's use of and key achievements in environmental collaboration and conflict resolution to the Office of Management and Budget and the Council on Environmental Quality. A few of CPRC's most recent annual reports are listed below; they include detailed accounts of the work at EPA's headquarters and in the regional offices to bring people together to solve complex environmental problems. Please contact the CPRC for annual reports dating back to fiscal year 2006.

These annual reports were developed to fulfill the requirements of the Office of Management and Budget/President's Council on Environmental Quality Memorandum on Environmental Collaboration and Conflict Resolution, September 7, 2012 (PDF) (9 pp, 4 MB, About PDF)

FY 2019 Environmental Collaboration and Conflict Resolution (ECCR) Policy Report to OMB-CEQ (PDF) (58 pp, 2.4 MB, About PDF)

FY 2018 Environmental Collaboration and Conflict Resolution (ECCR) Policy Report to OMB-CEQ (PDF) (63 pp, 3.4 MB, About PDF)

FY 2017 Environmental Collaboration and Conflict Resolution (ECCR) Policy Report to OMB-CEQ (PDF) (53 pp, 414 K, About PDF)

FY 2016 Environmental Collaboration and Conflict Resolution (ECCR) Policy Report to OMB-CEQ (PDF) (50 pp, 1 MB, About PDF)

FY 2015 Environmental Collaboration and Conflict Resolution (ECCR) Policy Report to OMB-CEQ (PDF) (38 pp, 612 K, About PDF)

Natural Resources and Environmental Conflict Resolution

Share

Managing complex natural and cultural resource issues requires innovative problem solving and open dialogue among those involved and potentially impacted by resource decisions. The Office of Collaborative Action and Dispute Resolution (CADR) has more than two decades of experience providing DOI Bureaus and Offices and external stakeholders with independent, confidential, and impartial collaborative problem-solving and alternative dispute resolution (ADR) expertise and services. Click each of the links below to learn more:

What is ECCR?

Environmental Collaboration and Conflict Resolution (ECCR) is about addressing environmental, natural and cultural resources and public lands issues in a collaborative fashion. In the Department of the Interior we use ECCR to also mean "External Collaboration and Conflict Resolution" to represent the wide array of collaboration and conflict resolution activities involving individuals and entities outside of DOI. These activities may involve individuals working together to resolve a single issue, as well as opportunities for many participants and stakeholders to address complex, multifaceted issues. ECCR makes use of an impartial third party to facilitate or mediate. Experienced facilitators, mediators, and ECCR process experts are:

- Experts in designing and facilitating collaborative problem solving, public engagement, and agreement-seeking processes;
- Impartial on substantive issues--they are NOT decision makers;
- May be federal employees or independent federal contractors; and
- Acceptable to the parties involved.

ECCR can occur in many settings such as policy dialogues, advisory committees, and task forces; NEPA planning processes; and program implementation. More formal settings include assisted negotiations; negotiated rulemaking; and litigation-related settlement.

The ECCR Continuum

Think about the types of Collaboration and Conflict Resolution Processes like a river going from headwaters downstream.

Upstream the waters may be relatively clear and calm, conflict may bubble up periodically but is readily resolved. This is an ideal environment to collaborate, build and advance relationships. Situations where collaboration works well include development of new policies and maintaining existing relationships with external stakeholders.

As you move downstream, water speeds up, there may be more turbulence as water hits rocks, and there may be periodic impasses as water picks up debris. This is similar to those situations where there is a history between groups with some level of conflict. Planning processes as well as

policy and/or program implementation are more effective and efficient when conflict management and prevention techniques are used.

By this time, the water has traveled quite a long way. Downstream the waters can be rough and turbulent. This is similar to situations where the there may be longstanding conflict that has been simmering for years, the absence of relationships and tools like assisted, or facilitated negotiation and/or mediation can be effective.

CADR's ECCR Approach and Services

Anyone can contact us, there is no cost and no official permission is required to reach out to CADR. We start with a conversation. We want to learn about the issue you are addressing, your objectives, who else is involved, timelines, and if the topic is a long-standing issue or something that's just emerging. With this information we help you think through what kind of facilitation, collaborative problem solving, or mediation might be needed for the issue or project you are addressing. Our advice is based on our decades of experience as practitioners. We will also explore with you what kind of impartial facilitation and/or collaboration may be appropriate and if the facilitator must have special expertise to work effectively with the group.

When appropriate, and where there is sufficient capacity and concurrence of the parties, CADR staff can provide direct facilitation and collaboration support.

To help meet the need for impartial facilitators versed in ECCR topics the DOI CADR Office maintains an Indefinite Quantity Indefinite Cost (IDIQ) contract for private sector facilitators, collaboration professionals and mediators. This contract is available for all DOI Bureaus and Offices to use. To learn more about our ECCR IDIQ contact Lisa Kool at https://www.doi.gov/pmb/cadr/contact-us.

Resources

Below are links to other collaboration programs in DOI and around the Federal Government.

Programs in DOI:

BLM CADR Program: https://www.blm.gov/services/cadr

FWS Human Dimensions: https://www.fws.gov/refuges/NaturalResourcePC/humanDimensions.html

NPS Rivers, Trails, and Conservation Assistance Program: https://www.nps.gov/orgs/rtca/index.htm

Reclamation: WaterSMART Cooperative Watershed Management Program: https://www.usbr.gov/watersmart/cwmp/index.html

Programs in Other Federal Agencies:

EPA Conflict Prevention and Resolution Program (CPRC): https://www.epa.gov/adr

Federal Energy Regulatory Commission Dispute Resolution Service: https://www.ferc.gov/enforcement-legal/legal/alternative-dispute-resolution/alternative-dispute-resolution-processes

Udall Foundation National Center for Environmental Conflict Resolution: https://www.udall.gov/ourprograms/institute/institute.aspx

USACE Collaboration and Public Participation Center of Expertise: https://www.iwr.usace.army.mil/About/Technical-Centers/CPCX-Collaboration-Public-Participation/

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If a "Notice to Parties of Court-Directed ADR Program" (Form ADR-08) is issued at the time of the filing of the complaint, the case has been assigned to a judge who participates in the Court-Directed ADR Program. Click here to see the list of participating judges.

In those cases that are not in the Court-Directed ADR Program, counsel must file a “Request: ADR Procedure Selection” (ADR-01) with their Fed.R.Civ.P. 26(f) Report. See General Order 11-10, § 6.2. This form may also be used when the parties want to request a different ADR Procedure or when the Court has not yet entered an Order/Referral to ADR.

After considering the parties’ Fed.R.Civ.P. 26(f) Report, the assigned judge will order/refer the case to one of the three ADR Procedures. The steps for implementing the three ADR Procedures are set forth below.

For further information on the Court’s ADR Program, review Civil L.R. 16-15 and General Order 11-10.

If ADR Procedure No. 1 (District/Magistrate Judge) is selected: If the assigned district judge or magistrate judge is to conduct a settlement conference, the parties must contact that judge’s courtroom deputy and arrange a date and time for the settlement conference.

If ADR Procedure No. 2 (Mediation Panel) is selected: Under General Order 11-10, §3.8, the Panel Mediator volunteers his or her preparation time and the first three hours of the session. Thereafter, if the parties choose to continue the mediation, the Mediator may charge his or her market rate.

The parties should first review the list of Panel Mediators on the Court website and confer regarding a Mediator upon whom they can agree. There are two lists: one, alphabetical by Panel Mediator and the other, by area of law.

How to Update Your Profile in CM/ECF

Attorneys are required by Local Rule 5-4.8.1 to maintain and update their personal contact information in CM/ECF. Beginning February 18, 2020, updates must be submitted through PACER. For instructions on how to update your profile, see Updating Your Contact Information.

The website also contains professional profiles of the Panel Mediators.

When the parties have agreed upon a Mediator, counsel with familiarity with the case must call the Mediator to obtain his or her consent to mediate the case within the time allowed by the Court. Counsel then e-file a Stipulation Regarding Selection of Mediator (ADR-02). If the parties and the Panel Mediator have agreed upon a date for the mediation, they may include the date in the form ADR-02. The mediation date is *optional*.

Soon after the form ADR-02 is filed, the ADR Program will e-file a Notice of Assignment of Mediator (ADR-11).

If the parties cannot agree on a Panel Mediator, they should e-file an ADR-02 Stipulation requesting assignment of a Panel Mediator. The ADR Program will assign a Mediator from the area of law designated on the ADR-02 and e-file the Notice of Assignment of Mediator (ADR-11).

Within thirty (30) days of the Notice of Assignment of Mediator, the Mediator will contact counsel to schedule the mediation. See General Order 11-10, §8.1. The Mediator will strive to schedule the mediation for the earliest possible date after the parties have had reasonable time to evaluate their case, thus minimizing the expense of the litigation.

The mediation must be completed within the time-frame ordered by the assigned judge or, if no completion date has been ordered, no later than forty-five (45) days before the Final Pretrial Conference. See Civil L.R. 16-15.2.

Within five days after the mediation session, the Mediator must e-file a Mediation Report (ADR-03). This Report advises the Court whether the case was completely settled at the mediation, partially settled, or if the parties were unable to reach an agreement. The Mediator will also

advise the Court whether any party, representative or counsel failed to appear at the mediation and whether the Mediator contemplates any further facilitated discussions.

Questions regarding the Mediation Panel should be directed to the ADR Program at (213) 894-2993.

If ADR Procedure No. 3 (Private Mediation) is selected: The parties must make any necessary arrangements directly with the private mediator and file a notice with the Court naming the person who will conduct the mediation and indicating the mediation date.

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California Code, Government Code - GOV § 66030

Current as of January 01, 2023 | Updated by FindLaw Staff (https://www.findlaw.com/company/our-team.html)

(a) The Legislature finds and declares all of the following:

(1) Current law provides that aggrieved agencies, project proponents, and affected residents may bring suit against the land use decisions of state and local governmental agencies. In practical terms, nearly anyone can sue once a project has been approved.

(2) Contention often arises over projects involving local general plans and zoning, redevelopment plans, the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000220&refType=LQ&originatingDoc=I137255a06f8f11ed9a20f277d41e0
development impact fees, annexations and incorporations, and the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=I137255a16f8f11ed9a20f277d41e0

(3) When a public agency approves a development project that is not in accordance with the law, or when the prerogative to bring suit is abused, lawsuits can delay development, add uncertainty and cost to the development process, make housing more expensive, and damage California's competitiveness. This litigation begins in the superior court, and often progresses on appeal to the Court of Appeal and the Supreme Court, adding to the workload of the state's already overburdened judicial system.

(b) It is, therefore, the intent of the Legislature to help litigants resolve their differences by establishing formal mediation processes for land use disputes. In establishing these mediation processes, it is not the intent of the Legislature to interfere with the ability of litigants to pursue remedies through the courts.

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California Code, Government Code - GOV § 66031

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(a) Notwithstanding any other provision of law, any action brought in the superior court relating to any of the following subjects may be subject to a mediation proceeding conducted pursuant to this chapter:

(1) The approval or denial by a public agency of any development project.

(2) Any act or decision of a public agency made pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000220&refType=LQ&originatingDoc=Ia3b057106f9011ed9a20f277d41e0

(3) The failure of a public agency to meet the time limits specified in Chapter 4.5 (commencing with Section 65920 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=Ia3b057116f9011ed9a20f277d41e0 commonly known as the Permit Streamlining Act, or in the Subdivision Map Act (Division 2 (commencing with Section 66410 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=Ia3b057126f9011ed9a20f277d41e0

(4) Fees determined pursuant to Chapter 6 (commencing with Section 17620) of Division 1 of Part 10.5 of the Education Code (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000205&refType=LQ&originatingDoc=Ia3b07e206f9011ed9a20f277d41e0 or Chapter 4.9 (commencing with Section 65995 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=Ia3b07e216f9011ed9a20f277d41e0

(5) Fees determined pursuant to the Mitigation Fee Act (Chapter 5 (commencing with Section 66000 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=Ia3b0a5306f9011ed9a20f277d41e0 Chapter 6 (commencing with Section 66010 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=Ia3b0a5316f9011ed9a20f277d41e0 Chapter 7 (commencing with Section 66012 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=Ia3b0a5326f9011ed9a20f277d41e0 Chapter 8 (commencing with Section 66016 (https://1.next.westlaw.com/Link/Document/FullText?

findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=Ia3b0a5336f9011ed9a20f277d41e0 and Chapter 9 (commencing with Section 66020 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=Ia3b0a5346f9011ed9a20f277d41e0

(6) The adequacy of a general plan or specific plan adopted pursuant to Chapter 3 (commencing with Section 65100 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=Ia3b0cc406f9011ed9a20f277d41e0

(7) The validity of any sphere of influence, urban service area, change of organization or reorganization, or any other decision made pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=Ia3b0cc416f9011ed9a20f277d41e0 of Title 5).

(8) The adoption or amendment of a redevelopment plan pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000213&refType=LQ&originatingDoc=Ia3b0f3506f9011ed9a20f277d41e0 of Division 24 of the Health and Safety Code).

(9) The validity of any zoning decision made pursuant to Chapter 4 (commencing with Section 65800 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=Ia3b0f3516f9011ed9a20f277d41e0

(10) The validity of any decision made pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000221&refType=LQ&originatingDoc=Ia3b11a606f9011ed9a20f277d41e0

(b) Within five days after the deadline for the respondent or defendant to file its reply to an action, the court may invite the parties to consider resolving their dispute by selecting a mutually acceptable person to serve as a mediator, or an organization or agency to provide a mediator.

(c) In selecting a person to serve as a mediator, or an organization or agency to provide a mediator, the parties shall consider the following:

(1) The council of governments having jurisdiction in the county where the dispute arose.

(2) Any subregional or countywide council of governments in the county where the dispute arose.

(3) Any other person with experience or training in mediation including those with experience in land use issues, or any other organization or agency that can provide a person with experience or training in mediation, including those with experience in land use issues.

(d) If the court invites the parties to consider mediation, the parties shall notify the court within 30 days if they have selected a mutually acceptable person to serve as a mediator. If the parties have not selected a mediator within 30 days, the action shall proceed. The court shall not draw any implication, favorable or otherwise, from the refusal by a party to accept the invitation by the court to consider mediation. Nothing in this section shall preclude the parties from using mediation at any other time while the action is pending.

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California Code, Public Resources Code - PRC § 21167.8

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(a) Not later than 20 days from the date of service upon a public agency of a petition or complaint brought pursuant to Section 21167 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000220&refType=LQ&originatingDoc=I048e15e0a5ce11ed94c1c1b91d664 the public agency shall file with the court a notice setting forth the time and place at which all parties shall meet and attempt to settle the litigation. The meeting shall be scheduled and held not later than 45 days from the date of service of the petition or complaint upon the public agency. The notice of the settlement meeting shall be served by mail upon the counsel for each party. If the public agency does not know the identity of counsel for any party, the notice shall be served by mail upon the party for whom counsel is not known.

(b) At the time and place specified in the notice filed with the court, the parties shall meet and confer regarding anticipated issues to be raised in the litigation and shall attempt in good faith to settle the litigation and the dispute that forms the basis of the litigation. The settlement meeting discussions shall be comprehensive in nature and shall focus on the legal issues raised by the parties concerning the project that is the subject of the litigation.

(c) The settlement meeting may be continued from time to time without postponing or otherwise delaying other applicable time limits in the litigation. The settlement meeting is intended to be conducted concurrently with any judicial proceedings.

(d) If the litigation is not settled, the court, in its discretion, may, or at the request of any party, shall, schedule a further settlement conference before a judge of the superior court. If the petition or complaint is later heard on its merits, the judge hearing the matter shall not be the same judge conducting the settlement conference, except in counties that have only one judge of the superior court.

(e) The failure of any party, who was notified pursuant to subdivision (a), to participate in the litigation settlement process, without good cause, may result in an imposition of sanctions by the court.

(f) Not later than 30 days from the date that notice of certification of the record of proceedings was filed and served in accordance with Section 21167.6 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000220&refType=LQ&originatingDoc=I048e6400a5ce11ed94c1c1b91d664 the petitioner or plaintiff shall file and serve on all other parties a statement of issues that the petitioner or plaintiff intends to raise in any brief or at any hearing or trial. Not later than 10 days from the date on which the respondent or real party in interest has been served with the statement of issues from the petitioner or plaintiff, each respondent and real party in interest shall file and serve on all other parties a statement of issues which that party intends to raise in any brief or at any hearing or trial.