

## LAND USE MEDIATION RESEARCH/TRAINING/SERVICES

### **The Consensus Building Institute (CBI)**

<http://cbuilding.org/>

(Cambridge and D.C.)

A non-profit that works with leaders, advocates, experts, and communities to promote effective negotiations, build consensus, and resolve conflicts. They rely on strategies developed through the Program on Negotiation and MIT-Harvard Public Disputes Program at Harvard Law School, where a number of CBI's staff and Board members are affiliated. CBI has a "Land Use and Facility Siting Dispute Program Center" and the website is great resource for considerable information about land use mediation.

CBI has produced a number of studies/ reports on land use mediation, including:

- *Using Assisted Negotiation to Settle Land Use Disputes: a Guidebook for Public Officials* (1999), <http://www.cbuilding.org/ideas/reports/using-assisted-negotiation-settle-land-use-disputes-guidebook-public-officials>
- *Mediating Land Use Disputes, Pro's and Con's*; Lawrence Susskind, Mieke Van Der Wansem, and Armando Ciccarelli (2000), <http://www.cbuilding.org/ideas/reports/mediating-land-use-disputes-pros-and-cons>
- *Land Use Decision Making on Martha's Vineyard* (2004), <http://www.cbuilding.org/resource/mutual-gains-negotiation-and-conflict-resolution-land-use-decisionmaking-martha%E2%80%99s-vineyard>

- *Responding to Streams of Land Use Disputes: A Systems Approach*, Patrick Field, Matthew McKinney (2007), <http://cbuilding.org/resource/responding-streams-land-use-disputes-systems-approach>
- *Cognitive Barriers in the Land Use Planning Process* (2007), <http://www.cbuilding.org/ideas/reports/cognitive-barriers-land-use-planning-process>
- *Integrating Mediation in Land Use Decision Making: a Report on Systems of Land Use Mediation in Vermont*, Patrick Field, Mark Strassberg, and Kate Harvey (2009); <http://www.cbuilding.org/resource/integrating-mediation-land-use-decision-making-report-systems-land-use-mediation-vermont>

## **Environmental Mediation Center (EMC)**

<http://www.emcenter.org/>

(Vermont)

The Environmental Mediation Center (EMC) is a non-profit organization whose mission is to help parties resolve environmental, land use, and agricultural disputes through the effective use of mediation. The EMC designs and administers environmental and agricultural dispute resolution programs. The EMC administers the United States Department of Agriculture's certified mediation programs for Vermont, New Hampshire, and Hawaii. The EMC also designs and administers environmental dispute resolution programs utilizing mediation screening for governmental and regulatory permitting bodies.

## **Oregon Consensus**

<http://www.orconsensus.pdx.edu/about.php>

(Portland)

Oregon Consensus at Portland State University provides mediation services on a wide variety of environmental issues, including Land Use Board Appeal (LUBA) mediations.

## **Pace Law School Land Use Law Center / Kheel Center on the Resolution of Environmental Interest Disputes**

<https://www.pace.edu/school-of-law/centers-and-special-programs/centers/theodore-w-kheel-center-resolution-environmental-interest-disputes>

(White Plains, NY)

The Land Use Law Center is dedicated to fostering the development of sustainable communities and regions through the promotion of innovative land use strategies and dispute resolution techniques. The Land Use Law Center houses the Kheel Center on the Resolution of Environmental Interest Disputes. The Kheel Center's work focuses on environmental interest disputes of importance to communities, states, and regions that require innovative resolution strategies and forums. Its mission is to train law students and lawyers in the skills that practicing attorneys need to address conflicts arising from climate change and other critical environmental and land use issues that may not be amenable to resolution by traditional means of adjudication.

## **U.S Institute for Environmental Conflict Resolution (Udall Foundation)**

<http://www.ecr.gov/>

(Tucson, AZ and Washington D.C.)

Congress established the U.S. Institute for Environmental Conflict Resolution in 1998. The U.S. Institute's mission is to help resolve environmental disputes that involve the

federal government, by providing mediation, training and related services. Included within the term "environmental" disputes are conflicts related to the environment, public lands and natural resources. Congress also directed the U.S. Institute to work to further the implementation of our National Environmental Policy Act (NEPA) by providing negotiation, mediation, and other settlement efforts as alternatives to litigation. Congress placed the U.S. Institute within the Udall Foundation. The Foundation is an independent federal agency based in Tucson, Arizona. As a result, the U.S. Institute is part of the federal government - but it is completely independent of all other federal agencies. The U.S. Institute provides a range of services to help parties prevent, manage and resolve environmental conflicts involving the federal government.

## **The William D. Ruckelshaus Center**

<http://ruckelshauscenter.wsu.edu/>

(Seattle)

A joint effort of Washington's two research universities that assists public, private, tribal, non-profit and other community leaders in their efforts to build consensus and resolve conflicts around difficult public policy issues related to environmental policy issues. The Center also advances teaching and research related to collaborative problem solving.

## LAND USE MEDIATION RULES AND REGULATIONS

### California

9.3 CA GOVT § 66030 *et. seq.*, Mediation and Resolution of Land Use Disputes.

Under California law, a number of land use and environmental decisions (identified in the statute) that are challenged in superior court may be subject to a mediation proceeding. Within 5 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 disputes through mediation. If the parties choose to proceed with mediation, all time limits with respect to the court action will be tolled while the mediation occurs. At the end of the mediation, the mediator must file a report with the Office of Permit Assistance that includes an estimate of the costs avoided, if any, because the parties use mediation instead of litigation.

### Colorado

C.R.S.A. § 24-32-3209.

The state of Colorado has adopted a process for mediation between local jurisdictions that have a dispute over a comprehensive plan or annexations. In Colorado, local governments must adopt a comprehensive plan and may petition for annexation of property. A neighboring jurisdiction may file an objection to the comprehensive plan and/or annexation and may include, with that objection, a request that the planning/annexing government participate in mediation of the comprehensive planning dispute. The planning/annexing jurisdiction is required to participate in mediation if it is requested by the objecting jurisdiction. The objecting jurisdiction must pay the costs of the mediator's services and the mediation is coordinated by a state agency called the Office of Smart Growth.

## **Florida**

F.S. § 70.51, the Florida Land Use and Environmental Dispute Resolution Act.

The “Florida Land Use and Environmental Dispute Resolution Act” allows any owner who believes that a development order (land use decision) or enforcement action is unreasonable or unfairly burdens the use of the owner’s real property may apply for relief under the Act within 30 days after receipt of the order. The property owner files the request for relief with the governmental entity only after exhausting all administrative remedies. The “head” of the governmental entity must then forward the request to a special magistrate who is required to hold a hearing. The initiation of this process tolls the deadline for filing a complaint for judicial review of the order. The magistrate, acting as a mediator, attempts to facilitate a resolution of the conflict between the owner and the governmental entity. The information is presented to the magistrate at a hearing and the statute defines the circumstances under which the challenged order is to be considered unreasonable or unfair burden to property. At the close of the hearing, the special magistrate prepares a written recommendation to the parties and presents findings on whether the order is unreasonable.

## **Idaho**

I.C § 67-6510: Mediation – Time limitations tolled

The Local Land Use Planning Act in Idaho includes a provision that requires local governments to include the option of mediation in the procedure for processing land use applications. Mediation may occur at any point during the decision-making process or after a final decision has been made. Mediation may be requested by the applicant, an affected person, the zoning commission or the governing board. During mediation, any time limitation relevant to the application is tolled.

## **Maine**

5 M.R.S.A § 3341: Land Use Mediation Program.

4 M.R.S.A § 18-B: Court Alternative Dispute Resolution Service

Maine's state law establishes a land use mediation program through Maine's Court Alternative Dispute Resolution Service. A landowner who has sought and failed to obtain a permit or governmental approval for use of his or her land may apply for mediation using this program after pursuing all administrative remedies. The landowner must submit an application to the court within a certain time frame and the Superior Court clerk will forward the application to the Court Mediation Service. The deadline for filing an appeal for judicial review is stayed until after the mediation process is completed. Participants in the mediation share the costs of mediation.

## **Minnesota**

M.S.A § 572A.01: Comprehensive planning disputes; mediation

M.S.A § 572A.015: Chapter 414 disputes; mediation

Minnesota's state law sets forth a formal process for disputes between a county and a city regarding comprehensive planning. As part of this process, any party may file a written request for mediation with the Bureau of Mediation Services. The Bureau of Mediation Services provides a list of neutrals experienced in land use planning or local government issues and the parties select a mediator from that list and mediation must occur within a 30 day period.

Minnesota law also sets forth a process for municipal boundary adjustments. An administrative law judge conducts hearings on municipal boundary adjustments and he/she may require that the dispute be addressed in whole or in part by alternative dispute resolution by the Bureau of Mediation Services. Within 10 days of receiving a request for mediation that the ALJ has required, the Bureau of Mediation Services will go through the same process outlined above.

The Minnesota Bureau of Mediation Services is a state agency – details about this agency are on its web site at <http://www.bms.state.mn.us/index.html>.

## **Oregon**

O.R.S. § 197.830, 860

O.R.S. § 197.010

O.R.S. § 197.320

Oregon state law establishes a Land Use Board of Appeals, which reviews land use decisions made by local governments. Within 10 days after service of a notice of intent to appeal, the board must provide notice to the petitioner and respondent of their option to enter into mediation pursuant to ORS § 197.860. All parties to the appeal may enter into a stipulation to stay the appeal to allow for mediation.

In a separate section of the code regarding comprehensive planning, Oregon incorporates a statement that says: “The equitable balance between state and local government interests can be best achieved by resolution of conflicts using alternative dispute resolution techniques such as mediation, collaborative planning and arbitration. Such dispute resolution techniques are particularly suitable for conflicts arising over periodic review, comprehensive plan and land use regulations, amendments, enforcement issues and local interpretation of state land use policy.”

In yet another separate section, the code authorizes the Land Conservation and Development Commission to issue enforcement orders to local governments, state agencies or special districts with respect to failure to comply with state planning requirements. The code explicitly states that a person requesting an enforcement order and the local government or special district may enter into mediation to resolve the issues in the request. DLCD must provide mediation services when jointly requested.

## **Washington**

RCW § 43.21B.175

In Washington state, the Environmental and Land Use Hearings Office consists of three administrative boards (the Pollution Control Hearings Board, the Shorelines Hearings Board, and the Growth Management Hearings Board) for the purpose of hearing different types of environmental appeals. The statute contains a provision that allows a party to the appeal to request mediation. If all parties agree, mediation may be conducted by an administrative appeals judge or other duly authorized agent of the board who has received training in dispute resolution techniques or has a demonstrated history of successfully resolving disputes, as determined by the board.

## **Wisconsin**

W.S.A § 66.02.03

W.S.A § 66.0217

Wisconsin state law establishes a procedure for incorporation of villages and cities. That provision allows parties to a petition for municipal incorporation to request a stay of Incorporation Review Board proceedings to engage in alternative dispute resolution. A separate provision requires that the Wisconsin Department of Administration make available on its web site a list of persons who identify themselves as professionals qualified to facilitate ADR of annexation, boundary, and land use disputes. The Department may also include links for other information about ADR.

## **Bainbridge Island, Washington**

### Ch. 2.19 BIMC

Chapter 2.19 of the City of Bainbridge Island's code, titled "Land Use Mediation," sets forth an optional process for mediation of disputed land use applications and code enforcement actions. Mediation may be requested by responsible or directly affected parties to the dispute, the department director, the planning commission, the hearing examiner, or the city council. Deadlines in the decision making process may be waived by the applicant to accommodate mediation proceedings. Mediation may occur at any stage in the project review process prior to the close of a public hearing. Upon a request for mediation, the department director must designate a mediator and the mediator's standard rate is generally provided by all of the parties or by the city through a mediation compensation process.

## **Kitsap County, Washington**

### KCC 21.04.120

This Kitsap County code provision incorporates mediation into the land use review and appeal process. During application review, the planning director may offer voluntary mediation and, if accepted, the application review process is tolled until mediation is complete. When an appeal to the hearing examiner has been filed regarding a Type I or II decision, mediation is mandatory prior to being heard by the hearing examiner. The planning department must make arrangements for mediation with the Dispute Resolution Center of Kitsap County. As to other types of decisions, the hearing examiner must advise the parties as early as possible in the process that mediation is available. If Type III application is contested and the parties cannot come to agreement on the issues by the end of the open record hearing, the hearing examiner may direct mediation and continue the hearing until mediation is held. Kitsap County pays the cost of mediation when it is conducted through the Kitsap County dispute resolution center. Parties pay the cost in all other cases.

## LOCAL AND STATE MEDIATION PROGRAMS WITH LAND USE COMPONENT

### Albuquerque, New Mexico

ROA 3-1-4, Resolution 8-25-93

According to the article *The Zoning Dispute Whisperer*, Joshua Abrams (2011), the City of Albuquerque has a well-developed alternative dispute resolution program that handles about 100 land use cases a year. Apparently, the planning department uses independent, paid consultants and over 60% of the issues raised are resolved prior to the application being heard by the Hearing Board. This program is quite prominent on the City's website (with a lot of information provided). A search of the Albuquerque code revealed no specific provisions outlining the process in the land-use context, but there is a general provision (ROA 3-1-4) indicating that the City shall encourage the use of ADR in all appropriate situations. The City also adopted a resolution in 1993 adopting a policy for use of ADR in site-specific land use situations. Other resolutions appear to appropriate funds for this purpose.

### City of Bellevue, Washington

[http://www.ci.bellevue.wa.us/mediation\\_services.htm](http://www.ci.bellevue.wa.us/mediation_services.htm)

The Department of Planning and Community Development is responsible for administration and operation of the City's neighborhood mediation program. The mediation program helps members of the public solve a broad range of issues, including public engagement facilitation for high profile land use changes, such a major rezones.

### Massachusetts

The Office of Public Collaboration (previously called the Massachusetts Office of Dispute Resolution) ran a program for the Department of Environmental Protection (MassDEP) to reduce lawsuits involving developments that impacted wetlands. While cases were waiting to be heard by a judge, staff members from MODR offered disputants a chance to mediate. (The program was moved in house by Mass DEP in 2003).