
**Saving Time and Money While
Preserving Relationship:
The Value of Negotiation and Mediation
in Transportation Projects**

Presented by Amy Kramb
and Frank Reed

Discussion Outline

- Introduction to Dispute Resolution (1:00-1:15)
- The FHWA and Environmental Conflict Resolution (1:15-1:45)
- The Costs of Litigation Versus Negotiation presented by Frank Reed (1:45-2:15)
- A Summary of How and When Negotiation Can Help Your Project (2:15-2:30)

Introduction to Dispute Resolution

- What is Dispute Resolution?
 - Litigation is not the only way to resolve disputes
- What is the Difference Between Negotiation and Mediation?
 - Negotiation involves the parties conversing to reach a voluntary, mutual agreement
 - Mediation is negotiation facilitated by a third-party neutral

Benefits of Negotiation & Mediation

- Generally less expensive than litigation
- Often more timely than litigation
- More satisfaction with mutually agreed upon outcome
- Greater degree of control and predictability of outcome
- Preservation of ongoing relationships

The FHWA and Dispute Resolution

- Background Information
 - 1990 – Federal agencies encouraged to use alternatives to litigation
 - 1998 – Congress forms the US Institute for Environmental Conflict Resolution
 - 2002 – US DOT Statement of Policy on Dispute Resolution
 - 2002 – FHWA issues guidance on dispute resolution for transportation projects

FHWA Guidance on Managing Conflict

Four Actions that Lead to Disputes

- Establishing the Purpose and Need
- Coordinating Among Agencies
- Analyzing Alternatives
- Selecting an Alternative

FHWA Guidance on Managing Conflict

Six Common Types of Disputes

- Disputes over terminology
- Disputes over information
- Disputes related to inadequate resources
- Disputes because of unfulfilled commitments
- Disputes rooted in fundamental disagreements of missions or mandates
- Disputes associated with human behaviors

FHWA Guidance on Managing Conflict Strategies for Preventing Disputes

- Documenting and sharing definitions
- Holding joint educational sessions
- Jointly agreeing upon methodologies
- Prioritizing projects
- Defining necessary resources
- Clarifying levels of authority
- Creating partnerships
- Avoiding assumptions

FHWA Guidance on Managing Conflict

Three Staged Problem Solving Model

- Unassisted Problem Solving (i.e. negotiation)
 - Develop timelines for reviews
 - Define guiding principles, meeting protocols, ground rules, and procedures for impasse
- Assisted Problem Solving (i.e. mediation)
- Upward Referral Process
 - Establish when and to whom to escalate
 - Use the formal process through the CEQ or USDOT

FHWA Guidance on Managing Conflict Strategies for Dispute Resolution

- Allow each agency a respected seat at the table
- Come to the table prepared and with an open mind
- Provide sufficient staffing
- Keep scoping open and continuous
- Use concurrence points at project milestones
- Do not revisit project milestones after concurrence
- Address issues as soon as possible and at the lowest level possible

Costs of Litigation v. Negotiation

- Discussion Presented By Frank Reed

Negotiation & Mediation: It Can Help Your Project

- Preserving Relationships
 - Clients
 - Public
 - Colleagues
- Fostering Productive Public Involvement
- Reaching Consensus
- Meeting Milestones

Resources

- How to Get Past No by William Ury
- Getting to Yes by Roger Fisher & William Ury
- www.mediate.com
- US Institute for Environmental Conflict Resolution www.ecr.gov
- FHWA Conflict Resolution www.environmental.fhwa.dot.gov/strmlng/es2conflict.asp