

**Conducting  
Conflict  
Assessments  
in the  
Land Use Context**

*A Manual*

*by*

**The Consensus Building Institute**

*and*

**Pace University Land Use Law Center**

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# **Section I**

## **The Use of Conflict Assessments**

### **In Land Use Disputes**

Land use disputes are a special class of public dispute. Compared to other public disputes—such as social policy conflicts or budget battles—land use disputes bring more parties to the table with fewer pre-established understandings about how their disagreements ought to be resolved. Land use conflicts also require greater attention to scientific and technical considerations, involve longer-term (even intergenerational) impacts, and can, if mishandled, extinguish property rights that have existed for centuries or result in the destruction of irreplaceable ecological resources.

In addition, land use disputes cut across the three broad classes of public disputes—disputes over the allocation of fixed resources, over policy priorities, and over standards of environmental quality or human health and safety. That is, land use disputes can take any one of these three forms.

All land use disputes involve multiple parties confronting an array of complex, intertwined issues. The parties typically include governmental agencies, landowners, abutters, and well-organized public interest groups such as environmental advocacy organizations. The issues in dispute may involve comprehensive planning, proposed development projects, environmental cleanup, facility siting or changes in infrastructure, or questions about natural resource management.

For example, a facility siting dispute might involve corporate interests seeking to build a waste-processing plant, multiple regulatory agencies with conflicting mandates and opinions regarding the need for such a facility, neighbors worried about property values, and advocacy groups seeking to make a larger point, such as the need for greater environmental justice. The interests of the parties in such disputes extend from immediate concerns about the specific impacts of the proposed facility to long-term worries about general problems only tangentially associated with the facility. Such disputes may also involve debates about (conflicting) constitutional rights.

In short, land use disputes often seem hopelessly complex.

As a result, traditional dispute resolution processes have sometimes proven to be inadequate or unsatisfying, and the use of so-called “alternative” processes—such as mediation—is increasing. Indeed, the use of mediation to resolve land use disputes began in the early 1980s. Government agencies experimented with it when traditional approaches to issuing permits or siting facilities bogged down. Since that time, the number of organizations and individuals providing land use mediation services has increased dramatically. Many localities, counties, and states are even building mediation into their basic administrative processes, such that mediation can hardly be considered an “alternative” any longer. In the only comprehensive study of land use mediation in the United States (involving 100 cases), researchers found that stakeholders’ levels of satisfaction with the mediation process, and the outcome, were extraordinarily high (Susskind, et al., 1999).

It’s important to note that mediation of land use disputes always produces a proposal that must still be acted upon by the elected or appointed bodies with the relevant statutory authority. Mediation does not substitute the ad hoc judgment of stakeholders for the decision-making responsibilities of elected and appointed officials.

If a land use mediation process is to be successful, however, the right people must be invited to the table, to talk about the right things, in a well-organized fashion. For this to happen, we believe that someone (whom we call a *convenor*) must commission the preparation of a *conflict assessment*—a document that summarizes the results of off-the-record interviews with stakeholders and recommends whether and how to proceed.

A conflict assessment is an essential step, not a luxury. Disputing parties sometimes have to wrestle with dramatic inequalities in political power, unequal access to financial resources, and very different levels of technical competence and negotiating experience. In some instances, such inequalities are so substantial that a key party might decide it has no interest in negotiating. But a conflict assessment can help to convince such parties that their options “away from the table” are not as good as they imagined. Also, because conflict assessments address each stakeholder’s need for additional information or technical advice, they sometimes make clear that only a jointly managed fact-finding process will generate reliable data acceptable to all the participants. The conflict assessment process can also be invaluable in educating stakeholders about the views of others and about the mediation process.

The use of conflict assessment in mediation has changed over time. Twenty years ago, when an impasse was reached, the relevant agency hired a professional mediator (also called a *neutral*) and asked him or her to settle the disagreement in whatever way they could. Typically, the neutral talked with the key people identified by the agency and decided whether or not to move forward. If the neutral thought mediation could help, he or she worked with the agency to invite the appropriate parties and proposed a step-by-step process for reaching agreement.

This mediator-centered approach has, in recent years, given way to much more open and elaborate conflict assessment procedures that depend on the first-hand involvement of self-identified stakeholders willing to represent key categories of interested parties. Also, the person

who conducts the conflict assessment is no longer assumed to be the person who will go on to mediate the dispute. (Thus the person conducting the assessment is often referred to as the *assessor*, not the mediator.)

A conflict assessment may require weeks or even months to prepare. It may be necessary, for example, to interview dozens of potential participants. Each interview typically takes 30 – 60 minutes. After the interviewing process, the assessor drafts a conflict assessment report, outlining the findings from the interviews (without attribution to any individual person or group), an analysis of the conflict, a possible timetable, ground rules, a proposed work plan, a proposed budget, possible fact-finding arrangements, and a clear statement of the role and responsibilities of the convenor, the mediator, and the other possible participants. (This report is sometimes called an “issues assessment,” especially when the interaction is intended to focus on an open-ended policy question (i.e., before a conflict has crystallized or an impasse has been reached).) Finally, the interviewees are typically asked to review and comment on the draft assessment.

Section II of this manual outlines in detail our suggested approach to conflict assessment. While it applies to the use of mediation in almost any public context, we have focused in particular on the way mediation can be used to resolve land use disputes. Section III answers frequently asked questions about the practice of conflict assessment.

## Section II

### How to Conduct a Conflict Assessment\*

Conflict assessments typically include six steps. The first is undertaken by the convenor or sponsor (i.e., the party interested in organizing a mediation process). In this step, the convenor **decides** to initiate a conflict assessment and helps to get it started. The next five steps are undertaken by the assessor. The assessor **initiates** the conflict assessment, **gathers** information through interviews, **analyzes** the interview results, **designs** a joint problem-solving process, and **shares** the assessment (in the form of a written report) with interviewees. This section describes each of these six steps in detail. (See Figure 1 for a graphic illustration of these steps.)

We will periodically refer to a real-life case in which a conflict assessment was conducted. The case involved a dispute in Delaware over how to implement the state's Coastal Zone Act (CZA)—a powerful land use law prohibiting heavy industry from locating new facilities in the state's coastal region. Delaware's Department of Natural Resources and Environmental Control (DNREC) is the state agency responsible for enforcing the CZA. Although the CZA had been on the books in Delaware for 25 years, regulations implementing it had never been successfully promulgated. (The law had been enforced by DNREC on a case-by-case basis rather than by overarching rules.) As a result, industry and environmental groups battled for years over the implementation of the law. At one point, DNREC convened a group of stakeholders to try to develop regulations, but the effort failed. That failure only heightened the distrust and acrimony

among the parties. In December 1995, DNREC decided once again that regulations had to be drafted and that a consensus building effort should be convened. Given the long history of conflict among the parties, however, DNREC officials weren't sure that a consensus building process would be feasible. If it did go ahead, the agency wanted to make sure the process had a good chance of succeeding. So, DNREC hired the Consensus Building Institute (CBI) to conduct a conflict assessment.

CBI conducted one-on-one, in-person, confidential interviews with 53 stakeholders, including representatives of industry, environmental interests, and government. Based on the interviews, the assessors determined that a mediation process would only be feasible if a limited set of issues were discussed and certain preconditions were met. CBI's conflict assessment report proposed a six-month work plan.

DNREC, as the convenor, accepted CBI's recommendations and, in October 1996, convened the first meeting of the consensus building group. By early 1998, the group had successfully completed its mission, allowing DNREC to formally enact CZA regulations without any objection. In retrospect, it is clear that the conflict assessment was instrumental in ensuring the group's success.

## **Step 1: Decide to Initiate a Conflict Assessment**

As DNREC did, a convenor should begin a conflict assessment process by retaining a credible and qualified assessor. It's crucial that the assessor be perceived by all parties in the conflict as

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\* This section was adapted from the chapter "Conducting a conflict assessment," by Lawrence Susskind and Jennifer Thomas-Larmer, published in *The consensus building handbook: A comprehensive guide to reaching agreement*, edited by Lawrence Susskind, Sarah McKernan, and Jennifer Thomas-Larmer (Sage Publications, 2000).

impartial and not having a stake in the conflict at hand. It's also helpful if the assessor is trained in mediation.

The convenor and assessor should jointly prepare a contract outlining the terms of their relationship, the product to be delivered, the expected cost, and the deadline for delivery. The contract should ensure that the assessor can operate autonomously; that is, he or she should be able to make recommendations based only on his or her best judgment. The contract should stipulate that the assessor can keep statements made by interviewees confidential, even from the convenor, and that the convenor will not try to influence the assessor's recommendations.

Next, the convenor should provide the assessor with a preliminary list of likely stakeholders, as well as information regarding the relationships among the parties, the history of the conflict, the issues at stake, and the language stakeholders tend to use to characterize their views. The convenor should also provide relevant reports, letters, press releases, and the like.

Finally, the convenor should draft a letter to stakeholders that introduces the assessor, describes the assessment process, promises confidentiality, and requests each recipient's participation. This letter will later be sent on the convenor's letterhead to all potential interviewees.

During the rest of the assessment, the convenor should lend a hand when asked—for example, if the assessor needs help convincing a reluctant stakeholder to participate—but should otherwise step aside and await the assessor's final report.

## **Step 2: Initiate a Conflict Assessment**

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Based on the information provided by the convenor, the assessor should begin by making a preliminary list of issues to be explored during the interviews. The assessor should then draft an

interview protocol—a list of questions to be asked. The protocol should be designed so that interviews can be completed in 30 minutes or less, and it should be pre-tested before it is used. It should include some variation on the following questions.

- What is the history of this situation?
- What issues relating to the situation are important to you and why?
- What other individuals or organizations have a stake in the situation?
- What are the interests and concerns of those individuals or organizations, as you see them?
- Would you be willing to work with other stakeholders to develop a consensus-based solution to this situation?

Note that all but the last question are “open-ended;” that is, they are designed to encourage interviewees to talk at length about whatever they feel is important. Open-ended questions help to elicit detailed responses that are unaffected by the assessor’s perspective, knowledge, or bias.

The assessor must then determine whom to interview. The stakeholders on the preliminary list provided by the convenor should be called first. Each should be asked (when arranging an interview) to suggest others who might have a stake in the conflict. The individuals named, if they aren’t already on the preliminary list, can be thought of as a “second circle” of stakeholders. The first circle might number 40 or so, and the second circle 20 more, in a typical land use dispute. We think of the process of identifying stakeholders to interview as “moving outward in concentric circles.” This ensures that all possible interests are included.

The assessor may find that some groups with a stake in the conflict may not be aware of what’s going on, or may not be organized in a way that makes it easy to identify an appropriate spokesperson. For example, residents living near a farm may not know that the farmland was recently purchased by a developer, that the developer has asked the municipality to zone, or that the town might be considering a mediation process to formulate new land use guidelines for the

area. In such cases, the assessor may need to take a number of extra steps to find appropriate interviewees. For example, the convenor and the assessor could organize a public meeting to explain the situation and assist residents in choosing representatives to be interviewed.

The total number of people to be interviewed will vary widely depending on the conflict. Not everyone needs to be interviewed. Those who hold positions of authority in relevant organizations, or who are seen as leading players in the debate because of their special knowledge of or history of involvement in the conflict are all good candidates. The assessor should talk with people from the full range of interests, including everyone on the preliminary list and as many as possible from the second circle. Another rule of thumb is that the assessor should interview everyone whose name is mentioned by two or more people. In the Delaware case, the facilitators interviewed 53 individuals from three categories of stakeholders—24 from business and industry, 15 representing environmental interests, and 14 from government bodies.

The convenor should send the letter of introduction to each potential interviewee, and then the assessor should call each person to schedule an interview. In this first call, the assessor should explain why the assessment is being done, who is conducting it, and why it is important for all stakeholders' views to be heard.

A promise of confidentiality should also be offered. Confidentiality in this case means that comments made by the interviewee will not be attributed to that person by name, title, or organization in discussions with others or in the report that is prepared. A list of all interviewees will be included in the conflict assessment report, however, and comments will be grouped by stakeholder category and paraphrased in the report.

Prospective interviewees should be assured that being interviewed does not oblige them to participate in a subsequent mediation process. They may be invited to participate, but the assessment is fundamentally separate from any dialogue that may follow.

### **Step 3: Gather Information through Interviews**

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We believe stakeholders should be interviewed in person, individually. The eye-to-eye contact possible in an in-person interview (as opposed to a telephone interview) is important for both gathering accurate information and building rapport. In-person interviews allow the assessor to observe each interviewee's facial expressions and communicate understanding and empathy, thereby fostering trust. This is particularly important if the assessor is likely to go on to become the mediator of the consensus building process.

Individual interviews are preferable to group interviews because they encourage more candor. Group interviews do save time and money, and if such interviews must be conducted, only groups of stakeholders with very similar interests should be interviewed together (e.g., a group of environmental activists).

Interviews should take about 30 minutes each, and all interviews should be scheduled within a two- to three-day period. This minimizes costs when the assessor has to travel to the area. It will only work, of course, when stakeholders live within a relatively well-defined region and can come to a central location to be interviewed. For statewide or regional conflicts, interview sessions may need to be scheduled in more than one location (e.g., one day of interviews in a state capitol and another day in another large city).

Interviews should be conducted in a neutral location (e.g., a hotel or town hall) in private meeting rooms, thereby creating a "safe" atmosphere, encouraging candid conversations, and enabling the assessor to project the most neutral image possible. Meeting in the convenor's office, for example, may give the impression that the assessor is biased in favor of the convenor.

It's helpful if two assessors can be present at each interview—one to ask questions and one to take notes. Costs can be minimized by having the note-taker be an intern or lower-level staff person.

We do not recommend tape recording interviews. Taping often makes interviewees uneasy, and it can be complicated by technical problems—tapes run out, batteries wear down, etc. In addition, tape transcription takes much longer than the interview itself. If a tape recorder is used, it should be as a backup only, and permission should be asked beforehand.

During the interviews, the protocol should be followed, but not too strictly. Interview protocols usually need to be edited and supplemented with new questions as interviews proceed. The earliest interviews will often reveal information that was not anticipated. When this happens, the assessor begins to formulate an idea about how the mediation process might be designed. Later interviewees should be given a chance to react to these ideas. (For this reason, we also recommend that the most important and senior-level stakeholders be interviewed during the second half of the interviewing period.)

The assessor should be sure to write down the answers to the main questions (e.g., What are your main concerns? Who are the other key players?) as well as additional, related information, such as

- the interviewee's exact involvement in the conflict,
- what the interviewee thinks of the other parties,
- what the interviewee doesn't think is important,
- the names and organizational affiliations of people mentioned by the interviewee,
- whether or not the interviewee thinks the media are interested in the issues, and
- concerns expressed about the convenor or the assessment process.

After the interviews are completed, a written summary of the highlights of the interview should be sent to each participant, to be certain that nothing has been misunderstood.

## **Step 4: Analyze the Interview Results**

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By the time the interviews are complete, the assessor should have a good idea of who the central players are, what concerns them, and whether or not a mediation is likely to succeed. It's important that the assessor sort through the accumulated information in a methodical way, to confirm these impressions and generate a complete report. In the analysis phase, the assessor must summarize the findings, map the areas of agreement and disagreement, and assess the feasibility of moving forward.

### **Summarize the Findings**

The first step in analyzing the results is to read through the interview notes and draft a summary of the concerns and interests of everyone involved. These “findings” will be included in the written assessment report. They should be organized by stakeholder category (e.g., industry, government, advocacy groups). Each stakeholder category forms a heading, and the key issues form the subheadings, under which the primary opinions of those stakeholders should be summarized. In the Delaware assessment report, for example, under the heading “Business and Industry” there was a subheading: “What Is at Stake in the Debate.” Under that subheading was the following bullet, summarizing the thoughts of a number of the business leaders interviewed: “The future of continued heavy industry in Delaware is at stake. Plants must be allowed to expand and change in order to stay competitive and adjust to a rapidly changing marketplace” (Consensus Building Institute, 1996, p. 6).

When the findings are organized by stakeholder categories like this, it's easy to preserve confidentiality. No attribution is needed; the opinions and ideas are simply reported. Even if the findings are organized differently, it's important that the summary not attribute ideas or opinions to specific individuals or organizations. The summary should never include statements such as, "Jane Johnson of the state Department of Transportation is concerned that..." or even "A representative from the state Department of Transportation believes that..." At most, the assessor could say, "Government representatives expressed concern that..." This makes for inelegant writing, but it preserves confidentiality.

It is also important not to indicate which ideas or opinions represent a majority view. The purpose of the assessment is simply to set forth the range of ideas, not to polarize the debate by gauging whose views are dominant.

## **Map Areas of Agreement and Disagreement**

Once the findings have been summarized, the assessor should make note of issues on which there is disagreement. One way to do this is with a matrix. On one axis can be listed the issues in contention; on the other are the stakeholder groups. The assessor can place either Xs (indicating that the issue is a primary concern for a stakeholder group) or numbers from 1-5 (indicating the relative importance of the issue to the group) in the boxes. Matrices are helpful to the assessor and can be included in the written assessment. (See Figure 2 for a sample matrix showing the key concerns of interest groups in a hypothetical landfill siting case.)

The assessor should also make note of potential opportunities for "mutual gain," were the parties to enter negotiations. The basic premise of mutual gains is this: Since stakeholders generally differ regarding which issues are of greatest importance to them, they can "trade"

across those issues to create gains for each other in the negotiated agreement. In the Delaware case, for example, it first appeared that there was no room for agreement because the industry groups and the environmental groups held such sharply differing opinions on almost every issue. But they did, in fact, have different *priorities*. Industry was most concerned that any Coastal Zone Act regulations provide them with the flexibility to make changes, as needed, in their manufacturing processes and products. The environmental groups, on the other hand, were most concerned that there be continuous improvement in the environmental health of the coastal zone. The final agreement gave industry the flexibility to make changes as needed, while requiring them to offset any environmental impacts from new projects with environmental improvements, either at their facility or elsewhere in the coastal zone. (The improvements had to be “worth more” than the impacts, as measured by agreed-upon environmental indicators.) Each side got what it felt was most important, while giving away something of lesser importance. By mapping stakeholder interests with a matrix, the assessor may be able to spot potential trades such as this.

The assessor should also note potential obstacles to reaching agreement. These might include issues on which mutual gain does not seem possible (i.e., strongly held, mutually exclusive opinions on the same high-priority issue), deeply entrenched positions leading to illogical stubbornness, insufficient incentive to come to agreement, lack of financial support for a consensus process, and so forth.

## **Assess the Feasibility of a Mediation Process**

For a mediation process to succeed, the following conditions must be met (in no particular order):

- All key affected public officials and decision-makers are adequately represented, organized, willing to participate in the mediation.
- The parties are will to abide by pre-established ground rules.
- The process is open, credible, and agreed to by the participants themselves.
- There is significant possibility for agreement to be made on one or more key issues among the parties.
- The status quo is unacceptable, or at least unappealing to most stakeholders.
- There are sufficient financial, regulatory, or other mechanisms to reasonably ensure that any agreement reached can be implemented.
- There are sufficient agency and participant resources to support a mediation effort.

By contrast, mediation is *not* likely to succeed if any of the following conditions hold.

- There are few if any areas of potential agreement among stakeholders and no obvious opportunities to trade across issues valued differently.
- One or more key stakeholders refuses to participate or has good reasons not to negotiate.
- An unrealistic deadline for reaching consensus has been imposed on the parties.
- There is a better option available (i.e., stakeholders can count on meeting their interests through other channels).
- The convenor is incapable of granting the neutral facilitator with the autonomy he or she requires (or wants to control the process and the outcome solely for its own gain).
- Huge power imbalances exist among the stakeholders.
- There is no way to fund the mediation effort.
- There is no pressure to form a mediation process (i.e., there is no deadline, no political mandate, and no interest on the part of key stakeholders).

If just one of these conditions exists, it can usually be overcome, and a qualified recommendation to proceed may still be appropriate. For example, if a key stakeholder refuses to participate, the assessor can recommend going forward *only if* that stakeholder or someone with similar views can be convinced to take part.

The Delaware assessment uncovered several possible pitfalls and recommended moving forward only if they could be addressed. For example, a number of interviewees said their interests might best be met by lobbying the legislature or the executive branch. So, the report recommended that a group be convened only if leaders in the state's executive and legislative branches publicly endorsed the effort. The assessors believed that the right endorsements would "signal to all the interested parties that an 'end run' around the negotiation process would not be fruitful," (Consensus Building Institute, 1996, p. 39). Ultimately, these endorsements were received, and the process was successful.

Stakeholders' skepticism regarding the potential success of a mediation effort is not a reason to recommend against proceeding. People who are entrenched in a land use conflict have difficulty judging whether or not mediation is likely to be successful. Nor is the lack of a legislative or regulatory mandate sufficient reason to call a halt; land use mediation processes often operate without one.

If the assessor determines that a mediation is likely to be productive, the next step is to suggest the best way to proceed (Step 5, below). If it doesn't make sense to move forward, the assessor should explain why in the assessment report (Step 6).

## **Step 5: Design a Joint Problem-Solving Process**

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If a consensus-based process appears feasible, the assessor needs to draft a preliminary process design. This should take the form of a recommendation to be included in the conflict assessment report. The recommendation may be modified based on suggestions from interviewees after they review the draft conflict assessment. Also, the elements of a proposed process should be discussed and modified, if necessary, at the first meeting of the negotiating group. Ultimately, the negotiators must take “ownership” of the process in which they are involved. The proposed process design in the assessment report simply provides a starting point for discussion.

The assessor should make design recommendations regarding the goals of the mediation, the issues to be discussed, selection of the appropriate stakeholder representatives, the time frame and schedule for meetings, ground rules, the relationship of the process to other decision-making efforts, and funding.

### **Goals**

The assessor should suggest an appropriate mission for the mediation (e.g., to draft a Superfund cleanup plan or land management plan, formulate policy recommendations for a local planning board, or develop a facility siting process for a state environmental agency). The convenor probably has such an objective in mind, so the assessor should decide whether that objective is feasible. It is important that the assessor recommend clear, reachable goals.

### **Issues to be Discussed**

The richer the array of issues on the table, the greater the possibility of negotiating mutually advantageous “packages.” This principle, of course, has its limits. Some issues may be too

complex to handle in a single forum. A discussion about the quality of elementary education, for example, wouldn't be appropriate in a collaborative effort to clean up a toxic waste site next to an elementary school. In other circumstances, an issue may be too contentious to make much progress. For a policy dialogue on endangered species protection, for example, the assessors determined that it would be more productive to discuss the narrow issue of "incentives for private landowners to protect endangered species" than to take on other, highly contentious issues related to the Endangered Species Act (The Keystone Center, 1995). The assessor should delineate the range of issues that could be productively discussed.

## **Participation**

In recommending who should participate, the assessor should think about inclusion and balance. All categories of stakeholders should be identified, and an approximately equal number of representatives from each major category should be recommended. Ideally, the mix should not be skewed toward one interest or another (i.e., it's best if a group does not include twelve industry representatives and one environmentalist). Ultimately, it's the responsibility of the newly formed negotiating group to be sure all interests are represented at the table.

Dispute resolution practitioners hold varying opinions about how large a negotiating group can be and still be productive. We won't add to the debate by suggesting an optimal group size, because we have seen groups of widely varying sizes (from 5 to 100) successfully forge consensus agreements.

## **Time Frame/Schedule of Meetings**

The assessor must also make a recommendation regarding how many meetings are likely to be needed to cover the items on the agenda, when they should be held, and the order in which issues should be addressed. Meetings should be spaced at regular intervals, with adequate time between each to draft or review documents, undertake joint fact-finding, or complete other tasks. The total amount of time needed to complete a mediation will vary widely, depending on (among other factors):

- outside pressures constraining or driving the timeline (e.g., a statutory deadline);
- whether the situation is acute or chronic (e.g., an imminent public health threat that must be addressed or an abandoned junk yard that could be cleaned up);
- the level of interest, initiative, and energy shown by the participants;
- whether the situation is contained within a small geographic area in which people live near each other and can meet often, or a regional or national issue for which people will have to travel to meetings; and
- the level of joint fact-finding or original research needed to generate answers to the group's questions.

For a conflict that involves an acute situation, contained in a single community, for which there is a high level of interest, three or four four-hour meetings, spaced at weekly intervals, may be sufficient. For a conflict that involves a chronic problem, at a state or regional level, requiring a great deal of joint fact-finding, a series of 10 or more day-long sessions over a two-year period may be required.

## **Ground Rules**

The assessor should make preliminary recommendations regarding the ground rules that should govern the dialogue. In general, ground rules should address the following.

- How group decisions will be made (that is, how consensus is defined)
- The responsibilities of participants, the mediator(s), the convenor, and the public
- How participants should interact with each other
- How media inquiries will be handled
- How working groups or subcommittees will be utilized and their work integrated into the efforts of the plenary
- How draft documents will be circulated and reviewed
- Confidentiality (if the process is not public)
- Any other issues about which interviewees expressed specific concern

## **Relationship to Other Efforts**

Activities relating to the issues addressed in the mediation will undoubtedly take place before, during, and after the process. Town meetings, public hearings, elections, court cases, the promulgation of administrative rules, academic research, and even other consensus-based processes may overlap. The assessor must determine, to the extent possible, how the mediation might interact with these activities. Agreement may be needed by a certain date, for example, in order to meet a separate but linked deadline. It may be best not to begin a mediation until after an election, so the political landscape is clear. Or, a faculty member at a local university may be undertaking a research project that could influence the dialogue, so final agreements may need to be put on hold until her results are made public.

## **Budget and Funding Mechanism**

The assessor should determine the likely cost of the mediation, if one goes forward. The estimate will only be a “best guess.” It should take into account the expected cost of professional services (including travel), meeting room rental, catering, and other administrative needs. A more-precise, itemized budget can be drawn up later if the process is goes ahead.

The assessor may also want to recommend to the convenor that, once a process is underway, the group appoint an executive committee to oversee whatever funds are contributed by the convenor and other parties. This way, the group can be assured that the funding is not contingent on achieving a certain result.

## **Step 6: Share the Assessment with Interviewees**

The analysis of the interview results and the proposed process design should be presented to the convenor and the interviewees in a written conflict assessment report. The report should include the following.

- **Introduction.** This section should name the convenor, the assessor, the purpose of the assessment, how the assessment was conducted, and the number of people interviewed. It could also include a short summary of the points of agreement and disagreement among the interviewees.
- **Findings.** As discussed previously, this section should summarize the interests and concerns of the interviewees, using language that protects confidentiality.

- **Analysis.** This section should include the assessor’s analysis of the findings, including the matrix. It should point out where stakeholders’ interests overlap and where they diverge, and identify potential barriers to agreement.
- **Recommendations.** This section should include a recommendation regarding whether or not a mediation should proceed. If the assessor recommends that such an effort go forward, this section should also sketch a possible process design, as discussed in the previous section.
- **List of Interviewees.** This list should include each individual’s name, title, and affiliation.

The process of distributing the report can be used to help launch the consensus building effort, serving as a “springboard” to convening. The first step in distribution is to circulate the draft report—with the word “draft” stamped on every page—to all interviewees and the convenor. The interviewees should be encouraged to comment on both the description of stakeholder interests and the proposed work plan. This feedback will ensure that the assessor has accurately portrayed each stakeholder’s interests and will test parties’ readiness to proceed. Once the deadline for comment has passed, the assessor should revise the draft and issue a final report.

The finalized document can then be circulated to a wider audience, if appropriate. If a process hinges on public support, for example, the final document should be distributed to key media outlets, the public, and elected officials. A report that makes a case for a mediation process will help strengthen public support for it.

If a mediation effort is recommended, the convenor should then move ahead with the selection of a mediator, a first meeting of stakeholders (to ratify the work plan, budget, and mediator selection), and securing adequate funds. If the assessment was conducted according to the guidelines set forth in this section, all the pieces should be in place to proceed.



## **Section III**

### **Frequently Asked Questions**

While the procedures for conducting a conflict assessment are fairly straightforward, it's not always easy to know how to react when faced with specific challenges or questions. A variety of problems may arise; for example, a key stakeholder may refuse to participate, or a convenor may try to take too much control of the process. The questions and answers below address a number of such challenges that may be raised before or during a conflict assessment. They are broken into three categories: questions about dealing with stakeholders, the assessor's role, and the assessment itself.

#### **Dealing with Stakeholders**

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##### **What if a key party is unwilling to be interviewed?**

If a stakeholder is unwilling to be interviewed, the assessor should first try to find out why. The reason often lies in the party's presumption that participation in the assessment process implies his or her approval of a subsequent mediation process. In fact, the assessment and the mediation are two entirely separate processes, and participation in the former does not obligate a party to participate in the latter. The individual may also believe that cooperation will negatively affect his or her interests.

To address these concerns, the assessor should:

1. communicate the purpose of the assessment clearly (i.e., to summarize the perspectives and viewpoints of all prospective stakeholders in single document, identify areas of agreement and disagreement on the issues, and propose a process for moving forward);
2. reiterate that the assessor is a neutral party and has no stake in the assessment process or any subsequent mediation;
3. reassure the party that all conversations are off-the-record and not-for-attribution (perhaps even signing a written contract to that effect); and
4. point out that the “opposition” will control the way the story is told .

Every effort should be made to allay the individual’s concerns. Sometimes, the key is to get another person to talk to the reluctant party about participating. For instance, the assessor could ask the convenor to approach the party, or a senior-level stakeholder with similar interests who has already agreed to participate.

If, despite these efforts, the stakeholder still does not wish to participate in the process, the assessor must inform other stakeholders that a key party is not willing to participate. The reluctant party should not be identified publicly, however. That would be a breach of stakeholder confidentiality.

### **Why should politically powerful stakeholders participate?**

There are several reasons. First, given the multiparty nature of land use disputes, powerful parties may find that coalitions of less-powerful groups may thwart their interests. As a result, their ability to control the outcome is almost never guaranteed. Also, they should consider the risk to their reputation that may result from remaining outside an assessment or mediation process.

Finally, strong parties may gain more power and influence by participating; this can help them protect their interests.

### **What if an interviewee seems to be lying?**

It is not the assessor's role to determine factual or technical truth about the issues under discussion, nor should the assessment report be viewed as a legal or technical document. Rather, it is the assessor's responsibility to capture the range of opinion (i.e. to map the conflict).

The assessor can also, through appropriate questioning, try to determine how potentially misleading information does or does not support a party's position. Ideally, this effort will help clarify the "belief" supporting the statement. Indeed, the belief or reasoning behind a factual statement is what's really important in determining areas of potential agreement among the parties.

### **What if an interviewee offers technically inaccurate information?**

Again, it is not the assessor's job to correct stakeholder statements. Rather, the assessor should simply determine whether or not a stakeholder truly believes a controversial statement and, if so, how that belief is linked to the outcome they desire. Depending on how the conversation is going—the assessor may choose to share other stakeholder viewpoints (anonymously) in an effort to ground-truth any differences. In this way, the stakeholder may come to realize that he or she has made a mistake. In the conflict assessment report, the assessor should frame the contested fact as an issue to be considered by the entire group if the mediation process goes forward.

### **What if stakeholders cannot articulate their interests?**

If time and resources permit, the assessor should help stakeholders who are unclear about specific issues to articulate and clarify their interests. This can be done by asking questions to draw out stakeholders' thoughts and by providing background materials describing the full slate of perspectives on the issues. The assessor should not, of course, try to steer the stakeholder in a particular direction. Also, for that reason, it's probably best not to suggest other stakeholders as resources. This could be perceived as advocating a particular perspective.

If a stakeholder indicates no interest in defining his or her views, this should be considered a legitimate response and recorded in the conflict assessment.

## **The Assessor's Role**

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### **How much substantive knowledge must an assessor have?**

While the assessor need not have a college degree that is relevant to the subject matter, he or she should have enough knowledge to be able to ask pertinent questions during the interviews, recognize areas of agreement and disagreement among the stakeholders, and develop a work plan for proceeding. Also, the assessor should be able to explain and re-frame the issues verbally and in writing. The assessor's fresh view of the issues often brings added perspective to the debate.

### **How much should the assessor inject his or her own understanding of the issues into the written assessment?**

Although it's important for the assessor to understand the substantive issues, he or she should avoid saying or writing anything that could be interpreted as advocacy of a particular point of

view. The assessor's job is to report the views of the stakeholders, map the conflict, and suggest a way of proceeding that has a chance of resolving differences among the parties.

## **Should the assessor let the convenor see the assessment before it is completed?**

The contract between the assessor and convenor should be clear on this point: the convenor must not have *carte blanche* over the text of the document during or after the assessment process. The assessor is not acting as the convenor's agent; rather, he or she must be able to act independently. By sharing the document with the convenor, the assessor may diminish his or her reputation as a neutral. Of course, the convenor, as well as all stakeholders, may raise questions about or want to correct factual errors in the assessment report after it is released to the public.

## **Must the assessor speak to the media?**

During the conflict assessment process, the assessor is obligated to answer questions from the press about the assessor's identity and role and the nature of the conflict assessment process. After the assessment report is released to the public, the assessor can restate the findings of the report to the press. It is *not* appropriate for the assessor, at any time, to reference or describe the viewpoints of individual stakeholders. The assessor should leave it up to the stakeholders to share with the media their own views about the issues and the prospects for moving forward.

## **The Assessment Process**

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## **What if a constitutionally protected right is at stake?**

Many disputes involve a constitutionally guaranteed right. One of the assessor's most important roles is to assist parties in determining whether or not going forward with a conflict assessment—and potential mediation—will indirectly undermine someone's constitutional rights. If so, it would be inappropriate to proceed. For example, a mediator would not recommend going forward with an effort to determine how much racial segregation a city might decide to permit. Since none is the only possible answer, mediation would not make sense. While a conflict assessment might help to disentangle constitutional claims and conflicting interests, it would be inappropriate to proceed if only constitutional claims or rights were at stake in a land use dispute

One important test in determining whether to go forward when a constitutional right is involved is whether or not all the key parties are willing to come to the table. The assessor must help each party understand their legal rights and determine whether mediation is in their interest. This is not an effort to advocate a particular decision or route, but rather encourages clarification of the issues—and thus whether each party is ready and willing to go forward.

## **How can confidentiality be protected if a stakeholder category contains only one person?**

For starters, assessors should work to see that this never occurs. They should find additional interviewees who hold similar views to interview. Or, they should group a single respondent with others who have the most similar concerns, even if it means creating a broad “government” category, for instance, rather than breaking this group into “agency officials” and “elected officials.” However it is handled, the assessor should avoid singling out one person's views in

the report. The report should, rather, contain broad phrases to protect confidentiality, such as “others said...” or “within the group, the concerns raised included...”. It may be, of course, that the person in question doesn’t mind being singled out, or the information in question is so trivial that it doesn’t matter. Regardless, the assessor should confer with any individual regarding the presentation of their concerns when there is only one respondent in a category.

### **What if disagreement exists within a stakeholder category?**

This is not unusual. For example, there is often variation in opinion among environmental or industry groups on specific issues. This variation should be noted in the report, without revealing the identity of the specific stakeholders.

### **Is a conflict assessment report always made public?**

The nature and purpose of the conflict assessment report should be clearly determined with the convenor and all parties before the process begins. Most dispute resolution professionals feel strongly that assessment reports should be made public after the parties have had a chance to comment on them and any disagreements about the content have been resolved. That is, all interviewees should review a draft document (which should not be made public), provide comments, and be asked to “sign off on” the revised, final version.

## **Section IV**

### **References**

Consensus Building Institute. (1996). *Conflict assessment: The prospects for building consensus on new regulations pursuant to Delaware's Coastal Zone Act*. Cambridge, MA: Author.

Keystone Center. (1995). *Final report of the Keystone dialogue on incentives for private landowners to protect endangered species*. Washington, DC: Author.

Susskind, L., Mieke van der Wansem, & Armand Ciccarrelli. (1999). *Mediating land use disputes*. Cambridge, MA: Lincoln Institute for Land Policy.

## Section V

### Readings

This section includes readings that may be of use to individuals preparing to conduct conflict assessments. The selections are as follows.

1. Carpenter, S. (1999). "Choosing appropriate consensus building techniques and strategies." *The consensus building handbook: A comprehensive guide to reaching agreement*. L. Susskind, S. McKernan, and J. Thomas-Larmer, eds. Thousand Oaks, CA: Sage Publications.
2. Elliott, M.L.P. (1999). "The role of facilitators, mediators, and other consensus building practitioners." *The consensus building handbook: A comprehensive guide to reaching agreement*. L. Susskind, S. McKernan, and J. Thomas-Larmer, eds. Thousand Oaks, CA: Sage Publications.
3. Susskind, L. and Field, P. (1996). "The media." *Dealing with an angry public*. New York: Free Press.
4. Conflict assessments? (will need complete cites)