

Conflict Resolution Guidance

Conflict Resolution Evolves to Collaboration and Partnering

Timeline of Federal Government Transition from Conflict Resolution to Collaboration

1978: The **Contract Disputes Act** addressed contract disputes and claims using dispute resolution procedures, thereby eliminating the need to litigate by mutually agreeing to solutions at the contracting officer level.. These procedures included assisted settlements (third party facilitated), mediation, and fact-finding.

1992 – 1996: DoD’s **Defense Environmental Restoration Program (DERP)** established Restoration Advisory Boards (RABs) to improve relationships between communities and military installations that were cleaning up historic contamination from past activities. Please see the Evolution in Department of Defense/Military Installations topic discussed in detail below for more information.

1998: Congress, through the Environmental Policy and Conflict Resolution Act (P.L. 105-156), created the **U.S. Institute for Environmental Conflict Resolution** at the Morris K. Udall Foundation to “promote collaborative problem-solving and decision-making during the design and implementation of federal policies to prevent and reduce the incidence of future environmental disputes”¹. The Institute focused on federal environmental, natural resource, and public land disputes. Their programs have evolved from increasing an awareness and use of environmental conflict resolution to include added services, such as consultation, assessments, process design, convening meetings, mediation, facilitation, stakeholder engagement, tribal consultation, and other related activities.

1998: Congress, through the **Alternative Dispute Resolution Act (ADRA) (P. L. 105-315)**, authorized the use of Alternative Dispute Resolution (ADR) for all civil litigation. Typically, civil litigation against the federal government is initiated by citizens groups, non-governmental organizations, tribal governments, and individuals. The ADRA required litigants and the federal government to consider ADR at the earliest stage in the litigation process. It also directed each district court to develop and implement its own ADR program, tailored to meet the needs of its unique caseload. In combination with P.L. 105-156, the ADRA drove alternative resolution, conflict resolution, and collaboration as a way to achieve improved results without resorting to litigation.

NOVEMBER 2000: **Executive Order (EO) 13175**, Consultation and coordination with Indian tribal governments re-affirmed their rights to self-governance and sovereignty and required all federal agencies to allow them to establish their own policies, standards, and administrative regulations, versus the federal government. For all federal actions affecting Indian tribes, agencies must consult with tribal officials on a government-to-government basis to determine the appropriate application and scope of federal standards. The preference is for tribes to make their own governance decisions. This EO re-established the requirement to collaborate with Indian tribal governments as stakeholders with standing equal to that of the federal government on all actions.

2003: As the chairperson of the Interagency Alternative Dispute Resolution (ADR) Working Group, the attorney general of the United States championed the ADR as a way for federal agencies to realize

¹ Office of Management and Budget and President’s Council on Environmental Quality, Memorandum on Environmental Conflict Resolution, November 28, 2005

better conflict outcomes by using results-oriented, citizen-centered approaches that effectively include public participation in government decisions. The attorney general's advocacy, along with growing numbers of federal agency leaders and senior civil servants responsible for conservation programs, brought about the 2004 Executive Order (EO) 13352, signed by President George W. Bush.

AUGUST 2004: [Executive Order \(EO\) 13352](#), Facilitation of [Cooperative Conservation](#), directed the Departments of Interior, Agriculture, Commerce, and Defense, and the Environmental Protection Agency to implement a new approach termed "cooperative conservation". Its goal was to include participants who have ownership or other legally recognized interests in land and natural resources programs, projects, and activities of these federal agencies in executing their conservation programs.

AUGUST 2005: EO 13352 also required a government-wide conference chaired by the [Council on Environmental Quality](#) (CEQ) to exchange information and advice about cooperative conservation and ideas to achieve the objectives outlined in the EO. The [White House Conference On Cooperative Conservation](#) was held in St. Louis, MO in August, 2005. You can find the daily and final conference newsletters in the Resources tab.

NOVEMBER 2005: Based on the outcomes from the White House Conference on Cooperative Conservation and other inputs, OMB and CEQ jointly developed and published a [Memorandum on Environmental Conflict Resolution](#) (ECR). The memorandum identified the following challenges of balancing public interests and federal agency responsibilities regarding environmental protection and conservation programs:

- Protracted and costly environmental litigation;
- Unnecessarily lengthy project and resource planning processes;
- Costly delays in implementing needed environmental protection measures;
- Missed opportunities for public and private investments when decisions are not timely or are appealed;
- Lower quality outcomes and lost opportunities when environmental plans and decisions are not informed by all available information and perspectives; and
- Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unintended conflicts.

The memorandum applied to all executive branch agencies responsible for managing and conserving the environment, natural resources, and public lands. It further provided policy guidance and recommended mechanisms and strategies to increase the effective use of ECR.

JANUARY 2009: The [Memorandum on Transparency and Open Government](#) reinforced federal agency obligations to conduct work as transparently as possible and to maximize public participation in policymaking and collaboration with other federal agencies, Indian tribes, state and local governments, nonprofits, businesses, and individuals when making decisions that could affect one or more of these stakeholders. The memorandum established collaboration and participatory government to move past conflict resolution and alternative dispute resolution by including stakeholders early in the policy making and decision-making process. When included early in such efforts stakeholders can establish a true stake and sense of ownership in shaping final outcomes and devising solutions that consider all perspectives.

NOVEMBER 2009: The **Memorandum on Tribal Consultation** required all federal agencies to provide OMB with a detailed plan to implement EO 13175 policies and directives. Its goal was to reinforce the unique government-to-government relationships between Indian tribes and the federal government and to encourage expanding collaboration and consultation on matters with tribal implications. The memorandum also required each agency to designate a liaison to Indian tribal governments when implementing the plan and reporting annually on its status.

MARCH 2012: **Executive Order 13604**, Improving Performance of Federal Permitting and Review of Infrastructure Projects, sought to improve the speed, efficiency, and outcomes of federal agency surface transportation, aviation, port and waterway, water resource, renewable energy generation, electricity transmission, broadband, and pipeline projects. The EO included the following recommendations to achieve this goal:

- Encourage early collaboration among agencies, project sponsors, and affected stakeholders to incorporate and address their interests and minimize delays
- Provide transparency and accountability by utilizing cost-effective information technology to collect and disseminate information about individual projects and agency performance so that the priorities and concerns of all citizens are considered
- Rely upon early and active consultation with state, local, and tribal governments to avoid conflicts and duplicating efforts, and to resolve concerns, and allow for concurrent rather than sequential reviews
- Recognize the critical role project sponsors play in assuring the timely and cost-effective review of projects by providing complete information and analysis and by supporting, as appropriate, the costs associated with review
- Enable agencies to share priorities, work collaboratively and concurrently to advance reviews and permitting decisions, and facilitate the resolution of disputes at all levels of agency organization

To implement the above and track performance improvements, the EO established a **Steering Committee on Federal Infrastructure Permitting and Review Process Improvement**, chaired by a Chief Performance Officer (CPO). The EO implementation results are on the steering committee's webpage, which also has an **interactive map** showing projects included in the improvement process. The committee continues to meet and develop new resources and tools to continuously improve federal project outcomes.

Evolution in Department of Defense/Military Installations

Between 1992 and 1996, during the first term of the Clinton presidency, the military undertook one of its first efforts to have a more collaborative approach to conflict resolution by establishing Restoration Advisory Boards (RABs). RABs included community members or organizations and local and state representatives, who worked with military installations and contractors performing site remediation to help guide cleanup activities. RABs provided information on cleanup activities and solicited and responded to RAB member questions and concerns. As RABs continued to meet, members began to establish relationships and came to share roles when developing solutions to environmental problems. Former adversarial and confrontational relationships between the military and communities were replaced with communication, cooperation, and collaboration, which helped everyone better understand and participate in cleaning up historic contamination. In Maryland, military installations that established RABs included **Fort Detrick**, **Fort Meade**, **Aberdeen Proving Ground**, **NAS Patuxent River**, and **NSF Indian Head**.

As the military and other federal agencies became more diligent and compliant with their environmental programs and the effectiveness of the RAB model became more apparent, the military, regulators, and communities began moving beyond compliance to focus on pollution prevention and environmental sustainability. As sustainability concepts were being implemented, it became clear that military installations were facing encroachment, which could reduce mission effectiveness. It also became apparent that mission completion could negatively affect surrounding communities. Going back to the old model of “decide and defend” would re-create previous adversarial relationships, leaving conflict resolution as the only viable solution.

Having gained experience through RABs and other informal collaborative efforts undertaken by individual installations, the military developed a collaborative approach to new encroachment challenges, instead of trying to solve the problem on its own. The new approach employed coordination and partnerships on a level which had not been previously seen by the military and led to the **Readiness and Environmental Protection Initiative** (REPI) at OSD and military service programs, such as the Army Compatible Use Buffer (ACUB) program.

Concurrently, during the 1988 – 1997 Base Realignment and Closure Act rounds, DoD established programs to help communities where installations were being shut down so they could adjust to new circumstances. The Office of Economic Adjustment (OEA), now called the Office of Local Defense Community Cooperation (OLDCC), started community grant programs with monetary assistance to develop and attract new industries, re-train workers, and support other efforts to help cushion the loss of a major employer.

These offices and programs – REPI, ACUB, OLDCC and others became the standard-bearers to address problems affecting military installations, thereby benefitting military missions, communities, and in many cases the conservation and protection of ecosystems. Newer authorities and tools, such as **IGSAs, EULs, Power Purchase Agreements, Energy Performance Service Contracts (EPSCs) and Real Property Exchange** have been used to successfully advance community and military collaboration, partnerships, and allowed shared financial burdens to develop compatibility solutions. Recently added concerns include resilience and assurances to lessen the impacts of natural and man-made disasters.