Executive Office of the President
Office of Management and Budget

Executive Office of the President
Council on Environmental Quality

Dear Secretary/Administrator:

Consistent with the President's focus on sound stewardship of our natural resources, we are committed to improving environmental governance through constructive and timely approaches to addressing challenges that arise over the use, conservation, and restoration of the environment, natural resources, and public lands.

To achieve better governance, the Administration calls for department and agency commitment to the goals identified in the Memorandum on Environmental Collaboration and Conflict Resolution, and the goals identified in related policy guidance. This approach supports other transparency and good government initiatives including the Memorandum on Transparency and Open Government (January 21, 2009), the Memorandum on Tribal Consultation (November 5, 2009), and the Executive Order on Improving Performance of Federal Permitting and Review of Infrastructure Projects (March 22, 2012) which encourage early collaboration among agencies, project sponsors, and affected stakeholders in order to incorporate and address their interests and minimize delays in making informed and timely Federal permitting and review decisions.

The Memorandum on Environmental Collaboration and Conflict Resolution expands and builds on the November 28, 2005, Environmental Conflict Resolution Memorandum. This Memorandum directs departments and agencies to increase the appropriate and effective use of third-party assisted environmental collaboration as well as environmental conflict resolution to resolve problems and conflicts that arise in the context of environmental, public lands, or natural resources issues, including matters related to energy, transportation, and water and land management. With the magnitude of environmental challenges facing the nation, coupled with the need for careful stewardship of tax dollars and budgets, Federal departments and agencies should leverage all environmental collaboration and conflict management techniques to improve environmental governance.

This Memorandum, issued by the Office of Management and Budget and the Council on Environmental Quality, applies to all executive branch agencies as they carry out their responsibilities under their organic acts and enabling legislation, the National Environmental Policy Act (NEPA), and other laws in effect to manage and conserve our environment, natural resources, and public lands.

Jeffrey D. Zients
Acting Director
Office of Management and Budget

Date: 9/7/12

Nancy H. Sutley
Chair
Council on Environmental Quality

Date: 9/6/12

Executive Office of the President
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Office of Management and Budget and President's Council on Environmental Quality

MEMORANDUM ON ENVIRONMENTAL COLLABORATION AND CONFLICT RESOLUTION

SECTION 1. PREAMBLE

To advance the successful integration of multiple use, conservation, and restoration of the environment and natural resources Federal agencies need to foster collaboration to build relationships, enhance public engagement, minimize or prevent conflicts, and manage and resolve conflicts when they arise. Environmental and natural resource conflicts, including matters related to energy, transportation, and water and land management, represent serious governance challenges with significant budget, management, and public service implications. Federal departments and agencies should strive to avoid unnecessarily lengthy planning processes, delayed implementation of projects, contentious relationships among stakeholders, and protracted and costly litigation. Doing so is critical to each department and agency, both when its core mission is explicitly environmental and when environmental issues may impact other core missions.

The challenge of implementing Federal policies and programs can often be met with collaborative, constructive, and timely approaches to identify and address affected interests, consider alternatives, and reach solutions before different positions or opinions result in conflict. Collaborative efforts involving the public and policy and program coordination within and across multiple levels of government are important for addressing these challenges. Managed correctly, the decision-making process should result in timely, practical, cost-effective, and resilient solutions. When conflicts do arise over the use, conservation, and restoration of the environment and natural resources, those conflicts must be managed proactively.

This Memorandum supersedes the November 28, 2005, Memorandum on Environmental Conflict Resolution. It broadens the efforts called for under the 2005 Memorandum by explicitly encouraging appropriate and effective upfront environmental collaboration to minimize or prevent conflict and strengthen the focus on environmental conflict resolution developed under the 2005 Memorandum. This Memorandum emphasizes the value of collaboration in policy making, conflict prevention and management, and conflict resolution in meeting mission responsibilities when managing and conserving our environment, natural resources, and public lands.

To build on those efforts to achieve better governance, this Memorandum calls for a department and agency commitment to employ collaboration to minimize and potentially avoid environmental and natural resource conflicts as well as to enhance the use of environmental conflict resolution to manage and resolve conflicts that arise. This approach supports other transparency and good government initiatives such as the Executive Order on Improving Performance of Federal Permitting and Review of Infrastructure Projects which encourage early collaboration among agencies, project sponsors, and affected stakeholders to incorporate and address their interests and minimize delays in making informed and timely Federal permitting and review decisions.

With the magnitude of environmental challenges facing the nation, coupled with the need for careful stewardship of tax dollars and budgets, all Federal departments and agencies should leverage environmental collaboration and conflict management approaches to minimize and resolve environmental conflicts.

SECTION 2. DEFINITION OF ENVIRONMENTAL COLLABORATION AND CONFLICT RESOLUTION

Under this policy, Environmental Collaboration and Conflict Resolution is defined as third-party assisted collaborative problem solving and conflict resolution in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and water and land management.

The term Environmental Collaboration and Conflict Resolution encompasses a range of assisted collaboration, negotiation, and facilitated dialogue processes and applications. These processes directly engage affected interests and Federal department and agency decisionmakers in collaborative problem solving and conflict resolution.

Multi-issue, multi-party environmental disputes or controversies often take place in high conflict and low trust settings, where the assistance of impartial facilitators or mediators can be instrumental to reaching agreement and resolution. Such disputes range broadly from policy and regulatory disputes to administrative adjudicatory disputes, civil judicial disputes, intra- and interagency disputes, and disputes with non-Federal persons and entities.

Environmental Collaboration and Conflict Resolution can be applied during policy development or planning in the context of a rulemaking, administrative decision-making, enforcement, or litigation, with appropriate attention to the particular requirements of those processes. These contexts typically involve situations where a Federal department or agency has ultimate responsibility for decision-making and there may be disagreement or conflict among Federal, Tribal, State, and local governments and agencies, public interest organizations, citizens groups, and business and industry groups.

Although Environmental Collaboration and Conflict Resolution refers specifically to collaborative and conflict resolution processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that Federal departments and agencies may pursue with non-Federal entities to plan, manage, and implement department and agency programs and activities. The Basic Principles for Agency Engagement in Environmental Collaboration and Conflict Resolution are presented in Attachment B. The Basic Principles provide guidance that applies to both Environmental Collaboration and Conflict Resolution and unassisted collaborative problem solving and conflict resolution. This policy recognizes the importance and value of the appropriate use of all forms of collaborative problem solving and conflict resolution.

SECTION 3. APPLICABILITY OF THE ENVIRONMENTAL COLLABORATION AND CONFLICT RESOLUTION POLICY MEMORANDUM

This Memorandum applies to all executive branch departments and agencies (as defined by Title 5 U.S.C. § 105) responsible for complying with the National Environmental Policy Act (42 U.S.C. § 4321 et seq.) and executing other laws in effect to manage and conserve our environment, natural resources, and public lands. Independent agencies are also requested to comply with the provisions of this Memorandum.

SECTION 4. POLICY DIRECTION

a. Federal departments and agencies should ensure they effectively explore opportunities for collaboration in their planning and decisionmaking processes to address different perspectives and potential conflicts, consistent with the Basic Principles of Environmental Conflict Resolution and Collaborative Problem Solving in Attachment B.

b. Given possible cost savings through improved outcomes, fewer appeals and less litigation, department and agency leadership should identify and support upfront investments in collaborative processes and conflict resolution, and demonstrate those savings in performance and accountability measures.

c. Several mechanisms, strategies, and resources exist to aid departments and agencies in this effort and to build internal department and agency capacity, including those presented in Section 5, and each department and agency should draw on them as appropriate.

d. Departments and agencies should give careful consideration to the use of assisted negotiations through Environmental Conflict Resolution when addressing environmental conflicts, using their own Environmental Conflict Resolution (ECR)/Alternative Dispute Resolution (ADR) staffs, the U.S. Institute for Environmental Conflict Resolution, the U.S. Department of Justice (e.g., for litigation matters), or other ECR/ADR organizations, as appropriate.

e. Federal departments and agencies are encouraged to draw on the services of the U.S. Institute for Environmental Conflict Resolution to review internal mechanisms and strategies for increasing the use of Environmental Collaboration and Conflict Resolution and to assist departments and agencies in developing performance and accountability measures consistent with the Environmental Policy and Conflict Resolution Act of 1998 (P.L. 105-156).

f. The Director of the Office of Management and Budget (OMB) and the Chair of the Council on Environmental Quality (CEQ) will convene periodic leadership meetings of departments and agencies to advance progress on this policy. The U.S Institute for Environmental Conflict Resolution shall convene a quarterly interagency forum of senior department and agency staff to provide advice and guidance and facilitate interagency exchange on Environmental Collaboration and Conflict Resolution.

g. Federal departments and agencies shall report at least every year to the Director of OMB and the Chair of CEQ on their use of Environmental Collaboration and Conflict Resolution for these purposes, and on the estimated cost savings and benefits realized through third-party assisted negotiation, mediation, or other processes designed to help parties achieve agreement. Costs savings and benefits realized should be reported using quantitative data to the extent possible. Departments and agencies are encouraged to work toward systematic collection of relevant

information that can be useful in on-going information exchange across departments and agencies as fostered by Section 4(e).

SECTION 5. MECHANISMS AND STRATEGIES TO INCREASE THE EFFECTIVE USE OF ENVIRONMENTAL COLLABORATION AND CONFLICT RESOLUTION AND IMPROVE AGENCY CAPACITY

To increase the effective use of Environmental Collaboration and Conflict Resolution and build institutional capacity for collaborative planning processes and problem solving, Federal departments and agencies should draw upon the mechanisms and strategies outlined in Attachment C.

Priority should be given to:

- Integrating Environmental Collaboration and Conflict Resolution objectives and a focus on up-front collaboration as a key principle in agency mission statements and strategic plans;
- Developing internal Environmental Collaboration and Conflict Resolution guidance;
- Coordinating with other departments and agencies to address emerging areas of conflict and cross-cutting challenges;
- Strategizing with other departments and agencies on how to assess the costs and benefits of Environmental Collaboration and Conflict Resolution; and
- Documenting the savings and benefits of Environmental Collaboration and Conflict Resolution where quantitative or qualitative data exist.

Attachment A.
Guidance and Authorities Related to ADR and Environmental Collaboration and Conflict Resolution

- Administrative Dispute Resolution Act of 1996 (ADRA) (available at http://www.adr.gov/pdf/adra.pdf)
- Regulatory Negotiation Act of 1996 (available at http://www.epa.gov/adr/regnegact.pdf)
- Contract Disputes Act of 1978, as amended (available at http://www.law.cornell.edu/uscode/usc_sup_01_41_10_9.html)
- Alternative Dispute Resolution Act of 1998 (available at http://www.epa.gov/adr/adra_1998.pdf)
- Environmental Policy and Conflict Resolution Act of 1998 (available at http://www.ecr.gov/pdf/PL_105-106.pdf)
- Executive Order 12988, "Civil Justice Reform" (February 5, 1996) (available at http://www.archives.gov/federal-register/executive-orders/1996.html)
- Presidential Memorandum, "Designation of Interagency Committee to Facilitate and Encourage Use of Alternative Means of Dispute Resolution and Negotiated Rulemaking" (May 1, 1998) (available at http://govinfo.library.unt.edu/npr/library/direct/memos/disputre.html)
- Environmental Policy and Conflict Resolution Advancement Act of 2003 (available at http://www.ecr.gov/pdf/PLAW-108publ160.pdf)
- Executive Order 13352, "Facilitation of Cooperative Conservation" (August 4, 2004) (available at http://ceq.hss.doe.gov/nepa/regs/Executive_Order_13352.pdf)
- Office of Management and Budget and Council on Environmental Quality Memorandum on Environmental Conflict Resolution (November 28, 2005) (available at http://georgewbush-whitehouse.archives.gov/ceq/joint-statement.html)
- Presidential Memorandum, "Transparency and Open Government" (January 21, 2009) (available at http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment)
- OMB Memorandum, "Open Government Directive" (December 8, 2009) (available at http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-06.pdf)
- Presidential Memorandum, "Tribal Consultation" (November 5, 2009) (available at http://www.whitehouse.gov/the-press-office/memorandum-tribal-consultation-signed-president)

Attachment B.

Basic Principles for Agency Engagement in Environmental Collaboration and Conflict Resolution

Informed Commitment - Confirm willingness and availability of appropriate department and agency leadership and staff at all levels to commit to principles of engagement; and ensure commitment and availability to participate in good faith and be open to new perspectives.

Balanced, Voluntary Representation - Ensure balanced inclusion of affected and concerned interests, recognizing that all parties should be willing and able to participate and select their own representatives.

Group Autonomy - Engage all participants in developing (through a situation assessment) and conducting a process; include a choice of consensus-based decision rules; and seek assistance as needed from an impartial third-party facilitator or mediator selected by and accountable to all parties.

Informed Process - Seek agreement on how to share, test, and apply relevant information (scientific, cultural, technical, etc.) among participants; and ensure relevant information is accessible and understandable to all participants.

Accountability - Participate in the process directly, fully, and in good faith; and be accountable to all participants, as well as to department and agency representatives and the public.

Openness - Ensure all participants and the public are fully informed in a timely manner of the purpose and objectives of the process; communicate department and agency authorities, requirements, and constraints; and uphold confidentiality rules and agreements as required for particular proceedings.

Timeliness - Ensure timely decisions and outcomes.

Implementation - Ensure decisions are implementable and consistent with Federal law and policy by commiting to: identify the parties' roles and responsibilities necessary to implement agreement; agree in advance on the consequences of a party being unable to provide necessary resources or implement agreement; and ensure parties will take steps to obtain resources necessary to implement agreement.

Attachment C.
Mechanisms and Strategies to Increase the Effective Use of Environmental Collaboration and Conflict Resolution and Improve Agency Capacity

The following mechanisms and strategies are among those that can be of use in building institutional capacity for pursuing the effective use of Environmental Collaboration and Conflict Resolution:

(a) Departments and Agencies with Existing or Developing Environmental Collaboration and Conflict Resolution Programs

(1) Integrate Environmental Collaboration and Conflict Resolution objectives into department and agency mission statements, Government Performance and Results Act (GPRA) goals, and strategic planning by:

- Identifying relevant GPRA goals and link to department and agency strategic plans;
- Aligning plans for implementation of Environmental Collaboration and Conflict Resolution with department and agency strategic plan goals;
- Aligning of planning, budgeting, and accountability systems to facilitate collaboration;
- Setting performance goals for increasing use of Environmental Collaboration and Conflict Resolution;
- Exploring why goals may not be met and what steps are necessary to meet them in the future;
- Tracking annual costs or other mission impacts of environmental conflict to the department or agency and setting goals for reduction in such costs;
- Identifying annual resource savings and benefits accrued from collaborative solutions; and
- Estimating the relative costs and benefits of using Environmental Collaboration and Conflict Resolution compared to other decision-making processes, and set goals to increase the use of Environmental Collaboration and Conflict Resolution in those situations where Environmental Collaboration and Conflict Resolution is superior to other decision-making processes.

(2) Ensure that department and agency infrastructure support Environmental Collaboration and Conflict Resolution by:

- Drawing on dispute resolution specialists and existing ADR resources pursuant to the Administrative Dispute Resolution Act of 1996 and other legal authorities and policy guidance;
- Providing leadership support;
- Setting internal policy directives;
- Integrating use of Environmental Collaboration and Conflict Resolution into performance plans;
- Creating incentives to increase appropriate use;
- Supporting staff outreach, education, and training; and

- Documenting other useful forms of collaboration and conflict resolution such as unassisted principled negotiation.

(3) Invest in support of programs by:

- Assigning staff and directing resources to support programs;
- Performing an internal self-audit of priority environmental goals or problems and areas of expanding or challenging conflict and assessing potential value and appropriateness for using Environmental Collaboration and Conflict Resolution;
- Identifying existing program resources and future needs;
- Fostering collaborative leadership at all levels through recruitment and career development;
- Building expert knowledge, skills, and capacity by strengthening intellectual and technical expertise in Environmental Collaboration and Conflict Resolution;
- Documenting demonstration projects and dispute system design results;
- Implementing tracking systems for Environmental Collaboration and Conflict Resolution requests for assistance, cases, and projects;
- Identifying efficient methods to access project funding;
- Fostering open communication early in project or proposal development;
- Building partnerships with other department and agency programs; and
- Supporting early assessment and assistance for Environmental Collaboration and Conflict Resolution.

(4) Focus on accountable performance and achievement by:

- Preparing periodic progress reports;
- Issuing guidance on expected outcomes and resources;
- Conducting program evaluation;
- Conducting Environmental Collaboration and Conflict Resolution case and project evaluation; and
- Responding appropriately to evaluation results to improve appropriate use of Environmental Collaboration and Conflict Resolution.

(b) Departments and Agencies without Environmental Collaboraltion and Conflict Resolution Programs

(1) Draw on any of the above mechanisms in Section 5(a) that may be applicable. For example, perform an internal audit of areas where environmental conflicts are occuring; inventory annual costs of environmental conflict and set goals to reduce those costs; and identify annual savings from using collaborative processes.

(2) Demonstrate increased use of Environmental Collaboration and Conflict Resolution by applying it to cases and under conditions consistent with the Basic Principles for Agency Engagement in Environmental Collaboration and Conflict Resolution in Attachment B.