

## Mediation Primer

### What is Mediation?

Mediation is a process wherein the parties meet with a mutually selected impartial and neutral person who assists them in the negotiation of their differences. Mediation leaves the decision power totally and strictly with the parties. The mediator does not decide what is "fair" or "right."

### What is the Mediator's Role?

The mediator acts as a catalyst between opposing interests attempting to bring them together by defining issues and eliminating obstacles to communication, while moderating and guiding the process to avoid confrontation and ill will.

The mediator does not represent any party and has no bias against any party or their position. Parties enter into agreements voluntarily. Agreements are never imposed on parties.

### What is a Mediation Session Like?

Mediation generally begins with a joint session to set an agenda, define the issues and ascertain the position and/or concerns of the parties. The joint session is usually followed by a separate caucus between the mediator and each individual party or their counsel. This allows each side to explain and enlarge upon their position and mediation goals in confidence. Depending on the nature of the dispute and the dynamics of the mediation sessions, the mediator may alternate between joint and private sessions until the parties have resolved their differences, decided to reconvene for additional sessions, or determined that further mediation is no longer constructive.

Mediation is a cost-effective method to resolve environmental and land use disputes. In a 1999 study of 100 U.S. land use cases, the Consensus Building Institute and the Lincoln Institute of Land Policy found that 86% of participants in some kind of assisted negotiation had a positive view of the process. Almost 90% of those surveyed thought that assisted negotiation saved both time and money.

### What if I Doubt That Mediation Would Helpful in my Case?

If you are not sure whether to pursue mediation, one option is to have Green Mountain Environmental Resolutions perform a conflict assessment or initial screening to determine whether mediation or some other form of collaborative decision-making may help the parties resolve their differences. In a conflict assessment or initial screening, the mediator conducts confidential

conversations with the parties to explore whether there is any common ground between the parties' initial positions, the willingness of the parties to consider alternative means to meet their interests, and the parties desire to reach settlement and avoid litigation. Without disclosing any confidential information, the mediator recommends whether mediation or some other form of collaborative decision-making would likely be constructive. Ultimately, the parties choose which avenue to pursue.

### Are There Different Kinds of Mediation?

While there are different schools of mediation such as facilitative mediation and evaluative mediation, any mediation has core concepts in common that include a neutral mediator and a voluntary and confidential process where the parties determine the outcome.

In facilitative mediation, the mediator takes an active role in structuring and controlling the process to assist the parties in reaching a mutually agreeable resolution. However, the facilitative mediator does not make recommendations to the parties, give his or her own advice or opinion as to the outcome of the case, or predict what a court would do in the case. The mediator is in charge of the process, while the parties are in charge of the outcome.

Evaluative mediation on the other hand, is based on the belief that mediators with expertise in the issues in conflict can help the parties reach settlement if the mediation gets "stuck" by confidentially assessing the weaknesses and strengths of their legal positions. Evaluative mediators believe that an objective "weather report" of a parties' likelihood of success in court could provide additional clarity that may make a settlement option more or less attractive compared to going to court. In evaluative mediation, the mediator controls the process and may also suggest solutions for resolving the conflict.

GMER uses tools from each school of mediation depending on the facts and circumstances of the dispute to increase the likelihood of reaching settlement.