

APPENDIX O  
ALTERNATIVE DISPUTE RESOLUTION

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There are several established conflict resolution and alternative dispute resolution (ADR) mechanisms in Maine. These mechanisms allow for facilitated discussions while avoiding lawsuits and decisions by judges or juries.

1. Court Alternative Dispute Resolution Service (CADRES)

- ADR is available through the Maine courts in domestic relations matters, small claims, larger civil and commercial cases, and in land use and environmental disputes.
- Under Maine’s rules of civil procedure (see Rule 16B) parties are required to participate in some form of ADR in Superior Court civil case, unless the case is exempt or the requirement is waived by a judge.

2. Land Use Mediation Program

- 5 M.R.S.A. § 3341 provides for mediation as an alternative to litigation in land use matters
- Mediation must be initiated by a private landowner who has either sought and failed to obtain a permit or variance from a municipality or has sought and failed to obtain a permit for a land use from a state agency
- Municipalities are not required to participate in mediation, but state agencies are required to do so
- The landowner applies for mediation through the superior court, who sends the application to CADRES
- CADRES assigns a mediator

3. Natural Gas Pipeline Mediation

- 5 M.R.S.A. § 3345 provides for mediation in disputes concerning acts or omissions occurring during the construction, maintenance or operation of any natural gas pipelines that result in property damage
- A private landowner may apply for mediation if he or she has suffered property damage as a result of an act or omission by a person surveying, constructing, operating or maintaining a natural gas pipeline on, over or under the landowner's land
- The landowner applies for mediation through the superior court, who sends the application to CADRES
- Participation in the mediation process is voluntary for all parties and may not be compelled by the mediator or any other person
- CADRES assigns a mediator

#### 4. DEP Enforcement Actions

- 38 M.R.S.A. § 347A(4)(E) provides that when an alleged violator and the Maine DEP cannot agree on the terms of an administrative consent agreement, and the DEP elects to bring a civil enforcement action in district court, the court must refer the parties to mediation if either party requests mediation and the parties must meet with the mediator at least once and "try in good faith to reach an agreement"

Research also uncovered some examples where ADR was used to resolve specific natural resource related conflicts outside the established State ADR programs. One example is:

##### 1. Monhegan Island Lobster Zone

- In November of 1997, the Department of Marine Resources assisted in convening mediation between lobster fishermen from Friendship and Monhegan after 6 lobster fishermen from Friendship set gear in waters that were traditionally fished exclusively by Monhegan residents.
- Following 2 days of meetings with a professional mediator, an agreement was reached amongst the fishermen. The provisions of the agreement served to allowed the lobster fishing season in the area to begin on schedule without conflict. It spelled out how lobster fishing in the area would proceed until the Legislature could convene and act. The Friendship fishermen also agreed not to challenge in court any legislation that the Legislature might pass regarding the Monhegan Conservation Area.
- Rules and statutes were soon developed to further define the Monhegan Conservation Area and to clarify the rules for those wanting to register to fish there.
- It should be noted that the mediation produced a private, interim solution to the conflict satisfactory to the particular parties involved. A lasting fix to the conflict had to be made by law, in a public process, by the Legislature and DMR, since the dispute was over public trust resources, not resources amenable to ownership or management by the disputants.

Parties to any dispute who wish to employ the services of a mediator or other dispute resolution professional may find such professionals through the following organizations:

1. CADRES maintains a roster of neutrals for ADR (<http://www.courts.state.me.us/courtservices/adr/directory.html>)
  - The directory may be searched by type of process and type of case, i.e. environmental
  - Neutrals set their own fees, which may either be hourly or a flat fee
2. Maine Association of Dispute Resolution Professionals ([www.madrp.org](http://www.madrp.org))
3. New England Chapter of the Association for Conflict Resolution ([www.neacr.org](http://www.neacr.org))