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## INSTITUTE FOR ENVIRONMENTAL NEGOTIATIONS CREATED

An Institute for Environmental Negotiations, supported by a grant from the Virginia Environmental Endowment, was established at the University of Virginia in January 1981 to continue the evaluation of the use of mediation as an alternative to litigation in resolving environmental disputes. The Endowment's support of the concept began in January 1979 when three faculty members of Old Dominion University and the University of Virginia were awarded a grant to evaluate the potential of mediation as a solution to environmental disputes through entering selected disputes as mediators. The success of that activity resulted in the creation of Environmental Mediation Services (EMS) in January 1980 under the direction of Dr. Roger Richman. Although EMS was staffed with full time personnel only during the summer months, the Institute will have full time staff year round to support its environmental mediation efforts.

Environmental mediation, an outgrowth of labor mediation, is perceived by its supporters as a means of defining and narrowing issues in environmental disputes and as a nonadversary alternative to litigation under certain circumstances. The usual scenario involves a well developed dispute in which the parties have reached an impasse in their negotiations. Although the only solution appears to be litigation, neither party is convinced that litigation will produce an entirely satisfactory solution. For example, one party may be convinced that it can ultimately win in court but only after years of delay and at the cost of a number of suits to resolve all of the potential issues. Under these circumstances, both parties may accept the intervention of a neutral party to aid them in resolving at least part of their dispute prior to resort to the courts. Mediators are trained to assist them in identifying the issues involved and developing alternative solutions that may be agreeable to all. Thus, even if mediation does not result in a complete resolution of the dispute it can significantly reduce the complexity of the ultimate litigation. In most cases, the mediation services are provided at no cost to the parties involved.

Upon being contacted by one of the parties to an environmental dispute, a staff member conducts an initial dispute assessment to determine whether the dispute is appropriate for mediation. Frequently, the mediator will determine that because of timing or an imbalance between the parties, the dispute is not suitable for mediation. If mediation is determined to be potentially productive, the staff will attempt mediation entry by further discussion with all parties involved. If all parties agree to mediation, the effort can proceed.

Environmental Mediation Services has conducted initial assessments of thirty-two disputes. Of these, nineteen have been assessed as potentially suitable for mediation. After further discussion with the parties, EMS has been accepted as mediator in six cases. In those cases which have been assessed as having a potential for mediation, but which acceptance of EMS as mediator has not occurred typically one party has desired to go to mediation but the other party has not. The other party may believe that it has a strong case if the dispute gets to a court of law, or may just not have confidence in the mediation process, which is new as applied to environmental disputes.

Of the six cases in which EMS has been accepted as mediator, two have been completed and four are in progress or upcoming. In one of the completed mediations, the staff was contacted in June of 1980 concerning a dispute which had developed over a Corps of Engineers proposal to dredge a channel between two barrier islands

off the mouth of the Whiteoak River. A controversy developed between conservationists and local fishermen on one side and the COE on the other side involving the reluctance of the COE to undertake a comprehensive study of the causes and possible solutions to the siltation problem which made the dredging necessary. Dr. Richman was selected as mediator by the eight parties to the dispute, which included two towns, two counties, an environmental group, a state agency, the local fishing industry and the Corps of Engineers. As a result of the mediation, the parties established the Whiteoak River Advisory Council to plan and carry out the study of the problems of the basin. This agreement is currently being carried out.

The second of the completed mediations was conducted by Dr. Richard Collins of the University of Virginia and concerned controversy between environmental groups and members of the Virginia legislature concerning the existence of adequate legislation to encourage or permit the giving of easements to protect endangered or rare species and sensitive ecosystems. In particular, the adequacy of existing Virginia Law to permit the taking of easements by not-for-profit groups such as the Nature Conservancy was questioned. Dr. Collins conducted a mediation involving representatives of Chesapeake Bay Foundation, the Nature Conservancy, the Virginia Cave Commission and Conservancy, the Wilderness Society, the State Fish and Game Commission, the State Legislature, the Virginia Council on the Environment, the Shenandoah National Park, the Conservation Council of Virginia, the Piedmont Environmental Council, and the Virginia Outdoors Commission. Using the draft of a proposed bill, the Conservation Restriction Act, presented by Senator Frederick Boucher, as the focus of discussion, a number of issues were raised and positions presented. As a result of the mediation, a consensus was reached.

Mediation is currently in progress in two cases, one of which is a dispute between the City of Harrisonburg and Rockingham County over annexation. The city has proposed annexation of a fourteen square mile segment of the county which contains the region's major shopping mall and other recently developed areas. A new annexation statute in Virginia establishes the Virginia Commission on Local Government to assist the courts in annexation proceedings and specifically calls for mediation as a first step in resolving disputes. Such mediation activities are expressly exempted from the provisions of the Virginia Freedom of Information Act. EMS was formally appointed mediator of this dispute and the first meeting between the parties in this context was held in mid November. After four lengthy negotiating sessions, negotiations were suspended in early January.

The other continuing mediation involves the Town of Chincoteague and the Federal Flood Insurance Administration. EMS is assisting them to resolve a dispute concerning the conditions under which the town would enter the agency's flood insurance program. Mediation is also upcoming in two other cases, and in addition, staff members are monitoring other situations which are not currently ripe for mediation but which are potential candidates.

Further information about environmental mediation can be obtained by contacting:

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