

29H-13.001 Purpose.

In recognition of the regional planning council’s role as a mediator and conciliator, a voluntary regional dispute resolution process (DRP) is hereby established to reconcile differences on planning and growth management issues among local governments, regional agencies, port master plans, and private interests. This DRP shall not be utilized to address disputes involving environmental permits or other regulatory matters unless requested to do so by the parties involved. Components of the DRP include: process initiation; situation assessments; voluntary mediation; advisory arbitration; and settlement agreements.

Specific Authority 163.3177(6)(h)1., 163.3177(6)(h)2., 163.3178(5), 186.505(1), 186.505(20), 186.509 FS. Law Implemented 163.3177, 163.3178, 186.509 FS. History–New 4-10-94.

29H-13.002 Definitions.

(1) ADVISORY ARBITRATION is a process where a neutral third person or panel listens to the facts and arguments presented by the parties and renders a non-binding decision.

(2) CERTIFICATE OF SERVICE is when a party shall certify in substance:

“I certify that copy hereof has been furnished to (here insert name or names) by (delivery) (mail) this _____ day of _____.

_____”
Party

and shall be taken as proof of such service.

(3) CROSS-JURISDICTIONAL DISPUTE is a dispute which involves more than one jurisdiction.

(4) DISPUTE RESOLUTION PROCEDURES include facilitation, mediation, and advisory arbitration processes in which a neutral person assists disputing parties to resolve their dispute. The three processes differ in the kind of assistance the neutral person offers.

(5) FACILITATION is a process where a facilitator helps the parties design and follow a meeting agenda and assists parties to communicate more effectively throughout the process. The facilitator has no authority to make or recommend a decision.

(6) INFORMAL NEGOTIATIONS include staff discussions, meetings, document exchanges, coordination committees, task forces, etc.

(7) JURISDICTION is any local government, special district, or regional agency.

(8) MEDIATION is a process where a neutral person acts to encourage and facilitate the resolution of a dispute without prescribing what the resolution should be. It is an informal and non-adversarial process with the objective of helping the disputing parties reach a mutually acceptable agreement. A mediator helps the parties explore their interests and develop and evaluate options for resolving their dispute.

(9) PARTY is any jurisdiction, organization, group or individual that is named in a petition or is invited to participate in settlement of a dispute by the named parties.

(10) PERSON is any jurisdiction, organization, group or individual that is not named in a petition.

(11) SITUATION ASSESSMENT is a process of information collection involving interviews and review of documents leading to a written report(s) identifying: the issues in dispute; the stakeholders; information needed before a decision can be made; and a recommendation on the best dispute resolution procedures.

Specific Authority 186.505(1), 186.509 FS. Law Implemented 186.509 FS. History–New 4-10-94.

29H-13.003 Process and Intent.

(1) The objective of the DRP is to provide a procedure to reconcile differences on planning and growth management issues that will:

(a) Clearly identify and resolve problems as early as possible.

- (b) Utilize DRP components in a low-to-high-cost sequence.
- (c) Allow flexibility in the use of the components.
- (d) Provide for appropriate involvement of affected and responsible parties.
- (e) Provide as much process certainty as possible.

(2) The DRP contemplates the use of the following procedures: initiation period; informal negotiation; settlement period; mediation; advisory arbitration; and administrative or judicial action, as appropriate. The resolution of an issue through the DRP shall not alter any person's right to a judicial or administrative determination of any issue if that person is entitled to such a determination under statutory or common law.

- (3) It is permissible to move forward or backward and have cooling off periods within the DRP.

Specific Authority 186.505(1), 186.509 FS. Law Implemented 186.509 FS. History—New 4-10-94.

29H-13.004 Initiation of Procedure.

(1) A potential party may request an informal pre-initiation consultation prior to the submission of a petition in order to ascertain whether the issue(s) or impact(s) identified meet the purpose of this rule.

- (2) Jurisdictions may initiate petitions. Local governments may initiate petitions on behalf of a private interest.

(3) Any dispute cognizable under Florida Statutes shall be automatically accepted into the dispute resolution process.

(4) A private interest who has demonstrated the existence of a cross-jurisdictional dispute may initiate the DRP after they have clearly made a good faith effort to resolve the dispute at the local level. The existence of the cross-jurisdictional dispute and good faith effort shall be verified by the Council or other neutral third person prior to the initial meeting.

(5) Petitions shall be filed with the Chairman or Executive Director of the Council. The petition shall be signed by an authorized official of the jurisdiction or private interest. The petition shall clearly state that it is the intention of the petitioner to initiate and participate in the DRP described herein; shall specify the issues of dispute; and shall identify the affected party(ies). The petitioner shall provide, by certified mail, a copy of the petition to all parties involved in the dispute at the time of filing of the original with the Council. Named parties shall have twenty (20) calendar days to notify the Council of their intention to voluntarily participate in the DRP or otherwise respond.

(6) Upon the receipt of a petition, the Council shall assess its interest in the dispute. In case of potential conflict or where the Council is a named party, the Council will notify the other parties of the nature of the Council's interest to determine whether an outside facilitator for the initial settlement meeting is desired.

(7) If the Council is not a named party and does not see itself as a potential party, it shall convene an initial meeting within twenty (20) days of receiving notice of intent to participate. This meeting shall take place at the Council on a day and at a time convenient to all parties, or at an alternate location that is convenient to all parties.

Specific Authority 163.3177(6)(h)1., 163.3177(6)(h)2., 163.3178(5), 186.505(1), 186.505(10), 186.505(20), 186.509 FS. Law Implemented 163.3177, 163.3178, 186.509 FS. History—New 4-10-94.

29H-13.005 Notice - Point of Entry.

(1) Persons other than the named parties to a pending proceeding, who are not otherwise represented and who desire to become parties, may request of the parties leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before any settlement meeting, voluntary mediation, or advisory arbitration, with copies provided to all parties of record and shall include allegations sufficient to demonstrate that the intervenor is an affected party and entitled to participate in the proceeding. The parties must approve entry of additional parties.

(2) Persons refusing to enter the process initially may not enter the process at a later date unless agreeable to all the participating parties.

(3) All notices, communications or other pleadings shall be provided at the time of filing to all parties and a certificate of service shall accompany all said documents.

Specific Authority 186.505(1), 186.505(17), 186.509 FS. Law Implemented 186.509 FS. History—New 4-10-94.

29H-13.006 Situation Assessment.

(1) Situation assessment is intended to examine the nature of the dispute and impact; identify the affected and involved [potential] parties; and assist the parties to evaluate appropriate resolution procedure options.

(2) Situation assessments may be conducted, as requested, throughout the DRP in order to ensure that new relevant information or the identification of additional affected persons is considered.

(3) Situation assessments shall be conducted by the Council staff unless the Council is a party to the DRP or where a conflict of interest may exist. In such case, an outside person, agreed to by the involved parties, shall conduct the situation assessment.

Specific Authority 186.505(1), 186.505(10), 186.505(20), 186.509 FS. Law Implemented 186.509 FS. History--New 4-10-94.

29H-13.007 Settlement Meetings.

(1) Settlement meetings may occur at any point and shall, at a minimum, be attended by the chief administrators or other authorized decision makers of the named parties.

(2) Settlement meetings may be facilitated by a Council staff member or, if the Council is a party, other neutral facilitator acceptable to the parties and shall be held at a time acceptable to the parties.

(3) At a settlement meeting, the parties shall review the issues to be addressed, present their concerns and constraints, explore options for a solution, and seek agreement.

(4) If no agreement is reached at an initial settlement meeting, the parties shall, at a minimum, prepare a joint report that includes:

(a) A description of the issues discussed and whether any were resolved;

(b) A list of potentially affected or involved individuals or agencies (including those which may not be parties);

(c) A description of agreed upon next steps, if any, and a time frame for starting and ending: informal negotiations, additional settlement meetings, mediation, arbitration, joint meeting of elected bodies, administrative hearing or litigation; and

(d) If any additional Council assistance is requested. The report shall include exhibits any party wishes to include.

(5) Any party who has agreed to participate in the DRP may proceed to a judicial determination of any issue if that party is entitled to such a determination under statutory or common law.

Specific Authority 186.505(1), 186.505(10), 186.505(20), 186.509 FS. Law Implemented 186.509 FS. History--New 4-10-94.

29H-13.008 Mediation.

(1) If the parties submit a request for mediation to the Council, the Council shall assist the parties to select and retain an impartial mediator or the parties may request that the Council select a mediator, or serve as mediator.

(2) The party initiating mediation shall report the results to the Council at the conclusion of the mediation.

Specific Authority 186.505(1), 186.505(10), 186.509 FS. Law Implemented 186.509 FS. History--New 4-10-94.

29H-13.009 Advisory Arbitration.

(1) If the parties submit a request for advisory arbitration to the Council, the Council shall assist the parties to select and retain an impartial arbitrator or the parties may request that the Council select an arbitrator or serve as arbitrator.

(2) The party initiating arbitration shall report the results to the Council at the conclusion of the arbitration.

Specific Authority 186.505(1), 186.505(10), 186.509 FS. Law Implemented 186.509 FS. History--New 4-10-94.

29H-13.010 Form of Settlement Agreement.

The actual form of the settlement agreement shall be determined by the parties involved and may be in the form of an interlocal agreement, concurrent resolutions, a signed agreement or other form that may be agreed to by the parties. Upon settlement of the dispute, the participants shall provide a copy of the agreement to the Council.

Specific Authority 186.505(1), 186.509 FS. Law Implemented 186.509 FS. History–New 4-10-94.

29H-13.011 Other Existing Resolution Processes.

In addition to the process outlined in Section 186.509, F.S., other resolution processes exist within the Florida statutes, including, but not limited to, the following: Intergovernmental Coordination Element, Section 163.3177(6)(h)1. and 2., F.S.; Port Master Plans, Section 163.3178, F.S.; Community Residential Homes, Section 419.001(5), F.S.; Cross Acceptance Process, Section 186.505(22), F.S.; Location of Spoil Sites, Section 380.32(14), F.S.; Termination of the Development of Regional Impact Program, Section 380.27, F.S.; Administrative Procedures Act, Chapter 120, F.S.; Florida Governmental Cooperation Act, Chapter 164, F.S.; and Mediation Alternatives to Judicial Action, Chapter 44, F.S.

Specific Authority 186.505(1), 186.509 FS. Law Implemented 186.509 FS. History–New 4-10-94.

29H-13.012 Role of the Regional Planning Council/Regional Planning Council Staff.

(1) The Council shall be responsible for the implementation of this rule. The Council staff or designee shall serve as facilitator and shall perform the administrative procedures necessary to implement the process set forth in this rule. A Council member, staff or designee may serve as a mediator or an arbitrator.

(2) Administrative duties to be provided by the Council staff may include:

(a) Conducting pre-initiation meetings;

(b) Administering procedures related to process initiation;

(c) Conducting situation assessments;

(d) Verify the cross-jurisdictional nature of the disputes and good faith efforts, pursuant to subsection 29H-13.004(3), F.A.C.;

(e) Maintaining lists of qualified mediators, pursuant to Rule 29H-13.013, F.A.C.;

(f) Securing the services of mediators, as needed;

(g) Arranging for the appropriate meeting(s); and

(h) Invoicing.

(3) The Council shall provide a copy of the petition to any party identified through the situation assessment process not previously identified.

Specific Authority 186.504, 186.505(1), (10), (12), (17), (20), 186.509 FS. Law Implemented 186.504, 186.505, 186.509 FS. History–New 4-10-94, Amended 1-27-09.

29H-13.013 Qualifications of the Mediator.

Parties shall select a mediator who is on the Florida Growth Management Conflict Resolution Consortium rosters, or who is certified by the Florida Supreme Court, or any other mutually acceptable mediator.

Specific Authority Chapter 44, 186.505(1), 186.509 FS. Law Implemented 186.509 FS. History–New 4-10-94.

29H-13.014 Compensation for Regional Planning Council and Mediator.

The Council shall be reimbursed for dispute resolution services performed by a Council member, staff or designee at an amount to be agreed upon plus any additional out-of-pocket expenses. Outside professional mediators shall be paid at their standard rate. The expenses of the Council and the professional mediator may be shared equally or in accordance with an agreed upon formula by the parties involved in the dispute. The parties shall enter into a fee agreement at the initial meeting.

Specific Authority 186.504, 186.505, 186.505(1), 186.505(12), 186.505(19) FS. Law Implemented 186.504, 186.505, 186.509 FS. History–New 4-10-94, Amended 1-27-09.

