

The Partnership Process- Issue Resolution in Action

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The Challenge:

Environmental Conflict Resolution

- Port development projects especially including dredging are critical to the successful operations and hence economic viability of the ports. However, these projects must undergo substantial & complex environmental impact review & permitting to proceed;
- The environmental review and permitting process will depend upon the nature of the project, the state and local environmental jurisdictions, the environmental activist community and quite often historical issues or public profile and perceptions;
- As a result quite often critical conflicts arise that will delay or cause important port development projects to be abandoned;

The Challenge:

Environmental Conflict Resolution

- As a result of the complex mix of science, agency regulations, public opinion, and politics – Remember, The environmental permitting process is both:

“A Science and an Art”

Goal and Objectives of Conflict Resolution Process

The conflict resolution process is an informal negotiation that utilizes a "Mediation Format" in which a facilitator assists the engaged parties develop a mutually acceptable agreement to the issues in conflict. The facilitator must be viewed as a neutral party and has no authority to make decisions or recommend outcomes.

The Conflict Resolution Process will provide an opportunity for the participants to:

- Dialog constructively about what their objectives are to achieve settlement;
- Consider the constraints and challenges they face in reaching agreement;

Goal and Objectives of Conflict Resolution Process

- Explore a range of creative solutions that may address technical, legal and other issues;
- Shape an agreement (consent order) that best addresses the environmental impacts and the parties interests;

Advantages of process compared to administrative hearing or court, mediation often results in:

- Reaching a consensus settlement sooner
- Spending less time and resources in reaching a settlement;
- A better solution for the environment, and the active participant parties (stakeholder);
- Improved relations between the port, the agencies and environmental community

NOTE: This process may not be appropriate in cases where precedent is sought or when the only issue is an interpretation of the law that may only be resolved by an administrative law judge

Port of Miami – A Case Study Example

The Port of Miami Dredging Project is a real example of how the previously discussed *“conflict resolution process”* was utilized to facilitate the port’s need to have the State of Florida’s consistency determination in order for the project to proceed further in the GRR/EIS approval process.

In summary, the Phase III dredging GRR included:

- Channel and turning basin expansion & deepening from 42 ft to 50 ft
- The Phase I deepening project was completed successfully under budget and on time with the COE 204-E agreement. The Phase II (42 ft deepening) project was approx. half completed also with the 204-E agreement leaving approximately 2 million c.y. of dredging remaining

Port of Miami – A Case Study Example

- A termination of the prior 204-E agreement process & a new PCA was required to be negotiated with the Corps;
- Additional funding for the project had to be secured by the port;
- A major multi-million dollar lawsuit between the port and the previous dredge contractor and their surety bond company was underway;
- Phase II was to be completed under a new contract that was to utilize blasting techniques not previously used on the project;
- Environmental violations had occurred under the first contractor and violation orders had to be resolved for the project to proceed;
- The original project had started in 1995 & stopped in 1997 with Phase II completion in 2005. The Phase III GRR/EIS process needed concurrency determination for the Final Record of Decision (ROD).

How Did We Get Here?

- It's not only the approval process that can be problematic but dredging contract implementation is very complicated and requires careful, professional management and continuous monitoring & oversight from beginning to the end;
- The project had to be restarted in a new direction with new approval processes and permits while the next phase GGR was underway;
- The project process was proceeding until significant RED LIGHTS became apparent. Port started receiving state agency letters of the project not being deemed "IN CONCURRENCY" with their agency mandates for project review;
- Port determined immediate action was needed to put the project back on track for federal GRR/EIS Process.

Available Options

- Continue with “BUSINESS AS USUAL” trying to reconcile each agency concern individually and lose critical time in the process. Time is always of the essence and time kills all deals (in this case-project);
- Take a PROACTIVE response to the issues;
- Invoke a dialog of “CONFLICT RESOLUTION” collectively with the local and state agencies including the environmental community to find a mutually acceptable agreement outcome to resolve the issues
- Continue in a cooperative effort with the COE to finalize new PCA and permitting issues on Phase II while working on Phase III also;
- Continue to pursue legal remedies for contractor default under prior Phase II work.

Port of Miami – GRR Consensus Process

Purpose

A well planned and facilitated process can: Build on all technical and negotiation work to date Focus efforts to maximize productivity of everyone's efforts Build understanding of each party's interests and concerns Utilize the best information and expertise available Involve final decision makers and others at key points in the process Develop consensus on required documents that will assure acceptable procedures and results (economic, environmental, social, political, etc.). Build broad commitment for implementation/compliance

Components of the Process

- **Agency Liaisons:**

Agencies designated liaisons to work with the facilitator to set up interviews, clarify the project scope, guide and coordinate efforts of the Consensus Work Group and individual agencies and organizations, and generally oversee the completion of the process.

GRR Consensus Process

- **Consensus Work Group:**

This work group included senior representatives and staff from the FDEP, FFWCC, USAGE, Port of Miami, and Miami-Dade DERM and others. They met twice. At the first meeting they discussed priority issues and sought consensus on recommended refinements in the GRR/EIS. Between meetings parties drafted agreement language on consensus items, work on unresolved issues, gather information needed for final decision-making and solicit feedback from final decision makers and constituents. The final meeting considered input from the final decision makers, constituents, experts and others, seek consensus on unresolved issues and the agreement as a whole and get commitments for needed next steps.

- **Final Decision Makers:**

The chief administrators and/or boards of participating groups were informed and were asked for guidance before the first meeting and between meetings. They then received recommendations from the consensus work group and made their formal decisions as required and/or provide letters of support or concern.

- **Involvement of Others:**

Other federal and state agencies, private and other groups were encouraged to designate a contact person for this process. Group contacts would receive a report of the first meeting, keep their groups leaders and members informed and acted as a channel for their group's input into the process. In particular they will be asked to indicate the acceptability of the final recommendations.

GRR Consensus Process

Summary of the Consistency Issues

(Based upon reviewing agency comments)

- Channel Widening
- Seagrass and Hardbottom Habitat Mitigation
- Monitoring Requirements
- Water Turbidity
- Cumulative Impacts
- Protected Species (State and County acts and plans)

GRR Consensus Process

Process Plan

Facilitator's Preparation

- Communication with agency contacts to finalize the process and participation.
- Interviews with key players and review of background information
- Prepare meeting agenda and materials

Consensus Work Group Meeting - #1

- 28 participants attended the two day process in Tallahassee
- Prioritize specific technical, organizational and political issues were addressed
- Seek consensus on language to be included in the consistency determination and Record of Decision (ROD) in the Chief's Report.
- Determine tasks and responsibilities for between meeting efforts

GRR Consensus Process

Between Meeting Tasks

- Prepare a report of the meeting 1.
- Draft agreement language on consensus items.
- Work on unresolved issues.
- Gather information needed for final decision-making.
- Solicit feedback from final decision makers, constituents and other groups

Consensus Work Group Meeting - #2

- Consider input from final decision makers, constituents, experts and others.
- Seek consensus on unresolved issues and the agreement as a whole.
- Obtain commitments for needed next steps.

Next Steps were to:

- Follow-up meeting reports and outcome action list for implementation
- Clearinghouse concurrency determination
- Final Record of Decision, ROD, in Chiefs report

Outcomes:

- The port decided to immediately proceed in conjunction with its environmental consultant to coordinate a professionally facilitated conflict resolution process with the environmental agencies and organizations of concern;
- On very short notice (three weeks) it was possible to schedule a Conflict Resolution Process with the affected parties utilizing a professional facilitator, environmental expertise and PORT DIRECTOR;
- Focused coordinated 2 day working sessions in Tallahassee until final agreement was reached and agency "CONSISTENCY DETERMINATION" achieved;
- Also, lawsuit reached conclusion in 2006 with a \$22 million settlement in favor of the port to off-set dredge project completion costs;
- Phase II dredging project to 42 ft finally completed Fall 2005;
- Phase III deepening to 50 ft included IS NOW in current WRDA.

Conclusions & Recommendations

- In order to avoid or minimize project conflicts which can be potential project "Breakers" be sure to professionally and effectively manage all aspects of the project from A to Z. Not just approval process but contract management;
- Remember "MURPHY'S LAW" is alive and well ready to strike;
- When things go wrong "ACT" soon but effectively;
- Put together the team and formulate a plan to resolve issues;
- Identify action items;
- Use all tools available to you including a facilitated "CONFLICT RESOLUTION PROCESS"
- Remember, "TIME IS OF THE ESSENCE" but patience and perseverance is not just a virtue but

"THE KEY TO SUCCESS"

THANK YOU

