

Chapter 463-30 WAC

~~((PROCEDURE--))~~ ADJUDICATIVE PROCEEDINGS

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90, effective 3/16/90)

**WAC 463-30-010 Purpose ~~((and scope of this chapter))~~.** The purpose of this chapter is to set forth procedures by which adjudicative proceedings are to be conducted before the council under chapter 34.05 RCW. Except as indicated herein, the uniform procedural rules set forth in chapter 10-08 WAC shall not apply to adjudicative proceedings before the council.

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90, effective 3/16/90)

**WAC 463-30-020 Council conducted hearings and administrative law judges.** The council ~~((may conduct))~~ is the presiding officer at adjudicative proceedings pursuant to chapters 34.05 and 80.50 RCW ((or it)). The council may utilize an administrative law judge provided by the office of administrative hearings ((pursuant to chapter 34.12 RCW. In the event the council elects to conduct the hearing, a presiding officer shall be appointed and the hearing shall be governed by the regulations and procedures contained in this chapter and chapter 34.05 RCW, as applicable)) to facilitate conduct of administrative hearings and all matters related thereto. Administrative hearings shall be governed by chapter 34.05 RCW and this chapter.

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90, effective 3/16/90)

**WAC 463-30-050 Status of (~~agencies and agency~~) members in adjudicative proceedings.** All state agencies and local governments having members on the council are deemed to be parties to any adjudicative proceeding before the council. For purposes of any adjudicative proceeding, however, the agency or local government representative on the council shall be deemed to be a member of the council and not a member of the agency or local government. (~~It shall be proper for the agency representative on the council to~~) Members of the council shall not communicate with employees of the represented agency or local government, (~~excepting those agency employees~~) who have participated in the proceeding (~~in any manner~~) or who are otherwise disqualified by RCW 34.05.455.

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90, effective 3/16/90)

**WAC 463-30-060 Definitions--Persons and parties.** The terms "person" and "party" when used in this chapter shall have the following meanings. The term "person" shall be defined according to RCW 80.50.020(3). The term "party" shall mean and be limited to the following:

- (1) The "applicant" as defined in RCW 80.50.020(1).
- (2) Each "member agency" as (~~defined~~) specified in RCW 80.50.030 (3) through (6).
- (3) The "counsel for the environment" as defined in RCW 80.50.020(12).
- (4) Each person admitted to an adjudicative proceeding as an "intervenor," is a party only for the purposes and subject to any limitations and conditions specified in the council order granting intervention.

AMENDATORY SECTION (Amending WSR 98-01-084, filed 12/12/97, effective 1/12/98)

**WAC 463-30-080 Commencement of adjudicative proceedings.**

Adjudicative proceedings shall commence upon issuance of a formal notice of hearing or prehearing conference. The notice shall be served upon all parties at least twenty days in advance of the initial hearing date, unless the council finds that an emergency exists requiring the hearing or prehearing conference to be held upon less notice.

The time and place of continued hearing sessions may also be set:

- (1) Upon the record without further written notice to the parties; or
- (2) By letter from the (~~EFSEC~~) council manager; or
- (3) By letter from the presiding officer.

In such instances, twenty days' prior notice is not required.

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90, effective 3/16/90)

**WAC 463-30-090 Publicity--Commencement of adjudicative proceedings.**

Upon the filing of an application for certification, the council shall prepare an appropriate statement for dissemination to the news media which shall: (1) Describe all actions taken to date regarding the proposed site, and (2) state clearly that any person may be allowed to present timely written or oral argument for or against the proposed site to be certified and that advance notice within a reasonable time shall be required of persons who desire status as intervenors in accordance with WAC (~~(463-30-400)~~) 463-30-091.

NEW SECTION

**WAC 463-30-091 Intervention.** On timely application in writing to the council, intervention shall be allowed to any person upon whom a statute confers a right to intervene and, in the discretion of the council, to any person having an interest in the subject matter and whose ability to protect such interest may be otherwise impaired or impeded. All petitions to intervene shall be verified under oath by the petitioner, shall adequately identify the petitioner, and shall establish with particularity an interest in the subject matter and that the ability to protect such interest may be otherwise impaired or impeded. In exercising discretion with regard to intervention, the council shall consider whether intervention by the petitioner would unduly delay the proceeding or prejudice the rights of the existing parties. The council may establish a date after which petitions to intervene will not be considered except for good cause shown. When such a date has been established, the council will assure that adequate public notice is given.

NEW SECTION

**WAC 463-30-092 Participation by intervenor.** In general, it is the policy of the council to allow any intervenor broad procedural latitude. To the extent that the council determines that numerous intervenors might unduly delay the proceedings or prejudice the rights of existing parties, intervenor status may be conditioned upon assent by the prospective intervenor and counsel for the environment to allow the counsel for the environment to act as lead counsel for the balance of the hearing, where the intervenor's interests more closely align with those of the counsel for the environment. Intervenor status may also be conditioned upon allowance of other parties to act as lead parties, where appropriate. The council reserves the right to prescribe other limitations and conditions, where appropriate.

NEW SECTION

**WAC 463-30-093 Participation by county, city and port district representatives.** In any adjudicative site certification proceeding, designated council members representing local jurisdictions may discuss and, if authorized, vote only on issues affecting their jurisdictions. Issues shall be separated for purposes of discussion and voting.

AMENDATORY SECTION (Amending WSR 98-01-084, filed 12/12/97, effective 1/12/98)

**WAC 463-30-120 Format, filing and service of documents.**

~~(1) ((Filing. Filing of any document shall be deemed complete only upon receipt by the EFSEC manager or other authorized agent of the council. Receipt in the council's telefax machine, or similar device, does not constitute filing. Unless in a particular case the council specifies a different number of copies, every pleading submitted to the council shall be filed with two copies. Filing a document with the council does not constitute service upon the office of the attorney general or any other party. Likewise, service on the office of the attorney general does not constitute a filing with the council.~~

~~(a)) Format.~~

~~(a) All pleadings, motions, and other documents (including prefiled testimony) filed with the council shall be legibly written or printed. The use of letter size paper (8 1/2 by 11 inches) is mandatory. The writing or printing shall appear on two sides of the page.~~

~~(b) The requirements of (a) of this subsection are not mandatory for exhibits but the use of exhibits that comply with (a) of this subsection is encouraged if it does not impair legibility.~~

~~(2) Filing.~~

~~(a) In each case, the council will specify the number of copies required for motions, related pleadings, and exhibits which must be filed with the council.~~

~~(b) Document shall be deemed filed only upon actual receipt by the council manager or designee during office hours.~~

~~(c) Faxes.~~

~~(i) As used in this rule, "fax" means electronic~~

telefacsimile transmission.

(ii) Except as specified in (c)(iii) of this subsection, receipt of a document in the council's fax machine does not constitute filing.

(iii) For good cause shown, a party may request and the council manager or designee may in his or her sole discretion grant authority to file a document by fax.

(iv) Filing by fax is perfected when a complete legible copy of the document is reproduced on the council manager's fax machine during the council's normal office hours, so long as the council receives the required number of nonfaxed originals on the next successive business day. If a transmission of a document by fax commences after the council's normal office hours, the document shall be filed on the next successive business day.

(v) Any document filed by fax must be accompanied by a cover page or other form identifying the party making the transmission, listing the address, telephone, and fax number of the party, identifying the adjudicative proceeding to which the document relates, and indicating the date faxed and total number of pages included in the transmission.

(vi) The party attempting to file a document by fax bears the risk that the document will not be timely received or legibly printed, regardless of the cause. If a fax is not received in legible form, it will be considered as if it had never been sent.

(d) E-mail. The filing of documents with the council by electronic mail is not authorized without the express approval of the council manager or designee and under such circumstances as the council manager or designee allows.

(e) Filing a document with the council does not constitute service upon the office of the attorney general or any other party. Likewise, service on the office of the attorney general does not constitute a filing with the council.

(f) Applications. Applications for a site certificate shall be filed in the manner prescribed by the rules governing such applications.

~~((b) Other pleadings. All pleadings shall be legible and a copy shall be served upon each party to the proceeding.~~

~~(2)) (3) Service.~~

(a) A copy of each pleading, motion, and document filed with the council shall be simultaneously served upon each party.

(b) Service by parties.

(i) Service of pleadings, motions, and other documents by parties shall be made by delivering one copy to each party (A) in person, (B) by mail, (~~properly addressed with postage prepaid,~~) (C) by commercial parcel delivery company (~~properly tendered with fees prepaid, or by telefacsimile transmission~~) or (D) for documents not exceeding twenty-five pages, if

authorized by the council manager or designee, by fax, where originals are mailed simultaneously.

(ii) Except as otherwise provided, when any party has appeared by attorney or other authorized representative, service upon such attorney or representative will be deemed valid service upon the party ~~((of all future pleadings before the council)).~~ ~~((Service of pleadings by mail shall be complete when a true copy of the document is properly addressed and stamped and deposited in the United States mail. Service by commercial parcel delivery company shall be complete when accepted for delivery by the company.~~

~~(b))~~ (iii) Service of documents shall be deemed complete upon (A) personal delivery, (B) deposit in the United States mail properly addressed with appropriate first-class postage prepaid, (C) acceptance for delivery by a commercial parcel delivery company, properly tendered with fees prepaid, or (D) production by the fax machine of a confirmation of transmission by fax, with simultaneous deposit of the originals in the United States mail, properly addressed with appropriate first-class postage prepaid.

(c) Service by the council. All notices, ~~((findings of fact, decisions, and))~~ orders and other documents required to be served by the council may be served by delivery of one copy to each party (i) in person, (ii) by mail, (iii) by commercial parcel delivery company, ((properly tendered with fees prepaid, or by telefacsimile transmission)) or (iv) by fax, when originals are mailed simultaneously. Service of documents ~~((shall be complete when a true copy of the document, properly addressed and stamped, is deposited in the United States mail with first class postage affixed, or accepted for delivery by the parcel delivery company))~~ by the council shall be deemed complete upon (A) personal delivery, (B) deposit in the United States mail properly addressed with appropriate first-class postage prepaid, (C) acceptance for delivery by a commercial parcel delivery company, properly tendered with fees prepaid, or (D) production by the council's fax machine of a confirmation of the transmission by fax, with simultaneous deposit of the originals in the United States mail, properly addressed with appropriate first-class postage prepaid.

~~((e))~~ (d) Certificate of service. There shall appear on or in a separate document accompanying the original of every pleading when filed with the council in accordance with this subsection, either an acknowledgment of service, or the following certificate:

"I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, by authorized method of service pursuant to WAC 463-30-120 ~~((2)(a))~~ (3).

Dated at ..... this .... day of ....  
(signature) .....

(4) Courtesy copies. Parties are encouraged to send courtesy copies of documents to the council and all other parties via electronic mail.

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90, effective 3/16/90)

**WAC 463-30-200 Subpoenas--Practice.** (1) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446.

(2) Every subpoena shall identify the party causing issuance of the subpoena and shall state the name of the agency and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control at the time and place set for the hearing.

(3) A subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit.

(4) The presiding officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may:

(a) Quash or modify the subpoena if it is unreasonable and oppressive; or

(b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(5) No subpoena shall be issued or given effect to require the attendance and testimony of, or the production of evidence by, any member of the council or any member of the council staff (~~(in any proceeding before the council)~~). For these purposes, the council's independent consultant is deemed a member of the council staff.

(6) The council shall (~~only~~) be responsible for paying only the witness fees of the witnesses which it subpoenas. Each subpoena shall bear the name of the party requesting or issuing the subpoena and the party responsible for paying the witness fees.

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90, effective 3/16/90)

**WAC 463-30-250 Stipulations ((and settlement)) of fact.**

~~((1) Stipulations are encouraged. The parties to any adjudicative proceeding before the council may, by stipulation in writing filed with the council or entered into the record, agree upon the facts or any portion thereof involved in the proceeding. This stipulation, if accepted by the council, shall be binding upon the parties thereto and may be used by the council as evidence at the hearing. The council may reject the stipulation or require proof by evidence of the stipulated facts, notwithstanding the stipulation of the parties.~~

~~(2) Before or after a formal hearing, parties to a proceeding may enter into discussions leading to a voluntary settlement. In furtherance of a voluntary settlement, the council may invite the parties to confer among themselves or with a designated person. Settlement conferences shall be informal and without prejudice to the rights of the parties. No statement, admission, or offer of settlement made at a settlement conference shall be admissible in evidence in any formal hearing before the council. Any resulting settlement or stipulation shall be stated on the record or submitted in writing and is subject to approval by the council.))~~ A stipulation is an agreement among parties intended to establish one or more operative facts in an adjudicative proceeding. The council encourages parties to enter stipulations of fact. The parties to an adjudicative proceeding before the council may agree to all of the facts or any portion of the facts involved in the proceeding. The parties to a stipulation may file it in writing or enter it orally into the record. A stipulation, if accepted by the council, is binding on the stipulating parties. The parties may present the stipulation as evidence at the hearing. The council may reject the stipulation or require proof of the stipulated facts, despite the parties' agreement to the stipulation.

NEW SECTION

**WAC 463-30-251 Alternative dispute resolution.** The council supports parties' informal efforts to resolve disputes when doing so is lawful and consistent with the public interest. Alternative dispute resolution (ADR) includes any mechanism to resolve disagreements, in whole or in part.

(1) Forms of ADR. Parties may agree to negotiate with other parties at any time without council oversight. The council may direct parties to meet or consult as provided in subsection (2) of this section, or may establish or approve a collaborative process as provided in subsection (3) of this section. The council may assign a mediator or facilitator to assist the parties. The council may also assign an arbitrator whose decision is subject to council review.

(2) Settlement conference. The council may invite or direct the parties to confer among themselves or with a designated person. Settlement conferences must be informal and without prejudice to the rights of the parties.

(3) Collaborative.

(a) Defined; membership. A collaborative is a form of ADR and is a council-sanctioned negotiation in which interested parties work with each other and representatives of council staff to achieve consensus on one or more issues assigned by the council or identified by the collaborative participants. Any interested party whose interests may be substantially affected by the result of the collaborative must be given an opportunity to participate. Collaborative participants must inform the council and seek approval if a collaborative changes its membership or redefines the issues it will address.

(b) Communication with council. Communication between the council and collaborative participants may be through council staff assigned to serve as a third party neutral in the collaborative, or through the council manager, subject to agreement among the participants to the form and substance of any such communication.

(4) ADR guidelines. In any ADR process, the following apply unless all participants agree otherwise:

(a) The parties, as their first joint act, will consider any guidelines or directions by the council, and determine the ground rules governing the negotiations;

(b) No statement, admission or offer of settlement made during negotiations is admissible in evidence in any formal hearing before the council without the consent of the

participants or unless necessary to address the process of the negotiations;

(c) To the extent permitted by law, parties may agree that information exchanged exclusively within the context of settlement negotiations will be treated as confidential as provided in a council protective order; and

(d) Participants in a council-sanctioned ADR process must periodically advise any nonparticipating parties and the council of any substantial progress made toward settlement. Participants must immediately advise the council if a council-sanctioned ADR process is without substantial prospects of resolving the issue or issues under negotiation.

#### NEW SECTION

**WAC 463-30-252 Settlement.** A settlement is an agreement among two or more parties. Applicants, member agencies, and the counsel for the environment may enter into a settlement concerning any matter. Intervenors may enter into a settlement agreement subject to any limits and conditions specified in the council's order granting intervention. Settlements are filed with the council as a proposed resolution of the issues addressed in the agreement.

(1) Full settlement. An agreement of all parties that would resolve all issues in a proceeding may be presented as a full settlement for council review.

(2) Partial settlement. An agreement of all parties on fewer than all issues in a proceeding may be presented as a partial settlement for council review, and remaining matters may be the subject of further council proceedings.

(3) Multiparty settlement. An agreement of some but not all parties on one or more issues may be offered as their position in the proceeding along with the evidence that they believe supports it.

(4) Notice to council. Parties must advise the council if they reach a full, partial, or multiparty settlement and may suggest preferred procedural alternatives for review of the settlement, subject to the requirements of WAC 463-30-253 and 463-30-254. The council will determine the appropriate procedure in each proceeding consistent with the requirements of WAC 463-30-253 and 463-30-254.

NEW SECTION

**WAC 463-30-253 Settlement consideration procedure.** The council must have a reasonable opportunity to hear parties' views on why a proposed settlement should be approved and adopted, to ask questions of the parties, and to conduct its processes in an orderly fashion. Parties must, therefore, consider the timing and the content of their settlement presentation to the council.

(1) Settlement presentation timing. Parties must file a proposed settlement that allows the council sufficient time for the filing, review, and approval of any filing.

(2) Settlement presentation contents. When filing a proposed settlement agreement, parties must also file supporting documentation sufficient to demonstrate to the council that the proposal is appropriate for adoption.

(a) Supporting documentation should include supporting evidence; a narrative outlining the scope of the settlement and its principal aspects; a statement explaining in detail why the proposal is appropriate for adoption; a summary of its costs and benefits; and a summary of legal points that bear on the proposed settlement. The documentation may be in the form of a memorandum, supporting prefiled testimony, brief, or other form that serves the same functions.

(b) Parties must make a brief presentation to the council concerning the proposed settlement and address any legal or factual matters associated with it. Each party to the settlement agreement must offer to present one or more witnesses to testify in support of the proposal and to answer questions. In the case of a contested settlement, parties opposed to the council's adoption of the proposal may offer to present one or more witnesses to testify or argue against the proposal.

NEW SECTION

**WAC 463-30-254 Council discretion to accept or reject a proposed settlement or other agreement.** The council will not delegate to parties the power to make decisions. The council retains the right to exercise its authority in every adjudicative proceeding to consider any proposed settlement or other agreement of the parties. The council may decide whether or not to consider a proposed settlement or agreement. If the council considers a proposed settlement or agreement, the council may accept it, reject it, or take any other action the council deems appropriate.

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90, effective 3/16/90)

**WAC 463-30-270 Prehearing conference.** (1) The (~~presiding officer~~) council upon (~~his or her~~) its own motion or upon request of a party may direct the parties or their representatives to engage in a prehearing conference or conferences to consider:

- (a) Simplification of issues;
- (b) The necessity or desirability of amendments to the pleadings;
- (c) The possibility of obtaining stipulations, admissions of fact, and admissions of the genuineness of documents which will avoid unnecessary proof;
- (d) Limitations on the number and consolidation of the examination of witnesses;
- (e) Procedural matters;
- (f) Distribution of written testimony and exhibits to the parties prior to the hearing;
- (g) The disposition of petitions for leave to intervene in the proceeding filed pursuant to WAC (~~463-30-400~~) 463-30-091 may be ruled upon at a prehearing conference;
- (h) Such other matters as may aid in the disposition or settlement of the proceeding including scheduling the hearing and determination of the sequence of the subject matter.

(2) Prehearing conferences may be held by telephone conference call or at a time and place specified by the (~~presiding officer~~) council.

(3) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken at the conference, the amendments allowed to the pleadings, ~~((and))~~ the agreements made by the parties concerning all of the matters considered and other matters as appropriate. If no objection to ~~((such notice))~~ the order is filed within ten days after the date ~~((such notice))~~ the order is mailed, it shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

(4) In any proceeding the ~~((presiding officer))~~ council may~~(, at his or her discretion,)~~ conduct a conference prior to the taking of testimony, or may recess the hearing for such conference, for the purpose of carrying out the purpose of this section. The ~~((presiding officer))~~ council shall state on the record the results of such conference.

(5) Nothing in this section shall be construed to limit the right of the council to order a prehearing conference or other settlement procedure prior to issuance of a notice of hearing.

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90, effective 3/16/90)

**WAC 463-30-320 ~~((Entry of initial and final orders.))~~**  
**Preparation of recommendation to the governor.** Every ~~((decision and order whether initial or final))~~ recommendation to the governor shall:

(1) Be correctly captioned to identify the council and name of the proceeding;

(2) Identify all parties and representatives participating in the proceeding;

(3) Include a concise statement on the nature and background of the proceeding;

(4) Contain appropriate numbered findings of fact ~~((meeting the requirements of RCW 34.05.461))~~;

(5) Contain appropriate numbered conclusions of law, including citations to statutes and rules relied upon;

(6) Contain ~~((an initial or final order))~~ a recommendation disposing of all contested issues;

(7) ~~((If applicable,))~~ Contain such other information deemed appropriate by the council;

(8) Contain a statement describing the parties' rights to reconsideration or other administrative relief.

AMENDATORY SECTION (Amending WSR 98-01-084, filed 12/12/97, effective 1/12/98)

**WAC 463-30-335 Petition for reconsideration of recommendations to the governor.** A petition for reconsideration of a ~~((final order under RCW 34.05.470))~~ recommendation to the governor shall be filed with the ~~((EFSEC))~~ council manager.

(1) The petition for reconsideration shall be filed with the council within twenty days of the date of service of the recommendation to the governor, unless a different place and time limit for filing the petition are specified in the recommendation to the governor in its statement describing available procedures for administrative relief. Copies of the petition shall be served upon all other parties or their representatives at the time the petition is filed.

(2) The petition for reconsideration shall specify the challenged portions of the recommendation to the governor and shall refer to the evidence of record and legal authority which is relied upon to support the petition.

(3) Any party may file an answer to a petition for reconsideration. The answer shall be filed with the council manager within fourteen days after the date of service of the petition and copies of the answer shall be served upon all other parties or their representatives at the time the answer is filed.

NEW SECTION

**WAC 463-30-345 Recommendation--Transmittal to governor.** Upon the adoption by the council of its recommendations as to the approval or disapproval of an application for certification, the council shall forward such recommendations to the governor.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 463-30-030 Use of the term "council."

WAC 463-30-055	Applicant funding of council members salaries and fringe benefits for extended adjudications.
WAC 463-30-280	Attendance by council members at prehearing conferences.
WAC 463-30-330	Petition for review and replies.
WAC 463-30-390	Recommendation--Transmittal to governor.
WAC 463-30-400	Intervention.
WAC 463-30-410	Participation by intervenor.
WAC 463-30-420	Participation by county, city and port district representatives.