

**WAC 463-30-250 Stipulations and settlement of facts.** ~~(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 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.~~

**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 any other parties at any time without council oversight. The council may direct parties to meet or consult as provided in subsections (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) Collaboratives.

(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 non-participating 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.

**WAC 463-30-253 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 litigated.

(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-xx4. The council will determine the appropriate procedure in each proceeding consistent with the requirements of WAC 463-30-xx4.

**WAC 463-30-254 Settlement consideration procedure.** The council must have a reasonable opportunity to hear parties' views on why the 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 to deliberate and to prepare an order responding to the proposal. The parties must allow 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.

**WAC 463-30-255 Council discretion to accept or reject a proposed settlement or other agreement.** The council will not delegate to parties the power to make final 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.

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