



THE STATE OF WASHINGTON
**ENVIRONMENTAL AND
LAND USE HEARINGS OFFICE**

Mediation Program

Shorelines Hearings Board Pollution Control Hearings Board

The Shorelines Hearings Board (SHB) and Pollution Control Hearings Board (PCHB) believe that mediation can help parties reach consensual resolution of many cases coming before the Boards. Settlement early in a case can provide a cost effective and flexible way to resolve disputes to the satisfaction of all concerned.

The Environmental and Land Use Hearings Office (ELUHO) provides free mediation services by a trained mediator to assist parties with their settlement efforts on cases pending before the Boards.

Mediation at ELUHO

Mediation is assisted negotiation. It is a voluntary process in which an impartial, neutral mediator helps the parties negotiate a solution that is acceptable to them. The mediator does not render a decision, as would an arbitrator in an arbitration process, and the mediator has no authority to impose a settlement.

ELUHO's mediation program provides mediating services free of charge on cases pending before the Boards. The mediation program uses trained and experienced Administrative Appeals Judges from ELUHO as mediators. The discussions with the mediator are strictly confidential and will not be shared with any member of the Board or the Board's Presiding Officer. The mediator will take no part in the formal proceeding.

Benefits

The Board hopes that this mediation process will help parties to reach more creative and flexible outcomes than they might achieve in litigation and at considerably less expense and delay. The mediators will work with the parties to tailor the mediation process to the particular dispute.

Settlement Agreements

In mediation, parties have greater control of the decision making process and maximum flexibility in developing a resolution addressing all parties' interests. Settlement agreements may not violate state law. Otherwise, a request to withdraw the appeal or dismiss the case pursuant to a settlement agreement will be granted.



THIS IS YOUR INFORMAL GUIDE TO MEDIATION SERVICES AT ELUHO.

This guide is not exclusive, it is not legal advice, and **it does not have the force and effect of state law or regulation.**

The mediation program is conducted pursuant to the provisions of the Uniform Mediation Act: [Chapter 7.07 RCW](#).

State law authorizes ELUHO's judges to mediate cases before the boards: [RCW 43.21B.175](#).

For more information, please visit the Environmental and Land Use Hearings Office website at www.eluho.wa.gov.

Confidentiality

All discussions at the mediation, including any statement made by any party, attorney or other participant, shall, with certain exceptions outlined in [Chapter 7.07 RCW](#), be privileged and not reported, recorded, placed in evidence, used for impeachment, made known to the Board or construed for any purpose as an admission.

No party shall be bound by anything done or said at the conference unless a settlement is reached, in which event, the agreement upon a settlement shall be reduced to writing and shall be binding upon all parties to that agreement.

Washington Court Rules regarding the confidentiality of settlement discussions will apply to all discussions during a mediation.

Also, since the *ex parte* contact rules generally applicable to decision makers are not applicable to mediations, you may direct questions to the mediator before, during, or after a mediation session.

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Selecting Cases

The Presiding Officer on a case will make an initial assessment as to whether mediation may be appropriate. A number of factors will guide the Presiding Officer in making this initial determination. If the Presiding Officer considers mediation appropriate, the issue will be raised at the Pre-hearing Conference to see if the parties are interested in mediation.

If a case is not identified by the Presiding Officer for possible mediation, parties may jointly or separately request mediation. In any event, whether the Presiding Officer recommends mediation or a party requests it, mediation is voluntary. All parties must agree to try the process before a mediation session is actually scheduled.

Should the Case Be Mediated?

Not all cases are good candidates for mediation. Some may involve issues of such important principle that for some parties defeat is preferable to compromise. In others, parties may be concerned with creating a precedent. Some basic questions should be addressed when considering the use of mediated negotiations:

- ◆ Are you and your organization willing to consider a compromise?
- ◆ Do you have room for flexibility?
- ◆ Why do you want to end the dispute?
- ◆ Has the conflict reached the point where issues have been defined and joined and you know who the parties at interest are?
- ◆ Do all parties have some reason to bargain? Does each have the ability to frustrate or make prohibitively costly the unilateral actions of the other(s)?
- ◆ Is the outcome uncertain?
- ◆ Is there some sense of urgency to settle the conflict?
- ◆ Do you have the support of your organization to explore possible mediation? Do they understand the implications of such an effort?
- ◆ Ask yourself the same questions regarding the other parties.¹

Procedures

The procedures governing each mediation will vary depending upon the circumstances of the case and the complexity of issues and parties. In most cases the parties will be expected to be represented at the mediation by all persons necessary to reach an agreement.

Mediation is presented as an opportunity to resolve as many issues as possible in the action. To accomplish that, each party must bring every person to the mediation who must approve any substantive decision in the litigation, or send persons who are fully authorized to bind the party. Parties will need to consider well in advance of the mediation who can best represent them and evaluate the case in some detail.

Most mediations will begin with opening remarks by the parties outlining their views of the topics to be discussed, some background on the facts, and their goals for the process. A combination of joint sessions and meetings between the mediator and one side (caucuses) may follow until agreement is reached or further efforts appear futile.

¹ Cormick, Gerald W., "Where, When & How to Use Mediated Negotiations: A Checklist for the Potential Participant." [Canadian Environmental Mediation Newsletter](#), York University, Toronto, Volume 3, No. 1, 1988, pp. 7-9.