

# **Environmental Hearings Office Strategic Plan 2007-09**

## **Mission Statement**

The mission of the Environmental Hearings Office (EHO), which is comprised of five independent environmental boards, is to:

- Conduct fair and impartial hearings and issue clear and well-reasoned decisions;
- Provide expeditious and efficient resolution of environmental appeals through hearings and alternative dispute resolution processes;
- Foster a consistent statewide interpretation of Washington's environmental laws in agency decision making and appeals; and
- Assist parties in understanding the hearing process to ensure meaningful and enhanced access to justice.

## **Listing of Statutory Authority References**

The Environmental Hearings Office includes the following five boards:

1. Pollution Control Hearings Board (PCHB)
2. Shorelines Hearings Board (SHB)
3. Environmental and Land Use Hearings Board (ELUHB)
4. Forest Practices Appeals Board (FPAB)
5. Hydraulic Appeals Board (HAB)

Each board is independent of the agencies whose decisions are reviewed on appeal.

The Pollution Control Hearings Board reviews orders, penalties, and other decisions of the Department of Ecology. Additionally, this board reviews certain decisions of local conservation districts, air pollution control boards, local health departments and the Department of Agriculture.

The Shorelines Hearings Board reviews decisions of local governments (cities and counties) and the Department of Ecology under the Shoreline Management Act.

The Environmental and Land Use Hearings Board reviews decisions involving certain projects with multiple permits, including local environmental permits.

The Forest Practices Appeals Board reviews decisions of the Department of Natural Resources made under the Forest Practices Act.

The Hydraulic Appeals Board reviews certain decisions of the Department of Fish and Wildlife on Hydraulic Project Approvals.

## **Goals**

The overall objectives of the office are to provide a readily accessible and efficient dispute resolution process, a statewide consistency of interpretation of Washington's environmental statutes, and a timely and just disposition for each appeal. To achieve this outcome, the agency has identified 11 major goals:

1. Conduct fair and impartial hearings and issue clear and well-reasoned written decisions in a timely manner.
2. Provide information and resources about the appeals process to parties and the public to ensure access to justice.
3. Create a quality work environment and an effective team.
4. Use technology to assist the Board, judges, and parties in the hearing process.
5. Ensure communication among members of all five Boards, and provide necessary training and education to Board members, judges, and staff.
6. Expand the agency mediation and procedural assistance program.
7. Conduct hearings outside the Olympia area as funds allow to minimize costs to parties and allow citizens to observe an important function of state government.
8. Continually improve the appeals process through both public input and internal review.
9. Communicate and share resources and information with other adjudicatory agencies.
10. Identify opportunities to improve the effectiveness and efficiency of state government.
11. Minimize and manage risks associated with the appeals process and administration of EHO.

## **Activity Inventory**

The five adjudicatory boards under EHO were created to provide independent review of various local, regional, and state agency decisions in an expedited and cost-effective manner.

## **Statewide Result**

- #8:** Improve the quality of Washington's natural resources.
- #5:** Improve the economic vitality of businesses and individuals.
- #10:** Improve the ability of state government to achieve results efficiently and effectively.

## **Performance Assessment**

**Output: Number of months from appeal to final resolution of contested cases decided either by hearing or motion.**

EHO's performance measures are primarily based on the amount of time from filing of appeal to completion. The goal is to accomplish this as quickly as possible, while ensuring that all parties receive equal access to justice in the process. Our goal is 6 months from start to finish for appeals going to a full hearing.

**Output: Number of months from appeal to settlement for cases which do not go to hearing.**

As noted in the first measure, our goal is to accomplish the entire appeal process as quickly as possible, while ensuring that all parties receive equal access to justice in the process. Our goal is 5.5 months from start to finish for appeals that reach a settlement prior to hearing.

**Output: Percentage of appeals that settle before hearing.**

A large percentage of the appeals filed before the five boards are settled before hearing. Settlements are win-win solutions for the parties involved, and can be achieved independently or through our mediation services. Our goal is to have 90% of all appeals filed reach amicable settlement.

**Output: Number of Board decisions appealed to Superior Court or the Court of Appeals, and the percentage of those decisions upheld on appeal.**

Over the past few years, a decreasing number of decisions issued by the Boards are appealed further to Superior Court or the Court of Appeals. A key focus of our recent quality improvement efforts has been improving the quality of our decisions, and our goal is to issue clearly written opinions that are well-reasoned and supported by the law and the facts. This important qualitative goal is measurable, to some degree, by the decreasing number of Board decisions that are appealed and the increasing percentage of those decisions that are upheld on appeal. The EHO recognizes that this output does not perfectly measure the improvements made in our written decisions and that we do not have direct control over whether parties will appeal our decisions, but we believe it provides a useful gauge of the improved quality of our work product.

Meeting these performance measures requires diligence on the part of the Board members, judges, and staff. EHO monitors active cases to keep the parties moving toward resolution of their appeals. EHO has an excellent track record of meeting the performance objectives relating to timely resolution of appeals. EHO also has an excellent track record of having its decisions upheld on appeal.

## Strategies

**Goal 1: Conduct fair and impartial hearings and issue correct, clearly written decisions in a timely manner.**

- Conduct periodic workshops on relevant legal and environmental subject matters.
- Expand the digests of board decisions.
- Provide continuing education and training for judges and board members.
- Encourage open discussion and analysis by judges and board members.
- Develop an informal style manual.
- Establish standard internal formats.
- Update internal forms book and make it available electronically.
- Conduct review of procedural rules and seek input from stakeholders about possible improvements.
- Reduce the time for issuing orders and decisions.

**Goal 2: Provide information and resources about the appeals process to parties to ensure access to justice:**

- Establish a work group to develop specific improvements.
- Research interactive forms for the on-line practice manual.
- Schedule a second customer survey.

**Goal 3: Create a quality work environment and an effective team.**

- Periodically discuss and update the EHO Policy and Procedure Manual.
- Continue the annual performance evaluation process for members and staff.
- Hold monthly meetings between director and staff.
- Hold monthly office meetings to discuss and improve practices.
- Identify opportunities for employee recognition and teambuilding.
- Practice an attitude of respect and courtesy towards all agency personnel.

**Goal 4: Use technology to assist the parties in understanding the appeals process and to assist the Board in issuing quality written decisions.**

- Maximize use of technology in communicating with off-site board members.
- Enhance and update website for clarity and ease of use.
- Research electronic filing and records management.
- Provide alternative legal research tools and related training.
- Upgrade Case Management System to expand ability to record many various types of permit appeals under the Environmental and Land Use Hearing Board.
- Upgrade Case Management System to provide reports for tracking mediation and appellate appeals.
- Track appellate appeals and get copies of appellate decisions.

- Goal 5: Improve communication and evaluate sharing of resources with the other adjudicatory agencies:**
- Continue participating in the Network of Adjudicatory Agencies and the related executive assistants group.
  - Assist in planning and participate in the annual judicial training program.
  - Actively engage in discussions with other adjudicatory agencies on opportunities to share resources and hearing rooms, when not in use.
- Goal 6: Ensure communication among members of all five Boards, and provide necessary training and education to all Board members and staff.**
- Develop and implement a training and education plan for each person.
  - Provide regular training for all board members, including alternate members.
  - Periodically hold “best practices” workshops to improve skills of presiding officers.
  - Hold meetings of the members of all five boards as necessary.
- Goal 7: Continue expanding the agency mediation and procedural assistance program.**
- Develop a process to screen cases for mediation potential.
  - Strongly encourage parties to participate in the mediation program.
  - Assess potential areas for mandatory mediation.
- Goal 8: Conduct hearings outside the Olympia area as funds allow to minimize costs to parties and allow citizens to see an important function of state government.**
- Develop screening criteria for when it is appropriate to hold a hearing in locations outside of Lacey.
  - Discuss with parties the location of witnesses and attorneys and other considerations relevant to hearing location.
- Goal 9: Continually improve the appeals process through both stakeholder input and internal review.**
- Develop an internal deskbook for board members and judges.
  - Explore expanded use of Outlook for calendaring to improve internal communications.
  - Develop a standardized, consistent management plan for handling exhibits during and after a hearing.
  - Develop a standardized plan for document indexing.
  - Establish standard internal formats.
  - Update internal forms book and make it available electronically.
  - Conduct review of procedural rules and seek input from stakeholders about possible improvements.
  - Reduce the time for issuing orders and decisions.
  - Schedule a second stakeholder survey.

**Goal 10: Identify opportunities to improve the effectiveness and efficiency of the environmental permitting and appeals process and state government administration.**

- Continue Executive Order 03-01, Service Delivery, to further improve service delivery standards.
- Continue Executive Order 05-01, Sustainability and Efficiency for State Operations.
- Continue Executive Order 05-02, Government Management, Accountability and Performance (GMAP).
- Continue Executive Order 05-03, Plain Talk, to improve clarity of written documents.

**Goal 11: Minimize and manage risks associated with the conduct and administration of the EHO.**

- Include risk management as a topic for discussion among Board members and staff.
- Encourage all Board members to be guided by the Code of Judicial Conduct.
- Encourage Board members and staff to receive relevant state-sponsored training in ethics.
- Regularly review and update the agency policies on ethics.
- Make training and educational materials available to assist in working with parties of different backgrounds and abilities.
- Ensure all employees have received defensive driving training.
- Provide storage off-site for critical back-up computer information.
- Periodically review and update office security and safety measures.

**Goals 2009 - 2011**

- Improve usefulness of agency website and resources.
- Work with other state agencies to develop use of electronic media for hearings.
- Develop a process for electronic filing and service of documents.
- Expand alternative dispute resolution options.

**Appraisal of External Environment**

Appeals are filed with each of the five boards from decisions made by various state and local agencies. Thus, EHO's workload can change significantly depending on the number of decisions issued by local and state agencies, the number of those decisions that are appealed, and the complexity of the issues involved in each appeal. As the permitting process before local governments and state agencies focuses on specific types of permit decisions, EHO will typically see a corresponding increase in the number of appeals of that same type.

**Key external issues during 2007-09:** Ecology's water resource program is expected to move toward processing of new water rights applications; Ecology's water quality program will issue Clean Water Act § 401 Certification for a number of hydropower facilities; and local governments will begin updating local Shoreline Master Programs for Ecology approval. Each of these will result in complicated appeals before the boards within EHO.

The GMAP process will continue to be used by EHO to demonstrate how process improvement efforts undertaken by the agency have improved the appeals process.

Existing trends in appeals before EHO are likely to continue, including the number of complex appeals with extensive motion practice, parties' use of EHO's procedural assistance and mediation programs, and a significant number of pro se appeals.

### **Trends in Customer Characteristics**

EHO's stakeholder base includes permitting agencies and local governments, environmental or community organizations, landowners, citizens, and project developers throughout Washington State. While our Boards frequently hear appeals involving statutes requiring the consideration and balancing of public interests, the Boards' ultimate role is to interpret and apply the law.

Our mission includes providing more expeditious and efficient disposition of appeals of agency environmental decisions, including alternative dispute resolution process, and giving aggrieved parties meaningful and enhanced access to justice. A key element to providing meaningful access to justice is to have a hearing in or near the location where the appeal originates. EHO monitors and adjusts travel to hearings based on stakeholders' needs and budget restrictions. Reductions to our travel budget jeopardize a fundamental element of our core mission.

### **Strategy and Capacity Statement**

EHO is a small agency, comprised of three full time Governor-appointed board members, three administrative appeals judges, and three administrative staff. All positions are exempt. The Director position is rotated among the three PCHB members and shares a full caseload with the other members and judges. The Director is responsible for the administrative duties and requirements of the office, and is assisted by staff and judges in fulfilling these obligations.

### **Assessment of Internal Capacity, Financial Health, and Challenges**

- EHO is 100% funded by the State of Washington (General Fund) and has no other independent sources of funds (fees or charges).
- EHO is saving taxpayer dollars and serving customers more efficiently by making our handouts, board decisions, and the hearing calendar all available on our website. We

also provide many research links for parties. We have a “research” station available for those who do not have access to a computer. The station can be used to access all previous board decisions, and perform legal research free of charge. All previous board decisions are now available online. The agency is now in the process of developing brief, easy-to-understand handouts to better assist parties who are not represented by an attorney

- EHO is faced with keeping on top of a demanding workload with very few people. The current EHO staff and board members (9 FTEs) are hard working and flexible and able to keep pace with the demands of the agency and the unpredictable nature of the appeal process. The agency would like to increase its focus on employee recognition.
- By statute, the Shorelines Hearings Board is required to render a final decision within 180 days from when the appeal is filed. The deadline can only be extended 30 days under certain conditions. The other boards are bound by the Administrative Procedure Act (APA,) which requires that a decision be rendered within 90 days of the hearing on the merits, or from the last pleadings filed in the case, whichever is later. Section 401 Certification decisions must be issued within one year of the application being filed with Ecology. The agency faces some risk if these appeals are not completed in a timely manner, so it is imperative that the caseload is manageable for the number of board members and judges.
- EHO has been located in the same office space since 1980. The office meets the needs of the agency and the special needs of our stakeholders at this time. We have renewed our lease to extend to 2010.
- In addition to meeting the demands that are inherent with the core mission of the agency, we must also comply with the directives from the Governor, the Office of Financial Management, the Dept. of Information Services, and other agencies. This is a challenge to a small agency with only 9 FTEs.