



LE-MAKING ORDER

(RCW 34.05.360)

CR-103

Agency: Environmental Hearings Office
Shorelines Hearings Board

- Permanent Rule
- Emergency Rule
- Expedited Adoption
- Expedited Repeal

(1) Date of adoption: November 4, 1999

(2) Purpose: Changes to WAC 461-08-355 bring the rule into conformance with an amendment to RCW 90.58.180(1) requiring that a petitioner serve local government with a copy of the petition for review within seven days of filing with the Board. Service on a project applicant is moved to WAC 461-08-355 for greater clarity. WAC 461-08-360 is repealed eliminating a confusing reference to service on the chief legal officer. WAC 461-08-555 is revised to clarify the result if less than a majority of the board members agree on a decision.

(3) Citation of existing rules affected by this order:

Repealed: WAC 461-08-360
 Amended: WAC 461-08-355; WAC 461-08-555
 Suspended:

(4) Statutory authority for adoption: RCW 90.58.175
Other Authority:

PERMANENT RULE ONLY (Including EXPEDITED ADOPTION)

Adopted under notice filed as WSR 99-19-121 on October 6, 1999.
Describe any changes other than editing from proposed to adopted version: In response to comment received, the words "a copy of" were added to proposed WAC 461-08-355 to clarify that a copy of the petition is served on parties to the case

EMERGENCY RULE ONLY

- Under RCW 34.05.350 the agency for good cause finds:
- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
 - (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

EXPEDITED REPEAL ONLY

Under Preproposal Statement of Inquiry filed as WSR _____ on _____ (date).

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

(6) Effective date of rule:

- | | |
|--|--|
| Permanent Rules
or Expedited Repeal | Emergency Rules |
| <input checked="" type="checkbox"/> 31 days after filing | <input type="checkbox"/> Immediately |
| <input type="checkbox"/> Other (specify) _____* | <input type="checkbox"/> Later (specify) _____ |

*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required.)

Name (Type or Print)

Phyllis K. Macleod

Signature

Phyllis K. Macleod

Title
Rules Coordinator

Date
11-8-99

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

NOV 12 1999

TIME 3:47 AM
94-23-038 PM

Note: If a category is left blank, it will be calculated as zero.
No descriptive text.

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	<u>1</u>	Repealed	_____

The number of sections adopted at the request of nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	<u>2</u>	Repealed	<u>1</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	<u>2</u>	Repealed	<u>1</u>
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-355 Service of petitions for review with department and attorney general--Intervention by the department and attorney general. (1) For a petition(~~s~~) pertaining to a local government's final decision on a permit, the petitioner shall (~~file one copy of~~) serve a copy of the petition with the department ((and one copy with the office of)), the attorney general and that local government within seven days of (~~the date that~~) filing the petition ((was filed)) with the board.

(2) Within fifteen days of the date of receipt of the petition for review described in subsection (1) of this section, the department or the attorney general may intervene in the case before the board to protect the public interest and to insure compliance with chapter 90.58 RCW. Nothing in WAC 461-08-345, setting a twenty-one day limit on when the department or the attorney general can directly file a petition for review, limits the right of the department or attorney general to intervene under this section in a board proceeding.

(3) When the petitioner is not the permit applicant, the petitioner shall serve the permit applicant with a copy of the petition for review.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-555 Final decisions and orders. (1) **Full-board cases.** When the hearing on the petition for review has been heard by a majority of the board in a full-board case, and upon completion of the record and submission of the issues for decision and order, a written final decision and order concurred in by them then may be adopted which shall contain findings and conclusions as to each contested issue of fact and law: Provided, That in the event that the full board considers the record and that four of the members cannot agree on a decision, the substantive decision (~~of the local government~~) under appeal will control. The board will formally adopt its final decision and order: Provided further, That this subsection does not apply to a request for review filed under RCW 90.58.210.

(2) **Short-board cases.** When the hearing on the petition for review has been heard by two or more board members in a short-board case, and upon completion of the record and submission of the

issues for decision and order, a written final decision and order concurred in by them then may be adopted which shall contain findings and conclusions as to each contested issue of fact and law: Provided, That in the event that the three board members consider the record and two members cannot agree on a decision, the substantive decision (~~(of the local government)~~) under appeal will control. The board will formally adopt its final decision and order.

(3) Copies of the final decision and order shall be mailed by the board to each party to the petition for review or to the attorney or representative of record, if any. Service upon the representative shall constitute service upon the party.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 461-08-360

Service of the petition for review on local government and other parties.