

WSR 23-02-070
PROPOSED RULES
ENVIRONMENTAL AND
LAND USE HEARINGS OFFICE
[Filed January 4, 2023, 10:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-19-089.

Title of Rule and Other Identifying Information: Chapter 461-08 WAC, Review of the granting, denying or rescinding of substantial development permits—Hearings, environmental and land use hearings office (ELUHO) (shorelines hearings board) practice and procedure.

Hearing Location(s): On February 8, 2023, at 11:00 a.m., Zoom <https://us02web.zoom.us/j/2407504750>; or 1111 Israel Road S.W., Suite 301, Tumwater, WA 98501. The public hearing will be conducted online via Zoom; however, participants who wish to comment may phone in using the Zoom call-in information or they may participate in person.

Date of Intended Adoption: March 31, 2023.

Submit Written Comments to: Jamie Merly, 1111 Israel Road S.W., Suite 301, Tumwater, WA 98501, email Jamie.Merly@eluhwa.gov, by February 17, 2023.

Assistance for Persons with Disabilities: Contact Jamie Merly, phone 360-485-1282, email Jamie.Merly@eluhwa.gov, by February 6, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule changes have several purposes and anticipated effects: (1) Several minor changes to gain language consistency with the pollution control hearings board rules for ease of comprehension by litigants; (2) clarify electronic filing procedures and remove paper filing (the rule changes will provide procedures for electronic filing via a case management system portal); (3) require the filing of dispositive motions no later than 90 days before the hearing date, allowing more time for the board to consider dispositive issues prior to hearing; (4) remove the holding of settlement conferences from the presiding officer powers and duties; (5) clarify that proof of service must be filed with the board to perfect the appeal, reducing confusion about proof-of-service requirements; (5) [(6)] allow parties who have settled an appeal to submit a request for dismissal rather than a written order of dismissal; and (6) [(7)] remove the requirement that parties apply to the board to request a certificate of appealability for direct review of board decisions by the court of appeals. This will align with RCW 34.05.518. Without the requirement, parties may file directly with the court of appeals without receiving certification by the board.

Reasons Supporting Proposal: The rule changes provide procedures to assist shorelines hearings board litigants in filing petitions and other case documents electronically, eliminating the requirement to file in paper. Parties who lack the technological capacity to file electronically may file by other means. The rule changes assist litigants by clarifying other board procedures and aligning rules with statutes.

Statutory Authority for Adoption: RCW 43.21B.170, 90.58.175.

Statute Being Implemented: Chapter 90.58 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The rule

change effective date is intended to align with the launch of the agency's new case management system. The new case management system is being built in response to RCW 43.21B.005(6) to provide greater transparency for growth management hearings board, pollution control hearings board, and shorelines hearings board decisions. The new system will allow electronic filing of case documents.

Name of Proponent: ELUHO, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jamie Merly, 1111 Israel Road S.W., Suite 301, Tumwater, WA 98501, 360-485-1282.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. ELUHO is not specifically listed in RCW 34.05.328 (5)(b)(i) and does not intend to make this section voluntarily applicable to this rule update per subsection (5)(b)(ii). One of the primary purposes of the rule change is to clarify procedures for implementing existing statutes, consistent with RCW 34.05.328 (5)(b)(v). Therefore, unless subsection [(5)(b)](ii) is invoked by the joint administrative rules committee after filing [a] CR-102, no cost-benefit analysis is required.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Scope of exemption for rule proposal:

Is fully exempt.

January 4, 2023

Jamie Merly

Director of Legal and Administrative Services

OTS-4278.2

AMENDATORY SECTION (Amending WSR 15-03-044, filed 1/14/15, effective 2/14/15)

WAC 461-08-305 Definitions. The following terms apply throughout this chapter and, unless the context clearly requires otherwise, have the following meanings:

(1) "Adjudicative proceeding" means a proceeding involving an opportunity for hearing before the board as defined in RCW 34.05.010. The terms "appeal," "adjudicative proceeding," and "case" are used interchangeably in this chapter.

(2) "Agency" means any state governmental entity.

~~((2) "Adjudicative proceeding" means a proceeding involving an opportunity for hearing before the board as defined in chapter 34.05 RCW. The terms "appeal," "adjudicative proceeding" and "case" are used interchangeably in this chapter.))~~

(3) "Board" means the shorelines hearings board, a quasi-judicial body created pursuant to chapter 90.58 RCW and described in WAC 461-08-315.

(4) "Business days" means Monday through Friday exclusive of any state or federal holidays.

(5) "CMS" means the environmental and land use hearings office case management system or any successor system designated by the board.

(6) "Date of filing" as used in this chapter and RCW 90.58.140(6) has different meanings depending upon the type of local government decision that is being appealed.

(a) "Date of filing" of a local government's approval or denial of a substantial development permit, or local government's denial of a variance or conditional use permit, is the date of actual receipt by the department of the local government's decision.

(b) "Date of filing" of a local government's approval of a conditional use permit or variance is the date that the department transmits its final decision or order to local government.

(c) For substantial development permits filed simultaneously with approvals of conditional use permits or variances, the "date of filing" is the date that the department transmits its final decision or order on the variance or conditional use permit to local government.

~~((5))~~ (7) "Department" refers to and means the department of ecology.

~~((6))~~ (8) "Filing" of a document means actual receipt by the board between the hours of 8:00 a.m. and 5:00 p.m. on days other than Saturdays, Sundays, or legal holidays. The board's record of the date ~~((stamp placed on the))~~ and time of receipt of a document shall be evidence of the filing date. Filings received after 5:00 p.m., or on a Saturday, Sunday, or legal holiday, shall be considered filed on the next business day. If the last day for filing a document as required by these rules falls on a day when the board is closed under WAC 461-08-320(3), then the time for such filing shall be extended until the end of the next business day upon which the board is open for business.

(a) ~~((Electronic))~~ The filing of documents ~~((, and fax filing of documents ten pages or less, are permitted, so long as the original document and any required copies are mailed or submitted to a commercial delivery service on the same day. The date and time of receipt will be the date of transmission as indicated by the board's computer or fax machine, unless the transmission is completed after 5:00 p.m. or on a Saturday, Sunday, or legal holiday, in which case filing will be the next business day))~~ with the board shall be electronically through the CMS. Information about accessing the CMS is available at the ELUHO website at www.eluho.wa.gov. If a party does not have the technological capacity to file electronically through the CMS, a party may file documents by personal delivery, commercial delivery, fax, electronic mail, or first-class, registered, or certified mail.

(b) Any document filed with the board shall contain an affirmation that copies were served on the appropriate agency, local government and parties.

~~((7))~~ (c) Filing of a document in the method authorized in (a) of this subsection shall substitute for filing through the CMS in the event the CMS is unavailable or in emergency situations in which the governor declares a statewide emergency.

(9) "Local government" means any county, incorporated city or town which contains within its boundaries any lands or water subject to chapter 90.58 RCW.

~~((8))~~ (10) "Party" means:

(a) A person to whom any local government or agency decision is specifically directed; or

(b) A person named as a party to the appeal, or allowed to intervene or joined as a party by the board.

~~((9))~~ (11) "Person" means any individual, partnership, corporation, association, organization, governmental subdivision, agency or entity of any character.

~~((10))~~ (12) "Petition for review" is a document that when properly filed with the board initiates an adjudicative proceeding before the board.

~~((11))~~ (13) "Presiding officer" means any member of the board or an administrative appeals judge who is assigned to conduct a conference or hearing by the chairperson or the vice chairperson.

~~((12))~~ (14) "Service" of a document for administrative review means delivery of the document to the ~~((other))~~ parties to the appeal. Service may be made in any of the following ways:

(a) Personally, in accordance with the laws of the state, with a return of service or affidavit of service completed.

(b) First-class, registered, or certified mail. Service is complete upon deposit in the United States mail properly stamped and addressed.

(c) Fax transmission with mailing or submission to a commercial delivery service of copies on the same day. Service by fax is regarded as complete by production of the confirmation of transmission and evidence of mailing or submission to a delivery service of the copies.

(d) Commercial delivery service. Service by commercial delivery service is regarded as complete upon delivery to the delivery company with charges prepaid.

(e) Electronic service. Electronic service of documents ~~((, other than the appeal document itself,))~~ by email or electronic filing is authorized if ((the parties agree to electronic service or if authorized by the presiding officer)) agreed to by the receiving party. Service by electronic filing is regarded as complete when the document is uploaded successfully to the receiving party's designated electronic filing system.

(15) "Signature" means a written signature, or an electronic signature executed or adopted by a person with the intent to sign a document either in the form of s/_____ (name typed out), a graphic representation of an electronic signature, or a digital graphic representation of the signature as signed by the person. An electronic signature shall be considered the same as an original signature for all purposes.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-305, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 90.58.175, 90.58.090, 90.58.140, 90.58.180, and 90.58.190. WSR 13-21-068, § 461-08-305, filed 10/16/13, effective 11/16/13. Statutory Authority: RCW 43.21B.170, 90.58.175, 2010 c 84, 2010 c 130, 2010 c 210, and 2010 c 285. WSR 10-18-021, § 461-08-305, filed 8/23/10, effective 9/23/10. Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 461-08-305, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-305, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

WAC 461-08-310 Computation of time. (1) The time within which any act shall be done, as provided by these rules, is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a legal holiday, or a day when the board is closed for business under WAC 461-08-320(3), and then it is excluded and the next succeeding day which is neither a Saturday, Sunday nor a legal holiday, or a day when the board is closed for business under WAC 461-08-320(3) is included. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays are excluded in the computation.

(2) This section also pertains to the period for filing with the board any petition for review, petition for rule making, petition for declaratory ruling or any other adjudication authorized by this chapter.

[Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 461-08-310, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 90.58.175 and SHB 1314. WSR 97-19-063, § 461-08-310, filed 9/15/97, effective 10/16/97. Statutory Authority: RCW 90.58.175 and Den Beste v. Washington, No. 13967-1-III (Div. III, April 18, 1996). WSR 96-17-017, § 461-08-310, filed 8/12/96, effective 9/12/96.]

AMENDATORY SECTION (Amending WSR 15-03-044, filed 1/14/15, effective 2/14/15)

WAC 461-08-320 Board office hours and contact information. (1) The administrative business of the board, except rule making, is performed by the environmental and land use hearings office. To the extent necessary for rule making (~~(, the board holds regular meetings at 10:00 a.m. on the second Tuesday of each month)~~) or other matters, the board will hold meetings at the address set forth below.

(2) The information included in this section is current at the time of rule adoption, but may change. Current information is available on the board's internet site at www.eluho.wa.gov.

(a) The board is organized within the Environmental and Land Use Hearings Office, 1111 Israel Road S.W., Tumwater, Washington. The principal hearing room used by the board is located at the same address, although many hearings are held near the site of the dispute at issue.

(b) The mailing address is:

Shorelines Hearings Board
P.O. Box 40903
Olympia, WA 98504-0903

~~((b))~~ (c) The telephone number of the board is 360-664-9160. The fax number is 360-586-2253. The board's email address is eluho@eluho.wa.gov.

(3) The office hours of the board and the environmental and land use hearings office are 8:00 a.m. to 5:00 p.m., Monday through Friday, except for legal holidays or when the office is closed due to weather,

technological failure, or other hazardous or emergency conditions or events.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-320, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 90.58.175, 90.58.090, 90.58.140, 90.58.180, and 90.58.190. WSR 13-21-068, § 461-08-320, filed 10/16/13, effective 11/16/13. Statutory Authority: RCW 90.58.175. WSR 02-06-008, § 461-08-320, filed 2/22/02, effective 3/25/02; WSR 96-15-002, § 461-08-320, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 15-03-044, filed 1/14/15, effective 2/14/15)

WAC 461-08-325 Public information about practice before the board and public records. (1) Questions about practicing before the board (~~(procedures)~~) may be directed to the environmental and land use hearings office by mail or, during regular office hours, by telephone, by fax, or email (~~(at eluho@eluho.wa.gov)~~).

(2) The environmental and land use hearings office maintains a website with information about and access to the CMS for electronic filing, and information on the shorelines hearings board, including information about the board members, the board hearings calendar, past decisions of the board, a brief description of the appeal process with helpful information for practice before the board, a set of frequently asked questions, sample forms, and links to the board's rules of procedure and other pertinent statutes and rules. This website may be accessed via the internet at www.eluho.wa.gov.

(3) Case files of appeals pending before the board, past written opinions of the board and other public records maintained by the board under chapter 198-14 WAC are available on the website (www.eluho.wa.gov) or available for public inspection and copying during regular office hours at the environmental and land use hearings office. The procedures for obtaining public records from the board are set forth in chapter 198-14 WAC.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-325, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 90.58.175, 90.58.090, 90.58.140, 90.58.180, and 90.58.190. WSR 13-21-068, § 461-08-325, filed 10/16/13, effective 11/16/13. Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 461-08-325, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-325, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 13-21-068, filed 10/16/13, effective 11/16/13)

WAC 461-08-340 (~~(Where to file a)~~) Filing a timely petition for review (~~(and number of copies)~~) with the board. (1) An adjudicative proceeding before the board is initiated by filing a petition for review with the board (~~(at the environmental and land use hearings office)~~). A petition shall be filed with the board electronically

through the CMS. If a party does not have the technological capacity to file electronically through the CMS, a party may file by personal delivery, commercial delivery, fax, electronic mail, or first-class, registered, or certified mail. A petition is filed with the board on the date the board actually receives the petition. Upon receiving the petition, the board ((shall)) will acknowledge ((filing of the petition for review by a stamp and)) receipt. The board's ((stamp on)) record of the date and time of receipt of the petition is prima facie evidence of the date of filing. ((The board may thereafter require that additional copies be filed.)) Filings transmitted after 5:00 p.m., or on a Saturday, Sunday, or legal holiday, shall be considered filed the on next business day. If the last day for filing a document as required by these rules falls on a day when the board is closed under WAC 461-08-320(3), then the time for such filing shall be extended until the end of the next business day upon which the board is open for business.

(2) **Deadlines for filing a petition for review.** Different deadlines for filing a petition for review apply depending upon the type of shoreline decision or government action taken, and whether local government or the department makes the final decision.

(a) Any person aggrieved by a local government's decision granting, denying or rescinding a shoreline substantial development, or its denial of a shoreline conditional use or variance must file a petition for review with the board within (~~twenty-one~~) 21 days of the "date of filing" as defined in WAC 461-08-305 (4)(a).

(b) If local government approves a shoreline conditional use or variance permit, that action will be reviewed by the department, which will make the final decision on the conditional use or variance permit. Any person aggrieved by the department's decision to approve, approve with conditions or deny a conditional use or variance permit must file a petition for review with the board within (~~twenty-one~~) 21 days of the "date of filing" as defined in WAC 461-08-305 (4)(b).

(c) When a local government simultaneously transmits to the department its decision on a shoreline substantial development with its approval of a shoreline conditional use permit and/or variance, a petition for review of the shoreline substantial development decision must be filed no later than (~~twenty-one~~) 21 days from the "date of filing" as defined in WAC 461-08-305 (4)(c).

(d) A petition for review by a person who has incurred a penalty assessment must be filed with the board within (~~thirty~~) 30 days of the date of receipt of the penalty.

(e) A petition for review by any person aggrieved by the department's final decision to approve, or reject a proposed master program, or master program amendment, by a local government that is not planning under the Growth Management Act, RCW 36.70A.040, must be filed with the board within (~~thirty~~) 30 days of the date that the department publishes notice of its final decision under RCW 90.58.090(8).

(f) A petition for review of any rules, regulations, or guidelines adopted or approved by the department pursuant to chapter 90.58 RCW must be filed with the board within (~~thirty~~) 30 days of the date of adoption or approval.

[Statutory Authority: RCW 90.58.175, 90.58.090, 90.58.140, 90.58.180, and 90.58.190. WSR 13-21-068, § 461-08-340, filed 10/16/13, effective 11/16/13. Statutory Authority: RCW 43.21B.170, 90.58.175, 2010 c 84, 2010 c 130, 2010 c 210, and 2010 c 285. WSR 10-18-021, § 461-08-340, filed 8/23/10, effective 9/23/10. Statutory Authority: RCW 43.21B.170,

90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 461-08-340, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-340, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 15-03-044, filed 1/14/15, effective 2/14/15)

WAC 461-08-350 Contents of the petition for review. Petitions for review to the board pursuant to RCW 90.58.180 (1) and (2) shall contain:

- (1) The name, mailing address, telephone number, fax number (if available), and email address (~~((if available))~~) of the appealing party, and of the representative, if any;
- (2) Identification of the parties, by listing in the caption or otherwise. In every case, the agency and/or the local government whose decision is being appealed and the person to whom the decision is directed shall be named as parties;
- (3) A copy of the decision or permit appealed from;
- (4) A short and plain statement showing the grounds upon which the appealing party considers such decision or permit to be unjust or unlawful;
- (5) A clear and concise statement upon which the appealing party relies to sustain his or her grounds for appeal;
- (6) The relief sought, including the specific nature and extent;
- (7) The signature of the appealing party or its representative. The signature of the representative or the appealing party shall constitute a certificate by the signatory that the signatory has read the petition and that it is consistent with civil rule 11;
- (8) All pleadings shall be so construed as to do substantial justice;
- (9) Proof of service must be filed with the board to perfect the appeal.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-350, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-350, filed 7/3/96, effective 8/3/96.]

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

WAC 461-08-390 Appearance by representative. (1) An attorney or authorized representative as defined in WAC 461-08-385 may appear for a party by either of the following actions:

- (a) Filing a written notice of appearance, a petition for review or another pleading containing the name of the party to be represented, and the name, address (~~and~~), telephone number, and email address of the representative; or
- (b) Entering an appearance at the time and place of a conference or hearing on the appeal, and notifying the presiding officer conducting the same of the party to be represented and the name, address (~~and~~), telephone number, and email address of the representative.

(2) Copies of every written notice of appearance or pleading that identifies the representative shall be served by the representative on all other parties or their representatives of record at the time the original is filed with the board.

(3) Where a petition for review has been filed with the board by the department or attorney general, the attorney general shall, unless the department or attorney general notifies the board otherwise, be deemed to have entered an appearance for the department, and the attorney general shall be exempt from the requirement of filing and serving a written notice of appearance.

(4) After a representative appears on behalf of a party, the board shall serve all future notices, orders and correspondence upon such representative. Service upon the representative shall constitute service upon the party.

(5) After a representative appears on behalf of a party, and gives notice to all other parties to the appeal, all future pleadings and correspondence shall be served upon that representative. Service upon the representative shall constitute service upon the party.

[Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-390, filed 7/3/96, effective 8/3/96.]

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

WAC 461-08-410 Presiding officer (~~(duties and)~~)—Powers and duties. It shall be the duty of the presiding officer to conduct conferences or hearings in cases assigned in an impartial and orderly manner. The presiding officer shall have the authority, subject to the other provisions of these rules:

(1) To administer oaths and affirmations.

(2) To issue subpoenas and protective orders as provided in the Administrative Procedure Act.

(3) To rule on all procedural matters, objections and motions.

(4) To rule on all offers of proof and receive relevant evidence.

(5) To question witnesses called by the parties in an impartial manner to develop any facts deemed necessary for a fair and adequate decision.

(6) To secure and present in an impartial manner such evidence, in addition to that presented by the parties, as deemed necessary to decide the matter fairly and equitably.

(7) To take appropriate disciplinary action with respect to representatives of parties appearing before the board.

(8) To issue orders joining other parties, on motion of any party, or in the judgment of the presiding officer, when it appears that such other parties may have an interest in, or may be affected by, the proceedings.

(9) To consolidate matters for hearing when such consolidation will expedite disposition of the matters and avoid duplication of testimony and when the rights of the parties will not be prejudiced thereby.

(10) To hold prehearing (~~(and settlement)~~) conferences.

(11) To permit and regulate the taking of discovery.

(12) To regulate the course of the hearing.

(13) To dismiss a petition for review or take other appropriate disciplinary actions, where a party or representative fails to appear at a prehearing conference, hearing or at any other stage of the appeal proceeding.

(14) To take any other action necessary and authorized by these rules and the law.

[Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-410, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

WAC 461-08-425 Dismissal of petitions for review on jurisdictional grounds. (1) Timely filing of the petition for review with the board, and other petitions within the board's jurisdiction under chapter 90.58 RCW, and timely service on the appropriate agencies are required for the board to acquire jurisdiction.

(2) Any party may challenge the jurisdiction of the board to hear a petition for review or other petition under chapter 90.58 RCW on jurisdictional grounds, and the board may independently raise the jurisdictional issue. The board (~~may~~) shall, when satisfied that it does not have jurisdiction, dismiss the petition for review.

[Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 461-08-425, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-425, filed 7/3/96, effective 8/3/96.]

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

WAC 461-08-450 ((Prehearing)) Scheduling letter((s)). (1) Upon receipt of a petition for review which complies with the requirements of these regulations, the board shall promptly (~~mail to each party~~) issue a scheduling letter which sets the time and location of the hearing.

(2) In cases where the presiding officer does not order a prehearing conference, the letter setting the hearing date and time will be (~~mailed~~) issued at least seven days before the hearing date. The letter may also set the schedule for filing motions and prehearing briefs, and will notify the parties that an interpreter can be made available, upon reasonable notice to the board, for a witness or party who does not speak English or is hearing-impaired. The scheduling letter will control the subsequent proceedings, unless modified for good cause by the presiding officer.

(3) In cases where the presiding officer decides to hold a prehearing conference, the scheduling letter will also notify the parties of the time and location of the prehearing conference. The scheduling letter will be (~~mailed~~) issued at least seven days before the prehearing conference.

[Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-450, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 15-03-044, filed 1/14/15, effective 2/14/15)

WAC 461-08-465 Settlement and mediation agreements. (1) Where the parties settle an appeal before hearing, the parties shall prepare ~~((a written))~~ and submit to the board a request for an order of dismissal to which the settlement agreement is attached, submit that ~~((order))~~ request to the board, and the board shall enter an order and dismiss the case.

(2) This section also pertains to settlement agreements reached after mediation.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-465, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-465, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 15-03-044, filed 1/14/15, effective 2/14/15)

WAC 461-08-475 Motions. (1) An application to the board for an order must be by motion which, unless made during a hearing, must be in writing, state with particularity the grounds therefor and set forth the relief sought. A moving party is not required to submit a proposed order with a motion unless requested to do so by the presiding officer.

(2) For motions for continuance or for schedule changes, or other motions that are likely to be uncontested, the moving party shall affirmatively seek the agreement of all parties and present a stipulated order wherever possible.

(3) If the motion is contested, any party may request, or the board may independently set, an oral argument on the motion. The presiding officer will decide whether or not an oral argument will be held and notify the parties accordingly. At oral argument, the board will consider the arguments of the parties but will not take evidence or testimony from witnesses.

(4) Unless a scheduling letter or order provides otherwise, the following schedule governs all written motions (including any supporting affidavits, memoranda of law, or other documentation):

(a) All motions dispositive of all or part of an appeal must be filed and served not later than ~~((sixty))~~ 90 days before the hearing date, unless the presiding officer by order allows otherwise.

(b) All responses to any dispositive motion must be filed and served ~~((fourteen))~~ 14 days from the receipt of the motion by the non-moving party. The moving party then has ~~((ten))~~ 10 days from receipt of the response to file and serve a reply.

(c) All responses to any nondispositive motion must be filed and served five days from receipt of the motion by the nonmoving party.

The moving party then has three days from receipt of the response to file and serve a reply.

(d) In exigent or exceptional circumstances, a party may at any time request the board to modify the above schedules by requesting a scheduling conference (which may be telephonic) with the presiding officer.

(5) Unless oral argument is held, the board normally decides motions exclusively on the parties' written submissions.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-475, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 461-08-475, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-475, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 15-03-044, filed 1/14/15, effective 2/14/15)

WAC 461-08-490 Hearing briefs. Hearing briefs, if filed, must be submitted to the board at least seven days before the time of hearing or such other time as directed by the presiding officer. The (~~original~~) brief must be filed with the board and (~~a copy~~) served on the other parties or their attorneys. (~~Additional copies must be submitted to the board as required by the presiding officer and consistent with the prehearing order.~~) The board may permit or require the filing of additional briefs.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-490, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 461-08-490, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-490, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 15-03-044, filed 1/14/15, effective 2/14/15)

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 material to the disposition of the matter: 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 under appeal will control. The board will formally adopt its final decision and order.

(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 a majority of the members cannot agree on a decision, the substantive decision under appeal will control. The board will formally adopt its final decision and order.

(3) The ~~((board))~~ board's final decision and order shall ~~((mail copies of the final decision and order to))~~ be served on each party to the petition for review or to the attorney or representative of record, if any. The board's final decision and order may be served electronically when a party agrees to electronic service. Service upon the representative constitutes service upon the party.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-555, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 461-08-555, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 90.58.175. WSR 99-23-038, § 461-08-555, filed 11/12/99, effective 12/13/99; WSR 96-15-002, § 461-08-555, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

WAC 461-08-565 Petitions for reconsideration. (1)(a) After issuance of a final decision, any party may file a petition for reconsideration with the board. Such petition must be filed and served on all parties within ~~((ten))~~ 10 days of ~~((mailing of))~~ the board serving the final decision under WAC 461-08-320(3). The board may require an answer, or parties may elect to file an answer, to the petition for reconsideration. Any answer to a petition for reconsideration must be filed and served on all parties within five days of the date of receipt of the petition.

(b) The filing of a petition for reconsideration does not stay the effectiveness of the final decision of the board.

(c) In response to a petition for reconsideration, the board may deny it, or may reverse or modify its decision or may reopen the hearing. The board is deemed to have denied the petition if, within ~~((twenty))~~ 20 days from the date the petition is filed, the board does not act on the petition or specify a date by which it will act on the petition.

(2) The time for filing a petition for judicial review does not commence until disposition of the petition for reconsideration. However, the filing of a petition for reconsideration is not a prerequisite for seeking judicial review.

(3) The board shall ~~((mail copies of))~~ serve the final decision and order and of the board's disposition of any petition for reconsideration ~~((to))~~ on each party to the appeal or ~~((to))~~ on the attorney or representative of record. The board's final decision and order may be served electronically when a party agrees to electronic service. Service on the representative constitutes service on the party.

[Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 461-08-565, filed 1/17/07, ef-

fective 2/17/07. Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-565, filed 7/3/96, effective 8/3/96.]

AMENDATORY SECTION (Amending WSR 10-18-021, filed 8/23/10, effective 9/23/10)

WAC 461-08-570 Time for filing petitions for review to superior court. An appeal of a final board order is called a petition for review. A petition for review must be filed with superior court within ((thirty)) 30 days of the date that the board serves its final order or decision as provided in RCW 34.05.542. The petitioner shall file a copy of the petition for review to superior court with the board and shall serve all parties of record. All appeals must first be filed in superior court even if direct review to the court of appeals will be sought.

[Statutory Authority: RCW 43.21B.170, 90.58.175, 2010 c 84, 2010 c 130, 2010 c 210, and 2010 c 285. WSR 10-18-021, § 461-08-570, filed 8/23/10, effective 9/23/10. Statutory Authority: RCW 90.58.175 and SHB 1314. WSR 97-19-063, § 461-08-570, filed 9/15/97, effective 10/16/97. Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-570, filed 7/3/96 effective 8/3/96.]

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

WAC 461-08-580 Certification of record. (1) Within ((thirty)) 30 days of receipt of a copy of the petition for judicial review to the superior court or notice of acceptance of the certificate of appealability by the court of appeals, the board shall certify and transmit to the reviewing court the record made before the board. Additional time for certification and transmission of the record may be allowed by the reviewing court.

(2) Normally the record will not include a transcript of the testimony. Unless the board has caused a transcript to be printed, arrangements for and costs of the written transcript shall be the obligation of the party seeking judicial review.

[Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-580, filed 7/3/96, effective 8/3/96.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 461-08-575	Direct review to the court of appeals based upon an accepted certificate of appealability by the board.
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