

# Title 461 WAC

## SHORELINES HEARINGS BOARD

### Chapters

- 461-08 Practice and procedure—Review of the granting, denying or rescinding of substantial development permits—Hearings.**
- 461-12 Practice and procedure—Public records.**

### Chapter 461-08 WAC

#### PRACTICE AND PROCEDURE—REVIEW OF THE GRANTING, DENYING OR RESCINDING OF SUBSTANTIAL DEVELOPMENT PERMITS—HEARINGS

### WAC

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#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 461-08-165 Hearings—Conditions for setting subsequent hearings. [Statutory Authority: RCW 90.58.175, 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-165, filed 9/9/81; Order 75-1, § 461-08-165, filed 5/9/75; Order 74-4, § 461-08-165, filed 7/3/74.] Repealed by 94-12-028, filed 5/24/94, effective 6/24/94. Statutory Authority: RCW 90.58.175.
- 461-08-200 Rules of evidence—Additional evidence by presiding officer. [Order 75-1, § 461-08-200, filed 5/9/75; Order 74-4, § 461-08-200, filed 7/3/74.] Repealed by 81-19-025 (Order 82-1, Resolution No. 82-1), filed 9/9/81. Statutory Authority: RCW 90.58.175.

**WAC 461-08-001 Board administration and address of the board.** The administrative business of the board, except rule making, is performed by the environmental hearings office. To the extent necessary for rule making, the appeals board holds regular meetings at 10:00 a.m. on the second Tuesday of each month at the address set forth below.

(2) The board is organized within the Environmental Hearings Office, 4224 - 6th Avenue SE, Building No. 2 Rowesix, Lacey, Washington. The mailing address is:

Shorelines Hearings Board  
PO Box 40903  
Olympia, WA 98504-0903

(3) The telephone number of the board is (360) 459-6327. The telefacsimile number is (360) 438-7699.

[Statutory Authority: RCW 90.58.175. 94-12-028, § 461-08-001, filed 5/24/94, effective 6/24/94.]

**WAC 461-08-005 Chapter applicable.** (1) The shorelines hearings board shall be guided in procedural matters before it by chapter 461-08 WAC. Chapter 461-08 WAC specifically replaces the uniform procedural rules chapter 1-08 WAC, except where specifically noted.

(2) All appeals taken pursuant to RCW 90.58.180, relating to appeals by local government of rules, regulations, guideline designations or master programs, shall be guided in procedural matters by the uniform rules of procedure, chapter 1-08 WAC, and not by chapter 461-08 WAC.

[Order 74-4, § 461-08-005, filed 7/3/74.]

**WAC 461-08-010 Prehearing procedures.** Insofar as applicable, and not in conflict with these rules, the statutes and court rules regarding pretrial procedures in civil cases in superior courts of the state of Washington shall be used. Such rules shall include but shall not be limited to those rules pertaining to discovery of evidence by parties to civil actions.

[Order 74-4, § 461-08-010, filed 7/3/74.]

**WAC 461-08-015 Definitions.** As used in this chapter the following terms shall have the following meanings:

(1) Shorelines hearings board. The shorelines hearings board is a quasi judicial body created pursuant to chapter 90.58 RCW and is hereinafter referred to as the "board." Where appropriate, the term "board" also refers to the agents of the shorelines hearings board.

(2) Department refers to and means the department of ecology.

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

(4) Presiding officer. Wherever used in these rules, the term "presiding officer" or "hearing officer" shall mean any member of the board or any person who is assigned to conduct a conference or hearing by the chairman or by the vice chairman in event of the chairman's absence.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-015, filed 9/9/81; Order 75-1, § 461-08-015, filed 5/9/75; Order 74-4, § 461-08-015, filed 7/3/74.]

**WAC 461-08-020 Appearance and practice before the board—Persons who may and may not appear.** No person may appear in a representative capacity before the

board or its designated hearing officer other than the following:

(1) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington.

(2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law.

(3) A bona fide officer, partner or full time employee of an individual firm, association, partnership, corporation or local government unit who appears for such individual, firm, association, partnership, corporation or local government unit.

(4) Legal interns admitted to practice under APR 9 of the rules of court may appear before the board under the conditions and limitations therein specified.

(5) No former employee of the department or member of the attorney general's staff may appear in a representative capacity on behalf of other parties in a formal proceeding in which an active part as a representative of the department was taken in the same case or proceeding, at any time after leaving the employment of the department or the attorney general, except when permitted by RCW 42.18.220.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-020, filed 9/9/81; Order 75-1, § 461-08-020, filed 5/9/75; Order 74-4, § 461-08-020, filed 7/3/74.]

**WAC 461-08-025 Appearance and practice before the board—Local government unit—Service of papers.** All papers required to be served on local government units by this chapter or otherwise shall be served upon the chief legal officer of the local government unit unless such local government unit has filed a written request with the board that such service be on some other person.

[Order 75-1, § 461-08-025, filed 5/9/75; Order 74-4, § 461-08-025, filed 7/3/74.]

**WAC 461-08-030 Appearance and practice before the board—Appearance by representative.** (1) Appearances may be made on behalf of any party by an attorney or other duly authorized representative as defined in WAC 461-08-020 by:

(a) Filing a written notice of appearance containing the name of the party to be represented, and the name, address and telephone number of the representative, or by

(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 of the representative.

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

(3) Where a request 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 and

shall be exempt from the requirement of filing and serving written notice of appearance.

(4) Certification of a request for review, as set forth in RCW 90.58.180 shall not be deemed an appearance by the department or the attorney general.

(5) Thereafter all future notices and orders shall be served by the board upon such representative. Service upon the representative shall constitute service upon the party.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-030, filed 9/9/81; Order 75-1, § 461-08-030, filed 5/9/75; Order 74-4, § 461-08-030, filed 7/3/74.]

**WAC 461-08-035 Appearance and practice before the board—No formal admission to practice.** Duly authorized representatives shall be permitted to appear in proceedings before the board without a formal request or admission to practice before the board.

[Order 75-1, § 461-08-035, filed 5/9/75; Order 74-4, § 461-08-035, filed 7/3/74.]

**WAC 461-08-040 Appearance and practice before the board—Withdrawal or substitution of representatives.** An attorney or other representative withdrawing from a case shall immediately so notify the board and all parties of record in writing, or shall state such withdrawal for the record at a conference or hearing. Any substitution of an attorney or representative shall be accomplished by written notification to the board and to all parties of record, together with the written consent of the prior attorney or representative, and if such consent cannot be obtained, a written statement of the reason therefor shall be supplied.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-040, filed 9/9/81; Order 75-1, § 461-08-040, filed 5/9/75; Order 74-4, § 461-08-040, filed 7/3/74.]

**WAC 461-08-045 Appearance and practice before the board—Conduct.** All persons appearing in a representative capacity in proceedings before the board shall conform to the standards of ethical conduct required of attorneys before the courts of Washington. If any such person does not conform to such standards, the presiding officer may admonish or reprimand such person, or exclude such person from further participation in the proceedings and adjourn the same, or report the matter to the board which may, in its discretion, after notice and hearing, take appropriate disciplinary action including, but not limited to, a letter of reprimand, and refusal to permit such person to appear in a representative capacity in any proceeding before the board.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-045, filed 9/9/81; Order 75-1, § 461-08-045, filed 5/9/75; Order 74-4, § 461-08-045, filed 7/3/74.]

**WAC 461-08-047 Appearance and practice before the board—Parties not represented by legal counsel—Waiver of rules to prevent manifest injustice.** The presiding officer may waive any of these rules, other than a rule relating to jurisdiction, for any party not represented by legal counsel where necessary to avoid manifest injustice.

[Statutory Authority: RCW 90.58.175. 94-12-028, § 461-08-047, filed 5/24/94, effective 6/24/94.]

**WAC 461-08-050 Presiding officer duties and powers.** 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 as provided in RCW 34.04.105.

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

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

(5) To interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter.

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

(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 sua sponte 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 conferences for the settlement or amplification of the issues.

(11) To take or cause to be taken depositions and interrogatories pursuant to these rules and to procedures available to litigants in civil cases in superior courts in the state of Washington.

(12) To cause to be submitted, written sworn statements as currently provided in WAC 1-08-470 through 1-08-500.

(13) To regulate the course of the hearing.

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

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-050, filed 9/9/81; Order 75-1, § 461-08-050, filed 5/9/75; Order 74-4, § 461-08-050, filed 7/3/74.]

**WAC 461-08-053 Subpoenas. (1) Issuance.** Subpoenas may be issued by any member of the board, or presiding officer assigned to the case, or by the attorney of record, as provided in RCW 34.04.105. Each subpoena shall be subscribed with the signature of the issuing person. Parties desiring subpoenas to be signed by a person from the board shall make a showing of general relevance and reasonable scope of the testimony or evidence sought, and shall prepare the subpoenas for issuance, send them to the board's office for signature, and upon return shall make arrangements for service.

(2) **Form.** Every subpoena shall name the shorelines hearings board and the title of the proceedings, and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under that person's control at a specified time and place.

(3) **Service.** Service of subpoenas shall be made by delivering a copy of the subpoena to such person and tendering on demand, where entitled to make such a demand, the fees for one day's attendance and the mileage allowed by law. All costs shall be paid by the party seeking the attendance of the witness.

(4) **Proof of service.** The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit or acknowledgement of service with the board or presiding officer of the case. Failure to make proof of service does not affect the validity of the service.

(5) **Quashing.** Upon motion made promptly (at or before the time specified in the subpoena for compliance) by the person to whom the subpoena is directed and upon notice to the party for whom the subpoena was issued, the board or its presiding officer may (a) quash, or (b) modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (c) condition denial of the motion upon just and reasonable conditions.

(6) **Geographical scope.** Attendance of witnesses and production of evidence may be required from any place in the state of Washington, at any designated place of hearing.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-053, filed 9/9/81.]

**WAC 461-08-055 Requests for review to the board—Contents of the request for review.** Requests for review to the board pursuant to RCW 90.58.180 (1) and (2) shall contain:

(1) The name, mailing address and telephone number of the appealing party, and of the representative, if any;

(2) The appealing party's legal residence or principal place of business within the state;

(3) A copy of the application for a substantial development permit which was filed with the local government pursuant to RCW 90.58.140;

(4) A copy of the decision or permit appealed from;

(5) A short and plain statement showing the grounds upon which the appealing party considers such decision or permit to be unjust or unlawful, and if one of the grounds so asserted is failure to comply with RCW 43.21C.030 (2)(c) (SEPA), six copies of any environmental impact statement if available to appealing party;

(6) The relief sought, including the specific nature and extent;

(7) A statement that the appealing party has read the request for review and believes the contents to be true, followed by the party's signature and the signature of the representative, if any. If the appealing party is unavailable to sign the request for review, it may be signed by the representative.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-055, filed 9/9/81; Order 75-1, § 461-08-055, filed 5/9/75; Order 74-4, § 461-08-055, filed 7/3/74.]

**WAC 461-08-060 Requests for review to the board—Filing—Copy.** The original and one copy of the request for review shall be filed, by mail or otherwise, with the board. The board shall forthwith acknowledge filing of the request for review and the stamp placed thereon shall be

*prima facie* evidence of the date of filing. The board may thereafter require additional copies to be filed.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-060, filed 9/9/81; Order 75-1, § 461-08-060, filed 5/9/75; Order 74-4, § 461-08-060, filed 7/3/74.]

**WAC 461-08-065 Requests for review to the board—Filing with department and attorney general.** (1) A copy of the request provided for in WAC 461-08-055 shall be filed concurrently by requestor with the department of ecology and the office of the attorney general. A copy of the request shall also be filed with the appropriate local government unit.

(2) When the requestor is not the permit applicant, the requestor shall mail to the permit applicant a copy of the request for review and any amendments thereto.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-065, filed 9/9/81; Order 75-1, § 461-08-065, filed 5/9/75; Order 74-4, § 461-08-065, filed 7/3/74.]

**WAC 461-08-070 Requests for review to the board—Time for filing.** (1) A request for review pursuant to RCW 90.58.180(1) by any person aggrieved shall be filed with, i.e., received by, the board within thirty days of the "date of filing" as defined in RCW 90.58.140(6).

(2) The department of ecology or the attorney general may, pursuant to RCW 90.58.180(2), obtain review of any final decision granting a permit, or granting or denying an application for a permit issued by a local government by filing a written request with the board and the appropriate local government within thirty days from the date the final decision was filed as provided in RCW 90.58.140(6).

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-070, filed 9/9/81; 80-02-100 (Order 80-1, Resolution No. 80-1), § 461-08-070, filed 1/24/80; Order 77-1, § 461-08-070, filed 2/3/77; Order 76-1, § 461-08-070, filed 7/28/75; Order 75-1, § 461-08-070, filed 5/9/75; Order 74-4, § 461-08-070, filed 7/3/74.]

**WAC 461-08-075 Requests for review to the board—Dismissal of request for review on jurisdictional grounds.** Any party may challenge the jurisdiction of the board to hear a request for review on jurisdictional grounds, and the board may *sua sponte* raise the jurisdictional issue. The board may, when satisfied that it does not have jurisdiction, dismiss the request for review.

[Order 74-4, § 461-08-075, filed 7/3/74.]

**WAC 461-08-080 Requests for review to the board—Granting the review.** (1) The request for review shall be deemed granted when certified to the board pursuant to RCW 90.58.180(1).

(2) The request for review shall be deemed granted when a written request is filed by the department or the attorney general pursuant to RCW 90.58.180(2).

[Order 74-4, § 461-08-080, filed 7/3/74.]

**WAC 461-08-085 Requests for review to the board—Cross appeals and intervention.** (1) Within twenty days after the date that a request for review has been filed pursuant to WAC 461-08-055 interested parties may file a notice of cross appeal with the board which shall

conform in all respects to the requirements of a request for review.

(2) The department of ecology and the attorney general may intervene within fifteen days pursuant to RCW 90.58.180(1) in any matter set out therein and if such intervention is sought it shall be granted.

(3) Upon order of any member of the board, or a presiding officer, the permittee and/or permit issuing agency shall be joined as a party in interest in any matter pending before the board, unless such entity is already a party.

[Statutory Authority: RCW 90.58.175, 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-085, filed 9/9/81; Order 77-1, § 461-08-085, filed 2/3/77; Order 75-1, § 461-08-085, filed 5/9/75; Order 74-4, § 461-08-085, filed 7/3/74.]

**WAC 461-08-090 Requests for review to the board—Correction or amendment of notice.** (1) If any request for review is found by the board to be defective or insufficient pursuant to the standards in WAC 461-08-055, the board may require the party filing said request for review to correct, clarify or amend the same to conform to the requirements of the statute and the board's rules. The board may refuse to schedule any conference or hearing thereon until compliance with such requirements, or may issue an appropriate order which may include providing for dismissal of such request for review upon failure to comply with a request to correct, clarify or amend the same within a specific time.

(2) Prior to the scheduling of the first conference, the party appealing may amend the request for review at any time; thereafter, such amendment may be made on such terms as the board or presiding officer may prescribe, and the presiding officer may, when deemed necessary, in justice to all parties, require correction, clarification or amendment of a request for review before allowing any hearing thereon to proceed, or may issue an order requiring such correction, clarification or amendment to be made within a specified time, and if such requirement is not complied with, the board may issue an appropriate order which may include dismissal of the request for review.

[Statutory Authority: RCW 90.58.175, 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-090, filed 9/9/81; Order 75-1, § 461-08-090, filed 5/9/75; Order 74-4, § 461-08-090, filed 7/3/74.]

**WAC 461-08-093 Requests for review to the board—Responsive pleadings.** Respondent(s) may file an answer to a request for review with the board and serve a copy thereof upon other parties within twenty days of receipt of the request for review. Answers shall generally conform to the requirements of a request for review.

[Statutory Authority: RCW 90.58.175, 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-093, filed 9/9/81.]

**WAC 461-08-095 Conferences—Two types.** Conferences shall be of two types: Informal and prehearing.

[Order 74-4, § 461-08-095, filed 7/3/74.]

**WAC 461-08-100 Informal conference—Purpose.** The purpose of an informal conference shall be to determine the feasibility of a settlement of the request for review. The presiding officer shall be present at the opening and closing

of a scheduled informal conference. If it may facilitate an agreement or a settlement, the presiding officer may leave the conference from time to time.

[Statutory Authority: RCW 90.58.175, 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-100, filed 9/9/81; Order 75-1, § 461-08-100, filed 5/9/75; Order 74-4, § 461-08-100, filed 7/3/74.]

**WAC 461-08-105 Informal conference—When held.** At any time prior to hearing on a request for review, any party thereto may file a written application with the board, requesting an informal conference. The board may thereupon, at its discretion, or any time on its own motion, order an informal conference on not less than seven days' notice mailed to each party to the request, at a time and place fixed by the board. At any time prior to hearing, the presiding officer to whom the case is assigned, may, pursuant to agreement of all parties, convene and preside at an informal conference at a time and place agreed upon.

[Statutory Authority: RCW 90.58.175, 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-105, filed 9/9/81; Order 74-4, § 461-08-105, filed 7/3/74.]

**WAC 461-08-110 Informal conference—Agreements at informal conferences.** (1) All agreements reached at informal conferences shall be set forth in the record by the presiding officer in writing.

(2) If an agreement concerning final disposition of the request for review is reached by all the parties present or represented at a conference, an order may be issued in conformity therewith, providing the board finds said agreement is in accordance with the law.

(3) If the board decides that the agreement is not in accordance with the law, it may schedule another informal conference, or direct that a prehearing conference be held.

(4) If no agreement is reached by the parties as to final disposition of a request, a prehearing conference may thereafter be held.

[Order 74-4, § 461-08-110, filed 7/3/74.]

**WAC 461-08-115 Prehearing conference—Purpose.** The purpose of a prehearing conference shall be to obtain a stipulation of facts to show the board's jurisdiction in the matter; to obtain agreement as to the issues of law and fact presented and the simplification or limitation thereof; to determine the necessity of amendments to the request for review or other pleadings; to determine the possibility of obtaining admissions of facts and authenticity of documents which will avoid unnecessary proof; to determine the admissibility of exhibits; to obtain stipulation as to all or part of the facts in the case; to determine the limitation of the number of witnesses; to obtain information as to the number of expert and lay witnesses expected to be called by the parties and their names when possible; to determine the approximate time necessary for the presentation of the evidence of the respective parties; and to obtain all other information which may aid in the prompt disposition of the cases.

[Order 75-1, § 461-08-115, filed 5/9/75; Order 74-4, § 461-08-115, filed 7/3/74.]

**WAC 461-08-120 Prehearing conference—When held.** A prehearing conference shall be held in every case pending before the board unless otherwise ordered by the chairman. Such prehearing conference shall be held at such time as ordered by the chairman, or presiding officer, on not less than seven days' notice to each party. Such prehearing conference may also be held immediately at the conclusion of an informal conference if time permits.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-120, filed 9/9/81; Order 75-1, § 461-08-120, filed 5/9/75; Order 74-4, § 461-08-120, filed 7/3/74.]

**WAC 461-08-125 Prehearing conference—Documentary evidence.** (1) The board or its presiding officer may require:

(a) That all documentary evidence which is to be offered during the taking of evidence be identified at or prior to any prehearing conference.

(b) That documentary evidence not identified as required by subsection (1)(a), be excluded as evidence in the absence of a clear showing that the offering party had good cause for the failure to produce the evidence sooner.

(c) That the authenticity of all documents so presented and examined be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.

(2) The presiding officer may, upon findings made on the record, limit the documentary evidence to that presented at any prehearing conference. For good cause shown any party may submit additional documentary evidence at the time of hearing.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-125, filed 9/9/81; Order 75-1, § 461-08-125, filed 5/9/75; Order 74-4, § 461-08-125, filed 7/3/74.]

**WAC 461-08-130 Prehearing conference—Excerpts from documentary evidence.** When only portions of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and shall supply copies of such excerpts to the presiding officer and to the other parties. However, the whole of the original document shall be made available for examination and for use by all parties to the proceeding.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-130, filed 9/9/81; Order 74-4, § 461-08-130, filed 7/3/74.]

**WAC 461-08-135 Prehearing conference—Failure to supply prehearing information.** If any party fails to supply the presiding officer at a prehearing conference the information reasonably necessary to aid the board in properly scheduling hearings, the board or the presiding officer may suspend setting a hearing pending receipt of the required information, or may refuse to grant such party a continuance of the original hearing, or may otherwise restrict the time or location of hearing for receipt of such party's evidence.

[Order 74-4, § 461-08-135, filed 7/3/74.]

**WAC 461-08-140 Prehearing conference—Agreements at prehearing conferences.** At the conclusion of a prehearing conference, the presiding officer conducting the same shall state for the record the results thereof. The statement shall include the agreements of the parties concerning issues, admissions, witnesses, time and location of hearings, the issues remaining to be determined and other matters that may expedite the subsequent hearing. The statement of agreement and issues, and rulings of the presiding officer, shall control the subsequent course of the proceedings unless modified for good cause by subsequent order.

[Order 74-4, § 461-08-140, filed 7/3/74.]

**WAC 461-08-143 Procedures—Telephone.** Parties may agree to conduct any conference or hearing, or any part thereof, provided in these rules by telephone conference call. Upon a timely request, the board or its presiding officer may schedule such conference or hearing if it appears to promote the fair, speedy and economical processing of a matter compatible with this procedure.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-143, filed 9/9/81.]

**WAC 461-08-144 Procedures—Motions.** (1) An application to the board for an order shall be by motion which, unless made during a hearing, shall be in writing, state with particularity the grounds therefor and set forth the relief sought. Dispositive motions will be filed and briefed in accordance with CR 56 unless a scheduling letter or order varies that procedure. Each written motion shall have appended to it the order which the motion seeks. The moving party shall affirmatively seek the stipulation of all parties and present a stipulated order wherever possible. If the motion is contested, the moving party shall note the motion for hearing on a date deemed by the clerk to be available for that purpose. The motion, order and note for hearing shall then be filed and served. Where the clerk specifies that the hearing shall be telephonic, the moving party shall originate the telephonic hearing conference call.

(2) 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) Except dispositive and ex parte motions, all motions and notice of the hearing thereof shall be filed and served not later than five days before the time specified for the hearing on the motion.

(b) All dispositive motions shall be filed and served not later than twenty-eight days before the hearing on the motion. Any party opposing the motion may file and serve a response not later than eleven days before the hearing on the motion. The moving party may file and serve a reply to the response not later than five days before the hearing on the motion.

(c) 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 board.

(3) Where a scheduling letter or order so provides, or by stipulation, a motion will be decided on the written record.



[Statutory Authority: RCW 90.58.175. 94-12-028, § 461-08-144, filed 5/24/94, effective 6/24/94.]

**WAC 461-08-145 Hearings—Types of.** These rules, as contemplated by chapter 90.58 RCW, the Shoreline Management Act, reflect two classes of hearings to be held pursuant to the chapter 34.04 RCW, the Administrative Procedure Act:

(1) Request for review pursuant to RCW 90.58.180(1) from any person aggrieved by the granting, denying, or rescinding of a permit on the shorelines of the state pursuant to RCW 90.58.140.

(2) Review obtained pursuant to RCW 90.58.180(2) by the department or the attorney general of any final order granting a permit, or granting or denying an application for a permit issued by a local government.

(3) These rules, chapter 461-08 WAC, do not control any appeal made pursuant to RCW 90.58.180(4) regarding appeals by local government. Such appeals shall be guided in procedural matters by chapter 1-08 WAC.

[Order 77-1, § 461-08-145, filed 2/3/77; Order 76-1, § 461-08-145, filed 7/28/75; Order 74-4, § 461-08-145, filed 7/3/74.]

**WAC 461-08-150 Hearings—Scheduling of hearings.** As soon as a request for review has been filed with the board, a prehearing conference may be scheduled at a time ordered by the chairman on not less than seven days' notice to each party. The date for the hearing on the request for review shall be set without regard to whether the time has elapsed within which certification or intervention by the department or attorney general may occur.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-150, filed 9/9/81; Order 77-1, § 461-08-150, filed 2/3/77; Order 74-4, § 461-08-150, filed 7/3/74.]

**WAC 461-08-155 Hearings—Notice of hearing.** (1) **Time.** When the board schedules a hearing, it shall mail a written notice thereof to all parties not less than twenty days prior to the hearing date.

(2) **Contents.** The notice shall identify the cases to be heard, the names of the parties to the request for review and their representatives, if any, and shall specify the time and place of hearing, and that the hearing is to be held pursuant to RCW 90.58.180 and chapter 461-08 WAC.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-155, filed 9/9/81; Order 74-4, § 461-08-155, filed 7/3/74.]

**WAC 461-08-156 Hearing—Primary and secondary setting.** (1) Each case shall be assigned a primary hearing date. A case has first priority for hearing on that date.

(2) Each case may be assigned a secondary hearing date. That date will precede the primary hearing date. A case has second priority for hearing on the secondary date, and will proceed to hearing only if the primary case does not proceed. The parties to a primary case shall inform the clerk of the board as soon as any settlement occurs. The parties to a secondary case may contact the clerk of the board to learn whether or not the primary case will proceed. The parties to a secondary case may also contact directly the

parties to a primary case to learn whether or not the primary case will proceed.

[Statutory Authority: RCW 90.58.175. 94-12-028, § 461-08-156, filed 5/24/94, effective 6/24/94.]

**WAC 461-08-157 Hearings—Briefs.** An original and six copies of written briefs if filed, should be submitted to the board at least three days before the time of hearing, or other such time as the board may prescribe. When briefs are filed, a copy shall also be served on the other parties or their attorneys. The board may permit or require the filing of additional briefs. Proposed findings may be included with the briefs.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-157, filed 9/9/81.]

**WAC 461-08-160 Hearings—Continuances and dismissals.** (1) Continuance of a hearing is within the discretion of the board, whether contested or uncontested by the parties. The board may continue a hearing on its own motion.

(2) The continuance of a hearing shall be sought by written motion. Each such motion shall have appended to it the continuance order which the motion seeks. The moving party shall: Contact the clerk of the board to determine available dates; affirmatively seek the stipulation of all parties; and set forth the continued date in the order. If the continuance is contested, the moving party shall set forth in the order the continued date being requested and shall note the motion for telephonic hearing on a date deemed by the clerk to be available for that purpose. The motion, order and note for telephonic hearing shall then be filed and served. The moving party shall originate the telephonic hearing conference call.

[Statutory Authority: RCW 90.58.175. 94-12-028, § 461-08-160, filed 5/24/94, effective 6/24/94; 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-160, filed 9/9/81; Order 77-1, § 461-08-160, filed 2/3/77; Order 75-1, § 461-08-160, filed 5/9/75; Order 74-4, § 461-08-160, filed 7/3/74.]

**WAC 461-08-167 Dismissal or default.** (1) If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, the presiding officer may serve upon all parties a default or other dispositive order which shall include a statement of the grounds for the order. Within seven days after service of a default or dismissal order for failure to attend or participate, the party against whom it was entered may file a written motion requesting that the order be vacated, and stating the grounds relied upon.

(2) An appellant may request to withdraw an appeal. Requests before appellant rests are mandatory and afterwards are permissive.

[Statutory Authority: RCW 90.58.175. 94-12-028, § 461-08-167, filed 5/24/94, effective 6/24/94.]

**WAC 461-08-170 Hearings—Procedures at hearings.** (1) **Presiding officer.** All hearings shall be conducted by a presiding officer who shall conduct the hearing in an orderly manner and rule on all procedural matters, objections and motions.

(2) **Testimony under oath.** Oaths shall be administered by the presiding officer. All testimony to be considered by the board shall be sworn, and each person shall swear (or affirm) that the testimony about to be given shall be the truth, the whole truth, and nothing but the truth.

(3) **Order of presentation of evidence.** The presiding officer shall determine the proper order of presentation of evidence. As a general rule, the appealing party shall initially introduce its evidence. The adverse parties may then introduce the evidence necessary to their cases. Rebuttal evidence will then be received.

Witnesses may be called out of turn in contravention of this rule by agreement of all parties.

(4) **Opening statements.** Unless the presiding officer rules otherwise, parties shall present an oral opening statement setting out briefly a statement of the basic facts, disputes, and issues of the case.

(5) **Written statement of qualifications of expert witnesses.** Any party who plans to introduce the testimony of any expert witness at the hearing shall submit as an exhibit to the board and all parties at the hearing a written statement of the qualifications, experience, and expertise of each such expert witness.

(6) **Former employee as an expert witness.** No former employee of the department or the board or the attorney general shall, at any time after leaving the employment with the department, appear, except when permitted by RCW 42.18.220, as an expert witness on behalf of other parties in a formal proceeding in which an active part in the investigation as a representative of the department or board was taken.

(7) **Objections and motions to strike.** Objections to the admission or exclusion of evidence shall be in short form, stating the legal grounds of objection relied upon, and the transcript shall not include extended argument or debate.

(8) **Rulings.** The presiding officer, on objection or *sua sponte*, shall exclude all irrelevant or unduly repetitious evidence and all rulings upon objections to the admissibility of evidence shall be made in accordance with WAC 461-08-180 through 461-08-200.

(9) Persons requesting review pursuant to RCW 90.58.180(1) and (2) shall have the burden of proof in the matter.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-170, filed 9/9/81; Order 75-1, § 461-08-170, filed 5/9/75; Order 74-4, § 461-08-170, filed 7/3/74.]

**WAC 461-08-174 Hearings—Scope of review.** Hearings upon requests for review shall be quasi-judicial in nature and shall be conducted *de novo* unless otherwise required by law.

[Order 77-1, § 461-08-174, filed 2/3/77.]

**WAC 461-08-175 Hearings—Standard of review.**

(1) In deciding upon a request for review brought pursuant to RCW 90.58.180 (1) and (2) the board shall make its decision considering the following standards:

(a) Consistency with the requirements of chapter 43.21C RCW, the State Environmental Policy Act.

(b) From June 1, 1971 until such time as an applicable

master program has become effective, whether the action of the local government unit is consistent with:

(i) The policy of RCW 90.58.020; and

(ii) The guidelines and regulations of the department; and

(iii) So far as can be ascertained the master program being developed for the area.

(c) After adoption or approval, as appropriate, by the department of an applicable master program, whether the action of the local government unit is consistent with the applicable master program and the provisions of chapter 90.58 RCW.

(2) Evidence that is material and relevant to determination of the matter consistent with the standards set out in subsection (1) above, subject to these rules, shall be admitted into the record whether or not such evidence had been submitted to the local government unit.

[Order 77-1, § 461-08-175, filed 2/3/77; Order 74-4, § 461-08-175, filed 7/3/74.]

**WAC 461-08-180 Rules of evidence—Admissibility criteria.** (1) **General.** Subject to the other provisions of these rules, all relevant evidence is admissible which, in the opinion of the officer conducting the hearing, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness. In passing upon the admissibility of evidence, the officer conducting the hearing shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings in matters not involving trial by jury in the superior courts of the state of Washington.

(2) **Agency records.** Copies of all records and documents on record or on file pertaining to the granting, denying or rescinding of a permit maintained in the office of the local government, or department, when duly certified by the respective officers having by law the custody thereof, under their respective seals where such officers have official seals, shall be admitted in evidence if offered.

[Statutory Authority: RCW 90.58.175. 83-06-031 (Order 83-1, Resolution No. 83-1), § 461-08-180, filed 2/24/83; Order 74-4, § 461-08-180, filed 7/3/74.]

**WAC 461-08-185 Rules of evidence—Official notice—Matters of law.** The board and its hearing officers, upon request made before or during a hearing, will officially notice:

(1) **Federal law.** The Constitution; congressional acts, resolutions, records, journals and committee reports; decisions of federal courts and administrative agencies; executive orders and proclamations; and all rules, orders and notices published in the Federal Register.

(2) **State law.** The Constitution of the state of Washington, acts of the legislature, resolutions, records, journals and committee reports; decisions of administrative agencies of the state of Washington, executive orders and proclamations by the governor; and all rules, orders and notices filed with the code reviser.

(3) **Governmental organization.** Organization, territorial limitations, officers, departments, and general administration of the government of the state of Washington, the United States, the several states and foreign nations.



(4) **Agency organization.** The department, commission or board organization, administration, officers, personnel, official publications, and practitioners before its bar.

[Order 74-4, § 461-08-185, filed 7/3/74.]

**WAC 461-08-190 Rules of evidence—Official notice—Material facts.** In the absence of controverting evidence, the board and its hearing officers, upon request made before or during a hearing, or in a proposed decision, may officially notice:

(1) **Board proceedings.** The pendency of, the issues and position of the parties therein, and the disposition of any proceeding then pending before or theretofore concluded by the board;

(2) **Business customs.** General customs and practices followed in the transaction of business;

(3) **Notorious facts.** Facts so generally and widely known to all well informed persons as not to be subject to reasonable dispute, or specific facts which are capable of immediate and accurate demonstration by resort to accessible sources of generally accepted authority, including but not exclusively, facts stated in any publication authorized or permitted by law to be made by any federal or state officer, department, or agency;

(4) **Technical knowledge.** Matters within the technical knowledge of the board as a body of experts, within the scope or pertaining to the subject matter of its statutory duties, responsibilities or jurisdiction;

(5) **Request or suggestion.** Any party may request, or the presiding officer may suggest, that official notice be taken of a material fact, which shall be clearly and precisely stated, orally on the record, at any prehearing conference or oral hearing or argument, or may make such request or suggestion by written notice, any pleading, motion, memorandum, or brief served upon all parties, at any time prior to a final decision;

(6) **Statement.** Where an initial or final decision of the board rests in whole or in part upon official notice of a material fact, such fact shall be clearly and precisely stated in such decision. In determining whether to take official notice of material facts, the hearing officer may consult any source of pertinent information, whether or not furnished as it may be, by any party and whether or not admissible under the rules of evidence;

(7) **Controversion.** Any party may controvert a request or a suggestion that official notice of a material fact be taken at the time the same is made if it be made orally, or by a pleading, reply or brief in response to the pleading or brief or notice in which the same is made or suggested. If any decision is stated to rest in whole or in part upon official notice of a material fact which the parties have not had a prior opportunity to controvert, any party may controvert such fact by appropriate exceptions if such notice be taken in an initial or intermediate decision or by a petition for reconsideration if notice of such fact be taken in a final report. Such controversion shall concisely and clearly set forth the sources, authority and other data relied upon to show the existence or nonexistence of the material fact assumed or denied in the decision;

(8) **Evaluation of evidence.** Nothing herein shall be construed to preclude the board or its authorized agents from

utilizing their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-190, filed 9/9/81; Order 74-4, § 461-08-190, filed 7/3/74.]

**WAC 461-08-195 Rules of evidence—Tentative admission—Exclusion—Discontinuance—Objections.** When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The officer conducting the hearing may, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-195, filed 9/9/81; Order 75-1, § 461-08-195, filed 5/9/75; Order 74-4, § 461-08-195, filed 7/3/74.]

**WAC 461-08-205 Disposition of contested cases—Definition.** As used in WAC 461-08-205 through 461-08-235, a contested case shall mean any case not previously disposed of by agreement of the parties, or by dismissal thereof either voluntarily or for failure of prosecution which case advances to a hearing on the merits.

[Order 74-4, § 461-08-205, filed 7/3/74.]

**WAC 461-08-210 Disposition of contested cases—Record.** The record before the board in any contested case shall consist of the decision or order appealed from, the request for review therefrom, responsive pleadings, if any, and notices of appearances, and any other written applications, motions, stipulations or requests duly filed by any party and written reports or orders of the presiding officer. Such record shall also include all depositions, if they are admitted at the hearing, the transcript of testimony as provided in WAC 461-08-215, and other proceedings at the hearing, together with all exhibits admitted. No part of the local government's record or other documents shall be made part of the record of the board unless admitted in evidence.

[Order 74-4, § 461-08-210, filed 7/3/74.]

**WAC 461-08-215 Disposition of contested cases—Transcripts.** The following shall be the policy of the board with regard to transcription of the record:

(1) If four or more members of the board are present at the hearing, it shall be discretionary for the board to cause a transcript to be printed.

(2) If less than four members of the board are present at the hearing, the board shall cause a transcript to be printed for the board's review. Any party may obtain a transcript upon payment of the reasonable cost thereof.

(3) In any case when the board shall not cause a transcript to be printed, pursuant to subsection (1), above, it shall be the obligation of the party wishing a transcript, or such portions of it, to order the same from the board reporter and assume the cost of printing same.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-215, filed 9/9/81; Order 75-1, § 461-08-215, filed 5/9/75; Order 74-4, § 461-08-215, filed 7/3/74.]

**WAC 461-08-220 Disposition of contested cases—Decisions and orders. (1) Final.**

(a) When the hearing on the request for review has been heard by a majority of the board, 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.

(b) After issuance of a final decision issued under this subsection, any party may file a petition for reconsideration with the board. Such petition must be filed within eight days of mailing of the final decision. Copies of the petition for reconsideration, and an answer, if required, shall be served on the other parties of record and with the original and six copies filed with the board.

(c) The filing of a petition for reconsideration shall suspend the final decision of the board until the petition is denied by the board, or a modified decision is entered by the board.

(d) In response to a petition for reconsideration, the board may deny it, or may modify its decision or reopen the hearing.

(e) Such final decision and order shall be the final decision of the board for purposes of judicial review.

(2) **Proposed.** When the hearing on the request for review has been heard by less than a majority of the board or when less than a majority of the board concur in the matter or when the board shall otherwise elect to do so, a written proposed final decision and order shall thereafter be prepared which shall contain findings and conclusions as to each contested issue of fact and law.

The provisions of WAC 461-08-225, 461-08-230, and 461-08-235 shall apply to such proposed decision and order. Petitions for reconsideration are not applicable to final decisions issued after such proposed decisions.

(3) Copies of the final decision and order and proposed decision and order, as the case may be, shall be mailed by the board to each party to the request for review and to the attorney or representative of record, if any.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-220, filed 9/9/81; Order 76-1, § 461-08-220, filed 7/28/75; Order 75-1, § 461-08-220, filed 5/9/75; Order 74-4, § 461-08-220, filed 7/3/74.]

**WAC 461-08-221 Disposition of contested cases—Presentation of additional evidence.**

After the parties have rested or upon review of the record, the board may present such evidence in addition to that contained in the record, as deemed necessary to decide the matter fairly and equitably. Any evidence secured and presented by the board shall be presented in an impartial manner, and shall be received subject to full opportunity for cross-examination by all parties. If a party desires to present rebuttal evidence to any evidence so presented by the board, application shall be made therefor immediately following the submission of such evidence. Such application will be granted by assignment of a time and place of taking of such rebuttal evidence.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-221, filed 9/9/81; Order 75-1, § 461-08-221, filed 5/9/75.]

**WAC 461-08-225 Disposition of contested cases—Exceptions, reply. (1) Time for filing.**

Within twenty days, or such further period as the board may allow on written application of a party, from the date of receipt of the proposed decision and order to the parties or their attorneys of record, any party aggrieved thereby may file with the board, a written statement of exceptions thereto in original and six copies. Copies thereof shall be furnished to all other parties. In the event such statement of exceptions is filed, the failure of any party not aggrieved by the proposed decision and order to file a statement of exceptions shall not be deemed a waiver by such party of any objections or irregularities disclosed by the record.

(2) **Contents.** Such statement of exceptions shall set forth in detail the grounds therefor and the party or parties filing the same shall be deemed to have waived all objections or irregularities not specifically set forth therein. A general exception to findings of fact on the ground that the weight of evidence is to the contrary shall not be considered sufficient compliance, unless the exception shall refer to the evidence relied upon in support thereof. If legal issues are involved, the statement of exceptions shall set forth the legal theory relied upon and citation of authority and/or argument in support thereof. The statement of exceptions should also contain the exceptor's proposed findings of fact and/or conclusions of law covering the factual and legal issues to which exceptions are being taken.

(3) **Reply to exceptions.** Any party may, within ten days or such further time as the board may allow, submit a reply to exceptions, a written brief or a statement of position regarding the matters on which exceptions were taken, or the board may, on its own motion, require the parties to submit written briefs or statements of position or to appear and present oral argument regarding the matters on which exceptions were taken, within such time and on such terms as may be prescribed.

(4) **Action by board on exceptions.** The board shall, in a case in which it determines that a statement of exceptions does not properly conform to the provisions of subsection (2) above, issue an order requiring the party to amend such statement of exceptions to conform to that rule, within a specified time. Failure of the party to comply with such order may result in the board issuing an order adopting the proposed decision and order of the board as the final decision and order of the board on the ground that no legally sufficient statement of exceptions had been taken to said proposed decision and order.

(5) **Exceptions to rulings on admissibility of evidence.** If an exception is taken to a ruling or rulings of a presiding officer sustaining an objection to admissibility of evidence, or denying a continuance for the presentation of further evidence, and the board determines that said ruling or rulings were erroneous, the board may:

(a) Return the matter to the presiding officer with appropriate instructions, or,

(b) Open the matter for further argument and decision by the board itself.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-225, filed 9/9/81; Order 75-1, § 461-08-225, filed 5/9/75; Order 74-4, § 461-08-225, filed 7/3/74.]

**WAC 461-08-230 Disposition of contested cases—Finality of proposed decisions and orders.** In the event no statement of exceptions is filed as provided herein by any party, the proposed decision and order of the board may be adopted by the board and become the final decision and order of the board. Such adoption of the proposed decision and order shall be the final decision of the board for purposes of judicial review.

[Order 74-4, § 461-08-230, filed 7/3/74.]

**WAC 461-08-235 Dispositions of contested cases—Final decisions and orders following proposed orders.** After the filing of exceptions, if any, and a reply, if any, the filing of briefs or presentation of oral argument thereon, if required, and the obtaining of additional evidence, if any, as provided for in WAC 461-08-221, the record before the board shall be considered by at least four of the members of the board: *Provided*, That in the event that the full board considers the record and four members cannot agree on a decision, the substantive decision of the local government unit will control. The board will formally adopt its final decision and order.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-235, filed 9/9/81; Order 74-4, § 461-08-235, filed 7/3/74.]

**WAC 461-08-237 Disposition of contested cases—Preparation of findings, conclusions and orders.** Upon request of the board or presiding officer, findings, conclusions and orders shall be prepared by counsel. The same shall be based upon the oral or memorandum opinion. The board or presiding officer may adopt said findings, conclusions and orders in part or in whole or may prepare their own findings, conclusions and orders.

[Statutory Authority: RCW 90.58.175. 94-12-028, § 461-08-237, filed 5/24/94, effective 6/24/94.]

**WAC 461-08-240 Appeals to the courts—Notice of appeal.** Any person aggrieved by a final decision in a contested case may institute a proceeding for review pursuant to RCW 34.04.130. The appealing party shall serve the board and all parties of record with a copy of the notice of appeal to the superior court as provided in RCW 34.04.130(2).

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-240, filed 9/9/81; Order 75-1, § 461-08-240, filed 5/9/75; Order 74-4, § 461-08-240, filed 7/3/74.]

**WAC 461-08-245 Appeals to the courts—Certification of record.** Within thirty days of the service of the petition for review upon the board, or within such further time as the court may allow, the board shall certify and transmit to the reviewing court the record of the proceedings as set forth in RCW 34.04.130(4) and in accordance with WAC 461-08-210 through 461-08-215.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-245, filed 9/9/81; Order 74-4, § 461-08-245, filed 7/3/74.]

**WAC 461-08-250 Computation of time.** In computing any period of time prescribed or allowed by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

[Order 74-4, § 461-08-250, filed 7/3/74.]

**WAC 461-08-255 Petitions for declaratory ruling.**  
(1) **Right to petition for declaratory ruling.** As prescribed by RCW 34.04.080, any interested person may petition the board for a declaratory ruling.

(2) **Form of petition.** The form of the petition for a declaratory ruling shall generally adhere to the following:

(a) At the top of the page shall appear the wording "Before the Shorelines Hearings Board, state of Washington." On the left side of the page below the foregoing, the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for a Declaratory Ruling." Opposite the foregoing caption shall appear the word "petition."

(b) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall set out the state of facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of this state. The concluding paragraphs shall contain the prayer of the petitioner. The petition shall be subscribed and verified in the manner prescribed for certification of complaints in the superior courts of this state.

(c) The original and six legible copies shall be filed with the board. Petitions shall be on white paper, either 8-1/2" x 11" or 8-1/2" x 13" in size.

(3) **Consideration of petition.** The entire board shall consider the petition, and within a reasonable time shall:

(a) Issue a nonbinding declaratory ruling; or

(b) Notify the person that no declaratory ruling is to be issued; or

(c) Set a reasonable time and place for a hearing or for submission of written evidence on the matter, and give reasonable notification to the person of the time and place for such hearing or submission, and of the issues involved.

(4) **Disposition of petition.** If a hearing is held or evidence is submitted as provided in subsection (3)(c) above, the board shall, within a reasonable time:

(a) Issue a binding declaratory ruling; or

(b) Issue a nonbinding declaratory ruling; or

(c) Notify the person that no declaratory ruling is to be issued.

[Order 74-4, § 461-08-255, filed 7/3/74.]

**WAC 461-08-260 Petitions for rule making.** (1) **Right to petition for rule making.** Any interested person may petition the board for the promulgation, amendment, or repeal of any rule.

(2) **Form of petition.** The form of the petition for promulgation, amendment, or repeal of any rule shall generally adhere to the following:

At the top of the page shall appear the wording, "Before the Shorelines Hearings Board, state of Washington." On the left side of the page below the foregoing, the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for (state whether promulgation, amendment or repeal) of rule (or rules)." Opposite the foregoing caption shall appear the word "petition."

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether the petitioner seeks the promulgation of new rule or rules, or amendment or repeal of existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for amendment, the new matter shall be underscored and the matter proposed to be deleted shall appear in double parentheses. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interest of the petitioner in the subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

Petitions shall be dated and signed by the person or entity named in the first paragraph or by the petitioner's attorney. The original and six legible copies of the petition shall be filed with the board. Petitions shall be on white paper, either 8-1/2" x 11" or 8-1/2 x 13" in size.

(3) **Consideration of petitions.** All petitions shall be considered by the entire board, and the board may, in its discretion, order an informal hearing or meeting for the further consideration and discussion of the requested promulgation, amendment, or repeal of any rule.

(4) **Notification of disposition of petition.** The board shall notify the petitioning person within a reasonable time of the disposition, if any, of the petition.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-260, filed 9/9/81; Order 75-1, § 461-08-260, filed 5/9/75; Order 74-4, § 461-08-260, filed 7/3/74.]

**WAC 461-08-265 Petition by the department for rescission of permits.** Petition by the department for rescission of permits pursuant to RCW 90.58.140(8) shall comply with the following requirements:

(a) The petition shall contain a copy of the written notice provided to the local government and the permittee involved;

(b) A petition by the department for rescission of a permit shall be filed with the board within fifteen days of the termination of the thirty day notice to local government and the permittee as provided by RCW 90.58.140(8).

(c) At the time of filing the petition with the board, the department shall give written notice of such petition to the local government and the permittee involved.

[Order 77-1, § 461-08-265, filed 2/3/77.]

**WAC 461-08-270 Applicability of SEPA guidelines.** The board has reviewed its authorized activities pursuant to WAC 197-10-800(4) and has found them all to be exempt from the provisions of chapter 197-10 WAC.

[Order 78-1, § 461-08-270, filed 11/29/77.]

## Chapter 461-12 WAC

### PRACTICE AND PROCEDURE—PUBLIC RECORDS

#### WAC

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#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

461-12-035	Office of the clerk of the board. [Order 1, § 461-12-035, filed 5/16/73.] Repealed by 81-19-025 (Order 82-1, Resolution No. 82-1), filed 9/9/81. Statutory Authority: RCW 90.58.175.
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**WAC 461-12-010 Purpose.** The purpose of this chapter shall be to ensure compliance by the shorelines hearings board with the provisions of chapter 1, Laws of 1973 (Initiative 276, Disclosure—Campaign finances—Lobbying—Records); and in particular with sections 25 through 32 of that act, dealing with public records.

[Order 1, § 461-12-010, filed 5/16/73.]

**WAC 461-12-020 Definitions.** (1) **Public records.** "Public record" includes any writing containing information relating to the performance of any governmental or proprietary function which is prepared, owned, used or retained by the shorelines hearings board, regardless of physical form or characteristics.

(2) **Writing.** "Writing" means handwriting, typewriting, printing, photostating, photographing and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents.

(3) **Shorelines hearings board.** The shorelines hearings board (hereinafter board) is a quasi-judicial body created pursuant to chapter 90.58 RCW and is hereinafter referred to as the "board." Where appropriate, the term "board" also refers to the staff and employees of the environmental hearings office.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-12-020, filed 9/9/81; Order 1, § 461-12-020, filed 5/16/73.]

**WAC 461-12-030 Public records available.** All public records of the board, as defined in WAC 461-12-020, are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by section 31, chapter 1, Laws of 1973 and these rules.

[Order 1, § 461-12-030, filed 5/16/73.]

**WAC 461-12-031 Membership, function and jurisdiction.** (1) **Members.** The shorelines hearings board (hereinafter board) is a quasi-judicial body, composed of six members. Three members shall be members of the pollution control hearings board. Two members, one appointed by the association of Washington cities and one appointed by the association of county commissioners, shall serve at the pleasure of the associations. The state land commissioner or his designee shall be the sixth member. The chairman of the pollution control hearings board shall be the chairman of the shorelines hearings board.

(2) **Function and jurisdiction.** The function of the board is to provide quasi-judicial review pursuant to the provisions of RCW 90.58.180. In review proceedings, the board shall utilize the provisions of chapter 461-08 WAC. Those matters properly reviewable by the board include but are not limited to:

(a) Grants, denials or rescissions of substantial development permits on shorelines of the state where a request for review is filed with the board by an aggrieved person. Review shall only be granted upon certification by the attorney general or the department of ecology (hereinafter department) pursuant to RCW 90.58.180(1).

(b) Grants or denials of permits and denials of applications for permits where review is sought by the attorney general or the department pursuant to RCW 90.58.180(2).

(c) Rules, regulations, guidelines, designations or master programs for shorelines of the state adopted or approved by the department where review is sought by any local governmental entity pursuant to RCW 90.58.180(4).

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-12-031, filed 9/9/81; Order 3, § 461-12-031, filed 10/1/73; Order 1, § 461-12-031, filed 5/16/73.]

**WAC 461-12-032 Administration of the board.** The administrative offices of the board shall be located at the Environmental Hearings Office, 4224 6th Avenue SE, Building 2 Rowesix, MS: PY-21, Lacey, Washington 98504. The board has no established field organization and all available records relating to board functions shall be in the custody of the board at the foregoing address.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-12-032, filed 9/9/81; Order 1, § 461-12-032, filed 5/16/73.]

**WAC 461-12-033 Meetings of the board.** The board shall meet in formal sessions at its principal office at 10 a.m. on the fourth Wednesday of each month; and shall meet at such other times and places as the board may designate.

[Order 74-1, § 461-12-033, filed 5/23/74; Order 1, § 461-12-033, filed 5/16/73.]

**WAC 461-12-034 Quorum.** Four or more members shall constitute a quorum for making orders. A decision of the board must be agreed to by at least four members in order to be final. Any member of the board, or other person designated by the chairman, may hold hearings and take testimony, but all proceedings and testimony shall be reported to the board to the extent required by RCW 34.04.110, and ultimate decisions shall be by at least four or more members of the board.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-12-034, filed 9/9/81; Order 3, § 461-12-034, filed 10/1/73; Order 1, § 461-12-034, filed 5/16/73.]

**WAC 461-12-036 Communications with the board.** All written communications by parties pertaining to a particular case, including requests for hearings on all matters; notices of appeal from orders and decisions; certifications of the department or the attorney general; and applications and requests for relief of any kind, shall be filed with the board at its principal office in Lacey, Washington 98504. Copies of all such written communications shall be furnished to the department and the attorney general by the party seeking review where the request is for review by the board of a final order of a local government pursuant to RCW 90.58.180(1).

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-12-036, filed 9/9/81; Order 1, § 461-12-036, filed 5/16/73.]

**WAC 461-12-040 Public records officer.** The board's administrative officer shall be in charge of the public records. Such person shall be responsible for implementation of these rules and regulations regarding release of public records, and generally insuring compliance with the public records disclosure requirements of chapter 1, Laws of 1973, sections 25 through 34.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-12-040, filed 9/9/81; Order 1, § 461-12-040, filed 5/16/73.]

**WAC 461-12-050 Office hours.** Public records shall be available for inspection and copying during the customary office hours of the board. For the purposes of this chapter, the customary office hours shall be from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

[Order 1, § 461-12-050, filed 5/16/73.]

**WAC 461-12-060 Requests for public records.** Subject to the provisions of chapter 1, Laws of 1973 that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such

records may be obtained, by members of the public, upon compliance with the following procedures:

(1) A request shall be made in writing upon a form prescribed by the board which shall be available at its administrative office. The form shall be presented to the board or to any member of the board's staff at the administrative office of the board during customary office hours. The request shall include the following information:

- (a) The name of the person requesting the record;
- (b) The time of day and calendar date on which the request was made;
- (c) The nature of the request;
- (d) If the matter requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index;
- (e) If the requested matter is not identifiable by reference to the board's current index, an appropriate identification of the record requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the staff member to whom the request is made, to assist the member of the public in appropriately identifying the public record requested.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-12-060, filed 9/9/81; Order 1, § 461-12-060, filed 5/16/73.]

**WAC 461-12-070 Copying.** No fee shall be charged for the inspection of public records. The board shall charge a fee of ten cents per page of copy for providing copies of public records and for use of the board's copy equipment. This charge is the amount necessary to reimburse the board for its actual costs incident to such copying.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-12-070, filed 9/9/81; Order 1, § 461-12-070, filed 5/16/73.]

**WAC 461-12-080 Exemptions.** (1) The board reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 461-12-060 is exempt under the provisions of section 31, chapter 1, Laws of 1973.

(2) In addition, pursuant to section 26, chapter 1, Laws of 1973, the board reserves the right to delete identifying details when it makes available or publishes any public records, in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 1, Laws of 1973. The board will fully justify such deletion in writing.

(3) All denials of requests for public records must be accompanied by a written statement specifying the reason for the denials, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

[Order 1, § 461-12-080, filed 5/16/73.]

**WAC 461-12-090 Review of denials of public records requests.** (1) Any person who objects to denials of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written

statement by the staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the staff member denying the request shall refer it to a member of the board. The member shall immediately consider the matter and, if appropriate, call a special meeting of the board as soon as possible to review the denial. In any case, the request shall be returned with a final written decision of the board or its acting member within two business days following the original denial.

(3) Administrative remedies shall not be considered exhausted until the board or its acting member shall have returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.

(4) With regard to denials of inspection, the provisions of WAC 461-12-034 shall be inapplicable.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-12-090, filed 9/9/81; Order 1, § 461-12-090, filed 5/16/73.]

**WAC 461-12-100 Protection of public records.** The administrative officer shall, to the extent practicable, insure that records are not removed from the premises nor portions thereof removed by members of the public.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-12-100, filed 9/9/81; Order 1, § 461-12-100, filed 5/16/73.]

**WAC 461-12-110 Records index.** (1) **Index.** The board shall have available to all persons a current index which shall provide identifying information as to those records applicable to the board, which have been issued, adopted or promulgated since June 30, 1972; described in section 26 of Initiative 276 as follows:

"(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

"(b) Those statements of policy and interpretations of policy, statute and the constitution which have been adopted by the agency;

"(c) Administrative staff manuals and instructions to staff that affect a member of the public;

"(d) Planning policies and goals, and interim and final planning decisions;

"(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

"(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party."

(2) **Availability.** The current index promulgated by the board shall be available for inspection by all persons.

[Order 1, § 461-12-110, filed 5/16/73.]

**WAC 461-12-120 Communications with the board.** All communications with the board, including but not limited



to the submission of materials pertaining to its operations and/or the administration or enforcement of chapter 1, Laws of 1973 and these rules, requests for copies of the board's decisions and other matters, shall be addressed as follows: Shorelines Hearings Board, Environmental Hearings Office, 4224 6th Avenue SE, Building 2 Rowesix, MS: PY-21, Lacey, Washington 98504.

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-12-120, filed 9/9/81; Order 1, § 461-12-120, filed 5/16/73.]

**WAC 461-12-130 Adoption of form.** The board hereby adopts the use by all persons requesting inspection and/or copies of records the form set out below, entitled "Request for public records."

We have received your request for copies of our public records. Please complete the form and return it with the amount required. We will forward the requested copies to you as soon as we receive this form.

Thank you.

Return to:

Shorelines Hearings Board  
Environmental Hearings Office  
4224 6th Avenue SE  
Building 2 Rowesix, MS: PY-21  
Lacey, Washington 98504

SHORELINES HEARINGS BOARD  
REQUEST FOR PUBLIC RECORDS

Date ..... Time .....  
Name .....  
Address .....

Description of Records (see index):  
.....  
.....  
.....

I certify that the information obtained through this request for public records will be used in compliance with chapter 42.17 RCW.

.....  
Signature

Number of Copies .....  
Number of Pages .....  
Per Page Charge \$ .....  
Total Charge \$ .....

[Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-12-130, filed 9/9/81.]