

# Title 461 WAC

## ENVIRONMENTAL HEARINGS OFFICE (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**

**PART A  
GENERAL**

- 461-08-300** Purpose of this chapter and applicability of the board's rules of practice to the civil rules of procedure and the rules of evidence.
- 461-08-305** Definitions.
- 461-08-310** Computation of time.

**PART B  
BOARD ADMINISTRATION AND JURISDICTION**

- 461-08-315** Board membership, function and jurisdiction.
- 461-08-320** Office hours, telephone number, telefacsimile number and address of the board.
- 461-08-325** Public information about practice before the board and public records.
- 461-08-330** Board decision making on appeals.

**PART C  
FILING AN APPEAL WITH THE BOARD AND SERVICE**

- 461-08-335** Types of petitions before the board.
- 461-08-340** Where to file a petition for review and number of copies.
- 461-08-345** Deadline for filing petition for review of permitting decisions by the department or attorney general.
- 461-08-350** Contents of the petition for review.
- 461-08-355** Service of petitions for review with department and attorney general—Intervention by the department and attorney general.
- 461-08-365** Board decision making on petitions for review of department rules and regulations.
- 461-08-370** Board decision making on petitions for declaratory ruling.
- 461-08-375** Board decision making on petitions for rule making.
- 461-08-380** Board decision making on department of ecology petitions for rescission of permits.

**PART D  
APPEARANCE AND PRACTICE BEFORE THE BOARD**

- 461-08-385** Persons who may appear before the board.
- 461-08-390** Appearance by representative.
- 461-08-395** Withdrawal or substitution of representatives.
- 461-08-400** Conduct before the board by representatives.
- 461-08-405** Parties not represented by legal counsel—Waiver of rules to prevent manifest injustice.
- 461-08-410** Presiding officer duties and powers.
- 461-08-415** Mediation.
- 461-08-420** Subpoenas.

**PART E  
PREHEARING PRACTICE**

- 461-08-425** Dismissal of petitions for review on jurisdictional grounds.

- 461-08-430** Correction or amendment of notice.
- 461-08-435** Intervention.
- 461-08-440** Joinder of parties.
- 461-08-445** Answers to petitions for review.
- 461-08-450** Prehearing scheduling letters.
- 461-08-455** Prehearing conferences.
- 461-08-460** Prehearing orders.
- 461-08-465** Settlement and mediation agreements.
- 461-08-470** Use of telephone conferences, motion hearings and hearings.
- 461-08-475** Motions.
- 461-08-480** Postponements and continuances of hearings.
- 461-08-485** Dismissal, default or withdrawal of appeal.

**PART F  
HEARINGS**

- 461-08-490** Hearing briefs.
- 461-08-495** Procedures at hearings.
- 461-08-500** Scope and standard of review and burden of proof.
- 461-08-505** Legal criteria.
- 461-08-510** Provision of interpreters and of reasonable accommodations to individuals with special needs.
- 461-08-515** Rules of evidence—Admissibility criteria.
- 461-08-520** Rules of evidence—Official notice—Matters of law.
- 461-08-525** Rules of evidence—Official notice—Material facts.
- 461-08-530** Presentation of additional evidence by presiding officer.
- 461-08-535** Rules of evidence—Tentative admission—Exclusion—Discontinuance—Objections.

**PART G  
DECISIONS BY THE BOARD AFTER HEARING**

- 461-08-540** Contents of the record.
- 461-08-545** Preparation of transcripts.
- 461-08-550** Preparation of findings, conclusions and orders.
- 461-08-555** Final decisions and orders.
- 461-08-560** Deadline for the board to issue final decision on petitions for review of permitting decisions. Waivers and extensions of deadline.
- 461-08-565** Petitions for reconsideration.

**PART H  
APPEALS FROM BOARD DECISIONS**

- 461-08-570** Time for filing petitions for review to superior court.
- 461-08-575** Direct review to the court of appeals based upon an accepted certificate of appealability by the board.
- 461-08-580** Certification of record.

**PART I  
APPLICABILITY OF SEPA**

- 461-08-585** Applicability of SEPA guidelines.

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

- 461-08-001** Board administration and address of the board. [Statutory Authority: RCW 90.58.175, 94-12-028, § 461-08-001, filed 5/24/94, effective 6/24/94.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-005** Chapter applicable. [Order 74-4, § 461-08-005, filed 7/3/74.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-010** Prehearing procedures. [Order 74-4, § 461-08-010, filed 7/3/74.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-015** Definitions. [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.]

- Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-020 Appearance and practice before the board—Persons who may and may not appear. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-025 Appearance and practice before the board—Local government unit—Service of papers. [Order 75-1, § 461-08-025, filed 5/9/75; Order 74-4, § 461-08-025, filed 7/3/74.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-030 Appearance and practice before the board—Appearance by representative. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-035 Appearance and practice before the board—No formal admission to practice. [Order 75-1, § 461-08-035, filed 5/9/75; Order 74-4, § 461-08-035, filed 7/3/74.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-040 Appearance and practice before the board—Withdrawal or substitution of representatives. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-045 Appearance and practice before the board—Conduct. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-047 Appearance and practice before the board—Parties not represented by legal counsel—Waiver of rules to prevent manifest injustice. [Statutory Authority: RCW 90.58.175. 94-12-028, § 461-08-047, filed 5/24/94, effective 6/24/94.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-050 Presiding officer duties and powers. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-053 Subpoenas. [Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-053, filed 9/9/81.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-055 Requests for review to the board—Contents of the request for review. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-060 Requests for review to the board—Filing—Copy. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-065 Requests for review to the board—Filing with department and attorney general. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-070 Requests for review to the board—Time for filing. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-075 Requests for review to the board—Dismissal of request for review on jurisdictional grounds. [Order 74-4, § 461-08-075, filed 7/3/74.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-080 Requests for review to the board—Granting the review. [Order 74-4, § 461-08-080, filed 7/3/74.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-085 Requests for review to the board—Cross appeals and intervention. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-090 Requests for review to the board—Correction or amendment of notice. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-093 Requests for review to the board—Responsive pleadings. [Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-093, filed 9/9/81.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-095 Conferences—Two types. [Order 74-4, § 461-08-095, filed 7/3/74.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-100 Informal conference—Purpose. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-105 Informal conference—When held. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-110 Informal conference—Agreements at informal conferences. [Order 74-4, § 461-08-110, filed 7/3/74.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-115 Prehearing conference—Purpose. [Order 75-1, § 461-08-115, filed 5/9/75; Order 74-4, § 461-08-115, filed 7/3/74.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-120 Prehearing conference—When held. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-125 Prehearing conference—Documentary evidence. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-130 Prehearing conference—Excerpts from documentary evidence. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-135 Prehearing conference—Failure to supply prehearing information. [Order 74-4, § 461-08-135, filed 7/3/74.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-140 Prehearing conference—Agreements at prehearing conferences. [Order 74-4, § 461-08-140, filed 7/3/74.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-143 Procedures—Telephone. [Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-143, filed 9/9/81.] Repealed by 96-15-002,

- filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-144 Procedures—Motions. [Statutory Authority: RCW 90.58.175. 94-12-028, § 461-08-144, filed 5/24/94, effective 6/24/94.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-145 Hearings—Types of. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-150 Hearings—Scheduling of hearings. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-155 Hearings—Notice of hearing. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-156 Hearing—Primary and secondary setting. [Statutory Authority: RCW 90.58.175. 94-12-028, § 461-08-156, filed 5/24/94, effective 6/24/94.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-157 Hearings—Briefs. [Statutory Authority: RCW 90.58.175. 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-157, filed 9/9/81.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-160 Hearings—Continuances and dismissals. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 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.
- 461-08-167 Dismissal or default. [Statutory Authority: RCW 90.58.175. 94-12-028, § 461-08-167, filed 5/24/94, effective 6/24/94.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-170 Hearings—Procedures at hearings. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-174 Hearings—Scope of review. [Order 77-1, § 461-08-174, filed 2/3/77.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-175 Hearings—Standard of review. [Order 77-1, § 461-08-175, filed 2/3/77; Order 74-4, § 461-08-175, filed 7/3/74.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-180 Rules of evidence—Admissibility criteria. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-185 Rules of evidence—Official notice—Matters of law. [Order 74-4, § 461-08-185, filed 7/3/74.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-190 Rules of evidence—Official notice—Material facts. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-195 Rules of evidence—Tentative admission—Exclusion—Discontinuance—Objections. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. 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.
- 461-08-205 Disposition of contested cases—Definition. [Order 74-4, § 461-08-205, filed 7/3/74.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-210 Disposition of contested cases—Record. [Order 74-4, § 461-08-210, filed 7/3/74.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-215 Disposition of contested cases—Transcripts. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-220 Disposition of contested cases—Decisions and orders. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-221 Disposition of contested cases—Presentation of additional 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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-225 Disposition of contested cases—Exceptions, reply. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-230 Disposition of contested cases—Finality of proposed decisions and orders. [Order 74-4, § 461-08-230, filed 7/3/74.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-235 Dispositions of contested cases—Final decisions and orders following proposed orders. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-237 Disposition of contested cases—Preparation of findings, conclusions and orders. [Statutory Authority: RCW 90.58.175. 94-12-028, § 461-08-237, filed 5/24/94, effective 6/24/94.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-240 Appeals to the courts—Notice of appeal. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-245 Appeals to the courts—Certification of record. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-250 Computation of time. [Order 74-4, § 461-08-250, filed 7/3/74.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-255 Petitions for declaratory ruling. [Order 74-4, § 461-08-255, filed 7/3/74.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-260 Petitions for rule making. [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.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.

- 461-08-265 Petition by the department for rescission of permits. [Order 77-1, § 461-08-265, filed 2/3/77.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-270 Applicability of SEPA guidelines. [Order 78-1, § 461-08-270, filed 11/29/77.] Repealed by 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.
- 461-08-360 Service of the petition for review on local government and other parties. [Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-360, filed 7/3/96, effective 8/3/96.] Repealed by 99-23-038, filed 11/12/99, effective 12/13/99. Statutory Authority: RCW 90.58.175.

## PART A GENERAL

**WAC 461-08-300 Purpose of this chapter and applicability of the board's rules of practice to the civil rules of procedure and the rules of evidence.** (1) The purpose of chapter 461-08 WAC is to provide rules of practice before the shorelines hearings board (hereinafter "board"). The interpretation of these rules may be guided, where relevant, by the civil rules of superior court (hereinafter "civil rules") and the rules of evidence for the superior courts of the state of Washington, as those rules have been construed by Washington state courts.

(2) Except where in conflict with the board's rules, Washington statutes regarding pretrial procedures, civil rules and rules of evidence shall be followed in proceedings before the board unless the presiding officer determines that the evidence, although in conflict with the rules, is admissible pursuant to WAC 461-08-515.

(3) This chapter shall govern practice before the board. The rules in this chapter are consistent with the model rules of procedure issued by the office of administrative hearings, chapter 10-08 WAC except where specifically noted.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-300, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-305 Definitions.** As used in this chapter the following terms shall have the following meanings:

(1) "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) "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 that the department actually receives a completed filing.

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

(6) "Filing" of a document means actual receipt by the board during regular office hours. Any document filed with the board shall contain an affirmation that copies were served on the appropriate agency, local government and parties. Filing by facsimile is permitted of documents ten pages or less if the original document is concurrently mailed or submitted to a commercial delivery service.

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

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

(11) "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) "Service" of a document 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) Facsimile transmission with mailing or submission to a commercial delivery service of copies on the same day. Service by facsimile 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.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-305, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-310 Computation of time.** (1) In computing any period of time prescribed or allowed by these rules or applicable statute, the day of the act after which the designated period of time begins to run is not to be included. The time within which any act shall be done, as provided by these rules, shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a legal holiday, and then it is excluded and the next succeeding day which is neither a Saturday, Sunday nor a legal holi-

day is included. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be 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 which this chapter authorizes.

[Statutory Authority: RCW 90.58.175 and SHB 1314. 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). 96-17-017, § 461-08-310, filed 8/12/96, effective 9/12/96.]

## PART B

### BOARD ADMINISTRATION AND JURISDICTION

**WAC 461-08-315 Board membership, function and jurisdiction.** (1) **Members.** The board is made up of six members. Three members are also members of the pollution control hearings board and are appointed by the governor. A fourth member is appointed by the association of Washington cities and a fifth member is appointed by the association of county commissioners. The sixth member is the commissioner of public lands or the commissioner's designee.

(2) **Function and jurisdiction.** This board is a quasi-judicial body with powers of de novo review authorized by chapter 90.58 RCW to adjudicate or determine the following matters:

(a) Appeals from any person aggrieved by the granting, denying or rescinding of a permit issued or penalties incurred pursuant to chapter 90.58 RCW;

(b) Appeals of department rules, regulations or guidelines; and

(c) Appeals from department decisions to approve, reject or modify a proposed master program or program amendment of local governments which are not planning under RCW 36.70A.040.

(3) This section is intended to be general and informational only and failure herein to list matters over which the board has jurisdiction shall not constitute a waiver or withdrawal of that jurisdiction.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-315, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-320 Office hours, telephone number, telefacsimile number and address of the board.** (1) 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 Rowe Six, Lacey, Washington. The mailing address is:

Shorelines Hearings Board  
4224 6th Avenue S.E., Building No. 2, Rowe Six  
PO Box 40903  
Lacey, WA 98504-0903

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

(2003 Ed.)

(4) The office hours of the environmental hearings office are 8:00 a.m. to 5:00 p.m., Monday through Friday, except for legal holidays.

[Statutory Authority: RCW 90.58.175. 02-06-008, § 461-08-320, filed 2/22/02, effective 3/25/02; 96-15-002, § 461-08-320, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-325 Public information about practice before the board and public records.** (1) Questions about board procedures may be directed to the environmental hearings office by mail or, during regular office hours, by telephone or by telefacsimile.

(2) Case files of appeals pending before the board, past written opinions of the board and other public records maintained by the board under chapter 198-12 WAC are available for public inspection and copying during regular office hours at the environmental hearings office. The form for requests for public records is set forth in WAC 198-12-140. Any person seeking to make copies of such public records may copy the documents at the environmental hearings office for a reasonable charge per page.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-325, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-330 Board decision making on appeals.** The number of board members required to make a decision on a case differs depending on the type of case.

(1) **Short-board appeals.** Pursuant to RCW 90.58.170, petitions for review that involve a single-family residence or an appurtenance to a single-family residence, including a dock or pier for a single-family residence, may be heard by a panel of three board members, at least one and not more than two of whom shall also be members of the pollution control hearings board. Two members of the panel must agree to issue a final decision. The decision of the panel shall be the final decision of the full board.

(2) **Full-board appeals.** All other appeals are full-board appeals. Four members of the board shall constitute a quorum for making a decision and may act even if the other two members are unavailable or have not yet been appointed.

(3) **Administrative appeals judges.** For both full-board and short-board cases, the chairperson may appoint an administrative appeals judge from the environmental hearings office to be the presiding officer.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-330, filed 7/3/96, effective 8/3/96.]

## PART C

### FILING AN APPEAL WITH THE BOARD AND SERVICE

**WAC 461-08-335 Types of petitions before the board.** The board is empowered to hear and decide the following:

(1) Petitions for review of permitting decisions;

(2) Petitions for review of penalties imposed under chapter 90.58 RCW;

[Title 461 WAC—p. 5]

(3) Petitions for review of master programs adopted by jurisdictions that are not subject to the Growth Management Act;

(4) Petitions for review of regulations adopted by the department pursuant to chapter 90.58 RCW;

(5) Petitions for declaratory rulings;

(6) Petitions for rule making by the board; and

(7) Petitions by the department for rescission of permits issued by local government.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-335, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-340 Where to file a petition for review and number of copies.** (1) An adjudicative proceeding before the board shall be begun by filing a petition for review and one copy at the environmental hearings office. The board shall acknowledge filing of the petition for review by a stamp and the board's stamp on the petition shall be prima facie evidence of the date of filing. The board may thereafter require that additional copies be filed.

(2) **Deadlines for filing a petition for review.** There are different deadlines for filing a petition for review depending upon the type of decision or government action being appealed.

(a) A petition for review by any person aggrieved by the granting, denying or rescinding of a permit on shorelines of the state shall be filed with the board within twenty-one days of the "date of filing" as defined in WAC 461-08-305.

(b) A petition for review by any person aggrieved by a penalty assessment shall be filed with the board within thirty days of the date the penalty notice is received.

(c) A petition for review by any person aggrieved by the department's decision to approve, reject or modify a proposed or final shoreline master program, or program amendment, by a local government that is not planning under the Growth Management Act, RCW 36.70A.300, shall be filed with the board within thirty days of the date of the department's written notice of its decision to the local government.

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

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-340, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-345 Deadline for filing petition for review of permitting decisions by the department or attorney general.** The department 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 petition for review with the board and the appropriate local government within twenty-one days from the date the final decision was filed as provided in RCW 90.58.140 (6).

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-345, filed 7/3/96, effective 8/3/96.]

[Title 461 WAC—p. 6]

**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 and telefacsimile number (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 application for a shoreline 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;

(6) A clear and concise statement upon which the appealing party relies to sustain his or her grounds for appeal;

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

(8) The signature of the representative of the appealing party or of the appealing party. 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;

(9) All pleadings shall be so construed as to do substantial justice.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-350, filed 7/3/96, effective 8/3/96.]

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

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

(3) Service on the local government shall be accomplished in one of the following ways:

(a) The petitioner shall serve local government as designated on the permit decision within seven days of filing the petition with the board; or

(b) The petitioner shall serve the department or office within the local government that issued the permit decision within seven days of filing the petition with the board; or

(c) The petitioner shall serve local government pursuant to RCW 4.28.080 within seven days of filing the petition with the board.

(2003 Ed.)



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

(5) For purposes of this rule, service shall be the date of mailing.

(6) The board may dismiss a petition for review where there has not been substantial compliance with the filing and service requirements of RCW 90.58.180 and this rule. Substantial compliance will include actual notice of a petition for review.

[Statutory Authority: RCW 90.58.175. 02-06-009, § 461-08-355, filed 2/22/02, effective 3/25/02; 99-23-038, § 461-08-355, filed 11/12/99, effective 12/13/99; 96-15-002, § 461-08-355, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-365 Board decision making on petitions for review of department rules and regulations.** (1)

Where a petition for review of a department rule or regulation adopted pursuant to chapter 90.58 RCW is filed, the full board shall hold a hearing on the petition, and within sixty days of the final day of hearing, shall issue a decision upholding the validity of the rule, regulation or guideline, unless the board finds that the rule, regulation or guideline:

(a) Is clearly erroneous in light of the policy of this chapter;

(b) Constitutes an implementation of chapter 90.58 RCW in violation of the Constitution or statutes;

(c) Is arbitrary and capricious;

(d) Was developed without full consideration and evaluation of all material submitted to the department during public review and comment; or

(e) Was not adopted in accordance with required procedures.

(2) Where the board decides that the rule, regulation or guideline is invalid under subsection (1)(a) through (e) of this section, the board shall enter a decision stating the reasons for its determination and remanding the rule, regulation or guideline to the department in accordance with RCW 90.58.180(6).

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-365, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-370 Board decision making on petitions for declaratory ruling.** (1) **Right to petition for declaratory ruling.** As prescribed by RCW 34.05.240, any interested person may petition the board at any time for a declaratory ruling.

(2) **Quorum.** Four members of the board shall constitute a quorum when the board acts on declaratory judgment petitions. Four members of the board may act although two positions on the board are vacant.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-370, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-375 Board decision making on petitions for rule making.** (1) **Right to petition for rule making regarding rules of the board.** As prescribed by RCW 34.05.330, any person may petition the board to promulgate, amend or rescind the board's administrative rules as set forth in this chapter. The provisions of these rules and the Admin-

(2003 Ed.)

istrative Procedure Act shall apply to petitions for rule making.

(2) **Quorum.** Four members of the board shall constitute a quorum when the board promulgates, amends or rescinds its administrative rules. Four members of the board may act although two board positions are vacant.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-375, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-380 Board decision making on department of ecology petitions for rescission of permits.** (1) **Department authority to petition.** The department may petition for the rescission of permits issued by local government pursuant to RCW 90.58.140(8).

(2) **Form of the petition.** A petition for rescission 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) The petition 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.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-380, filed 7/3/96, effective 8/3/96.]

**PART D  
APPEARANCE AND PRACTICE BEFORE THE  
BOARD**

**WAC 461-08-385 Persons who may appear before the board.** (1) Any person has the right to represent himself or herself in a proceeding before the board.

(2) The only persons who are qualified to represent another person or entity before the board are the following:

(a) Attorneys at law duly qualified and entitled to practice before the highest court of record of any state.

(b) An authorized officer, partner, owner, employee or member of an association, partnership, corporation, organization, government agency or local government.

(c) Legal interns admitted to practice under the applicable admission to practice rules of the Washington state court rules as long as the conditions and limitations of the applicable rules are satisfied.

(d) Any other individual designated by an entity to serve as a spokesperson in a case with the approval of the board's presiding officer.

(3) 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 applicable state conflict of interest laws.

(4) No former member of the board shall, for a period of one year after the termination of his or her membership, represent a party before the board on any matter.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-385, 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 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 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. 96-15-002, § 461-08-390, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-395 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. 96-15-002, § 461-08-395, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-400 Conduct before the board by representatives.** All persons who are representing parties before the board shall conform to the standards of ethical conduct required of attorneys before the courts of Washington even if

[Title 461 WAC—p. 8]

the representative is not an attorney. Representatives who, in the opinion of the presiding officer, violate those ethical standards may be reprimanded or sanctioned. Sanctions may include, among other measures, the imposition of costs and the exclusion of the representative from the proceedings. The board may, after notifying the representative and holding a hearing, take appropriate disciplinary action including, but not limited to, barring such person from representing another party in any future board proceedings.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-400, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-405 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. 96-15-002, § 461-08-405, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-410 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 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. 96-15-002, § 461-08-410, filed 7/3/96, effective 8/3/96.]



**WAC 461-08-415 Mediation.** The board may, on occasion, recommend that the parties to an appeal engage in mediation. One or more parties may also recommend to the other parties or the presiding officer that a mediation occur. Subject to availability, an administrative appeals judge from the environmental hearings office may serve as the mediator for the board. In the event that the mediation proves unsuccessful and the case proceeds to hearing, any administrative appeals judge who served as a mediator will neither preside over the hearing nor have any contact with the board members regarding the case other than to inform them that the mediation did not result in a settlement.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-415, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-420 Subpoenas.** (1) **Issuance.** Subpoenas may be issued by any member of the board, the presiding officer assigned to the case or by the attorney of record, as provided in the Administrative Procedure Act. Each subpoena shall be subscribed with the signature of the issuing person. Parties desiring subpoenas to be signed by the presiding officer or a board member shall make a showing of general relevance and reasonable scope of the testimony or evidence sought, shall prepare the subpoenas for issuance, shall 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 to a witness who is not party to the case shall be made by personally serving a copy of the subpoena to such person, in accordance with civil rule 45, 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 acknowledgment 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 subpoenaed 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. 96-15-002, § 461-08-420, filed 7/3/96, effective 8/3/96.]

(2003 Ed.)

## PART E PREHEARING PRACTICE

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

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

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-425, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-430 Correction or amendment of notice.** (1) Within thirty days of receipt by the board, if any petition for review is found to be defective or insufficient, the board may require the party filing the petition for review to correct, clarify or amend the same to conform to the requirements of chapter 90.58 RCW 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 the petition upon failure to comply within a specified time.

(2) Other amendments and supplemental pleadings shall conform to civil rule 15.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-430, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-435 Intervention.** (1) The department and the attorney general may intervene by right within fifteen days from the date of receipt of the petition for review by the department or the attorney general pursuant to RCW 90.58.180(1) in any matter set out therein, and if such intervention is sought it shall be granted.

(2) The presiding officer may grant a petition for intervention by any person at any time, upon determining that the petitioner qualifies as an intervenor pursuant to civil rule 24, that the intervention will serve the interests of justice and that the prompt and orderly conduct of the appeal will not be impaired.

(3) The presiding officer may impose conditions upon the intervenor's participation in the proceedings.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-435, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-440 Joinder of parties.** The presiding officer shall order the joinder of the permittee, permitting agency or any other interested person or entity in accordance with civil rule 19. The presiding officer may also permit the joinder of persons who are not necessary to the determination of the appeal in accordance with civil rule 20.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-440, filed 7/3/96, effective 8/3/96.]

[Title 461 WAC—p. 9]

**WAC 461-08-445 Answers to petitions for review.**

Respondent(s) may file an answer to a petition for review with the board and serve a copy thereof upon other parties within twenty days of receipt of the petition for review. Answers shall generally conform to the requirements of a petition for review.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-445, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-450 Prehearing scheduling letters.** (1)

Upon receipt of a petition for review which complies with the requirements of these regulations, the board shall promptly mail to each party 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 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 at least seven days before the prehearing conference.

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

**WAC 461-08-455 Prehearing conferences.** (1) The purpose of a prehearing conference shall be:

(a) To determine the feasibility of a settlement of the appeal or, failing settlement;

(b) To prepare the case for hearing by scheduling prehearing deadlines and by identifying the issues, and if possible, witnesses, exhibits, stipulations, and admissions.

(2) Appearance by a party or by the party's representative at a prehearing conference is mandatory. If a party fails to attend a prehearing conference, that is not justified by good cause, the presiding officer may issue an order of default against the absent party or other appropriate action.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-455, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-460 Prehearing orders.** After a prehearing conference which has not resulted in settlement, the presiding officer shall enter a prehearing order. Normally, this will include a statement of issues, a schedule for filing motions and briefs, and lists of witnesses and exhibits or provide for filing such lists, as well as other matters which may bear on the preparation for hearing. The issues stated in the prehearing order shall control the subsequent course of the proceedings, unless modified for good cause by subsequent order.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-460, filed 7/3/96, effective 8/3/96.]

[Title 461 WAC—p. 10]

**WAC 461-08-465 Settlement and mediation agreements.** (1) Where the parties settle an appeal before hearing, the parties shall prepare a written order of dismissal to which the settlement agreement is attached, and submit that order to the board. If the agreement is in accordance with the law, the board shall enter the order and dispose of the case.

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

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-465, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-470 Use of telephone conferences, motion hearings and hearings.** Upon the motion of any party or independently, the presiding officer may decide to conduct any conference, motion hearing or hearing by telephone conference call to promote the fair, speedy and economical processing of a matter. If the presiding officer grants the party's request for a telephone conference, the requesting party shall initiate and pay for the conference call.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-470, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-475 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. Each written motion shall have appended to it the order which the motion seeks.

(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 stipulation of all parties and present a stipulated order wherever possible.

(3) If the motion is contested, any party may request that the board hold a motion hearing. At a motion hearing, the board will consider the arguments of the parties but will not take evidence. Unless a motion hearing is requested by one or more parties, or the board independently sets a motion hearing date, the board will normally decide the motion exclusively on the parties' written submissions. Where any party requests a motion hearing, that party shall procure from the hearing coordinator an available date for the motion hearing and prepare a note that sets the time, date and location of the motion hearing. The moving party shall note the motion for hearing on a date deemed by the hearing coordinator to be available for that purpose. The motion, order and note for motion hearing shall then be filed and served. Where the hearing coordinator specifies that the hearing shall be telephonic, the moving party shall originate the telephonic hearing conference call. The presiding officer will decide whether or not a motion hearing will be held, and notify the parties accordingly.

(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 responses to any motion shall be filed and served ten days from the date the motion is received. The moving party shall then have seven days from receipt of the response to file and serve a reply.

(2003 Ed.)

(b) In cases where the moving party requests a motion hearing, all dispositive motions shall be filed and served not later than twenty-eight days before the motion hearing.

(c) All dispositive motions shall be filed and served not later than forty-five days before the hearing date, unless the presiding officer by order allows otherwise.

(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) The board will decide a motion on the written record unless the presiding officer orders a motion hearing.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-475, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-480 Postponements and continuances of hearings.** (1) Postponement or continuance of a hearing is within the discretion of the presiding officer, whether contested or uncontested by the parties. The board may postpone or continue a hearing on its own motion.

(2) The postponement or continuance of a hearing shall be sought by written motion and according to the procedure set forth in WAC 461-08-475.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-480, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-485 Dismissal, default or withdrawal of appeal.** (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 the appellant rests its case-in-chief during the hearing are mandatory and afterwards are permissive.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-485, filed 7/3/96, effective 8/3/96.]

## PART F HEARINGS

**WAC 461-08-490 Hearing briefs.** Hearing briefs, if filed, should be submitted to the board at least seven days before the time of hearing or other such time as the board may prescribe. For a full-board case, an original and six copies must be filed. In a short-board case, an original and three copies must be filed. In all cases where 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.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-490, filed 7/3/96, effective 8/3/96.]

(2003 Ed.)

**WAC 461-08-495 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 or other officer with authority to administer oaths. All testimony to be considered by the board shall be sworn or affirmed.

(3) **Recording.**

(a) An official recording of all evidentiary hearings shall be made by manual, electronic, or other type of recording device.

(b) Unofficial use of photographic and recording equipment is permitted at hearings; however, the presiding officer shall be consulted first and may impose conditions on their use as necessary to prevent disruption of the hearing.

(4) **Order of presentation of evidence.**

(a) The presiding officer shall determine the proper order of presentation of evidence. As a general rule, the appealing party shall initially introduce its evidence.

(b) The opposing party shall introduce its evidence after the appellant has rested. Rebuttal and surrebuttal evidence will be received only at the discretion of the presiding officer.

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

(5) **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.

(6) **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.

(7) **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 applicable state conflict of interest law, 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.

(8) **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.

(9) **Rulings.** The presiding officer, on objection or independently, 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 461-08-515 through 461-08-535.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-495, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-500 Scope and standard of review and burden of proof.** (1) Hearings upon petitions for review shall be quasi-judicial in nature. The scope and standard of review shall be *de novo* unless otherwise required by law. However,

[Title 461 WAC—p. 11]

the board shall conduct the following types of hearings on the record compiled by the department:

(a) Petitions for review of department decisions to adopt or approve rules, regulations or guidelines pursuant to chapter 90.58 RCW; and

(b) Petitions for review to approve, reject or modify a proposed master program or master program amendment.

(2) The board shall make findings of fact based on the preponderance of the evidence unless otherwise required by law.

(3) Persons requesting review pursuant to RCW 90.58.180 (1) and (2) shall have the burden of proof in the matter. The issuing agency shall have the initial burden of proof in cases involving penalties or regulatory orders.

[Statutory Authority: RCW 90.58.175. 02-06-010, § 461-08-500, filed 2/22/02, effective 3/25/02; 96-15-002, § 461-08-500, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-505 Legal criteria.** (1) In deciding upon a petition for review brought pursuant to RCW 90.58.180 (1) and (2) the board shall make its decision considering the following legal criteria:

(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 is consistent with the applicable master program and the provisions of chapter 90.58 RCW, and the department's implementing regulations.

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

[Statutory Authority: RCW 90.58.175. 02-06-010, § 461-08-505, filed 2/22/02, effective 3/25/02; 96-15-002, § 461-08-505, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-510 Provision of interpreters and of reasonable accommodations to individuals with special needs.** (1) Whenever any person involved in an adjudicative proceeding before the board is eligible for an interpreter, as that eligibility is defined in WAC 10-08-150, or qualifies for reasonable accommodations as an individual with disabilities, that person shall request an interpreter or other reasonable accommodations from the presiding officer not later than three weeks before the date of the hearing, conference or other situation for which the interpreter or assistance is needed. The board shall comply with WAC 10-08-150 and 10-08-160(2) regarding the provision of interpreters.

(2) Information about proceedings before the board is available in alternate format upon request.

[Title 461 WAC—p. 12]

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-510, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-515 Rules of evidence—Admissibility criteria.** (1) Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. All relevant evidence is admissible which, in the opinion of the presiding officer, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness. In passing upon the admissibility of evidence, the presiding officer 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) The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-515, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-520 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 Washington state courts and administrative agencies; 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.

[Statutory Authority: RCW 90.58.175 and Den Beste v. Washington, No. 13967-1-III (Div. III, April 18, 1996). 96-17-017, § 461-08-520, filed 8/12/96, effective 9/12/96.]

**WAC 461-08-525 Rules of evidence—Official notice—Material facts.** (1) 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:

(a) **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;

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

(c) **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;

(d) **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.

(2) **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.

(3) **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.

(4) **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 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.

(5) **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. 96-15-002, § 461-08-525, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-530 Presentation of additional evidence by presiding officer.** The presiding officer may, when all parties have rested, present such evidence, in addition to that presented by the parties, as deemed necessary to decide the appeal fairly and equitably. Any such evidence secured and presented by the presiding officer shall be presented in an impartial manner, and shall be received subject to full oppor-

(2003 Ed.)

tunity for cross-examination by all parties. If a party desires to present rebuttal evidence to any evidence so presented by the presiding officer, application shall be made therefor immediately following the conclusion of such evidence. Such application shall be granted by assignment of a time and place for presentation of such rebuttal evidence.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-530, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-535 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. 96-15-002, § 461-08-535, filed 7/3/96, effective 8/3/96.]

## PART G

### DECISIONS BY THE BOARD AFTER HEARING

**WAC 461-08-540 Contents of the record.** The record before the board in any adjudicative proceeding shall consist of the decision or order appealed from, the petition 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 461-08-545, 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.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-540, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-545 Preparation of transcripts.** (1) The board, in its discretion, may at any time cause a transcript to be printed, but will not normally do so.

(2) When the board does not cause a transcript to be printed, it shall be the obligation of the party wishing a transcript, or portions of it, to order the same from the board reporter and assume the printing costs.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-545, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-550 Preparation of findings, conclusions and orders.** Upon request of the board or presiding officer, findings, conclusions and orders shall be prepared by counsel and the same be based upon the board's oral or memorandum opinion. The board or presiding officer may adopt, in whole or in part, the findings, conclusions and orders or the board may prepare its own findings, conclusions and orders.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-550, filed 7/3/96, effective 8/3/96.]

[Title 461 WAC—p. 13]

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

(2) **Short-board cases.** When the hearing on the petition for review has been heard by two or more board members in a short-board case, and upon completion of the record and submission of the issues for decision and order, a written final decision and order concurred in by them then may be adopted which shall contain findings and conclusions as to each contested issue of fact and law: Provided, That in the event that the three board members consider the record and two members cannot agree on a decision, the substantive decision under appeal will control. The board will formally adopt its final decision and order.

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

[Statutory Authority: RCW 90.58.175, 99-23-038, § 461-08-555, filed 11/12/99, effective 12/13/99; 96-15-002, § 461-08-555, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-560 Deadline for the board to issue final decision on petitions for review of permitting decisions. Waivers and extensions of deadline. (1)** The board shall, pursuant to RCW 90.58.180, issue a final decision on petitions for review arising out of the granting, denying or rescinding of a permit within one hundred eighty days of the following:

- (a) The date the petition for review is filed; or
  - (b) The date a motion to intervene is filed by the department or the attorney general, whichever is later.
- (2) The parties may agree to waive the one hundred eighty-day deadline.
- (3) The board may, on its own motion, extend the deadline for thirty days after determining that good cause exists for the extension.

[Statutory Authority: RCW 90.58.175 and SHB 1314, 97-19-063, § 461-08-560, filed 9/15/97, effective 10/16/97. Statutory Authority: RCW 90.58.175, 96-15-002, § 461-08-560, filed 7/3/96 effective 8/3/96.]

**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 within ten days of mailing of the final decision. The board may require an answer to the petition. Copies of the petition for reconsideration, and an answer, if required, shall be served on the other parties of record.

[Title 461 WAC—p. 14]

(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 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) Copies of the final decision and order and of the board's disposition of any petition for reconsideration shall be mailed by the board to each party to the appeal or to the attorney or representative of record. Service on the representative shall constitute service on the party.

[Statutory Authority: RCW 90.58.175, 96-15-002, § 461-08-565, filed 7/3/96, effective 8/3/96.]

## PART H APPEALS FROM BOARD DECISIONS

**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 days of the date that the board issues its final order or decision. The petitioner shall file a copy of the petition for review to superior court with the board and 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 90.58.175 and SHB 1314, 97-19-063, § 461-08-570, filed 9/15/97, effective 10/16/97. Statutory Authority: RCW 90.58.175, 96-15-002, § 461-08-570, filed 7/3/96 effective 8/3/96.]

**WAC 461-08-575 Direct review to the court of appeals based upon an accepted certificate of appealability by the board. (1)** Within thirty days after filing the petition for review with the superior court, a party may file an application for direct review with the superior court and must serve the board and all parties of record. The application for direct review shall request the board to file a certificate of appealability.

(2) If the board's jurisdiction is among the issues on review to the superior court, the board may, on its own motion, file an application for direct review with the superior court on the jurisdictional issue.

(3) From the date the board is served a copy of the application for direct review under subsection (1) of this section, the board shall have thirty days to grant or deny the request for a certificate of appealability. The board shall file its decision granting or denying the certificate of appealability with the superior court and serve the parties of record.

(4) The board may issue a certificate of appealability if it finds that delay in obtaining a final and prompt determination of the issues would be detrimental to any party or the public interest, and either of the following:

(a) Fundamental and urgent statewide or regional issues are raised; or

(2003 Ed.)



(b) The proceeding is likely to have significant precedential value.

(5) The board shall state in the certificate of appealability, or in its decision denying the certificate, which criteria set forth in subsection (4) of this section it applied and how those criteria were or were not met.

(6) Where the board issues a certificate of appealability, the parties shall have fifteen days from the date of service to file a notice of discretionary review in the superior court. The notice shall include a copy of both the certificate of appealability and the final decision.

(7) If the appellate court accepts review, the certificate of appealability shall be transmitted to the court of appeals as part of the certified record.

(8) If the certificate of appealability is denied, review shall be by the superior court. The superior court's decision may be appealed to the court of appeals.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-575, filed 7/3/96, effective 8/3/96.]

**WAC 461-08-580 Certification of record.** Within thirty 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. 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. 96-15-002, § 461-08-580, filed 7/3/96, effective 8/3/96.]

## PART I APPLICABILITY OF SEPA

**WAC 461-08-585 Applicability of SEPA guidelines.** The board has reviewed its authorized activities pursuant to the SEPA rules and has found them all to be exempt from that chapter.

[Statutory Authority: RCW 90.58.175. 96-15-002, § 461-08-585, filed 7/3/96, effective 8/3/96.]

## Chapter 461-12 WAC PRACTICE AND PROCEDURE—PUBLIC RECORDS

WAC	
461-12-010	Purpose.
461-12-020	Definitions.
461-12-030	Public records available.
461-12-031	Membership, function and jurisdiction.
461-12-032	Administration of the board.
461-12-033	Meetings of the board.
461-12-034	Quorum.
461-12-036	Communications with the board.
461-12-040	Public records officer.
461-12-050	Office hours.
461-12-060	Requests for public records.
461-12-070	Copying.
461-12-080	Exemptions.
461-12-090	Review of denials of public records requests.
461-12-100	Protection of public records.
461-12-110	Records index.

(2003 Ed.)

461-12-120	Communications with the board.
461-12-130	Adoption of form.

### 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.
------------	--

**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 pro-

[Title 461 WAC—p. 15]

visions 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

[Title 461 WAC—p. 16]

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

(2003 Ed.)

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

(2003 Ed.)

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 Rowsix, 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 Rowsix, 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.]