

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 Board office hours and contact information.
- 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. WSR 94-12-028, § 461-08-001, filed 5/24/94, effective 6/24/94.] Repealed by WSR 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 WSR 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 WSR 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. WSR 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 WSR 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. WSR 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 WSR 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 WSR 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175.		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. WSR 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 WSR 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 WSR 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 WSR 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. WSR 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 WSR 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. WSR 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 WSR 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. WSR 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 WSR 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. WSR 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 WSR 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. WSR 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-093, filed 9/9/81.] Repealed by WSR 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. WSR 94-12-028, § 461-08-047, filed 5/24/94, effective 6/24/94.] Repealed by WSR 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 WSR 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. WSR 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 WSR 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. WSR 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 WSR 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. WSR 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-053, filed 9/9/81.] Repealed by WSR 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. WSR 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 WSR 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. WSR 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 WSR 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 WSR 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. WSR 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 WSR 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 WSR 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. WSR 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 WSR 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. WSR 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 WSR 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. WSR 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-070, filed 9/9/81; WSR 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 WSR 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. WSR 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 WSR 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 WSR 96-15-002,	461-08-130	Prehearing conference—Excerpts from documentary evidence. [Statutory Authority: RCW 90.58.175. WSR 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 WSR 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 WSR 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 WSR 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. WSR 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-143, filed 9/9/81.] Repealed by WSR 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. WSR 94-12-028, § 461-08-144, filed

- 5/24/94, effective 6/24/94.] Repealed by WSR 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 WSR 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. WSR 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 WSR 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. WSR 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 WSR 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. WSR 94-12-028, § 461-08-156, filed 5/24/94, effective 6/24/94.] Repealed by WSR 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. WSR 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-157, filed 9/9/81.] Repealed by WSR 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. WSR 94-12-028, § 461-08-160, filed 5/24/94, effective 6/24/94; WSR 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 WSR 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. WSR 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 WSR 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. WSR 94-12-028, § 461-08-167, filed 5/24/94, effective 6/24/94.] Repealed by WSR 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. WSR 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 WSR 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 WSR 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 WSR 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. WSR 83-06-031 (Order 83-1, Resolution No. No. 83-1), § 461-08-180, filed 2/24/83; Order 74-4, § 461-08-180, filed 7/3/74.] Repealed by WSR 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 WSR 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. WSR 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 WSR 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. WSR 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 WSR 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 WSR 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 WSR 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 WSR 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. WSR 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 WSR 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. WSR 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 WSR 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. WSR 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 WSR 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. WSR 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 WSR 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 WSR 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. WSR 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 WSR 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. WSR 94-12-028, § 461-08-237, filed 5/24/94, effective 6/24/94.] Repealed by WSR 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. WSR 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 WSR 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. WSR 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 WSR 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 WSR 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 WSR 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. WSR 81-19-025 (Order 82-1, Resolution No. 82-1), § 461-08-260, filed 9/9/81; Order 75-1, §

- 461-08-265 461-08-260, filed 5/9/75; Order 74-4, § 461-08-260, filed 7/3/74.] Repealed by WSR 96-15-002, filed 7/3/96, effective 8/3/96. Statutory Authority: RCW 90.58.175. Petition by the department for rescission of permits. [Order 77-1, § 461-08-265, filed 2/3/77.] Repealed by WSR 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 WSR 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. WSR 96-15-002, § 461-08-360, filed 7/3/96, effective 8/3/96.] Repealed by WSR 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 administrative procedure, pre-trial 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 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-300, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-300, filed 7/3/96, effective 8/3/96.]

WAC 461-08-305 Definitions. The following terms apply throughout this chapter and, unless the context clearly requires otherwise, 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 of actual receipt by the department of the local government's decision.

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

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

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

(6) "Filing" of a document means actual receipt by the board between the hours of 8:00 a.m. and 5:00 p.m. on days other than Saturdays, Sundays, or legal holidays. The board's date stamp placed on the document shall be evidence of the filing date.

(a) Electronic filing of documents, and fax filing of documents ten pages or less, are permitted, so long as the original document and any required copies are mailed or submitted to a commercial delivery service on the same day. The date and time of receipt will be the date of transmission as indicated by the board's computer or fax machine, unless the transmission is completed after 5:00 p.m. or on a Saturday, Sunday, or legal holiday, in which case filing will be the next business day.

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

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

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

(e) Electronic service. Electronic service of documents, other than the appeal document itself, is authorized if the parties agree to electronic service or if authorized by the presiding officer.

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

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

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

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

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 Washington state association of counties. 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 or reject 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

(1/14/15)

board has jurisdiction shall not constitute a waiver or withdrawal of that jurisdiction.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-315, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 90.58.175, 90.58.090, 90.58.140, 90.58.180, and 90.58.190. WSR 13-21-068, § 461-08-315, filed 10/16/13, effective 11/16/13. Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-315, filed 7/3/96, effective 8/3/96.]

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

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

(a) The board is organized within the Environmental and Land Use Hearings Office, 1111 Israel Road S.W., Tumwater, Washington. The mailing address is:

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

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

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

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

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 and land use hearings office by mail or, during regular office hours, by telephone, by fax, or email at eluho@eluho.wa.gov.

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

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

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-325, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW

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

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 90.58.185, 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, and petitions for review involving a penalty of fifteen thousand dollars or less, may be heard by a panel of three board members. The chair of the hearings board may also designate other cases for review by a short-board appeal panel. In designating these cases, the chair shall consider factors such as the complexity and precedential nature of the case and the efficiency and cost-effectiveness of using a short board versus a full board. A short-board appeal panel must have at least one but not more than two members of the pollution control hearings board. Two members of the panel must agree to issue a final decision. The decision of the panel is the final decision of the full board.

(2) **Full-board appeals.** All other appeals are full-board appeals. Four members of the board 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 and land use hearings office to be the presiding officer.

[Statutory Authority: RCW 90.58.175, 90.58.090, 90.58.140, 90.58.180, and 90.58.190. WSR 13-21-068, § 461-08-330, filed 10/16/13, effective 11/16/13. Statutory Authority: RCW 90.58.175, chapter 34.05 RCW. WSR 09-21-032, § 461-08-330, filed 10/13/09, effective 11/13/09. Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 461-08-330, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 90.58.175. WSR 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;
- (3) Petitions for review of master programs adopted by jurisdictions that are not planning pursuant 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.

[Ch. 461-08 WAC p. 6]

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-335, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 90.58.175. WSR 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 is initiated by filing a petition for review with the board at the environmental and land use hearings office. The board shall acknowledge filing of the petition for review by a stamp and the board's stamp on the petition is 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.** Different deadlines for filing a petition for review apply depending upon the type of shoreline decision or government action taken, and whether local government or the department makes the final decision.

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

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

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

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

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

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

[Statutory Authority: RCW 90.58.175, 90.58.090, 90.58.140, 90.58.180, and 90.58.190. WSR 13-21-068, § 461-08-340, filed 10/16/13, effective 11/16/13. Statutory Authority: RCW 43.21B.170, 90.58.175, 2010 c 84, 2010 c 130, 2010 c 210, and 2010 c 285. WSR 10-18-021, § 461-08-340, filed 8/23/10, effective 9/23/10. Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 461-08-340, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-340, filed 7/3/96, effective 8/3/96.]

(1/14/15)

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, 90.58.090, 90.58.140, 90.58.180, and 90.58.190. WSR 13-21-068, § 461-08-345, filed 10/16/13, effective 11/16/13. Statutory Authority: RCW 43.21B.170, 90.58.175, 2010 c 84, 2010 c 130, 2010 c 210, and 2010 c 285. WSR 10-18-021, § 461-08-345, filed 8/23/10, effective 9/23/10. Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-345, filed 7/3/96, effective 8/3/96.]

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

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

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

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.

(1/14/15)

(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.

(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, the date of service is the date of mailing.

[Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 461-08-355, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 90.58.175. WSR 02-06-009, § 461-08-355, filed 2/22/02, effective 3/25/02; WSR 99-23-038, § 461-08-355, filed 11/12/99, effective 12/13/99; WSR 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. WSR 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. WSR 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 Administrative 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. WSR 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. WSR 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 local jurisdiction, or member of the attorney general's staff may appear in a representative capacity on behalf of other parties in a board proceeding, except when permitted by applicable rules of professional conduct or conflict of interest laws.

[Ch. 461-08 WAC p. 8]

(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 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-385, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 90.58.-175. WSR 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. WSR 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 consistent with civil rule 71.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-395, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 90.58.-175. WSR 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 the representative is not an attorney. Representatives who, in the opinion of the presiding officer, violate those ethical stan-

(1/14/15)

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

(1/14/15)

WAC 461-08-415 Mediation. In all appeals, upon request of one or more parties and with the consent of all parties, the board may assign a mediator. The mediator must be an administrative appeals judge or other duly authorized agent of the board who has received training in dispute resolution techniques or has a demonstrated history of successfully resolving disputes, as determined by the board. A person who mediates in a particular appeal may not participate in a hearing on that appeal and may not write the decision and order in the appeal. The mediator may not communicate with board members regarding the mediation other than to inform them of the pendency of the mediation and whether the case settled. Mediation provided by the board must be conducted pursuant to the provisions of the Uniform Mediation Act, chapter 7.07 RCW.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-415, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 43.21B.170, 90.58.175, 2010 c 84, 2010 c 130, 2010 c 210, and 2010 c 285. WSR 10-18-021, § 461-08-415, filed 8/23/10, effective 9/23/10. Statutory Authority: RCW 90.58.175. WSR 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 at least ten days before the hearing, 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 43.21B.170, 90.58.175, 2010 c 84, 2010 c 130, 2010 c 210, and 2010 c 285. WSR 10-18-021, § 461-08-420, filed 8/23/10, effective 9/23/10. Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-420, filed 7/3/96, effective 8/3/96.]

PART E

PREHEARING PRACTICE

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

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

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

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. WSR 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.

(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 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-435, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 90.58.-175. WSR 96-15-002, § 461-08-435, filed 7/3/96, effective 8/3/96.]

[Ch. 461-08 WAC p. 10]

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. WSR 96-15-002, § 461-08-440, filed 7/3/96, effective 8/3/96.]

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. WSR 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. WSR 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 is to prepare the case for hearing by scheduling prehearing deadlines and by identifying the issues. At the prehearing conference, the presiding officer will encourage the parties to engage in settlement negotiations as the case proceeds.

(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 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-455, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 90.58.-175. WSR 96-15-002, § 461-08-455, filed 7/3/96, effective 8/3/96.]

WAC 461-08-460 Prehearing orders. Following the prehearing conference the presiding officer shall enter a prehearing order. Normally, this will include a statement of issues, a schedule for filing motions and briefs, as well as other matters which may bear on the preparation for hearing.

(1/14/15)

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 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-460, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 90.58.-175. WSR 96-15-002, § 461-08-460, filed 7/3/96, effective 8/3/96.]

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, submit that order to the board, and the board shall enter an order and dismiss the case.

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

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-465, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 90.58.-175. WSR 96-15-002, § 461-08-465, filed 7/3/96, effective 8/3/96.]

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, oral argument on a motion, or hearing by telephone conference call or other electronic means to promote the fair, speedy, and economical processing of a matter.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-470, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 43.21B.-170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 461-08-470, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 90.58.175. WSR 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 must be by motion which, unless made during a hearing, must be in writing, state with particularity the grounds therefor and set forth the relief sought. A moving party is not required to submit a proposed order with a motion unless requested to do so by the presiding officer.

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

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

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

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

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

(1/14/15)

(c) All responses to any nondispositive motion must be filed and served five days from receipt of the motion by the nonmoving party. The moving party then has three days from receipt of the response to file and serve a reply.

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

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

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

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) A party may seek the postponement or continuance of a hearing by written motion and according to the procedure set forth in WAC 461-08-475.

[Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 461-08-480, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 90.58.175. WSR 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 to withdraw an appeal shall be governed by civil rule 41.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-485, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 90.58.-175. WSR 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, must be submitted to the board at least seven days before the time of hearing or such other time as directed by the presiding officer. The original brief must be filed with the board and a copy served on the other parties or their attorneys. Additional copies must be submitted to the board as required by the presiding officer and consistent with the prehearing order. The board may permit or require the filing of additional briefs.

[Statutory Authority: RCW 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-490, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW

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

WAC 461-08-495 Procedures at hearings. (1) **Presiding officer.** All hearings are 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.** All testimony to be considered by the board must be sworn or affirmed. The presiding officer, or other authorized officer, shall administer the oath to witnesses.

(3) **Recording.**

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

(b) Unofficial use of photographic and recording equipment is permitted at hearings; however, anyone seeking to use such equipment must consult first with the presiding officer, who 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 except that in the case of an appeal from a regulatory order or an order assessing a penalty, the issuing agency shall initially introduce all evidence necessary to its case.

(b) The opposing party shall introduce its evidence after the party initially presenting evidence has rested.

(c) Rebuttal and surrebuttal evidence will be received only at the discretion of the presiding officer.

(d) 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.** Except when permitted by applicable state conflict of interest law, no former employee of the department or the board or the attorney general may appear as an expert witness on behalf of other parties in a board proceeding in which he or she took an active part in the matter giving rise to the appeal as an employee or representative of the department or board.

(8) **Objections and motions to strike.** Objections to the admission or exclusion of evidence must be in short form, stating the legal grounds of objection relied upon.

(9) **Rulings.** The presiding officer, on objection or independently, shall exclude all irrelevant or unduly repetitious evidence. 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 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-495, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 461-08-495, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 90.58.175. WSR 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, 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 or reject 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, 90.58.090, 90.58.140, 90.58.180, and 90.58.190. WSR 13-21-068, § 461-08-500, filed 10/16/13, effective 11/16/13. Statutory Authority: RCW 90.58.175. WSR 02-06-010, § 461-08-500, filed 2/22/02, effective 3/25/02; WSR 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. WSR 02-06-010, § 461-08-505, filed 2/22/02, effective 3/25/02; WSR 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.

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

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

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

(3) The board shall mail copies of the final decision and order to each party to the petition for review or to the attorney or representative of record, if any. Service upon the representative constitutes service upon the party.

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

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. WSR 97-19-063, § 461-08-560, filed 9/15/97, effective 10/16/97. Statutory Authority: RCW 90.58.175. WSR 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 and served on all parties within ten days of mailing of the final decision. The board may require an answer, or parties may elect to file an answer, to the petition for reconsideration. Any answer to a petition for reconsideration must be filed and served on all parties within five days of the date of receipt of the petition.

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

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

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

(3) The board shall mail copies of the final decision and order and of the board's disposition of any petition for reconsideration to each party to the appeal or to the attorney or representative of record. Service on the representative constitutes service on the party.

[Statutory Authority: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 461-08-565, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 90.58.175. WSR 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 serves 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 43.21B.170, 90.58.175, 2010 c 84, 2010 c 130, 2010 c 210, and 2010 c 285. WSR 10-18-021, § 461-08-570, filed 8/23/10, effective 9/23/10. Statutory Authority: RCW 90.58.175 and SHB 1314. WSR 97-19-063, § 461-08-570, filed 9/15/97, effective 10/16/97. Statutory Authority: RCW 90.58.175. WSR 96-15-002, § 461-08-570, filed 7/3/96, effective 8/3/96.]

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 by the court of appeals 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,

(1/14/15)

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

(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 have fifteen days from the date the certificate is served to file a notice of discretionary review in the superior court. The notice must include a copy of both the certificate of appealability and the final order or decision of the board being appealed.

(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 43.21B.170, 90.58.175. WSR 15-03-044, § 461-08-575, filed 1/14/15, effective 2/14/15. Statutory Authority: RCW 43.21B.-170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW. WSR 07-03-074, § 461-08-575, filed 1/17/07, effective 2/17/07. Statutory Authority: RCW 90.58.175. WSR 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. WSR 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. WSR 96-15-002, § 461-08-585, filed 7/3/96, effective 8/3/96.]