

WAC 461-08-340 Filing a timely petition for review with the board. (1) An adjudicative proceeding before the board is initiated by filing a petition for review with the board. A petition shall be filed with the board electronically through the CMS, except as identified in WAC 461-08-381 (3)(e). If a party does not have the technological capacity to file electronically through the CMS, a party may file by personal delivery, commercial delivery, fax, electronic mail, or first-class, registered, or certified mail. A petition is filed with the board on the date the board actually receives the petition. Upon receiving the petition, the board will acknowledge receipt. The board's record of the date and time of receipt of the petition is evidence of the date of filing. Filings transmitted after 5:00 p.m., or on a Saturday, Sunday, or legal holiday, shall be considered filed the on next business day. If the last day for filing a document as required by these rules falls on a day when the board is closed under WAC 461-08-320(3), then the time for such filing shall be extended until the end of the next business day upon which the board is open for business.

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 23-11-078, filed 5/17/23, effective 6/16/23)

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 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))~~ their 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) Proof of service must be filed with the board to perfect the appeal;

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

NEW SECTION

WAC 461-08-381 Claims of confidential and exempt information.

(1) Statutory provisions limit or prevent disclosure of certain information provided to the board. This rule addresses how to designate documents as containing exempt or confidential information when filing with the board. WAC 461-08-476 governs access to, and exchange of, such information in proceedings before the board. Chapter 198-14 WAC governs ELUHO's process for responding to requests for public records.

(2) Definitions.

(a) Document means any writing as the legislature has defined that term in the Public Records Act, chapter 42.56 RCW.

(b) Confidential information means information properly designated as confidential pursuant to the Climate Commitment Act, chapter 70A.65 RCW, the Public Records Act, chapter 42.56 RCW, or any other provision of law.

(c) Exempt information means information prohibited from disclosure under an exemption in the Public Records Act, chapter 42.56 RCW, the Climate Commitment Act, chapter 70A.65 RCW, or any other provision of law providing an exemption from disclosure.

(d) Provider means any person who submits documents to the board under a claim that information contained therein is confidential or exempt.

(3) Filing confidential or exempt information with the board.

(a) Any provider claiming that information provided to the board is confidential or exempt must make that claim in writing at the time of filing and must state the basis for the claim.

(b) The provider must also file a cover sheet identifying that one or more documents in the filing contain information claimed as confidential or exempt.

(c) Any provider claiming that a document contains confidential or exempt information must file a redacted and an unredacted version with the board.

(d) If the claim applies to multiple pages within a document, the provider may file a single page in the redacted version identifying the contiguous pages that are subject to the claim. If the claim applies to a document in its entirety, the provider may file a single page as the redacted version identifying that the document in its entirety is confidential or exempt.

(e) Unredacted versions must be filed by personal delivery, commercial delivery, fax, electronic mail, or first-class, registered, or certified mail. The provider should contact the board's staff for instructions on filing unredacted versions with the board.

(4) Designating information as confidential or exempt.

(a) The provider must clearly designate information claimed to be confidential or exempt on each page of the unredacted version by outlining, underlining, bracketing, or marking the text with gray shading. The provider must clearly mark each copy of the document with the designation "Outlined/shaded/underlined/bracketed information is designated as confidential/exempt pursuant to (insert provision of law)" on the first page of a multipage document and on each specific page that the provider asserts a claim.

(b) The provider must label the redacted version of the document as redacted. The provider must completely mask the information subject to the claim or leave a blank space where the information is located in the redacted version. To the extent practicable, the redacted and unredacted versions must have the same pagination and the text must appear on the same lines on each page.

(c) When a document contains more than one type of information, the provider is responsible for distinguishing between information designated as confidential or exempt.

(5) Motion for protective order. When a provider designates and files documents under this rule and an applicable protective order has not been issued, the provider must file a motion for protective order at the time of filing the designated information.

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

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.

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

AMENDATORY SECTION (Amending WSR 23-11-078, filed 5/17/23, effective 6/16/23)

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

(1) To administer oaths and affirmations.

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

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

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

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

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

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

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

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

(10) To hold prehearing 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.

NEW SECTION

WAC 461-08-411 Consolidation. (1) The presiding officer may consolidate matters when consolidation will:

- (a) Expedite disposition of the matters;
- (b) Avoid duplication of testimony; and
- (c) Not prejudice the rights of the parties.

(2) Where multiple permits for the same underlying clean energy project, as defined in RCW 43.158.010, are appealed to one or more of the environmental boards, as identified in RCW 43.21B.005, the presiding officer shall consolidate the appeals for hearing when:

(a) Appeals of permits related to the same underlying project are either:

- (i) Filed within 60 days of each other; or
- (ii) If not filed within 60 days of each other and the board issues a stay of the appeal following the permit applicant's request. Such a stay must include a stay of the construction of the project pending appeal pursuant to RCW 43.21B.320, to allow other anticipated appeals of permits for the same underlying project to be filed to accommodate consolidation. The board may set a deadline after which an appeal may proceed in the absence of other permit appeals in order to ensure efficient resolution of appeals; or

(b) The presiding officer determines the criteria in subsection (1) of this section have been met.

AMENDATORY SECTION (Amending WSR 23-11-078, filed 5/17/23, effective 6/16/23)

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

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

AMENDATORY SECTION (Amending WSR 23-11-078, filed 5/17/23, effective 6/16/23)

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 90 days before the hearing date, unless the presiding officer by order allows otherwise.

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

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

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

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

(6) Exhibits must be formatted and filed in accordance with the board's electronic exhibit requirements, which are available at the ELUHO website at www.eluho.wa.gov.

NEW SECTION

WAC 461-08-476 Protective orders. (1) Pursuant to the Administrative Procedure Act, chapter 34.05 RCW, the board may issue a protective order when the board finds that filings will require information designated as confidential or exempt as defined in WAC 461-08-381 to be disclosed. The board on its own initiative, or upon motion by a party, may amend its protective order.

(2) **Denial of protective order.** If the board denies a motion for a protective order, the presiding officer will order disclosure and any terms and conditions of disclosure.

(3) **Designating and filing documents subject to a protective order.** Parties must comply with the requirements in the protective order and in WAC 461-08-381 for designating, marking, and filing documents containing information claimed to be confidential or exempt. The provider must file a cover sheet identifying that one or more documents in the filing contain information subject to the protective order. Unredacted versions must be filed by personal delivery, commercial de-

livery, fax, electronic mail, or first-class, registered, or certified mail. The provider should contact the board's staff for instructions on filing unredacted versions with the board.

(4) **Ruling on designations.** The presiding officer will review documents claimed to be subject to the protective order. The presiding officer may rule that any document is not subject to the protective order. The party seeking the designation has the burden to support the claimed designation. The board will provide an opportunity for the provider to respond, either orally or in writing, before ordering disclosure, in whole or in part, and any terms and conditions of disclosure. A party to a proceeding may also challenge a designation by filing a motion requesting that the presiding officer review and remove the claimed designation.

NEW SECTION

WAC 461-08-491 Hearing exhibits. Hearing exhibits must be formatted and filed in accordance with the board's electronic exhibit requirements, which are available at the ELUHO website at www.eluho.wa.gov.