

1 In accordance with the County's request, the Board scheduled a hearing for August 12,
2 2009. At that hearing the County, now aware of the appeal to the Court of Appeals, orally
3 moved for a stay of proceedings, pursuant to RCW 34.05.550. Futurewise indicated that it
4 had no objection to the motion.

6 II. DISCUSSION

7 There is no provision in the Boards' Rules of Practice and Procedure (Ch. 242-02 WAC) for
8 the issuance of stays. However, the GMA provides that the Administrative Procedure Act
9 (APA) governs practice and procedure before the boards unless it conflicts with specific
10 provisions of the GMA:
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12 All proceedings before the board, any of its members, or a hearing examiner
13 appointed by the board shall be conducted in accordance with such
14 administrative rules of practice and procedure as the boards jointly prescribe. All
15 three boards shall jointly meet to develop and adopt joint rules of practice and
16 procedure, including rules regarding expeditious and summary disposition of
17 appeals. The boards shall publish such rules and decisions they render and
18 arrange for the reasonable distribution of the rules and decisions. **Except as it
19 conflicts with specific provisions of this chapter, the administrative
20 procedure act, chapter 34.05 RCW, and specifically including the
21 provisions of RCW 34.05.455 governing ex parte communications, shall
22 govern the practice and procedure of the boards.**

23 RCW 36.70A.270(7)(emphasis added).

24 Although the GMA does not directly authorize the Board to issue stays, the APA provisions
25 apply to the practice and procedure of the boards. RCW 34.05.550 authorizes issuance of
26 stays. RCW 34.05.550(1) provides:

27 Unless precluded by law, the agency may grant a stay, in whole or in part, or
28 other temporary remedy.

29 This provision of the APA is limited to those actions where there is no direct conflict with the
30 law; here, the GMA. The Board finds there is no direct conflict and issuance of a stay is a
31 remedy available to the Board.

1 Appeals are currently pending in Division II of the Court of Appeals in regards to the areas
2 where the Superior Court reversed the Board. Based on the conflicting nature of the
3 holdings, it would be wasteful of County resources for the Board to require the County to
4 pursue legislative action to achieve compliance at this time. Therefore, we find that the
5 granting of a stay is the appropriate remedy in this case.
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7 **VI. ORDER**

8 The Board GRANTS a stay of its July 28, 2008 Final Decision and Order until sixty (60)
9 days subsequent to a final decision of the appellate courts.
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11 The September 9, 2009 compliance hearing set in this matter is cancelled and a future
12 hearing will be scheduled pending the decision of the appellate courts.
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14 Dated this the 14th day of August, 2009.
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18 James McNamara, Board Member
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21 William Roehl, Board Member
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24 Nina Carter, Board Member
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