

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-070 Regular meetings. Regular meetings of the board will be held at the office of the growth management hearings board or a designated location on the first Wednesday of each month at (~~10:00 a.m.~~) 1:30 p.m. or following any scheduled hearing on that date. Meetings may be held telephonically.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-140 Signing of pleadings, motions, and legal memoranda. Every pleading, motion and legal memorandum of a party shall be dated and signed by the party, or the party's attorney or other authorized representative and include an address, telephone (~~and fax numbers,~~) and electronic mail address.

AMENDATORY SECTION (Amending WSR 13-01-026, filed 12/11/12, effective 1/11/13)

WAC 242-03-230 Petition for review—Filing and service. (1) Filing a petition for review. A petition for review shall be filed with the board by electronic mail, as provided in WAC 242-03-240, unless a petitioner does not have the technological capacity to do so. The original and three copies of the petition for review shall be filed with the board personally, or by (~~first class, certified, or registered~~) mail or commercial parcel delivery service. Filings may also be made with the board by (~~telefacsimile~~) fax transmission as provided in WAC 242-03-240. A petition for review is deemed filed on the date the board receives it by electronic mail or by (~~telefacsimile~~) fax transmission by 5:00 p.m. provided that the original and three copies are sent by mail or by a commercial parcel delivery service postmarked (~~and mailed~~) on the same date as the electronic filing. See WAC 242-03-060 for contact information.

(2) Service of petition for review.

(a) A copy of the petition for review shall be served upon the named respondent(s) and must be received by the respondent(s) on or

before the date filed with the board. Service of the petition for review may be by mail, ~~((or))~~ personal service, or a commercial parcel delivery service, so long as the petition is received by respondent on or before the date filed with the board.

(b) When a county is a respondent, the petition for review shall be served on the county auditor ~~((in noncharter counties and the agent designated by the legislative authority in charter counties))~~ or on the agent designated by the legislative authority of the county. When a city is a respondent, the mayor, city manager, or city clerk shall be served. When the state of Washington is a respondent, the office of the attorney general shall be served at its main office in Olympia unless service upon the state is otherwise provided by law. In a challenge to the adoption of, or amendment to, a shoreline master program approved by the department of ecology, the department of ecology shall be named as a respondent and served.

(3) Proof of service shall be filed with the board pursuant to WAC 242-03-245.

(4) The board may dismiss a case for failure to substantially comply with this section.

AMENDATORY SECTION (Amending WSR 13-01-026, filed 12/11/12, effective 1/11/13)

WAC 242-03-240 Filing and service of all other papers. (1) Filing of papers: All pleadings and briefs shall be filed with the board by electronic mail unless a petitioner does not have the technological capacity to do so. The original and three copies of all documents shall be filed with the board personally, or by ~~((first class, certified, or registered))~~ mail or commercial parcel delivery service and must be postmarked ~~((and mailed))~~ or sent on the same date as the electronic filing. Filings less than fifteen pages may be made by ~~((telefacsimile))~~ fax transmission. The original and three copies must be ~~((mailed))~~ postmarked or sent on the same date as the ~~((telefacsimile))~~ fax transmission to be deemed filed.

Filings made by electronic mail and/or ~~((telefacsimile))~~ fax transmission shall be deemed filed upon actual receipt during office hours of 8:00 a.m. to 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped received on the following business day. The date and time in-

licated by the board's (~~telefacsimile~~) fax machine or receiving computer shall be presumptive evidence of the date and time of receipt of transmission. All papers will be deemed filed with the board on the date received by electronic mail provided that the original document and three copies are (~~mailed and~~) postmarked or commercially sent on the same date as the (~~telefacsimile~~) fax transmission or electronic mail filing. See WAC 242-03-060 for contact information.

(2) Service: Parties shall serve copies of all filings on all other named parties by electronic mail, on or before the date filed with the board, unless a party lacks technical capability. Service is accomplished when the document is transmitted electronically, or, by agreement among the parties or exception granted by the presiding officer, is (~~deposited in the mail and~~) postmarked or commercially sent by the required date.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-260 Amendments to petitions for review. (1) A petition for review may be amended as a matter of right until (~~thirty~~) fourteen days after its date of filing. Any such amendments shall be limited to amending the legal bases for challenging the matters raised in the original petition, but may not raise new challenges to the ordinance.

(2) Thereafter any amendments shall be requested in writing by motion, and will be made only after approval by the presiding officer. Amendments shall not be freely granted and may be denied upon a showing by the adverse party of unreasonable and unavoidable hardship, or by the presiding officer's finding that granting the same would adversely impact the board's ability to meet the time requirements of RCW 36.70A.300 for issuing a final order.

(3) At the prehearing conference the presiding officer will work with the parties to clarify the issues raised in the petition for review. The presiding officer may, upon motion of a party or upon its own motion, require a more complete or concise statement of the issues presented for resolution by the board.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-270 Intervention. (1) Upon motion, any person may request status as an intervenor in a case. The motion shall state the applicant's interests relating to the subject of the action, how disposition of the action may impair that interest, and whether that interest is adequately represented by existing parties. The motion shall specify the legal issue(s) in the case which the intervenor seeks to address and may not raise new issues beyond the issues already in the case. In determining whether a person qualifies as an intervenor, the presiding officer shall apply any applicable provisions of law. Granting intervention must be in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings.

(2) The motion to intervene shall be filed at least thirty days prior to the deadline for filing the initial hearing brief, unless good cause is shown. The applicant should ~~((make an effort to))~~ contact the parties so that the motion may be filed without objection. ~~((The motion to intervene shall be filed at least ten days prior to the deadline for filing the petitioner's prehearing brief, unless good cause is shown.~~

~~(2) In determining whether a person qualifies as an intervenor, the presiding officer shall apply any applicable provisions of law and may consider the applicable superior court civil rules (CR) of this state. The granting of intervention must be in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings.)~~

(3) If the person qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest as demonstrated by the motion;

(b) Requiring two or more intervenors to combine their presentations of evidence and argument, or requiring intervenor to combine its argument with the party whose position the intervenor supports; and

(c) Limiting the intervenor's role in settlement proceedings.

~~((4) The presiding officer shall timely grant or deny each motion and specify conditions, if any.~~

~~(5))~~ (4) Pleadings and briefs of an intervenor shall be filed and served in accordance with the deadlines applicable to the party whose position the intervenor supports, in accordance with the board's order on intervention.

(5) An intervenor is subject to dismissal pursuant to WAC 242-03-710.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-500 Notice of hearing. (1) Within ten days of the filing of a petition for review or of the filing of the last filed of consolidated petitions, unless ~~((a))~~ the petition for review has been dismissed pursuant to RCW 36.70A.290(3) or removed to superior court~~((,))~~ pursuant to WAC 242-03-290, the board or presiding officer will issue a notice of hearing.

(2) The notice of hearing shall identify the appeal to be heard, the names of the parties to the appeal and their attorneys or other authorized representatives, if any, and shall include the information specified in RCW 34.05.434.

(3) The notice of hearing will inform the parties of the presiding officer and the panel members designated to hear the matter.

(4) The notice of hearing will include an order setting a date and time for a prehearing conference. If the prehearing conference is to be held by teleconference, the notice shall so state.

(5) The notice of hearing shall contain a tentative schedule for the case prepared by the presiding officer for review and finalization at the prehearing conference. The notice of hearing shall contain a date for the hearing on the merits. The presiding officer will thereafter schedule a place for the hearing.

(6) The notice shall state that if a limited-English-speaking or hearing impaired party needs an interpreter, a qualified interpreter will be appointed and that there will be no cost to the party. The notice shall include a form for a party to indicate if an interpreter is needed and identification of the primary language, or if a participant is hearing impaired or has other disability to be accommodated.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-510 Index of the record. (1) Within thirty days of service of a petition for review, the respondent shall file with the board and serve a copy on the parties of an index listing all material used in taking the action which is the subject of the petition for review, including materials submitted in public comment. The index shall contain sufficient identifying information to enable unique documents to be distinguished.

(2) Concurrent with the filing of the index, the respondent shall make all documents in the index reasonably available to the petitioners for inspection and copying without the necessity for a public records request. In addition, the written or (~~tape recorded~~) electronic record of the legislative proceedings where action was taken shall be available to the parties for inspection or transcription. Respondents may charge for the cost of copies of documents requested by other parties in accordance with RCW 42.56.120, as amended.

(3) Within seven days after the filing of the index, any other party may file a list of proposed additions to the index. To the extent such documents were submitted to the jurisdiction or a part of the jurisdiction's proceedings prior to the challenged action, they are presumed admissible subject to relevance. If the respondent objects to any proposed addition, the petitioner may bring a motion to supplement the record as provided in WAC 242-03-565.

(4) Respondent may file a corrected index to add, delete, or correct the listing of documents it considered, without the necessity for a motion to supplement the record, by no later than a week before the date for filing the petitioner's prehearing brief.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-520 Exhibits. Except as otherwise provided in these rules, the evidence in a case shall consist of the exhibits cited in the briefs or as exhibits allowed pursuant to a motion to supplement

and attached thereto. Exhibits shall be documents, portions of documents, or transcriptions of (~~proceedings~~) electronic records listed in the index, unless a motion to supplement the record has been granted. Exhibits admitted on motion to supplement will be assigned a number by the presiding officer.

The relevant portion of any exhibit cited in a brief or motion must be attached to the brief or motion and identified by the exhibit's index of the record (or assigned) number and number of the page cited. When such attachment is redundant, the presiding officer may allow the participants to cross-reference to exhibits attached to previously submitted materials so long as they are identified in the same manner.

~~((Exhibits attached to motions to supplement shall be cross-referenced in briefs for the hearing on the merits. The presiding officer may, at her/his discretion, require copies of all exhibits to be attached to both the motion to supplement and the hearing on the merits brief, or may just allow the exhibits to be cross-referenced.))~~

This requirement will be stated in the order on motion to supplement.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-535 Prehearing conference—When held. The prehearing conference will be held (~~(thirty)~~) twenty-one days after the filing of the petition for review or as scheduled in the notice of hearing. The prehearing conference is conducted by the presiding officer and is ordinarily held telephonically.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-640 Official notice—Material facts. (1) In the absence of conflicting evidence, the board or presiding officer, upon oral or written request made by any party before or during a hearing, or upon the board's own motion, may officially notice the following kinds of material facts:

(a) Business customs. General customs and practices followed in the transaction of business.

(b) 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.

(c) Technical or scientific facts. Facts of a technical or scientific nature (~~(Technical or scientific facts)~~) within the board's specialized knowledge.

~~((2) Request. Any party may request, orally or in writing, that official notice be taken of a material fact. The board or presiding officer may take official notice of a material fact on its own initiative.~~

~~(3) Notice.))~~ (2) Whenever official notice of material facts is requested, the requesting party, or board, if on its own motion, (~~(Parties)~~) shall (~~(be notified either before or during a hearing)~~) notify the other parties of the material fact(s) proposed to be officially noticed, and the other parties shall be afforded the opportunity to contest such facts and materials.

~~((4))~~ (3) Statement of official notice.

(a) In determining whether to take official notice of material facts, the presiding officer may consult any source of pertinent information, whether or not furnished by any party and whether or not admissible under the rules of evidence.

(b) If official notice of a material fact is taken, it shall be clearly and precisely stated and made part of the record.

(c) Where a 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.

AMENDATORY SECTION (Amending WSR 12-05-110, filed 2/22/12, effective 3/24/12)

WAC 242-03-860 Stay. (~~(The presiding officer pursuant to RCW 34.05.467 or the board pursuant to RCW 34.05.550(1) may stay the effectiveness of a final order upon motion for stay filed within ten days of filing an appeal to a reviewing court)~~) The board pursuant to

RCW 34.05.550(1) may stay the effectiveness of a final order upon motion for stay.

A stay may be granted if the presiding officer or board finds:

(1) An appeal is pending in court, the outcome of which may render the ~~((ease meet))~~ city or county compliance efforts futile or unduly burdensome; and

(2) Delay in application of the board's order will not substantially harm the interest of other parties to the proceedings; and

(3)(a) Delay in application of the ~~((board's))~~ final order is not likely to result in actions that substantially interfere with ~~((the))~~ fulfillment of the goals of the GMA, including the goals and policies of the Shoreline Management Act~~((r))~~ or the State Environmental Policy Act; or

(b) The parties have agreed to halt implementation of the noncompliant ordinance and undertake no irreversible actions regarding the subject matter of the case during the pendency of the stay; and

(4) Delay in application of the ~~((board's))~~ final order furthers the orderly administration of justice.

The board's order granting a stay will contain appropriate findings and conditions. The board may require periodic status reports from the parties. An ~~((board))~~ order denying stay is not subject to judicial review.

AMENDATORY SECTION (Amending WSR 13-01-026, filed 12/11/12, effective 1/11/13)

WAC 242-03-970 Appeals of a board's final decision. (1) Any party aggrieved by a final decision of the board may appeal the decision to superior court as provided in RCW 34.05.514 and 34.05.542 or 36.01.050 within thirty days of service of the final decision of the board.

(2) The petition for review of a final decision of the board shall be served on the board, however, it is not necessary to name the board as a party.

~~((2))~~ (3) In the event that direct appellate review is sought, within thirty days of the filing of a petition for review in the superior court, a party may request a certificate of appealability for direct review by the court of appeals. If the issue on review is the jurisdiction of the board, the board may file an application for direct

review. Application for direct review of a decision of the board is governed by the procedures and criteria of RCW 34.05.518.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-990 Procedure on remand. Within forty-five days of receipt of a reviewing court's (~~(final order)~~) mandate remanding a decision of the board, or final remand order in the case of a superior court decision, the presiding officer will (~~(schedule)~~) convene a conference of the parties as necessary to determine the procedures required to resolve the matter in accordance with the mandate or final order.