

WSR 10-15-012
EXPEDITED RULES
GROWTH MANAGEMENT
HEARINGS BOARD

[Filed July 8, 2010, 10:29 a.m.]

Title of Rule and Other Identifying Information: Chapter 242-02 WAC, Practice and procedures.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Julie Ainsworth-Taylor, Rules Coordinator, Office of the Growth Management Hearings Boards, P.O. Box 40953, Olympia, WA 98504-0953, e-mail Juliet@cps.gmhb.wa.gov, AND RECEIVED BY no later than 5 p.m. on September 20, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Purpose of these amendments is to permanently amend certain sections of chapter 242-02 WAC which relate to an emergency rule-making order published in WSR 10-11-028. These amended sections reflect the consolidation of the three growth management hearings boards into a single, statewide growth management hearings board and addresses the creation of regional panels to hear challenges brought before the board. Amendments are related to internal operations of the board.

1. Amend sections of chapter 242-02 WAC to reflect a single growth management hearings board, including number of members.

2. Add a section, pursuant to SHB [SSB] 6214, to provide parameters for the establishment of regional panels to hear and decide cases.

3. Modifying quorum voting procedures and meeting schedules to reflect new structure and regional panel composition.

Reasons Supporting Proposal: These amendments implement the requirements of SHB [SSB] 6214, enacted by the legislature in the 2010 legislative session, becoming effective on July 1, 2010. With this legislation, the structure of the growth management hearings board was changed in two regards: (1) Consolidation of three boards into a single entity and (2) regional panel structure to hear and decide cases. Part of this reconfiguration is based on budgetary concerns and related to SHB 2935. Amendments are needed to update procedures related to the board's structure, including the establishment of regional panels, and meetings (regular, annual, and special) of the growth management hearings board. (Exempt from CR-101 requirement based on RCW 34.05.310 (4)(b), (e), (g)(i); filed under CR-105 based on RCW 34.05.353 (1)(a) and (d).)

Statutory Authority for Adoption: RCW 36.70.270(7).

Statute Being Implemented: Chapter 36.70A RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Growth management hearings board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Julie Ainsworth-Taylor, P.O. Box 40953, Olympia, WA 98504-0953, (425) 441-8250.

July 8, 2010

James J. McNamara
Chair, Rules Committee

AMENDATORY SECTION (Amending WSR 03-15-047, filed 7/11/03, effective 8/11/03)

WAC 242-02-010 Organization. (~~Three~~) The growth management hearings board(~~s were~~) was established pursuant to chapter 36.70A RCW. (~~Each~~) The board is an independent quasi-judicial agency of the state of Washington with (~~three~~) seven members appointed by the governor who are qualified by experience or training in matters pertaining to land use planning. These rules were developed, adopted, and amended (~~jointly~~) by (~~all three~~) the board(~~s~~) pursuant to RCW 36.70A.270(7). They should be read in conjunction with the act and the Administrative Procedure Act, chapter 34.05 RCW.

NEW SECTION

WAC 242-02-015 Regional panels. (1) Each petition for review that is filed with the growth management hearings board shall be heard and decided by a regional panel of growth management hearings board members. Regional panels shall be constituted as follows:

(a) Central Puget Sound region. A three-member Central Puget Sound panel shall be selected to hear matters pertaining to cities and counties located within the region comprised of King, Pierce, Snohomish, and Kitsap counties.

(b) Eastern Washington region. A three-member Eastern Washington panel shall be selected to hear matters pertaining to cities and thirty-two counties that are required or choose to plan under RCW 36.70A.040 and are located east of the crest of the Cascade mountains.

(c) Western Washington region. A three-member Western Washington panel shall be selected to hear matters pertaining to cities and counties that are required or choose to plan under RCW 36.70A.040, are located west of the crest of the Cascade mountains, and are not included in the Central Puget Sound region. Skamania County, if it is required or chooses to plan under RCW 36.70A.040, may elect to be included within either the Western Washington region or the Eastern Washington region.

(2)(a) Each regional panel selected to hear and decide cases shall consist of three board members, at least a majority of whom shall reside within the region in which the case arose, unless such members cannot sit on a particular case because of recusal or disqualification, or unless the board administrative officer determines that there is an emergency including, but not limited to, the unavailability of a board member due to illness, absence, vacancy, or significant workload imbalance. The presiding officer of each case shall

reside within the region in which the case arose, unless the board administrative officer determines that there is an emergency.

(b) Except as provided otherwise in (b) of this subsection, each regional panel must:

(i) Include one member admitted to practice law in this state;

(ii) Include one member who has been a city or county elected official; and

(iii) Reflect the political composition of the board. The requirements of (b) of this subsection may be waived by the board administrative officer due to member unavailability, significant workload imbalances, or other reasons.

AMENDATORY SECTION (Amending WSR 98-01-144, filed 12/19/97, effective 1/20/98)

WAC 242-02-020 Function—Local deference. (1)

The function of ~~((a))~~ the board is to make informed decisions on appeals arising from implementation of the Growth Management Act in a clear, consistent, timely, and impartial manner that recognizes regional diversity.

(2) The legislature requires growth management planning to occur in compliance with the goals and requirements of the act. The responsibility for managing local growth and shaping a county's or city's future rests with the local community. The board~~((s))~~ will grant deference to counties and cities in how they plan for and manage growth.

AMENDATORY SECTION (Amending WSR 97-04-008, filed 1/24/97, effective 3/1/97)

WAC 242-02-030 Jurisdiction. This section is intended to be general and informational only, and failure to list matters over which ~~((a))~~ the board has jurisdiction at law shall not constitute any waiver of or withdrawal from such jurisdiction.

(1) Geographic jurisdiction. Each ~~((board))~~ panel shall hear only those matters pertaining to the cities and counties located within its jurisdictional boundaries. The boundaries are as follows:

(a) The Eastern Washington ~~((board))~~ regional panel includes all counties and the cities now or subsequently located within these counties that are required or choose to plan under RCW 36.70A.040 and are located east of the crest of the Cascade mountains;

(b) The Central Puget Sound ~~((board))~~ regional panel includes and is limited to King, Pierce, Snohomish and Kitsap counties, and the cities now or subsequently located within those counties; and

(c) The Western Washington ~~((board))~~ regional panel includes all counties and the cities now or subsequently located within those counties that are required or choose to plan under RCW 36.70A.040 and are located west of the crest of the Cascade mountains and are not included in the Central Puget Sound ~~((board))~~ regional panel boundaries;

(d) Skamania County, should it be required or choose to plan under RCW 36.70A.040, may elect to be included within the jurisdictional boundaries of the Western or Eastern Washington ~~((boards))~~ regional panels.

(2) Subject matter jurisdiction. ~~((Each))~~ The board shall hear and determine petitions alleging that a state agency, county, or city is not in compliance with the requirements of the act, or chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to plans, development regulations, and amendments adopted under the act or chapter 90.58 RCW; or, petitions from cities or the governor relating to an adopted county-wide planning policy; or, that the twenty-year growth management planning projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted.

(3) Jurisdictional issues. Any party to a proceeding before ~~((a))~~ the board and its regional panel may, by motion, challenge the jurisdiction of ~~((that board))~~ the panel in any petition for review. ~~((A))~~ The board may, upon its own motion, raise such an issue.

AMENDATORY SECTION (Amending WSR 09-21-039, filed 10/13/09, effective 11/13/09)

WAC 242-02-040 Definitions. As used in this title, the following terms shall have the following meaning:

(1) "Act" means the Growth Management Act, chapter 36.70A RCW, and subsequent amendments.

(2) "Board" means ~~((the Eastern Washington, Western Washington or Central Puget Sound))~~ the growth management hearings board or a panel of the board hearing a matter.

(3) "Final decision" means:

(a) Any final order as provided in RCW 36.70A.300; or

(b) Any other written finding, determination or order of the board which finally determines a legal right, duty, or other legal interest of the parties in the case and which clearly states such written finding, determination or order that it is a final decision subject to appeal to superior court.

(4) "Hearing examiner" means an authorized agent of a board who has a demonstrated knowledge of land use planning and law, appointed to assist the board in the performance of its hearing function as delegated by the board as provided by the act.

(5) ~~(("Joint boards" means the three independent boards meeting or acting jointly.~~

~~((6))~~ "Office of the growth management hearings board~~((s))~~" means the administrative office of the ~~((three growth management hearings))~~ board~~((s))~~ established ~~((in RCW 36.70A.250))~~ pursuant to RCW 36.70A.270(2).

~~((7))~~ (6) "Participant" means any person with standing to challenge a legislative action as set forth in RCW 36.70A.-330(2).

~~((8))~~ (7) "Party" means any person named in the caption of a case before ~~((a))~~ the board.

~~((9))~~ (8) "Person" means any individual, partnership, corporation, association, state agency, governmental subdivision or unit, or public or private organization or entity of any character.

~~((10))~~ (9) "Petitioner" means a person who appeals any matter or who brings a petition for rule making to the board. A petitioner is a party to a case before the board.

~~((11))~~ (10) "Presiding officer" means any member of ~~((a))~~ the board, or a hearing examiner, who is assigned to

conduct a conference or hearing as directed by ((a)) the board. The presiding officer shall be designated pursuant to WAC 242-02-521 and have authority as provided by WAC 242-02-522.

((12)) (11) "Publication" means:

(a) For a city, the date the city publishes the ordinance or summary of the ordinance adopting a comprehensive plan, development regulations or subsequent amendment, as is required to be published, or the date the city publishes notice that the shoreline master program or amendment has been approved or disapproved by the department of ecology;

(b) For a county, the date the county publishes the notice that it has adopted a comprehensive plan, development regulations or other enactments, or subsequent amendments pursuant to RCW 36.70A.290(2), or the date the county publishes notice that the shoreline master program or amendment has been approved or disapproved by the department of ecology.

((13)) (12) "Respondent" means a person who is named as a responding party in any petition for review before ((a)) the board.

AMENDATORY SECTION (Amending WSR 98-01-144, filed 12/19/97, effective 1/20/98)

WAC 242-02-050 Rules. These rules shall govern the ((joint boards)) board's adoption or amendment of ((joint)) rules, and all practice and procedure for hearings before ((a)) the board. Where a time frame is different in these rules from those in chapter 10-08 WAC, it is because ((a)) the board is required to act pursuant to the time frames set forth in the act.

AMENDATORY SECTION (Amending WSR 09-23-009, filed 11/5/09, effective 12/6/09)

WAC 242-02-052 Petition for rule making. (1) Right to petition for rule making. Any person may petition the ((joint)) board((s)) for the adoption, amendment, or repeal of any rule. Said petition shall be filed with the ((joint boards in care of the)) board at its office ((of growth management hearings boards)).

(2) Form of petition. The form of the petition for adoption, amendment, or repeal of any rule shall generally adhere to the following:

(a) A caption in the following form:

BEFORE THE JOINT GROWTH MANAGEMENT
HEARINGS BOARD((S))
STATE OF WASHINGTON

No.

In the matter of
the Petition of
(Name of Petitioner)
for Rule Making

PETITION FOR RULE MAKING

(b) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether the petitioner seeks the adoption of a new rule or rules, or amendment or repeal of an existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule,

shall set forth the desired rule in its entirety. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by board rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interests of the petitioner and the subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

(c) The petition shall be dated and signed by the party named in the first paragraph or by the petitioner's attorney or other authorized representative. The original and nine copies shall be filed with the ((appropriate)) board ((at its office)).

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

WAC 242-02-054 Petition for rule making—Consideration and disposition. (1) Each petition for the adoption, amendment, or repeal of a rule shall be considered by the ((joint)) board((s)), and the ((joint)) board((s)) may, in ((their)) its discretion, solicit comments or invite discussion concerning the matter prior to disposition of the petition.

(2) Consideration of petitions. All petitions shall be considered by the ((joint)) board((s or representatives designated by each board,)) and the ((joint)) board((s)) may, in ((their)) its discretion, hold meetings for the further consideration and discussion of the requested adoption, amendment, or repeal of any rule.

(3) Notification of disposition of petition. The ((joint)) board((s)) or designated representatives shall notify the petitioner within a reasonable time of the disposition, if any, of the petition.

AMENDATORY SECTION (Amending WSR 09-21-041, filed 10/13/09, effective 11/13/09)

WAC 242-02-070 Quorum. ((1) Joint boards. For the purpose of adopting, amending, or repealing these rules or transacting other administrative business, at least two members of each board shall constitute a quorum of the joint boards. A quorum being present, any action may be taken upon the vote of the majority of the joint board members.

(2) Individual board. For purposes of making orders or decisions or transacting other official administrative business for an individual board, two members of a board shall constitute a quorum and may act even though one position on the board is vacant. One member or designated hearing examiner may hold hearings and take testimony. The findings of such member or hearing examiner shall not become final until approved by a majority of the board. A board member who does not attend a hearing shall review a transcript or recording of the hearing before signing the decision.)) Board quorum. For the purpose of adopting, amending, or repealing these rules or transacting other administrative business, at least four members of the board shall constitute a quorum of the board. A quorum being present, any action may be taken upon the vote of the majority of the board members.

Panel quorum. For purposes of making orders or decisions in a case, two members of a panel shall constitute a quorum and may act even though one panel member is absent.

One member or designated hearing examiner may hold hearings and take testimony. The findings of such member or hearing examiner shall not become final until approved by a majority of the panel. A panel member who does not attend a hearing shall review a transcript or recording of the hearing before signing the decision.

AMENDATORY SECTION (Amending WSR 09-21-039, filed 10/13/09, effective 11/13/09)

WAC 242-02-072 Board office. (1) The administration of the ~~((three))~~ board~~((s))~~ is consolidated in one office - the office of the growth management hearings board~~((s))~~:

~~((Office of the))~~
Growth Management Hearings Board~~((s))~~
319 - 7th Avenue S.E., Suite 103
Olympia, WA 98501
P.O. Box 40953
Olympia, WA 98504-0953
360-586-0260
360-664-8975 Fax
e-mail: eastern@ew.gmhb.wa.gov
e-mail: western@wwgmhb.wa.gov
e-mail: central@cps.gmhb.wa.gov
web site: www.gmhb.wa.gov

(2) The filing of all petitions, briefs, exhibits, and other documents related to any proceeding before an individual board shall be made to the office of the growth management hearings board~~((s))~~, with specific indication of the appropriate ~~((board's))~~ regional panel's name - Eastern, Western, or Central Puget Sound.

AMENDATORY SECTION (Amending WSR 09-21-041, filed 10/13/09, effective 11/13/09)

WAC 242-02-074 Regular meetings. (1) Regular meetings of ~~((each))~~ the board will be held at the office of the growth management hearings board~~((s))~~, or a designated location ~~((at the following times:~~

~~((a) Eastern Washington board — on the first Wednesday of each month at 10:00 a.m. or following any scheduled hearing on that date.~~

~~((b) Western Washington board — on the second Wednesday of each month at 11:00 a.m. or following any scheduled hearing on that date.~~

~~((c) Central Puget Sound board — on the first Monday of each month at 10:00 a.m. or following any scheduled hearing on that date))~~ on the first Wednesday of each month at 10:00 a.m. or following any scheduled hearing on that date. Meetings may be held telephonically.

(2) The ~~((joint))~~ board~~((s))~~ shall meet annually at a time and location to be announced.

~~((3) An individual board shall make available the location of such a meeting if it is not to be held at the office of the growth management hearings boards.))~~

AMENDATORY SECTION (Amending WSR 09-21-041, filed 10/13/09, effective 11/13/09)

WAC 242-02-075 Special meeting. (1) A special meeting of the ~~((joint))~~ board~~((s))~~ may be called at the request of any ~~((three))~~ two of the ~~((nine))~~ board members. To call a special meeting, a written notice of the meeting shall be posted on the ~~((boards'))~~ board's web site and personally e-mailed to:

(a) Each member of the board~~((s))~~; and

(b) Each general circulation newspaper, television or radio station which has on file with the board~~((s))~~ a written request to be notified of special meetings.

(2) The written notice shall state the date and time of the meeting, and shall specify the business to be transacted by the board~~((s))~~. The board~~((s))~~ will not take final action on any matter that is not specified in the written notice.

(3) Notices of special meetings shall be sent by e-mail:

(a) One day (twenty-four hours) before the scheduled meeting; except

(b) When a special meeting is called to consider rule changes pursuant to chapter 34.05 RCW, the notice shall be sent at least twenty days prior to the meeting; and except

(c) In the event of an emergency requiring board action, the notice and timing requirements may be waived as provided in RCW 42.30.080.

(4) The special meeting shall be chaired by ~~((one of the board members who called the meeting))~~ the administrative officer.

(5) A special meeting may be held by telephone conference call.

~~((Two members of each board will constitute a quorum for a special meeting.~~

~~((7))~~ Members of the public may attend a special meeting by appearing at ~~((any of))~~ the ~~((three))~~ board office~~((s))~~, or the location of the special meeting, at the date and time set for the meeting.

AMENDATORY SECTION (Amending WSR 03-15-047, filed 7/11/03, effective 8/11/03)

WAC 242-02-076 Annual and semiannual ~~((joint))~~ board~~((s))~~ meetings. (1) The annual ~~((joint))~~ board~~((s))~~ meeting will be held on the first Thursday and first Friday of October of each year. The annual meeting will be held in person.

(a) In odd-numbered years the annual ~~((joint))~~ board~~((s))~~ meeting will be held within the Central Puget Sound ~~((board's))~~ region.

(b) In even-numbered years the annual ~~((joint))~~ board~~((s))~~ meeting will be held within the Eastern Washington ~~((board's))~~ region.

(c) The location, time and agenda for the annual ~~((joint))~~ board~~((s))~~ meeting will be posted on the ~~((boards'))~~ board's web site (www.gmhb.wa.gov) in September of each year.

(2) The semiannual ~~((joint))~~ board~~((s))~~ meeting will be held on the last Thursday in April each year. The semiannual meeting will be held in person.

(a) Each year the semiannual ~~((joint))~~ board~~((s))~~ meeting will be held within the Western Washington ~~((board's))~~ region.

(b) The location, time and agenda for the semiannual (~~joint~~) board(~~s~~) meeting will be posted on the (~~boards'~~) board's web site (www.gmhb.wa.gov) in March of each year.

AMENDATORY SECTION (Amending WSR 09-23-009, filed 11/5/09, effective 12/6/09)

WAC 242-02-080 Form and size of documents. Documents, other than exhibits, shall be provided in the manner indicated in (~~the~~) the board's prehearing order.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

WAC 242-02-090 Case numbering. (~~Each~~) The board shall assign a case number to each petition for review which shall be the official reference number for purposes of identification. The first two digits of the case number shall correspond to the last two digits of the calendar year in which the petition was filed. The third digit shall designate which (~~board~~) regional panel has jurisdiction over the matter. The Eastern Washington (~~board~~) panel shall use the digit "1"; the Western Washington (~~board~~) panel shall use the digit "2"; and the Central Puget Sound (~~board~~) panel shall use the digit "3." The last four digits shall be numbered sequentially in order of receipt.

AMENDATORY SECTION (Amending WSR 98-01-144, filed 12/19/97, effective 1/20/98)

WAC 242-02-110 Appearance and practice before (~~the~~) the board—Who may appear. Practice before (~~the~~) the board shall be open to the following persons who have met the standing requirements of chapter 36.70A RCW:

(1) A party or participant to a case before the board may appear personally or, by a duly authorized representative;

(2) Attorneys at law practicing before the board must be duly qualified and entitled to practice in the courts of the state of Washington; and

(3) Other persons permitted by law.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

WAC 242-02-120 Rules of professional conduct. All persons appearing in proceedings before (~~the~~) the board in a representative capacity shall conform to the rules of professional conduct required of attorneys before the courts of Washington. If any such person does not conform to such rules, the board may decline to permit such person to appear in a representative capacity in any current or future proceeding before (~~that~~) the board or impose other appropriate sanctions.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

WAC 242-02-150 Teleconference proceeding. (1) At the discretion of (~~the~~) the board or a presiding officer, or where the parties agree and where the rights of the parties will not be prejudiced, all or part of any hearing, prehearing,

or motion hearing may be conducted by telephone, television, or other electronic means. Each party in the proceeding must have an opportunity to participate effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place.

(2) The board may require documentary evidence, motions, and briefs to be submitted sufficiently in advance of the teleconference proceeding to insure fair consideration and presentation of the issues. All such material shall also be served on other parties at the time of filing with (~~the~~) the board.

AMENDATORY SECTION (Amending WSR 97-04-008, filed 1/24/97, effective 3/1/97)

WAC 242-02-220 Petition for review—Time for filing. (1) A petition relating to whether or not an adopted comprehensive plan, development regulation, shoreline master program or subsequent amendments, is in compliance with the goals and requirements of the act or chapter 90.58 or 43.21C RCW shall be filed with (~~the~~) the board within sixty days from the date of publication by the legislative body of the county or city as specified by RCW 36.70A.290(2).

(2) A petition relating to an adopted county-wide planning policy shall be filed within sixty days of its adoption as specified in RCW 36.70A.210(6).

(3) A petition alleging that the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted can be filed at any time.

(4) For all other matters, a petition must be filed with (~~the~~) the board within sixty days of the final written decision, order, determination, publication, or action being entered.

(5) A petition relating to the failure of a state agency, city or county to take an action by a deadline specified in the act may be brought at any time after the deadline for action has passed.

AMENDATORY SECTION (Amending WSR 09-23-009, filed 11/5/09, effective 12/6/09)

WAC 242-02-230 Petition for review—Service and filing. (1) At least one copy of the petition for review shall be filed with the board by electronic mail, as provided in WAC 242-02-240, unless a petitioner does not have the technological capacity to do so. The original and four copies of the petition for review shall be filed with (~~the~~) the board personally, or by first class, certified, or registered mail. Filings may also be made with (~~the~~) the board by telefacsimile transmission as provided in WAC 242-02-240. A copy of the petition for review shall be personally served upon all other named parties or deposited in the mail and postmarked on or before the date filed with the board. When a county is a party, the county auditor shall be served in noncharter counties and the agent designated by the legislative authority in charter counties. The mayor, city manager, or city clerk shall be served when a city is a party. When the state of Washington is a party, 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. Proof of service may be filed with the board pursuant to WAC 242-02-340.

(2) ~~((A))~~ The board may dismiss a case for failure to substantially comply with subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 09-23-009, filed 11/5/09, effective 12/6/09)

WAC 242-02-240 Date of filing—Facsimile and electronic mail. (1) The date of filing shall be the date of actual receipt by ~~((a))~~ the board at ~~((the))~~ its office ~~((of the growth management hearings boards))~~. The date stamp placed on the petition shall be presumptive evidence of the date of receipt.

(2) Filing of any documents with ~~((a))~~ the board by electronic mail or telefacsimile transmission is at the risk of the sender and shall not be deemed complete unless the following procedures are strictly observed:

(a) An electronic mail or telefacsimile document will only be stamped "received" by the board between the hours of 8:00 a.m. and 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 indicated by the board's telefacsimile machine or receiving computer shall be presumptive evidence of the date and time of receipt of transmission.

(b) The original document and four copies shall be mailed and postmarked or otherwise transmitted to the board on or before the date of sending the telefacsimile transmission or electronic mail.

(c) Documents over fifteen pages in length may not be filed by telefacsimile without prior approval of the presiding officer.

(3) A telefacsimile or electronic mail copy shall constitute an original solely for the purpose of establishing the date a document was filed.

AMENDATORY SECTION (Amending WSR 97-04-008, filed 1/24/97, effective 3/1/97)

WAC 242-02-260 Amendments to petitions for review and answers. (1) A petition for review or answer may be amended as a matter of right until thirty days after its date of filing.

(2) Thereafter any amendments shall be requested in writing by motion, and will be made only after approval by ~~((a))~~ the board or 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 ~~((a))~~ the board's finding that granting the same would adversely impact ~~((a))~~ the board's ability to meet the time requirements of RCW 36.70A.300 for issuing a final order. The board may, upon motion of a party or upon its own motion, require a more complete statement of the nature of the claim or defense or any other matter stated in a pleading.

AMENDATORY SECTION (Amending WSR 04-21-046, filed 10/15/04, effective 11/15/04)

WAC 242-02-280 Amicus. (1) Any person whose interest may be substantially affected by a proceeding before ~~((a))~~ the board may, by motion, request status as an amicus in the case.

(2) A motion to file an amicus curiae brief must include a statement of:

(a) Applicant's interest and the person or group applicant represents;

(b) Applicant's familiarity with the issues involved in the matter and with the scope of the argument presented or to be presented by the parties;

(c) Specific issues to which the amicus curiae brief will be directed; and

(d) Applicant's reason for believing that additional argument is necessary on these specific issues. The brief of amicus curiae may be filed with the motion but must be filed no later than the time set for the filing of the brief for the party whose position the amicus supports.

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

AMENDATORY SECTION (Amending WSR 98-01-144, filed 12/19/97, effective 1/20/98)

WAC 242-02-290 Direct review by superior court—Procedures. RCW 36.70A.295 provides for direct review by superior court of a petition for review filed with ~~((a))~~ the board if:

(1) All parties to the board proceeding agree to direct review by superior court;

(2) The parties file a direct review agreement, signed by all parties, or their designated representatives, with the ~~((appropriate))~~ board;

(3) The direct review agreement includes agreement to proper venue; and

(4) The direct review agreement is filed with the ~~((appropriate))~~ board within ten days after the petition for review is filed, or if multiple petitions have been filed and the board has consolidated the petitions, within ten days after the board serves notice of consolidation.

AMENDATORY SECTION (Amending WSR 04-21-046, filed 10/15/04, effective 11/15/04)

WAC 242-02-310 Service of papers. (1) Parties filing pleadings, briefs, exhibits and other documents or papers with ~~((a))~~ the board shall also serve copies upon all other parties no later than the date upon which they were filed with the board. Parties served shall be those included on the declaration of service list attached to the board's prehearing order, or amended prehearing order.

(2) Service upon a party's attorney or other authorized representative shall be considered valid service for all purposes upon the party represented.

(3) Final decisions of the board shall be served upon the parties and their attorney or representative of record, if any.

AMENDATORY SECTION (Amending WSR 09-23-009, filed 11/5/09, effective 12/6/09)

WAC 242-02-320 Method of service. Service of papers, specified in WAC 242-02-310(1), shall be made by electronic mail unless the party does not have the technolog-

ical capacity to do so. Service may also be made personally, by first class, registered or certified mail, or by telefacsimile transmission. If service is by electronic mail or telefacsimile, an original and four copies shall be properly addressed to ((a)) the board, deposited in the mail, and postmarked no later than the same day. Exhibits shall not be served electronically but shall be deemed timely filed if included in the mailed copies.

AMENDATORY SECTION (Amending WSR 09-23-009, filed 11/5/09, effective 12/6/09)

WAC 242-02-330 Service of papers—When complete. (1) Papers required to be filed with ((a)) the board shall be deemed filed upon actual receipt during office hours at the board's office.

(2) All facsimile and electronic mail transmissions are sent at the risk of the sender and only pursuant to the procedures specified in WAC 242-02-240.

(3) This section shall not extend any applicable time for appeal to ((a)) the board nor extend the time for providing notice of appeal to any named party.

AMENDATORY SECTION (Amending WSR 09-23-009, filed 11/5/09, effective 12/6/09)

WAC 242-02-340 Proof of service—Declaration. Where proof of service is required by this chapter, by statute, or upon ((a)) the board's request, filing the original document with the board and serving copies upon all attorneys or other authorized representatives of record and upon parties not represented together with one of the following documents shall constitute proof of service:

(1) An acknowledgment of service;

(2) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon each party or the party's attorney or other authorized representative of record in the proceeding by delivering a copy thereof in person to the named individuals;

(3) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon all parties of record in the case by:

(a) Mailing a copy, properly addressed with postage prepaid, to each party or that party's attorney or other authorized representative; or

(b) Transmitting a copy by electronic mail or telefacsimile, and on the same day mailing a copy to each party in the case or that party's attorney, or other authorized representative; or

(c) Depositing a copy, properly addressed with charges prepaid, with a commercial parcel delivery company or courier service.

AMENDATORY SECTION (Amending WSR 94-07-033, filed 3/9/94, effective 4/9/94)

WAC 242-02-410 Discovery—Limitation. (1) Discovery shall not be permitted except upon an order of ((a)) the board or its presiding officer.

(2) Insofar as applicable and not in conflict with this chapter, when discovery has been authorized by ((a)) the

board or presiding officer, the statutes and court rules regarding pretrial procedures in civil cases in superior courts of the state of Washington shall be used. Such statutes and rules shall include but shall not be limited to those rules pertaining to discovery of evidence by parties to civil actions.

AMENDATORY SECTION (Amending WSR 98-01-144, filed 12/19/97, effective 1/20/98)

WAC 242-02-420 Subpoena—Issuance. (1) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446 and court rules.

(2) Every subpoena shall identify the party causing its issuance. Subpoenas may be issued by ((a)) the board or by an attorney of record. The person issuing shall sign the subpoena. Parties desiring subpoenas to be signed by ((a)) the board shall make a showing of relevance and reasonable scope of the testimony or evidence sought and shall prepare the subpoenas for issuance, send them to the board's office for signature, and, upon return, shall make arrangements for service.

AMENDATORY SECTION (Amending WSR 98-01-144, filed 12/19/97, effective 1/20/98)

WAC 242-02-510 Notice of hearing—Setting of time and place. (1) Within ten days of the filing of a petition for review, unless a petition for review has been removed to superior court, pursuant to WAC 242-02-290 through 242-02-295, ((a)) the board or presiding officer will schedule a hearing date and notify the parties of the date.

(2) The board or presiding officer will thereafter schedule a place for the hearing.

(3) A written notice of the date and location of the hearing shall be sent to all parties not less than twenty days prior to the hearing date.

(4) The notice 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 specify the time and place of hearing. The notice shall include the information specified in RCW 34.05.434 and if the hearing is to be conducted by teleconference call the notice shall so state.

(5) The notice shall state that if a limited-English-speaking or hearing impaired party or witness needs an interpreter, a qualified interpreter will be appointed and that there will be no cost to the party or witness. 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.

(6) The notice may also include an order fixing the pre-hearing date and/or deadlines as provided in these rules.

(7) Defects in notice may be waived if the waiver is knowing and voluntary.

AMENDATORY SECTION (Amending WSR 97-04-008, filed 1/24/97, effective 3/1/97)

WAC 242-02-520 Record. 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 of all material used in taking the action which is the subject of the peti-

tion for review. The index shall contain sufficient identifying information to enable unique documents to be distinguished. In addition, the written or tape-recorded record of the legislative proceedings where action was taken shall be available to the parties for inspection.

AMENDATORY SECTION (Amending WSR 97-04-008, filed 1/24/97, effective 3/1/97)

WAC 242-02-521 Designation of presiding officer. ((A)) The board shall designate the presiding officer for each case at the time it issues its notice of hearing pursuant to WAC 242-02-510. In the event the presiding officer subsequently changes, the board shall promptly notify the parties.

AMENDATORY SECTION (Amending WSR 00-09-094, filed 4/19/00, effective 5/20/00)

WAC 242-02-522 Presiding officer—Powers and duties. It shall be the duty of the presiding officer to conduct conferences or hearings as directed by ((a)) the board in an impartial and orderly manner. The presiding officer shall have the authority, subject to the other provisions of the act or these rules to:

- (1) Inspect the petition for review to determine whether, on its face, compliance with the jurisdictional and standing requirements of the act is shown, and if compliance is not shown, to recommend an action or to refer the issue to the full board for resolution;
- (2) Take appropriate action with respect to the qualifications of the parties or the parties' attorney(s) or other authorized representative(s) to appear before ((a)) the board;
- (3) Administer oaths and affirmations if witnesses are permitted to testify;
- (4) Issue subpoenas as provided in RCW 34.05.446;
- (5) Rule on all procedural matters, objections and motions unless a board determination is required;
- (6) Rule on all evidentiary matters including offers of proof;
- (7) When applicable, question witnesses called by the parties in an impartial manner as needed to develop any facts deemed necessary to fairly and adequately decide the issue;
- (8) Issue orders joining other parties, on motion of any party, when it appears that such other parties may have an interest in, or may be affected by the case;
- (9) Consolidate cases for hearing when such consolidation will expedite disposition and avoid duplication of testimony and when consolidation will not unduly prejudice the rights of any party;
- (10) Hold conferences for the settlement or amplification of the issues;
- (11) Regulate the course of the case;
- (12) Encourage the parties to stipulate to the admissibility of documents in advance of a hearing and to rule on issues concerning the content of the record;
- (13) Limit the length of a brief or impose format restrictions;
- (14) Sign and file certificates of agreement acknowledging receipt of timely, complete, executed agreements for direct review by superior court;
- (15) Rule on requests for settlement extensions;

(16) Waive any requirement of these rules unless a party shows that it would be prejudiced by such a waiver; and

(17) Take any other action necessary and authorized by these rules, the act, or the Administrative Procedure Act, chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 09-23-009, filed 11/5/09, effective 12/6/09)

WAC 242-02-530 Motions—Requirements. (1) A motion is an application for an order or ruling. Every motion shall be in writing, unless made during a hearing; shall state with particularity the grounds; and shall set forth the relief or order sought. An original and four copies of the motion shall be filed with ((a)) the board and a copy served on each opposing party or that party's attorney or other authorized representative.

(2) All motions shall be properly captioned and signed by the moving party or that party's attorney or other authorized representative.

(3) The motion shall specify the amount of time required for argument, whether appearance by telecommunication is requested, and the names, telephone numbers, and electronic mail addresses of all parties served with the motion.

(4) Dispositive motions on a limited record, similar to a motion for summary judgment in superior court or a motion on the merits in the appellate courts, are permitted. Time frames for making and responding to such a motion shall be established by the presiding officer.

(5) Motions to disqualify a hearing examiner acting as the presiding officer, or a board member, for bias, prejudice, interest or other cause, with supporting affidavit(s), may be filed with ((a)) the board.

(6) Any party may bring a motion for the board to decide a challenge to compliance with the notice and public participation requirements of the act raised in the petition for review, provided that the evidence relevant to the challenge is limited. If such a motion is timely brought, the presiding officer or the board shall determine whether to decide the notice and public participation issue(s) on motion or whether to continue those issues to the hearing on the merits.

AMENDATORY SECTION (Amending WSR 97-04-008, filed 1/24/97, effective 3/1/97)

WAC 242-02-532 Motions—Time for filing and hearing. (1) A motion can be filed at any time unless otherwise specified in these rules or by ((a)) the board or presiding officer.

(2) After prehearing or other order. If a prehearing order or other order has been entered establishing a deadline for filing motions, no written motion may be filed after the date specified in the order without written permission of the board or presiding officer.

(3) ((A)) The board or presiding officer, after taking into consideration when the motion was received and the complexity of the issues raised, may, in its discretion, schedule a hearing for argument of a motion at the time of a prehearing conference or at a separate hearing time, or may defer consideration of the motion until commencement of the hearing on

the petition for review. ((A)) The board or presiding officer may also limit argument on a motion to briefs.

(4) A motion, other than a dispositive motion or a motion to supplement the record, is deemed denied unless the board takes action within twenty days of filing of the motion.

AMENDATORY SECTION (Amending WSR 09-23-009, filed 11/5/09, effective 12/6/09)

WAC 242-02-534 Response to motions. (1) A party served with a motion shall have ten days from the date of service of the motion to respond to it, unless otherwise directed by the presiding officer. A response to the motion shall be filed with ((a)) the board and a copy served on the opposing party/parties.

(2) The response shall specify the amount of time required for argument, whether appearance by telecommunication is requested, and the names, telephone numbers, and electronic mail addresses of all parties served with the response.

AMENDATORY SECTION (Amending WSR 98-01-144, filed 12/19/97, effective 1/20/98)

WAC 242-02-540 New or supplemental evidence. Generally, ((a)) the board will review only the record developed by the city, county, or state in taking the action that is the subject of review by the board. A party by motion may request that ((a)) the board allow such additional evidence as would be necessary or of substantial assistance to the board in reaching its decision, and shall state its reasons. ((A)) The board may order, at any time, that new or supplemental evidence be provided.

AMENDATORY SECTION (Amending WSR 97-04-008, filed 1/24/97, effective 3/1/97)

WAC 242-02-550 Prehearing conference. A prehearing conference is optional at the discretion of the presiding officer. The purpose of a prehearing conference is to:

- (1) Determine the feasibility of and encourage settlement of the matter or any portion thereof;
- (2) Obtain a stipulation of relevant facts including ((a)) the board's jurisdiction and the party's standing in the matter;
- (3) Obtain agreement as to the issues of law and fact presented and their simplification, limitation, or resolution;
- (4) Determine the qualifications of expert witnesses, if they are permitted to testify;
- (5) Receive any motions concerning qualification of individual board members to hear the matter;
- (6) Obtain information as to the number of expert and/or lay witnesses expected to be called by the parties and their names, addresses and telephone numbers;
- (7) Set subsequent deadlines, if and when appropriate, for filing final exhibit and witness lists, filing motions, and completing discovery; establish a briefing schedule, limit the length of briefs; and decide other matters related to the conduct of the hearing;
- (8) Determine the approximate time necessary for the presentation of evidence and/or argument of the respective parties; and

(9) Obtain all other information which may aid in the prompt disposition of the matter.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

WAC 242-02-552 Prehearing conference—When held. (1) ((A)) The board or presiding officer may order a prehearing conference on not less than seven days notice mailed to each party at a time and place fixed by ((a)) the board or presiding officer.

(2) At any time prior to a hearing on a petition for review, any party may file a written application with ((a)) the board requesting a prehearing conference.

AMENDATORY SECTION (Amending WSR 94-07-033, filed 3/9/94, effective 4/9/94)

WAC 242-02-558 Prehearing conference—Agreements. At the conclusion of a prehearing conference, the presiding officer may require the parties to submit a proposed prehearing order. The presiding officer will issue an order reciting the action taken at the conference and any agreements of the parties or decisions of the presiding officer. The order may include provisions pertaining to:

- (1) Jurisdiction and standing;
 - (2) Issues;
 - (3) Admissions;
 - (4) Witnesses, if permitted;
 - (5) Time, location and length of hearings;
 - (6) Authenticity and/or admissibility of exhibits;
 - (7) Qualification of witnesses, if permitted;
 - (8) Rulings of the board prior to the prehearing conference;
 - (9) Rulings of the presiding officer; and
 - (10) Any other matters that may expedite the hearing.
- Any objection to such order shall be made in writing within seven days after the date the order is dated. ((A)) The board shall serve its prehearing order on the same day that the order is dated. The order shall control ensuing proceedings unless modified for good cause by a subsequent order.

AMENDATORY SECTION (Amending WSR 98-01-144, filed 12/19/97, effective 1/20/98)

WAC 242-02-560 Settlement extensions—Continuances. (1) If additional time is necessary to achieve settlement of a dispute that is an issue in a petition before ((a)) the board, ((a)) the board may extend the one hundred eighty-day time limit for issuing a final decision and order, as provided in RCW 36.70A.300 (2)(b). ((A)) The board may authorize one, or more, extensions of up to ninety days each.

(2) A request for a settlement extension must be filed with ((a)) the board not later than seven days before the date scheduled for the hearing on the merits of the petition.

(3) ((A)) The board may grant a request for a settlement extension if:

- (a) The request was timely filed; and
- (b)(i) All parties named in the caption of the petition, agree to and sign the request; or

(ii) A petitioner and respondent agree to and sign the request and the board determines that a negotiated settlement between the remaining parties could resolve significant issues in dispute.

(4) Continuances of hearings will be granted only on ((a)) the board's initiative or upon timely request of a party setting forth in detail the reasons for such a request and a date by which such reason will no longer apply. The board will continue the matter only upon a finding of good cause and in order to prevent manifest injustice.

AMENDATORY SECTION (Amending WSR 08-10-029, filed 4/28/08, effective 5/29/08)

WAC 242-02-570 Briefs. (1) A petitioner, or a moving party when a motion has been filed, shall submit a brief on each legal issue it expects ((a)) the board to determine. Failure by such a party to brief an issue shall constitute abandonment of the unbrieffed issue. Briefs shall enumerate and set forth the legal issue(s) as specified in the prehearing order if one has been entered.

(2) The original and four copies of briefs and exhibits not previously filed with the board in the pending case and that are cited in the brief shall be filed with ((a)) the board at least five business days prior to the hearing unless otherwise provided by ((a)) the board or presiding officer. When briefs and exhibits are filed, a copy shall also be served on each party, unless otherwise directed by ((a)) the board or presiding officer. ((A)) The board or presiding officer may permit or require the filing of additional briefs.

(3) Clarity and brevity are expected to assist ((a)) the board in meeting its statutorily imposed time limits. A presiding officer may limit the length of a brief and impose format restrictions.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

WAC 242-02-582 Waiver of parties' appearance. Upon stipulation by all parties, or upon order of the board, a matter may be submitted to ((a)) the board or presiding officer without oral argument or appearance. The board or presiding officer, in its discretion, may require appearance for oral argument.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

WAC 242-02-610 Hearing—Testimony under oath—Interpreters. (1) All testimony to be considered by ((a)) the board or presiding officer shall be sworn, and each person shall swear or affirm that the testimony to be given shall be the truth, the whole truth, and nothing but the truth, or according to the provisions of RCW 5.28.020 through 5.28.060.

(2) Every interpreter shall, before beginning to interpret, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being exam-

ined to the presiding officer, in the English language, to the best of the interpreter's skill and judgment.

AMENDATORY SECTION (Amending WSR 98-01-144, filed 12/19/97, effective 1/20/98)

WAC 242-02-634 Standard of proof. Where a petition for review alleges a lack of compliance with the Growth Management Act, ((a)) the board shall find compliance unless it determines that the action by the state agency, county or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of the act.

AMENDATORY SECTION (Amending WSR 97-04-008, filed 1/24/97, effective 3/1/97)

WAC 242-02-650 Rules of evidence—Admissibility criteria. (1) All relevant evidence, including hearsay evidence, is admissible if, in the opinion of the presiding officer, the offered evidence is the kind of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs. 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. The presiding officer shall exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(2) ((A)) The board's experience, technical knowledge, competency, and specialized knowledge may be used in evaluation of evidence.

(3) If not inconsistent with subsection (1) of this section, the presiding officer shall refer to, but shall not be bound by, the Washington rules of evidence.

(4) Documentary evidence may be submitted in the form of copies or excerpts, or by incorporation by reference.

AMENDATORY SECTION (Amending WSR 97-04-008, filed 1/24/97, effective 3/1/97)

WAC 242-02-660 Official notice—Matters of law. ((A)) The board or presiding officer may 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) Washington state law. The Constitution of the state of Washington; decisions of the state courts; acts, resolutions, records, journals, and committee reports of the legislature; decisions of administrative agencies of the state of Washington; executive orders and proclamations by the governor; all rules, orders, and notices filed with the code reviser; and codes or standards that have been adopted by an agency of this state or by a nationally recognized organization or association.

(3) Laws of other states. The constitutions of other states; decisions of state courts; acts, resolutions, records, journals and committee reports of other state legislatures; decisions of other states administrative agencies; executive orders and proclamations issued by a governor of another state; and

codes or standards that have been adopted by an agency of another state.

(4) Counties and cities. Ordinances, resolutions, and motions enacted by cities, counties, or other municipal subdivisions of the state of Washington.

(5) Federally recognized Indian tribes, Constitutions, ordinances, resolutions and motions enacted by federally recognized Indian tribes.

(6) Growth management hearings board((s)). Orders and decisions of ((~~any~~) the board((-

~~(7) Joint boards.)) and the board's rules of practice and procedure.~~

AMENDATORY SECTION (Amending WSR 98-01-144, filed 12/19/97, effective 1/20/98)

WAC 242-02-670 Official notice—Material facts. In the absence of conflicting evidence, ((~~the~~) the board or presiding officer, upon request made before or during a hearing, may officially notice:

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

(2) 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.

(3) Technical or scientific facts. Technical or scientific facts within ((~~the~~) the board's specialized knowledge.

(4) 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.

(5) Notice. Parties shall be notified either before or during a hearing of the material fact(s) proposed to be officially noticed, and shall be afforded the opportunity to contest such facts and materials.

(6) Statement.

(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~~) 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 94-07-033, filed 3/9/94, effective 4/9/94)

WAC 242-02-680 Hearings—Board questions. A hearing examiner or any member of ((~~the~~) the board may, at any time during the hearing, ask clarifying questions as necessary to understand the evidence or argument.

AMENDATORY SECTION (Amending WSR 97-04-008, filed 1/24/97, effective 3/1/97)

WAC 242-02-710 Failure to attend—Default or dismissal—Setting aside. (1) When a party to a proceeding has, after proper notice, failed to attend a hearing or any other matter before ((~~the~~) the board or presiding officer, a motion for default or dismissal may be sought by any party to the case or raised by ((~~the~~) the board upon its own motion or by a presiding officer. Any order granting the motion shall include a statement of the grounds for the order and shall be served upon all parties to the case.

(2) Within seven days after service of the default order or dismissal under subsection (1) of this section, the party against whom the order was entered may file a written objection requesting that the order be vacated and stating the specific grounds relied upon. The board may, for good cause, set aside an order of dismissal or default.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

WAC 242-02-720 Dismissal of action. Any action may be dismissed by ((~~the~~) the board:

(1) When all parties stipulate;

(2) Upon motion of the petitioner or respondent prior to the presentation of the respondent's case;

(3) Upon motion by the respondent alleging that the petitioner has failed to prosecute the case, failed to comply with these rules, or failed to follow any order of the board; or

(4) Upon ((~~the~~) the board's own motion for failure by the parties to comply with these rules or any order of the board.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

WAC 242-02-810 Presentation of post hearing matters. Unless requested by or authorized by ((~~the~~) the board, no post hearing evidence, documents, briefs, or motions will be accepted. ((~~The~~) The board may request submission of proposed findings of fact, conclusions of law, and final order from any or all parties.

AMENDATORY SECTION (Amending WSR 98-01-144, filed 12/19/97, effective 1/20/98)

WAC 242-02-830 Final decision and order—Basis. (1) When the hearing on the petition for review has been held and the record reviewed by a majority of ((~~a board~~) the panel hearing the matter, a written final decision and order shall be issued that contains appropriate findings and conclusions, and articulates the basis for the final decision and order.

(2) The board will not issue advisory opinions on issues not presented to the board in the petition for review's statement of the issues, as modified by any prehearing order.

(3) Except as provided in RCW 36.70A.300 (2)(b) and WAC 242-02-560, the final decision and order shall be issued by ((~~the~~) the board within one hundred eighty days of receipt of the petition for review, or if multiple petitions are filed, within one hundred eighty days of receipt of the last petition that is consolidated.

AMENDATORY SECTION (Amending WSR 06-12-019, filed 5/26/06, effective 6/26/06)

WAC 242-02-831 Final decision and order—Compliance, noncompliance, invalidity. (1) In its final decision and order, ((a)) the board shall either:

(a) Find that the state agency, county or city is in compliance with the requirements of chapter 36.70A RCW, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW; or

(b) Find that the state agency, county or city is not in compliance with the requirements of chapter 36.70A RCW, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW, in which case the board shall remand the matter to the state agency, county or city and specify a time for compliance. The period of remand shall extend to the date the board issues its next order on compliance.

(2) In its final decision and order, ((a)) the board may determine that part or all of a comprehensive plan or development regulations are invalid if the board:

(a) Makes a finding of noncompliance and issues an order of remand;

(b) Includes in its final decision and order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of the act; and

(c) Specifies the part or parts, if applicable, of the plan or regulation that are determined to be invalid and the reasons for invalidity.

(3) The effect of a determination of invalidity is as set forth in RCW 36.70A.302.

AMENDATORY SECTION (Amending WSR 08-10-029, filed 4/28/08, effective 5/29/08)

WAC 242-02-832 Reconsideration. (1) After issuance of a final decision any party may file a motion for reconsideration with ((a)) the board in accordance with subsection (2) of this section. Such motion must be filed within ten days of service of the final decision. The original and four copies of the motion for reconsideration shall be filed with the board. At the same time, copies shall be served on all parties of record. Within five days of filing the motion for reconsideration, a party may file an answer to the motion for reconsideration without direction or request from the board. ((A)) The board may require other parties to supply an answer. All answers to motions for reconsideration shall be served on all parties of record.

(2) A motion for reconsideration shall be based on at least one of the following grounds:

(a) Errors of procedure or misinterpretation of fact or law, material to the party seeking reconsideration;

(b) Irregularity in the hearing before the board by which such party was prevented from having a fair hearing; or

(c) Clerical mistakes in the final decision and order.

(3) In response to a motion for reconsideration, the board may deny the motion, modify its decision, or reopen the hearing. A motion is deemed denied unless the board takes action within twenty days of filing the motion for reconsideration. A board order on a motion for reconsideration is not subject to a motion for reconsideration.

(4) A decision in response to the petition for reconsideration shall constitute a final decision and order for purposes of judicial review. Copies of the final decision and order shall be served by the board on each party or the party's attorney or other authorized representative of record.

AMENDATORY SECTION (Amending WSR 98-01-144, filed 12/19/97, effective 1/20/98)

WAC 242-02-833 Invalidity—Hearing pursuant to motion to clarify, modify or rescind. If a motion to clarify, modify or rescind a determination of invalidity order has been filed by a county or city subject to a determination of invalidity, pursuant to RCW 36.70A.302, and the jurisdiction has not enacted legislation in response to the board's remand order, ((a)) the board shall schedule and conduct a hearing to address clarifying, modifying or rescinding the determination of invalidity. Within thirty days of the hearing the board shall continue, clarify, modify, or rescind the determination of invalidity. The board may rescind a determination of invalidity but find continuing noncompliance, in which case the board may establish a compliance schedule or new compliance date.

AMENDATORY SECTION (Amending WSR 09-21-039, filed 10/13/09, effective 11/13/09)

WAC 242-02-834 Publication of final decision and orders. Copies of all final decisions and orders are available ((for an individual board that entered the decision and order)) from the office of the growth management hearings board((s)). The growth management hearings board's web site is www.gmhb.wa.gov. Each board panel posts its decisions within its individual portion of the web site and maintains a digest of its decisions.

AMENDATORY SECTION (Amending WSR 98-01-144, filed 12/19/97, effective 1/20/98)

WAC 242-02-880 Transcripts. The following shall be the policy of ((each)) the board with regard to transcription of the record:

(1) ((A)) The board, in its discretion, may at any time cause a transcript to be printed. Any person may obtain a copy upon payment of the reasonable costs thereof.

(2) In any case when ((a)) the board shall not cause the transcript to be printed, it shall be the obligation of the party wishing a transcript, or portions of it, to assume the cost of producing it.

(3) When an appeal is taken from any final decision and order of a board to a reviewing court, the appealing party is responsible for ordering and paying for the transcript of the hearing.

AMENDATORY SECTION (Amending WSR 06-12-019, filed 5/26/06, effective 6/26/06)

WAC 242-02-890 Determination of noncompliance—Compliance schedule. In those cases where ((#)) the board finds that a state agency, county, or city is not in compliance with the requirements of the act, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW, the board shall remand the matter to the affected state agency, county, or city. The board's final decision and order shall specify a reasonable time not in excess of one hundred eighty days, or such longer time as determined by the board in cases of unusual scope or complexity, within which the state agency, county, or city shall comply. In its order the board shall establish a compliance schedule and may require periodic reports on the progress the jurisdiction is making toward compliance.

AMENDATORY SECTION (Amending WSR 98-01-144, filed 12/19/97, effective 1/20/98)

WAC 242-02-891 Compliance—Notice of hearing. (1) After the compliance deadline specified in the final decision and order passes, or at an earlier time upon the motion of a county or city subject to a determination of invalidity under RCW 36.70A.302, ((#)) the board shall issue a notice of compliance hearing setting a hearing date for the purpose of determining whether compliance has been achieved. The compliance hearing shall be given the highest priority of business.

(2) The presiding officer shall set the format of the compliance hearing in the notice of compliance hearing. At the compliance hearing the presumption of validity and burden of proof are as set forth in WAC 242-02-630 and 242-02-632. The parties to the original case, and a person with standing to challenge the legislation enacted in response to ((#)) the board's final decision and order, may participate in the compliance hearing. The notice of compliance hearing shall set the scope of, and procedures for participation.

AMENDATORY SECTION (Amending WSR 06-12-019, filed 5/26/06, effective 6/26/06)

WAC 242-02-89201 Intent to participate in compliance hearings. Any person eligible to participate in a compliance proceeding based upon his or her participation in the proceedings to enact legislation in response to ((a-board)) the board's order shall abide by any briefing schedule set in the board's compliance order, as amended or extended, and provide the board and the parties of record with written notice of intent to participate no later than two weeks prior to the compliance hearing date set in that order.

AMENDATORY SECTION (Amending WSR 98-01-144, filed 12/19/97, effective 1/20/98)

WAC 242-02-894 Compliance—Hearing pursuant to motion—Rescinding invalidity. If a motion for a compliance hearing has been filed by a county or city subject to a

determination of invalidity, pursuant to RCW 36.70A.330(1), and the jurisdiction has enacted legislation amending the invalidated plan, regulation or part thereof, ((#)) the board shall schedule and conduct a hearing to address rescinding the determination of invalidity. Within forty-five days of the filing of the motion, the board shall issue an order continuing, modifying, or rescinding the determination of invalidity depending upon whether the jurisdiction's legislative action has removed the basis for invalidity so that it no longer substantially interferes with the goals of the act. The board may rescind a determination of invalidity but find continuing non-compliance, in which case the board may establish a compliance schedule or new compliance date.

AMENDATORY SECTION (Amending WSR 98-01-144, filed 12/19/97, effective 1/20/98)

WAC 242-02-896 Continued noncompliance—Recommendation to the governor. If the board finds that the county or city continues to be in noncompliance with the act, the board shall transmit its findings to the governor. ((A)) The board may recommend that sanctions authorized by the act be imposed. A jurisdiction's efforts to meet a compliance schedule shall be considered by the board in making a recommendation on sanctions to the governor.

AMENDATORY SECTION (Amending WSR 98-01-144, filed 12/19/97, effective 1/20/98)

WAC 242-02-898 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 or 36.01.050 within thirty days of service of the final decision of the board.

(2) ((A)) The board shall follow the procedures established in RCW 34.05.518 in the event that direct appellate review is sought.

WSR 10-15-013
EXPEDITED RULES
GROWTH MANAGEMENT
HEARINGS BOARD

[Filed July 8, 2010, 10:56 a.m.]

Title of Rule and Other Identifying Information: Chapter 242-04 WAC, Public records.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Julie Ainsworth-Taylor, Rules Coordinator, Office of the Growth Management Hear-

ings Boards, P.O. Box 40953, Olympia, WA 98504-0953, e-mail Juliet@cps.gmhb.wa.gov, AND RECEIVED BY no later than 5 p.m. on September 20, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Purpose of these amendments is to permanently amend certain sections of chapter 242-04 WAC which relate to an emergency rule-making order published in WSR 10-11-028. These amended sections reflect the consolidation of the three growth management hearings boards into a single, statewide growth management hearings board, a regional panel structure, and the creation of the position of administrative officer. Amendments are related to internal operations of the board.

1. Amend sections of chapter 242-04 WAC to reflect a single growth management hearings board, including number of members.

2. Amended sections reflect establishment of regional panel structure and the creation of the position of administrative officer.

3. Amended sections reflect meeting schedules.

Reasons Supporting Proposal: These amendments implement the requirements of SHB [SSB] 6214, enacted by the legislature in the 2010 legislative session, becoming effective on July 1, 2010. With this legislation, the structure of the growth management hearings board was changed in several regards: (1) Consolidation of three boards into a single entity, (2) regional panel structure to hear and decide cases, (3) creation of an administrative officer. Part of this reconfiguration is based on budgetary concerns and related to SHB 2935. Amendments are needed to update procedures related to the board's public records, including addressing the position of administrative officer and meeting schedules of the growth management hearings board. (Exempt from CR-101 requirement based on RCW 34.05.310 (4)(b), (e); filed under CR-105 based on RCW 34.05.353 (1)(a) and (d).)

Statutory Authority for Adoption: RCW 36.70.270(7).

Statute Being Implemented: Chapter 36.70A RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Growth management hearings board, governmental.

Name of Agency Personnel Responsible for Julie Ainsworth-Taylor, P.O. Box 40953, Olympia, WA 98504-0953, (425) 441-8250.

July 8, 2010

James J. McNamara
Chair, Rules Committee

AMENDATORY SECTION (Amending WSR 09-21-040, filed 10/13/09, effective 11/13/09)

WAC 242-04-010 Purpose. The purpose of this chapter is to ensure compliance by ~~((each individual board, the joint boards, and the office of))~~ the growth management hearings board((s)) with the provisions of chapter 42.17 RCW, and in particular with RCW 42.17.250 through 42.17.340, dealing with public records.

AMENDATORY SECTION (Amending WSR 09-21-040, filed 10/13/09, effective 11/13/09)

WAC 242-04-020 Definitions. (1) "Board" means the ~~((Eastern Washington, Western Washington, or Central Puget Sound))~~ growth management hearings board~~((Each is))~~, a quasi-judicial body created pursuant to chapter 36.70A RCW. Where appropriate the term board also refers to the staff and employees of ~~((each))~~ the board.

(2) ~~((("Joint boards" means the three independent boards meeting or acting jointly.))~~ "Administrative officer" means the board member elected pursuant to RCW 36.70A.270(10).

(3) "Office of the growth management hearings board~~((s))~~" means the administrative office of the ~~((three))~~ growth management hearings board~~((s))~~ established in RCW 36.70A.250.

(4) "Public record" means any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

(5) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation~~((s))~~ including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion pictures, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents, including existing data compilations from which information may be obtained or translated.

AMENDATORY SECTION (Amending WSR 09-21-040, filed 10/13/09, effective 11/13/09)

WAC 242-04-030 Description of organization and public meetings. (1) ~~((Each))~~ The board is an independent agency of the state of Washington, composed of ~~((three))~~ seven members appointed by the governor. ~~((Each))~~ The board ~~((elects an administrative chairperson from its members at least annually.))~~

~~((2) The administrative chairpersons constitute the administrative committee of the joint boards.~~

~~((3) Regular meetings of each board will be held at the office of the growth management hearings boards or other designated location at the following times:~~

~~((a) Eastern Washington board—on the first Wednesday of each month at 10:00 a.m.~~

~~((b) Western Washington board—on the second Wednesday of each month at 11:00 a.m.~~

~~((c) Central Puget Sound board—on the first Monday of each month at 10:00 a.m.~~

~~((4))~~ shall annually elect one of its members to be the board administrative officer. The duties and responsibilities of the administrative officer include handling day-to-day administrative, budget, and personnel matters on behalf of the board, together with making case assignments to board members in accordance with the board's rules of procedure in order to achieve a fair and balanced workload among all board members. The administrative officer of the board may

carry a reduced caseload to allow time for performing the administrative work functions.

(2) Regular meetings of the board will be held at the office, telephonically if desired, of the growth management hearings board, or a designated location on the first Wednesday of each month at 10:00 a.m. or following any scheduled hearing on that date.

(3) The ~~((joint))~~ board~~((s, comprised of the members of the three individual boards,))~~ shall meet at least annually at a time and location to be announced.

~~((5))~~ (4) The office of the growth management hearings board~~((s))~~ provides for the administrative operations of the ~~((three individual boards and the joint))~~ board~~((s))~~.

AMENDATORY SECTION (Amending WSR 92-21-034, filed 10/15/92, effective 10/15/92)

WAC 242-04-040 Public records available. All public records of ~~((each board and of))~~ the ~~((joint))~~ board~~((s))~~ are available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 42.17.310 and other laws.

AMENDATORY SECTION (Amending WSR 09-21-040, filed 10/13/09, effective 11/13/09)

WAC 242-04-050 Communications with ~~((each))~~ the board ~~((or the joint boards))~~. (1) All communications with ~~((a))~~ the board, including but not limited to the submission of materials pertaining to its operations and/or administration or enforcement of chapter 42.17 RCW and these rules, requests for copies of ~~((each))~~ the board~~((s))~~ decisions and other matters, by including identification of the appropriate regional panel, shall be addressed to the ~~((appropriate))~~ board as follows:

~~((The))~~ Office of the Growth Management Hearings Board~~((s~~
~~((Insert name of appropriate board)))~~
 319 - 7th Avenue S.E.
 Olympia, WA 98501
 P.O. Box 40953
 Olympia, WA 98504-0953
 360-586-0260
 360-664-6975 fax
 e-mail: eastern@ew.gmhb.wa.gov
 western@wv.gmhb.wa.gov
 central@cps.gmhb.wa.gov
 web site: ~~((www.gmhba.wa.gov))~~ www.gmhb.wa.gov

(2) All communications with the ~~((joint))~~ board~~((s))~~ shall be addressed as noted in subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 09-21-040, filed 10/13/09, effective 11/13/09)

WAC 242-04-060 Public records officer. (1) The administrative ~~((chairperson responsible for management of the office of the growth management hearings boards))~~ officer, or his/her designee, shall be in charge of the public records for ~~((all three boards and for the joint))~~ board~~((s))~~.

(2) Such person shall be responsible for implementation of these rules and regulations regarding release of public records, and generally assuring compliance with the public records disclosure requirements of chapter 42.17 RCW, and in particular RCW 42.17.250 through 42.17.340.

AMENDATORY SECTION (Amending WSR 09-21-040, filed 10/13/09, effective 11/13/09)

WAC 242-04-070 Office hours. Public records shall be available for inspection and copying during the customary office hours of the ~~((office of the))~~ growth management hearings board~~((s))~~. For the purposes of this chapter, the customary office hours shall be from 8:00 a.m. to noon and from 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding legal holidays.

AMENDATORY SECTION (Amending WSR 09-21-040, filed 10/13/09, effective 11/13/09)

WAC 242-04-080 Requests for public records. In accordance with the provisions of chapter 42.17 RCW, that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied, or copies of such records may be obtained, by members of the public upon compliance with the following procedures:

(1) A request shall be made in writing upon a form prescribed by the ~~((joint))~~ board~~((s))~~ which shall be available at the office of the growth management hearings board~~((s))~~. A completed form shall be presented to the public records officer or to any staff member at the office of the growth management hearings board~~((s))~~ during customary office hours. The request shall include the following information:

- (a) The name and address of the person requesting the record and the organization represented, if any;
- (b) The time of day and calendar date on which the request was made;
- (c) A description of the material requested;
- (d) If the matter requested is referenced within the current index maintained by the public records officer, a reference to the requested record as it is described in such current index;
- (e) If the requested matter is not identifiable by reference to a current index, an appropriate identification of the record requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made to assist the member of the public in appropriately identifying the public record requested.

AMENDATORY SECTION (Amending WSR 09-21-040, filed 10/13/09, effective 11/13/09)

WAC 242-04-090 Responses to requests for public records. Within five business days of receiving a public record request, the public records officer must respond by either:

- (1) Providing the record;

(2) Acknowledging that the public records officer has received the request for ~~((an individual))~~ the board ~~((or the joint boards))~~ and providing a reasonable estimate of the time that the public records officer will require to respond to the request. Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, the public records officer may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the public records officer need not respond to it; or

(3) Denying the public record request.

AMENDATORY SECTION (Amending WSR 09-21-040, filed 10/13/09, effective 11/13/09)

WAC 242-04-100 Copying. No fee shall be charged for the inspection of public records. The public records officer, on behalf of ~~((either an individual))~~ the board ~~((or the joint boards))~~, shall charge a reasonable fee for providing copies of public records and for use of the office of the growth management hearings ~~((boards'))~~ board's photocopy equipment. The public records officer may charge a reasonable fee for electronic facsimile transmissions (fax). The charge is the amount necessary to reimburse the office of the growth management hearings board ~~((s))~~ for its actual costs incident to such copying or transmission.

AMENDATORY SECTION (Amending WSR 09-21-040, filed 10/13/09, effective 11/13/09)

WAC 242-04-110 Exemptions. (1) The public records officer, on behalf of ~~((each individual))~~ the board ~~((or the joint boards))~~, reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 242-04-080 is exempt under the provisions of RCW 42.17.310 including but not limited to the following:

(a) Personal information in files maintained for members and employees of ~~((an individual))~~ the board, ~~((the joint boards))~~, or the office of the growth management hearings board ~~((s))~~, to the extent that disclosure would violate their right to privacy;

(b) Preliminary drafts, notes, recommendations, and intra-agency memoranda in which opinions are expressed or policies formulated or recommended, except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action;

(c) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant;

(d) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(2) Pursuant to RCW 42.17.260, the public records officer reserves the right to delete identifying details when he/she

makes available or publishes any public records, in all cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 42.17 RCW. The public records officer will fully justify such deletion in writing.

(3) All public records otherwise exempt by law shall be considered exempt under the provision of these rules.

AMENDATORY SECTION (Amending WSR 09-21-040, filed 10/13/09, effective 11/13/09)

WAC 242-04-130 Protection of public records. In order to protect the public records in the custody of ~~((each individual))~~ the board, ~~((the joint boards))~~, or the office of the growth management hearings boards, the following guidelines shall be followed by any person inspecting such public records:

(1) No public records shall be removed from the office;

(2) Inspection of any public record shall be conducted in the presence of the public records officer or his/her designee;

(3) No public record may be marked or defaced in any manner during inspection;

(4) Public records which are maintained in the file jacket, or in chronological order, may not be dismantled except for purpose of copying, and then only by the public records officer or his/her designee;

(5) Access to file cabinets, shelves, vaults, and other storage locations is restricted to the public records officer, board members, and staff.

AMENDATORY SECTION (Amending WSR 09-21-040, filed 10/13/09, effective 11/13/09)

WAC 242-04-140 Records index. (1) Index. The public records officer has available to all persons a current index which provides identifying information as to records which have been issued, adopted, or promulgated since May 15, 1992, as follows:

(a) Final orders, including concurring and dissenting opinions, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by ~~((an individual))~~ the board ~~((and/or the joint boards))~~;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) ~~((Individual board and joint))~~ Board planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, a consultant's factual reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with ~~((an individual))~~ a board, ~~((the joint boards))~~, or the office of the growth management hearings boards relating to any regulations, supervisory or enforcement responsibilities of the growth management hearings board ~~((s))~~, where ~~((an individual))~~ the board determines or is asked to determine the rights of the state, the public, a subdivision of state government, or of any private party.

(2) Availability. The current index promulgated by the public records officer shall be available for inspection by all persons under the same rules and on the same conditions as are applied to public records available for inspection.

AMENDATORY SECTION (Amending WSR 09-21-040, filed 10/13/09, effective 11/13/09)

WAC 242-04-150 Adoption of form. ~~((Each individual))~~ ~~The board ((and the joint boards))~~ adopts the use by all persons requesting inspection and/or copies of records the form set out below, entitled "Request for inspecting and/or copying public records."

We have received your request for inspection of and/or copies of our public records. Please complete this form and return it with the amount required, if applicable. We will forward the requested copies to you as soon as we receive this completed form with payment.

Return to:

PUBLIC RECORDS OFFICER

OFFICE OF THE GROWTH MANAGEMENT HEARINGS BOARD ~~((S-(INSERT APPROPRIATE BOARD'S NAME)))~~

REGIONAL PANEL:

REQUEST FOR INSPECTING AND/OR COPYING PUBLIC RECORDS

Date:

Name:

Address:

Day Phone Number:

Description of Record(s) Requested, including case number and document identification and date, if known:

I certify that the information obtained through this request for public records will be used in compliance with chapter 42.17 RCW.

Signature

Number of Copies

Number of Pages

Per Page Cost \$

Total Charge \$

WSR 10-15-094
WITHDRAWAL OF
EXPEDITED RULE MAKING
SUPERINTENDENT OF
PUBLIC INSTRUCTION
(By the Code Reviser's Office)
[Filed July 20, 2010, 11:19 a.m.]

WAC 392-500-030, proposed by the superintendent of public instruction in WSR 10-02-069 appearing in issue 10-02 of

the State Register, which was distributed on January 20, 2010, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 10-15-119

EXPEDITED RULES

DEPARTMENT OF AGRICULTURE

[Filed July 21, 2010, 9:40 a.m.]

Title of Rule and Other Identifying Information: Chapter 16-740 WAC, Food assistance programs.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Teresa Norman, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, AND RECEIVED BY September 21, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 68, Laws of 2010, transferred the authority to administer state emergency food programs from the department of general administration and the department of commerce to the department of agriculture (WSDA) effective July 1, 2010. Chapter 365-140 WAC contains the rules governing these programs. These rules are being moved to new chapter 16-740 WAC under Title 16 WAC, Department of agriculture. There are no substantial changes to the rules.

Reasons Supporting Proposal: Chapter 68, Laws of 2010, transferred the authority to administer state emergency food programs from the department of general administration and the department of commerce to WSDA. Chapter 365-140 WAC is implemented by the department of commerce. Moving the rules for state emergency food programs found in chapter 365-140 WAC to a new WAC chapter under Title 16 WAC, allows WSDA to implement these rules.

Statutory Authority for Adoption: Chapter 68, Laws of 2010, chapter 34.05 RCW.

Statute Being Implemented: Chapter 68, Laws of 2010.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting:
Ken Harden, Olympia, (360) 902-1932; Implementation and
Enforcement: Kim Eads, Tacoma, (253) 593-2031.

July 21, 2010
Kenneth R. Harden
Assistant Director

Chapter 16-740 WAC

FOOD ASSISTANCE PROGRAMS

NEW SECTION

WAC 16-740-010 Authority. These rules are adopted under the authority of chapter 68, Laws of 2010, which provides that the director may adopt rules necessary to implement the food assistance programs.

NEW SECTION

WAC 16-740-020 Purpose. The purpose of this chapter is to set forth the conditions and procedures under which state funding will be made available to assist local emergency food programs.

NEW SECTION

WAC 16-740-030 Definitions. "Administrative costs" means management and general expenses, including membership dues that cannot be readily identified with a particular program or direct services.

"Applicant" means a public or private nonprofit organization, tribe or tribal organization who applies for state emergency food assistance.

"Commodity program" means a program that primarily distributes USDA surplus commodities to clients (TEFAP).

"Contractor" means an applicant who has been awarded state funds under the emergency food assistance program, and who has entered into a contract with the department to provide emergency food assistance to individuals.

"Department" means the Washington state department of agriculture.

"Director" means the director of the Washington state department of agriculture or the director's authorized representative.

"Emergency food" means food that is given to clients who do not have the means to acquire that food themselves, so that they will not go hungry.

"Emergency food assistance program" or "EFAP" means the statewide activities of the department to assist local emergency food programs by allocating and awarding state funds.

"Food bank" means an emergency food program that distributes unprepared food without charge to its clients, is open a fixed number of hours and days each week or month, and such hours and days are publicly posted.

"Food distributor" means a food distribution agency that collects, warehouses, and distributes food to emergency food programs and other charities on a county, regional, or statewide basis.

"In-kind" means the value of volunteer services or donated goods such as staff time, rent, food, supplies and transportation.

"Lead agency contractor" means a contractor who may subcontract with one or more local food banks to provide emergency food assistance to individuals, and with food distributors to provide food to food banks.

"Operational expenses" means those costs clearly identifiable with providing direct services to eligible clients, or distribution services to food banks such as staff time, transportation costs, and equipment rental.

"Participating food bank" means a local public or private nonprofit food bank that enters into a subcontract with a lead agency contractor to provide emergency food assistance to individuals.

"Religious service" means any sectarian or nondenominational service, rite, or meeting that involves worship of a higher being.

"Special dietary needs" means funds to purchase food that meets the nutritional needs of a special needs population.

"Tribal food voucher program" means the statewide activities of the department that allocate and award state funds to tribes and tribal organizations that issue food vouchers to clients.

NEW SECTION

WAC 16-740-040 Contractor funding allocation and award of contracts. At least seventy percent of the total allocation appropriated by the legislature shall be contracted to lead agency contractors. These funds shall be for the purpose of funding the activities of food banks and food distributors, the purchase of special dietary needs foods, and providing special dietary needs training. The specific appropriation for timber and salmon dependent communities shall be contracted to food banks in those communities. Of the remainder of the total allocation, not including department administrative costs, allocations shall be contracted to a discretionary program if the department elects to award such contracts, the tribal food voucher program, and additional special dietary needs training. Allocations for each county shall be contracted to lead agency contractors on the following basis:

(1) A formula for distributing the funds in proportion to need shall be established by the department in consultation with a committee appointed by the director or the director's designee. This formula may only be changed at the beginning of a biennial contract period.

(2) The department shall award the lead agency contract to an eligible contractor, as defined by the department, which is supported by a least two-thirds of the participating food banks in a county.

(3) The department may award the combined allocation for two or more counties to a single applicant.

(4) The department shall award a contract to no more than one lead agency contractor in each county, with the exception of King County, where there may be three lead agency contractors, to administer subcontracts with one or more participating food banks and food distributors.

(5) Federally recognized tribes may apply to the department directly for the food bank program without having to

subcontract with the lead agency. They must meet all the same criteria and requirements as lead agencies.

(6) Within each lead agency service area, except for the additional funds specifically allocated for food banks in timber and salmon dependent communities, funds shall be allocated between food distributors, food banks, and special dietary needs foods and training based on a two-thirds vote of all participating food banks and the lead agency.

(7) The additional funds specifically allocated for food banks in timber and salmon dependent communities shall remain in the amounts identified by the legislature.

(8) If participating food banks designate funds for food distribution, they shall elect with a two-thirds vote of the participating food banks and the lead agency, an eligible distributor as defined by the department. They may choose more than one distributor with which to subcontract. The lead agency contractor shall be responsible for subcontracting with the food distributor(s).

(9) A formula for distributing the funds to each tribe and tribal organization participating in the emergency food assistance program in proportion to need shall be established by the department in consultation with a committee consisting of representatives from all tribes participating in the program. This formula may only be changed at the beginning of a biennial contract period.

(10) The department shall pay for services provided under the emergency food assistance program after the contractor submits a monthly report of expenditures incurred and a request for reimbursement.

(11) Tribes may apply for the food bank funds or the food voucher funds or both. Tribes will receive the same amount of funds whether they participate in one or both programs, computed as their share of the allocated EFAP tribal funds. It will be up to the discretion of each participating tribe how it allocates the EFAP funds.

(12) In the event that funds are not claimed by an eligible organization in a county or that a portion of the funds allocated to a county remains unspent, the lead agency contractor may request authorization from the department to reallocate funds, within its service area, to an area of unmet need.

(13) In the event that a portion of the funds allocated to a subcontracting tribe within a tribal contractor's contract remains unspent or unclaimed, the tribal contractor may request authorization from the department to reallocate funds to one of its other subcontracting tribes with unmet needs.

NEW SECTION

WAC 16-740-050 Applicant eligibility criteria. (1)

The applicant must have a certified form from the IRS stating nonprofit status under section 501 (c)(3), or be a public nonprofit agency, be a recognized tribe, a tribal organization with section 501 (c)(3) status, or an unrecognized tribe with section 501 (c)(3) status.

(2) The applicant for funding as lead agency must have been operating as a public nonprofit or private nonprofit with section 501 (c)(3) status for one year prior to the beginning date of the contract.

(3) The applicant for funding as a participating food bank must have been operating as a public nonprofit or pri-

vate nonprofit with section 501 (c)(3) status food bank for one year prior to the beginning date of the subcontract.

(4) The applicant for funding as a food distributor must have been operating as a public nonprofit or a private nonprofit with section 501 (c)(3) status food distributor for one year prior to the beginning date of the contract.

(5) The applicant for lead agency or tribal contractor may or may not actually provide emergency food program services.

(6) The applicant must practice nondiscrimination in providing services and employment.

(7) The applicant must not require participation in a religious service as a condition of receiving emergency food or a food voucher.

(8) Applicants within a county or multicounty region, or tribes with established parameters for service, may define their service area boundaries for the purpose of equitably allocating resources. The department encourages the provider to serve the client no matter what service areas the client resides in. If appropriate, the provider may then refer the client to the agency servicing the area in which the client resides, or to the tribe which has established jurisdiction over the individual, for further assistance. Providers must practice nondiscrimination when applying their service area policies.

(9) The applicant may not charge for food or food vouchers given to a client.

NEW SECTION

WAC 16-740-060 Financial support application process. (1) Potential applicants will be notified by the department that in order to be considered for state emergency food financial assistance, an application must be submitted to the department.

(2) An applicant must make formal application using forms issued and procedures established by the department. Such application shall be for the period indicated on the contract face sheet. Failure of an applicant to make application in a timely manner, as specified by the department, may result in denial of the funding request.

(3) Department funds may not supplant other existing funding sources.

(4) The department shall notify successful applicants and shall provide to each of them a contract for signature. This contract must be signed by an official with authority to bind the applicant and must be returned to the department prior to the award of any funds under this program.

(5) Applicants that receive food bank or food distribution funds are subject to the following fiscal requirements:

(a) The total funds from the department received by a nontribal lead agency contractor or a food distribution subcontractor must be equally matched by funds from other sources during the fiscal year. No more than fifty percent of that match may be documented in-kind contributions. Nontribal participating food banks receiving funds from the department have two options for matching funds: They may equally match the EFAP funds, with no more than fifty percent being documented in-kind contributions; if they do not have at least one-half of their minimum match as cash, they

may match their department funds by at least two hundred percent in in-kind contributions from other sources.

(b) Administrative costs for food bank and food distributor subcontractors under this program are limited to ten percent of their total contract award. Administrative costs for a lead agency contractor who also provides direct emergency food assistance services as a participating food bank and/or services as a food distributor are limited to ten percent of the contractor's allocation for providing direct services, ten percent of the contractor's allocation for providing food distributor services, and ten percent of the total contract award as food bank lead agency; total administrative costs, however, may not exceed fifteen percent of the total contract award. Administrative costs for agencies who are lead agency contractors only are limited to ten percent of their total contract award.

(6) Tribal applicants are subject to the following fiscal requirements:

(a) Tribal contractors and subcontractors must match thirty-five percent of the funds received by the department for the emergency food assistance program. No more than fifty percent of that match may be documented in-kind contributions.

(b) Of a contract award allocated to the tribal food voucher program, tribal contractors may not spend more than ten percent on administrative costs, and five percent on operational expenses. The balance of funds is to be used for food vouchers issued to clients. Of funds allocated to the food bank program, tribal contractors are subject to the same spending requirements as nontribal food bank contractors under subsection (5)(b) of this section.

**WSR 10-15-123
EXPEDITED RULES**

DEPARTMENT OF AGRICULTURE

[Filed July 21, 2010, 10:42 a.m.]

Title of Rule and Other Identifying Information: Expedited repeal of chapter 365-140 WAC, State funding of local emergency food programs.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Teresa Norman, Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, AND RECEIVED BY September 21, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 68, Laws of 2010, transferred the authority to administer state emergency food programs from the department of general administration and the department of commerce to the department

of agriculture (WSDA) effective July 1, 2010. Therefore, the rules found in chapter 365-140 WAC are being moved to a new chapter under Title 16 WAC, Department of agriculture, and chapter 365-140 WAC will be repealed.

Reasons Supporting Proposal: Chapter 68, Laws of 2010, transferred the authority to administer state emergency food programs from the department of general administration and the department of commerce to WSDA. Chapter 365-140 WAC is implemented by the department of commerce. Moving the rules for state emergency food programs found in chapter 365-140 WAC to a new WAC chapter under Title 16 WAC, allows the department of agriculture to implement these rules and chapter 365-140 WAC is no longer needed.

Statutory Authority for Adoption: Chapter 68, Laws of 2010; chapter 34.05 RCW.

Statute Being Implemented: Chapter 68, Laws of 2010.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting: Ken Harden, Olympia, (360) 902-1932; Implementation and Enforcement: Kim Eads, Tacoma, (253) 539-2031.

July 21, 2010

Kenneth R. Harden
Assistant Director

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 365-140-010	Authority.
WAC 365-140-020	Purpose.
WAC 365-140-030	Definitions.
WAC 365-140-040	Contractor funding allocation and award of contracts.
WAC 365-140-050	Applicant eligibility criteria.
WAC 365-140-060	Financial support application process.