

WSR 23-11-077
PERMANENT RULES
ENVIRONMENTAL AND
LAND USE HEARINGS OFFICE

[Filed May 17, 2023, 9:36 a.m., effective June 16, 2023]

Effective Date of Rule: June 16, 2023.

Purpose: The rule changes will clarify electronic filing procedures and remove fax and paper filing. The rule changes will provide procedures for electronic filing via a case management system portal. The rule changes clarify the presiding officer powers and duties, as well as the purpose of the prehearing conference. Lastly, the rule changes clarify that the board shall dismiss actions upon stipulated dismissal by the parties before entry of a final decision and order. This rule change is needed to align with RCW 36.70A.330.

Citation of Rules Affected by this Order: Amending WAC 242-03-030, 242-03-060, 242-03-230, 242-03-240, 242-03-530, 242-03-540, 242-03-720, and 242-03-870.

Statutory Authority for Adoption: RCW 36.70A.270.

Adopted under notice filed as WSR 23-02-071 on January 4, 2023.

Changes Other than Editing from Proposed to Adopted Version: WAC 242-03-060, 242-03-230, and 242-03-240 removed the proposed deletion of fax as a method for filing documents with the board; WAC 242-03-030(19) clarified that the definition of "service" includes delivery of orders and decisions by the board to parties; WAC 242-03-720 clarified that the board shall dismiss actions upon stipulated dismissal by the parties before entry of a final decision and order.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 8, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 1, 2023.

Jamie Merly
Director of Legal and Administrative Services

OTS-4269.2

AMENDATORY SECTION (Amending WSR 21-17-069, filed 8/12/21, effective 9/12/21)

WAC 242-03-030 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 growth management hearings board or a panel of the board hearing a matter as established in RCW 36.70A.260.

(3) "Chair" means the board member annually elected by the board pursuant to RCW 36.70A.270(11). The duties and responsibilities of the chair include, developing board procedures, 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, and managing board meetings.

(4) "CMS" means the environmental and land use hearings office case management system or any successor system designated by the board.

(5) "Compliance participant" means any person with standing to challenge legislation taken in response to a board order, as provided in RCW 36.70A.330(2).

~~((5))~~ (6) "Consolidation" means the combining of all petitions involving review of the same comprehensive plan or development regulation into a single case for hearing and decision, as provided in RCW 36.70A.290(5).

~~((6))~~ (7) "Coordination" means provision of parallel case schedules for cases involving related matters in the interest of efficient resolution and to avoid duplication of evidence and argument.

~~((7))~~ (8) "Environmental and land use hearings office" means the administrative office of the board established pursuant to RCW 36.70A.252.

~~((8))~~ (9) "Ex parte communication" is communication about issues in a pending case between a party and a board member without including or providing notice to all other parties to the matter. Ex parte communication is prohibited.

~~((9))~~ (10) "Filing" of a document means actual receipt by the board during regular office hours, as specified in WAC 242-03-230 (for a petition for review) or WAC 242-03-240 (for all other documents).

~~((10))~~ (11) "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 in such written finding, determination or order that it is a final decision subject to appeal to superior court.

~~((11))~~ (12) "Panel" means the three board members assigned to hear and decide a particular case pursuant to RCW 36.70A.260.

~~((12))~~ (13) "Party" means the petitioner(s) and respondent(s) in a case before the board and, if admitted in the case, intervenor(s), amicus, and compliance participant(s).

~~((13))~~ (14) "Person" means any individual, partnership, corporation, association, state agency, governmental subdivision or unit, or public or private organization or entity of any character.

~~((14))~~ (15) "Petitioner" means a person who files a petition for review pursuant to RCW 36.70A.290 or who brings a petition for rule making to the board.

~~((15))~~ (16) "Presiding officer" means any member of the board who is designated to conduct a conference or hearing as directed by the board. The presiding officer shall be designated pursuant to WAC 242-03-525 and have authority as provided by WAC 242-03-530.

~~((16))~~ (17) "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 department of ecology publishes notice that the shoreline master program or amendment has been approved or disapproved by final action of 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 subsequent amendment pursuant to RCW 36.70A.290(2), or the date the department of ecology publishes notice that the shoreline master program or amendment has been approved or disapproved by final action of the department of ecology.

~~((17))~~ (18) "Respondent" means the city, county, or state agency whose action is challenged in a petition for review before the board.

~~((18))~~ (19) "Service" of a document means delivery of the document to the ~~((other))~~ parties to the appeal, as specified in WAC 242-03-230 (for the petition for review) or WAC 242-03-240 (for all other documents).

~~((19))~~ (20) "Shoreline master program" means the comprehensive use plan for a described shoreline area, the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies in RCW 90.58.020 and applicable guidelines. Pursuant to RCW 36.70A.480(1), an approved shoreline master program is a component of the city or county's comprehensive plan and development regulations.

~~((20))~~ (21) "Shoreline Management Act" means chapter 90.58 RCW and subsequent amendments.

~~((21))~~ (22) "Signature" means a written signature or an electronic signature executed or adopted by a person with the intent to sign a document either in the form of s/_____ (name typed out) or a digital graphic representation of the signature as signed by the person. An electronic signature shall be considered the same as an original signature for all purposes.

(23) "State Environmental Policy Act" means chapter 43.21C RCW and subsequent amendments.

[Statutory Authority: RCW 36.70A.270(7). WSR 21-17-069, § 242-03-030, filed 8/12/21, effective 9/12/21; WSR 11-13-109, § 242-03-030, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 21-17-069, filed 8/12/21, effective 9/12/21)

WAC 242-03-060 Board office. (1) The administration of the board is consolidated in one office - The environmental and land use hearings office (~~. All correspondence shall be mailed to the physical address of the board~~):

Growth Management Hearings Board
c/o Environmental and Land Use Hearings Office
1111 Israel Road S.W., Suite 301
Tumwater, WA 98501
P.O. Box 40903
Olympia, WA 98504-0953
website: www.eluho.wa.gov
ELUHO Main Office: 360-664-9160

Fax: 360-586-2253
 Regional Email Inboxes
 email: eastern@eluhwa.gov
 email: western@eluhwa.gov
 email: central@eluhwa.gov

(2) Unless a party does not have the technological capacity to do so, the filing of all petitions, briefs, exhibits, and other documents related to any proceeding before a regional panel shall be ~~((made to the board, through its administrative office, the environmental and land use hearings office. However, each filing must be sent to the appropriate regional panel email inbox and must indicate the appropriate regional panel's name — Eastern, Western, or Central Puget Sound))~~ electronically through the CMS. Information about accessing the CMS is available at the ELUHO website at www.eluhwa.gov.

(3) Email or mail filings shall substitute for filing through the CMS in the event that the filing through the CMS is unavailable or impossible or if a party does not have the technological capacity, such as lack of access to an internet connection or a computer, to utilize the CMS.

[Statutory Authority: RCW 36.70A.270(7). WSR 21-17-069, § 242-03-060, filed 8/12/21, effective 9/12/21; WSR 13-01-026, § 242-03-060, filed 12/11/12, effective 1/11/13; WSR 11-13-109, § 242-03-060, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 16-02-114, filed 1/6/16, effective 2/6/16)

WAC 242-03-230 Petition for review—Filing and service. (1)

Filing a petition for review. A petition for review shall be filed with the board ~~((by electronic mail))~~ electronically through the CMS, as provided in WAC 242-03-240, unless a petitioner does not have the technological capacity, such as lack of access to an internet connection or a computer, to do so. ~~((The original and three copies of the petition for review shall be filed with the board personally, or by mail or commercial parcel delivery service. Filings may also be made with the board by fax transmission as provided in WAC 242-03-240.))~~ A petition for review is deemed filed on the date the board receives it ~~((by electronic mail or by fax transmission))~~ by 5:00 p.m. ~~((provided that the original and three copies are sent by mail or by a commercial parcel delivery service postmarked on the same date as the electronic filing.))~~ See WAC 242-03-060 for contact information.

(a) Information about accessing the CMS is available at the ELUHO website at www.eluhwa.gov.

(b) Email, fax, or mail filings shall substitute for filing through the CMS in the event that the filing through the CMS is unavailable or impossible or if a petitioner does not have the technological capacity to utilize the CMS.

(2) Service of petition for review.

(a) A copy of the petition for review shall be served upon the named respondent(s) and must be received by the respondent(s) on or before the date filed with the board. Service of the petition for review may be by mail, personal service, or a commercial parcel delivery

service, so long as the petition is received by respondent on or before the date filed with the board.

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

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

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

[Statutory Authority: RCW 36.70A.270 (4) and (7). WSR 16-02-114, § 242-03-230, filed 1/6/16, effective 2/6/16. Statutory Authority: RCW 36.70A.270(7). WSR 13-01-026, § 242-03-230, filed 12/11/12, effective 1/11/13. Statutory Authority: RCW 43.21B.005, 43.21B.090, and 36.70A.270(7). WSR 12-05-110, § 242-03-230, filed 2/22/12, effective 3/24/12. Statutory Authority: RCW 36.70A.270(7). WSR 11-13-109, § 242-03-230, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 21-17-069, filed 8/12/21, effective 9/12/21)

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

Filings ((made by electronic mail and/or fax transmission)) shall be deemed filed upon actual receipt during office hours of 8:00 a.m. to 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be ((stamped)) deemed to be received on the following business day. The date and time indicated by the ((board's fax machine or receiving computer)) CMS shall be presumptive evidence of the date and time of receipt of transmission. All ((papers)) documents will be deemed filed with the board on the date ((received by electronic mail provided that the original document and three copies are postmarked or commercially sent on the same date as the fax transmission or electronic mail filing. See WAC 242-03-060 for contact information)) filed through the CMS.

(2) Service: Parties shall serve copies of all filings on all other named parties by electronic mail((~~7~~)) on or before the date filed with the board, unless a party lacks technical capability. Service is accomplished when the document is transmitted electronically,

or, by agreement among the parties or exception granted by the presiding officer, is postmarked or commercially sent by the required date.

(3) Filing and service requirements may be altered by the presiding officer, when filing through the CMS is unavailable or impossible, or in emergency situations, in which the governor declares a statewide emergency. Email or fax filings shall substitute for filing through the CMS in the event that filing through the CMS is unavailable or impossible, unless otherwise specified by the presiding officer.

[Statutory Authority: RCW 36.70A.270(7). WSR 21-17-069, § 242-03-240, filed 8/12/21, effective 9/12/21. Statutory Authority: RCW 36.70A.270(4) and (7). WSR 16-02-114, § 242-03-240, filed 1/6/16, effective 2/6/16. Statutory Authority: RCW 36.70A.270(7). WSR 13-01-026, § 242-03-240, filed 12/11/12, effective 1/11/13. Statutory Authority: RCW 43.21B.005, 43.21B.090, and 36.70A.270(7). WSR 12-05-110, § 242-03-240, filed 2/22/12, effective 3/24/12. Statutory Authority: RCW 36.70A.270(7). WSR 11-13-109, § 242-03-240, filed 6/21/11, effective 7/22/11.]

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

WAC 242-03-530 Presiding officer—Powers and duties. It shall be the duty of the presiding officer to conduct conferences or hearings 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))~~ requirements for subject matter jurisdiction, procedural filing and service requirements, 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 board for resolution;

(2) Require that parties not represented by counsel designate a spokesperson(s);

(3) Conduct the prehearing conference, seek clarification or simplification of issues, establish the case schedule, and regulate the course of the case;

(4) Rule on all procedural matters, objections and routine motions; ~~((obtain agreement of the parties))~~ resolve procedural issues concerning service of ~~((papers electronically))~~ documents by email or by mail in light of technical capabilities or other circumstances;

(5) Rule on all evidentiary matters including supplementation of the record;

(6) Decide motions for intervention, amicus, or compliance participant status;

(7) Consolidate cases for hearing pursuant to RCW 36.70A.290(5) or coordinate cases pursuant to WAC 242-03-030(5) and 242-03-030(6) when such consolidation or coordination will expedite disposition and avoid duplication of evidence and argument;

(8) Review cases for settlement or mediation opportunities and assist the parties in arranging such sessions;

(9) Administer oaths and affirmations if witnesses are permitted to testify, authorize discovery, or issue subpoenas in exceptional circumstances as provided in RCW 34.05.446;

(10) Encourage the parties to stipulate to the admissibility of documents in advance of a hearing and rule on issues concerning the content of the record;

(11) Limit the length of a brief or impose format restrictions;

(12) Rule on requests for settlement extensions;

(13) Determine whether oral argument will be allowed on a motion and, if so, schedule the hearing; determine whether a conference or hearing shall be held by teleconference or in person;

(14) Require a party to provide a complete copy of the comprehensive plan, county-wide planning policy, or other core document germane to determination of the case;

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

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

[Statutory Authority: RCW 36.70A.270(7). WSR 11-13-109, § 242-03-530, filed 6/21/11, effective 7/22/11.]

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

WAC 242-03-540 Prehearing conference—Purpose. The purpose of a prehearing conference is to:

(1) Determine the feasibility of and encourage settlement of the matter or any portion thereof and provide information about mediation as set forth in WAC 242-03-575;

(2) Obtain a stipulation of relevant facts including the board's jurisdiction, the petitioner's standing in the matter, and the timeliness of the petition for review;

(3) Obtain agreement as to the issues of law and fact presented and their clarification, simplification, limitation, or resolution, so as to frame the final issues to be decided by the board;

(4) Rule on any pending matters of intervention, consolidation, or the qualification of individual board members or the composition of the panel;

(5) Determine the witnesses, if any, that may be allowed to be called by the parties;

(6) Set the final case schedule for filing motions, deadlines for briefing, and date and time of the hearing on the merits;

(7) Determine the approximate time necessary for the presentation of evidence and/or argument of the respective parties;

(8) Obtain all other information which may aid in the prompt disposition of the matter; and

(9) (~~Obtain agreement of the parties~~) Resolve procedural issues concerning service of ((papers electronically)) documents by email or by mail in light of technical capabilities or other circumstances.

[Statutory Authority: RCW 36.70A.270(7). WSR 11-13-109, § 242-03-540, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 21-17-069, filed 8/12/21, effective 9/12/21)

WAC 242-03-720 Dismissal of action. (1) Any action shall be dismissed by the board:

(a) Upon petitioner's withdrawal of the petition for review before entry of a final decision and order; or

(b) Upon stipulation for dismissal by petitioner(s) and respondent(s) before entry of a final decision and order.

(2) Any action may be dismissed by the board:

(a) Upon motion of 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

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

(c) Upon the board's own motion for petitions that are frivolous, not within the board's subject matter jurisdiction (~~(of the board)~~), not in compliance with procedural service and filing requirements, or the petitioner's lack of standing.

[Statutory Authority: RCW 36.70A.270(7). WSR 21-17-069, § 242-03-720, filed 8/12/21, effective 9/12/21; WSR 11-13-109, § 242-03-720, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 21-17-069, filed 8/12/21, effective 9/12/21)

WAC 242-03-870 Publication of final decisions and orders. Copies of all final decisions and orders are available from the environmental and land use hearings office at eluho.wa.gov. The board posts final orders, compliance orders, and other decisions on (~~its web site~~) the CMS and maintains a digest of its decisions by region.

[Statutory Authority: RCW 36.70A.270(7). WSR 21-17-069, § 242-03-870, filed 8/12/21, effective 9/12/21; WSR 11-13-109, § 242-03-870, filed 6/21/11, effective 7/22/11.]