

# SMA MEETS GMA

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## The GMHB Review Process for Your SMP Update

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Growth Management Hearings Board

April 2011 Shoreline Planners' Forum

# GMHB in a Nutshell

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- ❑ One 7-person Board in 3-member regional panels
  - ❑ Quasi-judicial review of comp plans and development regs – **not** site-specific projects
  - ❑ Quasi-judicial review of SMPs – **not** shoreline development permits
  - ❑ No review of plan/program as a whole, only specific challenges
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# GMHB in a Nutshell

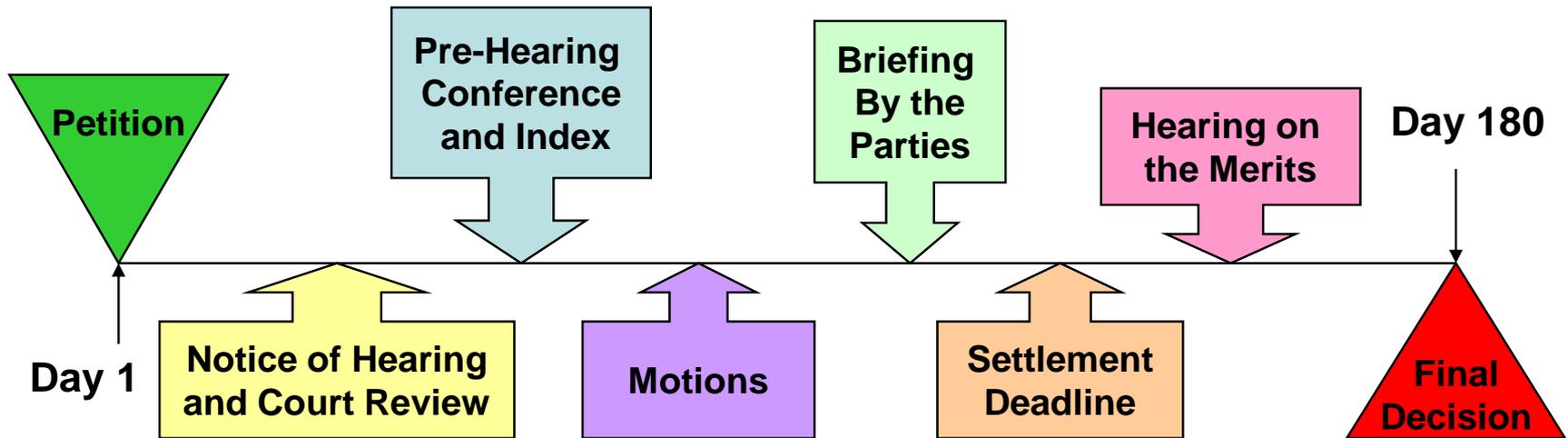
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- ❑ Review is on the record, not de novo
- ❑ Narrow jurisdiction – GMA, SMA or SEPA compliance
- ❑ Decision limited to stated issues
- ❑ Deference to local government and Ecology
- ❑ 180-day decision deadline

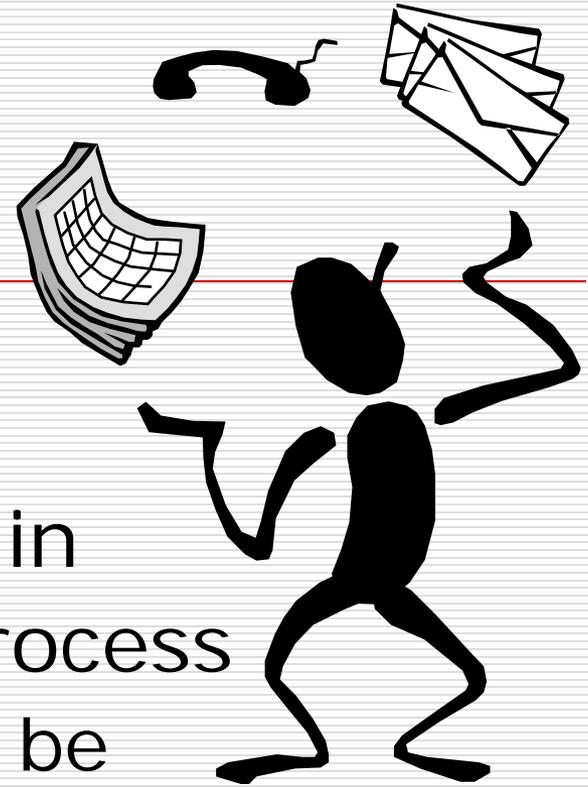


STATE OF WASHINGTON  
GROWTH MANAGEMENT HEARINGS BOARD



# Launching a PFR

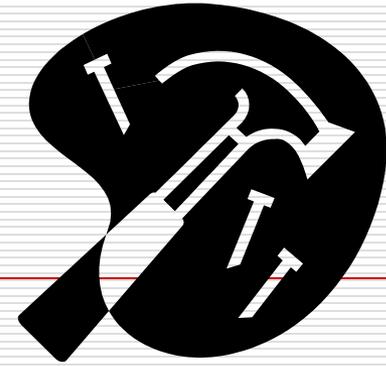
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- No attorney required
  - Standing – participation in the city/county public process
  - Timeliness - petition must be filed within 60 days of publication of the challenged action or notice of Ecology approval
  - Service of petition on city/county and Ecology
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# Petitioner constructs a case

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- State Legal Issues with care
- Identify the specific section of the GMA/SMA relied on for each issue
- Document each issue with facts from the record
- No conclusory arguments allowed!

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# HOW DO YOU PREPARE?



# Do your Homework

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- ❑ GMA RCW 36.70A
- ❑ Board rules WAC 242-02 / 242-03
- ❑ Commerce guidelines WAC 365-196
- ❑ Website - [www.gmhb.wa.gov](http://www.gmhb.wa.gov)
- ❑ Digest of Board Decisions
- ❑ **Board Practice Handbook**
- ❑ SMA RCW 90.58
- ❑ Ecology guidelines WAC 173-26

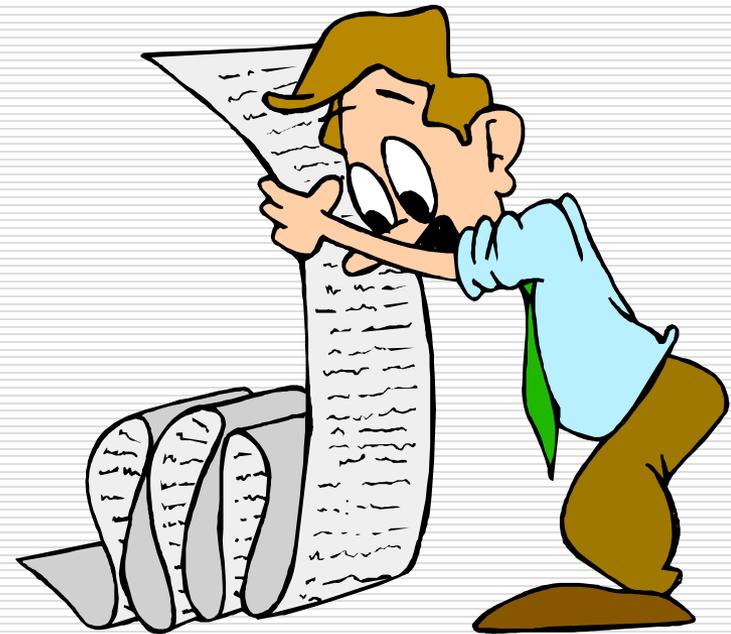


*Don't be calling the Board for advice. We're a quasi-judicial agency.*

# Compile the Record

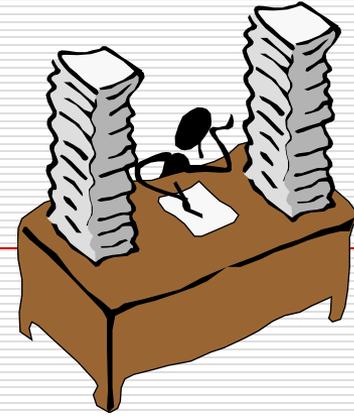
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- Anything the Council/Ecology had before it in making the decision is fair game
- Keep a running tally of documents, reports, comments received, hearings and meetings



# The Paper Trail

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- ❑ “Record” = all the material used by city/county/Ecology in taking the action
- ❑ Index = list of all materials
  - Petitioner must be allowed access!
- ❑ **Exhibits** = documents from the record provided to the Board as attachments to briefs
- ❑ Filing rules are in Prehearing Order

# Present the Facts

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- ❑ Document all key facts with paper exhibits attached to the briefs
- ❑ Meeting tapes – transcribed if needed
- ❑ Supplemental exhibits - documents “necessary or of substantial assistance” to the Board’s decision
- ❑ Illustrative exhibits – when is a picture worth 1000 words?

# Make your Argument

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- Build your case on facts and sound legal reasoning, not bare assertions
- Argue each stated Legal Issue
- Briefs and exhibits are the heart of the case
- Cite legal authority, but don't assume prior Board rulings create "bright lines"



# Standard of Review

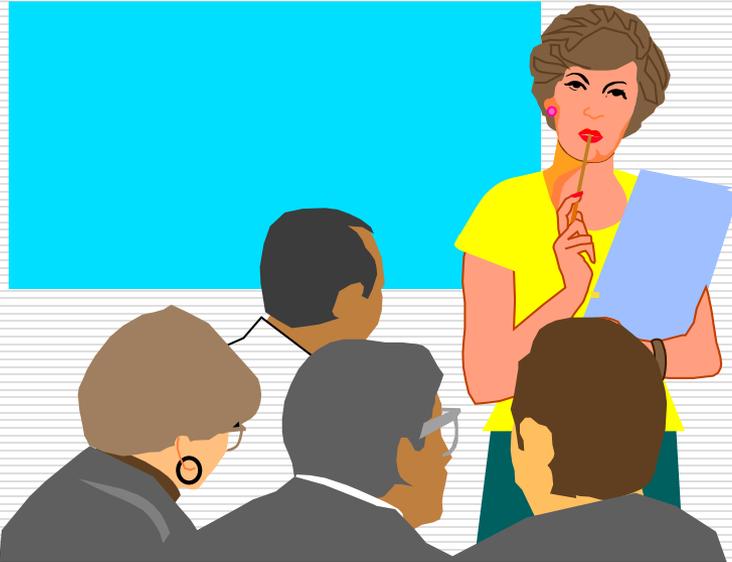
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- ❑ Deference to local government and Ecology
- ❑ GMA burden of proof – “clearly erroneous” – Board is left with a firm and definite conviction that a mistake has been made
- ❑ SMA review – includes GMA consistency and SEPA - ***but*** RCW 90.58.190(2)
- ❑ SMA Shoreline of Statewide Significance – “clear and convincing evidence”

# Prepare for the Hearing

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Hearing on the Merits is oral argument based on facts in the record, **not** examination of witnesses





# Tell Your Story

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- ❑ When the Petitioner has made a prima facie case, the jurisdiction can't just rest on its 'duff'ERENCE
- ❑ Acknowledge commonalities in the region or state
- ❑ Document unique local circumstances
- ❑ Your 'record' includes lots of things you know about your jurisdiction – find ways to demonstrate key facts

# A Clear Record is a Winning Record

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**Seattle Shellfish v. Pierce County and Department of Ecology**, CPSGMHB Case No. 09-3-0010, Final Decision and Order (Jan. 19, 2010)

**Samson v Bainbridge Island and Ecology**, Court of Appeals, 149 Wn.App. 33 (2009)

**Pilcher v Spokane County and Ecology**, GMHB No. 10-1-0012  
Final Decision and Order  
(Mar.22, 2011)



**KAPO (Hood Canal) v Kitsap County**,  
Court of Appeals, 152 Wn.App. 270(2010)



# Mind your Manners

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*Instructions we sometimes have to give to warring parties!*

- ❑ "Abstain from offensive personalities"
- ❑ Umbrage and outrage are no substitute for documented facts and sound legal reasoning
- ❑ Be cautious about using technicalities to trounce *pro se* petitioners - Bullying usually backfires

# Questions?

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