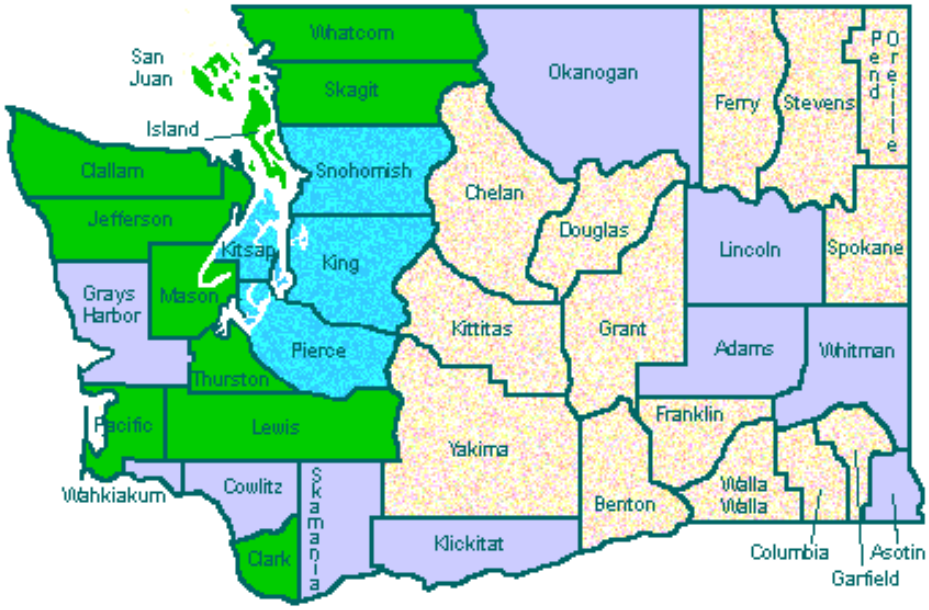
State of Washington

Growth Management Hearings Board



Practicing before the Growth Management Hearings Board for Washington State

October 2010

THE WHO, WHAT, WHY, WHERE, WHEN, AND HOW
Of Practicing before the Growth Management Hearings Board

This is an informal guide intended to assist individuals, organizations, cities, and counties in bringing cases before Washington's Growth Management Hearings Board. If you should have any questions, please contact the Hearings Board administrative office. This Handbook is provided for your convenience and does not have the force and effect of state law, Board rule, or regulation. See RCW 36.70A Growth Management Act and WAC 242-02 Board Rules of Practice and Procedures for detailed information. Prior Hearings Board decisions can be found in the Digest of Decisions available on the Board's website, www.gmhb.wa.gov.

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- This handbook is a compilation of the RCW, the WAC, consultation with Board members on their practices and procedures, stakeholders' review, and the diligent efforts of the Board's Staff Attorney, Julie Ainsworth-Taylor.
- Photographs and graphics are available from the Washington State Department of Commerce - www.commerce.wa.gov

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Photo Courtesy of Franklin County, Washington

The Growth Management Act and the Hearings Board

With the passage of the **Growth Management Act (GMA)**, RCW 36.70A, in 1990, the Washington State Legislature created a process for comprehensive land use planning involving citizens, communities, counties, cities, and the private sector that would prevent uncoordinated and unplanned growth. The Legislature found that uncontrolled growth poses a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of Washington State. The GMA requires counties of a certain size and growth rate, and the cities within them, to adopt comprehensive plans and development regulations which are guided by 14 goals:

- Focus urban growth in urban areas
- Reduce sprawl
- Provide efficient transportation
- Encourage affordable housing
- Encourage sustainable economic development
- Protect property rights
- Process permits in a timely and fair manner
- Maintain and enhance natural resource-based industries
- Retain open space and habitat areas and develop recreation opportunities
- Protect the environment
- Encourage citizen participation and regional coordination
- Ensure adequate public facilities and services
- Preserve important historic resources
- Goals and Policies of the Shoreline Management Act

A special process is provided to resolve disputes arising from the adoption of these comprehensive plans and development regulations. Rather than have GMA disputes proceed directly to the court, the Legislature established the **Growth Management Hearings Board (GMHB)** which is authorized to "hear and determine" allegations a city, county, or state agency has not complied with the goals and requirements of the GMA, and related provisions of the **Shoreline Management Act (SMA)**, RCW 90.58, and the **State Environmental Policy Act (SEPA)**, RCW 43.21C.

The Board has seven members appointed by the Governor for staggered six-year terms. The Board reviews local legislative actions only when a **Petition for Review (PFR)** is filed.

Although the Board is **quasi-judicial**, it is not a court. A person or an organization is not required to be an attorney or be represented by an attorney to file a PFR or appear before the Board as a party. A ***Pro Se Petitioner*** is a party representing himself/herself before the Board. All persons, *Pro Se* participants and attorneys alike, who appear before the Board, must conform to the **Rules of Professional Conduct** required of attorneys appearing before the courts of Washington.

The Board was established to provide neutral, quasi-judicial resolution of GMA disputes. Neither a Board Member nor any Board staff may provide legal advice. Board staff may communicate with parties about procedures, such as case schedules. However, any contact between the Board and a party about the issue(s) in the case is prohibited except through the briefs and hearings. ***Ex-parte* communication** is strictly prohibited.

Photo Courtesy of Dept. of Commerce/Rita R. Robison

Do you have a case?

Before filing a Petition for Review, a petitioner must ask *do I have a case?* In order to appeal to the Board, three basic requirements must be met:

- The local legislative action must be within the Board's subject matter jurisdiction
- The party must have standing
- The PFR must be timely

Unless *all of these requirements are met*, the case may be dismissed by the Board or upon a motion by the **respondent** jurisdiction. In addition, a party wishing to file a case with the Board should be aware that there is a very high hurdle to clear (termed the **Burden of Proof**). The GMA directs that the local government's actions are presumed valid and that the Board must give deference to the local government in how it plans for growth.

The Types of Cases the Board Hears (Digest Keyword: Subject Matter Jurisdiction)

The Board hears and decides challenges to official actions taken (usually ordinances) by city or county governments adopting or amending comprehensive plans or their implementing development regulations. The Board has the authority to hear only cases over which it has **Subject Matter Jurisdiction**. These include challenges to matters arising from the:

- Adoption of and/or amendments to a **Comprehensive Plan**
- Designation of **Resource Lands** and **Critical Areas**
- Adoption of and/or amendment to regulations to conserve Resource Lands and Protect Critical Areas
- Adoption of and/or amendments to **County-Wide Planning Policies** (not subject to a citizen-filed appeal)
- Adoption of and/or amendments to **Urban Growth Areas**
- Adoption of and/or amendments to **Development Regulations** that implement the comprehensive plan (zoning, subdivision, etc)
- **Growth Management Planning Population Projections** prepared by the State of Washington, Office of Financial Management
- Adoption of and/or amendments to a **Shoreline Master Plan**
- SEPA documents that accompany a GMA action
- **Failure of the local government to act** to meet a GMA statutory deadline

The Board DOES NOT have authority to hear cases that challenge compliance with:

- Federal and/or state constitutional issues
- Statutes other than RCW 36.70A, RCW 90.58, and RCW 43.21C, as those statutes relate to GMA comprehensive plans and development regulations
- Settlement Agreements
- Annexations
- Ballot measures
- Local Project Review, RCW 36.70B

***Other statutes**: Some parts of comprehensive plans or development regulations are developed under statutes other than the GMA, for example water and sewer plans, stormwater regulations, or flood management plans. The Board has jurisdiction to determine whether such elements comply with the GMA but cannot determine compliance with the enabling statute.*

Who may Bring a Case before the Board (Digest Keyword: Standing)

Only an aggrieved person, organization, or government who has "**standing**" may file a Petition for Review with the Board. The GMA identifies four types of standing: **participation standing, governmental standing, Governor-certified standing,** and **Administrative Procedures Act (APA) standing.** Participation standing is the primary basis for bringing a PFR before the Board. A person has *participation standing* if he or she has participated orally or in writing in the public participation process for the adoption of the challenged action. The testimony or written comments must have raised the disputed issues in sufficient detail to provide the local government with the opportunity to consider these concerns. The issues presented to the Board for review must correspond with these concerns. The Board applies this same standard to an organization and further requires that the organization must have made it clear the person and/or persons testifying or submitting written comments is representing the organization and not themselves in order to achieve *organizational standing*. State agencies, counties, and cities subject to the GMA may seek review of other agencies, counties, or cities' actions under *governmental standing*. *Governor-certified standing* is rarely used but allows a person who has not participated in the public process to seek certification from the Governor to challenge a local government action. *APA standing* derives from the APA, RCW 34.05, and requires that a person satisfy the requirements set forth in RCW 34.05.530 to bring a petition for review before the Board.

Before bringing a SEPA challenge, a Petitioner should review the Board's decisions on SEPA standing [see Digest Key Word—Standing or State Environmental Policy Act]. For challenges to SEPA-related issues, the Eastern and Western panels require only that the Petitioner demonstrate GMA participation standing. However, within the Central Puget Sound region, to challenge a SEPA document that accompanies a GMA comprehensive plan or development regulation, a party must demonstrate SEPA standing.

Filing Deadlines for a Petitioner's Claims (Digest Keyword: Timeliness)

A challenge to the local government's action must be brought *within 60 days of* ***publication*** of the local government's challenged **final action**. The Petition for Review must be received in the Board's office no later than 5 PM on the last **day** of the 60-day time limit. Failure to file within this set timeline will result in dismissal of the case. For a city or a county, publication must follow the procedures for publication of its adopted ordinance, comprehensive plan, development regulation, or subsequent amendments provided for in the city's or county's code.

The City or County Clerk should be able to provide the date of publication. It may take a day or several weeks for a local government to publish notice of its final action.

The Standard of Review – How the Board Looks at a Case (Digest Keywords: Standard of Review; Burden of Proof)

In all matters that come before the Board, the Petitioner has the burden of proving the city's or county's actions were **clearly erroneous.** The Board must find that the local government's action is in compliance with the GMA unless it determines the action is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA. The GMA and the Courts both specify that legislative actions of city and county governments are presumed valid upon adoption; the Board is required to show **deference** to the local government's choices in planning for growth and allow it discretion in adapting the requirements of the GMA to local circumstances, so long as those decisions are consistent with the goals and requirements of the GMA.

For a Petitioner, this sets a high hurdle for proving a city's or county's action did not comply with the goals and requirements of the GMA. When making its decision, the Board will look at the entire record, focusing on those parts of the record provided by the parties as **exhibits**, to determine if a mistake has been made by the city or county. Thus, in doing so, the Board is limited to specific GMA requirements. The Board will not substitute its own preferences or judgment for the choices made by elected officials so long as those choices fall within the parameters of the GMA.

Photo Courtesy of Dept. of Commerce/Rita R. Robison

Making Your Case – Evidence and Arguments

The Board bases its decision on 4 things:

1. **The Law**
2. **The Record**
3. **The Exhibits**
4. **The Arguments**

The Law

In all matters, the law which the Board looks to is its controlling statute - the GMA, RCW 36.70A. The Board will address issues that arise under the SMA (RCW 90.58) and SEPA (RCW 43.21C), but only in regard to how those laws interact with the GMA. In addition to the statutes, the Board considers the WACs for the GMA, SMA, and SEPA. On procedural questions, the Board looks to **Washington Administrative Code (WAC) 242-02**, the **Rules of Procedure** for the Board, **Case Law**, and the Administrative Procedures Act (RCW 34.05). Case law is the reported decisions of the Washington State Supreme Court and Court of Appeals in their review of prior cases and serves as **precedent** that should be used by the Board as a standard in a similar case. The Board also looks to its prior decisions as guidance for subsequent cases when similar issues were raised. The Board provides a **Digest of Decisions** and a searchable database on its website to assist parties in researching, by keyword, procedures and issues pertaining to their case.

The Index to the Record

The **Index to the Record** is a numbered listing of all of the information, written and oral, that the city or county relied on to make its decision on the action being challenged. In essence, the Index is a *Table of Contents* which may be arranged chronologically, by topic, or by the entity which considered the action (i.e. planning commission, council committee). This listing should sufficiently identify information to enable unique documents to be distinguished. All information contained within the record, both written and audio, must be made available to the parties for inspection. The Index also serves as a list of documents which may be offered into evidence without objection. The Index must be submitted by the Respondent city or county within 30 days of the filing of the PFR.

The Record

The **Record** is all of the documents considered by a city or county in taking the challenged action. The Record generally includes minutes of meetings before commissions, committees, or councils, staff reports, technical and scientific documents, correspondence, laws and regulations, and public comments (oral and written). The city or county is responsible for compiling and indexing the Record. The record should not be copied and filed with the Board, but all documents in the Record must be made available to the other parties for review. It is only necessary for the Board to receive the Index to the Record and copies of the specific documents that any party wants to rely on as Exhibits to support their arguments and briefing. It is up to each party to identify and present to the Board, as Exhibits, copies of those documents from the Index of the Record the party believes supports its case. These documents are attached to the briefs as Exhibits.

The Exhibits

The Exhibits are documents presented with briefs to show the Board the facts and support the party's argument. Exhibits primarily encompass specific documents found in the Record and any additional evidence permitted by the Board that was found to be necessary or of substantial assistance to the Board in reaching its decision. The Boards requires that a party's brief include a Table of Exhibits and that each Exhibit is tabbed so that it can be easily located. If the Board requires a Table of Exhibits, this requirement will be stated in the Prehearing Order. If needed, the Board may take **Official Notice** of certain items a the Board believes are necessary to resolving the matter. These items include federal and state laws, ordinances and resolutions of the local government, previous decisions of any of the Growth Management Hearings Boards, accepted business customs, technical or scientific facts, and generally and widely-known "notorious" facts. The Board bases its decision on the exhibits presented by the parties with their briefs.

Filing a Case Before the Board

How to Bring a Case

After reviewing the Boards' Rules of Practice and Procedures (WAC 242-02), the first step in bringing a case is the **filing** of a Petition for Review (PFR) (See Sample Forms). The PFR is filed by a party with standing, called the **Petitioner**, who is alleging violations of the GMA. The PFR must contain the following information:

- Name, address, phone number, and e-mail address of Petitioner(s) and/or Organization
- Name, address, phone number, and e-mail address of Attorney (if represented by one)
- The Challenged Action (i.e. ordinance, resolution, motion)
- Date of publication of the challenged action
- A detailed statement of the issues, which includes the specific section(s) of the GMA the Petitioner is alleging the action violates and the specific section(s) of the city's or county's document (i.e. development regulation or comprehensive plan)
- A statement showing why the Petitioner has *standing* to bring the action
- An estimated length of time for the Hearing on the Merits (usually 4 hours)
- A statement regarding the specific nature and extent of relief sought by Petitioner
- **Attestation Statement**
- Signature of Petitioner(s), Petitioner's Attorney, or Petitioner's Representative
- A copy of the challenged action and applicable provisions

One of the most vital elements of the PFR is the statement of the issues: the questions that the Petitioner would like the Board to address. The issues should be framed as questions, written in a YES or NO format, and be *concise and to the point*. Each legal issue should indicate the specific section of the GMA and the specific sections of the local government's actions that Petitioner alleges violate the GMA. The legal issues are an allegation, not an argument. The PFR is not the time or the place to argue the merits of the case. The Petitioner and Respondent will each have the opportunity to argue their case in their **Prehearing Briefs.** (See "How to Write an Issue Statement" - Appendix A).

Petitioners must *describe their standing* in the PFR and state which method of standing allows them to proceed with a case before the Board. The Petitioners need not provide evidence in support of their claim of standing. If the Respondent challenges standing, the Petitioner will be given the opportunity to provide additional evidence to support its position.

How to File and Serve

The Petition for Review must be **served** on the Board and all parties named in the PFR. The Board may be served personally by delivering the PFR to the Board's office in Olympia or via First Class, Certified or Registered mail. The Petition may be filed by e-mail or fax to meet the filing deadline, however, hard copies must follow and be postmarked the same day. The original and four copies of the PFR and all future filings are required. Original documents must be single sided and two hole punched at the top; copies are to be double sided and three-hole punched at the left hand side. (*See* WAC 242-02-230 *for specific service requirements*).

A **Proof of Service or Declaration of Service** is required for all legal documents filed with the Board and all other parties. The Proof of Service demonstrates that papers were served upon the noted parties and the date service was completed. (See Sample Forms). (*See* WAC 242-02-340).

Petitioners may contact the administrative office if they need clarification on filing and formatting requirements.

Where to File Your Case

When creating the GMA, the State Legislature separated the State into three regions, each with its own office and with a three-person Board authorized to hear matters arising within their **jurisdiction**. In 2009-2010, the three Boards were consolidated and downsized to serve the State more efficiently. A single office now handles all filings.

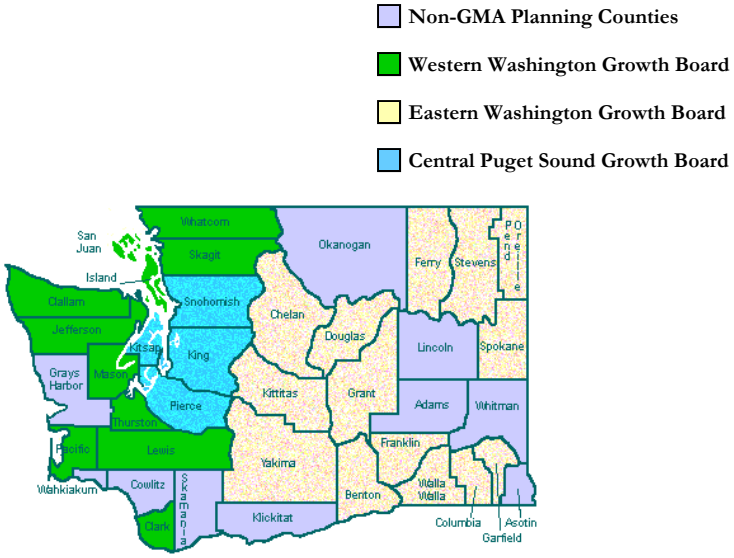
In Person:
319 7th Avenue SE, Suite 103
Olympia, WA 98501

Via Mail:
PO Box 40953
Olympia, WA 98504-0953

Via Email
Eastern Region: eastern@ew.gmhb.wa.gov
Western Region: western@wwgmhb.wa.gov
Central Region: central@cps.gmhb.wa.gov

Via Phone
Tel: (360) 586-0260
Fax: (360) 664-8975

All filings should be to the attention of the regional panel having jurisdiction over the matter.



Who Will Hear Your Case

Your case will be heard by a three-member **panel**. Two of the panel members will be Board members from the region where the case originated—Eastern, Western or Central. The third panelist will be assigned from among the other Board members on rotation. Each panel should have an attorney and a former local elected official. The Presiding Officer for the case will be one of the members from the region where the case originated, and the Hearing on the Merits will be held in that region.

The Case Before the Board

After Filing the Petition for Review (PFR)

Upon receipt of a PFR, the Board will assign a case number and a **Presiding Officer**, who is the Board member responsible for the case. The Presiding Officer will issue a **Notice of Hearing** by the 10th day after receipt of the PFR, which will identify the panelists assigned to hear the case and provide a tentative schedule, including the dates for the **Prehearing Conference**, the **Hearing on the Merits**, and other essential information.

After receiving a copy of the PFR, the city or county against whom the PFR has been filed, called the Respondent, must promptly file a **Notice of Appearance** with the Board, which provides the name of the city's or county's designated representative and contact information including address, telephone, fax, and e-mail address. The Notice of Appearance must be filed with all parties, including the Petitioner.

A PFR may be amended within 30 days of filing. Amendment of the PFR within the 30-day time period does not require that the Petitioner seek permission from the Board. However, if the Petitioner seeks to amend the PFR after the initial 30-day time limitation, the Petitioner must file a written Motion to Amend the Petition for Review with the Board. The Board may deny the motion if amendment would create a hardship for the adverse party or if granting the motion would adversely impact the Board's ability to meet the 180-day statutory deadline for issuing its final decision. Sometimes, the Presiding Officer may ask the Petitioner to clarify or restate the legal issues in the PFR if they are unclear, or the Presiding Officer may present a Proposed Restatement of the Legal Issues for discussion at the Prehearing Conference. The legal issues to be determined will be finalized at the Prehearing Conference and set out in the Prehearing Order.

The Prehearing Conference is the first opportunity for the Board and all of the parties, Petitioner and Respondent alike, to discuss and clarify the issues. The Prehearing Conference is an informal proceeding which is often conducted telephonically. The purpose of the Prehearing Conference is to encourage settlement discussions between the parties, discuss the legal issues, address the legal parameters (i.e. burden of proof, **standard of review**), inquire about the possibility of any motions, and finalize the schedule for subsequent filings and hearings. The responding jurisdiction will submit the Index of the Record within 30 days from when the PFR is filed.

Generally within seven days of the Prehearing Conference, the Presiding Officer will issue the **Prehearing Order**, which sets forth the final schedule and the legal issues that will be briefed and argued. Any party who objects to the Prehearing Order must file such objections within seven days.

Joining in on the Challenge – Consolidation, Intervention, and *Amicus*

The Board has the authority to consolidate cases when there are several challenges to the same ordinance or action. If cases are consolidated, the 180-day statutory deadline for the Board's decision is based on the filing date of the last PFR filed.

Often, someone other than the Petitioner or the Respondent may have an interest in the outcome of the case. If they wish to participate, this individual or organization must file a **Motion to Intervene** (See Sample Forms), which states that party's interests in relation to the subject matter of the case, how the disposition of the case may impair an interest of that party, and why that interest is not adequately represented by the existing parties. The motion should state which of the parties – Petitioner or Respondent – the party is supporting and on which issues intervention is sought. *Intervenors may only address issues posed by the Petitioner in the PFR; they may not raise new issues.* If the motion is granted, the party is termed an **Intervenor.** The Intervenor does not have to satisfy the standing requirement that is required of the Petitioner. Any party to the case may file a response within 10 days objecting to or supporting the admission of the Intervenor. If a party does not respond, it will be assumed that the party has no objection. The Presiding Officer will determine if a party qualifies, utilizing the applicable superior court rules. If the Motion to Intervene is granted, the Board may limit the Intervenor's participation in regard to issues, briefs, and oral arguments.

In some cases, there is a person or an organization that is neither the Petitioner, Respondent, nor an Intervenor, but still has a strong interest in the case and wants to voice an opinion. This party is termed an ***Amicus Curiae*** and must file a **Motion to File *Amicus* Brief** in order to participate. The key function of the *Amicus,* as a "friend of the court," is to assist the Board in understanding the legal issues or to provide a broader perspective than that of the parties. Any party may file a brief objecting to the

proposed *Amicus*. The Presiding Officer will decide whether to permit the *Amicus* brief and may impose conditions on the *Amicus's* participation in the proceedings such as limiting the *Amicus* to a single brief with no allowance for oral argument at the Hearing on the Merits.

Moving the Case Along

Any party to the case may file a **Motion**. Procedures and the schedule for submission of motions, responses to motions, and rebuttals to responses is clearly set forth in the Prehearing Order for the case. The schedule for motions helps move the case along, and participating attorneys especially, will be mindful of their duty under RPC 3 to respect the rules and procedures of the Board for expediting the case.

A motion is a request by one of the parties asking the Board to rule on a particular issue. **Dispositive motions** are typically brought by the Respondent and ask the Board to dismiss a PFR on the grounds that it is untimely, the Petitioner lacks standing, the Board lacks subject matter jurisdiction, or issues pertaining to notice and public participation (provided that the evidence relevant to the challenge is limited). A dispositive motion may be based on a single issue or the case as a whole. A dispositive motion may be brought by a party or, occasionally, by the Board's own motion when it determines it needs to see briefing on a question that may be dispositive. The motion will be decided in the Board's **Order on Motions** after the Board has reviewed the briefs and arguments of the parties.

A **non-dispositive motion** is any request for relief that does not decide an issue or the case. Examples of non-dispositive motions are: Motion to Supplement the Record, Motion to Strike Evidence or Exhibits. If a party is seeking to amend the Record with items it believes the jurisdiction erroneously omitted from the Record, it should first ask the city or county for the requested item to be included in the Record. The city or county must then file an Amended Index of the Record to include the requested item. The only time a Motion to Supplement the Record is necessary is when there is a dispute. When filing its motion, it is imperative that the moving party provide the Board with a copy of the item sought to be included in the Record. The Board will review a motion to allow new or supplemental evidence by considering whether the information is necessary or of substantial assistance to the resolution of the case. A non-dispositive motion will be decided by the Presiding Officer.

The Boards' regional panel procedures for deciding motions vary. The Prehearing Order and subsequent orders in the case will indicate whether rebuttal briefs are allowed and whether the Board will schedule a hearing on the motion.

All parties are reminded that the Prehearing Order contains the case schedule and provides all of the filing deadlines for motions and/or briefs. All parties must comply with the filing deadlines. The Board may disregard a motion or response that is submitted subsequent to the required filing deadlines.

Working Towards a Resolution – Negotiations and Settlement Extensions

The Boards encourage and support discussions to resolve the dispute between the Petitioner and the Respondent. If the parties find that they may be able to settle the matter without the Board's assistance but they need additional time, then all parties involved must submit a **Request for Settlement Extension** (see Sample Forms). The request must be signed by both the Petitioner(s) and the Respondent, must be filed no later than seven days before the date scheduled for the Hearing on the Merits, and must clearly state the amount of extra time requested – 30, 60, or a maximum of 90 days. If needed, a Board member not on the panel for the case may serve as a mediator for the parties. The Board will typically grant the request and issue a **Settlement Extension** amending the case schedule. Issuance of a Settlement Extension extends the 180-day deadline for issuance of the **Final Decision and Order (FDO)** and all other filings. Although parties may request multiple extensions, the Board may require that a status report be filed prior to the end of the settlement extension time period to ensure progress. The Board does not have the authority to enforce a Settlement Agreement nor may the Board Review a Settlement Agreement for compliance with the GMA.

Arguing Your Case – the Prehearing Brief

The Petitioner's Prehearing Brief and the Respondent's **Response Brief** provide the Board with the information needed to make its decision. This is your chance to make your case. The documents on which you rely should be attached to your briefs as exhibits.

The Petitioner will submit its Prehearing Brief based on the date for filing provided in the Prehearing Order. The Prehearing Brief must address each of the legal issues set forth in the Prehearing Order, since these are the questions that the Board is asked to answer. Any legal issue not briefed and argued is **deemed abandoned** and will be dismissed without further discussion. The Petitioner can arrange the legal issues in any way that facilitates their argument and may consolidate different issues together. Section headings in the Prehearing Brief should clearly indicate which legal issue is being addressed. After the Petitioner's brief is filed, the Respondent will file the Response Brief, countering the Petitioner's claims and arguing its own view of the legal issues. The Petitioner may file a **Reply Brief**, responding to the arguments in the Response Brief, but cannot raise any new issues.

Clarity and brevity are expected and the Presiding Officer may limit the length of a brief. As with all documents filed with the Board, the parties must *serve the Board with an original and four copies*, along with any exhibits not previously filed, unless a lesser number of copies is specified in the Prehearing Order or other Board order. A party must serve a copy of the brief and all exhibits on each party to the case.

Prior to the Hearing on the Merits, the Board panelists will read and review the briefs and submitted exhibits, consult with each other, and research legal issues in preparation for the hearing.

The briefs should not contain **conclusory arguments**. Any such arguments, by either party, will be weighed accordingly by the Board and the legal issues supported by the statement may be deemed abandoned. The Petitioner does not meet its burden by simply stating: "The GMA requires a local government to do a certain action, the government didn't do it, and therefore the government violated the GMA." Remember—the local government's action is presumed valid and the burden of proof is on the Petitioner.

Likewise, if a Petitioner makes a *prima facie* case, it is not enough for a city or county to state that "the Board must defer to its planning decision, which is within the city or county's discretion, and such deference mandates that the Board find that the city or county did not violate the GMA." Once a Petitioner makes an argument supported by evidence within the Record that calls into question the validity of the jurisdiction's action, it is up to the city or county to respond with persuasive arguments and evidence that shows the action taken falls within the boundaries of the GMA.

The Hearing on the Merits (HOM)

The Hearing on the Merits gives the parties the opportunity to argue their case to the Board. The main goal of the Hearing on the Merits is for the Board to ask questions of the parties and to clarify any items of concern raised from the parties' Briefs. Occasionally, in response to the Board's questions, the Board may request that the parties provide additional briefing and/or documentation. The parties, themselves, through their attorney, or through any authorized representative, are permitted to argue before the Board. The public is welcome to attend and observe; however, the Hearing on the Merits is not a public hearing and the Board does not take public comment. The GMA empowers the Board to take testimony; however, the Board almost always decides cases on the basis of briefing and oral argument, without additional testimony. It is sometimes helpful to a local jurisdiction to have its planners present at the Hearing on the Merits to assist the jurisdiction's attorney in answering the Board's questions. The Board will set the time for argument in each case. The Petitioner will be allotted time for opening arguments and rebuttal at the end. If the Petitioner is an organization, a spokesman will need to be selected and it is only that person who may provide oral argument. If a party is supported by an Intervenor, it is up to that party to determine how much time to share with the Intervenor. Amici are generally not permitted to participate in oral arguments.

As noted in the Prehearing Order, interpreters and hearing assistance devices are available upon request, if needed. The hearing is recorded by a **Court Reporter**. Although the court reporter is recording a verbatim report of the proceedings, a transcript is normally not ordered unless specifically needed. If a party requests a transcript, that party is responsible for the costs of producing it.

Resolution – the Final Decision and Order (FDO)

By law, the Board must issue its Final Decision and Order within 180 days from the date the Board received the Petitioner's PFR. The Board's decision is set forth in the FDO. The FDO typically provides: a synopsis of the case; the procedural background; a

All of the Board's Final Decisions and Orders are posted on the Board's website within a few days of issuance. Parties can review the full decision of the Board on a matter or search the Digest of Decisions by keyword. The Board's decisions may be found at www.gmhb.wa.gov/CaseSearch.aspx

restatement of the Board's jurisdiction, the Petitioner's burden of proof, and the standard of review; a discussion and analysis of the legal issues; findings and conclusions; an Order finding either compliance or non-compliance; and a schedule for post-hearing matters, such as the compliance deadline. The FDO is the result of consultation among the Board panelists and must be signed by at least two panel members. Sometimes, a Board member may write a **Concurring or Dissenting Opinion** in order to voice a separate opinion.

The FDO is the Board's final resolution and will state whether the jurisdiction is in compliance or not in compliance with the GMA. If the Board finds non-compliance, the matter will be **remanded** to the city or county so it may amend, revise, or otherwise alter its non-compliant comprehensive plan and/or development regulations to bring the plan and/or regulations into compliance with the GMA. A jurisdiction may take no longer than 180 days to complete this task unless the matter is considered to be unusual or complex. In that instance, the Board may grant a longer period of time for compliance.

If the Board finds non-compliance, it may issue a **Determination of Invalidity** if it concludes that continued validity of the plan provision or development regulation would substantially interfere with the fulfillment of the goals of the GMA. Unlike a finding of non-compliance, which does not affect the validity of a jurisdiction's plan or development regulations, invalidity is most often invoked to prevent the vesting of development projects to city or county enactments that are non-compliant with the GMA. If the Board issues an Order of Invalidity, it is effective upon receipt of the Board's Order by the jurisdiction. Invalidity is prospective in nature and does not extinguish rights that have vested under state or local law prior to receipt of the order. A Petitioner wishing to see the jurisdiction's action invalidated is advised to set forth invalidity as one of the issues in the PFR. While some Board regions will consider invalidity ***sua sponte,*** regardless of whether or not a party raises it during the proceedings, the Petitioner carries the burden of demonstrating the jurisdiction's action substantially interferes with the fulfillment of the goals or requirements of the Act.

Any party may file a **Motion for Reconsideration** (see Sample Forms). A Motion for Reconsideration must be based on an allegation that the Board erred in regard to procedure or misinterpreted facts or the law, or, due to irregularities in the hearing, the party was prevented from having a fair hearing; or the FDO contains clerical mistakes. A party filing a Motion for Reconsideration must remember that this is not an opportunity to re-argue its case; rather, the purpose is to correct facts and/or errors. The Motion must be served on the Board and all parties within 10 days of the issuance of the FDO. Any party served may file a response within five days. The Board may deny the motion, modify its decision, or re-open the hearing, but if the Board has not responded within 20 days of filing of the Request for Reconsideration, the request is deemed denied.

After the FDO – Compliance and Appeals

If the Board has determined a city's or county's action was not in compliance with the GMA, the local government is required to take corrective action to achieve compliance with the GMA.

Contained in the FDO will be the **Compliance Schedule**. The Compliance Schedule will provide a date for the **Compliance Hearing** (no more than 180 days from the issuance of the FDO); a deadline for the local government to take appropriate legislative action; and a deadline for the local government to file a report explaining the specific legislative actions taken to comply (**Statement of Actions Taken (SATC)** or **Compliance Report**), and a **Compliance Index.** A local government may take action prior to the deadline set in the Compliance Schedule and may request an earlier Compliance Hearing. The Petitioner will have the opportunity to file a response stating any objections to a finding of compliance and the local government may file a reply to the Petitioner's response. An original and four copies of these documents must be filed with the Board and served at the same time on all parties. Generally, only the original parties to the PFR may participate in the compliance phase of the matter. However, any party who can demonstrate standing to challenge the legislation enacted to bring the local government into compliance may participate, if they notify the Board in writing no later than two weeks prior to the Compliance Hearing. Participation is limited to the issues subject to the finding of non-compliance and remand. Anyone objecting to the legislation on other grounds must file a new PFR.

If a Board finds noncompliance and the case is of unusual scope and complexity, the Board may allow the compliance period to be longer than the 180-day limit imposed by statute. The length of a reasonable compliance period in those situations may be determined after consultation with the non-compliant jurisdiction and the other parties to the case.

Any party aggrieved by the FDO may appeal the decision to the appropriate Superior Court. This appeal must be filed within 30 days of the issuance of the FDO.

GUIDELINE for GMHB CASE SCHEDULE

The schedule governing each case is set by the Presiding Officer in the Prehearing Order. The schedule will take into account holidays, furlough days, and any special circumstances.

Day	
1	• Petition for Review Filed - RCW 36.70A.290(1a)
10	• Notice of Hearing Issued - RCW 36.70A.290(3)
30	• Index of the Record Due from City/County - WAC 242-02-520
31	• Prehearing Conference held - WAC 242-02-550
38	• Prehearing Order Issued - RCW 36.70A.290(1), WAC 242-02-560
40	• Additions to the Index Due
45	• Objections to Additions to the Index Due
50	• Motions Due - Supplementation - RCW 36.70A.290(4), WAC 242-02-540
57	• Motions due - Dispositive -WAC 242-02-530*
60	• Responses to Motions Due - Supplementation - WAC 242-02-534
67	• Responses to Motions due - Dispositive - WAC 242-02-534
84	• Order on Motions Issued - Supplementation
91	• Order on Motions Issued - Dispositive
110	• Petitioner(s) Prehearing Brief(s) filed w/ exhibits • Intervenor(s) supporting Petitioner(s) Prehearing Brief(s) filed w/ exhibits
120	• Respondent(s) Prehearing Brief(s) filed w/ exhibits • Intervenor(s) supporting Respondent(s) Prehearing Brief(s) filed w/ exhibits
127	• Petitioner(s) Reply Brief(s) filed w/ exhibits; Intervenor(s) supporting Petitioner(s) Reply Brief Filed w/ exhibits • Deadline for Settlement Extension - RCW 36.70A.300(2)(b)
135	• Hearing on the Merits conducted
180	• Final Decision and Order Issued - 36.70A.300(2)(a)

Blue denotes due date for parties **Red** denotes due date for GMHB **Green** denotes hearing date

* In some cases, the Board may allow a reply brief and/or a motion hearing to be scheduled.

GLOSSARY

***Amicus Curiae*:** Latin for *friend of the court*, an *Amicus* is a person who is not party to a matter but who desires to file a brief in the action because that person has a strong interest in the subject matter (See WAC 242-02-280).

Attestation Statement: a statement affirming the contents of the document are, to the best of the signer's knowledge, true and accurate.

Briefs: a written document in which the party provides essential facts, arguments, and legal authority that supports its allegations (See WAC 242-02-570)

1. **Petitioner's Prehearing Brief:** filed by the Petitioner prior to the Hearing on the Merits
2. **Respondent's Response Brief:** filed by the Respondent after receipt of the Petitioner's Prehearing Brief; provides the Respondent the opportunity to counter any facts and arguments set forth by the Petitioner
3. **Petitioner's Reply Brie:** filed by the Petitioner after receipt of the Respondent's Response Brief; provides the Petitioner with the opportunity to counter any facts and arguments set forth by the Respondent and bolster any of the facts and arguments set forth in the Petitioner's Prehearing Brief. No new issues not raised in the Prehearing Brief may be introduced.

Burden of Proof: a party's duty to prove a disputed assertion. The Petitioner must prove the local government has not acted in compliance with the GMA (See RCW 36.70A.302(2), WAC 242-02-632).

Clearly Erroneous: the Standard of Review the Board uses to analyze a matter. To make a finding that a local government's actions were clearly erroneous, the Board must be left with a firm and definite conviction that, in view of the entire record and in light of the goals and requirement of the GMA, a mistake has been made by the local government (See RCW 36.70A.302(3), WAC 242-02-634).

Compliance Hearing: a hearing held after a finding of non-compliance to determine if the local government has taken sufficient action to bring the non-compliant provision into compliance with the GMA (See RCW 36.70A.330, WAC 242-02-891, 242-02-893, 242-02-894).

Compliance Index: a listing of all of the documents the local government has relied on in taking action to bring the non-compliant provision into compliance with the GMA.

Compliance Report: the local government's statement of actions it has taken to comply with the Board's order, as provided in its FDO. This document is sometimes called the Statement of Actions Taken to Comply.

Compliance Schedule: the table that sets forth the dates for compliance hearings and filings required by the Board in its FDO (see WAC 242-02-890, 242-02-891).

Comprehensive Plan: a generalized coordinated land use policy statement of the governing body of a county or city adopted pursuant to the GMA (see RCW 36.70A.030(4); RCW 36.70A.070, .080, .090, .100).

Conclusory Argument: an argument which expresses a factual inference without stating the underlying facts on which the inference is based; allegations that lack any supporting evidence.

Concurring Opinion: opinion written by one member of the Board agreeing with the outcome of the Board order but for different reasons or providing a different perspective.

County-Wide Planning Policies (CPPs): a written policy statement or statements adopted by a county in cooperation with its cities establishing a county-wide framework from which county and city comprehensive plans are developed and adopted (see RCW 36.70A.210).

Court Reporter: a person who records a verbatim transcript of the HOM. Transcripts are available to a party at the cost of production (See WAC 242-02-620; WAC 242-02-880).

Critical Areas: areas and ecosystems which include wetlands; areas with a critical recharging effect on aquifers used for potable water; fish and wildlife habitat conservation areas; frequently flooded areas; and geologically hazardous areas (see RCW 36.70A.030 (5)).

Day: a calendar day; if the last day for service shall fall on a Saturday, Sunday, or legal holiday, the party has until the next business day (see WAC 242-02-060).

Deemed Abandoned: any legal issue in the Prehearing Order which the Petitioner fails to argue in the Prehearing Brief is deemed abandoned and is dismissed.

Deference: the legislatively-mandated requirement that the Board recognize the responsibility for managing local growth and shaping a county's or city's future rests with the local community and that the Board give consideration to the local government on how it plans for and manages growth (see RCW 36.70A.3201; WAC 242-02-020).

Determination of Invalidity: provided in the Board's FDO and issued if the Board finds the local government is not in compliance with the GMA and the continued validity of the non-compliant action would substantially interfere with the goals of the Act (see RCW 36.70A.302; WAC 242-02-831(2)(b), 242-02-833).

Development Regulations: the controls placed on the development or use of land by a county or a city including, but not limited to, zoning ordinances, critical area ordinances, shoreline master programs, and subdivision ordinances. RCW 36.70A.030(7).

GLOSSARY (*continued)*

Digest of Decisions: available through the Boards' website; the Digest is a summary of all the Board's decisions and is organized by keyword.

Direct Review Agreement: an agreement entered into by all parties within seven days of filing of the PFR, which states that the parties agree to have the matter reviewed by the applicable Superior Court as opposed to the Board (see RCW 36.70A.295; WAC 242-02-290, 242-02-292, 242-02-295)

Dissenting Opinion: opinion written by one member of the Board disagreeing with the order of the Board, in whole or in part.

Exhibit: the evidence to be relied upon; it may be photographic, illustrative, demonstrative, or written documentation.

Ex-Parte Communication: communication pertaining to a pending matter before the Board between any party to that matter—Petitioner, Respondent, Intervener, or *Amicus*—and the Board or Board Staff, outside the presence of the other parties, except with respect to administrative or logistical matters of the case (See WAC 242-02-130).

Failure to Act: a local government's non-action on a mandatory requirement. For example, the GMA mandates that local governments review their comprehensive plans at certain times; if a government does not perform this required review, a petitioner may bring a Failure to Act challenge.

Final Action: the decision and/or action of the highest governing level of the jurisdiction. For example, for a city this would be the City Council or Mayor; for a county this would be the County Council or Board of Commissioners.

Final Decision and Order (FDO): the Board's final decision. It is required to state whether the local government's disputed action is or is not in compliance with the GMA and it must be issued within 180 days of the filing of a PFR, unless time has been extended for settlement discussions (see RCW 36.70A.300; WAC 242-02-130).

Growth Management Act (GMA): RCW 36.70A.

Growth Management Hearings Board (GMHB): the seven-member quasi-judicial Board appointed by the Governor for hearing disputes arising under the GMA (see RCW 36.70A.250; WAC 242-02-010, 242-02-020(1)).

Growth Management Planning Population Projections: issued by the State of Washington Office of Financial Management (OFM). Figures are from the US Census and provide the basis for new projections of population growth. Counties will utilize these figures for allocating growth and revising comprehensive plans.

Hearing on the Merits (HOM): a hearing on the Record considered by the city or county in taking the challenged action (closed record hearing) that is conducted by the Board, the purpose of which is to provide the representatives of the parties the opportunity to orally argue their case and for the Board to ask any clarifying questions as necessary to understand the evidence and the argument (See WAC 242-02-610, 242-02-612, 242-02-620, 242-02-640, 242-02-640, 242-02-680, 242-02-710).

Index of Record: a listing of all of the materials used by a city or county in taking the action which is the subject of the PFR (See WAC 242-02-520, Sample Forms).

Intervenor: a person who voluntarily seeks to enter a case pending before the Board (See WAC 242-02-270; Sample Forms).

Jurisdiction: the geographical area or subject matter in which the Board has authority to decide a matter.

- **Venue:** the proper geographic location for a case to be filed. For the Board, the Petition must indicate the Board region that has authority in the specific county (See RCW 36.70A.250; WAC 242-02-030(1).
- **Subject Matter:** the basis for the alleged violation of the GMA. For the Board, subject matter jurisdiction is limited to violations of the GMA, SMA, and SEPA (See RCW 36.70A.280; WAC 242-02-030(2).

Lack of Prosecution: a failure on the part of the Petitioner to actively pursue an action (WAC 242-02-720(3)).

Motions: a written request by one of the parties asking the Board to rule on a particular issue. A motion must state the particular grounds for which the motion is being requested and the relief sought by the requestor (See WAC 242-02-530, 242-02-532, 242-02-533, 242-02-534, 242-02-540)

- **Dispositive:** a motion that is based on single or multiple issues or the matter as a whole which may dismiss (or dispose of) an issue(s) or the entire case.
- **Non-Dispositive:** a motion that does not decide an issue or the whole case but, for example, is generally limited to the addition or deletion of certain evidence/exhibits.

Motion for Reconsideration: filed within ten days of the Board's issuance of its FDO by a party who alleges the Board has erred in procedure, misinterpreted law or fact, or that there are clerical mistakes in the final order (See WAC 242-02-832).

Notice of Appearance: filed by the Respondent which serves to notify the Board and all parties who will be representing the local government (see WAC 242-02-250).

Notice of Hearing: a document issued by the Board within ten days of the receipt of the PFR, notifying the parties of the date and location of the Prehearing Conference and a tentative schedule including the date of the HOM (See WAC 242-02-510).

Official Notice: the act of the Board in recognizing certain evidence and/or facts that may or may not have been contained within the record but, which are capable of being known to a veritable certainty such as laws, ordinances, scientific and technical facts, business customs, or widely-known notorious facts (See WAC 242-02-660, 242-02-670).

GLOSSARY (*continued)*

Panel: three Board members assigned to hear a case (see RCW 36.70A.260(1); WAC 242-02-015.)
Participation Standing: obtained when a person participated, either orally or in writing, before the local government and raised the disputed issue in sufficient detail for the government to have had the opportunity to consider the issue prior to taking its action. (See Digest Keyword: Standing or State Environmental Policy Act (SEPA)).
Petition for Review (PFR): the initial document that must be filed with the Board within 60 days of publication of a local government's action to initiate a case before the Board. The PFR provides a detailed statement of the legal issues the Petitioner wishes the Board to resolve (See RCW 36.70A.290;WAC 242-02-210, 242-02-220, 242-02-230, 242-02-240; Sample Forms).
Petitioner: the person(s) and/or organization(s) filing the Petition for Review with the Board (See WAC 242-02-040(9)).
Precedent: a previously-decided case, either by the Board or the courts, that furnishes a basis for determining later cases involving similar facts or issues.
Prehearing Conference: a conference held by the Presiding Officer after receipt of the PFR, which seeks to encourage settlement, establish a schedule, address procedural requirements, and finalize the legal issues (See WAC 242-02-550, 242-02-552, 242-02-556).
Prehearing Order: issued after the Prehearing Conference. It provides the final legal issues and schedule for the matter (see WAC 242-02-558).
Presiding Officer: the member of the Board who is assigned to take responsibility for managing a specific case. (see WAC 242-02-040(10); WAC 242-02-521, 242-02-522).
Presumption of Validity: the concept that a local government's actions are in compliance with the law. The Board presumes all comprehensive plans and development regulations are valid upon adoption (see RCW 36.70A.320; WAC 242-02-630)
***Pro Se* Petitioner:** Latin for *on one's own behalf*; a party who represents himself/herself before the Board without the aid of an attorney (see WAC 242-02-110(1)).
Proof of Service/Declaration of Service: a signed document which provides proof that the legal documents were served on named parties/individual, the date on which service occurred, and the method of service. (See WAC 242-02-340; Sample Forms).
Publication: the date upon which a local jurisdiction provides the public with notice of its legislative action (See RCW 36.70A.290; WAC 242-02-040(11)).
Quasi-Judicial: a term applied to governmental bodies that have the power to hold hearings, weigh evidence, draw conclusions, and use this information as a basis for official decisions.
Record: a compilation of all of the documents the local government relied on in taking the action which is the subject of the PFR (See WAC 242-02-520).
Remand: an order issued by the Board that sends the matter back to the local government for further action.
Respondent: the local government (County or City) against whom the Petitioner is alleging violation of the GMA.
Resource Lands: land designated for natural resource use under the GMA (i.e. agricultural, mineral, or forestry).
Revised Code of Washington (RCW): the laws of Washington State. The RCW is available at public libraries or via the Washington State Legislature's website at http://apps.leg.wa.gov/RCW.
Rules of Procedure: the rules contained in WAC 242-02, which have been adopted by the Board, read with RCW 36.70A and RCW 34.05.
Rules of Professional Conduct (RPC): the rules to which all attorneys who practice within the State must adhere. All persons appearing before the Board must conform to these rules (see WAC 242-02-120. Contact the Washington State Bar Association for a copy of these rules—www.wsba.org).
Sanctions: monetary penalties imposed by the Governor (See RCW 36.70A.340; 36.70A.345; WAC 242-02-896).
Savings Clause: under the GMA, a Savings Clause will "reinstate" the previous GMA-compliant ordinance or regulation if an ordinance or regulation which replaced that ordinance or regulation is found invalid.
Service (Served): the act of delivering the legal documents (i.e. Motions, Briefs) to the Board and the parties; may be accomplished via personal service, 1st Class, registered or certified mail, facsimile and electronic transmissions. (See WAC 242-02-310, 242-02-320, 242-02-330, 242-02-340).
Settlement Extension: a written request made by both parties to extend the 180-day time limitation by 30, 60, or 90 days so the parties may participate in negotiations to settle the matter (see RCW 36.70A.300(2)(b); WAC 242-02-560; Sample Forms).
Severability Clause: a provision in an ordinance or regulation that keeps the remaining provisions in effect, if any portion of the ordinance or regulation is found to be invalid.

GLOSSARY (*continued*)

Shoreline Management Act (SMA): RCW 90.58; a statute that provides for the management of the shorelines of the state by planning and fostering all reasonable and appropriate uses. The goals and policies of the SMA are incorporated as goal 14 of the GMA.

Shoreline Master Plan (SMP): prepared by a city or county and approved by the Washington State Department of Ecology, this document contains regulations applicable to the use of shorelines within that city or county.

Standing: the Petitioner's right to file a case with the Board (See RCW 36.70A.280(2)). The GMA provides for four methods of standing—Governmental, Participation, Governor-Certified, and APA. The most common method of achieving standing before the Board is Participation Standing.

Standard of Review: the "lens" that the Board must look through when reviewing a local government's actions. Generally, the Board will find for the local government unless it determines that the government's action is clearly erroneous in view of the evidence provided to the Board and in light of the goals and requirements of the GMA. (See WAC 242-02-634).

State Environmental Policy Act (SEPA): a statute that requires state and local agencies to consider the likely environmental consequences of a proposal before approving or denying the proposal (See RCW 43.21C).

Statement of Actions Taken to Comply (SATC): the local government's statement of actions it has taken to comply with the Board's order as provided in its FDO. This document is sometimes called the Compliance Report.

Stay of Proceedings (Stay): a request to the Court by the appealing party to postpone or suspend all or part of the Board's compliance order until the matter has been resolved by the Court .

***Sua Sponte*:** Latin for "on its own accord"; this is the ability of the Board to raise an issue or remedy without any party stating the issue or requesting the remedy.

Urban Growth Area (UGA): a regional boundary, required by the GMA to control urbanization by designating the area inside the boundary for higher density urban and the area outside the boundary for lower density rural development. An urban growth boundary circumscribes an entire urbanized area designated for urban growth and is used by local governments as a guide to zoning and land use decisions. (See RCW 36.70A.030(20); RCW 36.70A.110).

Washington Administrative Code (WAC): Regulations of executive branch agencies that are issued by authority of statutes. The Board's Rules of Practice and Procedure are found at WAC 242-02. The WAC is available at public libraries and via the Washington State Legislature's website at http://apps.leg.wa.gov/WAC/default.aspx?cite=242-02..

Photo Courtesy of Dept. of Commerce/Rita R. Robison

SAMPLE FORMS: *Petition for Review*

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
(EASTERN WASHINGTON/WESTERN WASHINGTON/CENTRAL PUGET SOUND) REGION

_____,

Petitioners,

Case No. _____

v.

_____,

PETITION FOR REVIEW

Respondent.

I. PETITIONER
-Name [if organization, name of responsible individual] and contact information
-Name of Attorney, if represented by one, and contact information

II. THE CHALLENGED ACTION (*i.e. Ordinance, Motion, or Resolution* <u>*and*</u> *Date of Publication*)

III. DETAILED STATEMENT OF THE ISSUES (*See How to Frame Legal Issues*—Page 25)

IV. STANDING (*Type of Standing (i.e. Participation Standing) and Basis for Standing)*

V. ESTIMATED TIME REQUIRED FOR HEARING ON THE MERITS (*usually 4 hours*)

VI. RELIEF SOUGHT (*i.e. "Petitioner requests that the Board rule the challenged action to be non-compliant with the GMA and remand the challenged action to the jurisdiction to take the necessary legislative actions for it to be compliant with the GMA.")*

The Petitioner has read the Petition for Review and believe the contents to be true.

Dated this ____ day of _____, 201_.

_____
[Signature of Petitioner or Attorney Representing Petitioner]

SAMPLE FORMS: *Declaration of Service*

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
(EASTERN WASHINGTON/WESTERN WASHINGTON/CENTRAL PUGET SOUND) REGION

_____,

Petitioners,

Case No. _____

v.

_____,

DECLARATION OF SERVICE

Respondent.

I, _____(*Name of individual sending & signing Declaration*)_____, under penalty of perjury under the laws of the State of Washington, declare as follows:

I am _____(*Position/Relationship to Petitioner or Respondent*)_____. On the ____ day of _____, 200__, I caused _____(*Name of Document*)_____ to be served on the persons listed below in the manner indicated:

_____(*Name*)_____
_____(*Address*)_____
_____(*Phone/E-mail*)_____

__ by U.S. Mail
__ by Express Mail Service
__ by Legal Messenger Service
__ by Facsimile
__ by E-Mail

_____(*Name*)_____
_____(*Address*)_____
_____(*Phone/E-mail*)_____

__ by U.S. Mail
__ by Express Mail Service
__ by Legal Messenger Service
__ by Facsimile
__ by E-Mail

DATED this _____ of _____, 201_.

_____(*Signature*)_____
(*Printed Name of Signer*)

SAMPLE FORMS: *Motion to Intervene*

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
(EASTERN WASHINGTON/WESTERN WASHINGTON/CENTRAL PUGET SOUND) REGION

_____,

Petitioners,

v.

_____,

Respondent.

Case No. _____

(*Name of Party seeking to Intervene*)
MOTION TO INTERVENE
(WAC 242-02-270)

INTRODUCTION

On _____, the Growth Management Hearings Board received a Petition for Review (PFR) fro m the above-referenced Petitioner. The PFR challenges ___[*ordinance, resolution, etc*] ___for non-compliance with the GMA. [*Give brief statement of the facts pertaining to challenged action*].

RELIEF REQUESTED

[*Name of Potential Intervener*] now seeks intervention in the above-captioned case on behalf of _[*named party—Petitioner or Respondent— which the Potential Intervener seeks to support*]____, in order to _____[*challenge/defend the action complained of by the Petitioners*].

GROUNDS FOR INTERVENTION

Intervention should be granted pursuant to WAC 242-02-270. [*Name of Potential Intervener*] requests intervention because _____[*reasons for intervention*]_____:

(1) interests related to the subject of the action,
(2) how disposition of the case will impair those interests,
(3) interests would not be adequately represented by existing parties.

[Dated this ___ day of _____, 201_.

_____
[*Name of Potential Intervenor/Intervenor's representative*]
[*Contact Information—Address, phone, e-mail]*

SAMPLE FORMS: *Request for Settlement Extension*

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
(EASTERN WASHINGTON/WESTERN WASHINGTON/CENTRAL PUGET SOUND) REGION

_____,

Petitioners,

Case No. _____

v.

_____,

Respondent.

REQUEST FOR
SETTLEMENT EXTENSION
(RCW 36.70A.300(2)(b), WAC 242-02-560)

Pursuant to RCW 36.70A.300(2)(b) and WAC 242-02-560, the Petitioner, _____*(Name of Petitioner)*_____, and the Respondent, _____*(Name of City/County)*_____, respectfully request that the Board grant a __*(30 day, 60 day, up to a maximum of 90 day)*_____settlement extension from the deadlines established in the Notice of Hearing dated _____, 200__, in order to allow the parties to pursue settlement efforts in the above-referenced matter.

DATED this _____ day of _____, 201_.

_____
Signature of Petitioner/Petitioner's Representative-Attorney

_____
Signature of Respondent/Respondent's Representative-Attorney

SAMPLE FORMS: *Stipulated Joint Motion of Dismissal*

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
(EASTERN WASHINGTON/WESTERN WASHINGTON/CENTRAL PUGET SOUND) REGION

_____,	
Petitioners,	Case No. _____
v.	
_____,	STIPULATED JOINT MOTION OF DISMISSAL (WAC 242-02-720)
Respondent.	

The Petitioner and the Respondent jointly request the dismissal of the above-captioned matter. The parties have reached a settlement and request that the matter be dismissed without prejudice.

The parties request an order from the Board dismissing the case without prejudice, as authorized by WAC 242-02-720(1).

DATED this ____ day of _____, 201_.

_____
Signature of Petitioner/Petitioner's Representative-Attorney

_____
Signature of Respondent/Respondent's Representative-Attorney

SAMPLE FORMS: *Index to the Record*

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
(EASTERN WASHINGTON/WESTERN WASHINGTON/CENTRAL PUGET SOUND) REGION

_____,

Petitioners,

Case No. _____

v.

INDEX TO THE RECORD

_____,

Respondent.

***Jurisdiction's*] Index to the Record**
Ordinance No. _____
Purpose of Ordinance: _____

Index #	**DATE**	**TYPE**	**TO**	**FROM**	**SUBJECT/RE**
1		Notes	Council	Planning	Copy of Stakeholders Information Meeting notes
2		Email	Planning	Council	Copy of Email Re: Voice mail from John Doe with a copy of 3/10/06
3		Staff Memo	Council	Roads	Executive/Council Approval Form transmitting recommendations
4		Minutes	Council	Planning Comm.	Minutes of Council Planning Committee
5		Notice	Newspaper	Council Staff	Notice of Introduction of Ordinance and Notice of Public Hearing
6		Email	Public	Planning	Response to 3/16/06 Email (attached) to county from Jane Doe
7		Affidavit	Council	Newspaper	Affidavit of Publication – Notice of Introduction and Notice of Public Hearing

Appendix A

Guidelines for Framing Legal Issues

A legal issue should be stated in the form of a question that the Board can answer "yes" or "no". A legal issue is an allegation that a local government (city or county) action either *fails to comply* with specific goals and/or requirements of the Growth Management Act (GMA), the Shoreline Management (SMA) or State Environmental Policy Act (SEPA) (as to GMA and SMA actions) or is *inconsistent* with some GMA-adopted enactment, such as countywide planning policies, a comprehensive plan, or a development regulation. A legal issue should cite which specific provisions of the local government action are alleged not to comply with which specific provisions of which statute; or which specific provisions of a local government action are inconsistent with which specific provisions of which GMA-adopted enactment. A legal issue may include a phrase that briefly identifies the reason for the allegation of noncompliance and/or inconsistency. However, legal issue statements should generally be brief, devoid of argument or evidence, both of which will be presented by the respective parties in the written briefs and during oral argument at the hearing on the merits.

Examples

1. Did the City/County adoption of its comprehensive plan fail to comply with the requirements of RCW 36.70A.140 because it did not provide for early and continuous public participation?

2. Does Transportation Policy T-2 of the City/County Comprehensive Plan fail to comply with the requirements of RCW 36.70A.070(6) because it does not include an analysis of funding capability?

3. Is Land Use Policy LU-101 of the City/County Comprehensive Plan inconsistent with County-wide Planning Policies (CPPs) because it prevents the City from accommodating the population target allocated by CPP FW-22?

4. Does the City/County Comprehensive Plan fail to comply with RCW 36.70A.070 (preamble) because Land Use Policies LU-24 through LU-30 are inconsistent with the Housing Policies HO-12 through HO-17?

Guidelines for Legal Citation

Former Board decisions should be properly cited with the parties, case number, decision type, date, and page reference. For example, *City of Bremerton, et al., v. Kitsap County,* CPSGMHB Consolidated Case No. 04-3-0009c, Final Decision and Order (Aug. 9, 2004), at 5; and *Tulalip Tribes of Washington v. Snohomish County,* CPSGMHB Case No. 96-3-0029, Final Decision and Order (Jan. 8, 1997), at 7; *Sky Valley, et al., v. Snohomish County*, CPSGMHB Case No. 95-3-0068c, Order on Motions (Apr. 15, 1996), at 3.

Citation to Washington State Supreme Court and Court of Appeals cases should include reference to Pacific Reporter (e.g. *Lewis County v. Western Washington Growth Management Hearings Board*, 157 Wn.2d 488 at 498, fn. 7, 139 P.3d 1096 (2006); *Cooper Point Association v. Thurston County,* 108 Wash. App. 429, 444, 31 P.3d 28 (2001)).

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