Chapter 242-03 WAC

GMHB RULES OF PRACTICE AND PROCEDURE

ADMINISTRATION

NEW SECTION

WAC 242-03-010 Organization. The growth management hearings board was established pursuant to chapter 36.70A RCW. The board is an independent quasi-judicial agency of the state of Washington with seven members appointed by the governor who are qualified by experience or training in matters pertaining to land use planning. These rules were developed, adopted, and amended by the board pursuant to RCW 36.70A.270(7). They should be read in conjunction with the act and the Administrative Procedure Act, chapter 34.05 RCW.

NEW SECTION

WAC 242-03-015 Regional panels. (1) Each petition for review that is filed with the growth management hearings board shall be heard and decided by a regional panel of growth management hearings board members. Regional panels shall be constituted as follows:

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

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

(c) Western Washington region. A three-member Western Washington panel shall be selected to hear matters pertaining to

cities and counties that are required or choose to plan under RCW 36.70A.040, are located west of the crest of the Cascade mountains, and are not included in the Central Puget Sound region. Skamania County, if it is required or chooses to plan under RCW 36.70A.040, may elect to be included within either the Western Washington region or the Eastern Washington region.

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

(b) The presiding officer of each case shall reside within the region in which the case arose, unless the board administrative officer determines that there is an emergency.

(c) Except as provided otherwise in (d) of this subsection, each regional panel shall:

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

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

(iii) Reflect the political composition of the board.

(d) The requirements of (c) of this subsection may be waived by the board administrative officer due to member unavailability, significant workload imbalances, or other reasons.

NEW SECTION

WAC 242-03-020 Function. The function of the board is to make informed decisions on appeals within the scope of its jurisdiction arising from implementation of the Growth Management Act, Shoreline Management Act, and State Environmental Policy Act, in a clear, consistent, timely, and impartial manner that recognizes regional diversity.

NEW SECTION

WAC 242-03-025 Jurisdiction. Subject matter jurisdiction. The board shall hear and determine:

(1) Petitions alleging that a state agency, county, or city is not in compliance with the requirements of:

(a) The Growth Management Act; or

(b) Chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, including the department of ecology's approval or denial of such adoption or amendment by excluding the department of ecology's adoption of a shoreline master program by rule pursuant to RCW 90.58.070(2); or

(c) Chapter 43.21C RCW as it relates to plans, development regulations, and amendments adopted under the act or chapter 90.58 RCW; or

(2) Petitions from cities or the governor relating to an adopted county-wide planning policy; or

(3) Petitions alleging that the twenty-year growth management planning projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted.

NEW SECTION

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) "Administrative officer" means the board member annually elected by the board pursuant to RCW 36.70A.270(10) to handle day-to-day administrative, budget and personnel matters on behalf of the board and to make case assignments to board members in accordance with the board's rules of procedure.

(3) "Board" means the growth management hearings board or a panel of the board hearing a matter as established in RCW 36.70A.260.

(4) "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) "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) "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) "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.

(8) "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).

(9) "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.

(10) "Office of the growth management hearings board" means the administrative office of the board established pursuant to RCW 36.70A.270(2).

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

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

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

(18) "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) "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) "Shoreline Management Act" means chapter 90.58 RCW and subsequent amendments.

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

NEW SECTION

WAC 242-03-035 Rules. These rules shall govern the board's adoption or amendment of rules, and all practice and procedure for hearings before the board. Where a time frame is different in these rules from those in chapter 10-08 WAC, it is because the board is required to act pursuant to the time frames set forth in the act.

NEW SECTION

WAC 242-03-040 Petition for rule making. (1) Any person may petition the board for the adoption, amendment, or repeal of any rule. Said petition shall be filed with the board at its office. The form for a petition for rule making, the criteria to be addressed, and the procedure for submission shall be as specified in RCW 34.05.330(1).

(2) Upon receipt of a petition for the adoption, amendment, or repeal of a rule, the board may, in its discretion, solicit comments, invite discussion, and hold meetings concerning the matter prior to disposition of the petition.

(3) Within sixty days after submission of a petition for rule making, the board shall either:

(a) Deny the petition in writing, stating:

(i) Its reasons for the denial, specifically addressing the concerns raised by the petitioner and, where appropriate;

(ii) The alternative means by which it will address the concerns raised by the petitioner; or

(b) Initiate rule-making procedures in accordance with RCW 34.05.230.

NEW SECTION

WAC 242-03-045 Computation of time. The time within which any act shall be done, as provided by these rules, shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a legal holiday, pursuant to RCW 1.16.050, and then it is excluded and the next succeeding day which is neither a Saturday, Sunday nor a legal holiday is

included. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

NEW SECTION

WAC 242-03-050 Quorum. (1) Board quorum. For the purpose of adopting, amending, or repealing these rules or transacting other administrative business, at least four members of the board shall constitute a quorum of the board. A quorum being present, any action may be taken upon the vote of the majority of the board members.

(2) Panel quorum. For purposes of making orders or decisions in a case, two members of a panel shall constitute a quorum and may act even though one panel member is absent. One member may hold conferences or hearings. The findings of such member shall not become final until approved by a majority of the panel. A panel member who does not attend a hearing may participate in the decision and shall review a transcript or recording of the hearing before signing the decision.

NEW SECTION

WAC 242-03-060 Board office. (1) The administration of the board is consolidated in one office - The office of the growth management hearings board:

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

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

NEW SECTION

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

NEW SECTION

WAC 242-03-075 Special meeting. (1) A special meeting of the board may be called at the request of any two of the board members. To call a special meeting, a written notice of the meeting shall be posted on the board's web site and personally e-mailed to:

(a) Each member of the board; and

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

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

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

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

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

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

(4) The special meeting shall be chaired by the administrative officer.

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

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

NEW SECTION

WAC 242-03-080 Annual and semiannual board meetings. (1) The annual board meeting will be held in October of each year. The annual meeting should be held in person. The location, time, and

agenda for the annual board meeting will be posted on the board's web site (www.gmhb.wa.gov) in September of each year.

(2) The semiannual board meeting may be held in April of each year. The location, time, and agenda for the semiannual board meeting will be posted on the board's web site (www.gmhb.wa.gov) in March of each year.

NEW SECTION

WAC 242-03-095 Case numbering. The board shall assign a case number to each petition for review which shall be the official reference number for purposes of identification. The first two digits of the case number shall correspond to the last two digits of the calendar year in which the petition was filed. The third digit shall designate which regional panel has jurisdiction over the matter. The Eastern Washington panel shall use the digit "1"; the Western Washington panel shall use the digit "2"; and the Central Puget Sound panel shall use the digit "3." The last four digits shall be numbered sequentially in order of receipt. Consolidated cases are generally assigned the number of the last filed petition followed by a "c."

PRACTICE BEFORE THE BOARD

NEW SECTION

WAC 242-03-100 Appearance and practice before the board--Who may appear. Practice before the board shall be open to the following persons who have met the standing requirements of chapter 36.70A RCW:

(1) A party or compliance participant to a case before the board may appear personally or by a duly authorized representative. The duly authorized representative need not be an attorney;

(2) Attorneys at law representing a party before the board must be duly qualified and entitled to practice in the courts of the state of Washington or satisfy Washington Court Rule 9 standards.

NEW SECTION

WAC 242-03-115 Authorized representatives. (1) Notice of appearance. Any person acting in a representative capacity on behalf of a party or participant shall file a notice of appearance with the board and shall serve a copy on all other parties. This requirement shall apply to attorneys as well as to other duly authorized representatives of parties. This requirement shall apply to attorneys as well as to other duly authorized representatives of parties. A person listed in a petition for review as representing petitioners need not file a notice of appearance.

(2) Substitution. In the event of a change in representative or attorney, a notice of substitution must be filed with the board and a copy served on all other parties before the change in representative shall become effective.

NEW SECTION

WAC 242-03-120 Rules of professional conduct. (1) An attorney appearing in proceedings before the board in a representative capacity shall conform to the Rules of Professional Conduct required of attorneys before the courts of Washington.

(2) A person other than an attorney appearing in a representative capacity or on his/her own behalf shall conform to the following standards as set forth in the Washington Court Rules of Professional Conduct, RCP 3.1 to 3.5.

(a) Advancing good faith claims and contentions;

(b) Making reasonable efforts to expedite the proceedings;

(c) Candor and truthfulness toward the board;

(d) Fairness to opposing parties; and

(e) Refraining from conduct that is detrimental to the impartiality of the board or the decorum of the proceedings.

(3) If any person does not conform to such rules, the board may decline to permit such person to appear in any current or future proceedings before the board or impose appropriate sanctions.

NEW SECTION

WAC 242-03-130 Ex parte communication. No one in a board proceeding shall make or attempt to make any ex parte communications with board members regarding any issue in the proceeding that is prohibited by the Administrative Procedure Act,

RCW 34.05.455. Communications on purely procedural matters such as scheduling and logistics should be directed to the board's administrative staff. Any person who attempts to make prohibited ex parte communications on behalf of a party may be subject to sanctions pursuant to WAC 242-03-120. The board should disclose any prohibited ex parte communication and include it in the record.

NEW SECTION

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

NEW SECTION

WAC 242-03-145 Form and size of documents. Documents, other than exhibits, shall be provided in the manner indicated in the board's prehearing order.

NEW SECTION

WAC 242-03-150 Teleconference or video conference proceeding. (1) At the discretion of the board or a presiding officer, or where the parties agree and where the rights of the parties will not be prejudiced, all or part of any hearing, prehearing, or motion hearing may be conducted by telephone, video conference, or other electronic means. Each party in the proceeding must have an opportunity to participate effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place.

(2) The board will require documentary evidence, motions, and briefs to be submitted in accordance with the prehearing order or subsequent scheduling order to insure fair consideration and presentation of the issues. All such material shall also be served on other parties at the time of filing with the board.

APPEAL PROCEDURE

NEW SECTION

WAC 242-03-200 Initiating an appeal with the board. An appeal before the board is initiated by satisfying the following requirements:

(1) A petition for review relating to an adopted comprehensive plan, development regulation, or amendment thereto, must be filed with the growth management hearings board within sixty days after publication by the decision-making body of the state agency, county, or city whose action is being appealed and naming that state agency, county, or city as a respondent;

(2) The petition for review shall include a detailed statement of issues presented for resolution by the board;

(3) The petition for review shall include a statement showing that the petitioner has standing to file the petition; and

(4) The petition for review must allege either:

(a) A state agency, county, or city is not in compliance with the goals and requirements of the Growth Management Act, the Shoreline Management Act, applicable guidelines and rules, as it relates to shoreline master programs and amendments thereto, or the State Environmental Policy Act and rules, as it relates to plans, development regulations, shoreline master programs or amendments; or

(b) The twenty-year growth management planning populations projections adopted by the office of financial management should be adjusted.

NEW SECTION

WAC 242-03-210 Petition for review--Forms--Contents. A petition for review shall substantially contain:

(1) A caption in the following form:

BEFORE THE GROWTH MANAGEMENT
HEARINGS BOARD
_____ REGION
STATE OF WASHINGTON

Petitioner,	Case No.
v.	
Respondent.	PETITION FOR REVIEW

(2) Numbered paragraphs stating:

(a) Petitioner's name, mailing address, telephone number, and electronic mail address, and those of the attorney or other authorized representative, if any;

(b) Date of the challenged order, determination, publication, or other action or, in the case of an alleged failure to act under the Growth Management Act or the Shoreline Management Act, the date by which the action was required to be taken;

(c) A detailed statement of the issues presented for resolution by the board that specifies the provision(s) of the act or other statute allegedly being violated and, if applicable, the provision(s) of the document that is being appealed;

(d) A statement specifying the type and the basis of the petitioner's standing before the board pursuant to RCW 36.70A.280(2);

(e) The relief sought, including the specific nature and extent;

(f) A statement that the petitioner has read the petition for review and believes the contents to be true, followed by the petitioner's signature or signature of the attorney(s) or other authorized representative(s), if any.

(3) One copy of the applicable provisions of the document being appealed, if any, shall be attached to the petition for review. Petitioner shall provide the board with a copy of the entire document being appealed within thirty days of filing a petition for review, unless otherwise directed by the board.

NEW SECTION

WAC 242-03-220 Petition for review--Time for filing. (1) A petition relating to whether or not an adopted comprehensive plan, development regulation, or subsequent amendment, is in compliance with the goals and requirements of the act or chapter 90.58 or 43.21C RCW shall be filed with the board within sixty days from the date of publication by the legislative body of the county or city as specified by RCW 36.70A.290(2).

(2) A petition relating to a shoreline master program or denial thereof shall be filed within sixty days from the date the department of ecology publishes notice that the shoreline master program has been approved or disapproved by final action of the department of ecology.

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

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

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

NEW SECTION

WAC 242-03-230 Petition for Review--Filing and service. (1) Filing a Petition for Review. A petition for review shall be filed with the board by electronic mail, as provided in WAC 242-03-240, unless a petitioner does not have the technological capacity to do so. The original and four copies of the petition for review shall be filed with the board personally, or by first class, certified, or registered mail. Filings may also be made with the board by telefacsimile 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 provided that the original and four copies are postmarked and mailed on the same date as the electronic filing.

(2) Service of petition for review.

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

(b) When a county is a respondent, the petition for review shall be served on the county auditor in noncharter counties and the agent designated by the legislative authority in charter counties. 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.

NEW SECTION

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

Filings made by electronic mail and/or telefacsimile transmission shall be deemed filed upon actual receipt during office hours of 8:00 a.m. to 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped received on the following business day. The date and time indicated by the board's telefacsimile machine or receiving computer shall be presumptive evidence of the date and time of receipt of transmission. All papers will be deemed filed with the board on the date received by electronic mail provided that the original document and four copies are mailed and postmarked on the same date as the telefacsimile transmission or electronic mail filing.

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

NEW SECTION

WAC 242-03-245 Declaration of service. A party filing any pleadings, briefs, exhibits, or documents with the board shall provide a signed declaration of service, on penalty of perjury under the laws of this state, stating that copies have been served on all other parties, listing the parties, and stating the method of service.

NEW SECTION

WAC 242-03-250 Notice of appearance. The respondent shall file and serve a notice of appearance within seven days after having been served with a petition for review.

NEW SECTION

WAC 242-03-255 Governor certified standing. If the board receives a request for governor certified standing from a petitioner pursuant to RCW 36.70A.280 (2)(c), the board shall immediately forward the petitioner's request to the governor. The board shall indicate to the governor the end of the sixty-day time period within which the determination of standing must be made. Pendency of a request for governor certified standing does not extend the time for filing a petition for review.

NEW SECTION

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

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

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

NEW SECTION

WAC 242-03-270 Intervention. (1) Upon motion, any person may request status as an intervenor in a case. The motion shall state the applicant's interests relating to the subject of the action, how disposition of the action may impair that interest, and whether that interest is adequately represented by existing parties. The motion shall specify the legal issue(s) in the case which the intervenor seeks to address and may not raise new issues beyond the issues already in the case. The applicant should make an effort to contact the parties so that the motion may be filed without objection. The motion to intervene shall be filed at least ten days prior to the deadline for filing the petitioner's prehearing brief, unless good cause is shown.

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

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

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

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

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

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

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

NEW SECTION

WAC 242-03-280 Amicus. (1) Any person whose interest may be substantially affected by a proceeding before the board may, by motion, request status as an amicus in the case. A motion and amicus brief shall be filed no later than thirty days before the hearing on the matter, unless good cause is shown.

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

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

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

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

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

(3) Any party may respond to an amicus motion and brief within ten days.

(4) If leave to file an amicus brief is granted, amicus does not participate in oral argument, except at the request of the board, and is not a party of record in subsequent proceedings.

NEW SECTION

WAC 242-03-290 Direct review by superior court--Procedures. RCW 36.70A.295 provides for direct review by superior court of a petition for review filed with the board if all parties to the proceeding agree to direct review in superior court and file an agreement in writing with the board within ten days after the petition for review is filed, or if multiple petitions have been filed and consolidated, within ten days after the board serves notice of consolidation.

(1) A direct review agreement of the parties shall contain:

(a) Petitioner's name, mailing address, telephone number, and electronic mail address, and those of the attorney or other designated representative, if any;

(b) Respondent's name, mailing address, telephone number, and electronic mail address, and those of the attorney or other designated representative, if any;

(c) Intervenor's name, mailing address, telephone number, and electronic mail address, and those of the attorney or other designated representative, if any;

(d) A statement indicating agreement to seek direct review by superior court of the petition for review filed with the board, citing case name and number as assigned by the board. The statement shall include agreement to proper venue, and may include other terms;

(e) Date the petition for review was filed, or if multiple petitions were filed and consolidated, the date the board served notice of consolidation;

(f) A statement that all parties have read the agreement for direct review by superior court, and agree to its terms, followed by the signatures of all the parties or the signatures of the

attorneys or other designated representatives, if any.

(2) One copy of the filed petition for review, with the case name, number and date stamp shall be filed with the agreement for direct review by superior court.

(3) Within ten days of receiving the timely and complete agreement of the parties, the board shall file a certificate of agreement with the designated superior court with the documents required by RCW 36.70A.295(2) and shall serve the parties with copies of the certificate.

ADDITIONAL BOARD POWERS

NEW SECTION

WAC 242-03-300 Discovery--Limitation. (1) Because the board bases its decision on the record developed by the city, county, or state agency in taking the challenged action, discovery shall not be permitted except in extraordinary circumstances upon an order of the presiding officer.

(2) Insofar as applicable and not in conflict with this chapter, when discovery has been authorized by the presiding officer, the statutes and court rules regarding pretrial procedures in civil cases in superior courts of the state of Washington shall be used.

NEW SECTION

WAC 242-03-310 Subpoena--Issuance. (1) Because the board bases its decision on the record developed by the city, county, or a state agency taking the challenged action, subpoenas shall not be authorized except in extraordinary circumstances. When allowed by the presiding officer, subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446 and court rules.

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

arrangements for service.

NEW SECTION

WAC 242-03-320 Hearing examiner--May be appointed. (1) The board may appoint hearing examiners to assist the board in its hearing function, to make conclusions of law and findings of fact, and, if requested by the board, to make recommendations to the board for decisions in cases before the board.

(2) The findings and conclusions of the hearing examiner shall not become final until they have been formally approved by the panel hearing the case.

NEW SECTION

WAC 242-03-330 Witnesses and testimony--Limitation. (1) Because the board bases its decision on the record developed by the city, county, or the state in taking the challenged action, witnesses shall not be permitted to testify in hearings before the board except as allowed by the presiding officer. Requests to allow witness testimony shall be made no later than five working days prior to the hearing.

All testimony shall be given under oath as provided in chapter 5.28 RCW and subject to cross-examination. Where an interpreter is employed, the provisions of WAC 10-08-150 shall apply.

(2) When allowed to address the board by the presiding officer, local officials shall limit their comments to material contained in the record. Such comments will not be considered testimony, and therefore need not be given under oath.

NEW SECTION

WAC 242-03-340 Board consultation of critical areas expert. (1) Pursuant to RCW 36.70A.172(2), the board may retain scientific or other expert advice to assist in reviewing a petition that involves critical areas. When the board has determined that such advice is necessary or will be of substantial assistance in reaching its decision, the board shall promptly notify the parties of the proposed scope of the consultation.

(2) Upon receiving the report of the consulted expert, the

board shall provide all parties a copy of the report and a statement of the expert's qualifications.

(3) Any party may, within fourteen days, file objections to the qualifications or impartiality of the expert or to the substance of the report.

PROCEDURES PRIOR TO HEARING

NEW SECTION

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

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

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

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

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

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

NEW SECTION

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

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

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

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

NEW SECTION

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

Exhibits shall be documents, portions of documents, or transcriptions of proceedings listed in the index, unless a motion to supplement the record has been granted. Exhibits attached to motions to supplement shall be cross-referenced in briefs for the hearing on the merits. The presiding officer may, at her/his discretion, require copies of all exhibits to be attached to both the motion to supplement and the hearing on the merits brief, or may just allow the exhibits to be cross-referenced. This requirement will be stated in the order on motion to supplement.

NEW SECTION

WAC 242-03-525 Designation of presiding officer and panel members. The board shall designate the presiding officer and panel members for each case at the time it issues the notice of hearing pursuant to WAC 242-03-500. In the event the presiding officer or any panel member subsequently changes, the board shall promptly notify the parties.

NEW SECTION

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 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 concerning service of papers electronically 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.

NEW SECTION

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

NEW SECTION

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 concerning service of papers electronically or by mail in light of technical capabilities or other circumstances.

NEW SECTION

WAC 242-03-545 Prehearing order. (1) Within seven days after the prehearing conference, the presiding officer shall issue a prehearing order memorializing rulings of the board at or prior to the prehearing conference, establishing the issues for resolution in the case, and setting the final case schedule for motions, briefing, and the hearing on the merits. The prehearing order may include:

(a) Admissions concerning jurisdiction, standing, or timeliness of the appeal;

(b) Provisions concerning the record, documents to be provided, witnesses allowed, if any, and authenticity and/or admissibility of exhibits;

(c) Limitations on length of briefs and the coordination of arguments from parties with related issues; or

(d) Any other matters that may expedite the resolution of the matter.

(2) Any objection to such order shall be made in writing within seven days after the date the order is dated. The prehearing order shall control ensuing proceedings unless modified for good cause by a subsequent order.

NEW SECTION

WAC 242-03-550 Motions--General requirements. (1) A motion is an application for an order or ruling. Every motion shall be in writing, unless made during a hearing; shall state with particularity the grounds; and shall set forth the relief or order sought.

(2) The deadline for filing certain motions is established in the prehearing order. No written motion may be filed after the date specified in the order without written permission of the presiding officer which may be granted for good cause shown.

(3) Unless the prehearing order or other order in the case establishes a different deadline, a party served with a motion shall have ten days from the date of service of the motion to respond to it. The presiding officer may allow the moving party to

reply to the response.

(4) A party filing a motion on a routine matter is encouraged to inform other parties and to indicate in the motion whether it is filed with the concurrence of other parties.

(5) A motion on procedural matters will generally be decided by the presiding officer without a hearing.

(6) The presiding officer, taking into consideration the complexity and finality of the issues raised in a motion, may, in the officer's discretion, schedule a telephonic hearing for argument of the motion to the board or may defer consideration of the motion until the hearing on the merits.

NEW SECTION

WAC 242-03-555 Dispositive motions. (1) Dispositive motions on a limited record to determine the board's jurisdiction, the standing of a petitioner, or the timeliness of the petition are permitted. The board rarely entertains a motion for summary judgment except in a case of failure to act by a statutory deadline.

(2) Dispositive motions and responses shall be filed by the dates established in the prehearing order. The board may refuse to hear a motion that is not timely filed, except where good cause is shown.

(3) The presiding officer, taking into consideration the complexity and finality of the issues raised, may, in the presiding officer's discretion, request a reply brief from the moving party, schedule a telephonic hearing for argument of the motion or may defer the board's consideration of the motion until the hearing on the merits.

(4) Unless the order on dispositive motions is a final order pursuant to WAC 242-03-030(9), no motion for reconsideration will be allowed.

NEW SECTION

WAC 242-03-560 Dispositive motion on notice and public participation. Any party may bring a motion for the board to decide a challenge to compliance with the notice and public participation requirements of the act raised in the petition for review, provided that the evidence relevant to the challenge is limited. Such motion shall be filed by the deadline for dispositive motions established in the prehearing order. The presiding officer shall determine whether the panel will decide the

notice and public participation issue(s) on motion or whether to continue those issues to the hearing on the merits.

NEW SECTION

WAC 242-03-565 Motion to supplement the record. Generally, the board will review only documents and exhibits taken from the record developed by the city, county, or state in taking the action that is the subject of review by the board and attached to the briefs of a party. A party by motion may request that the board allow the record to be supplemented with additional evidence.

(1) A motion to supplement the record shall be filed by the deadline established in the prehearing order, shall attach a copy of the document, and shall state the reasons why such evidence would be necessary or of substantial assistance to the board in reaching its decision, as specified in RCW 36.70A.290(4). The board may allow a later motion for supplementation on rebuttal or for other good cause shown.

(2) Evidence arising subsequent to adoption of the challenged legislation is rarely allowed except when supported by a motion to supplement showing the necessity of such evidence to the board's decision concerning invalidity.

(3) Exhibits attached to motions to supplement shall be cross-referenced in the briefs for the hearing on the merits, unless the presiding officer, in the order on motion to supplement, requires copies of supplemental exhibits to be attached also to the hearing on the merits brief.

NEW SECTION

WAC 242-03-570 Motion to disqualify for cause--Challenge to panel. (1) A motion to disqualify a board member from serving on a panel or to challenge the composition of the panel shall be brought at least seven days before the board holds a prehearing conference, or if facts establishing grounds for disqualification are subsequently discovered, promptly after discovery of such facts. In the event a new panel assignment is made during the course of the proceedings on a matter, any motion for disqualification or challenge to panel composition shall be brought no later than seven days after the board issues its notice of panel assignment.

(2) Any board member designated to serve on a panel is subject to disqualification for bias, prejudice, interest, or any other cause as provided in RCW 34.05.425. The board member whose

disqualification is requested shall promptly determine whether to grant the motion, stating facts and reasons for the determination.

(3) If a party brings a motion challenging the composition of the panel for noncompliance with the requirements of RCW 36.70A.260, the presiding officer shall promptly forward the motion to the administrative officer who will prepare a response.

(4) If a motion for disqualification or challenge to composition of the panel is granted, a new panel assignment and/or presiding officer designation will be promptly made. The parties will be informed at the prehearing conference and the resolution of the matter will be included in the prehearing order or other written order of the board issued within twenty days of the filing of the motion.

NEW SECTION

WAC 242-03-575 Settlement extensions and mediation. (1) If additional time is necessary to achieve settlement of a dispute that is an issue in a petition before the board, the board may extend the one hundred eighty-day time limit for issuing a final decision and order, as provided in RCW 36.70A.300 (2)(b). The presiding officer may authorize one, or more, extensions of up to ninety days each.

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

(3) The presiding officer may grant a request for a settlement extension if:

(a) The request was timely filed; and

(b)(i) All parties named in the caption of the petition, agree to and sign the request; or

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

(4) The presiding officer may require status reports from the parties to determine whether progress is being made on resolving the dispute.

(5) At the request of the parties the board may grant a settlement extension to allow time for mediation of some or all of the issues of the appeal. At the request of the parties, the board may appoint a board member from a different region to serve as a mediator. If the parties do not reach agreement through mediation in the extension time granted, the appeal proceeds to hearing.

NEW SECTION

WAC 242-03-580 Continuance of hearing. Other than for settlement purposes pursuant to WAC 242-03-575, continuance of a scheduled hearing will be granted only on the board's initiative or upon timely request of a party setting forth in detail the reason for such a request and a date by which such reason will no longer apply. The board will continue the hearing only in extraordinary circumstances and upon a finding of good cause. Continuance and rescheduling of a hearing on the merits or compliance hearing does not extend the statutory deadline for filing a final decision or for taking action to achieve compliance with the act.

NEW SECTION

WAC 242-03-590 Briefs. (1) A petitioner, or a moving party when a motion has been filed, shall submit a brief addressing each legal issue it expects the board to determine. Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue. Briefs shall enumerate and set forth the legal issue(s) as specified in the prehearing order.

(2) Briefs shall be filed according to the schedule in the prehearing order or any subsequent order amending the briefing schedule.

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

NEW SECTION

WAC 242-03-595 Stipulation to the facts. Parties are encouraged to stipulate to any undisputed facts.

HEARING PROCEDURE

NEW SECTION

WAC 242-03-600 Hearing--Recording--Recording devices. (1) All hearings shall be officially recorded by manual, electronic, or other type of recording device.

(2) Photographic and recording equipment of others shall be permitted at hearings; however, the presiding officer may impose such conditions upon their use as deemed necessary to prevent disruption of the hearing, or when a statute or common law limits such use.

NEW SECTION

WAC 242-03-610 Hearing--Procedures at hearing. (1) Purpose. The purpose of any hearing is for the parties to present oral argument based on the record as presented in their briefs and exhibits and for the board to ask questions necessary for a thorough understanding of the issues for decision.

(2) Presiding officer. All hearings shall be conducted by a presiding officer who shall conduct the hearing in an orderly manner and rule on all procedural matters, objections, and motions.

(3) Order of presentation. The presiding officer shall determine the proper order of presentation and the time allotted for presentation. Time allotted to petitioners and respondents will be roughly equal, with parties responsible for dividing their time with supporting intervenors, if any.

(4) Illustrative exhibits. Any proposed illustrative exhibit shall be circulated to the parties at least four days prior to the hearing. Paper copies of any illustrative exhibit, in pleading size, shall be brought to the hearing for the benefit of the board and the parties.

(5) Supplemental evidence submitted at hearing. In exceptional circumstance the board may allow the submission of supplemental evidence at a hearing in response to board questions, upon a showing that the supplemental evidence is necessary or of substantial assistance to the board. If supplemental evidence is thereby introduced, the opposing party shall have the opportunity to respond. The board may require the parties to submit post-hearing briefing or documents detailing the supplemental evidence, and the opposing party's rebuttal to the supplemental evidence.

NEW SECTION

WAC 242-03-620 Evidence at hearing. All evidence from the record which is to be relied upon at hearing shall be submitted to the board and to other parties with their briefs.

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

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

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

(4) Documentary evidence submitted with briefs in the form of copies or excerpts, or by incorporation by reference, is subject to the following:

(a) That all documents so presented and examined be deemed authentic unless written objection is filed within ten days after receipt. A party will be permitted to challenge such authenticity at a later time only upon a clear showing of good cause.

(b) When only portions of a document or portions of a proceeding are to be relied upon, the offering party shall adequately identify and prepare the pertinent excerpts and shall supply copies of such excerpts for attachment as exhibits to a brief. However, the whole of the original document or recording shall be made available for examination and for use by all parties to the proceeding.

(c) That documentary evidence not submitted with the briefs and not in the record or supported by a timely filed motion to supplement the record pursuant to WAC 242-03-565 not be received in evidence in the absence of a clear showing that the offering party had good cause for the failure to produce the evidence sooner, unless it is submitted for impeachment or rebuttal purposes.

NEW SECTION

WAC 242-03-630 Official notice--Matters of law. The board or presiding officer may officially notice:

(1) Federal law. The Constitution; congressional acts, resolutions, records, journals, and committee reports; decisions of federal courts and administrative agencies; executive orders and proclamations; and all rules, orders, and notices published in the Federal Register.

(2) Washington state law. The Constitution of the state of Washington; decisions of the state courts; acts, resolutions,

records, journals, and committee reports of the legislature; decisions of administrative agencies of the state of Washington; executive orders and proclamations by the governor; all rules, orders, and notices filed with the code reviser; and codes or standards that have been adopted by an agency of this state or by a nationally recognized organization or association.

(3) Laws of other states. The constitutions of other states; decisions of state courts; acts, resolutions, records, journals and committee reports of other state legislatures; decisions of other states administrative agencies; executive orders and proclamations issued by a governor of another state; and codes or standards that have been adopted by an agency of another state.

(4) Counties and cities. Ordinances, resolutions, and motions enacted by cities, counties, or other municipal subdivisions of the state of Washington, including adopted plans, adopted regulations, and administrative decisions.

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

(6) Growth management hearings board. Orders and decisions of the board and the board's rules of practice and procedure.

NEW SECTION

WAC 242-03-640 Official notice--Material facts. (1) In the absence of conflicting evidence, the board or presiding officer, upon request made before or during a hearing, may officially notice:

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

(b) Notorious facts. Facts so generally and widely known to all well-informed persons as not to be subject to reasonable dispute or specific facts which are capable of immediate and accurate demonstration by resort to accessible sources of generally accepted authority, including, but not exclusively, facts stated in any publication authorized or permitted by law to be made by any federal or state officer, department, or agency.

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

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

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

(4) Statement of official notice.

(a) In determining whether to take official notice of material

facts, the presiding officer may consult any source of pertinent information, whether or not furnished by any party and whether or not admissible under the rules of evidence.

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

(c) Where a decision of the board rests in whole or in part upon official notice of a material fact, such fact shall be clearly and precisely stated in such decision.

NEW SECTION

WAC 242-03-650 Hearings--Board questions. Any member of the board may, at any time during the hearing, ask clarifying questions as necessary to understand the evidence or argument.

DISPOSITION OF CASES PRIOR TO HEARING

NEW SECTION

WAC 242-03-700 Dismissal--How decided. An order of dismissal, upon stipulation, dispositive motion, or default, is decided by the panel hearing the case. If the order disposes of the entire case, it is a final order for the purposes of appeal.

NEW SECTION

WAC 242-03-710 Default. (1) When a party to a proceeding has, after proper notice, failed to attend a hearing or any other matter before the board or presiding officer, or failed to file a prehearing brief, a motion for default or dismissal may be brought by any party to the case or raised by the board upon its own motion or by a presiding officer. Any order granting the motion shall include a statement of the grounds for the order and shall be served upon all parties to the case.

(2) If the party in default is the respondent, the board may determine whether petitioner has made a prima facie case that

overcomes the statutory presumption of validity such that, in absence of briefing and argument by respondent, the board's order should include a finding of noncompliance, specifying the grounds for the order.

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

NEW SECTION

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).

(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.

DISPOSITION OF PETITIONS FOR REVIEW AFTER HEARING

NEW SECTION

WAC 242-03-800 Presentation of post hearing matters. Unless requested by or authorized by the board, no post hearing evidence, documents, briefs, or motions will be accepted.

NEW SECTION

WAC 242-03-810 Final decision and order--Basis. (1) When the hearing on the petition for review has been held and the record reviewed by a majority of the panel hearing the matter, a written final decision and order shall be issued that contains appropriate findings and conclusions, and articulates the basis for the final decision and order.

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

(3) Except as provided in RCW 36.70A.300 (2)(b) and WAC 242-03-575, the final decision and order shall be issued by the board within one hundred eighty days of receipt of the petition for review, or if multiple petitions are filed, within one hundred eighty days of receipt of the last petition that is consolidated. The order shall be served on each party of record.

NEW SECTION

WAC 242-03-820 Final decision and order. (1) In its final decision and order, the board shall either:

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

(b) Find that the state agency, county or city is not in compliance with the requirements of chapter 36.70A RCW, chapter 90.58 RCW as it relates to the adoption, denial or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW.

(2) If the board's final decision and order finds noncompliance:

(a) Conclusions of law in the final decision and order shall specify the nature, scope, and statutory basis for the finding of noncompliance.

(b) The board's final decision and order shall remand the matter to the state agency, county, and/or city and establish a compliance schedule as specified in RCW 36.70A.300 (3)(b).

(c) The board retains jurisdiction of the matter until the board issues its final order on compliance.

(3) In its final decision and order, the board may determine that part or all of a comprehensive plan or development regulations, including shoreline master program provisions, are invalid if the board:

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

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

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

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

NEW SECTION

WAC 242-03-830 Postdecision motions--Reconsideration. (1) After issuance of a final decision any party may file a motion for reconsideration with the board in accordance with subsection (2) of this section. Such motion must be filed and served within ten days of service of the final decision. Within ten days of filing the motion for reconsideration, a party may file an answer to the motion for reconsideration without direction or request from the board. The board may require an answer or additional briefing from other parties.

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

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

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

(3) In response to a motion for reconsideration, the board may deny the motion, modify its decision, or reopen the hearing. The motion for reconsideration shall be disposed of by the same panel that entered the order, if reasonably available. A motion is deemed denied, if, within twenty days from the date the motion for reconsideration is filed, the board does not either:

(a) Dispose of the motion; or

(b) Serve the parties with a written notice specifying the date by which it will act on the motion.

(4) Upon receipt of a letter from a party identifying typographical errors or clerical mistakes in a final order, the board may, without objection, issue a corrected order. The letter must be filed within the deadline for motions for reconsideration and should indicate that the sender has obtained the concurrence of all other parties. Issuance of a corrected order does not extend the time for filing a petition for judicial review.

(5) A decision in response to the motion for reconsideration shall constitute a final decision and order for purposes of judicial review. A board order on a motion for reconsideration is

not subject to a motion for reconsideration.

(6) No motion for reconsideration stays the effectiveness of the board's final decision and order.

NEW SECTION

WAC 242-03-840 Postdecision motions--Reconsider compliance schedule. Where the board's order makes a finding of noncompliance and enters a schedule for the responding jurisdiction to achieve compliance, the respondent may file a motion for reconsideration requesting modification of the compliance schedule upon a showing of special complexity, specific hardship, or the need to coordinate the compliance action with other planning activities of the jurisdiction. The motion shall be filed and disposed of as a motion for reconsideration pursuant to WAC 242-03-830. Any later motion to extend time for compliance may require a compliance hearing and finding of continuing noncompliance before time may be granted.

NEW SECTION

WAC 242-03-850 Postdecision motions--Clarify, modify or rescind invalidity. Where the board's final decision and order makes a determination of invalidity, and the city or county subject to the order has not yet enacted legislation in response to the board's order, the city or county may file a motion to clarify, modify or rescind invalidity. The motion and any response may be supported by evidence arising subsequent to adoption of the invalidated legislation. Pursuant to RCW 36.70A.302(6), the board shall expeditiously schedule a hearing on the motion. Not later than thirty days after the hearing on the motion, the board shall issue any supplemental order continuing, clarifying, modifying or rescinding invalidity based on information provided at the hearing.

NEW SECTION

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

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

(1) An appeal is pending in court, the outcome of which may render the case moot; and

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

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

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

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

The board's order granting a stay will contain appropriate findings and conditions. A board order denying stay is not subject to judicial review.

NEW SECTION

WAC 242-03-870 Publication of final decisions and orders. Copies of all final decisions and orders are available from the office of the growth management hearings board. The growth management hearings board's web site is www.gmhb.wa.gov. The board posts final orders, compliance orders, and other decisions on its web site and maintains a digest of its decisions by region.

NEW SECTION

WAC 242-03-880 Transcripts. The following shall be the policy of the board with regard to transcription of the record of a hearing on the merits or other hearing:

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

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

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

COMPLIANCE/REMAND

NEW SECTION

WAC 242-03-900 Determination of noncompliance--Compliance schedule and notice of compliance hearing. (1) In those cases where the board, in a final order, has made a determination of noncompliance pursuant to RCW 36.70A.300 (3)(b), the board shall remand the matter to the affected state agency, county, or city.

(2) The board's final decision and order shall specify a reasonable time not in excess of one hundred eighty days, or such longer time as determined by the board in cases of unusual scope or complexity, within which the state agency, county, or city shall comply. In its order the board shall establish a compliance schedule, including a schedule for briefing and hearing, and may require periodic reports on the progress the state agency, county, or city is making toward compliance.

(3) The compliance schedule in the board's order shall set a hearing date for the purpose of determining whether compliance has been achieved and shall constitute notice of the compliance hearing. The compliance hearing shall be given the highest priority of business.

NEW SECTION

WAC 242-03-910 Compliance--Expedited hearing. When a city or county has taken legislative action to comply with all or part of the board's order prior to the expiration of the time set for compliance, the city or county may file a motion requesting an expedited compliance hearing. The department of ecology may request an expedited compliance hearing when it has taken action to comply with the board's order. The presiding officer shall promptly set a new hearing date and issue a notice establishing the time and place of the hearing and a briefing schedule.

NEW SECTION

WAC 242-03-920 Statement of action taken to comply--Compliance index. On or before the date indicated in the compliance schedule, the city, county or state agency subject to an

order of noncompliance shall file a brief indicating the legislation adopted or other action taken to comply with the board's order. A copy of the legislation or relevant portion shall be attached to the brief. The city, county or state agency shall also provide a compliance index including the index from the original proceeding and a listing of all additional material used subsequent to the remand in taking the action to comply, including materials submitted in public comment.

NEW SECTION

WAC 242-03-930 Compliance participant. (1) A person with standing to challenge legislation or other action taken in response to the board's order may petition the board to be allowed to participate at the compliance hearing. The compliance participant shall file a motion to participate by the date indicated in the compliance schedule, or if no date is indicated, by at least twenty days before the initial prehearing brief would be required under the compliance schedule. The motion should indicate the basis of the person's standing pursuant to RCW 36.70A.330(2) and the person's interest in the matter. Participation in the compliance proceeding shall be limited to matters about which the person testified in the proceedings below related to issues concerning compliance with the board's prior order. The compliance participant shall abide by the briefing schedule set in the compliance schedule.

(2) A person who has participated in the proceedings of a city, county, or state agency to enact legislation or take other action in response to the board's order and who seeks to raise new issues unrelated to compliance with the board's prior order, must file a new petition for review. New issues are issues not within the nature, scope and statutory basis of conclusions of noncompliance in the board's prior order finding noncompliance.

(3) A compliance participant seeking to be a party to all subsequent proceedings in the matter shall so indicate by a motion to intervene.

NEW SECTION

WAC 242-03-940 Compliance--Hearing. (1) The procedures at the compliance hearing shall be as set forth by the presiding officer. The matter shall be heard and decided by the same panel that entered the final decision and order, if reasonably available.

(2) The evidence in a compliance hearing shall consist of the

exhibits cited in the briefs submitted in the compliance proceeding and attached thereto. Documents provided in the original proceeding, if referenced in briefs in the compliance proceeding, must be attached as exhibits.

(3) The burden is on the petitioner to demonstrate that the action taken by the city, county, or state agency is not in compliance with the board's order, except that a city or county subject to a determination of invalidity has the burden of demonstrating that the action taken will no longer substantially interfere with fulfillment of the goals of the act.

(4) When the basis for an order of noncompliance is the failure to take an action by a deadline specified in the Growth Management Act or the Shoreline Management Act, the only question before the board at the compliance hearing is whether the county, city, or state agency has taken the required action. Any challenge to the merits of the newly enacted legislation must be asserted in a new petition for review. In a case of noncompliance or failure to act, when the department of ecology has adopted a shoreline master program by rule, any challenge to the merits of the adoption must be appealed to the court pursuant to RCW 90.58.190(1).

(5) Issues not within the nature, scope, and statutory basis of the conclusions of noncompliance in the prior order will not be addressed in the compliance hearing but require the filing of a new petition for review.

(6) After a compliance hearing, the board shall determine whether a state agency, city or county is in compliance with the requirements of the act as remanded in the final decision and order. The board shall issue an order on compliance indicating its findings and conclusions. If the board finds continuing noncompliance, the board shall enter conclusions of law specifying the nature, scope and statutory basis for the finding of continuing noncompliance. The board shall establish a new compliance schedule to address any remaining matters of noncompliance with the issues raised in the prior order. The board may require periodic reports to the board on the progress the jurisdiction is making towards compliance.

(7) Upon motion of a party or participant, if the board finds that the state agency, county, or city continues to be in noncompliance with the act, the board shall decide, if no determination of invalidity had previously been made, whether one should now be made. The board shall state in its order the part or parts of the legislation invalidated and the facts and law on which the determination of invalidity is based.

NEW SECTION

WAC 242-03-950 Compliance--Rescinding invalidity after new legislation or action. If a county, city, or state agency subject

to a determination of invalidity has taken action amending the invalidated plan, regulation or part thereof, the county, city, or state agency may move for a hearing to modify or rescind invalidity. Pursuant to RCW 36.70A.302(7), the board shall expeditiously schedule a hearing on the motion. Not later than thirty days after the hearing on the motion, the board shall issue an order continuing, modifying, or rescinding the determination of invalidity depending upon whether the city, county, or state agency's action has removed the basis for invalidity so that it no longer substantially interferes with the goals of the act. The board may rescind a determination of invalidity but find continuing noncompliance, in which case the board shall establish a new compliance schedule.

NEW SECTION

WAC 242-03-960 Continued noncompliance--Recommendation to the governor. If the board finds that the county, city, or state agency continues to be in noncompliance with the act, the board shall transmit its findings to the governor. The board may recommend that sanctions authorized by the act be imposed. A county or city's efforts to meet a compliance schedule shall be considered by the board in making a recommendation on sanctions to the governor.

NEW SECTION

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

(2) In the event that direct appellate review is sought, within thirty days of the filing of a petition for review in the superior court, a party may request a certificate of appealability for direct review by the court of appeals. If the issue on review is the jurisdiction of the board, the board may file an application for direct review. Application for direct review of a decision of the board is governed by the procedures and criteria of RCW 35.04.518.

NEW SECTION

WAC 242-03-980 Record on appeal. (1) The board's record on appeal includes all documents served on the parties by the board for that numbered case plus all documents submitted to the board for that numbered case, including any compliance proceedings. For a consolidated case, the record also includes all such documents associated with the cases that were so consolidated. The record also includes the board's recorded hearing(s).

(2) Pursuant to RCW 34.05.566(4), the record may be shortened by stipulation of all parties within twenty days of the filing of the appeal and prior to commencement of certification of the record.

(3) The board will prepare the record for certification after it receives a commitment from the party seeking review to pay the costs of transcribing the recorded hearing(s) and of copying the record. Payment of costs is required prior to certification of the record to the court.

NEW SECTION

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