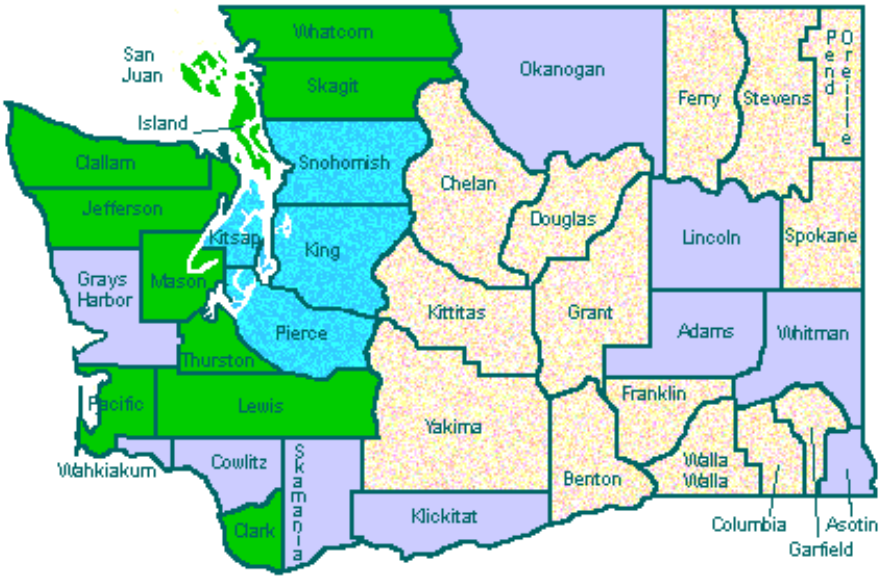
Practicing Before the

Growth Management Hearings Board



Handbook

Growth Management Hearings Board for Washington State
Practice Handbook and Glossary

This is an informal guide intended to assist individuals, organizations, cities, and counties in bringing cases before Washington's Growth Management Hearings Board. 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 242-03 Board Rules of Practice and Procedures for detailed information. Prior Growth Board decisions can be found in the Digest of Decisions available on the Board's website, www.eluho.wa.gov. If you have any questions, please contact the Growth Management Hearings Board administrative office.

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The GMHB is a part of the Environmental and Land Use Hearings Office (ELUHO).

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 former 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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The Growth Management Act and the Growth 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. The Legislature found that uncoordinated and unplanned growth poses a threat to the environment, sustainable economic development, and the high quality of life enjoyed by residents of the 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:

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

A special process is provided to resolve disputes arising from the adoption of these comprehensive plans, development regulations, and Shoreline Master Programs. Rather than have these 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, 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.[1] A ***Pro Se* Petitioner** is a party representing himself/herself or citizen-group associates before the Board. All persons who appear before the Board, *Pro Se* participants and attorneys alike, must conduct themselves professionally in Board proceedings.[2]

The Board's process provides 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 briefs and hearings. Such ***ex-parte* communication** is strictly prohibited.[3]

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[1] WAC 242-03-100 and -115
[2] WAC 242-03-120
[3] WAC 242-03-130

Do you have a case?

Before filing a Petition for Review **(PFR)**, a petitioner must ask, "*Do I have a case?*" To appeal to the Board, three basic requirements must be met:

1. The local legislative action must be within the Board's subject matter jurisdiction;
2. The petitioner must have standing; and
3. The PFR must be timely.

Unless *all of these requirements are met*, the case must be dismissed by the Board or upon a motion by the responding local government. 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)[4]

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, including Shoreline Master Programs. The Board has the authority to hear only cases over which it has **Subject Matter Jurisdiction**. These include challenges to:

- Adoption or amendment of a **Comprehensive Plan**
- Designation of **Resource Lands** and **Critical Areas**
- Adoption or amendment of regulations to conserve Resource Lands and protect Critical Areas
- Adoption or amendment of **County-Wide Planning Policies** (not subject to a citizen-filed appeal)
- Designation or amendment of **Urban Growth Areas**
- Adoption or amendment of **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, amendment, or denial of a **Shoreline Master Program**
- SEPA documents that accompany a GMA or Shoreline Master Program action
- **Failure of the local government to act** to meet a GMA or SMA statutory deadline

The Board <u>DOES NOT</u> have authority to hear cases that challenge compliance with:

- Federal or state constitutional issues
- Statutes other than RCW 36.70A, RCW 90.58, and RCW 43.21C*
- Settlement Agreements
- Annexations

[4] WAC 242-03-025

- 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)[5]

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 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.[6] *APA standing* derives from the APA, RCW 34.05, and requires that a person satisfy the requirements of 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 former regional Boards have applied slightly different standards to determine a Petitioner's standing.[7] In any SEPA case, the Petitioner should have provided comment or testimony during the SEPA process.

Filing Deadlines for a Petitioner's Claims (Digest Keyword: Timeliness)[8]

A challenge to the local government's action must be brought *within 60 days of* ***publication*** of the local government's challenged **final action**. When the challenged action concerns a Shoreline Master Program (SMP), the 60-day time limit is measured from the date the Department of Ecology publishes notice of its final approval or denial of the SMP. 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. Any case not filed within this timeline will be dismissed. For a city or a county, publication must follow the required procedures for publication of its adopted ordinance or resolution.

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[5] RCW 36.70A.280(2)

[6] WAC 242-03-255

[7] Review the Order on Dispositive Motions (Jan. 18, 2011), in *City of Shoreline et al v. Snohomish County*, Coordinated Case Nos. 09-3-0013c and 10-3-0011c, at pages 2-12, and the Concurring Opinion on pages 25-27, concerning different tests for SEPA standing.

[8] WAC 242-03-220 and -230(1)

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, county or state agency action was **clearly erroneous.** Under the GMA **Standard of Review**, 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 GMA requirements have been violated. 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.

If the city or county action concerns a Shoreline Master Program, the Board's review must be based on the requirements and policy of the SMA, the SMP Guidelines codified at WAC Chapter 173-26, and the GMA internal consistency requirements for comprehensive plans and development regulations, or SEPA compliance.[9] However, if the appeal concerns a ***Shoreline of Statewide Significance***, the Board may not consider GMA internal consistency or SEPA compliance – only SMA policy and guidelines – and must uphold the Department of Ecology's approval or denial of the SMP unless the Board finds clear and convincing evidence that Ecology's decision is inconsistent with SMA policy and guidelines.[10]

[9] RCW 90.58.190(2)(b)
[10] RCW 90.58.190(2)(c)

Filing a Case before the Board

How to Bring a Case[11]

After reviewing the Board's Rules of Practice and Procedure (WAC 242-03), 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)
- **Respondent(s)**: The city, county, and/or state agency whose action is challenged
- The Challenged Action (i.e. ordinance, resolution, motion)
- Date of publication of the challenged action, or publication of Ecology's approval or denial of SMP
- A detailed statement of the issues, which includes the **specific** section(s) of the GMA, SMA or SEPA the Petitioner is alleging the action violates and, if applicable, the **specific** section(s) of the city's or county's document (i.e. development regulation, comprehensive plan or SMP) being appealed
- A statement showing why the Petitioner has *standing* to bring the action
- A statement regarding the specific relief sought by Petitioner
- **Attestation Statement**
- Signature of Petitioner(s), Petitioner's Attorney, or Petitioner's Representative
- A copy of the challenged action or applicable provisions

The statement of the issues is the most vital element of the PFR. The PFR may have just one issue or several. The issues are the specific questions 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(s) of the GMA, SMA, or SEPA alleged to be violated and the **specific** sections (or aspects) of the city, county, or state actions that Petitioner alleges cause the violation. 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).

In the PFR, the Petitioners must state the basis for *standing* which allows them to bring the case. The Petitioners need not provide evidence in support of their claim of standing. If the Respondent challenges standing, the Petitioners will be given the opportunity to provide additional evidence to support their position.

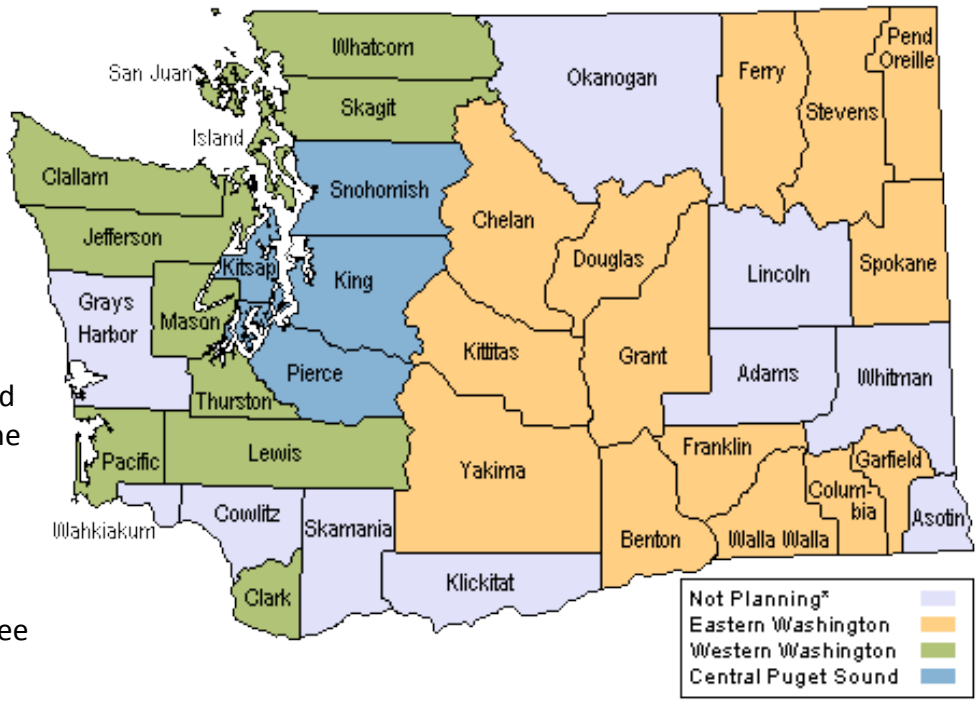
How to File and Serve[12]

The Petition for Review must be **filed** with the Board and **served** on all Respondents named in the PFR. The PFR must be filed with the Board electronically unless the Petitioner does not have technological capacity to do so. The original and three copies of the PFR must also be provided to the Board, either by hand delivery to the Board's office by the filing deadline or by mailed copy postmarked and mailed on the same date as the electronic filing. 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.

[11] WAC 242-03-210
[12] WAC 242-03-230

A copy of the PFR must be served by mail or personal service on each named Respondent and must be received by the Respondent(s) on or before the date filed with the Board. Service on Respondents should be directed as provided in WAC 242-03-230(2)(b).

A **Declaration of Service** is required for all legal documents filed with the Board and served on the parties.[13] The Declaration of Service demonstrates that papers were served upon the noted parties and the date service was completed. (See Sample Forms).



* These counties are not required to plan under the GMA

Petitioners may contact the Board's administrative office if they need clarification on filing and formatting requirements. If any party does not have the technical capability to file or receive documents electronically, including briefs with overlarge attachments, the Board's office should be contacted. The Presiding Officer will work with the parties at the prehearing conference to make alternative arrangements for filing and service.

Where to File Your Case

In Person: 1111 Israel Road SW, Suite 301
Tumwater, WA 98501

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

Via E-mail: Eastern Region: eastern@eluho.wa.gov
Western Region: western@eluho.wa.gov
Central Puget Sound Region: central@eluho.wa.gov

All filings should be directed to the region where your case arose as shown in the map above.[14]

[13] WAC 242-03-245
[14] WAC 242-03-015(1)

Who Will Hear Your Case[15]

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. Each panel should have an attorney and a former local elected official. The Presiding Officer for the case will most often be one of the members from the region where the case originated[16], and the Hearing on the Merits will be held in that region. Any objection to the assigned panelists should be filed at least seven days before the prehearing conference.[17]

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.[18] The Presiding Officer will issue a **Notice of Hearing and Preliminary Schedule** by the tenth 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.[19]

A Respondent who has received service of the PFR must promptly file a **Notice of Appearance** with the Board, which provides the name of the Respondent's designated representative and contact information including address, telephone, fax, and e-mail address.[20] The Notice of Appearance must be served on all parties, including the Petitioner.

A PFR may be amended within 14 days of filing to restate or clarify Petitioner's legal issues, provided no new issues may be added.[21] Amendment of the PFR within the 14-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 14-day time limitation, the Petitioner must file a written Motion to Amend the Petition for Review. Amendments are not freely granted, except to allow withdrawal or simplification of claims. 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 opportunity for the Board and all of the parties, Petitioner and Respondent alike, to discuss and clarify the issues.[22] The Prehearing Conference is an informal proceeding which is usually conducted

[15] WAC 242-03-015(2)
[16] These requirements are subject to WAC 242-03-515(2)
[17] WAC 242-03-570(1)
[18] WAC 242-03-525 and -530
[19] WAC 242-03-500
[20] WAC 242-03-250
[21] WAC 242-03-260
[22] WAC 242-03-535 and -540

telephonically. The purpose of the Prehearing Conference is to encourage settlement discussions between the parties, discuss the legal issues, explain the legal parameters (i.e. burden of proof, standard of review), determine the motions anticipated to be filed or obtain stipulations concerning standing, timeliness and jurisdiction, and finalize the schedule for subsequent filings and hearings. If any party will have difficulty filing, serving or receiving briefs and motions electronically, including overlarge attachments, the problem should be discussed and resolved at the Prehearing Conference.

The Respondent jurisdiction will submit the Index of the Record within 30 days from filing of the PFR.

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.[23] 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.[24] 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 Respondent may have an interest in the outcome of the case. Such individual or organization may 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 those interests, and why the interest is not adequately represented by the existing parties.[25] 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*. 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 ten days objecting to or supporting the admission of the Intervenor. Failure to respond is assumed to mean no objection. The Presiding Officer will determine if a party qualifies, utilizing any applicable provisions of law.[26] If the Motion is granted, the party is termed an **Intervenor** and must attend hearings and join in briefings. 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 provide additional facts or legal authority. This party is termed an ***Amicus Curiae*** and must file a **Motion to File *Amicus* Brief** in order to participate.[27] 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 different 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, typically limiting the *Amicus* to a single brief with no allowance for oral argument at the Hearing on the Merits.

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[23] WAC 242-03-545
[24] WAC 242-03-030(5)
[25] WAC 242-03-270
[26] WAC 242-03-270(1)
[27] WAC 242-03-280

Moving the Case Along

Any party to the case may file a **Motion**.[28] A motion is a request by one or more of the parties asking the Board to rule on a particular question of procedure or substance. The Prehearing Order for the case sets a specific schedule for submission of motions and responses. The schedule for motions helps move the case along. Participating attorneys should be mindful of their duty under **Rules of Professional Conduct (RPC)** to respect the rules and procedures of the Board for expediting the case.

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, or the Board lacks subject matter jurisdiction.[29] If the case raises threshold questions of proper notice and public participation procedures, either party may bring a dispositive motion to resolve those issues, 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. Occasionally, the Board makes its own motion when it needs additional clarification 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 of the parties. If the motion raises disputed facts or goes to the merits of the case, the Board may reserve its decision until after the Hearing on the Merits.

A Motion to Supplement the Record should be filed when the parties disagree on the inclusion of an item in the record.[30] If a party is seeking to amend the Record with items it believes the jurisdiction erroneously omitted, the party 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. If the county or city disagrees, or if the jurisdiction itself or any party wishes to add a non-record document, a Motion to Supplement the Record must be filed. The Motion to Supplement must attach a copy of the document sought to be included and must explain why the item is necessary or likely to be of substantial assistance to the determination of the case. Motions to Supplement the Record and other non-dispositive motions are decided by the Presiding Officer.

A party filing a motion on a routine or procedural matter is encouraged to inform the other parties and to indicate in the motion whether other parties concur so that an order may be expeditiously entered.[31]

The Board's 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 to allow oral argument.

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, brief or response that is submitted subsequent to the required filing deadlines.

Working Towards a Resolution – Negotiations, Mediation and Settlement Extensions[32]

The Board encourages and supports 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

[28] WAC 242-03-550
[29] WAC 242-03-555 and -560
[30] WAC 242-03-565
[31] WAC 242-03-550(4)
[32] WAC 242-03-540(1) and -575

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 – a maximum of 90 days.

Mediation is a voluntary process in which a mediator acts as a neutral third party and helps the parties work together to create a mutually acceptable resolution of all or part of the appeal. The Board encourages the use of mediation in Board cases. If needed, a Board member not on the panel for the case may serve as a mediator for the parties, or the parties may retain a private mediator. The mediation discussions are confidential and, should the case go forward, the attempted settlement may not be disclosed to the Board panel deciding the case.

The Board will typically grant an extension request to facilitate settlement discussions and will 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 good-faith negotiations are in progress. The Board lacks authority to extend the 180-day FDO deadline for any reason other than to allow time for settlement discussions. 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.

Making Your Case – Evidence and Arguments

The Board bases its decision on 4 things:

- The Law
- The Record
- The Exhibits
- 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 as authorized in the GMA. In addition to the statutes, the Board considers the **Washington Administrative Code (WAC)** guidelines for the GMA (WAC Chapters 365-190, 195, and 196), SMA (WAC Chapter 173-26), and SEPA (WAC Chapter 197-11). On procedural questions, the Board looks to **WAC Chapter 242-03**, the **Rules of Procedure** for the Board and the Administrative Procedures Act (RCW 34.05). The parties should bring relevant case law and other legal **authority** to the Board's attention in their briefs and arguments. 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 procedures and issues by keyword.

The Record

The **Record** is all of the documents considered by a city or county in taking the challenged action. In a shoreline case, the Department of Ecology proceedings are also part of the Record. 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 Department of Ecology will index its Record in a shoreline case. The Record should not be copied and filed with the Board. 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.

The Index to the Record[33]

The **Index to the Record** is a numbered listing of all of the information, written and oral, that the city, county, or state agency 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 other parties for review and for copying or transcription at the requesting party's expense. 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, county, or state agency within 30 days of the filing of the PFR.

The Exhibits[34]

The Exhibits are documents presented with briefs or motions to show the Board the facts supporting the party's argument. It is up to each party to identify and present to the Board, as Exhibits, copies of each document the party believes supports its case. Exhibits must be attached to the party's briefing, must be numbered using the Index identification number and tabbed as exhibits to the briefs. The Board requires that a party's brief include a Table of Exhibits and each Exhibit must be tabbed so that it can be easily located. A document not taken from the Record may only be used as an Exhibit if the Board has approved a Motion to Supplement the Record and found the document to be necessary or of substantial assistance to the Board in reaching its decision.[35] The Board bases its decision on the Exhibits presented by the parties with their briefs. The Board may also take **Official Notice** of certain items the Board believes are necessary to resolving the matter.[36] These items include federal and state laws, ordinances and resolutions of the local government, previous decisions of any of the Growth Management Hearings Boards, and technical or scientific facts.

Arguing Your Case – the Prehearing Brief[37]

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 and properly tabbed in your brief as exhibits.

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[33] WAC 242-03-510
[34] WAC 242-03-520
[35] WAC 242-03-565
[36] WAC 242-03- 630 and -640
[37] WAC 242-03-590

The Petitioner will submit its Prehearing Brief on or before 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 may 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. Briefs are limited to 25 pages and reply briefs limited to 15 pages. However, the Presiding Officer may change the brief length depending on the complexity of the case. As with all documents filed with the Board, the parties must file their briefs electronically and, on the same day, mail to the Board *an original and three copies*, along with any exhibits not previously filed.[38] A party must serve a copy of the brief and all exhibits on each party to the case. Electronic service is expected, unless the Prehearing Order provides some other arrangement.

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 rely on conclusory arguments. Conclusory 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's burden is not met by the bare statement: "The GMA contains this goal or requirement; the government didn't comply; therefore the government violated the GMA." Remember – the local government's action is presumed valid. The burden of proof is on the Petitioners, who must present facts from the record, legal authority, and explanation of the statutory provision to support their argument.

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 the local 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 jurisdiction's compliance, it is up to the city or county to respond with persuasive arguments, legal authority and evidence that shows the action taken falls within the bounds of the GMA, SMA or SEPA.

The Hearing on the Merits (HOM)[39]

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

[38] WAC 242-03-240
[39] WAC 242-03-610, -650

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 city or county to have its planner present at the Hearing on the Merits to assist the jurisdiction's attorney in answering the Board's questions.

An agenda for the HOM is provided by the Presiding Officer a week before the hearing, setting the times for argument in the 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 advance request, if needed. The hearing is recorded either digitally or 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.[40] If a party requests a transcript, that party is responsible for the costs of producing it.

Resolution – the Final Decision and Order (FDO)[41]

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 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 noncompliance, the matter will be **remanded** to the city or county so it may amend, revise, or otherwise alter its noncompliant comprehensive plan, development regulation, or Shoreline Master Program to come into compliance with the GMA, SMA or SEPA.[42] If the Board finds noncompliance, it may issue a **Determination of Invalidity.**

Any party may file a **Motion for Reconsideration** (see Sample Forms).[43] 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. A party filing a Motion for Reconsideration must remember that this is not an opportunity to re-argue the case; rather, the purpose is to correct facts and errors of law. The Motion must be served on the Board and all parties within ten days of the issuance of the FDO. Any party served may file a response within ten days. The Board may deny the motion, modify its decision, or re-open the hearing, but if the Board has not responded within twenty days of filing of the Motion for Reconsideration, the request is deemed denied.

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[40] WAC 242-03-600, -880
[41] WAC 242-03-800, -810, -820
[42] WAC 242-03-900
[43] WAC 242-03-830

The Board may issue a Corrected FDO to correct typographical errors or clerical mistakes brought to its attention by a letter from any of the parties within ten days of issuance of the FDO and indicating the other parties have no objection to the correction.

When the FDO remands a matter for compliance, the city or county should promptly review the **Compliance Schedule**.[44] A jurisdiction may take no longer than 180 days to comply unless the matter is considered to be unusual or complex. In that instance, the Board may grant a longer period of time for compliance. The Respondent may request modification of the Compliance Schedule by a motion brought within ten days of issuance of the FDO showing special complexity, specific hardship, or the need to coordinate the compliance action with other planning activities of the jurisdiction.[45] Any later attempt to extend the compliance schedule may require a hearing and an order of continuing non-compliance.

All of the Board's Final Decision and Orders are posted on the Board's website within a few days of issuance.[46] 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 http://www.eluho.wa.gov then select the Case and Decision Search on the left side.

Invalidity

The Board 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, including the SMA. Invalidity is a remedy considered by the Board on a case-by-case basis, usually as part of the FDO.[47] 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. A Petitioner wishing to see the jurisdiction's action invalidated is advised to 1) request imposition of invalidity in its PFR or in its opening brief for the Hearing on the Merits, and 2) to demonstrate in the briefs and argument that the jurisdiction's action substantially interferes with the fulfillment of the goals or requirements of the Act.

The GMA provides special procedures regarding invalidity. First, in response to an FDO imposing invalidity on a non-compliant city or county, the local government may bring a motion to clarify, modify or rescind invalidity.[48] The Board must promptly hear and decide the motion. Second, if the county or city takes action amending, repealing, or imposing a moratorium regarding the invalidated plan or program, the jurisdiction may move for an expedited hearing to modify or rescind invalidity.[49] Third, at the Compliance Hearing the Board will review the question of invalidity.[50] A Determination of Invalidity will be rescinded if the Board finds there is no longer substantial interference with the goals of the Act. On the other hand, if the city/county continues to be non-compliant, the Board may make a Determination of Invalidity in the Compliance Order, even if one was not imposed with the FDO.

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[44] WAC 242-03-900
[45] WAC 242-03-840
[46] WAC 242-03-870
[47] WAC 242-03-820(3)
[48] WAC 242-03-850
[49] WAC 242-03-950
[50] WAC 242-03-940(7)

Compliance Action and Appeals

The Compliance Schedule[51] in the FDO sets 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 action taken to comply (**Statement of Actions Taken (SATC)** or **Compliance Report**), and a **Compliance Index.**[52] The SATC must attach a copy of the compliance ordinance or relevant portion. The Compliance Index includes the index from the original proceeding and a listing of additional material used subsequent to the FDO in taking the action to comply. 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 three 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, a person who can demonstrate standing to challenge the legislation enacted to bring the local government into compliance may file a motion to participate.[53] The **Compliance Participant** 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.

The Compliance Schedule sets the date for the Compliance Hearing, which may be held telephonically.[54] The evidence in the hearing consists of the Exhibits cited in the compliance briefs and attached to the briefs. Documents provided in the original proceeding, if referenced in compliance briefs, must be attached as exhibits. Again, the burden is on the Petitioner to demonstrate the city or county's action is not in compliance, except that a city or county subject to an order of invalidity has the burden of demonstrating that the action taken will no longer substantially interfere with the goals of the GMA.

A local government may take action prior to the deadline set in the Compliance Schedule and may request an earlier Compliance Hearing.[55] Special procedures concerning Invalidity are provided above.

If, after a Compliance Hearing, the Board issues an Order of Non-Compliance, the Board must send its findings to the Governor's office and may even request the Governor to impose monetary penalties.[56]

Any party aggrieved by the FDO or other final Board order (such as an Order of Dismissal or Order on Compliance) may appeal the decision to the appropriate Superior Court.[57] This appeal must be filed within 30 days of the issuance of the final Board order being appealed. The appealing party is responsible for the costs of transcribing the hearings(s) and the preparation of the Board's record for certification to the court.

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[51] WAC 242-03-900
[52] WAC 242-03-920
[53] WAC 242-03-930
[54] WAC 242-03-940
[55] WAC 242-03-910
[56] RCW 36.70A.330; WAC 242-03-960
[57] WAC 242-03-970 and -980

Case Schedule Guidelines

The schedule governing each case is set by the Presiding Officer in the Prehearing Order. This chart provides general guidelines. The schedule will take into account holidays, furlough days, and any special circumstances. Blue denotes due dates for parties; Red denotes due dates for GMHB's Presiding Officer; Green denotes hearing dates. In some cases, the Board may combine due dates for Motions to Supplement and Dispositive Motions or the Board may allow a reply brief and/or a motion hearing to be scheduled.

Day	
1	• Petition for Review Filed – RCW 36.70A.290(1)(a)
10	• Notice of Hearing Issued – RCW 36.70A.290(3), WAC 242-03-500
21	• Prehearing Conference held – WAC 242-03-535
28	• Prehearing Order Issued – RCW 36.70A.290(1), WAC 242-03-545
30	• Index of the Record Due from City/County – WAC 242-03-510
40	• Additions to the Index Due
45	• Objections to Additions to the Index Due
50	• Motions to Supplement Due – RCW 36.70A.290(4), WAC 242-03-565
57	• Dispositive Motions Due – WAC 242-03-555, -560
60	• Response(s) to Motions to Supplement Due
67	• Response(s) to Dispositive Motions Due
84	• Order on Motions to Supplement Issued
91	• Order on Dispositive Motions Issued
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 – WAC 242-03-610
180	• Final Decision and Order Issued – RCW 36.70A.300(2)(a), WAC 242-03-810

Glossary of Procedures

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 to advise the Board of additional facts or legal authorities (See WAC 242-03-280).
Administrative Procedures Act	Clarifies the existing law of administrative procedure, to achieve greater consistency with other states and the federal government in administrative procedure and to provide greater public and legislative access to administrative decision making. (See RCW 34.05).
Attestation Statement	A statement affirming the contents of the document are, to the best of the signer's knowledge, true and accurate.
Authority [Authorities]	A case, statute, administrative rule, or Board decision cited in support of a legal argument
Briefs	A written document in which the party provides essential facts, arguments, and legal authority that supports its allegations (See WAC 242-03-590). Briefing in a case will include: • **Petitioner's Prehearing Brief:** filed by the Petitioner prior to the Hearing on the Merits • **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 • **Petitioner's Reply Brief:** 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 or Response 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)).
Clearly Erroneous	The Standard of Review the Board uses to analyze a matter. To make a finding that a city, county, or state agency action was clearly erroneous, the Board must be left with a firm and definite conviction, in view of the entire record and in light of the goals and requirement of the GMA, that a mistake has been made (See RCW 36.70A.302(3)).
Compliance Hearing	A hearing held after a finding of non-compliance to determine if the action taken by the city, county, or state agency brings the non-compliant provision into compliance (See RCW 36.70A.330, WAC 242-03-940).
Compliance Index	A listing of all of the documents the city, county or state agency has relied on in taking action to bring the non-compliant provision into compliance with the GMA. (See WAC 242-03-920).
Compliance Participant	A person with standing to challenge the legislation enacted in response to the Board's finding of non-compliance who requests to participate in compliance proceedings (See RCW 36.70A.330(2); WAC 242-03-930).
Compliance Report	The local government's statement of actions it has taken to comply with the Board's order, as provided in the FDO. This document is sometimes called the Statement of Actions Taken to Comply (WAC 242-03-920).
Compliance Schedule	The table in the FDO or subsequent Compliance Order that sets the dates for compliance hearings and filings required by the Board (see WAC 242-03-900, 242-03-940(6)).

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)).
Conclusory Argument	An argument which expresses a factual or legal conclusion without explaining the underlying facts or legal authority on which the conclusion is based; allegations that lack supporting evidence and argument.
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.
Consolidation	The combining of all PFRs challenging the same comprehensive plan, development regulation or SMP into a single case for hearing and decision (See RCW 36.70A.290(5); WAC 242-03-030(5)).
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 242-03-600; WAC 242-03-880).
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 of a deadline falls on a Saturday, Sunday, or legal holiday, the party has until the next business day (see WAC 242-03-045).
Declaration of Service	A signed document attesting that the legal documents were served on named parties/individual, the date on which service occurred, and the method of service. (See WAC 242-03-245; Sample Forms).
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 (See WAC 242-03-590(1)).
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).
Determination of Invalidity	A Board determination in the FDO or Compliance Order that the continued validity of a non-compliant plan, development regulation or Shoreline Master Program would substantially interfere with the goals of the Act (see RCW 36.70A.302; WAC 242-03-280(3), 242-03-940(7)).
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).
Digest of Decisions	The Digest is a summary of all the Board's decisions and is organized by keyword and available on the Boards' website – www.eluho.wa.gov.
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 instead of the Board (see RCW 36.70A.295; WAC 242-03-290).
Dispositive Motion	A motion to dismiss all or part of a case based on untimely filing, Petitioner's lack of standing, the Board's lack of subject matter jurisdiction, or other necessary threshold determination. The Board generally will not consider summary judgment motions seeking to resolve the case as a whole. (See WAC 242-03-555).

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. (WAC 242-03-520).
Ex-Parte Communication	Communication about issues in a pending case between any party—Petitioner, Respondent, Intervener, or *Amicus*— and a Board Member or Board staff without including or providing notice to all other parties to the case, except with respect to administrative or logistical matters (See WAC 242-03-030(7); WAC 242-03-130).
Failure to Act	A local government's non-action by a required deadline. 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 (See WAC 242-03-220(5)).
File [Filing]	The act of delivering the legal documents in the case to the Board (i.e., PFR, motions, briefs); delivery should be by electronic transmission, with hard copy placed in the mail the same day. (See WAC 242-03-230 for filing the PFR and 242-03-240 for all other filings.)
Final Action	In a GMA matter, the decision and/or action of the highest governing level of the jurisdiction (for a city this would be the City Council; for a county this would be the County Council or Board of Commissioners); in an SMA matter, the Department of Ecology's final decision approving or disapproving an SMP.
Final Decision and Order (FDO)	The Board's final order deciding the issues in a case. It is required to state whether the local government's disputed action is or is not in compliance with the GMA, SMA or SEPA, 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 242-03-800; WAC 242-03-820).
Growth Management Act (GMA)	RCW 36.70A. The GMA can be accessed through the Board's website – www.eluho.wa.gov
Growth Management Hearings Board (GMHB)	The seven-member quasi-judicial Board appointed by the Governor to hear challenges to local actions arising under the GMA, SEPA and SMA (see RCW 36.70A.250; WAC 242-03-010, 242-03-020).
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 utilize these figures for allocating growth and revising comprehensive plans.
Hearing on the Merits (HOM)	A hearing on the Record considered by the city, county, or state agency 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 questions as necessary to understand the evidence and the argument (See WAC 242-03-610, 242-03-650).
Index of Record	A listing of all of the materials used by a city, county, or state agency in taking the action which is the subject of the PFR (See WAC 242-03-510, Sample Forms).
Intervenor	A person who voluntarily seeks to enter a case pending before the Board (See WAC 242-03-270; Sample Forms).

Jurisdiction (Subject matter jurisdiction)	The nature of the cases which the Board has authority to decide. For the Board, subject matter jurisdiction is limited to compliance with the GMA, with the SMA as it relates to Shoreline Master Programs, and with SEPA as it relates to GMA and SMP actions (See RCW 36.70A.280(1); WAC 242-03-025).
Lack of Prosecution	A Petitioner's failure to actively pursue a case (WAC 242-03-710(1); WAC 242-03-720(2)(a)).
Mediation	A voluntary process in which a neutral third party acts as a mediator to help the parties work together to create a mutually acceptable resolution of all or part of the appeal. The Board encourages the use of mediation in Board cases. (See WAC 242-03-540(1); WAC 242-03-575).
Motion	A written request by one or more 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, along with any facts and legal authorities needed to support the motion (See general requirements at WAC 242-03-550).
Motion for Reconsideration	Filed within ten days of the Board's issuance of its FDO or other final order (i.e., Order on Compliance, Order of Dismissal) by a party who alleges the Board has erred in procedure or misinterpreted law or fact (See WAC 242-03-830).
Notice of Appearance	The Respondent's notice to the Board and all parties identifying the person who will be representing the Respondent in the case (see WAC 242-03-250).
Notice of Hearing	A document issued by the Board within seven days of the receipt of the PFR, notifying the parties of the date and location of the Prehearing Conference and a tentative case schedule including the date of the HOM (See WAC 242-03-500).
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 242-03-630; WAC 242-03-640).
Panel	Three Board members assigned to hear a case (see RCW 36.70A.260(1); WAC 242-03-015.)
Participation Standing	Obtained when a person participated, either orally or in writing, before the local government in its public process 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. (RCW 36.70A.280(2)(b)).
Petition for Review (PFR)	The initial document that must be filed with the Board 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 242-03-210; Sample Forms).
Petitioner	The person(s) and/or organization(s) filing the Petition for Review with the Board (See WAC 242-03-030(14)).
Precedent	A case previously decided, either by the Board or the courts, which 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 to encourage settlement, establish a schedule, address procedural requirements, and finalize the legal issues to be decided (See WAC 242-03-540).
Prehearing Order	Issued after the Prehearing Conference. It provides the final legal issues and schedule for the matter (see WAC 242-03-545).
Presiding Officer	The member of the Board who is designated to manage a specific case, including

	conducting hearings and preparing orders (See WAC 242-03-525; WAC 242-03-530).
Presumption of Validity	The assumption that a local government's actions are in compliance with the law. The Board presumes all comprehensive plans, development regulations, and shoreline master programs are valid upon adoption (see RCW 36.70A.320)
***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 242-03-100(1)).
Publication	The date upon which a local jurisdiction provides the public with notice of its legislative action or the Department of Ecology issues notice of its final action approving or disapproving an SMP (See RCW 36.70A.290; WAC 242-3-220).
Quasi-Judicial	A term applied to governmental bodies that have the power to hold hearings, weigh evidence, draw conclusions, and use this information to make rulings concerning the lawfulness of an action.
Record	A compilation of all of the documents the local government or state agency relied on in taking the action which is the subject of the PFR (See WAC 242-03-510).
Remand	An order issued by the Board that sends the matter back to the city, county or state agency for further action (See RCW 36.70A.300(3)(b)).
Respondent	The city, county or state agency against whom the Petitioner is alleging violation of the GMA, SMA or SEPA.
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 Chapter 242-03, which have been adopted by the Board pursuant to RCW 36.70A.270(7) to facilitate expeditious and summary disposition of appeals. WAC Chapter 242-03 is available on the Board's website – www.eluho.wa.gov.
Rules of Professional Conduct (RPC)	The rules to which all attorneys practicing law within the State must adhere. Attorneys appearing before the Board must conform to the RCPs (see WAC 242-03-120. Contact the Washington State Bar Association for a copy of these rules – www.wsba.org.)
Sanctions	Monetary penalties imposed by the Governor for non-compliance with the GMA (See RCW 36.70A.340; 36.70A.345; WAC 242-03-960).
Savings Clause	A provision in an ordinance which 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 legal documents in the case to the parties (i.e., PFR, motions, briefs); any document filed with the Board must be served on all other parties (See WAC 242-03-230(2) for serving the PFR and WAC 242-03-240(2) for service of all other documents).
Settlement Extension	A written request made by both parties to extend the 180-day time limitation for no longer than 90 days so the parties may participate in negotiations to settle the matter (see RCW 36.70A.300(2)(b); WAC 242-03-575; 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.
Shorelines of	Shorelines designated for special consideration under the SMA (see RCW

Statewide Significance	90.58.030(2)(f)). **The Board's review of challenges concerning shorelines of statewide significance is limited (See RCW 90.58.190(2)(c)).**
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 (See RCW.36.70A.480(1)).
Shoreline Master Program (SMP)	Prepared by a city or county and approved by the Washington State Department of Ecology, the SMP contains policies and regulations applicable to the use of shorelines within that city or county. The SMP is incorporated into the local comprehensive plan and development regulations (See RCW 36.70A.480(1)).
Standing	The Petitioner's right to file a case with the Board (See RCW 36.70A.280(2)). The GMA provides for four bases for standing—Governmental, Participation, Governor-Certified, and APA. The most common basis for standing before the Board is Participation Standing.
Standard of Review	The "lens" that the Board must look through when reviewing a challenged city, county or state agency action. Generally, the Board will uphold the action unless it determines the 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 RCW 36.70A.320(3)). In reviewing a challenged SMP for a Shoreline of Statewide Significance, the Board will uphold the Department of Ecology's approval or denial of the SMP unless the Board finds clear and convincing evidence that Ecology's decision is inconsistent with SMA policy and guidelines (See RCW 90.58.190(2)(c)).
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). The Board may review challenges to SEPA compliance relating to adoption or amendment of GMA plans and development regulations or Shoreline Master Programs (RCW 36.70A.280(1)(a); WAC 242-03-025(1)(c)).
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 (See WAC 242-03-920).
Stay of Proceedings (Stay)	A request to the Board by the appealing party, when a Board order has been appealed to court, to postpone or suspend all or part of the Board's order until the matter has been resolved by the Court (See WAC 242-03-860).
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.
Subject Matter Jurisdiction	(see Jurisdiction, above)
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 development and the area outside the boundary for lower density rural and natural resource use (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 WAC is available at public libraries and on the Washington State Legislature's website at http://apps.leg.wa.gov/WAC/default.aspx?cite=242-23. The Board's Rules of Practice and Procedure are found at WAC 242-03 and are available on the Board's website – www.eluho.wa.gov.

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 the issue must state which specific provisions of a local government action are inconsistent with which specific provisions of which GMA-adopted enactment. The issues should be stated in the following form:

(a) in separate sentences, with legal and factual premises followed by a short question;
(b) shorter is better, but no more than 75 words per issue; and
(c) with enough facts that the Board will understand how the question arises in the particular case.

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?

5. Does the City/County adoption and Ecology's approval of the Shoreline Master Program fail to comply with RCW 90.58.100(2)(a) and WAC 13-26-211(5)(b) because the SMP does not give first priority to water dependent industrial, commercial and transportation uses in the "high-intensity" environment?

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)).

Appendix B: Sample Forms

Sample of Petition for Review

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
[EASTERN WASHINGTON / WESTERN WASHINGTON / CENTRAL PUGET SOUND] REGION

_____, Petitioner(s), v. _____, Respondent(s),	**Case No. ## - # - #### to be assigned by Board** **PETITION FOR REVIEW**

I. PETITIONER

Name of appealing individual or organization, Petitioner's Attorney, and all contact information.

II. THE CHALLENGED ACTION

Identify the Ordinance, Motion, or Resolution and date of publication.

III. LEGAL ISSUES

See Appendix A for guidelines for framing legal issues.

IV. STANDING

Identify 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 noncompliant 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 believes the contents to be true.

Dated this ___day of [*Month*], 20__.

_____

[*Signature and printed name of signing Pro Se Petitioner or Attorney*]

Sample of Declaration of Service

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
[EASTERN WASHINGTON / WESTERN WASHINGTON / CENTRAL PUGET SOUND] REGION

_____, Petitioner(s), v. _____, Respondent(s),	**Case No. ## - # - ####** **DECLARATION OF SERVICE**

I, [NAME OF INDIVIDUAL SENDING & SIGNING DECLARATION], under penalty of perjury under the laws of the State of Washington, declare as follows:

I am the [POSITION/RELATIONSHIP TO PETITIONER OR RESPONDENT]. On the date indicated below, I caused [NAME OF DOCUMENT] to be served on the persons listed below in the manner indicated:

Name
Title
Municipality/Organization/Law Firm
Address
__ by U.S. Mail
__ by Express Mail Service
__ by Legal Messenger Service
__ by Facsimile
__ by E-mail

Name
Title
Municipality/Organization/Law Firm
Address
__ by U.S. Mail
__ by Express Mail Service
__ by Legal Messenger Service
__ by Facsimile
__ by E-mail

Dated this _____day of [*Month*], 20__.

_____
[*Signature and printed name of signing person*]

Sample of Motion to Intervene

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
[EASTERN WASHINGTON / WESTERN WASHINGTON / CENTRAL PUGET SOUND] REGION

_____, Petitioner(s), v. _____, Respondent(s),	**Case No. ## - # - ####** **[NAME OF PARTY SEEKING TO INTERVENE]'S MOTION TO INTERVENE (WAC 242-03-270)**

I. INTRODUCTION

On [*date*], the Growth Management Hearings Board received a Petition for Review (PFR) from the above referenced Petitioner. The PFR challenges [*ordinance, resolution, etc*] for noncompliance with the GMA. [*Give brief statement of facts pertaining to challenged action.*]

II. RELIEF REQUESTED

[*Name of potential Intervenor*] now seeks intervention in the above-captioned case on behalf of [*name of party – Petitioner or Respondent – which the potential Intervenor seeks to support*], in order to [*challenge/defend the action appealed by Petitioners*].

III. GROUNDS FOR INTERVENTION

Intervention should be granted pursuant to WAC 242-03-270. [*Name of potential Intervenor*] 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.*

[Potential Intervenor] has contacted each of the parties as provided by WAC 242-03-270(1) and no party objects to the intervention.
Dated this _____day of [*Month*], 20__.

_____
[*Signature and printed name of signing Pro Se Potential Intervenor/Intervenor's Attorney*]
[*Contact Information (address, phone, e-mail)*]

Sample of Request for Settlement Extension

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
[EASTERN WASHINGTON / WESTERN WASHINGTON / CENTRAL PUGET SOUND] REGION

_____, Petitioner(s), v. _____, Respondent(s),	**Case No. ## - # - ####** **REQUEST FOR SETTLEMENT EXTENSION (RCW 36.70A.200(2)(b), WAC 242-03-575)**

Pursuant to RCW 36.70A.300(2)(b) and WAC 242-03-575, the Petitioner, [*name of Petitioner*], and the Respondent, [*name of City/County*], respectfully request that the Board grant a [*30 day/60 day/90 day (maximum)*] settlement extension from the deadlines established in the Notice of Hearing dated [*date*], in order to allow the parties to pursue settlement efforts in the above-referenced matter.

Dated this day of [Month], 20__.

_____
[*Signature and printed name of signing Pro Se Petitioner or Attorney*]

_____
[*Signature and printed name of signing Respondent or Attorney*]

Sample of Stipulated Joint Motion of Dismissal

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
[EASTERN WASHINGTON / WESTERN WASHINGTON / CENTRAL PUGET SOUND] REGION

_____, Petitioner(s), v. _____, Respondent(s),	**Case No. ## - # - ####** **STIPULATED JOINT MOTION FOR DISMISSAL (WAC 242-03-720(1)(b))**

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.

The parties request an order from the Board dismissing the case, as authorized by WAC 242-03-720(1)(b).

Dated this __ day of [Month], 20__.

_____
[*Signature and printed name of signing Pro Se Petitioner or Attorney*]

_____
[*Signature and printed name of signing Respondent or Attorney*]