

Handbook

Practicing Before the **Growth Management Hearings Board**

June 2023



Practice Handbook and Glossary

This is an informal guide to help people, organizations, cities, and counties in bringing cases before Washington's Growth Management Hearings Board. This handbook is provided as a convenience and does not have the force and effect of state law, board rule, or regulation. See Revised Code of Washington (RCW) 36.70A Growth Management Act and Washington Administrative Code (WAC) 242-03 Board Rules of Practice and Procedures for detailed information. Previous board decisions may be found in the [Digest of Decisions](#) available on the board's website. If you have any questions, please contact the Growth Management Hearings Board administrative office.

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The board is a part of the Environmental and Land Use Hearings Office.

This handbook is a compilation of state laws and rules, board members' practices and procedures, stakeholder comments, and the diligent efforts of the board's former staff attorney, Julie Ainsworth-Taylor.

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The Growth Management Act and the Growth Board

With the passage of the Growth Management Act (GMA)¹ in 1990, the Washington State Legislature created a process for comprehensive land-use planning involving residents, communities, counties, cities, and businesses. The Legislature found that uncoordinated and unplanned growth threatens the environment, sustainable economic development, and the high quality of life enjoyed by residents of Washington. The GMA requires counties of a certain size and growth rate, and the cities within them, to adopt comprehensive plans and development regulations that are guided by the following fourteen goals:

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

Goals and Policies of the Shoreline Management Act

A special process is provided to resolve disputes arising from the adoption of these comprehensive plans, development regulations, and Shoreline Master Programs. Rather than have these disputes go directly to court, the Legislature established the Growth Management Hearings Board, which is authorized to hear and determine allegations that a city, county, or

¹RCW 36.70A

state agency has not complied with the GMA goals and requirements, related provisions of the Shoreline Management Act² and the State Environmental Policy Act.³

The board has five members appointed by the Governor for staggered six-year terms. The board reviews local legislative actions only when a Petition for Review 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 Petition for Review or appear before the board as a party.⁴ A pro se petitioner is a party representing oneself or a citizen group before the board. All people who appear before the board, pro se participants and attorneys alike, must conduct themselves professionally in board proceedings.⁵

The board's process provides neutral, quasi-judicial resolution of GMA disputes. Neither a board member nor any board staff may provide legal advice. Staff may communicate with parties about procedures, such as case schedules. However, any contact between the board and a party about the issues in the case, called ex-parte communication, is prohibited except through briefs and hearings.⁶

²RCW 90.58

³RCW 43.21C

⁴WAC 242-03-100 and WAC 242-03-115

⁵WAC 242-03-120

⁶WAC 242-03-130

Do You Have a Case?

Before filing a Petition for Review, ask, “Do I have a case?” To appeal to the board, the following three basic requirements must be met:

- The local legislative action must be within the board’s subject matter jurisdiction.
- The petitioner must have standing.
- The Petition for Review must be timely.

Unless ALL these requirements are met, the case must be dismissed either by the board or after a motion by the responding local government.

In addition, anyone wishing to file a case should be aware that there is a very high hurdle to clear. 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.

What Types of Cases Does the Board Hear?

Digest Keyword: Subject Matter Jurisdiction⁷

The board hears and decides challenges to official actions (usually ordinances) taken 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 the following:

- 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 Washington State Office of Financial Management

⁷WAC 242-03-025

- Adoption, amendment, or denial of a Shoreline Master Program
- State Environmental Policy Act documents that accompany a GMA or Shoreline Master Program action
- Failure of the local government to act to meet a GMA or Shoreline Management Act statutory deadline

The board DOES NOT have authority to hear cases that challenge compliance with the following:

- Federal or state constitutional issues
- Statutes other than RCW 36.70A, RCW 90.58, and RCW 43.21C⁸
- Settlement agreements
- Annexations
- Ballot measures
- Local project review, RCW 36.70B

Who May Bring a Case before the Board?

Digest Keyword: Standing⁹

Only an aggrieved person, organization, or government who has “standing” may file a Petition for Review with the board. The GMA identifies the following four types of standing:

- **Participation standing:** A person who 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 have given the local government the chance to consider these concerns. The board applies this same standard to an organization. However, to achieve organizational standing, the organization also must have clarified that people who testified or submitted written comments were representing the organization and not themselves.
- **Governmental standing:** A state agency, county, or city subject to the GMA that seeks review of the action of other agencies, counties, or cities.
- **Governor-certified standing:** A person who has not participated in the public process but obtains certification from the Governor to challenge the action of an agency,

⁸Other 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.

⁹RCW 36.70A.280(2)

county, or city.¹⁰

- **Administrative Procedures Act standing:** A person or entity who satisfies the requirements of [RCW 34.05.530](#) to bring a Petition for Review before the board.

State Environmental Policy Act Challenge

Before bringing a State Environmental Policy Act challenge, a petitioner should review the board's decisions on State Environmental Policy Act standing (see Digest Key Word-Standing or State Environmental Policy Act). Former regional boards have applied slightly different standards to determine a petitioner's standing in these cases.¹¹ In all cases, petitioners should have provided comment or testimony during the State Environmental Policy Act processes.

How Does the Board Look at a Case?

Digest Keywords: Standard of Review, Burden of Proof

The Standard of Review

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 complies 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 GMA goals and requirements. 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 GMA requirements to local circumstances, as long as those decisions are consistent with the goals and requirements of the GMA.

For a petitioner, this sets a high hurdle for proving an 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 as long as those choices fall within the parameters of the GMA.

In actions concerning a Shoreline Master Program, the board's review must be based on the requirements and policy of the Shoreline Management Act, the Shoreline Master Program guidelines codified as WAC 173-26, and the GMA internal consistency requirements for comprehensive plans and development regulations or State Environmental Policy Act compliance.¹²

¹⁰WAC 242-03-255

¹¹Review 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 State Environmental Policy Act standing.

¹²RCW 90.58.190(2)(b)

If the appeal concerns a Shoreline of Statewide Significance, the board only may consider Shoreline Management Act policy and guidelines and must uphold the Department of Ecology's approval or denial of the Shoreline Master Program unless the board finds clear and convincing evidence that Ecology's decision is inconsistent with Shoreline Management Act policy and guidelines.¹³

¹³RCW 90.58.190(2)(c)

Filing a Case Before the Board

How to Bring a Case¹⁴

After reviewing the board's Rules of Practice and Procedure,¹⁵ the first step in bringing a case is to file a Petition for Review (see sample forms in Appendix B). The petition is filed by a party with standing, called the petitioner, who is alleging violations of the GMA. The petition must contain the following information:

- Name, address, phone number, and e-mail of petitioner and/or organization
- Name, address, phone number, and e-mail address of attorney (if represented by one)
- Respondent: 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 Shoreline Master Program
- A detailed statement of the issues, which includes the specific sections of the GMA, Shoreline Management Act, or State Environmental Policy Act that the action allegedly violates and, if applicable, the specific sections of the city or county document (i.e., development regulation, comprehensive plan, or Shoreline Master Program) being appealed
- A statement showing why the petitioner has standing to bring the action
- A statement about the specific relief sought by petitioner
- Attestation statement affirming all documents are true and accurate
- Signature of petitioner, petitioner's attorneys or representative (which may be electronic)
- A copy of the challenged action or applicable provisions

Statement of Issues

The statement of the issues is the most vital element of the petition. The petition 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.

¹⁴WAC 242-03-210

¹⁵WAC 242-03

Each legal issue **must** indicate the **specific** sections of the GMA, Shoreline Management Act, or State Environmental Policy Act alleged to be violated and the **specific** sections (or aspects) of the city, county, or state actions that the petitioner alleges cause the violation. The legal issues are an allegation, not an argument. The petition is not the time or place to argue the merits of the case. The petitioner and respondent each will have the opportunity to argue their cases in their prehearing briefs. (See How to Write an Issue Statement in Appendix A).

In the petition, a petitioner must state the basis for standing that allows the case to be brought forward. The petitioner need not provide evidence to support the claim of standing. If the respondent challenges standing, the petitioner will be given the opportunity to provide evidence to support the position.

How to File and Serve¹⁶

The Petition for Review must be filed with the board electronically through the Case Management System and served on all respondents named in the petition. Information about accessing the Case Management System is available on the [board's website](#). If the petitioner does not have the technological capacity to file electronically or filing through the Case Management System is otherwise impossible, the petitioner may file the petition through personal delivery, fax, e-mail, or mail. If physical documents are needed, the 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.

A copy of the petition must be served by mail or personal service on each named respondent and must be received by the respondents on or before the date filed with the board. Service on respondents should be directed as provided in WAC 242-03-230(2).

A Declaration of Service is required for all legal documents filed with the board and served on parties.¹⁷ The declaration demonstrates that papers were served upon the noted parties and the date service was completed (see sample forms in Appendix B).

The board may dismiss an action for petitions that do not comply with procedural service and filing requirements.¹⁸ A petitioner may contact the board's administrative office for clarification on filing and formatting requirements.

If any party lacks 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.¹⁹

¹⁶WAC 242-03-230

¹⁷WAC 242-03-245

¹⁸WAC 242-03-720(2)(c)

¹⁹WAC 242-03-530(4) and -540(9)

Where to File a Case

Case Management System: Directions are available on the [board's website](#).

If the Case Management System cannot be used, one of the following may be substituted:

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

Via Mail: PO Box 40903
Olympia, WA 98504-0953

Via Fax: 360-586-2253

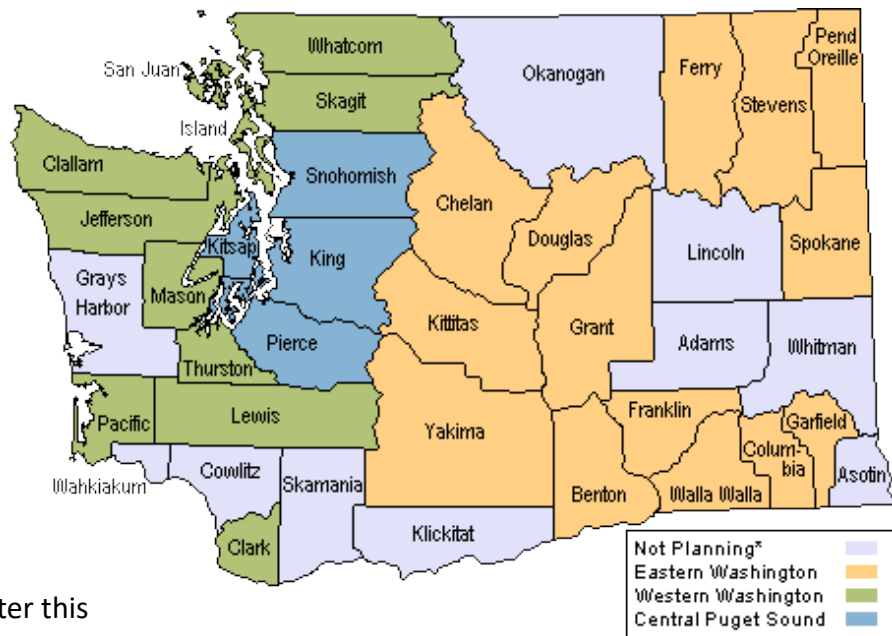
Via E-mail: [Eastern Region](#)
[Western Region](#)
[Central Puget Sound Region](#)

All filings should be directed to the region where the case arose as shown in the map below.²⁰

When to File a Case

Digest Keyword:
Timeliness²¹

A Petition for Review must be filed within sixty days of publication of the local government's challenged final action. The petition must be received by the board no later than 5 p.m. on the last of the sixty days. Petitions filed after this date will be dismissed.



* These counties are not required to plan under the GMA

When the challenged action concerns a Shoreline Master Program, the sixty-day time limit is measured from the date the Department of Ecology publishes notice of its final approval or denial of the Shoreline Master Program.

²⁰WAC 242-03-015(1)

²¹WAC 242-03-220 and WAC 242-03-230(1)

For a city or county, publication must follow the required procedures for publication of its adopted ordinance or resolution. City and county governments may take several days or weeks to publish notices of their final actions. Contact the city or county clerk to find out the publication date.

Amending a Petition for Review

A petition may be amended within fourteen days of filing to restate or clarify the petitioner's legal issues, but no new issues may be added.²² An amendment within the fourteen days does not require permission from the board. After fourteen days, the petitioner must file a written motion to amend the petition.

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 if they are unclear, or the presiding officer may offer a proposed restatement of the legal issues for discussion at the prehearing conference. The legal issues 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 the parties, petitioner and respondent alike, to discuss and clarify the issues.²³ The prehearing conference is an informal proceeding that usually is conducted on the telephone. 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.

Within seven days of the prehearing conference, the presiding officer will issue the prehearing order, which sets forth the final schedule and legal issues that will be briefed and argued.²⁴ Any party who objects to the prehearing order must file such objections within seven days.

Who Will Hear the Case?²⁵

A three-person panel, which should include an attorney and a former local elected official, will hear the case. The presiding officer for the case most often will be one of the board members from the region where the case originated.²⁶ Any objection to the assigned panelists should be filed at least seven days before the prehearing conference.²⁷

²²WAC 242-03-260

²³WAC 242-03-535 and -540

²⁴WAC 242-03-545

²⁵WAC 242-03-015(2)

²⁶These requirements are subject to WAC 242-03-015(2)(d)

²⁷WAC 242-03-570(1)

Arguing the Case Before the Board

After Filing the Petition for Review

Upon receipt of a Petition for Review, the board will assign a case number and a presiding officer, who is the board member responsible for the case.²⁸ Within ten days of receiving the petition, the presiding officer will issue a preliminary schedule, identify the panelists assigned to hear the case, and other essential information.²⁹

A respondent who has received service of the Petition for Review 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.³⁰ This notice must be served on all parties, including the petitioner.

Joining the Challenge

The board has the authority to consolidate cases when there are several challenges to the same ordinance or action.³¹ If cases are consolidated, the 180-day statutory deadline for the board's decision is based on the filing date of the last Petition for Review filed.

Other Interested Parties

Intervenor

If someone other than the petitioner or respondent has an interest in the outcome of the case, that person or organization (called an intervenor) may file a motion to intervene (see sample template in Appendix B) that states the intervenor's interests in the subject matter of the case, how the disposition of the case may impair those interests, and why the interests are not adequately represented by the existing parties.³² Intervenors only may address issues posed by the petitioner in the Petition for Review and 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, using any applicable provisions of law.³³ If the presiding officer determines the party qualifies as an intervenor, a motion is granted, and the intervenor must attend hearings and join briefings. The board may limit the intervenor's participation in the issues, briefs, and oral arguments.

²⁸WAC 242-03-095, 242-03-525, and 242-03-530

²⁹WAC 242-03-500

³⁰WAC 242-03-250

³¹RCW 36.70A.290(5), WAC 242-03-530(7)

³²WAC 242-03-270

³³WAC 242-03-270(1)

Amicus Curiae

If a person or an organization is not a petitioner, respondent, or intervenor but still has a strong interest in the case and wants to provide additional facts or legal authority, the party is termed an “Amicus Curiae.” The amicus curiae must file a motion to file an amicus brief identifying how participation would assist the board.³⁴

The key function of the amicus, as a “friend of the court,” is to help the board understand the legal issues or 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’ participation in the proceedings, typically limiting the amicus to a single briefing with no oral arguments at the Hearing on the Merits.

Working Towards a Resolution³⁵

The board encourages and supports discussions to resolve the dispute between the petitioner and the respondent. The board expects parties to discuss settlement before the Prehearing Conference. If the parties agree to settle before the Hearing on the Merits, the parties jointly may move to have the case dismissed.³⁶ However, after a finding of noncompliance, state law requires the board to determine whether a jurisdiction’s compliance action has brought it into compliance.

If the parties find that they may be able to settle the matter without the board’s aid, but need additional time, then all parties must submit a request for settlement extension (see sample forms in Appendix B). The request must be signed by both the petitioner and the respondent, must be filed no later than seven days before the Hearing on the Merits, and must clearly state the amount of extra time requested (up to a maximum of ninety days).

The board typically will grant an extension for 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 and all other filings. Although parties may request multiple extensions, the board may require that a status report be filed before the end of the settlement extension period to ensure good faith negotiations are in progress. The board may extend the 180-day Final Decision and Order deadline only to allow time for settlement discussions. The board does not have the authority to enforce a settlement agreement nor review the agreement for compliance with the GMA.

³⁴WAC 242-03-280

³⁵WAC 242-03-540(1) and WAC 242-03-575

³⁶WAC 242-03-700.

Arguing Your Case

The Prehearing Brief³⁷

The petitioner's prehearing brief and the respondent's response brief provide the board with the information needed to make a decision. These briefs also are where the petitioner and respondent make their cases. Any documents used to support those cases should be attached to and properly tabbed in the brief as exhibits.

The petitioner must submit the prehearing brief and all supporting documents on or before the filing date in the prehearing order. The brief must address each of the legal issues set forth in the prehearing order. 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 the argument and may consolidate different issues together. Section headings in the prehearing brief should indicate clearly 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 a 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. Page limits and format requirements will be set in the prehearing order. As with all documents filed with the board, the parties must file their briefs through the Case Management System unless a petitioner does not have the technological capacity to do so.³⁸ When filing through the Case Management System is unavailable or impossible, the presiding officer may alter filing and service requirements (by substituting e-mail or fax filings for example).

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. Before the Hearing on the Merits, the board will review the briefs and 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 petitioner, who must present facts from the record, legal authority, and explanation of the statutory provision to support the argument.

³⁷WAC 242-03-590

³⁸WAC 242-03-240

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’s or county’s discretion, and such deference mandates that the board finds that the city or county did not violate the GMA.” Once a petitioner makes an argument supported by evidence in 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, Shoreline Management Act, or State Environmental Policy Act.

The Hearing on the Merits³⁹

The Hearing on the Merits gives the parties the opportunity to argue their cases to the board. The main goal of the hearing is for the board to ask questions of the parties and to clarify any items of concern raised from the briefs. Occasionally, in response to the board’s questions, the board may request that the parties provide additional briefings or documents.

The parties, through their attorneys or authorized representative, are permitted to argue before the board. The public is welcome to attend and observe but the board does not take public comment. The GMA allows the board to take testimony; however, the board almost always decides cases on the briefing and oral argument, without additional testimony. It is sometimes helpful to a city or county to have its planner present at the hearing to answer the board’s questions.

The presiding officer provides a hearing agenda one week before the hearing, setting the times for argument in the case. The petitioner will be given time for opening arguments and rebuttal at the end. If the petitioner is an organization, a spokesperson will be identified and provide oral argument. If a party is supported by an intervenor, the party determines how much time to share with the Intervenor. Amici generally are 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 the proceedings verbatim, a transcript normally is not ordered unless specifically needed.⁴⁰ The party requesting a transcript must pay to produce it.

Motions

Any party to the case may file a motion.⁴¹ A motion is a request by one or more of the parties for the board to rule on a particular question of procedure or substance. The prehearing order 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 to respect the rules and procedures of the board for expediting the case.

³⁹WAC 242-03-610, -650

⁴⁰WAC 242-03-600, 242-03-880

⁴¹WAC 242-03-550

Dispositive motions typically are brought by the respondent and ask the board to dismiss a petition on the grounds that it is untimely, the petitioner lacks standing, or the board lacks subject matter jurisdiction.⁴² 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.

Motions to supplement the record should be filed when the parties disagree on the inclusion of an item in the record.⁴³ If a party is seeking to amend the record with items it believes the jurisdiction erroneously omitted, the party first should ask the city or county for the requested item to be included in the record; the city or county then must file an amended Index to the Record to include the requested item. If the county or city disagrees, or any party wishes to add a non-record document, a motion to supplement the record must be filed. The motion must attach a copy of the document sought to be included and explain why it will be of substantial assistance to the board. Motions to supplement the record and other non-dispositive motions are decided by the presiding officer.

A party filing **motions 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.⁴⁴

Motion Filing Schedule

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 the filing deadlines for motions and briefs. All parties must comply with the filing deadlines. The board may disregard a motion, brief, or response that is submitted after the deadline.

⁴²WAC 242-03-555 and -560

⁴³WAC 242-03-565

⁴⁴WAC 242-03-550(4)

The Board's Decision

The board bases its decision on the following five things:

- The law
- The record
- The exhibits
- The briefs
- The arguments presented at the hearing

The Law

In all matters, the board looks to its controlling statute—the GMA.⁴⁵ The board will address issues that arise under the Shoreline Management Act⁴⁶ and State Environmental Policy Act⁴⁷ but only as authorized in the GMA. In addition to the statutes, the board considers the WAC guidelines for the GMA,⁴⁸ Shoreline Management Act,⁴⁹ and State Environmental Policy Act.⁵⁰

On procedural questions, the board looks to the Rules of Procedure for the Board⁵¹ and the Administrative Procedures Act.⁵²

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 previous 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 previous decisions as guidance for subsequent cases when similar issues were raised. The board provides a [Digest of Decisions](#) on its website and a searchable database in its online [Case Management System](#) to help parties research procedures and issues by keyword.

The Record

The record is all the documents considered by a city or county when making the challenged action. In a shoreline case, the Department of Ecology proceedings also are part of the record. The record generally includes minutes of meetings before commissions, committees, or

⁴⁵RCW 36.70A

⁴⁶RCW 90.58

⁴⁷RCW 43.21C

⁴⁸WAC 365-190, WAC 365-195, WAC 365-196

⁴⁹WAC 173-26

⁵⁰WAC 197-11

⁵¹WAC 242-03

⁵²RCW 34.05

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 and copies of the specific documents that parties want to rely on as exhibits to support their arguments and briefing.

The Index to the Record⁵³

The Index to the Record is a numbered listing of all 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 that 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 in the record, both written and audio, must be made available to the other parties for review and for copying or transcription at their expense. The index also serves as a list of documents that may be offered into evidence without objection. **The index must be submitted by the respondent city, county, or state agency within thirty days of the filing of the Petition for Review.**

The Exhibits⁵⁴

The exhibits are documents presented with briefs or motions to show the board the facts supporting a 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, numbered using the index identification number, and tabbed as exhibits to the briefs. A party's brief includes a table of exhibits and each exhibit must be tabbed so that it can be located easily. A document not taken from the record may be used only as an exhibit if the board has approved its inclusion in an order or motion to supplement the record and found it to be necessary or of substantial assistance to the board in reaching its decision.⁵⁵

The board also may take official notice of certain items it believes are necessary to resolve the matter,⁵⁶ such as federal and state laws, local government ordinances and resolutions, previous decisions of any of the Growth Management Hearings Boards, and technical or scientific facts.

⁵³WAC 242-03-510

⁵⁴WAC 242-03-520

⁵⁵WAC 242-03-565

⁵⁶WAC 242-03- 630 and -640

The Final Decision and Order⁵⁷

By law, the board must issue its Final Decision and Order within 180 days from the date it received the Petition for Review. The board's decision is set forth in the Final Decision and Order, which typically provides the following:

- 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 noncompliance
- A schedule for post-hearing matters, such as the compliance deadline

The Final Decision and Order is the result of consultation among the board members and must be signed by at least two members. Sometimes, a member may write a concurring or dissenting opinion to voice a separate opinion.

The Final Decision and Order 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 comprehensive plan, development regulation, or Shoreline Master Program to come into compliance with the GMA, Shoreline Management Act, or State Environmental Policy Act.⁵⁸ If the board finds noncompliance, it may issue a determination of invalidity.

Any party may file a motion for reconsideration (see sample forms in Appendix B).⁵⁹ This motion must be based on an allegation that the board erred in procedure or misinterpreted the 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 but 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 Final Decision and Order. 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 the filing of the motion, the request is deemed denied.

⁵⁷WAC 242-03-810, 242-03-820

⁵⁸WAC 242-03-900

⁵⁹WAC 242-03-830

The board may issue a corrected Final Decision and Order to correct typographical errors or clerical mistakes brought to its attention by a letter from any of the parties within ten days of the Final Decision and Order. The letter should indicate that the other parties have no objection to the correction.

All the board's final orders, compliance orders, and other decisions are posted on the Case Management System within a few days of issuance.⁶⁰ Copies of all decisions and orders are available at www.eluho.wa.gov where parties can search the Digest of Decisions by region or keyword. The digest may be found on the website under "Resources."

Invalidity

The board may issue a determination of invalidity only after a finding of noncompliance. First the petitioner must meet the clearly erroneous standard to prove that the action failed to comply with the GMA, Shoreline Management Act, or State Environmental Policy Act.

Then, the petitioner must convince the board that continued validity of all or portions of the action (specifying which portions) will substantially interfere with achievement of GMA goals and requirements.

The board may issue a determination of invalidity If it concludes that continued validity of the plan provision or development regulation would interfere substantially with the fulfillment of the goals of the GMA, including the Shoreline Management Act. Invalidity is a remedy considered by the board on a case-by-case basis, usually as part of the Final Decision and Order.⁶¹

Unlike a finding of noncompliance, which does not affect the validity of a jurisdiction's plan or development regulations, invalidity most often is invoked to prevent the vesting of development projects to city or county enactments that are noncompliant. A petitioner wishing to see the jurisdiction's action invalidated is advised to do the following:

- Request imposition of invalidity in its Petition for Review or in its opening brief for the Hearing on the Merits.
- Demonstrate in the briefs and argument that the jurisdiction's action substantially interferes with the fulfillment of the goals or requirements of the GMA.

The GMA provides special procedures regarding invalidity. First, in response to a Final Decision and Order imposing invalidity on a noncompliant city or county, the local government may bring a motion to clarify, modify, or rescind invalidity.⁶² The board must promptly hear and decide the motion.

⁶⁰WAC 242-03-870

⁶¹WAC 242-03-820(3)

⁶²WAC 242-03-850

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.⁶³

Third, at the compliance hearing the board will review the question of invalidity.⁶⁴ A determination of invalidity will be rescinded if the board finds there is no longer substantial interference with the goals of the GMA. On the other hand, if the city or county continues to be noncompliant, the board may make a determination of invalidity in the compliance order, even if one was not imposed with the Final Decision and Order.

Compliance Action and Appeals

When the Final Decision and Order remands a matter for compliance, the city or county should promptly review the compliance schedule.⁶⁵ A jurisdiction may take no longer than 180 days to comply unless the matter is considered unusual or complex. Then, the board may grant more time for compliance.

The respondent may request modification of the compliance schedule by a motion brought within ten days of issuance of the Final Decision and Order showing special complexity, specific hardship, or the need to coordinate the compliance action with other planning activities of the jurisdiction.⁶⁶ Any later attempt to extend the compliance schedule may require a hearing and an order of continuing noncompliance.

The Final Decision and Order also sets deadlines for the local government to file a report explaining the action taken to comply (called a Statement of Actions Taken or Compliance Report) and a compliance index.⁶⁷

The Statement of Actions taken must include 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 after the Final Decision and Order 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 Petition for Review may participate in the compliance phase. 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.⁶⁸ The compliance

⁶³WAC 242-03-950

⁶⁴WAC 242-03-940(7)

⁶⁵WAC 242-03-900

⁶⁶WAC 242-03-840

⁶⁷WAC 242-03-920

⁶⁸WAC 242-03-930

participant is limited to the issues subject to the finding of noncompliance and remand. Anyone objecting to the legislation on other grounds must file a new Petition for Review.

The compliance schedule sets the date for the compliance hearing, which may be held by telephone or videoconference.⁶⁹ 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.

The burden is on the petitioner to demonstrate the city's 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 before the deadline set in the compliance schedule and may request an earlier compliance hearing.⁷⁰ Special procedures concerning invalidity are provided above.

If, after a compliance hearing, the board issues an order of noncompliance, the board must send its findings to the Governor's Office and may even request the Governor impose monetary penalties.⁷¹

Any party aggrieved by the Final Decision and Order or other final board order (such as an order of dismissal or order on compliance) may appeal the decision to the appropriate Superior Court.⁷² This appeal must be filed within thirty days of the issuance of the final board order being appealed. The appealing party is responsible for the costs of transcribing the hearings and the preparation of the board's record for certification to the court.

⁶⁹WAC 242-03-940

⁷⁰WAC 242-03-910

⁷¹RCW 36.70A.330; WAC 242-03-960

⁷²WAC 242-03-970 and -980

Case Schedule Guidelines

The presiding officer sets the schedule for a case in the prehearing order. This chart provides general guidelines. The schedule will account for holidays, furlough days, and any special circumstances. **Blue** denotes due dates for parties; **red** denotes due dates for the presiding officer; and **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 a motion hearing to be scheduled.

Day		RCW or WAC
0	Petition for Review Filed	RCW 36.70A.290(1)
10	Notice of Hearing Issued	RCW 36.70A.290(3) WAC 242-03-500
14	Last Day to Amend Petition for Review	WAC 242-03-260
21	Prehearing Conference held	WAC 242-03-535
28	Prehearing Order Issued	WAC 242-03-545
30	Index to the Record Due from City/County	WAC 242-03-510
37	Additions to the Index Due	
42	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	Responses to Motions to Supplement Due	
67	Responses to Dispositive Motions Due	
74	Order on Motions to Supplement Issued	
84	Order on Dispositive Motions Issued	
98	Petitioners and Intervenors Supporting Petitioners Prehearing Briefs Filed with Exhibits	
112	Respondents and Intervenors Supporting Respondent Prehearing Briefs Filed with Exhibits	
122	Petitioners and Intervenors Supporting Petitioners Reply Briefs Filed with Exhibits Deadline for Settlement Extension	RCW 36.70A.300(2)(b)
129	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 (APA): Clarifies the 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). A briefing in a case will include the following:

- **Petitioner's Prehearing Brief:** filed by the petitioner before 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.320(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 the goals and requirements of the GMA, that a mistake has been made (see RCW 36.70A.320(3)).

Compliance Hearing: A hearing held after a finding of noncompliance to determine if the action taken by the city, county, or state agency brings the noncompliant provision into compliance (see RCW 36.70A.330, WAC 242-03-940).

Compliance Index: A listing of all the documents the city, county, or state agency has relied on in taking action to bring the noncompliant 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 noncompliance and 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 Final Decision and Order. This document is sometimes called the Statement of Actions Taken to Comply (see WAC 242-03-920).

Compliance Schedule: The table in the Final Decision and Order 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(5)).

Conclusory Argument: An argument that 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 Petitions for Review challenging the same comprehensive plan, development regulation, or Shoreline Management Program into a single case for hearing and decision (see RCW 36.70A.290(5), WAC 242-03-530(7)).

County-wide Planning Policies: Written policy 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 Hearing on Merits. 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 other wildlife habitat conservation areas; frequently flooded areas; and geologically hazardous areas (see RCW 36.70A.030(6)).

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, 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 that 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 Final Decision and Order or compliance order that the continued validity of a noncompliant plan, development regulation, or Shoreline Master Program would interfere substantially with the goals of the GMA (see RCW 36.70A.302, WAC 242-03-820(3), WAC 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 (see RCW 36.70A.030(8)).

Digest of Decisions: A [summary of all the board's decisions](#), organized by keyword and available on the boards' website.

Direct Review Agreement: An agreement entered into by all parties within seven days of filing of the Petition for Review, that 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 entire case (see WAC 242-03-555).

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

Exhibit: The evidence to be relied upon; it may be photographic, illustrative, demonstrative, or written documentation (see 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 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(9), 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., Petition for Review, 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 Petition for Review and WAC 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 a Shoreline Management Act matter, the Department of Ecology's final decision approving or disapproving a Shoreline Management Program.

Final Decision and Order: 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, Shoreline Management Act, or State Environmental Policy Act, and it must be issued within 180 days of the filing of a Petition for Review, 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.

Growth Management Hearings Board (GMHB): The five-member, quasi-judicial board appointed by the Governor to hear challenges to local actions arising under the GMA, Shoreline Management Act, and State Environmental Policy Act (see RCW 36.70A.250, WAC 242-03-010, WAC 242-03-020).

Growth Management Planning Population Projections: Figures from the U.S. census, issued by the Washington State Office of Financial Management, that provide the basis for projections of population growth. Counties use these figures to track growth and revise comprehensive plans.

Hearing on the Merits: 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 cases and for the board to ask questions as necessary to understand the evidence and the argument (see WAC 242-03-610, WAC 242-03-650).

Index to the Record: A listing of all the materials used by a city, county, or state agency in taking the action, which is the subject of the Petition for Review (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, the Shoreline Management Act as it relates to Shoreline Master Programs, and the State Environmental Policy Act as it relates to GMA and Shoreline Management Program actions (see RCW 36.70A.280(1), WAC 242-03-025).

Lack of Prosecution: A petitioner's failure to actively pursue a case (see 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 Final Decision and Order 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 represent 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 Petition for Review, notifying the parties of the date and location of the prehearing conference and a tentative case schedule including the date of the Hearing on Merits (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 before taking its action. (see 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 petition 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 or organization filing the Petition for Review with the board (see WAC 242-03-030(15)).

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 Petition for Review 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 a Shoreline Management Program (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 the documents the local government or state agency relied on in taking the action that is the subject of the Petition for Review (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, Shoreline Management Act, or State Environmental Policy Act.

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](#).

Rules of Procedure: The rules contained in WAC 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 242-03](#) is available on the board's website.

Rules of Professional Conduct: The rules to which all attorneys practicing law in Washington State must adhere. Attorneys appearing before the board must conform to the rules (see WAC 242-03-120. Contact the [Washington State Bar Association](#) for a copy of these rules.)

Sanctions: Monetary penalties imposed by the Governor for noncompliance with the GMA (see RCW 36.70A.340, RCW 36.70A.345, WAC 242-03-960).

Savings Clause: A provision in an ordinance that 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., Petition for Review, motions, briefs); any document filed with the board must be served on all other parties (see WAC 242-03-230(2) for serving the Petition for Review 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.

Shoreline of Statewide Significance: A shoreline designated for special consideration under the Shoreline Management Act (see RCW 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 Act are incorporated as goal fourteen 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 Shoreline Management Program contains policies and regulations applicable to the use of shorelines within that city or county. The Shoreline Management Program 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 four bases for standing—governmental, participation, governor-certified, and Administrative Procedures Act. 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 Shoreline Management Program for a Shoreline of Statewide Significance, the board will uphold the Department of Ecology’s approval or denial of the Shoreline Management Program unless the board finds clear and convincing evidence that Ecology’s decision is inconsistent with Shoreline Management Act 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 Act compliance relating to adoption or amendment of GMA plans and development regulations or Shoreline Master Programs (see RCW 36.70A.280(1)(a), WAC 242-03-025(1)(c)).

Statement of Actions Taken to Comply: The local government’s statement of actions it has taken to comply with the board’s Final Decision and Order. This document is sometimes called the compliance report (see WAC 242-03-920).

Stay of Proceedings (Stay): An appealing party’s request to the board, when a board order has been appealed to court, to postpone or suspend all or part of the order until the court has resolved the matter (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(29), 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](#). The board’s [rules of practice and procedure](#) are found at WAC 242-03 and are available on the board’s website.

Appendix A: Guidelines for Framing Legal Issues

A legal issue should be stated in the form of a question that the board can answer with “yes” or “no.” A legal issue is an allegation that a city or county government action either fails to comply with specific goals and/or requirements of the GMA, the Shoreline Management, or State Environmental Policy Act (as to GMA and Shoreline Management Act actions) or is inconsistent with some GMA-adopted enactment, such as county-wide planning policies, a comprehensive plan, or a development regulation. A legal issue should cite which specific provisions of the local government action do 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:

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

Examples

- 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?
- 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?
- 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?
- 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?
- 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 Shoreline Master Program 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, 31P.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),	Case No. ## - # - ##### to be assigned by
v.		Board PETITION FOR REVIEW
	Respondent(s),	

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

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

n/Law Firm Address
___by U.S. Mail
___by Express Mail Service
___by Legal Messenger Service
___by Facsimile
___by E-mail

Name
Title

Municipality/Organization
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)	Case No. ## - # - ##### [NAME OF PARTY SEEKING TO INTERVENE]'S MOTION TO INTERVENE (WAC 242-03-270)
v.),	
	Responden t(s),	

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

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

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]*