

Chapter 365-199 WAC

PROCEDURES FOR MAKING A DETERMINATION OF COMPLIANCE FOR JURISDICTIONS SEEKING VOLUNTARY REVERSION TO PARTIAL PLANNING STATUS

WAC

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WAC 365-199-010 Purpose and authority. (1) The purpose of this chapter is to outline the procedures the department shall use when making a determination of compliance under RCW 36.70A.060 (1)(d).

(2) These rules are adopted under the authority of RCW 36.70A.060 (1)(d)(v).

[Statutory Authority: RCW 36.70A.060 (1)(d)(v). WSR 15-19-087, § 365-199-010, filed 9/16/15, effective 10/17/15.]

WAC 365-199-020 Definitions. "Department" means department of commerce.

[Statutory Authority: RCW 36.70A.060 (1)(d)(v). WSR 15-19-087, § 365-199-020, filed 9/16/15, effective 10/17/15.]

WAC 365-199-030 Review and application process. (1) A county that is not in compliance with RCW 36.70A.-060, 36.70A.040(4), 36.70A.070(5), 36.70A.170, and 36.70A.172 at the time it adopts a resolution for voluntary reversion, under RCW 36.70A.060 (1)(d) must apply to the department for a determination of compliance.

(2) Notice of intent to apply for a determination of compliance.

(a) Not less than one hundred twenty days prior to applying for a determination of compliance, the county must notify the department in writing that it intends to apply for a determination of compliance. Prior notification allows the department to review proposed actions prior to final adoption and advise the county of the actions necessary to achieve compliance.

(b) The notice of intent to apply for a determination of compliance must include:

(i) A statement of all of the issues in which the county is not in compliance with the requirements of the Growth Management Act.

(ii) If applicable, a list of final orders, including number in which the growth management hearings board or court found the county not in compliance with the requirements of the Growth Management Act.

(iii) A proposed schedule identifying the actions necessary to come into compliance.

(iv) Identification of the date which the county intends to apply for a determination of compliance.

(9/16/15)

(c) The department will consult with state agencies with expertise that would be helpful in making its determination of compliance.

(d) Public notice of intent to apply for determination of compliance.

(i) The department will publish notice in the *Washington State Register* that a county has notified the department of its intent to request certification.

(ii) The department will post a copy of the notice of intent to apply for a determination of compliance on the department web site.

(iii) The department will notify state agencies with expertise that a county has notified the department of its intent to apply for a determination of compliance.

(iv) The department will notify the parties of record in the case or cases before the growth management hearings board that resulted in the finding of noncompliance for which the county is seeking a determination of compliance.

(3) Procedures for an application of determination of compliance.

(a) After taking the legislative action necessary to address the outstanding noncompliance issues, the county may apply to the department for a determination of compliance. A county must submit its application to the department by January 30, 2017.

(b) An application for a determination of compliance must include, at a minimum, the following items:

(i) A cover letter from the board of county commissioners requesting a determination of compliance;

(ii) A copy of the adopted ordinance or resolution taking the legislative action or actions required to comply with RCW 36.70A.040(4), 36.70A.070(5), 36.70A.170, and 36.70A.172;

(iii) A statement of actions the county has taken to address the growth management hearings board's or court's final order or orders; and how the actions taken are sufficient to address the remaining noncompliance orders; and

(iv) A copy of the record developed by the county during the process of coming into compliance. The record of adoption must include copies of any public testimony submitted at the hearings required by (c) of this subsection;

(c) The actions necessary to come into compliance must include at a minimum, one hearing and opportunity for public comment on a statement of the issues on which the county is out of compliance, and one hearing and opportunity to comment on the changes proposed to bring the county into compliance.

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(4) Compliance determination procedures.

(a) The department must approve or deny the application within one hundred twenty days, or by June 30, 2017, whichever date is earlier.

(b) The department will issue its decision in the form of a written statement, including findings of fact and conclusions, and noting the date of the issuance of its decision.

(c) The department will publish its decision on the application for determination of compliance as follows:

(i) Notify the county in writing of its determination;

(ii) Publish a notice of action in the *Washington State Register*;

(iii) Post a notice of its decision on the agency web site;

(iv) Notify state agencies with expertise with which department consulted regarding the determination of compliance;

(v) Notify parties of record in the case or cases before the growth management hearings board that resulted in the finding of noncompliance for which the county is seeking a determination of compliance.

(5) If the department denies an application for a determination of compliance, the county and each city within is obligated to comply with all requirements of this chapter and the resolution for partial planning adopted under RCW 36.70A.-040 (2)(b) is no longer in effect.

[Statutory Authority: RCW 36.70A.060 (1)(d)(v). WSR 15-19-087, § 365-199-030, filed 9/16/15, effective 10/17/15.]

WAC 365-199-040 Evaluation criteria. Criteria for evaluation of applications.

(1) The determination of compliance requires a finding that the county's comprehensive and development regulations, including critical areas regulations, are in compliance with the requirements of RCW 36.70A.040(4), 36.70A.060, 36.70A.070(5), 36.70A.170, and 36.70A.172.

(2) The scope of the department's review is limited to outstanding findings of noncompliance established in an order from the growth management hearings board or court. Issues or provisions of the ordinance that were found in compliance, or were not timely challenged at the time of adoption, are not subject to review by the department.

(3) The department must base its decision on the record developed by the county during the process of coming into compliance.

[Statutory Authority: RCW 36.70A.060 (1)(d)(v). WSR 15-19-087, § 365-199-040, filed 9/16/15, effective 10/17/15.]

WAC 365-199-050 Sharing of appeal costs. (1) If the department approves an application for determination of compliance, the department and the county must equally share the costs incurred by the department for defending an approval of determination of compliance that is before the growth management hearings board.

(2) If the department denies an application for determination of noncompliance, the county is not required to share in the cost of defending the agency action.

[Statutory Authority: RCW 36.70A.060 (1)(d)(v). WSR 15-19-087, § 365-199-050, filed 9/16/15, effective 10/17/15.]