

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

(2) The evidence in a compliance hearing shall consist of the exhibits cited in the briefs submitted in the compliance proceeding and attached thereto. Documents provided in the original proceeding, if referenced in briefs in the compliance proceeding, must be attached as exhibits.

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

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

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

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

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

[Statutory Authority: RCW 36.70A.270(7). WSR 11-13-109, § 242-03-940, filed 6/21/11, effective 7/22/11.]