

Title 242 WAC

GROWTH PLANNING HEARINGS BOARD

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ADMINISTRATION

WAC 242-02-010 Organization. Three growth planning hearings boards were established pursuant to chapter 36.70A RCW. Each board is an independent agency

of the state of Washington with three members appointed by the governor who are qualified by experience or training in matters pertaining to land use planning. These rules were developed and adopted jointly by all three boards pursuant to RCW 36.70A.270(6). They should be read in conjunction with the act.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-010, filed 10/15/92, effective 10/15/92.]

WAC 242-02-020 Function. The function of a board is to make informed decisions on appeals arising from implementation of the Growth Management Act in a clear, consistent, timely, and impartial manner that recognizes regional diversity.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-020, filed 10/15/92, effective 10/15/92.]

WAC 242-02-030 Jurisdiction. This section is intended to be general and informational only, and failure to list matters over which a board has jurisdiction at law shall not constitute any waiver of or withdrawal from such jurisdiction.

(1) Geographic jurisdiction. Each board shall hear only those matters pertaining to the cities and counties located within its jurisdictional boundaries. The boundaries are as follows:

(a) The Eastern Washington board includes all counties and the cities now or subsequently located within these counties that are required or choose to plan under RCW 36.70A.040 and are located east of the crest of the Cascade mountains;

(b) The Central Puget Sound board includes and is limited to King, Pierce, Snohomish and Kitsap counties, and the cities now or subsequently located within those counties; and

(c) The Western Washington board includes all counties and the cities now or subsequently located within those counties that are required or choose to plan under RCW 36.70A.040 and are located west of the crest of the Cascade mountains and are not included in the Central Puget Sound board boundaries;

(d) Skamania county, should it be required or choose to plan under RCW 36.70A.040 may elect to be included within the jurisdictional boundaries of the Western or Eastern Washington boards.

(2) Subject matter jurisdiction. Each board shall hear and determine petitions alleging that a state agency, county, or city is not in compliance with the requirements of the act, or chapter 43.21C RCW as it relates to plans, regulations, and amendments thereto adopted under the act; or, petitions from cities or the governor relating to an adopted county-wide planning policy; or, that the twenty-year growth management planning projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted.

(3) Jurisdictional issues. Any party to a proceeding before a board may, by motion, challenge the jurisdiction of that board in any petition for review. A board may, upon its own motion, raise such an issue.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-030, filed 10/15/92, effective 10/15/92.]

WAC 242-02-040 Definitions. As used in this title, the following terms shall have the following meaning:

(1) "Act" means chapter 17, Laws of 1990 1st ex. sess. and chapter 32, Laws of 1991 sp. sess., and subsequent amendments.

(2) "Board" means the Eastern Washington, Western Washington, or Central Puget Sound growth planning hearings board.

(3) "Hearing examiner" means an authorized agent of a board who has a demonstrated knowledge of land use planning and law, appointed to assist the board in the performance of its hearing function.

(4) "Joint boards" means the three independent boards meeting or acting jointly.

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

(6) "Petitioner" means a person, natural or otherwise, who appeals any matter to the board or who brings a petition for rule making.

(7) "Presiding officer" means any member of a board, or a hearing examiner, who is assigned to conduct a conference or hearing as directed by a board. The presiding officer shall have authority as provided by WAC 242-02-522.

(8) "Publication" means: (a) For a city, the date the city publishes the ordinance or summary of the ordinance adopting a comprehensive plan, development regulations or subsequent amendment, as is required to be published; (b) for a county, the date the county publishes the notice that it has adopted a comprehensive plan, development regulations, or subsequent amendments pursuant to RCW 36.70A.290(2).

(9) "Respondent" means a person who is named as a responding party in any petition for review before a board.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-040, filed 10/15/92, effective 10/15/92.]

WAC 242-02-050 Rules. These rules shall govern the joint boards' adoption or amendment of joint rules, and all practice and procedure for hearings before a board. Where a time frame is different in these rules from those in chapter 10-08 WAC, it is because a board is required by the act to issue a final order within one hundred eighty days of filing a petition for review.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-050, filed 10/15/92, effective 10/15/92.]

WAC 242-02-052 Petition for rule making. (1) Right to petition for rule making. Any person may petition the joint boards for the adoption, amendment, or repeal of any rule. Said petition shall be filed with the Central Puget Sound board's office in Seattle, Washington.

(2) Form of petition. The form of the petition for adoption, amendment, or repeal of any rule shall generally adhere to the following:

(a) A caption in the following form:

BEFORE THE JOINT GROWTH PLANNING
HEARINGS BOARDS
STATE OF WASHINGTON

No.

In the matter of
the Petition of PETITION FOR RULE MAKING
(Name of Petitioner)
for Rule Making

(b) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether the petitioner seeks the adoption of a new rule or rules, or amendment or repeal of an existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by board rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interests of the petitioner and the subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

(c) The petition shall be dated and signed by the person named in the first paragraph or by the petitioner's attorney. The original and nine copies shall be filed with the Central Puget Sound board at its office in Seattle, Washington.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-052, filed 10/15/92, effective 10/15/92.]

WAC 242-02-054 Petition for rule making—Consideration and disposition. (1) Each petition for the adoption, amendment, or repeal of a rule shall be considered by the joint boards, and the joint boards may, in their discretion, solicit comments or invite discussion concerning the matter prior to disposition of the petition.

(2) Consideration of petitions. All petitions shall be considered by the joint boards or representatives designated by each board, and the joint boards may, in their discretion, hold meetings for the further consideration and discussion of the requested adoption, amendment, or repeal of any rule.

(3) Notification of disposition of petition. The joint boards or designated representatives shall notify the petitioner within a reasonable time of the disposition, if any, of the petition.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-054, filed 10/15/92, effective 10/15/92.]

WAC 242-02-060 Computation of time. The time within which any act shall be done, as provided by these rules, shall be computed by excluding the first day and including the last, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it is excluded and the next succeeding day which is neither a Saturday, a Sunday, nor a legal holiday is included. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-060, filed 10/15/92, effective 10/15/92.]

WAC 242-02-070 Quorum. (1) Joint boards. For the purpose of adopting, amending or repealing these rules, at least two members of each board must concur.

(2) Individual board. For purposes of making orders or decisions or transacting other official business, two members of a board shall constitute a quorum and may act even though one position on the board is vacant. One member or designated hearing examiner may hold hearings and take testimony. The findings of such member or hearing examiner shall not become final until approved by a majority of the board in accordance with WAC 242-02-840. In instances of a tie vote, the procedures described in WAC 242-02-870 shall apply.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-070, filed 10/15/92, effective 10/15/92.]

WAC 242-02-072 Principal offices. The principal offices of each board are as follows:

- (1) Eastern Washington Growth
Planning Hearings Board
Suite 1118 Larson Building
6 South 2nd Street
Yakima, Washington 98901
(509) 454-7803
(509) 454-7292 FAX
- (2) Western Washington Growth
Planning Hearings Board
111 W. 21st Avenue - Suite 1
P.O. Box 40953
Olympia, Washington 98504-0953
(206) 664-8966
(206) 664-8975 FAX
- (3) Central Puget Sound Growth
Planning Hearings Board
2329 One Union Square
600 University Street
Seattle, Washington 98101-1129
(206) 389-2625
(206) 389-2588 FAX

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-072, filed 10/15/92, effective 10/15/92.]

WAC 242-02-074 Regular meetings. (1) Regular meetings of each board will be held at its principal office or designated location at the following times:

- (a) Eastern Washington board - every Tuesday at 10:30 a.m.
 - (b) Western Washington board - every Wednesday at 10:30 a.m.
 - (c) Central Puget Sound board at 10:00 a.m. on the second Thursday of each month.
- (2) The joint boards shall meet annually at a time and location to be announced.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-074, filed 10/15/92, effective 10/15/92.]

WAC 242-02-080 Form and size of documents. Documents other than exhibits shall be typewritten or printed, properly captioned, signed by the appropriate person submitting the same, shall include his/her address and telephone number, and shall be on 8-1/2 x 11 inch paper. Each board uses IBM compatible software. A board may request submission of a disk from a party, if appropriate.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-080, filed 10/15/92, effective 10/15/92.]

WAC 242-02-090 Case numbering. Each board shall assign a case number to each petition for review which shall be the official reference number for purposes of identification. The first two digits of the case number shall correspond to the last two digits of the calendar year in which the petition was filed. The third digit shall designate which board has jurisdiction over the matter. The Eastern Washington board shall use the digit "1"; the Western Washington board shall use the digit "2"; and the Central Puget Sound board shall use the digit "3." The last four digits shall be numbered sequentially in order of receipt.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-090, filed 10/15/92, effective 10/15/92.]

PRACTICE BEFORE A BOARD

WAC 242-02-110 Appearance and practice before a board—Who may appear. Practice before a board in hearings shall be open to the following persons who have met the standing requirements of chapter 36.70A RCW:

(1) A party to a case before the board may participate personally or, if the party is a corporation, organization, informal association, or other artificial person, by a duly authorized representative;

(2) Whether or not participating in person, any party may be advised and represented at the party's own expense by an attorney or, if permitted by provision of law, other representative;

(3) Attorneys at law practicing before the board must be duly qualified and entitled to practice in the courts of the state of Washington; and

(4) Other persons permitted by law.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-110, filed 10/15/92, effective 10/15/92.]

WAC 242-02-120 Rules of professional conduct. All persons appearing in proceedings before a board in a representative capacity shall conform to the rules of professional conduct required of attorneys before the courts of Washington. If any such person does not conform to such rules, the board may decline to permit such person to appear in a representative capacity in any current or future proceeding before that board or impose other appropriate sanctions.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-120, filed 10/15/92, effective 10/15/92.]

WAC 242-02-130 Ex parte communication. No one in a proceeding before a board shall make or attempt to make any improper ex parte communications with board members, hearing examiners, or presiding officers prohibited

by the Administrative Procedure Act, RCW 34.05.455. An ex parte communication is direct or indirect contact with board members or staff by only one party without notice and opportunity for all other parties to participate. To avoid the occurrence of any improper ex parte communications, written communication with the opposing parties copied or a telephone conference call to the board with all parties on-line are strongly suggested. Questions on purely procedural matters such as scheduling and logistics are permitted on an ex parte basis. Attempts by anyone to make such prohibited ex parte communications shall subject such person to the sanctions of WAC 242-02-120 and 242-02-720.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-130, filed 10/15/92, effective 10/15/92.]

WAC 242-02-140 Signing of pleadings, motions, and legal memoranda. Every pleading, motion, and legal memorandum of a party shall be dated and signed by the party or representative and include an address and telephone number.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-140, filed 10/15/92, effective 10/15/92.]

WAC 242-02-150 Teleconference proceeding. (1) At the discretion of a board or a presiding officer, or where the parties agree and where the rights of the parties will not be prejudiced, all or part of any hearing, prehearing, or motion hearing may be conducted by telephone, television, or other electronic means. Each party in the proceeding must have an opportunity to participate effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place.

(2) The board may require documentary evidence, motions, and briefs to be submitted sufficiently in advance of the teleconference proceeding to insure fair consideration and presentation of the issues. All such material shall also be served on other parties at the time of filing with a board.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-150, filed 10/15/92, effective 10/15/92.]

APPEAL PROCEDURE

WAC 242-02-210 Petition for review—Forms—Contents. A petition for review shall substantially contain:

(1) A caption in the following form:

BEFORE THE . . . GROWTH PLANNING
HEARINGS BOARD
STATE OF WASHINGTON

Petitioner,

Case No.

v.

PETITION FOR REVIEW

Respondent.

(2) Numbered paragraphs stating:

(a) Petitioner's name, mailing address, and telephone number and that of the representative, if any;

(b) Date of the order, determination, publication, action, or failure to act from which the appeal is taken;

(c) A detailed statement of issues presented for resolution by the board;

(d) A statement indicating the basis of the petitioner's standing before the board;

(e) The estimated length of the hearing;

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

(g) A statement that the petitioner has read the petition for review and believes the contents to be true, followed by the petitioner's signature or signature of his/her attorney or qualified representative, if any.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-210, filed 10/15/92, effective 10/15/92.]

WAC 242-02-220 Petition for review—Time for filing. (1) A petition relating to whether or not an adopted comprehensive plan, development regulation, or subsequent amendments, is in compliance with the goals and requirements of the act shall be filed with a board within sixty days from the date of publication by the legislative body of the county or city as specified by RCW 36.70A.290(2).

(2) A petition relating to an adopted county-wide planning policy shall be filed within sixty days of its adoption.

(3) For all other matters, a petition must be filed with a board within sixty days of the final written decision, order, determination, publication, or action being entered or within sixty days from the failure to act by a specific deadline.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-220, filed 10/15/92, effective 10/15/92.]

WAC 242-02-230 Petition for review—Service and filing. (1) The original and three copies of the petition for review shall be filed with a board personally, or by first class, certified, or registered mail. Filings may also be made with a board by telegraph or by electronic telefacsimile transmission as provided in WAC 242-02-240. A copy of the petition for review shall be served promptly upon all other named parties. When a county is a party, the county auditor shall be served in noncharter counties and the agent designated by the legislative authority in charter counties. The mayor, city manager, or city clerk shall be served when a city is a party. When the state of Washington is a party, the office of the attorney general shall be served at its main office in Olympia unless service upon the state is otherwise provided by law. Proof of service may be filed with the board pursuant to WAC 242-02-340.

(2) A board may dismiss a case for failure to substantially comply with subsection (1) of this section.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-230, filed 10/15/92, effective 10/15/92.]

WAC 242-02-240 Date of filing—Facsimile and telegraph. (1) The date of filing shall be the date of actual receipt by a board at its office. The date stamp placed on the petition shall be presumptive evidence of the date of receipt.

(2) Filing of any documents with a board by electronic telefacsimile transmission is at the risk of the sender and shall not be deemed complete unless the following procedures are strictly observed:

(a) A facsimile document will only be stamped "received" by the board between the hours of 8:00 a.m. and 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped received on the following business day. The date and time indicated by the board's facsimile shall be presumptive evidence of the date and time of receipt of transmission.

(b) The original document must be filed with the board within ten days from the date of transmission.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-240, filed 10/15/92, effective 10/15/92.]

WAC 242-02-250 Notice of appearance, answer and petition for cross review. (1) The respondent's representative shall file a notice of appearance with the board and serve a copy on the petitioner and all other parties promptly after having been served with a petition for review. The notice of appearance shall be dated, signed, and contain the representative's address and telephone and FAX numbers.

(2) The respondent, at its option, may file an answer to the petition for review. The respondent shall file the original and three copies with the board and serve a copy on the petitioner. Answers shall be filed no later than twenty days from the date of service of the petition for review. Answers shall be verified in the same manner as the petition for review.

(3) A respondent may file a petition for cross review. The respondent shall file the original and three copies with the board and serve a copy on all other parties within thirty days after the service of the petition for review or any amendment to the petition. The petition for cross review shall conform in all respects to the requirements for a petition for review.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-250, filed 10/15/92, effective 10/15/92.]

WAC 242-02-260 Amendments to petitions for review, answers and petitions for cross review. (1) A petition for review, answer or petition for cross review may be amended as a matter of right until thirty days after its date of filing.

(2) Thereafter any amendments shall be requested in writing by motion, and will be made only after approval by a board or presiding officer. Amendments shall not be freely granted and may be denied upon a showing by the adverse party of unreasonable and unavoidable hardship, or unless granting the same would adversely impact a board's ability to meet the time requirements of RCW 36.70A.300 for issuing a final order. The board may, upon motion of a party or upon its own motion, require a more complete statement of the nature of the claim or defense or any other matter stated in a pleading.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-260, filed 10/15/92, effective 10/15/92.]

WAC 242-02-270 Intervention. (1) Any person whose interest may be substantially affected by a proceeding before a board may by motion request status as an intervenor in the case.

(2) In determining whether a person qualifies as an intervenor, the presiding officer shall apply the civil rules of the superior courts of this state.

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

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

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

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

[Statutory Authority: RCW 36.70A.270(6), 92-21-034, § 242-02-270, filed 10/15/92, effective 10/15/92.]

WAC 242-02-280 Amicus. (1) Any person whose interest may be substantially affected by a proceeding before a board may by motion request status as an amicus in the case.

(2) In determining whether a person qualifies as an amicus, the presiding officer shall apply the rules of the appellate courts of this state.

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

[Statutory Authority: RCW 36.70A.270(6), 92-21-034, § 242-02-280, filed 10/15/92, effective 10/15/92.]

SERVICE OF PAPERS

WAC 242-02-310 Service of papers. (1) Parties filing pleadings, documents, exhibits, and other papers with a board shall also serve copies upon all attorneys or representatives of record and upon parties not represented.

(2) Service upon the representative shall be considered valid service for all purposes upon the party represented.

(3) Decisions or orders of the board shall be served upon the parties and their attorney or representative of record, if any.

[Statutory Authority: RCW 36.70A.270(6), 92-21-034, § 242-02-310, filed 10/15/92, effective 10/15/92.]

WAC 242-02-320 Method of service. Service of papers, specified in WAC 242-02-310(1) except original service, shall be made personally or by first class, registered, or certified mail, or by telegraph, or by facsimile transmission.

[Statutory Authority: RCW 36.70A.270(6), 92-21-034, § 242-02-320, filed 10/15/92, effective 10/15/92.]

WAC 242-02-330 Service of papers—When complete. (1) Papers required to be filed with a board shall be

deemed filed upon actual receipt during office hours at the board's office.

(2) All facsimile transmissions are sent at the risk of the sender. Service by facsimile shall be deemed complete only when the following procedure is observed:

(a) The original document must be filed with a board within ten days from the date of transmission.

(b) Facsimile confirmation of transmission.

(3) This section shall not extend any applicable time for appeal to a board nor extend the time for providing notice of appeal to any named party.

[Statutory Authority: RCW 36.70A.270(6), 92-21-034, § 242-02-330, filed 10/15/92, effective 10/15/92.]

WAC 242-02-340 Proof of service—Certificate. Where proof of service is required by this chapter, by statute, or upon a board's request, filing a copy of the papers with the board and serving copies upon all attorneys or representatives of record and upon parties not represented together with one of the following documents shall constitute proof of service:

(1) An acknowledgement of service;

(2) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon all parties or representatives of record in the proceeding by delivering a copy thereof in person to the named individuals;

(3) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon all parties of record in the case by:

(a) Mailing a copy, properly addressed with postage prepaid, to each party in the case or his/her attorney, authorized agent, or representative; or

(b) Telegraphing a copy, properly addressed with charges prepaid, to each party in the case or his/her attorney, authorized agent, or representative; or

(c) Transmitting a copy by electronic telefacsimile device, and on the same day mailing a copy to each party in the case or his/her attorney, authorized agent, or representative; or

(d) Depositing a copy, properly addressed with charges prepaid, with a commercial parcel delivery company or courier service.

[Statutory Authority: RCW 36.70A.270(6), 92-21-034, § 242-02-340, filed 10/15/92, effective 10/15/92.]

DISCOVERY AND SUBPOENA

WAC 242-02-410 Discovery—Limitation. (1) Discovery shall not be permitted unless all parties stipulate to it or upon an order of a board or its presiding officer.

(2) Insofar as applicable and not in conflict with this chapter, when discovery has been authorized by a board or presiding officer or when the parties have stipulated to it, the statutes and court rules regarding pretrial procedures in civil cases in superior courts of the state of Washington shall be used. Such statutes and rules shall include but shall not be limited to those rules pertaining to discovery of evidence by parties to civil actions.

(3) All stipulations by the parties allowing discovery must be in writing, shall contain deadlines for the completion of discovery and shall be filed with the board.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-410, filed 10/15/92, effective 10/15/92.]

WAC 242-02-420 Subpoena—Issuance. Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446. Every subpoena shall identify the party causing its issuance. Subpoenas may be issued by a board or by an attorney of record. The person issuing shall sign the subpoena. Parties desiring subpoenas to be signed by a board shall make a showing of relevance and reasonable scope of the testimony or evidence sought and shall prepare the subpoenas for issuance, send them to the board's office for signature, and, upon return, shall make arrangements for service.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-420, filed 10/15/92, effective 10/15/92.]

WAC 242-02-430 Subpoena—Form. Every subpoena shall name the board and the title and number of the case and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under that person's control at a specified time and place.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-430, filed 10/15/92, effective 10/15/92.]

WAC 242-02-440 Subpoena—Service. Service shall be made by delivering a copy of the subpoena to such person and tendering on demand, where the person is entitled to make a demand, the fees for one day's attendance and the mileage allowed by law. All costs, which include the cost of producing records, shall be paid by the party requesting issuance of the subpoena. A subpoena may be served by any suitable person at least eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy or by leaving such copy at his/her office or place of residence.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-440, filed 10/15/92, effective 10/15/92.]

WAC 242-02-450 Subpoena—Proof of service. Proof of service and the required return affidavit shall be filed with the board.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-450, filed 10/15/92, effective 10/15/92.]

WAC 242-02-460 Subpoena—Quash or modification. If the subpoena issued is unreasonable or requires evidence not relevant to any matter in issue, a board or presiding officer may quash or modify the subpoena. The person who received the subpoena may bring a motion to quash or modify at or before the time specified in the subpoena for compliance and must provide notice to the party who issued the subpoena.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-460, filed 10/15/92, effective 10/15/92.]

WAC 242-02-470 Subpoena—Geographical scope. Attendance of witnesses and production of evidence may be

required from any place in the state of Washington at any designated place of hearing.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-470, filed 10/15/92, effective 10/15/92.]

PROCEDURES PRIOR TO HEARING

WAC 242-02-510 Hearing—Setting of time and place. (1) Within ten days of the filing of a petition for review, a board or presiding officer will schedule a hearing date and notify the parties of the date.

(2) The board or presiding officer will thereafter schedule a place for the hearing.

(3) A written notice of the date and location of the hearing shall be sent to all parties not less than twenty days prior to the hearing date.

(4) The notice shall identify the appeal to be heard, the names of the parties to the appeal and their representatives, if any, and shall specify the time and place of hearing. The notice shall include the information specified in RCW 34.05.434 and if the hearing is to be conducted by teleconference call the notice shall so state.

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

(6) The notice may also include an order fixing the prehearing date and/or deadlines as provided in these rules.

(7) Defects in notice may be waived if the waiver is knowing and voluntary.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-510, filed 10/15/92, effective 10/15/92.]

WAC 242-02-520 Record. (1) Within thirty days of service of a petition for review, the respondent shall file with the board and serve a copy on petitioner(s) of an index of all material used in taking the action which is the subject of the petition for review. The index shall contain sufficient identifying information to enable unique documents to be distinguished. In addition, the written or tape recorded record of the legislative proceedings where action was taken shall be available to the petitioner for inspection.

(2) Unless otherwise directed by the board or presiding officer, within fifty days of the filing of the petition for review, each of the parties shall identify those documents listed in the index which the party intends to use as an exhibit. The documents identified in this stage shall be labeled "preliminary list of exhibits." The preliminary list of exhibits shall be filed with the board and a copy served on all parties. In complying with the requirements of this subsection, parties shall not simply designate every document but shall carefully review the index, and designate only those documents that are reasonably necessary for a full and fair determination of the issues presented.

(3) The board or the presiding officer shall establish a deadline for identifying and filing a final list of exhibits with the board and serving a copy on all other parties. A copy of any document listed on the final list of exhibits shall be

served on the opposing party or parties by the time specified by the board or presiding officer. One copy of each document shall also be filed with the presiding officer to be used as an "original" exhibit. Prior to the beginning of a hearing, each of the parties shall also provide the board with three copies (four copies if a hearing examiner is the presiding officer) of each document being offered as an exhibit.

(4) Copies of designated documents from the index that have been certified or stipulated to be true and accurate may be admitted into evidence before a board in lieu of the original document.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-520, filed 10/15/92, effective 10/15/92.]

WAC 242-02-522 Presiding officer—Powers and duties. It shall be the duty of the presiding officer to conduct conferences or hearings as directed by a board in an impartial and orderly manner. The presiding officer shall have the authority, subject to the other provisions of the act or these rules to:

(1) Inspect the petition for review to determine whether, on its face, compliance with the jurisdictional and standing requirements of the act is shown, and if compliance is not shown, to recommend an action or to refer the issue to the full board for resolution;

(2) Administer oaths and affirmations;

(3) Issue subpoenas as provided in RCW 34.05.446;

(4) Rule on all procedural matters, objections, and motions unless a board determination is required;

(5) Rule on all offers of proof and receive relevant evidence;

(6) Question witnesses called by the parties in an impartial manner as needed to develop any facts he or she deems necessary to fairly and adequately decide the issue;

(7) Secure and present in an impartial manner such evidence, in addition to that presented by the parties, as deemed necessary to fairly and equitably decide the issue;

(8) Take appropriate action with respect to the representatives for the parties appearing before a board;

(9) Issue orders joining other parties, on motion of any party or on his/her own motion, when it appears that such other parties may have an interest in, or may be affected by, the case;

(10) Consolidate cases for hearing when such consolidation will expedite disposition and avoid duplication of testimony and when consolidation will not unduly prejudice the rights of any party;

(11) Hold conferences for the settlement or amplification of the issues;

(12) Regulate the course of the case prior to and during the hearing;

(13) Encourage the parties to stipulate to the admissibility of documents in advance of a hearing and to rule on issues concerning the content of the record;

(14) Waive any requirement of these rules unless a party shows that it would be prejudiced by such a waiver; and

(15) Take any other action necessary and authorized by these rules or the act.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-522, filed 10/15/92, effective 10/15/92.]

WAC 242-02-530 Motions—Requirements. (1) A motion is an application for an order or ruling. Every motion shall be in writing, unless made during a hearing; shall state with particularity the grounds; and shall set forth the relief or order sought. An original and three copies of the motion shall be filed with a board and a copy served on the opposing party/parties.

(2) All motions shall be properly captioned and signed by the moving party, its attorney, or other representative.

(3) The motion shall specify the amount of time required for argument, whether appearance by telecommunication is requested, and the names and telephone numbers of all parties served with the motion.

(4) Dispositive motions on a limited record, similar to a motion for summary judgment in superior court or a motion on the merits in the appellate courts, are permitted. Time frames for making and responding to such a motion shall be established by the presiding officer.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-530, filed 10/15/92, effective 10/15/92.]

WAC 242-02-532 Motions—Time for filing and hearing. (1) A motion can be filed at any time unless otherwise specified in these rules or by a board or presiding officer.

(2) After prehearing or other order. If a prehearing order or other order has been entered establishing a deadline for filing motions, no written motion may be filed after the date specified in the order without written permission of the board or presiding officer.

(3) A board or presiding officer, after taking into consideration when the motion was received and the complexity of the issues raised, may in its discretion, schedule a hearing for argument of a motion at the time of a prehearing conference or at a separate hearing time, or may defer consideration of the motion until commencement of the hearing on the petition for review. A board or presiding officer may also limit argument on a motion to briefs.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-532, filed 10/15/92, effective 10/15/92.]

WAC 242-02-534 Response to motions. (1) A party served with a motion shall have ten days from the date of receipt of the motion to respond to it, unless otherwise directed by the presiding officer. A response to the motion shall be filed with a board and a copy served on the opposing party/parties.

(2) The response shall specify the amount of time required for argument, whether appearance by telecommunication is requested, and the names and telephone numbers of all parties served with the response.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-534, filed 10/15/92, effective 10/15/92.]

WAC 242-02-540 New or supplemental evidence. A party by motion may request that a board allow such additional evidence as would be necessary or of substantial assistance to the board in reaching its decision, and shall state its reasons. A board may at any time prior to, during, or after the hearing order that new or supplemental evidence be provided.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-540, filed 10/15/92, effective 10/15/92.]

WAC 242-02-550 Prehearing conference. A prehearing conference is optional at the discretion of the presiding officer. The purpose of a prehearing conference is to:

- (1) Determine the feasibility of and encourage settlement of the matter or any portion thereof;
- (2) Obtain a stipulation of facts to show a board's jurisdiction and the party's standing in the matter;
- (3) Obtain agreement as to the issues of law and fact presented and their simplification, limitation, or resolution;
- (4) Determine the possibility of obtaining admissions of fact and authenticity of documents which will avoid unnecessary proof;
- (5) Determine the admissibility of exhibits;
- (6) Determine the qualifications of expert witnesses;
- (7) Receive any motions concerning qualification of individual board members to hear the matter;
- (8) Obtain stipulation as to all or a part of the facts or documents involved in the case;
- (9) Obtain information as to the number of expert and/or lay witnesses expected to be called by the parties and their names, addresses, and telephone numbers, if the board has previously authorized supplemental or additional evidence to be presented at the hearing;
- (10) Set subsequent deadlines if appropriate, for filing final exhibit and witness lists, filing motions, and completing discovery; establish a briefing schedule, limit the length of briefs; and decide other matters related to the conduct of the hearing;
- (11) Determine the approximate time necessary for the presentation of evidence and/or argument of the respective parties; and
- (12) Obtain all other information which may aid in the prompt disposition of the matter.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-550, filed 10/15/92, effective 10/15/92.]

WAC 242-02-552 Prehearing conference—When held. (1) A board or presiding officer may order a prehearing conference on not less than seven days notice mailed to each party at a time and place fixed by a board or presiding officer.

(2) At any time prior to a hearing on a petition for review, any party may file a written application with a board requesting a prehearing conference.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-552, filed 10/15/92, effective 10/15/92.]

WAC 242-02-554 Prehearing conference—Documentary evidence. (1) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of the Administrative Procedure Act and WAC 242-02-650.

(2) Where applicable, the presiding officer may order:

(a) That all documentary evidence which is to be offered during the hearing be submitted to the board and to other parties sufficiently in advance to permit study and preparation of cross-examination and rebuttal evidence;

(b) That documentary evidence not submitted as required in (a) of this subsection not be received in evidence in the absence of a clear showing that the offering party had good cause for the failure to produce the evidence sooner, unless it is submitted for impeachment or rebuttal purposes.

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

(3) The presiding officer may limit the documentary evidence to that identified on a final list of exhibits. A party may submit additional documentary evidence at the time of hearing only upon a showing of good cause.

(4) When only portions of a document are to be relied upon, the offering party shall adequately identify and prepare the pertinent excerpts and shall supply copies of such excerpts to the presiding officer and to the other parties. However, the whole of the original document shall be made available for examination and for use by all parties to the proceeding.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-554, filed 10/15/92, effective 10/15/92.]

WAC 242-02-556 Prehearing conference—Failure to supply information. If any party fails to supply the information reasonably necessary and required at the time of the prehearing conference, or as directed in a prehearing order, a board or presiding officer may subsequently limit the receipt of such party's evidence.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-556, filed 10/15/92, effective 10/15/92.]

WAC 242-02-558 Prehearing conference—Agreements. At the conclusion of a prehearing conference, the presiding officer may require the parties to submit a proposed prehearing order. The presiding officer will issue an order reciting the action taken at the conference and any agreements of the parties or decisions of the presiding officer. The order may include provisions pertaining to:

- (1) Jurisdiction and standing;
 - (2) Issues;
 - (3) Admissions;
 - (4) Witnesses;
 - (5) Time and location of hearings;
 - (6) Authenticity and/or admissibility of exhibits;
 - (7) Qualification of witnesses;
 - (8) Issues remaining;
 - (9) Rulings of the board prior to the prehearing conference;
 - (10) Rulings of the presiding officer; and
 - (11) Any other matters that may expedite the hearing.
- Any objection to such order shall be made in writing within seven days after the date the order is mailed. The order shall control subsequent proceedings unless modified for good cause by a subsequent order.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-558, filed 10/15/92, effective 10/15/92.]

WAC 242-02-560 Hearing—Continuances. Because of the provisions of RCW 36.70A.300, continuances and extensions of time will be granted only on a board's initiative or upon timely request of a party setting forth in detail the reasons for such a request and a date by which such reason will no longer apply. In the latter instance, the board will continue or extend the matter only upon a finding of good cause and in order to prevent manifest injustice.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-560, filed 10/15/92, effective 10/15/92.]

WAC 242-02-570 Briefs. A party may, at its own option or when directed by a board or presiding officer, submit a brief on one or more issues. The original and three copies of briefs shall be filed with a board at least five business days prior to the hearing unless otherwise provided by a board or presiding officer. When briefs are filed, a copy shall also be served on all other parties. A board or presiding officer may permit or require the filing of additional briefs. Clarity and brevity are expected, to assist a board in meeting its statutorily imposed time limits.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-570, filed 10/15/92, effective 10/15/92.]

WAC 242-02-580 Stipulation to the facts. Upon stipulation by all parties, or upon order of a board, that no facts are at issue, a matter may be submitted to a board or presiding officer for determination without additional testimony being taken. The board or presiding officer, in its discretion, may require additional testimony.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-580, filed 10/15/92, effective 10/15/92.]

WAC 242-02-582 Waiver of parties' appearance. Upon stipulation by all parties, or upon order of the board, a matter may be submitted to a board or presiding officer without oral argument or appearance. The board or presiding officer, in its discretion, may require appearance for oral argument.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-582, filed 10/15/92, effective 10/15/92.]

HEARING PROCEDURE

WAC 242-02-610 Hearing—Testimony under oath—Interpreters. (1) All testimony to be considered by a board or presiding officer shall be sworn, and each person shall swear or affirm that the testimony to be given shall be the truth, the whole truth, and nothing but the truth, or according to the provisions of RCW 5.28.020 through 5.28.060.

(2) Every interpreter shall, before beginning to interpret, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the presiding officer, in the English language, to the best of the interpreter's skill and judgment.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-610, filed 10/15/92, effective 10/15/92.]

WAC 242-02-612 Hearing—Interpreters. The provisions of WAC 10-08-150 are incorporated by reference herein.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-612, filed 10/15/92, effective 10/15/92.]

WAC 242-02-620 Hearing—Reporting—Recording—Recording devices. (1) All hearings shall be officially recorded by manual, electronic, or other type of recording device.

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

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-620, filed 10/15/92, effective 10/15/92.]

WAC 242-02-630 Presumption of validity. Comprehensive plans and development regulations and any subsequent amendments adopted under the act are presumed valid upon adoption.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-630, filed 10/15/92, effective 10/15/92.]

WAC 242-02-632 Burden of proof. The burden of proof shall be on the petitioner to show that respondent's action or failure to act is not in compliance with the requirements of the act.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-632, filed 10/15/92, effective 10/15/92.]

WAC 242-02-634 Standard of proof. A board shall find compliance unless it finds by a preponderance of the evidence that the respondent erroneously interpreted or applied the act.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-634, filed 10/15/92, effective 10/15/92.]

WAC 242-02-640 Hearing—Procedures at hearing. (1) Presiding officer. All hearings shall be conducted by a presiding officer who shall conduct the hearing in an orderly manner and rule on all procedural matters, objections, and motions.

(2) Order of presentation of evidence. The presiding officer shall determine the proper order of presentation of evidence.

(3) Opening statements. Unless the presiding officer rules otherwise, parties may present oral opening statements setting out briefly a statement of the basic facts and issues of the case.

(4) Objections. Objection to the admission or exclusion of evidence shall state briefly the legal ground of objection.

(5) Rulings. The presiding officer, on objection or on his/her own motion, shall exclude all irrelevant or unduly repetitious evidence. All rulings upon objections to the admissibility of evidence shall be made in accordance with WAC 242-02-650.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-640, filed 10/15/92, effective 10/15/92.]

WAC 242-02-650 Rules of evidence—Admissibility criteria. (1) All relevant evidence, including hearsay evidence, is admissible if, in the opinion of the presiding officer, the offered evidence is the kind of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The presiding officer shall exclude evidence that is irrelevant, immaterial, or unduly repetitious.

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

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

(4) Documentary evidence may be submitted in the form of copies or excerpts, or by incorporation by reference.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-650, filed 10/15/92, effective 10/15/92.]

WAC 242-02-660 Official notice—Matters of law. A board or presiding officer may officially notice:

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

(2) State law. The Constitution of the state of Washington; decisions of the state courts; acts of the legislature, resolutions, records, journals, and committee reports; decisions of administrative agencies of the state of Washington; executive orders and proclamations by the governor; and all rules, orders, and notices filed with the code reviser.

(3) Counties and cities. Ordinances and resolutions enacted by cities, counties, or other municipal subdivisions of the state of Washington.

(4) Governmental organization. Organization, territorial limitations, officers, departments and general administration of the government of the state of Washington, the United States, the several states, federally recognized Indian tribes, and foreign nations.

(5) Growth planning hearings boards. Orders and decisions of any board.

(6) Joint boards. Rules of practice and procedure.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-660, filed 10/15/92, effective 10/15/92.]

WAC 242-02-670 Official notice—Material facts. In the absence of conflicting evidence, a board or presiding officer, upon request made before or during a hearing, may officially notice:

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

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

permitted by law to be made by any federal or state officer, department, or agency.

(3) Request. Any party may request, orally or in writing, that official notice be taken of a material fact. The board or presiding officer may take official notice of a material fact on its own initiative. If official notice of a material fact is taken, it shall be clearly and precisely stated and made part of the record.

(4) Statement. Where a decision of a board rests in whole or in part upon official notice of a material fact, such fact shall be clearly and precisely stated in such decision. In determining whether to take official notice of material facts, the presiding officer may consult any source of pertinent information, whether or not furnished by any party and whether or not admissible under the rules of evidence.

(5) Objection to taking of official notice. Any party may object to a request that official notice of a material fact be taken, when the request is made.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-670, filed 10/15/92, effective 10/15/92.]

WAC 242-02-680 Hearings—Board questions. A hearing examiner or any member of a board may, at any time during the hearing, ask clarifying questions as necessary to understand the evidence.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-680, filed 10/15/92, effective 10/15/92.]

DISPOSITION OF CASES PRIOR TO HEARING

WAC 242-02-710 Failure to attend—Default or dismissal—Setting aside. (1) When a party to a proceeding has, after proper notice, failed to attend a hearing or any other matter before a board or presiding officer, a motion for default or dismissal may be sought by any party to the case or raised by a board or presiding officer upon its own motion. Any order granting the motion shall include a statement of the grounds for the order and shall be served upon all parties to the case.

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

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-710, filed 10/15/92, effective 10/15/92.]

WAC 242-02-720 Dismissal of action. Any action may be dismissed by a board:

(1) When all parties stipulate;

(2) Upon motion of the petitioner or respondent prior to the presentation of the respondent's case;

(3) Upon motion by the respondent alleging that the petitioner has failed to prosecute the case, failed to comply with these rules, or failed to follow any order of the board; or

(4) Upon a board's own motion for failure by the parties to comply with these rules or any order of the board.

[Statutory Authority: RCW 36.70A.270(6), 92-21-034, § 242-02-720, filed 10/15/92, effective 10/15/92.]

DISPOSITION OF PETITIONS FOR REVIEW AFTER HEARING

WAC 242-02-810 Presentation of post hearing matters. Unless requested by or authorized by a board, no post hearing evidence, documents, briefs, or motions will be accepted. A board may request submission of proposed findings of fact, conclusions of law, and final order from any or all parties.

[Statutory Authority: RCW 36.70A.270(6), 92-21-034, § 242-02-810, filed 10/15/92, effective 10/15/92.]

WAC 242-02-820 Disposition of petition for review. Disposition of a petition for review by a board shall be by final decision and order pursuant to WAC 242-02-830, or by initial decision and order pursuant to WAC 242-02-840 through 242-02-870 followed by issuance of a final decision and order.

[Statutory Authority: RCW 36.70A.270(6), 92-21-034, § 242-02-820, filed 10/15/92, effective 10/15/92.]

WAC 242-02-830 Disposition of petition for review—Final decision and order. (1) When the hearing on the petition for review has been heard by a majority of a board, a written final decision and order containing appropriate findings and conclusions, that is concurred in by at least two members, may be issued.

(2) After issuance of a final decision under this section, any party may file a petition for reconsideration with a board. Such petition must be filed within ten days of mailing of the final decision. The original and three copies of the petition for reconsideration shall be filed with the board. At the same time, copies shall be served on all parties of record. A board may require other parties to supply an answer which shall be served in a like manner.

(3) The filing of a petition for reconsideration shall suspend the final decision of a board until the petition is denied or a modified decision is entered by the board.

(4) In response to a petition for reconsideration, the board may deny the petition, modify its decision, or reopen the hearing. A petition is deemed denied unless the board takes action within twenty days of filing of the petition or answer where a board has required other parties to provide such an answer pursuant to subsection (2) of this section.

(5) A decision in response to the petition for reconsideration shall constitute a final decision and order for purposes of judicial review. Copies of the final decision and order shall be mailed by the board to each party or to its attorney or representative of record.

[Statutory Authority: RCW 36.70A.270(6), 92-21-034, § 242-02-830, filed 10/15/92, effective 10/15/92.]

WAC 242-02-840 Disposition of petition for review—Initial decision and order. When a hearing on the matter has been heard by less than the majority of a board, or when less than a majority of a board concurs in a matter, or when a board may otherwise elect to do so, the board shall prepare a written initial decision and order containing

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appropriate findings and conclusions and mail copies to the parties.

[Statutory Authority: RCW 36.70A.270(6), 92-21-034, § 242-02-840, filed 10/15/92, effective 10/15/92.]

WAC 242-02-850 Disposition of initial decision—Exceptions. (1) Time for filing. Within ten days from the date of mailing of the initial decision and order, any party may file with a board an original and three copies of a written statement of exceptions and shall serve a copy on all other parties.

(2) The statement shall set forth the grounds for exception in detail and the party or parties filing the same shall be deemed to have waived all objections for irregularities not specifically set forth. A general exception to findings of fact on the ground that the weight of evidence is to the contrary shall not be considered sufficient compliance with this requirement, unless the exception shall refer to the evidence relied upon. If legal issues are involved, the statement of exception shall set forth the legal theory relied upon, citations of authority and supporting argument. The statement of exceptions should also contain proposed findings of fact or conclusions of law as appropriate, covering the factual and legal issues to which exceptions are being taken.

(3) Reply to exceptions. Any party may, within ten days of service, submit a written reply to exceptions. A board may, on its own motion, require the parties to submit written briefs or to appear and present oral argument regarding the matters on which exceptions were taken.

(4) Exceptions to rulings. If an exception is taken to a ruling or rulings of a presiding officer sustaining an objection to admissibility of evidence, or denying a continuance for the presentation of further evidence, and a board determines that the ruling or rulings were erroneous, the board may: (a) Return the case to the presiding officer with appropriate instructions, or (b) open the matter for further argument and decision by the board itself.

[Statutory Authority: RCW 36.70A.270(6), 92-21-034, § 242-02-850, filed 10/15/92, effective 10/15/92.]

WAC 242-02-860 Disposition of petition for review—Finality of initial decision and order. In the event no statement of exception is filed by any party, the proposed decision and order of the presiding officer may be adopted by a board and become the final decision and order of the board. Such adoption of the proposed decision and order shall be the final decision of a board for purposes of judicial review.

[Statutory Authority: RCW 36.70A.270(6), 92-21-034, § 242-02-860, filed 10/15/92, effective 10/15/92.]

WAC 242-02-870 Disposition of petition for review—Final decision and order—Exceptions filed. After the filing of a statement or statements of exception and reply, if any, and the filing of briefs or presentation of oral argument, if required, the record before a board or presiding officer shall be considered by at least two members of the board; provided that if those two members do not agree on a decision, the third member must consider the record before the board; and further provided, that if no two members can

agree on a decision in any case, the governmental action giving rise to the petition for review will stand.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-870, filed 10/15/92, effective 10/15/92.]

WAC 242-02-880 Disposition of petition for review—Transcripts. The following shall be the policy of each board with regard to transcription of the record:

(1) If less than two members of a board are present at the hearing and if exceptions to the proposed decision and order of the board or presiding officer have been timely filed as provided by WAC 242-02-850, the board may order a transcript or copy of an electronic recording. Any party may obtain a copy upon payment of the reasonable costs thereof.

(2) A board, in its discretion, may at any time cause a transcript to be printed.

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

(4) When an appeal is taken from any final decision and order of a board to the Superior Court of Thurston County, the appealing party is responsible for ordering and paying for the transcript of the hearing.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-880, filed 10/15/92, effective 10/15/92.]

WAC 242-02-890 Postdecision hearing—Determination of compliance or noncompliance with final order. (1) In those cases where a board finds that a state agency, county, or city is not in compliance with the requirements of the act, the board shall remand the matter to the affected state agency, county, or city, specifying a reasonable time not in excess of one hundred eighty days within which the state agency, county, or city shall comply.

(2) After the compliance deadline specified in subsection (1) of this section, a board on its own motion or on the motion of a party shall schedule a hearing for the purpose of determining compliance. The time and place of the compliance hearing shall be at the discretion of a board but shall be given the highest priority of business.

(3) Once a motion for a compliance hearing has been filed, a board shall schedule and conduct the hearing and issue a finding of compliance or noncompliance within forty-five days of the filing of the motion under subsection (2) of this section.

(4) If the board finds that the respondent is not in compliance, the board shall transmit its finding to the governor. A board may recommend to the governor that sanctions authorized by the act be imposed.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-890, filed 10/15/92, effective 10/15/92.]

WAC 242-02-892 Appeals of a board's final decision and order. Any party aggrieved by a final decision of a board may appeal the decision to Thurston County Superior Court within thirty days of issuance of the final order of the board.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-892, filed 10/15/92, effective 10/15/92.]

DECLARATORY RULINGS

WAC 242-02-910 Petitions for declaratory ruling.

(1) Any person may petition a board for a declaratory ruling about the applicability to specific circumstances of a rule, order, or statute within a board's jurisdiction. The petition shall set forth facts and reasons on which the petition relies to show:

(a) That uncertainty necessitating resolution exists;

(b) That there is actual controversy arising from the uncertainty such that a declaratory ruling will not be merely an advisory opinion;

(c) That the uncertainty adversely affects the petitioner;

(d) That the adverse effect of uncertainty outweighs any adverse effects on others or on the general public that may likely arise from the order requested; and

(e) That the petition complies with any additional requirements established by the board.

(2) Form of the petition. The form of the petition for declaratory ruling shall generally adhere to the following:

(a) A caption in the following form:

BEFORE THE GROWTH PLANNING
HEARINGS BOARD
STATE OF WASHINGTON

No.

In the matter of
the Petition of
(name of Petitioner)
for a Declaratory
Ruling

PETITION FOR
DECLARATORY RULING

(b) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall set out the state of facts relied upon in form similar to that applicable to complaints in civil actions before superior courts of this state. The concluding paragraphs shall contain the relief requested. The petition shall be subscribed and verified in the manner prescribed for certification of petitions in these rules.

(c) The original and three copies shall be filed with the board.

(3) Consideration of petition. A board shall consider the petition and within thirty days shall:

(a) Issue a nonbinding declaratory ruling;

(b) Notify the petitioner that no declaratory ruling is to be issued; or

(c) Set a time and place for a hearing or for submission of written evidence on the matter, which shall occur within ninety days of the receipt of the petition, and give at least seven days notification to the petitioner of the time and place for such hearing or submission and of the issues involved.

(4) Disposition of petition. If the hearing is held or evidence is submitted as provided in subsection (3)(c) of this section, a board shall, within a reasonable time:

(a) Issue a binding declaratory ruling; or

(b) Issue a nonbinding declaratory ruling; or

(c) Notify the petitioner that no declaratory ruling is to be issued.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-910, filed 10/15/92, effective 10/15/92.]

WAC 242-02-920 Declaratory ruling—Notice to other persons. Within fifteen days after receipt of a petition for declaratory order, a board or presiding officer shall give notice of the petition to all persons to whom notice is required by law, and may give notice to any other person it deems desirable.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-920, filed 10/15/92, effective 10/15/92.]

WAC 242-02-930 Declaratory ruling—Disposition of petition. A declaratory ruling entered by a board or a decision by a board to decline to enter a declaratory ruling shall be in writing and shall be served upon the petitioner and all other persons described in RCW 34.05.240(3). A decision issued shall be considered a final decision for purposes of judicial review.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-930, filed 10/15/92, effective 10/15/92.]

Chapter 242-04 WAC PUBLIC RECORDS

WAC

242-04-010	Purpose.
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242-04-090	Responses to requests for public records.
242-04-100	Copying.
242-04-110	Exemptions.
242-04-120	Review of denials of public records requests.
242-04-130	Protection of public records.
242-04-140	Records index.
242-04-150	Adoption of form.

WAC 242-04-010 Purpose. The purpose of this chapter is to ensure compliance by each board and the joint boards with the provisions of chapter 42.17 RCW, and in particular with RCW 42.17.250 through 42.17.340, dealing with public records.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-04-010, filed 10/15/92, effective 10/15/92.]

WAC 242-04-020 Definitions. (1) "Board" means the Eastern Washington, Western Washington, or Central Puget Sound growth planning hearings board. Each is a quasi-judicial body created pursuant to chapter 36.70A RCW. Where appropriate the term board also refers to the staff and employees of each board.

(2) "Joint boards" means the three independent boards meeting or acting jointly.

(3) "Public record" means any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function

prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

(4) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion pictures, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-04-020, filed 10/15/92, effective 10/15/92.]

WAC 242-04-030 Description of organization and public meetings. (1) Each board is an independent agency of the state of Washington, composed of three members appointed by the governor. Each board elects an administrative chairperson from its members at least annually.

(2) The administrative chairpersons constitute the administrative committee of the joint boards. The administrative committee elects an administrative chairperson from its members at least annually.

(3) Regular meetings of each board will be held at its principal office or other designated location at the following times:

(a) Eastern Washington board - every Tuesday at 10:30 a.m.

(b) Western Washington board - every Wednesday at 10:30 a.m.

(c) Central Puget Sound board at 10:00 a.m. on the second Thursday of each month.

(4) The joint boards shall meet annually at a time and location to be announced.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-04-030, filed 10/15/92, effective 10/15/92.]

WAC 242-04-040 Public records available. All public records of each board and of the joint boards are available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 42.17.310 and other laws.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-04-040, filed 10/15/92, effective 10/15/92.]

WAC 242-04-050 Communications with each board or the joint boards. (1) All communications with a board, including but not limited to the submission of materials pertaining to its operations and/or administration or enforcement of chapter 42.17 RCW and these rules, requests for copies of each board's decisions, and other matters, shall be addressed to the appropriate board's office as follows:

- (a) Eastern Washington Growth
Planning Hearings Board
Suite 1118 Larson Building
6 South 2nd Street
Yakima, Washington 98901
(509) 454-7803
(509) 454-7292 FAX

(b) Western Washington Growth
Planning Hearings Board
111 W. 21st Avenue - Suite 1
P.O. Box 40953
Olympia, Washington 98504-0953
(206) 664-8966
(206) 664-8975 FAX

(c) Central Puget Sound Growth
Planning Hearings Board
2329 One Union Square
600 University Street
Seattle, Washington 98101-1129
(206) 389-2625
(206) 389-2588 FAX

(2) All communications with the joint boards shall be addressed in care of the Western Washington board.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-04-050, filed 10/15/92, effective 10/15/92.]

WAC 242-04-060 Public records officer. (1) The administrative chairperson of each board, or his/her designee, shall be in charge of the public records.

(2) The administrative chairperson of the joint boards, or designee, shall be in charge of the public records for the joint boards.

(3) Such persons shall be responsible for implementation of these rules and regulations regarding release of public records, and generally assuring compliance with the public records disclosure requirements of chapter 42.17 RCW, and in particular RCW 42.17.250 through 42.17.340.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-04-060, filed 10/15/92, effective 10/15/92.]

WAC 242-04-070 Office hours. Public records shall be available for inspection and copying during the customary office hours of each board. For the purposes of this chapter, the customary office hours shall be from 8:00 a.m. to noon and from 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding legal holidays.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-04-070, filed 10/15/92, effective 10/15/92.]

WAC 242-04-080 Requests for public records. In accordance with the provisions of chapter 42.17 RCW, that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied, or copies of such records may be obtained, by members of the public upon compliance with the following procedures:

(1) A request shall be made in writing upon a form prescribed by a board or the joint boards which shall be available at its office. A completed form shall be presented to that board or to any member of the board's staff at the office of the board during customary office hours. The request shall include the following information:

(a) The name and address of the person requesting the record and the organization represented, if any;

(b) The time of day and calendar date on which the request was made;

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(c) A description of the material requested;

(d) If the matter requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index;

(e) If the requested matter is not identifiable by reference to a current index, an appropriate identification of the record requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the board or staff member to whom the request is made to assist the member of the public in appropriately identifying the public record requested.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-04-080, filed 10/15/92, effective 10/15/92.]

WAC 242-04-090 Responses to requests for public records. Within five business days of receiving a public record request, a board must respond by either:

(1) Providing the record;

(2) Acknowledging that the board has received the request and providing a reasonable estimate of the time the board will require to respond to the request. Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, a board may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the board need not respond to it; or

(3) Denying the public record request.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-04-090, filed 10/15/92, effective 10/15/92.]

WAC 242-04-100 Copying. No fee shall be charged for the inspection of public records. Each board shall charge a reasonable fee for providing copies of public records and for use of each board's photocopy equipment. The charge is the amount necessary to reimburse each board for its actual costs incident to such copying.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-04-100, filed 10/15/92, effective 10/15/92.]

WAC 242-04-110 Exemptions. (1) Each board reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 242-04-080 is exempt under the provisions of RCW 42.17.310 including but not limited to the following:

(a) Personal information in files maintained for members and employees of a board to the extent that disclosure would violate their right to privacy;

(b) Preliminary drafts, notes, recommendations, and intra-agency memoranda in which opinions are expressed or policies formulated or recommended, except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action;

(c) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant;

(d) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(2) Pursuant to RCW 42.17.260, each board reserves the right to delete identifying details when it makes available or publishes any public records, in all cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 42.17 RCW. Each board will fully justify such deletion in writing.

(3) All public records otherwise exempt by law shall be considered exempt under the provision of these rules.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-04-110, filed 10/15/92, effective 10/15/92.]

WAC 242-04-120 Review of denials of public records requests. Any person who objects to a denial of a public records request or who objects to the reasonableness of the estimate of the time a board requires to respond to a public records request, shall petition the superior court in the county in which the record is maintained under the provisions of RCW 42.17.340.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-04-120, filed 10/15/92, effective 10/15/92.]

WAC 242-04-130 Protection of public records. In order to protect the public records in the custody of each board or joint boards, the following guidelines shall be followed by any person inspecting such public records:

- (1) No public records shall be removed from the office;
- (2) Inspection of any public record shall be conducted in the presence of a board member or his/her designee;
- (3) No public record may be marked or defaced in any manner during inspection;
- (4) Public records which are maintained in the file jacket, or in chronological order, may not be dismantled except for purpose of copying, and then only by a board member or designee;
- (5) Access to file cabinets, shelves, vaults, and other storage locations is restricted to board members and staff.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-04-130, filed 10/15/92, effective 10/15/92.]

WAC 242-04-140 Records index. (1) Index. Each board and the joint boards has available to all persons a current index which provides identifying information as to records which have been issued, adopted, or promulgated since May 15, 1992, as follows:

- (a) Final orders, including concurring and dissenting opinions, made in the adjudication of cases;
- (b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by a board;
- (c) Administrative staff manuals and instructions to staff that affect a member of the public;
- (d) Board planning policies and goals, and interim and final planning decisions;

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(e) Factual staff reports and studies, a consultant's factual reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with a board relating to any regulations, supervisory or enforcement responsibilities of a board, where a board determines or is asked to determine the rights of the state, the public, a subdivision of state government, or of any private party.

(2) Availability. The current index promulgated by each board and the joint boards shall be available for inspection by all persons under the same rules and on the same conditions as are applied to public records available for inspection.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-04-140, filed 10/15/92, effective 10/15/92.]

WAC 242-04-150 Adoption of form. Each board and the joint boards adopt the use by all persons requesting inspection and/or copies of records the form set out below, entitled "Request for inspecting and/or copying public records."

We have received your request for inspection of and/or copies of our public records. Please complete this form and return it with the amount required, if applicable. We will forward the requested copies to you as soon as we receive this completed form with payment.

Return to:

(name and address of applicable board)

GROWTH PLANNING HEARINGS BOARD
REQUEST FOR INSPECTING AND/OR COPYING
PUBLIC RECORDS

- Date:
- Name:
- Address:
- Day Phone Number:
- Description of Record(s) Requested:

I certify that the information obtained through this request for public records will be used in compliance with chapter 42.17 RCW.

Signature

Number of Copies
 Number of Pages
 Per Page Cost \$
 Total Charge \$

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-04-150, filed 10/15/92, effective 10/15/92.]

Chapter 242-06 WAC
COMPLIANCE WITH STATE ENVIRONMENTAL
POLICY ACT

WAC

242-06-010 Purpose.
242-06-020 Application.

WAC 242-06-010 Purpose. The purpose of this chapter is to comply with and implement RCW 43.21C.120 directing every state agency to adopt rules pertaining to the integration of the policies and procedures of the State Environmental Policy Act into the various programs under their jurisdiction for implementation.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-06-010, filed 10/15/92, effective 10/15/92.]

WAC 242-06-020 Application. The boards, both individually and collectively, have reviewed their authorized activities pursuant to WAC 197-11-800(12) and found them to be exempt under the provisions of chapter 197-11 WAC.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-06-020, filed 10/15/92, effective 10/15/92.]