

Title 237 WAC

GEOGRAPHIC NAMES, BOARD ON

Chapters

237-990 Appendix—Determination of geographic names.

Chapter 237-990 WAC

APPENDIX—DETERMINATION OF GEOGRAPHIC NAMES

Blue Heron Lake.
Curley Creek
Hammond Lake.
Harstine Island.
Hideaway Lake.
McDonald Creek
Putters Lake.
Sandford Point
Schlick Creek.

Reviser's note: Adoption of geographic names, while not done pursuant to chapter 34.05 RCW, is included in this compilation in accordance with the directions of RCW 43.126.050.

BLUE HERON LAKE: Lake, 488 m (1,600 ft) by 61 m (200 ft) located 2.3 km (1.4 mi) W of the community of Rock Island, 0.3 km (0.2 mi) N of the Columbia River; Douglas Co., WA; Sec 26, T22N, R21E, W.M. 47°22'36" N, 120°10'16" W. Approved by State Board 12/95; U.S. Board 5/97.

CURLEY CREEK: Stream, 9.7 km (6 mi) long, heads at 47°27'30" N, 122°35'48" W, flows N to Long Lake exiting at the NE tip, then flows NE to Yukon Harbor at the western side of South Colby; Kitsap Co., WA; Sec 33 T24N, R2E, and Secs 4 & 8, T23N, R2E, W.M.; 47°31'24" N, 122°32'42" W. Not Gurley Creek. Reaffirmed by State Board 1996; U.S. Board 12/96.

HAMMOND LAKE: Lake, 1.1 km (0.7 mi) by 0.2 km (0.1 mi) located E of the community of Rock Island, 3.5 km (2.2 mi) NW of Rock Island Dam; Douglas Co., WA; Sec 30, T22N, R22E, W.M.; 47°22'08" N, 120°07'16" W. Approved by State Board 9/95; U.S. Board 5/97.

HARSTINE ISLAND: Island, 14.5 km (9 mi) by 5.6 km (3.5 mi), located W of Case Inlet, in S Puget Sound, 16 km (10 mi) N of Olympia; Mason Co., WA; T19, 20, 21, R1W, W.M.; 47°13'55" N, 122°53'06" W. Not Hartstene Island, Harsteen Island, Harstein Island, Harstene Island, Hartstein Island. Approved by State Board 6/95; U.S. Board 11/97.

HIDEAWAY LAKE: Lake, 488 m (1,600 ft.) by 61 m (200 ft) located 1.1 km (0.7 mi) N of the community of Rock Island; Douglas Co., WA. Sec 24, T22N, R21E, W.M.;

47°23'04" N, 120°08'45" W. Approved by State Board 9/95; U.S. Board 5/97.

MCDONALD CREEK: Stream, 21 km (13 mi) long, originating in the Olympic National Forest, heads on NE slope of Blue Mountain, 17.7 km (11 mi) SW of Sequim at 47°57'57" N, 123°15'10" W, flows N from the Buckhorn Wilderness Area of the Olympic National Forest to the Sequim-Dungeness Valley into the Strait of Juan de Fuca, 8 km (5 mi) WSW of Dungeness; Clallam Co., WA; T30N, R4W, W.M., 48°07'32" N, 123°13'19" W. Not McDonnell Creek. Name reaffirmed by State Board in 1993 and U.S. Board 6/96.

PUTTERS LAKE: Lake, 396 m (1,300 ft) by 91 m (300 ft) located E of the community of Rock Island, N of the Rock Island Golf Course; Douglas Co., WA; Sec 25, T22N, R21E, W.M.; 47°22'28" N, 120°07'56" W. Approved by State Board 9/95; U.S. Board 5/97.

SANDFORD POINT: Cape, point of land on Colvos Passage of the Puget Sound on Vashon Island, 3.5 km (2.2 mi) SE of Olalla and 5.6 km (3.5 mi) W of Burton; King Co., WA; Sec 15, T22N, R2W W.M.; 47°23'57" N, 122°31'30" W. Not Point Sandford, Point Sanford, Sanford Point. Affirmed by State Board 1996; U.S. Board 12/96.

SCHLICK CREEK: Stream, 1.3 km (0.8 mi) long, heads 2.4 km (1.5 mi) S of the Upper Ranger Station at 46°23'57" N, 123°42'51" W, flows SW into the Naselle River, 3.1 km (1.9 mi.) WNW of Deep River Hill, 8 km (5 mi) ENE of the community of Naselle; Pacific Co., WA; Sec 31, T11N, R8W, W.M.; 46°23'25" N, 123°43'28" W. Approved by State Board 9/96; U.S. Board 5/97.

Title 242 WAC

GROWTH MANAGEMENT HEARINGS BOARDS

Chapters

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Chapter 242-02 WAC

PRACTICE AND PROCEDURE

WAC

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242-02-430	Repealed.		
242-02-440	Repealed.		
242-02-450	Repealed.		
242-02-460	Repealed.		
242-02-470	Repealed.		
242-02-510	Notice of hearing—Setting of time and place.	242-02-554	Prehearing conference—Documentary evidence. [Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-554, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-554, filed 10/15/92, effective 10/15/92.] Repealed by 97-04-008, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(7).
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242-02-550	Prehearing conference.		
242-02-554	Repealed.		
242-02-560	Settlement extensions—Continuances.	242-02-850	Disposition of initial decision—Exceptions. [Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-850, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-850, filed 10/15/92, effective 10/15/92.] Repealed by 97-04-008, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(7).
242-02-570	Briefs.		
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242-02-650	Rules of evidence—Admissibility criteria.	242-02-860	Disposition of petition for review—Finality of initial decision and order. [Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-860, filed 10/15/92, effective 10/15/92.] Repealed by 97-04-008, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(7).
242-02-660	Official notice—Matters of law.		
242-02-670	Official notice—Material facts.		
242-02-710	Failure to attend—Default or dismissal—Setting aside.		
242-02-820	Repealed.		
242-02-830	Final decision and order—Basis.		
242-02-831	Final decision and order—Compliance, noncompliance, invalidity.	242-02-870	Disposition of petition for review—Final decision and order—Exceptions filed. [Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-870, filed 10/15/92, effective 10/15/92.] Repealed by 97-04-008, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(7).
242-02-832	Reconsideration.		
242-02-833	Invalidity—Hearing pursuant to motion to clarify, modify or rescind.		
242-02-834	Publication of final decision and orders.		
242-02-840	Repealed.		
242-02-850	Repealed.		
242-02-860	Repealed.		
242-02-870	Repealed.		
242-02-880	Transcripts.		
242-02-890	Determination of noncompliance—Compliance schedule.	242-02-892	Appeals of a board's final decision. [Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-892, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-892, filed 10/15/92, effective 10/15/92.] Repealed by 98-01-144, filed 12/19/97, effective 1/20/98. Statutory Authority: RCW 36.70A.270(7).
242-02-891	Compliance—Notice of hearing.		
242-02-892	Repealed.		
242-02-893	Compliance—Hearing.		
242-02-894	Compliance—Hearing pursuant to motion—Rescinding invalidity.		
242-02-896	Continued noncompliance—Recommendation to the governor.		
242-02-898	Appeals of a board's final decision.		

**DISPOSITION OF SECTIONS FORMERLY
CODIFIED IN THIS CHAPTER**

242-02-430	Subpoena—Form. [Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-430, filed 10/15/92, effective 10/15/92.] Repealed by 98-01-144, filed 12/19/97, effective 1/20/98. Statutory Authority: RCW 36.70A.270(7).
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WAC 242-02-010 Organization. Three growth management hearings boards were established pursuant to chapter 36.70A RCW. Each board is an independent quasi-judicial 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(7). They

should be read in conjunction with the act and the Administrative Procedure Act, chapter 34.05 RCW.

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-010, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-23-112, § 242-02-010, filed 11/22/94, effective 12/23/94; 92-21-034, § 242-02-010, filed 10/15/92, effective 10/15/92.]

WAC 242-02-020 Function—Local deference. (1)

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.

(2) The legislature requires growth management planning to occur in compliance with the goals and requirements of the act. The responsibility for managing local growth and shaping a county's or city's future rests with the local community. The boards will grant deference to counties and cities in how they plan for and manage growth.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-020, filed 12/19/97, effective 1/20/98. 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 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to plans, development regulations, and amendments adopted under the act or chapter 90.58 RCW; 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(7). 97-04-008, § 242-02-030, filed 1/24/97, effective 3/1/97. 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 36.70A RCW, and subsequent amendments.

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

(3) "Final decision" means:

(a) Any final order as provided in RCW 36.70A.300; or

(b) Any other written finding, determination or order of the board which finally determines a legal right, duty, or other legal interest of the parties in the case and which clearly states such written finding, determination or order that it is a final decision subject to appeal to superior court.

(4) "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 as delegated by the board as provided by the act.

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

(6) "Participant" means any person with standing to challenge a legislative action as set forth in RCW 36.70A.330(2).

(7) "Party" means any person named in the caption of a case before a board.

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

(9) "Petitioner" means a person who appeals any matter or who brings a petition for rule making to the board. A petitioner is a party to a case before the board.

(10) "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 be designated pursuant to WAC 242-02-521 and have authority as provided by WAC 242-02-522.

(11) "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, or the date the city publishes notice that the shoreline master program or amendment has been approved or disapproved by the department of ecology;

(b) For a county, the date the county publishes the notice that it has adopted a comprehensive plan, development regulations or other enactments, or subsequent amendments pursuant to RCW 36.70A.290(2), or the date the county

publishes notice that the shoreline master program or amendment has been approved or disapproved by the department of ecology.

(12) "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(7). 98-01-144, § 242-02-040, filed 12/19/97, effective 1/20/98; 97-04-008, § 242-02-040, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-23-112, § 242-02-040, filed 11/22/94, effective 12/23/94; 94-07-033, § 242-02-040, filed 3/9/94, effective 4/9/94; 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 to act pursuant to the time frames set forth in the act.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-050, filed 12/19/97, effective 1/20/98. 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 Eastern board's office in Yakima, 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 MANAGEMENT
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 party named in the first paragraph or by the petitioner's attorney or other authorized representative. The original and nine copies shall be filed with the Eastern board at its office in Yakima, Washington.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-052, filed 12/19/97, effective 1/20/98. Statutory Authority: RCW 36.70A.270(6). 94-23-112, § 242-02-052, filed 11/22/94, effective 12/23/94; 94-07-033, § 242-02-052, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-052, 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, Sunday or a legal holiday, pursuant to RCW 1.16.050, and then it is excluded and the next succeeding day which is neither a Saturday, 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(7). 98-01-144, § 242-02-060, filed 12/19/97, effective 1/20/98; 97-04-008, § 242-02-060, filed 1/24/97, effective 3/1/97. 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. A board member who does not attend a hearing shall review a transcript or recording of the hearing before signing the decision. In instances of a tie vote, the procedures described in WAC 242-02-870 shall apply.

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-070, filed 1/24/97, effective 3/1/97. 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 Management Hearings Board
Suite 818 Larson Building
6 South 2nd Street
Yakima, Washington 98901
(509) 454-7803
(509) 454-7292 FAX

(2) Western Washington Growth Management Hearings Board
905 24th Way S.W. Suite B-2
P.O. Box 40953
Olympia, Washington 98504-0953
(360) 664-8966
(360) 664-8975 FAX

(3) Central Puget Sound Growth Management Hearings Board
Financial Center
1215 Fourth Avenue, Suite 322
Seattle, Washington 98161-1001
(206) 389-2625
(206) 389-2588 FAX

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-072, filed 12/19/97, effective 1/20/98. Statutory Authority: RCW 36.70A.270(6). 94-23-112, § 242-02-072, filed 11/22/94, effective 12/23/94; 94-07-033, § 242-02-072, filed 3/9/94, effective 4/9/94; 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 - on the first Wednesday of each month at 10:00 a.m.

(b) Western Washington board - on the second Wednesday of each month at 11:00 a.m.

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

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

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-074, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-074, filed 10/15/92, effective 10/15/92.]

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

(1) A party or participant to a case before the board may appear personally or, by a duly authorized representative;

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

(3) Other persons permitted by law.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-110, filed 12/19/97, effective 1/20/98; 97-04-008, § 242-02-110, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-110, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-110, filed 10/15/92, effective 10/15/92.]

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

in the proceeding that is prohibited by the Administrative Procedure Act, RCW 34.05.455. Communications on purely procedural matters such as scheduling and logistics are permitted on an ex parte basis. Attempts by anyone to make prohibited ex parte communications shall subject such person to the provisions of WAC 242-02-120 and 242-02-720.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-130, filed 12/19/97, effective 1/20/98; 97-04-008, § 242-02-130, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-130, filed 10/15/92, effective 10/15/92.]

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 MANAGEMENT
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 those of the attorney or other authorized representative, if any;

(b) Date of the challenged order, determination, publication, or other action or, in the case of an alleged failure to act, the date by which the action was required to be taken;

(c) A detailed statement of the issues presented for resolution by the board that specifies the provision of the act or other statute allegedly being violated and, if applicable, the provision of the document that is being appealed;

(d) A statement specifying the type and the basis of the petitioner's standing before the board pursuant to RCW 36.70A.280(2). Petitioners shall distinguish between participant standing under the act, governor certified standing, standing pursuant to the Administrative Procedure Act, and standing pursuant to the State Environmental Policy Act, as the case may be;

(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 the attorney(s) or other authorized representative(s), if any.

(3) One copy of the applicable provisions of the document being appealed, if any, shall be attached to the petition for review.

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-210, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-23-112, § 242-02-210, filed 11/22/94, effective 12/23/94; 94-07-033, § 242-02-210, filed 3/9/94, effective 4/9/94; 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, shoreline master program or subsequent amendments, is in compliance with the goals and requirements of the act or chapter 90.58 or 43.21C RCW 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 as specified in RCW 36.70A.210(6).

(3) A petition alleging that the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted can be filed at any time.

(4) 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.

(5) A petition relating to the failure of a state agency, city or county to take an action by a deadline specified in the act may be brought at any time after the deadline for action has passed.

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-220, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-23-112, § 242-02-220, filed 11/22/94, effective 12/23/94; 94-07-033, § 242-02-220, filed 3/9/94, effective 4/9/94; 93-11-068, § 242-02-220, filed 5/17/93, effective 6/17/93; 92-21-034, § 242-02-220, filed 10/15/92, effective 10/15/92.]

WAC 242-02-250 Notice of appearance and answer.

(1) The respondent 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 respondent'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.

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-250, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-250, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-250, filed 10/15/92, effective 10/15/92.]

WAC 242-02-260 Amendments to petitions for review and answers. (1) A petition for review or answer 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 by a board's finding that 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(7). 97-04-008, § 242-02-260, filed 1/24/97, effective 3/1/97. 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 at any time may by motion request status as an intervenor in a case.

(2) In determining whether a person qualifies as an intervenor, the presiding officer shall apply any applicable provisions of law and may consider the applicable superior court civil rules (CR) of this state. The granting of intervention must be in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings.

(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(7). 97-04-008, § 242-02-270, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-270, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-270, filed 10/15/92, effective 10/15/92.]

WAC 242-02-290 Direct review by superior court—Procedures. RCW 36.70A.295 provides for direct review by superior court of a petition for review filed with a board if:

(1) All parties to the board proceeding agree to direct review by superior court;

(2) The parties file a direct review agreement, signed by all parties, or their designated representatives, with the appropriate board;

(3) The direct review agreement includes agreement to proper venue; and

(4) The direct review agreement is filed with the appropriate board within ten days after the petition for review is filed, or if multiple petitions have been filed and the board has consolidated the petitions, within ten days after the board serves notice of consolidation.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-290, filed 12/19/97, effective 1/20/98.]

WAC 242-02-292 Direct review by superior court—Agreement of the parties. (1) A direct review agreement of the parties shall contain:

(a) A caption in the following form:

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

Petitioner, Case No.
v.
Respondent Agreement for Direct Review
by . . . County Superior Court

(b) Numbered paragraphs stating:

(i) Petitioner's name, mailing address and telephone number and those of the attorney or other designated representative, if any;

(ii) Respondent's name, mailing address and telephone number and those of the attorney or other designated representative, if any;

(iii) Intervenor's name, mailing address and telephone number and those of the attorney or other designated representative, if any;

(iv) A statement indicating agreement to seek direct review by superior court of the petition for review filed with the board, citing case name and number as assigned by the board. The statement shall include agreement to proper venue, and may include other terms;

(v) Date the petition for review was filed, or if multiple petitions were filed and consolidated, the date the board served notice of consolidation;

(vi) A statement that all parties have read the agreement for direct review by superior court, and agree to its terms, followed by the signatures of all the parties or the signatures of the attorneys or other designated representatives, if any.

(2) One copy of the filed petition for review, with the case name, number and date stamp shall be filed with the agreement for direct review by superior court.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-292, filed 12/19/97, effective 1/20/98.]

WAC 242-02-295 Board filing with superior court—Certificate of agreement. (1) Within ten days of receiving a timely, complete and signed agreement for direct review by superior court, the board shall file a certificate of agreement, signed by the presiding officer or the board, with the designated superior court and serve the parties with copies of the certificate of agreement.

(2) The following documents shall be filed with the certificate of agreement:

(a) The executed agreement for direct review by superior court;

(b) The petition for review;

(c) Any orders entered by the board;

(d) Any other documents filed with the board regarding the petition for review.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-295, filed 12/19/97, effective 1/20/98.]

WAC 242-02-310 Service of papers. (1) Parties filing pleadings, briefs, exhibits and other documents or papers with a board shall also promptly serve copies upon all other parties.

(2) Service upon a party's attorney or other authorized representative shall be considered valid service for all purposes upon the party represented.

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

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-310, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-310, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-310, filed 10/15/92, effective 10/15/92.]

WAC 242-02-420 Subpoena—Issuance. (1) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446 and court rules.

(2) 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(7). 98-01-144, § 242-02-420, filed 12/19/97, effective 1/20/98. 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 Repealed. See Disposition Table at beginning of this chapter.

WAC 242-02-440 Repealed. See Disposition Table at beginning of this chapter.

WAC 242-02-450 Repealed. See Disposition Table at beginning of this chapter.

WAC 242-02-460 Repealed. See Disposition Table at beginning of this chapter.

WAC 242-02-470 Repealed. See Disposition Table at beginning of this chapter.

WAC 242-02-510 Notice of hearing—Setting of time and place. (1) Within ten days of the filing of a petition for review, unless a petition for review has been removed to superior court, pursuant to WAC 242-02-290 through 242-02-295, 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 attorneys or other authorized 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(7). 98-01-144, § 242-02-510, filed 12/19/97, effective 1/20/98; 97-04-008, § 242-02-510, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-510, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-510, filed 10/15/92, effective 10/15/92.]

WAC 242-02-520 Record. Within thirty days of service of a petition for review, the respondent shall file with the board and serve a copy on the parties 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 parties for inspection.

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-520, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-520, filed 10/15/92, effective 10/15/92.]

WAC 242-02-52001 Exhibit lists. (1) 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.

(2) The board or the presiding officer may establish a deadline for identifying and filing a final list of exhibits with the board and serving a copy on all other parties. The board or presiding officer may elect not to require the filing of final exhibit lists and instead, require that a copy of any document cited in a brief shall be served on the opposing party or parties by the time specified by the board or presiding officer and an original and three copies of the exhibits be filed with the board.

(3) A presiding officer may order the use of a stipulated exhibit list in lieu of or in addition to preliminary and/or final exhibit lists.

(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(7). 97-04-008, § 242-02-52001, filed 1/24/97, effective 3/1/97.]

WAC 242-02-52002 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 all documents so presented and examined be deemed authentic 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 preliminary, stipulated and/or final list of exhibits and/or to those exhibits cited in a brief. 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(7). 97-04-008, § 242-02-52002, filed 1/24/97, effective 3/1/97.]

WAC 242-02-521 Designation of presiding officer.

A board shall designate the presiding officer for each case at the time it issues its notice of hearing pursuant to WAC 242-02-510. In the event the presiding officer subsequently changes, the board shall promptly notify the parties.

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-521, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-23-112, § 242-02-521, filed 11/22/94, effective 12/23/94.]

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) Take appropriate action with respect to the qualifications of the parties or the parties' attorney(s) or other authorized representative(s) to appear before a board;

(3) Administer oaths and affirmations if witnesses are permitted to testify;

(4) Issue subpoenas as provided in RCW 34.05.446;

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

(6) Rule on all evidentiary matters including offers of proof;

(7) When applicable, question witnesses called by the parties in an impartial manner as needed to develop any facts deemed necessary to fairly and adequately decide the issue;

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

(9) 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;

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

(11) Regulate the course of the case;

(12) 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;

(13) Limit the length of a brief or impose format restrictions;

(14) Sign and file certificates of agreement acknowledging receipt of timely, complete, executed agreements for direct review by superior court;

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

(16) Take any other action necessary and authorized by these rules, the act, or the Administrative Procedure Act, chapter 34.05 RCW.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-522, filed 12/19/97, effective 1/20/98; 97-04-008, § 242-02-522, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-522, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-522, 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.

(4) A motion, other than a dispositive motion or a motion to supplement the record, is deemed denied unless the board takes action within twenty days of filing of the motion.

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-532, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-532, filed 10/15/92, effective 10/15/92.]

WAC 242-02-533 Motion to disqualify for cause.

(1) A motion to disqualify a board member or hearing examiner acting as the presiding officer, for any reason provided under chapter 34.05 RCW, with supporting affidavit(s), must be filed at least seven days before the board holds a prehearing conference, or if facts establishing grounds for disqualification are subsequently discovered, promptly after discovery of such facts.

(2) The board shall promptly rule upon such a motion.

(3) If a motion for disqualification is granted and a presiding officer was disqualified as a result, the board shall promptly designate a new presiding officer.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-533, filed 12/19/97, effective 1/20/98; 97-04-008, § 242-02-533, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-23-112, § 242-02-533, filed 11/22/94, effective 12/23/94.]

WAC 242-02-540 New or supplemental evidence.

Generally, a board will review only the record developed by the city, county, or state in taking the action that is the subject of review by the board. 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 order, at any time, that new or supplemental evidence be provided.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-540, filed 12/19/97, effective 1/20/98. Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-540, filed 3/9/94, effective 4/9/94; 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 relevant facts including 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 qualifications of expert witnesses, if they are permitted to testify;

(5) Receive any motions concerning qualification of individual board members to hear the matter;

(6) 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;

(7) Set subsequent deadlines, if and when 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;

(8) Determine the approximate time necessary for the presentation of evidence and/or argument of the respective parties; and

(9) Obtain all other information which may aid in the prompt disposition of the matter.

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-550, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-550, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-550, filed 10/15/92, effective 10/15/92.]

WAC 242-02-554 Repealed. See Disposition Table at beginning of this chapter.

WAC 242-02-560 Settlement extensions—Continuances. (1) If additional time is necessary to achieve settlement of a dispute that is an issue in a petition before a board, a board may extend the one hundred eighty-day time limit for issuing a final decision and order, as provided in RCW 36.70A.300 (2)(b). A board may authorize one, or more, extensions of up to ninety days each.

(2) A request for a settlement extension must be filed with a board not later than seven days before the date scheduled for the hearing on the merits of the petition.

(3) A board may grant a request for a settlement extension if:

(a) The request was timely filed; and

(b)(i) All parties named in the caption of the petition, agree to and sign the request; or

(ii) A petitioner and respondent agree to and sign the request and the board determines that a negotiated settlement between the remaining parties could resolve significant issues in dispute.

(4) Continuances of hearings 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. The board will continue the matter only upon a finding of good cause and in order to prevent manifest injustice.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-560, filed 12/19/97, effective 1/20/98; 97-04-008, § 242-02-560, filed 1/24/97, effective 3/1/97. 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. (1) A petitioner, or a moving party when a motion has been filed, shall submit a brief on each legal issue it expects a board to determine. Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue. Briefs shall enumerate and set forth the legal issue(s) as specified in the prehearing order if one has been entered.

(2) The original and three copies of briefs and exhibits not previously filed with the board in the pending case and that are cited in the brief 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 and exhibits are filed, a copy shall also be served on each party, unless otherwise directed by a board or presiding officer. A board or presiding officer may permit or require the filing of additional briefs.

(3) Clarity and brevity are expected to assist a board in meeting its statutorily imposed time limits. A presiding officer may limit the length of a brief and impose format restrictions.

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-570, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-570, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-570, filed 10/15/92, effective 10/15/92.]

WAC 242-02-632 Burden of proof. (1) Except as provided in subsection (2) of this section, 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.

(2) A county or city subject to a determination of invalidity made under RCW 36.70A.302 has the burden of demonstrating that the legislation it has enacted in response to the determination of invalidity will no longer substantially interfere with the fulfillment of the goals of the act.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-632, filed 12/19/97, effective 1/20/98. 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. Where a petition for review alleges a lack of compliance with the Growth Management Act, a board shall find compliance unless it determines that the action by the state agency, county or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of the act.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-634, filed 12/19/97, effective 1/20/98. 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. The presiding officer shall determine the proper order of presentation.

(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.

(6) Time. The presiding officer, after consultation with the parties, shall determine the time allotted for presentation.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-640, filed 12/19/97, effective 1/20/98. 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 shall 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(7). 97-04-008, § 242-02-650, filed 1/24/97, effective 3/1/97. 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) Washington state law. The Constitution of the state of Washington; decisions of the state courts; acts, resolutions, records, journals, and committee reports of the legislature; decisions of administrative agencies of the state of Washington; executive orders and proclamations by the governor; all rules, orders, and notices filed with the code reviser; and codes or standards that have been adopted by an agency of this state or by a nationally recognized organization or association.

(3) Laws of other states. The constitutions of other states; decisions of state courts; acts, resolutions, records, journals and committee reports of other state legislatures; decisions of other states administrative agencies; executive orders and proclamations issued by a governor of another state; and codes or standards that have been adopted by an agency of another state.

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

(5) Federally recognized Indian tribes, Constitutions, ordinances, resolutions and motions enacted by federally recognized Indian tribes.

(6) Growth management hearings boards. Orders and decisions of any board.

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

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-660, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-23-112, § 242-02-660, filed 11/22/94, effective 12/23/94; 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) Technical or scientific facts. Technical or scientific facts within a board's specialized knowledge.

(4) 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.

(5) Notice. Parties shall be notified either before or during a hearing of the material fact(s) proposed to be officially noticed, and shall be afforded the opportunity to contest such facts and materials.

(6) Statement.

(a) 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.

(b) If official notice of a material fact is taken, it shall be clearly and precisely stated and made part of the record.

(c) 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.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-670, filed 12/19/97, effective 1/20/98; 97-04-008, § 242-02-670, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-670, filed 10/15/92, effective 10/15/92.]

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 upon its own motion or by a presiding officer. 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(7). 97-04-008, § 242-02-710, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-710, filed 10/15/92, effective 10/15/92.]

WAC 242-02-820 Repealed. See Disposition Table at beginning of this chapter.

WAC 242-02-830 Final decision and order—Basis.

(1) When the hearing on the petition for review has been held and the record reviewed by a majority of a board, a written final decision and order shall be issued that contains appropriate findings and conclusions, and articulates the basis for the final decision and order.

(2) The board will not issue advisory opinions on issues not presented to the board in the petition for review's statement of the issues, as modified by any prehearing order.

(3) Except as provided in RCW 36.70A.300 (2)(b) and WAC 242-02-560, the final decision and order shall be issued by a board within one hundred eighty days of receipt of the petition for review, or if multiple petitions are filed,

within one hundred eighty days of receipt of the last petition that is consolidated.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-830, filed 12/19/97, effective 1/20/98; 97-04-008, § 242-02-830, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-830, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-830, filed 10/15/92, effective 10/15/92.]

WAC 242-02-831 Final decision and order—Compliance, noncompliance, invalidity. (1) In its final decision and order, a board shall either:

(a) Find that the state agency, county or city is in compliance with the requirements of chapter 36.70A RCW, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW; or

(b) Find that the state agency, county or city is not in compliance with the requirements of chapter 36.70A RCW, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW, in which case the board shall remand the matter to the state agency, county or city and specify a time for compliance.

(2) In its final decision and order, a board may determine that part or all of a comprehensive plan or development regulations are invalid if the board:

(a) Makes a finding of noncompliance and issues an order of remand;

(b) Includes in its final decision and order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of the act; and

(c) Specifies the part or parts, if applicable, of the plan or regulation that are determined to be invalid and the reasons for invalidity.

(3) The effect of a determination of invalidity is as set forth in RCW 36.70A.302.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-831, filed 12/19/97, effective 1/20/98.]

WAC 242-02-832 Reconsideration. (1) After issuance of a final decision any party may file a motion for reconsideration with a board in accordance with subsection (2) of this section. Such motion must be filed within ten days of service of the final decision. The original and three copies of the motion 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.

(2) A motion for reconsideration shall be based on at least one of the following grounds:

(a) Errors of procedure or misinterpretation of fact or law, material to the party seeking reconsideration;

(b) Irregularity in the hearing before the board by which such party was prevented from having a fair hearing; or

(c) Clerical mistakes in the final decision and order.

(3) 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 (1) of this section.

(4) 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 served by the board on each party or the party's attorney or other authorized representative of record.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-832, filed 12/19/97, effective 1/20/98; 97-04-008, § 242-02-832, filed 1/24/97, effective 3/1/97.]

WAC 242-02-833 Invalidity—Hearing pursuant to motion to clarify, modify or rescind. If a motion to clarify, modify or rescind a determination of invalidity order has been filed by a county or city subject to a determination of invalidity, pursuant to RCW 36.70A.302, and the jurisdiction has not enacted legislation in response to the board's remand order, a board shall schedule and conduct a hearing to address clarifying, modifying or rescinding the determination of invalidity. Within thirty days of the hearing the board shall continue, clarify, modify, or rescind the determination of invalidity. The board may rescind a determination of invalidity but find continuing noncompliance, in which case the board may establish a compliance schedule or new compliance date.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-833, filed 12/19/97, effective 1/20/98.]

WAC 242-02-834 Publication of final decision and orders. Copies of all final decisions and orders are available from the board that entered the decision and order. Code Publishing Company, POB 51164, Seattle, WA 98115-1164 is the official publisher of all final decisions and orders entered by the boards. In addition, final decisions and orders are available from CD Law, 1000 2nd Ave., Ste. # 1610, Seattle, WA 98104 and Law BBS, Washington St. Bar Association, 2001 Sixth Ave., Ste. 500, Seattle, WA 98121-2599.

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-834, filed 1/24/97, effective 3/1/97.]

WAC 242-02-840 Repealed. See Disposition Table at beginning of this chapter.

WAC 242-02-850 Repealed. See Disposition Table at beginning of this chapter.

WAC 242-02-860 Repealed. See Disposition Table at beginning of this chapter.

WAC 242-02-870 Repealed. See Disposition Table at beginning of this chapter.

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

(1) A board, in its discretion, may at any time cause a transcript to be printed. Any person may obtain a copy upon payment of the reasonable costs thereof.

(2) 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 it.

(3) When an appeal is taken from any final decision and order of a board to a reviewing court, the appealing party is responsible for ordering and paying for the transcript of the hearing.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-880, filed 12/19/97, effective 1/20/98; 97-04-008, § 242-02-880, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-880, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-880, filed 10/15/92, effective 10/15/92.]

WAC 242-02-890 Determination of noncompliance—Compliance schedule. In those cases where a board finds that a state agency, county, or city is not in compliance with the requirements of the act, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW, the board shall remand the matter to the affected state agency, county, or city. The board's final decision and order shall specify a reasonable time not in excess of one hundred eighty days, or such longer time as determined by the board in cases of unusual scope or complexity, within which the state agency, county, or city shall comply. In its order the board may establish a compliance schedule and may require periodic reports on the progress the jurisdiction is making toward compliance.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-890, filed 12/19/97, effective 1/20/98. Statutory Authority: RCW 36.70A.270(6). 94-23-112, § 242-02-890, filed 11/22/94, effective 12/23/94; 92-21-034, § 242-02-890, filed 10/15/92, effective 10/15/92.]

WAC 242-02-891 Compliance—Notice of hearing.

(1) After the compliance deadline specified in the final decision and order passes, or at an earlier time upon the motion of a county or city subject to a determination of invalidity under RCW 36.70A.302, a board shall issue a notice of compliance hearing setting a hearing date for the purpose of determining whether compliance has been achieved. The compliance hearing shall be given the highest priority of business.

(2) The presiding officer shall set the format of the compliance hearing in the notice of compliance hearing. At the compliance hearing the presumption of validity and burden of proof are as set forth in WAC 242-02-630 and 242-02-632. The parties to the original case, and a person with standing to challenge the legislation enacted in response to a board's final decision and order, may participate in the compliance hearing. The notice of compliance hearing shall set the scope of, and procedures for participation.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-891, filed 12/19/97, effective 1/20/98.]

WAC 242-02-892 Repealed. See Disposition Table at beginning of this chapter.

WAC 242-02-893 Compliance—Hearing. Upon a motion of a party or participant, the board shall reconsider its final decision and order and decide, if no determination of invalidity had previously been made, whether one should now be made. The procedures at the compliance hearing shall be as set forth by the presiding officer, pursuant to WAC 242-02-891. After a compliance hearing, the board shall determine whether a state agency, county or city is in compliance with the requirements of the act as remanded in the final decision or order and any compliance schedule established by the board.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-893, filed 12/19/97, effective 1/20/98.]

WAC 242-02-894 Compliance—Hearing pursuant to motion—Rescinding invalidity. If a motion for a compliance hearing has been filed by a county or city subject to a determination of invalidity, pursuant to RCW 36.70A.330(1), and the jurisdiction has enacted legislation amending the invalidated plan, regulation or part thereof, a board shall schedule and conduct a hearing to address rescinding the determination of invalidity. Within forty-five days of the filing of the motion the board shall issue an order continuing, modifying, or rescinding the determination of invalidity depending upon whether the jurisdiction's legislative action has removed the basis for invalidity so that it no longer substantially interferes with the goals of the act. The board may rescind a determination of invalidity but find continuing noncompliance, in which case the board may establish a compliance schedule or new compliance date.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-894, filed 12/19/97, effective 1/20/98.]

WAC 242-02-896 Continued noncompliance—Recommendation to the governor. If the board finds that the county or city continues to be in noncompliance with the act, the board shall transmit its findings to the governor. A board may recommend that sanctions authorized by the act be imposed. A jurisdiction's efforts to meet a compliance schedule shall be considered by the board in making a recommendation on sanctions to the governor.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-896, filed 12/19/97, effective 1/20/98.]

WAC 242-02-898 Appeals of a board's final decision. (1) Any party aggrieved by a final decision of a board may appeal the decision to superior court as provided in RCW 34.05.514 or 36.01.050 within thirty days of service of the final decision of the board.

(2) A board shall follow the procedures established in RCW 34.05.518 in the event that direct appellate review is sought.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-898, filed 12/19/97, effective 1/20/98.]

**Chapter 242-04 WAC
PUBLIC RECORDS**

WAC

242-04-030	Description of organization and public meetings.
242-04-050	Communications with each board or the joint boards.
242-04-100	Copying.

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 - on the first Wednesday of each month at 10:00 a.m.

(b) Western Washington board - on the second Wednesday of each month at 11:00 a.m.

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

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

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-04-030, filed 12/19/97, effective 1/20/98. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-04-030, 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 Management Hearings Board
Suite 818 Larson Building
6 South 2nd Street
Yakima, Washington 98901
(509) 454-7803
(509) 454-7292 FAX
- (b) Western Washington Growth Management Hearings Board
905 24th Way S.W. Suite B-2
P.O. Box 40953
Olympia, Washington 98504-0953
(360) 664-8966
(360) 664-8975 FAX
- (c) Central Puget Sound Growth Management Hearings Board
Financial Center
1215 Fourth Avenue, Suite 322
Seattle, Washington 98161-1001
(206) 389-2625
(206) 389-2588 FAX

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

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-04-050, filed 12/19/97, effective 1/20/98; 97-04-008, § 242-04-050, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-23-112, § 242-04-050, filed 11/22/94, effective 12/23/94; 94-07-033, § 242-04-050, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-04-050, 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. Each board may charge a reasonable fee for electronic facsimile transmissions (FAX). The charge is the amount necessary to reimburse each board for its actual costs incident to such copying or transmission.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-04-100, filed 12/19/97, effective 1/20/98. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-04-100, filed 10/15/92, effective 10/15/92.]

Title 246 WAC DEPARTMENT OF HEALTH

Chapters

- 246-08 Practice and procedure.**
- 246-10 Administrative procedure—Adjudicative proceedings.**
- 246-11 Model procedural rules for boards.**
- 246-100 Communicable and certain other diseases.**
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- 246-171 Tuberculosis—Financial responsibility.**
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