

WSR 21-17-069
PERMANENT RULES
ENVIRONMENTAL AND
LAND USE HEARINGS OFFICE

[Filed August 12, 2021, 8:11 a.m., effective September 12, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Changes to chapter 242-03 WAC, procedural rules for the growth management hearings board.

Citation of Rules Affected by this Order: Amending chapter 242-03 WAC.

Statutory Authority for Adoption: RCW 36.70A.270(7).

Adopted under notice filed as WSR 21-13-097 on June 18, 2021.

Changes Other than Editing from Proposed to Adopted Version: Added a provision for dispositive motions in WAC 242-03-555 and added a provision about including maps as exhibits to briefs in WAC 242-03-590.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 22, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 22, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 11, 2021.

Nina Carter
Director

OTS-3123.1

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-010 Organization. The growth management hearings board was established pursuant to chapter 36.70A RCW. The board is an independent quasi-judicial agency of the state of Washington with ((seven)) five members appointed by the governor who are qualified by experience or training in matters pertaining to land use planning. These rules were developed, adopted, and amended by the board 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). WSR 11-13-109, § 242-03-010, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 13-01-026, filed 12/11/12, effective 1/11/13)

WAC 242-03-015 Regional panels. (1) Each petition for review that is filed with the growth management hearings board shall be heard and decided by a regional panel of growth management hearings board members. From the ~~((seven))~~ five board members, regional panels shall be constituted as follows:

(a) Central Puget Sound region. A three-member Central Puget Sound panel shall be selected to hear matters pertaining to cities and counties located within the region comprised of King, Pierce, Snohomish, and Kitsap counties.

(b) Eastern Washington region. A three-member Eastern Washington panel shall be selected to hear matters pertaining to cities and counties that are required or choose to plan under RCW 36.70A.040 and are located east of the crest of the Cascade mountains.

(c) Western Washington region. A three-member Western Washington panel shall be selected to hear matters pertaining to cities and counties that are required or choose to plan under RCW 36.70A.040, are located west of the crest of the Cascade mountains, and are not included in the Central Puget Sound region. Skamania County, if it is required or chooses to plan under RCW 36.70A.040, may elect to be included within either the Western Washington region or the Eastern Washington region.

(2)(a) Each regional panel selected to hear and decide cases shall consist of three board members, at least a majority of whom shall reside within the region in which the case arose, unless such regional members cannot sit on a particular case because of recusal or disqualification, or unless the board ~~((administrative officer))~~ chair determines ~~((that there is an emergency including, but not limited to,))~~ otherwise due to caseload management determinations or the unavailability of a board member due to illness, absence, or vacancy ~~((or significant workload imbalance))~~.

(b) The presiding officer of each case shall reside within the region in which the case arose, unless the board ~~((administrative officer))~~ chair determines that there is an emergency.

(c) Except as provided otherwise in (d) of this subsection, each regional panel shall:

(i) Include at least one member admitted to practice law in this state;

(ii) Include at least one member who has been a city or county elected official; and

(iii) Reflect the political composition of the board.

(d) The requirements of (c) of this subsection may be waived by the board ~~((administrative officer))~~ chair due to member unavailability, significant workload imbalances, or other reasons.

[Statutory Authority: RCW 36.70A.270(7). WSR 13-01-026, § 242-03-015, filed 12/11/12, effective 1/11/13; WSR 11-13-109, § 242-03-015, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-030 Definitions. As used in this title, the following terms shall have the following meaning:

(1) "Act" means the Growth Management Act, chapter 36.70A RCW, and subsequent amendments.

~~(2) ("Administrative officer" means the board member annually elected by the board pursuant to RCW 36.70A.270(10) to handle day-to-day administrative, budget and personnel matters on behalf of the board and to make case assignments to board members in accordance with the board's rules of procedure.~~

~~(3))~~ "Board" means the growth management hearings board or a panel of the board hearing a matter as established in RCW 36.70A.260.

(3) "Chair" means the board member annually elected by the board pursuant to RCW 36.70A.270(11). The duties and responsibilities of the chair include, developing board procedures, making case assignments to board members in accordance with the board's rules of procedure in order to achieve a fair and balanced workload among all board members, and managing board meetings.

(4) "Compliance participant" means any person with standing to challenge legislation taken in response to a board order, as provided in RCW 36.70A.330(2).

(5) "Consolidation" means the combining of all petitions involving review of the same comprehensive plan or development regulation into a single case for hearing and decision, as provided in RCW 36.70A.290(5).

(6) "Coordination" means provision of parallel case schedules for cases involving related matters in the interest of efficient resolution and to avoid duplication of evidence and argument.

(7) "Environmental and land use hearings office" means the administrative office of the board established pursuant to RCW 36.70A.252.

(8) "Ex parte communication" is communication about issues in a pending case between a party and a board member without including or providing notice to all other parties to the matter. Ex parte communication is prohibited.

~~((8))~~ (9) "Filing" of a document means actual receipt by the board during regular office hours, as specified in WAC 242-03-230 (for a petition for review) or WAC 242-03-240 (for all other documents).

~~((9))~~ (10) "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 in such written finding, determination or order that it is a final decision subject to appeal to superior court.

~~((10) "Office of the growth management hearings board" means the administrative office of the board established pursuant to RCW 36.70A.270(2).)~~

(11) "Panel" means the three board members assigned to hear and decide a particular case pursuant to RCW 36.70A.260.

(12) "Party" means the petitioner(s) and respondent(s) in a case before the board and, if admitted in the case, intervenor(s), amicus, and compliance participant(s).

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

(14) "Petitioner" means a person who files a petition for review pursuant to RCW 36.70A.290 or who brings a petition for rule making to the board.

(15) "Presiding officer" means any member of the board who is designated to conduct a conference or hearing as directed by the board. The presiding officer shall be designated pursuant to WAC 242-03-525 and have authority as provided by WAC 242-03-530.

(16) "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 department of ecology publishes notice that the shoreline master program or amendment has been approved or disapproved by final action of 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 subsequent amendment pursuant to RCW 36.70A.290(2), or the date the department of ecology publishes notice that the shoreline master program or amendment has been approved or disapproved by final action of the department of ecology.

(17) "Respondent" means the city, county, or state agency whose action is challenged in a petition for review before the board.

(18) "Service" of a document means delivery of the document to the other parties to the appeal, as specified in WAC 242-03-230 (for the petition for review) or WAC 242-03-240 (for all other documents).

(19) "Shoreline master program" means the comprehensive use plan for a described shoreline area, the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies in RCW 90.58.020 and applicable guidelines. Pursuant to RCW 36.70A.480(1), an approved shoreline master program is a component of the city or county's comprehensive plan and development regulations.

(20) "Shoreline Management Act" means chapter 90.58 RCW and subsequent amendments.

(21) "State Environmental Policy Act" means chapter 43.21C RCW and subsequent amendments.

[Statutory Authority: RCW 36.70A.270(7). WSR 11-13-109, § 242-03-030, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-035 Rules. These rules shall govern the board's adoption or amendment of rules, and all practice and procedure for hearings before the board. (~~Where a time frame is different in these rules from those in chapter 10-08 WAC, it is because the board is required to act pursuant to the time frames set forth in the act.~~)

[Statutory Authority: RCW 36.70A.270(7). WSR 11-13-109, § 242-03-035, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-050 Quorum. (1) Board quorum. For the purpose of adopting, amending, or repealing these rules or transacting other administrative business, at least (~~four~~) three members of the board shall constitute a quorum of the board. A quorum being present, any action may be taken upon the vote of the majority of the board members.

(2) Panel quorum. For purposes of making orders or decisions in a case, two members of a panel shall constitute a quorum and may act even though one panel member is absent. One member may hold conferences or hearings. The findings of such member shall not become final until approved by a majority of the panel. A panel member who does not attend a hearing may participate in the decision and shall review a transcript or recording of the hearing before signing the decision.

[Statutory Authority: RCW 36.70A.270(7). WSR 11-13-109, § 242-03-050, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 13-01-026, filed 12/11/12, effective 1/11/13)

WAC 242-03-060 Board office. (1) The administration of the board is consolidated in one office - The (~~office of the growth management hearings~~) environmental and land use hearings office. All correspondence shall be mailed to the physical address of the board:

Growth Management Hearings Board
c/o Environmental and Land Use Hearings Office
1111 Israel Road S.W., Suite 301
Tumwater, WA 98501
P.O. Box (~~(40953)~~) 40903
Olympia, WA 98504-0953
website: www.eluho.wa.gov
(~~(360-664-9170)~~)
ELUHO Main Office: 360-664-9160
Fax: 360-586-2253 ((Fax))
Regional Email Inboxes
email: eastern@eluho.wa.gov
email: western@eluho.wa.gov
email: central@eluho.wa.gov
(~~(web site: www.gmhb.wa.gov)~~)

(2) The filing of all petitions, briefs, exhibits, and other documents related to any proceeding before a regional panel shall be made to the (~~office of the growth management hearings board, with specific indication of~~) board, through its administrative office, the environmental and land use hearings office. However, each filing must be sent to the appropriate regional panel email inbox and must indicate the appropriate regional panel's name - Eastern, Western, or Central Puget Sound.

[Statutory Authority: RCW 36.70A.270(7). WSR 13-01-026, § 242-03-060, filed 12/11/12, effective 1/11/13; WSR 11-13-109, § 242-03-060, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-075 Special meeting. (1) A special meeting of the board may be called at the request of any two of the board members. To call a special meeting, a written notice of the meeting shall be posted on the board's website, prominently displayed on the main entrance of the board's principal office location and personally emailed to:

(a) Each member of the board; and

(b) Each general circulation newspaper, television or radio station which has on file with the board a written request to be notified of special meetings.

(2) The written notice shall state the date and time of the meeting, and shall specify the business to be transacted by the board. The board will not take final action on any matter that is not specified in the written notice.

(3) Notices of special meetings shall be sent by email:

(a) One day (twenty-four hours) before the scheduled meeting; except

(b) When a special meeting is called to consider rule changes pursuant to chapter 34.05 RCW, the notice shall be sent at least twenty days prior to the meeting; and except

(c) In the event of an emergency requiring board action, the notice and timing requirements may be waived as provided in RCW 42.30.080.

(4) The special meeting shall be chaired by the ~~((administrative officer))~~ board chair.

(5) A special meeting may be held by telephone conference call or other remote meeting systems. During a remote meeting, members of the board may appear or attend by phone or by other electronic means that allows real-time verbal communication without being in the same physical location.

(6) Members of the public may attend a special meeting by appearing at the board office, or the location of the special meeting, or online if held via electronic remote meeting device at the date and time set for the meeting.

[Statutory Authority: RCW 36.70A.270(7). WSR 11-13-109, § 242-03-075, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-145 Form and size of documents. Documents (~~(, other than exhibits,)~~) shall be provided in the manner indicated in the board's prehearing order.

[Statutory Authority: RCW 36.70A.270(7). WSR 11-13-109, § 242-03-145, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-210 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
_____ REGION
STATE OF WASHINGTON

Petitioner,	Case No.
v.	
Respondent.	PETITION FOR REVIEW

(2) Numbered paragraphs stating:

(a) Petitioner's name, mailing address, telephone number, and electronic mail address, 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 under the Growth Management Act or the Shoreline Management Act, the date by which the action was required to be taken;

(c) A detailed and concise statement of the issues presented for resolution by the board (~~(that specifies)~~). Each issue statement should not exceed seventy-five words and shall specify the provision(s) of the act or other statute allegedly being violated and, if applicable, the provision(s) 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);

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

(f) 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,)~~) ordinance, resolution, or other official action being appealed shall be attached to the petition for review. (~~(Petitioner shall provide the board with a copy of the entire document being appealed within thirty days of filing a petition for review, unless otherwise directed by the board.)~~)

[Statutory Authority: RCW 36.70A.270(7). WSR 11-13-109, § 242-03-210, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 16-02-114, filed 1/6/16, effective 2/6/16)

WAC 242-03-240 Filing and service of all other papers. (1) Filing of papers: All pleadings and briefs shall be filed with the board by electronic mail unless a petitioner does not have the technological capacity to do so. The original and three copies of all documents shall be filed with the board personally, or by mail or commercial parcel delivery service and must be postmarked or sent on the same

date as the electronic filing. Filings less than fifteen pages may be made by fax transmission. The original and three copies must be postmarked or sent on the same date as the fax transmission to be deemed filed.

Filings made by electronic mail and/or fax transmission shall be deemed filed upon actual receipt during office hours of 8:00 a.m. to 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 fax machine or receiving computer shall be presumptive evidence of the date and time of receipt of transmission. All papers will be deemed filed with the board on the date received by electronic mail provided that the original document and three copies are postmarked or commercially sent on the same date as the fax transmission or electronic mail filing. See WAC 242-03-060 for contact information.

(2) Service: Parties shall serve copies of all filings on all other named parties by electronic mail, on or before the date filed with the board, unless a party lacks technical capability. Service is accomplished when the document is transmitted electronically, or, by agreement among the parties or exception granted by the presiding officer, is postmarked or commercially sent by the required date.

(3) Filing and service requirements may be altered in emergency situations, in which the governor declares a statewide emergency.

[Statutory Authority: RCW 36.70A.270 (4) and (7). WSR 16-02-114, § 242-03-240, filed 1/6/16, effective 2/6/16. Statutory Authority: RCW 36.70A.270(7). WSR 13-01-026, § 242-03-240, filed 12/11/12, effective 1/11/13. Statutory Authority: RCW 43.21B.005, 43.21B.090, and 36.70A.270(7). WSR 12-05-110, § 242-03-240, filed 2/22/12, effective 3/24/12. Statutory Authority: RCW 36.70A.270(7). WSR 11-13-109, § 242-03-240, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-550 Motions—General requirements. (1) A motion is an application for an order or ruling. Every motion shall be filed separately in writing, and not contained within a brief, unless made during a hearing; shall state with particularity the grounds; and shall set forth the relief or order sought.

(2) The deadline for filing certain motions is established in the prehearing order. No written motion may be filed after the date specified in the order without written permission of the presiding officer which may be granted for good cause shown.

(3) Unless the prehearing order or other order in the case establishes a different deadline, a party served with a motion shall have ten days from the date of service of the motion to respond to it. The presiding officer may allow the moving party to reply to the response.

(4) A party filing a motion on a routine matter is encouraged to inform other parties and to indicate in the motion whether it is filed with the concurrence of other parties.

(5) A motion on procedural matters will generally be decided by the presiding officer without a hearing.

(6) The presiding officer, taking into consideration the complexity and finality of the issues raised in a motion, may, in the officer's discretion, schedule a telephonic hearing for argument of the motion to the board or may defer consideration of the motion until the hearing on the merits.

[Statutory Authority: RCW 36.70A.270(7). WSR 11-13-109, § 242-03-550, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-555 Dispositive motions. (1) Dispositive motions on a limited record to determine the board's jurisdiction, the standing of a petitioner, or the timeliness of the petition are permitted. The board rarely entertains a motion for summary judgment except in a case of failure to act by a statutory deadline or a procedural challenge to the State Environmental Policy Act (SEPA) compliance.

(2) Dispositive motions and responses shall be filed by the dates established in the prehearing order. The board may refuse to hear a motion that is not timely filed, except where good cause is shown.

(3) The presiding officer, taking into consideration the complexity and finality of the issues raised, may, in the presiding officer's discretion, request a reply brief from the moving party, schedule a telephonic hearing for argument of the motion or may defer the board's consideration of the motion until the hearing on the merits.

(4) Unless the order on dispositive motions is a final order pursuant to WAC 242-03-030(9), no motion for reconsideration will be allowed.

[Statutory Authority: RCW 36.70A.270(7). WSR 11-13-109, § 242-03-555, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-570 Motion to disqualify for cause—Challenge to panel. (1) A motion to disqualify a board member from serving on a panel or to challenge the composition of the panel shall be brought 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. In the event a new panel assignment is made during the course of the proceedings on a matter, any motion for disqualification or challenge to panel composition shall be brought no later than seven days after the board issues its notice of panel assignment.

(2) Any board member designated to serve on a panel is subject to disqualification for bias, prejudice, interest, or any other cause as provided in RCW 34.05.425. The board member whose disqualification is requested shall promptly determine whether to grant the motion, stating facts and reasons for the determination.

(3) If a party brings a motion challenging the composition of the panel for noncompliance with the requirements of RCW 36.70A.260, the presiding officer shall promptly forward the motion to the (~~administrative officer~~) board chair who will prepare a response.

(4) If a motion for disqualification or challenge to composition of the panel is granted, a new panel assignment and/or presiding officer designation will be promptly made. The parties will be informed at the prehearing conference and the resolution of the matter will be included in the prehearing order or other written order of the board issued within twenty days of the filing of the motion.

[Statutory Authority: RCW 36.70A.270(7). WSR 11-13-109, § 242-03-570, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-590 Briefs. (1) A petitioner, or a moving party when a motion has been filed, shall submit a brief addressing each legal issue it expects the 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.

(2) Briefs shall be filed according to the requirements and schedule in the prehearing order or any subsequent order amending the briefing schedule.

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

(4) A copy of any development regulation provision cited in the brief shall be included as an appendix, unless the provision is quoted verbatim in the brief.

(5) Where there is a map in the record that helps illustrate the material facts, petitioner shall include a copy of that map as an exhibit to the brief.

[Statutory Authority: RCW 36.70A.270(7). WSR 11-13-109, § 242-03-590, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-600 Hearing—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 common law limits such use.

[Statutory Authority: RCW 36.70A.270(7). WSR 11-13-109, § 242-03-600, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-630 Official notice—Matters of law. The board or presiding officer (~~may officially~~) will take official notice of:

(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, including adopted plans, adopted regulations, and administrative decisions.

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

(6) Growth management hearings board. Orders and decisions of the board and the board's rules of practice and procedure.

[Statutory Authority: RCW 36.70A.270(7). WSR 11-13-109, § 242-03-630, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-720 Dismissal of action. (1) Any action shall be dismissed by the board:

(a) Upon petitioner's withdrawal of the petition for review before entry of a final decision and order; or

(b) Upon stipulation for dismissal by petitioner(s) and respondent(s).

(2) Any action may be dismissed by the board:

(a) Upon motion of 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

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

(c) Upon the board's own motion for petitions that are frivolous, not within the jurisdiction of the board, or the petitioner's lack of standing.

[Statutory Authority: RCW 36.70A.270(7). WSR 11-13-109, § 242-03-720, filed 6/21/11, effective 7/22/11.]

NEW SECTION

WAC 242-03-805 Preparation of findings, conclusions and orders.

Upon request of the board or presiding officer, findings, conclusions and orders shall be prepared by the parties. The board or presiding officer may adopt, in whole or in part, the parties' findings, conclusions and orders or the board may prepare its own findings, conclusions and orders.

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AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-870 Publication of final decisions and orders. Copies of all final decisions and orders are available from the ~~((office of the growth management hearings board. The growth management hearings board's web site is www.gmhb.wa.gov))~~ environmental and land use hearings office at eluh.wa.gov. The board posts final orders, compliance orders, and other decisions on its website and maintains a digest of its decisions by region.

[Statutory Authority: RCW 36.70A.270(7). WSR 11-13-109, § 242-03-870, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-900 Determination of noncompliance—Compliance schedule and notice of compliance hearing. (1) In those cases where the board, in a final order, has made a determination of noncompliance pursuant to RCW 36.70A.300 (3)(b), the board shall remand the matter to the affected state agency, county, or city.

(2) 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 shall establish a compliance schedule, including a schedule for briefing and hearing, and may require periodic reports on the progress the state agency, county, or city is making toward compliance.

(3) The compliance schedule in the board's order shall set a hearing date for the purpose of determining whether compliance has

been achieved and shall constitute notice of the compliance hearing. The compliance hearing shall be given the highest priority of business.

(4) The board may notify the department of a finding of noncompliance. The purpose of the notification is for the department to provide technical assistance to the noncompliant jurisdiction to facilitate speedy resolution of the finding of noncompliance.

[Statutory Authority: RCW 36.70A.270(7). WSR 11-13-109, § 242-03-900, filed 6/21/11, effective 7/22/11.]

AMENDATORY SECTION (Amending WSR 16-02-114, filed 1/6/16, effective 2/6/16)

WAC 242-03-970 Appeals of a board's final decision. (1) Any party aggrieved by a final decision of the board may appeal the decision to superior court as provided in RCW 34.05.514 and 34.05.542 or 36.01.050 within thirty days of service of the final decision of the board.

(2) The petition for review of a final decision of the board shall be served on the board, however, it is not necessary to name the board as a party.

(3) ~~((In the event that direct appellate review is sought, within thirty days of the filing of a petition for review in the superior court, a party may request a certificate of appealability for direct review by the court of appeals. If the issue on review is the jurisdiction of the board, the board may file an application for direct review.))~~ Application for direct appellate review of a decision of the board is governed by the procedures and criteria of RCW 34.05.518.

[Statutory Authority: RCW 36.70A.270 (4) and (7). WSR 16-02-114, § 242-03-970, filed 1/6/16, effective 2/6/16. Statutory Authority: RCW 43.21B.005, 43.21B.090, and 36.70A.270(7). WSR 12-05-110, § 242-03-970, filed 2/22/12, effective 3/24/12. Statutory Authority: RCW 36.70A.270(7). WSR 11-13-109, § 242-03-970, filed 6/21/11, effective 7/22/11.]