

Exhibit D
Portions of Title 242 WAC

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

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

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

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

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

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

(b) The original document and three copies must be mailed or otherwise transmitted to the board within twenty-four hours of sending the facsimile transmission.

(c) Documents over fifteen pages in length may not be filed by FAX without prior approval of the presiding officer.

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(3) A FAX copy shall constitute an original solely for the purpose of establishing the date a document was filed.

[Statutory Authority: RCW 36.70A.270(6), 94-07-033, § 242-02-240, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-240, 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 242-02-280 Amicus. (1) Any person whose interest may be substantially affected by a proceeding before a board may by motion request status as an amicus in the case.

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

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

[Statutory Authority: RCW 36.70A.270(6), 94-07-033, § 242-02-280, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-280, 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;

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(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.]

SERVICE OF PAPERS

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 242-02-320 Method of service. Service of papers, specified in WAC 242-02-310(1), shall be made per-

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

(2) All motions shall be properly captioned and signed by the moving party or that party's attorney or other authorized representative.

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

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

(5) Motions to disqualify a hearing examiner acting as the presiding officer, or a board member, for bias, prejudice, interest or other cause, with supporting affidavit(s), may be filed with a board.

[Statutory Authority: RCW 36.70A.270(6), 94-23-112, § 242-02-530, filed 11/22/94, effective 12/23/94; 94-07-033, § 242-02-530, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-530, filed 10/15/92, effective 10/15/92.]

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

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

(3) A board or presiding officer, after taking into consideration when the motion was received and the complexity of the issues raised, may, in its discretion, schedule a hearing for argument of a motion at the time of a prehearing conference or at a separate hearing time, or may defer consideration of

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

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

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

WAC 242-02-540 New or supplemental evidence. 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;

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[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.]

WAC 242-02-910 Petitions for declaratory ruling. (1)

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

- (a) That uncertainty necessitating resolution exists;
- (b) That there is actual controversy arising from the uncertainty such that a declaratory ruling will not be merely an advisory opinion;
- (c) That the uncertainty adversely affects the petitioner;
- (d) That the adverse effect of uncertainty outweighs any adverse effects on others or on the general public that may likely arise from the order requested; and
- (e) That the petition complies with any additional requirements established by the board.

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

(a) A caption in the following form:

BEFORE THE GROWTH MANAGEMENT
HEARINGS BOARD
STATE OF WASHINGTON

No.

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

PETITION FOR
DECLARATORY RULING

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

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

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

- (a) Issue a nonbinding declaratory ruling;

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

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

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

- (a) Issue a binding declaratory ruling; or
- (b) Issue a nonbinding declaratory ruling; or

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

[Statutory Authority: RCW 36.70A.270(6). 94-23-112, § 242-02-910, filed 11/22/94, effective 12/23/94; 94-07-033, § 242-02-910, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-910, filed 10/15/92, effective 10/15/92.]

WAC 242-02-920 Declaratory ruling—Notice to other persons.

Within fifteen days after receipt of a petition for declaratory order, a board or presiding officer shall give notice of the petition to all persons to whom notice is required by law, and may give notice to any other person it deems desirable. A board or presiding officer may elect to allow written or oral presentations from other interested persons.

[Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-920, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-920, filed 10/15/92, effective 10/15/92.]

WAC 242-02-930 Declaratory ruling—Disposition of petition.

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

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

**Chapter 242-04 WAC
PUBLIC RECORDS**

WAC

242-04-010	Purpose.
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242-04-130	Protection of public records.
242-04-140	Records index.
242-04-150	Adoption of form.

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