

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN REGION
STATE OF WASHINGTON

TODD MCGUIRE, an individual; MARY
MCCURDY, an individual; JOHN CAPPS, an
individual; JOHN WATTS, an individual; and
AFFORDABLE HOMETOWN PORT
TOWNSEND, a non-profit organization,

Petitioners,

v.

CITY OF PORT TOWNSEND,

Respondent.

Case No. 26-2-0017

FINAL DECISION AND ORDER

SYNOPSIS

Todd McGuire, Mary McCurdy, John Capps, John Watts, and Affordable Hometown Port Townsend (collectively, Petitioner) challenged the City of Port Townsend's (City) approval of Ordinance No. 3361 on December 15, 2025 and published legal notice on December 24, 2025.

On December 15, 2025, the City adopted Ordinance 3361, relating to comprehensive planning; adopting the 2025 Growth Management Act (GMA) periodic update to the comprehensive plan pursuant to RCW 36.70A.130(5)(b); amending the comprehensive plan; adopting an active transportation plan, and amending titles 2, 12, 17, 18, and 20 of the Port Townsend Municipal Code (PTMC). Petitioner filed a Petition For Review (PFR) challenging multiple aspects of Ordinance 3361, including: amendments to the housing element in response to amendments to RCW 36.70A.070(2); amendments to the capital facilities element required under RCW 36.70A.070(3); amendments to the utilities element required under RCW 36.70A.070(4); and amendments to the transportation element

1 required under RCW 36.70A.070(6). Petitioner also challenged Ordinance 3361 and
2 adoption of the comprehensive plan and development regulations on the basis of
3 compliance with the public participation requirements of RCW 36.70A.140. All issues also
4 relate to corresponding goals of the GMA found in RCW 36.70A.020. Petitioner also
5 requested the Board to enter a determination of invalidity on multiple issues.
6

7 After examining the pleadings and exhibits filed and conducting a hearing on the
8 merits on July 7, 2026, the Board concludes that the Petitioner has met its burden to
9 demonstrate that the City's actions in adopting Ordinance 3361 were clearly erroneous in
10 the following respects: 1) the City failed to adopt a housing element in compliance with
11 RCW 36.70A.070(2) and RCW 36.70A.020(4); 2) the City failed to adopt a capital facilities
12 element in compliance with RCW 36.70A.070(3), RCW 36.70A.020(1) and (12), and RCW
13 36.70A.120; 3) the City failed to adopt a transportation element in compliance with RCW
14 36.70A.070(6), RCW 36.70A.020(3) and (12), and RCW 36.70A.120; and 4) the City failed
15 to comply with the public participation requirements of the GMA as required by RCW
16 36.70A.140 and RCW 36.70A.020(11) in the adoption of Ordinance 3361. The Board also
17 issues a Determination of Invalidity pursuant to RCW 36.70A.302(1)(b) with respect to public
18 participation because the City adopted certain development regulation amendments in a
19 manner contrary to its public participation program. The city council's action and the
20 amendments erroneously adopted substantially interfere with fulfillment of RCW
21 36.70A.020(11)(Citizen Participation and Coordination). The case is remanded to the City
22 to take further legislative action in compliance with this Final Decision and Order.
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25 I. INTRODUCTION

26 A. Background on the Port Townsend Urban Growth Area (UGA).

27 The City of Port Townsend is a small municipality of 10,649 people occupying
28 approximately a 9-square mile area in east Jefferson County on the Olympic Peninsula.¹
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32 ¹ Ex. 56 at 38; Respondent City of Port Townsend Response Brief (Resp. Br.) at 1.

1 Unlike many parts of western Washington, the growth rate in the City has been almost static
2 for the last 30 years: from 1996-2015, the annual growth rate was 0.6% and this trend
3 continued in 2015 through 2023 with a slight uptick to a 0.9% annual growth rate.² The
4 projected annual growth rate is 1.1%.³

5 As a City founded in the nineteenth century, much of the City was “platted” through
6 the ancient platting process of the late nineteenth and early twentieth century before the
7 advent of state subdivision law.⁴ Regulatory densities within the City are expressed in
8 fractions of 40,000 square-foot units, the size of a standard city block, consistent with the
9 ancient plats that cover much of the City.⁵ In addition, much of the water, sewer, street, and
10 utility infrastructure existing in the City was constructed many decades ago and is substantial
11 need of upgrade and improvement.⁶

12 Although the ancient platting process envisioned small-lot development, the
13 predominant historic growth pattern of the City was a rural pattern of large lots.⁷ The result
14 is a need for significantly more infrastructure than would typically be necessary in a City; in
15 other words, more roads and more utility lines. The City’s plan states, “[t]he low-density
16 development pattern is not only fiscally unsustainable, but is also environmentally and
17 socially unsustainable. Infill and density are needed to address housing and infrastructure
18 costs.”⁸

19 The City’s demographics present other challenges. Currently 41% of Port
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25 ² Resp. Br. at 1.

26 ³ Ex. 56 at 744.

27 ⁴ *Id.* at 43, 58. “Ancient plat or platting” is a shorthand way of describing the nineteenth century platting
28 procedure of simply filing a plan depicting streets and uniform square lots, without regard to topography or
29 connection to existing streets. These plans were recorded without review by local government and there was
30 no effort to tie them to infrastructure requirements. As a result, legal lots were established with no improved
31 access and no established utility services. This sometimes leads to a high cost of development of housing
32 because landowners must extend public utilities and demonstrate legal, adequate access. *Id.* at 58.

⁵ *Id.* at 43.

⁶ *Id.* at 58.

⁷ *Id.*

⁸ *Id.*

1 Townsend's residents are aged 65 or older.⁹ Average household size is approximately 1.83
2 persons per household.¹⁰ Many of the residents relocating to Port Townsend left areas with
3 higher salaries, and are generally not in need of higher paying jobs.¹¹ As a result, only
4 36.9% of income in the City came from earned income in 2022, compared with a state
5 average of 63.5%.¹² Transfer payments¹³ and property income¹⁴ accounted for 63.1% of
6 total personal income in Jefferson County, as compared to a state average of 36.5%.¹⁵
7

8 This influx of older people has driven up the cost of housing faster than local wages,
9 making housing costs challenging for working-age families and individuals.¹⁶ As housing
10 costs displace younger workers from the City, it becomes harder for employers to staff their
11 businesses.¹⁷ Median household income was \$60,015 in 2023, significantly less than the
12 state average of \$94,952.¹⁸ Roughly 14.2% of residents live on incomes below the federal
13 poverty level, 38% higher than the state average of 10.3%.¹⁹ Roughly half of renter occupied
14 households were cost burdened in 2020.²⁰
15

16 B. Zoning Action Taken by the City in Adopting Ordinance 3361.

17 The City's periodic update focused on a number of new GMA requirements enacted
18 since the last update, including recent GMA amendments by the legislature aimed at
19 addressing the housing affordability crisis.²¹ Ordinance 3361 included actions to upzone
20 many parts of the City in an effort to address affordability and minimum requirements for
21 density as required by the legislature.²²
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23 ⁹ *Id.* at 38.

24 ¹⁰ *Id.*

25 ¹¹ *Id.* at 39.

26 ¹² *Id.* at 750-51.

27 ¹³ "Transfer payments" refer to income received without services provided. *Id.* at 750-51.

28 ¹⁴ "Property income" refers to income derived from dividends, interest, and rent-owned properties. *Id.* at 750.

29 ¹⁵ *Ex. 56* at 751.

30 ¹⁶ *See id.* at 39, 57.

31 ¹⁷ *Id.* at 57.

32 ¹⁸ *Id.* at 38.

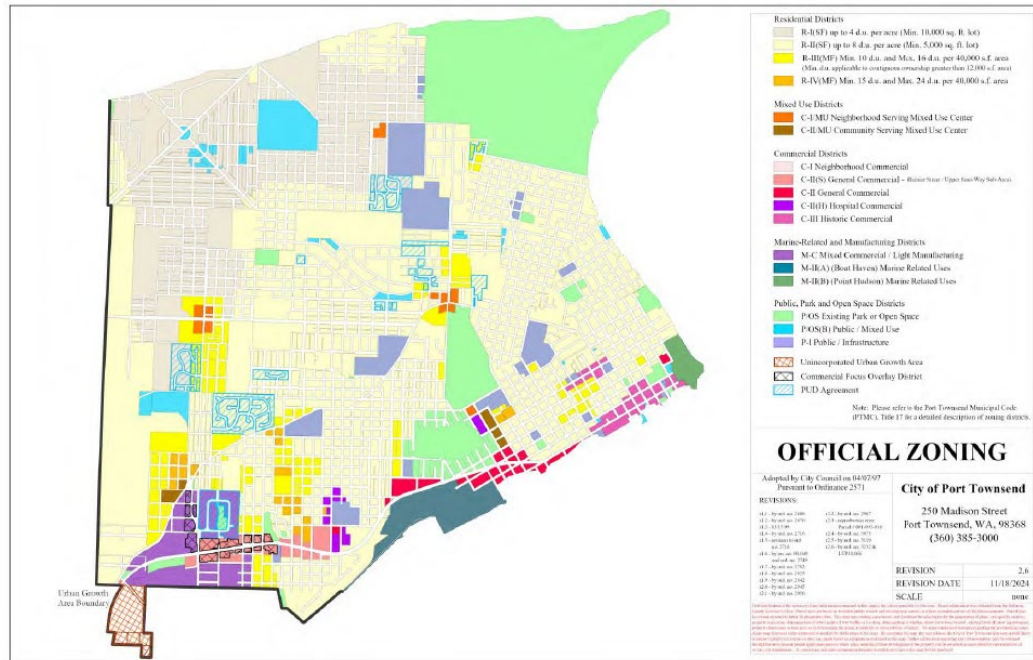
¹⁹ *Id.*

²⁰ *Id.* at 752.

²¹ *See* RCW 36.70A.130(1)(a), (e).

²² Pet's Prehearing Br. at 2-3.

Relevant to this case is the zoning map, as shown below.²³



The pale yellow color that covers much of the zoning map is the R-II zone, which is the zoning classification scrutinized in this case. The R-II classification covers 44.06% of the total land area within the City.²⁴ Prior to the amendments passed in December 2025, the maximum density for dwelling units in the R-II zone (with minor exceptions) was eight units per 40,000 square feet, or roughly lots of 5,000 square feet.²⁵ In considering the periodic update, the planning commission recommended a density increase to 32 units per 40,000 square feet in the R-11 zone.²⁶ The city council held a public hearing, and following that hearing, city staff introduced a new density proposal for the R-II zone to allow six-unit multiplexes on 5,000 square foot lots and 12-unit multiplexes on 10,000 square foot lots.²⁷ The council then voted to proceed with that option.²⁸ Following two more business meetings

²³ *Ex. 272* at 986.

²⁴ *Ex. 56* at 48.

²⁵ Pet'r's Prehearing Br. at 2.

²⁶ *Id.* at 3.

²⁷ Ex. 273 at 873. This proposal will be referred to as the “late amendment” in this decision.

²⁸ *Id.* at 874.

1 but no further public hearings, the council approved its “late-amendment” option along with
2 the rest of Ordinance 3361.²⁹ As a result, he subsequently adopted R-II zone contains the
3 equivalent of 48 units per 40,000 square feet, or the equivalent of six units per 5,000 square
4 foot lot.³⁰

5 C. GMA Amendments Related to Housing Applicable to the Port Townsend
6 Periodic Update.³¹

7
8 The legislature adopted Engrossed Second Substitute House Bill 1220 in 2021
9 (ESSHB 1220), amending various sections of the GMA dealing with housing.³² ESSHB
10 resulted in amendments to the following sections of the statute:

- 11 • RCW 36.70A.020(4) (Goal 4) was transformed from an aspirational goal
12 encouraging certain actions to a mandatory goal reading, “Plan for
13 accommodate housing affordable to all economic segments of the population
14 of the state, promote a variety of residential densities and housing types, and
15 encourage preservation of existing housing stock.”
- 16 • RCW 36.70A.070(2)(a) was amended to become a mandatory requirement
17 requiring that local jurisdictions inventory existing and projected housing
18 needs to identify the number of units needed for “moderate,³³ low,³⁴ very low,³⁵
19 and extremely low-income³⁶ households, . . . and [e]mergency housing,
20
21

22 ²⁹ Ex. 56 at 20.

23 ³⁰ Pet'r's Reply Br. at 5.

24 ³¹ Much of the information in this section is derived from *Futurewise, Kian Bradley, and Trevor Reed v. City of*
25 *Mercer Isl.*, GMHB Case No. 25-3-0003 at 7-8 (Final Decision and Order, Aug. 1, 2025). (Referred to as “*Mercer*
26 *Isl.*” in this decision).

27 ³² Laws of 2021, ch. 254.

28 ³³ “Moderate-income household” means a single person, family or unrelated persons living together whose
29 adjusted income is at or below 120 percent of the median household income adjusted for household size, for
30 the county where the household is located . . . RCW 36.70A.030(30).

31 ³⁴ “Low-income household” means a single person, family or unrelated persons living together whose adjusted
32 income is at or below 80 percent of the median household income adjusted for household size, for the county
where the household is located . . . RCW 36.70A.030(26).

³⁵ “Very low-income household” means a single person, family or unrelated persons living together whose
adjusted income is at or below 50 percent of the median household income adjusted for household size, for the
county where the household is located . . . RCW 36.70A.030(51).

³⁶ “Extremely low-income household” means a single person, family or unrelated persons living together whose

1 emergency shelters [and] permanent supportive housing."

- 2 • RCW 36.70A.070(2)(c) was amended to require local jurisdictions to identify
3 sufficient land capacity for housing, including housing for "moderate, low, very
4 low, and extremely low-income households" and "emergency housing,
5 emergency shelters [and] permanent supportive housing."
6
7 • RCW 36.70A.070(2)(d) was amended to require local jurisdictions to "[make]
8 adequate provisions" for the existing and projected needs of all economic
9 segments of the community including . . . low, very low, and extremely low.
10 And moderate-income households," including:
11 ○ incorporating consideration for moderate, low, very low, and extremely
12 low-income households;
13 ○ documenting programs and actions needed to achieve housing
14 availability including gaps in local funding, barriers such as
15 development regulations and other limitations;
16 ○ consideration of housing locations in relation to employment location;
17 and
18 ○ consideration of the role of accessory dwelling units (ADUs) in
19 meeting housing needs.
20
21 • RCW 36.70A.070(2)(d) was also amended to require local jurisdictions to
22 identify local policies and regulations that result in racially disparate impacts,
23 displacement, and exclusion in housing, including:
24 ○ zoning that may have a discriminatory effect;
25 ○ disinvestment; and
26 ○ infrastructure.
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31 _____
32 adjusted income is at or below 30 percent of the median household income adjusted for household size, for the
 county where the household is located . . . RCW 36.70A.030(18).

- RCW 36.70A.070(2)(e) requires local jurisdictions to identify local policies and regulations that result in racially disparate impacts, displacement, and exclusion in housing;
- RCW 36.70A.070(2)(f) requires local jurisdictions to identify and implement policies and regulations to address and begin to undo racially disparate impacts, displacement, and exclusion in housing caused by local policies, plans, and actions;
- RCW 36.70A.070(2)(g) requires local jurisdictions to identify areas that may be at higher risk of displacement from market forces that occur with changes to zoning development regulations and capital investments; and
- RCW 36.70A.070(h) requires local jurisdictions to establish antidisplacement policies, with consideration given to the preservation of historical and cultural communities as well as investments in low, very low, extremely low, and moderate-income housing; equitable development initiatives; inclusionary zoning; community planning requirements; tenant protections; land disposition policies; and consideration of land that may be used for affordable housing.

The Washington State Department of Commerce (Commerce) has developed detailed guidance to aid local jurisdictions in updating their housing element to comply with ESSHB 1220.³⁷ Commerce summarized the changes brought about by the new law this way:

The updated statute in RCW 36.70A.020 (4) strengthened the Growth Management Act (GMA) housing goal from “encourage affordable housing” to “plan for and accommodate” housing affordable to all income levels. Local governments now must go beyond simply encouraging affordable housing and

³⁷ Commerce has developed three different “books” as guidance: *Establishing Housing Targets for Your Community* (Book 1) (July 2023); *Guidance for Updating Your Housing Element* (Book 2) (2021 with Jan. 2026 update) (Commerce Guidance Book 2); and *Guidance to Address Racially Disparate Impacts* (Book 3) (April 2023) (Commerce Guidance Book 3). All three books are available on Commerce’s website: <https://deptofcommerce.app.box.com/s/1d9d5l7g509r389f0mjpowh8isjpirlh>

1 must actively 'plan for and accommodate housing' affordable to all economic
2 segments of the community.³⁸

3 D. The City's Periodic Update.

4 The City completed its periodic update on December 15, 2025, after an extensive
5 planning process begun in April 2024.³⁹ This appeal focuses primarily on the City's
6 amendments to its housing element, but also includes challenges to the transportation and
7 capital facilities element, along with a public participation challenge.
8

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10 **II. BOARD JURISDICTION**

11 The Board finds the Petition For Review was timely filed, pursuant to
12 RCW 36.70A.290 (2). The Board finds the Petitioner has standing to appear before the Board
13 pursuant to RCW 36.70A.280(2)(a) and (b) and RCW 36.70A.210(6). The Board also finds it
14 has jurisdiction over the subject matter of the petition pursuant to RCW 36.70A.280(1).
15

16
17 **III. STANDARD OF REVIEW**

18 Comprehensive plans and development regulations, and amendments to them, are
19 presumed valid upon adoption.⁴⁰ This presumption creates a high threshold for challengers
20 as the burden is on the petitioner to demonstrate that any action taken by a city is not in
21 compliance with the GMA.⁴¹ The Board is charged with adjudicating GMA compliance and,
22 when necessary, invalidating noncompliant plans and development regulations.⁴²
23

24 The scope of the Board's review is limited to determining whether a city has achieved
25 compliance with the GMA only with respect to those issues presented in a timely Petition For
26 Review.⁴³ The Board is directed to find compliance unless it determines that the challenged
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29 ³⁸ Commerce Guidance Book 3 at 10. See *Ex. 284*.

30 ³⁹ *Ex. 56* at 1-6, and 9.

31 ⁴⁰ RCW 36.70A.320(1).

32 ⁴¹ RCW 36.70A.320(2).

⁴² RCW 36.70A.280, RCW 36.70A.302.

⁴³ RCW 36.70A.290(1).

1 action is clearly erroneous in view of the entire record before the Board and in light of the
2 goals and requirements of the GMA.⁴⁴

3 Any challenge that was not briefed, or is inadequately briefed, by a petitioner is
4 considered abandoned.⁴⁵

6 IV. ANALYSIS AND DISCUSSION

7 **Issue No. 13. Did the City of Port Townsend fail to provide early, continuous, and**
8 **meaningful public participation in its adoption of Ordinance No. 3361, City of Port**
9 **Townsend Comprehensive Plan and development regulations, in violation of RCW**
10 **36.70A.140 and RCW 36.70A.020(11)?**

11 Petitioner first argues that the City failed to comply with the GMA's requirement to
12 provide "early and continuous public participation" as required by RCW 36.70A.140.⁴⁶
13 Specifically, Petitioner focuses on the city council's actions late in the adoption process of
14 Ordinance 3361.⁴⁷ Petitioner alleges:

16 After the Planning Commission completed its review of Ordinance 3361 and
17 recommended a flat density cap of 32 dwelling units per 40,000 square feet in
18 the R-11 zone, the City introduced materially different language specifically for
19 six- and twelve-unit multiplexes. *Ex. 274* at 1163 (Errata Sheet for Dec. 8,
20 2025, Council Meeting). That amendment, first introduced after all Planning
21 Commission hearings had come to an end, was ultimately adopted by the City
22 Council with no Planning Commission review. The City's failure to provide a
23 public hearing before the Planning Commission on that amendment represents
24 a violation of the plain language of the code, specifically the procedures
25 adopted by the City pursuant to the GMA's requirement for early and
26 continuous participation at RCW 36.70A.140.⁴⁸

27 ⁴⁴ RCW 36.70A.320(3). In order to find a city's action clearly erroneous, the Board must be "left with the firm
28 and definite conviction that a mistake has been committed." *Dep't of Ecology v. Pub. Util. Dist. No. 1*, 121 Wn.2d
29 179, 201, 849 P.2d 646 (1993).

30 ⁴⁵ *Futurewise v. Snohomish Cnty.*, 9 Wn.App. 391, 404, 444 P.3d 1228 (2019)("[T]he Board has also explained
31 that a party's inadequately briefed issues are treated the same as unbrieffed issues when the briefing provides
32 'insufficient supporting facts and legal arguments' to satisfy the party's burden of proof.")(Citations omitted).

⁴⁶ Pet'r's Prehearing Br. at 11.

⁴⁷ *Id.* at 13-14.

⁴⁸ *Id.* at 14.

1 Petitioner's reference to local code requiring planning commission review of the late
2 amendment⁴⁹ refers to PTMC 20.04.090.C, which states: "The planning commission shall
3 hold a public hearing **on any text amendment to the land use code** and make a
4 recommendation to the city council, using the decision criteria found in PTMC
5 20.04.080(a)(4) . . . " (Emphasis added). Petitioner alleges the error was compounded
6 because PTMC 20.04.090.C also requires the city council to hold a public hearing after
7 planning commission review pursuant to PTMC 20.09.090.C.⁵⁰ Because the late
8 amendment was not sent back to planning commission, the city council also did not hold its
9 corresponding public hearing on the amendment.⁵¹

12 Petitioner argues that although the city council made an effort to provide an
13 opportunity for public comment on the late amendment, that fell short of the city code
14 requirements because the subsequent city council proceedings were not public hearings;
15 they were special business meetings.⁵² In addition, Petitioner alleges the language of the
16 press release on the late amendment failed to alert the general public of the adopted
17 amendments at issue; specifically, the new exception for six- and twelve-unit multiplexes.⁵³
18 Finally, Petitioner argues that the city council's comment response matrix repeatedly
19 mischaracterized the density exception as being equivalent to an existing allowance for
20 converting an existing home into a fourplex and adding two accessory dwelling units
21 (ADUs).⁵⁴

24 The City provides the following responses to Petitioner's challenge. First, the City
25 argues that the exception language did make it into a planning commission PowerPoint
26

28 ⁴⁹ We use the term "late amendment" as a shorthand phrase to describe the action referred to by the Petitioner
29 in the paragraph above.

30 ⁵⁰ Pet'r's Prehearing Br. at 14.

31 ⁵¹ *Id.*

32 ⁵² *Id.* at 14-15.

⁵³ *Id.* at 15.

⁵⁴ *Id.*

1 presentation on July 23, 2025.⁵⁵ The City further argues that there is no requirement that
2 the exact language of the amendment be part of the public hearing proposal.⁵⁶

3 The City characterizes the City's actions on November 4, 2025, as follows:

4 Following the November 24, 2025 hearing Council direction on the R-II sixplex
5 exception, City staff drafted an amendment to Table 17.16.030 PTMC adding
6 "except 6 units per 5,000 square feet for infill projects with 10,000 square feet
7 or less of lot area" to the draft Ordinance 3361." . . . The exception text . . . from
8 the November 24, 2025 public hearing was conspicuously in Staff's December
9 8, 2025 presentation to City Council. Further, the exception text was included
10 in the "Errata Sheet" along with the December 8, 2025 Periodic Update
11 material, which is a consolidated spreadsheet showing all outstanding edits to
12 the Periodic Update . . . Finally, the R-II sixplex exception text was *again*
13 conspicuously presented to Council on December 15, 2025, in staff's
presentation and in the Errata Sheet.⁵⁷ (Citations omitted; emphasis in
original).⁵⁸

14 The City argues that public participation requirements pursuant to RCW 36.70A.035(2) were
15 satisfied because the city council sought and received numerous written comments on
16 Ordinance 3361 at the December 8, 2025 and December 15, 2025 business meetings, with
17 the majority related to housing density and some related directly to the sixplex exception.⁵⁹

18 Finally, the City also argues that PTMC 20.04.080(B)(4) does not require a public
19 hearing as the forum for providing an additional opportunity for review and comment when
20 the council deviates from the planning commission recommendation. The City cites
21 *Weyerhaeuser Real Est. Co. v. City of Dupont*, CPSGMHB Case No. 98-3-0035 at 10 (Final
22 Decision and Order, May 19, 1999) for the proposition that while RCW 36.70A.035(2)
23 requires a local jurisdiction to provide an opportunity for review and comment on a change
24 proposed after the close of public hearing, it does not require another public hearing before
25 legislative enactment.⁶⁰
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29 ⁵⁵ Resp. Br. at 9.

30 ⁵⁶ *Id.* at 10.

31 ⁵⁷ *Id.* at 11-12.

32 ⁵⁸ *Id.* at 11-12.

⁵⁹ *Id.* at 13-14.

⁶⁰ *Id.* at 15.

1 The GMA provides for "early and continuous public participation in the development
2 and amendment of comprehensive land use plans."⁶¹ "Citizen participation is a core goal of
3 the GMA."⁶² An important feature of RCW 36.70A.140 is the requirement "[to] establish and
4 broadly disseminate to the public a public participation program identifying procedures
5 providing for early and continuous public participation" Most importantly, the statute
6 provides that "[t]he procedures shall provide for broad effective notice, provision for open
7 discussion, . . . and consideration of and response to public comments."

8
9 The City has adopted its public participation program in chapter 20.04 of the PTMC.
10 PTMC 20.04.010 expressly states that the chapter establishes the city's public participation
11 program as required by RCW 36.70A.140. A municipality's public participation program must
12 comply with the minimum standards set by the GMA for public participation, but a municipality
13 is also free to adopt additional standards for public participation.⁶³ The City did so in adopting
14 PTMC 20.04.090.
15

16 It is true, as argued by the City, that the *Weyerhaeuser* case and RCW
17 36.70A.035(2)(a) do not require an additional public hearing for a change to a proposed
18 amendment after the close of public comment if the local jurisdiction provides another public
19 review and comment period beyond those allowed in its procedures. However, the question
20 here is different. The City's public participation program requires that "[t]he planning
21 commission shall hold a public hearing **on any text amendment to the land use code** and
22 make a recommendation to city council" ⁶⁴ In other words, the code requires last-minute
23 changes that result in a different text amendment to be reviewed by the planning commission
24 in a public hearing, followed by another public hearing before the city council.⁶⁵ While this
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27 ⁶¹ *King County v. Cent. Puget Sound H'rgs Bd.*, 138 Wn.2d 161, 167, 979 P.2d 374 (1999) (citing RCW
28 36.70A.140).

29 ⁶² *Spokane County v. E. Wash. Growth Mgmt. Hr'gs Bd.*, 188 Wn. App. 467, 490 (2015) (citing RCW
30 36.70A.020(11)).

31 ⁶³ See *Quadrant Corp. v. Cent. Puget Sound H'rgs Bd.*, 154 Wn.2d 224, 236, 110 P.3d 1132 (2005) ("[T]he
32 GMA contains numerous provisions which tend to show that local jurisdictions have broad discretion in adapting
the requirements of the GMA to local realities.").

⁶⁴ PTMC 20.04.090.C (emphasis added).

⁶⁵ PTMC 20.04.090.C and D.

1 requirement exceeds those of RCW 36.70A.035(2), it remains applicable to the City because
2 it is part of the City's adopted development regulations, specifically its adopted public
3 participation program under the GMA. There is no question that the city failed to send the
4 late amendment back to the planning commission for hearing.

5 PTMC 20.04.090.C also dispenses with the City's argument that there is no need to
6 have exact language before the planning commission; it requires a public hearing on the
7 actual "text amendment" to the land use code. A general description of a possible land use
8 code amendment is not sufficient to meet that requirement.
9

10 Aside from the fact that the City did not provide the required public notice of the late
11 amendment, the language the City used to describe it was unclear. The City's
12 characterization of the amendment as an existing exception in the land use code was at best
13 confusing and at worst deceptive. As pointed out by Petitioner, the City repeatedly
14 misrepresented the scope of the new six- and twelve-unit multiplex exception the council
15 adopted.⁶⁶ In response to comments, the City staff asserted that the change was a density
16 exception that the code already allowed, in that it involved the conversion of a single family
17 home into four units and also allowed two ADUs.⁶⁷ However, as clarified by the City in its
18 briefing to the Board, this amendment is not about conversions of single family homes; the
19 "exception" applies the heightened density to any lot that is 10,000 square feet or less of
20 area and zoned R-II, whether vacant or with an existing home.⁶⁸ So instead of being an
21 exception to the 32-unit density limit per block approved by the planning commission, the
22 council adopted the 48-unit density limit per block for the entire R II zone. Yet, the language
23 of the errata sheets characterizes maximum density in the R-II zone as "32 units, except 6
24 units per 5,000 square feet for infill projects with 10,000 square feet or less of area."⁶⁹
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30 ⁶⁶ Pet'r's Reply Br. at 3.

31 ⁶⁷ See Ex. 274 at 904-936.

32 ⁶⁸ Resp. Br. at 16.

⁶⁹ Ex. 274 at 1163.

1 Case law interprets the GMA to impose a “truth in labeling” duty upon local
2 governments with respect to public participation: “while the requirement to consider public
3 comment does not require elected officials to agree with or obey such comment, **local**
4 **government does have a duty to be clear and consistent in informing the public about**
5 **the authority, scope and purpose of proposed planning enactments.”**⁷⁰ The
6 descriptions of the late amendment cited by the City fail this test.
7

8 The Board concludes that the enactment of Ordinance 3361 by the City violated
9 RCW 36.70A.140 and RCW 36.70A.020(11) because the City failed to follow its own public
10 participation procedures, and because the City used inaccurate and confusing descriptors
11 of the late amendment that failed to convey to the public its true scope and purpose. The
12 Board is firmly convinced a mistake has been made and concludes that the adoption of
13 Ordinance 3361, with respect to the late-amendment adoption, was clearly erroneous in light
14 of the public participation program violation of RCW 36.70A.140 and RCW 36.70A.020(11).
15

16 While the Board considered remanding the case on public participation grounds
17 alone, we determined that based on the importance of the other issues in the case, it is in
18 best interests of both the City and the Petitioner to also decide the remaining issues.
19

20 **Issue No. 1. Did the adoption of Ordinance No. 3361, the City of Port Townsend**
21 **Comprehensive Plan Housing Element, fail to demonstrate sufficient capacity of land**
22 **for housing including housing for moderate, low, and extremely low-income**
23 **households, while also balancing the need to preserve existing housing stock, in**
24 **violation of RCW 36.70A.070(2)(c), RCW 36.70A.115, RCW 36.70A.020(1), (4), (5), (10),**
25 **(12), RCW 36.70A.120, RCW 36.70A.130(1) and (5)(b), RCW 36.70A.210, RCW**
26 **36.70A.100, and Jefferson County Countywide Planning Policies (CPPs) #6 and #9?**

27 Petitioner acknowledges that the City conducted a number of studies to inform its
28 amendment of its housing element in the comprehensive plan, including a Racially Disparate
29

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31 ⁷⁰ *Burien v. Growth Mgmt. Hrgs. Bd.*, 113 Wn.App. 375, 388, 53 P.3d 1028 (2002)(*quoting West Seattle Def.*
32 *Fund v. City of Seattle*, CPSGMHB Case No. 94-3-0016 at 51 (Final Decision and Order, April 4,
1995)(emphasis added).

1 Impacts Analysis, a Housing Needs Analysis, and a Land Capacity Analysis (LCA).⁷¹ The
2 LCA concluded that there is ample land zoned to meet the current and anticipated need, but
3 gaps in the availability and capacity of existing infrastructure (utility, stormwater, and street)
4 limit the feasibility of constructing housing within the 2025-2045 planning period.⁷² The LCA
5 also pointed out that the insufficient infrastructure must be paid for by developers;⁷³ when
6 that cost is combined with the high costs of buying property in the City, projects are often
7 beyond the budget of low-income affordable housing as well as market-rate developers.⁷⁴
8

9 Petitioner alleges that the City's conclusion that there is sufficient land capacity zoned
10 to meet current and anticipated need was flawed, because the LCA summary of unit capacity
11 improperly collapsed income bands when it reviewed the housing types available to each
12 income band and the capacity to meet the City's projected housing needs.⁷⁵ The LCA
13 collapsed the income categories as follows:⁷⁶
14

Income Categories

This analysis uses three main income categories:

Low-Income (Households earning under 80% AMI)

Moderate-Income (Households earning 80-120% AMI)

High-Income (Households earning more than 120%)

21
22 Petitioner argues that the City's collapse of these categories violated the Board's
23 ruling in *Mercer Island*, GMHB No. 25-3-0003 at 7-8. There the Board concluded that
24 aggregating income levels prevented the City of Mercer Island from compiling an accurate
25 inventory of its existing and projected permanent housing needs.⁷⁷ "Aggregation concealed
26 the reality that most of the land capacity the City identified as available to all low to moderate
27

28 ⁷¹ Pet'r's Prehearing Br. at 17.

29 ⁷² *Ex. 56* at 87.

30 ⁷³ *Id.*

31 ⁷⁴ *Id.*

32 ⁷⁵ Pet'r's Prehearing Br. at 17.

⁷⁶ *Ex. 56* at 731.

⁷⁷ *Mercer Isl.*, GMHB No. 25-3-0005 at 23.

1 income segments will only be available for the moderate-income segment at best.”⁷⁸ As a
2 result, the Board concluded that Mercer Island had not met the requirements of RCW
3 36.70A.020(4) and RCW 36.70A.070(2)(c) to identify existing and projected housing units
4 for the low, very low, and extremely low-income households which were allocated to it.⁷⁹

5 The City argues that it followed Commerce Guidance Book 2 in developing its
6 allocation method and the LCA did project housing needs for all income bands.⁸⁰ Following
7 Commerce’s Guidance, the City aggregated all lower income bands to determine
8 aggregated housing capacity (supply).⁸¹ The City summarizes its argument by stating that
9 the Petitioner failed to carry their burden of proof because the City:
10

- 11 • Followed Commerce Guidance Book 2 when developing its LCA- and remains
12 in compliance with Commerce’s guidance post their interpretation of *Mercer*
13 *Island and Kitsap County*;⁸²
- 14 • The City expressly acknowledged that 1,405 units would be needed within the
15 0-80% AMI band and that these units would cost approximately \$170 million
16 over a 20-year planning period- the City did not hide this funding gap;
17
- 18 • The Comprehensive Plan identifies funding sources for the gap, such as the
19 multifamily tax exemption program, grant funding and partnerships with
20 housing providers; and
21
- 22 • The City completed a disaggregation analysis to confirm the findings of the
23 LCA and ensure compliance with *Mercer Island*.⁸³
24
25
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27 ⁷⁸ *Id.*

28 ⁷⁹ *Id.*

29 ⁸⁰ Resp. Br. at 17-18.

30 ⁸¹ *Id.* at 18-19. It also refers to an “in-house” LCA Disaggregation Analysis at Ex. 332. Since there is no
31 indication this document was used by the City as part of their analysis on the record, the Board disregards the
32 graphic of the Resp. Br. at 19

⁸² *Kitsap Alliance of Prop. Owners v. Kitsap County*, GMHB Case No. 25-3-0005c (Final Decision and Order,
Aug. 8, 2025). (Referred to as “*Kitsap County*” in this decision).

⁸³ Resp. Br. at 23.

1 The Board recognizes the City's significant efforts at enacting a housing element
2 compliant with the GMA's new requirements. Unfortunately, however, the LCA suffers from
3 the same defect identified in *Mercer Island*: the aggregation of extremely low, very low, and
4 low income categories prevented the City from producing an accurate inventory of its
5 existing and projected permanent housing needs for each of those segments individually,
6 as discussed below.⁸⁴ For this reason, the Board concludes that the City's enactment of its
7 housing element is clearly erroneous and noncompliant with RCW 36.70A.070(2)(c).
8

9
10 **Issue No. 2. Did the adoption of Ordinance No. 3361, the City of Port Townsend**
11 **Comprehensive Plan Housing Element, fail to make adequate provisions for existing**
12 **and projected needs of all economic segments of the community, fail to incorporate**
13 **consideration for low, very low, extremely low, and moderate-income households,**
14 **and fail to document programs and actions needed to achieve housing availability**
15 **and affordable housing needs, including gaps in local funding in violation of RCW**
16 **36.70A.070(2)(d), RCW 36.70A.020(4), (5), RCW 36.70A.120, RCW 36.70A.210, RCW**
17 **36.70A.100, and Jefferson County CPPs #6 and #9?**

18 Petitioner argues that the City's housing element fails to meet the requirements of
19 RCW 36.70A.070(2)(d), because it fails to make "adequate provisions for existing and
20 projected needs of all economic segments of the community."⁸⁵ Petitioner cite the recent
21 *Mercer Island* case to argue that policy changes alone are insufficient absent a showing that
22 will actually meet a City's identified needs.⁸⁶ Petitioner further argues that because of the
23 City's error in aggregating low-income bands in its LCA, the City has obscured the distinct
24 needs of very low- and extremely low-income households, who are the groups least likely to
25 be served by market-rate development.⁸⁷ While Petitioner acknowledges the City has
26 adopted development regulations that purport to encourage affordable housing, Petitioner
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29

30 ⁸⁴ *Mercer Isl.*, GMHB No. 25-3-0005 at 23.

31 ⁸⁵ Pet'r's Prehearing Br. at 21.

32 ⁸⁶ *Id.* at 22.

⁸⁷ *Id.*

1 alleges that the City has not evaluated whether these regulations can realistically serve the
2 income levels with the greatest need.⁸⁸

3 Petitioner also asserts that the City has failed to document specific programs, funding
4 mechanisms, or regulatory changes necessary to close the funding gap as required by RCW
5 36.70A.070(2)(d).⁸⁹ It further contends that there is no meaningful analysis of whether
6 subsidies will be available at the scale required, whether new development impedes
7 production of affordable units, or whether the anticipated housing supply and subsidy and
8 incentive programs will actually serve the full spectrum of income bands. Petitioner
9 maintains that the City should have, but did not use the tools provided in Commerce
10 Guidance Book 2⁹⁰ to evaluate barriers and identify actions needed to address those
11 barriers.⁹¹ In addition, Petitioner references a comment letter made by Commerce in its
12 review of the City's plan in which it stated "we recommend identifying the number of units
13 that are likely to require subsidies and/or incentives to be affordable at the designated
14 income levels and the amount of subsidy required."⁹²
15
16

17 As a part of this issue statement, Petitioner also challenges the City's consistency
18 with Jefferson County Countywide Planning Policy (CPP) 6.7, which provides that "[e]ach
19 UGA shall accommodate its fair share housing affordable to low-and moderate-income
20 households according to housing units by income allocation and by promoting a balanced
21 mix of diverse housing types."⁹³ Petitioner states that the City is in violation of RCW
22 36.70A.210 and this section of the CPPs based on the same arguments summarized
23 above.⁹⁴
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28 ⁸⁸ *Id.*

29 ⁸⁹ *Id.*

30 ⁹⁰ *Ex. 283.*

31 ⁹¹ *Pet'rs' Br. at 19-20.*

32 ⁹² *Id.* (citing *Attach. 2 at 2*).

⁹³ *Ex. 56 at 723.*

⁹⁴ *Id. at 23.*

1 The City counters with a list of zoning changes that the City enacted in Ordinance
2 3361 to remove barriers that were identified in the City's Adequate Provisions Checklist.⁹⁵
3 The City also states that the City did identify a subsidy gap of \$170 million dollars over the
4 20-year planning period, based on an estimate using numbers from a City housing project⁹⁶
5 pro forma estimates (which were substantially lower than statewide cost per unit).⁹⁷
6 According to the City, the comprehensive plan identifies ways to close the \$5.7 million per
7 year funding gap through programs such as the multifamily tax exemption (MFTE) program,
8 donation or use of City property under RCW 39.33.015, housing and related service sales
9 tax under RCW 82.14.530, real estate excise tax under RCW 82.46.035, affordable housing
10 project fee waivers or deferrals, and general funds.⁹⁸ The City concludes by stating that
11 "[t]he City has used all available tools- absent diverting \$170 million over a 20-year planning
12 period from the City's very limited General Fund to provide 'adequate provisions.'"⁹⁹
13

14 The Board has issued two recent decisions relating to whether a housing element
15 makes "adequate provisions for existing and projected needs of all economic segments of
16 the community," as required by RCW 36.70A.070(2)(d). In *Kitsap County*, GMHB Case No.
17 25-3-0005c, the Board determined that RCW 36.70A.070(2)(d) requires local jurisdictions to
18 account for their allocated population either within their comprehensive plan or demonstrate
19 how the local jurisdiction's development regulations will make adequate provisions for the
20 existing and projected needs of all economic segments of the community.¹⁰⁰ In other words,
21 jurisdictions can no longer rely on the long-range planning window to somehow right the
22 ship. As stated in *Kitsap*, this means jurisdictions "must use the tools at their disposal to
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27 ⁹⁵ Resp. Br. at 24. The Adequate Provisions Checklist is provided by Commerce in Book 2, App. A, as a tool
28 to help local communities comply with RCW 36.70A.070(2).

29 ⁹⁶ The housing project is known as Evans Vista Neighborhood that is located on a 14-acre City owned property
30 "envisioned as a mixed income neighborhood accommodating approximately 321 residential units with at least
31 25% of units restricted to households earning 80% AMI or less."- Resp. Br. at 27.

32 ⁹⁷ Resp. Br. at 26.

⁹⁸ *Id.* at 26.

⁹⁹ *Id.* at 30.

¹⁰⁰ *Kitsap Cnty.*, GMHB 25-3-0005c at 12-13.

1 create the conditions that make it feasible for developers to build the kinds of housing
2 needed at all income levels.”¹⁰¹

3 In *Mercer Island*, the Board found that the erroneous aggregation of all the low to
4 medium income economic segments into a single category set the stage for an erroneous
5 analysis of “adequate provisions.”¹⁰² Mercer Island could not show how certain subsidies
6 and incentives would apply to each low income bracket, and even worse, it assumed that a
7 review of incentives and subsidies could be postponed to a later date. “In the absence of
8 the subsidies or incentives that will be necessary to make housing affordable to the low to
9 moderate income segments, neither the existing capacity for 1,073 units or the newly
10 provided capacity for 143 additional units in the Interim Zoning Ordinance constitute
11 ‘adequate provisions’ for housing across all economic segments.”¹⁰³ In addition, the Board
12 found Mercer Island’s land use policy changes, in and of themselves, did not meet the bar
13 of RCW 36.70A.070(2)(d) to make adequate provisions, because the record did not show
14 that the policies on their own would meet the action-forcing requirement of the statute.¹⁰⁴
15 The Board highlighted the mandatory nature of the new language in RCW 36.70A.020(4)
16 when stating, “[v]ague aspirations to generate unspecified quantities of affordable housing
17 are insufficient in a post-ESSHB 1220 world.”¹⁰⁵

18 Here the Board is presented with a similar problem as that identified in *Mercer Island*.
19 We agree with Petitioner that policy changes alone are insufficient absent a showing that
20 those changes will actually meet the City’s identified needs, which are unclear because of
21 the aggregation problem. Because of the City’s error in aggregating low-income bands in its
22 LCA, the City has obscured the distinct needs of very low- and extremely low-income
23 households, who are the groups least likely to be served by market-rate development. In
24 addition, while the City has adopted development regulations that purport to encourage
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30 ¹⁰¹ *Id.*

¹⁰² *Mercer Isl.*, GMHB No. 25-3-0003 at 41-42.

¹⁰³ *Id.* at 42.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 43.

1 affordable housing, the City has not evaluated whether these regulations can realistically
2 serve the income levels with the greatest need. Jurisdictions must use all the tools at their
3 disposal to create conditions that make it feasible for developers to build the kinds of housing
4 needed at all income levels.¹⁰⁶

5 We also agree with Petitioner that the City is in violation of RCW 36.70A.210 and
6 CPP 6.7 for the same reasons it is not compliant with RCW 36.70A.070(2)(d), as discussed
7 in the previous paragraphs.
8

9 Although we sympathize with the challenges faced by a small city like Port Townsend
10 in providing affordable housing to all economic segments, RCW 3670A.070(2) provides no
11 exceptions for small cities. The City needs to identify the distinct housing needs of extremely
12 low-, very low-, and low-income households, and review possible incentives, subsidies, and
13 other funding, along with policy changes, and provide a detailed analysis of how the housing
14 needs of all segments of the population will be met.
15

16 The Board concludes that the Petitioner has met its burden to show that the City's
17 adoption of Ordinance 3361 violates RCW 36.70A.070(2)(d), RCW 36.70A.020(4), RCW
18 36.70A.210, and Jefferson County Countywide Planning Policy 6.7. The Board is left with
19 a definite conviction that a mistake has been made and concludes that the City's action was
20 clearly erroneous and in violation of the GMA.
21

22 **Issue No. 3. Did the adoption of Ordinance No. 3361, the City of Port Townsend**
23 **Comprehensive Plan Housing Element, fail to identify local policies and regulations**
24 **that result in racially disparate impacts, displacement, and exclusion in housing in**
25 **violation of RCW 36.70A.070(2)(e), RCW 36.70A.020(4), RCW 36.70A.120, RCW**
26 **36.70A.210, RCW 36.70A.100, and Jefferson County CPP #6?**

27 **Issue No. 4. Did the adoption of Ordinance No. 3361, the City of Port Townsend**
28 **Comprehensive Plan Housing Element, fail to identify and implement policies and**
29 **regulations to address and begin to undo racially disparate impacts, displacement,**
30 **and exclusion in housing caused by local policies, plans, and actions, in violation of**
31

32 ¹⁰⁶ *Kitsap Cnty.*, GMHB 25-3-0005c at 12-13.

1 RCW 36.70A.070(2)(f), RCW 36.70A.020(4), (5), RCW 36.70A.120, RCW 36.70A.210,
2 RCW 36.70A.100, and Jefferson County CPP #6?

3 Issue No. 5. Did the adoption of Ordinance No. 3361, the City of Port Townsend
4 Comprehensive Plan Housing Element, fail to identify areas that may be at higher risk
5 of displacement from market forces associated with changes to zoning development
6 regulations, in violation of RCW 36.70A.070(2)(g), RCW 36.70A.020(4), (5), RCW
36.70A.120, RCW 36.70A.210, RCW 36.70A.100, and Jefferson County CPP #6?

7
8 Issue No. 6. Did the adoption of Ordinance No. 3361, the City of Port Townsend 6. Did
9 the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan
10 Housing Element, fail to establish antidisplacement policies with consideration given
11 to the preservation of historical and cultural communities as well as to the
12 investments in low, very low, extremely low, and moderate-income housing, equitable
13 development initiatives, inclusionary zoning, community planning requirements, land
14 disposition policies, and consideration of land that may be used for affordable
housing, in violation of RCW 36.70A.070(2)(h), RCW 36.70A.020(4), (5), RCW
36.70A.120, RCW 36.70A.210, RCW 36.70A.100, and Jefferson County CPP #6?

15 Addressing and remedying historical racially disparate impacts and displacement risk
16 in housing is a major feature of ESSHB 1220. The statute requires local jurisdictions to
17 address and attempt to remedy racially disparate impacts, displacement, exclusion, and
18 displacement risk in housing.¹⁰⁷ Commerce has issued detailed guidance to help local
19 jurisdictions conduct an intensive process of review, revision and implementation of
20 regulations and programs to remedy racially disparate impacts, displacement, exclusion,
21 and displacement risk identified in the local community.¹⁰⁸ Although we base our decision
22 in this case on the language of the GMA, we accord significant weight to Commerce
23 Guidance Book 3 on this part of the statute, due to Commerce's administrative expertise in
24 this area.¹⁰⁹

25
26
27 Petitioner argues that the City has not adequately complied with the RCW
28 36.70A.070(2)(e) through (h).¹¹⁰ Petitioner first argues the City attempted to comply with

29
30 ¹⁰⁷ RCW 36.70A.070(2)(e)-(h).

31 ¹⁰⁸ Commerce Book 3.

32 ¹⁰⁹ See *Mercer Isl.*, GMHB 25-3-003 at 39-40.

¹¹⁰ See Pet'r's Prehearing Br. at 23-27.

1 subsection (2)(f)¹¹¹ by removing portions of the code aimed at preserving “neighborhood
2 character” on the basis it had potential racially disparate impacts, but failed to analyze the
3 effectiveness of the change.¹¹² At the same time, the City adopted new development
4 regulations encouraging “denser, more expensive development while failing to assess
5 whether that development would actually serve those most burdened by housing costs.”¹¹³
6 Petitioner claims that the net result is that the City adopted the new development regulations
7 encouraging denser, more expensive development while failing to assess whether the
8 development would actually serve those most burdened by housing costs.¹¹⁴ Without such
9 an analysis, Petitioner argues, the City cannot demonstrate that its policies will reduce
10 disparities rather than exacerbate them.¹¹⁵

12 Petitioner also challenges the City’s actions with respect to RCW 36.70A.070(2)(g)
13 and (h), which require the City to both identify areas at higher risk for displacement and to
14 establish antidisplacement policies.¹¹⁶ Petitioner argues that the City failed to meaningfully
15 identify areas at heightened risk of displacement caused by its new development
16 regulations, and did not engage with those in the community with direct knowledge of
17 displacement pressures.¹¹⁷ Petitioner also claims that the City failed to adopt meaningful
18 antidisplacement policies with consideration of those risks, because the City never assessed
19 whether development under the new regulations would actually serve households most in
20 need of affordable housing, or whether the regulations would incentivize replacement of
21 existing housing stock with “more expensive market-rate development.”¹¹⁸ Petitioner cites
22 comments in the public record for support of its premise that the new upzones will make
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25

26 ¹¹¹ RCW 36.70A.070(2)(f) requires a local jurisdiction’s housing element to “[identify and implement] policies
27 and regulations to address and begin to undo racially disparate impacts, displacement, and exclusion in housing
28 caused by local policies, plans, and actions.”

29 ¹¹² Pet.r’s Prehearing Br. at 24.

30 ¹¹³ *Id.*

31 ¹¹⁴ *Id.*

32 ¹¹⁵ *Id.*

¹¹⁶ Pet.r’s Prehearing Br. at 24.

¹¹⁷ *Id.* at 25-26.

¹¹⁸ Pet.r’s Prehearing Br. at 26.

1 development even more expensive. In particular, the Petitioner refers to comments by
2 Habitat for Humanity, a local developer of affordable housing, who stated that while they
3 support higher maximum densities, the organization “has significant concerns about
4 proposals to increase minimum density requirements . . . which could unintentionally hinder
5 affordable housing development by introducing delays and limiting flexibility.”¹¹⁹
6

7 The City argues that the essence of Petitioner’s argument is that the upzoning that
8 occurred in Ordinance 3361 will “lead to greater displacement by encouraging existing
9 homes to be torn down and replaced by more intensive, and expensive, development.”¹²⁰
10 According to the City, the basis of Petitioner’s argument is that more widespread
11 displacement will occur because more housing will be constructed- an argument the City
12 describes as not in compliance with the GMA.¹²¹
13

14 The City states that its upzoning actions in Ordinance 3361 “were direct actions to
15 increase the supply of multifamily and ADU development in the City- the City intends that
16 these actions will increase the housing supply and be supportive of ESSHB 1220’s
17 requirements” concerning undoing racially disparate impacts, displacement, and exclusion
18 in housing.¹²² The City argues it did analyze areas at higher risk of displacement due to
19 local land use decisions, because the City included in the record Commerce’s Displacement
20 Risk Map for the City, which shows the city as “low-risk” for displacement, as well as maps
21 showing “under-utilized” parcels. The City also completed a Racially Disparate Impacts
22 Analysis, finding that all of the City’s Hispanic and African American households are cost
23 burdened.¹²³ The City alleges that Petitioner’s actual motive in this appeal is to preserve the
24 (former) status quo single-family zoning.¹²⁴
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29 ¹¹⁹ *Id.* at 27; *Ex.* 275 at 821.

30 ¹²⁰ *Resp. Br.* at 30.

31 ¹²¹ *Id.*

32 ¹²² *Id.* at 31.

¹²³ *Id.* at 30-31.

¹²⁴ *Id.* at 31.

1 The City also maintains that while RCW 36.70A.070(2)(h) requires the City to
2 “establish” antidisplacement policies, it does not require the City to implement them.¹²⁵ The
3 City points to Policy 189, which states “[c]ollaborate with populations most disproportionately
4 impacted by housing cost burden in developing, implementing, and monitoring strategies
5 that address racial exclusion and risk of displacement”¹²⁶ It also highlights Resolution
6 No. 17-014, the “Welcoming City Resolution” to establish citywide policy on civil and human
7 rights.¹²⁷ Finally, the City argues that it has programs to reduce displacement risk because
8 the City is home to two national historic districts, which include the waterfront downtown
9 area and the Uptown neighborhood, an area of residential homes and neighborhood
10 storefronts.¹²⁸ The City argues that discretionary land use controls in these districts help
11 prevent loss of historic structures, advancing preservation and antidisplacement objectives
12 at the same time.¹²⁹ The City also cites to just-cause eviction laws and required notice of
13 rent increases as other antidisplacement policies.¹³⁰

14
15
16 The heart of Petitioner’s argument is that the City failed to conduct the analyses
17 required by the statute to determine whether existing or newly enacted policies are effective
18 to meet the statute’s objective to “begin to undo racially disparate impacts, displacement,
19 and exclusion in housing caused by local policies, plans, and actions.” RCW
20 36.70A.070(2)(f).

21 The Petitioner states in its reply brief that “[w]hat we want is an evidence-based
22 comprehensive plan and development code that accommodates all segments of the
23 community.”¹³¹ We believe that statement sums up the requirements of the statute with
24 respect to racially disparate impacts, displacement, and exclusion in housing. We read RCW
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28 ¹²⁵ *Id.* at 32.

29 ¹²⁶ *Id.* (citing *Ex. 56* at 321).

30 ¹²⁷ *Id.*; see *Ex. 56* at 321; *Ex. 334*.

31 ¹²⁸ Resp. Br. at 33.

32 ¹²⁹ *Id.* at 34.

¹³⁰ *Id.*

¹³¹ Pet’r Reply Br. at 13.

1 36.70A.070(2)(e)-(h)¹³² to create a mandate that local jurisdictions study and analyze the
2 impacts identified in the statute (racially disparate impacts, displacement, and exclusion in
3 housing) of existing land use policies, development regulations, and other programs
4 affecting housing. The statute requires this analysis to be informed by identification of areas
5 at heightened risk of displacement, and engagement with community members who
6 possess direct knowledge of and experience with displacement.
7

8 Second, the statute tasks local jurisdictions with finding credible remedies to the
9 identified impacts, either by amending plans and regulations or enacting new ones.
10 However, new enactments and amendments to existing plans and regulations also have to
11 clear the same hurdle as existing enactments; i.e., the jurisdiction must again demonstrate
12 new enactments meet the statute's action-forcing step of identifying and implementing
13 policies and regulations that address and "*begin to undo*" the impacts identified in the
14 statute, as described in RCW 36.70A.070(2)(f). This step necessarily implies that the local
15 jurisdiction must analyze its implementation measures (policies, plans, regulations, and
16 programs) to determine whether the new enactments will result in progress in addressing
17 and undoing the impacts identified by (2)(f). And again, the local jurisdiction must identify
18 areas at heightened risk of displacement, and engage with community members who
19 possess direct knowledge of and experience with displacement concerning the
20 effectiveness of the new enactments. Fortunately, Commerce Guidance Book 3 provides
21 detailed instructions on how to meaningfully accomplish this work.¹³³
22
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26 ¹³² RCW 36.70A.070(2) requires local jurisdictions to include within their comprehensive plan "[a] housing
element ensuring the vitality and character of established residential neighborhoods that:

- 27 (e) Identifies local policies and regulations that result in racially disparate impacts,
28 displacement, and exclusion in housing . . . ;
29 (f) Identifies and implements policies and regulations to address and begin to undo racially
30 disparate impacts, displacement, and exclusion in housing caused by local policies, plans, and
31 actions;
32 (g) Identifies areas that may be at higher risk of displacement from market forces that occur
with changes to zoning development regulations and capital investments; and
(h) Establishes antidisplacement policies.

¹³³ Commerce Book 3 at 33-48.

1 While the City has diligently tried to identify solutions and enact them, it failed to
2 provide a credible analysis that establishes how the proposed land use and zoning changes
3 will “begin to undo racially disparate impacts, displacement, and exclusion in housing
4 caused by local policies, plans, and actions.”¹³⁴ The City cites to the upzoning actions in
5 Ordinance 3361 as “direct actions to increase the supply of multifamily and ADU
6 development in the City- the City intends that these actions will increase the housing supply
7 and be supportive of ESSHB 1220’s requirements” concerning undoing racially disparate
8 impacts, displacement, and exclusion in housing.¹³⁵ But a statement of intent does not make
9 it so. The City provides no analysis that specifies how the upzone will result in undoing
10 racially disparate impacts, displacement, and exclusion in housing.
11

12 Likewise, inclusion of a displacement risk map in the record is helpful to understand
13 how Commerce views displacement risk in Port Townsend, but the statute requires more.
14 The statute requires the City to analyze its land use changes to determine how they might
15 affect displacement risk in specific areas, which includes input from impacted community
16 members in affected neighborhoods.¹³⁶ Similarly, while discretionary land use controls for
17 national historic preservation districts further laudable goals, the City does not provide any
18 analysis of how such controls might address racially disparate impacts, displacement, or
19 exclusion in housing, which is our focus here.
20

21 The City’s argument that the statute does not require antidisplacement development
22 regulations is without merit. The City cites RCW 36.70A.070(2)(h) but fails to acknowledge
23 (2)(f), which not only requires policies “and regulations,” but also requires implementation of
24 those policies and regulations. We do agree with the City that Petitioner’s repeated
25 characterization of the City’s upzone as creating an incentive for more expensive
26 development that will not serve all economic segments has not been proven by the
27 Petitioner, nor is it borne out in this record. However, it will be the responsibility of the City
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31 ¹³⁴ RCW 36.70A.070(2)(f).

32 ¹³⁵ Resp. Br. at 31; see Commerce Book 3 at 37.

¹³⁶ RCW 36.70A.070(2)(g).

1 to analyze that question on remand. Likewise, we find that the record does not demonstrate
2 whether or not preservation of existing housing stock would result in less displacement. This
3 question should also be analyzed on remand. We do note that Goal 4 encourages the
4 preservation of existing housing stock.

5 We conclude that Petitioner has met its burden of proof and find that the City's
6 enactment of its housing element, along with implementing developing regulations including
7 the R-II upzone, was clearly erroneous because **the City failed to meet the following**
8 **requirements of RCW 36.70A.070(2):**

9
10 (e) Identify local policies and regulations that result in racially disparate impacts,
11 displacement, and exclusion in housing . . .;

12 (f) identify and implement policies and regulations to address and begin to undo
13 racially disparate impacts, displacement, and exclusion in housing caused by local policies,
14 plans, and actions;

15
16 (g) Identify areas that may be at higher risk of displacement from market forces that
17 occur with changes to zoning development regulations and capital investments; and

18 (h) Establish antidisplacement policies.
19

20 **Issue No. 8. Does the adoption of Ordinance No. 3361, the City of Port Townsend**
21 **Comprehensive Plan Transportation Element, fail to ensure that level of service**
22 **standard amendments were made concurrent with strategies to accommodate the**
23 **impacts of development, in violation of RCW 36.70A.070(6)(b) and RCW 36.70A.120?**

24 **Issue No. 10. Does the adoption of Ordinance No. 3361, the City of Port Townsend**
25 **Comprehensive Plan Transportation Element, fail to identify transportation facility**
26 **and service needs in accordance with RCW 36.70A.070(6)(a)(i) through (iii), RCW**
27 **36.70A.070(12), and RCW 36.70A.120, including specific actions and requirements for**
28 **bringing into compliance transportation facilities or services that are below the City's**
established level of service standards?

29 **Issue No. 11. Does the adoption of Ordinance No. 3361, the City of Port Townsend**
30 **Comprehensive Plan Transportation Element, fail to include a financing plan based**
31 **on the needs identified in the comprehensive plan, fail to discuss how land use**
32 **assumptions will be reassessed to ensure that level of service standards will be met,**

1 and fail to include demand management strategies, in violation of RCW
2 36.70A.070(6)(a)(iv)–(vii), RCW 36.70A.120, and RCW 36.70A.020(1), (12)?

3 Issue No. 12. Does the adoption of Ordinance No. 3361, the City of Port Townsend
4 Comprehensive Plan violate the Growth Management Act’s concurrency
5 requirements under RCW 36.70A.070(6)(b), RCW 36.70A.108, RCW 36.70A.630(4),
6 RCW 36.70A.120?

7 Issues 8, 10, 11, and 12 all challenge the City’s compliance with RCW 36.70A.070(6),
8 RCW 36.70A.020(1) and (3); and RCW 36.70A.120. Specifically, Petitioner argues that the
9 City’s proposes that Level of Service (LOS) F be adopted for all urban arterial roads
10 (excluding SR 20 and Mill Road), replacing the prior LOS which is still identified in the 2024
11 CFP as LOS D.¹³⁷ Petitioner argues that aside from an obvious consistency problem, “LOS
12 ‘F’ effectively eliminates any enforceable concurrency threshold because it represents
13 failure conditions and therefore provides no meaningful floor below which service may
14 decline.”¹³⁸ Petitioner argues that concurrency is reduced to an ad hoc and subjective
15 exercise, because the code requires concurrency approval to be granted only if “an
16 **adequate level of service** will exist after the development’s transportation facility impacts
17 are added to” existing usage, cumulative impacts, and demand for new development.”¹³⁹
18

19 Petitioner also alleges that the City has not met the GMA’s requirement “that
20 transportation improvements or strategies- or financial commitments for such—be in place
21 at the time of development.”¹⁴⁰ Petitioner acknowledges that the plan pledges to switch from
22 LOS standards for vehicles to an active transportation model, but asserts that the City has
23 not yet actually adopted an LOS standard.¹⁴¹ Petitioner concludes by stating that “[t]he City
24 of Port Townsend cannot rationally mitigate the impacts of lowering the LOS standard for
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26
27

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29 ¹³⁷ Pet’r’s Prehearing Br. at 28.

30 ¹³⁸ *Id.*

31 ¹³⁹ *Id.* at 28-29, PTMC 12.06.070.H (emphasis added).

32 ¹⁴⁰ *Id.* at 29 (citing RCW 36.70A.070(6)(b)).

¹⁴¹ *Id.* at 30 (stating that “the creation of such a standard is identified in the City’s Active Transportation Plan as a *future* action, the eventual timing of which is unknown.”).

1 vehicles based upon a future, unknown, yet-to-be-developed LOS standard for active
2 transportation, the funding mechanisms for which are uncertain.”¹⁴²

3 The City states that “[t]he Active Transportation Plan, adopted under Ordinance 3361,
4 pivots from vehicular based LOS standards to an efficient multimodal system that is based
5 on city and regional priorities, including enforceable LOS standards.”¹⁴³ The City identifies
6 the new transportation LOS standards from this table in the plan:¹⁴⁴
7

8 **Figure 6-2: Table of Transportation Level of Service Standards**

Road Type	Standard
Urban Arterial	F for streets meeting standards (Except SR20)
Other Roads w/in Urban Growth Area (UGA), but outside the City Limits	As set forth by Jefferson County
State Route 20	As set forth by Washington State Department of Transp.
Transit	Bus access within ¼ mile of any development of 50 homes or more
Active Transportation	1.) Access to a Connected Route within 1/4 of mile (6 city blocks) 2.) Direct Access to an ADA priority route for 20% of all housing units

18
19 LOS will shift from D to F on roads, meaning there will be effectively no concurrency standard
20 for city arterials.¹⁴⁵ The City explains that there has actually been a reduction in traffic
21 volumes on City arterials, while there have been large increases in traffic volumes on SR
22 19/20.¹⁴⁶ The Plan indicates that a reduction in traffic volumes on city arterial streets may
23 be a result of fewer workforce members living within the City, which is a documented housing
24 affordability challenge: “As more workforce members and families with school-aged children
25 move to outlying areas, the commute patterns shift from people driving on arterial streets
26 within Port Townsend to driving in and out of Port Townsend using State Route 19/20 (Sims
27
28

29
30 ¹⁴² *Id.*

¹⁴³ Resp. Br. at 35.

¹⁴⁴ *Ex. 56* at 201.

¹⁴⁵ State Highways LOS is set by the Washington State Department of Transportation (WSDOT).

¹⁴⁶ Resp. Br. at 37; *see Ex. 56* at 153.

Way).¹⁴⁷ The City also indicates that its “Sustainable Streets Plan” provides a strategy to re-develop the street grid in a manner that honors access to existing plats while also minimizing infrastructure and identifying priority emergency access routes.¹⁴⁸ Finally, the City states that its Active Transportation Plan places an emphasis on connectivity through multimodal routes.¹⁴⁹

The City states that it will continue to enforce concurrency using LOS standards as indicated in the chart above and implemented through the municipal code.¹⁵⁰ It urges that “the Comprehensive Plan’s Transportation Element, Capital Facilities Element, Sustainable Streets Plan, and Active Transportation Plan establish enforceable Transportation LOS standards- consistent with GMA’s broad discretion granted to communities in establishing transportation LOS standards.”¹⁵¹

The Board agrees with the City that it retains the discretion to adopt an LOS F standard for urban arterials. As stated by Commerce, there is no minimum LOS standard within the GMA; that is a choice left to the discretion of the local jurisdiction.¹⁵² However, in this case the Capital Facilities Plan (CFP), which is a plan that was not amended as a part of Ordinance 3361, indicates that the standard for urban arterials is LOS D.¹⁵³ Obviously, the transportation element’s adoption of LOS F is inconsistent with the adopted CFP’s standard of LOS D.¹⁵⁴ This constitutes a violation of RCW 36.70A.070 (preamble) which states: “The plan shall be an internally consistent document and all elements shall be consistent with the future land use map.”

Despite the ability to adopt LOS F for urban arterials, local jurisdictions are still required to comply with RCW 36.70A.070(6)(a) and (b), including (a)(iii)(B)’s requirement to

¹⁴⁷ Ex. 56 at 153.

¹⁴⁸ Resp. Br. at 38.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 39; see PTMC 12.06.070.

¹⁵¹ Resp. Br. at 40.

¹⁵² Washington Department of Commerce, *Your Community’s Transportation System: A Guide to Reviewing, Updating and Implementing Your Transportation Element* at 156 (Sept. 2009).

¹⁵³ Ex. 15 at 7.

¹⁵⁴ Compare Ex. 56 at 201 with Ex. 15 at 7.

1 include within its transportation element “[m]ultimodal level of service standards for all locally
2 owned arterials, locally and regionally operated transit routes that serve urban growth areas,
3 state-owned or operated transit routes . . . and active transportation facilities . . . ” The
4 question raised by Petitioner is whether the City actually adopted LOS standards, as it
5 claims to have done for Active Transportation. While the City provides an LOS standard in
6 its chart, the text of the plan states:
7

8 The City does not have an existing level of service standard for Active
9 Transportation (non-motorized) . . . The current plan also recognizes based on
10 public feedback that the city is largely disconnected from an active
11 transportation standpoint and thus shifts its focus on creating connected routes
12 resulting in the need to develop an Active Transportation Level of Service.¹⁵⁵

13 While the chart (as reproduced above) does include standards for “Access to a Connected
14 Route within ¼ mile” and “Direct Access to an ADA priority route for 20% of all housing
15 units,” the City points us to nothing more than its concurrency ordinance as evidence of
16 implementation of its new LOS standards.

17 Accordingly, the Board determines that the City has failed to demonstrate that it has
18 adopted multimodal LOS standards as required by RCW 36.70A.070(6)(a)(iii)(B) and RCW
19 36.70A.020(3) or implemented them as required by RCW 36.70A.070(6)(a) and (b).¹⁵⁶
20 Moreover, the Board agrees with the Petitioner that the City has failed to demonstrate how
21 transportation improvements or strategies- or financial commitments for such—will be in
22 place at the time of development.¹⁵⁷ While the City’s Active Transportation Plan provides
23 strategies and ideas, it does not create a LOS standard compliant with the GMA. The City
24 must meet all the requirements RCW 36.70A.070(6) in adopting an LOS standard for
25

26
27 ¹⁵⁵ Ex. 56 at 158.

28 ¹⁵⁶ The GMA requires local jurisdictions to adopt a transportation element in their plans that complies with RCW
29 36.70A.070(6) and contains the following: land use assumptions used in estimating travel; facilities and service
30 needs which include an inventory of all transportation facilities; multimodal level of service standards for all
31 locally owned arterials; forecasts of multimodal transportation demand and needs within and outside of cities
32 and urban growth areas for at least ten years based on the adopted land use plan; identification of state and
local system needs to equitably meet current and future demands; and a transition plan for transportation as
required in Title II of the Americans with Disabilities Act of 1990 (ADA). RCW 36.70A.070(6)(a).

¹⁵⁷ Pet’r Reply Br. at 14; see Ex. 56 at. 541-43.

1 multimodal systems. The Board has the firm and definite conviction that a mistake has been
2 made and concludes that the City's actions in adopting a transportation element in the plan
3 are clearly erroneous, including actions that violate RCW 36.70A.070 (preamble); RCW
4 36.70A.070(6); RCW 36.70A.120; and RCW 36.70A.020(3) and (12).

5
6 **Issue No. 7. Does the adoption of Ordinance No. 3361, the City of Port Townsend**
7 **Comprehensive Plan Capital Facilities Element, fail to demonstrate financial feasibility**
8 **and funding sources for infrastructure needed to serve forecasted growth, in violation**
9 **of RCW 36.70A.070(3), RCW 36.70A.020(1), (12), RCW 36.70A.120, RCW 36.70A.210,**
RCW 36.70A.100, and Jefferson County CPP #9?

10 **Issue No. 9. Does the adoption of Ordinance No. 3361, the City of Port Townsend**
11 **Comprehensive Plan Capital Facilities and Transportation Elements, authorize**
12 **development without ensuring that public facilities, services, and utilities will be**
13 **adequate to support development at the time development is available for occupancy**
14 **and use without decreasing levels of service below the minimum standards, in**
15 **violation of and RCW 36.70A.020(1), (4), (10), (12), RCW 36.70A.070(4)(a), RCW**
36.70A.120, RCW 36.70A.210, RCW 36.70A.100, and Jefferson County CPP #9?

16
17 Petitioner alleges that the City failed to provide an adequate CFP as required by RCW
18 36.70A.070(3) as a part of its periodic update of the comprehensive plan.¹⁵⁸ Petitioner
19 states: "The City's Comprehensive Plan simultaneously adopted sweeping density changes
20 intended to increase development capacity, repeatedly acknowledged existing infrastructure
21 deficiencies and unfunded capital needs, and relied upon and incorporated by reference a
22 [CFP] that was adopted before the City proposed the density increases that have now been
23 adopted."¹⁵⁹ Petitioner notes that the City relied on a 1996 Environmental Impact Statement,
24 traffic projections from a 2009 Functional Transportation study, and a water system plan from
25 2019 that only projects needs through 2036.¹⁶⁰ Petitioner also points out that the existing
26 CFP was adopted in December 2024, so it relied on outdated assumptions regarding future
27 land use, population, transportation demand, stormwater runoff, water demand, wastewater
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31 ¹⁵⁸ Pet'r's Prehearing Br. at 31.

¹⁵⁹ *Id.*

32 ¹⁶⁰ *Id.*, n.15.

1 capacity, and other infrastructure metrics.¹⁶¹ As a result, Petitioner argues that the CFP
2 could not have meaningfully forecasted future infrastructure needs, evaluated concurrency,
3 or established a financially feasible plan for growth for a planning horizon that reaches to
4 2045.¹⁶²

5 Petitioner also contends that the City's failure to adopt a capital facilities element
6 consistent with its land use element is a violation of Goal 1, which requires cities to encourage
7 development in urban areas where there is adequate public facilities and services exist or
8 can be efficiently provided, and GMA Goal 12, which states: "Ensure that those public
9 facilities and services necessary to support development shall be adequate to serve the
10 development at the time the development is available for occupancy and use without
11 decreasing current service levels below locally established minimum standards."¹⁶³

12 Finally, Petitioner alleges the City's adoption of periodic update of the comprehensive
13 plan violates RCW 36.70A.120, which requires that each city or county planning under the
14 GMA "perform its activities and make capital budget decisions in conformity with the
15 comprehensive plan."¹⁶⁴

16 The City contends as a threshold matter that Petitioner cannot challenge the CFP and
17 CIP because those documents were adopted in 2024.¹⁶⁵ On the merits, the City counters
18 that Petitioner misapprehends the requirements of the GMA, in that it stresses the land use
19 density increases, when the appropriate metric is the population projections.¹⁶⁶ The City
20 cites Jefferson County Countywide Planning Policy #1, which states:¹⁶⁶

21 The County and City [of Port Townsend] will jointly prepare a regional
22 population forecast for growth management planning purposes, using
23 Washington State Office of Financial Management (OFM) population
24 projection. This forecast will delineate a twenty-year population projection
25
26
27

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29 ¹⁶¹ *Id.* at 32.

30 ¹⁶² *Id.*

31 ¹⁶³ *Id.* at 34; *see Ex. 56* at 148.

32 ¹⁶⁴ Resp. Br. at 48-49.

¹⁶⁵ *Id.* at 41-42.

¹⁶⁶ *Id.* at 43 (emphasis omitted).

1 and be used in the preparation of land use, housing, water, utility, and
2 transportation for the capital improvement plans.

3 The City argues that Petitioner is advocating that “the City should plan for and build capital
4 facilities that accommodate the full build out of zoning entitlements under Ordinance
5 3361.”¹⁶⁷

6 The City further contends that even though the CFP was adopted in 2024, it remains
7 internally consistent with the comprehensive plan and its new land use element because the
8 plan ensures all functional plans are using the same planning projections and planning
9 horizons.¹⁶⁸ The City points to basic availability thresholds as non-transportation level of
10 service (LOS) standards, including for water and wastewater. For stormwater, the LOS
11 standard is a stormwater system that meets Department of Ecology requirements. The City
12 argues its comprehensive plan requires reassessment of the land use element if actual
13 population growth cannot be accommodated within the CFP and CIP.¹⁶⁹

14 The Board first addresses the jurisdictional issue. The City adopted a CFP which
15 states that it meets the requirements of RCW 36.70A.070(3) in December 2024. The City
16 claims that the plan is consistent with the periodic update adopted in December 2025.¹⁷⁰ It
17 further claims that it was adopted as a “functional plan” in conjunction with the comprehensive
18 plan.¹⁷¹

19 The Board agrees with the City that it does not have jurisdiction to review the City's
20 CFP and CIP since it was adopted in December 2024. But that in and of itself is problematic.
21 As it stands, the City has failed to include in its periodic update a capital facilities element.¹⁷²

22
23
24
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26 ¹⁶⁷ *Id.* at 44.

27 ¹⁶⁸ *Id.*

28 ¹⁶⁹ *Id.* at 45.

29 ¹⁷⁰ *Id.* at 40.

30 ¹⁷¹ *Id.*; *Ex. 56* at 37.

31 ¹⁷² Although there is a chapter in the comprehensive plan called “The Capital Facilities Element,” that chapter
32 does not meet the requirements of RCW 36.70A.070(3) and RCW 36.70A.020. *See Ex. 56* at 191-202. It is
broad and general in nature and does not provide an inventory of existing facilities or a forecast of future needs
for the planning horizon. While it does refer to 11 “functional plans,” the Transportation Functional Plan dates
back to 2009 and is not in the record. There are three other functional plans in the record, but they are also
dated and not within the jurisdiction of the Board. *See Exs. 13, 15, 18.*

1 A mention of a CFP as a “functional plan” in passing does not meet the requirements of the
2 GMA, specifically RCW 36.70A.070’s requirement that “[t]he plan shall be an internally
3 consistent document and all elements shall be consistent with the future land use map.” And
4 those functional plans all fail to address the 20-year planning horizon. Capital facilities
5 planning must be **integrated** into the periodic update process, and the CFP is required to
6 address RCW 36.70A.070(3)(a)-(c), and (e) as a fundamental part of planning for land use,
7 public facilities, utilities, and transportation throughout the 20-year planning cycle.¹⁷³ RCW
8 36.70A.120 requires that cities planning under GMA perform activities and make budget
9 decisions in conformity with its comprehensive plan. In other words, budget decisions must
10 be consistent with and implement the comprehensive plan.
11

12 The CIP component is “**at least a six-year plan** that will finance such capital facilities
13 within projected funding capacities and clearly identifies sources of public money for such
14 purposes.” RCW 36.70A.070(3)(d). While many jurisdictions adopt the CIP as part of their
15 budget cycle, the planning window must at all times be at least six years. Therefore, if a
16 plan is adopted with the planning window beginning in 2025, and the jurisdiction is on a two-
17 year adoption schedule for the budget combined with the CIP, the planning window must
18 extend eight years- from 2025 through 2032- to ensure that the CIP is at all times compliant
19 with the GMA and the planning window allows the CIP to remain compliant through the next
20 expected budget adoption.¹⁷⁴ In addition, the CIP must be updated concurrently with a
21 periodic update to ensure it remains consistent with all parts of the plan.
22
23

24 Part of the critical need to integrate the capital facilities element with the land use
25 element derives from Goal 12, which must be considered as a part of capital facilities
26 planning: “Ensure that those public facilities and services necessary to support development
27 shall be adequate to serve the development at the time the development is available for
28 occupancy and use without decreasing current service levels below locally established
29

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31 ¹⁷³ See WAC 365-196-415.

32 ¹⁷⁴ The Board notes that the City’s adopted CIP states that the planning window is 2025 to 2030. *Ex. 15* at 1.
Therefore, at present instead of the six-year window required by RCW 36.70A.070(3)(d) is less than four years.

1 minimum standards.” In *McVittie v. Snohomish County*, CPSGMHB Case No. 01-3-0002
2 (Final Decision and Order, July 25, 2001) (*McVittie VI*), the Board summarized four
3 conclusions from prior cases regarding Goal 12:

4
5 (1) Goal 12 creates a duty beyond the capital facility planning that is required
6 by RCW 36.70A.070(3) and requires substantive, as well as procedural
7 compliance; (2) Goal 12 requires the designation of a locally established single
8 Level of Service (LOS) standard for the facilities and services contained in the
9 Capital Facilities Element, below which the jurisdiction will not allow service to
10 fall; (3) Goal 12, operating through RCW 36.70A.070(3) and (6), requires an
11 enforcement mechanism or “trigger” to compel either concurrency
12 implementation or reevaluation of numerous options; and (4) Goal 12 does not
13 require a development-prohibiting concurrency ordinance for non-
14 transportation facilities and services, rather, it allows local governments to
determine what facilities and services are necessary to support development
and the enforcement mechanism for ensuring that identified necessary
facilities and services for development are adequate and available.

15 As *McVittie VI* indicates, jurisdictions have discretion to make choices to regarding LOS and
16 adequacy standards, enforcement mechanisms, and planning options. But this process must
17 clearly be a part of and integral to the comprehensive plan, not an afterthought. There needs
18 to be clear guidance in the Capital Facilities Element regarding public facilities and services
19 necessary to support Goal 12. What are the plan’s priorities to address aging infrastructure?
20 Will there be sufficient water supply and wastewater supply to accommodate projected
21 growth within the 20-year planning period? What are options to increase water supply? How
22 will the City plan and finance expansion of wastewater plants? With deficient, aging
23 infrastructure in the form of roads and sewer and water pipelines, what areas should be
24 prioritized in infrastructure replacement to accommodate more intensive development? Is
25 that consistent with the land use element? All of these types of questions should be
26 fundamental to discussions of housing,¹⁷⁵ density, and transportation priorities.
27
28

29
30 ¹⁷⁵ The Board notes that WAC 365-196-415(2)(v) requires that “[c]ounties and cities should consider where
31 infrastructure availability or lack thereof may have resulted in racially disparate impacts, displacement, or
32 exclusion in housing as a result of local policies or regulations. Where the lack of infrastructure limits the ability
to achieve infill development, cities required to allow middle housing must plan for adequate infrastructure, such

1 A robust capital facilities planning process fully integrated into the comprehensive plan
2 is a core requirement of GMA planning. The Board concludes that Petitioner has met its
3 burden of proof with respect to Issues 7 and 9. The Board further concludes that the City's
4 adoption of the periodic update to the comprehensive plan in Ordinance 3361 was clearly
5 erroneous because the City failed to integrate into the plan a capital facilities element that
6 meets the requirements of RCW 36.70A.070(3)(a)-(d), RCW 36.70A.020(1) and (12), and
7 RCW 36.70A.120.
8

9 **V. PETITIONER'S REQUEST FOR A DETERMINATION OF INVALIDITY**

10 Petitioner requested the Board enter a Determination of Invalidity in its opening brief
11 and during oral argument. Petitioner states:¹⁷⁶
12

13 The City's adoption of Ordinance 3361 substantially interferes with the planning
14 goals of the GMA by opening the door to widespread development without
15 ensuring compliance with concurrency requirements, failing to provide
16 adequate assurances that the resulting development will serve those most in
17 need of affordable housing, and even adopting sweeping changes aimed at
18 fostering commercial development that may displace those who are most in
19 need. In doing so, Ordinance 3361 materially frustrates the GMA's core
20 purpose of coordinated, planned growth that aligns development with adequate
21 public facilities and housing needs. See RCW 36.70A.020. The Board should
therefore invalidate Ordinance 3361 and remand the matter back to the City of
Port Townsend for action that is compliant with the Growth Management Act.

22 Petitioner also requests invalidity in its prehearing brief with respect to the public participation
23 violation in its prehearing brief. Petitioner states: "[B]ecause the City did not comply with the
24 'spirit' of the Planning Commission meeting requirement—wholly circumventing the
25 Commission in the Council's last-minute adoption of the six- and twelve-plex density
26 exception—the City's adoption of Ordinance 3361 should be invalidated."¹⁷⁷
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31 as sewer, to allow new infill development."

32 ¹⁷⁶ Pet'r's Prehearing Br. at 35.

¹⁷⁷ Pet'r's Prehearing Br. at 16.

1 The City argues that the request for invalidity is not properly before the Board because
2 it was not included in the Petition for Review and was only requested for the first time in
3 Petitioner's prehearing brief.¹⁷⁸ The City makes no argument concerning the substance of
4 the invalidity request.

5 In *Mercer Island* at 62-64, the Board was faced with an invalidity request that appeared
6 in the PFR, but not in briefing. Noting that the Board may issue a finding of invalidity *sua*
7 *sponte* in appropriate circumstances, the Board analyzed invalidity, but ultimately did not
8 enter a determination of invalidity.¹⁷⁹ The GMA provides that "[t]he Board may determine
9 that part or all of a comprehensive plan or development regulations are invalid . . ."¹⁸⁰ The
10 Board concludes that the statute provides the Board with discretion to consider a
11 determination of invalidity. In this case, the Petitioner briefed the request, and the City had
12 a full opportunity to respond. We therefore conclude that it is appropriate to consider
13 invalidity in this case.
14

15 Turning to Petitioner's specific requests, the Board declines to make a determination
16 of invalidity with respect to the City's housing element, transportation element, and capital
17 facilities element. While these violations are serious, the Board does not anticipate that the
18 plan enacted under Ordinance 3361 will substantially interfere with the fulfillment of the goals
19 of the GMA any more than the preexisting plan, which had many of the same defects. And
20 while the City's housing element is defective, the City did make a valiant effort to comply with
21 these complex new requirements of the GMA. Given the minimal growth rate and the size
22 of the City, it is unnecessary and unproductive for the Board to invalidate the City's
23 comprehensive plan.
24

25 Public participation is a different story. GMA, as a "bottom up" statute, relies heavily
26 on a strong ethic of public participation; public participation has often been called the bedrock
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31 ¹⁷⁸ Resp. Br. at 49.

¹⁷⁹ *Mercer Isl.*, GMHB 25-3-0003 at 63-64.

32 ¹⁸⁰ RCW 36.70A.302(1).

1 of the GMA.¹⁸¹ Here the Council adopted a zoning amendment that significantly increased
2 density in the R-11 zone occupying 44.06% of the total land area in the City,¹⁸² presumably
3 with the knowledge that the amendment had not gone through the appropriate public hearing
4 procedure before the Planning Commission.¹⁸³ This misstep weakens trust between local
5 officials and citizens who spend time and resources to participate in planning for their City's
6 future. While this violation was of the City's own public participation program and not a
7 specific GMA requirement, that does not make the error any less serious. GMA requires
8 local governments to follow their own adopted established and broadly disseminated public
9 participation program "identifying procedures providing for early and continuous public
10 participation in the development and amendment of comprehensive land use plans and
11 development regulations implementing such plans."¹⁸⁴ Compliance with a local government's
12 public participation ordinance is always important, but especially in a case like this when the
13 late amendment resulted in dramatic changes in local land use zoning affecting many citizens
14 in a zone that encompasses nearly half the City.
15

16
17 The City in its brief stressed how many comments it received regarding housing during
18 their final business meetings on December 8 and 15, 2025, with a few even referring to the
19 late amendment.¹⁸⁵ But that does not mitigate the violation. It is likely that most people,
20 even those who are following developments in comprehensive planning, knew nothing about
21 the late amendment until it was a fait accompli. In addition, the City's argument that it
22 provided effective notice of the late amendment prior to the two business meetings is entirely
23 without merit, because the claimed notice was wholly insufficient and inconsistent with the
24 City's public participation program.¹⁸⁶ In addition, as determined by the Board, the language
25

26
27 ¹⁸¹ *Pirie Second Family Ltd. P'ship, LP, v. City of Lynnwood*, CPSGMHB Case No. 06-3-0029 at 13 (Final
28 Decision and Order, April 9, 2007).

29 ¹⁸² *Ex. 56* at 48.

30 ¹⁸³ The Board assumes that city council members are familiar with the GMA public participation procedures in
31 their own jurisdiction.

32 ¹⁸⁴ RCW 36.70A.140.

¹⁸⁵ Resp. Br. at 13-14.

¹⁸⁶ The City claimed that there was mention of the late amendment in small print on a power point slide as part
of a staff presentation on December 8, 2025 and it was included as an entry on an errata sheet that is 38 pages

1 of the City's "notice," such as it was, was confusing and misleading, thereby compounding
2 the error.

3 The Board concludes that the city council's actions in adopting the late amendment
4 substantially frustrated fulfillment of RCW 36.70A.020(11), which states: "Citizen participation
5 and coordination. Encourage the involvement of citizens in the planning process, including
6 the participation of vulnerable populations and overburdened communities, and ensure
7 coordination between communities and jurisdictions to reconcile conflicts."

8 Accordingly, the Board issues a determination of invalidity in this case with respect to
9 the city's adoption of development regulations in Section 4 of Ordinance 3361. The Board
10 determines invalid all increases in density to the R-II zone and related amendments,
11 presumably located within Title 17 PTMC. The amendments are referred to in Ordinance
12 3361, Section 4(3) Exhibit Q (*Ex. 275* at 694-787); and Section 4(6) Errata Sheet, Exhibit X
13 (*Ex. 275* at 1071-1075).¹⁸⁷
14
15

16 VI. ORDER

17 Based upon review of the Petition For Review, the briefs and exhibits submitted by
18 the parties, the GMA, prior Board orders and case law, having considered the arguments of
19 the parties, and having deliberated on the matter, the Board finds:
20

- 21
- 22 • The City of Port Townsend's adoption of **Ordinance 3361 is clearly**
23 **erroneous** because in adopting the ordinance, the City **violated RCW**
24 **36.70A.140, and PTMC 20.04.090.C**, which is part of the City's adopted public
25 participation procedures. The City also **failed to be guided by RCW**
26 **36.70A.020(11)**.
27
 - 28 • **The Board issues a Determination of Invalidity pursuant to RCW**
29 **36.70A.302(1)(b) with respect to public participation because the city**
30

31 long in tiny-font print containing hundreds of entries. Resp. Br. at 12; *Ex. 275* at 1071-1109.

32 ¹⁸⁷ The parties may jointly review the record and present an agreed list of the amendments that are invalid as specified in this order in a motion for reconsideration, to allow clarity to the City regarding the scope of invalidity.

council adopted certain development regulation amendments in a manner contrary to the City's public participation program. The city council's action and the amendments illegally adopted substantially interfere with the fulfillment of Goal 11, Citizen Participation and Coordination. Findings are contained in Part V of this Decision.

- The City of Port Townsend's adoption of Ordinance 3361 is clearly erroneous because the City adopted a housing element that violates RCW 36.70A.070(2)(c)-(h). The City also failed to be guided by RCW 36.70A.020(4).
- The City of Port Townsend's adoption of Ordinance 3361 is clearly erroneous because the City adopted a transportation element that violates RCW 36.70A.070(6)(a) and (b), RCW 36.70A.070 (preamble), and RCW 36.70A.120. The City also failed to be guided by RCW 36.70A.020(3) and (12).
- The City of Port Townsend's adoption of Ordinance 3361 is clearly erroneous because the City adopted a capital facilities element that violates RCW 36.70A.070(3) and RCW 36.70A.120. The City also failed to be guided by RCW 36.70A.020(1) and (12).

Item	Date Due
Compliance Due	February 15, 2027
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	March 1, 2027
Objections to a Finding of Compliance	March 15, 2027
Response to Objections	March 25, 2027
Telephonic Compliance Hearing (Zoom links to be provided at later date)	April 1, 2027 at 10:00 a.m.

1 Length of Briefs – A brief of 15 pages or longer shall have a table of exhibits and a
2 table of authorities. WAC 242-03-590(3) states: "Clarity and brevity are expected to assist a
3 board in meeting its statutorily imposed time limits. A presiding officer may limit the length of
4 a brief and impose format restrictions." **Compliance Report/Statement of Actions Taken**
5 **to Comply shall be limited to 25 pages, 35 pages for Objections to Finding of**
6 **Compliance, and 10 pages for the Response to Objections.**
7

8 SO ORDERED this 19th day of August, 2026.
9

10 
11

12 Barbara Dykes Ehrlichman, Presiding
13 Board Member

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16 Rick Eichstaedt, Board Member
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18 
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20 Alex Sidles, Board Member
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24 **Note: This is a final decision and order of the Growth Management Hearings Board**
25 **issued pursuant to RCW 36.70A.300.¹⁸⁸**
26
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28
29 ¹⁸⁸ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all
30 parties within ten days of mailing of the final order. WAC 242-03-830(1), -840. A party aggrieved by a final
31 decision of the Board may appeal the decision to Superior Court within thirty days as provided in
32 RCW 34.05.514; RCW 36.01.050. See also RCW 36.70A.300(5); WAC 242-03-970. It is incumbent upon the
parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not
authorized to provide legal advice.

Appendix A: Procedural matters

On February 20, 2026, Petitioner Todd McGuire, Mary McCurdy, John Capps, John Watts, and Affordable Hometown Port Townsend filed a Petition For Review challenging the City of Port Townsend's approval of Ordinance No. 3361 on December 15, 2025, and published legal notice on December 24, 2025. The Petition was assigned Case No. 26-2-0017

A prehearing conference was held telephonically on March 12, 2026. Petitioner appeared through its counsel Bryan Telegin and Abigail McCeney. The City appeared through City Attorney Austin M. Watkins with City Manager John Mauro and City Planner Lonnie Mickle in attendance.

On April 9, 2026, Petitioner filed an Unopposed Motion for Extension of Time for Additions to the Record. Petitioner's Motion was granted.

The Briefs and exhibits of the parties were timely filed and are referenced in this order as follows:

- Petitioner's Prehearing Brief, May 29, 2026 (Petitioner's Brief)
- Response Brief, June 12, 2026 (Response Brief)
- Reply Brief, June 22, 2025 (Reply Brief)

Hearing on the Merits

The Hearing on the Merits convened July 7, 2026. The hearing afforded each party the opportunity to emphasize the most important facts and arguments relevant to its case. Board members asked questions seeking to thoroughly understand the history of the proceedings, the important facts in the case, and the legal arguments of the parties.

Appendix B: Legal Issues

Per the Prehearing Order, legal issues in this case were as follows:

1. Did the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan Housing Element, fail to demonstrate sufficient capacity of land for housing including housing for moderate, low, and extremely low-income households, while also balancing the need to preserve existing housing stock, in violation of RCW 36.70A.070(2)(c), RCW 36.70A.115, RCW 36.70A.020(1), (4), (5), (10), (12), RCW 36.70A.120, RCW 36.70A.130(1) and (5)(b), RCW 36.70A.210, RCW 36.70A.100, and Jefferson County Countywide Planning Policies (CPPs) #6 and #9?
2. Did the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan Housing Element, fail to make adequate provisions for existing and projected needs of all economic segments of the community, fail to incorporate consideration for low, very low, extremely low, and moderate-income households, and fail to document programs and actions needed to achieve housing availability and affordable housing needs, including gaps in local funding in violation of RCW 36.70A.070(2)(d), RCW 36.70A.020(4), (5), RCW 36.70A.120, RCW 36.70A.210, RCW 36.70A.100, and Jefferson County CPPs #6 and #9?
3. Did the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan Housing Element, fail to identify local policies and regulations that result in racially disparate impacts, displacement, and exclusion in housing in violation of RCW 36.70A.070(2)(e), RCW 36.70A.020(4), RCW 36.70A.120, RCW 36.70A.210, RCW 36.70A.100, and Jefferson County CPP #6?
4. Did the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan Housing Element, fail to identify and implement policies and regulations to address and begin to undo racially disparate impacts, displacement, and exclusion in housing caused by local policies, plans, and actions, in violation of RCW 36.70A.070(2)(f), RCW 36.70A.020(4), (5), RCW 36.70A.120, RCW 36.70A.210, RCW 36.70A.100, and Jefferson County CPP #6?
5. Did the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan Housing Element, fail to identify areas that may be at higher risk of displacement from market forces associated with changes to

1 zoning development regulations, in violation of RCW 36.70A.070(2)(g), RCW
2 36.70A.020(4), (5), RCW 36.70A.120, RCW 36.70A.210, RCW 36.70A.100,
3 and Jefferson County CPP #6?

4 6. Did the adoption of Ordinance No. 3361, the City of Port Townsend
5 Comprehensive Plan Housing Element, fail to establish antidisplacement
6 policies with consideration given to the preservation of historical and cultural
7 communities as well as to the investments in low, very low, extremely low, and
8 moderate-income housing, equitable development initiatives, inclusionary
9 zoning, community planning requirements, land disposition policies, and
10 consideration of land that may be used for affordable housing, in violation of
11 RCW 36.70A.070(2)(h), RCW 36.70A.020(4), (5), RCW 36.70A.120, RCW
12 36.70A.210, RCW 36.70A.100, and Jefferson County CPP #6?

13 7. Does the adoption of Ordinance No. 3361, the City of Port Townsend
14 Comprehensive Plan Capital Facilities Element, fail to demonstrate financial
15 feasibility and funding sources for infrastructure needed to serve forecasted
16 growth, in violation of RCW 36.70A.070(3), RCW 36.70A.020(1), (12), RCW
17 36.70A.120, RCW 36.70A.210, RCW 36.70A.100, and Jefferson County CPP
18 #9?

19 8. Does the adoption of Ordinance No. 3361, the City of Port Townsend
20 Comprehensive Plan Transportation Element, fail to ensure that level of service
21 standard amendments were made concurrent with strategies to accommodate
22 the impacts of development, in violation of RCW 36.70A.070(6)(b) and RCW
23 36.70A.120?

24 9. Does the adoption of Ordinance No. 3361, the City of Port Townsend
25 Comprehensive Plan Capital Facilities and Transportation Elements, authorize
26 development without ensuring that public facilities, services, and utilities will be
27 adequate to support development at the time development is available for
28 occupancy and use without decreasing levels of service below the minimum
29 standards, in violation of and RCW 36.70A.020(1), (4), (10), (12), RCW
30 36.70A.070(4)(a), RCW 36.70A.120, RCW 36.70A.210, RCW 36.70A.100, and
31 Jefferson County CPP #9?

32 10. Does the adoption of Ordinance No. 3361, the City of Port Townsend
Comprehensive Plan Transportation Element, fail to identify transportation
facility and service needs in accordance with RCW 36.70A.070(6)(a)(i) through
(iii), RCW 36.70A.070(12), and RCW 36.70A.120, including specific actions
and requirements for bringing into compliance transportation facilities or

1 services that are below the City's established level of service standards?

2
3 11. Does the adoption of Ordinance No. 3361, the City of Port Townsend
4 Comprehensive Plan Transportation Element, fail to include a financing plan
5 based on the needs identified in the comprehensive plan, fail to discuss how
6 land use assumptions will be reassessed to ensure that level of service
7 standards will be met, and fail to include demand management strategies, in
8 violation of RCW 36.70A.070(6)(a)(iv)–(vii), RCW 36.70A.120, and RCW
9 36.70A.020(1), (12)?

10
11 12. Does the adoption of Ordinance No. 3361, the City of Port Townsend
12 Comprehensive Plan violate the Growth Management Act's concurrency
13 requirements under RCW 36.70A.070(6)(b), RCW 36.70A.108, RCW
14 36.70A.630(4), RCW 36.70A.120?

15
16 13. Did the City of Port Townsend fail to provide early, continuous, and meaningful
17 public participation in its adoption of Ordinance No. 3361, City of Port
18 Townsend Comprehensive Plan and development regulations, in violation of
19 RCW 36.70A.140 and RCW 36.70A.020(11)?
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