

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

FUTUREWISE, KIAN BRADLEY, and
TREVOR REED,

Petitioners,

v.

CITY OF MERCER ISLAND,

Respondent.

Case No. 25-3-0003

FINAL DECISION AND ORDER

SYNOPSIS

Petitioners Futurewise, Kian Bradley, and Trevor Reed (Petitioners) challenged City of Mercer Island's adoption of Ordinance No. 24C-16, adopted November 19, 2024, and published December 11, 2024; and Ordinance No. 24C-18, adopted December 3, 2024, and published December 11, 2024.

Ordinance No. 24C-16 (hereinafter, "Comprehensive Plan Update Ordinance") was the City's periodic review and update of its Comprehensive Plan. Ordinance No. 24C-18 (hereinafter, "Interim Zoning Ordinance") was an interim zoning and official control ordinance amending certain sections of Ch. 19.11, "Town Center Development and Design Standards."

The Board concludes the adoption of the challenged ordinances did not comply with the Growth Management Act (GMA). In adopting the ordinances, the City failed to identify sufficient land capacity for permanent housing for extremely low, very low, low, and moderate-income households. The City's land capacity analysis assumed subsidies and incentives would be in place for these households within the City's medium to high density zoning categories, but the record does not show that sufficient subsidies and incentives will

1 be in place to house the City's full allocation of these households. The City may not delay
2 making adequate provision for the needs of these economic segments for another five
3 years; it was required to do so now.

4 In addition to the failure to identify capacity and make adequate provision for
5 permanent housing for extremely low, very low, low, and moderate-income households, the
6 City also did not complete the required subarea plan for the light rail station area. The City
7 also did not adopt anti-displacement measures when it added development capacity in the
8 Town Center.
9

10 While these failures are a serious matter, affecting not only the City but the entire
11 region, the Board recognizes the City may need significant time and effort to address such
12 complex issues. The Board affords the City a full year to achieve compliance with the
13 Growth Management Act and does not, at least at this stage, enter an order of invalidity.
14

15 I. INTRODUCTION

16 A. The Requirement to Perform a Periodic Update of the Comprehensive 17 Plan and, if Needed, Development Regulations. 18

19 Like all cities within King County that are either required to plan or else choose to
20 plan under the GMA, Chapter 36.70A RCW, the City of Mercer Island was required to
21 "review and, if needed, revise" its Comprehensive Plan and development regulations no
22 later than December 31, 2024.¹ The purpose of this mandatory review was "to ensure the
23 [Comprehensive Plan] and regulations comply with the requirements of [the GMA]".²
24 Subsequent reviews of the Comprehensive Plan and development regulations would then
25 follow every ten years.³
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30 ¹ RCW 36.70A.130(5)(a).

31 ² *Id.*

32 ³ *Id.*

1 This mandatory, decennial review and, if necessary, revision of the Comprehensive
2 Plan and development regulations is commonly referred to as the “periodic update.”⁴ The
3 periodic update is a familiar process to the cities and counties of Washington State, having
4 been a requirement of the GMA since at least 1997.⁵

5 The periodic update is subject to numerous provisions of the GMA, notably including
6 RCW 36.70A.070 (“Comprehensive plans—Mandatory Elements”) and RCW 36.70A.130
7 (“Comprehensive Plans—Review Procedures and Schedules—Implementation Progress
8 Report”), as well as many other sections of the GMA dealing with various subjects relevant
9 to the management of growth. While the GMA’s specific requirements for Comprehensive
10 Plans can sometimes seem complex, the overarching purpose is to ensure that local
11 jurisdictions’ Comprehensive Plans (and the development regulations that implement
12 plans) are in compliance with the goals of the GMA established by the Washington State
13 Legislature.⁶ Of particular significance to this case is GMA Goal 4 (Housing), which
14 requires jurisdictions to: “**Plan for and accommodate** housing affordable to all economic
15 segments of the population of this state, promote a variety of residential densities and
16 housing types, and encourage preservation of existing housing stock”⁷ (emphasis added).
17

18 To assist local jurisdictions in meeting the requirements and goals of the GMA, the
19 Department of Commerce (Department) is required to provide “technical assistance” to
20 local jurisdictions, including “information for local and regional inventories.”⁸ The
21 Department has also adopted “procedural criteria to assist counties and cities in adopting
22 comprehensive plans and development regulations that meet the goals and requirements”
23
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26 ⁴ See, e.g., RCW 36.70A.130(1)(b)(D)(ii) (“The [D]epartment [of Commerce] shall review the population
27 growth rate for a city or town participating in the partial review and revision of its comprehensive plan process
28 at least three years before the **periodic update** is due...”) (emphasis added).

29 ⁵ Laws of 1997, ch. 529, § 10 (“Not later than September 1, 2002, and at least every five years thereafter, a
30 county or city shall take action to review and, if needed, revise its comprehensive land use plan and
31 development regulations to ensure that the plan and regulations are complying with the requirements of this
32 chapter [the GMA].”)

⁶ See, e.g., RCW 36.70A.320(3); -.3201.

⁷ RCW 36.70A.020(4).

⁸ RCW 36.70A.190(4)(a).

1 pursuant to its authority under RCW 36.70A.190(4)(b). These Department criteria, which
2 are adopted by administrative rulemaking, appear in Chapter 365-196 WAC. This Board is
3 required to “consider” the Department’s criteria in determining whether a local jurisdiction
4 has complied with the requirements of the GMA, although the Board’s determination is
5 ultimately based on the Act itself, not the Department’s criteria.⁹

6
7 In addition to the requirements and goals of the GMA itself, the City’s planning
8 process must also be consistent with the Countywide Planning Policies (CPPs) and
9 Multicounty Planning Policies (MPPs).¹⁰

10 CPPs are adopted by King County to establish a “county-wide framework from which
11 county and city comprehensive plans are developed.”¹¹ “CPPs ensure that city and county
12 comprehensive plans are consistent with one another with regard to issues of regional
13 significance.”¹²

14
15 MPPs are adopted by the Puget Sound Regional Council (“Regional Council” or
16 “PSRC”), a planning agency established by an interlocal agreement among King, Kitsap,
17 Pierce, and Snohomish Counties in 1991 for the purpose (among other purposes) of
18 adopting multicounty planning policies pursuant to the requirements of RCW
19 36.70A.210(7).¹³ MPPs “establish a region-wide framework that ensures consistency
20 among comprehensive plans and countywide planning policies.”¹⁴

21
22 The City agrees that “its Comprehensive Plan and development regulations must be
23 consistent with the CPPs and MPPs.”¹⁵

24
25 The relationship among the various levels of planning policies is illustrated below,

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27 ⁹ RCW 36.70A.320(3).

28 ¹⁰ RCW 36.70A.210; WAC 365-196-305(3), -(8); *King Cty. v. Cent. Puget Sound Hearings Bd.*, 138 Wn.2d
161, 175, 979 P.2d 374 (1999).

29 ¹¹ RCW 36.70A.210(1).

30 ¹² *King Cty. v. Cent. Puget Sound Hearings Bd.*, 138 Wn.3d at 167.

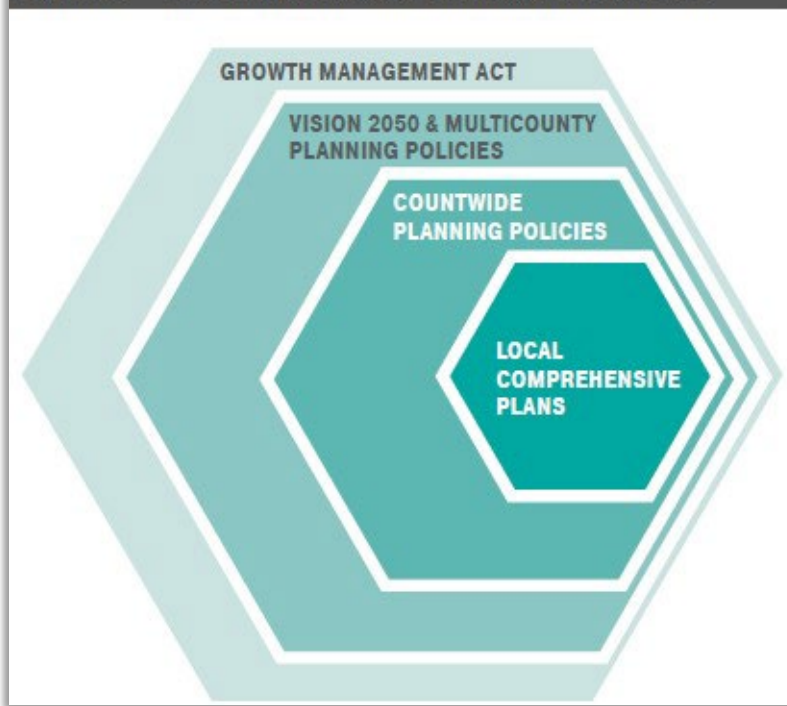
31 ¹³ Ex. 322, Puget Sound Regional Council, *VISION 2050: A Plan for the Central Puget Sound Region* (Oct.
2020) at i.

32 ¹⁴ WAC 365-196-305(8)(b).

¹⁵ *City of Mercer Island’s Resp Br.* at 6.

1 from the Regional Council's *VISION 2050: A Plan for the Central Puget Sound Region*
2 (Vision 2050)¹⁶

3 **Figure 4 – Washington State Planning Framework**



19 **B. The Requirement to Follow the Regional Growth Strategy and Vision**
20 **2050.**

21
22 CPPs and MPPs address a wide variety of subject matters, but the CPPs and MPPs
23 most relevant to this case pertain to housing. Of particular importance in this case are
24 those CPPs and MPPs that require compliance with the Regional Growth Strategy and
25 Vision 2050.

26 Vision 2050 is the latest iteration of a multi-county, long-term planning document,
27 which has been in existence in one form or another since at least 1990—although in 1990,
28 the document was known as Vision 2020, reflecting the document's 30-year planning
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30

31 ¹⁶ Ex. 322, at 15.
32

1 horizon.¹⁷ Vision 2050, the iteration currently in effect, was adopted by the Regional
2 Council on October 29, 2020.¹⁸

3 Among its many other functions, Vision 2050 serves as the home of the MPPs,
4 which, as noted above, are mandatory policies that guide planning.¹⁹ In addition, Vision
5 2050 is also the home of the Regional Growth Strategy, which the Regional Council
6 describes as a “cornerstone” of Vision 2050.²⁰

7
8 The Regional Growth Strategy attempts to distribute forecasted population growth
9 among the counties of central Puget Sound that participate in the Regional Council’s multi-
10 county planning process.²¹ The Regional Growth Strategy allocates population and
11 employment growth targets to each county based on the Regional Council’s
12 “macroeconomic forecasts for the year 2050 and Office of Financial Management
13 assumptions about the relative shares of growth to each county.”²²

14
15 Once the growth targets have been set for the central Puget Sound counties, each
16 individual county and the cities within it engage in a countywide planning process to
17 distribute the projected growth among the cities and counties, including setting growth
18 targets for each city.²³ The Regional Council reviews the countywide growth targets for
19 consistency with the overall Regional Growth Strategy.²⁴ Compliance with the growth
20 targets is assured through the mandatory MPPs, many of which incorporate the Regional
21 Growth Strategy by reference.²⁵

22
23 From a city’s perspective, the rubber meets the road during the countywide planning
24 process. Here, each county allocates specific, numeric growth targets to individual
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26 ¹⁷ Ex. 322, at i.

27 ¹⁸ *Id.* at iii.

28 ¹⁹ Ex. 322, at 43–44.

29 ²⁰ *Id.* at 26.

30 ²¹ *Id.* at 23.

31 ²² *Id.* at 23, 27–28.

32 ²³ *Id.* at 43.

²⁴ *Id.*

²⁵ See, e.g., Ex. 322, at 43 (MPP-RGS-1) (“Implement the Regional Growth Strategy through regional policies and programs, countywide planning policies and growth targets, local plans, and development regulations”).

jurisdictions within the county based on the projections allocated in the course the Regional Growth Strategy.²⁶ The individual jurisdictions are then required by the mandatory CPPs to comply with their specific growth targets.²⁷

C. New Requirements in the 2021 Amendments to the GMA.

In 2021, the Legislature narrowly adopted Engrossed Second Substitute House Bill (ESSHB) 1220, amending various sections of the GMA dealing with affordable housing.²⁸ Of particular significance to this case were amendments to GMA Goal 4 (Housing) and RCW 36.70A.070(2) (requirements for the “housing element” of a Comprehensive Plan).

Previously, GMA Goal 4 read:

Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

ESSHB 1220 amended GMA Goal 4 to read:

Plan for and accommodate housing affordable to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.²⁹

ESSHB 1220 also amended RCW 36.70A.070, the section of the GMA specifying mandatory elements of Comprehensive Plans. Relevant to this case, the bill amended RCW 36.70A.020(2)(a) to require local jurisdictions to inventory existing and projected housing needs to identify the number of units needed for “moderate, low, very low, and extremely low-income households, . . . and emergency housing, emergency shelters, [and] permanent supportive housing.” (Each of these terms is a term of art, defined elsewhere in the bill.)

²⁶ Ex. 276, 2021 King County Countywide Planning Policies, at 6.

²⁷ See, e.g., Ex. 276, at 38 (CPP H-1) (“Plan for and accommodate the jurisdiction’s allocated share of countywide future housing needs...”).

²⁸ Laws of 2021, ch. 254.

²⁹ *Id.* (emphasis added).

1 In addition, ESSHB 1220 amended RCW 36.70A.070(2)(c) to require local
2 jurisdictions to identify sufficient land capacity for housing, including the newly defined
3 concepts of “moderate, low, very low, and extremely low-income households” and
4 “emergency housing, emergency shelters, [and] permanent supportive housing.”

5 In addition, ESSHB 1220 amended RCW 36.70A.070(2)(d) to “[make] adequate
6 provision” for the existing and projected needs of all economic segments of the community,
7 including, once again, the defined categories of “moderate, low, very low, and extremely
8 low-income households.” Under the amended section -070(2)(d), local jurisdictions now
9 had to “[incorporate] consideration” for these four defined categories of households, and
10 also were required to “[document] programs and actions needed to achieve housing
11 availability including gaps in local funding, barriers such as development regulations, and
12 other limitations.”
13

14 Other relevant new requirements in RCW 36.70A.070(2)(d) included “consideration
15 of the role of accessory dwelling units in meeting housing needs;” “[identification] of local
16 policies and regulations that result in racially disparate impacts, displacement, and
17 exclusion in housing;” and “[identification] and [implementation of] policies and regulations
18 to address and begin to undo racially disparate impacts, displacement, and exclusion in
19 housing caused by local policies, plans, and actions.”
20

21 **D. Changes to the Growth Targets in the CPPs in Response to ESSHB**
22 **1220.**
23

24 The Department of Commerce, the Regional Council, and the counties and cities all
25 recognized that ESSHB 1220 represented a significant change in Washington State’s
26 approach to affordable housing. Henceforth, the GMA would no longer merely “encourage
27 the availability” of affordable housing. Instead, the GMA would require local jurisdictions to
28 “plan for and accommodate” affordable housing. Under the amendments to
29 RCW 36.70A.070(2), planning for and accommodating affordable housing would now mean
30 inventorying the existing and projected needs of moderate, low, very low, and extremely
31 low-income households, as well as emergency housing, emergency shelters, and
32

1 permanent supportive housing; and then identifying sufficient land capacity for each of
2 those categories of housing; and then making adequate provisions for, at a minimum, the
3 four defined categories of low-to-moderate income households (although not necessarily
4 for the categories emergency housing and shelters and permanent supportive housing,
5 which were included in RCW 36.70A.070(2)(a) and –(c) but excluded from –(d)).

6
7 King County moved promptly to amend its CPPs to account for the new
8 requirements of ESSHB 1220 to “plan for and accommodate” projected growth, folding the
9 new requirements into the County’s regularly scheduled 2021 update to the CPPs.³⁰ The
10 2021 King County CPPs are the ones in effect at the time the City adopted the challenged
11 ordinances in this case.³¹

12 CPP H-1 assigned the City its growth targets for housing. Consistent with ESSHB
13 1220, the City was assigned specific, numeric targets for each of the different housing
14 categories established by the bill:³²

	Jurisdictional Net New Permanent Housing Units Needed, 2019-2044								Jurisdictional Net New Emergency Housing Needs
	Total	0 to ≤30% Non-PSH	PSH	>30 to ≤50%	>50 to ≤80%	>80 to ≤100%	>100 to ≤120%	>120%	
Des Moines	3,800	790	415	231	227	281	318	1,538	726
Kenmore	3,070	1,063	559	483	393	75	85	412	587
Lake Forest Park	870	313	164	143	140	14	16	80	166
Mercer Island	1,239	339	178	202	488	4	5	23	237

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³⁰ Ex. 276, at 37. See also Growth Management Planning Council Mot. No. 21-1 (June 23, 2021) (acknowledging new planning requirements imposed by “House Bil 1220.”). The Board takes official notice of GMPC Mot. No. 21-1 pursuant to WAC 242-03-630.

³¹ Ex. 276, cover page.

³² CPP H-1, Ex. 276, at 40. Highlighting added to improve readability. PSH stands for “permanent supportive housing.”

1 **E. The City’s Land Capacity Analysis for Permanent Housing.**

2 The City’s decennial update to its Comprehensive Plan involved a lengthy, complex
3 process. Relevant to this case, the City conducted a series of studies to evaluate its
4 existing land capacity for the different types of housing that would now be required
5 pursuant to ESSHB 1220 and the 2021 CPPs: a Housing Needs Assessment dated
6 November 2022;³³ a Land Capacity Analysis Supplement dated December 2023;³⁴ an
7 Emergency Housing Land Capacity Analysis, undated but presented to the City Council on
8 September 3, 2024;³⁵ and a Racially Disparate Impacts Evaluation dated December
9 2023.³⁶

10
11 The most important of these studies for purposes of the current case was the Land
12 Capacity Analysis Supplement of December 2023 (hereinafter, LCA Supplement). The LCA
13 Supplement contained most of the City’s analysis as to where, within the City, the different
14 types of permanent housing required by CPP H-1 could be accommodated.³⁷

15
16 The LCA Supplement assumed that certain “zone categories” would be affordable to
17 certain income brackets, based on the following process:³⁸

18 In Table 4, the LCA Supplement pulled real estate data to determine the average
19 costs, in Mercer Island, of single-family homes, townhouses and condos, and apartments.³⁹

20 In Table 5, the LCA Supplement correlated each of these types of housing to five
21 zone categories: Single-family houses were correlated with the very low density and low
22 density zone categories; condos with the medium-low density zone category; and multi-
23

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25 ³³ Ex. 130, Ordinance No. 24C-16 at 223–288 (Cmty. Attributes Inc., *City of Mercer Island Housing Needs*
26 *Assessment* (2022)).

27 ³⁴ Ex. 130, at 327–390 (City of Mercer Island, WA Cmty. Plan. and Dev. Dept., *Land Capacity Analysis*
28 *Supplement* (2023)).

29 ³⁵ Ex.100, AB 6519 - 2024 Comp. Plan Periodic Update at 30–31 (Table 2: Emergency Housing Land
30 Capacity Analysis).

31 ³⁶ Ex. 130, at 391–457 (City of Mercer Island, WA Cmty. Plan. and Dev. Dept., *Racially Disparate Impacts*
32 *Evaluation* (2023)).

³⁷ Resp. Br. at 10 (“When the [Housing Needs Assessment] was performed, the City had not yet been
assigned its housing needs numbers in CPP H-1.”)

³⁸ Ex. 130, at 339–343 (LCA Supplement).

³⁹ *Id.* at 339.

1 family apartment rentals with the medium-high density and high density zone categories.⁴⁰
2 Table 5 also estimated the average monthly housing cost for each of these zone categories
3 based on real estate data.⁴¹

4 In Table 6, the LCA Supplement determined the level of income a household would
5 need to afford the housing costs identified in Table 5. Table 6 expressed the needed
6 income level as both an absolute dollar figure and as a percentage of area median income
7 (AMI). Table 6 stated that single-family houses would require an income of 433% AMI.
8 Condos and townhomes would require an income of 112% AMI. Apartments would require
9 an income of 69% AMI.⁴²

11 In Table 7, the City related the affordability findings of Table 6 back to the different
12 zone categories. For very low density and low density zones, the affordability level without
13 subsidy would be 433% of AMI, since these zones would accommodate single-family
14 houses. For medium-low density, medium-high density, and high density zones, the
15 affordability level without subsidy would range from 69% of AMI for apartments in those
16 zones to 112% of AMI for condos in those zones.⁴³

18 Finally, in Table 8, the City tied together the zone category, types of housing allowed
19 in each zone, level of income required to live in each zone category *with* subsidies, level of
20 income require to live in each zone category *without* subsidies, and what the City called the
21 “assumed affordability level for capacity analysis.” The “assumed affordability level”
22 appeared to aggregate households with subsidies and households without subsidies into a
23 single category of affordability. Table 8 then tabulated the capacity available for each zone
24 category.⁴⁴

29 ⁴⁰ *Id.* at 340.

30 ⁴¹ *Id.*

31 ⁴² *Id.*

32 ⁴³ *Id.*

⁴⁴ *Id.* at 343.

Table 8. Zone Categories, Housing Types, and Income Levels Served.

Zone Category	Typical Housing Types Allowed	Assumed Density Range	Lowest Potential Income Level Served		Assumed Affordability Level for Capacity Analysis	Capacity
			Without Subsidies	With Subsidies		
Very Low Density	Single-Family Residences	2.6-3.3 dwellings per acre	High income (>120%)	Not feasible at scale	>120% AMI	120
Low Density	Single-Family Residences	4.6-6.1 dwellings per acre	High income (>120%)	Not feasible at scale	>120% AMI	235
Medium-Low Density	Apartments and Owner-Occupied Multifamily	22.7 dwellings per acre	Moderate Income ¹ (>80-≤120% AMI)	PSH, Extremely Low, Very Low, and Low-Income (0-≤80% AMI)	0-120% AMI and PSH	10
Medium-High Density	Apartments and Owner-Occupied Multifamily	26 dwellings per acre	Moderate Income ¹ (>80-≤120% AMI)	PSH, Extremely Low, Very Low, and Low-Income (0-≤80% AMI)	0-120% AMI and PSH	535
High Density	Apartments and Owner-Occupied Multifamily	>100 dwellings per acre	Moderate Income ¹ (>80-≤120% AMI)	PSH, Extremely Low, Very Low, and Low-Income (0-≤80% AMI)	0-120% AMI and PSH	528

Table 8 treated medium-low density, medium-high density, and high-density zone categories as affordable without subsidy to “moderate income” households, that is, those households earning between 80%–120% of AMI. According to Note 1 of Table 8, the City arrived at this determination by observing that owner-occupied multifamily housing (that is, condos) tends to be affordable to households earning at least 112% of AMI, while renter-occupied multifamily housing (that is, apartments) tends to be affordable to households earning at least 70% of AMI. To avoid overestimating the affordability of apartments, Table 8 assumed apartments would be affordable to households earning at least at 80% of AMI

1 (even though, according to the data, apartments would likely be affordable starting at the
2 lower income of 70% of AMI). However, Table 8 aggregated apartments (affordable to 80%
3 of AMI) and condos (affordable at 112% of AMI) into a single category called “moderate
4 income,” which assumed an income range of 80%–120% of AMI. Table 8 did not
5 disaggregate the number of available apartments from the number of available condos,
6 even though condos require a significantly higher income to be affordable.
7

8 Table 8 also treated all multifamily housing types, in all medium to high density
9 zones, as affordable to all income levels. Table 8 reached this conclusion by relying on the
10 “assumed affordability level for capacity analysis” column of the table. Table 8 noted that
11 any household earning under 80% of AMI would require subsidies to live in any housing
12 type in the city. The “assumed affordability level for capacity analysis” column of Table 8
13 then simply assumed the provision of the necessary subsidies. With subsidies assumed to
14 be in place, any household could afford to live in any type of housing in any medium to high
15 density zone. Under this logic, any apartment or condo in Mercer Island could be
16 “assumed” to be affordable to any household at any income level, even extremely low-
17 income households earning 0%–30% of AMI.
18

19 Even under the assumptions of the “assumed affordability level for capacity
20 analysis,” Table 8 identified only 1,073 units potentially available in the medium to high
21 density zones. However, Table 9 reiterated the requirement in CPP H-1 to provide a total of
22 1,216 units for low to moderate-income households. Thus, there was a deficit of 143 low to
23 moderate-income units.⁴⁵
24

25 Table 9, like Table 8, aggregated all the low to moderate-income levels into a single
26 income category. Adding up CPP H-1’s housing allocations for moderate, low, very low,
27 and extremely low-income yielded 1,216 units across those four categories, the source for
28 Table 9’s statement that the City’s allocated affordable housing need was 1,216 units.
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31

⁴⁵ *Id.* at 344.
32

1 Table 9 also, like Table 8, aggregated all the medium to high density zone
2 categories into a single housing category. Adding up the potentially available housing
3 across all medium-low, medium-high, and high density zoned property yielded a total of
4 1,073 units across these zone categories, the source for Table 9's statement that the City
5 had a deficit of 143 units. Under the City's analysis, those 143 units could be supplied in
6 any form of housing (whether condos or apartments) in any medium to high density zone.⁴⁶
7

8 According to the LCA Supplement, this left the City with two needs regarding
9 permanent affordable housing: first, a need to increase capacity in the multifamily and
10 mixed use zones to generate 143 additional units; and second, a need to "examine its
11 incentives and subsidies for affordable housing to ensure that it is planning for its projected
12 housing need."⁴⁷ The additional 143 units were necessary to meet the deficit identified in
13 Table 8 and 9. The examination of subsidies and incentives was necessary because Table
14 8 showed that the City could only meet its housing targets by subsidizing or incentivizing
15 housing for all households earning under 80% of AMI.
16

17 The LCA Supplement determined that the 143-unit deficit was "small enough that it
18 can be addressed by changing the regulations in the multifamily and mixed-use zones
19 without amending the existing zoning boundaries."⁴⁸ The LCA Supplement promised that
20 the necessary "review of incentives and subsidies will be conducted in a separate report
21 addressing the 'adequate provisions' guidance provided by Commerce."⁴⁹ No details were
22 provided as to when this separate report would be completed.
23

24 **F. The City's Comprehensive Plan Update Ordinance and Interim Zoning**
25 **Ordinance.**
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30 ⁴⁶ *Id.* at 344–345.

31 ⁴⁷ *Id.* at 347.

32 ⁴⁸ *Id.* at 349.

⁴⁹ *Id.* at 347.

1 The City incorporated the LCA Supplement into its Comprehensive Plan Update
2 Ordinance.⁵⁰ It is unclear whether the promised “separate report” reviewing the City’s
3 incentives and subsidies for affordable was ever produced. No party directed the Board’s
4 attention to such a report, and the Board’s own review of the record did not uncover it. Nor
5 is such a report included in the list of reports incorporated into the Comprehensive Plan
6 Update Ordinance.⁵¹
7

8 Still, it is apparent that the need for incentives and subsidies was not wholly ignored.
9 Goal 2 of the Comprehensive Plan Update Ordinance did introduce several housing
10 policies aimed at increasing affordability through the use of subsidies and incentives:

11 Policy 2.4: Increase affordable homeownership options for moderate
12 income households by increasing moderate density housing
13 capacity.

14 Policy 2.5: Encourage the construction of new permanent income-
15 restricted housing through approaches such as the following:

16 2.5.1: Affordable housing incentives that require units at varying
17 income levels to be incorporated into new construction to
18 address the Mercer Island housing growth target and
19 housing needs for households earning less than the area
20 median income (AMI). Affordable housing unit
21 requirements should be set at levels to yield more lower-
22 income units as the benefit of the incentive increases.

23 2.5.2: Height bonuses concurrent with any increase in
24 development capacity to address Mercer Island’s
25 affordable housing needs;

26 2.5.3: Incentives for the development of housing units affordable
27 to extremely low-, very low-, low-, and moderate-income
28 households;

29 2.5.4: A Multi-family Tax Exemption (MFTE) linked to substantial
30 additional affordability requirements.

31 2.5.5: Reduced or waived permit fees for developments with
32 affordable units.

2.5.7: Reduced parking requirements for income-restricted units.

⁵⁰ Ex. 130 at 4, 327–390.

⁵¹ *Id.* at 4.

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2 Policy 2.6: Evaluate potential revenue sources to fund a local affordable
3 housing fund.
4
5 Policy 2.7: Evaluate a fee-in-lieu program whereby payments to the local
6 affordable housing fund can be made as an alternative to
7 constructing required income-restricted housing.
8
9 Policy 2.8: Prioritize the use of local and regional resources for income-
10 restricted housing, particularly for extremely low-income
11 households, populations with special needs, and others with
12 disproportionately greater housing needs.
13
14 Policy 2.9: Evaluate the feasibility of establishing zoning in existing multi-
15 family and mixed-use zones that would require developers to
16 provide affordable housing in new high-density developments.
17
18 Policy 2.10: Continue to participate in A Regional Coalition for Housing
19 (ARCH) as a key strategy for addressing affordable housing
20 needs for low-, very low-, and extremely low-income
21 households.
22
23 Policy 2.11: Evaluate increasing the contribution to the ARCH Housing
24 Trust Fund 1 (HTF) at a per-capita rate consistent with other
25 participating/member cities as a key strategy to address PSH,
26 extremely low-, very low-, and low-income housing needs.
27
28 Policy 2.12: Develop partnerships to address barriers to the production of
29 affordable housing to extremely low-income households by
30 connecting with government agencies, housing service
31 providers, religious organizations, affordable housing
32 developers, and interested property owners.

Policy 2.13: Periodically meet with partners to gather feedback on actions
the City can take to reduce barriers to the production of
extremely low-income housing units, including PSH and
emergency housing.⁵²

⁵² *Id.* at 112–114.

1 In addition to these policies regarding incentives and subsidies, the Comprehensive
2 Plan Update Ordinance also acknowledged the need for 143 new units of housing
3 capacity.⁵³ Those new units would be supplied by increasing the maximum building height
4 in selected areas of the City's Town Center zone through amendments to the zoning
5 code.⁵⁴ The necessary amendments were enacted through the second challenged
6 ordinance in this case, the Interim Zoning Ordinance.
7

8 Relevant to this case, the Interim Zoning Ordinance provided two functions: First, it
9 supplied the 143 new units of housing identified in the Comprehensive Plan Update
10 Ordinance by increasing the building height in parts of the Town Center zone, from five
11 stories to seven in the TC-5 and TC-4 Plus subareas, and from four stories to five in the
12 TC-4 subarea.⁵⁵ Second, it increased the required percentage of affordable housing in new
13 development in Town Center from 10% to 15%, and "deepened" the affordability
14 requirement for affordable housing in new development in Town Center from 60% to 50%
15 of AMI for rental housing and from 90% to 80% of AMI for ownership housing.⁵⁶
16

17 Under the affordability amendments in the Interim Zoning Ordinance, bonus building
18 heights in the Town Center zone were available as follows, with former language in
19 strikethrough and newly inserted language underlined:
20

21 **MICC 19.11.040 – Affordable Housing.**

22 ...

23 B. *Affordable housing ratio.* In order to qualify as significant
24 affordable housing and in order to qualify for bonus building height
25 over two stories, a development that contains dwelling units must
26 provide affordable housing units equal to at least ~~ten~~ fifteen
27 percent of the total units in the development. The number of
required affordable units shall be rounded up to the nearest whole
number.

28 C. *Affordability level.* For a three-story building the required affordable
29

30 ⁵³ *Id.* at 104.

31 ⁵⁴ *Id.*

32 ⁵⁵ Ex. 135, at 1.

⁵⁶ *Id.*, at 1–2.

1 housing units must be affordable at the 70 percent of median
2 income level for rental housing or 90 percent of median income
3 level for ownership housing. For four- ~~and to five~~ seven-story
4 buildings, the required affordable housing units must be affordable
5 at the ~~60~~ 50 percent of median income level for rental housing or
6 90 80 percent of median income level for ownership housing.⁵⁷

7 **G. Petitioners' Challenge to the Comprehensive Plan Update Ordinance and**
8 **Interim Zoning Ordinance.**

9 Petitioners filed their petition for review on February 4, 2025, challenging the
10 adoption of both ordinances in their entirety. Petitioners presented five issues for the
11 Board's review, each of which the Board treats below.

12 **II. BOARD JURISDICTION**

13 The Board finds the Petition for Review was timely filed, pursuant to
14 RCW 36.70A.290 (2). The Board finds the Petitioners have standing to appear before the
15 Board pursuant to RCW 36.70A.280(2)(a) and (b) and RCW 36.70A.210(6). The Board also
16 finds it has jurisdiction over the subject matter of the petition pursuant to
17 RCW 36.70A.280(1).
18

19 **III. STANDARD OF REVIEW**

20 Comprehensive plans and development regulations, and amendments to them, are
21 presumed valid upon adoption.⁵⁸ This presumption creates a high threshold for
22 challengers as the burden is on the petitioners to demonstrate that any action taken by a
23 county or city is not in compliance with the GMA.⁵⁹ The Board is charged with adjudicating
24 GMA compliance and, when necessary, invalidating noncompliant plans and development
25 regulations.⁶⁰
26
27
28
29

30 ⁵⁷ *Id.*, at Exhibit D.

31 ⁵⁸ RCW 36.70A.320(1).

32 ⁵⁹ RCW 36.70A.320(2).

⁶⁰ RCW 36.70A.280, RCW 36.70A.302.

1 The scope of the Board's review is limited to determining whether a county or city
2 has achieved compliance with the GMA only with respect to those issues presented in a
3 timely petition for review.⁶¹ The Board is directed to find compliance unless it determines
4 that the challenged action is clearly erroneous in view of the entire record before the Board
5 and in light of the goals and requirements of the GMA.⁶²
6

7 IV. ANALYSIS AND DISCUSSION

8 **Issue No. 1. Did the adoption of the Land Use Element, the Future Land Use Map,**
9 **the Housing Element, the City of Mercer Island Housing Needs Assessment, the**
10 **Land Capacity Analysis Supplement, and the development regulations in Ordinance**
11 **No. 24C-16, and Exhibits A and B, and Ordinance No. 24C-18, and Exhibits A through**
12 **F, fail to identify sufficient capacity of land for emergency shelters, transitional**
13 **housing, emergency housing, and permanent supportive housing violating RCW**
14 **36.70A.020(4), RCW 36.70A.030(14), RCW 36.70A.030(15), RCW 36.70A.030(31), RCW**
15 **36.70A.070, RCW 36.70A.070(2)(c) and (2)(d), RCW 36.70A.100, RCW 36.70A.120,**
16 **RCW 36.70A.130(1) and (5)(a), RCW 36.70A.210, RCW 36.70A.290(2), or King County**
17 **Countywide Planning Policies H-1 or H-3(a)?**

18 **Applicable Laws:**⁶³

19 **RCW 36.70A.020 (Planning Goals):**

- 20 (4) Housing. Plan for and accommodate housing affordable to all
21 economic segments of the population of this state, promote a variety of
22 residential densities and housing types, and encourage preservation of
23 existing housing stock.

24 **RCW 36.70A.070 (Comprehensive Plan—Mandatory elements):**

- 25 (2)(c) Identifies sufficient capacity of land for housing including, but not
26 limited to, government-assisted housing, housing for moderate, low,
27 very low, and extremely low-income households, manufactured
28 housing, multifamily housing, group homes, foster care facilities,
29 emergency housing, emergency shelters, permanent supportive

30 ⁶¹ RCW 36.70A.290(1).

31 ⁶² RCW 36.70A.320(3); *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993) ("In order to
32 find a local jurisdiction's action clearly erroneous, the Board must be "left with the firm and definite conviction
that a mistake has been committed".)

⁶³ Here, the Board quotes only those laws most relevant to the argument, omitting those upon which the
parties did not rely to any significant extent.

housing, and within an urban growth area boundary, consideration of duplexes, triplexes, and townhomes;

(2)(d) Makes adequate provisions for existing and projected needs of all economic segments of the community, including:

- (i) Incorporating consideration for low, very low, extremely low, and moderate-income households;
- (ii) Documenting programs and actions needed to achieve housing availability including gaps in local funding, barriers such as development regulations, and other limitations;
- (iii) Consideration of housing locations in relation to employment location; and
- (iv) Consideration of the role of accessory dwelling units in meeting housing needs;

RCW 36.70A.100 (Comprehensive Plans—Must be Coordinated):

The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with which the county or city has, in part, common borders or related regional issues.

RCW 36.70A.210 (Countywide Planning Policies):

- (1) The legislature recognizes that counties are regional governments within their boundaries, and cities are primary providers of urban governmental services within urban growth areas. For the purposes of this section, a "countywide planning policy" is a written policy statement or statements used solely for establishing a countywide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter. This framework shall ensure that city and county comprehensive plans are consistent as required in RCW 36.70A.100. Nothing in this section shall be construed to alter the land-use powers of cities.
- (7) Multicounty planning policies shall be adopted by two or more counties, each with a population of four hundred fifty thousand or more, with contiguous urban areas and may be adopted by other counties, according to the process established under this section or other processes agreed to among the counties and cities within the affected counties throughout the multicounty region.

CPP H-1:⁶⁴

Plan for and accommodate the jurisdiction's allocated share of countywide future housing needs for moderate-, low-, very low-, and extremely low-income households as well as emergency housing, emergency shelters, and permanent supportive housing. Sufficient planning and accommodations are those that comply with the Growth Management Act requirements for housing elements in Revised Code of Washington 36.70A.020 and 36.70A.070, that outline regulatory and nonregulatory measures to implement the comprehensive plan (Washington Administrative Code 365-196-650), and that comply with policies articulated in this chapter. Projected countywide and jurisdictional net new housing needed to reach projected future need for the planning period is shown in Table H-1.

CPP H-3:⁶⁵

Conduct an inventory and analysis in each jurisdiction of existing and projected housing needs of all segments of the population and summarize the findings in the housing element. The inventory and analysis shall include:

- a) The number of existing and projected housing units necessary to plan for and accommodate projected growth and meet the projected housing needs articulated in Tables H-1 and H-2, including:
 - 1) permanent housing needs, which includes units for moderate-, low-, very low-, and extremely low-income households and permanent supportive housing,
 - 2) emergency housing needs, which includes emergency housing and emergency shelters;

Board Discussion

A. Brief Summary of Parties' Arguments on Issue 1.

1. Brief Summary of Petitioners' Arguments on Issue 1.

Petitioners observed that the City's LCA Supplement aggregated the categories of extremely low, very low, low, and moderate-income into a single category, as the Board described above in the previous section. In other words, all households with an income of

⁶⁴ Ex. 276, at 39 (CPP Table H-1 contains the City's growth targets and is reproduced in the previous section of this decision).

⁶⁵ *Id.* at 41–42.

1 less than 120% of AMI were treated as a single category.⁶⁶ Petitioners also argued that the
2 LCA Supplement did not analyze the capacity for the category of emergency housing.⁶⁷

3 Because the various income levels were aggregated, Petitioners argues that the City
4 “fails to demonstrate how much of the identified capacity would be available specifically for
5 STEP⁶⁸ housing and extremely low-income households. Given the higher costs and
6 specific requirements for developing such housing, a more detailed analysis is necessary
7 to ensure adequate capacity and to comply with the GMA.”⁶⁹
8

9 **2. Brief Summary of Respondent’s Arguments on Issue 1.**

10 The City acknowledged that it had aggregate extremely low, very low, low, and
11 moderate income households into a single category for purposes of its land capacity
12 analysis.⁷⁰ The City argued that the Department of Commerce’s guidance also aggregates
13 the affordability categories for permanent housing.⁷¹ Aggregation of the income levels was
14 appropriate at the capacity analysis stage because the City’s data revealed that *all* income
15 levels below 120 percent of AMI could only be accommodated in the medium-low density,
16 medium-high density, and high density zones.⁷² As for emergency housing, the City argued
17 that a land capacity analysis is not required if a jurisdiction’s zoning regulations allow
18 emergency housing in all zones that allow hotels, which is the case in Mercer Island.⁷³
19
20
21
22

23 ⁶⁶ Petr’s Br. at 5.

24 ⁶⁷ *Id.*

25 ⁶⁸ See Ex. 284, Wash. State Dept. of Comm., *STEP Model Ordinance, User Guide and Best Practices Report*
26 (2024) at 4 (“STEP” is an acronym for emergency shelters, transitional housing, emergency housing, and
27 permanent supportive housing); see RCW 36.70A.070(2) (Emergency shelters, emergency housing, and
28 permanent supportive housing are all required elements of a Comprehensive Plan under the GMA); see
RCW 84.36.043(3)(c) (Transitional housing is a term from Washington’s property tax statute and is not
required by the GMA).

29 ⁶⁹ Pet’r’s Br. at 7.

30 ⁷⁰ Resp. Br. at 14.

31 ⁷¹ *Id.* (citing Ex. 282, Wash. State Dept. of Commerce, Local Govt. Div. Growth Mgmt. Serv., *Book 2:*
Guidance for Updating Your Housing Element (2023), at 33).

32 ⁷² *Id.* at 15.

⁷³ *Id.* at 12 (citing Ex. 100, at 72–75).

B. The Board Finds that the City's Land Capacity Analysis Did Not Include Sufficient Land Capacity for Existing and Projected Permanent Housing Needs by Income Level but Did Include Sufficient Land Capacity for Emergency Housing.

1. The City Did Not Identify Sufficient Existing and Projected Permanent Housing Capacity for All Income Segments.

The Board finds that aggregating the income levels prevented the City from compiling an accurate inventory of its existing and projected permanent housing needs. Aggregation concealed the reality that most of the land capacity the City identified as available to all low to moderate income segments will only be available for the moderate-income segment at best. The City would need a greatly expanded program of subsidies and incentives to provide sufficient inventory for the low, very low, and extremely low-income segments, and no such program is identified or proposed in either of the challenged ordinances. The majority of the inventory identified as available for the aggregated moderate plus low-income segments is, in reality, available only for the moderate-income segments. The Board concludes the City has not met the requirement of RCW 36.70A.020(4) and RCW 36.70A.070(2)(c) to identify existing and projected housing units for the low, very low, and extremely low-income households which have been allocated to the City in CPP H-1.

The City's LCA Supplement identified a capacity of 1,073 housing units in the medium-low, medium-high, and high density zone categories.⁷⁴ These numbers came from King County's 2021 Urban Growth Capacity (UGC) report.⁷⁵ However, the 2021 UGC report predated ESSHB 1220, where the requirement to analyze inventory by income segment was introduced. Thus, the housing capacity that appeared in the LCA Supplement, by way of the 2021 UGC report, did not distinguish between units that would

⁷⁴ Ex. 130, at 343 (Table 8).

⁷⁵ *Id.* at 338.

1 be affordable to low-income households versus those that would be unaffordable without
2 some form of subsidy or incentive.

3 In point of fact, virtually all of the 1,073 units identified in the LCA Supplement would
4 need to be subsidized or incentivized in order to be affordable to any income segment
5 below moderate income. Apartments in Mercer Island are assumed to be affordable to
6 households earning 80 percent or more of AMI.⁷⁶ All households earning under 80 percent
7 of AMI will require incentives or subsidized housing. CPP H-1 assigns Mercer Island just 32
8 new housing units for households earning above 80 percent of AMI, and 1,207 new
9 housing units for households earning less than or equal to 80 percent of AMI.⁷⁷ Thus, it is
10 apparent that the overwhelming majority, if not all, of the 1,073 units identified in the LCA
11 Supplement as potentially available would need to be subsidized or incentivized housing
12 units if those units are truly to be available for purposes of meeting the City's CPP H-1
13 growth targets. If the units are not incentivized or subsidized, then they are not available.
14

15 The Department published guidance to cities for how to include subsidized or
16 incentivized housing in a land capacity analysis. Exhibit 282 contains excerpts from the
17 Department's "Guidance for Updating Your Housing Element," Version 3.4, published in
18 August 2023—postdating and incorporating the new housing requirements of ESSHB
19 1220. The City and Commerce both refer to this document as Book 2.⁷⁸ As noted above,
20 the City argued that it relied on Book 2 to support the City's decision to aggregate the
21 income levels in the LCA Supplement.
22

23 It does not appear to the Board that the City correctly followed Book 2. Book 2 says
24 the following with regards to the incorporation into a land capacity analysis of housing units
25 that would be developed through optional incentivized zoning programs:
26

27 If a jurisdiction has a voluntary IZ [incentivized zoning] program, it can
28 include that portion of capacity that is likely to use the IZ program as low-
29 income capacity (<80% AMI). In this case, jurisdictions should examine

30 ⁷⁶ *Id.* at n.1 at 343 (Table 8).

31 ⁷⁷ Ex. 276, at 40 (CPP H-1).

32 ⁷⁸ Resp. Br. at 9, n. 8.

1 what their current voluntary IZ program (or a neighboring jurisdiction) has
2 produced in terms of <80% AMI housing and use those same
3 participation rates going forward.

4 In other words, if records show that only 5% of development in a zone
5 has used the voluntary IZ program, only about 5% of the future capacity
6 can assume to use IZ. If you layer on the requirement that 10% of that
7 development is affordable to <80% AMI, then 0.5% of the development
8 capacity in that zone can be assumed to qualify for the 0-80% AMI
9 housing (10% of 5%).⁷⁹

10 The City uses just such a voluntary incentivized zoning program to generate
11 affordable housing units in its TC zone. As discussed above, for example, the Interim
12 Zoning Ordinance expanded the use of height bonuses in the TC zone in exchange for
13 providing new affordable housing units. However, the City's voluntary incentivized zoning
14 program certainly does not require *all* new units to be affordable. Even under the expanded
15 affordability requirements of the Interim Zoning Ordinance, no more than fifteen percent of
16 the total units in a new development are required to be affordable—and even then, they are
17 only required to be affordable to households earning 50 percent of AMI for rentals or 80
18 percent of AMI for owner-occupied housing.⁸⁰ And none of this is a requirement. A
19 developer could build a two-story building in the TC zone without any affordable housing
20 units at all. Yet despite these limitations, the LCA Supplement specifically identified the
21 incentivized zoning program in the TC zone as a subsidy or incentive the City could rely on
22 to assume affordability of new units in the medium to high density zone categories.⁸¹
23

24 According to Book 2, when relying on a voluntary incentivized zoning program, the
25 City should have examined how many affordable housing units its existing incentivized
26 zoning program had actually created, and at what income levels, and it should have
27 estimated how many more such housing units an expanded incentivized zoning program
28
29

30 ⁷⁹ Ex. 282, at 32.

31 ⁸⁰ Ex. 135, at Exhibit D.

32 ⁸¹ Ex. 130, at 341–342 (LCA Supplement).

1 like the one in the Interim Zoning Ordinance could be expected to create, and it should
2 have used *that* number as basis for the housing inventory in the LCA Supplement. Instead,
3 the LCA Supplement tallied the number of units that could be built *with or without*
4 incentives or subsidies, and treated each of those units as it would likely be built *with*
5 incentives or subsidies—even though the City’s incentive program is strictly voluntary and
6 even though the program requires only a fraction of the total number of units within each
7 new development to be affordable.
8

9 Not only was the City’s inventory inconsistent with Commerce’s guidance in Book 2,
10 it was also inconsistent with the City’s own data. The City’s Housing Needs Assessment,
11 prepared in advance of the LCA Supplement, found that only three buildings in the entire
12 city offer rent-restricted units, yielding a total of 102 rent-restricted units among the three
13 buildings.⁸² Of those 102 rent-restricted units, the 59 units in Grace Place are only for
14 people aged 62 or older, and the 30 units in Island Crest Apartments are only for low
15 income families, seniors, or persons experiencing a disability.⁸³ Only the 13 units in Hadley
16 Apartments are available to persons not falling into one of those categories.⁸⁴ And even the
17 13 rent-restricted units in Hadley Apartments are only available to household earning less
18 than 70 percent of AMI. A household earning, for example, 75 percent of AMI would be a
19 low income household but would not qualify for a rent-restricted apartment in Hadley
20 Apartments.
21

22 The fact that only 102 rent-restricted units have been produced under the City’s
23 current system of subsidies and incentives should have led the City to question the
24 assumption that all or nearly all of the 1,073 units for which the City still has capacity will
25 turn out to be a rent-restricted unit. Nothing in the record supports such an assumption.
26

27 If the City had disaggregated the income segments, and had correctly accounted for
28 the fact that virtually all of the projected new households will require incentives or
29

30 ⁸² Ex. 130, at 275 (Housing Needs Assessment).

31 ⁸³ *Id.*

32 ⁸⁴ *Id.*

1 subsidies, the Board is confident that a less rosy picture of the City's low-income housing
2 inventory would have emerged. The Board is left with a definite and firm conviction that the
3 City erred in assuming that all or nearly all of the units for which capacity exists will be low-
4 income units, because there is no incentive or subsidy program in place that would
5 guarantee such an outcome.

6 The City was required under RCW 36.70A.070(2)(c) to identify in its housing
7 element sufficient capacity of housing for moderate, low, very low, and extremely low-
8 income households. For the reasons stated above, it did not do so.

9 In addition, the City was required by RCW 36.70A.070(2)(c) to identify sufficient
10 capacity of housing for permanent supportive housing. The City included its permanent
11 supportive housing inventory and projected needs in the LCA Supplement, which the Board
12 finds did not meet the requirements of the GMA, and therefore, the City also did not meet
13 its obligation to inventory and analyze housing needs for permanent supportive housing.

14 **2. The City Did Identify Sufficient Existing and Projected Capacity for** 15 **Emergency Housing.**

16 In addition to allocating the city 1,216 low to moderate income households, CPP H-1
17 also allocated the city 237 emergency housing units.⁸⁵ During an early draft of the City's
18 Comprehensive Plan Update Ordinance, the City received a comment from the Department
19 of Commerce in which the Department did not, at that time, see any analysis of existing
20 and projected emergency housing units:

21 During our review of your draft housing element, we did not find
22 supporting documentation indicating sufficient land capacity for
23 emergency housing and emergency shelter as required by
24 RCW 36.70A.070(2)(c). While Commerce guidance indicates jurisdictions
25 do not need to complete a land capacity analysis (LCA) for emergency
26 housing and emergency shelter *if they allow these uses in all zones that*
27 *allow hotels*,⁸⁶ RCW 36.70A.070(2)(c) expressly states jurisdictions must
28 ensure sufficient capacity for all housing types, including emergency
29

30
31 ⁸⁵ Ex. 276, at 40 (CPP H-1).

32 ⁸⁶ See Ex. 282, at 44.

1 housing and emergency shelter, is identified in the housing element.
2 Therefore, we recommend the city consider including this information in
3 the city's final land capacity analysis.⁸⁷

4 In response to this comment, the City conducted an Emergency Housing Land
5 Capacity Analysis, undated but presented to the City Council on September 3, 2024.⁸⁸ The
6 Emergency Housing Land Capacity Analysis followed the process prescribed in Book 2 for
7 analyzing land capacity for emergency housing.⁸⁹

8 Petitioners argued that the City's process wrongly aggregated what Petitioners
9 called the four categories of STEP housing: emergency shelters, transitional housing,
10 emergency housing, and permanent supportive housing.⁹⁰ The Board disagrees. First,
11 "transitional housing" is not a housing type that is required to be included in a land capacity
12 analysis.⁹¹ Second, "permanent supportive housing" was already included in the LCA
13 Supplement and so did not need to be analyzed a second time in the Emergency Housing
14 Land Capacity Analysis.⁹² Third, although "emergency housing" and "emergency shelters"
15 did need to be included in the Emergency Housing Land Capacity Analysis, the
16 Department's guidance in Book 2 stated that aggregating these two categories is
17 acceptable for purposes of a land capacity analysis:
18
19

20 Both emergency housing and emergency shelter include temporary
21 accommodations. In implementation, there may be overlap between what
22 could be considered emergency housing versus emergency shelter. For
23 this reason, emergency housing and emergency shelter are considered a
24 single category and referred to throughout this guidance as "emergency
25 housing."⁹³
26

27 ⁸⁷ Ex. 100, at 28.

28 ⁸⁸ Ex.100, at 30–31 (Emergency Housing Land Capacity Analysis).

29 ⁸⁹ Resp. Br. at 13

30 ⁹⁰ Pet'r's Reply at 2.

31 ⁹¹ RCW 36.70A.070(2)(c).

32 ⁹² With the caveat, however, that the Board concludes the LCA Supplement itself did not comply with the requirements of the GMA for the reasons stated in the preceding section.

⁹³ Ex. 282, at 18.

1 Like the analysis for permanent housing in the LCA Supplement, the City's analysis
2 for emergency housing looked only at capacity based on available land and development
3 regulations and did not include any consideration of whether subsidies, incentives, or any
4 other form of funding would be available.⁹⁴ Although the Board concluded, above, that
5 disregarding subsidies and incentives was unrealistic in the context of land capacity
6 analysis for permanent housing, the Board concludes that it is appropriate in the context of
7 emergency housing. The GMA defines emergency housing as:

9 temporary indoor accommodations for individuals or families who are
10 homeless or at imminent risk of becoming homeless that is intended to
11 address the basic health, food, clothing, and personal hygiene needs of
12 individuals or families. Emergency housing may or may not require
occupants to enter into a lease or an occupancy agreement.⁹⁵

13 Based on this definition, the Board expects that most emergency housing (including
14 emergency shelters) would likely be furnished by professional providers rather than private
15 actors within the housing market. The Board's expectation of professional providers is also
16 consistent with the examples of emergency housing provided in Book 2.⁹⁶ Given that
17 emergency housing will likely be furnished by professional providers, the Board concludes
18 that a land capacity analysis for emergency housing can reasonably be based on physical
19 capacity only and may disregard subsidies and incentives. This conclusion is consistent
20 with Book 2, which does not require any subsidy or incentive analysis for emergency
21 housing land capacity—unlike the requirements for analyzing permanent housing
22 capacity.⁹⁷

23
24
25
26 The Board concludes that the City met its obligation under RCW 36.70A.070(2)(c) to
27 include an inventory and analysis of existing and projected housing needs for emergency
28

29
30 ⁹⁴ *Id.*

⁹⁵ RCW 36.70A.030(14).

⁹⁶ Ex. 282, at 46–48.

⁹⁷ *Id.* at 44–46.

1 housing and emergency shelters. The City's obligation under RCW 36.70A.020(2)(c) to
2 include an inventory and analysis of existing and projected permanent supportive housing
3 was folded into its LCA Supplement, which, as the Board discussed in the preceding
4 section of this decision, did not comply with the requirements of RCW 36.70A.070(2)(c).
5

6
7 **Issue No. 2. Did the adoption of the Land Use Element, the Future Land Use Map, the**
8 **Housing Element, the City of Mercer Island Housing Needs Assessment, the Land**
9 **Capacity Analysis Supplement, and the development regulations in Ordinance No.**
10 **24C-16, and Exhibits A and B, and Ordinance No. 24C-18, and Exhibits A through F,**
11 **fail to document programs and actions needed to achieve housing availability**
12 **including gaps in local funding, barriers such as development regulations, and**
13 **other limitations and fail to adopt and implement policies to improve effectiveness**
14 **and address gaps in partnerships, policies, and dedicated resources to meet the**
15 **jurisdiction's housing needs violating RCW 36.70A.020(4), RCW 36.70A.070,**
16 **RCW 36.70A.070(2)(d), RCW 36.70A.100, RCW 36.70A.120, RCW 36.70A.130(1) and**
17 **(5)(a), RCW 36.70A.210, RCW 36.70A.290(2), or King County Countywide Planning**
18 **Policy H-12?**

19 **Applicable Laws:**

20 **RCW 36.70A.070 (Comprehensive Plan—Mandatory elements):**

- 21 (2)(d) Makes adequate provisions for existing and projected needs of all
22 economic segments of the community, including:
23 (i) Incorporating consideration for low, very low, extremely low, and
24 moderate-income households;
25 (ii) Documenting programs and actions needed to achieve housing
26 availability including gaps in local funding, barriers such as
27 development regulations, and other limitations;
28 (iii) Consideration of housing locations in relation to employment
29 location; and
30 (iv) Consideration of the role of accessory dwelling units in meeting
31 housing needs;
32

33 **RCW 36.70A.130 (Review Procedures and Schedules—Implementation Progress Report):**

- (1)(a) Each comprehensive land use plan and development regulations shall
be subject to continuing review and evaluation by the county or city

1 that adopted them. Except as otherwise provided, a county or city shall
2 take legislative action to review and, if needed, revise its
3 comprehensive land use plan and development regulations to ensure
4 the plan and regulations comply with the requirements of this chapter
according to the deadlines in subsections (4) and (5) of this section.

5 ...

6 (5)(a) ... [O]n or before December 31, 2024, with the following review and, if
7 needed, revision on or before June 30, 2034, and then every 10 years
8 thereafter, for King, Kitsap, Pierce, and Snohomish counties and the
9 cities within those counties

10 ...

11 (9)(a) Counties subject to planning deadlines established in subsection (5) of
12 this section that are required or that choose to plan under
13 RCW 36.70A.040 and that meet either criteria of (a)(i) or (ii) of this
14 subsection, and cities with a population of more than 6,000 as of April
15 1, 2021, within those counties, must provide to the department an
16 implementation progress report detailing the progress they have
17 achieved in implementing their comprehensive plan five years after the
18 review and revision of their comprehensive plan. Once a county meets
19 the criteria in (a)(i) or (ii) of this subsection, the implementation
20 progress report requirements remain in effect thereafter for that county
21 and the cities therein with populations greater than 6,000 as of April 1,
22 2021, even if the county later no longer meets either or both criteria. A
23 county is subject to the implementation progress report requirement if
24 it meets either of the following criteria on or after April 1, 2021:

- 25 (i) The county has a population density of at least 100 people per
square mile and a population of at least 200,000; or
26 (ii) The county has a population density of at least 75 people per
square mile and an annual growth rate of at least 1.75 percent
as determined by the office of financial management.

27 ...

28 (c) If a city or county required to provide an implementation progress
29 report under this subsection (9) has not implemented any specifically
30 identified regulations, zoning and land use changes, or taken other
31 legislative or administrative action necessary to implement any
32 changes in the most recent periodic update in their comprehensive
plan by the due date for the implementation progress report, the city or
county must identify the need for such action in the implementation
progress report. Cities and counties must adopt a work plan to

1 implement any necessary regulations, zoning and land use changes,
2 or take other legislative or administrative action identified in the
3 implementation progress report and complete all work necessary for
4 implementation within two years of submission of the implementation
5 progress report.

6 **CPP H-12:**

7 Adopt and implement policies that improve the effectiveness of existing
8 housing policies and strategies and address gaps in partnerships, policies,
9 and dedicated resources to meet the jurisdiction's housing needs.

10 **Board Discussion**

11 **A. Brief Summary of Parties' Arguments on Issue 2.**

12 **1. Brief Summary of Petitioners' Arguments on Issue 2.**

13 Petitioners raised several challenges under the "make adequate provision" prong of
14 the new housing requirements set forth by ESSHB 1220 in RCW 36.70A.070(2)(d). First,
15 Petitioners argued that the challenged ordinances did not document the programs and
16 actions needed to achieve housing availability, including gaps in funding and regulatory
17 barriers.⁹⁸ Petitioners argued that ESSHB 1220 required "concrete steps, specific policies,
18 programs, and implementation measure[s]," but the policies the City adopted in the housing
19 element of the Comprehensive Plan Update Ordinance were merely "vague commitments"
20 or promises to "comply with statewide legislation" without any plan to actual implement
21 measures to make housing affordable to all income segments.⁹⁹

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23
24 Petitioners argued that CPP H-12 required the City to address gaps in "partnerships,
25 policies, and dedicated resources."¹⁰⁰ Petitioners argued that the City had failed to identify
26 such resources for making housing affordable. The failure to find resources was particularly
27 harmful in the case of Mercer Island, Petitioners argued, because Mercer Island is such a
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⁹⁸ Pet'r's Br. at 10.

31 ⁹⁹ *Id.*

32 ¹⁰⁰ *Id.* at 11.

1 high-cost community, where even accessory dwelling units exceed the affordability
2 threshold for those earning less than 80 percent of AMI.¹⁰¹

3 Petitioners argued that the City was concentrating affordable housing in the TC
4 zone, because that is the only zone where incentivized zoning practices have been
5 implemented.¹⁰² But even in the TC zone, there is no requirement for developers to provide
6 any housing affordable to extremely low income households, those earning 30 percent of
7 AMI or below.

8
9 Petitioners argued that the deadline for compliance with the “make adequate
10 provisions” requirement of the GMA, RCW 36.70A.070(2)(d), was the same as the deadline
11 for updating the Comprehensive Plan: December 31, 2024.¹⁰³

12 **2. Brief Summary of Respondent’s Arguments on Issue 2.**

13 The City argued that it did “document gaps in local funding and barriers to housing
14 production,” as required by RCW 36.70A.070(2)(d), and that it did so in a manner
15 consistent with the Department’s guidance in Book 2.¹⁰⁴ The City identified various barriers
16 in Table 2 of the housing element of the Comprehensive Plan Update Ordinance, and that
17 same table listed appropriate programs and actions to overcome each barrier identified.¹⁰⁵

18 The core of the City’s argument was that the City was not required to actually
19 provide or identify funding for low income housing at this stage. It was merely required to
20 document funding gaps and identify funding strategies.¹⁰⁶ As the City argued, “[f]unding is
21 an issue that is too large for one city. ‘Meeting housing needs will require actions, including
22 commitment of substantial financial resources, by a wide range of private for-profit,
23 nonprofit, and government entities.’”¹⁰⁷

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28 ¹⁰¹ *Id.* at 12.

29 ¹⁰² *Id.* at 12–13 (citing MICC 19.11.040).

30 ¹⁰³ *Id.* at 13–14 (citing RCW. 36.70A.130(1)(a) and –(5)(a)).

31 ¹⁰⁴ Resp. Br. at 16.

32 ¹⁰⁵ *Id.* at 17, 22.

¹⁰⁶ *Id.* at 18.

¹⁰⁷ *Id.* at 18–19 (quoting Ex. 276, at 45).

1 In the City's reading of RCW 36.70A.070(2)(d), it was required only to document
2 funding gaps and identify strategies (which it did) and make up any shortfall in the number
3 of units identified in the course of the capacity analysis described in the preceding
4 section.¹⁰⁸ Since the LCA Supplement identified a shortfall of 143 in medium or high
5 density zones, the City adopted the Interim Zoning Ordinance to supply those units within
6 the TC zone by increasing height bonuses, while at the same time removing barriers to
7 affordability and helping achieve housing availability on Mercer Island.¹⁰⁹ The City argued
8 that there was no prohibition in the GMA or CPPs against siting affordable housing in the
9 TC zone, where it is most likely to be feasible.¹¹⁰

11 Any housing obligations beyond these steps, the City argued, were not due yet. The
12 City argued that RCW 36.70A.130(9)(a) gives larger counties and cities a longer period of
13 time to implement their comprehensive plans. In the City's reading, implementation of the
14 various strategies the City had identified would not be due until the first progress report
15 under RCW 36.70A.130(9)(a) was due in December of 2029.¹¹¹ The City argued that the
16 Book 2 guidance was that "implementing regulations to provide sufficient land capacity
17 must be adopted by the periodic update deadline and implementing regulations to make
18 adequate provision for all economic segments of the community may be adopted at a later
19 date."¹¹²

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24 **B. The Board Concludes that the City Was Required to Make Adequate**
25 **Provisions for Existing and Projected Needs of All Economic Segments**
26 **in the Most Recent Comprehensive Plan Periodic Update, Due**
27 **December 31, 2024.**
28

29 ¹⁰⁸ *Id.* at 19.

30 ¹⁰⁹ *Id.*

31 ¹¹⁰ *Id.* at 20–21.

32 ¹¹¹ *Id.* at 23–25.

¹¹² *Id.* at 25 (citing Ex. 282, at 102–103).

1 The Board recognizes a certain tension between the requirements of RCW
2 36.70A.070(2)(d), RCW 36.70A.130(1)(a) and -(5)(a), and RCW 36.70A.130(9)(a) and -(c).

3 Section -,070(2)(d) requires the housing element of a Comprehensive Plan to make
4 adequate provision for housing for all economic segments.

5 Sections -.130(1)(a) and -(5)(a) require that the Comprehensive Plan *and*
6 *development regulations* must be reviewed and, if needed, revised for compliance with the
7 GMA by December 31, 2024, as part of the periodic update.

8
9 Section -.130(9)(a) requires certain cities to provide “an implementation progress
10 report detailing the progress they have achieved in *implementing their comprehensive plan*
11 *five years after the review and revision of their comprehensive plan.*” Section -(9)(c)
12 provides that, if the city has not “implemented any specifically identified regulations ... in
13 the most recent periodic update in their comprehensive plan by the due date for the
14 implementation progress report, the city or county must identify the need for such action in
15 the implementation progress report. Cities and counties must adopt a work plan to
16 implement any necessary regulations, zoning and land use changes, or take other
17 legislative or administrative action identified in the implementation progress report and
18 complete all work necessary for implementation within two years of submission of the
19 implementation progress report.”
20

21 Section -.130(1)(a) and -(5)(a) require both Comprehensive Plan updates and any
22 necessary development regulations to be adopted by December 31, 2024. Section -
23 .130(9)(a) requires a progress report on the implementation of the Comprehensive Plan to
24 be submitted by December 2029—but not necessarily a progress report on the
25 implementation of both the Comprehensive Plan and development regulations. The
26 December 2029 progress reporting requirement for the Comprehensive Plan but not for
27 development regulations seems to imply a possibility that development regulations might
28 not necessarily be in place by December 2029. Indeed, Section -.130(9)(c) seems to
29 contemplate the possibility that a city might adopt only a Comprehensive Plan but might
30 potentially delay adoption of any development regulations until two years *after* its
31
32

1 Comprehensive Plan implementation report is due in December 2029, in other words,
2 December 2031. Yet such a scenario would appear to conflict the requirement of Section -
3 .130(1)(a) and –(5)(a) to have both the Comprehensive Plan and the development
4 regulations in place by December 2024.

5 The Department offered the following interpretation in Book 2:

6 The GMA requires counties and cities required or choosing to plan under
7 RCW 36.70A.040 to adopt a comprehensive plan including a housing
8 element that identifies sufficient capacity of land for all housing needs.
9 RCW 36.70A.115 further clarifies that those fully planning jurisdictions
10 shall ensure that, taken collectively, the comprehensive plan and
11 development regulations provide sufficient land capacity to accommodate
12 their allocated housing need. Under RCW 36.70A.130(1)(a),
13 comprehensive plans and development regulations must be compliant
with the GMA when they are adopted at the periodic update.

14 Based on these statutory requirements, both the comprehensive plan and
15 implementing development regulations must be adopted no later than the
16 periodic update deadline to ensure GMA compliance. For example, if a
17 jurisdiction's comprehensive plan identifies a residential land capacity
18 deficit for middle housing types to serve the projected number of low to
19 moderate-income households, then the adopted implementing
20 development regulations must include changes to the development
21 regulations to allow a sufficient amount of middle housing to overcome
22 that deficit. That additional capacity should be allowed "by right" to ensure
that there are minimal hurdles to building the needed capacity.

23 The GMA also requires fully planning jurisdictions to make adequate
24 provisions for existing and projected needs for all economic segments of
the community, including:

- 25 • Incorporating consideration for low, very low, extremely low and
- 26 moderate-income households;
- 27 • Documenting programs and actions needed to achieve housing
- 28 availability including gaps in local funding, barriers such as
- 29 development regulations and other limitations;
- 30 • Consideration of housing locations in relation to employment
- 31 locations; and
- 32 • Consideration of the role of ADUs in meeting housing needs.

1 Therefore, while GMA-compliant comprehensive plans and implementing
2 development regulations (which must provide for sufficient land capacity)
3 must be adopted by the periodic update deadline, actions taken to “make
4 adequate provisions” for a jurisdiction’s housing needs that do not involve
5 changes to the implementing development regulations for meeting
6 capacity may be taken after the periodic update deadline. Types of
7 actions falling under this category include, for example, implementing
8 regulation changes to remove barriers that may be contributing to market
9 inactivity, or modifying permitting or fee structures to incentivize certain
10 housing types to meet income needs.

11 In recognition that these steps may take some time to implement after the
12 comprehensive plan and development regulations are adopted,
13 RCW 36.70A.130(9) requires that certain jurisdictions provide the
14 Department of Commerce with a report detailing the progress they have
15 achieved in implementing their comprehensive plan five years after its
16 adoption. The implementation progress report shall cover:

- 17 • The implementation of previously adopted changes to the housing
18 element and any effect those changes have had on housing
19 affordability and availability,
- 20 • Permit processing timelines, and
- 21 • Progress towards implementing any actions to achieve reductions
22 to meet greenhouse gas and vehicle miles traveled requirements
23 as provided for in any element of the comprehensive plan under
24 RCW 36.70A.070.

25 If a jurisdiction required to provide an implementation progress report has
26 not implemented any specifically identified regulations, zoning and land
27 use changes, or taken any other legislative or administrative action
28 necessary to implement changes in the most recent periodic update by
29 the deadline to submit the progress report, that jurisdiction must adopt a
30 work plan to implement such actions. Then, according to RCW
31 36.70A.130(9), they must also complete all work necessary for
32 implementation of those actions within two years of the report’s
submission.

Given this statutory deadline, a jurisdiction should aim to implement
actions required to make adequate provisions for the jurisdiction’s
housing needs by the due date for the five-year implementation progress
report and be prepared to demonstrate progress made towards

1 implementing their housing element in the report. If the jurisdiction has
2 not made additional adequate provisions (i.e., beyond basic zoning
3 changes for capacity per RCW 36.70A.115) to accommodate its housing
4 needs, the report must demonstrate how those actions will be taken in
5 the next two years.¹¹³

6 The City relied on this Book 2 guidance to determine that it needed only to provide
7 *capacity* and *identify gaps and strategies* in the 2024 update. Actually “making adequate
8 provision” for housing through development regulations could be delayed until the 2029
9 progress report, or even, perhaps, two years after the progress report.

10 The Board concludes that the Book 2 guidance did not present a correct
11 interpretation of the GMA deadlines. In enacting revisions to RCW 36.70A.130(9)(a) and -
12 (c), the Legislature did not establish a new deadline for making adequate provisions for
13 housing all economic segments as required by RCW 36.70A.070(2)(d). Instead, the
14 deadline for making adequate provisions for housing, whether by means of Comprehensive
15 Plan updates or through development regulations, remains the deadline originally set by
16 RCW 36.70A.130(1)(a) and -(5)(a): December 31, 2024.

17 The Board concludes that RCW 36.70A.130(9)(a) set a December 2029 deadline to
18 *file a report* documenting the implementation of the GMA housing requirements, not a
19 December 2029 deadline to *achieve compliance* with the GMA housing requirements. In
20 the Board’s interpretation of Sections -.130(1), (5), and (9), a city must take action through
21 both its Comprehensive Plan and its development regulations to meet all of the GMA’s
22 requirements by December 2024—including the requirement to make adequate provision
23 for housing all economic segments. A city is then required to turn in a report evaluating its
24 implementation progress in December 2029. If, by that date, the city has not already
25 implemented specifically identified regulations, zoning, and land use changes necessary to
26 implement its most recent periodic update to its Comprehensive Plan, then the city’s
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¹¹³ Ex. 282, at 102–103.
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1 progress report must “identify the need for such action.” Having identified the needed
2 actions, the city then has a further two years to adopt them.

3 The December 2029 deadline in RCW 36.70A.130(9) is not a deadline to adopt
4 development regulations to implement the Comprehensive Plan. It is a deadline to report
5 on the success or failure of the Comprehensive Plan, including the development
6 regulations that implement the Comprehensive Plan. If the December 2029 report reveals
7 that implementation of the Comprehensive Plan has not been working as intended over the
8 preceding five years, and if there are still development regulations or other implementing
9 actions that have not yet been taken, then a narrow window is provided to adopt any
10 necessary implementing actions—not the usual ten-year window of the next periodic
11 update, but instead just two years after the progress report that identified the
12 implementation failure. The additional two-year deadline established by
13 RCW 36.70A.130(9)(c) is the window in which to correct a plan that turned out to be
14 unsuccessful, not the window in which to implement a plan in the first instance.
15
16

17 The Board does not lightly disagree with the guidance provided by the Department
18 in Book 2. On the contrary, the Board itself relied, in part, on guidance in Book 2 to inform
19 some of the Board’s own conclusions regarding Issue 1. The Board acknowledges its
20 statutory duty to consider Departmental criteria adopted pursuant to RCW
21 36.70A.190(4).¹¹⁴ The Board also recognizes that an agency’s interpretation of a statute is
22 accorded great weight when that statute is within the agency’s special expertise.¹¹⁵ And,
23 although the Book 2 guidance was not adopted by rule, as is required of formal
24 Departmental criteria pursuant to RCW 36.70A.190(4), and although Book 2 carries no
25 legal or regulatory effect,¹¹⁶ the Board nevertheless affords the interpretations in Book 2
26
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28 ¹¹⁴ RCW 36.70A.320(3).

29 ¹¹⁵ *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn.2d 568, 593, 90 P.3d 659 (2004).

30 ¹¹⁶ *See Wash. Educ. Ass’n v. Wash. State Pub. Disclosure Comm’n*, 150 Wn.2d 612, 619, 80 P.3d 608
31 (2003) (“Furthermore, issuance of interpretative statements is not governed by formal adoption procedures.
32 There is no need for formal procedures because such advisory statements have no legal or regulatory effect.”)

1 significant weight in recognition of the Department's administrative expertise in this field.
2 However, "an agency's view of the statute will not be accorded deference if it conflicts with
3 the statute."¹¹⁷ Ultimately, it is for the reviewing tribunal—here, the Board—to determine
4 the meaning and purpose of a statute.¹¹⁸

5 The Board cannot agree with Book 2's interpretation that RCW 36.70A.130(9)(a)
6 and -(c) worked to amend any part of the deadline to adopt a GMA-compliant periodic
7 update of both a Comprehensive Plan and the development regulations necessary to
8 implement the Comprehensive Plan. Such an interpretation would erroneously read out the
9 deadline for a GMA-compliant periodic update established in RCW 36.70.130(1) and -(5)
10 and would also ignore the language in Section -(9) providing an extended deadline only for
11 such corrective actions which a progress report determines remain necessary five years
12 after GMA compliance was required to be achieved in the first place. The interpretation in
13 Book 2 conflicts with the statute.
14

15 In addition to the plain language of RCW 36.70A.130(1) and -(5) setting the same
16 deadline for updating both Comprehensive Plans and development regulations, the Board
17 also considers the requirement of RCW 36.70A.040(3)–(5) that development regulations
18 must be "consistent with and implement the Comprehensive Plan." If the Board were to
19 allow a periodic update to amend a Comprehensive Plan but delay any implementing
20 development regulations by five years, then there would be a five-year gap during which
21 the development regulations would not be implementing the Comprehensive Plan—unless,
22 by happy coincidence, the existing, unamended development regulations just so happened
23 to implement the amendments in the Comprehensive Plan. However, no party in this case
24 is arguing that the City's existing development regulations have already made adequate
25 provisions for all economic segments in Mercer Island, and the record shows the existing
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31 ¹¹⁷ *Postema v. Pollution Control Hearings Bd.*, 142 Wn.2d 68, 77, 11 P.3d 726 (2000).

32 ¹¹⁸ *Id.*

1 regulations have not made adequate provisions.¹¹⁹ Therefore, because the periodic update
2 of the City's Comprehensive Plan was required to make adequate provisions for all
3 economic segments, the periodic update of the City's development regulations was also
4 required to make adequate provisions for all economic segments.

5 The Board does agree with the Book 2 guidance in one respect: "Under
6 RCW 36.70A.130(1)(a), comprehensive plans and development regulations must be
7 compliant with the GMA **when they are adopted at the periodic update.**"¹²⁰ Ever since
8 the adoption of ESSHB 1220 in 2021, the GMA has required comprehensive plans to
9 "make adequate provisions" for housing all economic segments. If a comprehensive plan,
10 together with its implementing regulations, do not "make adequate provisions" for housing
11 by the time of the periodic update, then that plan and those regulations are not compliant
12 with the GMA. And the time to fix the non-compliance is now, not five years from now. In
13 five years, the City must turn in a progress report documenting the success or failure of its
14 Comprehensive Plan. But if there is to be any hope of reporting success in five years, then
15 implementation must begin now with the periodic update—and the GMA requires exactly
16 that.
17
18

19 **C. The Board Concludes that the City Did Not Make Adequate Provisions**
20 **for Existing and Projected Needs of All Economic Segments.**

21 As noted earlier in this decision, the City's capacity analysis erroneously aggregated
22 all the low to medium income economic segments into a single segment, and then
23 baselessly assumed that any subsidies or incentives necessary for their housing would be
24 available. With these erroneous assumptions in place, the City identified a development
25 capacity of 1,073 units for the low to medium income economic segments, leaving a deficit
26 of 143 units for those segments. The Interim Zoning Ordinance then provided the missing
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30 ¹¹⁹ As the Board noted above, only 102 rent-restricted units have been produced under the City's current
31 system of subsidies and incentives.

32 ¹²⁰ Ex. 282, at 102 (emphasis added).

1 143 units through height increases. It also increased the amount and level of affordable
2 housing that a developer must provide to take advantage of height bonuses in the TC zone.

3 However, as the Board found above, virtually of the low to medium income
4 households allocated to the City will require subsidized or incentivized housing. If the City
5 cannot show that subsidies or incentives are available for each of those units, then the City
6 cannot claim those units in its capacity analysis.
7

8 Nothing in the record shows that subsidies or incentives will be available for each of
9 the 1,216 low to moderate income households allocated to the City in CPP H-1. The LCA
10 Supplement contains no such analysis. On the contrary, the LCA Supplement promised
11 that the necessary “review of incentives and subsidies will be conducted in a separate
12 report addressing the ‘adequate provisions’ guidance provided by Commerce.”¹²¹ That
13 work was not done—possibly because the City erroneously believed that “adequate
14 provisions” for housing did not need to be made until December 2029. In the absence of
15 the subsidies or incentives that will be necessary to make housing affordable to the low to
16 moderate income segments, neither the existing capacity for 1,073 units nor the newly
17 provided capacity for 143 additional units in the Interim Zoning Ordinance constitute
18 “adequate provisions” for housing across all economic segments. The Board concludes the
19 City has not met the requirement of RCW 36.70A.070(2)(d) to make adequate provisions
20 for housing all economic segments.
21

22 The City’s other measures to “make adequate provisions” for housing across all
23 economic segments also fall short. The Board agrees with Petitioners that the new policies
24 adopted in the Comprehensive Plan Update Ordinance (summarized in the introduction to
25 this decision) fail to make adequate provision for housing. The Board does not doubt that
26 the policies would contribute to the supply of housing, but the record does not show that
27 the policies, on their own, will make adequate provision for housing, which is the obligation
28 imposed by RCW 36.70A.070(2)(d).
29
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31 _____
32 ¹²¹ Ex.130, at 347.

1 To take just one example, Policy 2.5.1 is to use “affordable housing incentives that
2 require units at varying income levels to be incorporated into new construction to address
3 the Mercer Island housing growth target and housing needs for households earning less
4 than the AMI. Affordable housing unit requirements should be set at levels to yield more
5 lower-income units as the benefit of the incentive increases.”¹²² This policy obviously has
6 the potential to generate new units for households earning less than 100 percent of AMI.
7 Indeed, it is likely that this policy underlays the Interim Zoning Ordinance’s amendments to
8 expand the optional affordable housing incentives in the TC zone. But there is no analysis
9 in the record as to how many units, and at what income levels, Policy 2.5.1 can be
10 expected to generate.
11

12 The same is true for all of the other housing policies in the Comprehensive Plan
13 Update Ordinance. Each of the policies, both on its own and in the aggregate, might very
14 well result in some quantity of low to moderate income housing units being built. But there
15 is nothing to demonstrate that the policies will generate sufficient low to moderate income
16 housing units necessary to meet the CPP H-1 growth targets. Vague aspirations to
17 generate unspecified quantities of affordable housing are insufficient in a post-ESSHB
18 1220 world. The City’s approach here is reminiscent of the former GMA Goal 4, to
19 “encourage the availability of affordable housing to all economic segments.” This approach
20 is not consistent with the post-ESSHB 1220 GMA Goal 4, to “plan for an accommodate
21 housing affordable to all economic segments” and the post-ESSHB 1220 requirement of
22 RCW 36.70A.070(2)(d) to “[make] adequate provisions for existing and projected needs of
23 all economic segments.”
24
25

26 For the same reason, the Board does not accept that the affordable housing
27 amendments in the Interim Zoning Ordinance satisfy the requirements of RCW
28 36.70A.070(2)(d). While deepening the affordability requirements in the TZ zone will likely
29 result in some amelioration of the affordable housing shortage, the record does not show
30

31 _____
32 ¹²² Id., at 113.

1 that it makes adequate provision for housing all economic segments. The Board concludes
2 that neither of the challenged ordinances is consistent with the requirements of RCW
3 36.70A.070(2)(d).

4 The Board does agree with the City in one respect with regards to Issue 2: There is
5 no prohibition against concentrating affordable housing in the zones where it is most
6 feasible to provide. The Board does not see any provision of the GMA, CPPs, or other
7 source of law cited by Petitioners that would require the City to distribute affordable
8 housing across all neighborhoods. As a practical matter, making adequate provision for
9 housing all economic segments may lead the City to expand affordable housing subsidy
10 and incentive programs beyond the medium to high density zones, or the City may choose
11 to expand the medium to high density zones into areas of the city that currently carry other
12 zoning designations. Such planning choices would only be practical outcomes of the law,
13 not explicit requirements of the law itself—at least, not any law that Petitioners has called to
14 the Board’s attention with regard to Issue 2.
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18 **Issue No. 3. Did the adoption of Ordinance No. 24C-16, and Exhibits A and B, and**
19 **Ordinance No. 24C-18, and Exhibits A through F, fail to develop, adopt, and include**
20 **in the comprehensive plan a subarea plan for the Mercer Island light rail station area**
21 **violating Multicounty Planning Policies (MPPs) DP-Action-8, MPP-RGS-8, MPP-DP-**
22 **22, MPP-T-19, and associated narrative in VISION 2050 and pages 15, 27–28, and 68–**
23 **72; King County Countywide Planning Policies H-3(i), H-16, and H-17; RCW**
24 **36.70A.020(3); RCW 36.70A.020(4); RCW 36.70A.070; RCW 36.70A.070(1); RCW**
25 **36.70A.070(6)(a); RCW 36.70A.100; RCW 36.70A.108; RCW 36.70A.120; RCW**
26 **36.70A.130(1) and (5)(a), RCW 36.70A.210, or RCW 36.70A.290(2)?**

27 **Applicable Laws:**

28 **MPP DP-Action-8 (Center Plans and Station Area Plan):**¹²³

29 Each city or county with a designated regional center and/or light rail
30 transit station area will develop a subarea plan for the designated

31

¹²³ Ex. 322, at 80.
32

1 regional growth center, station area(s), and/or manufacturing/industrial
2 center. Cities and counties will plan for other forms of high-capacity
3 transit stations, such as bus rapid transit and commuter rail, and
4 countywide and local centers, through local comprehensive plans,
5 subarea plans, neighborhood plans, or other planning tools. Jurisdictions
6 may consider grouping station areas that are located in close proximity.

7 **MPP-DP-22:**¹²⁴

8 Plan for densities that maximize benefits of transit investments in high-
9 capacity transit station areas that are expected to attract significant new
10 population or employment growth.

11 **MPP-RGS-8:**¹²⁵

12 Attract 65% of the region's residential growth and 75% of the region's
13 employment growth to the regional growth centers and high-capacity
14 transit station areas to realize the multiple public benefits of compact
15 growth around high-capacity transit investments. As jurisdictions plan for
16 growth targets, focus development near high-capacity transit to achieve
17 the regional goal.

18 **MPP-T-19:**¹²⁶

19 Design transportation programs and projects to support local and regional
20 growth centers and high-capacity transit station areas.

21 **CPP H-3:**¹²⁷

22 Conduct an inventory and analysis in each jurisdiction of existing and
23 projected housing needs of all segments of the population and summarize
24 the findings in the housing element. The inventory and analysis shall
25 include:

- 26 ...
27 (i) Housing development capacity within a half-mile walkshed of high-
28 capacity or frequent transit service, if applicable;

29 **CPP H-16:**¹²⁸

30 ¹²⁴ *Id.* at 77.

31 ¹²⁵ *Id.* at 43.

32 ¹²⁶ *Id.* at 106.

¹²⁷ Ex. 276, at 41–42.

¹²⁸ *Id.* at 46.

Expand the supply and range of housing types, including affordable units, at densities sufficient to maximize the benefits of transit investments throughout the county.

CPP H-17:¹²⁹

Support the development and preservation of income-restricted affordable housing that is within walking distance to planned or existing high-capacity and frequent transit.

Board Discussion

A. Brief Summary of Parties' Arguments on Issue 3.

1. Brief Summary of Petitioners' Arguments on Issue 3.

Petitioners argued that Mercer Island has a "designated ... light rail transit station area" for its forthcoming high-capacity transit station, but the City has not adopted a subarea plan for the station area in contravention of MPP DP-Action-8.¹³⁰ The City's failure to adopt a subarea plan for the station area led to failures to comply with the other MPPs above.¹³¹

In addition, Petitioners argued the City did not complete the inventory and analysis of the high-mile walkshed around the forthcoming high-capacity transit station, as required by CPP H-3(i).¹³² Petitioners also argued that the only zone approaching what Petitioners characterized as a requirement in CPP H-16 for 50 units per residential acre within half a mile of the station is the TC zone. Zones north of the station are not even close to this density.¹³³ Petitioners also argued that Policy 4.3 of the Comprehensive Plan Update Ordinance—"[a]llow the development of affordable housing within the Town Center"¹³⁴—was not sufficient to meet the requirement of CPP H-17 to support the development of income-restricted affordable housing within walking distance of planned high-capacity

¹²⁹ *Id.*

¹³⁰ Pet'r's Br. at 18.

¹³¹ *Id.*

¹³² *Id.* at 16.

¹³³ *Id.* at 16–17.

¹³⁴ Ex. 130, at 91.

transit.¹³⁵ These failures, too, might have been avoided had a subarea plan been prepared, because a subarea plan would have been a natural place to address each of these CPP requirements.¹³⁶

2. Brief Summary of Respondent's Arguments on Issue 3.

The City did not dispute that it produced no subarea plan for the station area of the future light rail station. Instead, the City argued that most of the cited CPPs and MPPs do not require a subarea plan.¹³⁷ In the City's reading, CPP H-3(i) requires only an inventory and analysis, which the City provided.¹³⁸ CPP H-16 and H-17 require only expansion of housing supply near transit investments and development and presentation of income-restricted housing near high-capacity transit, which the City argued it meets through Comprehensive Plan Update Ordinance Policy 2.1.¹³⁹ The City denied that CPP H-16 requires 50 units per acre near transit areas, because that number comes not from the CPPs but rather from Petitioner Futurewise's own white paper.¹⁴⁰

The City argued that MPP-DP-22 requires only planning for densities to maximize transit, which the City argued it had done in Policies 1.9 and 2.1.¹⁴¹ Similarly, the City argued that MPP-T-19 and MPP-RGS-8 require only that the City design transportation programs and projects to support high-capacity transit station areas, and focus development near those areas, not achieve any specific result beyond those articulated in the goals and policies of the Comprehensive Plan Update Ordinance.¹⁴²

¹³⁵ Pet'r's Br. at 17.

¹³⁶ *Id.* at 18.

¹³⁷ Resp. Br. at 26–27.

¹³⁸ *Id.* at 27 (citing Ex. 320, at 5).

¹³⁹ *Id.* at 27 (citing Ex. 130, at 112 (Policy 2.1)) ("Support the development and preservation of income-restricted housing that is within walking distance of planned or existing high-capacity transit.").

¹⁴⁰ *Id.* at 27.

¹⁴¹ *Id.* at 28 (citing Ex. 130, at 77, 112 (Policy 1.9) ("Increase housing choices for everyone, particularly those earning lower wages, in areas with access to employment centers and high-capacity transit."), (Policy 2.1) (quoted above)).

¹⁴² *Id.*

1 MPP DP-Action-8 indisputably does require a subarea plan, at least by its plain
2 terms, but the City argued that this MPP did not come with a deadline by which the subarea
3 plan had to be adopted.¹⁴³ The City contrasted DP-Action-8's lack of a deadline with other
4 MPPs that do contain specific deadlines for other actions, including MPP-Ec-Action-5
5 whose deadline to establish an "economic development element" is the 2024
6 Comprehensive Plan periodic update—the very deadline Petitioners argued should apply to
7 the subarea plan.¹⁴⁴ The City also observed that the Regional Council, which establishes
8 the MPPs, commented on a draft of the City's Comprehensive Plan Update Ordinance and
9 did not remark on the absence of a subarea plan, even when commenting upon the light
10 rail station and the surrounding area.¹⁴⁵

11
12 Finally, the City argued that the Legislature's adoption of Third Substitute House Bill
13 (3SHB) 1491¹⁴⁶ has superseded the requirement of MPP DP-Action-8 to establish a
14 subarea plan for the area around the light rail station.¹⁴⁷ According to the City, 3SHB 1491
15 establishes "de facto subarea plans" within rail station areas within the same half-mile
16 walkshed as MPP DP-Action-8.¹⁴⁸ 3SHB 1491 gives cities until December 31, 2029 to
17 implement a wide range of zoning changes within the walkshed of a transit station,
18 including such changes as allowing multi-family housing at particular densities in residential
19 zones.¹⁴⁹

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23 **B. The Board Concludes that the City Met the Requirements of CPP H-3(i),**
24 **CPP H-16, CPP H-17, MPP-DP-22, MPP-RGS-8, and MPP-T-19, but not**
25 **the Requirement of MPP DP-Action-8 to Establish a Subarea Plan for the**
26 **Transit Station Area.**

27
28 ¹⁴³ *Id.* at 29.

29 ¹⁴⁴ *Id.* (citing Ex. 322, at 97).

30 ¹⁴⁵ *Id.* at 30 (citing Ex. 100, at 68).

31 ¹⁴⁶ Laws of 2025, ch.267.

32 ¹⁴⁷ Resp. Br. at 30.

¹⁴⁸ *Id.* at 31.

¹⁴⁹ *Id.* at 30–31.

1 The Board concludes that the walkshed and zoning map at Ex. 320 discharges the
2 City's obligation to inventory and analyze under CPP H-3(i). The Board concludes that CPP
3 H-16, CPP H-17, MPP-DP-22, MPP-RGS-8, and MPP-T-19 establish vague policy goals,
4 not specific targets, and that the City has met those vague goals with the policies
5 articulated in its Comprehensive Plan Update Ordinance and the additional housing
6 capacity provided in its Interim Zoning Ordinance.
7

8 The Board concludes that MPP DP-Action-9 does require a subarea plan for the
9 transit station area. MPP DP-Action-9 does not contain a deadline specific to that MPP, but
10 the Board concludes that the deadline to comply with the deadline for the period update,
11 namely, December 31, 2024. RCW 36.70A.130(5) says that cities "shall take action to
12 review and, if needed, revise their comprehensive plans and development regulations to
13 ensure the plan and regulations comply with the requirements [of the GMA]" by that date.
14 Compliance with MPPs is one component of compliance with the GMA.¹⁵⁰ If MPP DP-
15 Action-9 had stated some deadline other than the deadline for the periodic update, then
16 that deadline would have controlled. In the absence of an alternative deadline, however,
17 the general deadline for the periodic update controls. Most MPPs (and for that matter, most
18 CPPs and most of the City's own Comprehensive Plan policies) do not contain separate
19 deadlines. That does not mean such policies are subject to some indefinite deadline or no
20 deadline at all. It means they are subject to the general deadline of the periodic update:
21 December 31, 2024. The Regional Council was not required to repeat the deadline of the
22 periodic update for each and every one of the dozens, if not hundreds, of MPPs scattered
23 throughout Vision 2050.
24

25
26 The Board does not agree that 3SHB 1491 mooted or superseded the requirements
27 of MPP DP-Action-8 to establish a subarea plan for the area around the light rail station. It
28 is true that 3SHB 1491 covers many of the same subjects a subarea plan must cover. But
29 the GMA covers many of the same subjects a Comprehensive Plan must cover. That is no
30

31
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¹⁵⁰ RCW 36.70A.210(7), .100; WAC 365-196-305(8)(b).

1 basis for a local jurisdiction to decline to develop a Comprehensive Plan. Just as the GMA
2 introduces a wide variety of elements that must appear in a Comprehensive Plan but does
3 not supersede the requirement to develop a Comprehensive Plan, so does 3SHB 1491
4 introduce a wide variety of elements that must appear in the subarea plan required by MPP
5 DP-Action-8 but does not supersede the requirement to develop a subarea plan. If the
6 Regional Council determines that 3SHB 1491 has rendered subarea planning for transit
7 station areas obsolete, then the Regional Council may remove the requirement of MPP DP-
8 Action-8 to develop a subarea plan. Until then, the requirement remains in effect. The City
9 erred in not developing a subarea plan as part of its periodic update.
10
11

12 **Issue No. 4. Did the adoption of Ordinance No. 24C-16, and Exhibits A and B, and**
13 **Ordinance No. 24C-18, and Exhibits A through F, fail to complete the King County**
14 **Growth Management Planning Council's housing-focused review of the draft**
15 **periodic comprehensive plan update violating King County Countywide Planning**
16 **Policy H-26, RCW 36.70A.020(4), RCW 36.70A.070, RCW 36.70A.070(2), RCW**
17 **36.70A.100, RCW 36.70A.120, RCW 36.70A.130(1) and (5)(a), RCW 36.70A.210, or**
18 **RCW 36.70A.290(2)?**

19 **Applicable Laws:**

20 **CPP H-26:**

21 The Growth Management Planning Council or its designee will conduct a
22 housing-focused review of all King County jurisdiction's draft periodic
23 comprehensive plan updates for alignment with the Housing Chapter
24 goals and policies prior to plan adoption and provide comments. The
25 purpose of plan review is to:

- 26 a) offer early guidance and assistance to jurisdictions on
27 comprehensive plan alignment with the CPP Housing Chapter;
- 28 b) ensure plans address all Housing Chapter goals and policies and
29 include required analyses;
- 30 c) evaluate the meaningfulness of plan responses to policies in this
31 chapter, where meaningful responses can be reasonably expected
32 to achieve a material, positive change in the jurisdiction's ability to
meet housing needs; and

- 1 d) collect data on jurisdictional implementation details to inform future
2 monitoring and evaluation during the remainder of the planning
3 period.

4 **Board Discussion**

5 **A. Brief Summary of Parties' Arguments on Issue 4.**

6 **1. Brief Summary of Petitioners' Arguments on Issue 4.**

7
8
9 Petitioners argued that the City failed to complete the housing-focused review
10 required by CPP H-26.¹⁵¹ Petitioners cited the City's request to the Affordable Housing
11 Committee (AHC) to begin the housing focused review, followed by the AHC's letter of
12 incompleteness, in which the AHC requested additional information from the City.¹⁵²

13
14
15 **2. Brief Summary of Respondent's Arguments on Issue 4.**

16 The City argued that it submitted its draft housing element to the AHC on March 15,
17 2024, well in advance of the December 31, 2024 deadline for the periodic update.¹⁵³ The
18 AHC, according to the City, "rejected the submittal entirely" and demanded additional
19 materials—which the AHC would then take two to five months to review.¹⁵⁴ The City argued
20 that the AHC "recommended cities breach the statutory deadline of December 31, 2024 for
21 periodic updates, in favor of submitting to the AHC process."¹⁵⁵ The City argued that the
22 process outlined by AHC would be too slow and would result in the City missing its
23 statutory deadline for the periodic update. The City argued that CPP H-26 imposes a
24
25

26 ¹⁵¹ Pet'r's Br. at 22–23.

27 ¹⁵² *Id.* at 23 (citing Exs. 272, 275) (The AHC is the Growth Management Planning Council's designee, as
contemplated by CPP H-26).

28 ¹⁵³ Resp. Br. at 31 (citing Ex. 272, at 2).

29 ¹⁵⁴ *Id.* at 31–32 (citing Ex. 272, at 1).

30 ¹⁵⁵ *Id.* at 32 (citing Ex. 299, at PDF 55, 58, and 64). The Board finds these citations difficult to reconcile with
the exhibits as filed by the City, but the Board does find the following in Ex. 299, at King Cnty. Affordable
31 Hous. Comm. Meeting Minutes, December 5, 2024: "it won't be possible for some jurisdictions to amend
before plan adoption and encouraged these jurisdictions to amend their plans in 2025 as part of an annual
32 comprehensive plan update."

1 requirement on the AHC to conduct a housing-focused review but not a requirement on the
2 City to participate in the AHC's review.¹⁵⁶ Even though the City has now completed its
3 periodic update, the City has pledged to continue working with the AHC to have the AHC
4 review the City's Comprehensive Plan.¹⁵⁷

5 **B. The Board Concludes the City Was Not Required to Conduct a Housing-**
6 **Focused Review Prior to Adopting Its Periodic Update.**
7

8 The Board agrees with the City that CPP H-26 imposes a requirement on the AHC
9 to conduct a housing-focused review. It does not impose a requirement on the City to
10 conduct a housing-focused review.

11 As a matter of good governance, the City should make a good-faith effort to provide
12 the AHC the materials the AHC needs to conduct its review. Even so, the GMA and CPP
13 H-26 do not impose a legal obligation on the City here. The Board will not wade into any
14 dispute over whether the City made a good-faith effort to cooperate with the AHC in this
15 instance. At the end of the day, the burden is on the AHC to obtain whatever materials it
16 thinks it needs, not on the City to supply whatever materials the AHC requests.
17

18
19 **Issue No. 5. Did the adoption of the Land Use Element, the Future Land Use Map, the**
20 **Housing Element, and the development regulations in Ordinance No. 24C-16, and**
21 **Exhibits A and B, and Ordinance No. 24C-18, and Exhibits A through F, fail to comply**
22 **with King County Countywide Planning Policies H-2 by not prioritizing the need for**
23 **housing affordable to households with incomes less than or equal to 30 percent area**
24 **median, H-7 by not supporting the development, implementation, and monitoring of**
25 **strategies that achieve the goals of the countywide planning policies for housing, H-**
26 **8 by not collaborating with populations most disproportionately impacted by**
27 **housing cost burdens to develop, implement, and monitor strategies, H-9 by not**
28 **adopting intentional, targeted actions that repair harms to Black, Indigenous, and**
29 **other People of Color households from past and current racially exclusive and**
30 **discriminatory land use and housing practices, H-10 by not adopting policies,**
31 **incentives, strategies, actions, and regulations that increase the supply of long-term**
32 **income-restricted housing for extremely low-, very low-, and low-income households**

¹⁵⁶ *Id.* at 33.

¹⁵⁷ *Id.* at 34.

1 and households with special needs, H-13 by failing to implement strategies to
2 overcome cost barriers to housing affordability, H-18 by not adopting inclusive
3 planning tools and policies to increase the ability of all residents to live in the
4 neighborhood of their choice, H-19 by not lowering barriers to and promote access
5 to affordable homeownership for extremely low- through low-income households, H-
6 21 by not adopting policies and strategies that promote equitable development and
7 mitigate displacement risk, H-22 by not implementing, promoting, and enforcing fair
8 housing policies and practices, and H-23 by not adopting and implementing policies
9 that protect housing stability for renter households thereby violating RCW
10 36.70A.020(4), RCW 36.70A.100, RCW 36.70A.120, RCW 36.70A.130(1) and (5)(a),
11 RCW 36.70A.210, or RCW 36.70A.290(2)?

12 **Applicable Laws:**

13 **CPP H-2:**

14 Prioritize the need for housing affordable to households less than or
15 equal to 30 percent area median income (extremely low-income) by
16 implementing tools such as:

- 17 a) Increasing capital, operations, and maintenance funding;
- 18 b) Adopting complementary land use regulations;
- 19 c) Fostering welcoming communities, including people with behavioral
20 health needs;
- 21 d) Adopting supportive policies; and
- 22 e) Supporting collaborative actions by all jurisdictions.

23 **CPP H-7:**

24 Work cooperatively with the Puget Sound Regional Council, subregional
25 collaborations and other entities that provide technical assistance to local
26 jurisdictions to support the development, implementation, and monitoring
27 of strategies that achieve the goals of this chapter.

28 **CPP H-8:**

29 Collaborate with populations most disproportionately impacted by
30 housing cost burden in developing, implementing, and monitoring
31 strategies that achieve the goals of this chapter. Prioritize the needs and
32 solutions articulated by these disproportionately impacted populations.

CPP H-9:

Adopt intentional, targeted actions that repair harms to Black, Indigenous,
and other

People of Color households from past and current racially exclusive and
discriminatory land use and housing practices (generally identified

through Policy H-5). Promote equitable outcomes in partnership with communities most impacted.

CPP H-10:

Adopt policies, incentives, strategies, actions, and regulations that increase the supply of long-term income-restricted housing for extremely low-, very low-, and low-income households and households with special needs.

CPP H-13:

Implement strategies to overcome cost barriers to housing affordability. Strategies to do this vary but can include updating development standards and regulations, shortening permit timelines, implementing online permitting, optimizing residential densities, reducing parking requirements, and developing programs, policies, partnerships, and incentives to decrease costs to build and preserve affordable housing.

CPP H-18:

Adopt inclusive planning tools and policies whose purpose is to increase the ability of all residents in jurisdictions throughout the county to live in the neighborhood of their choice, reduce disparities in access to opportunity areas, and meet the needs of the region's current and future residents by:

- a) Providing access to affordable housing to rent and own throughout the jurisdiction, with a focus on areas of high opportunity;
- b) Expanding capacity for moderate-density housing throughout the jurisdiction, especially in areas currently zoned for lower density single-family detached housing in the Urban Growth Area, and capacity for high-density housing, where appropriate, consistent with the Regional Growth Strategy;
- c) Evaluating the feasibility of, and implementing, where appropriate, inclusionary and incentive zoning to provide affordable housing; and
- d) Providing access to housing types that serve a range of household sizes, types, and incomes, including 2+ bedroom homes for families with children and/or adult roommates and accessory dwelling units, efficiency studios, and/or congregate residences for single adults.

CPP H-19:

Lower barriers to and promote access to affordable homeownership for extremely low-, very low-, and low-income households. Emphasize:

- 1 a) Supporting long-term affordable homeownership opportunities for
2 households less than or equal to 80 percent area median income
3 (which may require up-front initial public subsidy and policies that
4 support diverse housing types); and
5 b) Remedying historical inequities in and expanding access to
6 homeownership opportunities for Black, Indigenous and People of
7 Color communities.

8 **CPP H-21:**

9 Adopt policies and strategies that promote equitable development and
10 mitigate
11 displacement risk, with consideration given to the preservation of
12 historical and cultural communities as well as investments in low-, very
13 low-, extremely low-, and moderate-income housing production and
14 preservation; dedicated funds for land acquisition; manufactured housing
15 community preservation, inclusionary zoning; community planning
16 requirements; tenant protections; public land disposition policies; and
17 land that may be used for affordable housing. Mitigate displacement that
18 may result from planning efforts, large-scale private investments, and
19 market pressure. Implement anti-displacement measures prior to or
20 concurrent with development capacity increases and public capital
21 investments.

22 **CPP H-22:**

23 Implement, promote, and enforce fair housing policies and practices so
24 that every person in the county has equitable access and opportunity to
25 thrive in their communities of choice, regardless of their race, gender
26 identity, sexual identity, ability, use of a service animal, age, immigration
27 status, national origin, familial status, religion, source of income, military
28 status, or membership in any other relevant category of protected people.

29 **CPP H-23:**

30 Adopt and implement policies that protect housing stability for renter
31 households;
32 expand protections and supports for moderate-, low-, very low-, and
extremely low-income renters and renters with disabilities.¹⁵⁸

Board Discussion

¹⁵⁸ The CPPs cited in Issue 5 appear in Ex. 276, at 41–47.

1 **A. Summary of Board’s Conclusions on Issue 5.**

2 In the interests of brevity and readability, the Board will not summarize the Parties’
3 arguments regarding each of the CPPs challenged under Issue 5.

4 In addition to defending its compliance with each CPP on the merits, the City also
5 raised the same deadline defense under Issue 5 that it raised under Issue 2, namely that
6 RCW 36.70A.130(9) extended the deadline to implement the CPPs by five years.¹⁵⁹ The
7 Board rejects that defense for the reasons given above under Issue 5. The Board
8 concludes that RCW 36.70A.130(9) extends a five-year deadline for a progress report
9 followed by a further two years to implement any corrective actions the progress report
10 identifies as still necessary at the five-year mark. The deadline for implementation in the
11 first instance is December 31, 2024, as set forth in RCW 36.70A.130(1)(a) and -(5)(a).
12

13 For the reasons discussed below, the Board concludes the City acted in compliance
14 with each of the CPPs cited under Issue 5 except CPP H-21.
15

16 **B. The Board Concludes the City Has Complied with CPP H-2.**

17 CPP H-2 requires the City to “prioritize the need for housing affordable to
18 households less than or equal to 30 percent of AMI.” However, this CPP—unlike CPP H-1,
19 discussed under Issue 1—does not set any specific targets that the City must meet with
20 regards to housing the extremely low income segment. Instead, CPP H-2 supplies a non-
21 exclusive list of example actions the City may take, including actions as vague as “fostering
22 welcoming communities, including people with behavioral health needs” and “supporting
23 collaborative actions by all jurisdictions.” Such vague language does not demand much
24 from the City, and so the requirement of CPP H-2 is not hard for the City to meet. Earlier in
25 this decision, the Board quoted numerous housing policies in the Comprehensive Plan
26 Update Ordinance. While those policies were not sufficient to satisfy the strict requirements
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¹⁵⁹ Resp. Br. at 43.

1 of CPP H-1 and RCW 36.70A.070(2)(c) and -(d), the Board concludes they are sufficient to
2 satisfy the requirements of CPP H-2.

3 **C. The Board Concludes the City Has Complied with CPP H-7.**

4
5 Similarly, CPP H-7 simply calls on the City to “work cooperatively” with the Regional
6 Council and other entities that provide technical assistance to achieve the goals of the CPP
7 housing chapter. This is not a demanding requirement, and the policies quoted earlier in
8 this decision show that the City is committed to working cooperatively with the relevant
9 regional entities, including especially A Regional Coalition for Housing. Certainly, there is
10 nothing in the record to suggest the City will not “work cooperatively” with the regional
11 entities, notwithstanding the dispute between the City and the AHC which the Board
12 dismissed under Issue 4.
13

14 **D. The Board Concludes the City Has Complied with CPP H-8.**

15 Once again, the requirement here is to “collaborate” regarding “strategies,” not to
16 achieve any specific, defined goal. The Comprehensive Plan Update Ordinance’s policies
17 3.1.5, 3.3, 3.4, and 3.5¹⁶⁰ all require the City engage in outreach and collaboration at the
18 strategizing and implementation stages. The Board concludes this is sufficient to meet CPP
19 H-8.
20

21 **E. The Board Concludes the City Has Complied with CPP H-9.**

22 CPP H-9 requires the City to adopt “intentional, targeted actions that repair harms to
23 Black, Indigenous, and other People of Color households” arising from past and current
24 discriminatory land use policies. CPP H-9 does not specify what those intentional, targeted
25 actions must be, nor how completely the harms of discrimination must be repaired. The
26 Comprehensive Plan Update Ordinance Policy 3.1 requires the City to:
27

28 3.1 Begin undoing racially disparate impacts by prioritizing actions
29 that:

30 3.1.1 Increase the supply of affordable rental housing;

31 3.1.2 Expand tenant protections;

32

160 Ex. 130, at 114.

- 1 3.1.3 Add incentives for the construction of affordable housing;
2 3.1.4 Increase capacity for multifamily and mixed-use housing
3 and
4 3.1.5 Include intentional public outreach during the
5 implementation of the Comprehensive Plan.¹⁶¹

6 At least two of these policies, 3.1.1 and 3.1.3, have been implemented by the Interim
7 Zoning Ordinance, which expanded affordable housing incentives in the TC zone. Above,
8 the Board concluded that the Interim Zoning Ordinance was inadequate to satisfy the
9 specific growth targets set in CPP H-1. By contrast, CPP H-9 does not set specific targets,
10 so it is an easier requirement to satisfy. The Board concludes that the City has satisfied
11 CPP H-9 through the Comprehensive Plan Update Ordinance and Interim Zoning
12 Ordinance.
13

14 **F. The Board Concludes the City Has Complied with CPP H-10.**

15 For the same reasons, the Board concludes that the City has met CPP H-10. As the
16 Board explained above, there is no doubt that the policies of the Comprehensive Plan
17 Update Ordinance and the regulatory amendments in the Interim Zoning Ordinance will
18 generate *some* amount of housing that is affordable to *some* of the low income economic
19 segments. That is all that CPP H-10 requires. It does not require any specific quantum of
20 housing.
21

22 **G. The Board Concludes the City Has Complied with CPP H-13.**

23 CPP H-13 is yet another policy that requires the implementation of “strategies”
24 related to housing affordability, but not the achievement of any particular results. Table 2 of
25 the Comprehensive Plan Update Ordinance lists various “actions or programs” the City will
26 take, including evaluating new revenue sources and housing fee-in-lieu programs,
27 streamlining design review for certain types of housing projects, and reviewing regulations
28 to simplify requirements and reduce permit review times.¹⁶² These measures appear to be
29
30

31 ¹⁶¹ *Id.*

32 ¹⁶² Ex. 130, at 106.

1 strategies aimed to reducing cost barriers, and the City appears to be implementing them.
2 Granted, the City has not produced a timeline by which these reviews will be complete,
3 much less a timeline by which changes recommended by the reviews will be made, much
4 less any analysis of the extent to which such changes might actually reduce housing costs.
5 But CPP H-13 demands a process, not a result, which the City has delivered.

6 **H. The Board Concludes the City Has Complied with CPP H-18.**

7
8 As noted above, one of Petitioners' objections to the Interim Zoning Ordinance was
9 that only the TC benefits from inclusionary zoning, specifically in the form of a height bonus
10 for adding affordable housing units. Petitioners repeated that objection with regards to CPP
11 H-18, which requires the City to "[a]dopt planning tools and policies whose purposes is ...
12 [p]roviding access to affordable housing to rent and own throughout the jurisdiction, with a
13 focus on areas of high opportunity; Expanding capacity for moderate-density housing
14 throughout the jurisdiction, especially in areas currently zoned for lower density single-
15 family detached housing ..."¹⁶³

16
17 The Board agrees that the Interim Zoning Ordinance concentrates incentive zoning
18 for affordable housing in the TC zone only and does not expand moderate density housing
19 into Mercer Island's single-family zones. However, CPP H-18 requires the City to adopt
20 only "planning tools and policies" whose aim is to "increase" affordability and opportunity
21 and "reduce" disparities in access to opportunity areas. CPP H-18 does not set any
22 particular affordability, opportunity, or disparity target that the City must achieve.

23
24 The City pointed to the Comprehensive Plan Update Ordinance's Housing Policy 1.7
25 and 1.8, which call upon the City to fairly disperse affordable housing opportunity and
26 Policy 5.2, which is to "Identify the regulatory amendments necessary to allow duplexes,
27 triplexes, townhomes, and other moderate-density housing types in residential zones
28 consistent with state law and this comprehensive plan."¹⁶⁴

29
30
31 ¹⁶³ Pet'r's Br. at 29 (citing Ex. 276, at 45 (CPP H-18)).

32 ¹⁶⁴ Resp. Br. at 40 (citing Ex. 130, at 112, 115).

1 CPP H-18 requires planning tools and policies aimed at increasing opportunities and
2 decreases disparities, and Policies 1.7, 1.8, and 5.2 are such tools and policies. Petitioners
3 may question how much impact these policies will achieve in reality, but CPP H-18 does
4 not require the policies to achieve any particular level of impact. It requires only that the
5 policies be helpful by an unspecified amount. This is a low bar, and the Board concludes
6 the City has cleared it.
7

8 **I. The Board Concludes the City Has Complied with CPP H-19.**

9 For the same reasons, the Board concludes the City has cleared the bar in CPP H-
10 19. Like CPP H-18, CPP H-19 requires the City to “lower barriers” and “promote access.”
11 Emphases include “supporting” affordable homeownership “opportunities,” and “remedying
12 historical inequities.” As with so many of the other policies addressed under Issue 5, CPP
13 H-19 does not ask much from the City—merely that the City make some effort. The level of
14 effort is not specified and measures of success are not imposed. The Comprehensive Plan
15 Update Ordinance’s policies cited above under Housing Policies 2.3 and Policy 3 with its
16 sub-policies are all aimed to lowering barriers, promoting access, supporting opportunities,
17 and remedying historical inequities. The extent to which these policies will or will not affect
18 reality on the ground is not a question before the Board, because CPP H-19 does not
19 define any particular real-world result that must be achieved.
20

21 **J. The Board Concludes the City Has Not Complied with CPP H-21.**

22 Portions of CPP H-21 require the City to adopt policies and strategies promoting
23 equitable development and mitigating displacement risk. The City’s Racially Disparate
24 Impacts Evaluation¹⁶⁵ represents the City’s efforts to do just that. The Board concludes the
25 City has met its obligations regarding the adoption of policies and strategies.
26

27 Unlike most of the CPPs addressed under Issue 5, however, CPP H-21 also
28 includes a more specific requirement: “Implement anti-displacement measures prior to or
29
30

31

¹⁶⁵ Ex. 130, at 391-457.
32

1 concurrent with development capacity increases and public capital investments.”¹⁶⁶
2 Petitioners observed that, according to the Racially Disparate Impacts Evaluation, the
3 Town Center contains and is also adjacent to areas identified as having a higher
4 displacement risk.¹⁶⁷ Therefore, any development capacity increase in the Town Center
5 should have been accompanied or preceded by anti-displacement measures, according to
6 CPP H-21.
7

8 As the Board discussed above, the Interim Zoning Ordinance increased the
9 development capacity of the TC zone by 143 units in an effort to meet the growth targets
10 CPP H-1. Under CPP HP-21, this should have triggered anti-displacement measures prior
11 to or concurrently with the adoption of the Interim Zoning Ordinance. The record and the
12 text of the ordinance reveal no such anti-displacement measures.
13

14 The only defense the City raised with regard to compliance with CPP H-21 was that
15 compliance with the CPPs was not due until December 2029 under the provisions of RCW
16 36.70A.130(9).¹⁶⁸ As the Board explained above, for both Issue 2 and Issue 5, the City is
17 incorrect on that point. Particularly here, when the CPP specifically says to “[i]mplement
18 anti-displacement measures **prior to or concurrent** with development capacity increases,”
19 the City should have realized that its efforts to increase the development capacity of the
20 Town Center should have included anti-displacement measures.
21

22 The City did not dispute that the Town Center both contains and is adjacent to areas
23 at high risk of displacement, and the City did not argue that anti-displacement measures
24 preceded or accompanied the development capacity increase implemented by the Interim
25 Zoning Ordinance. The Board concludes the City has failed to comply with CPP H-21.
26

27 **K. The Board Concludes the City Has Complied with CPP H-22.**

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30 ¹⁶⁶ Ex. 276, at 47.

31 ¹⁶⁷ Pet'r's Br. at 32 (citing Ex. 130, at 433 (Racially Disparate Impacts Evaluation)).

32 ¹⁶⁸ Resp. Br. at 41.

1 CPP H-22 requires the City to “implement, promote, and enforce fair housing
2 policies and practices.” It does not specify what fair housing policies and practices are
3 required, nor does it set any tangible goal that must be met. Petitioners did not identify any
4 specific fair housing policies and practices that CPP H-22 requires and offered only a one-
5 sentence argument the challenged ordinances do not contain such policies and
6 practices.¹⁶⁹ The City responded that the Comprehensive Plan Update Ordinance contains
7 a policy with language virtually identical to CPP H-22.¹⁷⁰ In the absence of any further
8 argument, the Board concludes that the City has complied with CPP H-22.
9

10 **L. The Board Concludes the City Has Complied with CPP H-23.**

11 CPP H-23 requires the City to adopt and implement policies that “protect housing
12 stability” for renters and “expand protections and supports” for moderate and low income
13 renters and renters with disabilities. However, the CPP does not specify what levels of
14 “protections” renters must receive. Petitioners offered a single-sentence argument that the
15 challenged ordinances do not supply protection.¹⁷¹ The City responded that many of the
16 housing policies in the Comprehensive Plan Update Ordinance do protect and support
17 renters in the protected categories specified by CPP H-23.¹⁷² The Board concludes that the
18 cited policies are sufficient to meet the vague requirement of CPP H-23 to provide
19 protection and support in an unquantified amount and with no specific target.
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23 **Invalidity**

24 The board may determine that part or all of a comprehensive plan or
25 development regulations are invalid if the board:

- 26 (a) Makes a finding of noncompliance and issues an order of remand
27 under RCW 36.70A.300;
28 (b) Includes in the final order a determination, supported by findings of
29 fact and conclusions of law, that the continued validity of part or

30 ¹⁶⁹ Pet'r's Br. at 32

31 ¹⁷⁰ Resp.Br. at 41.

32 ¹⁷¹ Pet'r's Br. at 33.

¹⁷² Resp. Br. at 42–43.

- 1 parts of the plan or regulation would substantially interfere with the
2 fulfillment of the goals of this chapter; and
3 (c) Specifies in the final order the particular part or parts of the plan or
4 regulation that are determined to be invalid, and the reasons for
5 their invalidity.¹⁷³

6 Since 2010, the Board has treated invalidity as a remedy, not a legal issue. As such,
7 invalidity is not required to be framed as a separate legal issue. While the Board may issue
8 a finding of invalidity *sua sponte* in appropriate circumstances, the Board generally requires
9 a petitioner to “expressly request invalidity as a form of relief within the [petition for review]
10 and support that request within the briefing.”¹⁷⁴ The requirement to brief invalidity was
11 repeated in the Board’s prehearing order in this case.¹⁷⁵ Petitioners did request invalidity in
12 the petition for review¹⁷⁶ but did not brief invalidity.

13
14 Above, the Board has found that the challenged ordinances are noncompliant as to
15 Issues 1, 2, and 3, and as to CPP H-21 under Issue 5. The Board is concerned that the
16 City’s failure to provide capacity and make adequate provisions for housing for all
17 economic segments does represent a substantial interference with GMA Goal 4 (housing)
18 and the failure to develop a subarea plan for the light rail station does represent a
19 substantial interference with both GMA Goal 4 and GMA Goal 3 (transportation). However,
20 the Board also believes that a substantial part of the City’s non-compliance arose out of a
21 good-faith misapplication of Book 2’s housing capacity calculation process (for Issue 1)
22 plus a good-faith misunderstanding of when the City had to comply with the housing
23 requirements of the GMA and CPPs and the subarea plan requirements of the MPPs (for
24 Issues 2 and 3 and part of Issue 5). In addition, it is not the case that the City’s previous
25 Comprehensive Plan and development regulations were any closer to meeting the new
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29 ¹⁷³ RCW 36.70A.302(1).

30 ¹⁷⁴ *Friends of the San Juans v. San Juan Cty.*, GMHB No. 10-2-0012, Final Decision and Order, at 35 (Oct.
31 12, 2010).

32 ¹⁷⁵ Prehearing Order, at 2 (Mar. 4, 2025).

¹⁷⁶ Pet. for Review, at 6 (Feb. 4, 2025).

1 requirements for housing and transportation, so invalidating the challenged ordinances
2 would not bring the City any closer to compliance with today's requirements.

3 Given the Board's conviction that the City would have achieved GMA compliance
4 but for a small number of good-faith misunderstandings, and the reality that the previous
5 plan and regulations would also not comply with today's standards, the Board concludes
6 that invalidity is not the appropriate remedy at this time. The Board may revisit the question
7 of invalidity in the event of continued non-compliance.
8

9 **Time for Compliance**

10 Ordinarily, the Board gives a non-compliant jurisdiction 180 days to come into
11 compliance.¹⁷⁷ However, in cases of unusual scope or complexity, the Board may set a
12 longer period for compliance.¹⁷⁸

13 The Board believes this is a case of unusual scope and complexity. Correcting the
14 errors identified in this decision may require the City to redo housing studies that took
15 months. Even more dauntingly, the City may then have to make challenging decisions to
16 accommodate the more than one thousand low to moderate income households the City
17 has been allocated—to say nothing of the difficulties inherent in developing a subarea plan
18 that complies not only with the MPPs but also with the new requirements of 3SHB 1491.
19 The Board recognizes that all of this will take time.
20

21 At the same time, the City's failure to establish capacity and make adequate
22 provisions for low to moderate income households is a serious matter, directly affecting low
23 income households within the city and indirectly affecting households and jurisdictions
24 across the entire multi-county region. In an effort to strike a balance between
25 accommodating the City's need for time against the seriousness of the regional housing
26 affordability crisis, the Board will afford the City one year to achieve compliance, with
27 progress reports due to the Board at the six-month and nine-month marks.
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31 ¹⁷⁷ RCW 36.70A.300(3)(b).

32 ¹⁷⁸ *Id.*

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V. ORDER

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

- The City of Mercer Island's adoption of Ordinance 24C-16 and Ordinance No. 24C-18 was **clearly erroneous** because the City did not identify sufficient land capacity for permanent housing, did not make adequate provision for existing and projected needs of all economic segments, did not include a subarea plan for the light rail station area, and did not incorporate anti-displacement measures when increasing development capacity.
- The City of Mercer Island's adoption of Ordinance 24C-16 and Ordinance No. 24C-18 did identify sufficient land capacity for emergency shelters and emergency housing, and did comply with all of the countywide planning policies cited in this appeal except CPP H-1 and CPP H-21 and with all of the multi-county planning policies cited in this appeal except MPP DP-Action-8.
- All other challenges to Ordinance 24C-16 and Ordinance No. 24C-18 are **denied**.
- The Board **remands** Ordinance 24C-16 and Ordinance No. 24C-18 to the City to take legislative action in accordance with the following schedule:

Item	Date Due
First Progress Report Due	1/28/2026
Second Progress Report Due	2/27/2026
Compliance Due	7/31/2026
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	8/14/2026
Objections to a Finding of Compliance	8/18/2026

Response to Objections	9/8/2026
Telephonic Compliance Hearing Link to be provided at a later date	9/15/2026 10:00 am

Length of Briefs – A brief of 15 pages or longer shall have a table of exhibits and a table of authorities. WAC 242-03-590(3) states: “Clarity and brevity are expected to assist a board in meeting its statutorily imposed time limits. A presiding officer may limit the length of a brief and impose format restrictions.” **Compliance Report/Statement of Actions Taken to Comply shall be limited to 30 pages, 40 pages for Objections to Finding of Compliance, and 10 pages for the Response to Objections.** The parties may petition the Board for longer page limits if needed.

SO ORDERED this 1st day of August, 2025.



ALEX SIDLES, Presiding Officer
Board Member



RICK EICHSTAEDT,
Board Chair



MARK MCCLAIN,
Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.¹⁷⁹

¹⁷⁹ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), -840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514; RCW 36.01.050. See *also* RCW 36.70A.300(5); WAC 242-03-970. It is incumbent upon the

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parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.