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2 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
3 WESTERN REGION
4 STATE OF WASHINGTON

5 WILLIAM TURNER and IAN MUNCE, et al.

CASE No. 26-2-0001c

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8 Petitioners,

**THIRD ORDER OF CONSOLIDATION
AND SECOND PREHEARING ORDER
(GMHB Nos. 26-2-0015 & 26-2-0016)**

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10 v.

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12 CITY OF ANACORTES,

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14 Respondent.
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17 This matter came before the Growth Management Hearings Board (Board) in a Second
18 Prehearing Conference held on February 24, 2026. Subsequent to the issuance of the Second
19 Order of Consolidation and Notice of Hearing and Preliminary Hearing on February 9, 2026,
20 Petitioners Brian Wetcher and James Benedetto filed separate Petitions for Review (PFRs)
21 challenging Ordinances No. 5013 and 5014, as had Petitioners Munce and Turner. Mr.
22 Wetcher's Petition for Review was assigned Case No. 26-2-0015. Mr. Benedetto's Petition
23 for Review was assigned Case No. 26-2-0016. Petitioners appeared through their attorney
24 Ian Munce. Respondent City of Anacortes appeared through its attorneys Darcy Swetnam.
25 Board members Rick Eichstaedt and Mark McClain attended. Board member James
26 McNamara convened the conference as the Presiding Officer.
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29 The following matters were discussed at the Prehearing Conference:

30 Service of documents: The Parties previously agreed to electronic service of all
31 documents at the original pre-hearing conference. The parties are instructed to **make sure**
32 **the office has your current email and phone contact** information on file. **ALL briefs,**

1 exhibits, and motion documents should be filed electronically through our Case
2 Management System. Instructions on using the Case Management System are available at
3 www.eluho.wa.gov/case-management/case-management-system. Please also provide a
4 copy of all briefs in Word format to eluho@eluho.wa.gov.

- 5 • The presiding officer noted the burden of proof on the Petitioner; .
- 6 • In the review of legal issues, the presiding officer advised the Petitioner, again, that
- 7 some of the issues failed to specify the portions of RCW43.21C allegedly violated.
- 8 • Petitioners reported the potential for a dispositive motion.
- 9 • The case calendar and the length of briefs was agreed to, as set out herein.
- 10 • Index of the Record: The City's Index of the Record is due March 5, 2026.
- 11 Procedures for supplementing the record, identifying exhibits and attaching them
- 12 to briefing materials, and requesting official notice of government actions were
- 13 discussed.
- 14 • Case Schedule: The case schedule was agreed upon as ordered below.
- 15 • Hearing on the Merits: To be held via Zoom videoconference.
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18 Based on discussions at the Prehearing Conference, the following order is entered:
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20 21 I. THE PETITIONS

22 On February 20, 2026, Brian Wetcher (Petitioner) filed a Petition for Review
23 challenging Ordinance No. 5013 and Ordinance No. 5014. The Petition was assigned Case
24 No. 26-2-0015.

25 On February 20, 2026, James Benedetto (Petitioner) filed a Petition for Review
26 challenging Ordinance No. 5013 and Ordinance No. 5014. The Petition was assigned Case
27 No. 26-2-0016.
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II. CONSOLIDATION

RCW 36.70A.290(6) provides: “[t]he board shall consolidate, when appropriate, all petitions involving the review of the same comprehensive plan or the same development regulation or regulations.”

Pursuant to RCW 36.70A.290(6), the Board hereby consolidates Case Nos. **26-2-0015** and **26-2-0016** with Case No. 26-20001c which previously consolidated PFRs filed by Munce and Turner. All cases present challenges to Anacortes Ordinances 5013 and 5014. The case number for the new consolidated case will be **26-2-0001c** and be entitled William Turner and Ian Munce et al. v. City of Anacortes.

James McNamara is the Presiding Officer. Rick Eichstaedt and Mark McClain will also serve on the panel to hear this matter.

III. ISSUES

The challenged action is the City of Anacortes’ Ordinances No. 5013 (2025 Comprehensive Plan Periodic Update) and No.5014 (2025 Development Regulation Periodic Update), publication date December 24, 2025, together with the associated SEPA DNS and the City Council’s denial of the SEPA Appeal. (However, as noted below, SEPA issues are not properly before the Board in this appeal.) Legal Issues in this case are as follows:

1. Did the City adoption of its comprehensive plan and development regulations fail to comply with the GMA when it failed to meet the requirements set forth in recently amended GMA Goal 4 to plan for and accommodate housing affordable to all economic segments of the population of the state and encourage preservation of existing stock? (Turner Issue #1 from his First PFR)
2. Did the City adoption of its comprehensive plan and development regulations fail to comply with the requirements of RCW 36.70A.140 because it did not provide for meaningful, early and continuous public participation? (Munce Issue 2 from his first PFR)

- 1 3. Did the City fail to comply with GMA Goal 10 (Environment), RCW
2 43.21C¹, and, more directly, meet the State Supreme Court's mandate
3 in Friends of Sammamish Valley that the City meaningfully engage with
4 the SEPA process) when it impermissibly piecemealed and balanced
5 housing interests against the environment and failed to conduct early
6 environmental review, consider alternatives, and provide reasonably
7 sufficient information. (Turner Issue #1 from his Second PFR; Munce
8 Issue #1 from his Second PFR; Wetcher Issue #1; Benedetto Issue #1)
- 9 4. Did the City impermissibly rely upon a 2010 Shoreline Master Program
10 that was required to have been updated, according to current Best
11 Available Science and new statutory and regulatory direction, between
12 five and seven years ago when it completed its SEPA review under RCW
13 43.21C for its 2025 Comprehensive Plan/Development Regulation
14 Periodic Update and sought to comply with GMA Goal 12 (Environment)
15 and RCW 43.21C. (Turner Issue #2 from his Second PFR)
- 16 5. Did the City adoption of its comprehensive plan and development
17 regulations fail to comply with RCW 36.70A.020 and, more specifically,
18 GMA Goal 12, when it did not include a meaningful analysis of the
19 funding capacity for the infrastructure necessary to support its
20 neighborhood densification and market rate housing
21 aspirations? (Munce Issue #2 from his Second PFR; Wetcher Issue #2;
22 Benedetto Issue #2)

23 As at the earlier Prehearing Conference on January 27, 2026, the Presiding Officer advised
24 counsel for Petitioners that certain statements of issues in Munce and Turner's Second
25 Petitions for Review (26-2-0006 and 26-2-0007, respectively) as well as in Wetcher and
26 Benedetto's Petitions for Review (26-2-00015 and 26-2-0016, respectively) were not in
27 compliance with RCW 36.70A.290(1) that provides:

28 (1) All requests for review to the growth management hearings board shall be initiated
29 by filing a petition that includes a detailed statement of issues presented for
30 resolution by the board. The board shall render written decisions articulating the basis
31 for its holdings. The board shall not issue advisory opinions on issues not presented
32 to the board in the statement of issues, as modified by any prehearing order.

In addition, WAC 242-03-210(2)(c) requires that the petition for review shall contain:

¹ The Board will not permit arguments related to alleged violations of SEPA due to Petitioners' failure to specify which provisions of RCW 43.21C are at issue. This restriction applies to Issue 4 as well.

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

5 Several issues failed to specify the provisions of SEPA allegedly being violated. As
6 the Board noted in the first and second Pre-Hearing conferences and in the February 4, 2026
7 Pre-Hearing Order, SEPA is a moderately lengthy statute covering numerous procedural and
8 substantive requirements, none of which Petitioners have identified with any degree of
9 specificity.

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11 As stated before, the Board believes that redaction of the SEPA claims from the issues
12 in this case is compelled not only by the need to comply with State law and the Board's
13 administrative regulations, but also in fairness to Respondent. WAC 242-03-510(1) requires
14 the Respondent in appeals before the Board to produce the Index of the Record within 30
15 days of the filing of the Petition for Review. Per this Order, that date is March 5, 2026. That
16 Index must contain "all materials used in taking the action which is the subject of the petition
17 for review". Respondent could not reasonably create such an Index when the issues invoking
18 SEPA are so poorly defined. Furthermore, Respondent ought not to be required to wait until
19 Petitioners have filed their opening brief to be presented with a detailed statement of the
20 specific sections of SEPA and the GMA allegedly violated.

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22 Accordingly, the Board in identifying the issue in this appeal has stricken the vague
23 and non-specific references to RCW 43.21C, (SEPA).

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25 **Petitioner has the obligation to review these issue statements to ensure that they**
26 **properly set forth the issues raised. If Petitioner objects to the completeness or**
27 **accuracy of these issue statements, it must file a written motion for change together**
28 **with the proposed changed issue or issues in their entirety no later than seven (7) days**
29 **from the date of this order.**
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IV. SCHEDULE

The following schedule shall remain in effect unless modified in writing by subsequent order:

January 6 & 7, 2026	Petitions Filed
February 2 & 3, 2026	Second Set of Petitions Filed
February 20, 2026	Third Set of Petitions Filed
February 9, 2026	Notice of Hearing and Preliminary Schedule
February 24, 2026	Prehearing Conference
March 2, 2026	Prehearing Order
March 5, 2026	Index Due (Respondents to file)
March 12, 2026	Additions to Index (parties to confer)
March 17, 2026	Objections to the Additions of the Index Due
March 25, 2026	Deadline for Motions to Supplement the Record (proposed supplements to be attached)
April 1, 2026	Deadline for Dispositive Motions
April 6, 2026	Deadline for Response to Motions to Supplement the Record
April 13, 2026	Deadline for Response to Dispositive Motions
April 28, 2026	Anticipated date of Order on Motions
May 12, 2026	Deadline for Petitioners' Prehearing Brief (with exhibits)
May 26, 2026	Deadline for Respondent's Prehearing Brief (with exhibits)
June 5, 2026	Deadline for Petitioners' Reply Brief (optional)
June 12, 2026 at 9:00 a.m.	Hearing on Merits of Petition² via Zoom (link provided at a later date)
August 3, 2026	Final Decision and Order

V. THE RECORD

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Index –The Respondent will file its Index of all documents considered in taking the challenged actions by the date indicated in the schedule. Documents listed in the Index shall

² Per the December 2, 2024, Directive of the Governor No. 24-19, an immediate freeze for travel is currently in effect for executive agencies statewide. For the duration of this Directive, hearings will be held via Zoom videoconference.

1 be made available to the Petitioners for review and copying, at Petitioners' expense. A party
2 wishing to submit the record of Council meetings or other meetings in the Index is responsible
3 to arrange the transcription of relevant portions at the requester's expense.

4 Petitioners shall promptly review the Index prepared by Respondent and notify the
5 Respondent of additions to the index if they believe any omissions have occurred.³ If the
6 Respondent agrees, it shall file an Amended Index. If there is a disagreement over whether
7 the item should be included in the record, the proponent may file a motion to supplement the
8 record, attaching the disputed documents. Supplementation may be permitted "if the board
9 determines that such additional evidence would be necessary or of substantial assistance to
10 the board in reaching its decision."⁴ Motions to supplement should also include proposed
11 Index numbers for the evidence sought to be included in the Index.

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13 Supplements to the record may come from outside the Respondent's records but must
14 be shown to be "necessary or of substantial assistance to the board in reaching its decision."
15 Any supplements to the record proposed must meet the standard set forth in RCW
16 36.70A.290(4).
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18 VI. EVIDENCE

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20 The Index to the Record lists the documents that may be introduced as exhibits, but
21 those documents do not become evidence until they are referenced in a brief and submitted
22 to the Board as exhibits to that brief. The briefs must cite the exhibits and explain how the
23 exhibits support the arguments in the briefs. The **exhibits should be numbered with the**
24 **Index number(s) from which they are drawn.** If the Index document is long, an exhibit may
25 be limited to a copy of the relevant portion of the Indexed document. When only portions of a
26 document or portions of a proceeding are to be relied upon, the offering party shall adequately
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30 _____
31 ³ WAC 242-03-510(3). Within seven days after the filing of the index, any other party may file a list of proposed
32 additions to the index. To the extent such documents were submitted to the jurisdiction or a part of the
jurisdiction's proceedings prior to the challenged action, they are presumed admissible subject to relevance. If
the respondent objects to any proposed addition, the petitioner may bring a motion to supplement the record as
provided in WAC 242-03-565.

⁴ RCW 36.70A.290(4).

1 identify and prepare the pertinent excerpts and shall supply copies of such excerpts for
2 attachment as exhibits to a brief.⁵

3 The parties **shall tab each exhibit with its Index number⁶ and provide a Table of**
4 **Exhibits**. Exhibits shall be filed at the same time as hearing briefs and served on all parties
5 electronically, unless a party lacks technical capability. It is not necessary to re-submit an
6 exhibit that has been previously (or simultaneously, as with intervenors) submitted by you or
7 another party, as long as it is referred to by the correct Index number. In filing with the Board,
8 the brief shall be filed electronically, including all exhibits.⁷

10 VII. BRIEFS

11 Briefs shall be filed with the Board and served on the other party on the dates specified
12 on the schedule. If no time is specified, they must be served by 5:00 p.m. **Briefs must be e-**
13 **filed through CMS**. Exhibits must be filed electronically at the same time that the briefs are
14 filed and may be provided as part of the brief itself.

15 Length of Briefs – **Briefs shall be limited to 25 pages for the Petitioner’s**
16 **prehearing brief, 35 pages for the Respondent’s response brief, and 10 pages for**
17 **Petitioner’s reply brief**. A brief of 15 pages or longer shall have a table of exhibits and a
18 table of authorities. A presiding officer may limit the length of a brief and impose format
19 restrictions. Documents other than exhibits shall be typewritten or printed, properly captioned,
20 signed by the appropriate person submitting the same, shall include his/her mailing address,
21 email and telephone number. Line spacing in all briefing shall be set at 1.5 and the typeface
22 must be no smaller than Times New Roman 12 pt. These briefing limits apply to any motions
23 and reply to such motions made in this proceedings.
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31 ⁵ WAC 242-03-620(4)(b).

32 ⁶ Do not label your exhibits Tab 1, 2, 3 or A, B, C. **Use the Index numbers assigned to the items in the**
record and place the items in numerical order.

⁷ WAC 242-03-240. (Check this reference.)

1 **VIII. RULES OF PROCEDURE**

2 The Board's Rules of Practice and Procedure shall apply to the proceedings in this
3 case. The Board's Rules of Practice and Procedure may be found in the Washington
4 Administrative Code (WAC), at Chapter 242-03 WAC.⁸

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6 **IX. DISABILITY ACCOMMODATION**

7 Any person who requires an accommodation to participate in or attend the hearings in
8 this case is asked to contact the Board's accessibility coordinator⁹ at least one week in
9 advance of the scheduled hearing to arrange an appropriate accommodation.
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11 **X. FAILURE TO ATTEND OR PARTICIPATE**

12 A party who fails to attend or participate in any hearing or other stage of the
13 adjudicative proceedings before the Board in this case may be held in default and an order of
14 default or dismissal may be entered pursuant to WAC 242-03-710.
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16 **XI. COMMUNICATION WITH THE BOARD**

17 Pursuant to RCW 34.05.455, the parties may not communicate *ex parte* with the
18 Presiding Officer or other Board members. The parties are directed to contact the
19 Administrative Assistant to the Board at (360) 664-9170, or email to eluho@eluho.wa.gov,
20 who will act as Board liaison and handle all procedural issues.
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23 DATED this 2nd day of March, 2026.



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26 _____
27 James McNamara, Presiding Officer

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29 **WAC 242-03-545(2). Any objection to this prehearing order shall be made in writing**
30 **within seven days after the date the order is dated.**

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32 ⁸ The Board's handbook, available on the website, may also be useful to the parties.
⁹ [Jamie Merly](#) or 360-485-1282, relay service for hearing impaired, call 711