

SKAGIT COUNTY WASH  
FILED

AUG 24 2026

MELISSA BEATON, CO CLERK  
Deputy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR COUNTY OF SKAGIT

IAN MUNCE,

PETITIONER

VS.

CITY OF ANACORTES AND WASHINGTON STATE  
GROWTH MANAGEMENT HEARINGS BOARD,

RESPONDENTS

Case No.: 26-2 00985 29

PETITION FOR JUDICIAL REVIEW OF  
ADMINISTRATIVE DECISION, RCW 34.05

**I. INTRODUCTION**

1.1 Petitioner Ian Munce hereby petitions the Skagit County Superior Court for judicial review of a final order issued by the Washington State Growth Management Hearings Board, Western Region, GMHB, on July 31, 2026. The 'final order' in this case is the Board's issuing an Order Dismissing Appeal. Exhibit A. GMHB Case No. 26-2-0018.

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1  
2 1.2 The State Growth Management Act (GMA) is unambiguous: the Growth  
3 Management Hearings Board (GMHB or Board) ) is the body exclusively charged with hearing  
4 and ruling on State Environmental Policy Act (SEPA) appeals of SEPA actions on  
5 comprehensive plans and development regulations. Yet, the Board in this case first  
6 impermissibly authorized splitting-off both City and Board review of the City's 2026  
7 Stormwater Plan from the 2025 Comprehensive Plan/Development Regulation Ten Year  
8 Periodic Update (2025 CP/DR Periodic Update). The Board then reinforced and expanded on  
9 this impermissible 'piecemealing' by denying Petitioner's motion to include the record in  
10 GMHB Case No. 26-2-0001c in this case, GMHB Case No. 26-2-0018. Next, the Board simply  
11 ignored the Anacortes Municipal Code provision that the City water, sewer, and stormwater  
12 plans are not just foundational documents to the 2025 Comprehensive Plan but actually only  
13 come into force as amendments to the Comprehensive Plan (CP, p.1-18). Finally, the Board in its  
14 impermissible deference to the City went on to ignore the AMC provision that these plans can  
15 only be adopted as part of the City's Annual Amendment process. (Id.), a process that must  
16 involve public participation and a new, adopted Public Participation Plan

## 20 II. PARTIES

21 2.1 Petitioner: Petitioner is an aggrieved party residing at 1711 Quail Drive,  
22 Anacortes, Skagit County, Washington, WA 98221

23 2.2 Respondents: Respondent Growth Management Hearings Board, Western  
24 Region, is an administrative board of the State of Washington, whose final decision is the  
25 subject of this petition and City of Anacortes, a Washington State municipal corporation.

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28

1 III. FACTS SUPPORTING JURISDICTION AND STANDING

2 3.1 This Court has subject matter jurisdiction pursuant to the Washington  
3 Administrative Procedure Act, RCW 34.05.514, because the Petitioner resides in Skagit County.  
4

5 3.2 This Petition is timely filed and served pursuant to RCW 34.05.542, being  
6 filed within 30 days of the service of the final order.

7 3.3 Petitioner has standing to seek judicial review because Petitioner participated  
8 in the administrative proceedings below, and the final order prejudices or threatens to prejudice  
9 Petitioner's substantial rights.  
10

11 3.4 Petitioner has exhausted all administrative remedies available.  
12

13 IV. THE CHALLENGED DECISION

14 4.1 Petitioner seeks review of the final administrative order titled Order  
15 Dismissing Appeal issued under Agency Case Number: 26-2-0018 on July 31, 2026.  
16

17 4.2 A copy of the final administrative order is attached hereto as Exhibit A.  
18

19 V. GROUNDS FOR RELIEF

20 The Respondent administrative board erred in entering the final order and the decision should be  
21 reversed because it is:  
22

- 23 1. Unconstitutional and/or in violation of constitutional provisions as set forth in §1.2, §1.4,  
24 and §1.5  
25 2. Within the statutory authority or jurisdiction of the agency as set forth in §1.2 and §1.3  
26 3. Erroneously interprets and/or applies the law as set forth in §1.3 and §1.6  
27

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4. Unsupported by substantial evidence viewed in light of the whole record established before the agency as set forth in §1.2-1.6., and/or
5. Arbitrary and capricious as set forth in §1.2-1.6

#### VI. RELIEF SOUGHT

Petitioner prays that the Court grant the following relief:

1. Reverse and/or vacate the Respondent Board's final order, an action that will allow and require Petitioner's GMHB Petition For Review to proceed to briefing, hearing, and a decision on the merits
2. Remand the matter to the board for further proceedings consistent with the Court's ruling, and
3. Grant such other and further relief as the Court deems just and equitable.

Dated this 23<sup>rd</sup> day of August, 2026

Signature of Petitioner/Attorney



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IAN MUNCE

# EXHIBIT A

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
WESTERN REGION  
STATE OF WASHINGTON

IAN MUNCE,

Petitioner,

**Case No. 26-2-0018**

v.

**ORDER DISMISSING APPEAL**

CITY OF ANACORTES,

Respondent.

## Introduction

On May 4, 2026, Petitioner Ian Munce (Petitioner) filed a Petition for Review (PFR) with the Growth Management Hearings Board ( Board) challenging the City of Anacortes' adoption of Resolution No 3212, adopting the 2026 Stormwater Plan (Plan), and challenging the associated Determination of Non -Significance (DNS) under the State Environmental Policy Act (SEPA), including the City Council's denial of Petitioner's administrative appeal. Respondent City of Anacortes (Respondent) filed a Motion to Dismiss on June 30, 2026 alleging that the Board lacks subject matter jurisdiction over the challenge to Resolution 3212 or related issues under the State Environmental Policy Act because the Plan is neither a comprehensive plan, development regulation, nor de facto amendment to a comprehensive plan or development regulation.<sup>1</sup>

The Board hearing this matter is comprised of Board Members Barbara Dykes Ehrlichman (presiding), Alex Sidles, and Rick Eichstaedt . Because the Plan is neither a comprehensive plan amendment nor a development regulation enacted pursuant to the

<sup>1</sup> Respondent's Motion to Dismiss at 1 (Motion).

1 Growth Management Act (GMA), the Board agrees with the Respondent that it lacks subject  
2 matter jurisdiction over this appeal. The Board also lacks jurisdiction over Petitioner's SEPA  
3 issue since it is not related to a comprehensive plan or development regulation.  
4 RCW 36.70A.280(1). The Board grants Respondent's motion to dismiss and dismisses this  
5 appeal.  
6

### 7 I. Background

8 Petitioner's appeal includes the following legal issues:

- 9 1. When the City adopted a 2026 Stormwater Plan, a foundational document  
10 for the City of Anacortes 2025 Comprehensive Plan, on April 27, 2026, did  
11 the City fail to comply with GMA Goal 10 (Environment) and, more directly,  
12 violate WAC 197 -11-335 ("The lead agency shall make its threshold  
13 determination based on information reasonably sufficient to evaluate the  
14 environmental impact of a proposal")?
- 15 2. Has the City violated, and continues to violate, WAC 197 -11-060(3)(b),  
16 "Proposals or parts of proposals that are related to each other closely  
17 enough to be, in effect, a single course of action shall be evaluated in the  
18 same environmental document ... proposals, or parts of proposals, are  
19 closely related, and they shall be discussed in the same environmental  
20 document"?
- 21 3. Did the City adoption of its 2026 Stormwater Plan fail to comply with RCW  
22 36.70A.020 and, more specifically, GMA Goal 12, when it did not include a  
23 meaningful analysis of the funding capacity for the infrastructure necessary  
24 to support its neighborhood densification and market rate housing  
25 aspirations?

26 Respondent states in its motion that the Plan was adopted to comply with the City's  
27 National Pollutant Discharge Elimination System (NPDES) Phase II Permit issued under the  
28 federal Clean Water Act (CWA). Respondent also indicates:

29 The City's 2025 Stormwater Master Plan was adopted independently of and  
30 after the City adopted its Periodic Update to its comprehensive plan and  
31 development regulations. While the 2025 Periodic Update incorporated the  
32 previous 2007 stormwater plan by reference and included information from  
the draft 2025 Stormwater Master Plan, the 2025 Stormwater Master Plan  
is an independent plan adopted regardless of the comprehensive plan  
update process. The 2025 Periodic Update did not rely on the 2025

1 Stormwater Master Plan, nor did it incorporate it by reference into the  
2 Comprehensive Plan.<sup>2</sup>

3 Petitioner argues that the Plan is a “foundational document,” which he defines as “core  
4 documents upon which the Comprehensive Plan is based and are identified on a case by  
5 case basis.”<sup>3</sup> Respondent further states that the Plan addresses GMA concurrency and  
6 capital facilities requirements.<sup>4</sup>

## 8 II. Legal Principles

9 We start with the well-settled principle that administrative agencies such as the Board  
10 are creatures of the legislature, without inherent or common law powers. The power of an  
11 administrative tribunal to fashion a remedy is strictly limited by statute, either expressly or by  
12 necessary implication.<sup>5</sup> Under RCW 36.70A.280(1), the Board’s jurisdiction in this case is  
13 limited to petitions alleging that a city or county is not in compliance with the requirements of  
14 the GMA, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or  
15 amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations,  
16 or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW.<sup>6</sup> The Board lacks  
17 jurisdiction over an appeal of any document or regulation that falls outside of the express  
18 limits of RCW 36.70A.280(1).

19  
20 In *Snohomish County v. Pollution Control Hearings Board*,<sup>7</sup> the Washington Supreme  
21 Court reviewed a dispute regarding whether Washington’s vested rights doctrine excuses  
22 compliance with the requirements of an NPDES permit.<sup>8</sup> As explained by the court, an  
23 NPDES permit is issued pursuant to the CWA, which prohibits the discharge of pollutants  
24 into water absent an NPDES permit.<sup>9</sup> Under the CWA, the federal Environmental Protection  
25  
26

27  
28 <sup>2</sup> Motion at 3.

29 <sup>3</sup> Respondent’s Response to City Motion to Dismiss at 5-6 (Response).

30 <sup>4</sup> *Id.* at 6.

31 <sup>5</sup> *Skagit Surveyors & Eng’rs, L.L.C. v. Friends of Skagit County*, 135 Wn.2d 542, 558 (1998).

32 <sup>6</sup> RCW 36.70A.280(1).

<sup>7</sup> 187 Wn.2d 346, 386 P.3d 1064 (2016).

<sup>8</sup> *Id.* at 350.

<sup>9</sup> *Id.* at 352.

1 Agency (EPA) delegated authority to the State Department of Ecology (Ecology) to  
2 implement NPDES permitting in Washington.<sup>10</sup> According to the court, "[t]he legislature has  
3 recognized that Ecology has 'complete authority to establish and administer the program'"<sup>11</sup>

4 The case explored the boundaries between land use controls and state requirements  
5 implementing the CWA through NPDES permits.<sup>12</sup> The court agreed with analysis by the  
6 state administrative Pollution Control Hearings Board,<sup>13</sup> which ruled that the requirements  
7 imposed by NPDES stormwater permits, including municipal NPDES permits, are not "land  
8 use controls."<sup>14</sup> In particular, the state mandate to local jurisdictions to implement regulations  
9 to comply with the NPDES permitting program means that "[t]he stormwater regulations are  
10 mandatory state regulations, rather than discretionary local regulations."<sup>15</sup>

### 11 12 III. Analysis

13 Petitioner does not dispute Respondent's assertion that the Plan was adopted as a  
14 requirement of the City's NPDES permit. Resolution 3212 states that its stormwater system  
15 is required to comply with the NPDES Phase II Municipal Stormwater Permit.<sup>16</sup> The Board  
16 recognizes that Ecology retains complete authority, as delegated by EPA, to implement the  
17 NPDES program under chapter 90.48 RCW, the State Water Pollution Control Act (WPCA).  
18 RCW 90.48.260.

19 It is true, as Petitioner points out, that the Stormwater Plan does appear to blur the  
20 line between the WPCA and the GMA. For instance, the Plan states:

21 City master planning documents, such as this Plan, are coordinated with the City's  
22 comprehensive planning process through an annual Comprehensive Plan  
23 amendment process. During this amendment process, the Plan and capital  
24 projects therein are integrated with the capital facilities element of the City's overall  
25 Comprehensive Plan.  
26

27 <sup>10</sup> *Id.*

28 <sup>11</sup> *Id.*

29 <sup>12</sup> *Id.* at 366.

30 <sup>13</sup> The PCHB's jurisdiction is established under Chapter 43.21B RCW.

31 <sup>14</sup> *Snohomish County*, at 370-71; see *Cox v. Dep't of Ecology*, PCHB No. 08-077, Order on Summ. J. at 8-10  
(Feb. 26, 2009).

32 <sup>15</sup> *Snohomish County* at 368.

<sup>16</sup> PFR, Resolution 3212 at 1.

1 Plan, at 1. While the subject matter is related, any stormwater plan required under the terms  
2 of an NPDES permit is exclusively regulated by Ecology.

3  
4 The Plan is not a comprehensive plan as defined in the GMA, which must relate to  
5 planning under the GMA or the Shoreline Management Act. RCW 36.70A.280(1); RCW  
6 36.70A.030(9). And, as demonstrated by the *Snohomish County* case above, a plan required  
7 under an NPDES permit is not a "land use control," which in GMA parlance equates to the  
8 definition of development regulation. "Development regulation" means the controls placed  
9 on development or land use activities by a county or city, "including, but not limited to, zoning  
10 ordinances, critical areas ordinances, shoreline master programs, official controls, planned  
11 unit development regulations, subdivision ordinances, and binding site plans..."  
12 RCW 36.70A.030(14) (emphasis added).

13  
14 As explained above, the legislature has limited the Board's jurisdiction to appeals  
15 related to plans and regulations adopted under the GMA and SMA, or population estimates.  
16 Any plan adopted pursuant to the requirements of an NPDES permit likely has distinct  
17 statutory requirements unrelated to the GMA which are administered by Ecology. The Board  
18 has no subject matter jurisdiction over NPDES permit compliance under WPCA. To the  
19 extent Respondent relies on parts of this Plan to implement GMA requirements, the Board  
20 assumes that aspects of the plan would be integrated into its Capital Facilities Plan and six-  
21 year Capital Improvement Program, both of which are subject to GMA requirements.  
22

#### 23 IV. ORDER

24 The Board GRANTS the motion to dismiss for lack of subject matter jurisdiction. This  
25 matter is DISMISSED and the case is CLOSED.

26  
27 SO ORDERED this 31st day of July, 2026.

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Barbara Ehrlichman, Presiding  
32 Board Member

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Rick Eichstaedt  
Board Member



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Alex Sidles  
Board Member