

**BEFORE THE
GROWTH MANAGEMENT HEARINGS BOARD
WESTERN REGION
STATE OF WASHINGTON**

SOUTH SOUND BIRD ALLIANCE, *et al.*,

Petitioners,

v.

THURSTON COUNTY

Respondent,

and

BLACK LAKE QUARRY LLC,

Intervenor-Respondent.

Case No. 26-2-0013c

**FUTUREWISE’S PETITIONER’S
PREHEARING BRIEF**

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I. INTRODUCTION

In 2023, the State of Washington Legislature adopted and the Governor signed comprehensive requirements to reduce greenhouse gas pollution and to protect people, property, and the environment from the ongoing and increasing adverse impacts of climate change.¹ The legislature and governor also invested \$300,000 to help Thurston County comply with these new requirements.²

While we acknowledge that Thurston County undertook important data gathering and analysis and adopted some exemplary policies, as a whole Resolution (Res.) No. 16574 and Ordinance (Ord.) No. 16575 fall short of these important requirements. We respectfully request that the Growth Management Hearings Board find that the resolution and ordinance violate these requirements and remand them back to the County for action consistent with the Growth Management Act (GMA). Our future depends on it.

II. STANDARD OF REVIEW

The Washington Supreme Court identified the standards applicable to this appeal:

The Board is charged with adjudicating GMA compliance, and, when necessary, with invalidating noncompliant comprehensive plans and development regulations. The Board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]. To find an action “clearly erroneous,” the Board must be left with the firm and definite conviction that a mistake has been committed.³

Res. No. 16574 and Ord. No. 16575 are presumed valid.⁴ The burden is on Futurewise to demonstrate that Res. No. 16574 and Ord. No. 16575 violates the GMA.⁵ “[T]he Board acts properly when it foregoes deference to a county’s plan that is not ‘consistent with the requirements and goals’ of the GMA.”⁶

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¹ Laws of 2023, ch. 228.

² Index to the Record Volume I (IR-I) No. 013 Bates No. 00110, Interagency Agreement with Thurston County through Growth Management Services Contract Number: 24-63610-167 For 2023-2025 Climate Planning Grant p. 18 of 18. Unless otherwise noted, the cited documents are included in the exhibits enclosed with this brief.

³ *King Cnty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd. (Soccer Fields)*, 142 Wn.2d 543, 552, 14 P.3d 133, 138 (2000).

⁴ *Kittitas Cnty. v. E. Washington Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 156, 256 P.3d 1193, 1199 (2011).

⁵ *Id.*; RCW 36.70A.320.

⁶ *Thurston Cty. v. Cooper Point Association*, 108 Wn. App. 429, 444, 31 P.3d 28, 36 (2001) *affirmed Thurston Cty. v. Cooper Point Ass’n*, 148 Wn.2d 1, 5 P.3d 1156, 1158 (2002).

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III. ARGUMENT

Issue 1. Did Thurston County’s adoption of Resolution No. 16574 and Ordinance No. 16575 violate RCW 36.70A.020 and (14); RCW 36.70A.070; RCW 36.70A.070(5); RCW 36.70A.070(9); RCW 36.70A.095; RCW 36.70A.100; RCW 36.70A.120; RCW 36.70A.130(1)(a), (1)(e), and (5)(b); RCW 36.70A.190; RCW 36.70A.210; RCW 36.70A.290(2); WAC 365-196-443; and Thurston County Countywide Planning Policies 3.1, e., f, and g. because the comprehensive plan’s Chapter Two Climate, Chapter Three Land Use, and Chapter Eight Transportation and the amended development regulations fail to identify the actions the jurisdiction will take during the planning cycle to reduce overall greenhouse gas emissions, do not comply with the greenhouse gas emissions reduction subelement requirements, the climate goal, and the cited requirements, and allow development and facilities, inconsistent with reducing greenhouse gas emissions?

Thurston County’s comprehensive plan and development regulations violate the GMA by failing to identify actions the jurisdiction will take during the planning cycle to reduce overall greenhouse gas emissions, do not comply with the greenhouse gas emissions reduction subelement requirements, and do not comply with the climate goal. RCW 36.70A.020(14)’s climate goal provides: “Ensure that comprehensive plans, development regulations, and regional policies, plans, and strategies under RCW 36.70A.210 and chapter 47.80 RCW adapt to and mitigate the effects of a changing climate; support reductions in greenhouse gas emissions and per capita vehicle miles traveled; prepare for climate impact scenarios; foster resiliency to climate impacts and natural hazards; protect and enhance environmental, economic, and human health and safety; and advance environmental justice.” RCW 36.70A.070(9) include the core requirements for the greenhouse gas emissions reduction subelement. RCW 36.70A.130(1) and (5)(b) establish December 31, 2025, as the deadline for updating comprehensive plans and development regulations to comply with the climate change and resiliency goal and element requirements.⁷ Thurston County is required to adopt a resiliency subelement and a greenhouse gas (GHG) emissions reduction subelement.⁸ “County

⁷ Thurston County has until December 31, 2026, to update its critical areas regulations. RCW 36.70A.130(7)(a)(ii).
⁸ IR-I No. 483 Bates No. 21382, Wash. State Dep’t of Commerce, *Climate Element Planning Guidance* p. 8 (Dec. 2023 V3.1).

1 development regulations must also comply with the requirements of the GMA. See RCW
2 36.70A.130(1)(a)[.]”⁹

3 RCW 36.70A.070(9)(d)(i) provides in relevant part that:

4 (d)(i) The greenhouse gas emissions reduction subelement of the comprehensive
5 plan, and its related development regulations, must identify the actions the
6 jurisdiction will take during the planning cycle consistent with the guidelines
7 published by the department pursuant to RCW 70A.45.120 that will:

8 (A) Result in reductions in overall greenhouse gas emissions generated by
9 transportation and land use within the jurisdiction but without increasing
10 greenhouse gas emissions elsewhere in the state;

11 ... and

12 (C) Prioritize reductions that benefit overburdened communities in order to
13 maximize the cobenefits of reduced air pollution and environmental justice.

14 To “identify” is to “link in an inseparable fashion : make correlative with something”¹⁰
15 An “action” is “the bringing about of an alteration by force or through some natural agency
16”¹¹ So the subelement must include goals and policies bringing about of an alteration linked
17 or correlated to “[r]esult in reductions in overall greenhouse gas emissions generated by
18 transportation and land use within the jurisdiction ...”¹² The subelement must “[p]rioritize
19 reductions that benefit overburdened communities”¹³

20 The Growth Management Hearings Board (Board) affords the State of Washington
21 Department of Commerce’s (Commerce) interpretations in guidance documents “significant
22 weight in recognition of the Department’s administrative expertise” when they are consistent with
23 the statute.¹⁴ The Washington State Department of Commerce guidelines provide that: “Cities
24 and counties should select measurable policies with a clear path to local implementation.
25 Progress on meeting GHG reduction sub-element requirements will be assessed on both how
26 much emissions have declined over time, and on whether the policies were implemented.”¹⁵

⁹ *Kittitas Cnty. v. E. Washington Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 164, 256 P.3d 1193, 1203 (2011)

¹⁰ WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY p. 1123 (2002).

¹¹ WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY p. 21 (2002).

¹² RCW 36.70A.070(9)(d)(i)(A).

¹³ RCW 36.70A.070(9)(d)(i)(C).

¹⁴ *Futurewise, Kian Bradley, and Trevor Reed v. City of Mercer Island*, CPSRGMHB Case No. 25-3-0003, Final Decision and Order (Aug. 1, 2025), at 39 – 40 of 67.

¹⁵ IR-I No. 028 Bates No. 00773, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas Emissions Analysis* p. 27 (v3.5.1).

1 **A. The adoption of Res. No. 16574 and Ord. No. 16575 failed to identify the actions the**
2 **jurisdiction will take to reduce overall greenhouse gas emissions and prioritize**
3 **reductions that benefit overburdened communities because it failed to include all**
4 **necessary local strategies from the Thurston County 2022 Greenhouse Gas Emissions**
5 **Analysis Local Action Scenario.**

6 The Washington State Department of Commerce conducted an emissions inventory for
7 Thurston County.¹⁶ The *Thurston County 2022 Greenhouse Gas Emissions Analysis* also
8 included “[t]he local action scenario, which represents just one of many potential paths to
9 achieving GHG emission reductions, provides a pathway toward achieving the state’s GHG
10 emission reduction target (95% reduction in GHG emissions by 2050 compared to a 1990
11 baseline).”¹⁷ Thurston County Chapter 2 Climate adopted a target of an 95% reduction in GHG
12 emissions by 2050.¹⁸ So the adoption of these local strategies would achieved both the state and
13 Thurston County GHG reduction targets. Unfortunately, as documented below, Thurston
14 County Chapter 2 Climate and other elements of the comprehensive plan did not include all of
15 the local strategies and where the strategies were included the policies were not measurable
16 with a clear path to local implementation. So they violate Commerce’s guidance.¹⁹

17 The first strategy from the Local Action Scenario is to electrify 100 percent of the new
18 buildings by 2050.²⁰ Chapter 2 does not provide for electrifying new buildings.²¹ The closest
19 Chapter 2 Climate comes is Policy CL-1.C.1 which provides in part to “[s]trengthen state
20 building and energy code development and implementation specific to decarbonization and
21 electrification.”²² But this policy does not call for strengthening the state building code to
22 require the electrification of all new buildings. As part of this strategy, Commerce calls for
23 “[r]equir[ing] additional net-zero greenhouse gas emission features of all new residential and
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¹⁶ IR-I No. 028 Bates Nos. 00758 – 66, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas Emissions Analysis* pp. 12 – 20 (v3.5.1).

¹⁷ IR-I No. 028 Bates No. 00773, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas Emissions Analysis* p. 27 (v3.5.1).

¹⁸ IR-I No. 353 Bates Nos. 10613, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 2-25.

¹⁹ IR-I No. 483 Bates No. 21416, Wash. State Dep’t of Commerce, *Climate Element Planning Guidance* p. 42 (Dec. 2023 V3.1).

²⁰ IR-I No. 028 Bates No. 00774, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas Emissions Analysis* p. 28 (v3.5.1).

²¹ IR-I No. 353 Bates No. 10613 – 29, Res. No. 16574 Attachment A Thurston County Comprehensive Plan pp. 2-25 – 2-41.

²² IR-I No. 353 Bates No. 10618, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 2-30.

1 commercial structures” and other electrification measures.²³ But Thurston County does not
2 identify any of them.²⁴ Commerce calls for directing solar development onto lands identified as
3 having “least conflict” and “[r]equiring solar panels on buildings with large rooftops, as well as
4 within or over parking areas.²⁵ Thurston County does not.²⁶

5 The second strategy is to reduce energy use in existing buildings by 45 percent by 2050.²⁷
6 While CL-1.B.7 calls for prioritizing increased energy efficiency in existing buildings, it does
7 not have a link to bringing about an alteration that will reduce energy use.²⁸ CL-1.B.7 does not
8 specify that education, or incentives, or regulations will be used to increase energy efficiency.²⁹
9 Policy CL-10.B.2 calls for partnerships with “community-based organizations with the capacity
10 and relationships to organize, educate, and empower diverse coalitions of residents to
11 implement climate resiliency and greenhouse gas reduction actions.”³⁰ But it does not say what
12 actions. Will they, for example, address reducing energy use in existing buildings? The policy
13 does not say. These policies will not result in reductions in greenhouse gas pollution without
14 more.

15 The third strategy is to electrify existing buildings with 95 percent of buildings using fossil
16 fuels converted to electricity by 2050.³¹ As part of this strategy, Commerce recommends
17 incentives for green building certification to improve energy and environmental performance.³²
18 While CL-1.B.7 calls for retrofitting existing buildings, it does not have a link to bringing about
19 an alteration that will electrify existing buildings.³³ CL-1.B.7 does not specify that education, or

20 ²³ IR-I No. 028 Bates No. 00797, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas*
21 *Emissions Analysis* p. 51 (v3.5.1).

22 ²⁴ IR-I No. 353 Bates No. 10613 – 29, Res. No. 16574 Attachment A Thurston County Comprehensive Plan pp. 2-
23 25 – 2-41.

24 ²⁵ IR-I No. 028 Bates No. 00797, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas*
25 *Emissions Analysis* p. 51 (v3.5.1).

26 ²⁶ IR No. 353 Bates No. 10613 – 29, Res. No. 16574 Attachment A Thurston County Comprehensive Plan pp. 2-25
27 – 2-41.

28 ²⁷ IR-I No. 028 Bates No. 00774, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas*
29 *Emissions Analysis* p. 28 (v3.5.1).

30 ²⁸ WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY p. 21, p. 1123 (2002).

31 ²⁹ IR No. 353 Bates No. 10617 – 18, Res. No. 16574 Attachment A Thurston County Comprehensive Plan pp. 2-29
32 – 2-30.

33 ³⁰ IR-I No. 353 Bates No. 10629, Res. No. 16574 Attachment A Thurston County Comprehensive Plan pp. 2-41.

³¹ IR-I No. 028 Bates No. 00774, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas*
34 *Emissions Analysis* p. 28 (v3.5.1).

³² IR-I No. 028 Bates No. 00798, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas*
35 *Emissions Analysis* p. 52 (v3.5.1).

³³ WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY p. 21, p. 1123 (2002).

1 incentives, or regulations will be used. This is a problem because this strategy is projected to
2 result in the third highest reduction in greenhouse gas pollution.³⁴

3 The fourth strategy is to reduce industrial emissions by 50 percent by 2050.³⁵ There is no
4 goal or policy directed to achieve this strategy.³⁶ However, there are no estimated reductions in
5 greenhouse gas emissions associated with this strategy.³⁷

6 The fifth strategy is to reduce passenger vehicle miles traveled by 20 percent by 2050.³⁸
7 Policy CL-2.B.6 provides: “Promote more efficient, affordable, and healthier transportation and
8 community development, reducing motorized vehicle miles to achieve greenhouse gas
9 reduction goals.”³⁹ To “promote” is “to contribute to the growth, enlargement, or prosperity
10”⁴⁰ But this policy does not include anything linked to bringing about an alteration that will
11 reduce energy use.⁴¹ Policy CL-2.B.6 is also not “measurable,” nothing is quantified or
12 objectively measurable and the policy does not include a clear path to local implementation of
13 the 20 percent reduction in total vehicle miles traveled in 2050. This is important because the
14 comprehensive plan states “[t]he region is currently not on track to reach greenhouse gas
15 emissions or vehicle miles traveled reduction targets. Both have increased since 2021.”⁴² Policy
16 CL-2.B.6 violates RCW 36.70A.070(9)(d)(i) and the Commerce guidelines.⁴³ This is a problem
17 because this strategy is projected to result in the third highest reduction in greenhouse gas
18 pollution.⁴⁴ We do support Policies CL-2.B.1 through CL-2.B.5 which will help reduce vehicle
19 miles driven.⁴⁵

19 ³⁴ IR-I No. 028 Bates No. 00774, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas*
20 *Emissions Analysis* p. 28 (v3.5.1).

21 ³⁵ IR-I No. 028 Bates No. 00774, *Id.*

22 ³⁶ IR-I No. 353 Bates No. 10613 -- 10629, Res. No. 16574 Attachment A Thurston County Comprehensive Plan
23 pp. 2-25 – 2-41.

24 ³⁷ IR-I No. 028 Bates No. 00774, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas*
25 *Emissions Analysis* p. 28 (v3.5.1).

26 ³⁸ IR-I No. 028 Bates No. 00774, *Id.*

³⁹ IR-I No. 353 Bates No. 10620, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 2-32.

⁴⁰ WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY p. 1815 (2002).

⁴¹ WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY p. 21, p. 1123 (2002).

⁴² IR-I No. 353 Bates No. 10839, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 8-13.

⁴³ IR-I No. 483 Bates No. 21416, Washington State Department of Commerce Growth Management Services,
Climate Element Planning Guidance p. 42 (Dec. 2023 V3.1).

⁴⁴ IR-I No. 028 Bates No. 00774, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas*
Emissions Analysis p. 28 (v3.5.1).

⁴⁵ IR-I No. 353 Bates No. 10619, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 2-31.

1 Strategy six is to electrify 100 percent of the passenger vehicles sold in 2050.⁴⁶ Objective C
2 calls for expanding electric vehicle infrastructure development and supporting the transition to
3 electric vehicles.⁴⁷ But the policies only call for monitoring and increasing electrical vehicle
4 chargers and partnering with organizations and agencies to increase consumer awareness about
5 electric vehicle options and incentives for use and purchase.⁴⁸ Policy CL-10.A.3 calls on the
6 County to “[c]ollaborate with environmental and other organizations and agencies to support
7 sustainable purchase programs to subsidize or incentivize fuel efficient or renewable energy
8 replacements for consumer vehicles”⁴⁹ Policy CL-10.B.3 calls on the County to “[d]evelop
9 and share education campaigns about ways drivers can improve sustainability and efficiency of
10 their vehicles”⁵⁰ The objective and policies are not “measurable,” nothing is quantified or
11 objectively measurable and the objective and policies do not include a clear path to local
12 implementation that would achieve 100 percent electrical vehicle purchases and leases in 2050.
13 Compare those policies with Commerce’s recommendation to “[p]rovide low-income residents
14 subsidies to purchase or lease electric vehicles and bicycles.”⁵¹ Policy CL-10.A.3 and Policy
15 CL-10.B.3 are not even targeted exclusively to electric vehicles. The objective and policies are
16 not linked to bringing about an alteration that will reduce energy use.⁵² They violate RCW
17 36.70A.070(9)(d)(i) and the Commerce guidelines.⁵³

18 Strategy seven calls for electrifying 80 percent of the freight and service vehicles sold in
19 2050.⁵⁴ As part of this strategy, Commerce recommends requiring “electric vehicle charging
20 infrastructure in all new and retrofitted buildings.”⁵⁵ Ord. No. 16575 does require electric
21 vehicle charging structures for commercial, residential uses other than single-family homes with

22 ⁴⁶ IR-I No. 028 Bates No. 00774, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas Emissions Analysis* p. 28 (v3.5.1).

23 ⁴⁷ IR-I No. 353 Bates No. 10620, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 2-32.

24 ⁴⁸ IR-I No. 353 Bates No. 10620, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 2-32.

25 ⁴⁹ IR-I No. 353 Bates No. 10628, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 2-40.

26 ⁵⁰ IR-I No. 353 Bates No. 10629, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 2-41.

⁵¹ IR-I No. 028 Bates No. 00802, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas Emissions Analysis* p. 56 (v3.5.1).

⁵² WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY p. 21, p. 1123 (2002).

⁵³ IR-I No. 483 Bates No. 21416, Washington State Department of Commerce Growth Management Services, *Climate Element Planning Guidance* p. 42 (Dec. 2023 V3.1).

⁵⁴ IR-I No. 028 Bates No. 00774, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas Emissions Analysis* p. 28 (v3.5.1).

⁵⁵ IR-I No. 028 Bates No. 00802, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas Emissions Analysis* p. 56 (v3.5.1).

1 garages and duplexes, and manufacturing uses.⁵⁶ So this partially meets the recommendation.
2 Commerce also recommends to “develop dedicated electric-vehicle (EV) lanes on local roads
3 and highways.”⁵⁷ The County did adopt not this measure.⁵⁸ Policy CL-2.C.3 calls for partnering
4 “with organizations such as the Thurston Regional Planning Council to identify efficient rural
5 transit delivery opportunities and the replacement of the existing commercial fleet with electric
6 vehicles and/or the electrification of heavy-duty vehicles.”⁵⁹ While efficient rural delivery
7 opportunities would help in rural areas, it will not help in urban growth areas such as Grand
8 Mound or the high volume freight and goods transportation routes that connect urban growth
9 areas such as I-5 and Highway 12.⁶⁰ Policy CL-2.C.3 also does not specify how the electric
10 vehicles will be electrified. This is not a measurable policy violating Commerce’s guidance.⁶¹
11 Further, to the extent the County is relying on the objective and policies discussed under
12 Strategy six above, they fail for the same reasons.

13 Strategy eight calls for electrifying 90 percent of the transit vehicles sold in 2050.⁶² Policy
14 CL-2.C.4 provides “[r]eplace county fleet vehicles with electric models as practicable based on
15 replacement schedule, business needs, and availability of charging infrastructure.”⁶³ This policy
16 is so heavily caveated that it does not commit the transit fleet to achieve a 90 percent
17 electrification rate by 2050. If the transit provider concludes they have different business needs,
18 then no electrified transit vehicles would be required by Policy CL-2.C.4. To the extent the
19 County is relying on the objective and policies discussed under Strategy six above, they fail for
20 the same reasons.

21 ⁵⁶ IR-I No. 352 Bates No. 10447 – 50, Ord. No. 16575 Attachment A.

22 ⁵⁷ IR-I No. 028 Bates No. 00802, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas
Emissions Analysis* p. 56 (v3.5.1).

23 ⁵⁸ IR-I No. 353 Bates No. 10613 -- 10629, Res. No. 16574 Attachment A Thurston County Comprehensive Plan
pp. 2-25 – 2-41.

24 ⁵⁹ IR-I No. 353 Bates No. 10620, Res. No. 16574 Attachment A Thurston County Comprehensive Plan pp. 2-32.

25 ⁶⁰ IR-I No. 353 Bates No. 11148, 11160, Res. No. 16574 Attachment A Thurston County Comprehensive Plan
Map L-1 Future Land Use Map & T-5 2023 Freight and Goods Transportation System.

26 ⁶¹ IR-I No. 483 Bates No. 21416, Washington State Department of Commerce Growth Management Services,
Climate Element Planning Guidance p. 42 (Dec. 2023 V3.1).

⁶² IR-I No. 028 Bates No. 00774, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas
Emissions Analysis* p. 28 (v3.5.1).

⁶³ IR-I No. 353 Bates No. 10620 – 29, Res. No. 16574 Attachment A Thurston County Comprehensive Plan pp. 2-
32 – 2-41.

1 Strategy nine calls for reducing offroad equipment carbon emissions by 95 percent in
2 2050.⁶⁴ No objective or policy is directed to offroad equipment.⁶⁵ To the extent the County is
3 relying on the objective and policies discussed under Strategy six above, they fail for the same
4 reasons. Further, that objective and policies focus on consumer education and businesses using
5 commercial and industrial offroad equipment will have very different needs and incentives.⁶⁶

6 Strategy ten calls for diverting 85 percent construction and demolition (C & D) waste from
7 landfills by 2050.⁶⁷ Policy CL-3.A.4 does call on the County to “[d]evelop, implement, and
8 enforce construction and demolition recycling and deconstruction ordinances.”⁶⁸ Compare this
9 policy with Commerce’s recommended policy of “[d]evelop a program that will enable
10 recycling of all construction and demolition debris by [insert target].⁶⁹ Commerce’s policy is
11 quantified, referring to “all” debris, and includes a target date to be selected by the jurisdiction.
12 Commerce’s policy complies with Commerce’s guidance; Thurston County’s does not.⁷⁰

13 Strategy eleven calls for diverting 95 percent of recyclable and compostable materials from
14 landfills by 2050, although no greenhouse gas reductions are identified for this strategy.⁷¹
15 Policy CL-3.A.2 calls for outreach prioritizing historically underserved communities to
16 encourage recycling and composting of materials with the highest GHG reduction impact.⁷²
17 Policy CL-3.A.3 calls for providing composting outreach and education to businesses and
18 pursue funding and/or partnerships to share education on practices that decrease waste for
19 business owners such as waste audits.⁷³ While some of these policies are similar to those
20 recommended by Commerce, Commerce’s recommendations include quantified reductions and

21 ⁶⁴ IR-I No. 028 Bates No. 00774, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas*
22 *Emissions Analysis* p. 28 (v3.5.1).

23 ⁶⁵ IR-I No. 353 Bates No. 10613 – 29, Res. No. 16574 Attachment A Thurston County Comprehensive Plan pp. 2-
24 25 – 2-41.

25 ⁶⁶ IR-I No. 028 Bates No. 00763 – 64, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas*
26 *Emissions Analysis* pp. 17 – 18 (v3.5.1).

27 ⁶⁷ IR-I No. 028 Bates No. 00774, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas*
28 *Emissions Analysis* p. 28 (v3.5.1).

29 ⁶⁸ IR-I No. 353 Bates No. 10621, Res. No. 16574 Attachment A Thurston County Comprehensive Plan pp. 2-33.

30 ⁶⁹ IR-I No. 028 Bates No. 00803, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas*
31 *Emissions Analysis* p. 57 (v3.5.1).

32 ⁷⁰ IR-I No. 483 Bates No. 21416, Washington State Department of Commerce Growth Management Services,
33 *Climate Element Planning Guidance* p. 42 (Dec. 2023 V3.1).

34 ⁷¹ IR-I No. 028 Bates No. 00774, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas*
35 *Emissions Analysis* p. 28 (v3.5.1).

36 ⁷² IR-I No. 353 Bates No. 10620, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 2-32.

⁷³ IR-I No. 353 Bates No. 10620, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 2-32.

1 deadlines which the County’s policies do not.⁷⁴ For example, Commerce recommends:
2 “Recycle all paper, food, textile, and metal waste by [insert target date].”⁷⁵ Again, many of
3 Commerce’s policies comply with Commerce’s guidance, Thurston County’s do not.⁷⁶

4 Strategy twelve calls for improving soil management to reduce 75 percent of emissions by
5 2050.⁷⁷ Policies CL-8.A.1 and Policy CL-8.A.4 emphasize education and promoting the
6 Voluntary Stewardship Program, but do not quantify these efforts.⁷⁸ Compare with Commerce’s
7 recommended policy to “[d]esignate a percentage of agricultural land that shall be maintained
8 and managed for sequestering carbon and curtailing vehicle miles traveled.⁷⁹ Similarly, Policy
9 CL-8.B.1 calls for “[p]rovide technical and financial assistance (e.g., grants, loans) to encourage
10 improved manure and fertilizer management, along with other regenerative practices,
11 prioritizing greenhouse gas emission reduction”⁸⁰ Commerce recommends “[r]equire
12 methane collection on dairy farms and other agricultural operations that utilize waste ponds.”⁸¹
13 Again, Commerce’s recommendations are more quantified and mandatory and will more likely
14 produce the needed results. Commerce’s policies comply with Commerce’s guidance; Thurston
15 County’s do not.⁸²

16 Strategy thirteen calls for reducing tree loss by 90 percent by 2050.⁸³ The County
17 acknowledges that over 20,000 acres of land in Thurston County experienced tree loss since
18 2016.⁸⁴ However, the policy response is limited. Policy CL-7.B.2 calls for setting goals for

19 ⁷⁴ IR-I No. 028 Bates No. 00803 – 04, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas*
20 *Emissions Analysis* pp. 57 – 58 (v3.5.1).

21 ⁷⁵ IR-I No. 028 Bates No. 00804, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas*
22 *Emissions Analysis* p. 58 (v3.5.1).

23 ⁷⁶ IR-I No. 483 Bates No. 21416, Wash. State Dep’t of Commerce, *Climate Element Planning Guidance* p. 42
(Dec. 2023 V3.1).

24 ⁷⁷ IR-I No. 028 Bates No. 00774, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas*
25 *Emissions Analysis* p. 28 (v3.5.1).

26 ⁷⁸ IR-I No. 353 Bates No. 10626, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 2-38.

⁷⁹ IR-I No. 028 Bates No. 00804, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas*
Emissions Analysis p. 58 (v3.5.1).

⁸⁰ IR-I No. 353 Bates No. 10626, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 2-38.

⁸¹ IR-I No. 028 Bates No. 00804, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas*
Emissions Analysis p. 58 (v3.5.1).

⁸² IR-I No. 483 Bates No. 21416, Wash. State Dep’t of Commerce, *Climate Element Planning Guidance* p. 42
(Dec. 2023 V3.1).

⁸³ IR-I No. 028 Bates No. 00774, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas*
Emissions Analysis p. 28 (v3.5.1).

⁸⁴ IR-I No. 353 Bates No. 10613, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 2-25.

1 future forest canopy and prairie acreage to increase resilience.⁸⁵ But this policy does not contain
2 any deadline and the deadline for the climate element has passed.⁸⁶ The policy does not say
3 how the goals will be enforced and no regulations addressing the goals were adopted.⁸⁷ Policy
4 CL-10.B.4 provides: “Support local partners in climate-smart forest management and adopt a
5 forest management plan to improve tree and watershed health, prioritize carbon sequestration,
6 and build climate resilience. Additionally, encourage participation in Washington's small forest
7 landowner assistance cost-share and stewardship programs.”⁸⁸ There is no deadline for the
8 forest management plan. It is not clear how this policy or the plan will avoid forest loss. The
9 County identifies avoiding tree loss as a policy that would reduce greenhouse gas pollution
10 from land use but did not adopt that policy.⁸⁹ Commerce recommends policies to improve and
11 expand urban forest management, maximizing tree canopy coverage in surface parking lots, and
12 maintaining small forestland ownership and publicly owned forest properties with carbon
13 sequestration as the goal.⁹⁰ The forest management plan does not say it will address any of
14 these recommendations. The policies calling for education and outreach can help, but lack the
15 scope of Commerce’s recommendations.⁹¹ The comprehensive plan includes other tree and
16 forest policies, but none of them meet the Commerce recommendations.⁹² These policies will
17 not meaningfully address tree loss which represents 46 percent of the proposed greenhouse gas
18 pollution reductions identified by the *Thurston County 2022 Greenhouse Gas Emissions*
19 *Analysis*.⁹³

20 ⁸⁵ IR-I No. 353 Bates No. 10625, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 2-37.
21 Policy EROS-5.A.2 also calls for determine tree canopy targets without a deadline or a mechanism for reducing
22 tree loss. IR-I No. 353 Bates No. 10712, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 4-
23 26.

24 ⁸⁶ RCW 36.70A.130(1) and (5)(b).

25 ⁸⁷ IR-I No. 352 Bates No. 10356 – 530, Ord. No. 16575 Attachments A – F.

26 ⁸⁸ IR-I No. 353 Bates No. 10629, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 2-41.

⁸⁹ IR-I No. 353 Bates No. 10613, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 2-25.

⁹⁰ IR-I No. 028 Bates No. 00805, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas Emissions Analysis* p. 59 (v3.5.1).

⁹¹ Policies CL-7.B.3, CL-7.B.5, and CL-10.B.4 IR-I No. 353 Bates Nos. 10625 – 26, 10629, Res. No. 16574 Attachment A Thurston County Comprehensive Plan pp. 2-37 – 2-38, p. 2-41.

⁹² IR-I No. 353 Bates Nos. 10712, 10755, 10784, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 4-26, p. 5-34, p. 6-23.

⁹³ IR-I No. 028 Bates No. 00774, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas Emissions Analysis* p. 28 (v3.5.1).

1 As this analysis argues, the County Comprehensive Plan failed to include policies needed to
2 achieve the state’s and County’s adopted net-zero emissions by 2050, a 95 percent reduction.⁹⁴
3 For the first, fourth, and ninth strategies no policies or regulations are included. For the other
4 strategies, Thurston County Chapter 2 Climate and other elements of the comprehensive plan
5 did not include measurable policies with a clear path to local implementation.⁹⁵ So they violate
6 Commerce’s guidance. This violates RCW 36.70A.070’s requirement that the comprehensive
7 plan “shall be an internally consistent document ...,” RCW 36.70A.020(14)’s climate goal, and
8 RCW 36.70A.070(9)(d)(i)’s requirement that the greenhouse gas emissions reduction
9 subelement “must” identify the actions the jurisdiction will take that result in reductions in
10 overall greenhouse gas emissions generated by transportation and land use.

11 **B. The adoption of Res. No. 16574 and Ord. No. 16575 failed to identify the actions the
12 jurisdiction will take to reduce overall greenhouse gas emissions and prioritize
13 reductions that benefit overburdened communities because it failed to include the
14 strategies from the Thurston County Climate Mitigation Plan Local Action Scenario.**

15 The Thurston County Comprehensive Plan Chapter 2 Climate states the “*Thurston County
16 Climate Mitigation Plan* is a road map for regional efforts to reduce climate change.”⁹⁶ The
17 Consultant Team that prepared the mitigation plan “estimated how local actions can close the
18 remaining gap and put our region on track to a 45 percent reduction in emissions by 2030 and
19 an 85 percent reduction by 2050.”⁹⁷ “[T]his suite of local actions, when paired with state
20 policies, could reduce emissions enough to meet our target.”⁹⁸ Unfortunately, as this section
21 will show Chapter 2 Climate did not incorporate all of these actions and so cannot meet the
22 targets calling for a 45 percent reduction in emissions by 2030 and an 85 percent reduction by
2050. And Chapter 2 Climate set “new community-wide GHG emission reduction targets:”

- 45% reduction by 2030.
- 70% reduction by 2040.
- Net-zero emissions by 2050 (95% reduction).⁹⁹

23 ⁹⁴ IR-I No. 028 Bates No. 00773, Wash. State Dep’t of Commerce, *Thurston County 2022 Greenhouse Gas
24 Emissions Analysis* p. 27 (v3.5.1); IR-I No. 353 Bates Nos. 10613, Res. No. 16574 Attachment A Thurston County
25 Comprehensive Plan p. 2-25.

26 ⁹⁵ IR-I No. 483 Bates No. 21416, Wash. State Dep’t of Commerce, *Climate Element Planning Guidance* p. 42
(Dec. 2023 V3.1).

⁹⁶ IR-I No. 353 Bates No. 10592, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 2-4.

⁹⁷ IR-I No. 393 Bates No. 14572, *Thurston County Climate Mitigation Plan* p. 62 (Dec. 2020).

⁹⁸ IR-I No. 393 Bates No. 14572, *Id.*

⁹⁹ IR-I No. 353 Bates No. 10613, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 2-25.

1 The *Climate Mitigation Plan* includes actions to reduce greenhouse gas emissions grouped
2 by category. For Strategy B1, reduce energy use in existing residential buildings, the County
3 adopted two actions, residential energy performance ratings and energy incentives, but not the
4 two other actions, residential energy audits and a rental energy efficiency baseline, that do not
5 require amendments to state law.¹⁰⁰ For Strategy B2, reduce energy use in existing
6 commercial/industrial buildings, the County adopted one action, commercial energy
7 performance ratings, but not three other actions, LED lighting, cool roofs, or a performance
8 standard.¹⁰¹ For Strategy B3, reduce energy use across all building types, the County adopted
9 one action, energy education, but not two other actions, exemplary building deployment and
10 tracking to monitor the use and impact of green building incentives.¹⁰² For Strategy B4, reduce
11 energy use in new construction and redevelopment, the County adopted one action, energy
12 efficient or grid connected appliances, but not the five other actions, demonstrating green
13 building technologies and practices in public buildings, permitting incentives, land use
14 incentives, permit counter technical assistance, and multi-family submetering.¹⁰³ For Strategy
15 B5, increase the production of local renewable energy, the County adopted three actions, install
16 solar photovoltaics on all available and feasible municipal sites, SolSmart (measures to increase
17 solar energy adoption), and a plan to adopt solar-ready codes, but not the action calling for
18 group purchasing of solar energy equipment.¹⁰⁴ For Strategy B6, convert to cleaner fuel
19 sources, the comprehensive plan calls for education on electrification which is currently the part
20 of the strategy the County clearly has the authority to undertake.¹⁰⁵

21 For Strategy T1, set land use policies that support increased urban density, efficient
22 transportation networks, and reduce urban sprawl; the County has adopted some of the actions

23 ¹⁰⁰ IR-I No. 393 Bates No. 14584, *Thurston County Climate Mitigation Plan* p. 74 (Dec. 2020); IR-I No. 353 Bates
24 Nos. 10613 – 629, Res. No. 16574 Attachment A Thurston County Comprehensive Plan pp. 2-25 – 2-41.

25 ¹⁰¹ IR-I No. 393 Bates No. 14585, *Thurston County Climate Mitigation Plan* p. 75 (Dec. 2020); IR-I No. 353 Bates
26 Nos. 10613 – 629, Res. No. 16574 Attachment A Thurston County Comprehensive Plan pp. 2-25 – 2-41.

¹⁰² IR-I No. 393 Bates No. 14586, *Thurston County Climate Mitigation Plan* p. 76 (Dec. 2020); IR-I No. 353 Bates
Nos. 10613 – 629, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 2-25 – 2-41. Policy CL-
1.B.6 does call for incentives to support cooling, weatherization, energy and water efficiency, and renewable
energy investments in buildings and land use, but not green buildings. IR-I No. 353 Bates No. 10617, *Id.* p. 2-29.

¹⁰³ IR-I No. 393 Bates No. 14587, *Thurston County Climate Mitigation Plan* p. 77 (Dec. 2020); IR-I No. 353 Bates
Nos. 10613 – 629, Res. No. 16574 Attachment A Thurston County Comprehensive Plan pp. 2-25 – 2-41.

¹⁰⁴ IR-I No. 393 Bates No. 14588, *Thurston County Climate Mitigation Plan* p. 78 (Dec. 2020); IR-I No. 353 Bates
Nos. 10613 – 629, Res. No. 16574 Attachment A Thurston County Comprehensive Plan pp. 2-25 – 2-41.

¹⁰⁵ IR-I No. 393 Bates No. 14589, *Thurston County Climate Mitigation Plan* p. 79 (Dec. 2020); IR-I No. 353 Bates
No. 10618, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 2-30.

1 but also increased the potential for rural development. Action T1.1 calls for coordinated long
2 term planning –future infill and urban sprawl reduction.¹⁰⁶ Action T1.1 says “[l]ook for
3 opportunities to meet the Sustainable Thurston land use vision by reducing urban sprawl.”¹⁰⁷
4 The County does call for urban infill, but also rural infill and gives density bonuses for certain
5 rural clusters.¹⁰⁸ Sustainable Thurston has set a target that between 2010 and 2035, no more
6 than five percent of new housing will locate in the rural areas which also include natural
7 resource lands.¹⁰⁹ Thurston County’s Buildable Lands Report found that the percentage of new
8 housing units locating in rural areas, farms, and forests per year has decreased from a high of 50
9 percent in 2000 to 14 percent in 2014.¹¹⁰ Unfortunately, the “region is not on track to meet the
10 more ambitious targets identified in Sustainable Thurston.”¹¹¹ “Meeting the Sustainable
11 Thurston targets will require changes to expected development patterns in both the urban and
12 rural areas. We will both need to accommodate more growth in urban areas and limit
13 conversion of natural resource lands in rural areas.”¹¹² Thurston County’s Buildable Lands
14 Report found that one of the reasons that the county was able to reduce the percentage of
15 growth in rural areas and farms and forests was because of “[c]hanges in rural cluster zoning
16 ordinances leading to removal of incentives for smaller lots on subdivision that include a
17 resource parcel.”¹¹³ Unfortunately, these changes will be undone by the new density bonuses
18 adopted in Thurston County Code Section (TCC) 20.30A.060 for the Rural Residential
19 Resource – 1/5 District.¹¹⁴ Rural growth matters because the transport-related direct emissions
20 of rural residents are three times the emissions of inner city residents and 1.5 times the
21 emissions of suburban residents.¹¹⁵ This is why Action T1.1 says “[l]ook for opportunities to

20 ¹⁰⁶ IR-I No. 393 Bates No. 14592, *Thurston County Climate Mitigation Plan* p. 82 (Dec. 2020).

21 ¹⁰⁷ IR-I No. 393 Bates No. 14592, *Id.*

22 ¹⁰⁸ IR-I No. 353 Bates Nos. 10659, 10680, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p.
3-30, p. 3-51; IR-I No. 352 Bates Nos. 10413 – 15, Ord. No. 16575 Attachment A.

23 ¹⁰⁹ IR-I No. 536 Bates No. 23846, Thurston Regional Planning Council, *Buildable Lands Report for Thurston
County* p. 5 (June 2021).

24 ¹¹⁰ IR-I No. 536 Bates No. 23896, *Id.* p. 55.

25 ¹¹¹ IR-I No. 536 Bates No. 23846, *Id.* p. 5.

26 ¹¹² IR-I No. 536 Bates No. 23846, *Id.*

¹¹³ IR-I No. 536 Bates No. 23896, *Id.* p. 55.

¹¹⁴ IR-I No. 352 Bates Nos. 10413 – 15, Ord. No. 16575 Attachment A.

¹¹⁵ IR-I No. 764 Bates No. 34452, Jeffrey Wilson, Jamie Spinney, Hugh Millward, Darren Scott, Anders Hayden,
and Peter Tyedmers, *Blame the exurbs, not the suburbs: Exploring the distribution of greenhouse gas emissions
within a city region* 62 ENERGY POLICY 1329, p. 1335 (2013). Energy Policy is a peer reviewed journal. IR-I No.
765 Bates No. 34466, Energy Policy Guide for authors webpage p. *14.

1 meet the Sustainable Thurston land use vision by reducing urban sprawl.”¹¹⁶ The clusters and
2 bonuses will increase growth in the rural area, increase greenhouse pollution, and is not
3 consistent with the Sustainable Thurston targets.

4 Action T1.2 calls for middle housing which the county allows in the Grand Mound UGA.¹¹⁷
5 Action T1.3 calls on identifying potential “Eco Districts.”¹¹⁸ The County did not identify any
6 “Eco Districts.”¹¹⁹ Action T1.4 calls for 20-minute neighborhoods, but the county did not
7 identify or adopt any.¹²⁰

8 The County allows attached and detached accessory dwelling units in the urban growth
9 areas as Action T1.9 calls for, but also allows them in some rural areas.¹²¹ The allowance for
10 rural area accessory dwelling units matter because the transport-related direct emissions of rural
11 residents are three times those of inner city residents and 1.5 times those of suburban
12 residents.¹²² This is why the action only calls for attached and detached ADUs in urban
13 residential areas.¹²³ Action T1.11 calls for integrated land use efficiency goals, but the County
14 did not identify or adopt any.¹²⁴

15 For Strategy T2, increase efficiency of the transportation system, the County adopted three
16 actions, transportation efficiency, vehicle efficiency outreach, and teleworking/flex work, but
17 did not adopt providing for telecommuting infrastructure.¹²⁵ For Strategy T3, increase adoption
18 of electric vehicles (EV), the County adopted four actions, EV parking in new construction,
19 EV-ready building codes, allowing charging stations where they are needed, and zero emission

116 IR-I No. 393 Bates No. 14592, *Thurston County Climate Mitigation Plan* p. 82 (Dec. 2020).

117 IR-I No. 393 Bates No. 14592, *Id.*; IR-I No. 353 Bates Nos. 10613 – 629, Res. No. 10814 Attachment A
Thurston County Comprehensive Plan p. 7-24.

118 IR-I No. 393 Bates No. 14592, *Thurston County Climate Mitigation Plan* p. 82 (Dec. 2020).

119 IR-I No. 353 Bates Nos. 10613 – 629, 11148, 11238 – 302, Res. No. 16574 Attachment A Thurston County
Comprehensive Plan pp. 1 – 3-57, Attachment C L-1 Future Land Use map, & Attachment F.

120 IR-I No. 393 Bates No. 14593, *Thurston County Climate Mitigation Plan* p. 83 (Dec. 2020); IR-I No. 353 Bates
Nos. 10613 – 629, 11148, 11238 – 302, Res. No. 16574 Attachment A Thurston County Comprehensive Plan pp. 1
– 3-57, Attachment C L-1 Future Land Use map, & Attachment F.

121 IR-I No. 393 Bates No. 14588, *Thurston County Climate Mitigation Plan* p. 83 (Dec. 2020); IR-I No. 352 Bates
Nos. 10358 – 59, 10386 – 404, 10427 – 30, Ord. No. 16575 Attachment A.

122 IR-I No. 764 Bates No. 34452, Jeffrey Wilson, Jamie Spinney, Hugh Millward, Darren Scott, Anders Hayden,
and Peter Tyedmers, *Blame the exurbs, not the suburbs: Exploring the distribution of greenhouse gas emissions
within a city region* 62 ENERGY POLICY 1329, p. 1335 (2013).

123 IR-I No. 393 Bates No. 14588, *Thurston County Climate Mitigation Plan* p. 83 (Dec. 2020).

124 IR-I No. 393 Bates No. 14593, *Thurston County Climate Mitigation Plan* p. 83 (Dec. 2020); IR-I No. 353 Bates
Nos. 10613 – 629, 11238 – 302, Res. No. 16574 Attachment A Thurston County Comprehensive Plan pp. 1 – 3-57,
& Attachment F.

125 IR-I No. 393 Bates No. 14594, *Thurston County Climate Mitigation Plan* p. 84 (Dec. 2020); IR-I No. 353 Bates
Nos. 10859 – 70, Res. No. 16574 Attachment A Thurston County Comprehensive Plan pp. 8-33 – 8-44.

1 fleets for governments (although with the problems identified above), and did not adopt four
2 actions, free EV parking at public buildings and increasing the cost of parking for non-EV
3 vehicles, EV education, EV mass purchase discounts, and EV purchase incentives.¹²⁶ For
4 Strategy T4, increase the use of public transit, the County adopted all four actions within its
5 existing authority.¹²⁷ For Strategy T5, increase use of active forms of travel (such as, bicycling,
6 walking), the County adopted one action, walk/bike infrastructure, and did not adopt three
7 actions, developing a regional inventory to identify gaps in connectivity, school drop-off
8 alternative modes, and mode -shift targets and car fee areas.¹²⁸

9 For Strategies W1, W2, and W3, increase the efficiency of water and wastewater
10 infrastructure, consumption, and emissions, the County adopted two actions, municipal energy
11 efficiency and nitrous oxide capture, but not the water audit action.¹²⁹ For Strategies W4 and
12 W6, divert more solid waste from landfills and reduce consumption of carbon-intensive goods,
13 the County adopted the three actions.¹³⁰

14 For Strategies A1 and A2, reduce emissions from agricultural practices and support
15 agricultural practices to sequester carbon, the County adopted both actions.¹³¹ For Strategies
16 A5, A6, and A7, preserve tree canopy and manage forests and prairies to sequester carbon,
17 action A5.1 called on the County to develop a coordinated reforestation/afforestation
18 program.¹³² But the Comprehensive Plan only calls for determining the feasibility of large-scale
19 options for water storage, including reforestation not the carbon storage called for in action

126 IR-I No. 393 Bates Nos. 14595 – 96, *Thurston County Climate Mitigation Plan* pp. 85 – 86 (Dec. 2020); IR-I
20 No. 352 Bates No. 10447 – 450, Ord. No. 16575 Attachment A; IR-I No. 353 Bates Nos. 10613 – 29, 10859 – 70,
21 Res. No. 16574 Attachment A Thurston County Comprehensive Plan pp. 2-25 – 2-41, pp. 8-33 – 8-44.

127 IR-I No. 393 Bates No. 14596, *Thurston County Climate Mitigation Plan* p. 86 (Dec. 2020); IR-I No. 352 Bates
22 No. 10447 – 450, Ord. No. 16575 Attachment A; IR-I No. 353 Bates Nos. 10850 – 51, 10859 – 70, Res. No. 16574
23 Attachment A Thurston County Comprehensive Plan pp. 8-24 – 8-25, pp. 8-33 – 8-44.

128 IR-I No. 393 Bates No. 14597, *Thurston County Climate Mitigation Plan* p. 87 (Dec. 2020); IR-I No. 352 Bates
24 No. 10447 – 450, Ord. No. 16575 Attachment A; IR-I No. 353 Bates Nos. 10850 – 51, 10859 – 70, Res. No. 16574
25 Attachment A Thurston County Comprehensive Plan pp. 8-24 – 8-25, pp. 8-33 – 8-44.

129 IR-I No. 393 Bates No. 14600, *Thurston County Climate Mitigation Plan* p. 90 (Dec. 2020); IR-I No. 353 Bates
26 Nos. 10620, 10915, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 2-32 p. 10-18.

130 IR-I No. 393 Bates No. 14601, *Thurston County Climate Mitigation Plan* p. 91 (Dec. 2020); IR-I No. 353 Bates
Nos. 10899, 10917 – 19, 11065, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 9-29 pp.
10-18 – 10-20, p. B-10.

131 IR-I No. 393 Bates No. 14604, *Thurston County Climate Mitigation Plan* p. 94 (Dec. 2020); IR-I No. 353 Bates
No. 10626, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 2-38.

132 IR-I No. 393 Bates No. 14605, *Thurston County Climate Mitigation Plan* p. 95 (Dec. 2020); IR-I No. 353 Bates
No. 10626, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 2-38.

1 A5.1.¹³³ The other actions call for maximizing tree canopy on county owned land and tree
2 canopy preservation, but the tree policies will not achieve these outcomes.¹³⁴ Strategy A7.3,
3 calls for the preservation and restoration of prairie habitat, Policy CL-7.A.6 calls for protecting
4 and restoring prairies consistent with the strategy.¹³⁵

5 Action G1.7 calls on the County to work with higher education institutions to research
6 methods to effectively change behavior, the County did not incorporate this action.¹³⁶ Action
7 G4.4 calls for developing a data and monitoring mechanism that is specific to marginalized
8 groups and their needs related to climate change and Action G4.6 calls for the adoption of
9 policies that require the use of a social price for carbon in zoning and development, the County
10 did not incorporate these actions.¹³⁷ Action G5.5 calls for prioritizing climate mitigation policy
11 in the County’s legislative agenda each year, the County did not incorporate this action.¹³⁸

12 Many of the policies in the comprehensive plan also have the same deficits argued under
13 Issue 1A above. As this analysis argues, the County Comprehensive Plan adopted 32 of the
14 actions and failed to adopt 30 of the actions, adopting only 52 percent of the actions called for
15 in the *Thurston County Climate Mitigation Plan*.¹³⁹ For the accessory dwelling units and the
16 density bonuses in the Rural Residential Resource – 1/5 District, rural growth will increase
17 increasing greenhouse gas pollution. The County Comprehensive Plan failed to include policies
18 needed to achieve a 45 percent reduction in emissions by 2030 and an 85 percent reduction by
19 2050 let alone the County’s adopted net-zero emissions by 2050, a 95 percent reduction
20 target.¹⁴⁰ This violates RCW 36.70A.070’s requirement that the comprehensive plan “shall be
21 an internally consistent document . . .,” RCW 36.70A.020(14)’s climate goal, and RCW

22 ¹³³ IR-I No. 393 Bates No. 14605, *Thurston County Climate Mitigation Plan* p. 95 (Dec. 2020); IR-I No. 353 Bates
23 No. 10919, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 10-20.

24 ¹³⁴ IR-I No. 393 Bates No. 14605, *Thurston County Climate Mitigation Plan* p. 95 (Dec. 2020); IR-I No. 353 Bates
25 No. 10712, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 4-26.

26 ¹³⁵ IR-I No. 393 Bates No. 14605, *Thurston County Climate Mitigation Plan* p. 95 (Dec. 2020); IR-I No. 353 Bates
No. 10625, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 2-37.

¹³⁶ IR-I No. 393 Bates No. 14608, *Thurston County Climate Mitigation Plan* p. 98 (Dec. 2020); IR-I No. 353 Bates
No. 10609 – 29, Res. No. 16574 Attachment A Thurston County Comprehensive Plan pp. 2-21 – 41.

¹³⁷ IR-I No. 393 Bates No. 14609, *Thurston County Climate Mitigation Plan* p. 99 (Dec. 2020); IR-I No. 353 Bates
No. 10609 – 29, Res. No. 16574 Attachment A Thurston County Comprehensive Plan pp. 2-21 – 41.

¹³⁸ IR-I No. 393 Bates No. 14610, *Thurston County Climate Mitigation Plan* p. 100 (Dec. 2020); IR-I No. 353
Bates No. 10609 – 29, Res. No. 16574 Attachment A Thurston County Comprehensive Plan pp. 2-21 – 41.

¹³⁹ IR-I No. 393 Bates Nos. 14584 – 610, *Thurston County Climate Mitigation Plan* pp. 74 – 100 (Dec. 2020).

¹⁴⁰ IR-I No. 393 Bates No. 14572, *Thurston County Climate Mitigation Plan* p. 62 (Dec. 2020); IR-I No. 353 Bates
Nos. 10613, Res. No. 16574 Attachment A Thurston County Comprehensive Plan p. 2-25.

1 36.70A.070(9)(d)(i)'s requirement that the greenhouse gas emissions reduction subelement
2 "must" identify the actions the jurisdiction will take that result in reductions in overall
3 greenhouse gas emissions generated by transportation and land use.

4 **C. The adoption of Ord. No. 16575 failed to identify the actions the jurisdiction will take
5 in its development regulations to reduce overall greenhouse gas emissions and to
6 prioritize reductions that benefit overburdened communities.**

7 RCW 36.70A.070(9)(d)(i) provides that the development regulations implementing the
8 greenhouse gas emissions reduction subelement must identify the actions that will result in
9 reductions in overall greenhouse gas emissions generated by transportation and land use"

10 RCW 36.70A.130(1)(e) provides that "[a]ny amendment of or revision to development
11 regulations shall be consistent with and implement the comprehensive plan." With the
12 exceptions of ADUs in urban growth areas and the measures related to electric car charging,
13 Ord. No. 16575 failed to identify the actions the jurisdiction will take to reduce overall
14 greenhouse gas emissions and prioritize reductions that benefit overburdened communities.¹⁴¹
15 For example, the development regulations do not include regulations to reduce tree loss by 90
16 percent by 2050.¹⁴² Ord. No. 16575 includes provisions that will increase rural growth and
17 thereby increase greenhouse gas pollution, such as the new density bonuses adopted in TCC
18 20.30A.060 as was argued above.¹⁴³ By failing to identify the actions the jurisdiction will take
19 in its development regulations to reduce overall greenhouse gas emissions and to prioritize
20 reductions that benefit overburdened communities, Ord. No. 16575 violated RCW
21 36.70A.070(9)(d)(i) and RCW 36.70A.130(1)(e).

22 **Issue 2. Did Thurston County's adoption of Resolution No. 16574 and Ordinance No.
23 16575 violate RCW 36.70A.020 and (14); RCW 36.70A.070; RCW
24 36.70A.070(1); RCW 36.70A.070(5); RCW 36.70A.070(9); RCW 36.70A.095;
25 RCW 36.70A.100; RCW 36.70A.120; RCW 36.70A.130(1)(a), (1)(e), and (5)(b);
26 RCW 36.70A.190; RCW 36.70A.210; RCW 36.70A.290(2); WAC 365-196-443;
and Thurston County Countywide Planning Policy 10.2 because the
comprehensive plan's Chapter Two Climate, Chapter Three Land Use, Chapter
Four Environment, Recreation, and Open Space, Chapter Eight Transportation,**

141 IR-I No. 352 Bates Nos. 10356 – 459, 10461 – 522, Ord. No. 16575 Attachment A & B.

142 IR-I No. 028 Bates No. 00774, Wash. State Dep't of Commerce, *Thurston County 2022 Greenhouse Gas Emissions Analysis* p. 28 (v3.5.1); IR-I No. 352 Bates Nos. 10356 – 459, Ord. No. 16575 Attachment A.

143 IR-I No. 352 Bates Nos. 10413 – 15, Ord. No. 16575 Attachment A; IR-I No. 764 Bates No. 34452, Jeffrey Wilson, Jamie Spinney, Hugh Millward, Darren Scott, Anders Hayden, and Peter Tyedmers, *Blame the exurbs, not the suburbs: Exploring the distribution of greenhouse gas emissions within a city region* 62 ENERGY POLICY 1329, p. 1335 (2013).

1 **and Chapter Nine Capital Facilities and the amended development regulations**
2 **fail to equitably enhance resiliency to, and avoid or substantially reduce the**
3 **adverse impacts of, climate change and the climate goal and related**
4 **requirements and allow development and facilities inconsistent with climate**
5 **resiliency?**

6 Thurston County’s own records establish that its entire Puget Sound shoreline sits within the
7 sea level rise inundation zone, that emissions are not on track to meet regional targets, and that
8 flooding, wildfire, heat, and drought pose escalating risks to county residents and
9 ecosystems.¹⁴⁴ Futurewise supports the County’s adoption of several significant resiliency
10 policies, including Policy CL-1.A.8 directing growth away from natural hazards, Policy CL-
11 7.A.8 requiring development siting and setback standards to allow wetland and habitat
12 migration, and Policy CL-5.B.8 committing the County to a sea level rise planning framework
13 aligned with the California Coastal Commission approach.¹⁴⁵ These are meaningful
14 commitments. But the County adopted a resiliency subelement whose remaining policies defer
15 action to some undefined future date rather than addressing the documented hazards, paired
16 those commitments with no implementing development regulations, and left comprehensive
17 plan Chapters Three, Four, Eight, and Nine inconsistent with the climate element’s own
18 requirements. This violates RCW 36.70A.020(14); RCW 36.70A.070; RCW 36.70A.070(1),
19 (5), and (9); RCW 36.70A.095; RCW 36.70A.100; RCW 36.70A.120; RCW 36.70A.130(1)(a),
20 (1)(e), and (5)(b); RCW 36.70A.190; RCW 36.70A.210; RCW 36.70A.290(2); WAC 365-196-
21 443; and Thurston County Countywide Planning Policy 10.2.

22 RCW 36.70A.020(14)’s climate goal requires that comprehensive plans, development
23 regulations, and regional policies “adapt to and mitigate the effects of a changing climate;
24 support reductions in greenhouse gas emissions and per capita vehicle miles traveled; prepare
25 for climate impact scenarios; foster resiliency to climate impacts and natural hazards; protect
26 and enhance environmental, economic, and human health and safety; and advance
environmental justice.” HB 1181 (Laws of 2023, ch. 228) added RCW 36.70A.070(9), requiring

¹⁴⁴ IR-I No. 432 Bates No. 17367, The Emergency Management Council of Thurston County, Hazards Mitigation Plan for the Thurston Region p. 4.5-2 (4th Ed. Nov. 2023); IR-I No. 415 Bates No. 16075, Thurston Regional Planning Council, Thurston Climate Mitigation 2022 Progress Report p. 1 (Jan. 2023); IR-I No. 353 Bates No. 10592, Thurston County Comprehensive Plan 2045 Chapter 2: Climate p. 2-4 (Dec. 16, 2025).

¹⁴⁵ IR-I No. 353 Bates Nos. 10616, 10625, 10623, Thurston County Comprehensive Plan 2045 Chapter 2: Climate p. 2-28 (Dec. 16, 2025) (Policy CL-1.A.8); *Id.* at p. 2-37 (Policy CL-7.A.8); *Id.* at p. 2-35 (Policy CL-5.B.8).

1 all jurisdictions planning under RCW 36.70A.040 to adopt a climate change and resiliency
2 element that “must enhance resiliency to and avoid the adverse impacts of climate change.”¹⁴⁶
3 The resiliency subelement is mandatory for all fully planning jurisdictions.¹⁴⁷ The statute is
4 unequivocal: the subelement “must equitably enhance resiliency to, and avoid or substantially
5 reduce the adverse impacts of, climate change in human communities and ecological systems
6 through goals, policies, and programs consistent with the best available science and
7 scientifically credible climate projections and impact scenarios.”¹⁴⁸ “Specific” goals, policies,
8 and programs of the resiliency subelement “must include, but are not limited to, those designed
9 to:”

10 (A) Identify, protect, and enhance natural areas to foster resiliency to climate
11 impacts, as well as areas of vital habitat for safe passage and species migration;

12 (B) Identify, protect, and enhance community resiliency to climate change impacts,
13 including social, economic, and built environment factors, that support adaptation
14 to climate impacts consistent with environmental justice; and

15 (C) Address natural hazards created or aggravated by climate change, including sea
16 level rise, landslides, flooding, drought, heat, smoke, wildfire, and other effects of
17 changes to temperature and precipitation patterns.¹⁴⁹

18 Development regulations must be consistent with and implement the comprehensive plan.¹⁵⁰
19 “The plan shall be an internally consistent document and all elements shall be consistent with
20 the future land use map.”¹⁵¹ The plan must also be consistent with applicable countywide
21 planning policies adopted under RCW 36.70A.210. Thurston County’s Countywide Planning
22 Policy 10.2, adopted March 18, 2025, requires the County to establish “a pattern and intensity
23 of land and resource use that is in concert with the ability of land and resources to sustain such
24 use, reduce the effects of the built environment on the natural environment, conserve natural
25 resources, and enable continued resource use,” through “[l]and-use and transportation plans and
26 actions that encourage compact development and concentrate development in urban growth
27 areas” and “[p]lanning for the amount of population that can be sustained by our air, land, and

146 RCW 36.70A.070(9)(a).

147 RCW 36.70A.070(9)(c).

148 RCW 36.70A.070 (9)(e)(i).

149 RCW 36.70A.070(9)(e)(i)(A)–(C).

150 RCW 36.70A.120; RCW 36.70A.130(1)(e).

151 RCW 36.70A.070.

1 water resources without degrading livability and environmental quality.”¹⁵² Commerce’s
2 Intermediate Climate Element Planning Guidance (December 2023) instructs jurisdictions to
3 use “strong and directive verbs” in climate policies “where possible, and amend development
4 regulations such as zoning or building standards to ensure that your measures achieve” the
5 required results.¹⁵³ The Board affords Commerce guidance “significant weight in recognition of
6 the Department’s administrative expertise” when consistent with the statute.¹⁵⁴

7 Throughout RCW 36.70A.070(9), the Legislature used “must”—not “should,” not “may,”
8 not “encourage.” “Must” is mandatory.¹⁵⁵ RCW 36.70A.070(9)(e)(i)(C) requires “specific”
9 goals, policies, and programs designed to “[a]ddress natural hazards created or aggravated by
10 climate change.” To “address” means “to make right.”¹⁵⁶ When the Legislature has not defined
11 a statutory term, courts apply its plain and ordinary meaning.¹⁵⁷ Policies directing a county to
12 “evaluate” risks, “develop strategies,” “encourage,” or “seek” cost-effective approaches do not
13 “make right” those hazards—they postpone action to some undefined future date. The
14 requirement is for “specific goals, policies, and programs” presently “designed to” address
15 hazards, not future commitments to study them. This interpretive framework applies equally to
16 the parallel requirements to “identify, protect, and enhance” natural areas and community
17 resilience under RCW 36.70A.070(9)(e)(i)(A) and (B): a policy committing to identify
18 something in the future does not presently identify it. Commerce’s guidance confirms this
19 reading: “[A] set of policies limited to ‘study’ or ‘consideration’ will not reduce GHG
20 emissions” and jurisdictions must use language “associated with implementation actions” rather
21 than “initial steps.”¹⁵⁸ The choice to use weak, aspirational language in resiliency policies is not
22 merely a stylistic preference—it is a failure to comply with the substantive requirements that
23 Commerce’s guidance, consistent with the statute, establishes.

24 ¹⁵² Thurston County County-wide Planning Policies (CWPP) 10.2(a), (c) p. 16 (3.18.2025) enclosed in the exhibits.

25 ¹⁵³ IR-I No. 483 Bates No. 21377, Wash. State Dep’t of Commerce, *Climate Element Planning Guidance* p. 7 (Dec. 2023 V3.1).

26 ¹⁵⁴ *Futurewise, Kian Bradley, and Trevor Reed v. City of Mercer Island*, CPSRGMHB Case No. 25-3-0003, Final Decision and Order (Aug. 1, 2025), at 39 – 40 of 67.

¹⁵⁵ *Kittitas Cnty. v. E. Washington Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 172, 256 P.3d 1193 (2011).

¹⁵⁶ WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY p. 24 (2002).

¹⁵⁷ *State, Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11, 43 P.3d 4, 10 (2002).

¹⁵⁸ IR-I No. 483 Bates No. 21434, Wash. State Dep’t of Commerce, *Climate Element Planning Guidance* p. 64 (Dec. 2023 V3.1).

1 **A. The adoption of Res. No. 16574 and Ord. No. 16575 failed to equitably enhance**
2 **resiliency to climate change because the resiliency subelement’s policies are**
3 **impermissibly aspirational.**

4 The County’s own records establish serious and documented hazards demanding action, not
5 further study—hazards already threatening specific places, industries, and communities that
6 Thurston County residents depend on. The Hazards Mitigation Plan for the Thurston Region
7 documents that “[t]he entirety of the unincorporated Thurston County Puget Sound shoreline is
8 in the sea level rise inundation area. Mud Bay and the Nisqually Delta will experience the
9 greatest impacts.”¹⁵⁹ Marine bluffs at Boston Harbor and Burfoot Park are already at risk of
10 accelerated erosion as rising seas increase wave action and destabilize coastal cliffs.¹⁶⁰ Coastal
11 wetlands in the Nisqually National Wildlife Refuge—home to more than 200 bird species and
12 critical habitat for Chinook and coho salmon and migratory birds—face inundation with
13 nowhere inland to migrate, and are projected to lose all high-marsh habitat under the “mid” sea
14 level rise scenario and convert entirely to mudflats under the “high” scenario by century’s
15 end.¹⁶¹ The county’s aquaculture industry—centered on the warm, nutrient-rich tidal flats of
16 southern Puget Sound and including the Olympia oyster, a native species of significant cultural,
17 economic, and environmental value—faces simultaneous stressors from sea level rise, ocean
18 acidification, and heat events; aquaculture operations located in sea level rise areas face harm
19 even where no structures are present, and the 2021 Heat Dome alone killed extremely large
20 amounts of oysters, mussels, and clams along Thurston County’s tidal flats.¹⁶² The Steamboat
21 Island Peninsula and the Boston Harbor/South Bay Peninsula are among the communities the
22 record identifies as facing the highest wildfire risk in the county, with approximately 34 percent
23 of unincorporated structures—18,500 buildings—already in the wildland-urban interface.¹⁶³

24 ¹⁵⁹ IR-I No. 432 Bates No. 17367, The Emergency Management Council of Thurston County, Hazards Mitigation
25 Plan for the Thurston Region p. 4.5-2 (4th Ed. Nov. 2023).

26 ¹⁶⁰ IR-I No. 455 Bates No. 21061, Thurston County Climate Change Vulnerability Assessment p. 35 (Nov. 2024).

¹⁶¹ IR-I No. 366 Bates No. 12244, Thurston Regional Planning Council, Vulnerability Assessment p. 64 (Dec.
2016); IR-I No. 455 Bates No. 21061, Thurston County Climate Change Vulnerability Assessment p. 35 (Nov.
2024).

¹⁶² IR-I No. 455 Bates No. 21060, Thurston County Climate Change Vulnerability Assessment p. 34 (Nov. 2024);
IR-I No. 370 Bates No. 12853, Thurston Regional Planning Council, Thurston Climate Adaptation Plan: Climate
Resilience Actions for Thurston County and South Puget Sound p. 48 (2018).

¹⁶³ IR-I No. 366, Bates No. 12254, Thurston Regional Planning Council, Vulnerability Assessment p. 74 (Dec.
2016); IR-I No. 353 Bates No. 10605, Thurston County Comprehensive Plan 2045 Chapter 2: Climate p. 2-17
(Dec. 16, 2025).

1 Average annual temperatures have warmed 2.4°F over the past century.¹⁶⁴ Communitywide
2 greenhouse gas emissions are “still not on track to meet the 2030 and 2050 targets.”¹⁶⁵

3 Futurewise supports the specific resiliency policies the County did adopt. Policy CL-1.A.8
4 directs growth away from natural hazards including sea level rise, flooding, smoke, and
5 wildfire—a meaningful step toward compliance with RCW 36.70A.070(9)(e)(i)(C).¹⁶⁶ Policy
6 CL-7.A.8 commits the County to establishing development siting and setback standards to
7 allow wetland and habitat migration as sea levels rise, directly responsive to RCW
8 36.70A.070(9)(e)(i)(A).¹⁶⁷ Policy CL-5.B.8 commits the County to the California Coastal
9 Commission framework for sea level rise planning—a science-based approach Futurewise
10 supported in its comment letters.¹⁶⁸ Futurewise continues to support these policies.

11 But the remaining resiliency policies are impermissibly aspirational and do not satisfy the
12 mandatory “must address” standard. To “address” a natural hazard is to “make right” that
13 hazard—not to study it.¹⁶⁹ Consider what the record tells us is at stake in Thurston County and
14 what the adopted policies actually require. The entire Puget Sound shoreline of unincorporated
15 Thurston County—including the marine bluffs at Boston Harbor and Burfoot Park, the shellfish
16 beds of southern Puget Sound, and the tidal marshes of the Nisqually National Wildlife
17 Refuge—sits in the sea level rise inundation zone.¹⁷⁰ Yet Policy CL-1.A.4 calls for the County
18 to “[i]dentify and implement strategies to increase the resilience of the shoreline environment to
19 sea-level rise and other climate hazards.”¹⁷¹ Strategies to be identified in the future do not
20 presently identify, protect, or enhance the shoreline as RCW 36.70A.070(9)(e)(i)(A) and (C)
21 require. Policy CL-1.B.1 directs the County to “[i]dentify and assess cost-effective project

22 ¹⁶⁴ IR-I No. 353 Bates No. 10593, Thurston County Comprehensive Plan 2045 Chapter 2: Climate p. 2-5 (Dec. 16,
23 2025).

24 ¹⁶⁵ IR-I No. 415, Bates No. 16075, Thurston Regional Planning Council, Thurston Climate Mitigation 2022
25 Progress Report p. 1 (Jan. 2023).

26 ¹⁶⁶ IR-I No. 353 Bates No. 10616, Thurston County Comprehensive Plan 2045 Chapter 2: Climate p. 2-28 (Dec.
16, 2025).

¹⁶⁷ IR-I No. 353 Bates No. 10625, Thurston County Comprehensive Plan 2045 Chapter 2: Climate p. 2-37 (Dec.
16, 2025).

¹⁶⁸ IR-I No. 353 Bates No. 10623, Thurston County Comprehensive Plan 2045 Chapter 2: Climate p. 2-35 (Dec.
16, 2025); IR-I No. 749 Bates Nos. 34262 – 64, Futurewise Comments on Thurston 2045 pp. 5–7 (Nov. 3, 2025).

¹⁶⁹ WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY p. 24 (2002).

¹⁷⁰ IR-I No. 432, Bates No. 17367, Hazards Mitigation Plan for the Thurston Region p. 4.5-2 (4th Ed. Nov. 2023);
IR-I No. 455 Bates No. 21061, Thurston County Climate Change Vulnerability Assessment p. 35 (Nov. 2024).

¹⁷¹ IR-I No. 353 Bates No. 10616, Thurston County Comprehensive Plan 2045 Chapter 2: Climate p. 2-28 (Dec.
16, 2025) (Policy CL-1.A.4).

1 opportunities for increasing resilience” and to “[s]eek cost effective approaches to
2 implementing climate adaptation and mitigation actions.”¹⁷² Assessment and seeking are not
3 action. Policy CL-1.B.4 “[d]iscourage[s] development in riverine or marine flood hazard areas
4 when feasible.”¹⁷³ “Discourage when feasible” is not a prohibition, not a setback standard, and
5 not calibrated to any sea level rise projection; the unlimited “when feasible” qualifier renders
6 the policy unenforceable against any specific development proposal on the Puget Sound
7 shoreline. Policy CL-4.A.3 directs the County to “[a]ssess and implement adaptation measures
8 to mitigate the vulnerability of the county’s aquifers, drainage systems, wastewater systems,
9 and septic systems to saltwater intrusion, inundation from rising sea levels.”¹⁷⁴ Saltwater
10 intrusion threatening Thurston County’s aquifers and the shellfish beds of southern Puget
11 Sound is a documented, present risk—most acute in areas of low topographic relief including
12 downtown Olympia, the Nisqually Valley, and the Steamboat Island area.¹⁷⁵ The policy
13 sequences assessment before action with no timeline for when implementation must follow.
14 Policy CL-4.A.7 calls for the County to “[e]ncourage sponsoring research by the county and
15 regional partners to develop and implement resilient water resource management
16 techniques.”¹⁷⁶ Encouraging others to sponsor research into future management techniques
17 while the Olympia oyster’s native habitat faces documented acidification and inundation is two
18 steps removed from addressing a current hazard. Policy CL-5.B.6 directs the County to “[p]lan
19 and prepare for climate change impacts so as to reduce damage from droughts, flooding, tree
20 disease, wildfires, and other hazards.”¹⁷⁷ Planning to plan does not make right any hazard.
21 Policy CL-8.A.4 calls for the County to “[p]romote the Voluntary Stewardship Program to
22 encourage farmers to adopt sustainable practices.”¹⁷⁸ This policy promotes an incentive
23 program to encourage voluntary action—doubly aspirational, and entirely unconnected to any
24 making right any specific hazard.
25
26

¹⁷² IR-I No. 353 Bates No. 10617, *Id.* at p. 2-29 (Policy CL-1.B.1).

¹⁷³ IR-I No. 353 Bates No. 10617, *Id.* (Policy CL-1.B.4).

¹⁷⁴ IR-I No. 353 Bates No. 10621, *Id.* at p. 2-33 (Policy CL-4.A.3).

¹⁷⁵ IR-I No. 366 Bates No. 12229, Thurston Regional Planning Council, Vulnerability Assessment p. 49 (Dec. 2016).

¹⁷⁶ IR-I No. 353 Bates No. 10621, Thurston County Comprehensive Plan 2045 Chapter 2: Climate p. 2-33 (Dec. 16, 2025) (Policy CL-4.A.7).

¹⁷⁷ IR-I No. 353 Bates No. 10623, *Id.* at p. 2-35 (Policy CL-5.B.6).

¹⁷⁸ IR-I No. 353 Bates No. 10626, *Id.* at p. 2-38 (Policy CL-8.A.4).



1 The contrast with the County’s own directive policies confirms that the choice of
2 aspirational language was deliberate. Policy CL-7.A.1 provides: “Ensure no net loss of
3 ecosystem composition, structure, and functions.”¹⁷⁹ Policy CL-7.A.4 directs the County to
4 “[e]stablish incentives and regulations to maintain open space and/or riparian buffers.”¹⁸⁰ Policy
5 CL-3.A.4 directs the County to “[d]evelop, implement, and enforce construction and demolition
6 recycling and deconstruction ordinances.”¹⁸¹ The County reserved “ensure,” “establish,” and
7 “enforce” for other policy areas and used “discourage when feasible,” “evaluate,” “encourage,”
8 and “seek” for the hazard-specific resiliency provisions the statute most directly addresses. This
9 pattern of aspirational language does not comply with the Legislature’s mandatory “must” or
10 with Commerce’s directive that jurisdictions use “strong and directive verbs” in climate
11 policies.¹⁸²

**B. The adoption of Res. No. 16574 and Ord. No. 16575 violated the GMA because no
development regulations implement the resiliency subelement.**

12 RCW 36.70A.120 and RCW 36.70A.130(1)(e) require that development regulations
13 implement the comprehensive plan. Whatever the merit of individual resiliency policies, they
14 are unenforceable without implementing regulations. Ord. No. 16575—the development
15 regulations adopted as part of the Thurston 2045 periodic update—does not include sea level
16 rise setback or prohibition regulations, does not include development siting and setback
17 standards implementing Policy CL-7.A.8, and does not include wildfire interface regulations
18 implementing Policy CL-1.B.2.¹⁸³ The County did not leave these gaps by oversight. Ordinance
19 No. 16575, Section 1.B, Finding 4, affirmatively states that the County reviewed its critical
20 areas regulations and determined that “no revisions are required at this time.”¹⁸⁴ Finding 5
21 states that the County intends to pursue “elective updates to the Critical Areas Ordinance in
22 2026.”¹⁸⁵ The County considered whether to adopt implementing regulations related to critical

23 ¹⁷⁹ IR-I No. 353 Bates No. 10624, *Id.* p. 2-36 (Policy CL-7.A.1).

24 ¹⁸⁰ IR-I No. 353 Bates No. 10625, *Id.* at p. 2-37 (Policy CL-7.A.4).

25 ¹⁸¹ IR-I No. 353 Bates No. 10621, *Id.* at p. 2-33 (Policy CL-3.A.4).

26 ¹⁸² IR-I No. 483 Bates No. 21377, Wash. State Dept of Commerce, *Climate Element Planning Guidance* p. 7 (Dec. 2023 V3.1).

¹⁸³ IR-I No. 352 Bates Nos. 10356 – 459, Ord. No. 16575 Attachment A.

¹⁸⁴ IR-I No. 353 Bates No. 10533, Res. No. 16574 p. 3.

¹⁸⁵ IR-I No. 352 Bates No. 10350 – 51, Ord. No. 16575, § 1.B, Findings 4–5 (Dec. 16, 2025).

1 areas, such as fish and wildlife habitats and flooding, and concluded it did not need to.¹⁸⁶ That
2 conclusion was clearly erroneous.

3 The regulatory gaps are concrete and specific. First, the County committed in Policy CL-
4 5.B.8 to plan for sea level rise “utilizing a framework aligned with the California Coastal
5 Commission approach.”¹⁸⁷ That approach requires adoption of development regulations
6 calibrated to long-term sea level rise projections because “development constructed today is
7 likely to remain in place over the next 75–100 years, or longer.”¹⁸⁸ The record documents that
8 marine bluffs are already experiencing accelerated erosion as rising seas increase wave action
9 and destabilize coastal cliffs.¹⁸⁹ Development approved today in those areas without setbacks
10 calibrated to projected sea level rise locks in risk for the life of those structures and beyond. No
11 such regulations exist in Ord. No. 16575.¹⁹⁰ The County made the policy commitment and then
12 declined to adopt the regulations its own policy required, precisely what Commerce’s guidance
13 instructs jurisdictions to avoid.¹⁹¹ Futurewise raised this specific gap in its April 23, 2025, and
14 November 3, 2025, letters to Thurston County and the Board of County Commissioners.¹⁹²
Further, RCW 36.70A.070(9)(e)(i)(C) requires “[a]ddress[ing] natural hazards created or
aggravated by climate change, including sea level rise”

15 Second, Policy CL-7.A.8 itself uses directive language: “Establish development siting and
16 setback standards for development and redevelopment that allow for necessary movement of
17 habitat and vegetation.”¹⁹³ The County adopted this commitment in its comprehensive plan. No
18 corresponding siting and setback standards appear in Ord. No. 16575.¹⁹⁴ The stakes of this
19 omission are specific and documented. The Nisqually National Wildlife Refuge—whose
wetlands, tidal marshes, and estuary provide critical habitat for salmon, migratory birds, and

20 _____
¹⁸⁶ RCW 36.70A.030(12) (2025).

21 ¹⁸⁷ IR-I No. 353 Bates No. 10623, Thurston County Comprehensive Plan 2045 Chapter 2: Climate p. 2-35 (Dec.
16, 2025) (Policy CL-5.B.8).

22 ¹⁸⁸ IR-I No. 127 Bates No. 02706, Futurewise Letter to Thurston County p. 25 (April 23, 2025).

23 ¹⁸⁹ IR-I No. 455, Bates No. 21061, Thurston County Climate Change Vulnerability Assessment p. 35 (Nov. 2024).

24 ¹⁹⁰ IR-I No. 352 Bates Nos. 10356 – 459, Ord. No. 16575 Attachment A.

25 ¹⁹¹ IR-I No. 483, Bates No. 21377, Wash. State Dep’t of Commerce, *Climate Element Planning Guidance* p. 7
(Dec. 2023 V3.1).

26 ¹⁹² IR-I No. 127 Bates No. 02685, 02711 – 12, Futurewise Letter to Thurston County p. 4, pp. 30 – 31 (April 23,
2025); IR-I No. 749 Bates No. 34260 – 61, 34284, Futurewise Comments on Thurston 2045 pp. 3–4, p. 27 (Nov. 3,
2025).

¹⁹³ IR-I No. 353 Bates No. 10625, Thurston County Comprehensive Plan 2045 Chapter 2: Climate p. 2-37 (Dec.
16, 2025) (Policy CL-7.A.8).

¹⁹⁴ IR-I No. 352 Bates Nos. 10356 – 459, Ord. No. 16575 Attachment A.

1 saltmarsh-dependent species—cannot adapt to sea level rise if human development blocks the
2 landward migration of its wetlands and vegetation.¹⁹⁵ Interstate 5 already provides one barrier
3 limiting the estuary’s ability to migrate upstream as sea levels rise.¹⁹⁶ The County’s failure to
4 adopt the setback regulations CL-7.A.8 required adds another—one the County controlled and
5 chose not to address. Without space for natural habitat migration, species that cannot adapt
6 quickly will decline, and marine shorelines will lose the vegetation that protects upland property
7 from erosion and storm damage by modifying soils and accreting sediment.¹⁹⁷ The County’s
8 own plan required these regulations. Their absence violates both RCW 36.70A.120 and the
9 County’s own commitment under CL-7.A.8.

10 Third, Policy CL-1.B.2 calls for the County to “[e]stablish development regulations that
11 reduce loss of life and property by reducing the risk of wildfire, extreme heat, flooding,
12 drought, and other climate-exacerbated hazards on buildings and infrastructure.”¹⁹⁸ The record
13 is specific about where that risk is highest. The 2016 Vulnerability Assessment identified the
14 Steamboat Island Peninsula and the Boston Harbor/Fishtrap Loop/Woodard Bay/South Bay
15 Peninsula among the communities most vulnerable to wildland fires in Thurston County.¹⁹⁹
16 Approximately 34% of unincorporated structures—18,500 buildings—are already within the
17 wildland-urban interface, including 173 industrial structures, 10 sites with hazardous materials,
18 and 44 transportation facilities.²⁰⁰ No wildfire interface development regulations appear in
19 Ordinance No. 16575.²⁰¹ RCW 36.70A.070(9)(e)(i)(C) specifically requires the resiliency
20 subelement to address wildfire as a climate-aggravated natural hazard. A policy commitment to
21 establish regulations, unaccompanied by the regulations themselves, does not satisfy RCW

195 IR-I No. 366 Bates No. 12244, Thurston Regional Planning Council, Vulnerability Assessment p. 64 (Dec. 2016); IR-I No. 455 Bates No. 21061, Thurston County Climate Change Vulnerability Assessment p. 35 (Nov. 2024).

196 IR-I No. 366, Bates No. 12244, Thurston Regional Planning Council, Vulnerability Assessment p. 64 (Dec. 2016).

197 IR-I No. 755 Bates No. 34349 – 50, R.A. Feagin et al., Does Vegetation Prevent Wave Erosion of Salt Marsh Edges?, 106 Proceedings of the National Academy of Sciences pp. 10110–11 (June 23, 2009). This Journal is peer reviewed. IR-I No. 756 Bates No. 34353, PNS Author Center.

198 IR-I No. No. 353 Bates No. 10617, Thurston County Comprehensive Plan 2045 Chapter 2: Climate p. 2-29 (Dec. 16, 2025) (Policy CL-1.B.2).

199 IR-I No. 366, Bates No. 12254, Thurston Regional Planning Council, Vulnerability Assessment p. 74 (Dec. 2016).

200 IR-I No. 455, Bates No. 21082, Thurston County Climate Change Vulnerability Assessment p. 59 (Nov. 2024); IR-I No. No. 353 Bates No. 10605, Thurston County Comprehensive Plan 2045 Chapter 2: Climate p. 2-17 (Dec. 16, 2025).

201 IR-I No. 352 Bates Nos. 10356 – 459, Ord. No. 16575 Attachment A.

1 36.70A.120 and RCW 36.70A.130(1)(e) —and does nothing to protect residents of the
2 Steamboat Island Peninsula or the South Bay communities from development that continues to
3 place homes and infrastructure deeper into the county’s highest-risk fire zones.

4 The regulations Ord. No. 16575 did include compounds the inconsistency. Rather than
5 adopting regulations to protect against climate hazards, the County adopted regulations
6 increasing rural development in areas exposed to those hazards: new density bonuses in the
7 Rural Residential Resource – 1/5 District Area and new provisions permitting detached
8 accessory dwelling units in rural areas.²⁰² Rural development matters for climate resiliency
9 because it places residents and structures in areas more exposed to wildfire, flooding, and
10 drought, with less capacity to evacuate or access emergency services.²⁰³ The County’s decision
11 to expand rural development opportunities while simultaneously declining to adopt regulations
12 protecting rural residents from climate hazards is the internal inconsistency that RCW
13 36.70A.070 prohibits. It also violates the resiliency subelement requirements in RCW
14 36.70A.070(c)(i)(C).

15 In addition, “[c]ounty development regulations must also comply with the requirements of
16 the GMA. See RCW 36.70A.130(1)(a)[.]”²⁰⁴ This includes the resiliency subelement
17 requirements in RCW 36.70A.070(9)(e). The lack of development regulations to protect and
18 enhance natural areas to foster resiliency to climate impacts, to protect, and enhance community
19 resiliency to climate change impacts consistent with environmental justice, and to address
20 natural hazards created or aggravated by climate change violate RCW 36.70A.070(9)(e)(i).²⁰⁵

21 **C. The adoption of Res. No. 16574 and Ord. No. 16575 failed to prioritize overburdened
22 communities as the statute requires.**

23 RCW 36.70A.070(9)(e)(i) requires the resiliency subelement to “prioritize actions that
24 benefit overburdened communities that will disproportionately suffer from compounding
25 environmental impacts and will be most impacted by natural hazards due to climate change.”
26 This is a substantive requirement, not a process one. The County must identify which

²⁰² IR-I No. 352 Bates Nos. 10358 – 59, 10413 – 15, 10427 – 29, , Ord. No. 16575 Attachment A. See TCC
20.30A.060 at IR-I No. 352 Bates Nos. 10413 – 15 for the Rural Residential Resource – 1/5 District bonus.

²⁰³ IR-I No. 455 Bates No. 21082, Thurston County Climate Change Vulnerability Assessment p. 59 (Nov. 2024);
IR-I No. 353 Bates No, 10605, Thurston County Comprehensive Plan 2045 Chapter 2: Climate p. 2-17 (Dec. 16,
2025).

²⁰⁴ *Kittitas Cnty. v. E. Washington Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 164, 256 P.3d 1193, 1203 (2011)

²⁰⁵ IR-I No. 352 Bates Nos. 10413 – 15, Ord. No. 16575 Attachment A.

1 overburdened communities face disproportionate climate impacts and must direct specific
2 priority actions toward them.²⁰⁶

3 The Vulnerability Assessment does this identification work. It documents that the Nisqually
4 River Delta and Mud Bay are particularly vulnerable to sea level rise inundation and habitat
5 loss, and that coastal wetlands face inundation with nowhere inland to migrate, threatening
6 critical near-shore habitat for salmon, forage fish, and migratory birds.²⁰⁷ It also documents
7 disproportionate exposure of vulnerable populations to heat, flood, and wildfire, including that
8 block groups across the county show high percentages of people under 5 and over 65 alongside
9 significant housing cost burden and heat exposure.²⁰⁸ Commerce’s guidance, consistent with the
10 HEAL Act framework, requires concrete identification of overburdened communities and
11 explicit direction of priority measures toward them.²⁰⁹

12 The adopted policies do not make this connection. Policy CL-5.A.1 calls for identifying and
13 addressing disproportionate impacts “when prioritizing investments, policies, programs, and
14 projects”—a process commitment without identified communities or directed actions.²¹⁰ Policy
15 CL-5.A.2 calls for developing community-based resilience hubs “prioritizing access for at-risk
16 populations”—no communities identified, no locations designated, no timeline.²¹¹ Policy CL-
17 5.A.3 calls for equitable distribution of investments and inclusive engagement strategies—
18 generic process language with no substantive direction. None of these policies identifies a
19 specific overburdened communities in Thurston County or directs a specific priority action
20 toward them. The County acknowledged the Vulnerability Assessment’s findings—a document
21 it commissioned and adopted as a technical appendix to the comprehensive plan²¹²—and
22 adopted generic commitments that do not act on them. This is not the prioritization the statute
23 requires.

24 ²⁰⁶ RCW 36.70A.070(9)(e)(i).

25 ²⁰⁷ IR-I No. 455 Bates No. 21061, Thurston County Climate Change Vulnerability Assessment p. 35 (Nov. 2024).

26 ²⁰⁸ IR-I No. 455 Bates No. 21040, Thurston County Climate Change Vulnerability Assessment p. 17 (Nov. 2024).

²⁰⁹ IR-I No. 483 Bates No. 21449, Wash. State Dep’t of Commerce, *Climate Element Planning Guidance* p. 79 (Dec. 2023 V3.1).

²¹⁰ IR-I No. 353 Bates No. 10622, Thurston County Comprehensive Plan 2045 Chapter 2: Climate p. 2-34 (Dec. 16, 2025) (Policy CL-5.A.1).

²¹¹ IR-I No. 353 Bates No. 10623, *Id.* p. 2-35 (Policy CL-5.A.2).

²¹² IR-I No. 455 Bates No. 21024, Thurston County Climate Change Vulnerability Assessment: Technical Appendix to the Thurston County Comprehensive Plan, Cover Page (Nov. 2024).

1 The County’s adoption of Resolution No. 16574 and Ordinance No. 16575 is clearly
2 erroneous. The resiliency subelement’s policies study and encourage rather than address and
3 protect; no implementing development regulations were adopted despite the County’s own
4 policy commitments requiring them; and overburdened communities were acknowledged but
5 not prioritized as the statute demands. The Board should remand with direction to adopt a
6 compliant resiliency subelement with specific, mandatory policies designed to address
7 documented hazards; implementing development regulations consistent with those policies; a
8 comprehensive plan whose elements are internally consistent on climate resiliency; and explicit
9 priority actions directed at the overburdened communities the Vulnerability Assessment
10 identified.

11 The County’s adoption of Resolution No. 16574 and Ordinance No. 16575 is clearly
12 erroneous as to Issue 2 on three independently sufficient grounds. First, the resiliency
13 subelement’s policies are impermissibly aspirational: they direct the County to evaluate,
14 encourage, and seek rather than to address, protect, and establish, and no set of policies limited
15 to study or consideration satisfies a statute that repeatedly uses “must.”²¹³ Second, the County’s
16 own policy commitments—to implement the California Coastal Commission sea level rise
17 framework, to establish habitat migration setback standards, and to establish wildfire interface
18 regulations—required implementing development regulations that Ord. No. 16575 does not
19 contain; the County affirmatively found that “no revisions are required at this time” to its
20 critical areas regulations, a conclusion the record does not support.²¹⁴ Third, the subelement’s
21 environmental justice provisions acknowledge overburdened communities in general terms
22 while directing no specific priority action toward the specific communities—the Nisqually
23 Delta, Mud Bay, the Steamboat Island Peninsula, and the Boston Harbor shoreline—that the
24 County’s own Vulnerability Assessment identified as facing the greatest climate risks.²¹⁵ Each

25 ²¹³ RCW 36.70A.070(9)(e)(i) (“must equitably enhance resiliency”); RCW 36.70A.070(9)(e)(i)(A)–(C) (“must
26 include” goals, policies, and programs designed to address, identify, protect, and enhance); IR-I No. 483 Bates No.
21434, Wash. State Dep’t of Commerce, *Climate Element Planning Guidance* p. 64 (Dec. 2023 V3.1) (“[a] set of
policies limited to ‘study’ or ‘consideration’ will not reduce GHG emissions”).

²¹⁴ IR-I No. 353 Bates No. 10623, 10625, 10617, Thurston County Comprehensive Plan 2045 Chapter 2: Climate
p. 2-35 (Policy CL-5.B.8), p. 2-37 (Policy CL-7.A.8), p. 2-29 (Policy CL-1.B.2) (Dec. 16, 2025); IR-I No. 352
Bates 10350 – 51, Ord. No. 16575, § 1.B, Findings 4–5 (Dec. 16, 2025).

²¹⁵ IR-I No. 455 Bates No. 21061, Thurston County Climate Change Vulnerability Assessment p. 35 (Nov. 2024);
IR-I No. 366 Bates No. 12254, Thurston Regional Planning Council, Vulnerability Assessment p. 74 (Dec. 2016);
RCW 36.70A.070(9)(e)(i) (requiring subelement to “prioritize actions that benefit overburdened communities”).

1 deficiency independently requires remand. Together, they demonstrate that the County’s
2 periodic update on climate resiliency falls clearly short of what the Legislature required when it
3 enacted HB 1181 (Laws of 2023, ch. 228). The deadline for these specific policies and
4 development regulations was December 31, 2025.²¹⁶ The Board should remand with direction
5 to adopt a compliant resiliency subelement, implementing development regulations, and a plan
6 whose elements are internally consistent on climate resiliency.

7 **Issue 3. Did Thurston County’s adoption of Resolution No. 16574 and Ordinance No.
8 16575 violate RCW 36.70A.020, (10), and (14); RCW 36.70A.070; RCW
9 36.70A.070(1); RCW 36.70A.070(5); RCW 36.70A.120; RCW 36.70A.130(1)(a),
10 (1)(e), and (5)(b); and RCW 36.70A.290(2); RCW 36.70A.590; and RCW
11 90.44.050 because the comprehensive plan’s Chapter Three Land Use and
12 Chapter Four Environment, Recreation, and Open Space and the amended
13 development regulations fail to require permit exempt wells to comply with the
14 requirements of the Growth Management Act and RCW 90.44.050?**

15 RCW 36.70A.590 provides that:

16 For the purposes of complying with the requirements of this chapter [the GMA]
17 relating to surface and groundwater resources, a county or city may rely on or
18 refer to applicable minimum instream flow rules adopted by the department of
19 ecology under chapters 90.22 and 90.54 RCW. Development regulations must
20 ensure that proposed water uses are consistent with RCW 90.44.050 and with
21 applicable rules adopted pursuant to chapters 90.22 and 90.54 RCW when making
22 decisions under RCW 19.27.097 and 58.17.110.

23 RCW 36.70A.070(1) provides that “[t]he land use element shall provide for protection of
24 the quality and quantity of groundwater used for public water supplies.” RCW
25 36.70A.070(5)(c)(iv) provides that “[t]he rural element shall include measures that apply to
26 rural development and protect the rural character of the area, as established by the county, by:
... Protecting surface water and groundwater resources.” Development regulations including
Ordinance Ord. No. 16575 must comply with the GMA.²¹⁷

Development regulations are required because overuse of surface or ground water often
harms senior water rights holders and fish and wildlife habitat and the environment. For
example:

Increasing demands for water over time, from ongoing population growth,
agriculture, and other consumptive uses as well as associated land use practices,

²¹⁶ RCW 36.70A.130(1) and (5)(b).

²¹⁷ *Kittitas Cnty.*, 172 Wn.2d at 164, 256 P.3d at 1203 citing RCW 36.70A.130(1). *Accord* RCW 36.70A.290(2).

1 have resulted in lower streamflows and declining groundwater levels in some
2 areas. These decreases have impacted important resources for fisheries and
3 general stream health. The impacts of climate change in WRIA 11 are also yet to
be fully realized. However, it is apparent that water availability is limited
throughout the Nisqually Watershed.²¹⁸

4 In 2023, the legislature amended RCW 36.70A.020(10) to require counties to “[p]rotect and
5 enhance the environment and enhance the state’s high quality of life, including air and water
6 quality, and the availability of water” adding the first “enhance.”²¹⁹ By not adopting land use
7 regulations to protect surface and ground water, the development regulations update adopted by
8 Ord. No. 16575 violated RCW 36.70A.020(10) and as will be documented below RCW
36.70A.590.

9 To comply with RCW 36.70A.590, the development regulations must “ensure that proposed
10 water uses are consistent with RCW 90.44.050,” the water codes, the applicable instream flow
11 rules, the watershed plan updated under RCW 90.94.020, and the watershed restoration and
12 enhancement plans required by RCW 90.94.030. RCW 90.44.050 limits any withdrawal of
13 public groundwaters for single or group domestic uses to no more than 5,000 gallons per day
14 (gpd).

15 RCW 90.44.050 and the State Supreme Court’s *Campbell & Gwinn* decision require that
16 when the County determines if a development, land division, or use qualifies for a domestic
17 permit exempt well under RCW 90.44.050, the development regulations must require that the
18 County limit the water used by the proposal, the parent parcel that existed in 2002, any lots
19 created from the parent parcel, and any development built on or after 2002 on those lots to no
20 more than the 5,000 gallons a day allowed by RCW 90.44.050.²²⁰ As the Washington State
Supreme Court held:

21 RCW 90.44.050 plainly says that the exemption applies provided 5,000 gpd or
22 less is used for domestic purposes. This is true, the statute provides, whether the
23 use is to be a single use or group uses. That is, whether or not the use is a single
24 use, by a single home, or a group use, by several homes or a multiunit residence,
the exemption remains at one 5,000 gpd limit, according to the plain language of
the statute. The developer of a subdivision is, necessarily, planning for adequate

25 ²¹⁸ IR-I No. 516 Bates No. 22404, State of Washington Department of Ecology Water Resources Program, *WRIA*
26 *11 Nisqually Watershed Water Availability* p. 3 (Publication 20-11-011 Revised Sept. 2022).

²¹⁹ Laws of 2023, Ch. 228 § 1

²²⁰ *State, Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 14, 43 P.3d 4, 110 (2002).

1 water for group uses, rather than a single use, and accordingly is entitled to only
2 one 5,000 gpd exemption for the project.²²¹

3 In the *Kittitas County* decision, the state supreme court held that consideration of commonly
4 owned properties must be considered in determining whether a property is entitled to the
5 exemption under RCW 90.44.050.

6 Without a requirement that multiple subdivision applications of commonly owned
7 property be considered together, the County cannot meet the statutory
8 requirement that it assure appropriate provisions are made for potable water
9 supplies. Instead, nondisclosure of common ownership information allows
10 subdivision applicants to submit that appropriate provisions are made for potable
11 water through exempt wells that are in fact inappropriate under *Campbell &*
12 *Gwinn* when considered as part of a development, absent a permit. To interpret
13 the County's role under RCW 58.17.110 to require the County to only assure
14 water is physically underground effectively allows the County to only condone
15 the evasion of our state's water permitting laws. This could come at a great cost to
16 the existing water rights of nearby property owners, even those in adjoining
17 counties, if subdivisions and developments overuse the well permit exemption,
18 contrary to the law.²²²

19 This principle applies with equal force to properties previously subdivided from the parcel after
20 the *Campbell & Gwinn* decision clarified the applicability of the permit-exemption in RCW
21 90.44.050. This principle also applies to developments and uses on the parcel as it existed when
22 the *Campbell & Gwinn* decision clarified RCW 90.44.050.

23 However, Ord. No. 16575 does not include any development regulations limiting ground
24 water withdrawals to no more than 5,000 gpd as RCW 90.44.050 requires.²²³ The deadline for
25 complying with RCW 36.70A.590, RCW 90.44.050, RCW 36.70A.070(1), RCW
26 36.70A.070(5)(c)(iv), and RCW 36.70A.020(10) passed on December 31, 2025.²²⁴ The Board
should conclude that the comprehensive plan and development regulations update violated these
provisions.

IV. REQUEST FOR INVALIDITY

The Board should find that the requirements of RCW 36.70A.302(1) are met. The Board
should conclude that the challenged provisions are noncompliant and issue an order of remand.

²²¹ *State, Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 12, 43 P.3d 4, 10 (2002).

²²² *Kittitas Cnty. v. E. Washington Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 180, 256 P.3d 1193, 1210 (2011).

²²³ IR-I No. 352 Bates Nos. 10356 – 459, Ord. No. 16575 Attachment A.

²²⁴ RCW 36.70A.130(1), (5)(b).

1 The Board has concluded that a determination of invalidity is based on a finding that
2 continued validity of a local government’s “action ‘would substantially interfere with the
3 fulfillment’ of a GMA Goal.”²²⁵ This Board has also recognized that the potential that
4 developments may vest can support a finding of invalidity.²²⁶ In *Orton Farms*, the Central
5 Board concluded that development proposals could vest on illegally de-designated agricultural
6 lands of long-term commercial significance substantially interfering with the fulfillment of
7 RCW 36.70A.020(8).²²⁷ Ord. No. 16575 allows increased rural densities on land that is subject
8 to natural hazards aggravated by climate change.²²⁸ It also allows increased rural densities
9 where ongoing population growth have resulted in lower stream flows and declining
10 groundwater levels adversely impacting fisheries and general stream health.²²⁹

11 RCW 36.70A.020(9) requires counties and cities to “enhance fish and wildlife habitat”
12 RCW 36.70A.020(10) now requires comprehensive plans and development regulations to
13 “[p]rotect and enhance the environment and enhance the state’s high quality of life, including
14 air and water quality, and the availability of water.” RCW 36.70A.020(14) provides in part:
15 Ensure that comprehensive plans [and] development regulations . . . adapt to and mitigate the
16 effects of a changing climate; support reductions in greenhouse gas emissions and per capita
17 vehicle miles traveled; prepare for climate impact scenarios; foster resiliency to climate impacts
18 and natural hazards; protect and enhance environmental, economic, and human health and
19 safety; and advance environmental justice.” Allowing additional development in areas subject
20 to natural hazards and where water withdrawals will adversely affect fisheries will substantially
21 interfere with Goals 9, 10, and 14. Res. No. 16574 and Ord. No. 16575 are already in effect and
22 will allow development to vest to these illegal provisions. Res. No. 16574 and Ord. No. 16575
23 substantially interfere with Goals 9, 10, and 14.. This justifies a finding of invalidity for the
24 challenged provisions.

25 ²²⁵ *Blair v. City of Monroe*, CPSRGMHB Case No. 14-3-0006c, Final Decision and Order (Aug. 26, 2014), at 30 of
26 34.

²²⁶ *Orton Farms, LLC v. Pierce County (Orton Farms)*, CPSGMHB Case No. 04-3-0007c, Final Decision and
Order (Aug. 2, 2004), at 43 of 50.

²²⁷ *Id.*

²²⁸ IR-I No. 352 Bates Nos. 10358 – 59, 10413 – 15, 10427 – 29, , Ord. No. 16575 Attachment A; IR-I No. 455,
Bates No. 21082, Thurston County Climate Change Vulnerability Assessment p. 59 (Nov. 2024).

²²⁹ IR-I No. 352 Bates Nos. 10358 – 59, 10413 – 15, 10427 – 29, , Ord. No. 16575 Attachment A; IR-I No. 516
Bates No. 22404, State of Washington Department of Ecology Water Resources Program, *WRIA 11 Nisqually
Watershed Water Availability* p. 3 (Publication 20-11-011 Revised Sept. 2022).

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V. CONCLUSION

This brief has shown that Res. No. 16574 and Ord. No. 16575 do not comply with the climate and ground water protection requirements of the GMA. The Board should find that the challenged provisions of the comprehensive plan and development regulations violate the GMA and remand them back to the County for action consistent with the GMA.

DATED this May 18, 2026, and respectfully submitted.

Signed: Brooke Frickleton
Brooke Frickleton, WSBA No. 55580
Signed: Tim Trohimovich
Tim Trohimovich, WSBA No. 22367

CERTIFICATE OF SERVICE

I, Tim Trohimovich, under penalty of perjury under the laws of the State of Washington, declare as follows:

I am an attorney for Futurewise. On the date indicated below, I caused Futurewise’s Petitioners’ Prehearing Brief and Exhibits to be served on the persons listed below in the manner indicated:

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Olympia, WA 98504-0903
Tel. 360-664-9170

Travis H. Burns
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- By United States Mail, postage prepaid and properly addressed.
By Legal Messenger or Hand Delivery
By Facsimile
By Federal Express or Overnight Mail prepaid
[X] Through the Case Management System (CMS)

- By United States Mail, postage prepaid and properly addressed
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By Legal Messenger or Hand Delivery
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By Federal Express or overnight mail prepaid sent on February 4, 2025.
Through the Case Management System (CMS) or by Email:

Dated and certified on May 18, 2026.

Signed: Tim Trohimovich

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