Civil Motions
The Honorable Anna G. Alexander
Noted for September 11, 2025 at 9:30 AM

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

MASTER BUILDERS ASSOCIATION OF KING AND SNOHOMISH COUNTIES, BUILDING INDUSTRY ASSOCIATION OF WASHINGTON, WASHINGTON AGGREGATES & CONCRETE ASSOCIATION, GREENCITY DEVELOPMENT, LLC, OSPREY LOGISTICS, LLC, ROBINETT BROTHERS CONSTRUCTION, LLC, ROBINETT INVESTMENT COMPANY, LLC, and MARTIN ROBINETT, Plaintiffs, vs. THE CITY OF EVERETT, Defendant, and STANDING FOR NATURE, Intervenor Defendant.	No. 25-2-00902-31 PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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I. INTRODUCTION AND RELIEF REQUESTED

Plaintiffs—a coalition of Everett voters, nonprofits, local homebuilders and developers, and a maritime logistics company operating a private port on the Snohomish River in the City of Everett—ask this Court to protect their rights by entering summary judgment declaring that City of Everett Initiative No. 24-03 (the "Initiative")[1] exceeds the scope of the local initiative power. The Initiative purports to give new rights to the Snohomish River Watershed (the "Watershed"), confer standing on the Watershed itself, and create a new cause of action and damages for the Watershed to enforce the Watershed's rights. *See* Declaration of Robert Maguire In Support of Plaintiffs' Motion For Summary Judgment ("Maguire Decl."), Ex. A; *see Mukilteo Citizens for Simple Gov't v. City of Mukilteo*, 174 Wn.2d 41, 51-52, 272 P.3d 227 (2012). The Washington Supreme Court has already rejected a similar Spokane local initiative purporting to grant legal rights to a river because the initiative was "directly contrary to the water rights system established by the State and is outside the scope of the city's authority." *Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend Const.*, 185 Wn.2d 97, 109, 369 P.3d 140 (2016). This Initiative is invalid for the same reasons. It exceeds the local initiative power by: (1) seeking to legislate in areas outside the local legislative power, (2) intruding on administrative matters, and (3) interfering with responsibilities delegated to the city council, not the city.

II. STATEMENT OF UNDISPUTED FACTS

In November 2024, City of Everett voters passed the Initiative, making it unlawful for any person to violate the rights of the Watershed, including "the rights to exist, regenerate, and flourish, which include the right to naturally recharge, the right to naturally flow, the right to water quality necessary to provide habitat for plants and animals, the right to provide clean water, and the right to restoration." *Compl.* ¶ 12; *see also* Maguire Decl., Ex. A. The Initiative defines the Watershed's geographic boundaries as encompassing all areas within the City of

[1] As discussed, below, the Initiative was passed and codified as Everett Mun. Code (EMC) § 20.12 *et seq.* For ease of reference, Plaintiffs refer to the ordinance as the Initiative.

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Everett, not limited to the Snohomish River, various creeks and tributaries, and Port Gardner Bay in Possession Sound. Maguire Decl., Ex. A.

The Initiative's stated purpose is "granting legal standing to the Snohomish River Watershed [that] would allow for the Watershed's rights to be represented and enforced in court" because "current legal frameworks may not adequately protect the Watershed's ability to exist and flourish." *Id.* The Initiative, therefore, expands standing: "any person with legal standing in the City of Everett" may bring an action in the name of the Watershed to vindicate these rights. *Id.* The Watershed, not the person, would be "the real party in interest." *Id.*

The Initiative lowers the burden of proof in Watershed enforcement actions by mandating that "[w]here probable violations of the rights protected in this Ordinance are shown to exist, lack of full scientific certainty shall not be used as a reason for denying or postponing enforcement or defense of these rights." *Id.* It provides damages "measured by the cost of fully restoring the Snohomish River Watershed to its natural state before the violation[.]" *Id.* These damages are paid to the City of Everett "to be used exclusively for the full and complete restoration of the Snohomish River Watershed as affected by the violation." *Id.*

After the Initiative passed, its sponsors praised its value as a threat to developers even absent litigation. *See* Maguire Decl., Ex. B. One sponsor stated, "[A] threat of a lawsuit . . . can happen prior to the damage occurring." *Id.*

Each plaintiff complies with extensive federal, state, and local regulatory frameworks to conduct lawful operations within the Watershed. Plaintiffs, however, now face threats of litigation, increased costs, and regulatory uncertainty due to the Initiative's creation of new rights, causes of action, and remedies.

Plaintiff Osprey Logistics operates a private port on the Snohomish River in the City of Everett and recently secured a federal grant from the U.S. Department of Transportation to increase its capacity as part of the United States Marine Highway Program. Declaration of Osprey Logistics, LLC In Support of Plaintiffs' Motion For Summary Judgment ("Osprey Logistics Decl.") ¶¶ 2-8. Osprey Logistics must comply with permits from the Department of

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Ecology ("DOE") and permits issued under Section 404 of the Clean Water Act ("CWA") for the discharge of dredged or fill materials. *Id.* ¶ 9. Osprey Logistics also must comply with the City of Everett's Shoreline Master Program, Comprehensive Plan under the Growth Management Act ("GMA"), and stormwater runoff regulations. *Id.* ¶¶ 10-12.

Plaintiffs Master Builders Association of King and Snohomish Counties ("MBAKS"), Building Industry Association of Washington ("BIAW"), Greencity Development, Robinett Brothers Construction, Robinett Investment Company, and Martin Robinett (collectively "Homebuilder Plaintiffs") are homebuilders and developers (or associations comprised of homebuilders and developers). All Homebuilder Plaintiffs must comply with City of Everett critical areas regulations, City of Everett storm drainage requirements, the federal CWA, Washington State regulations that implement the CWA, and regulations that implement the GMA, Shoreline Management Act, and State Environmental Policy Act. Declaration of Master Builders Association of King And Snohomish Counties In Support of Plaintiffs' Motion For Summary Judgment ("MBAKS Decl.") ¶¶ 7-11; Declaration of Building Industry Association of Washington In Support of Plaintiffs' Motion For Summary Judgment ("BIAW Decl.") ¶¶ 7-11; Declaration of Vitaliy Gutsalo on Behalf of Greencity Development, LLC In Support of Plaintiffs' Motion For Summary Judgment ("Greencity Development Decl.") ¶¶ 7-11; Declaration of Martin Robinett In Support of Plaintiffs' Motion For Summary Judgment ("Robinett Decl.") ¶¶ 6-10.

Plaintiff Washington Aggregates & Concrete Association ("WACA") represents and promotes the interests of sand, gravel, quarry rock, cement, ready mix concrete, suppliers, and industry-related businesses in Washington State, including businesses that operate in the City of Everett, which contribute approximately $5 billion in direct value to Washington's economy and provide direct wages of approximately $489.3 million across the state. Declaration of Washington Aggregates & Concrete Association In Support of Plaintiffs' Motion for Summary Judgment ("WACA Decl.") ¶¶ 3-5. WACA members in the Watershed must comply with the CWA, implementing state laws and permits including the Sand & Gravel General Permit, the

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City of Everett's Stormwater Management Program Plan, the GMA and the City of Everett's Comprehensive Plan implementing the GMA, Shoreline Management Act, and State Environmental Policy Act. *Id.* ¶¶ 7-12. WACA's interests have already been harmed because the Initiative has jeopardized the investment of hundreds of thousands of dollars of a WACA member on Smith Island as well as a separate project on Smith Island that received a Federal Railroad Administration grant of $18 million in January 2025. *Id.* ¶¶ 18-20.

The Initiative, thus, injures all Plaintiffs.

III. STATEMENT OF ISSUES

1. Does the Initiative exceed the local initiative power because it conflicts with federal or state law?
2. Does the Initiative exceed the local initiative power because it is administrative in nature?
3. Does the Initiative exceed the local initiative power because it interferes with powers delegated to local legislative bodies?
4. Have Plaintiffs satisfied justiciability and standing to obtain declaratory relief?

IV. EVIDENCE RELIED UPON

Plaintiffs rely upon the Declaration of Robert Maguire and supporting exhibits thereto, the Declaration of Master Builders Association of King and Snohomish Counties, the Declaration of Building Industry Association of Washington, the Declaration of Washington Aggregates & Concrete Association, the Declaration of Greencity Development, LLC, the Declaration of Osprey Logistics, LLC, and the Declaration of Martin Robinett.

V. ARGUMENT AND AUTHORITY

Summary judgment should be granted if the moving party shows that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56. The scope of the local initiative power is limited by state law. This Initiative exceeds that scope and is unlawful because it (1) conflicts with superior law; (2) intrudes on administrative matters; and (3) interferes with powers delegated to the city council.

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Plaintiffs address these points first, which are purely legal issues, then address why this action is justiciable and Plaintiffs have standing to obtain declaratory relief, which this Court already determined when denying Intervenor Defendant's previous Motion to Dismiss.

A. The Court Should Declare the Initiative Invalid Because It Exceeds the Initiative Power.

Put simply, Everett cannot adopt a law by initiative that exceeds the city's own legislative power, whether because the initiative conflicts with the federal or state constitutions, or because it conflicts with other federal or state laws or limits. Const. art. XI, § 10; *Save Our State Park v. Bd. of Clallam Cnty. Comm'rs*, 74 Wn. App. 637, 644, 875 P.2d 673 (1994) (initiative power conferred in county home rule charter limited to compliance with state law).

As permitted by state law, the City of Everett's charter allows "the people of Everett, in addition to the method of legislation, otherwise provided in this charter, shall have power to direct legislation by the initiative and the referendum." Everett Charter art. XI, § 11.1; RCW 35.22.200 (cities may grant the right of direct legislation in their charters). But "[t]he presence of broad initiative powers in a [city] charter does not . . . justify unlimited application of that power." *Save Our State Park*, 74 Wn. App. at 644 (initiative power conferred in county home rule charter limited to compliance with state law). As the Washington Supreme Court discussed a few months ago, "[t]he local initiative power is more limited than the statewide initiative power." *Jewels Helping Hands v. Hansen*, 567 P.3d 19, 30 (Wn. 2025). This is because the local initiative power is secured by "state statutes governing the establishment of cities[.]" *Id.* Both the Washington State Constitution and state statute expressly limit the local initiative power to compliance with state law. Const. art. XI, § 10 (city "shall be permitted to frame a charter for its own government, consistent with and subject to the Constitution and laws of this state"); RCW 35.22.200 ("The charter may provide for direct legislation . . . upon any matter within the scope of the powers, functions, or duties of the city.").

In addressing whether a local initiative exceeds the initiative power, Washington courts consider whether an initiative seeks to legislate in areas outside the local legislative power,

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intrudes on administrative matters, or interferes with responsibilities delegated to the city Council or Mayor, not the city. *See Seattle Bldg. & Constr. Trades Council v. City of Seattle*, 94 Wn.2d 740, 747, 620 P.2d 82 (1980) (local initiatives may not conflict with state law); *Jewels Helping Hands*, 567 P.3d at 30-31 (local initiative exceeds scope if it is administrative in nature and affects issues delegated to a local government's legislative authority); *Save Our State Park*, 74 Wn. App. at 644 (local initiatives may address only legislative, not administrative matters, and may not touch on matters delegated to the city council). This Initiative plainly exceeds the initiative power under each of those tests.

1. The Initiative Improperly Conflicts with Federal and State Law.

Citizens may not use the local initiative process to enact a law conflicting with federal or state law. This Initiative, however, does exactly that. The Initiative expressly admits that it attempts to add new rights and prohibitions because "current legal frameworks may not adequately protect the Watershed's ability to exist and flourish[.]" Maguire Decl., Ex. A at 1. But, "[w]hile the inhabitants of a municipality may enact legislation governing local affairs, they cannot enact legislation which conflicts" with superior law. *Seattle Bldg. & Constr. Trades Council*, 94 Wn.2d at 747 (citing Const. art. XI, § 10). "The fundamental proposition which underlies the powers of municipal corporations is the subordination of such [municipal] bodies to the supremacy" of federal and state law. *Id.* (quoting Philip A. Trautman, 38 Wash. L. Rev. 743 (1963)).

The Initiative conflicts with myriad federal and state laws by creating new "rights to exist, regenerate, and flourish," in the Watershed, by granting standing and a private right of action to the Watershed, and by creating a new damages scheme. *See* Maguire Decl., Ex. A.

The federal Clean Water Act ("CWA") governs the Watershed. *See* 33 U.S.C. § 1362(7) (defining "navigable waters" as "the waters of the United States"). Congress enacted the CWA "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters[.]" 33 U.S.C. § 1251(a). Under the Act, "each state must establish, subject to federal approval, comprehensive water quality standards." *Pub. Util. Dist. No. 1, of Pend Oreille Cnty.*

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v. State, Dep't of Ecology, 146 Wn.2d 778, 806, 51 P.3d 744 (2002); *see also* 33 U.S.C. § 1313(c). These water quality standards are established "by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses." 40 C.F.R. § 130.3. The Act provides for citizens suits for violations of any "effluent standard or limitation." 33 U.S.C. § 1365(a).

DOE "is the designated state agency for purposes of securing the benefits of and meeting the requirements of the Clean Water Act." *Oreille Cnty.*, 146 Wn.2d at 807 (citing RCW 90.48.260). It must establish water quality standards, "'taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational' and other purposes." *Id.* DOE has therefore "promulgated comprehensive, specific water quality standards for regulating state navigable waters, as well as a statewide antidegradation policy." *Id.* EPA has "reviewed and approved" these regulations, as the Act requires. *Id.* at 808. Further, EPA delegated authority to DOE to implement the National Pollutant Discharge Elimination System (NPDES) permitting program in Washington. RCW 90.48.260(1).

Similarly, through Chapter 90 of the Revised Code of Washington, the State of Washington, which has "[t]he power . . . to regulate and control the waters within it," has enacted a comprehensive scheme regulating water rights and uses. RCW 90.03.010. Among other things, the Code gives DOE the authority to "establish minimum water flows or levels for streams, lakes or other public waters," to promulgate regulations implementing its water laws, to enforce such laws, and "to develop and implement . . . a comprehensive state water resources program." *See* RCW 90.22.020; RCW 90.48.030, .035, .037, .140; RCW 90.54.040.

While the entirety of Chapter 90 of the Revised Code of Washington regulates the Watershed, certain provisions of the Chapter are particularly relevant here. For example, the legislature enacted the Shoreline Management Act of 1971, RCW 90.58 *et seq.* ("SMA"), to ensure "increased coordination in the management and development of the shorelines of the state" between federal, state, and local governments. RCW 90.58.020. The SMA specifically required the City of Everett to develop a "master program for regulation of uses of the

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shorelines of the state[,]" consistent with guidelines of DOE, by December 1, 2005, and then to amend that master program every ten years thereafter. RCW 90.58.080(1)-(4). And recently, the Legislature enacted the Streamflow Restoration Act, which directs DOE "to develop and implement plans to restore streamflows to levels necessary to support robust, healthy, and sustainable salmon populations." RCW 90.94.010. As lead agency, DOE must "establish watershed restoration and enhancement committees" across the Washington State, including in the Snohomish River Watershed. RCW 90.94.030.

In addition, Washington's Growth Management Act, RCW 36.70A *et seq.*, requires that local legislative bodies "plan their growth, protect the environment, protect the property rights of individuals, and designate and protect 'critical areas.'" *1000 Friends of Wash. v. McFarland*, 159 Wn.2d 165, 169, 149 P.3d 616 (2006) (citing RCW 36.70A.020, .060; WAC 365-190-040); *see also City of Seattle v. Yes for Seattle*, 122 Wn. App. 382, 388 n.1, 93 P.3d 176 (2004) (GMA requires local legislative bodies to "develop comprehensive growth plans and development regulations to meet the comprehensive goals"). The Act defines "development regulations" as "controls placed on development or land use activities by a county or city, including, but not limited to . . . critical areas." *Id.* at 389 (quoting RCW 36.70A.030(7)). And it defines "critical areas" as including "wetlands, areas that recharge aquifers used for potable water, fish and wildlife habitat conservation areas, areas that are frequently flooded, and areas that are geologically hazardous." *1000 Friends of Wash.*, 159 Wn.2d at 169 (citing RCW 36.70A.030(5)). Thus, federal and state law comprehensively govern and regulate the Snohomish River Watershed, including its tributaries and the nearby waters of Puget and Possession Sounds.

The Initiative conflicts with federal and state law because it creates new rights in the Watershed, rights that do not exist under the comprehensive federal and state laws governing the Watershed, and by creating a private right of action for the Watershed. *See* Maguire Decl., Ex. A. As the Initiative's sponsors concede, the Initiative "supplements" the existing legal framework. Dkt. 19 (Order Denying Intervenor-Defendant's Motion to Dismiss for Lack of

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Standing and Failure to State a Claim) at 3. These so-called supplementary rights prohibit what federal and state law permit. For example, the Initiative creates a right to clean water that is defined as:

> water that is free from any non-natural presence of substances, contaminants, noise, or pollutants in quantities that may pose actual or potential harm to human health or welfare, animals, fish, plant life, or water quality, or that may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

Maguire Decl., Ex. A. The CWA, in contrast, does not provide a blanket, exception-less right for waters to be free from "substances, contaminants, noise, or pollutants . . . that may pose actual or potential harm[.]" *Id.* Rather, the CWA authorizes the EPA Administrator to "issue a permit for the discharge of any pollutant," 33 U.S.C. § 1342(a), and the Secretary of the Army to "issue permits . . . for the discharge of dredged or fill material into the navigable waters[,]" § 1344(a), (d). The CWA's implementing water quality regulations further require states and EPA to adopt water quality standards that balance protecting water quality while taking into consideration their use and value for "agricultural, industrial and other purposes including navigation." 40 C.F.R. § 130.3.

In line with the CWA, Washington State does not create rights and standing in watersheds, but it provides "[c]omplete authority [in DOE] to establish and administer a comprehensive state point source waste discharge or pollution discharge elimination permit program[,]" which includes the authority to enforce the program through "penalties, emergency powers, and criminal sanctions[.]" RCW 90.48.260(1)(a). Washington State also weighs economic and industrial uses in land use decisions. For example, the legislature passed legislation "to ensure that local land use decisions are made in consideration of the long-term and widespread economic contribution of our international container ports and related industrial lands and transportation systems[.]" RCW 36.70A.085.

The conflict between the balance of federal and state law and the Initiative's blanket rights in the Watershed is meaningful. After the Initiative was passed, the sponsors quoted as a

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"brilliant insight" that the Initiative sought to impose a different development principle to Everett:

> And so I think what the Everett initiative is trying to do is to bring in the idea of the precautionary principle. So that's a well established principle in ecologically sustainable development law to say that even when science is not 100% settled, if you think there is a . . . high likelihood or a high risk of a negative impact, particularly if it's irreversible, then that is a reason to not approve a development.

Maguire Decl., Ex. B. *See also id.*, Ex. A ("Where probable violations of the rights protected in this Ordinance are shown to exist, lack of full scientific certainty shall not be used as a reason for denying or postponing enforcement or defense of these rights."). The Initiative, therefore, is intended to change development and land use decision-making in the City of Everett to be more restrictive than the balanced federal and state law frameworks.

Similarly, the private cause of action impermissibly expands traditional standing requirements in the federal and state schemes. The Initiative's preamble states that "current legal frameworks may not adequately protect" the Watershed and "granting legal standing to the Snohomish River Watershed would allow for the Watershed's rights to be represented and enforced in court[.]" Maguire Decl., Ex. A. Neither federal nor state law grant legal standing to watersheds. The CWA's private right of action is available only to "an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body." 33 U.S.C. § 1362(5). Similarly, in Washington State, a plaintiff must have capacity, CR 17(a), and "[a]n action brought under the name of a nonexistent entity is a nullity[,]" *K&W Children's Tr. v. Estate of Fay*, 20 Wn. App. 2d 862, 871, 503 P.3d 569 (2022). The purpose and effect of the Initiative's standing provision, thus, conflicts with federal and state laws and regulations by allowing what those federal and state laws do not, standing for a Watershed.

Indeed, finding that the Initiative conflicts with federal and state laws is the only interpretation consistent with the Washington Supreme Court's precedent. The initiative

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addressed by the Supreme Court in *Spokane Entrepreneurial Center* sought to grant the Spokane River the legal rights to "exist and flourish, including the rights to sustainable recharge, sufficient flows to support native fish, and clean water." 185 Wn.2d at 109 (internal quotations and citation omitted). In striking down the initiative, the Washington Supreme Court held that the "provision is directly contrary to the water rights system established by the State and is outside the scope of the city's authority." *Id.*

As in *Spokane Entrepreneurial Center*, this Initiative irreconcilably conflicts with federal and state law, and the Court must invalidate it. *See, e.g.*, *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 493-94 (1987) (Clean Water Act preempted state nuisance law to the extent the law sought to impose liability on an out-of-state point source because it interfered with the Act's method of eliminating water pollution); *Parkland Light & Water Co. v. Tacoma-Pierce Cnty. Bd. of Health*, 151 Wn.2d 428, 433, 90 P.3d 37 (2004) (invalidating board resolution that irreconcilably conflicted with statutory authority granted to water districts); *Seattle Bldg. & Constr. Trades Council*, 94 Wn.2d at 747 (initiatives may not conflict with state law); *Yes for Seattle*, 122 Wn. App. at 388 (affirming invalidation of initiative that conflicted with GMA). That the Initiative, like the Clean Water Act and Washington's water laws, has the goal of protecting and conserving the Watershed is beside the point –"[a] state law is also pre-empted if it interferes with the methods by which the federal statute was designed to reach" the common goal. *Ouellette*, 479 U.S. at 494.

2. The Initiative Intrudes on Administrative Affairs by Seeking to Regulate Water Rights.

The Watershed is highly regulated as part of a complex administrative regime under state, local, and federal law. Administrative matters, and "particularly local administrative matters, are not subject to initiative or referendum." *City of Port Angeles v. Our Water-Our Choice!*, 170 Wn.2d 1, 8, 239 P.3d 589 (2010) (initiatives seeking to repeal city council's decision to fluoridate city's water supply were administrative). "Generally speaking, a local government action is administrative if it furthers (or hinders) a plan the local government or

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some power superior to it has previously adopted." *Spokane Entrepreneurial Ctr.*, 185 Wn.2d at 107 (quoting *Our Water-Our Choice!*, 170 Wn.2d at 10.) In analyzing the legislative or administrative nature of an initiative, courts apply independent tests depending upon the facts of the situation:

> (1) whether the subject is of a permanent and general character [legislative and permissible] or of temporary and special character [administrative and impermissible] (the permanent-temporary test), and
>
> (2) whether the proposition is one to make new law or declare a new policy [permissibly legislative], or merely to carry out and execute law or policy already in existence [impermissibly administrative] (the new law/execute law test)[.]

Jewels Helping Hands, 567 P.3d at 31 (cleaned up). An initiative does not need to be its own comprehensive scheme in order to be impermissibly administrative in nature. Rather, a local initiative is administrative if it merely "modifies details of," "tinkers with," and "hinders" the already-enacted administrative policy of the local government. *Id.* at 32-33. For example, the initiative in *Jewels Helping Hands* simply sought to forbid public camping, regardless of shelter space availability, within a certain distance from parks, day care or childcare facilities, and private or public schools. *Id.* at 25-26. The Washington State Supreme Court held that was impermissibly administrative because the City of Spokane had already implemented a "comprehensive homeless camping policy" that did not have the same camping prohibitions as the local initiative. *Id.* at 32-33.

Jewels Helping Hands was consistent with the Washington Supreme Court's holding in the water rights case *Spokane Entrepreneurial Center* where the Court affirmed a trial court's ruling that the pre-election water right initiative was administrative. The initiative in *Spokane Entrepreneurial Center* sought to "give the Spokane River the legal right to exist and flourish, including the rights to sustainable recharge, sufficient flows to support native fish, and clean water." 185 Wn.2d at 109 (internal quotation marks and citation omitted). Even though the Initiative did not create its own regulatory scheme, the Washington Supreme Court held that the

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initiative "was administrative in nature because it would deal with how an existing regulatory scheme is implemented." *Id*.

As in *Spokane Entrepreneurial Center*, the Initiative in this case intrudes on administrative matters because it seeks to regulate waterways and adjacent critical areas that federal, state, and local authorities administer pursuant to the federal CWA, Washington's water laws, and GMA. The CWA, Washington's water laws, and the GMA, as implemented by DOE, set the policy for and comprehensively govern the Watershed, including the nearby shoreline and areas of the Puget Sound. The City of Everett developed and implemented numerous comprehensive plans pursuant to these laws, including:

- The 187-page Everett Shoreline Master Program, developed with state approval pursuant to the SMA, regulates a vast array of activity and conditions in the Watershed, including water quality, port activities, industrial activities, log storage and transport, and residential development. Maguire Decl., Ex. C. The SMA requires all master programs to "[r]ecognize the statewide interest over local interest." *Id.* at 1.
- The City of Everett Stormwater Management Program Plan ensures the city's compliance with the Western Washington Phase II Municipal Stormwater Permit under the CWA and Washington State's Water Pollution Control Law. Maguire Decl., Ex. D. This comprehensive program administers a diverse range of conduct implicated by the Initiative, including illicit discharge detection and elimination, *id.* § 6, and the control of runoff from new development, redevelopment, and construction sites, *id.* § 7. As part of the Stormwater Management Program Plan, the city adopted and updated stormwater drainage requirements. Everett Mun. Code § 14.28.
- The City of Everett's Comprehensive Plan under the GMA implements the GMA's requirement that local legislative bodies "adopt development regulations that *protect* critical areas that are required to be designated" under the Act, which

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include "areas critical to recharging aquifers used for potable water" and "areas used for fish and wildlife habitat conservation." *1000 Friends of Wash.*, 159 Wn.2d at 183. Everett's Comprehensive Plan provides detailed guidance on a broad range of water rights subject matters from the administration of "wetland preservation, alteration, and mitigation[,]" Maguire Decl., Ex. E, Ch. 2 at 8-14, to port operations regulation and promotion, *id.*, Ex. F, Ch. 11.

- The City of Everett administers extensive water treatment regulations through its water and sewers ordinances, Everett Mun. Code § 14.04 *et seq.*. Pursuant to these regulations, the City of Everett "operates [its own] water treatment facility within the Snohomish River Watershed that could be impacted by this Initiative[.]" City of Everett Opp'n to Mot. to Dismiss (Dkt. 16) at 2. The city's concern is well-founded not only because of the Initiative's prohibitions, but also because one of the Initiative's goals is to "reduc[e] costs associated with water treatment[.]" Maguire Decl., Ex. A. It is, however, well-settled that an initiative is "administrative in nature" where it seeks to "modify," "administer," or "interfere with" existing water treatment regulatory systems. *Our Water-Our Choice!*, 170 Wn.2d at 13-14.

The Initiative is plainly administrative in nature; indeed, it modifies, interferes, or tinkers with federal, state, and local comprehensive policies and plans in multiple ways. First, it creates new rights for the Watershed, including "the rights to exist, regenerate, and flourish, which shall include the right to naturally recharge, the right to naturally flow, the right to water quality necessary to provide habitat for native plants and animals, the right to provide clean water, and the right to restoration." Maguire Decl., Ex. A § A. Second, it creates standing in the Watershed itself because "current legal frameworks may not adequately protect the Watershed's ability to exist and flourish[.]" Maguire Decl., Ex. A. And, third, it creates a new enforcement mechanism that requires the City of Everett to administer restoration efforts. *Id.* ("Damages shall be . . . paid to the City of Everett to be used exclusively for the full and complete

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restoration of the Snohomish River Watershed as affected by the violation.").

The Initiative, thus, modifies policies that are part of the existing regulatory scheme implementing the CWA, Washington's water statutes, and the GMA. *See, e.g.*, *Spokane Entrepreneurial Ctr.*, 185 Wn.2d at 109 (creating legal rights in the Spokane River was administrative because it dealt with how an existing regulatory scheme was implemented); *1000 Friends of Wash.*, 159 Wn.2d at 183 (referendum regarding ordinances regulating surface water flows and clearing and grading fell within GMA's scope). As such, the Initiative impermissibly involves administrative, not legislative, matters. *See Our Water-Our Choice!*, 170 Wn.2d at 13-14 (initiatives attempting to reverse city fluoridation program were administrative); *1000 Friends of Wash.*, 159 Wn.2d at 185 (surface water and clearing and grading initiatives "passed pursuant to the GMA's requirement that critical areas be designated and protected . . . implement state policy and are not subject to local referenda").

3. The Initiative Interferes with Powers Delegated to Local Legislative Bodies.

The Initiative also exceeds the local initiative power because it interferes with multiple powers delegated to the Everett City Council. "An initiative is beyond the scope of the initiative power if the initiative involves powers granted by the legislature to the governing body of a city, rather than the city itself." *Mukilteo Citizens for Simple Gov't*, 174 Wn.2d at 51 (quoting *City of Sequim v. Malkasian*, 157 Wn.2d 251, 261, 138 P.3d 943 (2006)). "'[A] grant of power to [the] city's' legislative authority or legislative body 'means exclusively the mayor and city council and not the electorate.'" *Id.* (alterations in original) (quoting *Malkasian*, 157 Wn.2d at 265). Both the GMA and the SMA delegate powers directly to the City of Everett's legislative body, not the electorate.

Through the GMA, the Washington State Legislature delegates to city councils and county legislative bodies the authority to develop comprehensive growth plans, which affect critical areas regulations. *Whatcom Cnty. v. Brisbane*, 125 Wn.2d 345, 350-51, 884 P.2d 1326 (1994). The GMA only authorizes city councils or boards, or county legislative bodies—not

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cities or counties themselves—to adopt and administer comprehensive growth plans. RCW 35.63.110; RCW 36.70A.210(2). As discussed, *see* Parts V.A.1, the GMA requires local legislative bodies to establish comprehensive plans and development regulations "to plan their growth, protect the environment, protect the property rights of individuals, and designate and protect 'critical areas[,]'" which includes wetlands, fish, and wildlife habitat conservation areas, and frequently flooded areas. *1000 Friends of Wash.*, 159 Wn.2d at 169 (citing RCW 36.70A.020; RCW 36.70A.030(12)).

The SMA, similarly, involves a delegation from the Washington State Legislature to local city and county legislative bodies to develop master programs subject to the approval of the Department of Ecology. RCW 90.58.080. Like the GMA, the SMA's delegation of master programs is designed to create a consistent statewide policy. Indeed, the SMA requires that every local body's master program must "[r]ecognize and protect the statewide interest over local interest." RCW 90.58.020. The SMA, further, details a complex process of developing master programs that includes notice and comment but not referenda. RCW 90.58.090; *see also Brisbane*, 125 Wn.2d at 350-52 (holding that the careful procedures, including notice and comment, of the GMA were inconsistent with an up and down local initiative vote and that the absence of any mention of referenda in the GMA was strong evidence that the legislature vested the power and responsibility of the GMA in local legislative authorities).

Consistent with the GMA's statewide mandate and delegation to local legislative bodies, the City of Everett developed a comprehensive plan that will remain in effect until 2035. Maguire Decl., Ex. E. The comprehensive plan squarely addresses the substance of the Initiative, including water quality of critical areas such as wetlands and fish and wildlife areas. *Id.* Pursuant to the GMA, the City of Everett even has an entire municipal code chapter, Ch. 19.37 EMC, that regulates the city's critical areas, including wetland and stream preservation and protection (§ 19.37.085 EMC), fish and wildlife habitat conservation (§ 19.37.190 EMC), and groundwater discharge (§ 19.37.200 EMC). Further, the city also developed a comprehensive shoreline master program that regulates the same subject as the Initiative in the

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city's Puget Sound shoreline. Maguire Decl., Ex. C.

Despite the State's delegation to local legislative bodies through the GMA and SMA, and despite the city council's comprehensive plans under both acts, it is indisputable that the Initiative attempts to regulate the same subject matters. The Initiative concerns the "health and vitality" of the Watershed, which contains both critical areas under the GMA and shoreline under the SMA. Maguire Decl., Ex. A. And, again, the Initiative sponsors have admitted that the Initiative seeks to "supplement" existing law, Dkt. 19 at 3, including by "granting legal standing to the [] Watershed" because "current legal frameworks may not adequately protect [it]," Maguire Decl., Ex. A. But this is plainly impermissible. The Washington Supreme Court has stated that "[t]he GMA is a clear example of legislation that creates public policy to be implemented in large part at the local level, by representatives more attuned to the individual needs, wants, and characteristics of their areas." *1000 Friends of Wash.*, 159 Wn.2d at 174; *see also id.* at 181 ("allowing referenda is structurally inconsistent with [the GMA's] mandate"). The same logic should be extended to the SMA. Because the legislature granted the power to enact ordinances falling within these acts' scope to the legislative bodies of cities and counties, "the enactment of [such ordinances] cannot be accomplished by initiative." *Yes for Seattle*, 122 Wn. App. at 392; *see also 1000 Friends of Wash.*, 159 Wn.2d at 174, 181.

4. Preemption and Severability Clauses Cannot Save the Initiative.

Neither the Initiative's Preemption Clause nor its Severability Clause can save it. The Initiative's Preemption Clause states, "This ordinance shall not be applicable to areas of law that have been validly preempted by state or federal law." Maguire Decl., Ex. A. This clause fails to bring the Initiative within the local initiative power for three reasons.

First, while the Initiative conflicts with federal and state law, it also exceeds the local initiative power in two other ways: (1) it intrudes on matters that are administrative in nature; and (2) it interferes with powers delegated to legislative bodies. These are not preemption arguments; rather, they solely concern the scope of authorized power the City of Everett has granted, by charter and statute, to its citizens for direct legislation. *Jewels Helping Hands*, 567

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P.3d at 30-31. If an initiative is administrative in nature or concerns powers delegated to legislative bodies, that does not mean that federal or state law preempts that initiative, it just means that state law never granted citizens the power to pass such an initiative by direct legislation. *See id.*. As such, the Preemption Clause is no defense to these two claims.

Second, the Preemption Clause is so narrow that it has no bearing on Plaintiffs' claims. The plain text of the Initiative states that it "shall not be applicable to ***areas of law that have been validly preempted*** by state or federal law." Maguire Decl., Ex. A (emphasis added). That language attempts to address field preemption, where entire areas of law are preempted, but it does nothing to address conflicts with federal or state law. *See, e.g.*, *Estate of Becker v. Avco Corp.*, 187 Wn.2d 615, 626-27, 387 P.3d 1066 (2017) (describing field preemption as preempting an "area of law"). Put simply, the Preemption Clause applies the following test: if the area of law is preempted (field preemption), then the Initiative does not apply. This means, however, that the Initiative ***remains applicable*** to areas of law that federal or state law have not preempted. The Preemption Clause, therefore, does not address Plaintiffs' claim that the Initiative conflicts with federal or state law because it "permits what is forbidden by state law or prohibits what state law permits." *Parkland Light & Water Co.*, 151 Wn.2d at 433.

Third, if one assumes the Preemption Clause renders the Initiative inapplicable in every situation where it conflicts with federal or state law, then nothing would remain of the Initiative. The purpose of the Initiative is to supplement federal and state law, Dkt. 19 at 3, because the "current legal frameworks may not adequately protect the Watershed's ability to exist and flourish," Maguire Decl., Ex. A. The Initiative, therefore, grants the Watershed its own, novel rights, standing, cause of action, and remedies. *See* Maguire Decl., Ex. A. These provisions conflict with federal and state law. For example, the creation of rights in the Watershed "conflict[s] with state law, which already determines the water rights for the [Watershed]." *Spokane Entrepreneurial Ctr.*, 185 Wn.2d at 109. And the grant of standing to the Watershed conflicts with well-settled state law that "[a]n action brought under the name of a nonexistent

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entity is a nullity[,]" *K&W Children's Tr.*, 20 Wn. App. 2d at 871. Without its water rights, cause of action, or enforcement provisions, the Initiative is left without any meaning.

For the same reason, the Initiative's severability clause cannot save it. An "initiative may not be severed . . . if the valid and invalid portions are so connected that the valid portions would be 'useless to accomplish the legislative purpose.'" *Yes for Seattle*, 122 Wn. App. at 393. For instance, in *City of Seattle v. Yes for Seattle*, the court invalidated an initiative that sought to enact GMA development regulations because the "development aspects" of the initiative pervaded its sections, and the "nondevelopment sections on their own would not accomplish the [development and land use control] goals of the initiative." *Id.* at 394. Similarly, here, the Court must invalidate the entire Initiative because if the Court were to sever the Watershed rights and cause of action provisions, nothing would remain to accomplish the Initiative's goals.

B. Declaratory Relief, Justiciability, and Standing.

In denying the Intervenor Defendant's Motion to Dismiss for Lack of Standing and Failure to State a Claim, this Court concluded that (1) Plaintiffs have standing under the Uniform Declaratory Judgment Act because Plaintiffs have shown injury in fact and because the public importance exception applies and (2) Plaintiffs' claims for declaratory and injunctive relief are justiciable. *See* Dkt. 19 at 3-6. Plaintiffs' declarations filed in support of this Motion reinforce the Court's previous conclusion and compel entry of summary judgment declaring the Initiative beyond the scope of the initiative power.

1. Washington Courts Routinely Enter Declaratory Judgments Addressing the Scope of Local Initiatives and Declaring Them Invalid.

Washington courts regularly grant the relief Plaintiffs seek – a declaratory judgment determining that an initiative exceeds the scope of the initiative power – indeed, courts regularly grant such relief even pre-election. *See, e.g.*, *Am. Traffic Sols., Inc. v. City of Bellingham*, 163 Wn. App. 427, 433-34, 260 P.3d 245 (2011) (reversing denial of declaratory judgment for private company challenging local initiative as exceeding initiative power); *Ford v. Logan*, 79 Wn.2d 147, 157, 483 P.2d 1247 (1971) (affirming declaration for private taxpayer challenging

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local initiative as exceeding initiative power); *Seattle Bldg. & Constr. Trades Council*, 94 Wn.2d at 747-49 (affirming declaration for private trade association challenging local initiative as exceeding initiative power). Declaratory relief is proper in pre-election initiative challenges even when plaintiffs do not meet the test for injunctive relief. *See Am. Traffic Sols.*, 163 Wn. App. at 432-33, 435 (reversing denial of declaratory judgment because initiative exceeded initiative power, but affirming denial of injunction on standing grounds); *see also Powell v. McCormack*, 395 U.S. 486, 499 (1969) (court may grant declaratory judgment even though it does not issue injunctive relief). That is because the standard for declaratory relief is more liberal than for injunctive relief. *See Am. Traffic Sols.*, 163 Wn. App. at 432-33, 435.

2. Plaintiffs Satisfy the Procedural Requirements to Obtain Declaratory Relief.

When a justiciable controversy exists and Plaintiffs have standing – both of which the Court has already found in this case – declaratory relief is proper. *See Am. Traffic Sols.*, 163 Wn. App. at 432-33.

a. A Justiciable Controversy Exists.

The Court already recognized in denying the Intervenor's Motion to Dismiss that Plaintiffs' claim for declaratory relief is justiciable because "no further factual development is necessary to sharpen the issue." Dkt. 19 at 5. The Court's conclusion is well-supported by the law and facts.

The fundamental question in this case is whether the subject matter of the Initiative is proper for direct legislation. This post-election challenge is justiciable; indeed, it would have been justiciable had it been brought pre-election because no post-election event can change the answer to the question whether the measures are or are not within the scope of the initiative power.

> [Pre-election] [s]ubject matter challenges do not raise concerns regarding justiciability because postelection events will not further sharpen the issue (i.e., the subject of the proposed measure is either proper for direct legislation or it is not).

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Am. Traffic Sols., 163 Wn. App. at 432 (quoting *Coppernoll v. Reed*, 155 Wn.2d 290, 299, 119 P.3d 318 (2005)); *see also City of Sequim v. Malkasian*, 157 Wn.2d 251, 255, 260 (2006) (reaffirming same). Thus, Plaintiffs' post-election claims are plainly justiciable.

Although well-established authority makes clear that subject matter challenges do not raise justiciability concerns, this case plainly reflects a present, justiciable dispute. The initiative was passed by the voters and Plaintiffs allege the Initiative, which is now in effect, improperly exceeds the scope of the local initiative power. Plaintiffs have demonstrated the dispute involves direct and substantial interests, namely that the Initiative has caused injury to them, including by creating new rights in the Watershed. Indeed, the City of Everett has even stated it too has concerns about the Initiative's impact on the city's water treatment facility in the Watershed. Dkt. 16 at 2. Further, this action is the appropriate vehicle for resolving the dispute because the Initiative's sponsors are vigorously defending the validity of the Initiative and so the parties have "genuine and opposing interests." *See City of Longview v. Wallin*, 174 Wn. App. 763, 777-80, 301 P.3d 45 (2013) (even before signatures were validated on initiative petition, a justiciable controversy existed between sponsors supporting initiative and City attacking initiative). And, finally, a declaration that the Initiative exceeds the local initiative power will be final and conclusive.

b. Plaintiffs Have Standing.

As with justiciability, the Court has already determined the Plaintiffs have standing to seek declaratory relief in this case, under both the traditional standing test and the public importance standing doctrine. Dkt. 19 at 2-5. Plaintiffs' declarations establish the facts alleged in the Complaint which the Court relied upon in its previous determination. Indeed, Plaintiffs have demonstrated more than sufficient interests and injuries to satisfy standing under the UDJA, which "'is not intended to be a particularly high bar.'" *Bass v. City of Edmonds*, 199 Wn.2d 403, 409, 508 P.3d 172 (2022) (quoting *Wash. State House Fin. Comm'n v. Nat'l Homebuyers Fund, Inc.*, 193 Wn.2d 704, 712, 445 P.3d 533 (2019)).

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A plaintiff has standing to pursue declaratory relief if it meets the well-established two-part test. First, the plaintiff must demonstrate "the interest sought to be protected [is] arguably within the zone of interests to be protected or regulated by the [initiative]." *Spokane Entrepreneurial Ctr.*, 185 Wn.2d at 103-04 (internal quotation marks omitted). Second, the plaintiff must show that it has or will suffer an "injury in fact." *Alim v. City of Seattle*, 14 Wn. App. 2d 838, 852, 474 P.3d 589 (2020).[2] A Plaintiff can also have standing under the public importance exception, which allows a court to find standing "when a party raises an issue of broad overriding public import." *City of Edmonds v. Bass*, 16 Wn. App. 2d 488, 496, 481 P.3d 596 (2021) (internal quotation marks omitted). Courts regularly hold that subject matter challenges to initiatives involve "significant and continuing matters of public importance that merit judicial resolution." *See Am. Traffic Sols.*, 163 Wn. App. at 433; *Wallin*, 174 Wn. App. at 783. Whether the Court relies on Plaintiffs' overwhelming and uncontroverted evidence of standing or the public importance doctrine, Plaintiffs have standing here to obtain declaratory relief.

In addition to the individual Plaintiffs, Plaintiff associations have standing on behalf of their members. "An organization has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Mukilteo Citizens for Simple Gov't*, 174 Wn.2d at 46 (citation and internal quotation marks omitted).

(1) Plaintiffs Arguably Fall Within the Zone of Interests the Initiatives Seek to Regulate.

The Initiative's zone of interest is the Watershed's ecosystem. Maguire Decl., Ex. A ("current legal frameworks may not adequately protect the Watershed's ability to exist and

[2] *See also* RCW 7.24.020 ("A person . . . whose rights, status or other legal relations are affected by a statute [or] municipal ordinance . . . may have determined any question of construction or validity arising under the . . . statute [or] ordinance . . . and obtain a declaration of rights, status or other legal relations thereunder.")

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flourish"). To this end, the Initiative grants the Watershed "the rights to exist, regenerate, and flourish," including the rights "to naturally recharge," "to naturally flow," "to water quality necessary to provide habitat[,]" "to provide clean water," and "to restoration." *Id.* Plaintiffs need only demonstrate that they are "arguably" in the Initiative's zone of interest, and they have done so.

Plaintiff Osprey Logistics operates an intermodal marine facility on the waters of the Snohomish River in the City of Everett. Osprey Logistics Decl. ¶¶ 2-3. Osprey Logistics provides a suite of logistics services both on the waters and land of the Watershed, including breakbulk cargo handling, barge and truck loading and unloading, cargo yard storage, specialty log and timber services, dewatering log rafts for shipment, and moorage of barges or tugs on the Snohomish River. *Id.* ¶¶ 4-5. All of these operations interact with the Watershed. Indeed, federal, state, and local authorities all regulate Osprey Logistics' operations for the purpose of protecting the Watershed pursuant to existing legal and regulatory frameworks. *Id.* ¶¶ 9-12. Thus, Osprey Logistics falls squarely within the zone of the interest for the Initiative.

Plaintiffs MBAKS, BIAW, Greencity Development, Robinett Brothers Construction, Robinett Investment, and Martin Robinett are all homebuilders or homebuilder associations who operate in the City of Everett and the Watershed.[3] Federal, state, and, local authorities regulate Homebuilder Plaintiffs' construction operations within the Watershed through myriad laws, regulations, and ordinances that have the purpose of protecting the Watershed. Under the federal Clean Water Act as implemented by DOE and the City of Everett's Stormwater Management Program Plan, Homebuilder Plaintiffs must develop and implement stormwater

[3] Plaintiffs MBAKS, BIAW, and WACA have associational standing because: (1) their members have standing to sue in their own right, as they consist of companies and individuals who conduct business in the City of Everett and the Watershed; (2) the homebuilding and industrial interests they seek to protect in the Watershed are germane to their organizational purposes of advancing the interests of their members, *see* MBAKS Decl. ¶¶ 2-5; BIAW Decl. ¶¶ 2-5; WACA Decl. ¶¶ 2-5; and (3) the relief requested – declaring that the Initiative is invalid – does not require the individual members to participate. *See Wash. Ass'n for Substance Abuse & Violence Prevention v. State*, 174 Wn.2d 642, 653, 278 P.3d 632 (2012) (association had standing to challenge enacted initiative because "its goals of preventing substance abuse could reasonably be impacted" by initiative).

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pollution-prevention plans and sediment, erosion, and pollution prevention control measures on construction sites within the Watershed. MBAKS Decl. ¶¶ 7-9; BIAW Decl. ¶¶ 7-9; Greencity Development Decl. ¶¶ 7-9; Robinett Decl. ¶¶ 6-8. *See also* Maguire Decl., Ex. D § 7.2 (Everett must develop, implement, and enforce a program to reduce stormwater runoff pollutants in new developments, redevelopments, and construction site activities). Homebuilder Plaintiffs' operations in critical areas are also subject to the State Environmental Policy Act, GMA and the City of Everett's implementing Comprehensive Plan, and the City of Everett's critical area ordinances in Chapter 19.37 EMC. *See* MBAKS Decl. ¶ 10; BIAW Decl. ¶ 10; Greencity Development Decl. ¶ 10; Robinett Decl. ¶ 9. Additionally, Homebuilder Plaintiffs' operations near the City of Everett's shoreline are regulated by the SMA, and the City of Everett's Shoreline Master Program. *See, e.g.*, MBAKS Decl. ¶ 11; BIAW Decl. ¶ 11.

Plaintiff WACA is an association representing sand, gravel, quarry rock, cement, ready mix concrete, suppliers, and industry-related businesses across Washington State, including those who conduct business in the City of Everett and Watershed. WACA Decl. ¶¶ 2-5. WACA's purposes include strengthening this industry and promoting the interests of its members. *Id.* ¶ 4. As discussed above for the Homebuilder Plaintiffs, federal, state, and local authorities regulate WACA members' business activities with respect to water and critical area protection. *Id.* ¶¶ 6-12. WACA falls squarely within the interests of the Initiative.

(2) Plaintiffs Have Demonstrated Injury.

Injury in fact is not a high burden. "[A] party need not show a particular level of injury in order to establish standing[.]" *Chelan Cnty. v. Nykreim*, 146 Wn.2d 904, 935, 52 P.3d 1 (2002) (alteration in original) (quoting *Suquamish Indian Tribe v. Kitsap Cnty.*, 92 Wn. App. 816, 832, 965 P.2d 636 (1998)). And Plaintiffs only need to show the challenged law adversely affects them, not that they intend to violate it. *Alim*, 14 Wn. App. 2d at 854.

All Plaintiffs have demonstrated an ongoing and future injury in fact. Plaintiffs have shown the Initiative harms Plaintiffs' ongoing business operations in the Watershed by creating new rights in the Watershed. *See, e.g.*, Osprey Logistics Decl. ¶¶ 13-17; MBAKS Decl. ¶¶ 12-

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16; BIAW Decl. ¶¶ 12-16; Greencity Development Decl. ¶¶ 12-16; Robinett Decl. ¶¶ 11-15; WACA Decl. ¶¶ 13-20. Plaintiffs have also shown the Initiative has harmed pending development projects by creating additional risks and threatening the finality of already complex regulatory approval processes. *See, e.g.*, WACA Decl. ¶ 19 (the Initiative's new rights, uncertain standards, and private cause of action has jeopardized an investment of hundreds of thousands of dollars by a WACA member on Smith Island); Osprey Logistics Decl. ¶ 16 (the Initiative increases Osprey Logistics' cost of doing business and costs of projects to enhance capacity).

These are not novel claims of injury. Plaintiffs in *Spokane Entrepreneurial Center* brought a pre-election challenge to a sweeping initiative that included a provision giving the "Spokane River its own water rights, including the rights to sustainable recharge, sufficient flows to support native fish, and clean water." 185 Wn.2d at 106. The Washington Supreme Court found that plaintiffs, including a utility company and a county entity "that use the Spokane River pursuant to existing state law [] would *certainly suffer harm if others were given conflicting water rights* related to the Spokane River." *Id.* at 107 (emphasis added). Here, the Initiative give novel water rights to the Watershed and, thus, harms all Plaintiffs who interact with the Watershed under existing federal, state, and local laws and regulations.

(3) Plaintiffs Have Standing Under the Public Importance Doctrine.

As determined by the Court previously, Plaintiffs meet the traditional requirements for standing and, even if they did not, the Plaintiffs have public importance standing. Under this doctrine, courts apply the standing requirements liberally to cases that "involve significant and continuing matters of public importance that merit judicial resolution." *Am. Traffic Sols.*, 163 Wn. App. at 433 (citing *Farris v. Munro*, 99 Wn.2d 326, 330, 662 P.2d 821 (1983)); *Wash. Natural Gas Co. v. Pub. Util. Dist. No. 1 of Snohomish Cnty.*, 77 Wn.2d 94, 96, 459 P.2d 633 (1969). Standing exists under this test when an "issue . . . is a matter of continuing and substantial interest, it presents a question of a public nature which is likely to recur, and it is

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desirable to provide an authoritative determination for the future guidance of public officials." *Farris,* 99 Wn.2d at 330 (internal quotation marks omitted).

The Court of Appeals has frequently held that a proposed local initiative is an issue of substantial public importance that justifies applying the exception. In *American Traffic Solutions., Inc.*, Division One held that "even if the question of [] standing were debatable, we would still address the issues presented in this appeal, because they involve significant and continuing matters of public importance that merit judicial resolution." 163 Wn. App. at 433. Division Two reached the same conclusion: "even if [plaintiff] did not have clear standing, we would address its claims because they 'involve significant and continuing matters of public importance that merit judicial resolution.'" *Wallin*, 174 Wn. App. at 783; *see also Eyman v. McGehee*, 173 Wn. App. 684, 688-89, 294 P.3d 847 (2013) (questions regarding local initiatives are "issues of substantial and continuing public interest," permitting a court to "exercise its discretion and decide an appeal").

In denying Intervenor's Motion to Dismiss, the Court recognized this case involves significant and continuing matters of public importance. Dkt. 19 at 4. Indeed, the Court stated that "whether municipalities have the power to confer rights on waterbodies within their borders . . . [is a] question [that] affects every municipality and every person who uses a waterbody within the state." *Id.*

The Court's holding was correct. The passed Initiative has serious and substantial effects on thousands of people, a range of industries, and the City of Everett's administration of its own water treatment facility, which is why the city asked the Court to rule on the merits because of the public importance of the issues raised in this matter. *Answer* at 5 ("The City asks the court to rule on the legal claims Plaintiffs have raised challenging the validity of City of Everett Initiative No. 24-03"). As such, public importance standing applies. The Court cannot sever the offending sections without defeating the Initiative's purpose.

DATED this 14th day of August, 2025.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that I caused the document to which this certificate is attached to be delivered upon the following counsel via e-mail as follows:

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DATED this 14th day of August, 2025.

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