Civil Motions
The Honorable Jennifer R. Langbehn
Noted for October 24, 2025 at 9:30 AM

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SNOHOMISH

MASTER BUILDERS ASSOCIATION OF KING AND SNOHOMISH COUNTIES; *et al*. Plaintiffs, vs. THE CITY OF EVERETT, Defendant and STANDING FOR NATURE, Intervenor-Defendant.	NO: 25-2-00902-31 CITY OF EVERETT'S RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION AND REQUEST FOR RELIEF

The City of Everett (the "City") files this response in support of Plaintiffs' motion for summary judgment. While the City fully supports efforts to protect the Snohomish River Watershed, the City recognizes that existing federal and state law, along with the City's own rules, regulations and ordinances, are already in place to protect the Watershed and other related bodies of water. City of Everett Initiative No. 24-03 undermines those efforts by ignoring the

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balance established in existing environmental regulations, which are designed to protect those bodies of water while still permitting well-regulated development and industry to be conducted within the City of Everett. The City joins Plaintiffs' arguments and submits this brief to highlight just a few of the ways the Initiative disrupts the functioning of existing laws. The City therefore asks the Court to grant Plaintiff's motion for summary judgment and rule that Initiative 24-03 exceeds the scope of the local initiative power and declare it invalid.

II. STATEMENT OF FACTS

The City adopts Plaintiffs' summary of undisputed facts. Below, the City summarizes some of the negative impacts of the initiative on the City's compliance with the Clean Water Act, stormwater management, and the Growth Management Act.

III. STATEMENT OF ISSUES

The City adopts the Plaintiffs' statement of issues.

1. EVIDENCE RELIED UPON

1. Declaration of Jeff Marrs in Support of City of Everett's Response to Plaintiffs' Motion for Summary Judgment;

2. Declaration of Heather Griffin in Support of City of Everett's Response to Plaintiffs' Motion for Summary Judgment; and

3. Declaration of Yorik Stevens-Wajda in Support of City of Everett's Response to Plaintiffs' Motion for Summary Judgment.

2. LEGAL AUTHORITY

City of Everett Initiative No. 24-03 (the "Initiative") creates a new cause of action to enforce the Snohomish River Watershed ("Watershed")'s rights that will potentially upset established processes with exclusive jurisdiction to challenge water quality regulation, including water quality permits and land use decisions. The City has a substantial interest in ensuring that water quality permits issued to the City are final, and that the City can rely on those permits for

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implementing actions including discharge authorizations to its wastewater system and land use approvals that include drainage and stormwater requirements. The Initiative improperly intrudes on matters that are preempted under state and federal water quality laws and the exclusive jurisdiction under state law to review regulatory decisions by the City including the statutory and exclusive means of seeking administrative and judicial review of those decisions.

Water quality in the Watershed is primarily regulated under The Clean Water Act ("CWA"). 33 U.S.C. §§ 1251-1389. The CWA was enacted in 1972 as a sweeping effort to maintain and restore the quality of waters of the United States. A cornerstone of the statute is the concept of shared federalism under which certain obligations under the CWA would be devolved in the first instance to states. This includes the development of water quality standards under 33 U.S.C.§ 1313. The CWA posits the primary responsibility for developing water quality standards with states. The Department of Ecology ("Ecology") is the delegated state agency for the purposes of the CWA, RCW 90.48.260, and promulgates water quality standards as state administrative rules subject to EPA approval. *See* Ch. 173-201A WAC. Any party that is aggrieved by the adopting of water quality standards must seek review of the state rule under the state Administrative Procedures Act, Ch. 34.05 RCW, or EPA approval under the CWA, 33 U.S.C. § 1365.

Ecology was established as a state agency, in part, to assume responsibilities under the CWA and accept delegated NPDES permitting authority in Washington outside of federal and tribal lands. See RCW 90.48.260; *Port of Seattle v. Pollution Control Hearings Board*, 151 Wn.2d 568, 590, 90 P.3d 659 (2004). Under this statutory scheme, NPDES permits issued by Ecology are both federal and state permits. The Washington Legislature established the Pollution Control Hearings Board ("PCHB") at the same time as it created Ecology as an independent agency with exclusive jurisdiction to review appeals of NPDES permits and NPDES permit enforcement actions, among other regulatory actions by Ecology. RCW

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43.21B.110.

The City operates under two NPDES permits. The City's wastewater treatment plant is regulated under NPDES Permit No. WA0024490, that was reissued on November 21, 2024.[1] The current permit was subject to administrative review before the PCHB for a thirty-day period after it was issued. RCW 43.21B.230(1).[2] The City relies on the finality of its NPDES permit for all facility planning and for its industrial pretreatment program.[3] The City has a substantial interest in the finality of its permit and it would be disruptive to its planning obligations and compliance efforts to be subject to a collateral attack under the Initiative.[4] Property owners with connections to the municipal wastewater system and businesses regulated under the pretreatment program are entitled to rely on the finality of the NPDES permit obligations as implemented by the City.

The second NPDES permit issued by Ecology to the City is coverage under the Western Washington Municipal Stormwater Permit, NPDES Permit No. WAR045515.[5] The City's implementation and compliance with the municipal stormwater permit includes a Stormwater Management Action Plan, a capital construction program for water quality and drainage improvements to existing developments, annual reports submitted to Ecology.[6] The City enforces a drainage ordinance regulating stormwater runoff and prohibiting illicit discharges with escalating enforcement Ch. 14.28 Everett Municipal Code, and conducts stormwater system inspection programs for both public and private stormwater systems.[7] The City operates a business source control inspection program, adopts and enforces the Ecology Stormwater Management Manual for Western Washington (which includes both a runoff treatment volume

[1] Marrs Dec. at ¶2.
[2] Marrs Dec. at ¶2.
[3] Marrs Dec. at ¶3.
[4] Marrs Dec. at ¶4.
[5] Griffin Dec. at ¶2.
[6] Griffin Dec. at ¶3.
[7] Griffin Dec. at ¶4.

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and a source control volume), and includes stormwater-related requirements in the City Design & Construction Standards and Specifications for Development.[8] The City has a substantial interest in the finality of the MSP and its implementing measures. Additionally, Everett maintains a Surface Water Comprehensive Plan ("SWCP") that includes an entire volume dedicated to the Snohomish River Watershed with individual basin plans for each area that drains to streams and lakes.[9] The basin plans consist of basin characterization, issue identification and ranking, and conceptual solutions for identified issues. The SWCP also includes regulatory history, recommendations, and lists of planned projects.[10] Any person aggrieved by these actions by the City should pursue their concerns through a timely appeal of the municipal stormwater permit or a challenge to the ordinances adopted by the City. There should be no basis under the Initiative to bring an action against Ecology or the City that amounts to a collateral attack on final decisions made at the state and local level in the issuance of the municipal permit or the implementing measures by the City. Everett relies on the NPDES permitting and appeals process to consider and implement long-term development projects to ensure it may serve its community while complying with applicable water quality standards. The Initiative disrupts this reliance and forces the City to potentially expend time and resources on third party challenges that should be resolved through the existing processes.

The City also has a substantial interest in the finality of its sewer connection and stormwater management decisions made as part of its land use decisions. Under the state Land Use Petition Act ("LUPA"), any challenge to a final land use decision must be brought in superior court within 21 days of the issuance of the decision. RCW 37.70C.040(2) and (3). This is the exclusive means for judicial review of a land use decision and the failure to comply with the filing requirements under LUPA bars any subsequent review of the decision. *Wenatchee*

[8] Griffin Dec. at ¶5.
[9] Griffin Dec. at ¶6.
[10] Griffin Dec. at ¶6.

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Sportsman Ass'n v. Chelan County, 141 Wn.2d 169, 181-82, 4 P.3d 123 (2000). The Initiative is directly adverse to the established LUPA appeals process and would allow direct challenges to final decisions. The City and applicants for land use decisions are entitled to rely on the finality of decisions as they relate to sewer connections and stormwater management.

The Initiative similarly impacts established processes related to Comprehensive Plans under the Growth Management Act ("GMA") and the associated appeals process through the Growth Management Hearings Board. Washington's GMA, 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.'" RCW 36.70A.020, .060; WAC 365-190-040. Local governments have authority over "critical areas" 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. v. McFarland*, 159 Wn.2d 165, 169, 149 P.3d 616 (2007) (citing RCW 36.70A.030(5)). Thus, federal and state law comprehensively govern and regulate the Watershed, including its tributaries and the nearby waters of Puget and Possession Sounds. The GMA mandates a comprehensive planning process where cities and countries must conduct a thorough review of their Comprehensive Plans and development and regulations, including those related to critical areas and natural resource lands, every ten years in accordance with the schedule in RCW 36.70A.130.[11] These plans are intended to plan for population growth over the following twenty years. Local governments must also coordinate their Comprehensive Plan with any other city or county with which they share a common border. RCW 36.70A.100.[12] The planning process includes robust community input, including workshops, open houses, online engagement forums, surveys, and other means of input.[13] Everett's 2044 Comprehensive Plan guides the

[11] Stevens-Wajda Dec. ¶2.
[12] Stevens-Wajda Dec. ¶3.
[13] Stevens-Wajda Dec. ¶4.

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City's growth and development and ensures compliance with the higher-level countywide planning policies for Snohomish County.[14] These policies and plans squarely address the substance of the Initiative, including water quality of critical areas such as wetlands and fish and wildlife areas.[15] If a party feels a decision relating to city development or planning threatens the Watershed, it must adhere to the appeals process established through the Growth Management Hearings Board, which provides a pathway for all appeals arising under the GMA.[16] The Growth Management Hearings Board hears and decides claims that a city, county, or state agency has not complied with the goals and requirements of the GMA, some provisions of the Shoreline Management Act, and the State Environmental Policy Act.[17] These disputes may arise from challenges to official actions taken by a city, county, or state agency adopting or amending comprehensive plans or development regulations.[18] Anyone wishing to appeal must identify the action being challenged and reason for petition, file an appeal with the Growth Management Hearings Board, and serve the entity or agency that took the action being appealed.[19] The appeal must be filed within sixty days of publication of the local government's challenged final action.[20]

These are just examples of the comprehensive structure of environmental laws that the City must currently navigate to ensure that the actions taken by the City and local industry protect the Watershed and surrounding waters without putting a complete stop to reasonable and controlled development. The Initiative undermines these efforts by adopting a zero-impact policy that is wholly inconsistent with the balance struck by existing laws, rules and regulations.

[14] Stevens-Wajda Dec. ¶5.
[15] Stevens-Wajda Dec. ¶5.
[16] Stevens-Wajda Dec. ¶6.
[17] Stevens-Wajda Dec. ¶6.
[18] Stevens-Wajda Dec. ¶7.
[19] Stevens-Wajda Dec. ¶8.
[20] Stevens-Wajda Dec. ¶8.\

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3. CONCLUSION

All human activity impacts the environment. The existing web of environmental laws serves to protect the environment from past excesses of human development by regulating and monitoring the activities of the City and industry to mitigate the inevitable impacts of that activity on the environment, including the Snohomish River Watershed. The Initiative disrupts that balance by adopting a zero-impacts requirement that undermines all of the efforts of the City to protect the environment without shutting down all development and industry within the City. The Court should therefore find that the Initiative exceeds the scope of the local initiative power and is therefore invalid.

Signed this 8th day of September, 2025.

CITY OF EVERETT

/s/Ramsey Ramerman

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