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, 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.

Case No.: 25-2-00902-31

STANDING FOR NATURE'S RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Intervenor-Defendant Standing for Nature respectfully submits this Opposition to Plaintiffs' Motion for Summary Judgment and requests that the Court deny Plaintiff's Motion.

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

I. INTRODUCTION

Plaintiffs ask this Court for facial, premature invalidation of Everett Initiative 24-03 ("Initiative" or "Ordinance"), a measure duly passed by the people of Everett, based on a series of speculative and legally insufficient claims. The City of Everett's alignment with Plaintiffs' request to invalidate its own ordinance further underscores the need for a rigorous defense of the democratic process. Plaintiffs' motion should be denied because the Initiative is a valid exercise of the City's legislative power, and Plaintiffs and the City have failed to demonstrate the requisite standing and an actual injury-in-fact to challenge it. Furthermore, Plaintiffs' alleged injuries are speculative and are not a substitute for a true legal defect in the Initiative itself.

Washington law affords a strong presumption of validity to voter-approved initiatives, and courts are reluctant to overturn them unless they are clearly and demonstrably invalid. Plaintiffs have not met this high burden. The Initiative is a proper exercise of the City's inherent police power to protect environmental resources; it does not conflict with superior state or federal law; and its legislative character avoids any intrusion into administrative functions. The public importance of this matter does not compel the Court to rule in favor of Plaintiffs, but rather to apply the law correctly and uphold the will of the people. Initiatives like this are a fundamental way for a local community to have a say in their future. To invalidate a duly passed initiative on a matter of local concern would effectively render the right to initiative and referendum a hollow promise in the city's charter.

This measure represents a forward-thinking approach to local environmental protection, well within the City's charter authority, enabling citizens to address gaps in existing regulations or enforcement through direct democracy. Overturning it would undermine the very purpose of

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

the initiative process in Everett's charter, depriving local citizens of meaningful input on issues like watershed protection.

For these reasons, the Court should deny Plaintiffs' Motion for Summary Judgment in its entirety.

II. STATEMENT OF FACTS

On November 5, 2024, Everett voters approved Initiative 24-03 (the "Ordinance" or "Initiative") with 57% support. The Ordinance recognizes the Snohomish River Watershed's rights "to exist, regenerate, and flourish." Everett Municipal Code ("EMC") § 20.12.010. It prohibits violations of those rights but does not create any new permitting program, fee, or administrative process. EMC § 20.12.020. Enforcement is by local civil action brought in the name of the Watershed; monetary relief is limited to restoration damages payable to the City of Everett for remediation, together with prevailing-party attorney fees. EMC § 20.12.030(B). The Watershed itself incurs no liabilities under the Ordinance. EMC § 20.12.030(C). The Ordinance adopts a precautionary evaluative principle—where a probable violation is shown, lack of complete scientific certainty is not a ground to deny relief—while preserving ordinary civil procedures and the preponderance standard for proving violations. EMC § 20.12.030(D). The Ordinance applies solely within the City of Everett, expressly yields to valid federal or state preemption, and includes a severability clause. EMC § 20.12.050(A)–(B). It cites the City's legislative authority under the EMC, RCW Title 35A, and applicable constitutional provisions. EMC § 20.12.040.

Plaintiffs—trade associations and businesses—filed this action on January 28, 2025, seeking a declaratory judgment facially invalidating the Ordinance. They allege the Ordinance exceeds the local initiative power; conflicts with the Clean Water Act (CWA), 33 U.S.C. § 1251

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

et seq., the Growth Management Act (GMA), RCW 36.70A et seq., and Title 90 RCW (water statutes); intrudes on "administrative" matters; and will cause speculative harms (e.g., increased litigation and housing costs). Compl. ¶¶ 18–39, 41–44.[1] Standing for Nature intervened and denied those claims. Intervenor's Answer ¶¶ 1–46. The Court later denied Intervenor's motion to dismiss under the Uniform Declaratory Judgments Act (UDJA) (Dkt. 19), leaving the merits to be resolved on a fuller record.

Although named as a defendant, the City of Everett has asked the Court to reach the merits and has expressed concerns about the Ordinance, effectively aligning with Plaintiffs in seeking to set aside a voter-approved law.

Plaintiffs' Motion for Summary Judgment relies on declarations that speculate about potential lawsuits, economic burdens, and regulatory conflicts, but they identify no permit denial, permit condition, enforcement action, or concrete compliance cost caused by the Ordinance. *See, e.g.*, Mot. at 1–3 (citing declarations). Plaintiffs' Statement of Undisputed Facts also asserts that the Ordinance "lowers the burden of proof in enforcement actions." Mot. at 3. That is disputed: Standing for Nature's Answer denies any burden shift and explains that the Ordinance employs a precautionary evaluative lens while preserving the civil preponderance standard. Intervenor's Answer ¶ 15; *see* EMC § 20.12.030(D). The City's Answer likewise acknowledged the ordinary standard earlier in the case (admitting a quoted sentence but denying the initiative can change the burden of proof), yet in responding to summary judgment the City later adopted Plaintiffs' "undisputed" assertion without explanation. City's Answer ¶ 15; *see*

---

[1] Plaintiffs have not raised a void-for-vagueness challenge to the Ordinance in their Complaint or Motion for Summary Judgment. Any such argument would be waived and should not be considered by the Court. *See* RAP 2.5(a)(1) (issues not raised in trial court generally may not be raised on appeal); *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995) (constitutional challenges must be raised at earliest opportunity).

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

Mot. at 3. That inconsistency on a central point of operation creates a genuine dispute of material fact that must be resolved against summary judgment. *See* CR 56(c) (all reasonable inferences are drawn in favor of the nonmovant).

In sum, the record portrays the Ordinance as a community enforcement tool that adds restoration-focused remedies, includes express preemption, and operates alongside, not in displacement of, existing federal and state frameworks.

III. ISSUES PRESENTED

1. Whether Everett voters acted within their chartered initiative power by adopting a general, prospective policy that complements—rather than conflicts with—state and federal law and that expressly defers to preemptive law and preserves severability. Yes.
2. Whether Plaintiffs are entitled to facial, pre-enforcement invalidation on a paper record without concrete permit or enforcement facts where disputes exist about the Ordinance's operation (including burden of proof, alleged impacts, and application alongside state/federal regimes). No. *See* RCW 7.24.120; *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411–16, 27 P.3d 1149 (2001).
3. Whether Plaintiffs' standing and justiciability showings are insufficient, or at minimum so fact-contingent that the Court should exercise UDJA discretion to decline a sweeping facial ruling. Yes.

IV. EVIDENCE RELIED UPON

Standing for Nature relies upon the Declaration of Rachel Kurtz-McAlaine ("Kurtz") and supporting exhibits thereto.

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

V. ARGUMENT

A. Everett Has the Authority to Enact the Ordinance

Washington law clearly establishes that first-class cities have the authority to legislate concurrently with federal and state laws. Absent field preemption, "[t]he fact that an activity may be licensed under state law does not lead to the conclusion that it must be permitted under local law. A local ordinance may require more than state law requires where the laws are prohibitive." *Rabon v. City of Seattle*, 135 Wn.2d 278, 292, 957 P.2d 621 (1998).

Plaintiffs' entire argument ignores this dispositive law. Instead, they advance a "field preemption" claim disguised as "conflict preemption," asserting that federal and state regulation of water quality entirely precludes local recognition of the rights of watersheds. However, the laws cited by Plaintiffs do not impose field preemption in the area of watershed rights (and Plaintiffs do not assert otherwise, relying exclusively on conflict preemption). Nor do those laws contain a single regulation concerning the rights of watersheds (as Plaintiffs admit) with which the Ordinance could conflict under the doctrine of conflict preemption. Mot. at 8-9. These unavoidable truths defeat Plaintiffs' entire arguments on local legislative authority and preemption.

Unlike in *Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend the Constitution*, 185 Wn.2d 97, 369 P.3d 140 (2016), the Ordinance contains an express preemption carve-out: "This ordinance shall not be applicable to areas of law that have been validly preempted by state or federal law." In short, not only is there no conflict, but the Ordinance could not be more consonant with federal and state law.

Plaintiffs claim the Ordinance exceeds Everett's initiative power because it allegedly conflicts with federal or state constitutions or laws, intrudes on administrative matters, or

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

interferes with responsibilities delegated to the City Council or Mayor. Mot. at 5-18. This mischaracterizes the Ordinance's narrow scope and Washington's broad initiative framework. As a first-class charter city, Everett's initiative power is expansive, limited only by clear conflicts with superior law or improper administrative intrusion. Wash. Const. art. XI, § 10 (cities may frame charters "consistent with and subject to the Constitution and laws of this state"); RCW 35.22.200 (charters may provide for direct legislation "upon any matter within the scope of the powers, functions, or duties of the city"); Everett Charter art. XI, § 11.1 (people have power to direct legislation by initiative and referendum). *See Paget v. Logan*, 78 Wn.2d 349, 356, 474 P.2d 247 (1970) ("broad and permissive initiative power"); *Citizens for Financially Responsible Gov't v. City of Spokane*, 99 Wn.2d 339, 343, 662 P.2d 845 (1983) (grants of power to first-class cities, including the initiative power, "are to be liberally construed to carry out the objectives of [first-class cities]. RCW 35.22.900.").

First-class cities also possess robust municipal police powers for public health, safety, and welfare. RCW 35.22.280(35). "The scope of police power is broad, encompassing all those measures which bear a reasonable and substantial relation to promotion of the general welfare of the people." *Covell v. City of Seattle*, 127 Wn.2d 874, 878, 905 P.2d 324 (1995) (citing *Hillis Homes, Inc. v. Snohomish County*, 97 Wn.2d 804, 808, 650 P.2d 193 (1982)). Environmental protection and watershed health fall squarely within this inherent authority. *See, e.g., SkyCorp, Ltd. v. King County*, 29 Wn. App. 2d 832, 855-58, 3 Wn.3d 1008 (2024) (upholding ordinance promoting air quality under police power).

The initiative process exists to give citizens a direct voice in local governance, ensuring they can address critical community needs like environmental protection when existing mechanisms fall short. *See generally, e.g., Rental Hous. Ass'n of Wash. v. City of Federal Way*,

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

520 P.3d 87 (2022) (upholding local initiative to supplement state law by adding new defenses for tenants in eviction cases).

Plaintiffs' insistence that the Initiative is an illegal deviation from state and federal regulatory frameworks ignores the very purpose of local legislative power. It is precisely because state and federal environmental laws can be static, subject to change with political whims, or are in various ways deficient, that local communities need the power to address local environmental concerns.

1. The Ordinance Does Not Conflict with Federal or State Law

Plaintiffs claim the Initiative is preempted by superior state and federal law. This claim fails as a matter of law. Local ordinances are preempted only if they "directly and irreconcilably conflict[]" with superior law. *Lawson v. City of Pasco*, 168 Wn.2d 675, 686, 230 P.3d 1038 (2010). Preemption analysis focuses on whether laws can be harmonized; if harmonization is possible, no conflict exists, and courts analyze specific applications rather than invalidate ordinances wholesale. *Rental Hous. Ass'n v. City of Seattle*, 21 Wn. App. 2d 244, 258, 520 P.3d 87, 92 (2022).

Plaintiffs identify no textual, irreconcilable conflict between the Ordinance and superior law. The Ordinance creates no regulations but recognizes well-grounded, familiar ecological interests ("exist, regenerate, and flourish") and pairs them with ordinary judicial tools (standing, restoration damages) that apply only where they do not collide with superior law. Maguire Decl., Ex. A §§ A, E–F. The Washington Supreme Court has expressly held that "a local ordinance may go further in its prohibition than state law." *Rabon*, 135 Wn.2d at 293.

Federal law preserves local environmental authority. Clean Water Act Section 510 provides: "nothing in this chapter shall ... preclude or deny the right of any State or political

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

subdivision thereof ... to adopt or enforce any standard or limitation respecting discharges of pollutants ... except that ... such State or political subdivision ... may ... not adopt ... any standard ... which is less stringent." 33 U.S.C. § 1370. The Supreme Court has repeatedly affirmed this savings clause. *See Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 497 (1987); *PUD No. 1 of Jefferson Cty. v. Wash. Dep't of Ecology*, 511 U.S. 700, 704–05 (1994). The Ordinance operates within this federally protected space, imposing no less stringent standards than federal law.

Plaintiffs' reliance on *Spokane Entrepreneurial Ctr.*, is misplaced. That case involved an ordinance that directly contradicted the State water-rights appropriation system by purporting to give Spokane residents a right "to access and use water in the city." *Id*. at 663. The court invalidated the ordinance because it impermissibly intruded into the state's exclusive water allocation framework. *Id*. at 669. This Ordinance, by contrast, grants no water-use rights to Everett residents and does not purport to override State water allocations. Maguire Decl., Ex. A §§ E–F. The distinction is dispositive: where *Spokane Entrepreneurial Ctr*. involved an ordinance that usurped the state's water appropriation system, this Ordinance merely recognizes ecological interests and provides enforcement mechanisms that operate harmoniously with existing law.

2. The Ordinance Is Legislative, Not Impermissibly Administrative

Plaintiffs assert the Ordinance is impermissibly administrative because it allegedly modifies or hinders existing federal, state, and local regulatory schemes under the Clean Water Act, Washington's water laws (RCW Title 90), and the Growth Management Act, by creating new rights, standing, and enforcement mechanisms that purportedly interfere with comprehensive plans such as Everett's Shoreline Master Program, Stormwater Management

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

Program, Comprehensive Plan, and water treatment regulations. Mot. at 11-14. This argument misapplies the legislative-administrative distinction, which bars initiatives only if they execute or hinder pre-adopted plans rather than declare new policy. *City of Port Angeles v. Our Water-Our Choice!*, 170 Wn.2d 1, 8, 239 P.3d 589 (2010) (an initiative is administrative if it "furthers (or hinders) a plan ... previously adopted").

Under *Jewels Helping Hands v. Hansen*, 567 P.3d 19, 30–32 (Wash. 2025), the Initiative is legislative because it establishes permanent, generally applicable environmental rights and policies rather than implementing existing administrative schemes. The two-part test examines: (1) whether the subject matter has a "permanent and general character" (legislative) versus a "temporary and special character" (administrative); and (2) whether the measure "makes new law or declares new policy" (legislative) versus "merely carries out existing law" (administrative). *Id*. at 30–31. Both prongs establish that the Ordinance is legislative.

First, the Ordinance has a permanent and general character. It establishes enduring legal rights for the Snohomish River Watershed applicable to all activities affecting the watershed. Maguire Decl., Ex. A § E. This is not a temporary or special measure addressing a discrete administrative task, but rather a fundamental declaration of environmental policy with ongoing effect. *See Jewels Helping Hands*, 567 P.3d at 31 (legislative measures have "permanent and general" scope). The recognition of legal rights for natural entities constitutes a permanent policy framework comparable to other landmark rights expansions historically recognized as legislative acts. *See Ford v. Logan*, 79 Wn.2d 147, 154–55, 483 P.2d 1026 (1971) (actions prescribing new policy or plan are legislative).

Second, the Ordinance declares new law and policy rather than executing existing regulations. It creates a novel legal framework by: (1) granting the Watershed legal standing to

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

enforce its rights; (2) establishing enforceable rights previously nonexistent in state or federal law; and (3) providing a local enforcement mechanism with restoration-based remedies. Maguire Decl., Ex. A §§ E–F. These provisions represent a fundamental policy shift, not mere implementation of preexisting schemes. *See Jewels Helping Hands*, 567 P.3d at 32–33 (administrative measures impermissibly "tinker with" or "administer details" of preexisting policy).

Critically, the Ordinance does not hinder existing regulatory schemes, the linchpin of Plaintiffs' argument, because it contains an express preemption savings clause: "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 provision ensures the Ordinance operates only where it does not conflict with superior law, preventing any interference with established federal, state, or local regulatory frameworks. *See Margola Assocs. v. City of Seattle*, 121 Wn.2d 625, 642, 854 P.2d 23 (1993) (construe ordinances to avoid conflict).

The Ordinance is therefore distinguishable from cases where initiatives impermissibly intruded into administrative domains. In *Spokane Entrepreneurial Ctr*., 185 Wn.2d at 109, the ordinance was administrative because it directly conflicted with the state's exclusive water appropriation system. In *Jewels Helping Hands*, the measure was administrative because it merely modified implementation details (camping policy buffer distances) within an existing regulatory framework. 567 P.3d at 32–33. Here, by contrast, the Ordinance creates new substantive rights of permanent and general character while expressly preserving existing regulatory authority through its savings clause. This is quintessentially legislative action. See *Heider v. City of Seattle*, 100 Wn.2d 874, 675 P.2d 597 (1984) (administrative only if merely

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

amending pursuant to adopted plan). Unlike measures that directly contradict or impede existing administrative systems, this Ordinance supplements them within the bounds of local authority.

3. The Ordinance Does Not Interfere with Powers Delegated to Local Legislative Bodies

Plaintiffs claim the Ordinance exceeds initiative power by interfering with the City Council's delegated authority under the Growth Management Act ("GMA") (RCW 36.70A *et seq*.) and Shoreline Management Act ("SMA") (RCW 90.58 *et seq*.) to adopt comprehensive plans, development regulations, and shoreline master programs regulating critical areas and shorelines. Mot. at 15-16. This argument misapplies the delegation doctrine. Initiatives are invalid only if they involve powers granted exclusively to the legislative body (as opposed to the city itself) and directly conflict with the exercise of that exclusive authority. *Mukilteo Citizens for Simple Gov't v. City of Mukilteo*, 174 Wn.2d 41, 51, 272 P.3d 227 (2012) (quoting *City of Sequim v. Malkasian*, 157 Wn.2d 251, 261, 138 P.3d 943 (2006)). Statutory delegation under the GMA and SMA is exclusive only where state law expressly forecloses parallel local legislative action. *Id*. at 51–53. Absent such exclusivity, first-class cities retain broad police powers and may legislate by initiative so long as the measure does not irreconcilably conflict with superior law. *See Brown v. City of Yakima*, 116 Wn.2d 556, 563–65, 807 P.2d 353 (1991) (local governments may adopt more protective standards unless expressly prohibited).

The Ordinance satisfies this standard because it neither supplants nor dictates the content of Everett's planning documents. The City Council retains full authority to adopt and amend Everett's Comprehensive Plan (effective through 2035), critical areas regulations (EMC Ch. 19.37), and Shoreline Master Program. The Ordinance does not require any changes to these documents or interfere with the Council's discretion in administering them. Instead, it establishes a general, permanent policy recognizing enforceable watershed interests and

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

provides judicial remedies focused on restoration, while expressly yielding where state or federal law controls. EMC Ch. 20.12. That supplemental, rights-and-remedies structure leaves intact, and does not interfere with, the Council's exclusive GMA/SMA functions. *See 1000 Friends of Wash. v. McFarland*, 159 Wn.2d 165, 174, 149 P.3d 616 (2006) (GMA sets policy to be implemented at the local level by representatives; interference arises when a measure displaces those procedures, not when it operates in parallel).

Plaintiffs' cited cases are readily distinguishable. *Whatcom County v. Brisbane*, 125 Wn.2d 345, 350–52, 884 P.2d 1326 (1994), and *City of Seattle v. Yes for Seattle*, 122 Wn. App. 382, 392–94, 93 P.3d 176 (2004), involved initiatives and referenda that directly altered or submitted to popular vote GMA planning instruments or procedures, actions the statutes reserve to the legislative body and subject to specific process. This Ordinance does neither. It operates within existing frameworks, provides complementary enforcement, and, critically, contains a preemption carve-out that prevents it from hindering or otherwise affecting superior regulatory schemes: "This ordinance shall not be applicable to areas of law that have been validly preempted by state or federal law." EMC § 20.12.050(A). Where the Legislature has not expressly foreclosed parallel local action (and it has not here) citizens may legislate to address local environmental harms without usurping the Council's exclusive planning authority. *Mukilteo Citizens*, 174 Wn.2d at 51; *Brown*, 116 Wn.2d at 563–65.

In short, the Initiative neither dictates nor replaces the City Council's GMA/SMA duties; it supplements them with a rights-and-remedies framework that defers to superior law and leaves all formal planning, adoption, and amendment functions with the Council.

4. The Ordinance's Preemption Provision Defeats Plaintiffs' Facial Challenge

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

Plaintiffs argue the preemption savings clause (EMC § 20.12.050(A)) is ineffective for three reasons: (1) it fails to address their preemption, administrative, and delegation claims; (2) it applies only to field preemption, not conflict preemption; and (3) if applied broadly, it renders the Ordinance meaningless such that severability cannot preserve it. Mot. at 17-18. Each argument fails.

First, Plaintiffs contend the savings clause does not cure the alleged defects in the Ordinance because, in their view, the Ordinance is preempted, administrative, and exceeds delegated authority. That simply repackages their merits theories (preemption, "administrative" intrusion, and exclusive delegation) and asks the Court to ignore the clause. As demonstrated in Sections V.A.1 through V.A.3 above, the Ordinance is neither preempted nor impermissibly administrative, nor does it exceed delegated authority. The savings clause reinforces this conclusion by expressly providing: "This ordinance shall not be applicable to areas of law that have been validly preempted by state or federal law." Maguire Decl., Ex. A § 20.12.050(A). This provision ensures the Ordinance operates only within the bounds of valid local authority, supplementing rather than conflicting with superior law. Washington law presumes ordinances are valid and favors harmonious interpretation. *Margola*, 121 Wn.2d at 642 (courts interpret ordinances to avoid conflicts with superior law). The savings clause manifests precisely this intent to harmonize with state and federal law.

Second, Plaintiffs argue the savings clause addresses only field preemption, not conflict preemption, because the clause references "areas of law." Mot. at 17. This strained interpretation finds no support in the text, Washington precedent, or principles of statutory construction. The clause does not qualify or limit "preempted" to field preemption (e.g., by adding "in the field" or similar restricting language). It should therefore be read according to its

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

plain and ordinary meaning to encompass all forms of valid preemption recognized under Washington law. *See* RCW 1.12.010 (statutory interpretation principles applicable to ordinances). Washington courts routinely use "preempted" as an umbrella term encompassing both field and conflict preemption without distinction.

In *Lawson*, 168 Wn.2d at 686, the Washington Supreme Court defined preemption under Article XI, Section 11 of the Washington Constitution as occurring in two ways: (1) when a statute "preempts the field, leaving no room for concurrent jurisdiction," or (2) when "a conflict exists such that the statute and the ordinance may not be reconciled." The Court treated "preempted" as the overarching term that includes conflict as a mechanism for invalidating local law. Similarly, in *Cannabis Action Coal. v. City of Kent*, 183 Wn.2d 219, 231, 351 P.3d 151 (2015), the Court framed preemption as encompassing both field and conflict types, using "preempted" to cover both analyses.

Plaintiffs' narrow interpretation would require this Court to read limitations into the Ordinance's text that do not exist, contrary to established canons of construction. The phrase "areas of law that have been validly preempted" plainly encompasses all valid forms of preemption, whether by field occupation or irreconcilable conflict. The savings clause thus ensures non-application of the Ordinance wherever it would be incompatible with superior law, thereby preserving validity in non-preempted contexts such as local enforcement supplementing CWA and GMA minimum standards. *See Cherry v. Municipality of Metro. Seattle*, 116 Wn.2d 794, 808 P.2d 746 (1991) (no field preemption where local ordinance serves different purposes than state scheme); *Pac. Nw. Shooting Park Ass'n v. City of Sequim*, 158 Wn.2d 342, 144 P.3d 276 (2006) (preemption clauses preserve local authority in non-preempted areas).

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

Third, Plaintiffs contend that if the savings clause applies broadly to avoid all conflicts, nothing remains of the Ordinance, rendering it meaningless and beyond the reach of severability. Mot. at 18. This argument is speculative and misunderstands both the savings clause's operation and the nature of facial versus as-applied challenges. Whether a given claim or remedy would be displaced depends on specific facts (permit terms, discharge conditions, land-use posture, etc.), questions that are not suited to facial invalidation and are routinely resolved case by case. *See Weden v. San Juan County*, 135 Wn.2d 678, 696, 958 P.2d 273 (1998) (preemption is context-dependent). The savings clause ensures the Ordinance does not apply where preempted, while leaving ample room for complementary operation (e.g., restoration-focused remedies that exceed federal minima preserved by CWA § 510, 33 U.S.C. § 1370).

Plaintiffs' contrary position would require this Court to disregard the savings clause entirely and adjudicate hypothetical conflicts in a vacuum, precisely what the Uniform Declaratory Judgments Act disfavors. RCW 7.24.120 (courts "may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding"). *See To-Ro Trade Shows*, 144 Wn.2d at 411–16 (declining to issue advisory opinion on hypothetical applications). Moreover, facial challenges fail when an ordinance has lawful applications. *Cannabis Action Coal.*, 183 Wn.2d at 231 (no preemption absent irreconcilable conflict; existence of lawful applications defeats facial challenge). The Ordinance unquestionably has numerous lawful applications where it supplements existing environmental protections without conflicting with

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

superior law.[2] On this record, Plaintiffs have not shown that every application is preempted, so a facial ruling is improper. *See Id*., 183 Wn.2d at 231.

In short, the Ordinance's preemption clause and severability provision embody the rule of harmonious construction. They refute Plaintiffs' categorical theories, reserve any true conflict for as-applied resolution, and require denial of Plaintiffs' facial preemption claim. Because the Initiative is a valid exercise of local legislative power and not preempted, the severability clause is unnecessary for resolution of this motion.

B. Declaratory Relief, Justiciability, and Standing.

The Court's denial of Standing for Nature's Motion to Dismiss (Dkt. 19 at 3-6) was preliminary and did not resolve merits. On summary judgment, Plaintiffs fail to meet the UDJA's requirements, as their claims are unripe, speculative, and entitled to no public importance exception. *See Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 815, 514 P.2d 137 (1973).

1. Summary Judgment and Declaratory Relief.

Under CR 56(c), summary judgment is appropriate only if no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. *To-Ro Trade Shows*, 144 Wn.2d at 411. The UDJA permits declaratory relief only where "a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality" exists. *Id*.; RCW 7.24.020.

All evidence and inferences are viewed in the light most favorable to the nonmovant. *Young v. Key Pharms., Inc*., 112 Wn.2d 216, 225, 770 P.2d 182 (1989). It is improper where

---

[2] One example of a lawful application of the Ordinance would be to hold the owner of a derelict vessel accountable for the removal of its vessel and cleanup of any harm it caused the watershed should the Washington State Department of Natural Resources not have the time or funds to deal with that particular vessel. Kurtz Decl. at ¶ 2.

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

reasonable minds could differ on facts or law does not support the movant. *Ruff v. County of King*, 125 Wn.2d 697, 703, 887 P.2d 886 (1995). Speculation, conjecture, or legal conclusions do not warrant judgment. *Seven Gables Corp. v. MGM/UA Entm't Co*., 106 Wn.2d 1, 13, 721 P.2d 1 (1986).

a. Genuine Issues of Material Fact Preclude Summary Judgment.

Plaintiffs' motion fails because genuine disputes exist over the Ordinance's economic impacts, litigation risks, interpretation, and conflicts with superior law. CR 56(c) requires denial where reasonable minds could differ. *Ruff*, 125 Wn.2d at 703. Plaintiffs' declarations offer speculation, not evidence, while the record shows the Ordinance imposes no direct burdens and operates harmoniously with existing law.

(1) The Precautionary Principle Does Not Lower the Burden of Proof.

Plaintiffs repeatedly assert that the Ordinance imposes a "different development principle" and "lowers" the burden of proof in watershed enforcement actions. Mot. at 2, 10. These claims are factually and legally incorrect. The precautionary principle is a well-established tenet of Washington environmental law, incorporated into statutes, regulations, and judicial decisions. It does not alter the preponderance of the evidence standard governing civil actions but ensures that lack of absolute scientific certainty does not preclude protective measures. *See, e.g., Whidbey Env't Action Network v. Growth Mgmt. Hearings Bd*., 14 Wn. App. 2d 514, 532-33, 471 P.3d 960 (2020) (discussing precautionary approach and summarizing Washington case law); *State v. Otton*, 185 Wn.2d 673, 686-87, 374 P.3d 1108 (2016) (burdens set by law, not local policy).

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

The precautionary principle is codified in Washington administrative regulations governing critical areas protection. WAC 365-195-920 provides that "[w]here there is an absence of valid scientific information or incomplete scientific information relating to a county's or city's critical areas, leading to uncertainty about which development and land uses could lead to harm of critical areas," jurisdictions should adopt "[a] 'precautionary or a no risk approach,' in which development and land use activities are strictly limited until the uncertainty is sufficiently resolved." This regulatory framework, promulgated under the Growth Management Act (RCW 36.70A.190(4)(b)), reflects Washington's policy of environmental protection even where complete scientific certainty is lacking.

Washington courts have consistently applied and upheld the precautionary principle in environmental cases. In *Whidbey Envtl. Action Network v. Growth Mgmt. Hearings Bd.*, 14 Wn. App. 2d 514, 533, 471 P.3d 960 (2020), the Court of Appeals held that the precautionary principle requires jurisdictions to take a "precautionary or no risk approach" when scientific information about critical areas is incomplete, and that failure to apply this principle constitutes legal error. *See also Ferry Cnty. v. Dep't of Com.*, 184 Wn. App. 715, 742, 339 P.3d 478 (2014) ("In the absence of scientific evidence, a county should adopt a precautionary or no risk approach. WAC 365-195-920."); *Preserve Responsible Shoreline Mgmt. v. City of Bainbridge Island*, 24 Wn. App. 2d 1047, 522 P.3d 674 (2022) (applying precautionary principle to shoreline management).

Critically, none of these cases altered the burden of proof. The precautionary principle operates as an evidentiary framework for evaluating scientific uncertainty—it does not reduce the quantum of proof required to prevail on a claim. The Initiative here employs similar precautionary language for evaluating evidence of potential harm to the Watershed, consistent

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

with established Washington environmental law. The ultimate burden remains preponderance of the evidence, as governed by Washington civil procedure. *See generally State v. Otton*, 185 Wn.2d at 686–87 (burdens of proof established by law).

Moreover, this issue presents a disputed material fact that precludes summary judgment. Standing for Nature's Answer squarely disputed Plaintiffs' characterization of the burden of proof and explained that the Initiative preserves the preponderance standard. Answer at ¶ 15. The City's Answer likewise acknowledged the ordinary preponderance standard early in the proceedings yet later stipulated to Plaintiffs' "undisputed facts" on this point without explanation, an internal inconsistency that underscores the factual dispute. This alone defeats summary judgment. CR 56(c) (summary judgment inappropriate where material facts are genuinely disputed).

Plaintiffs' argument conflates the precautionary principle's evidentiary framework with the burden of proof itself. The principle does not require less evidence to meet the preponderance standard; rather, it prevents those opposing environmental protection from demanding absolute scientific certainty—an impossibility in environmental cases—before protective measures can be taken. This distinction is fundamental: the precautionary principle addresses what kind of evidence courts consider sufficient in the face of scientific uncertainty, not how much evidence is required to meet the applicable legal standard.

(2) Alleged Economic and Permitting Impacts are Speculative.

Plaintiffs hypothesize increased costs, project disruptions, and heightened litigation risks stemming from the Ordinance. Mot. at 10-12, 24-25. However, they cite no instances of permit denials, conditions imposed, or concrete compliance costs tied to any specific project as a result of the Initiative. See, e.g., WACA Decl. ¶¶ 19-20 (speculatively asserting that "the Initiative's

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

new standards have jeopardized the project and put hundreds of thousands of dollars at risk" without detailing how the Ordinance directly causes such jeopardy). Such unsubstantiated predictions fail to establish injury in fact, as Washington courts require concrete harm rather than speculative impacts. *Postema v. Pollution Control Hearings Bd*., 142 Wn.2d 68, 119, 11 P.3d 726 (2000) (dismissing claims based on hypothetical harms dependent on future contingencies); *see also Diversified Indus. Dev. Corp*, 82 Wn.2d at 815 (requiring "an actual, present and existing dispute" and rejecting unripe claims reliant on uncertain events).

Plaintiffs contend the Ordinance will restrict development, inflate housing costs, and burden businesses. Yet, the Ordinance imposes no direct prohibitions, fees, or permitting requirements; any enforcement (if at all) arises only after activities occur and requires proof of a probable violation in court. EMC § 20.12.020, .030(D). Potential impacts depend on triable factual issues, such as the frequency and outcomes of suits, and the feasibility of compliance through sustainable practices that minimize watershed harm.[3] These contingencies render Plaintiffs' claims unripe for summary judgment. *See Weden*, 135 Wn.2d at 696 (fact-dependent questions, such as as-applied conflicts, are not suitable for sweeping preemptive declarations).

Moreover, Plaintiffs' assertions of regulatory uncertainty overlook the inherent evolution of environmental regulations at federal, state, and local levels through legislative amendments, administrative rulemaking, and judicial rulings. Developers cannot reasonably expect regulatory stasis, particularly amid current federal environmental protection uncertainties, such as the Trump administration's reversal of key climate findings and deregulatory actions, that heighten the need for local initiatives to fill potential gaps in ecosystem safeguards. Kurtz Decl. at ¶ 6.

---

[3] There are many ways that developers can minimize their impact on watersheds, and the Washington State Department of Ecology even provides resources to assist developers on their impact. Kurtz Decl. at ¶ 5.

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

See also Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244 (2024) (overturning *Chevron* deference, increasing judicial scrutiny and potential instability in agency regulations); *Sackett v. EPA*, 598 U.S. 651 (2023) (narrowing federal wetlands protections under the Clean Water Act, shifting more responsibility to states and localities).

(3) Alleged Risk of Frivolous or Burdensome Litigation Is Speculative and Factually Contested

Plaintiffs express fears of abusive or frivolous suits enabled by the Ordinance. Mot. at 13-14, 24. However, any action under the Ordinance requires a well-pleaded complaint alleging a probable violation, supported by evidence, and remains subject to standard judicial gatekeeping mechanisms, including motions to dismiss for failure to state a claim (CR 12(b)(6)), summary judgment (CR 56), and Washington's Uniform Public Expression Protection Act (anti-SLAPP law), which provides for expedited dismissal of meritless claims with fee-shifting. RCW 4.105; EMC § 20.12.030(D). The merit, volume, and burden of such litigation are inherently factual questions unsuitable for resolution on summary judgment without a developed record. Reasonable inferences at this stage favor no material disruption, as Plaintiffs' declarations consist largely of opinion-based predictions rather than empirical evidence. *See Postema*, 142 Wn.2d at 119 (speculative harms insufficient to establish justiciability or standing).

Empirical data further undermines Plaintiffs' speculation: since the Initiative's passage, no lawsuits have been filed under it. Similarly, a comparable rights of nature ordinance enacted in Ojai, California, in November 2024, has also resulted in no lawsuits to date, despite similar provisions allowing resident enforcement. Kurtz Decl. ¶¶ 3-4. This absence of litigation in analogous contexts contests Plaintiffs' claims of imminent burdensome suits and reinforces that their fears are conjectural, not concrete. *See Walker v. Munro*, 124 Wn.2d 402, 411-12, 879

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

P.2d 920 (1994) (UDJA requires actual injury, not hypothetical harm from potential future enforcement).

b. Washington Courts Presume the Validity of Voter-Enacted Measures and Invalidate Them Only Upon a Clear Showing.

Plaintiffs' suggestion that courts "routinely" strike voter-approved measures is not an argument for striking down this Ordinance. Washington law presumes validity and directs courts to liberally construe the people's initiative power, setting aside such enactments only upon a clear showing that they exceed legal limits. *See City of Longview v. Wallin*, 174 Wn. App. 763, 777, 301 P.3d 45 (2013) (initiative power "is to be liberally construed in favor of the people"). That framework, rooted in democratic legitimacy and judicial restraint, requires deference absent an irreconcilable conflict with superior law or a measure that is administrative rather than legislative in character.

Historical practice reflects this deference. The Supreme Court has sustained voter measures where they fit within constitutional and statutory bounds, and it has invalidated them only when a limit plainly applies. *See, e.g., Fritz v. Gorton*, 83 Wn.2d 275, 282–86, 517 P.2d 911 (1974) (upholding state initiative against multi-subject challenge under a unifying subject); *cf. Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 205–10, 11 P.3d 762 (2000) (invalidating initiative based on concrete constitutional defects). The point is not that initiatives always stand, but that facial invalidation is exceptional and demands a specific legal conflict or procedural bar, not policy disagreement or speculative consequences.

Plaintiffs' authorities do not alter that standard. *Seattle Bldg. & Constr. Trades Council v. City of Seattle*, 94 Wn.2d 740, 747, 620 P.2d 82 (1980), confirms that local initiatives may not conflict with state law; it does not diminish the rule of liberal construction or the presumption that voter measures are valid when they can coexist with superior law. Likewise,

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

Am. Traffic Sols., Inc. v. City of Bellingham, 163 Wn. App. 427, 431–33, 260 P.3d 245 (2011), and *Ford v. Logan*, 79 Wn.2d at 150–55, turned on specific exceedances of initiative power; neither suggests courts may set aside a voter-enacted ordinance based on abstract predictions or generalized policy concerns.

Applying those principles here, Plaintiffs have not carried their burden. They identify no textual, irreconcilable conflict that would mandate invalidation of the Ordinance in all (or even most) applications; they rely instead on conjectural impacts and broad policy objections. On this record, the presumption of validity, the mandate of liberal construction, and the summary-judgment standard (viewing evidence and inferences for the nonmovant) all foreclose the sweeping relief they seek. *See* CR 56(c); *Lawson*, 168 Wn.2d at 679–80 (presume validity; harmonize where possible). The Court should decline Plaintiffs' invitation to substitute judicial preferences for the voters' judgment and should deny the request for declaratory invalidation.

2. Even If the Court Reaches Plaintiffs' Procedural Showings, Justiciability and Standing Are Not Satisfied—Or, at Minimum, Require a Concrete Record.

Court denied dismissal under the UDJA, but Plaintiffs now carry the summary-judgment burden to establish a ripe, final controversy and admissible proof of standing tied to the Ordinance's present operation. *See* RCW 7.24.020, .120; *To-Ro Trade Shows*, 144 Wn.2d at 411–16; *Diversified Indus. Dev. Corp*., 82 Wn.2d at 815. Plaintiffs cannot meet that standard on this record, particularly where the Ordinance (i) creates a private cause of action—not a regulatory scheme—and (ii) contains an express preemption clause that averts conflicts and forecloses facial invalidation. EMC § 20.12.050(A); *Cannabis Action Coal*, 183 Wn.2d at 231.

a. No Justiciable Controversy Exists for Declaratory Relief.

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

A UDJA claim requires an actual, present dispute between parties with genuine, opposing, direct and substantial interests that is fit for a final and conclusive determination, not an abstract "validity" ruling. *To-Ro*, 144 Wn.2d at 411–16; *Walker*, 124 Wn.2d at 411–12. Post-election challenges must be grounded in concrete facts showing how the law presently operates against the challenger; speculative fears of future enforcement do not suffice. *Weden*, 135 Wn.2d at 696. Plaintiffs identify no enforcement action, permit denial, or specific project condition traceable to the Ordinance; their asserted harms remain hypothetical and contingent.

b. Standing.

Under the UDJA, Plaintiffs must show (1) interests arguably within the zone regulated or protected by the challenged measure and (2) a concrete injury in fact. *Spokane Entrepreneurial Ctr.*, 185 Wn.2d at 103–04; *Alim v. City of Seattle*, 14 Wn. App. 2d 838, 852, 474 P.3d 589 (2020). At summary judgment, they must support both prongs with evidence, not conjecture. *See Int'l Ass'n of Fire Fighters, Local 1789 v. Spokane Airports*, 146 Wn.2d 207, 213–14, 45 P.3d 186 (2002). Here, the Ordinance imposes no self-executing regulatory duties or automatic penalties; it simply creates a cause of action that operates subject to superior law. That design undermines any claim of immediate, concrete harm.

(1) Plaintiffs Have Not Demonstrated Injury in Fact.

While Plaintiffs may have demonstrated they are within the zone of interest, injury in fact requires a present, concrete impact, not speculative "fear" of lawsuits that may never be filed. *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 802–03, 83 P.3d 419 (2004); *Walker*, 124 Wn.2d at 411–12. The possibility of civil liability despite regulatory compliance is a background feature of Washington law (e.g., nuisance), not a new harm created by this Ordinance. *See Tiegs v. Watts*, 135 Wn.2d 1, 13–15, 954 P.2d 877 (1998).

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

Plaintiffs identify no present application of the Ordinance to them. That failure is dispositive at summary judgment.

(2) Public Importance Doctrine Does Not Confer Standing.

The "public importance" exception is discretionary and does not eliminate the need for an adequate factual record where a voter-approved enactment can lawfully operate. *Farris v. Munro*, 99 Wn.2d 326, 330, 662 P.2d 821 (1983). Washington courts exercise restraint in facial challenges to initiatives absent immediate, system-wide effects. *See Am. Traffic Sols., Inc.*, 163 Wn. App. at 432–33; *City of Longview*, 174 Wn. App. at 777–83. Because the Ordinance is expressly non-preemptive and non-regulatory, and because no concrete application is presented, the exception does not justify setting aside the voters' enactment here.

VI. RESPONSE TO THE CITY'S CURRENT POSITION

The City of Everett occupies an unusual and legally problematic position in this litigation. Though named as Defendant, the City expressly "files this response in support of Plaintiffs' motion for summary judgment" and requests that the Court invalidate Initiative 24-03. City Resp. at 1, 6. As the municipality whose voters enacted the Initiative by a decisive 57% majority, the City has an institutional duty to defend its validly enacted laws. Washington courts recognize "broad deference to voter-approved initiatives" and the corresponding governmental obligation to uphold them. *Amalgamated Transit Union Local 587*, 142 Wn.2d at 207. The City's decision to actively seek invalidation of its own voter-approved ordinance creates procedural confusion, deprives the Court of genuine adversarial testing, and disrespects the democratic process by which Everett's voters exercised their constitutional right to direct legislation. See Wash. Const. art. XI, § 10; *1000 Friends of Wash.*, 159 Wn.2d at 172.

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

The City's inconsistent positions create genuine disputes of material fact precluding summary judgment. The City's initial Answer admitted the quoted language of EMC § 20.12.010(D) but denied "that the Initiative can change the standard of proof required in any civil action." City Answer ¶ 15. Subsequently, however, the City stipulated to Plaintiffs' characterization that the Ordinance "lowers the burden of proof." City Resp., Ex. A. The City offers no explanation for this reversal, which directly contradicts its sworn Answer and creates a disputed material fact regarding how the Ordinance operates. Under CR 56(c), summary judgment is inappropriate where material facts remain genuinely disputed, and a party's unexplained reversal epitomizes such a dispute.

The City's declarations from Jeff Marrs, Heather Griffin, and Yorik Stevens-Wajda express concerns about potential collateral attacks on NPDES permits, stormwater management decisions, LUPA determinations, and GMA processes. Marrs Decl. ¶ 4; Griffin Decl. ¶¶ 3, 6; Stevens-Wajda Decl. ¶¶ 6-8. These concerns do not justify facial invalidation. The Ordinance's preemption savings clause directly addresses these concerns by providing that the Ordinance "shall not be applicable to areas of law that have been validly preempted by state or federal law." EMC § 20.12.050(A). If NPDES permitting, LUPA, or GMA procedures preempt local enforcement, the savings clause renders the Ordinance inapplicable. Moreover, the City's concerns are entirely speculative as no enforcement actions have been filed since November 2024. Kurtz Decl. ¶ 3. The City identifies no specific permit, decision, or action that has been challenged or disrupted. *Postema*, 142 Wn.2d at 119 (speculation insufficient).

The City's implicit argument, that virtually any activity could be deemed a "violation" of the Watershed's rights, amounts to hyperbole that could equally apply to common law torts like nuisance or negligence, where courts routinely gatekeep frivolous claims through well-

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

established procedural safeguards. RCW 4.105 (anti-SLAPP protections against meritless suits); CR 12(b)(6) (dismissal for failure to state a claim); CR 56 (summary judgment). Washington relies on the judicial system to balance competing interests, dismissing unsubstantiated actions while allowing legitimate enforcement, a function the Ordinance expressly preserves by requiring proof of "probable violations" and yielding to preempting law. EMC §§ 20.12.010(D), 20.12.050(A). Courts assess causation, standing, and the merits of claims regardless of the legal theory asserted. The City's preemptive fears about potential misuse of the Ordinance do not justify overriding voter will absent concrete injury. *Diversified Indus. Dev. Corp*., 82 Wn.2d at 815 (rejecting declaratory relief for hypothetical disputes).

Many of the City's remaining arguments reflect policy disagreements rather than legal conflicts. The City contends the Initiative "undermines" the "balance established in existing environmental regulations" and "adopts a zero-impacts requirement" inconsistent with "reasonable and controlled development." City Resp. at 1, 7. This misreads the Ordinance, which imposes no regulatory requirements, and reflects policy judgments about appropriate environmental protection levels, precisely the kind of choice voters are entitled to make. To the extent genuine legal questions exist about how the Ordinance interacts with specific regulatory schemes, those questions are best resolved through as-applied challenges when and if enforcement actions arise. Facial invalidation requires showing no set of circumstances exists under which the ordinance would be valid. *Cannabis Action Coal*., 183 Wn.2d at 231. The City's concerns identify potential conflicts in specific applications, not universal invalidity, and thus do not support overriding Everett voters' democratic choice without allowing the Ordinance to be tested through actual application.

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

VII. CONCLUSION

Plaintiffs seek the extraordinary remedy of facially invalidating a voter-approved initiative without demonstrating concrete injury, without identifying a single enforcement action, and without establishing any irreconcilable conflict with superior law. They ask this Court to override the democratic will of Everett's voters based on speculation, conjecture, and policy disagreements—none of which satisfy the requirements for summary judgment or justify pre-enforcement invalidation of a legislative measure.

The Initiative is a valid exercise of Everett's broad legislative and police powers. It creates no regulatory scheme, imposes no permit requirements, and establishes no automatic penalties. Instead, it recognizes enforceable environmental rights and provides a supplemental enforcement mechanism that operates subject to all traditional judicial safeguards and expressly yields to preempting law. The Ordinance's preemption savings clause—which Plaintiffs ignore—ensures harmonious operation with federal and state law by rendering the Ordinance inapplicable where valid preemption exists. This provision alone defeats Plaintiffs' facial challenge, as they cannot demonstrate that every conceivable application conflicts with superior law.

Moreover, genuine disputes of material fact preclude summary judgment. Plaintiffs and the City have taken contradictory positions on fundamental questions, including whether the Ordinance alters burden-of-proof standards. The City's unexplained reversal from its sworn Answer creates a disputed material fact that must be resolved in Standing for Nature's favor under CR 56(c). Plaintiffs' declarations consist of opinion-based predictions rather than concrete evidence of actual harm, and the complete absence of enforcement actions since November 2024 underscores the speculative nature of their claims.

Rachel Kurtz-McAlaine, Esq.
9315 Otso Point Road
Anderson Island, WA 98303
(206) 227-2561

Washington law presumes the validity of voter-approved initiatives and requires courts to construe the people's initiative power liberally. Facial invalidation is reserved for measures that clearly and demonstrably exceed legal limits—a burden Plaintiffs have not met and cannot meet on this record. The proper course is to deny Plaintiffs' premature request for summary judgment and allow the Ordinance to operate as the voters intended, with any genuine conflicts resolved through as-applied challenges if and when they arise.

For these reasons, Standing for Nature respectfully requests that this Court deny Plaintiffs' Motion for Summary Judgment in its entirety.

DATED this 3rd day of October, 2025.

Respectfully submitted,

By: /s/Rachel Kurtz-McAlaine
Rachel Kurtz-McAlaine, WSBA #35119
9315 Otso Point Road
Anderson Island, WA 98303
Telephone: (206) 227-2561
Email: rachel@standingfornature.org
Counsel for Intervenor-Defendant,
Standing for Nature