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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, )

No. 25-2-00902-31

COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF

Plaintiffs,

vs.

THE CITY OF EVERETT,

Defendant.

Plaintiffs 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 bring the following complaint for declaratory and injunctive relief against defendant the City of Everett (the “City”).

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## I. INTRODUCTION

Washington courts have consistently rejected local initiatives seeking to change water use or regulation as beyond the scope of the local initiative power. Indeed, less than 10 years ago, the Washington Supreme Court held that it was beyond the local initiative power to create legal rights in the Spokane River to “exist and flourish,” including rights to recharge, flow, and clean water, because the initiative was “directly contrary to the water rights system established by the State” and “outside the scope of the city’s authority.” *Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend Constitution*, 185 Wn.2d 97, 109 (2016).

Like the impermissible Spokane initiative, City of Everett Initiative No. 24-03 (the “Initiative”) would drastically alter water use and regulations throughout the Snohomish River Watershed, including not only the Snohomish River and its tributaries within the City of Everett, but also Port Gardner Bay in Possession Sound. The Initiative confers upon the Snohomish River Watershed the “the rights to exist, regenerate, and flourish,” which include the right to “naturally recharge,” “naturally flow,” “provide clean water,” and more. The Initiative further allows any person with legal standing in the City of Everett to bring an action in the name of the Snohomish River Watershed to enforce these rights.

The Initiative goes far beyond the scope of the local initiative power because it conflicts with federal and state law, it involves administrative matters, it intrudes upon matters delegated to the Everett City Council, and is unconstitutionally vague.

A coalition of non-profits, local businesses, and an Everett resident bring this post-election lawsuit to uphold well-settled law and the regulatory scheme under which the coalition operates. To protect themselves from the burdens of and immediate injury from this impermissible local initiative, the Plaintiffs ask the Court to enter a declaratory judgment declaring the Initiative exceeds the local initiative power and enter an injunction preventing the unlawful measure from being enforced.

1 **II. PARTIES, JURISDICTION AND VENUE**

2 1. Defendant City of Everett. Defendant City of Everett is a first-class charter city  
3 and a municipal corporation organized and existing under the laws of the State of Washington  
4 and is located within the corporate limits of in Snohomish County, Washington. This Court has  
5 personal jurisdiction over the City because the City maintains offices and transacts business in  
6 the State of Washington. The City is named as a defendant because a post-election challenge  
7 concerning the local initiative power necessarily involves considering the City’s authority to  
8 enforce legislation that conflicts with federal and state laws.

9 2. Plaintiff Master Builders Association of King and Snohomish Counties. Plaintiff  
10 Master Builders Association of King and Snohomish Counties (“MBAKS”) is the nation’s  
11 oldest and largest local homebuilders trade association. MBAKS’s principal office address is  
12 located at 335 116 Avenue SE, Bellevue, WA 98004. MBAKS promotes the interest of  
13 homebuilders, remodelers, and associated businesses in King County and Snohomish County.  
14 MBAKS represents more than 2,400 member companies in the housing industry, including  
15 member companies who operate in the City of Everett. MBAKS members operate in the area of  
16 the Snohomish Watershed, including in the City of Everett. Their operations are regulated by  
17 various local, state, and federal laws, including laws that regulate construction in order to  
18 protect water quality, both within and outside the Snohomish River Watershed. MBAKS  
19 members also include residents of the City of Everett who pay various City and County taxes  
20 and fees that are used for, among other things, funding local elections and implementation of  
21 local administrative programs regulating the Snohomish River Watershed.

22 3. Plaintiff Building Industry Association of Washington. Plaintiff Building  
23 Industry Association of Washington (“BIAW”) is a non-profit Washington trade association  
24 with its principal office address located at 300 Deschutes Way SW, Ste. 300, Tumwater, WA  
25 98501. BIAW promotes the interests of Washington homebuilders. BIAW comprises 14 local  
26 affiliated associations, including MBAKS. Members of MBAKS are also members of BIAW.  
27 BIAW represents more than 8,000 member companies that employ approximately 265,000

1 people in all aspects of home construction, including member companies who operate in the  
2 City of Everett and other locations within the Snohomish Watershed. Like MBAKS, BIAW  
3 member companies permit and construct homes, so their operations are regulated by various  
4 local, state, and federal laws, including laws that regulate construction in order to protect water  
5 quality, both within and outside the Snohomish River Watershed. BIAW members also include  
6 residents of the City of Everett who pay various City and County taxes and fees that are used  
7 for, among other things, funding local elections and implementation of local administrative  
8 programs regulating the Snohomish River Watershed.

9 4. Plaintiff Washington Aggregates & Concrete Association. Plaintiff Washington  
10 Aggregates & Concrete Association (“WACA”) is a non-profit Washington industry trade  
11 association with a principal office address located at 22223 7th Avenue South, Des Moines, WA  
12 98198. WACA represents sand, gravel, quarry rock, cement, ready mix concrete, suppliers, and  
13 industry-related businesses in Washington State, including businesses that operate in the City of  
14 Everett, which contribute approximately \$5 billion in direct value to Washington’s economy and  
15 provide direct wages of approximately \$489.3 million across the state. WACA member  
16 businesses operate in the area of the Snohomish Watershed, including in the City of Everett, and  
17 their operations are regulated by various local, state, and federal laws, including laws that  
18 regulate these operations in order to protect water quality, both within and outside the  
19 Snohomish River Watershed. WACA members also include residents of the City of Everett  
20 who pay various City and County taxes and fees that are used for, among other things, funding  
21 local elections and implementation of local administrative programs regulating the Snohomish  
22 River Watershed.

23 5. Plaintiff Greencity Development, LLC. Plaintiff Greencity Development, LLC  
24 (“Greencity Development”), is a for-profit Washington limited liability corporation  
25 headquartered at 13410 Highway 99, 202, Everett, Washington 98204. Greencity Development  
26 is a trusted homebuilding company. Greencity Development operates in the area of the  
27 Snohomish Watershed, including in the City of Everett, and its operations are regulated by the

1 same local, state, and federal laws that apply to other MBAKS and BIAW members. Greencity  
2 Development is a resident of the City of Everett which pays various City and County taxes and  
3 fees that are used for, among other things, funding local elections and implementation of local  
4 administrative programs regulating the Snohomish River Watershed.

5 6. Plaintiff Osprey Logistics, LLC. Plaintiff Osprey Logistics, LLC (“Osprey  
6 Logistics”), is a for-profit Washington limited liability corporation headquartered at 2326 27th  
7 Place NE, Everett, Washington 98201. Located on Possession Sound, Osprey Logistics  
8 provides breakbulk and bulk freight solutions for businesses and individuals seeking intermodal  
9 terminal services in the Seattle area. Osprey Logistics operates in the area of the Snohomish  
10 Watershed, including in the City of Everett, and its operations are regulated by various local,  
11 state, and federal laws, including laws that regulate such operations in order to protect water  
12 quality, both within and outside the Snohomish River Watershed. Osprey Logistics is a resident  
13 of the City of Everett which pays various City and County taxes and fees that are used for,  
14 among other things, funding local elections and implementation of local administrative  
15 programs regulating the Snohomish River Watershed.

16 7. Plaintiff Robinett Brothers Construction, LLC. Plaintiff Robinett Brothers  
17 Construction, LLC (“Robinett Brothers Construction”), is a for-profit Washington limited  
18 liability corporation headquartered in Snohomish County, Washington. Robinett Brothers  
19 Construction builds speculative homes and communities throughout Snohomish County. It  
20 constructs homes in the area of the Snohomish Watershed, including in the City of Everett, so  
21 its operations are regulated by various local, state, and federal laws, including laws that regulate  
22 construction in order to protect water quality, both within and outside the Snohomish River  
23 Watershed. Robinett Brothers Construction also owns real property in the City of Everett and  
24 pays various City and County taxes and fees that are used for, among other things, funding local  
25 elections and implementation of local administrative programs regulating the Snohomish River  
26 Watershed.

1           8.     Plaintiff Robinett Investment Company, LLC. Plaintiff Robinett Investment  
2 Company, LLC (“Robinett Investment Company”), is a for-profit Washington limited liability  
3 corporation headquartered in Snohomish County, Washington. Robinett Investment Company  
4 builds speculative homes and communities throughout Snohomish County. It operates in the  
5 area of the Snohomish Watershed, including in the City of Everett, so its operations are  
6 regulated by various local, state, and federal laws, including laws that regulate construction in  
7 order to protect water quality, both within and outside the Snohomish River Watershed.  
8 Robinett Investment Company also owns real property in the City of Everett and pays various  
9 City and County taxes and fees that are used for, among other things, funding local elections  
10 and implementation of local administrative programs regulating the Snohomish River  
11 Watershed.

12           9.     Plaintiff Martin Robinett. Plaintiff Martin Robinett is a resident of the City of  
13 Everett. Mr. Robinett is a managing member of Robinett Brothers Construction and Robinett  
14 Investment Company, speculative home and community building companies in Snohomish  
15 County, Washington and owners of real property in the City of Everett. As the owner of  
16 Robinett Brothers Construction and Robinett Investment Company, Mr. Robinett routinely  
17 conducts work in the area of the Snohomish Watershed, including in the City of Everett, and  
18 this work is regulated by various local, state, and federal laws, including laws that regulate  
19 construction in order to protect water quality, both within and outside the Snohomish River  
20 Watershed. As a resident of the City of Everett, Mr. Robinett pays various City and County  
21 taxes and fees that are used for, among other things, funding local elections and implementation  
22 of local administrative programs regulating the Snohomish River Watershed.

23           10.    Venue. Venue is proper in Snohomish County pursuant to RCW 4.12.020.  
24 Venue is also proper because Defendant does business in Snohomish County.

25           11.    Jurisdiction. This Court has jurisdiction over this controversy pursuant to RCW  
26 ch. 7.24 because Plaintiffs seek a determination of the validity of the Initiative. This Court also  
27 has jurisdiction over this controversy pursuant to RCW ch. 7.40 because Plaintiffs seek an

1 injunction preventing Defendant from enforcement of the Initiative on the November 2013  
2 ballot.

### 3 III. FACTUAL BACKGROUND

#### 4 A. The Snohomish River Watershed Initiative.

5 12. The Initiative makes it “unlawful for any person to violate any of the rights” of  
6 the Snohomish River Watershed. These include “the rights to exist, regenerate, and flourish,  
7 which include the right to naturally recharge, the right to naturally flow, the right to water  
8 quality necessary to provide habitat for native plants and animals, the right to provide clean  
9 water, and the right to restoration.” They also include “the right to be free from activities or  
10 projects which violate those rights.” The Initiative defines these as:

11 “**Clean Water**” means water that is free from any non-natural presence of substances,  
12 contaminants, noise, or pollutants in quantities that may pose actual or potential harm to  
13 human health or welfare, animals, fish, plant life, or water quality, or that may  
14 unreasonably interfere with the enjoyment of life or property, including outdoor  
15 recreation.

16 “**Exist**” as used within this Ordinance, shall mean that the Snohomish River Watershed  
17 has the capacity to naturally perform basic functions historically common to the  
18 Snohomish River Watershed.

19 “**Flourish**” as used within this Ordinance, shall mean that the Snohomish River  
20 Watershed has the capacity to naturally prosper by vigorously growing and developing,  
21 which, in turn, allows it to robustly perform its basic functions.

22 “**Regenerate**” as used within this Ordinance, shall mean that the Snohomish River  
23 Watershed has the capacity to regain its historically basic functions following a natural  
24 or manmade interference with those functions.

25 13. The Initiative defines the Snohomish River Watershed as including the  
26 Snohomish River and its watershed within the boundaries of the City of Everett, and  
27 encompassing, but not limited to, “Port Gardner Bay and the East Waterway, Union Slough,  
Mile Creek, Langus Riverfront Park Creek, tributaries of Pilchuk [*sic*] and Allen creek, and any  
other wetlands, tributaries and contributors to the Snohomish River Watershed within the  
boundaries of the City of Everett.”

1           14.     The Initiative allows “any person with legal standing in the City of Everett” to  
2 bring an action “in the name of the Snohomish River Watershed as the real party in interest, in  
3 any court of competent jurisdiction” in order to vindicate the rights set out by the Initiative.

4           15.     The Initiative lowers the burden of proof for enforcement actions so that “lack of  
5 full scientific certainty shall not be used as a reason for denying or postponing enforcement or  
6 defense of these rights” “[w]here probable violations of the rights protected in this Ordinance  
7 are shown to exist.”

8           16.     Any person who is found to have violated the rights recognized by the Initiative  
9 shall be held liable for damages, which “shall be measured by the cost of fully restoring the  
10 Snohomish River Watershed to its natural state before the violation, and shall be paid to the City  
11 of Everett to be used exclusively for the full and complete restoration of the Snohomish River  
12 Watershed as affected by the violation.”

13           **IV.     THE INITIATIVE EXCEEDS THE LOCAL INITIATIVE POWER**

14           **A.     The Scope of the Initiative Power of the City of Everett.**

15           17.     State Statute Authorizes Local Initiatives. First-class charter cities such as  
16 Everett are authorized by state statute to provide in their charter “for direct legislation by the  
17 people through the initiative and referendum upon any matter within the scope of the powers,  
18 functions, or duties of the city.” RCW 35.22.200.

19           18.     Local Initiatives are Limited in Permissible Scope. Cities may not adopt  
20 initiatives that exceed the City’s authority to legislate. For example, cities may not adopt  
21 initiatives that purport to create local laws conflicting with the United States or Washington  
22 constitutions, or with other state or federal laws. Similarly, cities may not adopt initiatives  
23 involving powers delegated by the Washington Legislature to a city council or other local board,  
24 rather than the city itself. In addition, cities may not adopt initiatives that are administrative,  
25 rather than legislative, in nature.



1           19.    Invalid Initiatives Are Void. Initiatives that exceed the scope of the initiative  
2 power of a city in any manner are invalid regardless of whether a challenge is brought pre- or  
3 post-election.

4           **B.       The Snohomish River Watershed Initiative Exceeds the City’s Initiative**  
5           **Power.**

6           **1.       The Snohomish River Watershed Initiative Exceeds the Initiative**  
7           **Power.**

8           20.    The Initiative exceeds the local initiative power for four reasons. First, the City  
9 lacks the legislative authority to enact or enforce laws conflicting with federal and state laws.  
10 Second, the Initiative unlawfully involves powers delegated by the Washington Legislature to  
11 the city council or other legislative authority, rather than to the City itself. Third, the Initiative  
12 also unlawfully intrudes on administrative matters, which are beyond the permissible scope of a  
13 local initiative. And, fourth, the Initiative is unconstitutionally vague.

14           **2.       The Snohomish River Watershed Initiative Conflicts with State and**  
15           **Federal Laws Governing Water Resources.**

16           21.    The Snohomish River Watershed, which is defined to include parts of the Puget  
17 Sound, is subject to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, a comprehensive statutory  
18 scheme that regulates the quality and flow of navigable waterways in the United States. The  
19 Clean Water Act is implemented by the Washington State Department of Ecology (“DOE”) and  
20 the federal Environmental Protection Agency (“EPA”).

21           22.    In 1988, the EPA designated the Puget Sound as an estuary of national  
22 significance under Section 320 of the Clean Water Act, thus including the Puget and Possession  
23 Sounds, and in turn the Snohomish River Watershed, in the National Estuary Program.

24           23.    Multiple state legal structures also regulate the Snohomish River, as well as its  
25 surrounding wetlands and estuary. These include the Washington Growth Management Act,  
26 RCW 36.70A *et seq.* (“GMA”), which defines “critical areas” to include wetlands and fish and  
27 wildlife habitat conservation areas; and the Shoreline Management Act of 1971, RCW 90.58 *et*  
*seq.* (“SMA”), which broadly regulates shorelines across our State by delegation of authority to

1 local governments, and which has expressly designated parts of Port Gardner Bay and the  
2 Snohomish River estuary areas as shorelines of statewide significance.

3 24. The Washington Legislature has also vested authority to regulate the purity of  
4 Washington’s public water supplies with the Department of Health (“DOH”). RCW 43.20.050.  
5 Under this statutory scheme, the DOH has authority to adopt rules and regulations to ensure  
6 Washington’s drinking water is safe.

7 25. The Initiative purports to create new rights in the Snohomish River Watershed  
8 “to exist, regenerate, and flourish,” which includes the rights “to naturally flourish, the right to  
9 naturally flow, the right to water quality necessary to provide habitat for native plants and  
10 animals, the right to provide clean water, and the right to restoration.” The Initiative further  
11 purports to grant private citizens the rights to enforce these rights and regulate the quality, flow,  
12 and other aspects of the Snohomish River Watershed through civil lawsuits in the name of the  
13 Snohomish River. This attempt to regulate these resources through private litigation exceeds  
14 the initiative power of the City of Everett because it conflicts with the comprehensive state and  
15 federal statutory scheme that already exists to protect and manage these resources.

16 26. Local voters may not use the local initiative power to usurp the authority of the  
17 DOE, EPA, or DOH to regulate water quality and flow and may not take actions conflicting  
18 with state and federal statutes regulating water.

19 **3. The Snohomish River Watershed Initiative Involves Administrative**  
20 **Matters.**

21 27. The Initiative’s attempt to regulate the City of Everett’s water resources through  
22 private litigation also unlawfully involves the administrative rather than legislative authority.  
23 The Initiative exceeds the initiative power of the City of Everett because the regulation of these  
24 resources is administrative in nature and is not subject to the initiative or legislative process. As  
25 discussed above, the quality and flow of water resources, including the Snohomish River  
26 Watershed, are comprehensively regulated by the EPA, DOH, and DOE. Cities “lack the  
27 authority to add additional legal restrictions [to water quality regulation, and] any decisions

1 regarding the purity of public water systems are administrative in nature.” *City of Port Angeles*  
2 *v. Our Water-Our Choice*, 145 Wn. App. 869, 877-78 (2008).

3 28. In accordance with state regulations, the City of Everett has researched,  
4 developed, and implemented administrative programs, such as the City’s DOE-approved  
5 Shoreline Master Program (most recently updated in October 2019), which regulates all areas  
6 covered by the Initiative.

7 29. Not only does the Initiative’s broad language run contrary to the local, state, and  
8 federal regulations, but the Initiative also requires the City to use damages or fees “exclusively  
9 for the full and complete restoration of the Snohomish River Watershed as affected by the  
10 violation” of the Initiative.

11 **4. The Snohomish River Watershed Initiative Interferes with**  
12 **Responsibilities Delegated Exclusively to the City Council.**

13 30. To the extent city governments have any role in regulating water quality, the  
14 Washington Legislature has delegated this authority to the city council, not the city itself. For  
15 instance, the Washington Legislature requires city councils and county boards to adopt  
16 comprehensive plans that provide protection for the quality and quantity of groundwater  
17 pursuant to the GMA. *See* RCW 36.70A.070. The Washington Legislature similarly requires  
18 “[l]ocal governments” to “develop or amend a master program for regulation of uses of the  
19 shorelines of the state” consistent with guidelines adopted by the State DOE, and periodically  
20 update these plans to ensure their compliance with this delegation of legislative authority. *See*  
21 RCW 90.58.080 (2)(a)(i). Thus, the authority to create and implement these plans is not subject  
22 to the local initiative process.

23 **5. The Snohomish River Watershed Initiative Regulates Matters**  
24 **Beyond the Territorial Jurisdiction of the City of Everett.**

25 31. The Initiative’s attempt to regulate the Snohomish River Watershed also exceeds  
26 the initiative power of the City of Everett because the waters extend far beyond the borders of  
27 the City of Everett. The Initiative’s reach would extend far beyond the City of Everett and

1 affect millions of people in the cities, counties, states, and Canada that all use these waters, not  
2 to mention many different agencies with jurisdiction over matters of water quality within the  
3 Watershed. The City of Everett cannot enact or enforce regulations that limit the rights of other  
4 people in other cities, counties, and states to use natural resources.

5 **6. The Snohomish River Watershed Initiative is Unconstitutionally**  
6 **Vague.**

7 32. The Initiative does not provide fair notice as to what conduct is proscribed. It  
8 prohibits violating the rights of the Snohomish River Watershed, but these rights are not  
9 delineated beyond the vague terms of the Initiative. Plaintiffs, like any objective persons, do not  
10 know what constitutes violating the right of a watershed to be free from substances,  
11 contaminants, or noise “that may pose actual or potential harm” to humans, animals, fish, plants,  
12 or water quality. Similarly, the Initiative provides little guidance as to what constitutes violating  
13 the rights of the watershed to have “the capacity to naturally perform basic functions” or to have  
14 the “capacity to naturally prosper by vigorously growing and developing[.]” These broad,  
15 undefined prohibitions are particularly problematic, and threatening to the rights of Plaintiffs,  
16 because they are paired with a lower burden of proof that “lack of full scientific certainty”  
17 cannot be used to deny the rights of the watershed.

18 **7. All Plaintiffs Have A Well-Founded Fear.**

19 33. All Plaintiffs have a well-founded fear of the immediate invasion of their rights  
20 because the Initiative’s attempt to create new rights for the Snohomish River Watershed to exist,  
21 regenerate, and flourish, in turn regulating water quality and flow, through private lawsuits  
22 brought in the name of the watershed, will impede Plaintiffs’ ability to use water from the  
23 Snohomish River Watershed or conduct activities—including the use and development of real  
24 property—that could arguably impact the Watershed.

25 34. The Initiative Will Harm Plaintiff Osprey Logistics. Plaintiff Osprey Logistics  
26 has a well-founded fear of the immediate invasion of its rights in particular because it operates  
27 an intermodal transportation and logistics service right on waters defined by the Initiative in the

1 Snohomish River Watershed. Osprey Logistics operates a multi-modal marine facility that  
2 offers 25 acres of storage, barge loading/unloading access, and material handling services on  
3 Possession Sound at the mouth of the Snohomish River. Osprey Logistics is the only private  
4 entity that owns large acreage of developed uplands adjacent to owned tidelands not leased from  
5 the Department of Natural Resources or other government agencies. In 2024, it received a  
6 federal grant from the Maritime Administration under the United States Marine Highway  
7 Program to improve the nation's navigable waterways to strengthen our nation's supply chain.  
8 Osprey Logistics' operations are subject to federal, state, and local regulations. For example,  
9 Osprey Logistics must comply with industrial stormwater permits issued by DOE, permits  
10 issued under Section 404 of the Clean Water Act for the discharge of dredged or fill material  
11 into waters of the United States, and many other state and federal regulations concerning the  
12 Snohomish River Watershed. The Initiative subjects Osprey Logistics to conflicting regulation  
13 by the Initiative, on one hand, and regulations by the City of Everett, DOE, DOH, EPA, DOT,  
14 and other agencies, on the other. The rights created by the Initiative thus threaten its ability to  
15 conduct business in the City of Everett and areas in or around the Snohomish River Watershed.

16 35. The Initiative Will Harm Plaintiff WACA. Plaintiff WACA has a well-grounded  
17 fear of the immediate invasion of its rights because its members operate sand, gravel, quarry  
18 rock, cement, ready mix concrete, suppliers, and industry-related businesses in the City of  
19 Everett and other areas in or around the Snohomish River Watershed. Plaintiff WACA's  
20 members are subject to federal, state, and local regulations. For example, WACA members must  
21 obtain review and approval for and maintain compliance with numerous permits that are  
22 designed to protect the Snohomish River Watershed. These include compliance with NPDES  
23 permits under the Clean Water Act concerning surface water discharge management, sand and  
24 gravel permits issued by DOE, shoreline permits pursuant to the SMA, and requirements to  
25 protect wetlands pursuant to the GMA and State Environmental Policy Act ("SEPA"), and local  
26 (including City of Everett) regulations adopted pursuant to these State laws. The Initiative  
27 subjects WACA to conflicting regulation by the Initiative, on one hand, and regulations by the

1 City of Everett, DOE, DOH, and EPA, on the other. The rights created by the Initiative thus  
2 threaten its ability to conduct business in the City of Everett and areas in or around the  
3 Snohomish River Watershed.

4 36. The Initiative Will Harm Plaintiffs MBAKS, BIAW, Greencity Development,  
5 Robinett Brothers Construction, Robinett Investment Company, and Martin Robinett. These  
6 Plaintiffs have a well-grounded fear of the immediate invasion of their rights because they or  
7 their members are builders who conduct business in the City of Everett, which includes the  
8 permitting and development of real property within the Snohomish River Watershed. These  
9 Plaintiffs' operations are subject to federal, state, and local regulations and permitting  
10 requirements. For example, in order to construct buildings or facilities in the City of Everett,  
11 Plaintiffs must obtain review and approval for and maintain compliance with numerous  
12 regulations that are designed to protect the Snohomish River Watershed. These include, but are  
13 not limited to, the City of Everett's critical areas regulations under Chapter 19.37 EMC, the City  
14 of Everett's storm drainage requirements under Chapter 14.28 EMC, the federal Clean Water  
15 Act and the state regulations that enforce that Act, and the local regulations that implement the  
16 GMA, SMA, and SEPA. The Initiative subjects these Plaintiffs to conflicting regulation by the  
17 Initiative, on one hand, and regulations by the City of Everett, DOE, DOH, and EPA, on the  
18 other. Even if these Plaintiffs comply with the complex federal, state, and local regulatory  
19 scheme in place, they will still face the immediate and considerable threat of damages, including  
20 liability, from private lawsuit that seek to enforce the Initiative. The rights created by the  
21 Initiative thus threaten their ability to build, repair, replace, and/or maintain homes and other  
22 physical structures in the City of Everett and areas in or around the Snohomish River  
23 Watershed.

24 **C. The Offending Provisions of the Initiatives Are Not Severable From the**  
25 **Non-Offending Provisions.**

26 37. Severability Clauses. The Initiative contains a severability clause that provides  
27 "[s]hould any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance, or its

1 application to any person, entity, or circumstance, be declared unconstitutional or otherwise  
2 invalid or unenforceable for any reason, or should any portion of this Ordinance be validly  
3 preempted by state or federal law or regulations, such decision or preemption shall not affect the  
4 validity of the remaining portions of this Ordinance or its application to other persons, entities,  
5 or circumstances.”

6 38. Unlawful Provisions are Vital to Intended Purposes. The provisions of the  
7 Initiative that exceed the initiative power of the City of Everett are vital to the Initiative’s  
8 intended purposes.

9 39. Not Severable. The Court cannot sever the offending provisions of the Initiative  
10 from the non-offending provisions without rendering the Initiative useless.

## 11 V. CLAIMS FOR RELIEF

### 12 A. Count One: Declaratory Judgment.

13 40. Plaintiffs incorporate the previous allegations as if fully set forth herein.

14 41. Pursuant to the Washington Declaratory Judgment Act, RCW 7.24 *et seq.*, this  
15 Court may declare the validity of a post-election initiative.

16 42. The matter is ripe for declaratory relief because a dispute exists as to the validity  
17 of the Initiative.

18 43. A declaratory judgment action is proper to determine whether the Initiative  
19 exceeds the initiative power of the City of Everett.

### 20 B. Count Two: Injunctive Relief.

21 44. Plaintiffs incorporate the previous allegations as if fully set forth herein.

22 45. Pursuant to RCW 7.40 *et seq.*, the Court has the power to grant injunctive relief.  
23 The Court may grant an injunction at the time the action is commenced or at any time  
24 afterwards.

25 46. The Initiative has been approved by the City of Everett voters. As a result,  
26 Plaintiffs have a well-grounded fear of an immediate invasion of clear legal and equitable rights  
27 under federal and state law. Plaintiffs will suffer actual and substantial injuries if an injunction

1 is not entered preventing the Initiative from being enforced.

2 47. Injunctive relief is the only adequate remedy for an invalid initiative.

3 **VI. PRAYER FOR RELIEF**

4 Plaintiffs respectfully request the Court enter an order and judgment in its favor against  
5 Defendant as follows:

6 A. declaring that the Initiative is beyond the scope of the initiative power of the City  
7 of Everett, is otherwise invalid and unenforceable, and should not be enforced;

8 B. for injunctive relief precluding the Initiative from being enforced; and

9 C. for such other relief that the Court deems appropriate.

10  
11 DATED this 28th day of January, 2025.

12  
13 Davis Wright Tremaine LLP  
14 Attorneys for Plaintiffs

15 By: /s/Robert Maguire

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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, per prior agreement, via e-mail as follows:

Ramsey Ramerman  
Deputy City Attorney  
Everett, WA  
RRamerman@everttwwa.gov

DATED this 28th day of January, 2025.

/s/David A. Nordlinger  
David A. Nordlinger, WSBA #59545