No. 102586-6
SUPREME COURT OF THE
OF THE STATE OF WASHINGTON

PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, a Washington municipal corporation, BARRY CHRISMAN and KERRY CHRISMAN, individually and as husband and wife,

Respondents,

v.

STATE OF WASHINGTON, SIERRA PACIFIC INDUSTRIES DBA SIERRA PACIFIC INDUSTRIES, INC., a California corporation, PRECISION FORESTRY, INC., a Washington corporation, and JOHN DOE NOS. 1-10,

Petitioner.

RESPONDENT PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY'S ANSWER TO STATE OF WASHINGTON'S PETITION FOR REVIEW

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I. INTRODUCTION

This case involves the straightforward interpretation and application of RCW 76.09.330, a provision in the Forest Practices Act ("FPA") defining the scope of the State and forestland owners' immunity from civil lawsuits for damages resulting from certain conduct involving trees the Department of Natural Resources ("DNR") has designated as trees in a riparian management zone ("RMZ trees"). Based on RCW 76.09.330's plain language, and applying established principles of statutory interpretation, the Court of Appeals held as a matter of law that RCW 76.09.330 did not shield Petitioners the State of Washington ("State"), Sierra Pacific Industries ("SPI"), and Precision Forestry, Inc. ("Precision") from tort claims asserted by Respondents the Public Utility District No. 1 of Snohomish County (the "District") and Barry and Kerry Chrisman ("Chrismans") (collectively, "Respondents"). *See Pub. Util. Dist. No. 1 of Snohomish Cnty. v. State*, __ Wn. App.2d __, 534 P.3d 1210, 1216-19 (2023).

Respondents' injuries were the result of a tragic yet avoidable accident involving a tree that fell on a District-owned vehicle driven by Mr. Chrisman on a public highway adjacent to forestland owned by the State where SPI and Precision conducted timber harvesting activities. The accident resulted in catastrophic personal injuries to Mr. Chrisman and caused the District to suffer property damage and business loss. The Court of Appeals also found that there were genuine issues of material fact as to whether the RMZ was properly designated. *See Pub. Util. Dist. No. 1*, 534 P.3d at 1219-20.

The State[1] argues that this Court should accept review of the Court of Appeals' decision because the Court of Appeals "***erroneously denied*** [the State] immunity for damages" and "***wrongly interprets*** RCW 34.05.510(1) to allow plaintiffs to challenge final administrative agencies [sic] in tort suits for damages." State's Petition for Review at 21, 29 (emphasis

[1] SPI and Precision have also filed Petitions for Review which raise, in part, different issues than the State's Petition. The District has filed a separate Answer to SPI and Precision's Petitions to address those issues.

added). But contentions that the Court of Appeals somehow "erred" or "wrongly" interpreted a statute are not, in themselves, a basis for this Court to grant the State's Petition. Notably, the State does not contend that the Court of Appeals applied the wrong principles of statutory interpretation or erred by strictly construing RCW 76.09.330, as Washington law requires.

Recognizing this, the State argues that review should be accepted pursuant to RAP 13.4(b)(2) because Division I's decision conflicts with the decision of another Division I panel in *Ruiz v. State*, 154 Wn. App. 454, 225 P.3d 458 (2010), *rev. denied*, 169 Wn.2d 1012 (2010). State's Petition at 2. The State also claims that review should be accepted "because upholding the legislative schemes that protect our state's environment and provide finality for administrative decisions is an issue of substantial public interest[,]" warranting review under RAP 13.4(b)(4). *Id.*[2]

[2] The State does not argue that the Court of Appeals' decision conflicts with a decision of this Court or involves "a significant question of law"

As detailed below, the State has not demonstrated, as it must, that this case presents issues meriting review under RAP 13.4. ***First***, notwithstanding the State's attempt to manufacture a conflict between the Court of Appeals' decision and *Ruiz* (which is distinguishable), there is no conflict with any decision of the Court of Appeals, as RAP 13.4(b)(2) requires. ***Second***, the State has not met its burden to show that the Petition involves an issue of substantial public interest pursuant to RAP 13.4(b)(4), despite the State's presentation of a parade of horribles the State speculates will result from the Court of Appeals' decision. The State obviously disagrees with the legislature's policy decision to limit the scope of immunity provided by RCW 76.09.330. But that policy disagreement is not a basis for review by this Court.

The District respectfully requests that this Court deny the State's Petition.

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under the Washington or United States constitutions. *See* RAP 13.4(b)(1), (3).

II. IDENTITY OF RESPONDENT

Respondent is the Public Utility District No. 1 of Snohomish County (the "District").

III. RESTATEMENT OF ISSUES FOR REVIEW

1. Whether the State has met its burden, pursuant to RAP 13.4(b)(2), to establish that the Court of Appeals' decision holding that RCW 76.09.330's unambiguous language immunizes only the conduct of leaving RMZ trees is in conflict with a published decision of the Court of Appeals.

2. Whether the State has met its burden, pursuant to RAP 13.4(b)(4), to establish that the Court of Appeals' decision regarding the State's designation of the RMZ raises a substantial public interest of "administrative finality" that should be determined by this Court.

3. Whether, the State has met its burden, pursuant to RAP 13.4(b)(4), to establish that the Court of Appeals' decision regarding the scope of immunized conduct raises a substantial

public interest of "environmental protection" that should be determined by this Court.

IV. STATEMENT OF THE CASE

A. Factual Background

For the purpose of answering the State's Petition, the District relies on the facts as set forth in the Court of Appeals' decision. *See Pub. Util. Dist. No. 1*, 534 P.3d at 1215.

B. The Court of Appeals' Decision

The Court of Appeals reversed the trial court's summary judgment dismissal of the District's and the Chrismans' respective claims. *Pub. Util. Dist. No. 1*, 534 P.3d at 1221.

Interpreting the FPA's plain language, the Court of Appeals held that statutory immunity did not bar the District's and the Chrismans' tort claims. *Pub. Util. Dist*. *No. 1*, 534 P.3d at 1216-1219. The Court of Appeals also acknowledged, citing this Court's precedent, that RCW 76.09.330 should be "construed strictly to the extent the language is not plain on its face." *Id.* at 1216 n.2 (citing *Michaels v. CH2M Hill, Inc.*, 171

Wn.2d 587, 600, 257 P.3d 532 (2011)). "'Strict construction[,]'" the Court of Appeals explained, "'is simply a requirement that, where two interpretations are equally consistent with legislative intent, the court opts for the narrower interpretation of the statute.'" *Id.* at 1216 (quoting *Est. of Bunch v. McGraw Residential Ctr.*, 174 Wn.2d 425, 432-33, 275 P.3d 1119 (2012)).

Applying these principles, the Court of Appeals first held that "[u]nder the plain language of the statute, only the State of Washington, the DNR, and the ***relevant landowner*** are entitled to immunity under the FPA." *Pub. Util. Dist. No. 1*, 534 P.3d at 1217 (emphasis added). RCW 76.09.330 provides, in pertinent part, that "'[f]orestland ***owners*** may be ***required*** to leave trees standing in riparian and upland areas'" and that "'the ***landowner***, [DNR, and the State of Washington] shall not be held liable for any injury or damages resulting from these actions.'" *Id.* (quoting RCW 76.09.330) (emphasis added). The FPA defines "forestland owner" as "'any person in ***actual control*** of forestland, whether such control is based either on legal or

equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner.'" *Id.* (quoting RCW 76.09.020(16)) (emphasis added). Analyzing the plain language of both the FPA and SPI's contract with the State (which, by extension, applied to Precision via the Logging Agreement with SPI), the Court of Appeals found that "Precision and SPI are not forestland owners required to leave trees standing in riparian areas – they were not involved in the decision regarding which trees to leave and which to harvest" and "had no control or possession ***outside of the timber sale area*** under the terms of the contract," which sale area excluded the RMZ. *Id.* (emphasis added). In other words, "forestland owners" are those persons who have the right to harvest or dispose of timber in the area the DNR has designated for protection: the RMZ. As entities which are not "forestland owners" of the RMZ, SPI and Precision "are not entitled to statutory immunity under the FPA, ***as to [the District and the***

Chrismans'] claims." *Id.* (emphasis added).[3]

The Court of Appeals next considered what ***conduct*** was immunized by RCW 76.09.330. *Pub. Util. Dist. No. 1*, 534 P.3d at 1218-19. The court acknowledged that the statute's language, as amended in 1999, "reflect[s] the clear aim of the legislature to protect entities who are required to leave riparian trees standing to protect valuable ecological systems, despite the risk of damage[,]" expanded the types of injuries to which immunity applied (assuming that a party otherwise was entitled to immunity based on their alleged conduct), and added the State and DNR to the (potentially immunized) parties. *Id.* at 1218. However, based on its analysis of RCW 76.09.330's plain language, the Court of Appeals carefully, and properly,

[3] The State does not seek review of the Court of Appeals' holding that SPI and Precision are not entitled to statutory immunity under the FPA because they are not "forestland owners" of the RMZ. *See generally* State's Petition. As noted above, the District has filed a separate Answer to SPI and Precision's Petitions, which do request review of this portion of the Court of Appeals' decision.

distinguished between the immunized ***conduct*** and the immunized ***injuries***:

> While these legislative amendments expanded the provision of immunity, ***the legislature expanded only the acknowledged harms*** and protected parties, ***not the protected acts***. In each iteration of [RCW 76.09.330], ***only the act of leaving a tree,*** and the damage resulting therefrom, ***is shielded***.

Id. at 1218 (emphasis added). Accordingly, the Court of Appeals held that RCW 76.09.330's "plain language" only immunizes the "act of leaving a tree." *Id.* And, apart from leaving the tree that fell on Mr. Chrisman, "the State also elected to permit a successful bidder to strip Unit 2 up to the boundary of the RMZ despite the known risk of forest-edge effects[,]" and made "[t]he choice to permit SPI and Precision to log all trees in Unit 2, and to designate an RMZ without a wind buffer, [which] rendered the RMZ trees vulnerable to forest-edge effects." *Id.* The Court of Appeals held as a matter of law that "**[t]hese acts are distinct from the decision to leave the RMZ trees standing, and under**

the plain language of the statute, are not immunized." *Id.* at 1218-19 (emphasis added).

The Court of Appeals also rejected the State's argument that "immunity attaches for any damages caused by an RMZ-designated tree regardless of whether the DNR has measured the zone correctly[,]" noting that the State "cites no authority for this contention, nor does it engage in an analysis of the plain language of the statute." *Pub. Util. Dist. No. 1*, 534 P.3d at 1219-20. The Court analyzed the pertinent language in RCW 76.09.330 – "'[f]orestland owners may be ***required*** to leave trees standing in riparian and upland areas…'" – and held that "immunity attaches ***only*** where a forestland owner ***must*** leave a tree standing in order to comply with the relevant regulations." *Id.* at 1220 (quoting RCW 76.09.330) (emphasis added). In other words, "immunity only attaches if the RMZ is properly drawn." *Id.*

The Court of Appeals found that there was a genuine issue of material fact as to the designation of the RMZ. *Id.* at 1220-21.

Finally, the Court of Appeals rejected the argument that the District and the Chrismans could not challenge the RMZ designation in a civil suit for damages. *Pub. Util. Dist. No. 1*, 534 P.3d at 1219. While the APA is generally "the 'exclusive means of judicial review of agency action,'" the Court of Appeals explained, a party may challenge agency action in a civil suit when "'the sole issue is a claim for money damages or compensation'" and the agency at issue lacks "'statutory authority to determine the claim.'" *Id.* (quoting RCW 34.05.510(1)). The Court of Appeals found this statutory exception applied because the District and the Chrismans "brought a claim for money damages[ ] [and] the parties cite no legal precedent providing the DNR authority to determine this claim[,]" and because requiring the District and the Chrismans to challenge the RMZ two years before the accident, "would create absurd results." *Id.*[4]

[4] The Court of Appeals explained that it was only considering whether the RMZ designation must be challenged through the APA's administrative process because "this court may affirm a summary judgment dismissal on

The Court of Appeals denied the State's motion for reconsideration.[5]

V. ARGUMENT

Petitions for review are governed by the four criteria set forth in RAP 13.4(b). Whether a Court of Appeals' decision "erroneously denied" the Petitioner its requested relief or "wrongly interprets" the law is ***not*** a standard this Court uses when considering whether to grant review.

As detailed below, the State has not met its burden to show that the RAP 13.4(b) criteria it ***does*** rely upon (RAP 13.4(b)(2) and (4)) are satisfied. The Court of Appeals' decision does not conflict with *Ruiz*, or any other published Court of Appeals'

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any ground supported by the record." *Pub. Util. Dist. No. 1*, 543 P.3d at 1219. The trial court made clear it "did not rely on the APA argument" and the Court of Appeals noted that the State, SPI, and Precision did not "address[ ] [RCW 34.05.510's] statutory exception before the trial court or this court." *Id.*

[5] A copy of the order denying the State's motion for reconsideration ("Reconsideration Order") is attached to the State's Petition as App. B. As the Reconsideration Order explains, the Court of Appeals did not consider the substance of SPI and Precision's "unsolicited answers" to the State's motion for reconsideration, but merely considered those "answers" as "notice of intent to join the State's motion for reconsideration." Reconsideration Order at 1-2.

decision, and the issues of "substantial public interest" the State identifies in its Petition need not be determined by this Court.

Simply put, there is no basis for this Court to review the Court of Appeals' decision, which appropriately analyzed unambiguous and plain statutory language to effectuate the Legislature's intent that RCW 76.09.330 does not immunize the State from liability for the tort claims in this case, claims which are ***not*** based on the conduct of leaving RMZ trees.

A. The Court of Appeals' Decision That RCW 76.09.330 Immunizes Only The Conduct of Leaving RMZ Trees Does Not Conflict With *Ruiz*.

The Court of Appeals' decision does not conflict with *Ruiz*, the only Court of Appeals decision the State identifies as supposedly conflicting with the Court of Appeals' decision that RCW 76.09.330 does not immunize the State from liability for the District's and the Chrismans' claims. The State claims that *Ruiz* "confirms the broad scope of RCW 76.09.330's immunity[,]" "involved facts and legal issues analogous to the present case[,]" and thus, that the Court of Appeals erred when it

reversed the trial court's summary judgment dismissal rather than affirming that dismissal based on *Ruiz*. *See* State's Petition at 16-17.

The State's argument that the Court of Appeals' decision here conflicts with *Ruiz* leans hard on the outcome in that case and ignores the *Ruiz* plaintiff's claims and the precise issues the *Ruiz* court considered and decided. According to the State, "*Ruiz* explicitly held that where a harvester cut all the surrounding trees and left the RMZ trees standing without protection, thereby causing them to blow over onto a plaintiff, immunity nonetheless protected [DNR] and warranted summary judgment." State's Petition at 19.

A careful reading of *Ruiz*, however, demonstrates that the State overstates its holding. The "essence" of the *Ruiz* plaintiff's argument, as summarized by the *Ruiz* court, was "that because the RMZ was near a road, it was foreseeable that trees would fall resulting in damage and, thus, the State and [the landowner] should have considered this and waived any environmental

regulations [that prevented them from removing the offending trees]." 154 Wn. App. at 461. In other words, the *Ruiz* plaintiff argued that the defendants should not have left the subject trees standing. *See id.* As did the Court of Appeals in this case, the *Ruiz* court held that the immunized conduct is leaving trees standing. *See id.* at 459-61.

In sum, *Ruiz* only immunized the State from the plaintiff's claim that the defendants should not have "left" the trees at issue. As such, *Ruiz* is distinguishable and the Court of Appeals' decision does not conflict with *Ruiz* as to its holding that the specific tortious conduct at issue here, including clearcutting of the wind buffer, was not subject to statutory immunity. In sum, this is not a case where there is an obvious and "ongoing split in the Court of Appeals" that "requires [the Court's] review in this case" pursuant to RAP 13.4(b)(2). *Cf. State v. Cornwell*, 190 Wn.2d 296, 301-303, 412 P.3d 1265 (2018) (noting that the State "asks us to endorse the line of reasoning" in a Division Two opinion regarding constitutional limits on a community

corrections officer's warrantless search when an individual is suspected of violating conditions of probation whereas petitioner "relies on the reasoning of Division Three" in another case addressing the same issue)

The State also challenges the Court of Appeals' holding, based on an analysis of RCW 76.09.330's plain language, that "immunity only attaches if the RMZ is properly drawn." *See* State's Petition at 21-25. The State argues that "[n]othing in RCW 76.09.330 limits the immunity to trees that the rules expressly require to be left." *Id.* at 22. However, the State does not argue, nor could it, that the Court of Appeals' decision that "immunity attaches only where a forestland owner must leave a tree standing in order to comply with the relevant regulations" somehow conflicts with *Ruiz*. *See id.* at 21-25. Whether the State properly designated the RMZ was "not disputed" in *Ruiz*. 154 Wn. App. at 462. *Ruiz* also held that even though "the State later waived those riparian rules after the accident and authorized the removal of trees," this waiver did not change the fact that

before the plaintiff's accident, the relevant regulations required that the RMZ trees be left standing. *See id.* at 461-62.

The Court of Appeals' decision does not conflict with *Ruiz* and the Court has no basis to grant the State's Petition pursuant to RAP 13.4(b)(2). Moreover, with respect to the State's request that this Court review the portion of the Court of Appeals' decision holding that RCW 76.09.330 applies "regardless of whether the landowner was required to [leave a tree]", there is no basis for RAP 13.4(b)(2) review as the State does not assert a conflict with *Ruiz* on this issue and merely relies on its characterization of the Court of Appeals' holding as "erroneous."

B. The State Has Not Met Its Burden to Show That This Petition for Review Involves Issues of Substantial Public Interest That Should Be Determined by This Court.

This Court will accept review pursuant to RAP 13.4(b)(4) if a petition for review "involves an issue of substantial public interest that should be determined by [this] Court." The State has failed to meet that standard here as to the two "substantial public

interests" – "administrative finality" and "environmental protection" – it claims this case involves.

In contrast with other decisions where this Court has granted review pursuant to RAP 13.4(b)(4), the Court of Appeals' decision is not "[a] decision that has the potential to affect a number of proceedings in the lower courts [that] may warrant review as an issue of substantial public interest if review will avoid unnecessary litigation and confusion on a common issue." *See In re Flippo*, 185 Wn.2d 1032, 380 P.3d 413, 414 (2016) (table decision) (granting review pursuant to RAP 13.4(b)(4) where petitioner sought "relief from discretionary legal financial obligations" and "there are numerous now-pending personal restraint petitions challenging the imposition of LFOs…making claims similar to those asserted by Mr. Flippo"); *see also State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903 (2005) (explaining that "[t]his case presents a prime example of substantial public interest. The Court of Appeals holding, while affecting parties to this proceeding, also has the potential to

affect every sentencing proceeding in Pierce County after November 26, 2012, where a DOSA sentence was or is at issue").

Nor does the Petition involve issues which pose a significant danger to public welfare or safety, in sharp contrast with other cases where this Court has accepted review pursuant to RAP 13.4(b)(4). *See, e.g., In re Matter of Williams*, 197 Wn.2d 1001, 484 P.3d 445, 446 (2021) (table decision) (accepting review in case where Court of Appeals denied elderly man's personal restraint petition "challenging his confinement [in prison] while COVID-19 ravaged his facility"; finding that "[t]he chaos wrought by COVID-19" in state prisons and Department of Corrections' "efforts in responding to this constantly changing threat, constitutes an ongoing issue of substantial public interest within the meaning of RAP 13.4(b)(4)"); *In re Matter of Arnold*, 189 Wn.2d 1023, 408 P.3d 1091, 1092 (2017) (table decision) (finding that "review is appropriate under RAP 13.4(b)(4)" in part because Court of Appeals' decisions interpreting statutory rape laws "affect public

safety by removing an entire class of sex offenders from the registration requirements").

Here, the State has identified two "public interests" it claims are substantial, should be determined by this Court, and which are allegedly "threaten[ed]" by the Court of Appeals' decision: "administrative finality" and "environmental protection." State's Petition at 29-30. But the Court of Appeals' decision does not affect either of these "public interests" to a level that satisfies RAP 13.4(b)(4).

First, the Court of Appeals' decision does not threaten what the State describes as the "substantial public interest of administrative finality[.]" State's Petition at 30. The State insists that the Court of Appeals' decision "undermine[s] administrative finality for ***all*** State agencies by allowing Plaintiffs to challenge ***any*** state administrative decision, even years after it was made, through a tort suit for damages." *Id.* at 25 (emphasis added).

The State (again) mischaracterizes the Court of Appeals' decision. The Court of Appeals' ruling that the District and the

Chrismans may challenge the designation of the RMZ through a tort action for damages is not a radical departure from the APA. Indeed, the Court of Appeals ***relied*** on the APA when it held that "[u]nder RCW 34.05.510(1), the appellants may challenge the designation of the RMZ through this suit, rather than through an administrative proceeding." *Pub. Util. Dist. No. 1*, 534 P.3d at 1219. The Court of Appeals did ***not*** authorize "collateral attacks on final agency decisions," *see* State's Petition at 25, but correctly applied RCW 34.05.510(1) when it declined the State's 11th hour invitation (made only in the State's motion for reconsideration of the Court of Appeals' decision) to rewrite the District's and the Chrismans' pleadings to add requests for injunctive relief that are nowhere in those pleadings. *See Pub. Util. Dist. No. 1*, 534 P.3d at 1219. And there is no dispute that the DNR has no authority to award damages. *See id.* In sum, the State's argument that "administrative finality" is a substantial public interest "threatened" by the Court of Appeals' decision is a house of cards. The fact that the State elected not to challenge

the Court of Appeals' ruling as to the applicability of RCW 34.05.510(1) until after the Court of Appeals issued its decision also demonstrates that it is not an issue of substantial public interest that should be decided by this Court.

With respect to "environmental protection," the State claims that the Court of Appeals' interpretation of RCW 76.09.330 "incentivizes landowners to harvest as many trees as possible to avoid liability for naturally falling trees." State's Petition at 30. Thus, the State concludes, "[t]he only way to secure the[ ] public environmental benefits" of allowing "trees to fall naturally" is to broadly interpret RCW 76.09.330 as a statute immunizing tortfeasors that cause a specific type of injury, rather than a statute immunizing certain conduct. *See id.* at 30 ("The only way to secure these public environmental benefits is to hold that immunity applies to damages caused by any naturally falling leave tree, regardless of what actions or processes caused those damages to occur."). In fact, however, the Court of Appeals opinion does ***not*** "incentivize" the

unauthorized removal of trees in an RMZ. Rather, in addition to protecting the public from injury, the Court of Appeals' decision also benefits the environment by ***disincentivizing*** landowners and forestry operators from engaging in misconduct in the vicinity of an RMZ that has the potential to affect the stability of RMZ trees, such as ***clearcutting*** wind-buffer trees and thereby damaging the environment. If anything, the State's proffered broad interpretation of RCW 76.09.330 to immunize negligent and reckless logging outside an RMZ ***jeopardizes*** the environment.

Further, even if the Court of Appeals' decision somehow threatens the environment (it does not), in stressing the public interest in environmental protection above all else, the State ignores that the Court of Appeals' goal, like that of any other court construing a statute, "is to determine and effectuate legislative intent." *See Swinomish Indian Tribal Cmty. v. Dep't of Ecology*, 178 Wn.2d 571, 581, 311 P.3d 6 (2013). The State insists that a broad reading of RCW 76.09.330 resulting in

immunity for injuries rather than immunity for conduct is consistent with the legislature's intent to protect the environment, but this reading ignores the statute's plain language, in favor of a singular focus on RCW 76.09.330's summary of legislative findings. *See* State's Petition at 14-15 (quoting legislative findings set forth in RCW 76.09.330). But "[a] statement of legislative intent does not trump the plain language of the statute, and such statements are not controlling even when the codified intent of the legislature speaks directly to the enacted statute." *PeaceHealth St. Joseph Med. Ctr. v. Dep't of Revenue*, 196 Wn.2d 1, 11 n.3, 468 P.3d 1056 (2020) (relying on plain language analysis to interpret statute regarding B&O tax deduction for public and nonprofit hospitals; rejecting hospital's reliance on "select language in the legislative findings to argue that [the statute] should be read broadly") (internal citation and marks omitted). Indeed, "[i]t would be both absurd and contrary to precedent to hold that the statement of legislative findings negates the plain language of [a statute's] operative provisions."

See Portugal v. Franklin Cnty, 1 Wn.3d 629, 653, 530 P.3d 994 (2023). But that is exactly what the State relies on here: an overemphasis on the legislative findings set forth in RCW 76.09.330 to support its argument that "environmental protection" trumps the legislature's choice to provide limited immunity to certain parties who engage in specific conduct. Ultimately – and understandably – the State prefers that any statute immunizing its conduct be interpreted as broadly as possible, but public policy concerns, even when set forth in legislative findings, cannot and do not trump unambiguous statutory language.[6]

VI. CONCLUSION

As detailed above, there is no basis for review of the Court of Appeals' decision under RAP 13.4(b). The Court of Appeals' decision does not conflict with any decision of the Court of Appeals (or this Court, for that matter) or implicate an issue of

[6] The District notes that this Court declined to review the Court of Appeals' decision in *Ruiz*, which, by the State's logic, also addressed issues of "substantial public interest."

substantial public interest. The District respectfully requests this Court deny the State's Petition for Review.

RESPECTFULLY SUBMITTED this 19th day of January, 2024.

I certify that this memorandum contains 4,513 words, in compliance with Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I certify that on this 19th day of January, 2024, a copy of this document was sent as stated below.

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DATED this 19th day of January, 2024.

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