

Hearing date: August 8, 2025
Hearing time: 9:00 AM
Judge / Calendar:
Hon. Anne E. Egeler / Dispositive
Motions

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

FRIENDS OF GRAYS HARBOR, et al.,

Plaintiffs,

vs.

WASHINGTON STATE PARKS AND
RECREATION, et al.,

Defendants.

No. 24-2-01187-34

MSJ 4: PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT ON
SEASHORE CONSERVATION ACT
JURISDICTION

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This Motion is supported by: (1) Plaintiffs' Complaint and Proposed First Amended Complaint and exhibits thereto; (2) Defendants' answers and admissions; (3) Declaration of Arthur Grunbaum and the attachments thereto; (4) Declaration of Knoll Lowney and the Plaintiffs' Factual Record attached thereto; (5) Declaration of Danielle Davis and the attachments thereto; and (6) the Combined Statement of Facts.

This motion for partial summary judgment addresses yet another fatal defect of the State's proposed Links 2 Project. It appears to be the simplest of all the issues.

The first disputed legal issue involves the Act’s jurisdiction. The State apparently takes the position that only the beachfront of the Links 2 Project is within the Seashore Conservation Area (“SCA”), but it ignores that the SCA “also include[s] *all* state-owned nontrust accreted lands along the ocean.”² There is no material factual dispute that the Property is accreted land, it is clearly along

² RCW 79A.05.605 (emphasis added).

1 the ocean, and it is now state-owned land – facts the State admits. The Property is thus covered by
2 the SCA and must be protected as such.

3 The second legal dispute involves the Act’s mandate that “[l]ands within the Seashore
4 Conservation Area shall not be sold, leased, or otherwise disposed of, except as provided in this
5 section.”³ This broad prohibition precludes the State’s proposal to lease the Property to Westport
6 Golf for the next 80 years. If the State wishes to pursue such an arrangement, it will need the
7 Legislature to amend the Act – as it has repeatedly done for other property transactions within the
8 Seashore Conservation Area.

9 IV. AUTHORITY AND ARGUMENT

10 A. Standard of Review

11 Summary judgment is proper when there are no genuine issues of material fact and the
12 moving party is entitled to judgment as a matter of law.⁴ A genuine issue of material fact exists when
13 reasonable minds could differ regarding the existence or non-existence of some fact on which the
14 outcome of the litigation depends.⁵ Here, there are no factual disputes, and Plaintiffs are thus entitled
15 to judgment as a matter of law.

16 B. Background on Seashore Conservation Act.

17 The Legislature originally enacted the Act in 1967. In doing so, the Legislature found that
18 Washington’s ocean beaches “constitute some of the last unspoiled seashore remaining in the United
19 States,” providing the public “with almost unlimited opportunities for recreational activities like
20 swimming, surfing and hiking, for outdoor sports, like hunting, fishing, clamming, and boating; for

21 ³ RCW 79A.05.630.

22 ⁴ CR 56(c); *see also Life Designs Ranch, Inc. v. Sommer*, 191 Wn. App. 320, 327, 364 P.3d 129, 134
(2015).

23 ⁵ *Clements v. Travelers Indem. Co.*, 121 Wn.2d 243, 249, 850 P.2d 1298, 1301 (1993); *Klinke v.*
Famous Recipe Fried Chicken, 94 Wn.2d 255, 256-57, 616 P.2d 644, 645 (1980).

1 the observation of nature as it existed for hundreds of years before the arrival of Europeans, and for
2 relaxation away from the pressures and tensions of modern life.”⁶

3 The original 1967 Act established the Seashore Conservation Area (“SCA”) with a more
4 limited boundary than exists today, extending only from the present line of “ordinary high tide and
5 the line of extremely low tide” along the coast.⁷

6 In addition to establishing the SCA, the original Act also regulated accreted oceanfront lands
7 in the State’s possession. For example, the original Act prohibited oil rigs “on the seashore
8 conservation area or state-owned accreted lands,” and authorized the Department of Natural
9 Resources (“DNR”) to grant certain mining leases on certain “state-owned nontrust accreted lands.”⁸

10 Only two years later, in 1969, the Legislature amended the Act to bring all these state-owned
11 accreted lands along the ocean into the SCA.⁹ It added a new category of land to the SCA, providing
12 that the “the Washington State Seashore Conservation Area . . . shall also include *all* state-owned
13 nontrust accreted lands along the ocean.”¹⁰

21 ⁶ RCW 79A.05.600.

22 ⁷ Laws of 1967, ch. 120, § 2.

23 ⁸ Laws of 1967, ch. 120, § 8.

⁹ Laws of 1969, 1st Ex. Sess., ch. 55 § 6.

¹⁰ *Id.* § 1 (emphasis added).

Section 1. Section 2, chapter 120, Laws of 1967 and RCW 43.51-.655 are each amended to read as follows:

There is established for the recreational use and enjoyment of the public the Washington State Seashore Conservation Area. It shall include all lands now or hereafter under state ownership or control lying between Cape Disappointment and Leadbetter Point; between Toke Point and the South jetty on Point Chehalis; and between Damon Point and the Makah Indian Reservation and occupying the area between the ~~((present))~~ line of ordinary high tide and the line of extreme low tide, as ~~((this-line-now-is))~~ these lines now are or may hereafter be located, and, where applicable, between the Seashore Conservation Line, as established by survey of the Washington state parks and recreation commission and the line of extreme low tide, as these lines now are or may hereafter be located; and shall also include all state-owned nontrust accreted lands along the ocean: PROVIDED, That no such conservation area shall include any lands within the established boundaries of any Indian Reservation.

The 1969 amendment also expanded the SCA jurisdiction in several other ways.¹¹

B. Most of the Property is within the Seashore Conservation Area.

The Court should grant partial summary judgment to establish that as a matter of law, the portion of the Links 2 site that is on accreted land is subject to the SCA.¹² There are no disputed facts related to this simple issue. The statute is clear and expansive: the SCA includes “*all* state-owned nontrust accreted lands along the ocean.”¹³

¹¹ The amendment also expanded SCA jurisdiction to areas below ordinary high tide within State control (not just ownership, as previously provided) and areas above ordinary high tide where a “Seashore Conservation Line” could be negotiated with upland property owners. *Id.*

¹² The State has erroneously asserted that the Act only impacts the Links 2 Project “between the ordinary high tide line and the line of extreme low tide.” PFR 421 (WLSP Integrated Opportunity and Constraints Analysis, p. 78).

¹³ RCW 79A.05.605 (emphasis added).

1 It appears that until the Links 2 Project, the State has never tried lease or develop its accreted
2 land within the SCA, so there have been no past disputes about the SCA's jurisdiction or regulation
3 over such lands. But that does not make this a difficult issue.

4 The history and legislative intent are clear. Originally, the SCA only included land up to the
5 ordinary high tide, and it was later amended to also include "*all* state-owned nontrust accreted lands
6 along the ocean." The Legislature's use of the word "all" does not allow any exceptions. In rejecting
7 exceptions to another statute using the word "all," the Court of Appeals noted that "[t]he dictionary
8 defines the adjective 'all' as meaning, variously, 'being or representing the entire or total number,
9 amount, or quantity,' 'constituting, being, or representing the total extent or the whole,' 'being the
10 utmost possible of,' 'every,' 'any whatsoever,' and other, similarly comprehensive terms."¹⁴ "The
11 plain and ordinary meaning of that word is 'being or representing the entire or total number, amount,
12 or quantity.'"¹⁵

13 There is no question that the Links 2 Project sits, at least partly, on state-owned nontrust
14 accreted land. The Defendants' own DEIS for the Links 2 Project states that "Westport Light State
15 Park is an accretion landform, created by sand deposited by wind and the ocean over the last
16 century."¹⁶ "[T]he northern 290 acres of Westport Light State Park [] was created by the accretion of
17 sand that resulted from construction of the South Jetty."¹⁷

18 This conclusion is not new or disputable. The South Beach Area Management Plan, issued by
19 the Parks Commission, also confirmed that Westhaven State Park – which is now WLSP – "was
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21 ¹⁴ *Parkridge Assocs. v. Ledcor Indus.*, 113 Wn. App. 592, 602, 54 P.3d 225, 230 (2002) (citing THE
22 AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 47 (3d ed. 1992)).

23 ¹⁵ *Perkins Coie v. Williams*, 84 Wn. App. 733, 737, 929 P.2d 1215, 1218 (1997) (citing THE
AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 47 (3d ed. 1992)).

¹⁶ PFR 457 (DEIS, p. 2-6).

¹⁷ PFR 462 (DEIS, p. 3.2.15-4).

1 created by accreted land”¹⁸ after construction of the “jetty caused land accretion which became the
2 park.”¹⁹

3 Indeed, “interdunal wetlands” like those on the Property only exist on accreted oceanfront
4 land.²⁰ The Department of Ecology’s Wetland Manual defines interdunal wetlands by their presence
5 on accreted land: “Wetlands located west of the 1889 line (also called the Western Boundary of
6 Upland Ownership or WBUO) along the coast are considered interdunal wetlands because they have
7 formed only in the last century. These wetlands all have formed as a result of accretions of the beach
8 westward since 1889.”²¹

9 In August, 2024, the City of Westport issued a “summary and independent review of prior
10 studies characterizing the shorelines and wetlands of the City of Westport” (hereafter the “City
11 Review”).²² The City Review looked at all the major studies of the area, including those by the Parks
12 Commission and the Army Corps, which drew on “more than 150 years of historical data,”
13 concluding that “[c]onstruction of the South Jetty in 1902 was instrumental in the accretion of most
14 of the land area now occupied by the State Park.”²³ It found that “[a]ccretion of land, particularly
15 pronounced following construction of the South Jetty, resulted in the formation of interdunal
16 wetlands on the accreted, depressional areas where most of the City’s freshwater wetlands are now
17 located.”²⁴

18 PFR 503 (South Beach Area Management Plan).

19 *Id.*

20 PFR 578 (WA Dept. of Ecology, Wetland Rating System for Western Washington).

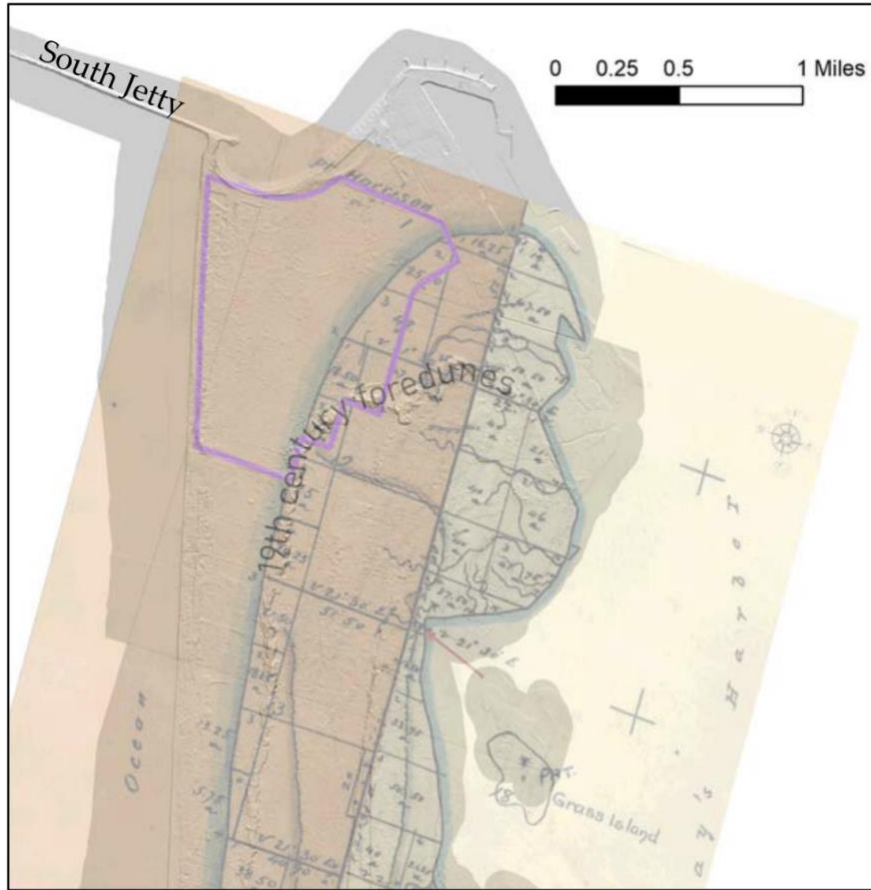
21 *Id.*

22 PFR 505-533 (Westport Geomorphology Review).

23 *Id.* p. 24 (PFR 530).

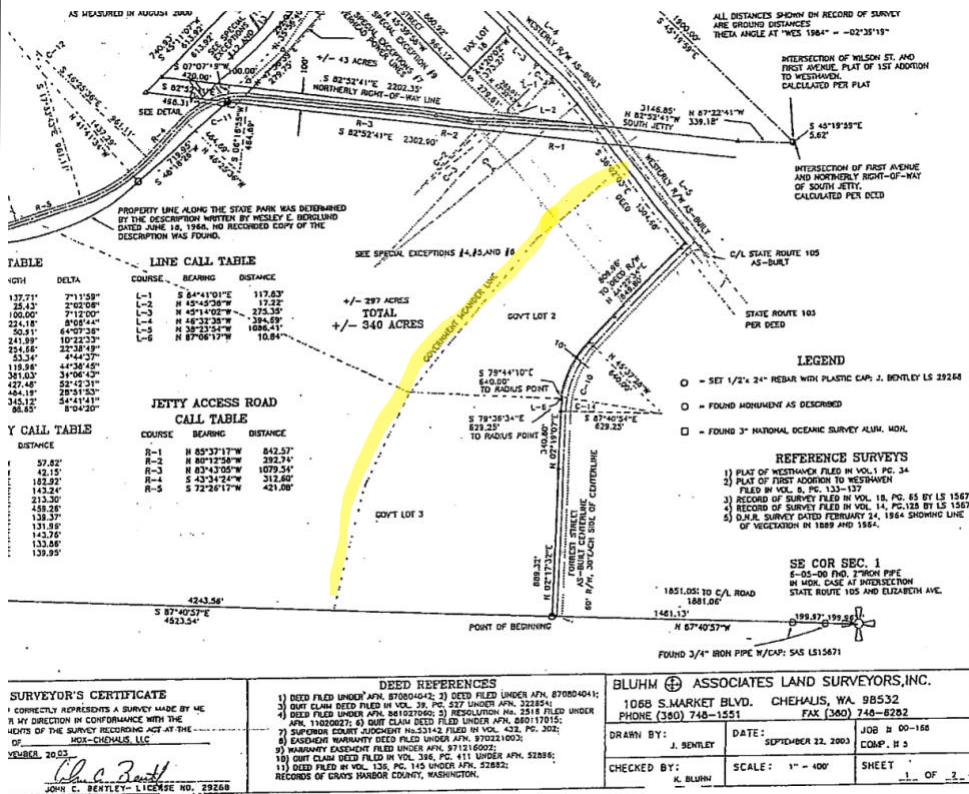
24 *Id.* at Executive Summary (PFR 506).

1 Just like every scientific study to date, the City Review recognized that “most” of Westport
2 Light State Park sits on land that has accreted since 1858, as shown on Figure 5 of the City Review,
3 which showed the State Park (in Magenta) overlaid on that 1858 shoreline:²⁵



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²⁵ *Id.* at p. 4 (PFR 510).

This original shoreline position at approximately the time of statehood (known as the “government meander line”) is also shown on the survey attached to the State’s Appraisal:²⁶



Indeed, the legal description of the Property in the City’s deed is “the portion of Government Lots 1, 2, and 3 and the Northeast Quarter of the Southeast Quarter, *TOGETHER WITH the Accretions* in Section 1, Township 16 North, Range 12 West of the Willamette Meridian . . .”²⁷

Figure 12 of the City Review shows the location of the Westport Lighthouse, which formerly was on the shoreline and is now located far inland, noting that “[m]ost of the land accreted since construction of the lighthouse.”²⁸

²⁶ PFR 306 (Preliminary Title Policy, Survey) (highlight added).

²⁷ PFR 350 (Statutory Warranty Deed, Ex. A) (emphasis added).

²⁸ PFR 518 (Westport Geomorphology Review, p. 12).



Figure 12. Projected shoreline retreat under the “high-risk” (i.e., 1% exceedance sea-level rise) scenario + 100-year storm event. Most of the land accreted since construction of the lighthouse in 1897/8. From Figure 17 of AECOM (2022a).

The Parks Commission noted, “jetty construction triggered substantive beach accretion westward of Chehalis Point along the south side of the jetty. This caused the west shoreline of Chehalis Point to move westward nearly 5,000 feet.”²⁹ Even in the context of the Links 2 Project, it confirmed “a significant portion of the development area is composed of accreted lands.”³⁰ Its request for proposals for development in WLSP similarly acknowledged that “Westport Light sits on land that has accreted since the completion of the South Jetty in 1902.”³¹

There can be no dispute of material fact. The majority of the Links 2 Project exists on accreted land. It is state owned; it is along the ocean; and it is not state trust land. The Court should thus find that it is within the SCA.

C. The Act does not allow the State to lease out the Seashore Conservation Area for 80 years.

The Court should grant partial summary judgment establishing that as a matter of law, those portions of the site within the Seashore Conservation Area may not be leased to Westport Golf for

²⁹ PFR 535 (Parks Letter to Westport Golf re: Accretion, January 7, 2021).

³⁰ PFR 540 (Parks Email to Westport Golf re: Accretion, January 20, 2021).

³¹ PFR 545 (Parks RFP for WLSP).

1 the next 80 years. RCW 79A.05.630 provides that “[l]ands within the Seashore Conservation Area
2 shall not be sold, leased, or otherwise disposed of, except as provided in this section.” None of the
3 stated exceptions in the statute apply here.³²

4 The DEIS states that if the Links 2 Project moves forward,

5 ***[Washington State Parks and Recreation Commission] and [Westport Golf] would enter***
6 ***into a long-term lease agreement that would allow [Westport Golf] to control activities***
7 ***within the revenue-generating area.*** The proposed lease area would range in size from
approximately 224 to 196 acres depending on the action alternative selected for
8 implementation. ***[Westport Golf] proposes to request the maximum lease term allowed***
under RCW 79A.05.030: 80 years.³³

9 The Court should end this illegal project. That portion of Westport Light State Park that is
10 within the Seashore Conservation Area may not be “leased or otherwise disposed of” through the
11 proposed 80-year lease between the State and Westport Golf.

12 V. CONCLUSION

13 For the foregoing reasons, this Court should grant Plaintiffs’ Motion for Partial Summary
14 Judgment.

15 RESPECTFULLY SUBMITTED this 11th day of July, 2025.

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22 ³² The exceptions allow limited land exchanges, disposition of up to five acres to resolve property
disputes with adjacent neighbors, lease for certain oil development, and the sale of sand. RCW
79A.05.630.

23 ³³ PFR 455 (DEIS, p. 1-1) (emphasis added).

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