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

Friends of Grays Harbor and Grays Harbor)	
Audubon Society)	
)	
Plaintiffs,)	FIRST AMENDED COMPLAINT FOR
vs.)	DECLARATORY
)	AND INJUNCTIVE RELIEF
State of Washington, including its agencies)	
the Washington State Parks and Recreation)	
Commission and Recreation and Conservation)	
Office, Westport Golf Inc., City of Westport,)	
J.D. Financial Corp, and Mox Chehalis LLC.)	
)	
Defendants.)	
)	
)	
)	

I. INTRODUCTION

This action seeks to establish that the State of Washington and its agencies are legally required to protect rare interdunal wetlands on Westport Light State Park (“WLSP”), and that its

efforts to fill wetlands to build a golf course in the Park are prohibited by covenants running with the land and state laws protecting parklands.

1.1 In the early 2000s, a private developer named Mox Chehalis LLC ("Mox Chehalis") sought to build a golf course resort on one of the most unique and ecologically valuable pieces of ocean-front public property in the state. Region 10 of the US Environmental Protection Agency ("EPA") and the State Department of Ecology ("Ecology") both opposed the project due to impacts to a rare interdunal wetlands system on the site.

1.2 Massive litigation challenging the project ensued for the next six years, spearheaded by Friends of Grays Harbor ("FOGH") and the Washington Environmental Council.¹ The litigation encompassed more than a half-dozen legal action and appeals – sometimes spanning from environmental hearings boards to the court of appeals -- and embroiling local, state, and federal agencies.

1.3 After more than six years of litigation, the parties engaged a retired judge to mediate the case and, in April 2007, signed a comprehensive Settlement ("Global Settlement" or "Settlement").

1.4 True and correct copies of the Global Settlement and its Appendices A and C are attached hereto as Exhibits 1, 2, and 3.

1.5 The heart of the Global Settlement was *permanent protection of the interdunal wetlands* on Mox Chehalis' project site (hereafter "Mox Chehalis property" or "site") by (1) agreeing to modify the golf course project to be "zero wetland fill," (2) requiring the property owner to record

¹ Washington Environmental Council has since changed its name to Washington Conservation Action.

a covenant to permanently preserve interdunal wetlands on the site, and (3) prohibiting any clearing or tree removal on preserved wetlands on the site. The Global Settlement expressly bound Mox Chehalis, the City of Westport, and their successors and assigns, and was also signed by two state agencies, the Washington State Department of Ecology and the Washington State Environmental & Land Use Hearings Board.

1.6 After the Global Settlement fully took effect and became binding on the parties and their successors, multiple events *strengthened protections* of the interdunal wetlands:

1.7 First, pursuant to the Global Settlement, substantive requirements of the Global Settlement, including the obligation to permanently protect wetlands, were incorporated into the Shoreline Substantial Development Permit (“SSDP”) for the Mox Chehalis property. One of these conditions was the requirement to create a permanent conservation easement to ensure that the wetlands were protected in perpetuity. These conditions were subsequently triggered when the owner of the property largely built the golf course terrain and in doing so significantly degraded the wetlands in ways that are still visible on the site today, fifteen years later. These SSDP conditions were intended to be permanent and bind successive owners. As a result, the conditions are durable and in effect to this day.

1.8 Second, in April 2008, the US Army Corps of Engineers (“Army Corps”) learned that Mox Chehalis was seeking to sell the Links site but had not fulfilled its obligation of recording a conservation easement to protect the wetlands as required by the Global Settlement and SSDP. The Army Corps therefore required the site's then owners, Mox Chehalis and JD Financial Corp (“JD Financial”), to formalize and record the previously-promised conservation easement (hereafter “Army Corps Covenant”). The Army Corps required this conservation easement to resolve

allegations that Mox Chehalis had illegally filled wetlands while it owned the property. The Army Corps negotiated the terms of the Army Corps Covenant with agents representing both Mox Chehalis and JD Financial. The negotiation was executed by Jim Daly, an agent of both Mox Chehalis and JD Financial. The Army Corps Covenant was recorded with the Grays Harbor Auditor.

1.9 A true and correct copy of the Army Corps Covenant is attached hereto as Exhibit 4.

1.10 Then, in 2015, the State of Washington ("State") purchased the site using a grant from the Washington State Recreational and Conservation Office ("RCO"). A purpose of the acquisition was to protect the interdunal wetlands from the golf course development, and to expand and connect the state parks that were on three sides of the property. With the support of the public, environmentalists including FOGH, and numerous state agencies, the site was saved from private development, brought into the State Parks system and made part of Westport Light State Park. That acquisition further protected the interdunal wetlands under the state laws governing state parks and RCO-grant-purchased property.

1.11 The State's purchase of the property also brought the wetlands into the Seashore Conservation Area ("SCA") established and protected via RCW Chapter 79A.05.600 *et seq.* Pursuant to RCW 79A.05.605, the entirety of the Mox Chehalis property – including the wetlands subject to the conservation easements – became part of the SCA as soon as it came into state ownership. This is because the SCA includes "***all*** state-owned nontrust accreted lands along the ocean." RCW 79A.05.605 (emphasis added).

1.12 When the wetlands were purchased by the State and thereby became part of the SCA, additional protections were triggered. Pursuant to RCW 79A.05.615, Parks must "administer the Washington State Seashore Conservation Area in harmony with the broad principles set forth in

RCW 79A.05.600. Where feasible, the area shall be preserved in its present state; everywhere it shall be maintained in the best possible condition for public use.” While RCW 79A.05.600 recognizes recreation as a permissible use, it does not allow the filling of rare interdunal wetlands for a golf course. The State Legislature created the SCA because these areas “constitute some of the last unspoiled seashore remaining in the United States” that “provide the public with almost unlimited opportunities for recreational activities, like swimming, surfing and hiking; for outdoor sports, like hunting, fishing, clamming, and boating; for the observation of nature as it existed for hundreds of years before the arrival of Europeans; and for relaxation away from the pressures and tensions of modern life. . . Nonrecreational use of the beach must be strictly limited. Even recreational uses must be regulated in order that Washington's unrivaled seashore may be saved for our children in much the same form as we know it today.” RCA 79A.05.600.

1.13 Once the site was *supposedly* protected as a state park and the SCA, the Washington State Parks and Recreation Commission (“Parks Commission”) reversed course and joined an effort to develop an even more destructive golf course project. Whereas the Global Settlement required “zero” wetland fill and would have impacted only 22 acres of wetland buffers, the Parks Commission is pursuing a project that would fill approximately 22.8 acres of wetlands and permanently impact approximately 100 acres of wetland buffers. And the golf course’s oceanside footprint has been significantly expanded, increasing the project’s harm to the coastal environment, and expanding the impact on the public’s enjoyment of the state park’s beaches and amenities.

1.14 This action seeks to establish that the State of Washington and its agencies are legally required to protect the interdunal wetlands on the site and that its efforts to fill wetlands and build a golf course on the site are contrary to law and contract. Specifically:

- A. Provisions of the Global Settlement constitute a conservation easement and/or a covenant running with the land that bind the State of Washington as a successor in interest and those working in concert with the State of Washington, the City of Westport, and Westport Golf. This includes both the affirmative provisions (e.g., must control noxious weeds) and prohibitive provisions (e.g., must not fill wetlands).
- B. The City of Westport and the State are bound by the Global Settlement. Any golf course they pursue or permit must comply with the provisions of the Global Settlement, including (1) only a zero-fill golf course design, (2) any driving range must be in the uplands in the NW corner of the site, not in wetland areas; (3) permanent protection of interdunal wetlands through legally enforceable deed covenants; and (4) no tree removal or clearing on preserved wetlands.
- C. The provisions of the SSDP protecting the wetlands are durable and enforceable and binding on the State, the City of Westport and any other entities in concert with them. Moreover, no future shorelines permit(s) may contradict those durable mitigation requirements.
- D. The State, as successor to Mox Chehalis and JD Financial, is subject to the Army Corps Covenant and must protect the interdunal wetlands according to its terms, which are expressly designed to implement the Global Settlement.
- E. The filling of wetlands to create a private golf course is inconsistent with the protections afforded by the SCA pursuant to RCW 79A.06.600 *et seq.*, which apply to all accreted lands and the interdunal wetlands within WLSP.

- F. The City of Westport and the State may not violate the interdunal wetland protections contained in the Global Settlement, SSDP, or Army Corps Covenant; neither the State nor any person in concert with the State may seek permits for a project that would violate such protections, nor may the City of Westport accept, process, or grant applications for such permits. Neither can take any action to advance projects that are inconsistent with such protections.
- G. The State of Washington and City of Westport may not spend taxpayer funds to pursue a project that violates the wetland protections in the Global Settlement, the SSDP, or Army Corps Covenant.
- H. State Law prohibits the Parks Commission from converting this RCO-grant-acquired property to the golf course project. The interdunal wetland system, being among the “last contiguous interdunal wetland habitat in this area” and providing critical benefits to habitat, drinking water, and public access, is irreplicable and therefore cannot qualify for conversion.
- I. RCW 79A.05.030 prohibits the Parks Commission from granting a concession for the golf course project because it would restrict the public’s “free access” to WLSP and its amenities.

1.15 After litigating for years to achieve the Global Settlement, SSDP, and Army Corps Covenant, FOGH has the right to enforce these running covenants on its own behalf and on behalf of the public and the environment. These beneficiaries are being irreparably harmed by the State and Westport's facilitation of a permitting process for a project that is prohibited by the running covenants. They are harmed by being forced to raise and expend resources to oppose such prohibited

projects, and are also suffering emotional distress from having to fight to protect these interdunal wetlands *again*, after already spending years to achieve their permanent protection through the running covenants. The Court should temporarily enjoin all environmental review and permitting processes for such projects.

1.16 When the State used RCO grants to purchase the site and bring it into the state park system, protections for interdunal wetlands and public access were increased, not decreased. The Parks Commission cannot use its acquisition of the site to eliminate environmental protections that were placed on the property by previous owners, and that by their terms are binding on successors. The Parks Commission's position, that its acquisition can essentially "launder" the property and shirk environmental protections, is contrary to law and public policy. The Parks Commission is subject to those prior contractual protections plus additional protection under state law, including the protections afforded to the SCA that attached upon the State's purchase of the accreted land.

II. PARTIES

2.1 Plaintiff Friends of Grays Harbor is a broad-based 100% volunteer tax-exempt 501(c)(3) citizens group made up of crabbers, fishers, oyster growers and caring citizens. The mission of FOGH is to foster and promote the unique economic, biological, and social benefits of Washington's estuaries and ocean coastal environments. The goal of FOGH is to protect the natural environment, human health, and safety in Grays Harbor, maintain the quality of Central and Southwest Washington's coastal environment through science, advocacy, law, activism, and empowerment.

2.2 FOGH's members and supporters are being harmed by the Parks Commission's proposal because they are forced to spend resources to protect the interdunal wetlands despite having

already contracted for such protections in the Global Settlement. FOGH would be harmed by the project' negative impact on the interdunal area, which qualifies as an Aquatic Resources of National Importance ("ARNI"). The project threatens water quality and quantity, water-user experiences (surfing), beach experiences, clean drinking water, and surface waters. In addition, the proposed golf course presents an economic justice issue by requiring the public to pay a greens fee to enjoy public park property.

2.3 The proposed project would harm plaintiffs' members and supporters by negatively impacting Category I interdunal wetlands in WLSP. The project would imperil unique and rare coastal dune habitat, interrupt quality habitat for a range of avian and wildlife species, impair water quality through pesticide, herbicide, and fertilizer pollution, and limit equitable access to the beach and to Westport Light State Park.

2.4 In settling its permit appeals, FOGH negotiated the wetland protections contained in the Global Settlement, including those incorporated into the SSDP and Army Corps Covenant. FOGH specifically secured protections that would survive a golf course redesign and the sale of the property. FOGH then lobbied for the State to purchase the property with RCO grants to protect the wetlands from a golf course development. The golf course proposal and project threaten these gains.

2.5 Plaintiff Grays Harbor Audubon Society ("GHAS") is a tax-exempt 501(c)(3) membership organization whose mission is to seek a sustainable balance between human activity and the needs of the environment, and to promote enjoyment of birds and the natural world. GHAS' members and supporters would suffer the same impacts as described for FOGH above.

2.6 Plaintiffs and their members and supporters have ongoing aesthetic, economic, health, and recreational interests in protecting the wetlands and habitat on the site; these interests are being harmed by the Parks Commissions' illegal efforts to build a golf course on the site.

2.7 Plaintiffs also bring this action as taxpayers. They have asked the WA Attorney General ("ATG") to intervene in this action on behalf of taxpayers, but such request is likely futile given that the ATG is actively litigating to invalidate the conservation easements on the property to enable the State to fill wetlands for a private golf course project.

2.8 The State of Washington owns the property. Various State agencies, including Ecology, RCO, and the Parks Commission, exercise regulatory authority over the property.

2.9 Westport Golf, Inc. ("Westport Golf") is seeking to build and operate a golf course on the WLSP property that is subject to the Global Settlement, SSDP, and the Army Corps Covenant. Westport Golf has actively lobbied the State to take actions to violate the wetland protections in the Global Settlement, SSDP, and Army Corps Covenant.

2.10 The City of Westport ("Westport") is a municipality and a signatory to the Global Settlement. Westport has also voluntarily taken on the role of SEPA lead agency for this project and is thereby voluntarily and actively assisting the violation of wetland protections in the Global Settlement, SSDP, and Army Corps Covenant.

2.11 Mox Chehalis is a now-dissolved corporation previously authorized to do business in Washington State. Mox Chehalis is a party to the Global Settlement.

2.12 J.D. Financial was the owner of the property at the time the Army Corps Covenant was placed on the property. JD Financial is related to Mox Chehalis. Both had common ownership

and were operated by James Daly. James Daly was the President of JD Financial and the sole governor and manager of Mox Chehalis.

III. JURISDICTION AND VENUE

3.1 This Court has subject matter jurisdiction over this action under chapter 7.24 RCW and chapter 7.40 RCW.

3.2 Venue is proper in Thurston County under RCW 4.92.010.

IV. FACTUAL BACKGROUND

A. Background environmental conditions

4.1 Westport Light State Park encompasses approximately 560 acres. Of that, 400 acres are wetlands, including 346 acres of wetland mosaic, 26 acres of willow swamp, 21 acres of red alder wetland forest, and five acres of small individual wetlands. Almost all of the wetlands (395 acres) are rated Category I. Those interdunal wetlands are recognized as a special category of wetland because they are a large system, with high habitat scores, which provide critical habitat functions to the ecosystem.

4.2 In August 5, 2004, correspondence, Region 10 of the EPA informed the Army Corps, Seattle District, of the importance of these interdunal wetlands:

The wetland at this 350 acre site represent a diverse habitat mosaic of interdunal, emergent scrub-shrub, and forested wetlands of over 150 acres, which are adjacent to the Pacific Ocean and Grays Harbor. . . . The site contains some of the last contiguous interdunal wetland habitat in this area and is located at the nexus of two key migratory flyways, critical for support of migratory birds. . . . These interdunal wetlands are not only important as habitat and refuge for numerous migratory bird species, but also support a number of mammals, amphibians, and fish. . . . This system provides overwintering and refuge habitat for coho (Onchorynchus keta), for which the Lower Columbia River population is a candidate species. The internal wetlands also provide important groundwater recharge functions, contributing to the maintenance of the City of Westport's sole drinking water supply. **Based on the importance of these coastal interdunal wetland ecosystems, and their associated functions and values, EPA has concluded that the proposed project poses a substantial**

and unacceptable risk to Aquatic Resources of National Importance (ARNI). (emphasis added).

4.3 The EPA found that placing a golf course in the interdunal wetland system “poses significant environmental impact, and is the subject of significant controversy,” and recommended preparation of a full federal environmental impact statement and denial of a permit to the project. *Id.* A true and correct copy of this correspondence is attached as Exhibit 5.

4.4 When Ecology appealed a permit granted to the golf course project, it similarly concluded “The wetlands on the site are rare, high quality, inter-dunal wetlands that provide habitat for birds, amphibians, small mammals and invertebrates. . . . In addition, the wetlands constitute a recharge area for underground aquifers.” Ecology concluded “The project will have severe impacts to the inter-dunal wetland system in the vicinity without a corresponding public benefit [and] will limit public access to the inter-dunal area”

4.5 A true and correct copy of this Notice of Appeal by Ecology, September 4, 2001, SHB No. 01-023, is attached as Exhibit 6.

4.6 Interdunal wetlands, like those found at WLSP, are a rarity on the Pacific coast. Moreover, only approximately ten percent of Washington’s wetlands are rated as Category I.

4.7 WLSP also includes forests, beaches, and extensive sand dunes, some reaching as high as 30 feet. It serves important groundwater recharge functions for the City of Westport’s drinking water supply. Numerous flora and fauna call the park home. The local vegetation makes the park a critical habitat for birds, including migratory birds. WLSP is a unique natural system that provides essential benefits to humans and wildlife alike.

B. The interdunal wetlands at issue are on accreted lands.

Almost the entirety of Westport Light State Park is on accreted oceanfront land. According to the City of Westport's August 2024 report, titled "Review of the Ocean Shoreline Geomorphology and Wetlands in the City of Westport and Westport Light State Park" (Westport Geomorphology Report):

Accretion of land, particularly pronounced following construction of the South Jetty, resulting in the formation of interdunal wetlands on the accreted, depressional area where most to the City's freshwater wetlands are now located."

...

A well-developed (and now relict) string of foredunes marks a relatively stable early 19th(?) century shoreline position now between one-half and one mile distant from the ocean. This feature is readily observed in the modern landscape today as a slight topographic rise along both W Ocean Avenue and N Forrest Street. Between it and the ocean lies nearly the entirety of the State Park, of which most has accreted since 1858, the date of the underlying GLO (General Land Office) map.

Westport Geomorphology Report, Executive Summary, p. 4. **Exhibit 11.** ²

4.8 Westport's Geomorphology Report contains graphical depictions that accurately show that the vast majority of WLSP is on accreted oceanfront land.

² Exhibits in the original complaint are not renumbered. New exhibits added through the First Amended Complaint begin at Exhibit number 11.

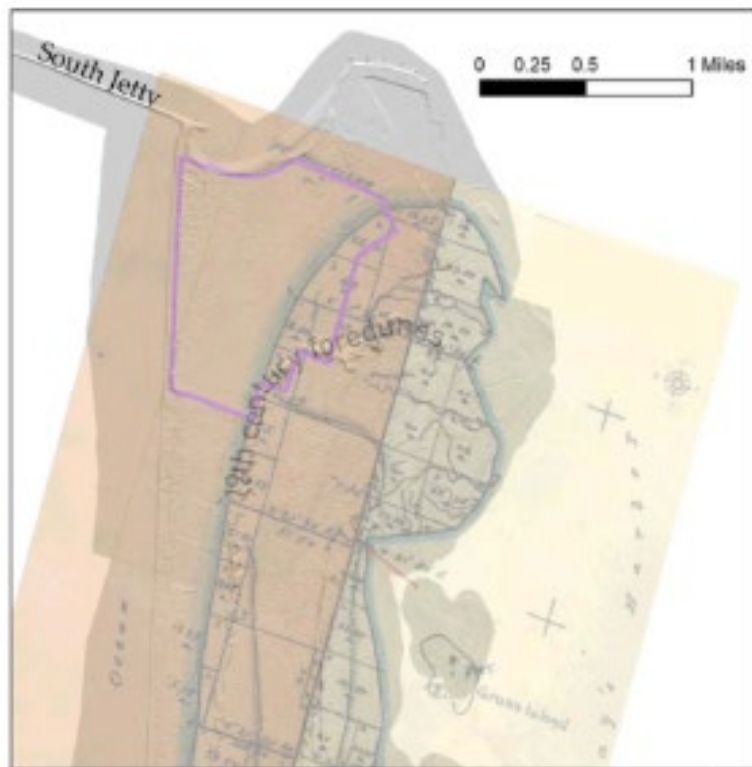


Figure 5. The 1858 GLO map with the outline of the present-day State Park (magenta), overlain on the 2019 LiDAR survey of the area. The foredunes associated with an early 18th century coastline are clearly visible in the topography. Basemap from Thomas et al. (2024, their Figure 7); LiDAR from <https://lidarportal.dnr.wa.gov/>.

Id. at 4.

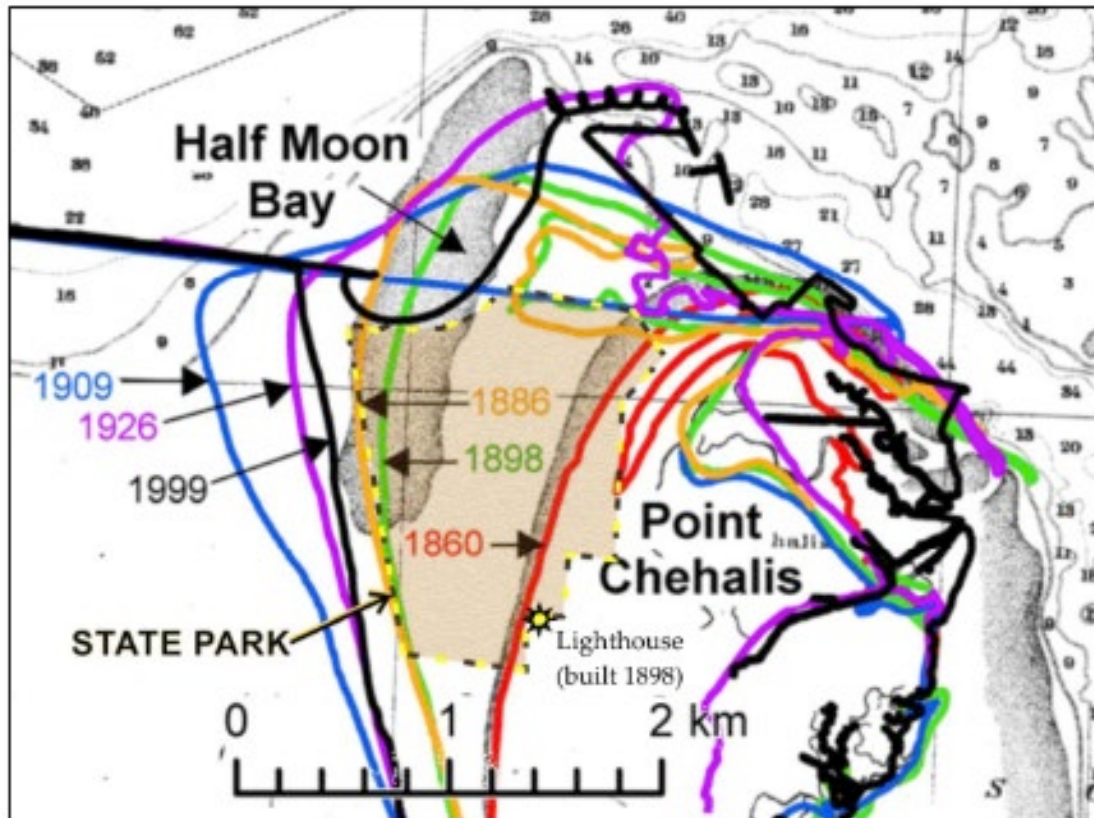


Figure 17. Variations in the shoreline of Point Chehalis, from Kaminsky et al. (2010, their Figure 11). Base map is the 1860 US Coast Survey chart; State Park boundary (orange-shaded area) traced from Thomas et al. (2024, their Figure 8).

Id at 18.

C. Mox Chehalis proposed a golf course resort on the property.

4.9 Mox Chehalis previously owned the Mox Chehalis property.

4.10 In the early 2000's, Mox Chehalis sought over a dozen permits to construct a links style golf course and associated resort amenities on the Mox Chehalis property, a shoreline substantial development permit, a site plan approval, a Clean Water Act Section 404 wetland fill permit, and a Clean Water Act Section 401 water discharge permit.

D. Appeals over the Mox Chehalis project were resolved through a Global Settlement that prohibited wetland fill and permanently protected wetlands on the site.

4.11 Ecology, FOGH, WEC, and others filed various appeals challenging the permits for the golf course project, often based upon the impacts to the interdunal wetlands on the site. Litigation over these permit appeals lasted more than six years and included multiple local appeals, multiple appeals before the State Environmental and Land Use Hearings Office ("ELUHO"), multiple state superior and appellate courts, and the U.S. District Court.

4.12 On April 9, 2007, following an extensive mediation with a retired judge, FOGH, WEC, Mox Chehalis, the City of Westport, the Port of Grays Harbor, Ecology, and ELUHO executed the Global Settlement.

4.13 The Global Settlement secured extensive protections for the interdunal wetlands on the site, which were set forth in the Global Settlement and its Appendices. For example:

4.14 Mox Chehalis agreed to redesign the golf course project to have zero wetland fill. Additionally, Mox Chehalis agreed to relocate any driving range to the uplands in the NW corner of the site to avoid any wetland fill, as well as other environmental agreements. One such agreement was to control noxious weeds, which became important when Mox Chehalis' ground clearing activity resulted in expansion of Scot's broom.

4.15 Mox Chehalis agreed to place restrictive covenants on the deeds for all wetlands identified as Project Mitigation in order to ensure that the sites are protected in perpetuity.

4.16 Mox Chehalis agreed to "not remove trees or clear areas identified by the Wetland Mitigation Plan (Appendix A) as areas for preservation of Wetlands."

4.17 Mox Chehalis agreed to "comply with the requirements set forth in Appendix C," which included extensive protections for the interdunal wetlands.

4.18 The City of Westport was a party to the Global Settlement, which stated that “The City shall require compliance with the revised Wetland Mitigation Plan as a condition of its permit approvals.” Exhibit 1 at 5. That revised Wetland Mitigation Plan required, *inter alia* (1) “No wetland fill or excavation will occur,” Exhibit 2, Executive Summary, (2) “preservation from future development of 107.00 acres of interdunal upland and wetland habitat,” *Id.* p. 18, (3) develop a legally binding conservation easement on the preserved areas, *id.* at p. 21, and (4) “rehabilitation of upland dune habitat by removal and suppression of invasive plant species, primarily Scot’s broom,” *id.* at 18.

4.19 The Global Settlement provided several contingencies that could terminate the settlement before it took effect. The parties to the Global Settlement instead let the Global Settlement go into effect, with Mox Chehalis largely building the golf course.

E. The Global Settlement was intended to be a conservation easement and/or covenant running with the land applying to any future golf course project designs.

4.20 The terms of the Global Settlement show an intent to create a conservation easement and/or covenant running with the land that would apply to the future golf course design whether it was owned by Mox Chehalis or a future owner of the land.

4.21 The Global Settlement states that it “*shall apply and be binding upon* the parties to this Agreement, their members, member organizations, related entities, *successors and assigns.*” Global Settlement, Section 13. (Emphasis added).

4.22 The Global Settlement shows that the parties intended to bind future owners of the land. It specifically required Mox Chehalis or its successor to record legally binding covenants protecting the wetlands. Moreover, Appendix A to the Settlement Agreement stated “Mox Chehalis, L.L.C. or subsequent owners will retain ownership of the on-site mitigation sites” to “provide

resources to maintain the on-site and off-site mitigation areas to assure that performance goals are met."

4.23 At the time the Global Settlement was entered, the parties had not agreed on a final golf course design and intended the Global Settlement to constrain such future design decisions. A primary covenant of Mox Chehalis and its successor in interest was to "modify the project" to be "consistent with" the agreed environmental standards in the settlement.

4.24 The Global Settlement shows its application to any future golf course decision. It requires that "Prior to construction of the golf course, a final golf course layout shall be submitted to the City for review and comment." Settlement Agreement, Appendix C, Section J.1. It states "The final design for the golf course project will not include any filling, or development of wetlands, except that bridges are allowed to span wetlands." Settlement Agreement, Section 2.c.

F. The Global Settlement's wetlands protections were incorporated into the SSDP as permanent (durable) mitigation requirements.

4.25 To implement the Global Settlement, Westport issued a 2007 Addendum to the prior Links EIS to reflect the project as modified by the Global Settlement ("2007 Addendum").

4.26 Pursuant to the Global Settlement, on June 29, 2007, the City granted Mox Chehalis the SSDP that, among other things, required compliance with the Revised Wetland Mitigation Plan. **Exhibit 12.** That Mitigation Plan contained all the permanent wetland protections that had been in the Wetland Mitigation Plan attached to the Global Settlement, and then some. **Exhibit 13.** For example, it required the conservation easement protected the preserved areas to be developed "by year 1." *Id.* On July 19, 2007, the Department of Ecology approved the SSDP. **Exhibit. 14.**

4.27 The SSDP expressly stated that it had been requested and granted “to implement the settlement agreement reached with the appellants in *Friends of Grays Harbor et. al. v. City of Westport, et. al.*, Court of Appeals No 34113-1-II.” SSDP, p. 1.

4.28 In late June 2007, the City of Westport mailed notice of the 2007 Addendum and the SSDP to parties of record, including the Washington Department of Ecology (“Ecology”), Washington Department of Fish & Wildlife (“WDFW”), and Parks Commission. **Exhibit. 15.**

4.29 Westport’s mailing list for their June 2007 mailing included Ecology, WDFW, and the Parks Commission. The June 2007 mailing was received by the Ecology, WDFW, and the Parks Commission

G. After Mox Chehalis filled wetlands during construction, the Army Corps required the site’s owner to record a covenant protecting certain wetlands on the site.

4.30 In a letter dated April 4, 2007, the Army Corps advised Mox Chehalis that based on detailed knowledge of the project site and the extensive mosaic of wetlands that exist throughout the project site, the Army Corps believed it would be extremely unlikely that a viable golf course could be constructed without the further filling of wetlands in violation of the Clean Water Act. The Army Corps cautioned Mox Chehalis that legal action may be initiated for wetland filling activities exceeding the limits of the Nationwide Permits in violation of the Clean Water Act.

4.31 On April 8, 2008, the Army Corps conducted an inspection of the site that revealed numerous wetland fill violations of the Clean Water Act.

4.32 Attached as Exhibit 7 is a true and correct copy of the Army Corps' April 8, 2008, Investigation Report.

4.33 On July 17, 2008, the Army Corps deemed Mox Chehalis' work "to be a knowing and willful violation of Federal Law." **Exhibit 16.** Over the course of the next months, the Army Corps and Mox Chehalis negotiated over a resolution of the illegal wetland fill.

4.34 During the negotiations, the Corps discovered that Mox Chehalis never recorded a permanent conservation easement for the interdunal wetlands, as required by the Global Settlement and SSDP. Mox Chehalis admitted to the Army Corps that the 107 acres to be preserved under the Global Settlement and SSDP was "still intact but not protected with [a] conservation covenant or deed restriction." July 24, 2009 email. **Exhibit 17.**

4.35 A November 13, 2009 Army Corps memo stated: "Due to the fact that the property is for sale, I advised of my concern about the fact that there was no deed restriction in place, as originally proposed, preventing a future owner from filling the created wetlands and other natural wetlands and forested habitat onsite proposed for preservation." **Exhibit. 18.** On January 15, 2010, the Army Corps again inquired, saying "The remaining issues yet to be resolved are maintenance and monitoring of the created wetlands and establishing deed restrictions for the new created wetlands and the wetlands to be preserved onsite." **Exhibit 19.**

4.36 On August 30, 2010, the Army Corps edited the proposed Army Corps easement to reiterate that it would bind "all future owners" and apply to "any future change in use of the property."

4.37 On or about October 1, 2010, the Corps and an agent for Mox Chehalis and JD Financial agreed on language of the Army Corps Covenant. Jim Daly, Mox Chehalis and JD Financial's Agent, agreed to the language on November 1, 2010.

4.38 On November 17, 2010, certain portions of the Mox Chehalis property was transferred to JD Financial, an entity related to the former owner Mox Chehalis, through an insider transaction.

4.39 On December 7, 2010, James Daly as agent for Mox Chehalis and JD Financial, made a Declaration of Covenants and Restrictions for the Mox Chehalis Property (“Army Corps Covenant,” attached as Exhibit 4).

4.40 The Army Corps Covenant stated Mox Chehalis and JD Financial as the owner of the property and “desires to create and preserve thereon wetlands and forested habitat to be maintained in accordance with provisions made between the declarant and the Department of Ecology (“DOE”) and the U.S. Army Corps of Engineers (USACE) for the project bearing the Revised Shoreline Management Permit #2007-SW-02407-A and USACE Reference Number 200301009.”

4.41 The Army Corps Covenant stated that the 107 acres “shall be managed for wetland mitigation and forested habitat preservation purposes *in accordance with the agreement identified under the DOE Revised Shorelines Permit #2007-SW-02407-A.*”

4.42 By referencing the “agreement identified under” the Revised Shoreline Management Permit #2007-SW-02407-A, the Army Corps Covenant referenced the wetland protections of the Global Settlement, which had been expressly incorporated into Revised Shoreline Management Permit #2007-SW-02407-A. The Revised Shorelines Permit had stated that it was “to implement the settlement agreement reached with the appellants in *Friends of Grays Harbor et. Al., v. City of Westport, et. Al.*, Court of Appeals No. 34113-1-II.”

4.43 The Army Corps Covenant states that it is binding on Mox Chehalis, JD Financial, and their successors and assigns.

4.44 The Army Corps Covenant was recorded in Grays Harbor County, Washington, on December 14, 2010.

4.45 On December 20, 2010, Francis Naglich, acting as an agent for JD Financial, sent an email to James Green, an investigator at the Army Corps, with the recorded Army Corps Covenant attached.

4.46 In that email, Francis Naglich warranted that the Army Corps Covenant was a deed restriction for Mox Chehalis property.

4.47 In that email, Francis Naglich requested a response from the Corps as to whether the deed restriction resolved the wetland violations.

4.48 On December 21, 2010, James Green replied to Francis Naglich via email requesting “proof that the document was recorded at the county against the title.”

4.49 On December 21, 2010, Francis Naglich replied to James Green warranting that a “recording stamp by Grays Harbor County” and a bar code on the bottom of the first page was evidence that the Army Corps Covenant had been recorded at the county against the title. Attached as Exhibit 8 is a true and correct copy of this email string.

4.50 On December 22, 2010, the Army Corps sent a letter resolving the wetland violations, noting “on December 14, 2010, the required deed restriction for the site was recorded with Grays Harbor County. This document identifies 94 acres of existing forested wetlands, 13 acres of forested uplands, and 7.44 acres of created wetlands to be preserved from future development, as required by the Corps of Engineers, to resolve this violation.” **Exhibit 20.**

4.51 The Corps also warned, “If you sell this property, you should inform the new owners of . . . the deed restrictions preventing future development in the identified preservation areas.” *Id.*

H. The State obtained RCO grants to purchase the site to connect adjacent parks and for habitat protection.

4.52 In April of 2014, the Parks Commission applied to the RCO for an acquisition grant under the RCO's Washington Wildlife and Recreation Program.

4.53 Every representation the Parks Commission made during the RCO application process asserted that the purposes of the acquisition were (1) to connect three state park properties in Westport and (2) habitat conservation.

4.54 The Parks Commission represented that only a very small portion of the property acquired with the RCO grant would be used for future development, which would consist of cabins, yurts, and campgrounds or overnight lodging.

4.55 The Parks Commission represented that the acquisition was important to prevent development of a luxury golf course, referring to that potential golf course development as a "threat."

4.56 On July 10th, 2015, the RCO approved the grant.

4.57 In October, 2015, the State of Washington by and through the Recreation and Conservation Funding and RCO and the Parks Commission executed a project agreement for the grant and acquisition of the Mox Chehalis property ("Project Agreement") stating that "[t]he primary goal of the project is to connect these three state park properties and to add a significant amount of new park land including over 2,000 feet of frontage on the Pacific Ocean." Steve Hahn, the Real Estate Program Manager for the Parks Commission, signed the Project Agreement for the Parks Commission.

4.58 The final project report completed by the Parks Commission in 2017 stated that the acquisition's primary purpose is habitat conservation.

4.59 The Project Agreement prohibits the Parks Commission from converting the property “to uses other than those purposes for which funds were approved without prior approval of the Recreation and Conservation Funding Board in compliance with applicable statutes, rules, and funding board policies.”

I. Prior to closing the purchase, the State had an opportunity for significant due diligence on environmental conditions and restrictions.

4.60 On July 22, 2014, JD Financial's real estate agent, Mike Coverdale, sent a willing seller statement to Steve Hahn, stating JD Financial's willingness to sell the Mox Chehalis property to State Parks and that, "We have been in discussion with you over the past year regarding the interest that your department may have in acquiring all or a portion of the property."

4.61 On August 8, 2015, the State of Washington, acting by and through the Parks Commission, entered into a Purchase and Sale Agreement with JD Financial for the purchase of the Mox Chehalis property ("2015 PSA").

4.62 Attached as Exhibit 9 is a true and correct copy of the 2015 PSA.

4.63 Under the 2015 PSA, (1) the State could enter the property "at all reasonable times for the purpose of conducting environmental assessments and investigating the Property;" Seller was required to provide the State with all "Due Diligence Material," including "existing or proposed easements, covenants, restrictions, agreements, or other documents that, to Seller's knowledge, affect title to the real property and that are not disclosed by the Preliminary Commitment," and "All governmental permits and approvals," "notices of violations," or environmental assessments and documents relating to the property. The State had an opportunity to study the due diligence materials, or to terminate the 2015 PSA based upon failure to receive due diligence material. The State also had the opportunity to conduct its own studies relating to the property.

J. Prior to closing the purchase, the State was on notice of the Global Settlement, the SSDP, and Army Corps Covenant.

4.64 The State, Parks Commission, and/or their agents had actual knowledge of the Army Corps Covenant before the State closed on the purchase of the Mox Chehalis property.

4.65 Before the State closed on the purchase of the Mox Chehalis Property, the State, Parks Commission, and/or their agents knew:

- A. Mox Chehalis had been the owner of the Mox Chehalis property;
- B. Mox Chehalis was a party to the Global Settlement;
- C. Mox Chehalis was the applicant of prior permits granted for the golf course project;
- D. Mox Chehalis had begun construction of the golf course project;
- E. Mox Chehalis had committed to wetland preservations on the site through the Global Settlement;
- F. Mox Chehalis had committed to wetland preservations on the site through Revised Shoreline Management Permit #2007-SW-02407-A;
- G. Mox Chehalis had conducted extensive environmental studies about the site, including the interdunal wetlands;
- H. Pursuant to the Global Settlement and Revised Shoreline Management Permit #2007-SW-02407-A, Mox Chehalis had committed to recording a covenant to protect wetlands on the site;
- I. The Army Corps had investigated environmental conditions on the site and found potential wetland violations on the site;

J. Ecology had investigated environmental conditions on the site and was in the best position to advise the State of Washington on such conditions and existing protections for the wetlands;

K. JD Financial was a successor-in-interest to Mox Chehalis after taking over the Mox Chehalis property;

L. JD Financial owned the Mox Chehalis property only since approximately November 17, 2010;

M. JD Financial was bound to the wetland protections contained in the Global Settlement and in the Revised Shoreline Management Permit #2007-SW-02407-A;

4.66 During the due diligence period, the Army Corps Covenant was accessible to the public and any title searcher through the Grays Harbor County Auditor's Office Self-Service Record Search.

4.67 During the due diligence period, a search for Mox Chehalis in the Grays Harbor County Auditor's Office Self-Service Record Search would have revealed the Army Corps Covenant.

4.68 During the due diligence period, the State, Parks Commission, and/or their agent searched for records related to the Mox Chehalis property in the Grays Harbor County Auditor's Office Self-Service Record Search.

4.69 During the due diligence period, the State, Parks Commisison, and/or their agent searched for Mox Chehalis in the Grays Harbor County Auditor's Office Self-Service Record Search.

4.70 During the due diligence period, the State, Parks Commission, and/or their agent, requested that the Army Corps provide documents about environmental conditions on the site.

4.71 During the due diligence period, the State, Parks Commission, and/or their agent, requested that the Army Corps provide documents about wetlands on the site.

4.72 In response to such requests, the Army Corps provided a copy of the Army Corps Covenant to the State, Parks Commission, and/or their agent.

4.73 During the due diligence period, the State, Parks Commission, and/or their agent, requested that Ecology provide documents about wetlands on the site.

K. By purchasing the site, the State became a successor to the Global Settlement and the Army Corps Covenant and is subject to the SSDP's mitigation requirements.

4.74 The Global Settlement states that it is binding upon Mox Chehalis' successors. By purchasing the Mox Chehalis property, the State became a successor to Mox Chehalis under the Global Settlement.

4.75 The Army Corps Covenant states that it is binding upon JD Financial successors. By purchasing the Mox Chehalis property, the State became a successor to JD Financial under the Army Corps Covenant.

L. After purchasing the site, the Parks Commission changed course and began developing a golf course in Westport Light State Park.

4.76 On October 12, 2020, a memorandum of agreement ("MOA") was executed between Westport Golf and the Parks Commission. Attached as Exhibit 10 is a true and correct copy of the MOA.

4.77 The MOA establishes that, upon the completion of prescribed planning milestones, the Parks Commission and Westport Golf will negotiate "a long-term concession agreement for the development, management, and operation of a golf course and ancillary facilities at Westport Light State Park."

4.78 The MOA further establishes that a separate concessions agreement will be negotiated between the Parks Commission and Westport Golf which will include terms related to “revenue sharing” and “fee structure.”

4.79 Since the signing of the MOA, the parties to the MOA have taken significant steps towards developing the proposed golf course. These efforts include the retention of design teams, revisions to site plan development, drafting of a master plan, public outreach, and an ongoing State Environmental Policy Act (“SEPA”) / Environmental Impact Statement (“EIS”) process.

4.80 Westport Golf intends to charge membership and use fees for users of the golf course. Fees will vary based on a visitor’s place of residence and membership at the club. Westport Golf intends to utilize a “dynamic pricing” model inspired by Chambers Bay Golf Course.

4.81 The proposed golf course at Westport Light State Park would include a links style golf course and associated resort amenities.

M. The Parks Commission denies that it is bound by the wetland protections contained in the Global Settlement, SSDP, and Army Corps Covenant.

4.82 On November 22, 2022, the Parks Commission and Westport Golf gave a joint presentation titled “Westport Light State Park *Westport Golf Links* Update.”

4.83 In the November 22, 2022, presentation, the Parks Commission included a slide titled “Legal Covenant,” reprinting the first page of the Army Corps Covenant, and a bullet point which read “Not likely legally binding on State Parks.”

4.84 The presenter notes for the “Legal Covenant” slide stated that “While doing background research for the baseline studies at the park, we submitted a FOIAQ request to ACOE for any prior documentation on wetland delineations associated with the previous Scotting links style golf course development. This was, of course, prior to our ownership. It was from that effort that we

discovered a legal covenant that was placed on the property by the previous owner. A legal covenant is a deed restriction that is applied to a property title that restricts use of the property. The covenant was placed on slightly more than 111 acres of restored wetlands. This legal covenant was basically a consequence, a legal requirement from the ACOE, after the previous developer violated their NWP by filling protected wetlands. The covenant was placed on slightly more than 111 acres of restored wetlands. . . . So what does this mean for the project? We've consulted with the AGs office and understand that because of how this covenant was filed with the Tile company, it is not legally binding on us a property owners. [sic]." The slide stated: "Result of wetland fill violations for previous project" "111.44 Acres of 'Creation or Preservation" and "Not likely legally binding on State Parks."

4.85 At the November 16, 2022, Parks Commission's regular work session meeting in Lake Chelan, WA, the Parks Commission gave an update on the Westport Light golf course project and stated that the Army Corps Covenant was "possibly not legally binding."

4.86 The Parks Commission has taken the position that the SSDP has expired and has no ongoing binding effect on the State of Washington.

N. The Parks Commission's golf course project is inconsistent with the Global Settlement, the durable conditions of the SSDP, and the Army Corps Covenant.

4.87 Pursuant to the MOA, the Parks Commission and/or Westport Golf are evaluating one or more golf course plans that would do the following on some portion of the 114.44 acres (107 acres of preservation; and 7.44 acres of wetland creation) that must be permanently protected under the Global Settlement, SSDP, and Army Corps Covenant:

- A. Fill wetlands;
- B. Disturb or change the natural habitat;

- C. Remove, destroy, cut, trim, mow, alter, or spray with biocides any vegetation for the purpose of constructing or maintaining the golf course project;
- D. Allow commercial activity;
- E. Allow golf course use;
- F. Allow right of passage used in conjunction with a commercial activity;
- G. Allow right of passage used in conjunction with the golf course;
- H. Fill, excavate, dredge, mine, or drill;
- I. Construct or place buildings or structures; and
- J. Construct a driving range in the wetlands rather than the uplands.

4.88 Pursuant to the MOA, the Parks Commission and/or Westport Golf are evaluating one or more golf course plans that would do the following on some portion of the area defined as "Property" in Army Corps Covenant:

- A. Fill wetlands;
- B. Disturb or change the natural habitat;
- C. Remove, destroy, cut, trim, mow, alter, or spray with biocides any vegetation for the purpose of constructing or maintaining the golf course project;
- D. Allow commercial activity;
- E. Allow golf course use;
- F. Allow right of passage used in conjunction with a commercial activity;
- G. Allow right of passage used in conjunction with the golf course;
- H. Fill, excavate, dredge, mine, or drill;
- I. Construct or place buildings or structures;

J. Construct a driving range in the wetlands rather than the uplands.

4.89 Pursuant to the MOA, the Parks Commission and/or Westport Golf are evaluating one or more golf course plans that would fill wetlands.

4.90 Pursuant to the MOA, the Parks Commission and/or Westport Golf are evaluating one or more golf course plans that would develop wetlands beyond just spanning with bridges.

4.91 Pursuant to the MOA, the Parks Commission and/or Westport Golf are evaluating one or more golf course plans that would remove trees and/or clear areas in some locations identified for wetlands preservation in the Wetland Mitigation Plan attached as Appendix A to the Global Settlement.

4.92 Pursuant to the MOA, the Parks Commission and/or Westport Golf are evaluating one or more golf course plans that would remove trees and/or clear areas in some locations identified for wetlands preservation in the Wetland Mitigation Plan attached as Appendix A to the Global Settlement.

4.93 Pursuant to the MOA, the Parks Commission and/or Westport Golf are evaluating one or more golf course plans that would disturb some portion of the area identified for project mitigation in the Wetland Mitigation Plan attached as Appendix A to the Global Settlement.

4.94 Pursuant to the MOA, the Parks Commission and/or Westport Golf are evaluating one or more golf course plans that would do the following to some portion of the area identified for project mitigation in the Wetland Mitigation Plan attached as Appendix A to the Global Settlement.

A. Fill wetlands;

B. Disturb or change the natural habitat;

- C. Remove, destroy, cut, trim, mow, alter, or spray with biocides any vegetation for the purpose of constructing or maintaining the golf course project;
- D. Allow commercial activity;
- E. Allow golf course use;
- F. Allow right of passage used in conjunction with a commercial activity;
- G. Allow right of passage used in conjunction with the golf course;
- H. Fill, excavate, dredge, mine, or drill;
- I. Construct or place buildings or structures;
- J. Construct a driving range in the wetlands rather than the uplands.

4.95 Pursuant to the MOA, the Parks Commission and/or Westport Golf are evaluating one or more golf course plans that would disturb some portion of the area that the Global Settlement identified for protection by restrictive covenant.

4.96 Pursuant to the MOA, the Parks Commission is actively working to pursue projects that are inconsistent with the Global Settlement, SSDP, and Army Corps Covenant.

O. Defendants have intentionally interfered with FOGH and the Public's conservation and contractual rights under the Global Settlement and the resulting SSDP mitigation and Army Corps Covenant.

4.97 Even after Defendants were indisputably aware of the Global Settlement, the SSDP, and the Army Corps Covenant, they acted together to intentionally try to deprive FOGH and the public of their conservation and contractual rights under the Global Settlement and the resulting SSDP and Army Corps Covenant.

4.98 Rather than trying to seek to quiet title or take legal action to establish their right to fill wetlands and develop a golf course in the wetlands, notwithstanding the Global Settlement,

SSDP, and Army Corps Covenant, they pushed forward with their development plans. They intentionally sought to use the financial resources of the State to breach FOGH's contractual rights, knowing that it would be difficult for a small non-profit to enforce its rights against the State, City of Westport, and a well-heeled private developer.

4.99 Defendants took these actions in bad faith and with the intent to deprive FOGH and the public of their rights.

4.100 Defendants knew that their actions would cause significant emotional distress to the members of FOGH that had fought for over seven years to achieve the wetlands protections incorporated into the Global Settlement, SSDP mitigation, and Army Corps Covenant.

4.101 Defendants knew that their actions would cause significant economic injury because FOGH would have to hire an attorney to litigate this case and participate in an expensive land use battle simply to maintain their rights under the Global Settlement, SSDP, and Army Corps Covenant.

P. The golf course project, being inconsistent with the RCO grant, would constitute a conversion of the property.

4.102 In 2015 and 2016, the Parks Commission adopted new real estate policies which proposed the development of Recreation Concession Areas ("RCA") in partnership with private entities. Westport Light State Park was named as one of the pilot sites for this new program.

4.103 In 2017, the Parks Commission submitted a conversion request to the Recreation and Conservation Funding Board ("RCFB") for potential conversions at Westport Light State Park and Millersylvania State Park due to each park's new status as an RCA.

4.104 The RCFB never made a decision to accept or deny the conversion request.

4.105 The MOA states WSP will seek approval “that the negotiated concession agreement is consistent with RCFB policy and will not result in conversion of lands purchased with RCFB grant funds.”

4.106 Between 2017 and 2022, the Parks Commission hired consultants to complete a series of environmental reports for the Westport Light State Park golf course proposal including wetland reports, vegetation surveys, a restoration feasibility study, a hydrologic report, a habitat report and a coastal study report. Under the MOA, the Parks Commission's reports constitute “milestones” in the working relationship between the Parks Commission and Westport Golf that “demonstrate both parties desire to collaboratively develop a Master Plan for Westport Light State Park, and to create financially viable park facilities . . .”

4.107 In October of 2022, Westport Golf hired a consultant to conduct an economic and fiscal benefits study for the golf course project.

4.108 In March of 2023, the Parks Commission and the City of Westport entered into a Lead Agency Agreement naming the City of Westport the nominal SEPA Lead Agency for the golf course project.

4.109 According to the City of Westport’s website, the golf course project is in the EIS drafting stage.

4.110 WSP’s plans to grant a concession to Westport Golf would result in a conversion.

Q. Conversion is impermissible because the interdunal wetlands on the site are irreplaceable.

4.111 The RCFB with the assistance of the Recreation and Conservation Office (RCO), administers grants to support conservation and recreation projects throughout the state and is governed by RCW Chapter 79A.

4.112 RCW 79A.15.030 (9) prohibits the conversion of any land acquired with a grant from the RCFB “to a use other than that for which funds were originally approved” without prior approval of the board.

4.113 RCW 79A.15.030 (9), furthermore, directs the RCFB to adopt “rules and procedures governing the approval” of conversions.

4.114 In accordance with RCW 79A.15.030 (9), the RCFB adopted “rules and procedures governing the approval” of conversions, which sets out the long-term obligations for acquisition projects funded with money from or through the board.

4.115 WAC 286-13-160 (3), furthermore, states that “the board may only approve a conversion when the sponsor:

- (a) Demonstrates the need to convert the project area including all efforts to consider practical alternatives, how they were evaluated, and the reasons they were not pursued;
- (b) Provides an opportunity for the public to participate in the identification, development and evaluation of the alternatives, including a minimum public comment period of at least thirty days; and
- (c) Commits to provide another interest in real property to serve as a replacement. The replacement must:
 - (i) Be of reasonably equivalent usefulness and location;
 - (ii) Be administered by the same sponsor unless otherwise approved by the board;
 - (iii) Satisfy need(s) identified in the sponsor's current plan as described in WAC 286-13-035 or other relevant local or statewide plan;
 - (iv) Be eligible in the same grant program account or category from which funds were originally allocated, unless otherwise approved by the board;
 - (v) Be interest in real property of at least equal current market value to the converted property; and
 - (vi) Satisfies the conversion without grant assistance from the board."

4.116 The RCO has published a series of grant manuals which offer guidance to grant applicants and recipients. RCO Grant Manual 7 provides information for RCO grant programs and projects with long-term obligations, including policies adopted by the RCFB.

4.117 RCO Grant Manual 7 defines the term conversion as follows:

A conversion occurs (1) when facilities acquired, developed, renovated, or restored in the project area change to a use other than that for which funds were approved, without obtaining prior written approval from RCO or the funding board, (2) when property interests are conveyed to a third party not eligible to receive grants in the program from which funding was approved without obtaining prior written approval from RCO or the funding board, or (3) when obligations to operate and maintain the funded property are not complied with after a reasonable opportunity to cure.

4.118 The interdunal wetlands and wetland mosaic in Westport Light State Park (a) are rare, (b) serve critical functions and values, as described herein, and (c) have unique legal protections through the Army Corps Covenant and the Global Settlement.

4.119 Based upon these and other factors, the interdunal wetlands and wetland mosaic cannot be replaced pursuant to the requirements of WAC 286-13-160 (3)(c).

R. The golf course project cannot comply with RCO's concession policy and would therefore require a conversion, which is not feasible.

4.120 The RCO maintains a concessions and leases policy for recipients of grant funding from the RCFB.

4.121 RCO's policy sets forth requirements that RCFB-funded projects must meet if they wish to grant a concession or lease to a private entity to operate within the project area.

4.122 The purpose of RCO's policy on concessions and leases is to ensure that public access is not diminished through the use of private lessees or concessionaires. The policy requires all documents providing for concessions or leases in RCFB-funded project areas to address, among other requirements: how the original grant recipient will maintain oversight and review capabilities to ensure public use and accessibility is not compromised; that the lease/concession area is identified as "publicly owned and operated for public outdoor recreation and/or habitat conservation purposes" on all signs and literature so that the public is not wrongly led to believe the area is private; signs

must be posted identifying the lease/concession area as open to the public; and any fees charged to the public must be competitive with similar facilities.

4.123 Additionally, RCO's policy and WAC 286-13-115 provide that any fees imposed upon nonresidents for use of the facilities may not exceed twice the amount of fees charged to residents.

4.124 Westport Golf plans to impose a fee structure similar to Brandon Dunes, which charges as much as \$300 for a round of golf. Such pricing is inconsistent with State concession policies.

4.125 Westport Golf's fee structure is not competitive with similar facilities. For example, Ocean Shores golf course, just north of Westport across Grays Harbor, charges fifty dollars before taxes and fees to play a round of golf. Highland Golf Course, approximately twenty miles east of Westport in Cosmopolis, charges thirty-five dollars per round.

4.126 If Westport Golf charges over one hundred dollars per round to nonresidents, it cannot comply with the WAC 286-13-115 requirement that nonresident fees must be equal to or less than twice the amount charged to residents, given its promise to charge residents only \$50. If it charges \$50 to \$100 per round, this luxury golf course would be economically infeasible.

4.127 Not only is Westport Golf's fee structure not competitive and potentially violative of WAC 286-13-115, but the high price tag also means that members of the public will be excluded from taking advantage of the golf course and related facilities in Westport Light State Park. Anyone who cannot afford the rate, whether resident or nonresident, to play a round of golf will be denied access to the golf course portion of the Park, directly contravening the purpose of RCO's concession policy to maintain public access in concession areas.

4.128 Westport Golf's fee structure does not comply with the requirements of and purpose behind RCO's concessions policy, and therefore a conversion will be necessary to develop a golf course in Westport Light State Park. As stated above, a conversion is not appropriate because a suitable replacement property does not exist.

S. The golf course project would destroy the public's access to Westport Light State Park and therefore constitutes an illegal concession.

4.129 RCW 79.05.030 declares mandatory powers and duties of the Parks Commission.

4.130 RCW 79A.05.030(5)(d) states that "No concession shall be granted which will prevent the public from having free access to the scenic attractions of any park or parkway."

4.131 The proposed golf course will prevent the public from having free access to the park's upland views of the Pacific Ocean. The 18-hole course would run the length of the ocean-facing western edge of Westport Light State Park.

4.132 The proposed golf course and amenities will prevent the public from having free access to the park's scenic attractions, such as the interdunal wetlands.

4.133 Currently, the public accesses the interior of Westport Light State Park primarily from the dune trail that separates the ocean beach from the rest of the park. From the elevated dune trail, the public has unimpeded views to the interdunal wetland system and informal trail access to the interior of the park. The proposed golf course would extend most of the length of the dune trail, eliminating the public's aesthetic and physical access to most of the park. As a matter of business and public safety, the golf course project would exclude the non-paying public from accessing the park.

V. FIRST CAUSE OF ACTION – DECLARATORY RELIEF

5.1 The preceding paragraphs are incorporated by reference as if set forth fully herein.

5.2 A controversy exists between Plaintiffs and Defendants regarding the following issues:

a. Do provisions of the Global Settlement constitute a conservation easement and/or covenant running with the land that bind the State of Washington as a successor in interest?

b. Are the City of Westport and State of Washington bound by the Global Settlement to pursue only zero-fill golf course designs, to permanently protect interdunal wetlands through legally enforceable deed covenants, to prohibit tree removal or clearing on wetlands, and other environmental protections?

c. Are the wetland protections of the Global Settlement incorporated into the SSDP durable and binding on the State of Washington, such that the State cannot pursue projects inconsistent with those conditions?

d. Do the wetland protections of the Global Settlement incorporated into the SSDP prevent the City of Westport or Department of Ecology from issuing any future shorelines permit that is inconsistent with such protections?

e. Is the State of Washington subject to the Army Corps Covenant and bound to protect the interdunal wetlands according to its terms?

f. Does it violate law and policy for the State of Washington or the Parks Commission to attempt to use the State's purchase of the property to "launder" such property of its environmental protections and conservation easements?

g. Do the protections of the Shorelines Conservation Area apply to the interdunal wetlands and other state-owned accreted land on Westport Light State Park and prevent the

filling of wetlands for an exclusive luxury golf course? Given the State's knowledge that its purchase would bring the property into the SCA, can the State claim to have innocently believed it could fill wetlands on the site for a luxury golf course?

h. Does developing a golf course on the site constitute a conversion under RCW 79A.15.030, which is prohibited unless the Parks Commission secures prior approval from RCFB in accordance with the specific procedures and mandatory conditions of WAC 286-13-160?

i. Does WAC 286-13-160(3)(c)(i) require the RCFB to expressly account for the site's irreplaceable and unique characteristics when considering any proposed replacement real property for a conversion?

j. Do the site's irreplaceable and unique characteristics prevent approval of a conversion on the site?

k. Does RCO's concession policy and RCW 79A.05.030 prohibit the Parks Commission from granting a concession for the golf course project because it would effectively privatize the State Park prevent the public's free access to the scenic attractions of the current Westport Light State Park?

5.3 The State denies that it is bound by the terms of the Global Settlement.

5.4 The State denies that it is bound by the Army Corps Covenant.

5.5 The State denies that it is bound by the mitigation requirements in the SSDP.

5.6 The Parks Commission has agreed to seek the concurrence of the RCO and the RCFB that a concession agreement for a golf course on the Westport Connection site "will *not* result in conversion of lands purchased with RCFB grant funds." (emphasis added)

5.7 The Parks Commission has not initiated a public comment process regarding a proposed conversion consistent with WAC 286-13-160(3)(b).

5.8 Neither the Parks Commission nor Westport Golf have proposed mitigation that would specifically address the requirements in WAC 286-13-160(3)(c) that, among other things, require replacement of converted property with real property of “reasonably equivalent usefulness and location.” Nor does any such replacement property exist.

5.9 Neither the Parks Commission nor Westport Golf has acknowledged that the interdunal wetland complex on the site is functionally irreplicable and non-fungible because it is among the “last contiguous interdunal wetland habitat in this area,” providing critical benefits to habitat, drinking water, and public access, and is subject to unique environmental protections including through the Global Settlement and the Army Corps Settlement.

5.10 Members of the Plaintiff organizations live near and regularly visit the whole of Westport State Park, including the proposed golf course site.

5.11 Members of the Plaintiff organizations currently enjoy the scenery and ecology of the wetlands thanks to the protections that were previously secured under the terms of both the Global Settlement and the Army Corps Covenant. Members also enjoy the knowledge that their previous efforts to secure strong wetland protections for this site ultimately helped facilitate the availability of the site for purchase by the State and helped draw the attention of Parks Commission to this site as one worth purchasing with public funds for the express purpose of habitat conservation.

5.12 Members of the Plaintiff organizations currently freely enter, explore, and generally access the uplands and interior wetland complex of Westport Light State Park. Members presently freely enjoy the scenic attractions of the Park. Those scenic attractions include sweeping, unimpaired,

and free-roaming views of the ocean and surrounding landscape from multiple portions of the Park's uplands. Those scenic attractions also include inward views of the entire wetland complex as a connected and contiguous whole. Members can currently enjoy all of these attractions without paying a fee to a private concessionaire and without any significant limitations on where or when they may wander to discover the Park's many scenic amenities.

5.13 The conflict between Plaintiffs, the State, Westport Golf, and the City of Westport is ongoing, well developed, and concrete. The State, through the Parks Commission, and Westport Golf continue to execute the terms of their MOA, regularly progress toward and meet various milestones indicated in the MOA, and have initiated a formal SEPA process for the proposed golf course. The City of Westport continues to facilitate a SEPA process studying golf course designs that are inconsistent with the running covenants.

5.14 Members of the Plaintiff organizations have interests that are opposed to the golf course plans of the Parks Commission and Westport Golf. Members have commented in opposition to the proposed golf course and will be harmed by the proposed golf course through, among other things: the violation of both the Global Settlement and the Army Corps Covenant, which were protections previously secured by the Plaintiff organization in service of its mission and with the prior enforcement support of State, municipal, and Federal entities entrusted with wetland protections; the conversion of the site to a purpose other than habitat conservation, which purpose Member organization endorsed publicly at the time of purchase; the loss, to the private concession, of free-roaming access to the outward-facing and inward-facing scenic attractions of the current Westport Light State Park; and the loss of access, via a charge for golf course access, to any scenic attraction along the path of the course that is presently available without cost.

5.15 Plaintiffs seek affirmative declarations from this Court on the matters set forth in paragraph 5.2 above.

VI. SECOND CAUSE OF ACTION – INJUNCTIVE RELIEF

6.1 The preceding paragraphs are incorporated by reference as if set forth fully herein.

6.2 Plaintiffs seek an injunction against the State of Washington, requiring it to:

a. Comply with the terms of the Global Settlement, including but not limited to (i) prohibit wetland fill in connection with any golf course proposal on the property; (ii) "[e]stablish a legally binding description of the preservation areas [and] [d]evelop a legally binding conservation easement" on the identified mitigation wetlands; (iii) locate any driving range in uplands, not wetlands; (iv) prohibit tree removal and clearing on preserved wetlands; and (v) control invasive species on the property.

b. Comply with the covenants that were required to be recorded pursuant to the Global Settlement.

c. Comply with the mitigation requirements of the SSDP;

d. Comply with the terms of the Army Corps Covenant and permanently protect the interdunal wetlands according to its terms.

e. Halt consideration of any proposal on the site that is inconsistent with these permanent wetland protections or that are inconsistent with law.

6.3 Plaintiffs seek an injunction against the City of Westport, requiring it to comply with the Global Settlement, to which it is a party, and halt any SEPA or permitting processes regarding any projects that do not comply with the Global Settlement and/or which are inconsistent with the mitigation requirements of the SSDP or Army Corps Covenant

VII. THIRD CAUSE OF ACTION –TORTIOUS INTERFERENCE WITH CONSERVATION EASEMENT

7.1 The preceding paragraphs are incorporated by reference as if set forth fully herein.

7.2 Plaintiffs ask the Court to recognize a cause of action of tortious interference with a conservation easement. *See Ueland v. Pengo Hydra-Pull Corp.*, 103 Wn.2d 131, 136, 691 P.2d 190 (1984) (the court, in the interests of justice, may recognize a new cause of action). Washington State has not had occasion to recognize the cause of action of tortious interference with an easement, which, when recognized, largely tracks the claim of tortious interference with a contractual relationship. However, a lower standard of proof should be applied and greater damages available when a party tortiously interferes with the public's right in a conservation easement, especially when that party is an entity tasked with defending the public's right in the conservation easement.

7.3 Plaintiffs and the public have a valid expectancy in the wetland protections incorporated into the Global Settlement, SSDP, and Army Corps Covenant.

7.4 At the time Defendants took action contrary to the conservation easements, they had actual, constructive, or inquiry notice of that expectancy.

7.5 Defendants interfered with that expectancy for an improper purpose and used improper means to do so. For example, and not by way of limitation, defendants commenced a SEPA and permitting process for a project to fill wetlands for a luxury golf course, even after having actual knowledge of the conservation easements, and despite acknowledging that the project likely can never be permitted and/or would be economically infeasible. Defendants made arguments against the validity of the conservation easements that have no basis in law. Defendants designed the MOA and permitting process to maximize the damages to Plaintiffs and the public. Rather than acknowledging

the conservation easements and seeking to quiet title or otherwise establish their invalidity, they pushed forward with an expensive SEPA and permitting process and utilized expensive litigation tactics with the goal of achieving their goals notwithstanding the conservation easements. Moreover, rather than defending the public's interest in the conservation easements, the State of Washington and its ATG have focused the State's resources into extinguishing Plaintiff's and the public's expectancy.

7.6 Given the unambiguous wetland protections in the Global Settlement, SSDP, and Army Corps Covenant, the State of Washington acted dishonestly and in bad faith in commencing SEPA and permitting for a project that was clearly inconsistent with these conservation easements.

7.7 Given the unusual situation of the State of Washington's bad faith and tortious interference with the conservation easements, the State of Washington should be held liable for special damages, including attorneys' fees and costs, and punitive damages.

7.8 The wetland protections in the SSDP and Army Corps Covenant originated in the Global Settlement, which had a fee shifting statute. Thus, the enforcement of any wetland protections should entitle Plaintiffs to recover their attorneys' fees and costs.

7.9 All Defendants should be held jointly and severally responsible for appropriate tort damages.

VIII. FOURTH CAUSE OF ACTION – TORTIOUS INTERFERENCE WITH A CONTRACTUAL RELATIONSHIP

8.1 The preceding paragraphs are incorporated by reference as if set forth fully herein.

8.2 Plaintiffs and the public have a valid contractual expectancy in the wetland protections of the Global Settlement, which were incorporated into the SSDP and Army Corps Covenant.

8.3 At the time Defendants took action contrary to the conservation easements, they had actual, constructive, or inquiry notice of that expectancy.

8.4 Defendants interfered with that expectancy for an improper purpose and used improper means to do so. For example, and not by way of limitation, defendants commenced a SEPA and permitting process for a project to fill wetlands for a luxury golf course even after having actual knowledge of the conservation easements, and despite acknowledging that the project likely can never be permitted and/or would be economically infeasible. Defendants made arguments against the validity of the conservation easements that have no basis in law. Defendants designed the MOA and permitting process to maximize the damages to Plaintiffs and the public. Rather than acknowledging the conservation easements and seeking quiet title or otherwise establish their invalidity, they pushed forward with an expensive SEPA and permitting process and utilized expensive litigation tactics with the goal of achieving their goals notwithstanding the conservation easements. Moreover, rather than defending the public's interest in the conservation easements, the State of Washington and its Attorney General have focused the State's resources into extinguishing Plaintiff and the public's expectancy.

8.5 Given the unambiguous wetland protections in the Global Settlement, SSDP, and Army Corps Covenant, the State of Washington acted dishonestly and in bad faith in commencing SEPA and permitting for a project that was clearly inconsistent with these conservation easements.

8.6 Given the unusual situation of the State of Washington's bad faith and tortious interference with the conservation easements, the State of Washington should be held liable for special damages, including attorneys' fees and costs, and punitive damages.

8.7 The wetland protections in the SSDP and Army Corps Covenant originated in the Global Settlement, which had a fee shifting statute. Thus, the enforcement of any wetland protections should entitle Plaintiffs to recover their attorneys' fees and costs.

8.8 All Defendants should be held jointly and severally responsible for appropriate tort damages.

IX. FIFTH CAUSE OF ACTION – BREACH OF CONTRACTS

9.1 The preceding paragraphs are incorporated by reference as if set forth fully herein.

9.2 The City of Westport and the State of Washington are parties to the Global Settlement and bound thereby.

9.3 The City of Westport and the State of Washington have breached the Global Settlement, causing damage to FOGH.

9.4 The wetland protections in the SSDP and Army Corps Covenant originated in the Global Settlement, which had a fee shifting statute. Thus, the enforcement of any wetland protections should entitle Plaintiffs to recover their attorneys' fees and costs.

9.5 All Defendants should be held jointly and severally responsible for appropriate contractual damages.

9.6 The Global Settlement is expressly designed to be enforced by specific performance and the Court should permanently enjoin the breach thereof.

X. RELIEF REQUESTED

WHEREFORE, Plaintiffs seek the following relief:

10.1 Grant declaratory judgment as requested above;

10.2 Grant a temporary and/or permanent injunction against the State of Washington and its agencies as requested above;

10.3 Grant a temporary and/or permanent injunction against the City of Westport as requested above;

- 10.4 Grant reasonable attorneys' fees and costs to Plaintiffs;
- 10.5 Grant an award of compensatory, special, and punitive damages.
- 10.6 Grant such other relief as the Court deems just and equitable.

DATED this 6th day of June, 2025.

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