

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 1: PLAINTIFFS' MOTION TO
ENFORCE THE GLOBAL SETTLEMENT
AND DURABLE CONDITIONS AGAINST
CITY OF WESTPORT (INCLUDING
COMBINED STATEMENT OF FACTS)**

1 This case concerns the State of Washington’s efforts to fill some of the last remaining
2 interdunal wetlands in the State to build a luxury “Scottish Links” golf course within Westport Light
3 State Park and the State Seashore Conservation Area, and to lease the course to a private entity for
4 the next 80 years. The State’s current Links project (“Links 2”) follows a previous project called
5 Links at Half Moon Bay (“Links” or “Links Project”), which also sought to build a similar “Scottish
6 Links” course in this rare interdunal wetland system.

I. RELIEF REQUESTED

8 Friends of Grays Harbor (“FOGH” or “Plaintiffs”) hereby moves for partial summary
9 judgment to establish that the City’s participation in the Links 2 Project is subject to its contractual
10 obligations under the Global Settlement¹ and the durable conditions in the Links Project’s shorelines
11 permit, and that the City has breached the Global Settlement and implied duty of good faith.

II. EVIDENCE RELIED UPON

13 This Motion is supported by the legal authority cited below and: (1) Plaintiffs' Complaint and
14 Proposed First Amended Complaint and exhibits thereto; (2) Defendants' answers and admissions;
15 (3) Declaration of Arthur Grunbaum and the attachments thereto; (4) Declaration of Knoll Lowney
16 and the Plaintiffs' Factual Record attached thereto; and (5) Declaration of Danielle Davis.

III. COMBINED INTRODUCTION

18 FOGH and other environmental groups litigated for seven years to protect the rare interdunal
19 wetlands on site of the Links Project (“Property”). When the case reached Division II of the Court of
20 Appeals, the parties mediated and reached a settlement (the “Global Settlement”). Under the Global
21 Settlement, FOGH dropped its appeals in exchange for permanent wetland protections, including

23 ¹ All capitalized terms in this Motion have the meaning ascribed in the Combined Statement of Facts, *infra*.

1 assurances that any final golf course design on the Property would avoid all wetland fill and that
2 100+ acres of wetlands would be permanently preserved. These wetland protections were further
3 formalized in a revised shoreline substantial development permit (the “Revised SSDP”) and a federal
4 conservation easement recorded in 2010 (“Army Corps Covenant”).

5 When the Links Project failed, the State purchased the Property for habitat conservation and
6 parkland, and it became part of Westport Light State Park (“WLSP”) and the Washington State
7 Seashore Conservation Area (“SCA”).

8 Now, in a stunning reversal, the State and City of Westport (“the City”) are pursuing a
9 slightly revised “Links” golf course project on the Property (hereafter, the “Links 2 Project”), which
10 would fill between 35 and 43 acres of wetlands, plus impact 113 to 123 acres of wetland buffers.

11 Plaintiffs seek a permanent or preliminary injunction to require the City and State to comply
12 with the Global Settlement, the permanent wetland protections contained in the Revised SSDP and
13 Army Corps Covenant, and the Seashore Conservation Act. The injunction motion is supported by
14 separate motions for summary judgment establishing (1) the City’s participation in the Links 2
15 Project is governed by (and violates) the Global Settlement and durable conditions in the Revised
16 SSDP; (2) the State’s participation in the Links 2 Project is subject to (and violates) the Global
17 Settlement and Army Corps Covenant; (3) the State cannot establish a bona fide purchaser defense;
18 and (4) the Property is subject to the Seashore Conservation Act, which prevents the proposed 80-
19 year golf course lease.

20 **IV. COMBINED STATEMENT OF FACTS**

21 **A. The original Links Project threatened rare interdunal wetlands and raised numerous
22 environmental issues.**

23 Between 2000 and 2010, Mox Chehalis LLC sought to permit and construct the Links
Project, a “Scottish links” style golf course, on an environmentally sensitive property in Westport,

1 along the Washington Coast.² To proceed, it sought more than a dozen regulatory approvals,
2 including a shoreline development permit, site plan approval, and wetland fill permits under the
3 federal Clean Water Act.³

4 State and federal agencies opposed the Links Project, largely due to the environmental
5 significance of the rare interdunal wetlands system on the Links Property. The U.S. Environmental
6 Protection Agency concluded that a golf course on the Property “poses a substantial and
7 unacceptable risk to Aquatic Resources of National Importance,” (“ARNI”) including an extensive
8 report supporting their ARNI designation.⁴ The Washington Department of Ecology (“Ecology”)
9 went so far as to appeal the Links shorelines permit, warning of “severe impacts” to rare wetlands
10 that function as aquifer recharge zones and support broad biodiversity.⁵ The Washington Department
11 of Fish and Wildlife (“WDFW”) concluded “[t]hese wetlands are not only critical habitat themselves,
12 but are performing the critical function of infiltration and biofiltration,” and that proposed mitigation
13 was doomed to failure,⁶ and the Washington State Parks and Recreation Commission (“Parks
14 Commission”) argued that these “wetlands have more value because they are rare in the state of
15 Washington. There is concern that the long-term effect of a golf course on dunal wetlands cannot be
16 known or predicted.”⁷

17 Environmentalists and government agencies also opposed the Links Project also because it
18 was proposed on land which accreted in the last century and is now experiencing long term erosion,
19

20 ² All citations contained herein are to Plaintiffs’ Factual Record (“PFR”), which is paginated and
21 contains all supporting declarations and exhibits. PFR 2 (Declaration of Arthur Grunbaum,
hereinafter “Grunbaum Decl.” ¶4).

22 ³ PFR 2-5 (Grunbaum Decl., ¶¶5-12).

23 ⁴ PFR 35-48 (EPA Letter and ARNI designation, Aug. 5, 2004).

⁵ PFR 34 (Ecology Shorelines Appeal, ¶6).

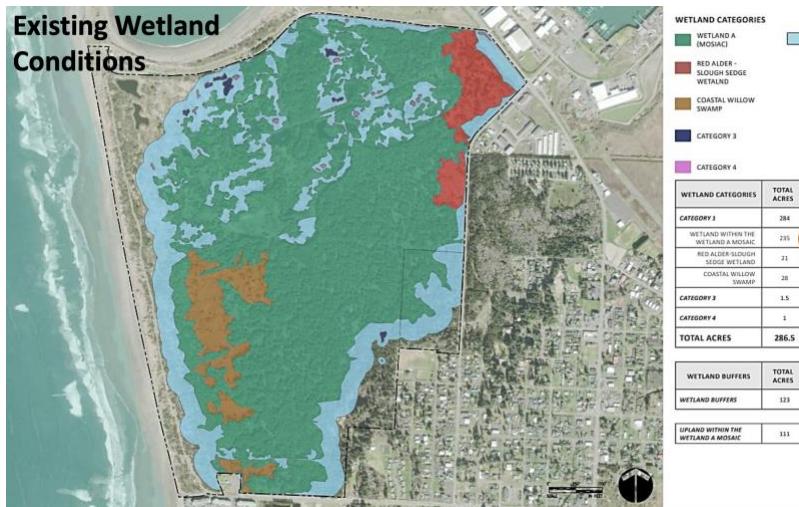
⁶ PFR 17 (WDFW Comments on Links Draft Environmental Impact Statement, Dec. 8, 2000).

⁷ PFR 27 (Parks Commission Comments on Links Draft Environmental Impact Statement, Dec. 14, 2000)

1 threatening any development on the property; the Property contains the City's sole source aquifer;
2 and the Property provides extremely valuable habitat and contains rare vegetation.⁸

3 **B. These environmental conditions continue today, leading Ecology, the Quinault Indian
4 Nation, and others to oppose the Links 2 Project.**

5 In the last quarter-century, these fragile environmental conditions have persisted, leading
6 Ecology and the Quinault Indian Nation ("QIN") to oppose the Links 2 Project in their formal
7 comments on the Links 2 Draft Environmental Impact Statement ("DEIS") recently published by the
8 City.⁹ Indeed, since the Links Project, Ecology has revised its wetland rating system to upgrade the
9 interdunal wetlands on the site to Category 1, the most valuable category, because they "provide
10 critical habitat in this ecosystem."¹⁰ The State admits that virtually the entire site is a Category 1
11 wetland mosaic (shown in green):¹¹



8 See fns 3-7, *supra*; PFR 3 (Grunbaum Decl., ¶8).

9 PFR 488-501 (Quinault Indian Nation and WA Dept. of Ecology Comments on DEIS, June 9, 2025).

10 PFR 575-580 (Ecology, Wetland Rating System for Western Washington, July 2023).

11 PFR 479 (WA State Parks, Links 2 DEIS Presentation, April 17, 2025).

1 **C. The 2007 Global Settlement resolved a pending appeal and seven years of litigation.**

2 To protect the interdunal wetland from the Links Project, FOGH and other environmental
3 plaintiffs challenged every permit issued to the Links Project, beginning in 2000.¹² Seven years of
4 litigation ensued, at great expense to the parties, multiple local governments, state agencies, and the
5 judicial system. That litigation included multiple appeals in front of local agencies, multiple cases
6 before the Washington State Environmental Hearings Office (“EHO”), including a weeklong
7 contested hearing, and two fully litigated cases before the Thurston County Superior Court.¹³

8 The final Links Project case was an appeal before Division II of the Court of Appeals, which
9 was based upon the record built in an almost six-month proceeding before the EHO that included
10 discovery, open record and closed record permit appeals, dispositive motions, and a weeklong
11 contested hearing.¹⁴ *The EHO’s decision was 105 pages*, including a 15-page concurrence and
12 dissent.¹⁵ After the Division II appeal was *fully briefed and argued*, the parties stayed the case for
13 mediation before retired Thurston County Superior Court Judge Daniel Berschauer – the fourth time
14 the parties had tried to resolve the protracted litigation.¹⁶

15 One of the last sticking points in the negotiation was the insistence that the City, not FOGH,
16 would primarily monitor and enforce compliance with the Global Settlement.¹⁷

17 The Global Settlement was executed on April 13, 2007, by FOGH, Mox Chehalis, City of
18 Westport, and two state agencies, and lodged in Division II of the Court of Appeals to resolve
19 *Friends of Grays Harbor et al. v. Mox Chehalis LLC et al.*, No. 34113-1-II.¹⁸ Pursuant to the Global

20 ¹² PFR 2 (Grunbaum Decl., ¶5).

21 ¹³ *Id.* (Grunbaum Decl., ¶6).

22 ¹⁴ *Id.* (Grunbaum Decl., ¶6).

23 ¹⁵ See PFR 596-786 (contested decisions in Links litigation).

24 ¹⁶ PFR 4 (Grunbaum Decl., ¶13-14).

25 ¹⁷ PFR 5 (Grunbaum Decl., ¶16).

26 ¹⁸ PFR 49 (Global Settlement).

1 Settlement, FOGH withdrew its Division II appeal and allowed construction to begin,¹⁹ foregoing
2 legal strategies to delay the Links Project for years to come.²⁰

3 **D. The Global Settlement provided permanent wetland protections and was expressly
binding on future golf course designs and future owners.**

4 In exchange for FOGH dropping its appeals and allowing construction to begin, the Global
5 Settlement guaranteed permanent protection for the interdunal wetlands,²¹ including:

6 “*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.*”²²

7 “*No wetland fill or excavation will occur. . . . Avoidance of all wetland fill translates
into retention of two important wetland functions – water quality and hydrological –
while partially retaining some habitat functions even if vegetation within the wetland
areas is pruned or mowed.*”²³

8 “*The driving range will be moved [out of wetlands and] to the current location of the
condominiums.*”²⁴

9 “*Mox Chehalis shall not remove trees or clear areas identified by the Wetland
Mitigation Plan (Appendix A) as areas for preservation of wetlands.*”²⁵

10 In addition, the Global Settlement required that over 100 acres of fragile wetlands would be
11 protected in perpetuity by a binding conservation easement, providing:

12 “*A 100+ acre preservation area must be protected by a “legally binding ‘Conservation
Easement’ on the preservation area.*”²⁶

13
14
15
16
17
18
19 ¹⁹ See *id.*

20 ²⁰ PFR 4 (Grunbaum Decl., ¶14).

21 The Global Settlement’s wetland protections were contained in the main settlement and its
22 attached Wetland Mitigation Plan (Global Settlement, Appx. A), Natural Resources Management
23 Plan (Global Settlement, Appx. B), and Water Quality Standards (Global Settlement, Appx. C).

24 ²² PFR 50 (Global Settlement, p. 2) (emphasis added).

25 ²³ PFR 69 (Settlement Appendix A, June 2006 Wetland Mitigation Plan) (emphasis added).

26 ²⁴ PFR 51 (Global Settlement, p. 3) (emphasis added).

27 ²⁵ PFR 58 (Global Settlement, p. 10) (emphasis added).

28 ²⁶ PFR 73 (Settlement Appendix A, June 2006 Wetland Mitigation Plan) (emphasis added).

1 “[P]lace restrictive covenants on the deeds for all of the wetlands identified as
2 Project Mitigation above in order to ensure that the site are protected in
3 perpetuity.”²⁷

4 The Global Settlement repeatedly acknowledged that the design for the golf course was in
5 flux, so the environmental protections within the settlement were designed as “performance
6 standards” to apply to “[t]he final design for the golf course project,”²⁸ and “prior to any construction
7 of the golf course, a final golf course layout shall be submitted.”²⁹

8 At the time the parties reached a settlement, Mox Chehalis was trying to sell the Property, so
9 the Global Settlement was expressly drafted to apply to all future owners:

10 “*This Agreement shall apply to and be binding upon the parties to the Agreement, their members, member organizations, related entities, successors and assigns.*”³⁰

11 “*Mox Chehalis L.L.C. or subsequent owners will retain ownership of the on-site mitigation sites [and] provide resources to maintain the on-site and off-site mitigation areas to assure that performance goals are met.*”³¹

12 **E. The Global Settlement required its protections to be further formalized in the shorelines
13 permit and through a recorded conservation easement.**

14 Pursuant to the Global Settlement, on June 29, 2007, the City granted Mox Chehalis the
15 revised Shoreline Substantial Development Permit (“Revised SSDP”) that expressly stated that it had
16 been requested and granted “to implement the settlement agreement reached with the appellants in
17 *Friends of Grays Harbor et. al. v. City of Westport, et. al.*, Court of Appeals No 34113-1-II.”³² The

18 ²⁷ PFR 80 (Global Settlement Appx. C, Water Quality Standards) (emphasis added). Other key
19 environmental protections included “[R]emoval and suppression of invasive plant species, primarily
20 Scot’s broom” on 134.32 acres of the site, PFR 71 (Global Settlement Appx. A, Wetland Mitigation
21 Plan), and “prohibit[ing] application of pesticides and fertilizers when the water table does not have a
22 minimum separation of 3 feet from the elevation of the golf course,” PFR 88 (Global Settlement
23 Appx. C, Water Quality Standards).

24 ²⁸ PFR 50 (Global Settlement p. 2); *see* PFR 71-73 (Settlement Appx. A, Wetland Mitigation Plan).

25 ²⁹ PFR 86 (Global Settlement, Appx. C, Water Quality Standards).

26 ³⁰ PFR 62 (Global Settlement ¶13) (emphasis added).

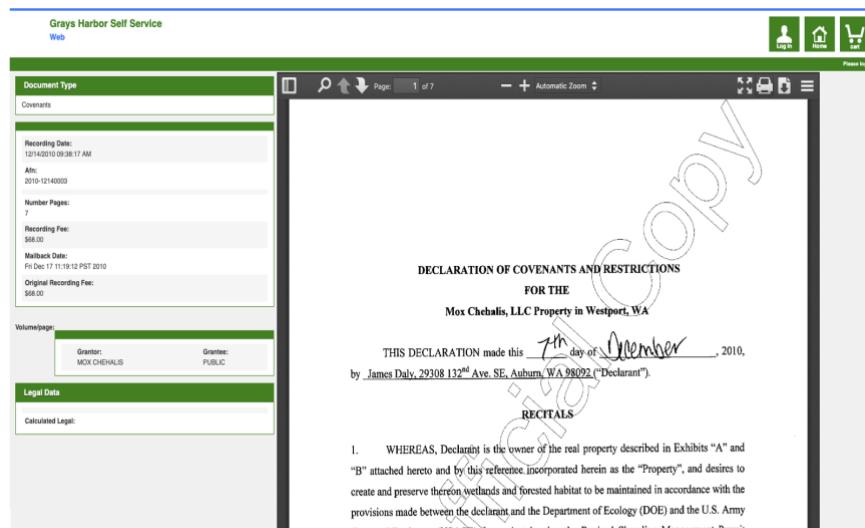
27 ³¹ PFR 76 (Global Settlement, Appx. A, Wetland Mitigation Plan) (emphasis added).

28 ³² PFR 120 (2007 Revised SSDP).

1 Revised SSDP, among other things, required compliance with the Revised Wetland Mitigation Plan
2 attached to the Global Settlement, including protecting the preserved areas via conservation easement
3 “by year 1.”³³ On July 19, 2007, the Department of Ecology approved and filed the Revised SSDP.³⁴

4 **F. The conservation easement required by the Global Settlement was formally recorded in
5 2010, to resolve an Army Corps Clean Water Act enforcement action.**

6 The conservation easement required by the Global Settlement and SSDP was formally
7 recorded with the Grays Harbor County Auditor in 2010, as shown by this screenshot from the
8 Auditor’s online portal:³⁵



17 The Army Corps required the easement to be recorded to resolve its enforcement action
18 against Mox Chehalis for “knowing and willful” violations of the Clean Water Act through illegal
19 wetland fill.³⁶ The impacts to the wetlands were extensive and are still observable to this day – over

20
21
22 ³³ PFR 150 (Revised Wetland Mitigation Plan)

23 ³⁴ PFR 153 (Ecology Approval of Revised SSDP, July 19, 2007).

³⁵ PFR 269- (Army Corps Covenant); PFR 6 (Grunbaum Decl., ¶21) and PFR 14 (Grunbaum Decl., Ex. B).

³⁶ PFR 190-191 (Army Corps Notice of Violation); PFR 218-269.

1 15 years later.³⁷ During its enforcement action, the Army Corps learned that the conservation
2 easement required by FOGH's settlement had never been recorded, so it required recording of the
3 conservation easement as a condition of resolving the federal enforcement action.³⁸

4 This Army Corps Covenant required that the 100+ acres of wetlands protected by the Global
5 Settlement be protected from development and "managed for wetland mitigation and forested habitat
6 preservation purposes *in accordance with the [Global Settlement] agreement identified under the*
7 *DOE Revised Shorelines Permit #2007-SW-02407-A.*"³⁹

8 As contemplated by Global Settlement, the Army Corps Covenant is expressly binding on
9 future owners.⁴⁰ A letter from the Army Corps confirmed, "on December 14, 2010, the required deed
10 restriction for the site was recorded with Grays Harbor County. This document identifies [100+ acres
11 of] wetlands to be preserved from future development, as required by the Corps of Engineers, to
12 resolve the violation."⁴¹ The letter concluded by warning Mox Chehalis that, "[i]f you sell this
13 property, you should inform the new owner of . . . the deed restriction preventing future
14 development in the identified preservation areas."⁴²

15 **G. The State acquires the Property for parkland and "habitat protection" and then
reverses course and seeks to complete the Links Project.**

16 In 2014, the State decided to purchase the Property through a grant from the Recreation and
17 Conservation Office ("RCO") to connect three adjacent state park areas and for habitat
18
19
20

21 ³⁷ PFR 6 (Grunbaum Decl., ¶ 20).

22 ³⁸ PFR 220 (Army Corps Internal Memo).

23 ³⁹ PFR 570 (Army Corps Covenant Art. 4).

⁴⁰ PFR 569-570 (Army Corps Covenant at Art. 2, Art. 4)

⁴¹ PFR 285 (Letter from Michelle Walker to Chuck Maples, Dec. 22, 2010).

⁴² *Id.*

1 preservation.⁴³ The State expressly pitched its purchase as a way to protect the Property's wetlands
2 from being filled for a golf course.⁴⁴

3 The Property became part of Westport Light State Park and the Seashore Conservation
4 Area.⁴⁵ Then, in a stunning reversal, the State made a deal with the City of Westport and a shadowy
5 private entity ("Westport Golf, Inc.") to build the Links 2 Project within WLSP.⁴⁶ The State
6 employee who spearheaded the State's purchase of the Property then went to work for this private
7 golf course developer.

8 From the perspective of the Global Settlement, the Links 2 Project is simply a continuation of
9 the Links Project. It is the same luxury "Scottish Links" golf course proposal that FOGH fought for
10 seven years.⁴⁷ Indeed, the State Environmental Policy Act ("SEPA") required the proponents of both
11 projects to formally describe their project's purpose, and both described the project as an 18-hole
12 Scottish links style golf course suitable for championship play.⁴⁸ Proponents of both the original
13 Links Project and the Links 2 Project proposed many alternative golf course layouts for the Property
14 and both proposed to use adjacent parcels for the clubhouse and lodging.⁴⁹ But both were remarkably

15
16
17 ⁴³ PFR 288 (RCO Funding Application, Westport Park Connection).

18 ⁴⁴ See PFR 287 (Email) ("[T]he alternative to the property becoming a state park . . . equates to
filling wetlands and destroying quality habitat.").

19 ⁴⁵ See RCW 79A.05.605 and Plaintiffs' Motion for Partial Summary Judgment on Seashore
Conservation Area.

20 ⁴⁶ PFR 368-378 (MOA Between Washington State Parks and Recreation Commission and Westport
Golf, Inc.).

21 ⁴⁷ Compare PFR 108 (excerpt of Links 2007 EIS Addendum) and PFR 456 (2025 Westport Golf
Links Proposal DEIS).

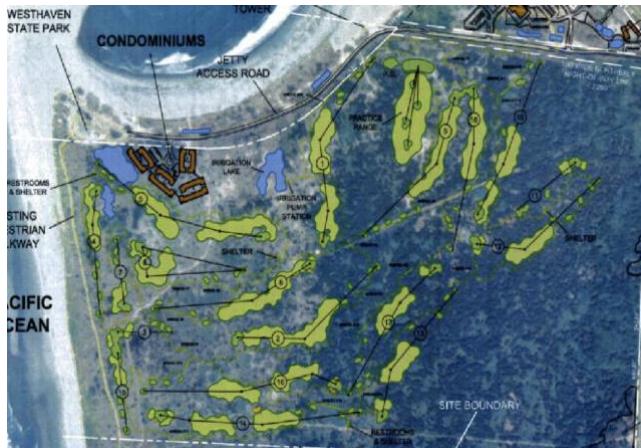
22 ⁴⁸ Compare PFR 93 (excerpt of Links 2007 EIS Addendum ("The golf course will be an 18-hole
links style championship course with a total of 6,778 yards of play.")) and PFR 450 (2025 DEIS states
23 the purpose and objective of the proposal is to "[d]evelop an economically viable, public 18-hole
Scottish links golf course of a caliber that would attract championship play.").

⁴⁹ PFR 5 (Grunbaum Decl., ¶18).

1 similar, right down to the design and marketing (“Scottish Links,” like Bandon Dunes) and the
2 wetland-location of the driving range.⁵⁰ No wonder the State’s consultants call this “Links 2.0.”

3 Both projects propose to use most of the western two-thirds of the Property for a “Scottish
4 Links” golf course:⁵¹

5 **Links 1 Plan:**



6 **Links 2 Plan:**



7
8
9
10
11
12 Indeed, the State’s project is designed to sit over the original Links Project’s footprint, as can
13 be seen by this comparison of the partially built Links Project⁵² and the Links 2 design:⁵³

14
15
16
17
18
19
20 ⁵⁰ *Id.*

21 ⁵¹ Compare PFR 108 (excerpt of Links 2007 EIS Addendum) and PFR 456 (2025 Westport Golf
Links Proposal DEIS).

22 ⁵² PFR 397 (WSLP Restoration Feasibility Study) (showing aerial image of partially constructed
Links Project).

23 ⁵³ The Global Settlement anticipated that there would be major design changes in the golf course.
Just as Mox Chehalis changed its designs, so too does the State. So far, it has presented three primary
designs, two in the DEIS. See PFR 456 (DEIS Figure 2.3-2) (showing aerial mock-ups of both
designs).

Links 1 Construction:



Links 2 Plan:



E. The Links 2 Project violates the Global Settlement's wetland protections.

After the filing of this lawsuit, the City and the State issued a DEIS for the Links 2 Project that violates and shows an intent to further violate the wetland protections in the Global Settlement and Army Corps Covenant.

First, the Global Settlement required that “[t]he final design for the golf course project will not include any filling, or development of wetlands,”⁵⁴ but the Links 2 Project would fill between 35 and 43 acres of wetlands and impact between 118 and 128 acres of wetland buffers.⁵⁵

⁵⁴ PFR 50 (Global Settlement).

⁵⁵ PFR 469 and 481 (DEIS Presentation).

1 Second, the Global Settlement required the driving range to be moved out of the wetlands and
2 into the upland, where the condominiums were originally located.⁵⁶ The State now proposes to move
3 the driving range back into its original wetland location,⁵⁷ as shown below:

4 **Links 1 Pre-Settlement:**⁵⁸



5 **Links 1 Post-Settlement:**⁵⁹



6 **Links 2 Plan:**⁶⁰



7 In addition, the State proposes to build key golf course features directly in the areas preserved
8 by the Global Settlement, Revised SSDP, and Army Corps Covenant. This is illustrated by the
9 declaration of Danielle Davis, which overlays the Links 2 proposals onto the Army Corps
10 Covenant's preservation areas.⁶¹ As shown in the following image, it is undeniable that Links 2
11 proposes key golf course features, including its central road system (shown in white), directly in the
12 preservation areas.

13
14
15
16
17
18
19
20
21 ⁵⁶ PFR 51-52 (Global Settlement). This was an important term in the Global Settlement, supported by
22 eight conditions.

23 ⁵⁷ PFR 456 (DEIS Figure 2.3-2).

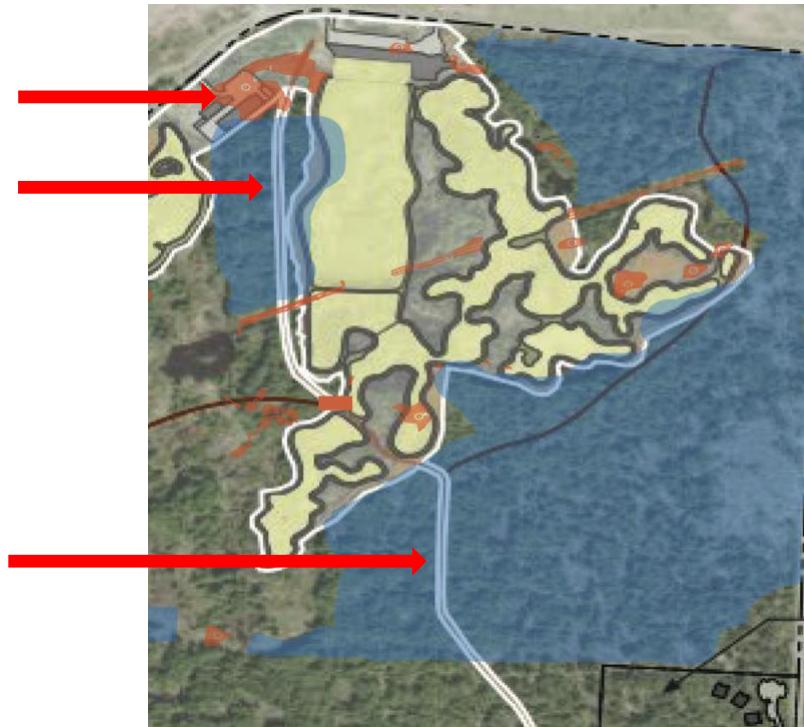
24 ⁵⁸ PFR 107 (Links 1 Addendum, Exhibit 1, 2007).

25 ⁵⁹ PFR 108 (Links 1 Addendum, Exhibit 2, 2007).

26 ⁶⁰ PFR 458 (Links 2 DEIS, Figure 2.4.1-1, 2025).

27 ⁶¹ See PFR 546-574 (Declaration of Danielle Davis and Exhibits, hereinafter "Davis Decl.").
28

1 preserved wetlands (shown in blue and orange), in violation of the Global Settlement, Revised SSDP,
2 and Army Corps Covenant.



13 **F. Despite this suit, Defendants are proceeding with the Links 2 Project.**

14 Since FOGH filed this lawsuit, Defendants have not slowed down on their efforts to develop
15 the Links 2 Project.⁶² The City has taken on the role of “SEPA Nominal Lead Agency” and issued
16 the DEIS for the Links 2 Project.⁶³ Both action alternatives presented in the DEIS show vast filling of
17 the wetlands protected by the Global Settlement, Revised SSDP, and Army Corps Covenant.⁶⁴ The
18 State and City intend to move immediately towards permitting.⁶⁵

21
22 ⁶² PFR 8 (Grunbuam Decl., ¶29).

⁶³ *Id.*

23 ⁶⁴ See PFR 546-574 (Davis Decl. and Exhibits).

⁶⁵ PFR 487 (DEIS presentation); PFR 448-449 (DEIS Cover letter from Westport, dated April 7, 2025). The shoreline permit process, which is imminent, will include hearing examiner appeals. *Id.*

1 The City has become a partner in the development of the Links 2 Project by offering City-
2 owned property for the golf course's "clubhouse" and lodging.⁶⁶ The City's land sale for these
3 purposes leads directly to the destruction of the protected wetlands, because the City-owned land
4 connects to the golf course via a road through the wetlands.⁶⁷

5 The City admits it is bound by the terms of the Global Settlement, but its actions on the Links
6 2 Project blatantly defy its commitments. The City has issued a DEIS for the Links 2 Project that
7 only includes golf course designs that violate the terms of the Global Settlement by filling wetlands,
8 moving the driving range back into the wetlands, and placing key project components in the
9 permanently protected wetlands. All the Links 2 designs place the golf course clubhouse and
10 maintenance facility on City-owned land connected to the course by a road protected wetlands.

11 Without an injunction, FOGH will be forced to fight out all the permit appeals that it
12 previously litigated for seven years and then eventually settled in exchange for permanent wetland
13 protections. These permit appeals will cost FOGH hundreds of thousands of dollars and will force
14 government agencies and the court system to waste years, if not another decade, on a project that
15 cannot move forward due to the wetland protections in force under the Global Settlement, Revised
16 SSDP, the Army Corps Covenant, and the Seashore Conservation Act.

17 In addition, the Court should grant summary judgment to establish that the City's actions on
18 Links 2 are subject to its obligations under the Global Settlement. Additionally, it should find that the
19 City is in breach of both the Global Settlement and its implied duty of good faith and fair dealing.

20
21
22
23 ⁶⁶ See PFR 420 (Integrated Opportunities Report).

⁶⁷ PFR 546-574 (Davis Decl. and Exhibits).

V. AUTHORITY AND ARGUMENT

A. Standard of Review

“When a moving party relies on affidavits or declarations to show that a settlement agreement is not genuinely disputed, the trial court proceeds as if considering a motion for summary judgment.”⁶⁸ Summary judgment is proper when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.⁶⁹ A genuine issue of material fact exists when reasonable minds could differ regarding the existence or non-existence of some fact on which the outcome of the litigation depends.⁷⁰ Here, there are no factual disputes, and Plaintiffs are thus entitled to judgment as a matter of law.

B. The City's actions on Links 2 must comply with the Global Settlement and the durable conditions of the Revised SSDP.

For 25 years, these same parties and multiple state agencies have been litigating over the fundamental question of whether these rare interdunal wetlands can be filled for a luxury “Scottish Links” golf course, and if Links 2 moves forward, the parties will be litigating for another decade. The Court has jurisdiction to resolve dispositive legal disputes about Links 2 under the Uniform Declaratory Judgment Act (“UDJA”).⁷¹ Indeed, the UDJA was designed to resolve such disputes over responsibilities under contracts and statutes.⁷²

⁶⁸ *Brinkerhoff v. Campbell*, 99 Wn. App. 692, 696, 994 P.2d 911, 914 (2000).

⁶⁹ CR 56(c); see also *Life Designs Ranch, Inc. v. Sommer*, 191 Wn. App. 320, 327, 364 P.3d 129, 134 (2015).

⁷⁰ *Clements v. Travelers Indem. Co.*, 121 Wn.2d 243, 249 (1993); *Klinke v. Famous Recipe Fried Chicken*, 94 Wn.2d 255, 256-57 (1980).

⁷¹ RCW 7.24.010, 7.24.020.

72 *Id.*

1 **1. The Global Settlement governs the City's actions on Links 2.**

2 The City admits that it remains bound by the Global Settlement,⁷³ but it has become partners
3 on a project that violates the Global Settlement in numerous ways. The Court should declare that the
4 Global Settlement governs the City's actions on the Links 2 Project.

5 The City does not deny it is bound by the Global Settlement, and it is clearly a valid
6 contract.⁷⁴ In Washington, an enforceable contract requires an objective manifestation of mutual
7 assent between the parties, sufficiently definite terms, and consideration.⁷⁵ Here, all parties signed
8 the Global Settlement, indicating their acceptance of the terms therein.⁷⁶ Additionally, the Global
9 Settlement plainly defines the legal obligations of the parties thereto.⁷⁷ Finally, bargained-for
10 consideration was present: Mox Chehalis and the City promised to modify the final golf course
11 design and permanently protect wetlands in exchange for FOGH's dropping its appeal and allowing
12 construction to proceed.⁷⁸

13 The Global Settlement explicitly imposed duties on the City of Westport as the permitting
14 entity for any golf course on the Property. For example, the Global Settlement provides that the City
15 *must* require compliance with the Wetland Mitigation Plan appended to the Global Settlement as a

16 ⁷³ PFR 788 (City of Westport's Response to Request for Admission No. 1 (admitting that it is bound
17 by the Global Settlement)).

18 ⁷⁴ See *Stottlemire v. Reed*, 35 Wn. App. 169, 171, 665 P.2d 1383, 1385 (1983) ("[S]ettlement
19 agreements are considered to be contracts, [and] their construction is governed by the legal principles
20 applicable to contracts[.]") (citations omitted).

21 ⁷⁵ *Keystone Land & Dev. v. Xerox Corp.*, 152 Wn.2d 171, 177-78, 94 P.3d 945, 949 (2004).

22 ⁷⁶ See *Yakima Cty. (west Valley) Fire Prot. Dist. No. 12 v. Yakima*, 122 Wn.2d 371, 389, 858 P.2d
23 245 (1993) (signing of a contract indicates a party's intent to be bound by its terms and establishes
24 objective manifestation of assent); PFR 63-64 (Global Settlement).

25 ⁷⁷ See *Sandeman v. Sayres*, 50 Wn.2d 539, 541, 314 P.2d 428, 429 (1957) (indefinite terms are those
26 which are so ambiguous "that a court cannot decide just what it means").

27 ⁷⁸ See PFR 56 (Global Settlement requires FOGH to drop appeal and further appeals); *Huberdeau v.
28 Desmarais*, 79 Wn.2d 432, 439, 486 P.2d 1074, 1078 (1971) ("Consideration may consist of an act, a
29 forbearance, the creation, modification or destruction of a legal relationship, or a return promise
30 given in exchange.").

1 condition of its permit approvals for the Property.⁷⁹ One of the Wetland Mitigation Plan's
2 requirements was the *permanent* protection of 100+ acres of wetlands by a conservation easement.⁸⁰

3 There is no reason that the Global Settlement's requirements do not apply to the Links 2
4 Project. The Global Settlement recognizes that at the time it was executed there was no final golf
5 course design and Mox Chehalis would not be the final owner.⁸¹ The Global Settlement was
6 therefore written to expressly survive a sale of the Property and apply to any future golf course
7 design.⁸² Thus, the facts are even stronger than in *Leighton v. Leonard*, where a running covenant
8 restricting the height of "the house" was interpreted to mean "any house" on the property because,
9 "[a]t the time the document was signed . . . , Pack had no plans or precise site location prepared."⁸³

10 The City remains the permitting authority for any golf course on the Property and is
11 beginning to exercise that authority through its issuance of a Draft Environmental Impact Statement
12 ("DEIS").⁸⁴ After the DEIS is formalized through a Final EIS ("FEIS"), the City will move on to
13 consideration of the Links 2 permits, beginning with the shorelines permits⁸⁵—the same permits
14 FOGH and the City previously litigated for seven years before reaching the Global Settlement.⁸⁶

15 The Court should hold that the Global Settlement governs the City's actions on Links 2.

16 **2. Links 2 permits must comply with durable conditions in the Revised SSDP.**

17 The Court should also establish that any future shorelines permit for Links 2 Project must
18 comply with the durable conditions in the Links Revised SSDP, which also protects the wetlands.

20 ⁷⁹ PFR 53 (Global Settlement).

21 ⁸⁰ PFR 69, 71, 73, 74 (Wetland Mitigation Plan).

22 ⁸¹ PFR 49-64 (Global Settlement).

23 ⁸² *Id.*

⁸³ *Leighton v. Leonard*, 22 Wn. App. 136, 141, 589 P.2d 279, 282 (1978).

⁸⁴ PFR 447-462 (DEIS).

⁸⁵ See PFR 448-449(City of Westport, Notice of Availability Draft Environmental Impact Statement).

⁸⁶ PFR 2 (Grunbaum Decl., ¶¶4-5).

1 To provide another avenue for wetland protections, the Global Settlement required Mox
2 Chehalis to apply for a revised SSDP incorporating the environmental protections of the settlement.⁸⁷
3 The City approved Mox Chehalis' application and issued the Revised SSDP for the Property,
4 incorporating the settlement's wetland protection and mitigation measures as durable permit
5 conditions.⁸⁸ This expressly included the duty to record a permanent conservation easement on 100+
6 acres of wetlands on the Property "by year one" of the Links Project construction.⁸⁹

7 The Courts and Shorelines Hearings Board have recognized that these type of conditions in a
8 shorelines permit are considered "durable" and continue in effect even after the remainder of the
9 permit expires.⁹⁰ Conditions that can continue in effect after the construction are those that either (1)
10 are intended to impact the land after the conclusion of the permitted work,⁹¹ or (2) are required for
11 continuing compliance with the Shorelines Management Act ("SMA") after the conclusion of the
12 project.⁹² Like all shorelines permit conditions, they run with the land to future owners.⁹³

13
14
15

⁸⁷ PFR 53 (Global Settlement) ("The Amended Master Plan, revised shoreline substantial
16 development permit and revised binding site plan will reflect the Settlement Agreement and will
17 retain existing mitigation requirements...").

⁸⁸ PFR 120-23 (Revised SSDP) ("The request [for permit revision] was made to implement the
18 settlement agreement reached with the appellants in *Friends fo [sic] Grays Harbor et. al., v. City of*
Westport, et.al. [sic], Court of Appeals No. 34113-1-II.").

⁸⁹ PFR 122 (Revised SSDP); PFR 150 (excerpts of 2007 Wetland Mitigation Plan).

⁹⁰ *Eastlake Cnty. Council v. Seattle*, 64 Wn. App. 273, 280, 823 P.2d 1132, 1136 (1992) (citing
20 *SAVE v. Bothell*, 1986 WA ENV LEXIS 118 for proposition that "development pursuant to
subsequent shoreline permits must be in compliance with the prior durable condition in the original
permit").

⁹¹ *SAVE v. City of Bothell* at *17 (a re-routed stream is a durable condition because it impacts the
land after the expiration of the permit and was required for compliance with the SMA).

⁹² *Franzen v. Snohomish Cnty.*, 1988 WA ENV LEXIS 110, at *35-36 (requiring, as a permit
23 condition, that legal covenants "binding upon any subsequent owners" be recorded against the
property to ensure compliance with the SMA).

⁹³ *Yale Est. Homeowners Ass'n v. Cowlitz Cnty.*, 2003 WA ENV LEXIS 86, at *19.

1 Under most shoreline permits, the right to construct on the project typically expires after five
2 years.⁹⁴ However, these durable conditions survive beyond the five-year limit.⁹⁵ Moreover, any
3 subsequent permits on the same property must substantially comply with the durable conditions
4 enshrined in prior permits:⁹⁶

5 We hold that where, as here, a durable condition such as the greater North Creek buffer exists
6 in a prior shoreline permit, subsequent shoreline permits, such as that for lot 9, must be in
7 substantial compliance with the prior, durable condition.⁹⁷

8 Here, the Revised SSDP established conditions that were expressly designed to survive the
9 project and therefore continue in effect. Most obviously, the Revised SSDP required Mox Chehalis to
10 create and record a conservation easement on 100+ acres of wetlands, which was designed to be a
11 permanent protection and therefore durable. The condition required this permanent conservation
12 easement to be recorded “by year 1” of the project, in part to mitigate construction impacts, which
13 certainly was triggered by years of construction on the Links Project and its significant impacts to the
wetlands.⁹⁸

14 The Shorelines Hearings Board and governments across the state routinely require such
15 permanent conservation easements as a condition of a shorelines permit.⁹⁹ It would be absurd and
16
17

18 ⁹⁴ RCW 90.58.143(3).

19 ⁹⁵ See *Eastlake Cnty. Council*, 64 Wn. App. at 280.

20 ⁹⁶ See *SAVE v. City of Bothell* at *18; see also *Rosellini et al. v. City of Bellingham*, 2008 WA ENV
LEXIS 41, at *30 (“While the right to construct substantial developments may not extend beyond
five years, the right to make use of a development constructed under a shoreline permit, and the
associated conditions placed upon that development or use, continue to govern beyond the five years
the construction authorization is in effect.”).

21 ⁹⁷ *SAVE v. City of Bothell* at *17.

22 ⁹⁸ PFR 150 (Revised SSDP); PFR 194-99 (Army Corps Investigation).

23 ⁹⁹ See *Franzen* at *35 (“The public access features included in the plans for the project shall be
incorporated in covenants which are recorded against the property and binding upon any subsequent
owners.”).

1 violate public policy to allow a City to grant a shorelines permit for construction through a wetland
2 that it previously required to be permanently preserved from development.

3 Additionally, the Revised SSDP required the final golf course design to be no-fill, in
4 compliance with the Global Settlement.¹⁰⁰ This is a durable condition because it was intended to
5 permanently preserve the natural state of the wetlands beyond the development of a golf course.

6 The Court should issue declaratory judgment establishing that the City's future permitting
7 must be consistent with the durable conditions in the Revised SSDP, including the permanent
8 protection of 100+ of wetlands and a no-fill golf course design. In other words, the City cannot grant
9 a shorelines permit to the Links 2 Project because it would directly violate the durable conditions of
10 the Revised SSDP.

11 **C. The City is in breach of the Global Settlement.**

12 Additionally, the Court should hold that the City's actions have already breached the Global
13 Settlement. To prevail on a claim for breach of contract, a plaintiff must establish: (1) the existence
14 of a contract, (2) which imposes a duty, (3) the defendant breached that duty, and (4) the defendant's
15 breach caused the plaintiff to suffer damages.¹⁰¹ As discussed above, here there was a valid contract
16 that imposed duties on the City of Westport.

17 The Court should hold that the City's pursuit of the Links 2 Project constitutes a breach of the
18 Global Settlement. The City-issued DEIS indicates that the City is not requiring project permits to
19 comply with the Wetland Mitigation Plan, as the Global Settlement requires. The DEIS considers
20 only two golf course designs, and both violate the requirements of the Wetland Mitigation Plan (and
21 Global Settlement):

22
23¹⁰⁰ PFR 160 (Revised SSDP).

¹⁰¹ *Nw. Independ. Forest Mfrs. v. Dep't of Lab. & Indus.*, 78 Wn. App. 707, 712, 899 P.2d 6, 7-8 (1995).

1 First, the Wetland Mitigation Plan requires avoidance of all wetland fill, while the DEIS' two
2 proposed action alternatives would fill between 35–43 acres of wetlands.¹⁰²

3 Second, the Wetland Mitigation Plan requires permanent protection of 100+ acres of
4 wetlands,¹⁰³ but both proposals in the DEIS involve major development in these preservation areas,
5 including roads, a driving range, and fairways, as shown in the graphic contained in the factual
6 statement above.¹⁰⁴

7 Third, the Global Settlement required the driving range to be moved out of the wetlands, but
8 the Links 2 Projects puts the driving range back into the wetlands.¹⁰⁵

9 The City's actions deprive FOGH of the contractual benefits it worked hard to secure and is
10 entitled to, forcing FOGH to sue to protect its rights under the Global Settlement. FOGH is a small,
11 volunteer-run, not-for-profit organization that works to preserve and protect the unique ecological
12 functions of the Grays Harbor estuary and surrounding areas.¹⁰⁶ Despite having already litigated the
13 very issues presented by this current lawsuit, FOGH is now expending valuable time and scarce
14 resources to fund the present suit, travel to and from meetings and informational sessions on the
15 Links 2 Project, and draft and submit public comments for a project that is illegal and destined to
16 fail.¹⁰⁷ The exact amount of economic damages that FOGH has incurred is yet to be determined, but
17 invoices through May 2025 indicate that it is already well over \$250,000.¹⁰⁸

18
19
20

¹⁰² PFR 69 (Wetland Mitigation Plan) (stating golf course design will be no fill); *compare with* PFR
21 469 (Westport Golf Proposal Presentation from Parks) (proposing between 35 and 43 acres of
22 wetland fill).

23 ¹⁰³ PFR 70 (Wetland Mitigation Plan).

24 ¹⁰⁴ *See* PFR 547 (Davis Decl., ¶ 5).

25 ¹⁰⁵ *See* fns 58 to 60, *supra*.

26 ¹⁰⁶ PFR 1 (Grunbaum Decl., ¶ 2)

27 ¹⁰⁷ PFR 7 (Grunbaum Decl., ¶¶ 24-27).

28 ¹⁰⁸ *Id.*

1 The City has never disputed the validity or enforceability of the Global Settlement and cannot
2 now escape the terms of the agreement requiring the City to condition any permit approvals for the
3 Property on compliance with the Global Settlement.¹⁰⁹ The City’s attempts to shirk its admitted
4 duties under the Global Settlement represents a breach of contract.

5 **D. The City violated their duty of good faith and fair dealing under the Global Settlement
6 by partnering on the Links 2 Project, facilitating the project with a sale of City-owned
7 land, and driving the SEPA process.**

8 “There is in every contract an implied duty of good faith and fair dealing . . . [that] obligates
9 the parties to cooperate with each other so that each may obtain the full benefit of performance.”¹¹⁰
10 The duty of good faith and fair dealing does not impose additional obligations beyond those agreed
11 in the contract, but “compels the parties to a contract to maintain ‘faithfulness to an agreed common
12 purpose and consistency with the justified expectations of the other party.’”¹¹¹ Additionally, the
13 Global Settlement itself requires that the “parties will exercise good faith in the performance of their
14 duties under this Settlement Agreement.”¹¹²

15 The City’s express responsibility is to condition permit approval on compliance with the
16 Wetland Mitigation Plan. “‘Evasion of the spirit of the bargain, lack of diligence and slacking off and
17 willful rendering of imperfect performance’ have all been considered bad faith.”¹¹³ By helming a
18 permit process that is not aligned with the requirements established by the Global Settlement, the
19

20 ¹⁰⁹ See City of Westport’s Answer at ¶ 23 (admitting that the Global Settlement took effect)).

21 ¹¹⁰ *Badgett v. Sec. State Bank*, 116 Wn.2d 563, 569, 807 P.2d 356, 360 (1991).

22 ¹¹¹ *134th St. Lofts, LLC v. iCap Nw. Opportunity Fund, LLC*, 15 Wn. App. 2d 549, 562 (2020)
(quoting *Edmonson v. Popchoi*, 172 Wn.2d 272, 280, 256 P.3d 1223, 1227 (2011)).

23 ¹¹² PFR 58 (Global Settlement).

24 ¹¹³ *Sumner Plains 84, LLC v. Wakefield*, No. 55406-2-II, 2022 Wash. App. LEXIS 1590, at *18 (Ct.
25 App. Aug. 2, 2022) (cleaned up) (quoting Restatement (Second) of Contracts § 205 cmt. d (Am.
26 Law. Inst. 1981)).

1 City is, in effect, precluding FOGH from receiving its bargained-for contractual benefits and thus
2 acting in bad faith.

3 In addition, the City has offered up its adjacent parcel of land for a golf course project that
4 undermines the central promises of the Global Settlement.¹¹⁴ The City's parcel is integral to the
5 Links 2 Project's golf course design. In both DEIS golf course proposals, the City-owned land will
6 be used for the golf clubhouse, lodging, parking, and other amenities, without which the Links 2
7 Project could not move forward.¹¹⁵ As illustrated above and in Plaintiffs' Combined Factual
8 Statement, the City-owned land is to be connected to the golf course by a new road that goes directly
9 through the preservation area established by the Global Settlement.¹¹⁶

10 "Direct interference with or failure to cooperate in the other party's performance may violate
11 the duty of good faith."¹¹⁷ By proffering its land for a project that is in plain violation of the Global
12 Settlement's environmental protections, the City is directly undermining the purpose of the Global
13 Settlement and FOGH's justified expectations under the agreement. This Court should declare that
14 the City's conduct here violates the implied duty of good faith and fair dealing embedded in the
15 Global Settlement.

16
17
18
19
20 ¹¹⁴ PFR 461 (DEIS) ("[Westport Golf] proposes to purchase Parcel 616121212060 if the golf course
21 is approved for development within WLSP.").

22 ¹¹⁵ The DEIS mentions the City's Parcel 616121212060 no less than 201 times. *See e.g.*, PFR 456
23 (showing Parcel 616121212060 as part of the proposed design); PFR 457 (stating that clubhouse and
lodge are proposed for the parcel). The complete DEIS is available to view at this link:
https://www.ezview.wa.gov/site/alias_2007/37863/library.aspx .

¹¹⁶ *See* PFR 552-54 (Davis Decl. and Exhibits).

¹¹⁷ *Larson Motors, Inc. v. Jet Chevrolet, Inc.*, No. 83124-1-I, 2022 Wash. App. LEXIS 1611, at *13
(Ct. App. Aug. 8, 2022) (citing *Edmonson v. Popchoi*, 172 Wn.2d 272, 280, 256 P.3d 1223 (2011)).

E. Judicial policy requires enforcement of settlement agreements – especially those that resolve protracted litigation with significant public costs.

Washington courts “favor[] the amicable settlement of disputes” and are “inclined to view them with finality.”¹¹⁸ In *Snyder v. Tompkins*, the court found that, in the context of settlements concerning property, a party “attempting to dislocate an in-court settlement of a claim has the burden of showing that the agreement was a product of fraud or overreaching.”¹¹⁹ Contracts including the Global Settlement carry the force of finality under the law and should be enforced.

Here, beyond judicial policy favoring resolution of disputes, the failure to enforce the Global Settlement would impose great costs on the judicial system, as well as on FOGH and state and local governments. If the City and State are permitted to move forward, the courts and local and state agencies are going to have to re-consider the exact same permit issues that were disputed, extensively litigated, and resolved between 2000–2007. FOGH will be required to re-litigate nearly identical environmental and legal issues, at great costs to the judicial system. Why would anyone ever settle if the settlement can be so easily evaded through unscrupulous property transactions?

To protect FOGH's bargained-for rights under the Global Settlement, and in the interest of judicial economy and public policy favoring the finality of settlements, the City of Westport must not be permitted to evade its clear responsibilities under the Global Settlement.

V. CONCLUSION

For the foregoing reasons, this Court should grant Plaintiffs' Motion to Enforce the Global Settlement and Durable Conditions Against Defendant City of Westport as set forth in Plaintiffs' proposed order.

¹¹⁸ *Snyder v. Tompkins*, 20 Wn. App. 167, 173, 579 P.2d 994, 998 (1978).

¹¹⁹ *Id.*; accord *In re Marriage of Hawkins*, No. 39065-9-III, 2024 Wash. App. LEXIS 983, at *20 (Ct. App. May 14, 2024) (“public policy favors finality in property settlements”).

