No. 1052162

SUPREME COURT
OF THE STATE OF WASHINGTON

FRIENDS OF GRAYS HARBOR and GRAYS HARBOR AUDUBON SOCIETY,

Appellants,

v.

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,

Respondents.

STATEMENT OF GROUNDS FOR DIRECT REVIEW

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Appellants Friends of Grays Harbor and Grays Harbor Audubon Society (collectively, "FOGH") file this Statement of Grounds for Direct Review in accordance with RAP 4.2. FOGH respectfully requests that this Court directly review the Thurston County Superior Court's several orders granting summary judgment to the Washington State Parks and Recreation Commission ("Parks" or "Parks Commission") and other Respondents and denying FOGH's Motions for Summary Judgment, Motion for Preliminary Injunction, and Motion to Amend, entered January 22, 2026 and January 23, 2026.

As discussed below, direct review is necessary in part because this case seeks an injunction against multiple state officers and agencies and involves urgent and important issues of first impression in our State. Delaying the ultimate resolution of this appeal will significantly burden taxpayers and the judicial system, and will lead to uncertainty about environmental and property laws with statewide impacts.

I. Nature of the Case and Decision

A. History of the Litigation

The primary question posed by this case is whether the State of Washington can fill some of the last remaining interdunal wetlands in the State to build a luxury private "Scottish Links" golf course within Westport Light State Park and the State Seashore Conservation Area, despite layered environmental protections. Specifically, the wetlands are protected by (1) a judicial settlement that resolved seven years of litigation in exchange for permanent wetland protections; (2) a federal conservation easement exacted by the U.S. Army Corps of Engineers to resolve wetland fill violations; (3) a Shorelines Management Act permit that purports to permanently protect the wetlands; and (4) the laws establishing the Seashore Conservation Area (the "Seashore Conservation Act"). The Superior Court brushed aside all these protections, allowing the State to proceed with a controversial golf course development.

A brief overview of the history of this development shows that a drawn-out appellate process will be both certain and burdensome. The current golf course project (the "Links 2 Project") follows a previous project called Links at Half Moon Bay ("Links" or "Links Project"), which sought to build a strikingly similar "Scottish Links" course in these same wetlands two decades ago. From 2000-2007, FOGH litigated in multiple venues to protect these wetlands, which comprise the second largest tract of interdunal wetlands in the State. App. 21-22.[1] These wetlands are categorized by the Department of Ecology ("Ecology") as Category I wetlands—the most valuable category of wetland—and the U.S. Environmental Protection Agency deemed them Aquatic Resources of National Importance. App. 54-67, 228, 293, 329-334. During the early

[1] Some portions of the Appendix have been highlighted by Appellants' counsel for the Court's ease of reference, except App. 131-132 was provided in discovery with highlights. Much of the Appendix is composed of excerpted portions of the Plaintiffs' Factual Record in the underlying Superior Court case.

2000s litigation, FOGH often had the support of both state and federal agencies, including Parks. App. 34-41 (Washington Department of Fish and Wildlife comments), 42-48, (Parks Commission comments), 49-53 (Ecology Shorelines Permit Appeal).

Seven years of exhaustive litigation resulted in hundreds of pages of contested decisions from trial courts and multiple state agencies, and ultimately led to Division II of the Court of Appeals. App. 335-525. After full briefing and argument of that appeal, retired Thurston County Superior Court Judge Daniel Bershauer mediated a global settlement ("Global Settlement"). App. 23.

The Global Settlement allowed the Links Project to proceed, but provided permanent protections for the wetlands, requiring, *inter alia,* (1) redesign of the golf course to avoid *all* wetland fill, and (2) permanently protecting 100+ acres of wetlands with a conservation easement over the property. App. 23, 68-69, 92. The Global Settlement expressly applied to

future golf course designs and future property owners. App. 23-24, 81. The Global Settlement was filed with Division II to resolve the appeal. App. 68.

To facilitate enforcement, the Global Settlement mandated that critical wetland protections be formalized in a Shorelines Management Act ("SMA") permit and through a formal conservation easement. App. 68-85, 92. A compliant SMA permit was issued in 2007. App. 96-99. However, unbeknownst to FOGH, Mox Chehalis LLC ("Mox"), the developer and property owner at the time, failed to promptly record the required conservation easement.

With permits in hand, Mox cleared and shaped the golf course. However, in doing so, Mox illegally filled wetlands and built ponds on the site, impacts that can still be seen today. App. 100-127, 193, 201, 206, 213.

When the U.S. Army Corps of Engineers discovered the illegal wetland fill, it commenced an enforcement action against Mox for "knowing and willful" violations of the federal Clean

Water Act. App. 100-102. During negotiations to resolve the violation, Mox admitted it never recorded the Global Settlement's conservation easement. App. 131-132. As an express condition of resolving the enforcement action, the Army Corps required Mox to formally execute and record this conservation easement, which Mox did in 2010. App. 129, 134, 166-178.

This federally exacted conservation easement expressly protected over 100 acres of wetlands from development in accordance with the terms of the Global Settlement, App. 171-173, and it applied to future property owners and users. *See id.*; App. 179. Contemporaneous documents from the negotiations show that all parties understood that the federal conservation easement was intended to fulfill the requirements of FOGH's Global Settlement. App. 129-157, 158-163, 179.

Ultimately, that first effort to build a golf course in Westport failed, and in 2015, the State purchased the Links Project property (the "Property") for "habitat conservation" and

to expand state parkland, App. 182, reasoning that the State's purchase would prevent wetlands from being filled for a golf course. App. 180-181. Once in the State's possession, the Property was combined with neighboring Westhaven State Park to form what is now known as Westport Light State Park.

In 2019, in an unexpected reversal, the State decided to revive the Links Project, in partnership with the City of Westport and Westport Golf, Inc. The State now argues that it can fill the interdunal wetlands for the current Links 2 Project, notwithstanding the Global Settlement and associated SMA permit and conservation easement. The State has since attacked these documents, App. 206, and moved forward with the Links 2 Project, despite admitting that its position is "debatable." App. 242-243.

Appellants brought the instant case to enforce the wetland protections already achieved in the Global Settlement, federal conservation easement, and SMA permit, and with the specific goal of avoiding re-litigation of the exact same issues

previously adjudicated from 2000-2007 in connection with the Links Project.

In April 2025, the State and the City of Westport issued a Draft Environmental Impact Statement ("Draft EIS") for the Links 2 Project proposing two golf course designs. App. 27, 245-260. Both designs violate the wetland protections enshrined in the Global Settlement, SMA permit, and federal conservation easement, including by filling and running roads through the protected wetland areas and by placing the driving range in the protected wetlands. App. 300-328. Indeed, Parks' two proposals would fill between 35 and 43 acres of wetlands and impact between 118 and 128 acres of wetland buffers. App. 267, 278-279.

The State plans to issue the Final Environmental Impact Statement ("Final EIS") soon, which will trigger a cascade of permit applications, requiring FOGH to mount challenges to the same permits it previously fought for seven years or else risk losing all the environmental benefits it won two decades ago.

B. The Lawsuit and Superior Court's Decisions

FOGH commenced this action to enjoin the State from pursuing a project that would destroy the interdunal wetlands in direct violation of the Global Settlement and its implementing SMA permit and conservation easement. In addition, FOGH seeks to force the State to abide by the planning and environmental protections of the Seashore Conservation Act, RCW 79A.05.600 *et seq.*, which protects the interdunal wetlands from development.

In lieu of a preliminary injunction, the Superior Court entered a stipulated order to prevent the State from issuing the Final EIS and beginning the permit process until the Court resolved cross-motions for summary judgment. App. 1-6.

Then, in a series of orders, the Superior Court granted summary judgment to the Respondents on all key issues:

First, without any explanation, the Superior Court concluded that the Global Settlement and the SMA permit do

not apply to the Links 2 Project. App. 10. This was erroneous because the Global Settlement's wetland and environmental protections meet all the standards for a covenant running with the land and are also enforceable as a conservation easement under RCW 64.04.130. Moreover, the SMA permit contains "durable conditions" which apply to future developments on the Property.

Second, in a conclusion of first impression, the Superior Court held that FOGH lacks standing to enforce the federal conservation easement. App. 9. In doing so, the Superior Court ignored binding and persuasive precedent that establishes multiple independent bases for FOGH's standing to enforce the conservation easement, which expressly implemented FOGH's settlement. App. 171, 173 (covenant to preserve wetlands "in accordance with the agreement identified under the [Ecology] Revised Shoreline Management Permit" issued pursuant to the Global Settlement).

Finally, again in a matter of first impression, the Superior Court held that FOGH lacks standing to enforce the Seashore Conservation Act. App. 16-17.

The Superior Court provided no findings of fact, detailed legal conclusions, or thorough analysis to support its orders, which pave the way for the State to issue the Final EIS and immediately begin seeking permits for the Links 2 Project. Once that happens, FOGH must appeal every permit granted simply to retain the benefits of its prior settlement.

II. Issues Presented for Review

1. Did the Superior Court err by failing to enjoin Respondents from issuing the Final EIS and seeking permits on the Links 2 Project, which violates (a) the Global Settlement, (b) the resulting federal conservation easement, (c) durable conditions in a prior shorelines permit, and (d) the Seashore Conservation Act?

2. Did the Superior Court err in ruling that the Global Settlement does not apply to the Links 2 Project, despite its

environmental protections meeting all standards for a covenant running with the land and a conservation easement under Washington law?

3. Did the Superior Court err in ruling that FOGH lacks standing to enforce the federal conservation easement, including for the following reasons:

(a) FOGH can enforce as a third-party beneficiary because the Army Corps exacted the federal conservation easement to implement FOGH's Global Settlement;

(b) FOGH can enforce the conservation easement in Westport Light State Park because the Attorney General is seeking to nullify the easement, such that denying standing would leave important public rights unenforceable;

(c) FOGH has standing because its members use and enjoy the wetlands that the State seeks to fill;

(d) FOGH has taxpayer standing; and

(e) Standing is relaxed to protect the public interest, especially where the government agency that would normally

enforce is the one seeking to override the easement to fill wetlands.

4. Did the Superior Court err in failing to enforce the Links Project's SMA Permit's durable conditions, which also required protection of the wetlands through a conservation easement?

5. Did the Superior Court err in holding that FOGH lacked standing to enforce the Seashore Conservation Act?

6. Did the Superior Court err in not granting summary judgment to FOGH on these issues?

7. Did the Superior Court err in refusing to allow FOGH to amend its complaint to pursue claims for tortious interference with the Global Settlement and its conservation easement against the State and therefore failing to provide appropriate remedies for such claims?

8. Was FOGH entitled to recovery of attorneys' fees and costs for enforcing the Global Settlement and resulting conservation easement?

III. Grounds for Direct Review

A. This case seeks an injunction against the State and its officers.

This case independently qualifies for direct review under RAP 4.2(a)(5) because it is fundamentally "[a]n action against a state officer in the nature of … injunction." FOGH seeks an injunction against the State of Washington, including the Parks Commission that is leading this project but also as to all of the agencies which are or will be involved in the permitting process.

This case is unusual in the volume of agencies that are involved in this dispute and targeted by the requested injunctive relief. Over a half dozen state agencies were involved in the permitting and litigation over this project when it was first proposed in 2000-2007. App. 22. Then, in 2007, both Ecology and the Environmental Land Use Hearings Office ("ELUHO") signed the Global Settlement that was lodged with Division II of the Court of Appeals to resolve the dispute. App. 83.

The injunctive relief sought by this case would bind or impact the many state agencies that are or will be involved in the Links 2 Project: the Parks Commission manages Westport Light State Park and the Seashore Conservation Area and is the lead proponent of the golf course project; the Recreation and Conservation Office provided the grants to purchase the land for the State and will need to approve the project; and Ecology, the Department of Fish and Wildlife, and ELUHO will play key permitting roles.

FOGH seeks to enjoin the State of Washington, including all of its agencies and officers, from issuing a Final EIS and pursuing or processing permits for the Links 2 Project, based upon its violation of a recorded conservation easement, binding settlement agreement, durable SMA permit conditions, and statutory protections under the Seashore Conservation Act.

The requested relief would directly restrain the conduct of state officials acting in their official capacity and is thus the type of action contemplated by RAP 4.2's "action against state

officer" provision. *See, e.g.*, *Five Corners Fam. Farmers v. State*, 173 Wn.2d 296, 301-02, 268 P.3d 892 (2011) (granting direct review where claims sought to restrain statewide government action).

B. This appeal presents fundamental and urgent statewide issues of public importance.

This case also merits direct review by this Court under RAP 4.2(a)(4), as "[a] case involving a fundamental and urgent issue of broad public import which requires prompt and ultimate determination."

1. This case addresses fundamental questions about the State's compliance with the rule of law.

This litigation raises important questions about the State's adherence to the laws of Washington. The State is seeking to fill wetlands that are expressly protected by: (1) a federal conservation easement, (2) a settlement signed by multiple state agencies, and (3) permanent conditions of a shorelines permit. The State purchased the property expressly to preserve the wetlands, expand public parkland, and to do the opposite of what

it now seeks to accomplish: to protect the Property from large-scale development. The State's contrary positions throughout the history of this litigation warrant direct review by this Court.

2. The State's blatant disregard for a federal conservation easement raises urgent issues of federal comity.

The key facts are not in dispute: (1) The Army Corps required Mox to formalize and record the Global Settlement's conservation easement permanently protecting 100+ acres of wetlands as a condition of resolving its enforcement action, App. 129-137; and (2) the State proposes to place fill, roads, and golf course features directly within the protected wetlands, App. 300-328, 256.

Federal conservation easements acquired pursuant to an important national policy, such as the Clean Water Act, are enforceable notwithstanding contrary state law. *See, e.g., United States v. Little Lake Misere Land Co.*, 412 U.S. 580, 594-97, 93 S. Ct. 2389 (1973) (state law would have abrogated the explicit terms of a prior land acquisition of the United States under the

Migratory Bird Treaty Act and was thus not applied); *United States v. Albrecht*, 496 F.2d 906, 911 (8th Cir. 1974) (state law barring conveyance of real property was not applicable where it would have hindered a national program of acquiring land for waterfowl production areas). In *North Dakota v. United States*, for example, the Supreme Court upheld negotiated agreements between landowners and the Secretary of the Interior that concerned wetlands on private property, finding that these federal easements took supremacy over state law which would have abrogated them. 460 U.S. 300, 319, 103 S. Ct. 1095 (1983).

Like in *North Dakota*, when the Army Corps required Mox to place a conservation easement over the Property to resolve its federal Clean Water Act violations, it was acting pursuant to a national policy and under its Clean Water Act enforcement authority. App. 101-103, 179. Under U.S. Supreme Court precedent, the federal conservation easement imposed by the Army Corps must be upheld, even if not in perfect compliance with state law.

The State, however, maintains that it is not required to abide by this federal property restriction, and is proceeding with the Links 2 Project as if it does not exist. App. 242-243, 300-328. Such deliberate disregard for a federally exacted conservation easement raises serious questions about the State's cooperation with established federal regulatory schemes when its perceived right to develop may be impacted.

Where, as here, the Army Corps' exacted protection was expressly designed to implement FOGH's settlement, FOGH certainly has an interest in this issue.

This Court should grant direct review to preserve cooperative federalism and the appropriate balance of shared authority between state and federal law here.

3. The Superior Court's decision will result in massive unrecoverable costs to the public and the parties.

The extensive litigation over the Links Project leading to the 2007 Global Settlement demonstrates the enormous costs that the public and the parties can be expected to incur as the Links 2

Project advances. All of the same permits that were litigated in 2000-2007 and led to the Global Settlement will be litigated all over again. Multiple state agencies will be called upon to issue permit decisions, which will be challenged in administrative and judicial forums for years.

Ecology's comments on the Draft EIS stating that the Links 2 Project is un-permittable show that, if anything, the future litigation will be even more prolonged, hard-fought, and expensive to the State of Washington and its taxpayers. App. 293-299; *see also* App. 286-292 (Quinault Indian Nation comments on Draft EIS stating that golf course would infringe on Quinault Nation's treaty rights). This time around, after all, the Parks Commission will be involved in all of the permitting and litigation *as the applicant*. Importantly, since the 2000-2007 litigation, the wetlands have been upgraded to Category I by Ecology, *see* App. 575-579, and brought into the State Park system and Seashore Conservation Area, gaining further protections.

Direct review by this Court will significantly reduce the costs to the taxpayers and the judicial system, as well as to the parties.

4. The appellate decision will impact wetland protections throughout the State.

A prolonged appellate process will result in uncertainty over critical environmental protection tools, including exacted wetland protections, that federal, state, and local governments utilize routinely throughout the State.

If the State can ignore and then successfully defeat the multi-layered wetland protections at issue in this case, it casts doubt on our entire system of exacted wetland protections. State and local governments often require developers to protect wetlands via conservation easements, either as mitigation for development impacts or to resolve alleged environmental violations. These types of conservation easements are referred to as "exacted," in that they were mandated by a regulatory body. Jessica Owley Lippmann, *Exacted Conservation Easements: The*

Hard Case of Endangered Species Protection, 19 J. ENV'T L. & LITIG. 293, 294-95 n.3 (2004). Under the State's theory, this kind of important mechanism for protecting the environment is not binding on the State and is unenforceable by the public, threatening the entire system.

The uncertainty here also extends to other fundamental tools of wetland protections, all of which the Superior Court effectively set aside: covenants running with the land, conservation easements, durable conditions enshrined in shoreline permits, and the Seashore Conservation Area.

5. This case presents questions of first impression for Washington courts about conservation easements and the Seashore Conservation Act.

Until FOGH brought this case, Washington courts had not considered what constitutes a conservation easement under common law or RCW 64.04.130 and who has standing to enforce such protections. Additionally, no Washington appellate court

has addressed the physical scope of the Seashore Conservation Area and the State's ability to develop therein.[2]

Both of these issues present questions of broad public importance. First, conservation easements have become increasingly popular as a mechanism for protecting the environment, whether entered into voluntarily or exacted by a regulatory agency in exchange for permission to develop, as was the case with the Links Project. What constitutes a conservation easement under Washington law, as well as who may enforce a conservation easement, are fundamental questions, resolution of which will broadly impact property law in Washington.

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[2] Two Washington Supreme Court decisions have addressed the Parks Commission's authority to regulate vehicle traffic in the Seashore Conservation Area. *See State v. Wright*, 84 Wn.2d 645, 529 P.2d 453 (1974); *Sim v. Wash. State Parks & Recreation Comm'n*, 94 Wn.2d 552, 617 P.2d 1028 (1980). Neither *Wright* nor *Sim* addressed the core issues in this dispute: standing to enforce the Seashore Conservation Act, the physical scope of the Seashore Conservation Area, and the State's ability to develop within the Seashore Conservation Area.

Second, the State seeks to develop a 200-acre private golf course in a public park that lies largely within the Seashore Conservation Area, where "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." RCW 79A.05.600. Whether the State's proposed development is allowed under the Seashore Conservation Act will impact the public's right to access state parks and public beach areas. Moreover, the question of standing to enforce the Seashore Conservation Act raised in the Superior Court will impact the public's ability to protect the very area that was promised to them by the Legislature to be "preserved in its present state" and "maintained in the best possible condition for public use." RCW 79A.05.615.

To resolve these fundamental questions of both first impression and broad public import, this Court should accept direct review.

C. Delay in obtaining a resolution is detrimental to all parties and the public interest.

It is urgent to obtain final resolution of the issues in this case as quickly as possible. The State and the City of Westport will publish the Final EIS shortly, which will trigger an immediate influx of permit applications from the State and Westport Golf to the various permitting agencies. It is a near certainty that every single permit, whether granted or not, will be appealed by either FOGH or the Respondents. Each appeal will require a substantial and irreversible commitment of resources from the agencies and regulatory bodies involved, the parties, agency and judicial tribunals, and Washington state taxpayers.

Should the Court find that the Global Settlement, federal conservation easement, shorelines permit, and/or the Seashore Conservation Area apply to restrict the development path of the Links 2 Project, the State will need to go back to the drawing board with a golf course design, effectively wasting any

resources already expended in furtherance of the Links 2 Project. A final decision on the applicability of the Property's underlying wetland protections, and FOGH's ability to enforce them, will further the public interest by ensuring that scarce resources are only expended on a version of the Links 2 Project that is legally permittable, if one exists.

IV. Conclusion

For these reasons, Appellants respectfully request that the Court accept direct review.

I certify that this document contains 3,911 words in accordance with RAP 18.17(c)(1).

Respectfully submitted this 17th day of April, 2026.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on April 17, 2026, I caused Appellants' Statement of Grounds for Direct Review to be served in the above-captioned matter upon the parties herein via electronically filing the document on the appellate portal:

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