

## Merrill, Hannah

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**From:** pearl hewett [REDACTED]  
**Sent:** Tuesday, October 11, 2011 11:26 AM  
**To:** zSMP; Jo Anne Estes; earnest spees; harry bell  
**Cc:** Jay Petersen; Lois Perry; Sue Forde; Norman MacLeod; Marv Chastain  
**Subject:** Washington State Administrative Code (WAC) Clallam County SMP

### **TO WHOM IT MAY CONCERN**

**I submit this as my comment on the**

**Clallam County SMP**

**Pearl Rains Hewett Trustee**

**George C. Rains Sr. Estate**

**SMP Advisory Committee Member**

**Clallam County SMP - The Federal Public Trust Doctrine**

**Futurewise a special interest group**

**Washington State Administrative Code (WAC)**

Regulations of executive branch agencies are issued by authority of statutes. Like legislation and the Constitution, regulations **are a source of primary law** in Washington State. The WAC codifies the regulations and arranges them by subject or agency. The online version of the WAC is updated twice a month. Copies of the WAC as they existed each year since 2004 are available in the [WAC archive](#).

**WAC'S ARE NOT LAW'S?**

**Guidelines Are Not Law's?**

**Rules Are Not Law's?**

**Our Elected County Officials take an oath to uphold WA State Laws not WAC'S.**

**Per FUTUREWISE these are not laws**

**Restoration and mitigation WAC 173-26-186(8) (c)**

**Restoration plan goal WAC 173-26-201(2) (f)**

**Recommended Shoreline stabilization WAC 173-26-231 (3) (a)**

**Recommendations for shore side uses and structures WAC 173-26-221 (4)**

Public Access

A primary objective of SMA Policy

**A primary Objective is not law?**

Public use and access to the waters of the state is one of the requirements of **the Public Trust Doctrine Includes specific requirements in WAC 173-26-221(4)** Most developments are required to provide public access

- Not single family home construction
- Not subdivisions of four or fewer lots

[Statutory Authority: RCW [90.58.120](#), [90.58.200](#), [90.58.060](#) and [43.21A.681](#). 11-05-064 (Order 10-07), § 173-26-201, filed 2/11/11, effective 3/14/11. Statutory Authority: RCW [90.58.060](#) and [90.58.200](#). 04-01-117 (Order 03-02), § 173-26-201, filed 12/17/03, effective 1/17/04.]

WAC 173-26-171 Authority, Purpose and Effects of Guidelines.

(1) Authority.

### **Guidelines Are Not Law's?**

**RCW 90.58.090 authorizes and directs the department to adopt "guidelines consistent with RCW 90.58.020, containing the elements specified in RCW 90.58.100" for development of local master programs for regulation of the uses of "shorelines" and "shorelines of statewide significance."**

### **Rules Are Not Law's?**

RCW 90.58.200 authorizes the department and local governments "to adopt such **rules** as are necessary and appropriate to carry out the provisions of" the Shoreline Management Act.

(2) Purpose.

The general purpose of the guidelines is to implement the "cooperative program of shoreline management between local government and the state."

**Local government shall have the primary responsibility for initiating the planning required by the Shoreline Management Act**

**and "administering the regulatory program consistent with the policy and provisions" of the Act."**

**[T]he department shall act primarily in a supportive and review capacity with an emphasis on providing assistance to local government and insuring compliance with the policy and provisions" of the Act. RCW 90.58.050.**

In keeping with the relationship between state and local governments prescribed by the Act, the guidelines have three specific purposes: **to assist local governments in developing master programs;** to serve as standards for the regulation of shoreline development in the absence of a master program along with the policy and provisions of the Act and, to be used along with the policy of RCW 90.58.020, as criteria for state review of local master programs under RCW 90.58.090.

(3) Effect.

(a) The guidelines are guiding parameters, standards, and review criteria for local master programs. **The guidelines allow local governments substantial discretion to adopt master programs reflecting local circumstances and other local regulatory and non-**

**regulatory programs** related to the policy goals of shoreline management as provided in the policy statements of RCW 90.58.020, WAC 173-26-176 and WAC 173-26-181. The policy of RCW 90.58.020 and these guidelines constitute standards and criteria to be used by the department in reviewing the adoption and amendment of local master programs under RCW 90.58.090 and by the growth management hearings board and shorelines hearings board adjudicating appeals of department decisions to approve, reject, or modify proposed master programs and amendments under RCW 90.58.190.

(b) Under RCW 90.58.340, the guidelines, along with the policy of the Act and the master programs, also shall be standards of review and criteria to be used by state agencies, counties, and public and municipal corporations in determining whether the use of lands under their respective jurisdictions adjacent to the shorelines of the state are subject to planning policies consistent with the policies and regulations applicable to shorelines of the state.

(A) **Comply with state and federal laws** and implementing **rules** applicable to shorelines of the state within the local government jurisdiction;

## **Rules Are Not Law's?**

### **The Public Trust Doctrine and Coastal Zone Management in Washington State**

The Shoreline Management Act which requires a combination of state and local planning, is an example.

The SMA clearly states the need for **comprehensive planning** to allow multiple uses of the state's shorelines while protecting the public interest. Such planning is essential to the creation of local shoreline master programs (SMP) which implement the plans.

**In general SMPs regulate use in, on, or over shorelines. This feature**

**appears in zoning classifications including natural, conservation, rural, and urban which**

**specify appropriate, conditional, and prohibited uses for each environment.** SMPs may also incorporate any other element deemed appropriate or necessary to effectuate the policy of the

SMA. This clause is an open invitation for local SMPs **to incorporate explicitly public trust doctrine principles.**

**I find this hard to believe? I would like Sheila Miller to clarify this?**

It is on the DOE Public Trust Doctrine web site **(88 pages)**

Finally, SMPs, unlike other comprehensive plans, **are adopted as WAC'S** and become part of the state's Shoreline Master Program. **As such, all local SMP rules, regulations, designations and guidelines become state law and are enforceable. In this manner, protection of public trust resources and uses becomes binding.**