

Merrill, Hannah

From: pearl hewett [REDACTED]
Sent: Sunday, November 06, 2011 9:19 AM
To: zSMP; Lois Perry; Sue Forde
Cc: earnest spees; Jay Petersen; Gray, Steve; Miller, Sheila Roark; Chapman, Mike; Jo Anne Estes
Subject: SMP and WA STATE SUPREME COURT

TO WHOM IT MAY CONCERN

My comment on the SMP Update
Pearl Rains Hewett Trustee
George C. Rains Sr. Estate
Member SMP Advisory Committee

This is how Judge Johnson Washington State Supreme Court explains the role of local government in the SMP.

(Taken out of context)

The Supreme Court explained that even though there is significant local government involvement in the creation of SMPs, the process is done in the shadow of the Department of Ecology's (DOE) control.

Involvement of local jurisdiction in the SMP process is merely a benevolent gesture by the state.

Court confirmed that Whatcom County's SMP was not the product of local government,

Read on if you are interested.

Rational Shoreline Planning v. Whatcom County, ___ Wn.2d. ___, 258 P.3d 36 (2011).

Court: Washington Supreme Court

Docket: 84675-8

Opinion Date: August 18, 2011

Judge: Johnson

**Areas of Law: Environmental Law, Government & Administrative Law, Zoning, Planning & Land Use
(read to bottom for complete text)**

(Taken out of context)

II. Applicable Law and Analysis. In affirming the Court of Appeals, the Supreme Court explained that even though there is significant local government involvement in the creation of SMPs, the process is done in the shadow of the Department of Ecology's (DOE) control.

The Shoreline Management Act (SMA) provides DOE with stringent oversight authority and command over the final content of any SMP, and involvement of local jurisdiction in the SMP process is merely a benevolent gesture by the state.

The Court held that although Whatcom County was encouraged to tailor its SMP according to local conditions and needs, the SMP was subject to DOE's mandatory review, revision, and approval as a condition precedent to the SMP taking effect.

The Court confirmed that Whatcom County's SMP was not the product of local government,

The issue on appeal to the Supreme Court was whether RCW 82.02.020, which generally prohibits local governmental bodies from imposing taxes or fees on development, applied to shoreline master programs (SMP) created pursuant to the Shoreline Management Act of 1981. Members of the Citizens for Rational Shoreline Planning (CRSP) owned land regulated under Whatcom County's SMP. The group filed a complaint alleging, in part, that the regulations contained in the SMP constituted a direct or indirect tax, fee or charge on development in violation of RCW 82.02.020. The superior court dismissed the claim for failure to state a claim for which relief could be granted. The appellate court affirmed. Upon review of the implicated legal authorities, the Supreme Court affirmed the appellate court: "[w]hile local jurisdictions play a role in tailoring SMPs to local conditions, **the Shoreline Management Act dictates that the Department of Ecology retains control over the final contents and approval of SMPs.** Therefore, **SMP regulations are the product of state action** and are not subject to RCW 82.02.020."

CASE REPORT

SHORELINE MANAGEMENT ACT AND MASTER PROGRAM - RCW 82.02.020. Because the Shoreline Management Act requires that the Department of Ecology retain control over the final contents and approval of local Shoreline Master Programs, Shoreline Master Programs are the product of state action and not subject to RCW 82.02.020. *Citizens for Rational Shoreline Planning v. Whatcom County*, ___ Wn.2d. ___, 258 P.3d 36 (2011).

I. Facts. Citizens for Rational Shoreline Planning (CRSP) challenged Whatcom County's amended Shoreline Master Program (SMP) alleging that the County's SMP's buffer zone provisions constituted a direct or indirect tax, fee, or charge on development in violation of RCW 82.02.020. Superior Court dismissed the suit. Noting that RCW 82.02.020 applies only to local, not state regulations, the Superior Court held that state involvement in the creation and adoption of SMPs is so pervasive that they are state - not local actions. As a result, RCW 82.02.020 does not apply to them. The Court of Appeals affirmed the Superior Court's decision, and discretionary review by the Supreme Court followed.

ii. Applicable Law and Analysis. In affirming the Court of Appeals, the Supreme Court explained that even though there is significant local government involvement in the creation of SMPs, the process is done in the shadow of the Department of Ecology's (DOE) control.

The Shoreline Management Act (SMA) provides DOE with stringent oversight authority and command over the final content of any SMP, and involvement of local jurisdiction in the SMP process is merely a benevolent gesture by the state.

The Court held that although Whatcom County was encouraged to tailor its SMP according to local conditions and needs, the SMP was subject to DOE's mandatory review, revision, and approval as a condition precedent to the SMP taking effect. The

Court confirmed that Whatcom County's SMP was not the product of local government, and

therefore, it was not subject to RCW 82.02.020. Finally, the Court also rejected CRSP's other arguments that amendments to the GMA and mirroring provisions in Whatcom County's Critical Areas Ordinance (CAO) rendered the County's SMP subject to RCW 82.02.020. The Court held that GMA amendments did not override the numerous provisions of the SMA that provide the DOE with extensive authority over the creation and enactment of a local jurisdiction's SMP. The Court also held that the even if Whatcom County's SMP buffer zone provisions were copied from its CAO provisions, it was immaterial in determining whether the creation and adoption of the SMP was a local or state action, because the underlying approval and adoption process remained unchanged.

III. Conclusion. RCW 82.02.020 applies to land use regulations and conditions imposed by local jurisdictions only. Under the SMA, while local jurisdictions play a role in tailoring SMPs to local conditions, the state, through the DOE, retains control over the final contents and approval of SMPs. As result, SMP regulations are the product of state action and are not subject to RCW 82.02.020. If you have any questions, please contact your city attorney.