Merrill, Hannah

From: pearl hewett [redacted]
Sent: Thursday, June 07, 2012 10:07 AM
To: zSMP; earnest spees; Harry Bell
Cc: mary pierce pfaff; connie beauvias; Jay Petersen; Dick Pilling; robert crittendend; Steve Gray
Subject: WA STATE SUPREME COURT 65% SEIZURE OF PROPERTY

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

"It is now undisputed that the county had no authority to deprive residents of the use of their own private property."

WASHINGTON SUPREME COURT REFUSES TO RESCUE CAO'S "65 PERCENT" SEIZURE OF PROPERTY

PLF Lauds Supreme Court for "Driving a Stake Through One of the Most Extreme Assaults on Property Rights in the U.S."

SEATTLE, WA; March 4, 2009: The Washington Supreme Court has let stand an appellate court ruling that invalidated King County's freeze on vast areas of private property in rural areas. The rule, part of King County's Critical Areas Ordinance (CAO), was struck down by the Washington State Court of Appeals in July, 2008. The county petitioned the state Supreme Court to hear the case, and yesterday the Supreme Court denied the petition.

"The state Supreme Court has served justice by driving a stake through one of the most extreme and outrageous assaults on property rights in the United States," said Pacific Legal Foundation attorney Brian T. Hodges, who brought the legal challenge to the CAO rule. "It's now time, once and for all, for King County to stop enforcing this illegal seizure of people's property and property rights," said Hodges, who is managing attorney with PLF's Pacific Northwest office in Bellevue, WA. "Incredibly, the county continued to enforce this unlawful regulation even after the court of appeals struck it down last summer. Bureaucrats cited a Kent resident for clearing blackberry and hazard trees on his property. The County even imposed thousands of dollars of fines against another rural resident. Why? Because he had the audacity to ask King County to hold off on enforcing the unlawful land-freeze regulation until the Supreme Court ruled on the county's petition for review."

The CAO rule forced rural property owners in King County to set aside 50 percent to 65 percent of their property in a permanent state of "natural vegetation," and prohibited building structures or improvements such as a home, barn, or driveway.

"The death of this rule is a great day for King County property owners," Hodges continued. **"It is now undisputed that the county had no authority to deprive residents of the use of their own private property."** PLF is the nation's leading legal watchdog organization that litigates for property rights in courts across the country. In the CAO challenge, PLF attorneys represent the Citizens Alliance for Property Rights. "The defeat of this draconian regulation is a landmark victory for everyone's property rights," said Steve Hammond, president of the Citizens Alliance for Property Rights. "We're grateful to be able to partner with Pacific Legal Foundation, especially attorney Brian Hodges, in this successful fight against oppressive government."

The appellate court held that the 65 percent set-aside rule violates a state law prohibiting a "tax, fee or charge" on land use. Case law establishes that this prohibition **"applies to ordinances that may require developers to set aside land as a condition of development**," wrote Judge Ronald Cox in a **unanimous decision** joined by Judge Susan Agid and Judge Anne Ellington. None of the limited exceptions in the law apply, the court noted. For instance, the state's Growth Management Act does not require CAO's uncompensated restrictions on landowners' use of their property.

The Citizens Alliance for Property Rights turned to PLF after the King County Superior Court rejected the grassroots group's attempt to place the CAO issue on the ballot. Individuals challenging the ordinance include avid gardeners, horse owners, someone who planned to build a home, and another who hoped to build a garage to accompany his single-family residence. All of them had their plans to reasonably use their private property derailed by the CAO.

Specifically, the CAO limited rural landowners with five acres or more to clearing only 35 percent of their property, forcing them to maintain the remaining 65 percent as native vegetation indefinitely. Rural landowners owning less than five acres were allowed to clear only 50 percent of their parcels. Affected landowners had to continue paying taxes on the portion of the property rendered useless by the CAO.

The case is *Citizens' Alliance for Property Rights v. Sims*.