

Merrill, Hannah

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Sent: Saturday, June 09, 2012 1:21 PM
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Cc: K.E. Spees; Lois Perry; Miller, Sheila Roark; Gray, Steve; mary pierce pfaff; harry bell; Dick Pilling; robert crittendend; Jay Petersen
Subject: DOE SMP PRECAUTIONARY SETBACKS AND BUFFER ZONE

This is my comment on the DOE SMP
Pearl Rains Hewett Trustee
George C. Rains Sr. Estate
Member SMP Advisory Committee

Based on the Clallam County DOE SMP Draft proposal for **excessive Precautionary Principles setbacks and buffer zones**, **The DOE and Clallam County must also involve an examination of the full range of alternatives, including no action.**

The case is Citizens' Alliance for Property Rights v. Sims.
It is an 858 page document (available on line)

KING COUNTY, BEST AVAILABLE SCIENCE: VOLUME I, supra note 3, ch. 2, at 2-1, available at <http://your.kingcounty.gov/ddes/cao/PDFs04ExecProp/BAS-Chap2-04.pdf>.

25 See Nollan, 483 U.S. 825, 837 (1987).

26 Sci. & Envtl. Health Network, Statements: Wingspread Statement, <http://www.sehn.org/state.html> (last visited July 11, 2010) (emphasis added). This excerpt comes from the famous Wingspread Conference definition of the precautionary principle. The full statement is as follows:
When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established.

In this context the proponent (DOE) of the activity, rather than the public, should bear the burden of proof.

The process of applying the Precautionary Principle must be open, informed and democratic and must include potentially affected parties. It must also involve an examination of the full range of alternatives, including no action.

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VI. CONCLUSION

CAPR is a warning. While **the court correctly determined that King County's clearing and grading ordinance violated the statutory prohibition on development fees of RCW 82.02.020 and Dolan's rough proportionality test**, its cursory treatment of essential nexus was short and disappointingly uninformative. The essential nexus test for development exactions will eventually erode away in Washington if courts continue to consider meansend

rationale as a replacement for evidence of causation. If essential nexus goes, Washington property owners stand to lose significant constitutional protection from government restrictions on the use of their land. **Fortunately, Nollan's principle of causation is easy to understand and apply. Courts that reinvestigate their concern for establishing causation in the regulation of**

critical areas will help to produce truly necessary environmental law while
upholding the rights of property owners under the Constitution.
counterterrorism is