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From: pearl hewett [REDACTED]
Sent: Sunday, March 10, 2013 11:54 AM
To: zSMP
Cc: Karl Spees; Jo Anne Estes; notac@olyphen.com; robert crittendend; Lois Perry; Sue Forde; [REDACTED] Keith Olson; Brian and Brooke; Randy Dutton; Delane Hewett; Tristin Hewett; joni howard; Sandy Rains [REDACTED], Vi; Don; Jay Petersen; harry bell; mary pierce pfaff; Rick Forschler -
Subject: SMP NNL Protected by RCW 90.58.140

This is my comment on
ESA NO NET LOSS REPORT
Pearl Rains Hewett Trustee
George C. Rains Sr. Estate
Member SMP Update Committee

SMP NNL THREAT OF DEVELOPMENT?

The entire report prepared by ESA on NO NET LOSS and the THREAT OF DEVELOPMENT is redundant, based on assumptions, arbitrary conclusions, presumptions, precautionary, limited and/or flawed information and maps, filled with disclaimers of (Note: all numbers are approximate) and fails to provide anything remotely resembling BAS in their conclusions.

THIS IS THE WA STATE LAW 90.58.140

Development permits — Grounds for granting — Administration by local government, conditions — Applications — Notices — Rescission — Approval when permit for variance or conditional use.

(1) A development **shall not be undertaken** on the shorelines of the state unless it is consistent with the policy of this chapter and, after adoption or approval, as appropriate, the applicable guidelines, rules, or master program.

(2) **A substantial development shall not be undertaken** on shorelines of the state without first obtaining a permit from the government entity having administrative jurisdiction under this chapter.

(10) Any permit for a variance or a conditional use issued with approval by a local government under their approved master program must be submitted to the (DOE) department for its approval or disapproval.

WITH THE SMP, WA State LAWS, DOE RULES, GUIDELINES AND

ABSOLUTE APPROVAL OF ALL SUBSTANTIAL DEVELOPMENT

BY THE (DOE) DEPARTMENT OF ECOLOGY ON CLALLAM COUNTY SHORELINES,

THE "THREAT OF DEVELOPMENT" AND POSSIBILITY OF NET LOSS TO ECOLOGICAL FUNCTIONS IS A MOTE POINT.

COMPLETE TEXT

THIS IS THE WA STATE SMP LAW 90.58.140

Development permits — Grounds for granting — Administration by local government, conditions — Applications — Notices — Rescission — Approval when permit for variance or conditional use.

(1) A development **shall not be undertaken** on the shorelines of the state unless it is consistent with the policy of this chapter and, after adoption or approval, as appropriate, the applicable guidelines, rules, or master program.

(2) **A substantial development shall not be undertaken** on shorelines of the state without first obtaining a permit from the government entity having administrative jurisdiction under this chapter.

A permit shall be granted:

(a) From June 1, 1971, until such time as an applicable master program has become effective, only when the development proposed is consistent with: (i) The policy of RCW [90.58.020](#); and (ii) after their adoption, the guidelines and rules of the department; and (iii) so far as can be ascertained, the master program being developed for the area;

(b) After adoption or approval, as appropriate, by the department of an applicable master program, **only when the development proposed is consistent** with the applicable master program and this chapter.

(3) The **local government shall** establish a program, consistent with rules adopted by the department, for the administration and enforcement of the permit system provided in this section. The administration of the system so established **shall be performed exclusively** by the local government.

(4) Except as otherwise specifically provided in subsection (11) of this section, the local government **shall require notification of the public** of all applications for permits governed by any permit system established pursuant to subsection (3) of this section by ensuring that notice of the application is given by at least one of the following methods:

(a) Mailing of the notice to the latest recorded real property owners as shown by the records of the county assessor within at least three hundred feet of the boundary of the property upon which the substantial development is proposed;

(b) Posting of the notice in a conspicuous manner on the property upon which the project is to be constructed; or

(c) Any other manner deemed appropriate by local authorities to accomplish the objectives of reasonable notice to adjacent landowners and the public.

The notices **shall include a statement** that any person desiring to submit written comments concerning an application, or desiring to receive notification of the final decision concerning an application as expeditiously as possible after the issuance of the decision, may submit the comments or requests for decisions to the local government within thirty days of the last date the notice is to be published pursuant to this subsection. The **local government shall** forward, in a timely manner following the issuance of a decision, a copy of the decision to each person who submits a request for the decision.

If a hearing is to be held on an application, notices of such a hearing **shall include a statement** that any person may submit oral or written comments on an application at the hearing.

(5) The system **shall include provisions** to assure that construction pursuant to a permit will not begin or be authorized until twenty-one days from the date the permit decision was filed as provided in subsection (6) of this section; or until all review proceedings are terminated if the proceedings were initiated within twenty-one days from the date of filing as defined in subsection (6) of this section except as follows:

(a) In the case of any permit issued to the state of Washington, department of transportation, for the construction and modification of SR 90 (I-90) on or adjacent to Lake Washington, the construction may begin after thirty days from the date of filing, and the permits are valid until December 31, 1995;

(b)(i) In the case of any permit or decision to issue any permit to the state of Washington, department of transportation, for the replacement of the floating bridge and landings of the state route number 520 Evergreen Point bridge on or adjacent to Lake Washington, the construction may begin twenty-one days from the date of filing. Any substantial development permit granted for the floating bridge and landings is deemed to have been granted on the date that the local government's decision to grant the permit is issued. This authorization to construct is limited to only those elements of the floating bridge and landings that do not preclude the department of transportation's selection of a four-lane alternative for state route number 520 between Interstate 5 and Medina. Additionally, the Washington state department of transportation shall not engage in or contract for any construction on any portion of state route number 520 between Interstate 5 and the western landing of the floating bridge until the legislature has authorized the imposition of tolls on the Interstate 90 floating bridge and/or other funding sufficient to complete construction of the state route number 520 bridge replacement and HOV program. For the purposes of this subsection (5)(b), the "western landing of the floating bridge" means the least amount of new construction necessary to connect the new floating bridge to the existing state route number 520 and anchor the west end of the new floating bridge;

(ii) Nothing in this subsection (5)(b) precludes the shorelines hearings board from concluding that the project or any element of the project is inconsistent with the goals and policies of the shoreline management act or the local shoreline master program;

(iii) This subsection (5)(b) applies retroactively to any appeals filed after January 1, 2012, and to any appeals filed on or after March 23, 2012, and expires June 30, 2014.

(c) Except as authorized in (b) of this subsection, construction may be commenced no sooner than thirty days after the date of the appeal of the board's decision is filed if a permit is granted by the local government and (i) the granting of the permit is appealed to the shorelines hearings board within twenty-one days of the date of filing, (ii) the hearings board approves the granting of the permit by the local government or approves a portion of the substantial development for which the local government issued the permit, and (iii) an appeal for judicial review of the hearings board decision is filed pursuant to chapter [34.05](#) RCW. The appellant may request, within ten days of the filing of the appeal with the court, a hearing before the court to determine whether construction pursuant to the permit approved by the hearings board or to a revised permit issued pursuant to the order of the hearings board should not commence. If, at the conclusion of the hearing, the court finds that construction pursuant to such a permit would involve a significant, irreversible damaging of the environment,

the court shall prohibit the permittee from commencing the construction pursuant to the approved or revised permit until all review proceedings are final. Construction pursuant to a permit revised at the direction of the hearings board may begin only on that portion of the substantial development for which the local government had originally issued the permit, and construction pursuant to such a revised permit on other portions of the substantial development may not begin until after all review proceedings are terminated. In such a hearing before the court, the burden of proving whether the construction may involve significant irreversible damage to the environment and demonstrating whether such construction would or would not be appropriate is on the appellant;

(d) Except as authorized in (b) of this subsection, if the permit is for a substantial development meeting the requirements of subsection (11) of this section, construction pursuant to that permit may not begin or be authorized until twenty-one days from the date the permit decision was filed as provided in subsection (6) of this section.

If a permittee begins construction pursuant to (a), (b), (c), or (d) of this subsection, the construction is begun at the permittee's own risk. If, as a result of judicial review, the courts order the removal of any portion of the construction or the restoration of any portion of the environment involved or require the alteration of any portion of a substantial development constructed pursuant to a permit, the permittee is barred from recovering damages or costs involved in adhering to such requirements from the local government that granted the permit, the hearings board, or any appellant or intervener.

(6) Any decision on an application for a permit under the authority of this section, whether it is an approval or a denial, shall, concurrently with the transmittal of the ruling to the applicant, be filed with the department and the attorney general. This shall be accomplished by return receipt requested mail. A petition for review of such a decision must be commenced within twenty-one days from the date of filing of the decision.

(a) With regard to a permit other than a permit governed by subsection (10) of this section, "date of filing" as used in this section refers to the date of actual receipt by the department of the local government's decision.

(b) With regard to a permit for a variance or a conditional use governed by subsection (10) of this section, "date of filing" means the date the decision of the department is transmitted by the department to the local government.

(c) When a local government simultaneously transmits to the department its decision on a shoreline substantial development with its approval of either a shoreline conditional use permit or variance, or both, "date of filing" has the same meaning as defined in (b) of this subsection.

(d) The department shall notify in writing the local government and the applicant of the date of filing by telephone or electronic means, followed by written communication as necessary, to ensure that the applicant has received the full written decision.

(7) Applicants for permits under this section have the burden of proving that a proposed substantial development is consistent with the criteria that must be met before a permit is granted. In any review of the granting or denial of an application for a permit as provided in RCW [90.58.180](#) (1) and (2), the person requesting the review has the burden of proof.

(8) Any permit may, after a hearing with adequate notice to the permittee and the public, be rescinded by the issuing authority upon the finding that a permittee has not complied with conditions of a permit. If the department is of the opinion that noncompliance exists, the department shall provide written notice to the local government and the permittee. If the department is of the opinion that the noncompliance continues to exist thirty days after the date of the notice, and the local government has taken no action to rescind the permit, the

department may petition the hearings board for a rescission of the permit upon written notice of the petition to the local government and the permittee if the request by the department is made to the hearings board within fifteen days of the termination of the thirty-day notice to the local government.

(9) The holder of a certification from the governor pursuant to chapter [80.50](#) RCW shall not be required to obtain a permit under this section.

(10) Any permit for a variance or a conditional use issued with approval by a local government under their approved master program must be submitted to the department for its approval or disapproval.

(11)(a) An application for a substantial development permit for a limited utility extension or for the construction of a bulkhead or other measures to protect a single-family residence and its appurtenant structures from shoreline erosion **shall be subject** to the following procedures:

(i) The public comment period under subsection (4) of this section **shall be twenty days**. The notice provided under subsection (4) of this section shall state the manner in which the public may obtain a copy of the local government decision on the application no later than two days following its issuance;

(ii) The local government **shall issue its decision** to grant or deny the permit within twenty-one days of the last day of the comment period specified in (a)(i) of this subsection; and

(iii) If there is an appeal of the decision to grant or deny the permit to the local government legislative authority, the appeal shall be finally determined by the legislative authority within thirty days.

(b) For purposes of this section, a limited utility extension means the extension of a utility service that:

(i) Is categorically exempt under chapter [43.21C](#) RCW for one or more of the following: Natural gas, electricity, telephone, water, or sewer;

(ii) Will serve an existing use in compliance with this chapter; and

(iii) Will not extend more than twenty-five hundred linear feet within the shorelines of the state.

[2012 c 84 § 2; 2011 c 277 § 3; 2010 c 210 § 36; 1995 c 347 § 309; 1992 c 105 § 3; 1990 c 201 § 2; 1988 c 22 § 1; 1984 c 7 § 386; 1977 ex.s. c 358 § 1; 1975-'76 2nd ex.s. c 51 § 1; 1975 1st ex.s. c 182 § 3; 1973 2nd ex.s. c 19 § 1; 1971 ex.s. c 286 § 14.]

Notes:

Findings -- 2012 c 84: "In adopting the shoreline management act in 1971, the legislature declared that it is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses, to ensure the development of these shorelines in a manner that will promote and enhance the public interest, and to protect against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto. The legislature declares that the policies recognized in 1971 are still vital to the protection of shorelines of the state.

The legislature recognizes that the replacement of the Evergreen Point bridge affects shorelines of the state and shorelines of statewide significance. However, the legislature finds that the state route number 520 corridor, including the Evergreen Point bridge, is a critical component of the state highway system and of the Puget Sound region's transportation infrastructure and is essential to maintaining and improving the region's and the

state's economy.

The legislature further finds that the Evergreen Point bridge and its approaches are in danger of structural failure and that it is highly likely that the bridge will sustain serious structural damage from an earthquake or windstorm over the next fifteen years. The floating span sustained serious damage during the 1993 storm, which required major repair and retrofit. Retrofitting the span has added weight, which causes the floating span to sit lower in the water, increasing the likelihood of waves breaking over the span and causing traffic hazards. The floating span cannot be further retrofitted to withstand severe windstorms. Recent storms have continued to cause damage to the floating span, including cracks in the pontoons that allow water to enter the pontoons.

The legislature further finds that replacement of the floating span and its approaches presents unique challenges in that it is subject to narrow windows in which work on Lake Washington can be performed because of weather and environmental constraints.

The legislature further finds that significant delays in replacing the floating span and east approach of the Evergreen Point bridge must be avoided in order to: Avoid the catastrophic loss of the bridge; protect the safety of the traveling public; prevent injury, loss of life, and property damage; and provide for a strong economy in the Puget Sound region and in Washington state. In the past, the legislature has only provided exemptions to the shoreline management act for bridges that have sunk, and it is the intent of the legislature to only allow this exemption to the automatic stay provision of the shoreline management act because the Evergreen Point floating bridge is in danger of further damage and sinking." [2012 c 84 § 1.]

Effective date -- 2012 c 84: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 23, 2012]." [2012 c 84 § 3.]

Intent -- Effective dates -- Application -- Pending cases and rules -- 2010 c 210: See notes following RCW [43.21B.001](#).

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW [36.70A.470](#).

Finding -- Intent -- 1990 c 201: "The legislature finds that delays in substantial development permit review for the extension of vital utility services to existing and lawful uses within the shorelines of the state have caused hardship upon existing residents without serving any of the purposes and policies of the shoreline management act. It is the intent of this act to provide a more expeditious permit review process for that limited category of utility extension activities only, while fully preserving safeguards of public review and appeal rights regarding permit applications and decisions." [1990 c 201 § 1.]

Severability -- 1984 c 7: See note following RCW [47.01.141](#).