Merrill, Hannah

From: zSMP
Subject: RE: SMP Requested Wetland Disclosure

From: pearl hewett [redacted]
Sent: Tuesday, March 19, 2013 10:05 AM
To: zSMP
Cc: Karl Spees; harry bell; notac@olypen.com; Jo Anne Estes; [redacted]; Brian and Brooke; Keith Olson; info@justwateralliance.org; Randy Dutton; Rick Forschler -; joni howard; Vi; Delane Hewett; Jay Petersen; mary pierce pfaff; robert crittendend; Miller, Sheila Roark; McEntire, Jim; Chapman, Mike; Windy Boulden; Misty Rains; Sandy Rains; Don; [redacted]; Tristin Hewett; Dawn Rains; Lois Perry; Sue Forde; marg@sequim.com; Frank M Penwell; [redacted]
Subject: SMP Requested Wetland Disclosure

SMP Requested Wetland Disclosure

Posted on March 19, 2013 8:45 am by Pearl Rains Hewett *Comment*

Clallam County has failed to disclose the identity of private property WETLANDS

Citing WA State Chapter 42.36 RCW Appearance Of Fairness Doctrine
And, The "Understanding of a Reasonable Person" I am requesting disclosure of the following, "UNKNOW" factors of PRIVATE WETLANDS, on the Clallam County SMP Draft included in 4.3.4, 4.3.5, 4.3.6 and (WAC 365-195-905(5)(a)) as defined in WAC 365-900 through 925 and other any other SMP Draft critical areas restrictions that apply to WETLANDS.
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SMP Draft Update – WETLAND LIST OF UNKNOWN FACTORS
Shall we all be required to wait in FEAR of the UNKNOWN?

1. IDENTIFICATION
2. NOTIFICATION TO THE AFFECTED
3. INVITATION TO THE AFFECTED
4. DISCLOSURE TO THE AFFECTED
5. AFFECTED BY ADJOINING PROPERTY
6. WETLAND CATEGORY (I – IV)
7. ENDANGERED SPECIES LOCATION
8. IDENTIFIED WETLAND PLANTS
9. SETBACKS AND BUFFERS (unknown) (UP TO 300 FEET + OTHERS)
10. PRIVATE PROPERTY RESTRICTED USE AND DEVELOPMENT
11. REGULATORY TAKING OF PRIVATE PROPERTY VALUE
12. NON-CONFORMANCE OF SINGLE FAMILY RESIDENCE
13. DELINEATION
14. WETLANDS ON PROPERTY TITLE?

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WETLANDS ARE REGULATED BY WA STATE LAW
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VIOLATION OF A "WETLAND" IS A FEDERAL OFFENSE.

THE THREAT ON WHAT WAS PERCEIVED TO BE DEVELOPMENT OF A WETLAND BY THE EPA ENDED UP IN THE U S SUPREME COURT.
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PACIFIC LEGAL FOUNDATION
PLF and the Sacketts: an important win at the Supreme Court
Sackett v. U.S. Environmental Protection Agency
Contact: Damien M. Schiff

Status: On remand: The administrative record was filed Jan. 15, 2013. Case is stayed until Mar. 18, 2013. Any motion on the administrative record is due Apr. 2, 2013.
Summary:
In an unanimous opinion, the Supreme Court rules that landowners have a right to direct, meaningful judicial review if the EPA effectively seizes control of their property by declaring it to be "wetlands." The Court rules in favor of PLF clients Mike and Chantell Sackett, of Priest Lake, Idaho, who were told by EPA — and by the Ninth Circuit — that they could not get direct court review of EPA's claim that their two-thirds of an acre parcel is "wetlands" and that they must obey a detailed and intrusive EPA "compliance" order, or be hit with fines of up to $75,000 per day.

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CLALLAM COUNTY CRITICAL AREA MAPS
The Critical Area and Zoning Maps show all of the above base information, plus zoning, parcels, and all of the various critical areas designated by the County. Note the Critical Area Map Legend: This is a one-page legend and guide to the maps. It is essential to understanding them. The Wetland Function Maps show all the wetlands in the county, identified with a unique identifier and an attribute code explaining its functional relationship to the overall natural systems

HOW TO IDENTIFY YOUR WETLAND ON MAPS?
Since parcels and wetlands are too small and numerous to label legibly
at this scale, they are identified with tiny labels. To view wetland codes and large parcel numbers, you must zoom to at least 400%. To view small parcel labels, you must zoom to at least 1200%.

SMP UPDATE DISCLAIMER ON MAPS
2. Mapping: The approximate location and extent of wetlands are shown on the
County's critical area maps. These maps are advisory and do not provide definitive information about wetlands?
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THIS IS WA STATE LAW
RCW 36.70A.175 Wetlands to be delineated in accordance with manual.
Wetlands regulated under development regulations adopted pursuant to this chapter shall be delineated in accordance with the manual adopted by the department pursuant to RCW 90.58.380.
DELINEATED to describe or explain something in detail, to sketch or draw something in outline, to represent something visually using something such as a chart or graph, to indicate the physical boundaries of something

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THIS IS THE DRAFT UPDATED INFORMATION

CLALLAM COUNTY SMP FINAL DRAFT 4-22 NOVEMBER 20124.

4.3.4
Regulations –Wetland Designation, Delineation, Mapping and Classification
1.Designation:
Regulated wetlands are those areas that are inundated or saturated by surface or
ground water at a frequency and duration sufficient to support, and that under normal
circumstances do support, a prevalence? of vegetation typically adapted for life in saturated soil conditions. Regulated wetlands generally include, but are not limited to, swamps, marshes, bogs, ponds, including their submerged aquatic beds and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities,
wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990 (adoption date of Chapter 36.70A RCW, Growth Management Act)that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands created as mitigation and wetlands modified for approved land use activities shall be considered as regulated wetlands.

2. Mapping: The approximate location and extent of wetlands are shown on the
County's critical area maps. These maps are advisory and do not provide definitive information about wetland Clallam County SMP

Final Draft November 2012 4-21 size or presence. The County shall update the maps as new wetlands are identified and as new information from credible sources becomes available.

Best Available Science for Wetlands (WAC 365-195-905(5)(a)).
Under the state's Growth Management Act, local governments are required to use the best available science when reviewing and revising their policies and regulations on wetlands. However, there was no comprehensive synthesis or interpretation of the science for wetlands, and most local governments lack the resources to tackle such an undertaking. Best Available Science is defined in WAC 365-900 through 925.

3.Delineation: In accordance with RCW 90.58.380, wetlands shall be identified in accordance with the requirements of WAC 173-22-035. Unless otherwise provided for in this Program, all areas within the County meeting the criteria in the manual are hereby designated critical areas and are subject to the provisions of this section The wetland boundary shall be identified and delineated by a biologist with wetlands ecology expertise within the North Olympic Peninsula Region, and who has professional experience in this occupation demonstrated by a minimum of two years' practical experience or is certified as a Professional Wetland Scientist by the Society of Wetland Scientists. This person shall field stake the wetland boundary and this line shall be surveyed by a professional land surveyor if the delineation is required for a land division pursuant to Clallam County Code Title 29.4.

Classification and Rating:

WETLANDS SHALL be rated based on categories that reflect the functions and values of each wetland. Wetland categories shall be based on the criteria provided in the Washington State Wetland Rating System for Western Washington(Ecology Publication No. 04-06-025and revised editions), as determined using the appropriate rating forms contained in that publication. These categories are generally defined as follows:

HOWEVER (full text below)
7. Increased Wetland Buffers: The Administrator may increase wetland buffer zone widths, not to exceed three hundred (300) feet

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a.category I Type standard Buffer Width Class I 200 feet

Wetlands:Category I wetlands are those wetlands of exceptional value in terms of protecting water quality, storing flood and storm water, and/or providing habitat for wildlife as indicated by a rating system score of 70 points or more on the Ecology rating forms. These are wetland communities of infrequent occurrence that often provide documented habitat for sensitive, threatened or endangered species, and/or have other attributes that are very difficult or impossible to replace if altered.

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b. Category II Wetlands: Type standard Buffer Width Class II 150 feet

Category II wetlands have significant value based on their function as indicated by a rating system score of between 51 and 69 points on the Ecology rating
forms. They do not meet the criteria for Category I rating but occur infrequently and have qualities that are difficult to replace if altered.

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c. Category III Wetlands: Type standard Buffer Width Class III 75 feet

Category III wetlands have important resource value as indicated
by a rating system score of between 30 and 50 points on the Ecology rating forms. These wetlands are relatively common.

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d. Category IV Wetlands: Type standard Buffer Width Class IV 50 feet

Category IV wetlands are wetlands of limited resource value as
indicated by a rating system score of less than 30 points on the Ecology rating forms.
They typically have vegetation of similar age and class, lack special habitat features,
and/or are isolated or disconnected from other aquatic systems or high-quality upland habitats.

Clallam County SMP Final Draft 4-22November 20124.

3.5 Regulations –Wetland Buffers
1.Buffer Widths: Buffers shall be established and maintained to protect all regulated wetlands. The standard wetland buffer width shall be determined according to the regulated wetland rating as outlined in Table 4-1below. The buffer shall not be altered except as authorized by this Program; provided that such alterations meet all other standards for the protection of regulated wetlands. All buffers are measured from the regulated wetland edge as marked in the field.

Table 4-1. Wetland Buffers for Wetlands in Shoreline Jurisdiction Wetland Type standard Buffer Width
Class I 200 feet
ClassII150 feet
Class III 75 feet
Class IV 50 feet

2.Wetland Buffer Condition: Buffers shall be maintained in a predominantly well-vegetated and undisturbed condition defined as an average density of at least 150 woody stems per acre or fifty five percent (55 %) areal cover of woody vegetation, unless this Program specifically allows alteration of the buffer. Alterations that are not associated with an allowed use or development shall be prohibited.

3. Multiple Buffers: In the event that buffers for any shorelines and/or critical areas are contiguous or overlapping, the landward- most edge of all such buffers shall apply.

4.Buffer Averaging: Wetland buffer widths shown in Table 4-1
may be reduced by the Administrator though buffer averaging. With buffer averaging, the buffer width is reduced in one location and increased in another location to maintain the same overall buffer area. Proposals for wetland buffer averaging shall not require a shoreline variance or compensatory mitigation if the following conditions are met:

a. The minimum width of the buffer at any given point is at least fifty percent (50%) of the standard width per Table 4-1, or thirty five (35) feet, whichever is greater; and

b. The net buffer area (acreage) after averaging is the same as the standard buffer area without averaging; and

c. The area that is added to the buffer to offset the reduction is well-vegetated as defined in 4.3.5.2 above .

5.Buffer Reduction: On sites that lack well-vegetated buffers as defined in 4.3.5.2 above, the Administrator may approve a proposal for wetland buffer reduction. Proposals for wetland buffer reduction on such parcels shall not require a shoreline variance as long as the following conditions are met:

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a. The minimum width of the reduced buffer is at least seventy five percent (75%)
of the standard width per Table 4-1; and

b. The reduced portion of the buffer cannot exceed forty percent (40%) of the buffer length (in other words, in a one hundred [100]
foot long segment of buffer, the reduced buffer could up to forty [40] feet long); and

c. The reduced buffer area is planted and enhanced to meet the minimum vegetation density and/or cover targets in 4.3.5.2 above.

Plantings shall consist of species native to western Washington.

6.Mitigation for Buffer Averaging: Prior to approving a request for buffer averaging or reduction, the Administrator shall ensure the development is designed to separate and screen the wetland from impacts such as noise, glare, vegetation trampling, etc. The site design shall consider the varying degrees of impacts of different land uses. For example, parking lots, store entrances, and roads generally have higher noise and glare impacts than the rear of the store. Site screening should take advantage of natural topography or existing vegetation, wherever possible. Where natural screening is not available, berms, landscaping, and structural screens should be implemented (e.g., orient buildings to screen parking lots and store entrances from critical areas).

Landscaping shall be consistent with Chapter 33.53 Clallam County Code.

7.Increased Wetland Buffers: The Administrator may increase wetland buffer zone widths, not to exceed three hundred (300) feet, for a development project on a case-by-case basis when a larger buffer is necessary to protect wetland functions and values. Such determination shall be based on site-specific and project-related on conditions which include, but are not limited to:

a. Wetland sites with known locations of endangered or threatened species for which a habitat management plan indicates a larger buffer is necessary to protect habitat values for such species; or

b. The adjacent land is susceptible to severe erosion, and erosion control best management practices will not effectively prevent adverse wetland impacts.

8.Buffer for Wetland Mitigation Sites: Any wetland that is created, restored, or enhanced as compensation for an approved wetland alteration shall have the standard buffer required for the category of the created, restored, or enhanced wetland.

4.3.6 Regulations –Wetland Protection Standards
1.
New shoreline uses and developments shall be located, designed, constructed,
and maintained to avoid wetland areas. Impacts to wetlands shall be prohibited except when all of the following conditions are met:

a. The use or development is specifically allowed by this Program;
and

b. All reasonable measures have been taken to avoid adverse effects on wetland functions and values; and

c. Compensatory mitigation is provided, in accordance with section 4.4 of this Program,
for all adverse impacts that cannot be avoided; and

d. The amount and degree of alteration are limited to the minimum needed to accomplish the project purpose.

2.The Administrator may impose conditions on new shoreline use and developments as needed to preserve or, if feasible, increase the acreage, quality, function, and/or values of regulated wetlands within Clallam County. Specific conditions shall include, but not be limited to, reducing the number, size or scale of buildings, driveways and other features; altering the configuration or layout of the proposed development; using environmentally favorable construction materials; foregoing construction of accessory structures; directing lights away from the wetland; preserving native vegetation; and other reasonable measures needed to maintain the following wetland functions and values:

a. Drinking Water:
Ability of a wetland to recharge, maintain, and/or enhance surface or ground
water resources that yield potable water in sufficient quantities to be economically useful.

b. Floodflow Desynchronization:
Ability of a wetland to retain/detain floodwaters in the upper watershed, reducing the severity of flooding.

c. Groundwater Recharge:
This wetland function is significant but not in the context that wetlands act as the major locations of groundwater recharge to aquifers. Although some wetlands do provide

a significant amount of groundwater recharge, the large areas of river alluvium and unconsolidated glacial deposits and, in the Sequim-Dungeness Valley, the irrigation network are much more regionally significant. Rather, groundwater recharge is significant because wetlands in contact with the aquifer are most susceptible to carrying pollutants to the aquifer. Conversely, if managed properly, such wetlands could assist in the treatment of pollutants already carried in the drinking water aquifer.

d. Nutrient Removal/Transformation:
Ability of a wetland to retain or transform inorganic phosphorus and/or nitrogen into their organic forms, or transform nitrogen into its gaseous form, on either a net annual basis or during the growing season. This can reduce excess nutrients and algal blooms in downstream surface waters.

e. Sediment/Toxicant/Bacterial Retention:
Ability of a wetland to retain suspended solids and chemical contaminants such as pesticides, pathogens, and heavy metals absorbed to them, on a net annual basis.

f. Seawater Intrusion Prevention:
Wetlands can act as the boundary between the unconfined aquifer and the marine environment. Loss of water supply or drainage of wetlands will likely increase seawater intrusion to unconfined aquifers supplying drinking water to coastal inhabitants.

g .Streamflow/Channel Maintenance:
Wetlands that provide detention or groundwater discharge can supply a significant proportion of streamflow during summer and fall These areas regulate the amount and timing of stream energy and therefore are crucial to defining the shape of stream channels.

h. Temperature Maintenance:
Wetlands can provide thermal refuges during winter and summer months due to influence from springs or contact with the unconfined aquifer. During summer months, wetlands with this function are important as fish habitat for salmonids; during winter months, these wetlands provide waterfowl habitat by maintaining ice-free conditions.

i. Water/Food Availability:
The ability of a wetland to provide surface water and foraging resources for migratory and resident species.

j. Habitat:
The quality and availability of areas for breeding, nesting, feeding, and resting for wetland-dependent and wetland-associated species

This entry was posted in "Reasonable Man" understanding, Clallam County SMP, Economic Impact, Pacific Legal Foundation, Wetlands. Bookmark the permalink.Edit
SMP Identify Private Wetlands