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**Sent:** Monday, May 16, 2016 4:25 PM

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**Subject:** Shoreline property set-aside mandate

## **This is my public comment regarding the Clallam County SMP Update.**

Pearl Rains Hewett

Clallam County vested shoreline property owner

## **High Court is asked to review shoreline property set-aside mandate**

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Pacific Legal Foundation

7 days ago - Washington, D.C.; **May 10, 2016**: Pacific Legal Foundation attorneys are asking the U.S. *Supreme Court* to decide whether San Juan County, ...

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## **High Court is asked to review shoreline property set-aside mandate**

**Washington, D.C.; May 10, 2016:** Pacific Legal Foundation attorneys are asking the U.S. Supreme Court to decide whether San Juan County, Washington, can force shoreline property owners to set aside large sections of their land as buffers to filter out storm water pollution from other properties, without establishing a link between any specific development proposal and the mandatory buffer set-aside requirement.

Anthony Francois  
Senior Staff Attorney

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Donor-supported PLF is the leading national watchdog organization that litigates for limited government, property rights, and a balanced approach to environmental protection. In the petition for [certiorari](#) filed this week, PLF represents Common Sense Alliance, a grassroots alliance of property owners with members who would be harmed by the mandatory buffer policy.

Under the San Juan County ordinance at issue, any permit for development of shoreline property requires the owner to set aside a predetermined amount of land as a buffer with the aim of filtering pollution out of storm water crossing over the property.

Document1

The inflexible set-aside formula takes no account of the details of specific development proposals, and has the effect of requiring landowners to dedicate property to filter runoff from other owners' parcels. Moreover, the agency that heard and denied an initial appeal of the plan acknowledged that there was no certainty that the buffers would function as envisioned.

Nevertheless, the Washington state courts upheld the plan, even though U.S. Supreme Court precedent — as established initially by PLF's victory in *Nollan v. California Coastal Commission* — bars land use conditions not tailored to respond to harm from the proposed project.

"This case deals with a perennial problem that property owners face," said PLF Senior Staff Attorney Tony Francois. "Too often, jurisdictions use their permit authority as leverage to take property without compensation, and without any need created by the proposed project itself.

"We are asking the Supreme Court to review this case, in order to close some loopholes that regulators and lower courts have created in the rule against extortionate permit conditions," he continued. "Specifically, we're asking the justices to make it clear that the prohibition applies even to land use conditions that are imposed through a generally applicable ordinance, and even if the property that would be seized might be useful for some general government purposes."

The case is [Common Sense Alliance v. San Juan County](#). More information, including the petition for *certiorari* and an explanatory blog post, may be found at: [www.pacificlegal.org](http://www.pacificlegal.org).

#### **[About Pacific Legal Foundation](#)**

Donor-supported PLF is a watchdog organization that litigates nationwide for limited government, property rights, and balanced environmental regulations. PLF represents all clients without charge.