

## Merrill, Hannah

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**From:** pearl hewett [REDACTED]  
**Sent:** Friday, May 13, 2011 9:26 AM  
**To:** zSMP  
**Subject:** Fw: Consistency Review Fw: WA Supreme Court has granted SMP review

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Please add this as my #5 comments to the SMP update.

Pearl Rains Hewett

----- Original Message -----

**From:** [pearl hewett](#)  
**To:** [earnest spees](#) ; [Jo Anne Estes](#) ; [Kai Ahlburg](#)  
**Sent:** Thursday, May 12, 2011 9:27 PM  
**Subject:** WA The Supreme Court has granted SMP review

The Supreme Court will hear it.

**WA The Supreme Court has granted review in several additional cases this month.**

***Citizens for Rational Shoreline Planning, et al. v. Whatcom County, et al.***, No. 84675-8. Citizens for Rational Shoreline Planning, a citizens group, and the Building Industry Association of Washington brought action against Whatcom County to challenge newly-adopted shoreline master programs (SMP) developed pursuant to the Shoreline Management Act. The groups argued that SMPs are subject to RCW 82.02.020, which prohibits local governments from imposing direct or indirect taxes, fees, or charges on development. The superior court granted the county's motion to dismiss. The Court of Appeals affirmed, holding that SMPs were not subject to the statutory prohibition because of the pervasive and necessary involvement of the state Department of Ecology in the development of SMPs

PACIFIC LEGAL FOUNDATION

Featured Case

### **Local Governments in Washington Can't Impose Arbitrary Land Use Conditions**

#### **Citizens for Rational Shoreline Planning v. Whatcom County**

**Contact:** [Brian T. Hodges](#)

**Status:** Oral argument on the merits is set for May 26, 2011, before the Washington Supreme Court.

#### **Summary:**

In 2008, Whatcom County, Washington, adopted an **updated shoreline master program** that requires **all shoreline property owners** to set aside large portions of their land as **natural vegetation areas**. This requirement is imposed as a uniform and preset condition on any application to use

**or develop shoreline property.** A group of concerned property owners filed a lawsuit contending that the setback violates a state law that prohibits local governments from imposing arbitrary land use conditions for which there is no connection to an impact created by a proposed use of land. The county responded by arguing that shoreline regulations are immune from this law. The trial court agreed and dismissed the complaint. Supporting the landowners on appeal, PLF is arguing that all local land use decisions, including those pertaining to the shorelines, are subject to the restrictions against arbitrary land use conditions.

On May 10, 2010, the Washington Court of Appeals issued an adverse decision. The Court of Appeals held that *Orion* remains authoritative and RCW 82.02 does not apply to any **regulation of shoreline property** in this case. The Court relied heavily on case law *Orion Corporation v. State*. PLF will directly represent the Building Industry Association of Whatcom County before the Washington Supreme Court.