

Rebecca Messinger

From: Kathleen Otto
Sent: Monday, October 23, 2023 9:19 AM
To: Rebecca Messinger; Kristin Phillips
Subject: FW: WOTUS and Private Property



Kathleen Otto
County Manager

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From: Clark County Citizens United, Inc. <cccuinc@yahoo.com>

Sent: Sunday, October 22, 2023 10:10 PM

To: Karen Bowerman <Karen.Bowerman@clark.wa.gov>; Gary Medvigy <Gary.Medvigy@clark.wa.gov>; Michelle Belkot <Michelle.Belkot@clark.wa.gov>; Glen Yung <Glen.Yung@clark.wa.gov>; Sue Marshall <Sue.Marshall@clark.wa.gov>; Kathleen Otto <Kathleen.Otto@clark.wa.gov>; Oliver Orjiako <Oliver.Orjiako@clark.wa.gov>; Jose Alvarez <Jose.Alvarez@clark.wa.gov>

Subject: Fw: WOTUS and Private Property

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Clark County Council
P.O. Box 5000
Vancouver, Washington 98666

October 22, 2023

FOR THE PUBLIC RECORD AND THE COMPREHENSIVE PLAN UPDATE

Re: WOTUS, Private Property Rights and the Clark County Wetland and Habitat Ordinance

Dear Councilors,

Clark County Citizens United, Inc. has reviewed the court action of May 25, 2023, when the U. S. Supreme Court ruled and changed how, "*Waters of the United States*," (WOTUS) is defined and applied. This ruling now omits wetlands that fail to directly flow into, "*rivers, lakes, and other bodies of water that flow across or for a part of State boundaries.*" This recent ruling excludes certain water categories. Clark County is not immune to this Supreme Court ruling, as it applies to private property throughout the United States.

The Court's determination centered on the Sackett family and their 15 year struggle to build a home near Priest Lake, Idaho. The family was threatened with punitive fines and forced to stop backfilling a "wetland" on their property. The EPA demanded much mitigation from the effects of the site preparation.

Justice Alito's comments are relevant in Clark County. He states how local jurisdictions had developed a history; *"What emerged was a system of "vague" rules that depended on "locally developed practices." . . . "Within a few years, the agencies had interpreted their jurisdiction over "the Waters of the United States" to cover 270-300 million acres" of wetlands and "virtually any parcel of land containing a channel or conduit. . . through which rainwater or drainage may occasionally or intermittently flow."*

Justice Alito elaborated; *"Most laws do not require the hiring of expert consultants to determine if they even apply to you or your property," and, "because the Clean Water Act can. . . criminalize mundane activities like moving dirt, this unchecked definition of "Waters of the United States," means that a staggering array of landowners are at risk of criminal prosecution or onerous civil penalties."*

CCCU's membership has witnessed, time and again, county staff interpreting WOTUS, with streams and wetlands, using an inappropriate broad scope. This approach has resulted in faulty and flawed characterizations that result in expensive reports, increased permitting time, additional fees, more reports, extraneous buffers and smaller building envelopes. All contribute to the costs of local housing, lost property uses and lost property rights. Recently, CCCU has seen road drainage ditches, stock watering ponds, stormwater runoff, land depressions that may or may not hold water, and old railroad borrow pits, misidentified by staff because they took a flawed broad brush approach. Such determinations should never be arbitrary.

Assuming a narrowed scope, with the new court ruling, means better clarification and certainty for all concerned. If wetlands and streams are properly identified and empty directly into an existing body of water per new definitions, WOTUS likely applies. If they don't, they should be excluded and are beyond WOTUS considerations. There are many changes that Clark County must do to the Wetland and Habitat Ordinance to be compliant to the United States Supreme Court and the law, under WOTUS.

Sincerely,

Susan Rasmussen, President

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