

From: [Rebecca Messinger](#)
To: [Oliver Orjiako](#); [Sonja Wiser](#)
Subject: FW: Covenants must be removed from code and Environmental Services must change their ways
Date: Monday, February 5, 2024 8:48:55 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

Good morning,

Please see the below public comments from CCCU. Thanks!



Rebecca Messinger
Clerk to the Council
COUNTY MANAGER'S OFFICE

564-397-4305



From: Kathleen Otto <Kathleen.Otto@clark.wa.gov>
Sent: Friday, February 2, 2024 2:17 PM
To: Rebecca Messinger <Rebecca.Messinger@clark.wa.gov>; Kristin Phillips <Kristin.Phillips@clark.wa.gov>
Subject: FW: Covenants must be removed from code and Environmental Services must change their ways



Kathleen Otto
County Manager

564.397.2458



From: Clark County Citizens United, Inc. <ccuinc@yahoo.com>
Sent: Friday, February 2, 2024 2:05 PM

To: Gary Medvigy <Gary.Medvigy@clark.wa.gov>; Karen Bowerman <Karen.Bowerman@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>

Subject: Covenants must be removed from code and Environmental Services must change their ways

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Clark County Council
2, 2024
P.O. Box 5000
Vancouver, Washington 98666

February

FOR THE PUBLIC RECORD

Re: Covenants must be removed from code and Environmental staff must change their ways

Dear Councilors,

Clark County Citizens United, Inc. has been getting many calls over clearly erroneous and egregious requirements, when wetland and critical land has been forced upon landowners, as a condition of a building permit or permanent occupancy. To date, CCCU has worked with approximately ten such cases, which county staff will not correct. There appears to be a clear and distinctive pattern of abuse, as staff makes "law" as they go along. Yesterday, CCCU received yet another case. As time goes on, these cases become more and more destructive.

CCCU is waiting for this landowner to forward all of the county information, and then research will begin over what the county staff has done. But simply listening to the landowner, over the phone, tells CCCU that something is very wrong. She complained that after buying the five acres, just outside Battle Ground, they began their building process. It's zoned five acre rural and is a flat hayfield, which continues to harvest hay. Historically, it was part of a large dairy farm, that shut down, decades ago.

She told CCCU that they have thousands of dollars invested in the simple permitting process to allow for a new home. They bought the field, because they wanted a field. CCCU sees that portions of the hay field have hydric soil, but there are no wetland plants nor inundated areas on the parcel. She reported that no where on the land is the ground soggy when she walks through it. When asked if there were any wet areas on the land, she said only a small area of water pools in the Southwest corner when it rains, and dries up when it stops raining. That is where the county

required them to build their driveway.

They have been forced to change and move around all of the development proposals, at great engineering cost to them. Ariel Whitaker has determined they have a wetland, and when all of the delineations are drawn, it consumes the five acres. They were forced to move their homesite in an undesirable location and were told they could not use a county road for access, even though it met the road standards requirements. They were forced to access the homesite from a different road, which made them have to construct an approximately 600 foot driveway, through the length of the five acres, instead of a much shorter driveway from the other county road.

Before they bought the land, they went to the county and asked if there were any wetland, or any land issues they needed to be aware of. They were told by the county staff in the Community Development Department, that there were no wetlands and no concerns. After they bought the land and began the development process, wetland staff told them they were talking to the wrong person.

But even more egregious is the mitigation requirements that Ariel placed on the building permit. They are to plant approximately 900 trees and plants, most of them being trees. The landowner complained they wanted a field to live in, and now they will be forced to live in a jungle. The plantings are required to be planted right up to the buildings, which goes against all fire prevention recommendations. State law says all that's required is "no net loss" when mitigation is being used. In the case of a farm hay field, there would be no such tree mitigation. The landowner read off the types of plants being required, and the cost to purchase all of those trees and plants would be in the thousands of dollars. Unfortunately, CCCU did not get the case until after they began the building process. In addition, they are being required to sign a permanent covenant on the land and they do not want to do that. They believe what they are being put through has got to be illegal.

CCCU is seeing these cases over and over again, and sees a pattern of abuse by county staff. We are seeing Ariel Whitaker and a consulting firm, Ash Eco working in tandem on many of these cases. The Department of Ecology has very specific requirements to determine a wetland, and the Department of Natural Resources have very particular requirement to call water, a stream. But that scientific data collection, has not been happening. The GMA requires that best available science must be used, but CCCU is seeing none of that.

What is happening, after staff determinations are made, environmental covenants are being used for illegitimate reasons. The county is "taking" the land from the landowner and controlling it forever. They would not be able to do that, if they had not determined some type of environmental protection must be made. This flies in the face of both state and federal property rights law. The courts have clearly said, if the county wants the land, they must buy it. What is happening here, is that false claims of a need for environmental protection is allowing staff to use the covenants, illegally. Often times staff "walkthroughs" are done via trespass, which negates any proposed regulations, according to state and federal law. This kind of staff activity has got to stop. All environmental covenants must be rescinded and the language that

gives staff the ability to use covenants must be removed from the Wetland and Critical Land Ordinance. The county must get such arbitrary and capricious activity under control.

Sincerely,

Carol Levanen, Exec. Secretary

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