From: Kathleen Otto
To: Rebecca Messinger
Subject: FW: April 12, 2024 supreme court ruling upholding takings clause
Date: Wednesday, April 17, 2024 9:12:02 AM
Attachments: image001.png
image002.png
image003.png
image004.png

Kathleen Otto
County Manager

564.397.2458

From: Clark County Citizens United, Inc. <cccuinc@yahoo.com>
Sent: Tuesday, April 16, 2024 11:57 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: Fw: April 12, 2024 supreme court ruling upholding takings clause

Clark County Council April 16, 2024
P.O. Box 5000
Vancouver, Washington 98666
FOR THE PUBLIC RECORD AND THE COMPREHENSIVE PLAN
Re: April 12, 2024 United States Supreme Court ruling upholding takings clause
Dear Councilors,
Clark County Citizens United, Inc. is forwarding you excerpts from a recent US Supreme Court decision that add clarification to the Takings Clause in the United State Constitution. You have likely seen this decision, but do you realize it is talking about you, and Clark County.
The mandatory covenants that have been forced on hundreds of landowners is illegal under the law. The code language that allows that to happen must be removed from the code. In addition, all those covenants that have been filed on lands, since the ordinance incorporated that wording, need to be rescinded or the landowner needs to be compensated for the county takings.
There is another lawsuit pending in the same court over the WOTUS rule of 2023. CCCU expects Pacific Legal Foundation to prevail in that court action, also. It would be wise if the county would also comply with that court order, and remove all artificial wetlands and buffers from the books. The county will also have to compensate for the

property losses.
Clark County is not above the law. It is time that the county complies with it.
Sincerely,
Carol Levanen, Exec. Secretary
Clark County Citizens United, Inc.
P.O. Box 2188
Battle Ground, Washington 98604

SUPREME COURT OF THE UNITED STATES No. 22–1074
GEORGE SHEETZ, PETITIONER v. COUNTY OF EL DORADO, CALIFORNIA ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT [April 12, 2024]
JUSTICE BARRETT delivered the opinion of the Court.
https://www.supremecourt.gov/opinions/23pdf/22-1074_bqmd.pdf

While States have substantial authority to regulate land use, see Village of Euclid v. Amber Realty Co., 272 U. S. 365 (1926), the right to compensation is triggered if they "physically appropriat[e]" property or otherwise interfere with the owner's right to exclude others from it, Cedar Point Nursery v. Hassid, 594 U. S. 139, 149–152 (2021). That sort of intrusion on property rights is a per se taking

Our decisions in Nollan and Dolan address this potential abuse of the permitting process. There, we set out a twopart test modeled on the unconstitutional conditions doctrine. See Perry v. Sindermann, 408 U. S. 593, 597 (1972) (government "may not deny a benefit to a person on a basis that infringes his constitutionally protected interests"). First, permit conditions must have an "essential nexus" to the government's land-use interest. Nollan, 483 U. S., at 837. The nexus requirement ensures that the government is acting to further its stated purpose, not leveraging its permitting monopoly to exact private property without paying for it. See id., at 841. Second, permit conditions must have "'rough proportionality'" to the development's impact on the land-use interest. Dolan, 512 U. S., at 391. A permit condition that requires a landowner to give up more than is necessary to mitigate harms resulting from new development has the same potential for abuse as a condition that is unrelated to that purpose. See id., at 393. This test applies regardless of whether the condition requires the landowner to relinquish property or requires her to pay a "monetary exactio[n]" instead of relinquishing the property. Koontz, 570 U. S., at 612–615.

So far as the Constitution's text is concerned, permit conditions imposed by the legislature and other branches stand on equal footing.

"The essential question is not . . . whether the government action at issue comes garbed as a regulation (or statute, or ordinance, or miscellaneous decree). It is whether the government has physically taken property for itself or someone else." Cedar Point, 594 U. S., at 149.

This principle is evident in our regulatory takings cases too.

Gorsuch

However the government chooses to act, whether by way of regulation "'or statute, or ordinance, or miscellaneous decree,'" it must follow the same constitutional rules.

In Nollan, the California Coastal Commission told the plaintiffs that they could build a home on their land only if they accepted an easement allowing public access across their property along the beach. The plaintiffs argued that the commission's demand amounted to a taking without just compensation, and the Court agreed.

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