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To: [Jeffrey Delapena](#)
Cc: [April Furth](#); [Christine Cook](#)
Subject: FW: It appears wetland and habitat agencies are claiming unjustified covenants on private property
Date: Monday, July 1, 2024 8:24:02 AM

Hello Jeffrey:

For the record. Thanks.

From: Clark County Citizens United, Inc. <cccuinc@yahoo.com>
Sent: Saturday, June 29, 2024 10:08 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>; Oliver Orjiako <Oliver.Orjiako@clark.wa.gov>
Subject: Fw: It appears wetland and habitat agencies are claiming unjustified covenants on private property

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Clark County Council
June 29, 2024
P.O. Box 5000
Battle Ground, Washington 98666

FOR THE PUBLIC RECORD AND THE COMPREHENSIVE PLAN

Re: It appears wetland and habitat agencies are claiming unjustified covenants on private property

Dear Councilors,

Clark County Citizens United, Inc. has been watching closely what county wetland and habitat staff are doing. It appears these county agencies are routinely claiming unjustified covenants on private properties, further preventing property owners from pursuing land uses stated in the adopted land use zoning of the property. This appears to be widespread throughout the rural areas. The land owner permittees are mostly blind to staff's administration of their permits. Staff is taking advantage of their professional positions and the landowner's lack of education regarding the business of county permitting standards.

All of the inefficiencies could be averted if county staff would not pursue flawed and unwarranted mitigations with permanent recorded covenants. Agency staff, in their professional capacity as public servants, should never intentionally devise critical designations without using scientific, reproducible, peer reviewed, reasonable, lawful standards. Their actions are driving flawed mitigating and unnecessary covenants. which inflict punitive damage against landowners and withhold permanent occupancy

permits. There are rules of professional conduct and a public servant should never go outside those parameters. The permittees are being misled and this is causing distrust, financial hardships and inefficiencies in the permitting process.

Has the Clark County Councilors authorized this unprofessional behavior using critical tax dollars?

1. COMMUNICATION. Communication is essential between staff and landowner permittees, but staff refuses to communicate. It appears to be intentionally used as a tool to force the permittee to exceed their appeal date. CCCU sees this happen over and over again, and it is the belief the permittee should not be required to spend more money on the hearings examiner, to appeal. The wetland and critical land process should be contained within the particular agencies.

2. ILLEGAL. Portions of the ordinance, particularly the use of trespass, fabrication of streams, wetlands and buffers and the unwarranted covenant, is likely illegal.

3. REGULATORY ACTIONS may not be congruent to the ordinance. There appears to be a disconnection between the ordinance and the regulations that cover the ordinance?

4. STAFF ACTIONS. There appears to be a disconnection between staff's actions when *administering the ordinance*. with staff overreaching and creating policy and legislation. They are creating regulations and imposing mitigation, that is not subject to the ordinance as written.

5. BEST AVAILABLE SCIENCE. Staff is failing to apply industry standards *best available science* when making designations for critical lands, wetlands and habitat. Many times staff uses their own interpretation of the law as "best available science" without the benefit of industry standards investigations.

6. ENHANCEMENTS The county must remove any mandatory "*enhancement*" language from the ordinance. All state and federal regulations say that "*no net loss of functions and values is the standard*", with enhancements being optional. The formulas being used came from the original 1992 Wetland Ordinance that was written by attorney, John Karpinski, according to CCCU's records.

7. COVENANTS . CCCU believes any language in the ordinance that requires or references recording a permanent covenant on the deed of the entire property must be removed. That language originally came from a 1992 Karpinski document, according to CCCU research, but was removed as the ordinances progressed through the years. Research documents show that past covenants that were required, were part of a CC&R process, and only applied to the mitigation area. When "mandatory" was applied to the entire parcel and put back in the ordinance, no one knows. That language needs to be removed.

8. ROUGH PROPORTIONALITY When mitigation is necessary, it needs to be *reasonable and roughly proportional* to the impact. There needs to be a nexus. But first, the determinations and mitigation must be legitimate and according to best available science and industry standards.

9. MORTGAGE HOLDERS The lender who holds the property mortgage owns the property until the financial obligation of the buyer is satisfied. To require only the borrower to sign a permanent covenant, leaves out the holder of the deed and property. Mortgage holders should be in agreement, if a covenant is recorded on the mortgaged property

10 PROTECTIONS OF PRIVATE PROPERTY RIGHTS Staff never performs an analysis to ensure a potential takings will not occur. This step must be done. All county agencies must use the Washington Attorney General Guidelines for protections of private property rights.

11. MANDATORY FIRE SAFE ZONES Ensure that mitigation meets the standards for setbacks applied to fire protection areas around buildings, as required under state law. These fire safe zone areas range

from 30 feet to 200 feet.

12. PERMIT EFFICIENCY. Ensure economical and timely efficiencies for permittees, by following state law requirements and recommendations for permits. Staff must be readily available for any questions or concerns a landowner may have, as they go through the permit process.

13. PROFESSIONAL STANDARDS County staff needs to be respectful of the permittees and the process. They should refrain from threatening actions, that would appear to align with the definitions of blackmail or extortion. Staff must refrain from exploiting their positions of power.

14. GIS ACCURACY GIS mapping layers should make every attempt to ensure the recorded information is correct and accurate. Staff cannot be the ones that define what is included in the GIS maps, by submitting flawed data. One needs only to look at what happened when a massive downzoning of rural land occurred in 1994 by using only aerial photography, tax status and staff interpretation. CCCU has found even more evidence to confirm the 1993 GIS Metadata information, submitted into the public record for the 2016 and 2025 Comprehensive Plan updates that confirmed that. Additional data states that staff used the 1990 GIS aerial photos as a basis for that information.

There is much that must change within Clark County government, but most important is the display of integrity and truth. There must be viable outside professional and statistical confirmation, for any actions performed by any county staff member. Citizens should not be satisfied with the county just saying, *Do what I tell you to do*. There has to be a legal and reasonable reason for doing so.

Sincerely,

Susan Rasmussen, President

Clark County Citizens United, Inc.
P.O.Box 2188
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