

**From:** [Jeffrey Delapena](#)  
**To:** [Oliver Orjiako](#)  
**Subject:** RE: Changes need to be made to the flawed Clark County Wetland and Habitat Ordinance 2023-03-01  
**Date:** Monday, July 15, 2024 11:14:00 AM

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Hello Oliver,

I did not receive this one, I will get this added to the Comp Plan Index right away.

Regards,  
Jeff

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**From:** Oliver Orjiako <[Oliver.Orjiako@clark.wa.gov](mailto:Oliver.Orjiako@clark.wa.gov)>  
**Sent:** Monday, July 15, 2024 10:46 AM  
**To:** Jeffrey Delapena <[Jeffrey.Delapena@clark.wa.gov](mailto:Jeffrey.Delapena@clark.wa.gov)>  
**Subject:** FW: Changes need to be made to the flawed Clark County Wetland and Habitat Ordinance 2023-03-01

Hi Jeff:

Did you receive this? Thanks.

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**From:** Clark County Citizens United, Inc. <[cccuinc@yahoo.com](mailto:cccuinc@yahoo.com)>  
**Sent:** Thursday, July 11, 2024 5:35 PM  
**To:** Gary Medvigy <[Gary.Medvigy@clark.wa.gov](mailto:Gary.Medvigy@clark.wa.gov)>; Carol Levanen <[cccuinc@yahoo.com](mailto:cccuinc@yahoo.com)>; Karen Bowerman <[Karen.Bowerman@clark.wa.gov](mailto:Karen.Bowerman@clark.wa.gov)>; Michelle Belkot <[Michelle.Belkot@clark.wa.gov](mailto:Michelle.Belkot@clark.wa.gov)>; Glen Yung <[Glen.Yung@clark.wa.gov](mailto:Glen.Yung@clark.wa.gov)>; Sue Marshall <[Sue.Marshall@clark.wa.gov](mailto:Sue.Marshall@clark.wa.gov)>; Kathleen Otto <[Kathleen.Otto@clark.wa.gov](mailto:Kathleen.Otto@clark.wa.gov)>; Oliver Orjiako <[Oliver.Orjiako@clark.wa.gov](mailto:Oliver.Orjiako@clark.wa.gov)>; Jose Alvarez <[Jose.Alvarez@clark.wa.gov](mailto:Jose.Alvarez@clark.wa.gov)>; Brent Davis <[Brent.Davis@clark.wa.gov](mailto:Brent.Davis@clark.wa.gov)>  
**Subject:** Changes need to be made to the flawed Clark County Wetland and Habitat Ordinance 2023-03-01

**EXTERNAL:** This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Clark County Council  
11, 2024  
P.O. Box 5000  
Vancouver, Washington 98666

July

FOR THE PUBLIC RECORD AND THE COMPREHENSIVE PLAN

**Re: Changes must be made to the flawed Clark County Wetland and Habitat Ordinance  
2023-03-01**

Dear Councilors,

Clark County Citizens United, Inc. has a whole library of county land use documents, from 1990 to today. CCCU went back into the wetland and habitat binders to get a history of these documents, up until the current one. In addition, the Tuesday, March 7, 2023 Clark County Council hearing was reviewed. The Council voted to approve combining the wetland and habitat ordinances into one document, and to approve its text. But did the Councilor really know what they were voting for?

I will be compiling important aspects of those other documents, from the time John Karpinski wrote the 1992 Wetland Ordinance, and will send my rough draft to Susan Rasmussen, for final approval and then to you, if you want to see it. These ordinances have been manipulated, over and over again, and I have many binders telling the story. What CCCU sees is clear deception as it regards a covenant and believe the councilors do not fully understand what staff is doing,... or do they? None of the definitions in the various reviews, give the real story of what the actual impact will be. The first mention of a covenant over the land was in the **John Karpinski 1992 Wetland Ordinance** rendition.

The original **6-15-1995 Critical Habitat Ordinance** (Vegetation Clearing Management Ordinance) states in:  
**Definitions (5)**, (Staff claims 1997)

*"**Conservation covenant**" means a signed agreement between a property owner and Clark County, running with the land and stipulating that **certain areas** of the property be maintained in a natural state without disturbance to vegetation or other features unless otherwise approved by the County."*

**CCCU NOTES:** This passage leads one to believe that those certain areas would be confined to the mitigation areas, but that is not what is happening.

**The March 3, 2005 Wetland Ordinance** states:

*"A conservation covenant shall be recorded **in a form approved by the Prosecuting Attorney** as adequate to incorporate the other restrictions of this section and to give notice of the requirement to obtain a wetland permit prior to engaging in regulated activities within a wetland or its buffer."*

**CCCU NOTES:** This is where the fault lies and how the ordinance is manipulated. It is the Prosecuting Attorney document that is flawed.

All of the covenant definitions, throughout all of the county reviews of these ordinances, are deceptive and lead the reader to believe it only applies to the mitigation area, and that is not true.

At the 3-7-23 hearing, Susan Rasmussen gave testimony against the covenant and

Councilor Marshall asked staff to explain. Brent Davis referenced the "reasonable use" clause of the ordinance, and no more was said about the topic. A council member asked if it was possible to change portions of the ordinance, after it was adopted. Staff said it had to go through a full public review and the county manager, Kathleen Otto said, because it was in Title 40, that was true. But in CCCU's research, the commissioners/councilors changed portions of the ordinance with only one noticed public meeting.

Staff told the councilors the GMA requires them to update the ordinances, and that had not been done since 2006. But CCCU's research shows the GMA says to **review** and update, if necessary. The ordinances were worked on in 2009. Brent Davis said they started to apply the covenant to all rural and resource developments in 2009. He claimed they found the success rate of the mitigation to be better, with a covenant. What he didn't say is that the covenant didn't only apply to the mitigation area, but rather it applied to the whole parcel.

CCCU has attached the "**standard covenant form**" from **the Prosecuting Attorney**, that was sent to the **Jason and Leah Higgins** family, which easily shows the flawed process that is being used. The document reads:

*"A COVENANT **to Clark County, State of Washington**, hereinafter "County" entered into pursuant to the Clark County Habitat Conservation Ordinance, title 40.440 and Wetlands Protection Ordinance, Title 40.450, by the owners \_\_\_\_\_ of **certain real property described in Exhibit "A"**, on behalf of themselves and all their heirs, assigns and successors in interest into whose ownership said property may pass, agrees that **this covenant shall run with the land.**"*

**Exhibit "A" is the entire deed to the property.** It goes on to say that it is for the benefit of the mitigation area noted in Exhibit "B", which is the actual location of the mitigation. But, in the case of the Higgins, that mitigation area is a very small portion of the over all parcel, yet the **covenant applies to the entire five acre parcel** and not just to the mitigation area. Extrapolated out, that means someone with a 20, 40 or 80 acre parcel, would be subject to this covenant language, if they submit any application for **any development permit in Clark County.**

In all the previous examples that CCCU has sent the councilors, regarding flawed wetland and habitat designations, those designations can be BAS proven to be wrong, as it regards wetlands and critical lands. CCCU believes staff creates these fake designations in order to apply the covenant over the whole parcel, thereby giving the county power over the entire private property.

When CCCU has submitted testimony for various landowners, that proves the incorrect designations, staff "disappears". The landowner cannot access them, and the parcel goes into limbo, with no communication from the county for many months, until they get a threatening code enforcement letter that says they will not get their permanent occupancy permit, until they sign the covenant. This pattern of abuse is the same for all of the cases.

This Clark County Council has a jurisdictional duty to assure that no ordinance is deceptive or flawed. None of the many updated wetland and habitat ordinances tell the permittee that all of their land will be given to the county and tied up with a covenant. They are not told this until they read the covenant language and just before the permit is issued. In the case of a building permit, the covenant has to be signed and filed with the Auditor, before they will receive an occupancy permit.

CCCU asks the Councilors to conduct an emergency public hearing to remove the Prosecuting Attorney Covenant document and replace it with a clear and concise definition of any proposed covenant that describes only the actual mitigation area, and a warranted reasonable time frame, as to when the covenant will be removed. The many renditions of the ordinance state three to eight years. In the case of all of those landowners who have been burdened with this flawed covenant, new language in the Wetland and Habitat Ordinance regarding a covenant, should be retroactive, back to 2009.

I have attached the actual Higgins covenant documents, for your review.

Thanks for you time and attention. We will wait for your response.

For and in behalf of the Clark County Citizens United, Inc. membership

Carol Levanen, Exec. Secretary

Clark County Citizens United, Inc.  
P.O. Box 2188  
Battle Ground, Washington 98604

<https://clark.wa.gov/sites/default/files/media/document/2023-03/ORDINANCE%20CPZ2022-00010%20Critical%20Areas%20Ordinance%20Update%202-20.pdf>

RETURN ADDRESS

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## CONSERVATION COVENANT RUNNING WITH THE LAND

<b>Grantor (owner):</b>	Jason & Leah Higgins
<b>Grantee:</b>	Clark County
<b>Legal Description:</b>	#99 SEC 7 T4N R3EWM 5.03A
<b>Assessor's Property Tax Parcel/Account Number(s):</b>	230790000
<b>Project Case No.:</b>	WHR-2023-00271

A COVENANT to Clark County, State of Washington, hereinafter "County," entered into pursuant to the Clark County Habitat Conservation Ordinance, Title 40.440 and Wetlands Protection Ordinance, Title 40.450, by the owner(s), \_\_\_\_\_

\_\_\_\_\_, of certain real property described in Exhibit "A", on behalf of themselves and all their heirs, assigns and successors in interest into whose ownership said property may pass, agrees that this covenant shall run with the land. It is the purpose of this covenant that certain habitats and/or wetlands and their associated buffer areas as shown in Exhibit "B" will be maintained in a protected state as follows:

1. A physical demarcation along the upland boundary of the wetland buffer and/or habitat area, whichever is greater, shall be installed and thereafter maintained. Such demarcation may consist of logs, a tree or hedge row, fencing or other prominent physical marking approved by the Responsible Official for the County. Any change to the type of demarcation shall similarly be approved by the Responsible Official for the County.

2. Consistent with the purpose of this covenant, habitats and/or wetlands and their buffers shall be maintained in a natural state. Unless otherwise authorized by the Responsible Official in accordance with Titles 40.440 and 40.450, the following activities shall not occur: the construction of any structure; the removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material; the draining, flooding, or disturbing of the water level or water table, or the destruction or alteration of vegetation through clearing, harvesting, mowing, intentional burning, or grazing; provided, however, that the foregoing shall not be construed to prohibit the pruning or removal of dead, dying or diseased trees and shrubs posing a safety hazard, the harvesting of wild crops in a manner that is not injurious to natural production of such crops, the removal of non-native nuisance vegetation consistent with Title 40.450 and Title 40.440, or the planting of native vegetation which is indigenous to the area.
3. Additionally, habitats can be managed, maintained, and enhanced in accordance with the Stewardship Plan provisions of the Clark County Habitat Conservation Ordinance, Title 40.440.020(D). Such plan may be modified or rescinded in accordance with the Habitat Conservation Ordinance, Title 40.440.
4. Monitoring and Maintenance of Mitigation. Habitat, Wetland and wetland buffer mitigation sites subject to this covenant are required to be monitored and maintained in accordance with the mitigation plan or conditions of approval of the associated Clark County Habitat or Wetland Permits.
5. Nothing in this covenant shall be construed to provide for public use of, or entry into, said habitats and/or wetlands and their buffers as shown in Exhibit "B". However, representatives and agents of Clark County are hereby authorized to make reasonable entry upon such land for purposes related to administering this covenant: provided that
  - a. Owners or their heirs, successors or assigns are given at least 24 hours advance notice of any such entry.
  - b. Access granted to representatives and agents of Clark County under this provision shall expire upon completion of required monitoring and final acceptance of the mitigation by the Responsible Official.
6. The provisions of this covenant are enforceable in law or equity by Clark County and its successors.
7. In the event of inconsistencies or conflicts between the aforementioned ordinances, the applicable regulation that affords the highest level of ecological protection shall prevail.

8. This covenant and all of its provisions, and each of them, shall be binding upon the owners and any and all of their heirs, assigns and successors in interest into whose ownership the above-described real property may pass, and any obligations made herein by owners, shall be enforceable against all their heirs, assigns and successors in interest into whose ownership the above-described real property may pass.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed the day and year indicated below.

Dated: \_\_\_\_\_  
*month day, year*

By: \_\_\_\_\_  
Owner

By: \_\_\_\_\_  
Owner

STATE OF WASHINGTON     )  
  ) SS.  
COUNTY OF CLARK        )

I hereby certify that I know or have satisfactory evidence that

\_\_\_\_\_  
signed this instrument and acknowledged it to be a free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_

County Approvals:

APPROVED AS TO FORM ONLY:

CLARK COUNTY, WASHINGTON

ANTHONY F. GOLIK  
Prosecuting Attorney

By: \_\_\_\_\_  
Stephen Archer  
Civil Deputy Prosecuting Attorney

By: \_\_\_\_\_  
Brent Davis  
Wetland and Habitat Review Manager

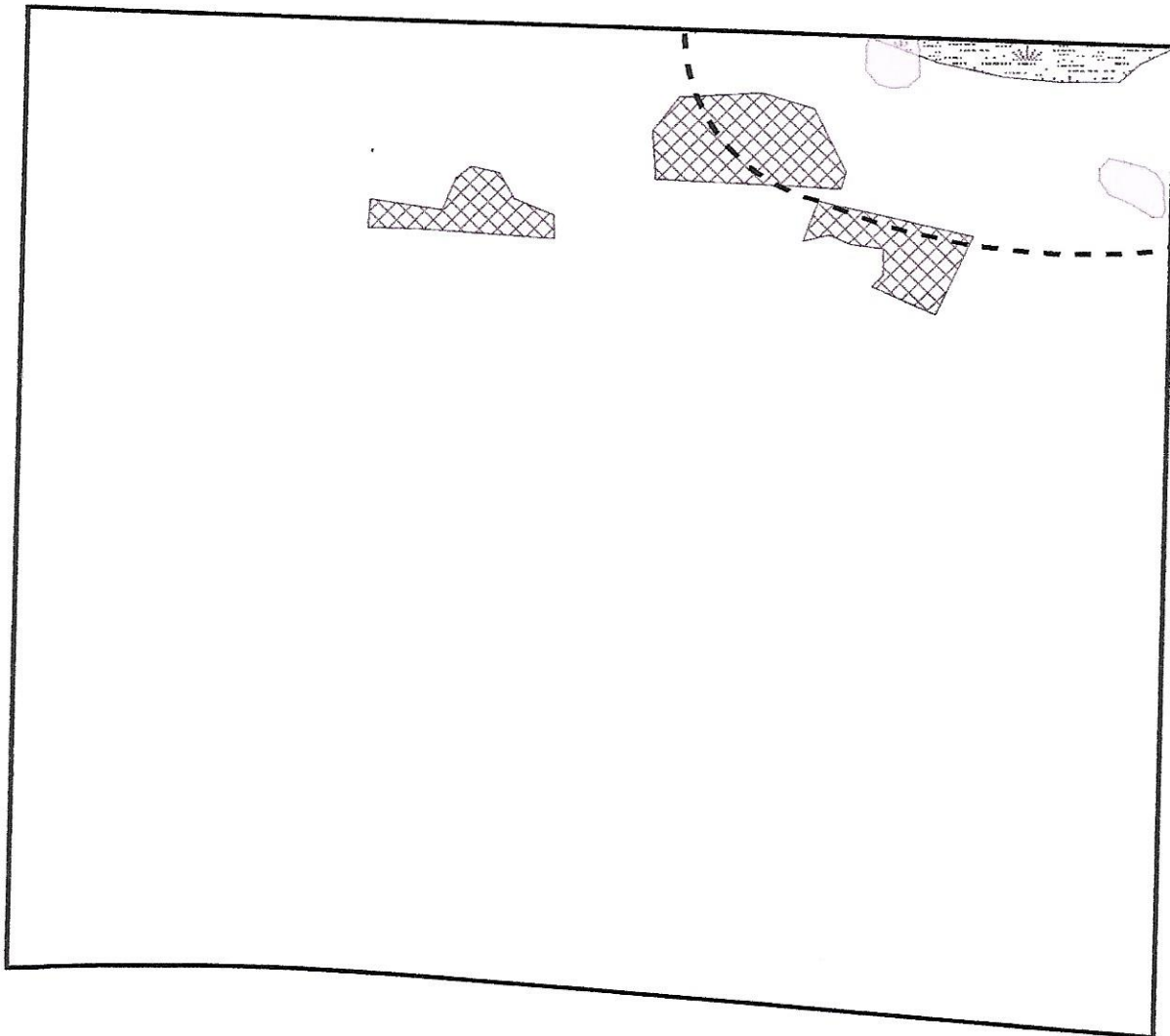


**Key**

-  Parcel
-  Oregon White Oak Woodlands
-  Category III Wetland
-  Low Intensity Buffer
-  Mitigation Areas

**Exhibit B**

# 230790000



**Limitations**

This exhibit is intended to illustrate the approximate location of areas that are likely to contain wetlands or habitat conservation areas or have been designated for mitigation. It does not represent a survey of the property illustrated. There may be Critical Areas outside the areas identified on this exhibit that may be subject to regulation by Clark County or State and Federal Agencies.



**CLARK COUNTY WASHINGTON**  
**COMMUNITY DEVELOPMENT**  
*Working together. Securing your safety. Protecting your investment.*

