

From: [Oliver Orjiako](#)
To: [Jeffrey Delapena](#)
Subject: FW: CCCU tour Report for Type I Staff Report and Decision – Halberg Residence – HAB2017-00122
Date: Thursday, September 12, 2024 1:23:47 PM

Hello Jeff:

This says for the comp plan record. Thanks.

From: Clark County Citizens United, Inc. <cccuinc@yahoo.com>
Sent: Thursday, September 12, 2024 12:45 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>; Jose Alvarez <Jose.Alvarez@clark.wa.gov>; Brent Davis <Brent.Davis@clark.wa.gov>; CommDev OA Land Use <CommDevOALandUse@clark.wa.gov>; Norb Halberg <norbhalberg@gmail.com>
Subject: CCCU tour Report for Type I Staff Report and Decision – Halberg Residence – HAB2017-00122

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

September 12,

FOR THE PUBLIC RECORD AND THE COMPREHENSIVE PLAN

Re: **HAB 2017-00122 – Norbert Halberg – 26311 N.E. 207th Street, Battle Ground, Wash. 98604**

Dear Councilors,

On Friday, August 30, 2024, Clark County Citizens United, Inc. Board Members conducted a tour of the Norbert Halberg property, located at **26311 NE 207th Street, Battle Ground, Washington 98604**. The purpose of the visit was to determine whether the Wetland and Habitat determination by county Staff was accurate. It was not.

Mr. Halberg took us on a tour of the property via an ATV quad. He drove all around the property. In the location of what the staff called a “stream” is simply a quad trail. We could not find any North-South stream, which the staff determined

needed a 75 foot buffer, mitigation requirements and a lifetime covenant. There is evidence of a stream running East – West on the South end of his land, as we saw water in that area, but certainly not a fish bearing stream that needs a 200 foot buffer. Even that overgrown stream is seasonal. Mr. Halberg’s development is a long way away from this location on the other end of the parcel.

The Department of Natural Resources (DNR) has no map indicators of a stream going North and South on Mr. Halbergs land. In our research, back to 1912, we found no map that indicates a stream going that direction on the parcel. DNR requires certain parameters must be met, before any water is deemed a jurisdictional stream. **Primary to those parameters is a bed, bank and channel**, that has water going over it. This criteria is essential in determining a high water mark, as the county determines a buffer width. This is also a DNR parameter. CCCU saw none of that in the North -South location, indicated by staff on their map.

Even water to the South did not demonstrate those criteria. It looked more like simply a stormwater drainage area. At one time, there must have been a farm on the land, as there’s a farm pond just over the Halberg property line to the South, with water in it. The owner likely caught the water as it traveled by. **Stock ponds are exempt from regulation.** DNR water maps indicate there is a stream in that area because of the topography, and older maps also show it. But that water runoff isn’t anywhere near the Halberg home and development. It’s easy to see that Staff was mistaken.

Not only should the county reverse the buffer and covenant requirements, because they are incorrect, it should also pay Mr. Halberg for managing the stormwater runoff, going through a county road culvert that diverts water into Mr. Halberg’s yard. The road was deeded to the county in the **Venersborg Acre Tracts, dated July 9,1912** and continued to be mentioned as a county road called N.E 207th Street, in adjacent developments throughout many years. A county agent told Mr. Halberg the county road ended at the corner of his property, but that is not true. The reason the culvert drains into Mr. Halberg’s yard is because there are **little to no stormwater conveyance systems (ditches) to manage the water on either side of the county road.** He was able to divert the culvert water into riprap rock, to protect his investment. That responsibility was the county’s, and not his.

The topography in this area of the county has lots of little dips and ravines as the land travels downhill. It was recently clearcut across the street from the Halberg lot, but the land does not demonstrate streams in that area. It is interesting that staff claims the fake “stream” begins at the South edge of the Halberg Building envelope. **That is very unusual.** Streams must have an underground source, otherwise they are just plain stormwater runoff. There are no wet areas or indications of water in the location the county claims as the beginning of a stream. In addition, in 2006, the land went through a short plat process called the **Scott’s Short Plat.** The records show that is when the North – South stream was put on a map. Staff insisted the surveyor put the stream in, but that survey was never filed with the county. He likely didn’t file it because he knew there was no stream, and his license was at stake. This was done to finalize the Plat.

The Scott Short Plat conditions of approval said the artificial “stream” had buffers that had to be mitigated. The owner complied with all the requirements, to complete the land division. CCCU asks the county why Mr. Halberg is required to do the same thing for the same reasons? But instead of where Scott planted the trees near the “stream” area, staff moved the 13,000 plus square feet of mitigation over to another portion of the Halberg property, making the total buffer area even larger. Now the buffered land is approximately 2/3 of his parcel. The lifetime covenant includes this whole area. CCCU believes that is a Constitutional Takings.

According to a **Type II Land Division & Environmental Review, Staff report & Decision – Scott’s Short Plat - dated February 13, 2009, in Finding 3 – Enforcement** it states;

*“The applicant obtained a class IV-G forest practices permit through DNR for logging portions of the property in 2000 and a subsequent Class III permit in 2000. This **conversion permit** allowed the landowner to harvest under the 20 acre exemption rules which allow timber harvest within 29 feet of a Class III stream (ie DNR type F stream) **and no buffers on Ns and Np streams**. Based on a review of aerial photographs, logging did occur on portions of the property in 2000 and 2001. However, forests surrounding the type Ns stream and the associated 75 foot riparian HCZ were not logged at this time. Furthermore, both logging permits issued by DNR expire two years from the decision date.”.....*

In their apparent desire to buffer and regulate an imaginary “stream”, staff went to great lengths to justify their actions. In reality, the landowner had the options to turn the five acres into a pasture, but he didn’t. Scott Lee used a DNR **conversion** cutting permit, in preparation for a development. DNR does not require the land to be reforested. The process for these permits is more extensive and involves the county. But in the end, there is no requirement to replant trees. We see in the GIS photos that the parcel was **clear cut**, except in the area of a 29 foot buffer for the stream on the South property line. If any trees were not cut, it meant they were too small to sell.

But a **conversion ends the need for trees on this parcel, as some other use will take their place.** Landowners can remove trees for their own use and the landowner admitted he removed brush and some small trees from the imaginary “stream” area. During the short plat review, the professional forester who managed the DNR permit process redacted the 75 foot buffer, in his report to the county staff. He reiterated that the harvest was a **conversion**, and no plantings were necessary. But Staff ignored him.

Staff goes into great detail to justify regulating this area, even claiming the landowner did things that he did not. Even though Scott did not need to plant back the trees, he did so, because staff would not finalize the Short Plat until he did. He planted them in the location staff dictated, on the North end of staff’s imaginary “stream”. Everything should have been complete now, and development should have been able to proceed. But when Mr. Halberg came for his building permit on one of the short plat lots, he was forced to go through the same thing. Staff claimed he also

needed to plant that same area, but used a different approach, as a ploy to convince him he must plant something. They moved the same square footage of approximately **13,000 plus square feet**, to another portion of his parcel, **increasing the total buffer size**. This area was outside the building envelope and did not need mitigation. He too, planted trees that should not have been required.

Mr. Halberg has been compliant to the Wetland and Habitat Permit conditions under Type I Staff Report and Decision – Halberg Residence – HAB2017-00122, dated March 2, 2018. But because he did not sign over his land in a covenant, he has been denied an occupancy permit. The construction occurred **six years ago**, and he has attempted to communicate with the county, with no success. He recently submitted a letter to the county with his concerns. To date, he has heard nothing in return. This is consistent with the last six years. But it is clear there is **no stream going North to South** on his property by which to regulate. This is a travesty of great proportions that needs to be rectified. Staff's environmental determinations were wrong, on many levels, and Clark County is legally obligated to **give Mr. Halberg the occupancy permit and remove the covenant requirement.**

Sincerely,

Carol Levanen, Exec. Secretary

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