

From: [Oliver Orjiako](#)
To: [Jeffrey Delapena](#)
Subject: FW: No state or federal BAS document recommends permanent covenants on private land
Date: Monday, October 21, 2024 8:23:43 AM

FYI.

From: Clark County Citizens United, Inc. <cccuinc@yahoo.com>
Sent: Saturday, October 19, 2024 9:01 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>; Eric Golemo <egolemo@sgaengineering.com>; Summer Steenbarger <summer@preservingtheharvest.net>; Tyler Castle <wfivancouver@gmail.com>
Subject: No state or federal BAS document recommends permanent covenants on private land

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

October 19, 2024

FOR THE PUBLIC RECORD AND THE COMPREHENSIVE PLAN

Re: No state or federal BAS document recommends permanent covenants on private land

Dear Councilors,

Clark County Citizens United, Inc. has witnessed too many rural landowners getting blindsided by a trio of wetland and critical area mischaracterizations, silence from county permitting staff and long response times. This appears to be strategized to run out the clock so it's impossible for permittees to make timely legal challenges. All are part of a strategy to get landowners to needlessly burden their deeds with permanent conservation covenants to Clark County.

Such is the case for rural land owners trying to receive final occupancy permits

for their homes. The three elements specifically target land in rural communities. All three elements specifically *exempt* land in urban and suburban areas. All three elements mandate staff-contrived critical areas, buffer zones and mitigated areas so large they nearly consume most of the private property. This effectively eliminates authorized zoned uses of the land. In nearly all cases, the buffers and mitigations are unfounded and unwarranted.

When the process took place to create wetland and critical land regulation, mandating large buffers around streams and wetlands with extensive critical area mitigations, Clark County farmers, ranchers foresters and rural land owners were not at the table as stakeholders. Clark County has failed at fixing exclusionary practices from the public process, especially when rural stakeholders are the ones most impacted.

The 2022 legislation outlines use of the **Washington State Department of Fish and Wildlife Riparian Ecosystems Guidance, Volumes 1 & 2** and the [State wetland regulations - Washington State Department of Ecology](#) as starting points for wetland and riparian area protections, maintenance and management. The State considers the manuals to contain, "*the best available science.*" County staff should be relying on best available science instead of mischaracterizations and fabrications. Without upholding legitimate BAS, faulty data creeps in and is relied upon when critical determinations are made. This practice is proving extremely damaging to landowners as it eliminates protections for private property rights, drives unwarranted mitigations, drives permitting costs, and loss of human uses for the properties.

The **WDFW manual** says; " . . . **buffers of more than 100 feet lose virtually all temperature benefit related to shade provided.** "*The state would have greater success and more voluntary participation in wetland and riparian habitat projects by leaning into existing framework that treats individual properties as distinctive places*". This site by site approach is being utilized by county conservation districts and through the Voluntary Stewardship Program. . . ." *individual site evaluation should receive more funding and staffing support to better address the needs of salmon, landowners, and, ultimately, all*

Washingtonians. "

None of the state and federal documents included in this report, including the WDFW Riparian Ecosystems Guidance, Volumes 1 & 2, the Department of Commerce Plauche & Carr Riparian Taskforce Final Report: Facilitation Process and Recommendations, December 2022, and the State Wetland Regulations - Washington State Department of Ecology has recommendations for permanent recorded conservation covenants on private lands.

If the goal is to develop partnerships with private landowners " Clark County needs to create a sense of trust amongst rural communities. Currently, there is very little TRUST because permitting staff **is using an unauthorized form of eminent domain** where they make faulty determinations, wrongly demand mitigations and require permanent conservation covenants recorded on deeds, while holding back occupancy permits. That threat erases all incentives to "voluntarily" participate. If the county is going to take private land it deems necessary for whatever reason, the landowners must be compensated and paid fair market value. The sheer volume of complaints CCCU receives, and forwarded on to the Councilors and County Manager, should warrant a recall of the regulatory actions concerning the onerous permanent covenants. A monitoring period is all that is needed.

What is the position of the Board of Councilors? The process used here doesn't contain opportunities for collaboration and cooperation between differing perspectives. No collaborative discussions with landowners is occurring. When the public process advances and the prime stakeholders are intentionally eliminated from participating, there's little chance for resistance. Why do permanent conservation covenants *only target rural properties?*

Rather than landowners needlessly spending money on more reports, the citizens demand staff accountability and oversight. Clark County rural citizens deserve more than the same bad policies that are written and proposed *prior to any public process. The permanent conservation covenant was just decided by staff, on a whim they called their own "best available science".*

There is no legitimate justification to force a permanent conservation covenant, to Clark County, on any private land. None of the latest “Best Available Science” discussed in these publications and mandated by law, recommends doing so. **CCCU is asking the county to use the BAS from the state and federal publications and remove the mandatory covenant language in the Wetland and Habitat Ordinance, retroactive to 2008.**

Sincerely,

Susan Rasmussen, President

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

<https://ofm.wa.gov/sites/default/files/public/publications/Riparian%20Taskforce%20Final%20Report%20and%20Recommendations.pdf>

<https://wdfw.wa.gov/publications/01987>

[Riparian Ecosystems, Volume 1: Science Synthesis and Management ...](#)

The nine chapters of Volume 1 are a partial update of a 1997 document entitled **Management** Recommendations for Washington's Priority Habitats: **Riparian**. This document **Riparian Ecosystems, Volume 1: Science Synthesis and **Management****

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<https://wdfw.wa.gov/publications/01988>

[Riparian Ecosystems, Volume 2: Management Recommendations](#)

The science in this document is based on **Riparian Ecosystems, Volume 1: Science Synthesis and **Management** Implications**.. Volume 2 is a partial update of an earlier

[document entitled **Management** Recommendations for Washington's Priority](#)

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<https://ecology.wa.gov> › [Water-Shorelines](#) › [Wetlands](#) › [Tools-resources](#) › [Delineation-resources](#)

[Wetland delineation resources - Washington State Department of Ecology](#)

[Learn what **wetland** delineation is, how it establishes the existence and limits of a **wetland** for regulatory purposes, and how to conduct a delineation using approved methods and guidance. Find resources for different situations, such as](#)

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<https://apps.ecology.wa.gov> › [publications](#) › [summarypages](#) › [0506008.html](#)

[Wetlands in Washington State - Volume 2: Guidance for Protecting and ...](#)

[This document is the second part of a two-part document addressing **wetlands** in Washington and their protection and management. Volume 2 contains guidance primarily for local governments on protecting and managing **wetlands** and their](#)

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<https://apps.leg.wa.gov> › [WAC](#) › [default.aspx?cite=173-22-035](#)

[PDF WAC 173-22-035 - Washington](#)

[Review copies are available at the department of ecology headquarters and regional offices. Links to the online versions are accessible through the department of ecology **wetlands** web page. Copies of the original published](#)

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<https://ecology.wa.gov> › [Water-Shorelines](#) › [Wetlands](#) › [Regulations](#) › [Local-regulations](#)

[Local regulations - Washington State Department of Ecology](#)

[Learn how Ecology helps local governments protect **wetlands** and their functions](#)

under the Growth Management Act. Find **wetland** guidance, resources, and contact information for CAO updates.

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<https://apps.ecology.wa.gov/publications/summarypages/0506008.html>

[Wetlands in Washington State - Volume 2: Guidance for Protecting and ...](#)

Description. This document is the second part of a two-part document addressing **wetlands** in Washington and their protection and management. Volume 2 contains guidance primarily for local governments on protecting and managing **wetlands**

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<https://ecology.wa.gov/Water-Shorelines/Wetlands/Regulations/State-wetland-regulations>

[State wetland regulations - Washington State Department of Ecology](#)

We regulate **wetlands** in Washington state regardless of federal jurisdiction. **Wetlands** are protected and managed through multiple state laws, including the state Water Pollution Control Act and the Shoreline Management Act. The State

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[WAC 173-22-035](#)

[Wetland identification and delineation.](#)

Identification of wetlands and delineation of their boundaries pursuant to this chapter shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements. Review copies are available at the department of ecology headquarters and regional offices. Links to the online versions are accessible through the department of ecology wetlands web page. Copies of the original published manual are available through the U.S.

Army Corps of Engineers National Technical Information Service (phone **703-487-4650**).

RCW 36.70A.175

Wetlands to be delineated in accordance with manual.

Wetlands regulated under development regulations adopted pursuant to this chapter shall be delineated in accordance with the manual adopted by the department pursuant to RCW **90.58.380**.

RCW 90.58.380

Adoption of wetland manual.

The department by rule shall adopt a manual for the delineation of wetlands under this chapter that implements and is consistent with the 1987 manual in use on January 1, 1995, by the United States army corps of engineers and the United States environmental protection agency. If the corps of engineers and the environmental protection agency adopt changes to or a different manual, the department shall consider those changes and may adopt rules implementing those changes.

[1995 c 382 s 11.]
