

From: [Clark County Citizens United, Inc.](#)
To: [Michelle Belkot](#); [Glen Yung](#); [Wil Fuentes](#); [Matt Little](#); [Sue Marshall](#); [Kathleen Otto](#); [Oliver Oriako](#); [Jose Alvarez](#); [CommDev OA Land Use](#); [Cnty 2025 Comp Plan](#)
Subject: Re: Spring 2025 Bi-annual Code Updates - public testimony from Clark County Citizens United, Inc.
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Clark County Council

July 10, 2025

Clark County Community Development
P.O. Box 5000
Vancouver, Washington 98666

FOR THE PUBLIC RECORD AND THE COMPREHENSIVE PLAN

Re: Spring 2025 Bi-annual Code Updates

https://clark.wa.gov/sites/default/files/media/document/2025-07/071525-hearing_spring-biannuals_attachment-e.pdf

Dear Councilors,

It has been abundantly clear to Clark County Citizens United, Inc. that regardless of what the law dictates, or the code says, county staff makes up the rules as they go along. They do not follow the law or the county code. This is most apparent when environmental determinations are made. In these cases, are the staff determinations even valid, and will they hold up in court? What is most alarming is that those fabricated determinations have the power of law. The landowner must hire an attorney and appeal those determinations within 14 days, which includes week-ends. When the report finally gets to the landowner via USPS, which could take up to six days mail time, the affected person tries to contact the staff to get more information. They receive silence. This results in their appeal time running out and nowhere to turn. This happens over and over again and can be verified by many of your constituents.

How about a recommendation from the citizens that county staff must answer permitting questions within 1 working day.

We see that staff has prepared the Spring 2025 Bi-annual Code Update, which they composed and assume the council will just sign off on it. That is usually what happens. But the councilors don't verify that what the staff presents is legal, reasonable and in the best interest of the public. The following are excerpt from the proposed code changes.

Agriculture, agriculture uses or agricultural activities

“Agriculture,” “agriculture uses” or “agricultural activities” means the use of the land for agricultural purposes, including, but not limited to, farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture and wineries, apiaries, and animal and poultry husbandry, and the necessary accessory uses and structures; provided, however, that the construction and operation of any such accessory use or structure shall be incidental to that of normal agricultural activities; and provided further, that the above uses shall not include slaughterhouses and meat packing or commercial feeding of animals. Marijuana production and processing do not, for the purposes of this zoning title, meet the definition of agriculture, agricultural uses or agricultural activities, and may only occur in accordance with Chapter 314-55 WAC and Section 40.260.115. (Amended: Ord. 2006-07-09; Ord. 2006-08-03; Ord. 2014-05- 07)

CCCU NOTES - This Agriculture Code definition assumes that accessory structures are necessary to agriculture. Yet there is an 85 year old man who farms 80 acres and is now stopped from replacing a damaged run down farm building, because of staff's fabrications. He wanted to replace it with a pre-fab structure that can protect him, his tractor and implements, safely. But now he is prevented from doing so because of county staff. If he is compelled to continue the use of the old building, is Clark County ready to take on the liability if a safety incident happens, because of their regulations? This man needs a safe a reliable building to store his very expensive tractor and implements and the county staff needs to give aid to him to achieve that goal.

Conservation covenant

“Conservation covenant” means a signed and recorded 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 – The conservation covenant is a constitutional “takings” of private property, as it is being used by county staff. Landowners cannot use their land unless the county allows it. The covenant language for each land development project reads that it applies to “Attachment A”, which is the entire deed to the whole parcel. Even worse is that these covenants are in response to a fabricated wetland or critical land that has no scientific basis. The Covenant item must be removed from the code. Legitimate designations only need a three year monitoring period. The county does not pay the taxes on the land and does not own it by proxy.

How about a recommendation from Clark County citizens requiring that any member of staff is required to meet certain standards when making critical determinations that impact private property rights and housing affordability. Determinations must be held to commonly, accepted standards. This applies to all land zones.

Developer Covenants to Clark County

“Developer Covenants to Clark County” is a recorded legal document limiting or prohibiting certain uses of property. The Developer Covenants to Clark County may also impose affirmative obligation such as payment of a fee or be used to disseminate information which the county deems is in the public interest. (Amended: Ord. 2005-04-12)

How about a recommendation from the citizens that in addition to EIS reports, social, familial and cultural impacts also need to be acknowledged and assessed.

Dwelling, single family detached

“Single-family detached dwelling” means a building, on a single lot, designed or used for residence purposes containing one (1) dwelling unit only, including modular and manufactured homes. • “Tiny house” means a detached single-family dwelling unit of not less than one hundred fifty (150) square feet that is constructed or mounted on a foundation and is connected to utilities. A small dwelling unit built on a chassis is considered a recreational vehicle. (Amended: Ord. 2009-07-01; Ord. 2018-01-17; Ord. 2018-10-02; Ord. 2019-05-07; Ord. 2024-03-02)

CCCU NOTES – A tiny home on a chassis is considered a recreational vehicle and is under the licensing and jurisdiction of the state, not the county. Yet, a family who placed a tiny home on their property to house their disabled son, was hit with a large critical land buffer, unreasonable planting requirements and a permanent conservation covenant on their entire property. Staff claimed they removed two oak trees to place the tiny home, when in fact they were storm damaged hazard trees that were threatening their home. County records show that in 2002 an Environmental Services staff examined that land, prior to their ownership, and determined all the trees in that area were Oregon Ash. There was no mention of any Oak on that five acre parcel.

Emergent wetland

“Emergent wetland” means a wetland with at least thirty percent (30%) of the surface area covered by erect, rooted, herbaceous vegetation as the uppermost vegetative strata.

CCCU NOTES – In all the reports CCCU has seen regarding emergent wetland, never has the staff proven at least thirty percent of the surface was covered with erect, rooted, herbaceous vegetation, which CCCU assumes means wetland vegetation. It is also assumed the surface area is the entire “wetland” and not just portions of it. In most cases, staff simply walks through a parcel and within five to ten minutes, claims a wetland. There is a landowner who is burdened with a 100 foot “wetland” buffer that was not on the land before he bought it. The land had gone through a short plat process and a development process, with no wetland found. Suddenly it appeared, after his new home was completed and county staff came back “to take a look”. Three times, a county development process had occurred, and no

wetland was found, even by the wetland experts. It was determined that what the county staff was calling a wetland, was actually the exempt borrow pit manmade ditches, adjacent to the county railroad. That “wetland” needs to be removed from the county maps. It is incorrect.

Enhancement

“Enhancement” means actions performed to improve the condition of an existing degraded wetland or buffer so that the functions provided are of a higher quality.

CCCU NOTES – In all the environmental determination cases that CCCU has seen, enhancement plantings were required, regardless of the impact or any degradation. This is being done despite the Department of Ecology directing counties to not use enhancements, but rather a “no net loss”. In addition, in all these cases, there was no degradation of the area. In reality, they are staff fabricated wetlands, which did not follow standard protocol.

Facultative plants

“Facultative plants” means plants that are equally likely (thirty-four percent (34%) to sixty-six percent (66%) probability) to occur in wetlands or nonwetlands. Such groupings are more fully defined in the Wetlands Delineation Manual

Facultative wet plants

“Facultative wet plants” means plants that usually (sixty-seven percent (67%) to ninety-nine percent (99%) probability) occur in wetlands. Such groupings are more fully defined in the Wetlands Delineation Manual.

CCCU NOTES – Staff uses this term to describe many plants, but they are unable to prove that they exist in the regulated area. They briefly spend time on the land and then present a massive descriptive list of plants. Many from this list, can’t be found. CCCU examined one case in which many plants were listed in a wetland on the property. None of them were there. But some of them could be found in the county ditch.

Forested wetland

“Forested wetland” means a wetland with at least thirty percent (30%) of the surface area covered by a canopy of woody obligate, facultative wet, or facultative plants greater than twenty (20) feet in height

CCCU NOTES -We see in this passage that thirty percent of the land is to be covered by woody obligate, facultative wet, or facultative plants that are over 20 feet. All these trees require a water environment. Staff will claim land that does not have the required water and yet are called “forested wetland”, according to their subjective determination. Staff is required to do more than just write an extensive list of plants that don’t apply..

Guesthouse

“Guesthouse” means an accessory building designed, constructed and used for the purpose of providing temporary living accommodations for guests, or for members of the same family as that occupying the main structure, and **containing no kitchen facilities.**

CCCU NOTES – Let’s be realistic. Even motels and hotels have kitchen facilities. Even in a temporary stay, people like to buy and cook their own food. They must have the facilities to do that. The wording that says “*containing no kitchen facilities*” should be removed from the code.

Habitable floor

“Habitable floor” means any floor usable for living purposes including working, sleeping, eating, cooking or recreating uses, or any combination of these uses. **A floor used only for storage purposes is not a “habitable floor.”**

CCCU NOTES – County staff has claimed in one instance that a home that had four rooms upstairs, had too many bedrooms and must replace their septic system. Two of the rooms were used for storage and were substandard to qualify as a bedroom. Staff did this because she couldn’t prove a wetland or a stream. The family was installing a swimming pool, just outside their patio door, which replaced a patio concrete pad. CCCU sees county staff going to great lengths to force a covenant on a landowner.

Hazard tree

“Hazard tree” means any tree which, in the opinion of the responsible official, an expert approved by Clark County (such as, but not limited to, a professional forester or landscape architect), or a similar expert employed by another public agency or utility, has a strong likelihood of causing a hazard to life or property. (Amended: Ord. 2006-06-09)

CCCU NOTES This definition should be struck, as it places the county in a high liability position.

In Number **5. Class I Hazard Tree Removal Determinations. (NEW)**, staff has volumes of additional language that prevents a person from removing a hazard tree in a timely fashion to protect life and property. CCCU will have to assume if this code language is adopted, the county is assuming the liability that goes with it. If someone dies because they cannot remove a hazard tree immediately, the legal burden is on Clark County. When one reads this #5 passage, most layman can’t understand what is expected of them, nor how long it would take to be compliant. If past landowner experience can be a reference, they would not hear from staff at all. This is totally unacceptable. A landowner knows when imminent danger is at hand, and they must act fast. The county cannot second guess them, and all this unnecessary language in #5 of the code must be removed. There should be no code language over “hazard trees”. That determination must be left up to the landowner

5. Class I Hazard Tree Removal Determinations. (NEW)

An approved Class I Hazard Tree Removal Determination allows the landowner to remove Hazard and/or Diseased trees located within a horizontal distance of one and a half (1 ½) tree lengths of the Hazard and/or Diseased tree from permanent buildings (such as a house, barn, shop, or pumphouse). This is not to be confused with the removal of healthy trees around permanent buildings, to which a Class 1 permit is the appropriate permit for such situations not otherwise exempted pursuant to Section 40.260.080(A)(4).

42 a. General Requirements.

43 (1) A Class I Hazard Tree Determinations shall be submitted prior to conducting forest practices on the project site; Spring 2025 Biannual Code Updates Page 144 of 186

1 (2) All Class I Hazard Tree Determinations shall describe the harvest method, including type of equipment to be used and the expected dates of commencement and completion of all harvest activity;

4 (3) All Class I Hazard Tree Determinations shall include an Certified Arborist/Professional Forester/Landscape Architect Report. The purpose of this report is to adequately document the rationale supporting a determination that a tree(s) is a hazard, dangerous and/or diseased and that abatement and/or tree removal is necessary. This report should include the following items.

10 (i). General description of proposal;

11 (ii) Final plat notes applicable to proposal (if applicable);

12 (iii) A description of the property(ies) subject to the danger/hazard;

13 (iv) A description of the forest stand/greenbelt, including approximate stand age and tree species;

15 (v) A site plan indicating the location of the Hazard/Dangerous and/or Diseased trees and associated structures;

17 (vi) A description of the Hazard/Dangerous and/or Diseased tree(s) including age, species, defect, disease, and/or structural integrity;

19 (vii) A description of the Recommended Abatement treatment for each tree (e.g., removal, habitat cut, thinning and restructuring) and anticipated timeline;

22 (viii) A detailed replanting plan and/or mitigation plan. Include anticipated schedule of installation. Replanting should be completed within 60 days of the tree abatement;

25 (ix) A description regarding the fate of the tree(s) to be cut (i.e., will the tree(s) be removed, decked, or left in place); and

27 (x) Documentation that the report was prepared by a certified arborist, licensed landscape architect or professional forester or other expert approved by Clark County.

30 b. Review Criteria.

31 (1) Class I Hazard Tree Determinations shall comply with Section 40.260.080(A)(6).

33 (2) Class I Hazard Tree Determinations shall comply with the conditions of approval established through the forest practice permit.

35 c. Approval Authority.

36 (1) The responsible official shall review all requests for approvals, any comments received, and applicable regulations or policies and shall inspect the property prior to rendering a decision.

39 (2) The responsible official may approve an application for a Class I Hazard Tree Determination, approve the application with conditions, require modification of the proposal to comply with specified requirements or local conditions, or deny the application if it fails to comply with requirements of this code.

44 d. Required Written Findings and Determinations. A Class I Hazard Tree Determination shall be approved by the responsible official if the application is consistent with this code

Hydric soil

“Hydric soil” means a soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the Wetlands Delineation Manual

CCCU NOTES – In the many cases CCCU has examined, county staff has not used this definition of “hydric soil”. The critical words are saturated, flooded and ponded, that clearly affect the upper part of the soil. This county code, the state code and federal code all have the same definition and say the same thing. Hydric soil must be present to call land a wetland. So if staff is not following the law and the code, does that make their wetland determinations void? That is what needs to happen for all those wetland determinations that are incorrect.

Hydrophytic vegetation

“Hydrophytic vegetation” means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. The presence of hydrophytic vegetation shall be determined following the methods described in the Wetlands Delineation Manual.

CCCU NOTES – This type of vegetation is also required in a determined wetland. But staff ignores this requirement. One landowner was hit with a \$42,000 cost to get out from having to plant hundreds of Douglas Fir as mitigation to three staff fabricated wetlands, that don’t exist on the land, and never have. There is no wetland soil, no wetland plants and no water. Clearly, county staff is not following the Wetlands Delineation Manual, which they are bound by. Such a financial burden on a landowner is an illegal action by county staff, and the county needs to remove the wetland designations and reimburse the person for staff’s mistake.

How about a recommendation from the citizens that elected officials are given more authority over staff.

Intermittent stream

“Intermittent stream” means surface streams with no measurable flow during thirty (30) consecutive days in a normal water year

CCCU NOTES – Intermittent streams should not be regulated by the county as they are just stormwater runoff. As soon as it stops raining, the water dries up and goes away. Staff is regulating these streams and then placing large buffers on them, along with enhanced mitigation requirements and conservation covenants. That must stop.

One landowner had such a stream and the county claimed it was fish bearing. The stormwater that traveled over their land had a vertical drop of 80 feet at one point, and a 100 vertical drop at another point. It was impossible for any fish to survive in these conditions. The landowner is still waiting for his occupancy permit. Another parcel of land has no water, any time of the year in what county staff calls and regulates a stream. This stream was incorrectly drawn on a map and needs to be

removed. He too is still waiting for his occupancy permit, after seven years.

Mitigation

“Mitigation,” when referring to wetlands, means compensating for wetland impacts such that **no overall net loss** in wetland acreage and functions occurs.

CCCU NOTES – Staff regularly burdens the landowner with enhanced mitigation that goes far beyond the requirement of this code. CCCU sees time and again that staff ignores the codes in their determinations. There must be a “standard” that is mandatory for county staff to use whenever they effect land with regulation. That is not the case in Clark County and there is no oversight over what staff is doing. This has to change.

Obligate plants

“Obligate plants” mean **plants that almost always (ninety-nine percent (99%)** probability) occur in wetlands under natural conditions. Such groupings are more fully defined in the Wetlands Delineation Manual

CCCU NOTES – Again, staff ignores this definition and often describes simple grasses and other vegetation, not consistent with a wetland. But after they file a determination, it is “law”. CCCU sees that these determinations come well after construction of their home has begun, and the bank loan clock is running. Staff takes advantage of this situation with their after the fact determinations.

Registered soil scientist

*“Registered soil scientist” means a **professional soil scientist** registered with the **American Registry of Certified Professionals in Agronomy, Crops and Soils**, experienced and knowledgeable in the practice of pedology related to soil survey, who is responsible for design and preparation of soils maps, related soil groups, and identifying soil factors for construction engineering.*

CCCU NOTES – In none of the cases CCCU has seen, has county staff used a soil scientist. In fact, it appears that all the wetland and habitat determinations are simply made by staff in a matter of ten to fifteen minutes. They come out, they leave and they send a determination document. If the landowner protests, they tell them to call Ash Eco for an evaluation. CCCU’s discussion with that agency determines they simply do what staff directs them to do. If the landowner wants more detail, they have to pay more. One landowner hired a different, highly respected firm, for their evaluation. His report was very detailed and refuted everything that staff had determined. The county department ignored that legitimate report.

Riparian zone

~~“Riparian zone” means areas encompassing riparian priority habitat, a subset of priority habitat and as defined by the Washington Department of Fish and Wildlife (WDFW), extending outward from the ordinary high water mark of waters to the one~~

~~hundred (100)-year floodplain or the following distances if greater: Definitions of the Types S, F, Np and Ns waters are found in WAC 222-16-030 (Forest Practices Rules). Type S water, two hundred fifty (250) feet; Type F water, two hundred (200) feet; Type Np water, one hundred (100) feet; Type Ns water, seventy-five (75) feet. Not included are erosion gullies or rills, and irrigation ditches, canals, stormwater runoff devices, or other entirely artificial watercourses, except where they exist in a natural watercourse which has been altered by humans. (Amended: Ord. 2006-06-09)~~

CCCU NOTES - So what replaced this struck out paragraph? Is there something else that landowners need to be keenly aware of, that isn't here?

Scrub-shrub wetland

“Scrub-shrub wetland” means a wetland with at least thirty percent (30%) of its surface area covered by woody vegetation less than twenty (20) feet in height as the uppermost strata.

CCCU NOTES – This definition requires thirty percent of a wetland surface area which had vegetation less than twenty feet tall. That is also if there is hydric soil and hydric plants. They all go together. But staff often calls simple normal everyday brush as some sort of wetland plant, in their quest to call something a wetland and then burden that land with all sorts of regulation and a permanent conservation covenant.

Stormwater facility

“Stormwater facility” means the natural or constructed components of a stormwater drainage system, designed and constructed to perform a particular function, or multiple functions. Stormwater facilities include, but are not limited to, pipes, swales, ditches, culverts, street gutters, detention ponds, retention ponds, constructed wetlands, infiltration devices, catch-basins, oil/water separators, and biofiltration swales. (Amended: Ord. 2015-11-24)

CCCU NOTES – This code item is completely ignored by staff. They insist on heavy regulation on these facilities, that are supposed to be exempt. When a farmer collects the downhill stormwater and directs it into a pond that he has made, he uses it for stormwater control, animal watering, aquifer recharge, recreation, and emergency water supply. These ponds are made with heavy dirt moving equipment to construct the dikes to hold the water back and contain it. It is not dug in a wetland, that would mire the machine down. These ponds should be encouraged and not regulated. Yet, that is exactly what staff has been doing. CCCU can note many of these cases. One case involves a farm field where a substandard county culvert would overflow onto the land and prevent use of it. The landowner decided to collect that water into a small pond, to stop it from flooding more of his land. An area this size is to be exempt from regulation. It dries up soon after the rain stops and the culvert dries. Yet, county staff has determined it to be a wetland and has placed it in the GIS maps. Many such manmade ponds have been placed on the maps as wetlands, even though they are not to be regulated. Staff must stop this illegal activity and remove these ponds from the maps.

Stream or streams

“Stream” or “streams” means those areas where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is indicated by hydraulically sorted sediments or the removal of vegetative litter or loosely rooted vegetation by the action of moving water. The channel or bed need not contain water year round. This definition is not meant to include irrigation ditches, canals, stormwater runoff devices or other entirely artificial watercourses unless they are used to convey streams naturally occurring prior to construction. Those topographic features that resemble streams but have no defined channels (i.e., swales) shall be considered streams when hydrologic and hydraulic analyses done pursuant to a development proposal predict formation of a defined channel after development

CCCU NOTES – County staff is amiss when it comes to defining a stream. They will call a stream even if one looks up, to see a county culvert directing water onto private land, and down, where they see another county culvert handling the surface stormwater that dries up after the rains. A stream, according to DNR, has a “headwater” coming from underground. Water flowing over the surface during storm events is stormwater. That water can sometimes wash away soil to expose rocks, but it is not technically a stream.

One landowner wanted to control the steep downhill water that was flowing over his pasture land and the neighbor's. It flooded the county road, at the bottom of the hill. He used a very large D-7 caterpillar and dug a hole in the ground, making a very large dike and an overflow ditch. The surface sheet water went into the pond, as well as the sheet water from the neighbors. He then plowed a trench for the water to continue to travel downhill and directed it into another smaller hole in the ground to use as a stock water pond, when water was available. He had cross fenced the land and wanted water for each pasture. The larger pond was used as an emergency water source, stormwater facility, and stock water pond. A county agent trespassed on the land and called the large pond a wetland with buffer. When the landowner argued there was no wetland there, he claimed they covered it up. That is not a scientific evaluation of a wetland. There is no wetland soil, and no wetland plants. Douglas Fir grew on the dike and were recently harvested. County staff also called the trench, dug for the overflow water, a stream with huge buffers, because he could see rock in the ditch. That area is known for rocky ground and it's easy to find rock anywhere.

Water-dependent

“Water-dependent” means a use or a portion of a use which requires direct contact with the water and cannot exist at a nonwater location due to the intrinsic nature of its operations

CCCU NOTES – This is truly what a wetland requires, water. A wetland cannot exist without that water. Yet county staff has determined many non-water wetlands on various properties across the county. Such actions go against the county, state and federal codes for wetlands.

Wetlands

“Wetland” or “wetlands” means areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands. (Amended: Ord. 2006-05-27)

This wetland definition is consistent in county code, state code and federal code. Yet county staff ignores thi law and makes up their own definitions. This is a standard that must be followed, and the County Councilors must assure the public that the laws are followed by the Clark County staff.

Sincerely,

Carol Levanen, Exec. Secretary

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