

Rebecca Messinger

From: lconaway50@aol.com
Sent: Monday, January 30, 2023 10:23 AM
To: Sonja Wiser
Cc: Rebecca Messinger
Subject: changes in critical areas ordinances
Attachments: January 30.docx

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Please add the attached to public comments for the Wednesday work session.

Thank you.

Linda Conaway
Northwest Wild Fish Rescue

January 30, 2023

To: Planning Commission and Clark County Council:

Northwest Wild Fish Rescue is very concerned about the proposed changes in critical areas ordinances. The goal of 40.440 has been to avoid any net loss of habitat. The ordinances are supposed to protect "environmentally distinct, fragile and vulnerable fish and wildlife habitat areas while allowing reasonable use of private property".

Staff proposals to reduce stream buffers on seasonal streams is misguided. These small streams run into large streams which then run into rivers or larger bodies of water. They often provide shelter and nutrients for various wildlife and aquatic insects, etc. Their trees and shrubs help to cool the environment and these cooler temperatures help to keep larger connecting streams cool. These streams could be improved with habitat additions, reduction of illegal water withdrawals and with increased protection and buffers. WFW has recommended to the legislature an increase in protections for the environment from a "no net loss" policy to one of "a net ecological gain" standard.

As a group that works specifically to enhance wild fish populations within Clark County, we find that our streams are often overlooked and that their vital importance in maintaining our wild fish is ignored. Streams and wetlands and fish habitat in general need more protections and larger buffers from the encroachment of a growing population. Please do not sacrifice our biodiversity and ecological foundation to "progress".

Linda Conaway

Northwest Wild Fish Rescue

Rebecca Messinger

From: Brent Davis
Sent: Friday, February 3, 2023 7:36 AM
To: Rebecca Messinger
Cc: Jacqui Kamp; Jose Alvarez
Subject: Additional Post PC comments for CPZ2022-00010
Attachments: 1-27 WDFW Response Letter to Clark County Council.pdf; 12-6 Jim Byrrne Comments CPZ2022-00010.pdf

Rebecca,

I have attached 2 comments that were not included on the comment summary and binder for the work session this week. Both are follow-up comments from parties that submitted comments prior to the PC hearing.

I will forward additional comments as they come in.

Thanks



Brent Davis
Wetland and Habitat Review Manager
Shoreline Administrator
Interim Clean Water Division Manager (Public Works)
COMMUNITY DEVELOPMENT

ePlan – saving trees and parking fees! Visit clark.wa.gov/ePlan to learn more.

From: [R5 Planning \(DFW\)](#)
To: [Brent Davis](#)
Subject: WDFW Response Letter to Clark County Council
Date: Friday, January 27, 2023 9:16:28 AM
Attachments: [image001.png](#)
[Clark County CAO Response Letter.pdf](#)

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Good morning,

Attached is a letter of support to Clark County Council regarding 40.445 Wetlands and Fish and Wildlife Habitat Conservation Areas.

Thank you,
Amaia



Amaia Smith

(she/her)

Habitat Biologist, WDFW Habitat Program

5525 S 11th St Ridgefield, WA 98642

amaia.smith@dfw.wa.gov

360-839-3508



State of Washington
DEPARTMENT OF FISH AND WILDLIFE
Southwest Region 5 • 5525 South 11th St Ridgefield, WA 98642
Telephone: (360) 696-6211 • Fax: (360) 906-6776

January 27, 2023

Clark County Council
1300 Franklin Street
Vancouver, WA 98666

RE: 40.445 Wetlands and Fish and Wildlife Habitat Conservation Areas

Dear Clark County Council,

First, we want to applaud Clark County on the work and progress made in this ordinance update and acknowledge how challenging it has been for the County. WDFW appreciates the ongoing discussion to address the conservation challenges in Clark County and for the opportunity to engage in this ordinance update. Overall, we believe that the proposed ordinance update will lead to increased protections for critical areas in Clark County, especially for riparian habitats. WDFW outlined initial concerns about the Clark County's Wetlands and Fish and Wildlife Habitat Conservation Areas ordinance in a comment letter dated November 16, 2022, during the initial SEPA comment period. Our concerns were mostly with ensuring there was consistency with the guidance that WDFW provides to local jurisdictions. This included:

- Best available science- Add a definition for best available science if a definition is not located elsewhere in Clark County's code that can be referenced in 40.445.
- Riparian management – Increase buffer to a minimum of 100 ft on Type Ns waters in Site Class IV and V soils to provide ecological lift through pollutant and sediment removal functions within riparian areas.
- Mitigation- Increase monitoring for Non-riparian tree cover/canopy release from 10 to 20 years or create a new category specific to Oregon white oaks (OWO).
- Removal of WDFW review- reorganize 40.445.030C.3.c.3, to allow the responsible official to solicit recommendations from WDFW for all compensatory mitigation.

We have reviewed changes to the ordinance after the Planning Commission meeting and want to acknowledge and thank the County for addressing our concerns. This includes adding a definition for best available science and for creating a new item (4) under 40.445.030C to allow for consultation with WDFW for all aspects of compensatory mitigation addressed within that section. We are also happy to see that Type Ns streams now have a minimum 100ft buffer for all soil classes which will provide ecological lift through the pollutant removal function. While the setbacks in Table 40.445.020-4 Riparian Habitat Areas remain fixed, we acknowledge that the numbers are derived from based Site Potential Tree Height at 200 years (SPTH₂₀₀) and leads to a **10.8% increase in riparian habitat protections** compared to the existing ordinance. This is a considerable increase,

Page 2

particularly for non-fish bearing streams.

Due to these changes, WDFW is supportive of 40,445 Wetlands and Fish and Wildlife Habitat Conservation Areas as proposed and we will monitor for effectiveness. We look forward to working with the County in its implementation.

Respectfully,

Amaia Smith

Amaia Smith, Habitat Biologist
Amaia.Smith@dfw.wa.gov, (360)839-3508

Cc: Maddie Nolan, Acting Regional Habitat Program Manager

From: [Jim Byrne](#)
To: [Brent Davis](#)
Cc: [Oliver Oriako](#); [April Furth](#)
Date: Tuesday, December 6, 2022 11:35:15 AM

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Brent,

Here are my thoughts on Clark Co. riparian. ordinance.

The Growth Management Act (GMA) requires all cities and counties in Washington to adopt regulations protecting “critical areas” in order to preserve the natural environment, wildlife habitats, and sources of fresh drinking water.

The GMA states, “Critical Areas Ordinances are **required** to include Best Available Science (BAS) and give “special consideration” to conservation or protection measures necessary to preserve or enhance anadromous fish (RCW 37.70A.172).” The intent of the law is to protect the functions and values of wetlands, shorelines and riparian areas. New Riparian Habitat Management Recommendations from Washington Department of Fish and Wildlife in 2020 have redefined Riparian Habitat based on “Site Potential Tree Height” (SPTH) as opposed to a fixed width based on stream functions (2020).

County staff appear to disregard state law. In a Nov. 2nd, presentation to staff and professional consultants, Staff determined that their Type N reductions are a departure from BAS (Slide 10), and reverted to fixed buffer widths associated with stream type. This is exactly what the new SPTH is designed to avoid. Additionally, in the same presentation, staff proposes to “**Remove requirement to defer to WDFW recommendations for project review**” (Slide 8). This is not the intent of the GMA, nor the County Council which directed staff to “**pursue updates that conform to State Agency guidelines**” (Slide 4). (1). In brief, Clark Co. has chosen to disregard WDFW's BAS and apply reduced buffers on non-fish bearing and ephemeral streams.

The County's own Ordinance **40.445 Wetlands and Fish and Wildlife Habitat Conservation Areas** states, in the introduction 140.445.101 to “(1) Include best available science to protect the functions and values of wetlands and fish and wildlife habitat conservation areas with special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries”. We see no special consideration for anadromous fish. Eliminating SPTH on ephemeral and non-fish-bearing streams also violates the goal of “(2) no net loss functions and values of wetland and fish and wildlife habitat conservation areas”. Reducing buffers will cause an increase in loss of function and value.

This is clearly not the intent of the State expressed in WDFW's **Riparian Ecosystems, Volume 2: Management Recommendations (2)** which state, “**6. Apply the recommended RMZ delineation steps to all streams, whether or not they are fish-bearing:** In 1997, WDFW recommended a lower level of protection for non-fish bearing streams than fish-bearing streams. In reviewing the current

science literature for Volume 1, we found no evidence that full riparian ecosystem functions along non-fish-bearing streams are less important to aquatic ecosystems than full riparian ecosystem functions along fish-bearing streams. This recommendation is based on four additional considerations. Non-fish-bearing streams:

- Support a unique community of aquatic and riparian-obligate wildlife;
- Provision fish-bearing streams with matter and energy; and
- Provide movement corridors for wildlife, particularly in the face of changing climate conditions;
- Provide cool water to downstream reaches. Washington State has already experienced increased stream temperatures due to climate change and expect further increases, which have direct implications for the persistence of fish”. Volume 2, pg 11,12.

WDFW clearly supports SPTH on all streams, not only fish bearing ones. Where is the science you are using in proposing the reduced buffers? Has County staff done any actual stream buffer research? Can you provide a detailed list of scientific journals that support the reduced buffers? We would like your science baseline.

Moreover, the new ordinance makes no reference to Climate Change. Who can forget the 116° (F) temperatures experienced in June 2021. We are entering a new era of climate change, which needs to be reflected in this ordinance.

Ephemeral or seasonal streams also have great value. What might appear as a dry bed in August can be at bank-full width in October. Steelhead and coho salmon, in particular, utilize these streams for building redds, laying eggs, and juvenile rearing. Locally, Northwest Wild Fish Rescue (3) surveys these seasonal streams and collects ≈ 20,000 juvenile steelhead and coho each year

I hope you will endorse SPTH on all streams. It is BAS and the correct thing to do. I look forward to your reply.

REFERENCES

1. Clark County's Brent Davis presentation to “Professionals Group” on November 2nd, 2022.
2. Rentz, R., A. Windrope, K. Folkerts, and J. Azerrad. 2020. Riparian Ecosystems, Volume 2: Management Recommendations. Habitat Program, Washington Department of Fish and Wildlife, Olympia.
3. <https://instreamconservation.org/why-we-need-northwest-wild-fish-rescue/>

cc'd: O. Orjiako
B. Davis

S. Wisser
C. Cook

Rebecca Messinger

From: Kathleen Otto
Sent: Tuesday, February 7, 2023 9:04 AM
To: Tina Redline; Rebecca Messinger
Subject: FW: DRAFT 40.445 January 24, 2023 p 1 1 40.445 WETLANDS AND FISH AND WILDLIFE HABITAT CONSERVATION AREAS



Kathleen Otto
County Manager

564.397.2458



From: Clark County Citizens United, Inc. <cccuinc@yahoo.com>
Sent: Monday, February 6, 2023 10:19 PM
To: Karen Bowerman <Karen.Bowerman@clark.wa.gov>; Gary Medvigy <Gary.Medvigy@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>
Subject: Fw: DRAFT 40.445 January 24, 2023 p 1 1 40.445 WETLANDS AND FISH AND WILDLIFE HABITAT CONSERVATION AREAS

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

February 6, 2023

FOR THE PUBLIC RECORD

Re: DRAFT 40.445 January 24, 2023 p 1 1 40.445 WETLANDS AND FISH AND WILDLIFE HABITAT CONSERVATION AREAS

Dear Councilors,

Clark County Citizens United, Inc. is a non-profit organization established in 1994 in response to policies adopted in the Clark County Comprehensive Plan. From that time, CCCU has continued to monitor policies being considered or adopted by Clark County officials. The proposed code changes to **Title 40 Draft 40.445 January 24, 2023 p 11 40.445 Wetlands and Fish and Wildlife Habitat Conservation Areas**, shows a contempt for private property rights in the way it was created. and

how it will cause damage to all landowners burdened under it. This proposed draft is a far cry from the original intent of the original ordinance adopted in 1997. The following information explains why CCCU is so concerned about what staff is proposing. CCCU is asking the Clark County Council to remove items with the numbers:

Numbers: **874, 911, 912.1, 913,2, 998.3, 1000, 1002, 1009, 1010, 1016, 1021, 1023, 1024, and 1025.**

All of these items pertain to covenants. CCCU asks for these items to be removed from the draft for the following reasons.

- 1. All of them have to do with permanent covenants being applied to private property and assigns. A great financial and land use burden would occur, without just compensation, if this were to be allowed.**
- 2. All of this language has been based on a misrepresentation of Chapter RCW 64.70 UNIFORM ENVIRONMENTAL COVENANTS ACT state law regarding covenants. The state RCW regarding covenants was put in place to affect and assure that industrial and hazardous waste sight cleanups were completed.**
- 4. The ordinance wording was changed, at some time after it's adoption, as it regards Voluntary Covenants. This was done without any public process. But it opened the doors to a permanent highly regulatory and restrictive covenant scheme.**
- 5. The original 1997 ordinance under 13.51.100 (read) *Non-regulatory implementation measures*. Shortly after, all county codes were moved into an umbrella Title 40, but the language was to stay the same.**
- 6. In Chapter 40.440 Habitat Conservation - The wording was changed in 40.440.020, to read, *Standards and Nonregulatory Measures*. No one knows how or when this word change happened, but staff is using this additional word to apply permanent covenants throughout the county. This is being done despite the fact that almost none of those lands pertain to industrial or hazardous waste.**
- 7. Such use of permanent Covenants undermines the use provisions of the zones and makes the Comprehensive Plan inconsistent.**

Clark County Citizens believes there are many other legal ramifications to the way staff is using the covenant language in this code. Until there is a clear legal understanding that a permanent covenant is necessary to assure compliance to the code, this language must be struck out of the CCC Chapter 40.440 Habitat Conservation Ordinance.

Sincerely,

Carol Levanen, Exec. Secretary

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

Chapter 13.51 HABITAT CONSERVATION ORDINANCE

Sections:

13.51.010 Purpose and summary.
(REPEALED)

13.51.020 Ordinance applicability and
review process. (REPEALED)

13.51.030 Individual stewardship
plans. (REPEALED)

13.51.040 Definitions. (REPEALED)

13.51.050 Habitat areas covered by this chapter. (REPEALED)

13.51.055 Locally important habitat. (REPEALED)

13.51.060 Activities reviewed under this chapter. (REPEALED)

13.51.070 Submittal information. (REPEALED)

13.51.080 Approval criteria. (REPEALED)

13.51.090 Regulatory incentives and reasonable use assurances.
(REPEALED)

13.51.100

This chapter has been repealed in its entirety and moved to Title 40. [Click here for a cross-reference table.](#)

Non-regulatory implementation measures. (REPEALED)

13.51.110 Permit authority and timelines. (REPEALED)

13.51.120 Enforcement

51.100 Non-regulatory implementation measures.

Chapter 40.440 Habitat Conservation

Standards and Nonregulatory Measures

3. Mitigation Measures.

- a. Mitigation measures may be established pursuant to the above basic criteria.
- d. Subject to individual circumstances, potential mitigation measures may include, but are not limited to, the following:.....

(14) Establishing conservation covenants and other mechanisms to ensure long-term preservation or maintenance of mitigation actions;

Any science used to guide mitigation actions, whether on site or off site, must meet the criteria and characteristics of best available science listed in WAC 365-195-905 (Criteria for determining which information is the “best available science”), or the state standards in effect at the time of application.

- d. Subject to individual circumstances, potential mitigation measures may include, but are not limited to, the following:
 - (1) Avoiding the impact altogether by not taking a certain action or parts of an action;
 - (2) Exploring alternative on-site locations to avoid or reduce impacts of activities;
 - (3) Preserving important vegetation and natural habitat features by establishing buffers or by limiting clearing or alteration;
 - (4) Replacing invasive exotic plants with native species (refer to the Clark County Native Plant Communities Guide or other relevant publication for guidance);
 - (5) Prohibiting introduction of invasive plant species in habitat areas;
 - (6) Enhancing, restoring or replacing vegetation or other habitat features and functions. In riparian areas, this may include riparian zone averaging as specified in Section 40.440.020(C)(3);
 - (7) Using native plants where appropriate when planting within habitat areas (refer to the Clark County Native Plant Communities Guide or other relevant publication for guidance);

(8) **Managing access to habitat areas**, including exclusionary fencing for livestock if needed;

<https://clark.wa.gov/sites/default/files/media/document/2023-01/Council%20Draft%2040.445%20CAO%20Update%201-24-2023.pdf>

DRAFT 1/24/2023

DRAFT 40.445 January 24, 2023 p 1 1 40.445 WETLANDS AND FISH AND WILDLIFE HABITAT CONSERVATION AREAS

874 c. Any covenants, agreements, or easements necessary to execute the mitigation plan;

911 I. Conservation covenants

912 1. The Responsible Official shall provide standard forms for required conservation covenants.

913 2. All covenants shall be in a form approved by the County Prosecuting Attorney as adequate to

998 3. Conservation Covenant Modifications. Modifications to conservation covenants shall be consistent

1000 a. Modification to a covenant approved by a Type I decision shall be subject to a Type I review

1002 b. Modification to a covenant approved by a Type II decision shall be subject to a Type I review

DRAFT 1/24/2023 DRAFT 40.445 January 24, 2023 p 33 1008 c. Modification to a covenant approved by a Type II decision shall be subject to a Type II review

1009 process if it is not subject to Type I review.

1010 d. Modification to a covenant approved by a Type III decision shall be subject to a Type I review

1016 e. Modification to a covenant approved by a Type III decision shall be subject to a Type II review

1021 f. Modification to a covenant approved by a Type III decision shall be subject to a Type III review

1023 g. **Modification** requests submitted with other applications will be processed as specified in Section

1024 40.500.010(D)(2).

1025 h. **Removal of covenants** established pursuant to this chapter shall be granted by the County

[WACs](#) > [Title 365](#) > [Chapter 365-195](#) > [Section 365-195-900](#)

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[Beginning of Chapter](#) << 365-195-900 >> [365-195-905](#)

[Agency filings affecting this section](#)

[PDF](#)

WAC 365-195-900

Background and purpose.

(1) Counties and cities planning under RCW [36.70A.040](#) are subject to continuing review and evaluation of their comprehensive land use plan and development regulations. Every five years they must take action to review and revise their plans and regulations, if needed, to ensure they comply with the requirements of the Growth Management Act. RCW [36.70A.130](#).

(2) Counties and cities **must include the "best available science"** when developing policies and development regulations to protect the functions and values of critical areas and must give "special consideration" to conservation or protection measures necessary to **preserve or enhance anadromous fisheries**. RCW [36.70A.172\(1\)](#). The rules in WAC 365-195-900 through [365-195-925](#) are intended to assist counties and cities in identifying and including the best available science in newly adopted policies and regulations and in this periodic review and evaluation and in demonstrating they have met their statutory obligations under RCW [36.70A.172\(1\)](#).

(3) The inclusion of the best available science in the development of critical areas policies and regulations is especially **important to salmon recovery efforts**, and to other decision-making affecting threatened or endangered species.

(4) These rules are adopted under the authority of RCW [36.70A.190](#) (4)(b) which requires the department of community, trade, and economic development (department) to adopt rules to assist counties and cities to comply with the goals and requirements of the Growth Management Act.

[Statutory Authority: RCW [36.70A.190](#) (4)(b). WSR 01-08-056, § 365-195-900, filed 4/2/01, effective 5/3/01; WSR 00-16-064, § 365-195-900, filed 7/27/00, effective 8/27/00.]

[Complete Chapter](#) [HTML](#) | [PDF](#) | [RCW Dispositions](#)

Chapter [64.70](#) RCW

UNIFORM ENVIRONMENTAL COVENANTS ACT

RCW [64.70.005](#)

Findings—National uniform legislation.

The legislature finds that the national conference of commissioners on uniform state laws has developed uniform legislation called the **uniform environmental covenants act**. The act ensures that environmental covenants, recorded use restrictions negotiated in **connection with hazardous waste site cleanups**, and other environmental response projects are legally valid and enforceable. The uniform environmental covenants act achieves this objective by providing clear statutory standards that override court-made doctrines that do not fit **such cleanup and reuse** contexts. The legislature further finds that nothing in this chapter will amend or modify any local or state laws that determine when environmental covenants are required, **when a particular contaminated site must be cleaned up, or the standards for a cleanup.**

Adoption of the uniform environmental covenants act in Washington will provide all **participants in a cleanup** with greater confidence that environmental covenants and other institutional controls will be effective over the life of the cleanup. This will **facilitate cleanups of many sites and assist in the recycling of urban brownfield properties into new economic uses for the benefit of the citizens of Washington.**

This chapter adopts most provisions of the uniform legislation while making modifications to integrate the uniform environmental covenants act with **Washington's environmental cleanup programs.**[[2007 c 104 § 1.](#)]

RCW [64.70.020](#)

Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Activity or use limitations" means restrictions or obligations created under this chapter with respect to real property.

(2) "Agency" means either the department of ecology, the pollution liability insurance agency, or the United States environmental protection agency, whichever determines or approves the environmental response project pursuant to which the **environmental covenant is created.**

(3)(a) "Common interest community" means a condominium, cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a

parcel of real property, is obligated to pay property taxes or insurance premiums, or for maintenance, or improvement of other real property described in a recorded covenant that creates the common interest community.

(b) "Common interest community" includes but is not limited to:

(i) An association of apartment owners as defined in RCW 64.32.010;

(ii) A unit owners' association as defined in RCW 64.34.020 and organized under RCW 64.34.300;

(iii) A master association as provided in RCW 64.34.276;

(iv) A subassociation as provided in RCW 64.34.278; and

(v) A homeowners' association as defined in RCW 64.38.010.

(4) "Environmental covenant" means a servitude arising under an environmental response project that imposes activity or use limitations.

(5) "Environmental response project" means a plan or work performed for environmental remediation of real property and conducted:

(a) Under a federal or state program governing environmental remediation of real property, including chapters 43.21C, 64.44, 70A.205, 70A.388, 70A.300, 70A.305, 90.48, and 90.52 RCW;

(b) Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of an agency; or

(c) Under the state voluntary clean-up program authorized under chapter 70A.305 RCW or technical assistance program authorized under chapter 70A.330 RCW.

(6) "Holder" means the grantee of an environmental covenant as specified in RCW 64.70.030(1).

(7) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(8) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

RCW 64.70.030

Interests in real property—Subordination.

(1) Any person, including a person that owns an interest in the real property, the agency, or a municipality or other unit of local government, may be a holder. An environmental covenant may identify more than one holder. The interest of a holder is an interest in real property.

(2) A right of an agency under this chapter or under an environmental covenant, other than a right as a holder, is not an interest in real property.

(3) An agency is bound by any obligation it assumes in an environmental covenant, but an agency does not assume obligations merely by signing an environmental covenant. Any other person that signs an environmental covenant is bound by the obligations the person assumes in the covenant, but signing the covenant does not change obligations, rights, or protections granted or imposed under law other than this chapter except as provided in the covenant.

(4) The following rules apply to interests in real property in existence at the time an environmental covenant is created or amended:

(a) An interest that has priority under other law is not affected by an environmental covenant unless the person that owns the interest subordinates that interest to the covenant.

(b) This chapter does not require a person that owns a prior interest to subordinate that interest to an environmental covenant or to agree to be bound by the covenant.

(c) A subordination agreement may be contained in an environmental covenant covering real property or in a separate record. If the environmental covenant covers commonly owned property in a common interest community, the record may be signed by any person authorized by the governing board of the owners' association.

(d) An agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person's interest but does not by itself impose any affirmative obligation on the person with respect to the environmental covenant.

RCW 64.70.040

Covenants—Contents—Agency discretion—Local land use consideration.

(1) An environmental covenant must:

(a) State that the instrument is an environmental covenant executed pursuant to this chapter;

(b) Contain a legally sufficient description of the real property subject to the covenant;

(c) Describe with specificity the activity or use limitations on the real property;

(d) Identify every holder;

(e) Be signed by the agency, every holder, and unless waived by the agency every owner of the fee simple of the real property subject to the covenant; and

(f) Identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.

(2) In addition to the information required by subsection (1) of this section, an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed it, including any:

(a) Requirements for notice following transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for, or proposals for any site work **affecting the contamination on, the property subject to the covenant;**

(b) Requirements for periodic reporting describing compliance with the covenant;

(c) Rights of access to the property granted in connection with implementation or enforcement of the covenant;

(d) **Narrative descriptions of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination;**

(e) Limitations on amendment or termination of the covenant in addition to those contained in RCW 64.70.090 and 64.70.100;

(f) Rights of the holder in addition to its right to enforce the covenant pursuant to RCW 64.70.110;

(g) Other information, restrictions, or requirements required by the agency, including the department of ecology under the authority of chapter 70A.305 RCW.

(3) In addition to other conditions for its approval of an environmental covenant, the agency may require those persons specified by the agency who have interests in the real property to sign the covenant.

(4) The agency may also require notice and opportunity to comment upon an environmental covenant as part of public participation efforts related to the environmental response project.

(5) The agency shall consult with local land use planning authorities in the development of the land use or activity restrictions in the environmental covenant. The agency shall consider potential redevelopment and revitalization opportunities and obtain information regarding present and proposed land and resource uses, and consider comprehensive land use plan and zoning provisions applicable to the real property to be subject to the environmental covenant.

RCW 64.70.060

**Chapter 64.70 RCW: UNIFORM ENVIRONMENTAL
COVENANTS ACT**

Use of real property—Chapter application.

This chapter does not authorize a use of real property that is otherwise prohibited by zoning, by law other than this chapter regulating use of real property, or by a recorded instrument that has priority over the environmental covenant. An environmental covenant may prohibit or restrict uses of real property that are authorized by zoning or by law other than this chapter.

[2007 c 104 § 7.]

cc'd: G. Onjiako
S. Wisser

B. HAVIS
C. COOK

Rebecca Messinger

From: Kathleen Otto
Sent: Tuesday, February 7, 2023 9:04 AM
To: Tina Redline; Rebecca Messinger
Subject: FW: Is a permanent covenant under CCC 40.445 a chicken or the egg?



Kathleen Otto
County Manager

564.397.2458



From: Clark County Citizens United, Inc. <cccuinc@yahoo.com>
Sent: Monday, February 6, 2023 10:46 PM
To: Karen Bowerman <Karen.Bowerman@clark.wa.gov>; Gary Medvigy <Gary.Medvigy@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>
Subject: Fw: Is a permanent covenant under CCC 40.445 a chicken or the egg?

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

February 6, 2023

FOR THE PUBLIC RECORD

Re: DRAFT 40.445 January 24, 2023 p 1 1 40.445 WETLANDS AND FISH AND WILDLIFE HABITAT CONSERVATION AREAS

Dear Councilors,

Clark County Citizens United, Inc. must ask the Clark County Council. Are the changes being proposed in the Draft CCC 40.445 Wetlands and Fish and Wildlife Habitat Conservation Areas, the chicken or the egg? **Is this a back door attempt at a rezone or an overlay?**

We're seeing staff's ambitions for the proposed riparian area buffer and covenant on the Traffic property, and now CCC 40.445, not squaring with the current Land Use Zoning and elements stated in the Comprehensive Plan. Is this an attempt by staff to re-zone this property into something it's

not? The proposals will remove described legal uses allowed in the Rural-10 zone, and other rural zones, that dictate residential uses, small-scale farming and forestry, etc. and replace them with a natural, treed and vegetative state. Staff's proposals are more akin to a designated AG/Wildlife zone that is kept in a natural state and has one dwelling per 160 acres. That is the antithesis of the current uses stated in the Rural zone. In this regard, the proposals are looking more like a back door rezone, or the very least, an overlay. In both cases, a formal public process, using equity and reasonable use, must be warranted.

Does the Comprehensive Plan need to adapt itself to staff's riparian buffers and covenants, or is staff required to suit their proposals to the confines of the Plan and zoning regulations?

Because the current land use zoning and Comprehensive Plan do not conform to the proposed riparian buffer and covenant, is staff now going to require changes in the Comprehensive Plan and land use zoning in order to meet their proposals? Those changes will be required since the Plan no longer suits their hierarchy of things in the county. **Does the Comprehensive Growth Plan change, at the drop of a hat, or should staff's proposals conform to the Plan?**

It's a chicken or the egg thing. Is the Clark County Comprehensive Plan elevated above proposals, or do staff's proposals provoke changes to land use zoning and the Plan? How do policies of the elected officials integrate into all this? Aren't those policies, set in the Plan, rise above all the nonsense? It is time this Council to answer these and many other questions that the public is obligated to know.

Sincerely,

Susan Rasmussen, President

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

CC'd: O. Orjiako
Brent Davis
sonja wisler
CHRIS COO

Rebecca Messinger

From: Kathleen Otto
Sent: Sunday, February 26, 2023 10:42 AM
To: Rebecca Messinger; Tina Redline
Subject: FW: Major changes to the Critical Areas Wetland and Habitat Ordinances



Kathleen Otto
County Manager

564.397.2458



From: Clark County Citizens United, Inc. <cccuinc@yahoo.com>
Sent: Saturday, February 25, 2023 9:14 PM
To: Karen Bowerman <Karen.Bowerman@clark.wa.gov>; Gary Medvigy <Gary.Medvigy@clark.wa.gov>; Glen Yung <Glen.Yung@clark.wa.gov>; Michelle Belkot <Michelle.Belkot@clark.wa.gov>; Sue Marshall <Sue.Marshall@clark.wa.gov>; Kathleen Otto <Kathleen.Otto@clark.wa.gov>
Subject: Major changes to the Critical Areas Wetland and Habitat Ordinances

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

February 25, 2023

FOR THE PUBLIC RECORD

Re: Docket Item CPZ 2022-00010 - Critical Areas Ordinance Update

Dear Councilors,

Clark County Citizens United, Inc. cannot accept the proposals contained in **Docket Item CPZ 2022-00010, Critical Areas Ordinance Update**. Staff will be presenting this draft to the Clark County Council, on **March 7, 2023** for approval. It is apparent that our concern over use of a covenant in the ordinance, is not the only problem. What is noticed most, is the deceptive way that it is being presented, both to the Clark County Planning Commission, and now to the Clark County Council.

It is clear, that staff intends to stop rural development via use of the habitat buffers contained in the Draft. What they couldn't do by using zoning, they are attempting to do with this ordinance and its buffers. The Clark County Comprehensive Plan is required by the Growth Management Act to create rural, agriculture and forest zones. Within those zones are allowed uses. If this ordinance is adopted, it will negate the zones, specific definitions and allowed uses.

It is important for the Councilors to understand, that if the hands of the landowners are tied, there will be no one to take care of rural lands. As in all infrastructure, there has to be maintenance, and that is what landowners do. They watch over the land and manage it, when they are allowed to live there, whether they are commercial farms and forests or family farms and forests. Even small rural lots allow for some form of rural maintenance that maintains and protects the rural character of the area, which is required under the GMA. The Councilors are not mandated by anyone, including the GMA, to accept staff's proposal and recommendations. Staff is advisory only, and should be bringing forth reasonable proposals. This Draft Wetland and Critical Habitat Ordinance is a far cry from reasonable.

The crux of the problem lies in the stream buffer proposals. The following is a review of those buffers, with CCCU clarifications and notations in red.

b. Riparian Habitat Areas.

Riparian Priority Habitat is designated based on the estimated average 200 (feet) year site potential tree height, extending outward on **each side of the stream**, as

CCCU NOTES: The Washington Fish and Wildlife recommendations are advisory and it is up to the county to create their own ordinance. The same is true for Washington Department of Natural Resources, as they are also advisory only. What staff is recommending is to use the Forest Practices DNR water maps, intended for timber harvests, and Fish and Wildlife's rendition of those map streams. The buffer widths on such "streams" has been dramatically increased in this proposed ordinance.

The tree height is based on a mature potential height of a Douglas Fir tree. If there are small native trees, brush or no trees in the area, this ordinance would still use the 200 feet marker on both sides of the "stream", based on DNR stream maps, which DNR admits, are not always accurate. DNR states in their forest applications that they are dependent on the landowner to determine if the "stream" is actually there and correctly designated.

Using the proposed changes, would affect 400 feet of land. A rectangular five acre parcel is 660 feet X 330 feet. If the "stream" runs through the middle of the lot, these proposed buffers would prevent use of the whole parcel, or 100%.

18 defined in Chapter 40.100.070, Definitions) from the **ordinary high water mark** (as defined in 19 Chapter 40.460.800) to the distances in Table 40.445.020-1 for each Site Class (defined in 20 WAC 222-16-010) by Water Type (defined in WAC 222-16-030).

CCCU NOTES: DNR stream classifications of Np and Ns waters are simply seasonal runoff areas. They have been determined by an aerial and topographical maps. These "streams" are dry most of the year, as they are simply rain induced runoff, similar to what people have in their back yards. They don't have a true "ordinary high water mark". One can see where they have been, but many times they disappear until the next rain. They don't support fish or aquatic species and usually don't have a defined "bed" or "bank". In rocky ground, the soil gets washed off the rocks, which would define their location, but that is not a true aquatic "bed" or "bank".

21 Table 40.445.020-4 Riparian Habitat Areas

Type S and F Waters - Site Class II - 235 feet, III - 205 feet, IV - 165 feet, V - 150 feet
Type Np Waters - Site Class II - 155 feet, III - 135 feet, IV - 105 feet, V - 100 feet
Type Ns Waters - Site Class II - 100 feet, III - 100 feet, IV - 100 feet, V - 100 feet

22 *No Site Class I soils are mapped in Clark County.

23 c. Functionally Isolated Riparian Habitat Areas. Riparian habitat Areas which are at least one 24 hundred (100) feet from the **Ordinary High Water Mark** and disconnected from the water body 25 by a continuous public or private roadway serving three (3) or more lots shall be excluded 26 from Fish and Wildlife Habitat Conservation Areas.

There is no rush for the Board of Councilors to adopt these recommendations until they reach out to those landowners who are most affected. The Farm Forest Association, Farm Bureau, Board of Realtors, and Building Industry should have been stakeholders in this decision making, and CCCU sees nothing from any of those organizations. It is likely that they are not aware of these major changes that are being proposed in this ordinance, as it is just touted as a "Docket Item."

Until there is a meaning public response by all those affected by this ordinance, Clark County Citizens United, Inc. recommends the Council table this Draft proposal until they have had a opportunity to weigh in on all public response and comments.

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

<https://app.leg.wa.gov/rcw/default.aspx?cite=36.70A>

<https://app.leg.wa.gov/RCW/default.aspx?cite=36.70A.070>

<https://app.leg.wa.gov/RCW/default.aspx?cite=36.70A.080>

https://scholar.google.com/scholar?scidkt=6360227444238730838&as_sdt=2&hl=en

<https://app.leg.wa.gov/RCW/default.aspx?cite=36.70A.060>

<https://mrsc.org/explore-topics/environment/critical-areas-and-species/critical-areas#inPageCollapse>

<https://www.codepublishing.com/WA/ClarkCounty/html/ClarkCounty40/ClarkCounty40440/ClarkCounty40440010.html>

<https://app.leg.wa.gov/WAC/default.aspx?cite=222-16-030>

<https://app.leg.wa.gov/WAC/default.aspx?cite=222-16-031>

<https://ecology.wa.gov/Research-Data/Monitoring-assessment/River-stream-monitoring/Flow-monitoring>

<https://app.leg.wa.gov/RCW/default.aspx?cite=90.58>

<https://fpamt.dnr.wa.gov/2d-view#activity?-13651193,-13649561,5769388,5770135>

https://www.dnr.wa.gov/publications/fp_board_manual_section13.pdf

Washington Department of Natural Resources Features shown on the Forest Practices Application Mapping Tool (FPAMT) represent data stored in the Washington State Department of Natural Resources (DNR) Geographic Information Systems database. As some of the data sets rely on outside sources of information, the DNR cannot accept responsibility for errors or omissions, and therefore there are no warranties that accompany this material.

[DNR Map Viewer](#)

Sincerely,

Carol Levanen, Exec. Secretary

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

Clark County Citizens United, Inc. P.O. Box 2188 Battle Ground, Washington 98604 E-Mail cccuinc@yahoo.com

cc'd: O. Orjiako
S. Wisler
B. Davis
C. Cook

Rebecca Messinger

From: Kathleen Otto
Sent: Sunday, February 26, 2023 10:41 AM
To: Rebecca Messinger; Tina Redline
Subject: FW: Docket Item CPZ 2022-00010 Critical Areas Ordinance Update - Chicken or the egg?



Kathleen Otto
County Manager

564.397.2458



From: Clark County Citizens United, Inc. <cccuinc@yahoo.com>
Sent: Saturday, February 25, 2023 9:49 PM
To: Karen Bowerman <Karen.Bowerman@clark.wa.gov>; Gary Medvigy <Gary.Medvigy@clark.wa.gov>; Glen Yung <Glen.Yung@clark.wa.gov>; Michelle Belkot <Michelle.Belkot@clark.wa.gov>; Sue Marshall <Sue.Marshall@clark.wa.gov>; Kathleen Otto <Kathleen.Otto@clark.wa.gov>
Subject: Fw: Docket Item CPZ 2022-00010 Critical Areas Ordinance Update - Chicken or the egg?

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

February 25, 2023

FOR THE PUBLIC RECORD

Re: Docket item CPZ 2022 - 00010 Critical Areas Ordinance Update

Dear Councilors,

Clark County Citizen United, Inc. has many concerns regarding the proposed changes to the Wetland and Critical Habitat Ordinances. As CCCU watches application of these ordinances that affect the landowner, it brings to question as to what exactly staff is trying to do with these onerous regulations. Here are some questions that come to CCCU's mind.

1. Is this a back door attempt at a rezone or create an overlay?

We're seeing staff's ambitions for the proposed riparian area buffer and covenant on the Jack Traffic property not squaring with the current Rural Land Use Zoning and elements stated in the GMA and Comprehensive Plan. Is this an attempt by staff to re-zone this property into something it is not? The proposals will remove described legal uses allowed in the Rural-10 zone, such as residential uses, small-scale farming and forestry, etc. and replace them with a permanent treed and vegetative state.

Staff's proposals are more akin to a designated AG/Wildlife zone that is kept in a natural state and has 1 dwelling per 160 acres. That is the antithesis of the current uses stated in the Rural zone. In this regard, the proposals are looking more like a back door rezone than an overlay. In both cases, no formal public process has been conducted to allow that to happen..

2. Does the Comprehensive Plan need to adapt itself to staff's riparian buffers and covenants, or is staff required to suit their proposals to the confines of the Growth Management Act, Clark County Comprehensive Land Use Plan and zoning regulations?

Because the current land use zoning and Comprehensive Plan do not conform to the proposed riparian buffer and covenant, is staff now going to require changes in the Comprehensive Plan and land use zoning in order to meet their proposals? Those changes will be required since the Plan no longer suits their hierarchy of things in the county. The question needs to be asked, Does the Comprehensive Growth Plan change or should staff's proposals conform to the Plan?

It's looks like a chicken or the egg thing. Is the GMA and Comprehensive Plan elevated above proposals, or do staff's proposals provoke changes to land use zoning and the Plan? If so, this would create an inconsistency in the Plan, which is not allowed under the GMA.

3. How do policies of the elected officials integrate into all this? Aren't those policies set in the Plan rise above all the nonsense proposed by staff?

As elected officials, the Clark County Council is required to create policies that are then adopted as laws. Zoning laws fall into that category. Councilors cannot pass that responsibility to non-elected county employees. It appears that staff is trying to usurp the law and go around it. Such activity is not allowed by state law.

Sincerely,

Susan Rasmussen, President

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

Sent from [Mail](#) for Windows

CC'd: B. Orjiako
C. Cook
S. Wisser
B. Davis

Rebecca Messinger

From: Kathleen Otto
Sent: Sunday, February 26, 2023 10:41 AM
To: Rebecca Messinger; Tina Redline
Subject: FW: Docket Item CPZ 2022-00010 Critical Areas Ordinance Update



Kathleen Otto
County Manager

564.397.2458



From: Clark County Citizens United, Inc. <ccuinc@yahoo.com>
Sent: Saturday, February 25, 2023 10:05 PM
To: Karen Bowerman <Karen.Bowerman@clark.wa.gov>; Glen Yung <Glen.Yung@clark.wa.gov>; Gary Medvigy <Gary.Medvigy@clark.wa.gov>; Michelle Belkot <Michelle.Belkot@clark.wa.gov>; Sue Marshall <Sue.Marshall@clark.wa.gov>; Kathleen Otto <Kathleen.Otto@clark.wa.gov>
Subject: Docket Item CPZ 2022-00010 Critical Areas Ordinance Update

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FEBRUARY 25, 2023

FOR THE PUBLIC RECORD

SUBMITTED FOR CLARK COUNTY COUNCILOR REVIEW

by CLARK COUNTY CITIZENS UNITED, INC.

YAKIMA COUNTY; Yakima County Farm Bureau, Inc., Respondents and Cross-Appellants.

v.

**EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD; Futurwise;
and Confederated Tribes and Bands of the Yakama Nation, Appellants and Cross-
Respondents,**

**Isabel L. Campbell, Wes Hazen; Upper Wenas Preservation Association; Yakima
Valley Audubon Society; Washington State Department of Fish and Wildlife;**

Washington State Department of Commerce; Columbia Ready-Mix, Inc.; Friends of the Wenas; Yakima County Cattlemen's Association; Central Pre-Mix Concrete Co., Inc., Defendants.

No. 29763-2-III.

**279 P.3d 434 (2012)
168 Wash.App. 680**

**Court of Appeals of Washington, Division 3.
June 14, 2012.**

¶ 51 In sum, the GMHB failed to defer to the County's reasoned justification for refusing to designate Type 5 ephemeral streams as critical areas subject to critical areas regulations. Accordingly, the superior court did not err in reversing the GMHB's decision that YCC 16C.06.16, Table 6-1, adopted in Ordinance No. 13-2007, violated 448*448 the GMA. Therefore, we affirm that portion of the superior court's decision.

¶ 52 Reversed in part. Affirmed in part.

WE CONCUR: KORSMO, C.J., and SWEENEY, J

¶ 21 The superior court concluded the County met its burden of showing a reasoned justification for maintaining the 1995 stream buffers:

Stream Type	Buffer Width, in feet Standard/(minimum adjustments)
Type 1 shoreline streams	100
Type 2 streams	75/(25)
Type 3 streams (Perennial)	50/(25)
Type 4 streams (Intermittent)	25/(15)
Type 5 streams (Ephemeral)	No buffer standards
Type 1 wetlands — 200 feet	Type 2 wetlands — 100 feet
Type 3 wetlands — 75 feet	Type 4 wetlands — 50 feet.

[Swinomish Indian Tribal Community. v. W. Washington Growth Mgmt. Hearings Board](#), 161 Wn.2d 415 (2007) – The tribe challenged the county's critical areas ordinance alleging, among other things, that a "no harm" provision failed to protect critical areas, as required by [RCW 36.70A.060](#)(2). The court concluded that the "no harm" standard protected critical areas by maintaining existing conditions. The GMA does not impose a duty on local governments to enhance critical areas. The county did not need to require buffers near rivers, where previously existing buffers had long since been removed (there is no requirement to enhance). The court also concluded that, while best available science needed to be considered and included in its record, the county did not need to follow it. A county may depart from the best available science if it provides a reasoned justification for doing so.

Clark County Citizens United, Inc. P.O. Box 2188 Battle Ground, Washington 98604 E-Mail cccuinc@yahoo.com

Clark County Citizens United, Inc. P.O. Box 2188 Battle Ground, Washington 98604 E-Mail cccuinc@yahoo.com

cc'd: O. Orjiako
B. Davis
S. Wisler; C. Cook

Rebecca Messinger

From: Kathleen Otto
Sent: Monday, February 27, 2023 7:49 PM
To: Rebecca Messinger; Tina Redline
Subject: Fw: Major changes to the Critical Areas Wetland and Habitat Ordinances- clarifications

From: Clark County Citizens United, Inc. <cccuinc@yahoo.com>
Sent: Monday, February 27, 2023 9:53 AM
To: Karen Bowerman <Karen.Bowerman@clark.wa.gov>; Gary Medvivy <Gary.Medvivy@clark.wa.gov>; Glen Yung <Glen.Yung@clark.wa.gov>; Michelle Belkot <Michelle.Belkot@clark.wa.gov>; Sue Marshall <Sue.Marshall@clark.wa.gov>; Kathleen Otto <Kathleen.Otto@clark.wa.gov>
Subject: Fw: Major changes to the Critical Areas Wetland and Habitat Ordinances- clarifications

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Additions and corrections are being submitted to this previous 2-25-23 CCCU testimony.

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

February 27, 2023

FOR THE PUBLIC RECORD

Re: Docket Item CPZ 2022-00010 - Critical Areas Ordinance Update

Dear Councilors

February 27, 2023

Clark County Citizens United, Inc. cannot accept proposals contained in **Docket Item CPZ 2022-00010, Critical Areas Ordinance Update**. Staff will be presenting this Draft to the Clark County Council, on **March 7, 2023** for approval. It is apparent that CCCU's concern over use of a covenant in the ordinance, is not the only problem. A bigger problem is the increase of stream buffers and what is included. It appears deception was used, as it was presented, to the Clark County Planning Commission, and now the Clark County Council.

It's seems clear staff intends to stop rural development via use of the habitat buffers in the Draft. What they couldn't do by using down-zoning, they are attempting to do with this ordinance and its buffers. The Clark County Comprehensive Plan is required by the Growth Management Act to create rural, agriculture and forest zones. Within those zones are allowed uses, such as gardens and orchards. If this Draft is adopted, it will negate the zones and allowed uses, over large swaths of rural lands in Clark County, via county controlled buffers.

It is important for the Councilors and the public to understand, if hands of landowners are tied, there will be no one to take care of those lands. As in all infrastructure, there is maintenance, and that is what landowners do. They watch over the land and manage it, when they are allowed to live there, whether they are commercial farms and forests or family farms and forests. Even small rural lots allow for some form of rural maintenance that maintains and protects the rural character of the area, which is required under the GMA law. The Councilors are not mandated by anyone, including the GMA, to accept staff's recommendations. Staff is advisory only, and should be bringing forth reasonable proposals. This Draft Wetland and Critical Habitat Ordinance is a far cry from reasonable. The crux of the problem lies in the stream buffer proposals. The following are CCCU clarifications and notations in red.

b. Riparian Habitat Areas.

"Riparian Priority Habitat is designated based on the estimated average 200 (feet) year site potential tree height, extending outward on **each side of the stream**, as defined in Chapter 40.100.070, Definitions) from the **ordinary high water mark** (as defined in Chapter 40.460.800) to the distances in Table 40.445.020-1 for each Site Class (defined in WAC 222-16-010) by Water Type (defined in WAC 222-16-030)"

CCCU Notes: The Washington Fish and Wildlife and Washington Department of Natural Resources recommendations are advisory and it is up to the county to create their own ordinance. What staff is recommending is to use Forest Practices DNR water maps, intended for timber harvests, and Fish and Wildlife's rendition of those maps. The buffer widths on such "streams" are dramatically increased in this proposed Draft ordinance.

The tree height is based on a mature potential height of a Douglas Fir tree. If there are small native trees, brush or no trees in the area, this ordinance would still use the 200 feet marker on both sides of the "stream", based on DNR stream maps, which they admit are not always accurate. DNR states in their harvest applications that the landowner is to determine if the "stream" is actually there and correctly designated. Using the proposed Draft would affect 400 feet of land. A rectangular five acres is 660 feet X 330 feet. If the "stream" runs through the center of the lot, the proposed buffers would prevent reasonable use of 100% of the parcel.

DNR stream classifications of Np and Ns waters are simply seasonal runoff areas. They have been determined by an aerial and topographical maps. These "streams" are dry most of the year, as they are simply rain induced runoff, similar to what people have in their back yards. They don't have a true "ordinary high water mark". One can see where they have been, but many times they disappear until the next rain. They don't support fish or aquatic species and usually don't have a defined "bed" or "bank". In rocky ground, the soil gets washed off the rocks, which would define their location, but that is not a true aquatic "bed" or "bank".

"21 Table 40.445.020-4 Riparian Habitat Areas"

Type S and F Waters - Site Class II - 235 feet, III - 205 feet, IV - 165 feet, V - 150 feet

Type Np Waters - Site Class II - 155 feet, III - 135 feet, IV - 105 feet, V - 100 feet
Type Ns Waters - Site Class II - 100 feet, III - 100 feet, IV - 100 feet, V - 100 feet

"*No Site Class I soils are mapped in Clark County.

c. Functionally Isolated Riparian Habitat Areas. Riparian habitat Areas which are at least one hundred (100) feet from the **Ordinary High Water Mark** and disconnected from the water body by a continuous public or private roadway serving three (3) or more lots shall be excluded from Fish and Wildlife Habitat Conservation Areas."

There is no rush for the Board of Councilors to adopt these recommendations until they reach out to those landowners who are most affected. The Farm Forest Association, Farm Bureau, Board of Realtors, Clark County Horse Council, Building Industry and rural landowners should have been stakeholders in this decision making, and CCCU sees nothing from any of those persons or organizations. It is likely that they're not aware of major changes being proposed in the Wetland and Habitat ordinances, touted as a "Docket Item." to Clark County Development Code Title 40 under the Wetland and Habitat Ordinances.

Until there is a meaning public response by all those affected by this ordinance, Clark County Citizens United, Inc. recommends the Clark County Council table this Draft proposal until they have had a opportunity to weigh in on all public response and comments.

Sincerely,

Carol Levanen, Exec. Secretary

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

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

<https://app.leg.wa.gov/rcw/default.aspx?cite=36.70A>

<https://app.leg.wa.gov/RCW/default.aspx?cite=36.70A.070>

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<https://mrsc.org/explore-topics/environment/critical-areas-and-species/critical-areas#inPageCollapse>

<https://www.codepublishing.com/WA/ClarkCounty/html/ClarkCounty40/ClarkCounty40440/ClarkCounty40440010.html>

<https://app.leg.wa.gov/WAC/default.aspx?cite=222-16-030>

<https://app.leg.wa.gov/WAC/default.aspx?cite=222-16-031>

<https://ecology.wa.gov/Research-Data/Monitoring-assessment/River-stream-monitoring/Flow-monitoring>

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https://www.dnr.wa.gov/publications/fp_board_manual_section13.pdf

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State Department of Natural Resources (DNR) Geographic Information Systems database. As some of the data sets rely on outside sources of information, the DNR cannot accept responsibility for errors or omissions, and therefore there are no warranties that accompany this material.

[DNR Map Viewer](#)

Sincerely,

Carol Levanen, Exec. Secretary

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

Clark County Citizens United, Inc. P.O. Box 2188 Battle Ground, Washington 98604 E-Mail cccuinc@yahoo.com

CC'd: B. Orjiako
B. DAVIS

C. COOK
S. WISER

Rebecca Messinger

From: Jim Byrne <byrnejim7@gmail.com>
Sent: Tuesday, February 28, 2023 4:11 PM
To: Karen Bowerman; Gary Medvigy; Sue Marshall; Glen Yung; April Furth; Rebecca Messinger
Subject: Critical Areas Ordinances
Attachments: CAO testimony final.odt

CAUTION: 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.

Councilors,

Thank you for the opportunity to meet on Zoom tomorrow. As a courtesy, I am providing text of what I hope to discuss. Some of which refer to legal passages. I feel you would prefer to see them, rather than listen to me read. I look forward to tomorrow.

Rebecca - Would you please add these comments to the public record.

Thank you all very much.

Jim

Feb 28th, 2023

Councilors,

Here are thoughts I hope may direct your decision making regarding the revision of our critical areas ordinances.

Legal

The GMA states, “Critical Areas Ordinances are required to include Best Available Science (BAS) and give “special consideration” to conservation or protection measures necessary to preserve or enhance anadromous fish (RCW 37.70A.172).”

The County's own Ordinance 140.445 Wetlands and Fish and Wildlife Habitat Conservation Areas states, in the introduction 140.445.101 to “(1) Include best available science to protect the functions and values of wetlands and fish and wildlife habitat conservation areas with special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries”. Currently, there are no special considerations for anadromous fish.

The County's plan to reduce buffers on ephemeral and non-fish-bearing streams violates BAS and also the goal of “(2) no net loss of functions and values of wetland and fish and wildlife habitat conservation areas”. Reducing buffers increases loss of function and value.

This is clearly not the State's intent, expressed in WDFW's Riparian Ecosystems, Volume 2: Management Recommendations (the “gold” standard for BAS) which state, “**6. Apply the recommended RMZ delineation steps to all streams, whether or not they are fish-bearing:** . . . In reviewing the current science literature . . . we found no evidence that full riparian ecosystem functions along non-fish-bearing streams are less important to aquatic ecosystems than full riparian ecosystem functions along fish-bearing streams. This recommendation is based on four additional considerations. Non-fish-bearing streams:

- Support a unique community of aquatic and riparian-obligate wildlife;
- Provision fish-bearing streams with matter and energy; and
- Provide movement corridors for wildlife, particularly in the face of changing climate conditions;
- Provide cool water to downstream reaches. Washington State has already experienced increased stream temperatures due to climate change and expect further increases, which have direct implications for the persistence of fish”. Volume 2, pg 11,12. **(1)**

Brent Davis stated, in comment 19 of the 1/24/2023 staff comments that, “RCW 36.70A.172 requires local governments to “include” Best Available Science. The County is not required to adopt standards solely based on best available science, provided we “show our work.” Staff has prepared an analysis of the impact of using Site Potential Tree Height for non-fish bearing streams on the land area in the county available for meeting other GMA goals, finding that the proposed Riparian Habitat designation balances Critical Areas protection with other GMA goals”. Meeting BAS in critical areas is a requirement of the GMA. Meeting goals is just that. There is no legal requirement to meet all goals. Goals and requirements are not equivalent. There is no GMA direction that goals be balanced. Brent is off base. Moreover, staff has not “shown our work”. They merely put new buffers in a table. What scientific review did it pass? Who approved it?

Chapter 365-195 of the Washington Administrative Code (WAC) serves as a guide for establishing what is considered the best available science. Jurisdictions must demonstrate that the best available science has been considered when creating their critical areas ordinance by documenting scientific sources that support their approach to regulating critical areas and explaining when policies depart from science-based recommendations. This has not been done.

Current situation

In 2022, WDFW directed two new opinions regarding habitat. First, in “Net Ecological Gain Standard Proviso Summary Report” (2), recommends moving from a no net loss of habitat to a Net Ecological Gain. An admission, we need more quality habitat, recognizing that no net loss is failing, and that we need to do more. The second, “The Future of Instream Water in Washington State: A Brief for Policy Makers” (3), recognizes, “Losses of instream water have been largely due to increasing human demands for out-of-stream uses, and climate warming due to global anthropogenic greenhouse gas emissions. . . These pressures will further degrade habitat quantity and quality for many native aquatic species, and particularly cold water-adapted fish like salmon. Water conservation and storage measures may relieve some increases in demand, but the manifold environmental impacts associated with climate change are likely to exceed the capacity of native fish and wildlife to adapt, and will not be easily mitigated”. We need to do something now.

The new ordinance makes no reference to “Climate Change”. While 15 years ago, we could agree with the County on type N streams, in the face of climate change we cannot. All streams are connected, and water runs downhill. Additional shade buffers along non-fish bearing and seasonal streams will protect and provide cooling water to downstream reaches. Who can forget the 116° (F) temperatures experienced in June 2021. We are entering a new era of climate change, which needs to be reflected in the ordinance. Locally this summer's Nakia Creek's fire illustrated the effects of climate change. Now, water temperature in the lower East Fork Lewis routinely reaches 75° (F) in recent summers damaging anadromous fish. **Remember** : anadromous fish are to receive “special consideration”. The existing ordinance does not provide additional consideration for anadromous fish; rather it ignores them.

Reduced protections on non- fish bearing streams, will cause reductions in fish bearing streams and additional seasonal streams. Over time, riparian vegetation is more likely to resemble adjacent upland vegetation, reducing its ability to provide riparian functions and increasing its susceptibility to wildfires. While riparian habitat makes up only a small proportion of the landscape, approximately 85% of wildlife species in Washington use it with approximately 170 species requiring riparian habitat for some portion of their lives.

According to WDFW PHS mapping, Clark County supports the following types of priority upland habitats: • Aspen stands • Biodiversity areas and corridors • Herbaceous balds • Old-growth/mature forests • Oregon white oak woodlands • West side prairies • Caves • Cliffs • Snags and logs • Talus slopes. These were incorporated into the 2016 plan and should be referenced in the new ordinance.

We have no issues with the proposed Wetland portions of the ordinance. We would encourage you to incorporate enhanced riparian buffers into the Shoreline revisions as well.

Please don't let Clark County fall behind Federal and state agencies. The City of Anacortes has adopted full buffers. Clark County should be in the forefront of environmental and climate protection – not lagging behind. Keep our buffers wide. I know I am asking you to go beyond the minimum. Think of your kids and grand-kids. Do it for them. Years from now, they will appreciate it.

REFERENCES

- 1). Rentz, R., A. Windrope, K. Folkerts, and J. Azerrad. 2020. Riparian Ecosystems, Volume 2: Management Recommendations. Habitat Program, Washington Department of Fish and Wildlife, Olympia.
- 2). Net Ecological Gain Standard Proviso Summary Report. 2022. Washington Department of Fish and Wildlife, Olympia.
- 3). Gates, K.K., T. Quinn, and N.J. Georgiadis, technical editors. 2022. The Future of Instream Water in Washington State: A Brief for Policy Makers. Habitat Program, Washington Department of Fish and Wildlife, Olympia.

CC'd: G. Orjiako
B. DAVIS

S. WISER
C. COOK

Rebecca Messinger

From: Kathleen Otto
Sent: Tuesday, February 28, 2023 6:29 PM
To: Rebecca Messinger; Tina Redline
Subject: Fw: Excessive Buffers in Docket Item CPZ 2022-00010 Critical Areas Ordinance Update

From: Clark County Citizens United, Inc. <cccuinc@yahoo.com>
Sent: Tuesday, February 28, 2023 4:48 PM
To: Karen Bowerman <Karen.Bowerman@clark.wa.gov>; Gary Medvigy <Gary.Medvigy@clark.wa.gov>; Glen Yung <Glen.Yung@clark.wa.gov>; Michelle Belkot <Michelle.Belkot@clark.wa.gov>; Sue Marshall <Sue.Marshall@clark.wa.gov>; Kathleen Otto <Kathleen.Otto@clark.wa.gov>
Subject: Excessive Buffers in Docket Item CPZ 2022-00010 Critical Areas Ordinance Update

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Clark County Council
2023 P.O. Box 5000
Vancouver, Washington 98666

February 28,

FOR THE PUBLIC RECORD

Re: : Docket Item CPZ 2022-00010 Critical Areas Ordinance Update

Dear Councilors,

Clark County Citizens United, Inc. is very concerned over the process and the result of what Staff is presenting to the Clark County Council in **Docket Item CPZ 2022-00010 Critical Areas Ordinance**. CCCU believes the buffers being proposed, are excessive, unnecessary and punitive. With that in mind, CCCU simply researched "habitat buffers in Washington state" and came up with many examples of other Washington state counties who had much more reasonable buffers in their Critical Land Ordinances, than Clark County. Included in this testimony are six examples of those counties, along with DNR information and an Idaho county who had some good ideas. CCCU stopped there, but what was found would likely be consistent with the other thirty-three counties in Washington state.

Clark County is not any more unique or special than those other counties, so why is Staff proposing such onerously large buffers? CCCU believes it is because the buffers are being used to suppress or stop growth in the rural areas. They function similar to an "overlay", thereby removing the intended uses in the zone. When one couples these buffers with county costs, requirements, other ordinance regulations and zoning, we see an impossibility to reasonably build a home in the rural areas of Clark County. This was not the intent of the state law under the Growth Management Act, when it was adopted by the Legislature.

CCCU has forwarded you two important court actions from the Washington State Court of Appeals Division 3, No. 29763-2-III. and the Washington State Supreme Court, **161 Wn.2d 415 (2007)** that confirms a reasoned approach to Critical Land Buffers is what was intended by the GMA. CCCU believes that if we research further, we will find many more such court actions.

Clark County Citizens United, Inc. urges the Council to delay adoption of this ordinance, scheduled for March 7, 2023, until reasonable buffers are presented by Staff. There needs to be a full and complete consideration of the impacts of this proposed ordinance, by the Councilors and the public, before adoption.

Sincerely,

Carol Levanen, Exec. Secretary

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

Critical Areas Ordinance

The Kitsap County Critical Areas Ordinance (CAO) regulates the use of land near wetlands, streams, saltwater, lakes, aquifer recharge areas, flood-prone areas, and geologically hazardous areas. This CAO fact sheet describes the County's protections for some of these environmentally critical areas. Parcels with pre-CAO development existing inside currently designated buffers and setbacks may be repaired, remodeled and expanded by up to 120% of the existing development footprint so long as new construction does not encroach further on the regulated critical area or creates additional adverse impacts.

Streams Buffers and Building Setbacks:

A "buffer" of native vegetation is designed to protect critical areas from human activities. Clearing or grading is not allowed within a buffer. In addition, structures must be set back 15 feet from the edge of the buffer. The inner edge of the buffer is measured from the stream's bankfull width (ordinary high water). Existing structures within a buffer may be remodeled, reconstructed or replaced.

Stream Buffers are tailored to the stream type. Standard buffer requirements: •

Type 1 Stream (fish bearing)–100 feet •

Type 2 Stream (fish bearing)–100 feet •

Type 3 Stream (fish bearing)–100 feet •

Type 4 Stream (Year-round stream/no fish)–50 feet •

Type 5 Stream (Seasonal/no fish)–25 feet Depending upon site-specific conditions, staff may have the authority to administratively decrease these buffers by up to 25%.

Wetlands

Wetland Buffers are tailored to the wetland type: •

Category I Wetland (highest value)–200 feet •

Category II Wetland–100 feet •

Category III Wetland–50 feet •

Category IV Wetland–25 feet

<https://nwtreatytribes.org/streamside-buffers-voluntary-farms-washington-state/> In 1997, when **Skagit County exempted agriculture from its Critical Areas Ordinance** protections and refused to adopt Growth Management Act provisions to

designate and protect critical areas associated with salmon habitat on agricultural lands, the tribe joined Friends of Skagit County and others in challenging the county's actions. This lawsuit resulted in a decision requiring the county to designate and protect critical areas on agricultural lands. During the course of the following decade, the tribe and others were forced to appeal the county's continuing refusal to adequately protect critical areas associated with salmon habitat on agricultural lands. **The issue was finally resolved in 2007 by the Washington state Supreme Court in *Swinomish Indian Tribal Community. v. Western Washington Growth Management Hearings Board*.** The court found that the "no harm" standard of the Growth Management Act protects critical areas by only requiring the maintenance of existing conditions, regardless of how degraded they might be. In short, GMA does not provide a remedy from ongoing agricultural activities that result in failure to meet state water quality standards and that degrade salmon habitat.

Mandatory buffers are not required on existing agricultural lands. **The Court found that best available science (BAS) does not create a GMA requirement for mandating buffers on existing farmed areas. The Tribe and WEC unsuccessfully argued that mandatory buffers must be established along streams and rivers to protect anadromous fish, because buffers are supported by the best available science (BAS):**

"If the omission of mandatory buffers from the county's critical areas ordinance is a departure from BAS, it is a justified departure of the kind that is tolerated by the GMA. As we have noted above, the GMA's requirement to protect does not impose a corresponding requirement to enhance. That holding guides us here. A requirement to develop buffers would impose an obligation on farmers to replant areas that were lawfully cleared in the past, which is the equivalent of enhancement. Without a duty to enhance being imposed by the GMA, however, we cannot require farmers within Skagit County to replant what was long ago plucked up."

1. ID
2.

JEFFERSON COUNTY CODE

A Codification of the General Ordinances of the County of Jefferson County, Washington

CODE PUBLISHING COMPANY | Seattle, Washington

Article VI. Fish and Wildlife Habitat Conservation Areas (FWHCAs)

Prescriptive FWHCA Buffers.

(i) The standard buffer widths required by this article are considered to be the minimum required to protect the FWHCA/stream functions and values at the time of the proposed activity. When a buffer lacks adequate vegetation to protect critical area functions, the administrator may require additional documentation before allowing a proposal for buffer reduction or buffer averaging.

(ii) The standard buffer shall be measured landward horizontally on both sides of the stream from the ordinary high water mark (OHWM) as identified in the field. Nevertheless, the required buffer shall include any adjacent regulated wetland(s), landslide hazard areas or erosion hazard areas and required buffers but shall not be extended across paved roads or other lawfully established structures or hardened surfaces. The following standard buffer width requirements are established; provided, portions of streams that flow underground may be exempt from these buffer standards at the administrator's discretion when it can be demonstrated that no adverse effects on aquatic species will occur.

Table 18.22.630(1): Stream Buffers*

Stream Type	Buffer Requirement
Type "S" – Shoreline Streams	150 feet
Type "F" – Fish Bearing Streams	150 feet
Type "Np" – Non-Fish Bearing Perennial Streams	75 feet
Type "Ns" – Non-Fish Bearing Seasonal Streams greater than or equal to 20% grade	75 feet
Type "Ns" – Non-Fish Bearing Seasonal Streams less than 20% grade	50 feet
*Note:	

Table 18.22.630(1): Stream Buffers*

Stream Type	Buffer Requirement
<p>(a) The buffers above shall apply to culverted streams.</p> <p>(b) The buffers above shall not apply to lawfully established piped streams. The burden of proof is on the applicant to show that the pipe was lawfully established; failure to demonstrate compliance with this requirement shall result in buffers being required.</p> <p>(c) Stream type shall be determined using the criteria in WAC <u>222-16-030</u>, or as amended.</p>	

Water typing is a Washington State Department of Natural Resources (DNR) classification system of streams and other water bodies that identifies whether or not streams/water bodies are used by fish, and whether or not streams experience perennial or seasonal flow. Water types are used by the Forest Practices program to determine the amount and pattern of riparian buffer protection required during forest practices activities.

Forest landowners are required to determine, in the field, the type of any regulated waters as identified in the forest practices rules within proposed harvest boundaries, including the area within 200 feet of the proposal prior to submitting a forest practices application/notification. In addition, field verified stream typing is required prior to placement or replacement of stream crossing structures for road construction or road maintenance.

Water Type Classifications

The following table provides a general description of forest practices water type classifications currently in use.

Type	Description
Type "S" = Shoreline	Streams and waterbodies that are designated "shorelines of the state" as defined in chapter 90.58.030 RCW. (formerly type 1)
Type "F" = Fish	Streams and waterbodies that are known to be used by fish, or meet the physical criteria to be potentially used by fish. Fish streams may or may not have flowing water all year; they may be perennial or seasonal. (formerly type 2 or 3)
Type "Np" = Non-Fish	Streams that have flow year round and may have spatially intermittent dry reaches downstream of perennial flow. Type Np streams do not meet the physical criteria of a Type F stream. This also includes streams that have been proven not to contain fish

Type	Description
	using methods described in <u>Forest Practices Board Manual Section 13.</u> (formerly type 4)
Type "Ns"= Non-Fish Seasonal	Streams that do not have surface flow during at least some portion of the year, and do not meet the physical criteria of a Type F stream. (formerly type 5)

The Whatcom County Council is the legislative branch of Whatcom County government that is comprised of 7 members.

Planning & Development Services

Wetlands

Wetland quality will be based on a rating system that is easy to review and ensures all wetlands are evaluated using the same criteria. It also improves consistency with state regulations. Wetland categories are assigned based on the Western Washington Wetland Rating System (PDF).

Categories

- **Category I** wetlands are of exceptional value in terms of protecting water quality, storing flood and storm water, and/or providing habitat for. These are wetland communities of infrequent occurrence that often provide documented habitat for sensitive, threatened or endangered species, and/or have other attributes that are very difficult or impossible to replace if altered. Buffer 50-300 feet.
- **Category II** wetlands have significant value based on their function. They do not meet the criteria for Category I rating but occur infrequently and have qualities that are difficult to replace if altered. Buffer 50-275 feet.
- **Category III** wetlands have important resource value. They occur commonly in Whatcom County. Buffer 50-150 feet.
- **Category IV** wetlands are of limited resource value. They typically have vegetation of similar age and class, lack of special habitat features, and/or are isolated or disconnected from other aquatic systems or high quality upland habitats. Buffer 25-50 feet.

Stream Buffers

- Larger buffers for large streams and rivers with fish habitat (150-feet)
- Buffers for medium sized fish-bearing streams are smaller (100-feet)
- Still smaller buffers for non-fish bearing streams (50-feet)
- Buffers for rivers and streams with channel migration zones
- _____
- _____
- _____
- _____

o **ISLAND COUNTY, WASHINGTON**

1. Island County, Washington - Code of Ordinances
2. TITLE XVII - ZONING
3. Chapter 17.05A - Shoreline Master Program Regulations and Procedures

4. 17.05A.090 - Shoreline use and development regulations.

SHOW CHANGES

MORE

VERSION: JAN 31, 2023 (CURRENT)

•

h.

Stream buffers: Protective buffers shall be required to preserve stream and riparian functions within shoreline jurisdiction. Buffer distances shall be measured horizontally from the ordinary high water mark of the stream. The following standard buffers apply to streams regulated under this Shoreline Master Program.

TABLE 2: Stream Buffers

EXPAND

Water type	Standard Stream Buffer
S—Shoreline of the State 1	150 feet
F—Known to contain fish habitat	100 feet
Np—Perennial stream, does not contain fish habitat	50 feet
Ns—Seasonal stream, does not contain fish habitat	50 feet

Spokane County, Washington Critical Areas Ordinance

g. Waters bodies will be classified under WAC 222-16-031. h. Riparian buffer areas shall be established from the bankfull width for Types S, F, and N Water. Water bodies classified by the **Water**

Typing System (WAC-222-16-0301) have the following buffer area requirements:

Water Type, General Description (see WAC-222-16-031) Buffer

Type S Water, Shorelines of the State 250 feet

Type F Water, Fish 100 feet

Type N* Water,

Non-Fish Perennial (Np) 75 feet

Non-Fish Seasonal (Ns) 25 feet

Wetland Category Minimum Buffer Width (in feet)

	Low Impact	Moderate	High Impact
I	125	190	250
II	100	150	200
III	75	110	150
IV	25	40	50

1. Kootenai County
2. Kootenai County, ID Code of Ordinances
3. **8.7.110: STREAM PROTECTION BUFFERS:**

8.7.110: STREAM PROTECTION BUFFERS:

A. Purpose: The purpose of stream protection buffers is to ensure that prior to, during, and after construction operations, streambeds, streamside vegetation and other existing physical characteristics are protected in order to maintain water quality and to protect property and aquatic habitat.

B. Applicability: The requirements for stream protection buffers shall apply to all class 1 streams, class 2 streams, and naturally occurring drainage swales, but shall not apply to the shorelines of any recognized lake or the Coeur d'Alene River or Spokane River.

C. Dimensions:

1. Class 1 stream protection buffer: The area encompassed by a slope distance of seventy five feet (75') on each side of the ordinary high water mark.

2. Class 2 stream protection buffer: The area encompassed by a minimum slope distance of thirty feet (30') on each side of the ordinary high water mark.

3. Naturally occurring drainage swale protection buffer: The area encompassed by a minimum slope distance of five feet (5') on each side of the top of a naturally occurring drainage swale. In no case shall this protection buffer have a total width greater than thirty feet (30').

4. For parcels legally created prior to January 1, 1997, the width of any stream protection buffer may be reduced to forty percent (40%) of the dimension of the parcel which is intersected by the stream

Clark County Citizens United, Inc. P.O. Box 2188 Battle Ground, Washington 98604 E-Mail ccuinc@yahoo.com

Rebecca Messinger

From: Jim Byrne <byrnejim7@gmail.com>
Sent: Thursday, March 2, 2023 12:19 PM
To: Rebecca Messinger
Subject: Trout Unlimited comments on CAO.
Attachments: LL to clark County re Riparian Ord rv2.pdf

CAUTION: 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.

Rebecca,

Would you please add this to the record for the Riparian (CAO) ordinance. Thank you,

It was good seeing you, however briefly, on today's WebEx meeting.

Jim



Washington Council of Trout Unlimited



March 1, 2023

Clark County Councilmembers & Staff
Public Service Center
1300 Franklin Street
Vancouver, WA 98666

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kathleen.otto@clark.wa.gov

RE: Proposed Revisions to Clark County Critical Areas Ordinances (CCC 40.440 & 40.450)

<https://clark.wa.gov/community-planning/cpz2022-00010>

Dear Councilmembers and Staff,

The Washington Council of Trout Unlimited (WCTU) represents over 4,500 members statewide and advocates for the conservation and restoration of Washington State's trout and salmon and the clean, cool waters on which they depend. WCTU appreciates the County's efforts to update its Critical Areas Ordinance (CAO) in accordance with Washington's Growth Management Act, Chapter 36.70A RCW. In particular, we support incorporating "Best Available Science" into CAO.

Nonetheless, WCTU is concerned that the proposed revisions to the "Riparian Habitat Area" (RHA) widths in Table 40.445.020-4 are inconsistent with the "best available science." More specifically, the 100-foot RHA width for all type Ns streams does not represent the "Best Available Science" because the RHA width should not be limited to 100 feet. Rather, the RHA width should be 100 feet at a minimum but can and should be greater where the "Site Potential Tree Height" (SPTH) is greater than 100 feet.

The "Best Available Science" on riparian buffer widths is addressed in the Washington Department of Fish and Wildlife's 2020 Management Recommendations for riparian ecosystems. See Rentz, R., A. Windrope, K. Folkerts, and J. Azerrad. 2020. Riparian Ecosystems, Volume 2: Management Recommendations. Habitat Program, Washington Department of Fish and Wildlife, Olympia, <https://wdfw.wa.gov/publications/01988> ("WDFW Recommendations"). Specifically, the WDFW Recommendations state that "the width of the riparian ecosystem is typically defined by the outer

Washington Council of Trout Unlimited
12819 SE 38th St. #462 Bellevue, WA 98006
council@washingtontu.org <https://washingtontu.org>



Washington Council of Trout Unlimited



edge of the zone of influence, which, in forested regions, is based on site-potential tree height (SPTH) measured from the edge of the active channel.” WDFW Recommendations at § 1.3, p. 8. The SPTH is further defined as “the average maximum height of the tallest dominant trees (200 years or more) for a given site class.” Id. WDFW Recommendations note that SPTH in Washington can be significantly greater than 100 feet, with mean tree heights ranging from 100-240 feet:

Mean heights of dominant trees in riparian old-growth forest of Washington **range from 100 to 240 feet** (Fox 2003). The wide range of heights reflects differences in site productivity, i.e., local differences in soil nutrients and moisture, light and temperature regimes, and topography.

WDFW Recommendations at § 2.2.3 (emphasis added). We further note that the County’s report, *Designating Riparian Habitat Areas Using WAC 222 Site Class and 200-year Site Potential Tree Height* (Feb. 19, 2023) acknowledges in Table 5 that the proposed 100-foot RHA width for Ns streams falls short of the best available science set forth in the WDFW Recommendations.

Consequently, the 100-foot RHA width in the proposed ordinances does not reflect the “Best Available Science” because it does not require wider riparian zone widths for those streams with SPTs exceeding 100 feet. By setting a prescriptive 100-foot RHA width, the proposed CAO will preclude the County from increasing the RHA width even though Best Available Science dictates a wider zone where SPTs exceed 100 feet. WCTU strongly recommends that the County revised the proposed language to require RHA widths based on the SPTH₂₀₀ value for each stream, but in no event would the RHA be less than 100 feet.

Thank you for your attention to these comments.

Sincerely,

A handwritten signature in blue ink that reads "Andrew M. Kenefick".

Andrew M. Kenefick - Chair, Advocacy Committee

A handwritten signature in black ink that reads "Pat Hesselgesser".

Pat Hesselgesser – Chair, WCTU

CC'd: O. Orjiako
B. Davis

C. Cook
S. Wisler

Rebecca Messinger

From: Kathleen Otto
Sent: Friday, March 3, 2023 7:49 AM
To: Tina Redline; Rebecca Messinger
Subject: FW: Clark County presenting a fatally flawed Record for DRAFT 40.445 January 24, 2023 WETLANDS AND FISH AND WILDLIFE HABITAT CONSERVATION AREAS



Kathleen Otto
County Manager

564.397.2458



From: Clark County Citizens United, Inc. <cccuinc@yahoo.com>
Sent: Thursday, March 2, 2023 6:30 PM
To: Karen Bowerman <Karen.Bowerman@clark.wa.gov>; Glen Yung <Glen.Yung@clark.wa.gov>; Gary Medvigy <Gary.Medvigy@clark.wa.gov>; Michelle Belkot <Michelle.Belkot@clark.wa.gov>; Sue Marshall <Sue.Marshall@clark.wa.gov>; Kathleen Otto <Kathleen.Otto@clark.wa.gov>
Subject: Clark County presenting a fatally flawed Record for DRAFT 40.445 January 24, 2023 WETLANDS AND FISH AND WILDLIFE HABITAT CONSERVATION AREAS

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Clark County Council
P.O. Box 5000
Vancouver, Washington 98604

March 2, 2023

Re: Fatally flawed DRAFT 40.445 January 24, 2023 WETLANDS AND FISH AND WILDLIFE HABITAT CONSERVATION AREAS

FOR THE PUBLIC RECORD

Dear Councilors,

Clark County Citizens United, Inc. has reviewed the public information contained in the public notice column posted on the Clark County web site. The following is the county information and CCCU comments to that information, using it as an outline. CCCU does not know what to say about the fatally flawed, poorly presented Public Record, to the DRAFT 40.445 January 24, 2023 WETLANDS

AND FISH AND WILDLIFE HABITAT CONSERVATION AREAS, except to say, it is horrible and fatally flawed.

Clark County's public process clearly shows a bias to environmental groups, and total disregard to those who disagree or have submitted critical information to support their position. Clark County Citizens United, Inc. has been involved in the Clark County Comprehensive Plan process since 1994. During that time, many critical documents submitted into the Public Record by CCCU have been disappeared from the Record, never to be seen again in a public forum.

This travesty has happened, again and again, and now with this draft ordinance. CCCU has submitted eleven items of individual testimony on behalf of the members of CCCU, but only three items are included in the Record,. This testimony will be number twelve. On the other hand, ten redundant items from environmental groups have been included in the Record for review. In addition to the redundancy, Mr. Davis gives definition to their testimony, whereby no one really knows what they had to say. Such actions are fatally flawed and does not follow state law.

Chapter 42.56 RCW: PUBLIC RECORDS ACT - Washington

Chapter 42.56 RCW: PUBLIC RECORDS ACT

Chapter 42.56 RCW: PUBLIC RECORDS ACT RCWs > Title 42 > Chapter 42.56 Complete Chapter HTML PDF / RCW Dispositions Chapter 42.56 RCW PUBLIC RECORDS ACT Sections NOTES: Criminal records privacy: Chapter 10.97 RCW. Restrictions on dissemination of child forensic interview recordings: RCW 26.44.187 and 26.44.188.

RCW [42.56.030](#) Construction.

RCW 42.56.030: Construction.

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.

Chapter [40.14](#) RCW PRESERVATION AND DESTRUCTION OF PUBLIC RECORDS RETENTION AND DISPOSITION ACTION DESIGNATION 20-12-69616

Rev. Meeting Records:

Records documenting each meeting and hearing held by the committee. Includes, but is not limited to:

- **Agendas;**
- **Written testimony;.**

Retention:

Within 2 years after end of session, Transfer to Washington State Archives for permanent retention.

Public Records

Records that have been created or received by any government agency in Washington State in connection with the transaction of public business regardless of physical form or characteristics

Washington – [Records Retention Schedules for Washington](#)

Because of this horrendous manipulation of the Public Record, Clark County Citizens United, Inc. is requesting that this whole process start over again, using appropriate actions by staff. At the very least, any adoption to this draft ordinance must be delayed until a proper public process has been performed and all of the comments from the public have been rightfully considered in a meaningful way. Disregarding certain testimony, indicates staff is practicing unabated censorship. This is a form of bias, and has no place in a democratic society. The following information demonstrates just how staff has manipulated the Public Record and the facts.

Sincerely,

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/2023-02/40.445%20Comment%20Summary%202-17-2023.pdf>

County Council Meetings

March 7, 2023 County Council Hearing at 10 a.m. in person at 1300 Franklin St., Vancouver, 6th Floor Hearing Room and virtually via Webex. Additional meeting details and information on how to join remotely can be found on the [County Council's meeting page](#).

- [Planning Commission Recommendation Report](#)
 - [Exhibit 1: Draft Title 6; Draft 40.445; Draft 40.100.070](#)
- [Planning Commission minutes](#)
- [Proposed Riparian Management Area Buffer Distance \(Map\)](#)

- [Interactive map](#)
- [Riparian Habitat Designation paper](#)
- [SEPA](#)
- **Public Comments** **CCCU Notes: The Public comments noted in the record show that Amaia Smith's testimony was submitted twice - which equals only one actual testimony. The same thing is true for the two documents by Jim Byrne, actually leaving only one testimony item for him. Clark County Citizens United, Inc. submitted two items of testimony. Each one is different and they are correct in the record.**
- **From: R5 Planning (DFW) To: Brent Davis** Subject: WDFW Response Letter to Clark County Council Date: Friday, January 27, 2023 9:16:28 AM Attachments: image001.png Clark County CAO Response Letter.pdf **Amaia Smith, Habitat Biologist Amaia.Smith@dfw.wa.gov, (360)839-3508**
- **CCCU Notes: These two documents are the same testimony**
- **From: R5 Planning (DFW) To: Brent Davis** Subject: WDFW Response Letter to Clark County Council Date: Friday, January 27, 2023 9:16:28 AM Attachments: image001.png Clark County CAO Response Letter.pdf **Amaia Smith, Habitat Biologist Amaia.Smith@dfw.wa.gov, (360)839-3508**
-
- **From: Jim Byrne To: Brent Davis** Cc: Oliver Orjiako; April Furth Date: Tuesday, December 6, 2022 11:35:15 AM
- **CCCU Notes : These two documents are the same testimony**
- **From: Jim Byrne Sent: Tuesday, December 6, 2022 11:35 AM To: Brent Davis**
-
- **From: Brent Davis To: Sonja Wiser** Cc: Jacqui Kamp Subject: CAO Comments Date: Tuesday, December 6, 2022 11:43:08 AM Attachments: image001.png
-
- **From: Rebecca Messinger To: Oliver Orjiako;** Sonja Wiser; Christine Cook; Brent Davis Subject: FW: **DRAFT 40.445 January 24, 2023 p 1 1 40.445 WETLANDS AND FISH AND WILDLIFE HABITAT CONSERVATION AREAS** Date: **Wednesday, February 8, 2023 10:11:20 AM** Attachments: image001.png image002.png image003.png image004.png **February 6, 2023 Carol Levanen, Exec. Secretary Clark County Citizens United, Inc. P.O. Box 2188 Battle Ground, Washington 98604**
-
- **From: Rebecca Messinger To: Oliver Orjiako;** Sonja Wiser; Brent Davis; Christine Cook Subject: FW: Is a permanent covenant under CCC 40.445 a **chicken or the egg?** Date: **Wednesday, February 8, 2023 10:11:53 AM** Attachments: image001.png image002.png image003.png **February 6, 2023 Susan Rasmussen, President Clark County Citizens United, Inc. P.O. Box 2188 Battle Ground, Washington 98604**

CCCU Notes: The above CCCU items of testimony are correct.

CCCU Notes: The following items of testimony were NOT in the record, during that same time period.

Sat, Feb 4 at 8:42 PM - Re: Jack Traffie - Parcel # 986034864 - ESE 2022-00136 and DRAFT 40.445 January 24, 2023 p 1 1 40.445 WETLANDS AND FISH AND WILDLIFE HABITAT CONSERVATION AREAS - Carol Levanen, Exec. Secretary - Clark County Citizens United, Inc. - P.O. Box 2188 - Battle Ground, Washington 98604

Monday February 6, 2023 10:18AM e: DRAFT 40.445 January 24, 2023 p 1 1 40.445 WETLANDS AND FISH AND WILDLIFE HABITAT CONSERVATION AREAS - Clark County Citizens United, Inc. is a non-profit organization established in 1994 - Carol Levanen, Exec. Secretary - Clark County Citizens United, Inc. - P.O. Box 2188 - Battle Ground, Washington 98604

CCCU submitted these additional testimony items to the Councilors after February 17, and before March 7, 2023. They are not in the Record.

February 25, 2023 Re: Docket Item CPZ 2022-00010 - Critical Areas Ordinance Update

Clark County Citizen United, Inc. has many concerns - Carol Levanen, Exec. Secretary Clark County Citizens United, Inc. P.O. Box 2188 - Battle Ground, Washington 98604

February 25, 2023 Re: Docket item CPZ 2022 - 00010 Critical Areas Ordinance Update

- Carol Levanen, Exec. Secretary - Clark County Citizens United, Inc. -P.O. Box 2188 Battle Ground, Washington 98604

FEBRUARY 25, 2023 - FOR THE PUBLIC RECORD - SUBMITTED FOR CLARK COUNTY COUNCILOR REVIEW - by CLARK COUNTY CITIZENS UNITED, INC. - YAKIMA COUNTY; Yakima County Farm Bureau, Inc., Respondents and Cross-Appellants. - [Swinomish Indian Tribal Community. v. W. Washington Growth Mgmt. Hearings Board.](#)

February 27, 2023 - Re: Docket Item CPZ 2022-00010 - Critical Areas Ordinance Update

Additions and corrections are being submitted to this previous 2-25-23 CCCU testimony. Carol Levanen, Exec. Secretary - Clark County Citizens United, Inc. - P.O. Box 2188 Battle Ground, Washington 98604

February 28, 2023 - Re: : Docket Item CPZ 2022-00010 Critical Areas Ordinance Update

Clark County Citizens United, Inc. is very concerned over the process and the result Carol Levanen, Exec. Secretary - Clark County Citizens United, Inc. - P.O. Box 2188

Battle Ground, Washington 98604

March 1, 2023 - Clark County Citizens United, Inc. is forwarding you a San Juan Court of Appeals Division I, court decision regarding habitat regulation - Carol Levanen, Exec. Secretary - Clark County Citizens United, Inc. P.O. Box 2188 Battle Ground, Wash. 98604

March 1, 2023 - Clark County Citizens United, Inc. is forwarding you Critical Areas Ordinance information for Skagit County, Yakima County and Cowlitz County, Washington.

Carol Levanen, Exec. Secretary - Clark County Citizens United, Inc. - P.O. Box 2188 Battle Ground, Washington 98604

Public Comment Summary

- **Public Comment Summary of CPZ2022-00010 Critical Areas Ordinance (CCC 40.445) Public Comments to date1 Prepared by Brent Davis Clark County. Most recently updated February 17, 2023.**
-
- **19 Riparian Habitat Designation Friends of Clark County** Concerns about not strictly following "Best Available Science." Recommends application of full Site Potential Tree Height of non-fish bearing streams. RCW 36.70A.172 requires local governments to "include" Best Available Science. The County is not required to adopt standards solely based on best available science, provided we "show our work." Staff has prepared an analysis of the impact of using Site Potential Tree Height for non-fish bearing streams on the land area in the county available for meeting other GMA goals, finding that the proposed Riparian Habitat designation balances Critical Areas protection with other GMA goals. It is also notable that Washington Department of Fish and Wildlife and the Lower Columbia Fish Recovery Board support the proposed Riparian Habitat designations (see comment numbers 9 and 11). 1

20 Public Process Friends of Clark County Concerns about a separate meeting for industry professionals, where the general public was not invited. A virtual open public meeting was held on October 27, 2022 where staff presented an overview of the proposed changes, outlined the public participation process moving forward, and answered questions from the public. Staff held a similar virtual meeting on November 1, 2022 for development professionals and Development Engineering Advisory Board members where the staff presentation provided more technical details about proposed changes that could affect development outcomes. The purpose of this meeting was not to engage attendees in a policy advisory role, but to provide more technical information to better inform public participation from subject matter experts. 2 members of Friends of Clark County requested to be included and were able to attend. 1

21 Public Process Friends of Clark County Concerns regarding limitations on verbal public testimony during hearings. Representatives have been informed that additional detailed written testimony or comments can be provided at any time. The Friends of Clark County submitted 2 letters prior to the Lanning Commission Hearing. Council will determine how public testimony will be managed during any Council hearings. 4

22 Riparian Habitat Designation Jim Byrne Concerns about not strictly following “Best Available Science.” Recommends application of full Site Potential Tree Height of non-fish bearing streams. See response to Comment 19 1

23 Public Process Jim Byrne Concerns about a separate meeting for industry professionals, where the general public was not invited. See response to Comment 19 1

23 Riparian Habitat Designation Futurewise Concerns about not strictly following “Best Available Science.” Recommends application of full Site Potential Tree Height of non-fish bearing streams. Includes additional concerns regarding impacts to salmonid species. See response to Comment 18. Washington Department of Fish and Wildlife and Lower Columbia Fish Recovery Board are satisfied that the proposed standards are sufficient conservation measures necessary to preserve anadromous fisheries

24 Rare Plant Protection Futurewise Adopt standards to protect rare, threatened, and endangered plants as Fish and Wildlife Habitat Conservation Areas RCW 36.70A does not include rare plants or plant communities in the definition of Critical Areas. Some plant communities are protected for habitat functions as Priority Habitat (i.e., oak woodlands, prairie habitat, herbaceous balds) and State listed plants in wetlands receive the highest level of protection provided. Designating plant occurrences as habitat areas would require clear identification of a fish or wildlife habitat nexus as identified by Washington Department of Fish and Wildlife or in a Locally Important Habitat designation (refer to 40.445.020.C.1.d). State listed plant occurrences have historically been addressed through Agency Consultation with the Department of Natural Resources Natural Heritage Program under the State Environmental Policy Act. 1

25 PHS designation and mapping Futurewise Clarify that the Critical Areas Regulations protect fish and wildlife habitats depicted in the PHS GIS database as points, lines, and areas. The County adopts all defined Priority Habitat and Species Areas and regulates those areas in accordance with Washington Department of Fish and Wildlife Management Recommendations as published or through agency consultation. This includes adding recommended buffers as part of the PHS designation. Refer to 40.445.020.C.1.a. The County updates PHS mapping in GIS from Washington Department of Fish and Wildlife on a periodic basis or as needed for significant mapping updates. Staff is unaware of any line based PHS types, but any that exist in the County would be subject to designation as the code is written. 1

26 PHS “Buffers” Futurewise Clarify 40.445.010B.2 as it relates to comment 24 with suggested language. Washington Department of Fish and Wildlife recommended buffers for protection of habitat functions associated with point species are applied by management recommendation. Refer to 40.445.020.C.1.a. There is wide variability on how species points are addressed, some require fixed buffers, others are addressed based on suitable habitat adjacent to a known occurrence. 1

27 State and Federal Law Albert O’Connor Proposed code amendments violate state and federal law Staff is confident that the proposed code amendments do not violate or supersede state or federal law. 1

28 Riparian Habitat Designation Albert O’Connor Concerns about not strictly following “Best Available Science.” Recommends application of full Site Potential Tree Height of non-fish bearing streams. See response to Comment 19 1

29 Mitigation Banking David Morgan, Plas Newydd, LLC
Proposed revision to 40.445.0 30.B.4.a to ensure mitigation banking standards are consistent with State and Federal guidelines and rules. The proposed language and structure are based on

Ecology's model code. Permittee responsible mitigation is only allowed if there are no credits available or the County determines that available credits are less ecologically appropriate than the proposed mitigation plan. Ecology provides mitigation plan guidelines that provide criteria for assessing the relative ecological benefit of a mitigation approach and staff will require the applicant (who has the legal burden of proof) to provide the analysis that justifies use of permittee responsible mitigation instead of mitigation bank credits

30 Site specific wetland issues Manoj Kripalani

The commenter requests: updating the wetlands map inventory in a particular area east of Camas, allowing homeowners to use mechanized equipment to clear noxious weeds, and for more flexibility in the codes that seem fragmented and overly restrictive for small acreage landowners. The issues raised are site specific and not affected by the proposed code amendments. Staff provided a detailed response, included in the comment records, with an explanation of the wetland designation and mapping on the property in question and applicable exemptions that could provide some of the flexibility requested. Staff also noted that the nearby property referenced in the comments is the City of Camas and is subject to a different critical areas ordinance. 1

31 Riparian Habitat Designation Jim Barnes, Cascadia Ecological Services, Inc.

Concerns that increased riparian habitat widths based on Site Potential Tree Height for non-fish bearing streams will have significant impact on smaller properties adjacent to streams. See response to Comments 9, 11, and 19. 3

32 Functionally Isolated Wetland Buffers Francis Naglich, Ecological Land Services

Recommendation to add additional specificity to the definition of functional isolation for wetland buffers to include steep slope criteria and considerations for restoring previously developed buffers Ecology specifically requested removal of "vertical separation" from the definition of functionally isolated wetland buffers, which includes all consideration of steep slopes. Restoration of developed buffer areas that are functionally isolated can be credited as wetland buffer mitigation for buffer averaging or to offset indirect wetland impacts caused by buffer loss. 1

33 Riparian Habitat Designation Francis Naglich, Ecological Land Services

Concerns related to use of Site Potential Tree Height to designate Riparian Habitat Areas. The proposed code amendments simplify the soil mapping based nature of Site Potential Tree Height by grouping soils into 5 "Site Classes" as defined in WAC 222, 4 of which existing in Clark County. The County will update riparian habitat mapping based on site class, which will form the basis for determining applicable Riparian Habitat Areas. If an applicant chooses to engage a qualified soils expert to classify the site specific soils adjacent to the stream, that information would be reviewed pursuant to 40.445.020.A.2 and 3. See response to Comments 9, 11, and 18 with regard to riparian habitat designation for non-fish bearing streams. 3

34 Conservation Covenants Clark County Citizens United

CCCU NOTES: Brent Davis comments over the testimony submitted by CCCU, and his rendition of the information, is not correct. The Public Record to CPZ2022-00010 Critical Areas Ordinance (CCC 40.445, should have included the actual documents, for CCCU's information and all of the noted items. There is no way the public or the Councilors actually know what was said, when Mr. Davis gives his rendition of the testimony, throughout all of these items in the "Public Comment Summary".

Presents argument that requiring conservation covenants is illegal under state law and requests that requirements for conservation covenants be removed from the proposed code. Conservation

covenants have been required for projects that impact wetlands since the adoption of the original wetland protection ordinance (Ord. 1992-02-03) and an option that can be prescribed by the responsible official for habitat mitigation since the adoption of the original habitat conservation ordinance (Ord. 1997-05-30).

CCCU NOTES: None of the critical lands ordinances had a mandatory covenant requirement when they were first adopted.

In 2007 the county conducted a study of mitigation performance for both wetland and habitat mitigation sites and found that mitigation was twice as likely to meet the performance goals (i.e. replacing ecological functions and values) if a covenant was in place. These covenants are not "environmental covenants" established pursuant to RCW 64.70, they are a mitigation measures imposed to protect critical areas from development impacts pursuant to RCW 36.70A.060. under current and proposed code, these covenants can be modified or updated through administrative review.

CCCU NOTES: If these are not environmental covenants, then what are they? They are indeed associated with environmental protection under the GMA, using the wetland and critical habitat ordinances.

The standard forms the County provides do not increase restrictions on designated critical areas and limits the County's rights to access the owner's property (with prior notification) to inspection of mitigation while it is in the performance monitoring period for the approved mitigation plan.

CCCU NOTES: There is no end to the "monitoring period", as the document runs with the land.

The form that Brent Davis refers to, reads thus:

"CONSERVATION COVENANT RUNNING WITH THE LAND." :

"A COVENANT to Clark County, State of Washington, hereinafter "County" by the owner(s)_____ of a certain property identified 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 the covenant shall run with the land. It is the purpose of this covenant that certain habitat areas and designated mitigation located within areas shown in Exhibit B will be maintained in a protected state as follows:

1. consistent with the purpose of this covenant, no person, company, agency, or applicant shall alter a habitat area regulated under Clark County Code title 40.440 except as exempted or as authorized by the Responsible Official through an approved Habitat Permit.

3.However, representatives and agents of Clark County are hereby authorized to make reasonable entry into designated mitigation areas upon such land for purposes related to administering this covenant....

5. This covenant and all of its provision, 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 of their heirs, assigns and successors in interest into who ownership the above described real property many pass."

CCCU NOTES: This legal and binding document is then signed by the owners of the property, signed by Taylor Halvik and Brent Davis. It is then filed with the Auditor as an attachment to the property deed and legal description. It is indeed a permanent burden on the property, in perpetuity.

- [Public Comments](#)
- [submitted to date](#)
-
- **CCCU NOTES: Under this heading, none of Clark County Citizens United, Inc. testimony is included in the "Public Comments to date." What we do see is a blatant disregard for legal documents that have been submitted on behalf of the Clark County Citizens United, Inc. into the Clark County Public Record for CPZ2022-00010 Critical Areas Ordinance (CCC 40.445).**

Under this "Public Comments submitted to date", the items that are included are:

1. Futurewise testimony to the Planning Commission
 2. Friends of Clark County November 9, 2022 testimony - signed by Lea Bain
 3. Friends of Clark County November 9, 2022 testimony - signed by Jim Byrne
 4. Albert O'Connor testimony
 5. Davide Morgan testimony
 6. Friends of Clark County November 9, 2022 testimony - signed by Ann Foster
 7. Numerous redundant documents for Mr. Kripalani over his private development concerns that have nothing to do with the Draft Ordinance.
 8. Friends of Clark County November 9, 2022 testimony - with member names, but no signature
 9. Jim Barnes (Actually Jim Byrnes) testimony - stating he "can't make the meeting".
- - **NOTE: The four items of testimony submitted by Friends of Clark County are identical, accounting for only one item of testimony from that organization.**
 -
 - **Clark County Citizens has submitted twelve (12) individual items of testimony, to date. Only three are noted in the public comment items and agenda for the March 7, 2023 Clark County Hearing, published on-line. The county information was the outline this testimony.**

cc'd: S. Orjiako
B. Davis

C. Cook
S. Wisen

Rebecca Messinger

From: Kathleen Otto
Sent: Sunday, March 5, 2023 1:55 PM
To: Rebecca Messinger; Tina Redline
Subject: Fw: Docket Item CPZ 2022-00010 - Critical Areas Ordinance Update

From: Amy Baker Bice <bakerbice@yahoo.com>
Sent: Sunday, March 5, 2023 1:46 PM
To: Karen Bowerman <Karen.Bowerman@clark.wa.gov>; Gary Medvigy <Gary.Medvigy@clark.wa.gov>; Glen Yung <Glen.Yung@clark.wa.gov>; Michelle Belkot <Michelle.Belkot@clark.wa.gov>; Sue Marshall <Sue.Marshall@clark.wa.gov>; Kathleen Otto <Kathleen.Otto@clark.wa.gov>
Subject: Re: Docket Item CPZ 2022-00010 - Critical Areas Ordinance Update

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

FOR THE PUBLIC RECORD

March 5, 2023

Re: Docket Item CPZ 2022-00010 - Critical Areas Ordinance Update

Dear Councilors,

Please reject "Docket Item CPZ 2022-00010 - Critical Areas Ordinance Update". While Clark County must revisit Critical Areas Ordinances every 8 years, it is NOT required to INCREASE land use regulations. Nor is it ever required to employ more restrictive guidelines than what the state or federal regulations require. By rejecting the Critical Areas Ordinance Update you will be supporting landowners, the greatest caretakers of their land and communities, in NOT increasing impediments to developing their properties. Specifically, the increase in setbacks from wetlands, would affect the simple desire for a property owner to build a garage next to her home, replace an aging mobile home on a parcel with a "wetland", or rebuild after fire or storm damage. Indeed, there are already ample protections of Critical Areas in our county as defined by current codes, ordinances, laws, guidelines, etc, and already it is almost an insurmountable task, in cost, time and red tape, for a simple citizen to navigate the development requirements in Clark County. If adopted, these ordinances would INCREASE restrictions on the rural property owners.

I ask you NOT to blindly rely upon the, "State agencies with *expertise* in each critical area..." (<https://clark.wa.gov/community-planning/cpz2022-00010>) who have developed these recommendations and guidelines, but rather represent the rural citizens who need their rights protected as landowners. **Become our greatest advocates** and reject these recommendations until you fully understand their effects on property owners. Will a property owner be exempt from these increased restrictions when wanting to build a garage next to her *existing* home of 20 years? Will the removal of an aging mobile home on an *existing* parcel be subjected to the increased setbacks, and other increased restrictions not yet identified, or would existing parcels be subjected to grandfathered requirements, the requirements which were in place at the time the parcel became a legal lot of record?

As a former public-school teacher, I'm asking you to do some homework. Put yourself in the place of a rural landowner trying to get a permit to build a barn on her parcel, which happens to have a creek or a

“wetland.” What is the actual cost and wait time to citizens under these new and more restrictive guidelines for exercising normal property rights (in trying to: rebuild after a fire or flood, build a barn, or add on to an existing home)? Would development on *existing* parcels be allowed? If so, exactly how much more burdensome (in time and money) will the process become for the citizenry? Again, don’t accept the recommendations of “state agencies with *expertise*” without fully understanding the implications of those recommendations for yourselves before approving any new measure.

Please employ *the least restrictive principle* which holds that government measures should interfere with the autonomous freedom of individuals **to the least possible or necessary extent**, and REJECT the Critical Areas Ordinance Update.

Thank you,

Amy Bice
PO BOX 374
Brush Prairie, WA 98606

cc'd: S. Orjiako B Davis
S. Wiser C. Cook

Rebecca Messinger

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Thank you,

Amy Bice
PO BOX 374
Brush Prairie, WA 98606

cc'd: D. Orjiako S. Wisser
B. Davis C. Cook

Rebecca Messinger

From: Kathleen Otto
Sent: Monday, March 6, 2023 8:27 AM
To: Tina Redline; Rebecca Messinger
Subject: FW: Docket Item CPZ 2022-00010-Critical Areas Ordinance Update



Kathleen Otto
County Manager

564.397.2458



From: Joel Divine <joelbdivine@yahoo.com>
Sent: Monday, March 6, 2023 8:16 AM
To: Gary Medvigy <Gary.Medvigy@clark.wa.gov>; Karen Bowerman <Karen.Bowerman@clark.wa.gov>; Glen Yung <Glen.Yung@clark.wa.gov>; Michelle Belkot <Michelle.Belkot@clark.wa.gov>; Sue Marshall <Sue.Marshall@clark.wa.gov>; Kathleen Otto <Kathleen.Otto@clark.wa.gov>
Subject: Docket Item CPZ 2022-00010-Critical Areas Ordinance Update

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Dear Councilors,

I am reaching out to urge you to please reject Docket item CPZ 2022-00010 Critical Areas Ordinance Update. This is another example of why there is a need for a council that is elected by the citizens to advocate for the the citizens. The Clark county staff is notorious for writing rules and regulations whereby the government can 'take' value from property owners. Not only in this instance, but also in property sales when ownership passes with no liens or encumbrances to a new owner. After the fact, the county can, and does impose fees, fines and liens on property, based on code violations by the previous owner.

This Critical Areas Ordinance Update could make some properties unbuildable. Owners of these properties may have been paying taxes for many years on a 'buildable' property, now it could become unbuildable, or the building site would be changed so that it is undesirable.

Please continue to advocate for the citizens and reject this item.

Sincerely,
Joel Divine

CC'd: O. Orjiako S. Wisser
B. Davis d. Cook

Rebecca Messinger

From: Kathleen Otto
Sent: Monday, March 6, 2023 8:27 AM
To: Tina Redline; Rebecca Messinger
Subject: FW: Docket Item CPZ 2022-00010-Critical Areas Ordinance Update



Kathleen Otto
County Manager

564.397.2458



From: Joel Divine <joelbdivine@yahoo.com>
Sent: Monday, March 6, 2023 8:16 AM
To: Gary Medvigy <Gary.Medvigy@clark.wa.gov>; Karen Bowerman <Karen.Bowerman@clark.wa.gov>; Glen Yung <Glen.Yung@clark.wa.gov>; Michelle Belkot <Michelle.Belkot@clark.wa.gov>; Sue Marshall <Sue.Marshall@clark.wa.gov>; Kathleen Otto <Kathleen.Otto@clark.wa.gov>
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building site would be changed so that it is undesirable.

Please continue to advocate for the citizens and reject this item.

Sincerely,

Joel Divine



Memorandum

FROM: Brent Davis, Community Development
DATE: March 6, 2023
SUBJECT: CPZ2022-00010 Critical Areas Ordinance Update
Response to comments regarding Best Available Science

The Council has received several comments since the February 1 work session on this proposed code update. Comments from Jim Byrne of the Friends of Clark County, dated March 2, 2023, speak specifically to the integrity of the record as it relates to the requirements of RCW 36.70A.172 and WAC 395-190. Staff provides the following response to these comments and the record:

Including Best Available Science in the Record

The Washington Department of Commerce *Critical Areas Handbook*, states that “to demonstrate that the best available science has been included (as defined by WAC 365-190) in the development of critical areas policies and regulations, a local government’s record should provide a rationale connecting the criteria in the ordinance used for designation and protection to the documented functions and values of critical areas known or potentially existing within the jurisdiction” (Chapter 1, p. 18). To that end, the County’s record includes the following:

- 1. The specific policies and regulations adopted to protect the functions and values of critical areas.

The specific policies and regulations are included in the proposed Clark County Code Chapter 40.445. These include definitions of the areas that are designated as Wetlands, Wetland Buffers, and Fish and Wildlife Habitat Conservation Areas, policies identifying when development activities can be allowed in these critical areas, regulations establishing performance standards for allowed development activities, and the associated procedures for review and permitting.

- 2. Copies of (or references to) the best available science used in the decision making.

The County has identified the following resources as Best Available Science for this update:

- a. Wetland and Fish and Wildlife Habitat Conservation Areas inventory resources identified in proposed Clark County Code Chapter 40.445.020.A.1 (Ord. 2023-03-01, page 4, beginning on line 2).
- b. Wetland Guidance for Critical Areas Ordinance (CAO) Updates: Western and Eastern Washington, Washington Department of Ecology.

This resource was referenced in staff presentations at the Planning Commission work session and hearing and included in the Comment Binder provided to the Planning Commission. It includes all of Ecology’s science and methodologies pertaining to designating and protecting wetlands, updated in October 2022.

- c. Washington Department of Fish and Wildlife (WDFW) Priority Habitat and Species list identified in proposed Clark County Code Chapter 40.445.020.C.1.a (Ord. 2023-03-01, page 7, beginning on line 24).
- d. Washington Department of fish and Wildlife Priority Habitat and Species Management Recommendations.

These are incorporated to the extent that they recommend management areas or buffers in proposed Clark County Code Chapter 40.445.020.C.1.a (Ord. 2023-03-01, page 7, beginning on line 27). In addition, Washington Department of fish and Wildlife's most current management recommendations for designating riparian habitat have been referenced in presentations to the public, Planning Commission, and Council and are considered in detail in *Designating Riparian Habitat Areas Using WAC 222 Site Class and 200-year Site Potential Tree Height* prepared by county staff and included in the record.

- e. *Designating Riparian Habitat Areas Using WAC 222 Site Class and 200-year Site Potential Tree Height*, prepared by county staff and included in the record.

This document provides the scientific basis for calculating the Riparian Habitat Areas in proposed Clark County Code Chapter 40.445.020.C.1.b (Ord. 2023-03-01, page 8, beginning on line 3). This analysis includes references to soil data, the methodology for determining the 200-Year Site Potential Tree Height, and designation of "site classes" and "water types" as adopted in WAC 222.

- f. The record also includes expert opinion from staff at the Washington Department of Ecology and the Washington Department of Fish and Wildlife in the form of written comments and specific recommendations and the extent to which they have been incorporated into proposed Clark County Code Chapter 40.445.

3. The nonscientific information used as a basis for departing from science-based recommendations.

- a. Wetland Guidance for Critical Areas Ordinance (CAO) Updates: Western and Eastern Washington, Washington Department of Ecology.

This resource was referenced in staff presentations at the Planning Commission work session and hearing and included in the Comment Binder provided to the Planning Commission. It includes guidance for non-scientific considerations and model code to balance science based critical areas protection with private property rights.

- b. *Designating Riparian Habitat Areas Using WAC 222 Site Class and 200-year Site Potential Tree Height* prepared by county staff and included in the record.

This document includes a comparison of the current Riparian Habitat Area designations and the recommended Site Potential Tree Height model to estimate the extent to which additional land area in Clark County would be regulated under the most current Washington Department of Fish and Wildlife management recommendations.

4. The rationale supporting the local government's reliance on the identified nonscientific information.

- a. Wetland Guidance for Critical Areas Ordinance (CAO) Updates: Western and Eastern Washington, Washington Department of Ecology.

The guidelines in this resource form the basis for the exemptions in proposed Clark County Code Chapter 40.445.040 Ord. 2023-03-01, page 24, beginning on line 17), the reasonable use assurances in proposed Clark County Code Chapter 40.445.050 Ord. 2023-03-01, page 25, beginning on line 7) and emergency action in proposed Clark County Code Chapter 40.445.050 Ord. 2023-03-01, page 27, beginning on line 43).

- b. *Designating Riparian Habitat Areas Using WAC 222 Site Class and 200-year Site Potential Tree Height* prepared by county staff and included in the record.

This document includes the rationale for reducing Riparian Habitat Areas for nonfish bearing streams based on balancing numerous GMA goals, including protection of private property rights.

- c. The record also includes expert opinion from staff at the Washington Department of Fish and Wildlife and the Lower Columbia Fish Recovery Board in the form of written comments and specific recommendations regarding proposed reductions in Riparian Habitat Areas which have been incorporated into proposed Clark County Code Chapter 40.445.
5. Actions taken to address potential risks to the functions and values of the critical areas the policies and regulations are intended to protect.
- a. *Designating Riparian Habitat Areas Using WAC 222 Site Class and 200-year Site Potential Tree Height* prepared by county staff and included in the record.

This document includes analysis of the impact of the proposed reduction of Riparian Habitat Areas for non-fish bearing waters on protection of Fish and Wildlife Habitat Conservation Areas and Conservation or Protection Measures Necessary to Preserve or Enhance Anadromous Fish based on WDFWs management recommendations and concludes that the proposed reductions provide at least 80% of the level of protection provided by applying the Site Protection Tree Height.

Special Consideration of Conservation or Protection Measures Necessary to Preserve or Enhance Anadromous Fish

The state agency guidelines referenced as indicated above, include special consideration of conservation or protection measures necessary to preserve or enhance anadromous fish. Specifically:

- Wetlands in Washington State—Volume 1: A Synthesis of the Science (Ecology); and
- Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications (WDFW).

In addition, there is specific consideration given to proposed policies and regulations that are not based on best available science in *Designating Riparian Habitat Areas Using WAC 222 Site Class and 200-year Site Potential Tree Height* concluding that the proposed protection measures provide conservation necessary to preserve or enhance anadromous fish.

Adopting Citations to BAS resources in Code

The statutes and rules pertaining to the inclusion of Best Available Science in adopting Critical Areas Ordinances does not require including citations of scientific documents in the code. The proposed ordinance is structured such that certain data sources and methodologies are referenced, but not cited, where the legislative intent is that the County can apply updates to those information sources without having to revise the code. Protection standards based on the science are incorporated as adopted performance standards where the County must exercise its legislative authority to include new or updated science.

Balancing GMA Goals

There is no statutory requirement to balance the various goals of the GMA, nor is there any hierarchy for how the various goals relate to each other. The Act grants the County legislative discretion, within limits, to plan and adopt regulations to meet the intent of the GMA. That authority includes adoption of critical areas policies and regulations that do not rely solely on Best Available Science and the other goals of the GMA provide a legitimate rationale for consideration of nonscientific information.

Climate Change Considerations

The proposed critical areas ordinance update is responsive to climate change considerations to the extent that they are included in the referenced in the Best Available Science. In particular, WDFW has given specific consideration to climate change in *Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications*.

cc'd: Council



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DEVELOPMENT and ENGINEERING ADVISORY BOARD (DEAB)

DRAFT Memorandum

TO: Clark County Council
FROM: DEAB
DATE: March 6, 2023
RE: March 2, 2023 DEAB Motions

During its March 2nd meeting, DEAB approved a motion with recommendations to the Council as follows:

1. CPZ2022-00010 Critical Areas Ordinance Update
 - a. The Council will consider a proposal to amend Clark County Code Chapters 40.440 and 40.450 by combining the two chapters into a single ordinance for streamlined administration and which will include adding an administrative variance and updating "Best Available Science" consistent with current Washington Department of Fish and Wildlife Priority Habitat and Species Management Recommendations and Department of Ecology guidelines for wetlands.

DEAB members pass a motion to support an effort regarding reducing Riparian Habitat Areas for non-fish bearing waters due of the conflicts with other GMA goals.

DEAB Motion: This motion passed unanimously.

cc'd: Council
O. Orjiako, B. Davis
S. Wisler, C. Cook

Rebecca Messinger

From: Clark County <webmaster@clark.wa.gov>
Sent: Monday, March 6, 2023 9:59 PM
To: publiccomment
Subject: Council Hearing Public Comment

CAUTION: 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

Submitted on Mon, 03/06/2023 - 9:58 PM

Name
Albert O Connor

Phone Number
3608924479

Email Address
oconnors2@netzero.net

Subject
Critical Areas Ordinance(s)

Date of Hearing
Tue, 03/07/2023

Comment
Clark County Council
c/o Rebecca Messinger
PO Box 5000
Vancouver WA 98666-5000
Dear Community Planning:

I am writing this letter to provide my comments on the proposed wetlands and riparian critical areas ordinance(s) related to The Growth Management Act (GMA). I request the Council not approve the Community Planning proposed subject ordinances unless they are modified per recommendations cited below and those applicable by others providing comments.

Recommendation 1: The ordinance(s) clearly needs to state that Best Available Science (BAS) technology will be used in evaluations, and to give special consideration to conserve, protect and/or enhance habitat for anadromous fish, (RCW 37.70A.172).

Recommendation 2: Preserve, protect and/or enhance the full riparian ecosystem functions for all streams.

Recommendation 3: Incorporate policies and measures to reduce Global Warming in the ordinances. Implement Going Green Policy. The City of Vancouver has implemented Going Green Policy.

Recommendation 4: Evaluation on wetlands and riparian habitat need to be based on BAS and site-specific conditions. Developing guidelines that do not consider soil types, topography, location, size and similar features is not science based and would be unacceptable.

Conclusions

Conclusion 1: The proposed ordinance(s) provide a windfall for a small select segment of the population, development. The human foot print on the land must be reduced to save the earth for future generations.

Conclusion 2: We need county employees including the councilors to be professional and this has not always been the case in the past.

Your thorough review of this letter would be appreciated.

Regards,

Albert O'Connor

Albert (Al) O'Connor
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Conservationist, Fisher & Hunter

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If there are any questions or concerns regarding this email, please contact the [Web Team](#).

Thank you for the opportunity to speak today.

March 7th, 2023

First, staff's new ordinance is an improvement over the old. I appreciate the inclusion of an avoidance and minimization threshold in mitigation sequencing, and the increase to a 100' buffer on type N streams. But it can go further.

The GMA states, "Critical Areas Ordinances are required to include Best Available Science (BAS) and give "special consideration" to conservation or protection measures necessary to preserve or enhance anadromous fish".

The County's own Ordinance states, "Include best available science to protect the functions and values of wetlands and fish and wildlife habitat conservation areas with special consideration to . . . anadromous fisheries". In my opinion BAS has not been applied to type N streams, and no provisions are mentioned to conserve or enhance anadromous fish.

WDFW's Riparian Ecosystems, Volume 2: Management Recommendations states, "**6. Apply the recommended RMZ delineation steps to all streams, whether or not they are fish-bearing: . .**

^{in comment 19}
Staff in comment 19 states, "requires local governments to "include" Best Available Science. The County is not required to adopt standards solely based on best available science. provided we "show our work." Staff has prepared an analysis of the impact of using Site Potential Tree Height for non-fish bearing streams on the land area in the county available for meeting other GMA goals, finding that the proposed Riparian Habitat designation balances Critical Areas protection with other GMA goals". This is incomplete.

WA (2005-135) serves as a guide. Jurisdictions must demonstrate that the best available science has been considered when creating their critical areas ordinance, by documenting scientific sources that support their approach to regulating critical areas, and explaining when policies depart from science-based recommendations. This has not been done.

Meeting BAS in critical areas is a requirement of the GMA. Meeting a goal is not. There is no legal requirement to meet all goals. Goals and requirements are not equivalent. There is no GMA direction that goals be balanced. Moreover, staff has not "shown our work". They merely put new numbers in a table. I do not see any science, or citations to support N type buffer widths in any of the staff documents. This won't hold up on appeal.

The new ordinance makes no reference to "Climate Change". We had the 116° (F) June 2021's Heat Dome and the 2022, Naxia Creek's fire. We are entering a new era of climate change, which needs to be reflected in the ordinance.

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Reduced protections will cause riparian vegetation to resemble adjacent upland vegetation, reducing its ability to provide riparian functions and increasing susceptibility to wildfires. 85% of wildlife species in Washington use riparian habitat, with approximately 170 species requiring riparian habitat for some portion of their lives.

The ten priority upland habitats should be referenced in the new ordinance.

Please don't let Clark County fall behind Federal and state agencies. The City of Anacortes has adopted full buffers. Clark County should be in the forefront of environmental and climate protection – not lagging behind. Keep our buffers wide. I know I am asking you to go beyond the minimum. Think of your kids and grand-kids. Do it for them. Years from now, they will appreciate it.

REFERENCES

- 1) Rentz, R., A. Windrope, K. Folkerts, and J. Azerrad. 2020. Riparian Ecosystems, Volume Management Recommendations. Habitat Program, Washington Department of Fish and Wildlife, Olympia.
- 2). Net Ecological Gain Standard Proviso Summary Report. 2022. Washington Department of Fish and Wildlife, Olympia.
- 3). Gates, K.K., T. Quinn, and N.J. Georgiadis, technical editors. 2022. The Future of Instream Water in Washington State: A Brief for Policy Makers. Habitat Program, Washington Department of Fish and Wildlife, Olympia.
- 4.) 2022 State of Salmon in Watersheds EXECUTIVE SUMMARY, Governor's Salmon Recovery Office Recreation and Conservation Office P.O. Box 40917 Olympia, Washington 98504-0917

Testimony of: Jim Byrne
 28501 NW 7 Ave.
 Ridgefield, WA 98642