

5/19/15 - Rec'd From Carol Levanen
-RLT

CCU - BOCC;
Silliman;
Orjaks +
O'Ronnell



Clark County Board of Councilors
P.O. Box 5000, Vancouver, Washington 98666

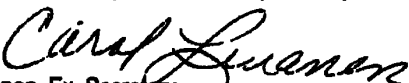
May 19, 2015

Re: Merriman Permit - HAB2014-00066 - Tax Parcel # 1233477-000 - For the Public Record

The Habitat Conservation Ordinance was adopted in 1997 and updated in 2006. It's purpose was to comply with the GMA and protect critical habitat, while being a flexible partnership between landowners and the county. Since it's adoption, this ordinance has become expensive, punitive, draconian and illegal, when it is applied to permits and developments. One example, of many, is the Merriman building permit. In 2014, the contractor obtained permits to construct a home, on a legal 5.09 acres. No water or critical area was present, but a stream buffer polygon from an adjacent lot, required a habitat permit for a proposed drive, shop and septic system, constructed in a grassy field. The two year permit states, "...after construction will be returned to lawn turf grass; as such, this impact is considered to be self-mitigating." Yet, Merrimans are being required to file a 200 foot conservation covenant in perpetuity, from the lot line inward, and mitigation planting of 42 trees with three year monitoring. This creates a 380 foot buffer from the stream. Nothing in the permit prevents final inspections from occurring, yet code enforcement refuses to do final inspections or give final occupancy, until the covenant is signed and filed. This is extortion. The adjacent lot, with the stream across it's length, received a building permit in 2004 for a home close to the stream, and required no habitat buffers or mitigation. Another parcel adjacent to that lot, had the same stream, received a building permit in 2006 and was required to plant a few trees, but not required a habitat buffer, even though the home was within 100 feet of the stream.

The GMA and state law references Critical Lands policies. RCW 36.70A.050, Guidelines to Classify Agriculture, forest and mineral lands and critical areas, states, "The department shall consult the department of ecology regarding critical areas. Streams are not mentioned. 36.70A.170 Natural resource lands and critical areas - Designations (d) (2) states, "In making the designation required by this section, counties and cities shall consider the guidelines established pursuant to RCW 36.70A.050." Again, this references wetlands and not streams. The Department of Ecology determines wetland buffers to be between 25 to 150 feet. 36.70A.172 Critical areas - designation and protection - best available science to be used. (1) states, "In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas. Washington Fish and Wildlife recommend larger buffers, but state, "WDFW will defer to negotiated agreements (e.g. TFW Forestry Module) regarding riparian management that may result from our participation...." WAC 365-190-130 states, "Counties and cities that use stream typing systems developed by the Department of Natural Resources should develop a process to verify actual stream conditions, identify flow alterations and locate fish passage barriers by conducting a field visit. WAC 222-16-010 Definitions states, "For Western Washington the 50 foot buffer of a type S or F water measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration". The Merriman property had a DNR field visit in 2006 which confirmed storm water runoff and recommended equipment be careful when working in the area.

There is very little in state law that determines a Habitat Ordinance must require very large stream buffers, as is currently applied. The Councilors have full authority to correct and change the ordinance. For these reasons, Clark County Citizens United, Inc. requests the conservation covenant be removed from the Merriman property with final inspection performed and occupancy given as soon as possible.

Sincerely, 

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

Property and Land Records Information

Map Sites Find Parcel Search Locate Address Print Map Legal Tech Support

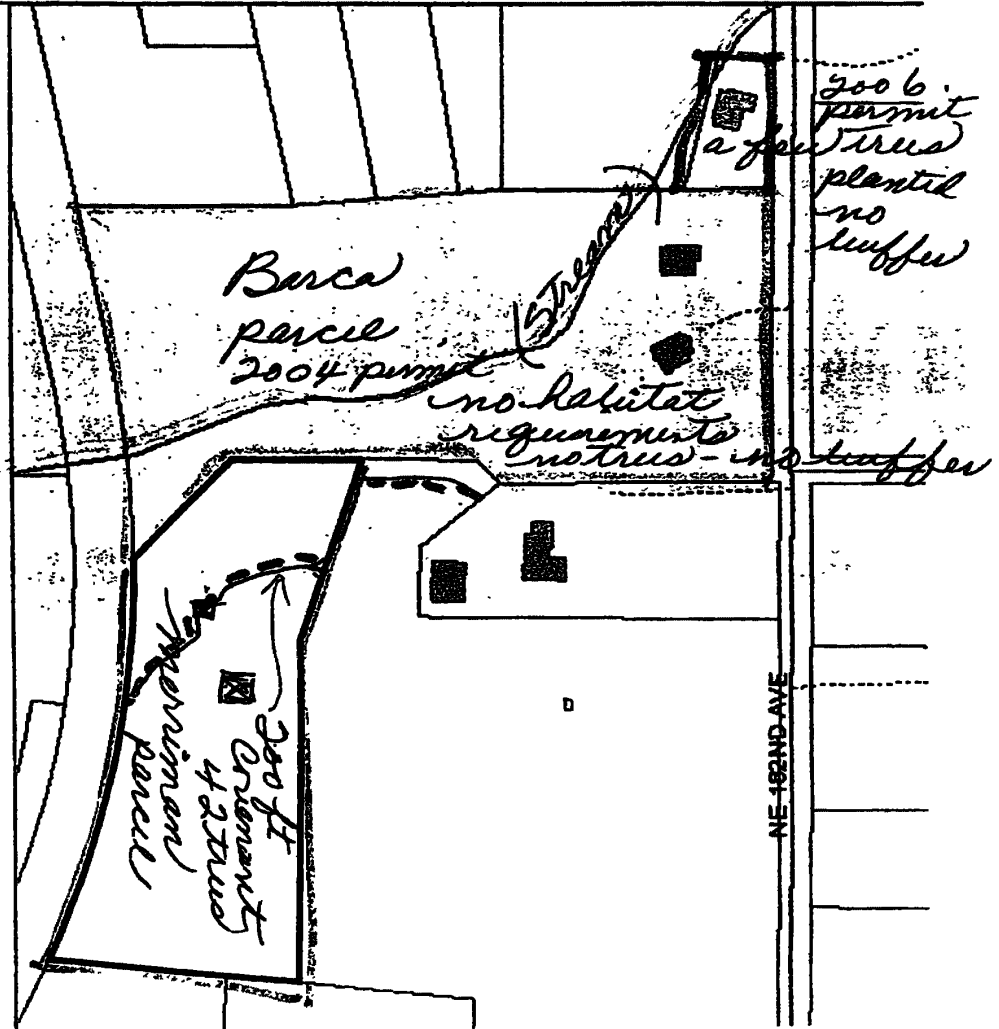


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Clark County Environmental Services
Resource Enhancement & Permitting Division



Type I Permit Decision

Habitat (CCC 40.440) Permit Review
Wetland (CCC 40.450) Permit Review

Case No(s): HAB2014-00066

Lance Watt @ Clark.Wa.gov

Request: Habitat permit for a driveway, shop, and septic system.

Decision:	APPROVAL, with conditions	
	<i>Carri.</i>	
Review Biologist:	Lance Watt	Date: November 19, 2014
Permit Conditions:	<i>* Permit is good for two (2) years</i>	
1.	Avoid drip line of existing trees when constructing access drive and drain field.	
2.	The applicant shall <u>replant</u> the indicated mitigation area within the riparian habitat conservation zone buffer, indicated with green trees (6,080 square feet; 0.14 acres) with 21 western red cedar (<i>Thuja plicata</i>), and 21 Douglas fir (<i>Pseudotsuga menziesii</i>) at the rate of 300 stems/acre (total 42 trees) as mitigation in the location indicated on the provided map. No non-native trees or shrubs shall be planted inside the Habitat Conservation Zone buffer. Volunteer growth may count towards the performance standards on a per species basis.	
3.	The mitigation plantings shall be <u>monitored and maintained for 3 full growing seasons</u> after planting with a <u>90% survivorship</u> for all plantings. Monitoring reports consisting of photographs and a count of live trees shall be submitted to DES no later than November 1 following each growing season. Monitoring Review fees shall be waived, but site visit fees may be required if DES staff determine that a site visit is needed to complete monitoring review.	
4.	<u>Within 30 days of planting, the applicant shall record a conservation covenant that runs with the land that identifies the modified habitat conservation buffer line and mitigation area. This covenant shall be in a form approved by the County Prosecuting Attorney. A standard form, exhibit, and instructions are attached.</u>	
5.	Any future impacts to the Habitat Area will require additional County review and a subsequent Habitat Permit.	

no trees located on the site originally

233512-000

*he was required to pay a maint. fee 800.
5000 ad fee -
9 trees -*

Site Information:

<u>Decision Date:</u> November 18, 2014	<u>Expiration Date:</u> November 18, 2017
<u>Applicant:</u> ALKOR CONSTRUCTION NW INC PO BOX 2088 WOODLAND, WA 98674	<u>Owner:</u> ROTH INVESTMENTS LLC C/O HABERSETZER DONNA ROTH PO BOX 634 JEROME ID, 83338
<u>Legal Description:</u> #6 SEC 19 T4N R3E WM 5.09A	<u>Location:</u> NE 182 ND AVE, BATTLE GROUND, WA 98604
<u>Associated Cases:</u> FIL-0113331	<u>Monitoring Period and Schedule:</u> 3 YEARS

Applicable Laws

Clark county Code Chapters 40.440 (Habitat Conservation) and 40.510 (Procedures).

Background

The applicant has proposed the construction of a 10-foot wide access drive, septic tanks and drain fields, and a 30 foot by 40 foot shop on an approximately 5 acre lot (parcel 233477000) within a riparian habitat conservation zone buffer of an unnamed tributary to the East Fork Lewis River. The stream has been designated by the Washington Department of Natural Resources as a Type F (fish bearing) stream. Per the Habitat Conservation Ordinance (CCC 40.440.010.C.1.a.2) a Type F stream is afforded a 200 foot riparian habitat conservation zone buffer. Any development within a riparian habitat conservation zone buffer would require a habitat permit and appropriate mitigation. The location of the proposed development is within an existing grass field and no woody vegetation is proposed to be removed. While lawn/turf grasses are non-native and of lesser habitat value than the surrounding woodlots, they provide more habitat value than impervious surfaces and provide valuable water quality filtering capacity. The drain fields (2,000 square feet) will be constructed on lawn/turf grass and after construction will be returned to lawn/turf grass; as such, this impact is considered to be self-mitigating. The total amount of new impervious surface proposed (via driveway, roof, etc.) within the riparian buffer is 6,505 square feet (0.15 acres); this impact will require mitigation at a 1:1 ratio based on square footage of impact. A portion of the proposed access drive (1,575 square feet) is located within the inner 50-percent of the Habitat conservation zone buffer and additional mitigation will be required for this portion of the drive (at a 2:1 ratio). No mitigation plan was provided by the applicant; as such the attached habitat mitigation plan was developed by County staff to offset riparian impacts.

Analysis

A complete analysis was conducted to determine if the proposal identified above meets the approval criteria. As part of this permit application, the applicant is required to adhere to all approval criteria and standards contained within the "Applicable Laws" listed above. The following issues, because of their significance, are discussed in detail:

1. Per Clark County Code 40.440.010 (B) (1), clearing and/or construction within a riparian priority habitat area requires a Habitat Permit. The proposed construction of the driveway, shop, and associated structures and septic were determined to occur within the riparian habitat conservation buffers for the streams as indicated on the provided map and as such will require a habitat permit and require mitigation. Staff proposes the following to mitigate for the impacts:
 - a. Per Clark County Code 40.440.010 (A), the applicant is required to maintain the functional integrity and values of the habitat on the site. The septic drain fields (approximately 2,000 square feet) are proposed in the outer 50% of the habitat conservation buffer for the Type F stream. This area is currently pasture and devoid of trees. If this area is re-seeded with native grass seed, the effects of construction of this feature would be mitigated and the function of this portion of the habitat conservation buffer would be retained.
 - b. Per Clark County Code 40.440.020.B.3, the required riparian habitat conservation zone buffers may be reduced up to 50 percent (100 foot buffer for a Type F stream [blue line]) provided the subtracted zone width is correspondingly made up elsewhere on the parcel. Clark County staff recommend utilizing this provision to account for the some impacts incurred by the proposed development. Please see the attached map (purple dashed line) to see where the proposed new habitat line would be located. The area with orange trees (2,000 square feet; 0.046 acres) is the area that is proposed to be added to the riparian habitat buffer to account for impacts that have not been replanted. This area is currently forested and requires no additional enhancement.
 - c. The proposed building site and driveway have portions of their design located within the riparian habitat conservation buffer for the Type F stream; there will be approximately 6,505 square feet (0.15 acres) of new impervious surface. This area is currently covered with lawn/turf grasses with scattered trees; no trees are proposed to be removed. This lawn, while lower habitat quality than the surrounding woodlots, still maintains some habitat and water quality value for the stream that require mitigation. Buffer enhancement through tree plantings within the inner 50% of the habitat conservation buffer zone at the rate of 300 stems/acre for trees (total 42 trees) is proposed by staff as mitigation as indicated in the conditions of the permit in the location indicated on the provided map.
 - d. *Stream is 180'-100' feet away from area and property line*
The area proposed to be cleared inside the inner 50% of the buffer (1,575 square feet) is a critical zone within the riparian habitat buffer and, under normal conditions, would not be allowed to be disturbed. As this area is the access easement for the parcel, impacts to this area cannot be avoided, although additional mitigation beyond the previously indicated plantings is required to offset the impacts. As mitigation, the County recommends planting trees at a 2:1 ratio based on square footage of impact within the inner 50% of the buffer zone as indicated on the provided map; additional 1,575 square feet).
 - e. The total amount of mitigation required is 8,080 square feet. This was calculated at a 1:1 ratio for total impervious impact (6,505 square feet) plus an additional 1,575 square feet for impacts within the inner 50% of the riparian habitat buffer. Of the total, 2,000 square feet will be alleviated by buffer averaging. The remaining 6,080 square feet will be mitigated by planting trees within the riparian habitat buffer.
2. Remaining sections of the building site and driveway are beyond the riparian habitat conservation zone and do not require a habitat permit or mitigation.
- * 3. All remaining critical areas on site (habitat, habitat buffer, and the planted area) shall be placed under a conservation covenant that runs with the land.

RETURN ADDRESS

CONSERVATION COVENANT RUNNING WITH THE LAND

Grantor (owner): _____
Grantee: Clark County
Abbreviated Legal Description: #6 SEC 19 T4N R3E WM 5.09A_____
Assessor's Property Tax Parcel/Account Number(s): 1233477000_____
Project Case No.: HAB2014-00066_____

A COVENANT to Clark County, State of Washington, hereinafter "County," by the owner(s) _____ of certain real property identified above on behalf of themselves and all their heirs, assigns and successors in interest into whose ownership said property may pass, agrees that this covenant shall run with the land. It is the purpose of this covenant that certain habitat areas and designated mitigation located within areas shown in Exhibit "A" 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.
2. Exempt Activities. All exempted activities shall use reasonable methods to avoid potential impacts to habitat areas. Exemptions from permits are not exemptions from habitat

stewardship responsibilities. Exempt activities listed in Title 40.440 shall be exempt from the provisions of this covenant; provided, that they are otherwise consistent with other local, state, and federal laws and requirements:

- 3. Nothing in this covenant shall be construed to provide for public use of or entry into the habitat areas or designated mitigation areas shown on Exhibit "A". 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, provided that:**
 - a. Owners or their heirs, successors or assigns are given at least 24-hours advance notice of any such entry.**
 - b. Access granted to representatives and agents of Clark County under this provision shall expire upon completion of required monitoring and final acceptance of the habitat mitigation by the Responsible Official.**
- 4. The provisions of this covenant are enforceable in law or equity by Clark County and its successors.**
- 5. This covenant and all of its provisions, and each of them, shall be binding upon the owners and any and all of their heirs, assigns and successors in interest into whose ownership the above-described real property may pass, and any obligations made herein by owners, shall be enforceable against all of their heirs, assigns and successors in interest into whose ownership the above-described real property may pass.**

Legal Description:

Parcel I: Parcel Number 233477-000

Being a portion of the Southeast one-quarter of the Northwest one-quarter and the Northeast one-quarter of the Northwest one-quarter of Section 19, Township 4 North, Range 3 East, Willamette Meridian, Clark County, Washington described as follows:

BEGINNING at the Northeast corner of the Southeast one-quarter of the Northwest one-quarter of Section 19 as shown in Book 62 of Surveys, Page 147, Clark County Auditor's Records; Thence South 00°05'35" East along the East line of the Southeast one-quarter of the Northwest one-quarter of Section 19, (Survey 62-147) for a distance of 216.00 feet; thence North 89°47'32" West, leaving said East line for a distance of 575.00 feet; Thence North 00°12'28" East, for a distance of 104.00 feet; Thence North 51°04'20" East, for a distance of 155.92 feet; Thence North 44°57'52" West, for a distance of 46.46 feet; Thence North 87°39'30" West, for a distance of 74.00 feet; Thence South 89°17'00" West, for a distance of 100 feet and the TRUE POINT OF BEGINNING; Thence South 19°02'14" West, for a distance of 288.18 feet; Thence South 00°12'28" West, for a distance of 519.50 feet; Thence North 85°06'00" West, for a distance of 377.26 feet to the Easterly Right of Way line of the Chelatchie Prairie Railroad as shown in Survey 62-47; Then along said Easterly Right of Way line along the arc of a 1482.39 foot radius curve to the left, through a central angle of 24°10'30" for an arc distance of 625.47 feet, the chord of which bears North 11°51'36" East, 620.84 feet; Thence North 44°39'00" East, leaving said Easterly Right of Way for a distance of 171.09 feet; Thence North 45°30'21" East, for a distance of 39.87 feet; Thence North 89°17'00" East, for a distance of 195.50 feet to the TRUE POINT OF BEGINNING; contains approximately 5.09 acres.

Together with and subject to a 20.00 easement for ingress, egress and utilities described as follows:

Beginning at the Northeast corner of the Southeast one-quarter of the Northwest one-quarter of Section 19 as shown in Book 62 of Surveys, Page 147, Clark County Auditor's Records; Thence South 00°05'35" East, along the East line of the Southeast one-quarter of the Northwest one-quarter of Section 19 (Survey 62-147) for a distance of 8.00 feet; Thence South 89°30'05" West, leaving said East line parallel with the North line of the Southeast one-quarter of the Northwest one-quarter of Section 19, for a distance of 32.74 feet to the West Right of Way of Northeast 182nd Avenue and the TRUE POINT OF BEGINNING; Thence South 00°12'28" West, along said West Right of Way line for a distance of 20.00 feet; Thence South 89°30'05" West, leaving said West Right of Way line for a distance of 428.41 feet; Thence North 44°57'52" West, for a distance of 47.03 feet; Thence North 87°39'30" West, for a distance of 66.99 feet; Thence South 89°17'00" West, for a distance of 107.18 feet, to the East line of the above described Tract 3; Thence North 19°02'14 East, along the East line of the above described Tract 3, for a distance of 21.25 feet to the Northeast corner of Tract 3; Thence North 89°17'00" East, for a distance of 100.00 feet; Thence South 87°39'30" East, for a distance of 74.00 feet; Thence South 44°57'52" East, for a distance of 46.46 feet; Thence North 89°30'05" East, parallel with the North line of the Southeast one-quarter of the Northwest one-quarter of Section 19, for a distance of 420.26 feet to the TRUE POINT OF BEGINNING;