



Management Brief

TO: Mayor Davidson and Bellevue City Councilmembers

FROM: Goran Sparman, Director, Transportation Department
 Dennis Vidmar, Director, Utilities Department
 Patrick Foran, Director, Parks Department
 Mike Brennan, Director, Development Services
 Lacey Madche, Assistant City Attorney, Legal
 Rick Logwood, Capital Projects Manager, Transportation Department

DATE: April 4, 2011

SUBJECT: Ms. Terry Foulon's Comments and Concerns Regarding I-405 Impacts to Newcastle Beach Park

EXECUTIVE SUMMARY:

Starting in December 2010, Ms. Terry Foulon provided written comments and testimony to the City Council regarding potential impacts to Newcastle Beach Park involving the I-405 corridor improvements designed and constructed by the Washington State Department of Transportation (WSDOT) and Atkinson Construction. Ms. Foulon has also communicated her concerns to City staff, the Governor's office, and other agencies that may have jurisdictional authority regarding potential impacts to Newcastle Beach Park. In her most recent communications with staff and Council, Ms. Foulon raised additional concerns that certain City departments may have potential conflicts of interest in responding to her complaints (namely the Utilities Department).

The investigation and response to the list of issues required coordination across several City departments, review of the completed WSDOT, I-405 South Bellevue Widening Project, and assessment of the future improvements proposed by WSDOT in the I-405 corridor in south Bellevue. After evaluation of relevant information staff has reached at the following conclusions:

- The City of Bellevue has no jurisdictional authority over the design or permitting of the storm drainage or highway improvements constructed within WSDOT's right-of-way;
- The I-405 South Bellevue Widening, 112th Avenue SE to SE 8th Street project, as constructed by the WSDOT in accordance with their policies, standards, and environmental approvals, and within their I-405 right-of-way, has not adversely impacted Newcastle Beach Park and does not constitute a 4(f) or 6(f) impact to the Park;
- There is a slight increase in flows being discharged toward the streams within Newcastle Beach Park. However, WSDOT has not diverted storm water runoff into Newcastle Beach Park in advance of a future I-405 expansion project that will include drainage improvements and stream enhancements to address increased runoff generated by that project.
- There has been no additional storm water runoff added to Lakehurst Creek through the "blending" of city/state runoff from 116th Avenue SE; and,

- In consultation with the City Attorney's Office, the City finds that no conflict of interest exists precluding the City's Utilities or Transportation Departments from participating in the investigation (thus far) involving Ms. Foulon's allegations.

Staff will provide a more detailed briefing on April 4, 2011. In advance of the briefing, the following provides background information and clarifications of material presented by Ms. Foulon.

BACKGROUND ON THE PROJECT IMPROVEMENTS:

There are two separate WSDOT projects referenced in the allegations: the recently completed I-405 South Bellevue Widening, 112th Ave SE to SE 8th Street project; and, a future I-405 widening project between Renton and Bellevue. Both of these projects represent a sub-set of improvements within the I-405 Corridor Master Plan. The future I-405 Renton to Bellevue improvements are anticipated to be implemented based on corridor priorities and available funding. Specific elements of the two projects include:

I-405 South Bellevue Widening, 112th Ave SE to SE 8th Street (project completed):

This project (Attachment 1), constructed during 2007 through 2009, included among other things modifying the northbound on-ramp from the 112th Avenue SE interchange and constructing the northbound auxiliary lane between 112th Avenue SE and I-90. Storm water runoff from portions of the ramp and auxiliary lane are conveyed to the west of I-405 in the proximity of Newcastle Beach Park. Various storm drainage pipe relining efforts and storm water treatment and detention improvements were implemented to address conveyance requirements associated with the ramp and auxiliary lane improvements. Through this project WSDOT also implemented measures to address storm water erosion on WSDOT property in the vicinity of 116th Avenue SE.

The Newcastle Beach Park Storm Water Plan & Initiative (future project):

The Newcastle Beach Park Storm Water Plan and Initiative (Attachment 3) is a separate future project that, when constructed, would divert and discharge water from impervious surfaces on I-405 within the Coal Creek basin and tributary to Coal Creek to an existing stream located within Newcastle Beach Park. The City and WSDOT have been working on the specifics of this initiative, including the required City permits, since 2006. This future project would enhance the existing stream channel, construct a new culvert at the park entrance, and add additional improvements within the Park. This project is associated with future planned improvements to I-405 between Renton and Bellevue and was reviewed and approved by the Bellevue Hearing Examiner on May 31, 2006. Implementation of the Newcastle Beach Park Storm Water Plan and Initiative requires adoption by the City Council of a standalone agreement with WSDOT and further permitting before construction can proceed.

The storm water flow rates and data associated with this specific proposal differ from the I-405 South Bellevue Widening project storm water analysis. The proposal for the Newcastle Beach Park Storm Water Plan reflects substantial higher flow rates and anticipates the future discharge of water from the Coal Creek basin to an enhanced stream channel within Newcastle Beach Park.

The City of Bellevue will have a significant permitting role for this proposal. WSDOT anticipates construction of this project will occur in advance of any future Renton to Bellevue improvements on I-405 south of I-90.

MS. FOULON'S INQUIRY/COMMENT AND CITY RESPONSE:

The following four sections capture Ms. Foulon's specific inquiries and comments over the past few months and City staff's responses. The specific inquiries/comments, while addressed individually, are grouped together in four topical areas.

I. Permitting and Jurisdictional Authority

The I-405 South Bellevue Widening project in the vicinity of Newcastle Beach Park occurred within WSDOT right-of-way; thus, Bellevue had no permit authority. WSDOT performed all drainage work consistent with both the WSDOT Hydraulics Manual and Highway Runoff Manual. These manuals contain the standards promulgated by the Federal Highway Administration and Department of Ecology, with which WSDOT must adhere. In follow up conversations with WSDOT regarding application of the manuals mentioned above, WSDOT confirmed it is also investigating the concerns raised by Ms. Foulon to determine how the South Bellevue Widening project conforms with applicable requirements and commitments relative to the concerns raised.

Foulon Inquiry/Comment No. 1: WSDOT failed to acquire the necessary permits to construct the improvements.

Response: The inquiry is based on the two projects as detailed above, one constructed and the other a future improvement. All improvements constructed as part of the I-405 South Bellevue Widening Project and in proximity of Newcastle Beach Park, were constructed fully within WSDOT right-of-way. Thus, the City of Bellevue had no jurisdictional authority regarding permit issuance and approvals on the storm drainage work and widening that occurred within the WSDOT right-of-way. Staff has no reason to believe that WSDOT construction occurred contrary to applicable codes and standards and has declined to pursue enforcement against WSDOT as requested by Ms. Foulon. Staff will continue to work with WSDOT as they conduct their own investigation

All improvements constructed on WSDOT property, which is not right-of-way, were constructed with appropriate permits issued by the City.

Foulon Inquiry/Comment No. 2: WSDOT failed to acquire necessary permits as conditioned by the Hearing Examiner for diverting and adding additional storm water runoff to the existing creek in Newcastle Beach Park.

Response: The construction of the Newcastle Beach Park Storm Water Plan & Initiative will include work outside of WSDOT right-of-way and, thus, will require compliance with applicable City Code and engineering standards. However, this is future work triggered by planned I-405 improvements that, as of today, are not funded. Additionally, all work associated with this future project must also

comply with and address Section 4(f) and 6(f) requirements as stipulated in the City's letter to WSDOT dated March 28, 2007 (Attachment 4).

Foulon Inquiry/Comment No. 3: Was the storm water increase insignificant when the new net impervious surface is likely far more substantial (as noted in Ms. Foulon's letter to Scott Taylor, 12/7/10) than reported in the WSDOT's "Newcastle Beach Park Conceptual Wetland, Storm and Drainage Improvement Plan."

Response: This is a result of mixing information from the two independent projects and their associated storm water design and calculations. Applying the flow and capacity data from the Newcastle Beach Park Storm Water Plan & Initiative, which reflected substantial larger runoff area and higher flows, to the constructed I-405 South Bellevue Widening improvements is an inappropriate use of collected data and consequently leads to improper and inaccurate conclusions.

II. Drainage improvements and are there impacts?

Specifically, staff's review of the final plans and hydraulic report for the I-5 South Bellevue Widening project show that there is an insignificant increase in flows discharged at two pipe crossings that then continue to flow further downstream through Newcastle Beach Park (see Map - Attachment 2). The increase in flows exiting the WSDOT culverts as part of the I-405 South Bellevue Widening Project is roughly three to four percent, at crossings 9.88, and 9.75, respectively, as calculated at the 25 year event. There are no further increases in rates or volumes further south. (See Attachment 2 for map referencing crossings and proximity to Newcastle Beach Park).

Foulon Inquiry/Comment No. 4: Was any additional detention or water quality treatment provided for the increase in flows?

Response: Again, separate requirements exist for the two projects. WSDOT, in accordance with requirements in the Hydraulic and Highway Runoff Manuals, addressed detention and water quality treatment requirements for the South Bellevue Widening project. The additional flows at crossings 9.88 and 9.75 were considered as part of the overall project detention provided; however, they are detained in the Coal Creek side of the project, not the Newcastle Beach side. WSDOT's drainage planning is performed on a much larger scale than that performed by municipalities. WSDOT captured the above increases within the Threshold Discharge Area (TDA) limits in accordance with applicable WSDOT standards. And while flows from the two crossings do not discharge and flow to the Coal Creek tributary, they are within the defined TDA. Detention and water quality treatment requirements were constructed as approved by the Department of Ecology.

City staff believe that WSDOT's intent to maintain existing flows consistent with WSDOT policies and standards were achieved. Meeting requirements above or beyond what would be normal practices (specifically at crossings 9.88 and 9.75) is something, however, that may be corrected by WSDOT, either with or possibly in advance of the future project. **This analysis may be further influenced by WSDOT's own investigation of Ms. Foulon's concerns.**

Foulon Inquiry/Comment No. 5: Did WSDOT divert storm water runoff ahead of the Initiative and associated permits, or Agreement?

Response: There is no evidence in documents provided and reviewed by staff indicating that any diversion of runoff within the Coal Creek basin and tributary have occurred in advance of WSDOT constructing the Newcastle Beach Park Storm Water Plan & Initiative.

Foulon Inquiry/Comment No. 6: Does the increase in flows from the South Bellevue Widening Project at crossings 9.88 and 9.75 create further downstream impacts, including 4(f) or 6(f) impacts to the Park?

Response: There are two discharge points (9.88 and 9.75) from WSDOT right-of-way east of the Park. Flows then continue east and south across BNSF right-of-way, then continue east through two existing stream channels within Newcastle Beach Park, before converging at a single point adjacent to the Park entrance. The insignificant increases in flows noted above do not adversely impact Newcastle Beach Park.

All construction for the I-405 South Bellevue Widening project occurred within WSDOT's right-of-way. As a consequence, the City has no information, nor any reason to believe that construction activities associated with the widening project improperly, or contrary to applicable codes and standards, impaired protected activities, features, and attributes of the surrounding areas (constituting 4(f) and 6(f) impacts).

Foulon Inquiry/Comment No. 7: Does the Newcastle Beach Park Storm Water Plan & Initiative constitute a 4(f) or 6(f) impact to Newcastle Beach Park?

Response: Staff coordinated with the City Attorney's Office, National Park Service, Interagency Committee for Outdoor Recreation, and environmental review staff in developing a draft agreement and associated performance requirements to construct the project without resulting in (4)f and/or 6(f) impacts (see Attachment 4). Based on the information provided to date, no apparent 4(f) or 6(f) impacts to Newcastle Beach Park have been identified. When preliminary plans are developed and permit applications filed for the Newcastle Beach Park project further review will be required to determine if this remains the case.

III. Lakehurst Creek and "blending" of water

Foulon Inquiry/Comment No. 8: Did the City of Bellevue and WSDOT increase the amount of storm water discharging from 116th Place SE?

Response: Lakehurst Creek does not drain to Newcastle Beach Park. The storm water pipe from 116th Avenue SE was constructed with the Newport Hills plat in 1958. Run off above I-405 from single family homes and streets has historically flowed through the drainage system and discharged onto the hillside above I-405, eventually finding its way to Lakehurst Creek. Since the 1958 plat was constructed, storm water runoff has caused a significant amount of down-slope erosion across property owned by WSDOT. All necessary permits were acquired from the City for WSDOT to

construct the improvements on their property. These improvements carry the pre-project flows safely down the hillside, eliminating the long-standing erosion problem. The amount of flow reaching Lakehurst Creek has remained unchanged.

IV. Staff having a conflict of interest investigating or responding to inquires and allegations

Foulon Inquiry/Comment No. 9: Does staff from the Utilities Department have a conflict of interest in responding to or assisting in investigating complaints filed with Code Compliance. Further who are persons at the City funded by WSDOT that are participating in review of the information associated in developing this response?

Response: After consultation with the City Attorney's Office, the City finds that no conflict of interest exists precluding the City's Utilities or Transportation Departments from participating in the investigation (thus far) involving Ms. Foulon's allegations.

Foulon Inquire/Comment No. 10: Are staff assigned to projects funded by WSDOT or assigned to project specific Agreements between the City and WSDOT party to preparing this response?

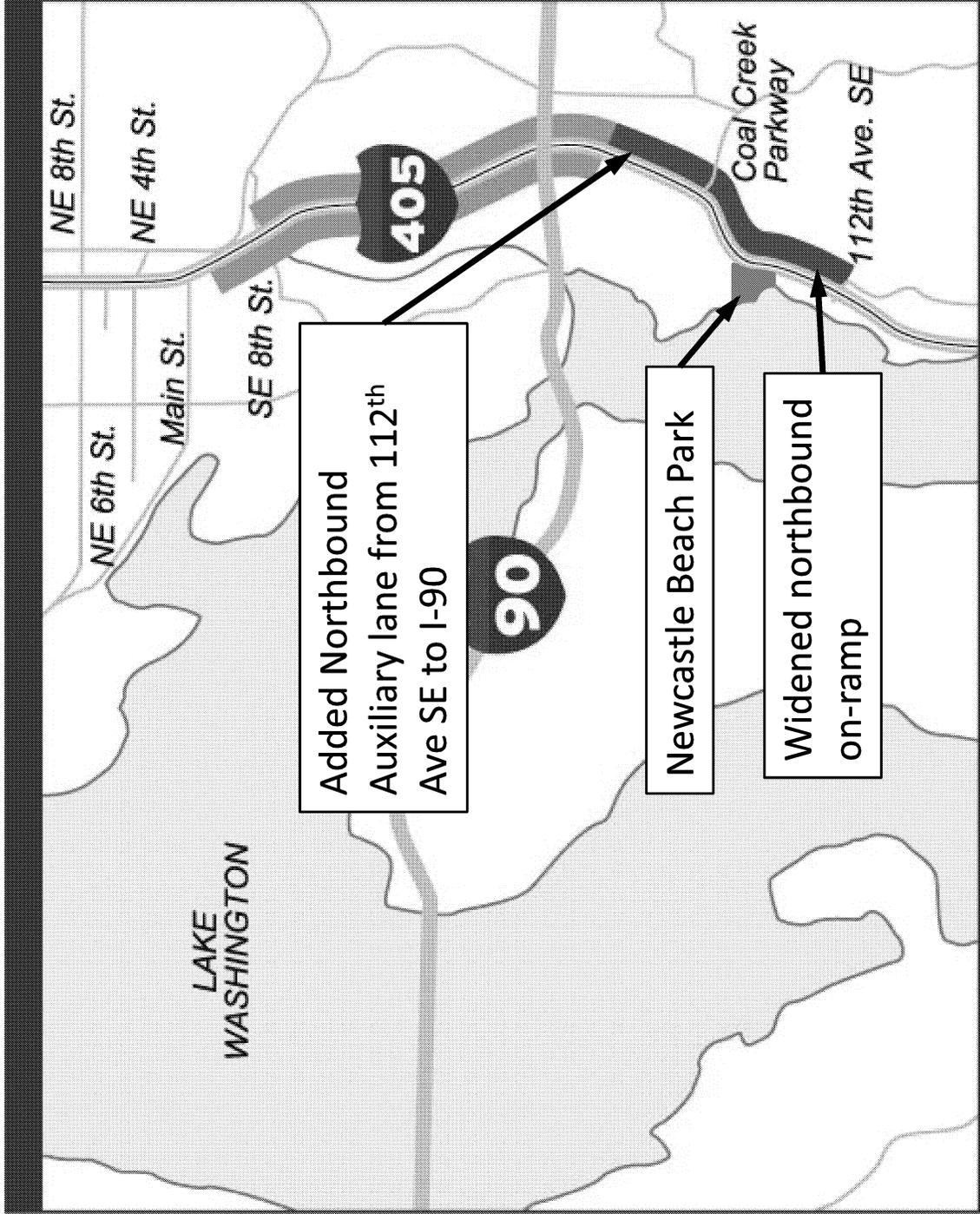
Response: Yes. Any City position coordinating with WSDOT in implementing regional corridor improvements or reviewing permits remain employees of the City. This would include staff associated with project specific WSDOT agreements, investigating complaints or performing duties in the review and approval of any and all permits that WSDOT acquires.

NEXT STEPS:

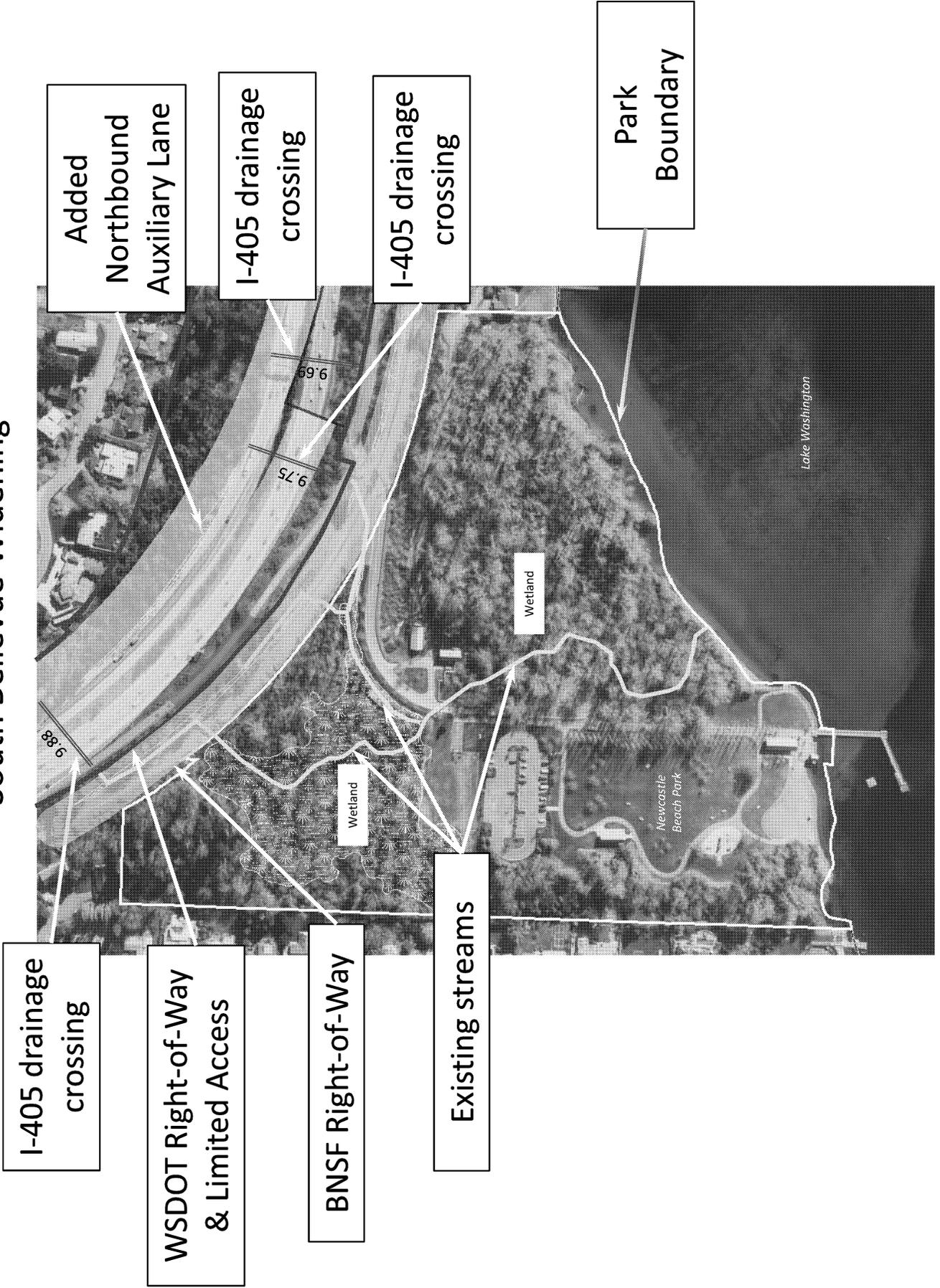
In an effort to address the insignificant increases in flow at the outfall of WSDOT crossings 9.88 and 9.75, staff will continue to work cooperatively with WSDOT to determine how flows will be addressed as part of the Newcastle Beach Park Storm Water Plan & Initiative. Should other needs arise following WSDOT's investigation; staff will work cooperatively WSDOT to address other measures, if necessary.

As discussed above, because the City has found no code violations involving either the Newcastle Beach Park Storm Water Plan & Initiative or the I-405 South Bellevue Widening project, staff is not initiating enforcement action against WSDOT. Likewise, after consultation with the City Attorney's Office, the City finds that no conflict of interest exists which would preclude the City's Utility Department or Transportation Department from participating in the investigation of the allegations raised by Ms. Foulon.

I-405 Bellevue to Renton South Bellevue Widening



I-405 Bellevue to Renton South Bellevue Widening



I-405 Bellevue to Renton

Newcastle Beach Park Storm Water Plan (Future Project Concept)

Proposed storm water treatment w/ limited detention

Eliminated Alternatives

Existing streams

Preferred Alternative with stream/culvert enhancement

Park Boundary





Corridor Program

Congestion Relief & Bus Rapid Transit

600 - 108th Avenue NE, Suite 405
 Bellevue, WA 98004
 Main 425-456-8500
 Fax 425-456-8600
 MS: NB82-250

March 28, 2007

Rick Logwood, Capital Projects Manager
 City of Bellevue
 Transportation Division
 P.O. Box 90012
 Bellevue, WA 98009-9012

Re: 4(f) and 6(f) Concurrence Letter: Renton to Bellevue Project Water Resource Initiative at Newcastle Beach Park

Dear Mr. Logwood:

As you know, the Washington State Department of Transportation (WSDOT) and the City of Bellevue (City) have been cooperating to identify a solution for managing stormwater discharge from the I-405 Renton to Bellevue Project. To that end, the parties are in the process of negotiating the details of the "Renton to Bellevue Project Water Resource Initiative at Newcastle Beach Park" (Initiative) in which WSDOT proposes to discharge additional stormwater resulting from the planned expansion of I-405 to Lake Washington through an existing drainage in Newcastle Beach Park (Park).

WSDOT has provided the City with a draft Stormwater Management Agreement for I-405 Water Resource Initiative at Newcastle Beach Park. The City is revising the format of the draft Stormwater Agreement to create a Memorandum of Agreement (MOA) and a Stormwater Use Permit (Permit). WSDOT has also provided the City with a Conceptual Wetland Stream and Drainage Improvement Plan (Conceptual Plan).

The purpose of this letter is to demonstrate the City's concurrence that Section 4(f) of the Department of Transportation Act of 1966 (49 USC 303) is not triggered by this Initiative and to set forth the parameters upon which the City bases its concurrence. This letter also serves as evidence that the City concurs that Section 6(f) of the Land and Water Conservation Fund Act (LWCFA) is not triggered by the Newcastle Initiative. Likewise, it establishes the parameters upon which the City bases its 6(f) concurrence.

Section 4(f) of the Department of Transportation Act of 1966 (49 USC 303)(4(f)) prohibits the Federal Highway Administration from approving a transportation project that uses land from a significant public park, recreation area, wildlife or waterfowl refuge, or land of an historic site of national, state or local significance, unless there is no feasible and prudent alternative, and the project includes all possible planning to minimize harm to the property. The parties agree that Newcastle Beach Park is a significant public park and recreation area with the City's largest and most popular swimming beach in the City to which the Department of Transportation Act of 1966 typically would apply. However, the Initiative will not permanently incorporate any of the Park into the transportation facility, and the primary purpose of the activity within the Park is not transportation. Therefore, the Initiative will not rise to more than a temporary occupancy and will not constitute a use according to the FHWA Section 4(f) Policy Paper, Non-Transportation Use of Section 4(f) Resources, and Section 4(f) regulations.

Section 6(f) of the LWCFA concerns transportation projects that impact or create a permanent conversion of outdoor recreation property that was acquired or developed with LWCFA grant assistance. The parties agree that the Park falls under the jurisdiction of 6(f) of the LWCFA. A conversion occurs when a property protected under 6(f) is converted to a non-recreation or non-public use, or when the sponsoring agency loses tenure or control over the property; when recreational use of the property is precluded or impaired; or when public access to the property is impaired.

At the present time, based on the information presented to the City by WSDOT, the City gives its concurrence for purposes of Sections 4(f) and 6(f) based on the following provisos: (1) the City will not grant permanent rights to WSDOT for stormwater drainage in connection with this Initiative; (2) WSDOT will work cooperatively with the City in designing the specifications and standards of the Initiative; (3) WSDOT will mitigate impacts of the Initiative and maintain the recreational uses of the Park; (4) WSDOT will be liable for and immediately remediate any negative impacts on the recreational uses of the Park resulting from the additional stormwater related to the Initiative, both in the short and long-term; and (5) WSDOT will assume drainage-related maintenance responsibilities for the conveyance of drainage in the stream channel related to the Initiative. All of these conditions to concurrence will be memorialized in the MOA and in the Permit to be executed by the parties in the coming months.

A more detailed explanation of the City's conditions for concurrence follows:

1. *Rights/Control:* WSDOT will not acquire any legal right or interest in the property or other rights that infringe on the City's ownership or control over the area for its intended Park and recreation use. WSDOT will obtain the Permit from the City for implementation of the Initiative and discharge of stormwater that is described as "temporary" and shall be documented in a mutually agreeable form.
2. *Public Access:* In implementing the Initiative and during construction WSDOT will maintain public access to the Park.
3. *Design:* WSDOT will protect Park uses and avoid or minimize impacts and disruption to recreation activities. WSDOT will continue to work cooperatively and deferentially with the City in obtaining the City's final plan approval and coordination through final construction of the Initiative.
4. *Standards/Policies:* WSDOT will ensure that the Initiative meets all applicable City, state, and federal standards and that there will be no temporary or permanent adverse impacts to the Park, recreational use, stream channel, and Lake Washington.
5. *Scope of the Initiative:* The duration of the construction and entry onto the site by WSDOT will be temporary. The proposed stormwater improvements and the magnitude of the changes will be minor and beneficial within the recreational context and use of the Park and regional transportation initiatives. The Initiative shall make provision for maintaining the recreational uses of the Park.
6. *Impacts/Liability:* WSDOT represents that the Initiative will not restrict or impair access to or recreational uses in the Park, detrimentally affect visual aesthetics, heighten noise, detrimentally affect wildlife or vegetation in the Park, or cause any temporary or permanent adverse impacts to Park use. WSDOT agrees to accept liability for all

adverse impacts to the Park resulting from the design, construction, erosion control, and additional stormwater related to the Initiative, whether or not resulting from negligence, and to promptly initiate action to remediate any adverse impacts to the Park or to the surrounding area that occur as a result of the Initiative.

7. *Restoration/Maintenance*: The land devoted to the Initiative will be fully restored to a condition that is equal to or better than that which existed prior to the Initiative. WSDOT will be responsible for all short and long-term WSDOT stormwater drainage-related maintenance responsibilities related to the Initiative. The specific limits shall be reflected in the MOA and permit.

WSDOT will continue to provide the City with information and assurances that neither 4(f) nor 6(f) is triggered.

WSDOT and the City acknowledge that although Sections 4(f) and 6(f) do not appear to be triggered based on current findings, the City reserves its right to raise any Sections 4(f) or 6(f) related concerns it may have to WSDOT or any state or federal regulatory agency at any time.

We look forward to implementing the Initiative through a partnering opportunity to create an improvement to the benefit of the environment, WSDOT, and the City of Bellevue.

Please confirm the City's concurrence with the points noted above by returning a copy of this letter signed by the City's designated representative.

Sincerely,



Allison Hanson, Environmental Manager
WSDOT, I-405 Project
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hansona@wsdot.wa.gov

City of Bellevue Concurrence

Name: Patrick Foran

Patrick Foran
Director, Parks & Community Services

Date: 4/2/07

Name: Goran Sparrman

Goran Sparrman
Director, Transportation Department

Date: 3/30/07

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cc: Stacy Trussler
Keith McGowan
Jim Jordan