



# MEMORANDUM

---

DATE: May 4, 2010  
TO: Chair Kasner, Members of the East Bellevue Community Council  
FROM: Mike Upston, Senior Planner  
SUBJECT: Kelsey Creek Center Rezone (09-113801-LQ)

On April 26, 2010 the City Council approved the subject Rezone application to repeal the existing concomitant zoning agreement for Kelsey Creek Center and replace it with a new concomitant zoning agreement.

This memorandum follows up from that decision to inform you that the applicant and City staff will be present at your May 4, 2010 meeting to answer any final questions you may have about the project so that you may make a determination as to whether the City Council decision should be upheld.

Attached for your review are the materials that were provided to the City Council, including the Hearing Examiner's report, Concomitant Zoning Agreement, and Mitigation Plan.

Please contact me if you have any questions prior to the May 4th meeting.

Attachments: East Bellevue Community Council public hearing notice  
Hearing Examiner's report  
Concomitant Zoning Agreement  
Legal Description  
Mitigation Plan

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

**BEFORE THE HEARING EXAMINER FOR THE CITY OF BELLEVUE**

In the Matter of the Application of )  
)  
NAT FRANKLIN, )  
FRANKLIN WEST, LLC )  
)  
For a Rezone Repealing Prior )  
Concomitant Zoning Agreements for )  
Kelsey Creek Center and Replacing )  
Them with New Agreements. )  
)

**FILE NO: 09-113801-LQ**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

**SUMMARY**

**1. Recommendation.** The application should be **APPROVED**, subject to conditions.

**2. Proposal.** Franklin West LLC seeks a rezone to repeal prior concomitant zoning agreements, principally removing a requirement to reopen Kelsey Creek where it runs under the middle of the Kelsey Creek Center if any commercial floor area is added to the site. The stream now flows through a culvert under the large parking lot covering the site. The requirement to reopen the creek includes the creation of a 110-foot-wide riparian zone on each side of the stream. The present proposal is for payment of a fee in lieu of culvert removal and reconstruction of an open stream channel. The funds would be used to fund an off-site mitigation plan for improving environmental functions along Kelsey Creek and Larson Lake on property adjacent to the shopping center site. The mitigation plan would provide functions and values equal to or greater than the functions and values achieved by daylighting the stream.

In addition, the rezone would include use limitations on the site to insure neighborhood compatibility, would subject any site redevelopment to current development standards applicable to the Community Business (CB) zone, and would call for replacement of the present creosote-treated timber culvert with a larger metal culvert. Under the rezone, redevelopment would also

3/4/10

1 necessitate the construction of pedestrian trails and sidewalks connecting the site to the Lake  
2 Hills Greenbelt.

3 The proposed rezone would take the form of a new 2010 Concomitant Zoning Agreement  
4 or, perhaps, a development agreement containing the same redevelopment conditions as the new  
5 CZA.

6 **3. Procedure.** The application was filed May 20, 2009 and deemed complete on July 17,  
7 2009. Notice of Application was made on August 27, 2009. The East Bellevue Community  
8 Council considered the proposal at a courtesy public meeting on October 6, 2009. There was no  
9 public comment. Two comment letters were received, one favoring the project and another from  
10 the Muckleshoot Tribe urging daylighting the creek. Consultants provided a detailed answer to  
11 the tribe, concluding that culvert replacement and off-site mitigation would adequately address  
12 the tribes concerns for fish habitat.

13 A Mitigated Determination of Non-Significance (MDNS) was issued under the State  
14 Environmental Policy Act (SEPA) on February 11, 2010. The MDNS was not appealed. No  
15 comments on it were received. The condition imposed by the MDNS is, effectively, compliance  
16 with the new CZA or development agreement.

17 Mailing, posting and publication of the application were appropriately accomplished.  
18 The Hearing Examiner hearing was held on February 25, 2009, upon due notice. Appearing at  
19 the hearing were John McCullough, attorney for the applicant, Patrick Mullaney, attorney for  
20 Costco Wholesale, and Michael Upston, Senior Planner for Bellevue's Development Services  
21 Department. Testimony was heard from Messrs McCullough, Mullaney and Upston, and from  
22 Nat Franklin, applicant, Carl Hadley, stream biologist, and Ed Sewall, wetland ecologist. There  
23 was no public testimony.

#### 24 **FINDINGS OF FACT**

25 1. The factual matters set forth in the foregoing **SUMMARY** are adopted by the  
26 Examiner findings.

27 2. The applicant here is the owner of the Kelsey Creek Center, an existing commercial  
28 center, approximately 16 acres in size located at the southeast corner of 148th Avenue SE and  
29 Main Street. The area is generally flat topographically and the majority of it is occupied by a  
30 paved parking area.

3/4/10

1           3. Adjacent to the south is a portion of the Lake Hills Greenbelt which contains Larson  
2 Lake and an upstream segment of Kelsey Creek. The creek flows north across the subject site  
3 into an open stream channel on the other side of Main Street. On the site it is entirely encased  
4 within a creosote-impregnated box culvert that lies under the paved parking lot.

5           4. Along the south side of the site is a long two-story commercial building, occupied by  
6 a variety of tenants. Along the east side of the site is a large vacant building that was formerly  
7 occupied by a Kmart department store. Most of the rest of the site is set aside for parking.

8           5. To the east, behind the former Kmart building, is a residential neighborhood. To the  
9 north and west are a strip of church, institutional and commercial properties with residential  
10 development beyond.

11           6. Kmart vacated the site in 2000. The building has remained unoccupied for the last 10  
12 years. Over this time many potential tenants have made overtures only to decide against  
13 proceeding with their plans. The building has deteriorated, detracting from the overall  
14 appearance of the property and from the attractiveness of the neighborhood.

15           7. The subject site was rezoned from Neighborhood Business (NB) to Commercial  
16 Business (CB) in 1987. At that time, the creek had already been placed in the culvert and paved  
17 over. In order to assure compatibility of the expanded business uses with the surrounding  
18 residential area, the rezone was accompanied by a concomitant zoning agreement (CZA) which  
19 imposed special use restrictions. It also imposed a condition that Kelsey Creek be re-opened and  
20 its riparian buffers restored whenever any commercial floor area is added to the site. This  
21 condition was continued through subsequent modifications of the CZA.

22           8. The daylighting requirement has proven to be the major impediment to redevelopment  
23 of the site. The re-opening of the creek and restoration of the riparian corridor would create a  
24 10-foot-wide stream with a 50-foot-wide riparian zone on either side, resulting in a vegetated  
25 strip, 110 feet wide, cutting sinuously across the center of the site.

26           9. From the commercial standpoint, the large open parking area is one of the site's major  
27 attractions. The effect of daylighting the creek and restoring vegetated buffers would be to  
28 eliminate approximately 1/3 of the parking space now available. Further, the parking field  
29 would be effectively bifurcated, with the western portion separated from old Kmart building by  
30

3/4/10

1 the riparian corridor -- a significant impediment to access. The effect on parking/access has been  
2 the stopper for redevelopment proposals.

3 10. Costco has leased the old Kmart building with the idea of putting in a warehouse  
4 store. But, like others, Costco finds that redevelopment of the property is not feasible if the  
5 parking lot is going to be cut in two and reduced in size.

6 11. In late 2004 Parametrix completed a "Daylighting Feasibility Analysis" on the site  
7 for the City in order to evaluate the potential impacts of eliminating the CZA requirement for re-  
8 opening of the stream and to suggest appropriate mitigation. The study identified the functions  
9 and values obtained by daylighting, while making it clear that off-site mitigation could  
10 effectively match the functions and values that would accrue from re-opening the stream.

11 12. The Parametrix study also compared the estimated the costs of on-site stream  
12 reopening against the costs of off-site restoration and found the latter to be roughly half the cost.

13 13. Costco commissioned a mitigation study taking off from the Parametrix work.  
14 In November of 2007, Kindig and Co. produced a critical area study and conceptual off-site  
15 mitigation plan, which included enhancement along the stream corridor from the shopping center  
16 south to Larson Lake and along the north shore of the lake.

17 14. Most of the proposed mitigation area along the north shore of Larson Lake identified  
18 by Kindig was subsequently picked up in a mitigation project of the Washington State  
19 Department of Transportation (WSDOT). Sewall Wetland Consulting was then asked to create a  
20 new mitigation plan to make up for the area along the lake taken by WSDOT. The Sewall plan  
21 added an area along the creek east of Larson Lake for additional mitigation activities.

22 15. The current mitigation proposal reflects the work of both Kindig and Sewall,  
23 improving the Kelsey Creek corridor from the shopping center property south to Larson Lake,  
24 and also enhancing a segment of stream corridor east of Larson Lake.

25 16. The off-site enhancement project involves replacement of areas dominated by reed  
26 canary grass with plantings of native tree, shrub and groundcover species. Habitat features,  
27 such as logs and snags, will be installed. Blackberries will be removed from willow dominated  
28 wetland areas to allow the over-story to grow unencumbered. The enhanced areas will be  
29 monitored five times a year for a five year period to insure that survival and coverage targets are  
30 met.

3/4/10

1 17. The ultimate mitigation plan resulting from all the biological evaluation conducted  
2 will, in the opinion of the experts, add functions and values off-site that that will exceed the  
3 functions and values that would be achieved by daylighting the stream across the Kelsey Creek  
4 Center parking lot. The Examiner so finds.

5 18. The City proposes to impose a fee to cover the costs of the identified off-site  
6 mitigation as a condition for repealing the daylighting requirement of the existing CZA. The fee  
7 would be paid to the City and the City would carry out the mitigation project.

8 19. In response to comments from the Muckleshoot Tribe, the applicant landowner and  
9 Costco decided to go to the additional expense of replacing the present culvert under the  
10 shopping center parking lot. The old culvert is a bottomless box made of creosote-treated wood.  
11 The new one would be a larger arch structure made of aluminum which would increase the size  
12 of the area available for stream flow.

13 20. The culvert is located at approximately river mile 6.0 on Kelsey Creek, less than a  
14 mile from the headwaters. Kelsey Creek is a fish-bearing stream, but salmon sightings  
15 upstream of the shopping center culvert have been rare and it isn't believed that significant use of  
16 this upstream area occurs. There are no monitoring locations near or upstream of the culvert.  
17 The nearest monitoring location is about a mile downstream where in 2008 ( latest available  
18 data) no salmon were observed. The nearest observations were about three miles downstream.  
19 No spawning habitat is found in the area of the culvert or upstream. Any salmon use is expected  
20 to be by juveniles for rearing.

21 21. Nevertheless, the enlarged culvert will meet Washington Department of Fish and  
22 Wildlife requirements for fish passage and will radically lessen adverse habitat effects of the  
23 creosote. Open grates will be maintained at a distance of one every 50 feet to admit light.  
24 Replacement of the old culvert will result in a decrease of impervious surface of approximately  
25 5,000 square feet due to new planting areas to be constructed around each opening in the culvert  
26 lid. The major value of the proposed mitigation activities to fish will be the provision of  
27 nutrients which will wash downstream.

28 22. The City Staff has drafted a new recommended CZA to replace the 1987 version.  
29 The new CZA: (a) imposes the fee (referred to above) in lieu of the daylighting requirement, (b)  
30 limits the type and size of uses allowed in the CB zone be at the Kelsey Creek Center, imposing

3/4/10

1 restrictions similar to those in prior CZA, (c) provides that current development standards for the  
2 CB district as now or hereafter amended shall apply, including but not limited to General  
3 Development Requirements, Transition Area Design District and Community Retail Design  
4 District requirements, (d) requires the construction of pedestrian trails and sidewalks upon  
5 redevelopment of the property in order to further connect 148th Avenue SE, Main Street and the  
6 site to Lake Hills Greenbelt Park.

7 23. The draft CZA also contains a provision for "reconstruction" and maintenance of the  
8 existing box culvert. In light of the proposal to replace the old culvert, the Examiner  
9 recommends that paragraph seven (7) of the new CZA be modified to insure that it covers the  
10 replacement of the culvert, rather than simply revamping the present one.

11 24. The restrictions on the type and size of uses are recommended in the interests of  
12 neighborhood compatibility and are a continuation of the approach taken in the original CZA.  
13 The provisions regarding development standards overcome the vesting to prior standards and  
14 ensure that the applicable standards will be those in effect at the time of future development.

15 Moreover, under the paragraph on development standards, the entire property is to be treated as  
16 one lot for purposes of compliance with setbacks, density, parking and access regulations

17 25. The pedestrian walkway condition will result in an improved path connecting the  
18 trail that already runs along the eastern side of Larson Lake to the interior of the shopping center.  
19 The creation of this path is not expected to result in more than incidental environmental impact.  
20 The final alignment of the pedestrian connection is to be approved by the Land Use Division of  
21 the Development Services Department.

22 26. The decision criteria for a rezone are set forth at LUC 20.30.140 as follows:

23 A. The rezone is consistent with the Comprehensive Plan; and

24 B. The rezone bears a substantial relation to the public health, safety, or  
25 welfare; and

26 C. The rezone is warranted in order to achieve consistency with the  
27 Comprehensive Plan or because of a need for additional property in the  
28 proposed land use district classification or because the proposed zoning  
29 classification is appropriate for reasonable development of the subject  
30 property; and

3/4/10

1 D. The rezone will not be materially detrimental to uses or property in the  
2 immediate vicinity of the subject property; and

3 E. The rezone has merit and value for the community as a whole.  
4

5 27. The Staff Report thoroughly analyzes the proposal in light of the above criteria and  
6 finds that, as conditioned, the rezone will be consistent with them. The Hearing Examiner  
7 concurs with this analysis and adopts the same. The Staff Report is by this reference  
8 incorporated herein as though fully set forth.

9 28. A major Comprehensive Plan goal for the retail and office areas of the Southeast  
10 Bellevue Subarea is to improve the appearance of retail and office uses. This proposal will  
11 facilitate redevelopment of a vacant building that has been a long-standing eyesore with new and  
12 more attractive development that will, it is hoped, also improve the economic vitality of the  
13 shopping center. Since the condition for re-opening Kelsey Creek was put in place no  
14 redevelopment at the site has occurred. Thus, the rezone is warranted in order to promote the  
15 reasonable development of the property. At the same time, compliance with the Mitigation Plan  
16 will ensure that there are no significant environmental losses. The surrounding neighborhood is  
17 presently degraded to some degree by the derelict Kmart building. With neighborhood  
18 compatibility assured through restrictions on adjacent commercial uses, a rezone that facilitates  
19 redevelopment will be beneficial, not detrimental, to the neighborhood. The entire community  
20 will benefit from the habitat improvements in the Lake Hills Greenbelt and from a revived  
21 Kelsey Creek Center.

22 29. In the opinion of Staff, compliance with the proposed new CZA will reduce the  
23 adverse environmental impacts of the proposed rezone to below the level of significance. The  
24 condition imposed by the MDNS is, in effect, compliance with the replacement CZA. The  
25 Examiner agrees that the combined effect of retaining prior CZA type and size limitations,  
26 insuring applicability of present construction standards, installing pedestrian improvements,  
27 replacing the old culvert, and implementing off-site mitigation will be to eliminate the need to  
28 write an environmental impact statement.

29 30. The instant application is not project specific. Impacts of redevelopment on such  
30 things as transportation and stormwater management cannot be known until some concrete  
proposal is presented. When that occurs further environmental review will need to be conducted

3/4/10

1 pursuant to SEPA. Review of engineering and design must likewise await an application for a  
2 specific project. It is noted, however, that all public utilities are available to the site and no  
3 capacity issues are likely to affect future development.

4 31. Any conclusion herein which may be deemed a finding is hereby adopted as such.

#### 5 **CONCLUSIONS OF LAW**

6 1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding.  
7 The application is subject to Process III, under which the Examiner makes a recommendation  
8 following a public hearing and the final decision is made by the City Council. LUC 20.35.015D,  
9 LUC 20.35.300.

10 2. The Land Use Code specifically authorizes the use of concomitant agreements as a  
11 condition of a rezone. Such agreements may be used to mitigate potential impacts of the rezone.  
12 LUC 20.30A.155.

13 3. As conditioned, the proposed rezone is consistent with SEPA and with the decision  
14 criteria for a rezone. WAC 197-11-350, LUC 20.30A.140.

15 4. The conditions imposed in the proposed new CZA may also be imposed by use of  
16 a development agreement under RCW 36.70B.170. The use of such an agreement would  
17 likewise satisfy the requirements of SEPA.

18 5. Any finding herein which may be deemed a conclusion is hereby adopted as such.  
19

#### 20 **CONDITIONS**

21 1. The City shall provide the applicant with a final version of the recommended CZA  
22 that is consistent with this decision.

23 2. The applicant shall provide the City with a final version of the Kelsey Creek  
24 Mitigation Plan.

25 3. The final versions of the CZA and Mitigation Plan shall be attached to the Hearing  
26 Examiner's recommendation and shall accompany it through the City Council review process.

27 4. Upon approval of the rezone, the applicant shall execute a copy of the recommended  
28 CZA provided to it by the City in order to provide mitigation that is equivalent to the  
29 neighborhood compatibility requirement, development intensity limitations and environmental  
30 and social functions previously provided by the stream reach re-opening conditions and other  
related conditions contained in the 1987 CZA.

3/4/10



1  
2  
3  
4  
5  
6  
7  
8

**NOTICE OF RIGHT TO APPEAL**  
(Pursuant to Resolution No. 5097)

9  
10  
11  
12

**RIGHT TO APPEAL-TIME LIMIT**

A person who submitted written comments to the Director prior to the hearing, or submitted written comments or made oral comments during the hearing on this matter, may appeal the recommendation of the Hearing Examiner to the Bellevue City Council by filing a written appeal statement of the Findings of Fact or Conclusion being appealed, and paying any appeal fee, no later than 14 calendar days following date that the recommendation was mailed. The appeal must be received by the City Clerk by **5:00 p.m. Thursday, March 18, 2010.**

13  
14  
15  
16  
17

**TRANSCRIPT OF HEARING-PAYMENT OF COST**

An appeal of the Hearing Examiner's decision requires the preparation of a transcript of the hearing before the Hearing Examiner. Therefore, the request for appeal must be accompanied by an initial deposit of \$100. Should the actual cost be less the amount of the deposit, any credit due shall be reimbursed to the appellant. Should the cost for transcript preparation be more than the deposit, the appellant will be additionally charged.

18  
19  
20  
21  
22

**WAIVER OF TRANSCRIPTION FEE**

Upon request, the City Clerk will waive transcription fees upon submission by an appellant of the following documentation: a) an affidavit stating that the appellant's net financial worth does not exceed \$20,000; b) an affidavit stating that the appellant's annual income does not exceed \$5,200; c) a brief statement of the issues sought to be reviewed; d) a designation of those parts of the record the party thinks are necessary for review; e) a statement that review is sought in good faith.

23  
24  
25  
26  
27

**CITY COUNCIL CONSIDERATION**

Unless appealed, this matter has tentatively been schedule to go before the City Council on **Monday, April 5, 2010 at 6:00 pm** for discussion, and **Monday, April 19, 2010 at 8:00 pm** for legislation. After **Thursday, March 18, 2010**, interested persons may contact the Hearing Examiner's Office at (425) 452-6934 to find out whether an appeal has been filed.

28  
29  
30

3/4/10

**Return Address:**

Catherine Drews, Legal Planner  
City of Bellevue  
PO Box 90012  
Bellevue, Washington 98009

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04)

<p><b>Document Title(s)</b> (or transactions contained therein): (all areas applicable to your document <b>must</b> be filled in)</p> <p>1. KELSEY CREEK CENTER CONCOMITANT ZONING AGREEMENT</p>
<p><b>Reference Number(s) of Documents assigned or released:</b> N/A</p> <p>1. Repeals and replaces the existing Concomitant Zoning Agreement, Recording No. 198711120962.</p>
<p><b>Grantor(s)</b> (Last name, first name, initials)</p> <p>1. Nat Franklin, Franklin West LLC</p>
<p><b>Grantee(s)</b> (Last name first, then first name and initials)</p> <p>1. City of Bellevue, a Washington municipal corporation</p>
<p><b>Legal description</b> (abbreviated: i.e. lot, block, plat or section, township, range)</p> <p>PARCEL A: LOT 1 CITY OF BELLEVUE SHORT PLAT NO FP-96-8990 REC NO 9803099020 -BEING PORTION OF NW QTR OF SW QTR STR 35-25-05.</p> <p><u>PARCEL B: LOT 2 CITY OF BELLEVUE SHORT PLAT NO FP-96-8990 REC NO 9803099020 -BEING PORTION OF NW QTR OF SW QTR STR 35-25-05.</u></p> <p><u>PARCEL C: LOT 3 CITY OF BELLEVUE SHORT PLAT NO FP-96-8990 REC NO 9803099020 -BEING PORTION OF NW QTR OF SW QTR STR 35-25-05.</u></p> <p><u>PARCEL D: LOT 4 CITY OF BELLEVUE SHORT PLAT NO FP-96-8990 REC NO 9803099020 -BEING PORTION OF NW QTR OF SW QTR STR 35-25-05</u></p> <p>Additional legal is included in Exhibit A of document.</p>
<p><b>Assessor's Property Tax Parcel/Account Number</b></p> <p>Affects Tax Parcel No's. 3525059084, 3525059085, 3525059060, and 3525059086.</p>
<p>The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.</p>

## **KELSEY CREEK CENTER CONCOMITANT ZONING AGREEMENT**

This Kelsey Creek Center Concomitant Zoning Agreement (Agreement or 2010 CZA) is entered into this \_\_\_\_ day of \_\_\_\_\_ 2010, between the City of Bellevue, a Washington municipal corporation (City), and Franklin West LLC (Property Owner) relating to real property located at 15015 Main Street and more specifically described in Exhibit A attached hereto and by this reference fully incorporated herein (Property).

### **I. RECITALS**

A. WHEREAS, the Property was originally developed as part of the 1969 Lake Hills annexation under Ordinance No. 1326; and,

B. WHEREAS, the Property was rezoned from Neighborhood Business (NB) to Community Business (CB) in 1987 (1987 Rezone) by Ordinance No. 3835; and,

C. WHEREAS, as a condition of the 1987 Rezone adopted pursuant to Ordinance No. 3835, the City and Property Owner executed a Concomitant Zoning Agreement dated October 12, 1987 (1987 CZA), recorded under King County Recording Number 198711120962; and,

D. WHEREAS, the 1987 CZA was amended in 2000 by Ordinance No. 5237; and,

E. WHEREAS, the 1987 CZA was amended in 2004 by Ordinance No. 5534; and,

F. WHEREAS, the Property Owner desires to replace the 1987 CZA with this new Kelsey Creek Center Concomitant Zoning Agreement (2010 CZA), to facilitate redevelopment of portions of the site and associated parking on the Property, which includes use and development limitations, pedestrian connections, and mitigation for replacing the existing box culvert and retaining Kelsey Creek in its closed stream channel; and,

G. WHEREAS, a Mitigation Plan (attached as Exhibit B) has been created to address functional loss occasioned by not reopening Kelsey Creek as was required by the prior 1987 CZA; and,

H. WHEREAS, the Mitigation Plan consists of off-site measures that will provide, at minimum, the amount of habitat benefit in the form of increased riparian buffers, rearing habitat, and improved water quality that would have

resulted from removal of the box culvert and reconstruction of an open stream channel for Kelsey Creek; and,

I. WHEREAS, on May 20, 2009, Applicant applied for a rezone of the Property under Project File No. 09-113801-LQ to repeal the 1987 CZA and replace it with the 2010 CZA; and,

J. WHEREAS, it is the intent of the parties that the 2010 CZA repeal and replace the 1987 CZA in its entirety; and,

K. WHEREAS, the City of Bellevue, Washington, a non-charter optional code city, under the laws of the State of Washington, has authority to enact laws and enter into agreements to promote the health, safety and welfare of its citizens, and thereby control the use and development of property within its jurisdiction; and,

L. WHEREAS, under Bellevue Land Use Code (LUC) 20.30A.155, the City may require rezone applicants enter into a concomitant zoning agreement with the City as a condition of the rezone, and may through that agreement impose development conditions designed to mitigate potential impacts of the rezone and development pursuant thereto; and,

M. WHEREAS, after holding a public meeting on October 6, 2009 pursuant to LUC 20.35.327, the Director of the Development Services Department issued a recommendation on February 11, 2010 to repeal the 1987 CZA and replace it with the 2010 CZA pursuant to LUC 20.35.330; and,

N. WHEREAS, after holding a public hearing on February 25, 2010 pursuant to LUC 20.35.337, the City of Bellevue Hearing Examiner recommended that the 1987 CZA be repealed and replaced with the 2010 CZA; and,

O. WHEREAS, pursuant to Chapter 43.21C RCW of the State Environmental Policy Act, the City seeks to mitigate all potentially significant adverse environmental impacts which may result from repeal of the 1987 CZA and replacement with this 2010 CZA through final action on the proposed Rezone (Project File No. 09-113801-LQ); now, therefore,

## II. AGREEMENT

The Property legally described in Exhibit A attached hereto and by this reference incorporated herein, is rezoned in accordance with Ordinance No. **[INSERT Ordinance]**, and in full consideration of that event, the Property Owner does hereby agree to the following:

1. Subject to Section 5 below, the terms of the 1987 CZA adopted pursuant to Ordinance No. 3835 and subsequently amended by Ordinance Nos. 5237 and 5534 (the “Prior CZAs”) are hereby repealed, and replaced with the terms contained in this 2010 CZA adopted by Ordinance No. **[INSERT Ordinance]**.

2. Allowed Uses. Except as modified in Section 3 below, allowed uses on the Property shall be governed by the regulations applicable to the CB land use district, as provided for in LUC 20.10.440 as of the effective date of this 2010 CZA.

3. Modifications to Uses in LUC 20.10.440. The following modifications of the otherwise applicable provisions of LUC 20.10.440 shall apply to the Property:

a. Residential Uses. The following residential uses are modified as follows:

- 12 – Group quarters are prohibited.
- 13/15 – Hotels and Motels are allowed only through a conditional use permit.

b. Manufacturing Uses. Manufacturing uses are prohibited, except Handcrafted Products Manufacturing of 10,000 gross square feet or less is allowed.

c. Transportation and Utilities Uses. Transportation and utilities uses are prohibited, except as follows:

- Highway and street right of way are allowed.
- Satellite Dishes are allowed.
- Accessory Parking is allowed only to serve other allowed uses on the Property.
- Wireless Communication Facilities are allowed only through a conditional use permit

d. Wholesale and Retail uses. The following wholesale and retail uses are modified as described below:

- Recycling centers are prohibited.
- 521/522/523/524 – Lumber and other bulky building materials are prohibited.

- General Merchandise: Individual Dry Goods, Variety, and Department Store (Retail) uses that do not exceed a maximum size of 65,000 gross square feet are permitted.
- General Merchandise: Individual Dry Goods, Variety, and Department Store (Retail) uses that exceed 65,000 gross square feet up to a maximum size of 100,000 gross square feet are allowed only through an administrative conditional use permit (ACUP) provided that the following decision criteria have been met in addition to those applicable to the ACUP as now or hereafter amended:
  - The ACUP shall provide general merchandise retail uses for the surrounding residential community, and shall not interfere with the site's primary neighborhood-serving function; and
  - In determining consistency with the Comprehensive Plan as required by the ACUP decision criteria, such consistency determination shall include consideration of policies that pertain specifically to neighborhood businesses and neighborhood serving uses.
- General Merchandise: Individual Dry Goods, Variety, and Department Store (Retail) uses that exceed 100,000 gross square feet are prohibited.
- 5511 – Autos (retail) are prohibited.
- Trucks, Motorcycles, Recreational Vehicles (retail) are prohibited.
- Boats (retail) are prohibited.
- 552 - Automotive and Marine Accessories (Retail) are limited to 10,000 gross square feet.
- 57 - Furniture, Home Furnishing (Retail) are limited to 25,000 gross square feet.
- Adult Retail Establishments are prohibited.

e. Services Uses. Service uses are prohibited, provided that the following uses are modified as described below:

- 63 - Business Services are limited to 10,000 gross square feet on the ground floor of any building located on the Property. Business Services are allowed without size limitation in the second story area of any building located on the Property.

- Professional Services: Medical Clinics and Other Health Care Related Services are limited to 10,000 gross square feet.
- Professional Services: Other are limited to 10,000 gross square feet.
- 695 – Religious Activities are allowed only through a conditional use permit.
- Administrative Office: General is limited to second story area of any building located on the Property.

f. Recreation uses. The following recreation uses are modified as described below:

- 712 – Nature exhibitions are prohibited.
- 7212/7214/7222/7231/7232 – Public Assembly (indoor) are prohibited.
- 7212/7214/7218 – Motion picture, theaters, night clubs, dance halls, and teen clubs are prohibited.
- 7213 – Drive-in theaters are prohibited.
- Adult Theaters are prohibited.
- 7223/73 – Public assembly (outdoor) are prohibited.
- 73 – Commercial Amusements: Video Arcades, Electronic Games are prohibited.
- 7491/7515 – Camping sites and hunting clubs are prohibited.
- 7411/7413/7414/7415/7417/7422/7423/7424/7425/7441/7449 – Recreation Activities listed are allowed only through a conditional use permit.

g. Resources Uses. All resource uses except 8221 - Veterinary Clinic and Hospital are prohibited.

4. Development Standards. The applicable development standards for the CB land use district shall apply as now or hereafter amended, including but not limited to, General Development Requirements (LUC 20.20), Transition Area Design District (Chapter 20.25B LUC) requirements, and Community Retail Design District (Chapter 20.25I LUC) requirements. Furthermore, the entire Property, regardless of the current or future configurations of the interior lot lines, shall be treated as one lot for the purposes of compliance with Land Use Code regulations, including but not limited to setbacks, density, parking and access.

5. Fee in Lieu of Box Culvert Removal and Reconstruction of an Open Stream Channel. The Property Owner shall provide a fee in lieu of the box culvert removal and reconstruction of the open stream channel that was required under

the terms of the Prior CZAs in the amount of \$585,252.76 (the "Mitigation Fee"). The Mitigation Fee is intended to fund the off-site mitigation described in Exhibit B, attached hereto and incorporated herein by this reference. Any Mitigation Funds remaining following completion of the mitigation project described in Exhibit B shall be used to fund monitoring of the mitigation work for a period of up to five years. The Mitigation Fee shall be paid within 60 days of the effective date of this Agreement. If the Mitigation Fee is not timely paid, the rezone will be null and void, and the 2010 CZA will automatically terminate without need for further Council action. In such event, the zoning for the Property shall be as set forth in ordinances and the Prior CZAs shall apply as though in full force and effect.

6. Pedestrian Connections. Upon redevelopment of the Property, the Property Owner shall construct pedestrian trails and sidewalks that further connect 148<sup>th</sup> Avenue SE, Main Street and the project site to Lake Hills Greenbelt Park and the surrounding neighborhood as conceptually shown in Figure 2 of the Rezone Recommendation contained in Project File No. 09-113801-LQ. Redevelopment for the purposes of applying this paragraph shall include re-tenanting any portion of the existing vacant K-Mart building, demolition or reconstruction of any portion of the existing vacant K-Mart building, addition of any new building, or addition of any new square footage to an existing building (regardless of size). The final alignment of the pedestrian connections to be constructed under the terms of this paragraph shall be approved by the Land Use Division of the Development Services Department, or its successor organization, as a component of the underlying permits or approvals required for the redevelopment that triggers the application of this paragraph.

7. Reconstruction and Maintenance of the Box Culvert. The property owner shall be responsible for continued maintenance of the streambed elevation and slope to ensure proper drainage. The applicant shall allow periodic inspection of the culvert and streambed elevation by the City of Bellevue Storm and Surface Water Utility. The applicant shall perform all work necessary to maintain the streambed elevation and slope as required by the City of Bellevue Storm and Surface Water Utility.

8. Conflict of Law and Severability. Should any term or clause of this Agreement conflict with applicable law, such conflicts shall not affect other terms of this Agreement which can be given effect without the conflicting term or clause.

9. Amendment. Any amendment or modification to this Agreement shall be valid only if mutually agreed upon by the City of Bellevue and the Property Owner (including heirs, assignees and successors to the Owner) in writing and recorded with the King County Department of Records and Elections.

10. Specific Performance. The City may at its discretion bring a lawsuit to compel specific performance of the terms and conditions of this Agreement.

11. Reservation of Rights. Nothing in this Agreement shall be construed to restrict the authority of the City to exercise its power to rezone the Property in future years. Notwithstanding any other term of this Agreement, the City reserves the right to establish and impose new or different additional regulations to the extent required to address a serious threat to public health and safety. Nothing in this Agreement shall be deemed an approval of any particular project level development.

12. Duration. This Concomitant Zoning Agreement shall remain in effect unless or until the property is rezoned.

13. Indemnification. Property Owner shall indemnify and save harmless the City of Bellevue from and against all claims, suits, damages, costs, losses and expenses in any manner resulting from, arising out of, or connected with the Owner's negligent performance of or failure to perform fully any term or condition of this Agreement.

14. Successors and Assigns. This Agreement shall be binding on the parties and their respective heirs, executors, administrators, successors, and assigns.

15. Entire Agreement. This Agreement represents the complete agreement between the parties with respect to the subject matter hereof. Any prior written or oral representations or agreements to the contrary are of no effect.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action arising out of this Agreement shall be in King County Superior Court.

17. Recording. The Applicant shall record this Agreement with the King County Department of Records and Elections.



I certify that I know or have satisfactory evidence that Nat Franklin is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it, as the \_\_\_\_\_ of FRANKLIN WEST, LLC to be the free and voluntary act of said company for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

Print name: \_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington Residing at \_\_\_\_\_.  
My Commission expires: \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

[attached]

EXHIBIT B

KELSEY CREEK MITIGATION PLAN

[attached]

**EXHIBIT A  
LEGAL DESCRIPTION**

LOT 1 CITY OF BELLEVUE SHORT PLAT NO FP-96-8990 REC NO  
9803099020 -BEING PORTION OF NW QTR OF SW QTR STR 35-25-05  
And

LOT 2 CITY OF BELLEVUE SHORT PLAT NO FP-96-8990 REC NO  
9803099020 -BEING PORTION OF NW QTR OF SW QTR STR 35-25-05  
And

LOT 3 CITY OF BELLEVUE SHORT PLAT NO FP-96-8990 REC NO  
9803099020 -BEING PORTION OF NW QTR OF SW QTR STR 35-25-05  
And

LOT 4 CITY OF BELLEVUE SHORT PLAT NO FP-96-8990 REC NO  
9803099020 -BEING PORTION OF NW QTR OF SW QTR STR 35-25-05

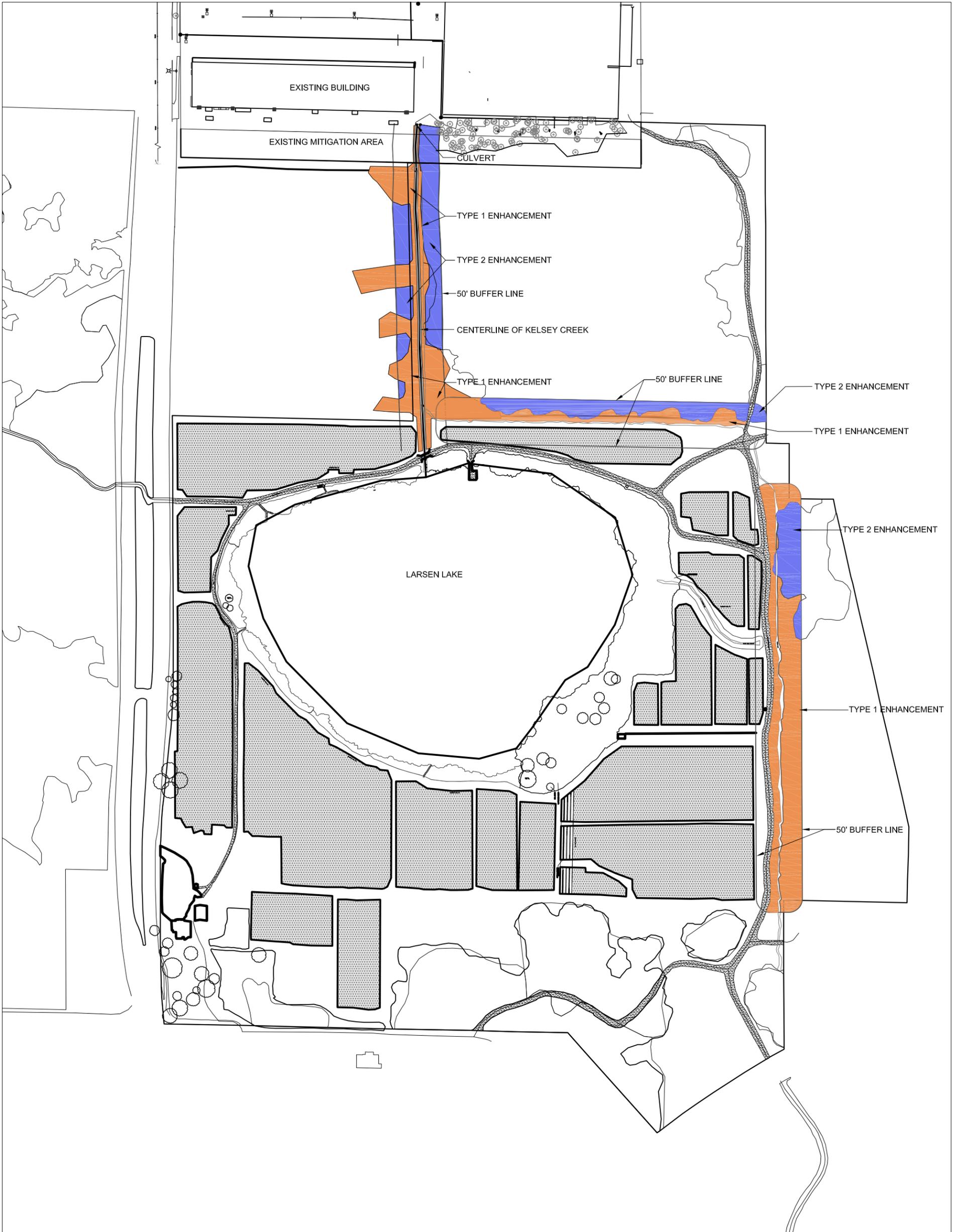
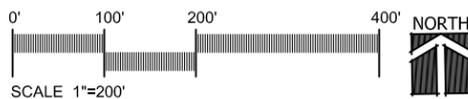


FIGURE 1  
 COSTCO WHOLESALe and the CITY OF BELLEVUE  
**KELSEY CREEK/LARSEN LAKE  
 ENHANCEMENT CONCEPT**

OCTOBER 12, 2009

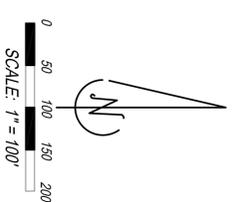


**WEISMAN DESIGN GROUP** INC, PS  
 LANDSCAPE ARCHITECTURE

2329 EAST MADISON STREET  
 SEATTLE, WA 98112-5416  
 PH 206.322.1732/FAX 206.322.1799  
 INTERNET WWW.WDGINC.COM



# EAST ENHANCEMENT CONCEPTUAL LAYOUT



5' Stream Maintenance Corridor  
(1,406sf) - No Plantings

9,815sf Type 2 Buffer Enhancement  
-Blackberry Removal from Understorey

42,538sf Buffer Enhancement  
-Reed Canary Grass Control  
-Native Plantings  
-Large Woody Debris (LWD)

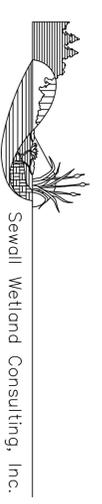
Planting Area A

50-Foot Buffer

Underplant Area with Shrubs  
and Scattered Cedars

508

NOTE: Base Map Provided By Weisman Design Group, Inc.  
-Large Woody Debris Installation Details on Sheet W-2



Sewall Wetland Consulting, Inc.  
27641 Compton Way SE #2, Compton, WA 98042 253-859-0515 Fax 253-852-4732

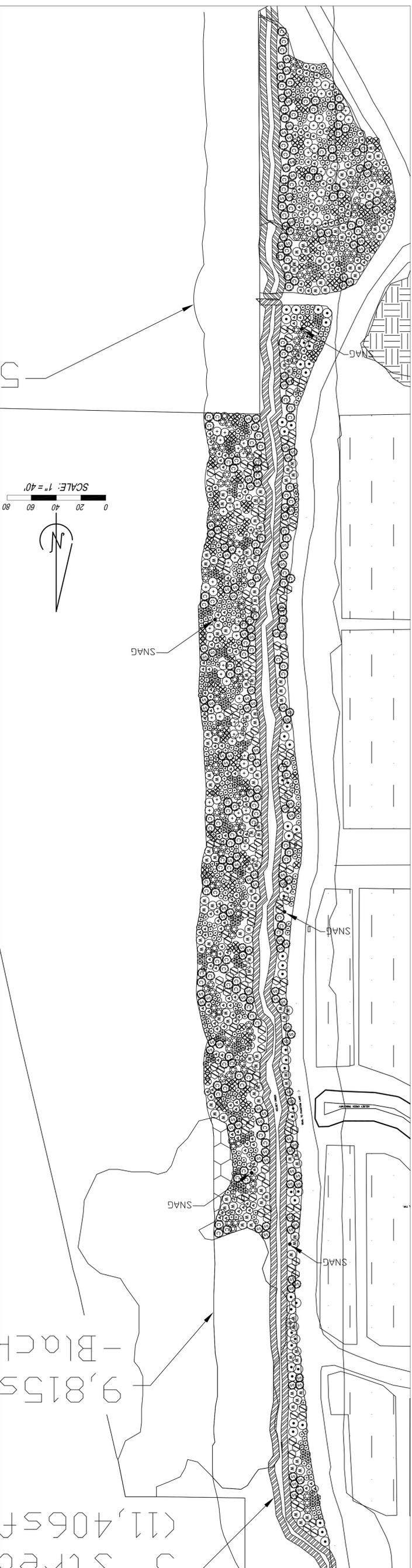
REVISIONS	
△	Revised Per City Comments 12-21-09
△	
△	
△	

**COSTCO KELSEY CREEK  
EAST ENHANCEMENT PLAN**

Job No. AG-156  
Designed by: ES  
Drawn by: AMW  
Checked by: AMW  
Date: 04/20/2009  
SHEET WK-1  
OF WK-3

NOTE: ALL REVISIONS, CONSTRUCTION DRAWINGS, SPECIFICATIONS, NOTES, COST ESTIMATES AND DATA ARE THE PROPERTY OF SEWALL WETLAND CONSULTING, INC. AND ARE TO BE USED ONLY FOR THE PROJECT AND AREA INDICATED THEREON. NO PARTS, WHOLE OR IN PART, ARE TO BE REPRODUCED, COPIED, EITHER AND SHALL ENTITLED SEWALL WETLAND CONSULTING, INC. TO RECOVER THE FULL COST OF PREPARATION THEREOF.

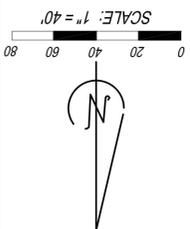
# PLANTING AREA A



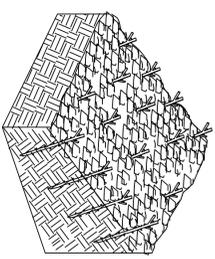
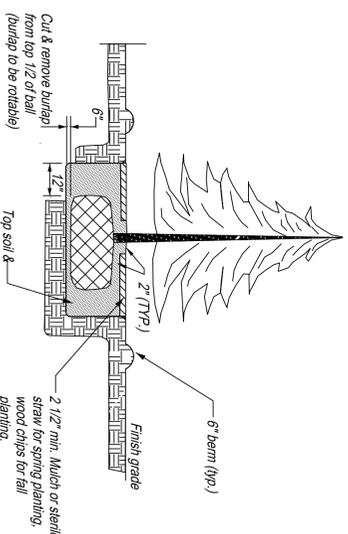
## PLANTING LIST

TREES	QNTY	PLANT NAME	SIZE	SPACING
51		Shore Pine <i>Pinus contorta</i>	5 gal.	as shown
179		Sitka Spruce <i>Picea sitchensis</i>	5 gal.	as shown
170		Pacific Willow <i>Salix lasandria</i>	Stake	as shown
170		Western Red Cedar <i>Thuja plicata</i>	5 gal.	as shown

SHRUBS	QNTY	PLANT NAME	SIZE	SPACING
64		Western Crabapple <i>Malus fusca</i>	2 gal.	as shown
159		Cascade <i>Rhamnus purshiana</i>	2 gal.	as shown
163		Pacific Ninebark <i>Physocarpus capitatus</i>	2 gal.	as shown
219		Red-osier Dogwood <i>Cornus stolonifera</i>	Stake	as shown
161		Sitka Willow <i>Salix sitchensis</i>	Stake	as shown
218		Highbush Cranberry <i>Viburnum edule</i>	2 gal.	as shown
159		Cluster Rose <i>Rosa pisocarpa</i>	2 gal.	as shown
157		Black Twinberry <i>Lonicera involucrata</i>	2 gal.	as shown
153		Black Gooseberry <i>Ribes lacustris</i>	2 gal.	as shown

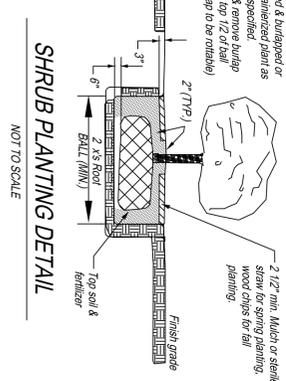
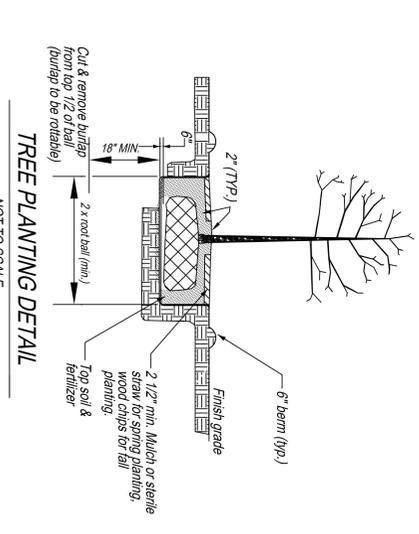


# PLANTING AREA B



### PLANTING NOTES

- Live stake cuttings are to be freshly cut 1"-2" in diameter & 3' long.
- Stake ends should be cut evenly at an angle and the tops should be cut square.
- All live stakes should be kept moist during transport to the site and should be installed the same day as harvest, with a maximum of two weeks unplanted.
- Live stakes will be installed by creating a pilot hole into native soil 1' - 2'. The pilot hole should be created at a right angle to the slope with a iron bar or other tool. The live stake is then inserted into the pilot hole and tapping place with a dead blow hammer or other similar tool. Approximately 20% of the live stakes should be exposed above the surface with two (2) lateral buds above grade.
- Live stakes should be spaced with a triangular placement pattern approximately 18" O.C.
- Live stakes should be installed during the dormant season (October 15th - March 15).



NOTE: Base Map Provided By Messman Design Group, Inc.

## COSTCO KELSEY CREEK EAST ENHANCEMENT PLAN

REVISIONS
▲ Revised Per City Comments 12-21-09
▲
▲
▲
▲

NOTE: ALL DESIGN, CONSTRUCTION DRAWINGS, SPECIFICATIONS, NOTES, COST ESTIMATES AND DATA ARE THE PROPERTY OF SEWELL WETLAND CONSULTING, INC. AND ARE TO BE USED ONLY FOR THE CONTRACTS AND AGREEMENTS IT IS PERFORMED BY SEWELL WETLAND CONSULTING. REUSE FOR ANY OTHER PURPOSE IS PROHIBITED AND SHALL OBTAIN SEWELL WETLAND CONSULTING, INC. TO RECOVER THE FULL COST OF PREPARATION THEREOF.

Habitat features to be 20' length (min.) and 12" diameter (min.) Preferred species Red Cedar w/branches intact  
• See Sheet W-3 for Snag Installation Detail

Sewell Wetland Consulting, Inc.  
27641 Compton Way SE #2, Compton, WA 98042 253-859-0815 Fax: 253-852-4132

Job No.	AS-156
Designed by	ES
Drawn by	AW
Checked by	DAI 2/1/2009
Date:	
SHEET	W-2
OF	W-3

