



MEMORANDUM

DATE: July 26, 2007
TO: Chair Bell, Members of the East Bellevue Community Council
FROM: David Pyle, Senior Planner (425)452-2973
SUBJECT: Kelsey Creek Center Hazard Tree Removal

During a past meeting the East Bellevue Community Council discussed the Hazard Tree removal at the Kelsey Creek Center on a tract of land that is located adjacent and to the north of the east fork of Kelsey Creek. During the meeting, Chair Bell explained that shortly after this past winter's storms several cottonwood trees were downed in the area behind the old Kmart building (Kelsey Creek Center) and after the windstorm all of the trees within this tract were removed. Concern was raised that the piece of land where the trees were removed is protected as an NGPA, and requires it to be left in its natural state. The Center determined that the trees posed a hazard and removed them without a permit. There was Council consensus to request a status report from staff. In response to a request for a status report, we have prepared this memo that outlines the history and status of the proposed (required) replanting of the site.

The removal of these trees was originally allowed under the "Emergency Action" provisions of the Land Use Code (LUC) section 20.25H.055.C.3.b which allows for the removal of hazard trees in an emergency situation. During the windstorms an emergency action declaration was issued by the City (Attachment A). Following the windstorms the property owner had 64 trees removed within the wetland, wetland buffer, and stream riparian area (protected as NGPA) at the southwest extreme of the Kelsey Creek property. The owner and property manager had these trees removed as hazard trees through verbal approval by the City (and issuance of the emergency action declaration) after several of the trees failed and damaged the building. As part of the approval to remove the trees under the emergency action declaration and code provisions, the applicant was required to submit for a Clearing and Grading permit to retroactively permit the removal of the trees and replant the area that was cleared. The Clearing and Grading application requires the submittal of a complete planting and restoration plan, and also requires processing under the State Environmental Policy Act. To comply with this and to restore the site, the applicant has been required to prepare and submit a Restoration / Replanting Plan, a Site Plan, a SEPA Environmental Checklist, and other standard permit application items.

Initially, the City set the deadline for Clearing and Grading application submittal at January 26, 2007, a timeframe that was deemed sufficient to prepare the appropriate replanting and restoration plans, as required by City Code. The property owner and

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manager failed to meet this deadline. Following the passing of this deadline, City staff forwarded communication to the applicant identifying that they would need to apply for the permit immediately. The applicant submitted for Clearing and Grading application on February 8th, 2007. After review of the items received the application was deemed incomplete due to lack of information and a letter of incomplete application was sent out in accordance with RCW 36.70A.040. The letter of incomplete application identified the items that needed to be submitted and those items that needed to be supplemented and established a revisions submittal deadline of March 23, 2007. No revisions were received.

On April 2, 2007, the City's Code Compliance Division issued a Notice of Civil Violation (COB File # 07-110937-EA) for failure to comply with the City's Land Use Code requirements for emergency removal of hazard trees. A hearing date was set for April 24, 2007. The property owner and property manager were informed that if the requested revision items were submitted within 48 hours before the hearing, that the hearing would be canceled. The requested revisions were not received and the hearing was held on schedule.

During the hearing the Examiner established a schedule for compliance and required that the requested information / revisions be submitted so that the City may proceed with review of the required site restoration / replanting. On May 14, 2007 the Hearing Examiner ordered the owner and property manager of Kelsey Creek Center to submit all of the required items by May 31, 2007 to complete the application. All required items were received on May 30, 2007 and the application was deemed complete. The SEPA checklist was reviewed and a notice of application was advertised on June 21, 2007, subject to a 14 day public comment period. One comment has been received on this application and was from the Muckleshoot Indian Tribe Fisheries Division.

Following the submittal of the required application items and the posting of the notice of application, the replanting / restoration plan was reviewed for content. The planting and site restoration plans were deemed complete, however lacking in plant diversity and density. A revisions letter was sent to the applicant on July 21, 2007 asking for a revised site restoration plan. I have attached this revisions letter as Attachment B. The applicant was given 30 days to submit the required revisions setting the new revisions deadline at August 20, 2007. At this point the City is waiting for revisions on the replanting / restoration plans from the applicant. Once revisions have been submitted and approved, the permit will be issued so that the property owner and manager can begin the restoration work. Site restoration will likely take place this fall and will be an ongoing process for a period of five years. A maintenance bond will be required as a part of permit approval and will be retained until the five year maintenance and monitoring period has been completed successfully.

If you have any questions about this application please feel free to contact me at (425)452-2973.

Attachment A – Emergency Declaration

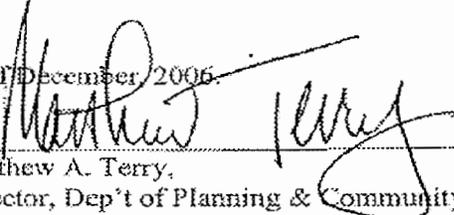
**DECLARATION OF EMERGENCY
for
PURPOSES OF COMPLIANCE WITH CRITICAL AREAS REGULATIONS**

On December 14th and 15th, 2006 the Puget Sound region experienced severe storm weather, including substantial rainfall and high winds. Many roads are blocked as a result of downed power lines, trees and vegetation or high water, storm sewers are inundated, and in the Puget Sound region more than 1 million customers are without power. These conditions affect much of the City of Bellevue. Any delay in the immediate repair of utilities, and removal of downed or threatening trees presents an imminent threat to the health and safety of the citizens of Bellevue, public and private property, and the traveling public. The City Manager has declared an emergency as a result of these conditions.

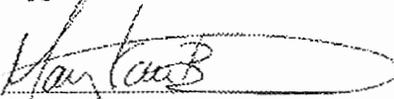
Therefore, in accordance with BCC 20.25H.055 the undersigned has determined that emergency actions may be necessary to: repair utilities, avoid threats to the natural environment, or avoid threats to the public safety or public or private property, and that such actions must be undertaken immediately or in a time too short for full compliance with the Land Use Code. Any emergency action undertaken in a critical area shall comply with BCC 20.25H.055.C.3.b, which procedures are generally outlined below:

Emergency actions within the critical area or critical area buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area or critical area buffer. The person or agency undertaking such action shall notify the Director of the existence of the emergency and emergency actions within one working day following commencement of the emergency activity. Within 10 working days following completion of the emergency activity, the person or agency undertaking such action shall provide a written description of the work undertaken, site plan, description of pre-emergency site conditions and such other information required by the Director to make the determination required under this subsection.

Executed this 15th day of December, 2006.


Matthew A. Terry,
Director, Dep't of Planning & Community Development

Approved as to form:


Mary Kate Berens
Deputy City Attorney



July 21, 2007

Joe Bacon
Emerald Commercial
1424 4th Ave Suite 804
Seattle, WA 98101

RE: Kelsey Creek Center Tree Replanting; COB # 07-105175-GH

Mr. Bacon:

Thank you for submittal of revisions to your Clearing and Grading Permit application for the removal of woody debris and associated replanting of wetland and stream buffer at 15015 Main St. At this time City Staff have reviewed your proposal for site restoration / mitigation and have determined the following revisions are needed:

- 1) Please supplement the planting plans to include a greater variety of plantings. We have reviewed the proposed planting plans and have determined that the use of Pacific willow along the edge of Kelsey Creek is acceptable, however we have noted that the spacing and density of planting should be increased. We are requesting that this portion of the plan be supplemented to increase the density of the plantings to 9 feet on center. The increased density will allow for a thicker canopy to establish in a shorter time period and will help suppress the re-growth of invasives.
- 2) We have also identified the need to supplement the portion of the planting plan that calls for the use of Sitka willow. We are requesting that you increase the diversity of plantings within this area. To achieve this, we are recommending that you incorporate Red-osier dogwood (*Cornus sericea*), Pacific ninebark (*Physocarpus capitatus*), Clustered Rose (*Rosa pisocarpa*), Hardhack (*Spirea douglasii*), Snowberry (*Symphoricarpus albus*), and Western serviceberry (*Amelanchier alnifolia*). We are also requesting you increase the density of the plantings to 4 feet on center. Because this site has been clear-cut, we feel the higher density of planting will help allow a canopy of shrubs to develop and help suppress the growth of invasives. By increasing the diversity of the plantings, a diverse plant community will be established.
- 3) Please revise the Performance Standards section of the Mitigation Plan to include yearly performance standards. This will provide a target for plant survival that can be evaluated annually and short term success can be determined.

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Attachment B- Julv 21 Revisions Reauest

- 4) Revise the maintenance portion of the plan to include plant replacement. When will plants that have failed be replaced? Who will be responsible for replacing the plants? Failed trees and shrubs should be replanted annually in the fall following the completion of the growing season. Trees and shrubs should be replanted based on the annual performance standards established. For example, if in year one the target for survival is 95% and more than 5% of the plants have failed, that potion of plants over the 5% of allowed failure must be replaced/replanted.
- 5) Revise the maintenance section of the replanting / mitigation plan to include at least two (2) entries for maintenance per growing season. During each entry weeds should be removed and Cottonwood stumps suppressed as necessary.
- 6) Please revise the monitoring section to include the documentation of failed / replaced plants as part of the annual monitoring submittal.
- 7) Replanting / Mitigation Installation Device: A financial security device in the form of an assignment of savings shall be submitted in the amount of %150 of the value of the replanting / mitigation that is proposed. This is required to ensure the timely installation of the replanting / mitigation and will be released on approval after final inspection of the approved replanting / mitigation. Please submit a copy of the replanting / mitigation installation bid from the installation contractor with the appropriate completed assignment of savings form.. This form can be accessed at <http://www.bellevuewa.gov/pdf/PCD/Landscape%20Installation%20Device.pdf> . The replanting / mitigation installation security device must be submitted after replanting / mitigation plan approval and prior to permit issuance.
- 8) Replanting / Mitigation Maintenance Device: A financial security device in the form of an assignment of savings shall also be submitted in the amount of %50 of the value of the replanting / mitigation that is proposed. This is required to ensure the long term maintenance after the installation of the replanting / mitigation and will be released on satisfactory completion of the required 5 year replanting / mitigation monitoring period. Please submit a copy of the replanting / mitigation installation bid from the installation contractor with the appropriate completed assignment of savings form. This form can be accessed at <http://www.bellevuewa.gov/pdf/PCD/Landscape%20Maintenance%20Device.pdf>. The replanting / mitigation maintenance security device must be submitted after replanting / mitigation plan approval and prior to permit issuance.

Your Next Step: The next step you need to take to fulfill the requirements outlined in this letter is to complete the requested revisions to the proposed mitigation plans. If you have any questions about these revisions please let mw know. I have also attached an electronic copy of the City's Critical Areas Restoration Handbook. Please complete the requested revisions and submit them to the City's Permit Center within 30 days of the date of this letter. Please also complete a revisions/additions sheet before the submittal of revisions and make sure you have a sufficient number of copies of each of the required submittal items. You may access the revisions/additions form electronically at http://www.bellevuewa.gov/pdf/PCD/forms_revadd.pdf .

Attachment B- Julv 21 Revisions Reuquest

If you have any further questions please contact me directly at (425)452-2973 or at dpyle@bellevuewa.gov .

Sincerely,

Sent Electronically on 07/21/2007.

David Pyle
Land Use Planner

Cc: Michael Paine, Environmental Planning Manager
Tom Campbell, Code Compliance Supervisor
Chad Armor, Chad Armor LLC.

Attachments: City of Bellevue Critical Areas Handbook
Assignment of savings form for landscape installation
Assignment of savings form for landscape maintenance
Revisions / Additions Form