



AMENDED DECISION

Proposal Name: Dodd Residence

Proposal Address: 3404 West Lake Sammamish Parkway SE

Proposal Description: The applicant requests approval of Critical Areas Land Use Permit with a Critical Areas Report in order to construct a single-family residence with a reduced stream buffer.

File Number: 08 129496-LO

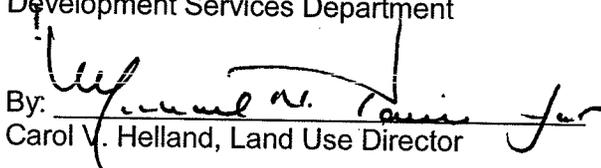
Applicant: Terry and Suzanne Dodd

Decisions Included: Critical Areas Land Use Permit with a Critical Areas Report (Process II. LUC 20.30P)

Planner: Mark Cross, Associate Planner

State Environmental Policy Act Threshold Determination: Exempt, covered by the SEPA Determination of Non-significance issued on March 12, 2009 for the original proposal.

Director's Decision: Approval with Conditions
Michael A. Brennan, Director
Development Services Department

By: 
Carol V. Helland, Land Use Director

Application Date: August 20, 2008
Notice of Application Publication Date: September 4, 2008
Decision Publication Date: April 30, 2009
Project/SEPA Appeal Deadline: May 14, 2009

For information on how to appeal a proposal, visit Development Services Center at City Hall or call (425) 452-6800. Comments on State Environmental Policy Act (SEPA) Determinations can be made with or without appealing the proposal within the noted comment period for a SEPA Determination. Appeal of the Decision must be received in the City's Clerk's Office by 5 PM on the date noted for appeal of the decision.

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I. Proposal Description

On April 17, 2009, the applicant requested in a letter dated April 17, 2009 (See attachment 11) that the decision to approve the Critical Areas Land Use Permit, Critical Areas Report and SEPA Determination of Non-significance be amended to allow the proposed Dodd residence to be located five feet to the south of the location approved and noticed on March 12, 2009. See attachment 12. The revised location would provide a ten foot setback along the Dodd's northern property line instead of the previously approved five feet. This request to modify the proposed house location and to have the City of Bellevue amend and re-issue its approval of a Critical Areas Land Use Permit and the Critical Areas Report was accompanied by a revised site plan reflecting a new location for the house and showing a revised mitigation plan. See attachment 13.

The revised house location has the effect of eliminating one of the stream setback modification requests and reducing the width of the proposed water quality bio-swale on the south side of the house. The analysis of the Critical Areas, their buffers and building setbacks are revised in this amended staff report to reflect the proposed changed house location and proposed changes to the mitigation plan.

The house relocation has been requested due to research on the property to the north and properties within the neighborhood which revealed the existence of an easement to cross the southern portion of the property to the north. Based on the Land Use Code (LUC) of the City of Bellevue, LUC 20.20.010 footnote (17) "If the setback abuts a street right-of-way, access easement or privet road, the minimum dimension is 10 feet unless a greater dimension is specified". In this case the proposed Dodd residence had been reviewed and approved five feet from the northern side yard. Since the establishment of the existence of the access easement across the neighboring property to the north, the minimum building setback along the north line of the Dodd property is 10 feet.

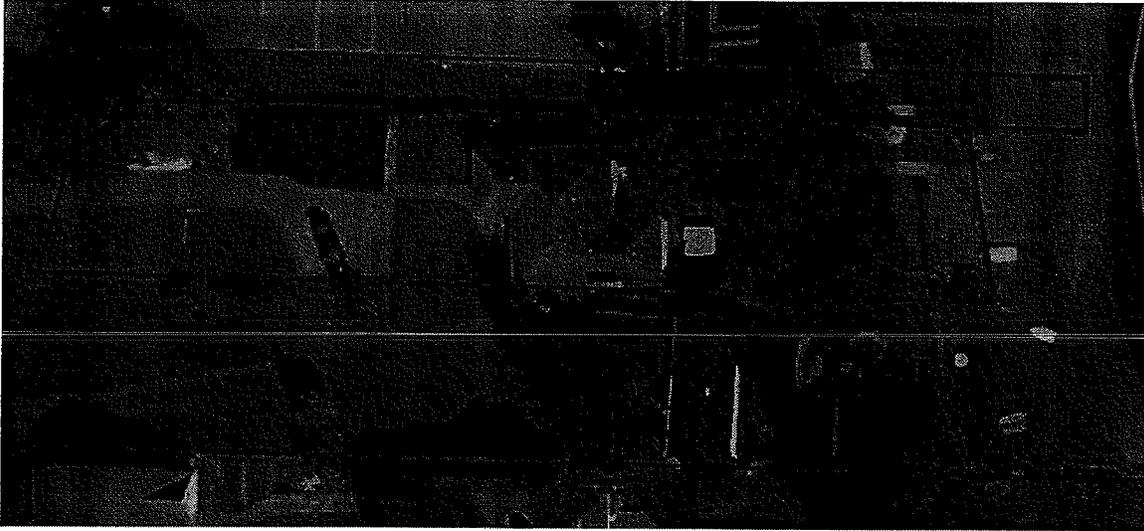
With this amended request, the applicant is requesting a Critical Areas Land Use Permit and approval of a Critical Areas Report in order to reduce the required buffer for a Type "F" stream from 50 feet to a minimum of 25 feet and to reduce the required fifty foot building setback from the stream buffer to a width ranging from 8 to 13 feet measured at the east face of the proposed deck. The request also includes reducing the 25 foot buffer for the open portion of a Type "O" stream located on the property to the north from 25 feet to 10 feet. This amended request no longer requires a reduction in the 10 foot setback from the closed portion of this same Type O stream from ten feet to six feet due to the relocation of the house an additional five feet to the south.

Proposed buffer reductions include reducing the Type "F" stream buffer by 765 square feet and the Type "O" stream buffer by 231 square feet. The mitigation plan proposes to restore and enhance 320 square feet of stream critical area and 1,751 square feet of stream buffer. In addition, 161 square feet of bio-filtration swale will be provided along the south side of the house.

The City of Bellevue Land Use Code (LUC) provides for the modification of stream buffers and building setbacks for open and closed sections of streams on developed sites subject to the provisions of LUC 20.25H.230 with a Critical Areas Report. See attachment 1.

The critical areas report is intended to provide flexibility for sites where the expected critical areas functions and values are not present due to degraded conditions. The two stream buffers on the property currently are degraded in function and value

because they lack the vegetative structural diversity found in higher-quality stream buffers. The western stream buffer for the Type “F” stream is dominated by a grass lawn and has little native vegetation in the buffer areas. Limited shading of the stream occurs from the three existing mature fir trees on the west side of the buffer area.



Dodd Residence is the northerly of the two houses with the three existing fir.

II. Site Description, Zoning, Land Use and Critical Areas

A. Site Description

The site is 50 feet wide, north and south, and abuts West Lake Sammamish Parkway SE along its western line and Lake Sammamish to the east. The site slopes from west to east towards the lake and is occupied by an existing house and a detached shed. A small stream on the property to the north, adjacent to the north west corner of the subject site, daylights out of a storm drain that runs under the Parkway and runs open for 15 feet before being piped to the Type “F” stream to the east. An open stream runs parallel to the lake and carries a portion of the water volume of Vasa Creek. This stream runs between the existing house and the lake and runs from south to north. The stream enters the lake three properties to the north. See photos of the site, attachment 6.

The existing single-story house is approximately 130 feet from Ordinary High Water of Lake Sammamish. Neighboring houses to the north and south are five feet and forty-two feet closer to the lake than the existing residence on the subject site. Access to the subject site is directly from West Lake Sammamish Parkway SE to the west. The lot includes an existing 557 square foot shed that is located between the house and the Parkway. The shed is proposed for demolition with this proposal. The site is relatively flat with a gentle slope towards the lake to the east with a moderate rise towards the Parkway at the western end of the site.

B. Zoning The property is zoned R-5 with a Comprehensive Plan designation of SF-H. The easterly 200 feet of the property is within the Shoreline Overlay District and the Critical Areas Overlay District. The proposed activities are associated with the construction of a single-family residence which is an allowed use in the R-5 zone.

C. Land Use Context The property is located within a continuous line of single-family homes along Lake Sammamish. A drainage way from across West Lake Sammamish Parkway briefly daylights along the northwest property line and then is piped to the lake between the existing Dodd residence and the house to the north. The property is located approximately 210 feet north of the entrance of Vasa Creek into Lake Sammamish. A portion of the creek flow is diverted to the north and crosses the subject site from south to north. The property is adjacent to single-family residences to the north and south. Property across West Lake Sammamish Parkway is also zoned R-5 and is developed with single-family residences.

D. Critical Areas Functions and Values

i. Streams and Riparian Areas

The proposal has an open Type “F” stream and a stream buffer on site. Adjacent to the northwest corner of the site, a Type “O” stream daylights for approximately 15 feet, on the property to the north. The 25 foot buffer for this Type “O” stream extends onto the subject site. The amended proposal includes stream buffer enhancement along the daylighted portion of the Type “O” stream buffer on the Dodd property and a request to reduce the 25 foot stream buffer to 10.

The onsite stream is a Type “F” stream that includes a portion of the stream flow of Vasa Creek diverted by a weir located directly within Vasa Creek. This portion of the stream flow, from Vasa Creek, runs in an open channel from south to north across several properties before reaching the Dodd property. The stream continues north across the Dodd property and several more properties before turning east and entering Lake Sammamish. The Land Use Code 20.25H.075 establishes 50 foot stream buffers and additional 50 foot building setbacks for Type “F” streams on developed sites.

According to the Critical Areas Report and Habitat Assessment, attachment 1, fish species of local importance known to use Lake Sammamish as habitat include Bull trout, Coho Salmon and Chinook salmon. “Coho Salmon were identified in Vasa Creek. “No species were identified within the Type “F” stream located on the project site.” Page 8, Critical Areas Report and Habitat Assessment, prepared by Talasaea Consultants, Inc., attachment 1. Table one of the Habitat Assessment provides an overview of the Stream Buffer Functions and Values. The current stream buffer functions and values for both the Type F stream and the Type O stream on the property to the north are described as low in all categories. Page 7, Critical Areas Report and Habitat Assessment, prepared by Talasaea Consultants, Inc., attachment 1.

Stream buffer improvements are described as providing “potential improvement” raising the daylighted portion of the stream buffer function for the Type “O” stream into the moderate category for Sediment Removal and Pollutant Removal.

Stream Buffer enhancements proposed for the type “F” stream are more extensive, see attachment 2 for the mitigation plan approved March 12 and attachment 13 for the amended mitigation plan approved with this staff report. The amended mitigation plan includes replanting the west side stream buffer with a range of native species and removing existing non-native vegetation and ornamental plantings. Portions of the east side of the stream are proposed for replanting with the exception of the existing concrete patio which is proposed for retention. Three existing significant fir trees in the proposed buffer area will be retained with this proposal. See attachment 13.

To improve water quality flowing to the Type “F” stream the applicant has proposed including a bio-swale along the south side of the house. The amended plan, attachment 13, reduces the width of the bio-swale from three feet to two feet and includes a revision in the surrounding plantings to fit the reduced five foot side yard setback. The proposed bio-swale runs some 100 feet from west to east to the proposed reduced 25 foot stream buffer for the Type “F” stream.

ii. Shorelines

The Dodd property has 50 feet of shoreline on Lake Sammamish. Both Lake Sammamish and Vasa Creek, a portion of which is diverted across the Dodd property, are known to support a salmonid population. Shorelines along Lake Sammamish are afforded a 25 foot buffer and a 25 foot building setback on a developed site, LUC 20.25H.035. The closest portion of the proposed house and deck are 90 feet from the Ordinary High Water Mark of Lake Sammamish and thus comply with the setback requirements of the Shoreline Critical Area Overlay.

III. Consistency with Land Use Code Requirements:

A. Zoning District Dimensional Requirements:

The site is located in the R-5 zoning district. The R-5 zone requires a 20 foot front yard setback, a total of 15 feet on the side yards and 20 feet in the rear. The amended proposal includes a 90 foot front yard setback from the West Lake Sammamish Parkway SE, a 10 foot side yard along the north property line, a 5 foot side yard along the south property line and a 90 foot setback from Ordinary High Water, OHW, to the face of the proposed new deck. The proposed residence is subject to the maximum 30 foot height limit and 40 percent lot coverage allowed under LUC 20.20.010.

B. Critical Areas Report Requirements LUC 20.25H.230

The applicant has submitted an amended application for a critical areas land use permit to place approximately 455 square foot deck 17 feet into a reduced 25 foot building setback adjacent to a reduced 25 foot buffer from a Type “F” stream. As allowed under LUC 20.25H.115.C.3 a critical areas report is needed to allow construction within the building setback or to modify a stream buffer.

The Critical Areas Report and Buffer and Stream Enhancement Planting Plan propose restoration and enhancement of the Type “F” and Type “O” stream buffers, and installation of a bio-swale to improve the water quality of storm water entering the Type “F” stream. The areas proposed for habitat mitigation are currently vegetated with lawn and garden plants and currently provide low stream buffer functions and values. See attachment 13.

The applicant supplied a complete critical areas report prepared by Talasaea Consultants, Inc. Talasaea staff, contributing to the report, include Bill Shiels, Ann Olsen, Erin Shau and Anne Cline. The report meets the minimum requirements in LUC 20.25H.250.

i. Consistency with Land Use Code Critical Areas Performance Standards LUC 20.25H.080

The proposed development of the subject property is consistent with the performance standards contained within LUC 20.25H.080 by specifying the use of lights that can be directed away from the stream buffers, by avoiding the placement of residential uses or noise generators within the stream

buffers, and by planting the outer buffer of the Type “F” stream buffer with denser vegetation to limit pet or human use.

ii. Consistency with administrative approval of structure and/or buffer setbacks LUC Section 20.25H.085

The proposal is consistent with the administrative approval requirements contained within LUC 20.25H.085 by including a mitigation and monitoring plan designed to mitigate impacts to the stream and critical area buffers and to meet the requirements of the Critical Areas Overlay District.

iii. Consistency with critical areas report – Additional provisions LUC 20.25H.090

The applicant has requested reductions in required stream buffers from 50 feet to 25 feet for Type “F” waters and from 25 feet to 10 feet for Type “O” waters. The proposed Type “F” and Type “O” stream buffer reductions are consistent with the maximum stream buffer reductions allowed by LUC 20.25H.090 A.

The amended site plan, attachment 13, proposes a ten foot setback from the closed segment of the Type “O” stream which runs along the south line of the property to the north. The amended proposal includes the 10 foot setback from this Type “O” closed stream segment setback requirement contained within LUC 20.25H which is designed to preserve the feasibility of a future reopening. The applicant does not have the ability to open this stream segment because it is located off site and thus no functions or values are lost from the closed stream segment remaining closed.

IV. Public Notice and Comment

Application Date: August 20, 2008
Public Notice (500 feet): September 4, 2008
Minimum Comment Period: September 18, 2008

The Notice of Application for this project was published in the City of Bellevue weekly permit bulletin on September 4, 2008. It was mailed to property owners within 500 feet of the project site. One comment has been received from the public as of the writing of this staff report.

Summary of public comment: Comments were received from Karen Walters, Watersheds and Land Use Team Leader for the Muckleshoot Indian Tribe.

Her comments, included as attachment 5 to this report, included concerns about:

- The balance of proposed mitigation to the amount of the requested buffer reduction lacks sufficient justification. The concrete patio on the east side (lake side) of the stream could be removed as additional mitigation for the loss of buffer area.
- The details of the planting plan not being sufficient.
- Concern about the current “minimal stream shading” and a recommendation that more stream shading be built into the mitigation plan.
- Suggestion for more plants to be planted right along the Type “F” stream bank.

- Concern that the performance standard for control of invasive species is set too high at 20% total cover.

Response: Ms. Walter's comments were shared with the applicant and additional information was requested with the December 1, 2008 revision request letter.

The key issue in evaluating the Critical Areas Report and Critical Areas Land Use Permit request is not whether there could be more mitigation or whether there is room for more mitigation and enhancement, the issue is whether the applicant has demonstrated that the proposed mitigation and enhancements are sufficient to mitigate the loss of depth of the buffers and building setbacks.

In this case, the current value and function of the stream and stream buffers is low and dominated by lawn. The proposed plantings and habitat improvements along with the bio-swale constitute a net improvement in the value and function of the stream buffers and water quality even with the proposed reduced buffer widths. This amended approval, and the stream buffer improvements and bio-swale installation will be monitored during construction and for a five year period following the completion of construction. The improvements in stream buffer function and water quality over and above existing conditions are seen as an appropriate balance of buffer and building setback width and environmental habitat functions and value and water quality.

V. Summary of Technical Reviews

Clearing and Grading:

The Clearing and Grading Division of the Development Services Department has reviewed the proposed site development for compliance with Clearing and Grading codes and standards. After submittal of additional geotechnical information in the form of boring logs, the Clearing and Grading staff found no issues with the proposed development.

VI. State Environmental Policy Act (SEPA)

The City of Bellevue issued a SEPA DNS on March 12, 2009 for the original project and mitigation plan. The amended proposal includes moving the proposed house an additional five feet to the south and a modified mitigation plan is consistent with the impacts and mitigation considered with that decision. Therefore this amended approval is covered by the March 12, 2009 SEPA Determination of Non-significance.

Environmental Analysis included in the original staff report supporting the March 12, 2009 SEPA Threshold Determination.

A. Earth and Water

A temporary erosion and sedimentation control plan is required with the building permit plans. Implementation of all requirements for restoring the site as well as erosion and sedimentation best management practices are required by the building permit and grading permit approval and the Critical Areas Land Use Permit. Erosion and sediment control best management practices include the installation of silt fencing around the work area and covering exposed soils to prevent migration of soils to the adjacent wetland. The applicant will also be required to submit information limiting the use of pesticides, insecticides, and fertilizers to avoid impacts to water resources. See Section X for a related condition of approval.

B. Animals

The project site is located on Lake Sammamish. No construction or changes are proposed within the lake buffer or building setback. The proposed plantings will improve the minimal habitat currently available onsite for birds, fish and mammals. The stream buffer mitigation plan is designed to add native vegetation and water quality features to the site. The three significant fir trees on the site could provide potential habitat to bald eagles and pileated woodpeckers, however no impacts are anticipated since no significant trees will be removed.

C. Plants

Mitigation for temporary and permanent disturbance will be approved pursuant to an approved mitigation and monitoring plan. Current low function buffers will be reduced in width as a part of this proposal, but will be planted and maintained with higher value native plantings and a water quality bio-swale. See Section X for related conditions of approval.

D. Noise

The site is adjacent to single-family residences whose residents are most sensitive to disturbance from noise during evening, late night and weekend hours when they are likely to be at home. Construction noise will be limited by the City's Noise Ordinance (Chapter 9.18 BCC) which regulates construction hours and noise levels. See Section X for a related condition of approval.

VII. Changes to proposal as a result of City review

The original staff review did result in additional information being provided by the applicant's consulting team on the design of the bio-swale, the soil borings and mitigation planting plan that will result in a greater assurance for the long term performance of the mitigation plan, an expansion of the mitigation planting areas, water quality improvements and improved structural design of the home.

This amended decision is based upon a revised site plan/mitigation plan submitted April 17, 2009 that includes an increase in the north side yard setback to ten feet, a reduction in the south side yard setback and bio-swale from ten feet to five feet, extension of the narrowed bio-swale the entire length of the house, higher density of proposed plantings within the stream buffer on both the east and west sides of the Type "F" stream and additional mitigation planting areas as shown on attachment 13.

VIII. Decision Criteria

A. Critical Areas Report Decision Criteria- General Criteria LUC 20.25H.255

The Director may approve, or approve with modifications, the proposed modification where the applicant demonstrates:

- 1. The modifications and performance standards included in the proposal lead to levels of protection of critical area functions and values at least as protective as application of the regulations and standards of this code;**

Finding: The existing condition of the western stream buffer, facing the existing house, of the Type "F" stream is degraded and includes lawn, ornamental plantings and three substantial fir trees. The proposed retention of the three substantial trees,

removal of non-native species and the replanting with native shrubs and groundcovers will improve stream buffer functions and values. The existing condition of the southern stream buffer for the Type “O” stream is degraded and lacks streambank vegetation. The proposed plantings with cattails will provide modest improvement in the streambank function in regards to sediment and pollution control for the portion of the stream buffer located on the subject site.

2. Adequate resources to ensure completion of any required mitigation and monitoring efforts;

Finding: As a condition of approval, the applicant is required to maintain the restored area through five years of maintenance and monitoring and will be required to submit a security device (assignment of savings or bond) to ensure the plantings will be installed and maintained over the required five year period. See conditions of approval in Section X.

3. The modifications and performance standards included in the proposal are not detrimental to the functions and values of critical area and critical area buffers off-site; and

Finding: The proposal to reduce the stream buffers and construct a residence and deck with reduced buffers and building setbacks will not be detrimental to the functions and values of the stream critical area and critical area buffers off-site as the proposal includes stream buffer vegetation enhancement, the removal of non-native species, the retention of all significant trees within the stream buffer and the maintenance of the restored areas for a period of five years. See conditions of approval in Section X.

4. The resulting development is compatible with other uses and development in the same land use district.

Finding: The surrounding land use and zoning is medium density residential. The proposed redevelopment of the site maintains single-family use of the property into the future. The proposed building setbacks for the new residence are consistent with the underlying R-5 zoning.

B. Critical Areas Report Decision Criteria-Proposals to Reduce Regulated Critical Area Buffer LUC 20.25H.255.

The Director may approve, or approve with modifications, a proposal to reduce the regulated critical area buffer on a site where the applicant demonstrates:

1. The proposal includes plans for restoration of degraded critical area or critical area buffer functions which demonstrate a net gain in overall critical area or critical area buffer functions;

Finding: The amended proposal, which includes reduction in buffer widths and building setbacks, includes a plan for restoration of the degraded Type “O” and Type “F” stream buffers and construction of a bio-swale for water quality that demonstrates a net gain in overall critical area and critical area buffer functions.

2. The proposal includes plans for restoration of degraded critical area or critical area buffer functions which demonstrate a net gain in the most important critical area or critical area buffer functions to the ecosystem in which they exist;

Finding: The amended proposal includes plans for restoration of degraded critical area buffer functions including improvements in water quality through the planting of cattails and the provision of a bio-swale, and stream temperature improvements through shading with native groundcovers and shrubs.

3. The proposal includes a net gain in stormwater quality function by the critical area buffer or by elements of the development proposal outside of the reduced regulated critical area buffer;

Finding: The amended proposal includes a net gain in stormwater quality function by including native plantings within the stream buffers and the creation of a bio-swale to filter runoff from the driveway along the south side of the house.

4. Adequate resources to ensure completion of any required restoration, mitigation and monitoring efforts;

Finding: The amended proposal is conditioned to require the posting of a bond or assignment of savings to insure the adequate maintenance and survival of the proposed plantings over a five year period. See related conditions of approval in Section X of this report.

5. The modifications and performance standards included in the proposal are not detrimental to the functions and values of critical area and critical area buffers off-site; and

Finding: Due to the degraded condition of the existing streams and stream buffers and building setback areas, the amended proposal to provide narrower stream buffers enhanced with native plantings and the provision of a bio-swale to filter storm water from the driveway, will improve the function and values of the stream buffers.

6. The resulting development is compatible with other uses and development in the same land use district. (Ord. 5680, 6-26-06, § 3)

Finding: The resulting single-family development will be compatible with the surrounding single-family development located in the same R-5 zoned district.

C. Critical Areas Land Use Permit Decision Criteria 20.30P

The proposal, as conditioned below, meets the applicable regulations and decision criteria for a Critical Areas Land Use Permit pursuant to LUC Section 20.30P.

1. The proposal obtains all other permits required by the Land Use Code;

Finding: The work proposed under this Critical Areas Land Use Permit will require a clearing and grading permit and a building permit for the single-family residence and deck. See related conditions of approval in Section X of this report.

2. The proposal utilizes to the maximum extent possible the best available construction, design and development techniques which result in the least impact on the critical area and critical area buffer;

Finding: The proposed mitigation plan includes compliance with the stormdrainage and erosion control requirements of the City of Bellevue and implementation of best management practices as outlined in the Department of Ecology Stormwater Management Manual for Western Washington. Fencing will be placed along the banks of the streams to prevent excess silt from depositing into the streams during construction. A temporary sediment pond will be constructed. See page 4, attachment 1.

The proposal will result in the least impact on the critical area and critical area buffer.

3. The proposal incorporates the performance standards of Part 20.25H to the maximum extent applicable, and ;

Finding: The proposal incorporates to the maximum extent applicable the performance standards for development on sites with type S or F streams as required by Part 20.25H.080 A. See related conditions of approval in Section X of this report.

4. The proposal will be served by adequate public facilities including street, fire protection, and utilities; and;

Finding: The subject site is served by adequate public facilities including street, fire protection and utilities.

5. The proposal includes a mitigation or restoration plan consistent with the requirements of LUC Section 20.25H.210; and

Finding: The proposal does include a mitigation and restoration plan consistent with the requirements of LUC Section 20.25H.210. See attachment 1.

6. The proposal complies with other applicable requirements of this code.

Finding: As discussed in Section III of this report, the proposal complies with all other applicable requirements of the Land Use Code.

IX. Conclusion and Decision

After conducting the various administrative reviews associated with this amended proposal, including Land Use Code consistency, SEPA, City Code and standard compliance reviews, the Director of Planning and Community Development does hereby **approve with conditions** the proposal to modify the Type “O” stream buffer from 25 feet to 10 feet, reduce the Type “F” stream buffer from 50 feet to 25 feet and the Type “F” building setback from 50 feet to 8 feet (average of 10 feet) to accommodate the construction of a new house and deck proposed for the property.

Note- Expiration of Approval: In accordance with LUC 20.30P.150 a Critical Areas Land Use Permit automatically expires and is void if the applicant fails to file for a Clearing and Grading Permit or other necessary development permits within one year of the effective date of the approval.

X. Conditions of Approval

The applicant shall comply with all applicable Bellevue City Codes and Ordinances including but not limited to:

<u>Applicable Ordinances</u>	<u>Contact Person</u>
Clearing and Grading Code- BCC 23.76	Tom McFarlane, 425-452-5207
Land Use Code- BCC 20.25H	Mark Cross, 425-452-6938
Noise Control- BCC 9.18	Mark Cross, 425-452-6938

The following conditions are imposed under the Bellevue City Code or SEPA authority referenced:

1. Disturbance Limit: The structure setback modification approved is limited to the edge of the new deck shown on the approved site plan. See attachment four. Any future proposals for structures inside the stream buffer or stream building setback area will require a Critical Area Land Use Permit approval to modify the structure setback.

Authority: Land Use Code 20.30P.120
 Reviewer: Mark Cross, Development Services Department

2. Building Permit Plans: The work approved under this Critical Area Land Use Permit shall be submitted with the building permit plans for the construction of the new single-family residence associated with this work. The building permit plans must be consistent with the activity permitted under this Critical Areas Land Use Permit.

Authority: Land Use Code 20.30P.140
 Reviewer: Mark Cross, Development Services Department

3. Special Inspection Required: Special inspection of the stream and stream buffer restoration following construction must be completed by the Land Use Planner. A Land Use inspection will be added to the building permit when submitted.

Authority: Land Use Code 20.25H.210
Reviewer: Mark Cross, Development Services Department

4. Clearing Limits for Permanent and Temporary Disturbance: Prior to commencement of construction, clearing limits must be delineated in preparation for preconstruction inspection by clearing and grading and land use staff and certified in the field to be in conformity with this approval.

Authority: Land Use Code 23.76.160
Reviewer: Mark Cross, Development Services Department

5. Buffer Restoration and Maintenance Plan Cost Estimate: A final restoration/planting plan is required to be submitted with the building permit for the single-family residence. The final restoration/planting plan shall include, in addition to the plantings shown on attachment 13, at least 420 square feet of native species plantings on the east side of the Type "F" stream buffer consistent with the stream buffer planting recommendations of the City of Bellevue Critical Areas Handbook. Planting plans that do not include trees at the size and density recommended by the handbook must contain supplemental plantings within the east and west side buffer with a focus on stream shading and habitat value. A cost estimate is required to be submitted which represents 50% of the cost for the work and plants proposed under the restoration plan. Staff will use this cost estimate to determine the amount required for the Maintenance Assurance Device in condition 6 below.

Authority: Land Use Code 20.25H.220
Reviewer: Mark Cross, Development Services Department

6. Installation and Maintenance Assurance Devices: To ensure the proposed plantings are installed and that the five year maintenance and monitoring plan is implemented, the applicant shall post a Maintenance Assurance Device (based on the cost estimate in condition 5 above) prior to the required Land Use inspection. This device will be released after 5 years, following an inspection from the Land Use Planner that finds that the maintenance and monitoring plan has been implemented and the restoration is successfully established.

7. Rainy Season restrictions: Due to the proximity to Lake Sammamish, no clearing and grading activity may occur during the rainy season, which is defined as November 1 through April 30 without written authorization of the Development Services Department. Should approval be granted for work during the rainy season, increased erosion and sedimentation measures, representing the best available technology must be implemented prior to beginning or resuming site work.

Authority: Bellevue City Code 23.76.093.A
Reviewer: Mark Cross, Development Services Department

8. Pesticides, Insecticides, and Fertilizers: The applicant must submit as part of the required Clearing and Grading Permit information regarding the use of pesticides,

insecticides, and fertilizers in accordance with the City of Bellevue's "Environmental Best Management Practices".

Authority: Land Use Code 20.25H.220.H
Reviewer: Mark Cross, Development Services Department

9. Noise Control: Noise related to construction is exempt from the provisions of BCC9.18 between the hours of 7 am to 6 pm Monday through Friday and 9 am to 6 pm on Saturdays, except for Federal holidays and as further defined by the Bellevue City Code. Noise emanating from construction is prohibited on Sundays or legal holidays unless expanded hours of operation are specifically authorized in advance. Requests for construction hour extension must be done in advance with submittal of a construction noise expanded exempt hour permit.

Authority: Bellevue City Code 9.18
Reviewer: Mark Cross, Development Services Department

Attachments

1. Critical Areas Report and Habitat Assessment, Prepared by Talasaea Consultants, Inc., dated August 18, 2008, in file.
2. Buffer and Stream Enhancement, Planting Plan and Schedule, submitted December 1, 2008, in file.
3. Environmental Checklist, submitted August 2, 2008, in file
4. Site Plan, sheet A-1, submitted December 1, 2008, in file.
5. E-mail from Karen Walters, Muckleshoot Tribe, September 18, 2008, in file.
6. Photos and aerial photos, 15 separate items, in file.
7. Response to Revision Request, Talasaea, submitted December 1, 2008, in file.
8. Geological/Geotechnical Assessment, Gary A. Flowers, PLLC, August 20, 2008, in file.
9. Exploration Boring Log, Gary Flowers, PLLC, faxed to Talasaea November 20, 2008 and submitted December 1, 2008, in file.
10. Bio-swale Capacity analysis, dated November 18, 2008, submitted December 1, 2008, in file.
11. Letter dated April 17, 2009 from Molly Lawrence, Attorney, Gordon Derr, Attorneys at Law, requesting issuance of an amended decision.
12. Staff Report including SEPA Threshold Determination of Non-significance, Critical Areas Land Use Permit approval and Critical Areas Report approval for the original proposal, dated March 12, 2009, in file.
13. Amended site plan/mitigation plan submitted April 20, 2009.

APR 20 2009

Service First



April 17, 2009

Mr. Mark Cross
Planner
City of Bellevue
450 110th Ave. NE
P.O. Box 90012
Bellevue, WA 98009

Re: Amendment to Critical Areas Permit for Dodd Residence, 08-129496-LO

Dear Mark:

We represent Terry and Suzanne Dodd with regard to their property at 3404 West Lake Sammamish Parkway SE. As we discussed earlier this week, we are requesting that the City process an amendment to the above-referenced critical areas permit. As explained more fully below, the Dodds must shift the location of their proposed house on their property to accommodate the required setback from an adjoining easement. That shift in location triggered minor changes to the proposed bio-swale and mitigation plan for the above-referenced critical areas permit. By this letter, we are requesting that the City process a revision to the above-referenced permit to reflect these changes to the location of the home and the corresponding changes to the mitigation plan (attached). We greatly appreciate your attention to this matter. We understand that from your perspective, this permit process was completed last month. As we discussed earlier this week, we need this minor amendment to meet the City's setback standards so that the Dodds can move forward with their building permit and construction of their new home.

To summarize the history triggering this amendment request, when the Dodds initially submitted their permit plans to the City, the project architect showed a 15 foot wide easement, running east to west, over the Foxes' property immediately adjoining the Dodd's property to the north, and the Dodd's proposed home setback 5 feet from this easement. In response, Leah Hyatt at the City commented that the easement triggered a 10 foot setback (rather than the standard 5 foot setback). LUC 20.20.010, note 17 ("If the setback abuts a street right-of-way, access easement or private road, the minimum dimension is 10 feet unless a greater dimension is specified"). As a result, we asked the title company to further research the easement and determine its current status. Based on that research, we learned that the easement had actually been released and no longer encumbered the property. Consequently, I directed the architect to remove the reference to the easement and communicated to Ms. Hyatt that we no longer believed the Fox property was encumbered by an easement.

Thereafter, we asked the title company to “double check” whether any other easements might exist over the 15 foot strip since the Foxes had mentioned that a couple of area families use the strip during the summers for pedestrian access to the Lake. After much effort by the title company, they identified one outstanding easement of record over the 15 foot strip on the Foxes’ property.

Based on the condition and history of the affected easement area (i.e., pedestrian use only and inadequate area to ever construct legal vehicular access), we requested that the City issue an interpretation that the setback requirement did not apply to the easement. Unfortunately, we submitted this request just as you were completing your review of the above-referenced critical areas permit. We failed to adequately communicate to you that you should hold off issuing the permit pending the outcome of the City’s review of our request. Before we had received a response to our request regarding the easement, you had issued the permit.

Thereafter, the City’s Legal Planner, Catherine Drews, denied our request for an interpretation that the setback requirement did not apply to the Dodd project. Consequently, we had to shift the location of the house 5 feet to the south, which in turn affected the width of the area proposed for the bio-swale and additional plantings from 10 feet to 5 feet along the south property line. We are requesting an amendment to the above-referenced critical areas permit to reflect and document these changes.

The attached plan (**Sheet W3.0**) reflects the changes noted above and the balance of the mitigation plan for the critical areas permit. Based upon our discussions earlier this week, the following changes were made to the mitigation plan:

1. The bio-swale was reduced from 3-feet wide to 2-feet wide and was lengthened to begin at the far western corner of the house.
2. The emergent plants originally intended for the bio-swale were changed to a seed mix adaptable to both wet and dry conditions that could also be mowed to allow access around the south side of the house as recommended by Michael Paine.
3. The shrub species to be planted adjacent to the bio-swale were changed to reflect species that would not shade the bio-swale and that would more appropriately fit into the reduced area on the south side of the house.
4. We added two new areas of native plantings to off-set the reduced planted area on the south side of the house. The first area is in front of the deck which provides an additional 121 sf, and the second area is along the rockery on the north side of the house which provides 104 sf. Both of these areas are planted with native shrubs and groundcovers thereby providing a larger native buffer area for the stream (an additional 225 sf).
5. We substantially increased the densities of buffer plantings in the approved stream buffer to provide a jump start to the ecological lift of the buffer over existing conditions.
6. We added the native plants on both the north and south side of the existing patio to satisfy the condition of the previously approved critical area permit.

Please contact me if you or anyone else needs further information to process this amendment request. Thanks again for your assistance with this matter. Hopefully we can get through this amendment process quickly and allow you to resume focusing on other projects.

Sincerely,

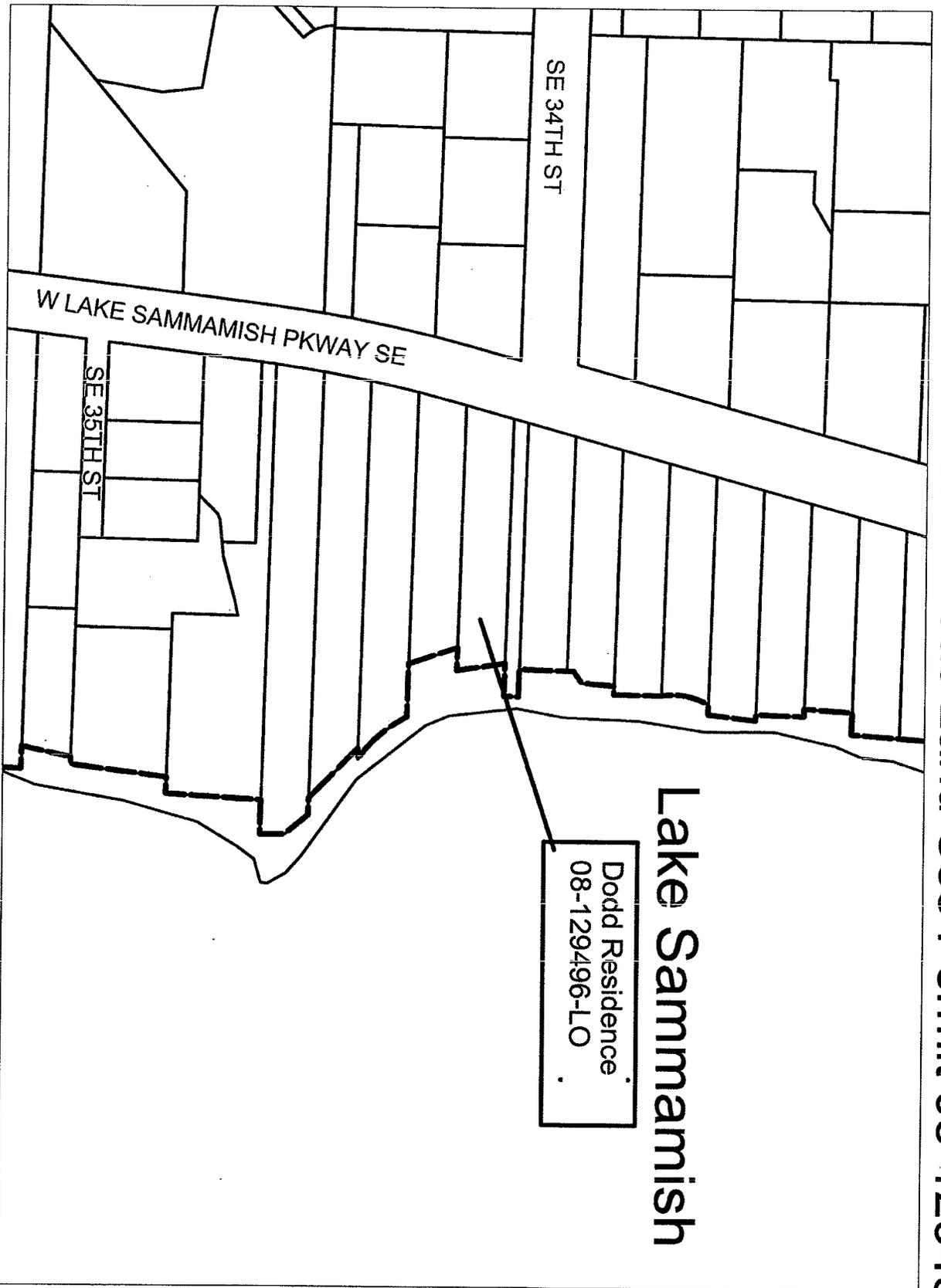


Molly Lawrence

Attachment

cc: Terry & Suzanne Dodd
Ann Olsen, Talasaea Consultants

Dodd Residence - Critical Areas Land Use Permit 08-129496



Lake Sammamish

Dodd Residence
08-129496-LO

