City of Bellevue
Development Services Department
P.O. Box 90012, Bellevue, WA 98009-9012
(425) 452-6800 Fax (425) 452-5225

Shoreline Management Act of 1971
Permit for Shoreline Management Substantial Development
Conditional Use and/or Variance

Application No. 09-130501-XQ

Date Received 11/25/2009

[X] Approved / Date 05/27/2010
[ ] Denied / Date

Type of Action:

[X] Substantial Development Permit
[ ] Conditional Use Permit
[ ] Variance Permit

Pursuant to Chapter 90.58 RCW, a permit is hereby granted to: Stephen Noeske, City of Bellevue Utilities Department

to undertake the following development:

Approval of Shoreline Substantial Development Permit to improve fish passage and to restore and enhance aquatic and riparian habitat for fish and wildlife use of specific reaches of Kelsey Creek within the City of Bellevue to implement elements of the July 2005 Final Lake Washington/Cedar/Sammamish Watershed (WRIA 8) Chinook Salmon Conservation Plan.

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upon the following property: 13300 SE 8th Street (Generally)

within Kelsey Creek
and/or its associated wetlands. The project will be located within Shorelines of Statewide Significance (RCW 90.58.030). The project will be located within a Shoreline Overlay District designation. The following master program provisions are applicable to this development:

- LUC Section 20.25E.080(B)General Regulations Applicable to all Land Use Districts & Activities:
- LUC Section 20.25E.080 (G) Clearing and Grading Regulations
- LUC Section 20.30R.155 Shoreline Substantial Development Permit
- Bellevue Comprehensive Plan, Shoreline Management Program Element

Development pursuant to this permit shall be undertaken in accordance with the following terms and conditions:

Conditions of Approval (Land Use Division) – See attached staff report

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This permit is granted pursuant to the Shoreline Management Act of 1971 and nothing in this permit shall excuse the applicant from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project, but not inconsistent with the Shoreline Management Act (Chapter 90.58 RCW).

This permit may be rescinded pursuant to RCW 90.58.140(8) in the event the permittee fails to comply with the terms and conditions hereof. Construction pursuant to this permit, or substantial progress toward construction, must be undertaken within two years of the date of final approval. This permit shall expire five years from the date of local approval.

Construction pursuant to this permit will not begin or is not authorized until twenty-one (21) days from the date of filing, as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one (21) days from the date of such filing have terminated; except as provided in RCW 90.58.140(5) (A) (B) (C).

May 27, 2010
Date

City of Bellevue, Land Use Division

CC: Attorney General, Department of Ecology, Northwest Region
Dept. of Fish and Wildlife, 1775 12th Ave. NW Suite 201 Issaquah, WA 98027
DOE, Dave Radabaugh, 3190 160th Avenue SE, Bellevue, WA 98008-5452

DEVELOPMENT SERVICES DEPARTMENT
ENVIRONMENTAL COORDINATOR
450 100th Ave NE., P.O. BOX 90012
BELLEVUE, WA 98009-9012

MITIGATED DETERMINATION OF NON-SIGNIFICANCE

PROPONENT: City of Bellevue Utilities Department, Stephen Noeske

LOCATION OF PROPOSAL: 13300 SE 8th Street (Generally)

NAME & DESCRIPTION OF PROPOSAL:

Kelsey Creek Stream Channel Habitat Improvement Project. Approval of Shoreline Substantial Development Permit, Critical Areas Land Use Permit, and issuance of a SEPA Threshold Determination to improve fish passage and to restore and enhance aquatic and riparian habitat for fish and wildlife use of specific reaches of Kelsey Creek within the City of Bellevue to implement elements of the July 2005 Final Lake Washington/Cedar/Sammamish Watershed (WRIA 8) Chinook Salmon Conservation Plan.

FILE NUMBER: 09-130506-XE; 09-130501-XQ

The Environmental Coordinator of the City of Bellevue has determined that this proposal does not have a probable significant adverse impact upon the environment. An Environmental Impact Statement (EIS) is not required under RCW 43.21C.030(2)(C). This decision was made after the Bellevue Environmental Coordinator reviewed the completed environmental checklist and information filed with the Land Use Division of the Department of Planning & Community Development. This information is available to the public on request.

☐ There is no comment period for this MDNS. There is a 14-day appeal period. Only persons who submitted written comments before the MDNS was issued may appeal the decision. A written appeal must be filed in the City Clerk's office by 5:00 p.m. on _____.

X This MDNS is issued after using the optional MDNS process in WAC 197-11-355. There is no further comment period on the MDNS. There is a 14-day appeal period. Only persons who submitted written comments before the MDNS was issued may appeal the decision. A written appeal must be filed in the City Clerk's Office by 5 p.m. on June 10, 2010.

☐ This MDNS is issued under WAC 197-11-340(2) and is subject to a 14-day comment period from the date below. Comments must be submitted by 5 p.m. on _____. This MDNS is also subject to appeal. A written appeal must be filed in the City Clerk's Office by 5 p.m. on _____.

This MDNS may be withdrawn at any time if the proposal is modified so that it is likely to have significant adverse environmental impacts; if there is significant new information indicating, or on, a proposals probable significant adverse environmental impacts (unless a non-exempt license has been issued if the proposal is a private project); or if the MDNS was procured by misrepresentation or lack of material disclosure.

_____ May 27, 2010
Environmental Coordinator Date

OTHERS TO RECEIVE THIS DOCUMENT:
State Department of Fish and Wildlife
State Department of Ecology,
Army Corps of Engineers
Attorney General
Muckleshoot Indian Tribe

City of Bellevue
Development Services Department
Land Use Division Staff Report

Proposal Name:	Kelsey Creek Stream Channel Habitat Improvement Project
Proposal Address:	13300 SE 8th Street (Generally)
Proposal Description:	Approval of Shoreline Substantial Development Permit, Critical Areas Land Use Permit, and issuance of a SEPA Threshold Determination to improve fish passage and to restore and enhance aquatic and riparian habitat for fish and wildlife use of specific reaches of Kelsey Creek within the City of Bellevue to implement elements of the July 2005 Final Lake Washington/Cedar/Sammamish Watershed (WRIA 8) Chinook Salmon Conservation Plan.
File Numbers:	09-130506-XE; 09-130501-XQ
Applicant:	Stephen Noeske, City of Bellevue Utilities Department
Decisions Included:	Shoreline Substantial Development (Process II) Critical Areas Land Use Permit (Process II) SEPA Threshold Determination (Process II)
Planner:	David Pyle, Senior Land Use Planner

State Environmental Policy Act Threshold Determination: **Mitigated Determination of Non-Significance**

Carol V. Helland, Environmental Coordinator
Development Services Department

Director's Decision: **Approval with Conditions**

Michael A. Brennan, Director
Development Services Department

By: _____
Carol V. Helland, Land Use Director

Application Date:	November 25, 2009
Notice of Application:	December 24, 2009
Decision Publication Date:	May 27, 2010

Deadline For Appeal of Process II Administrative Decisions:

SEPA and Critical Areas Land Use Permit:
June 10, 2010 (14 days following publication of a notice of decision)

Shoreline Substantial Development Permit:
July 1, 2010 (21 days following closure of SEPA and Critical Areas Land Use Permit Appeal Period)

For information on how to appeal a project proposal, visit the Permit Center at City Hall or call 425-452-6800. Appeal of any Process II Administrative decision must be made by 5 p.m. on the date noted for appeal of the decision. Appeal of the SEPA Threshold Determination and Critical Areas Land Use Permit must be made to the City of Bellevue City Clerk's Office. Appeal of the Shoreline Substantial Development Permit must be made to the Washington State Shoreline Hearings Board (contact the project planner for more information on how to file an appeal with the Shoreline Hearings Board).

I. Background

A. Project Description

The purpose of the Kelsey Creek Stream Channel Modification Improvements Project (Project) is to improve fish passage and to restore and enhance aquatic and riparian habitat for fish and wildlife use of Kelsey Creek within the City of Bellevue. Proposed Project elements include modification of portions of existing in-channel structures located in Kelsey Creek; placement of additional large boulders, large woody debris (LWD), and streambed gravels; removal of non-native invasive vegetation from stream banks; and replanting with native riparian species. The project area includes an approximately 2.3-mile-long reach of the main stem of Kelsey Creek. Aerial photographs of the project area are included on the various plan view figure bases. The Project will provide benefits to water quality; habitat structure and complexity; conditions for passage, spawning, and rearing of resident and anadromous fish species that currently use the creek; and will have only minor, in-channel effects on local floodplain elevations within the improvement areas but not extending further upstream.

Primary project goals and objectives are to:

- Improve fish passage where limitations to adult and juvenile salmonid mobility and upstream migration currently exist; and
- Enhance fish and wildlife habitat features within the Kelsey Creek channel and riparian corridor.

Secondary objectives include:

- Maintaining reasonably stable and sustainable channel morphology and sediment transport without excessive scour or deposition.
- Improving or having no adverse affect on the floodplain in the affected project Reaches
- Enhancing Kelsey Creek Park and Farm reach stream and wetland habitats through large woody debris (LWD) placement and invasive species control (vegetation management in these reaches is a separate initiative being handled by the City)
- Maintain consistency of recommended improvements with the Kelsey Creek Park Master Plan

For the purpose of project review and construction phasing this project has been broken into 4 distinctive reaches (segments). The reaches are named the SE 8th Street Reach (Reach 1), the Park Reach (Reach 2), the Farm Reach (Reach 3), and the Glendale Country Club Reach (Reach 4). The applicant has provided detailed information on the proposed improvements for each reach to be improved as described within and attached to this report. Project reaches are depicted in **Figure 1** below. Documents submitted as part of this application in support of this proposal and incorporated by reference to this staff report are as follows:

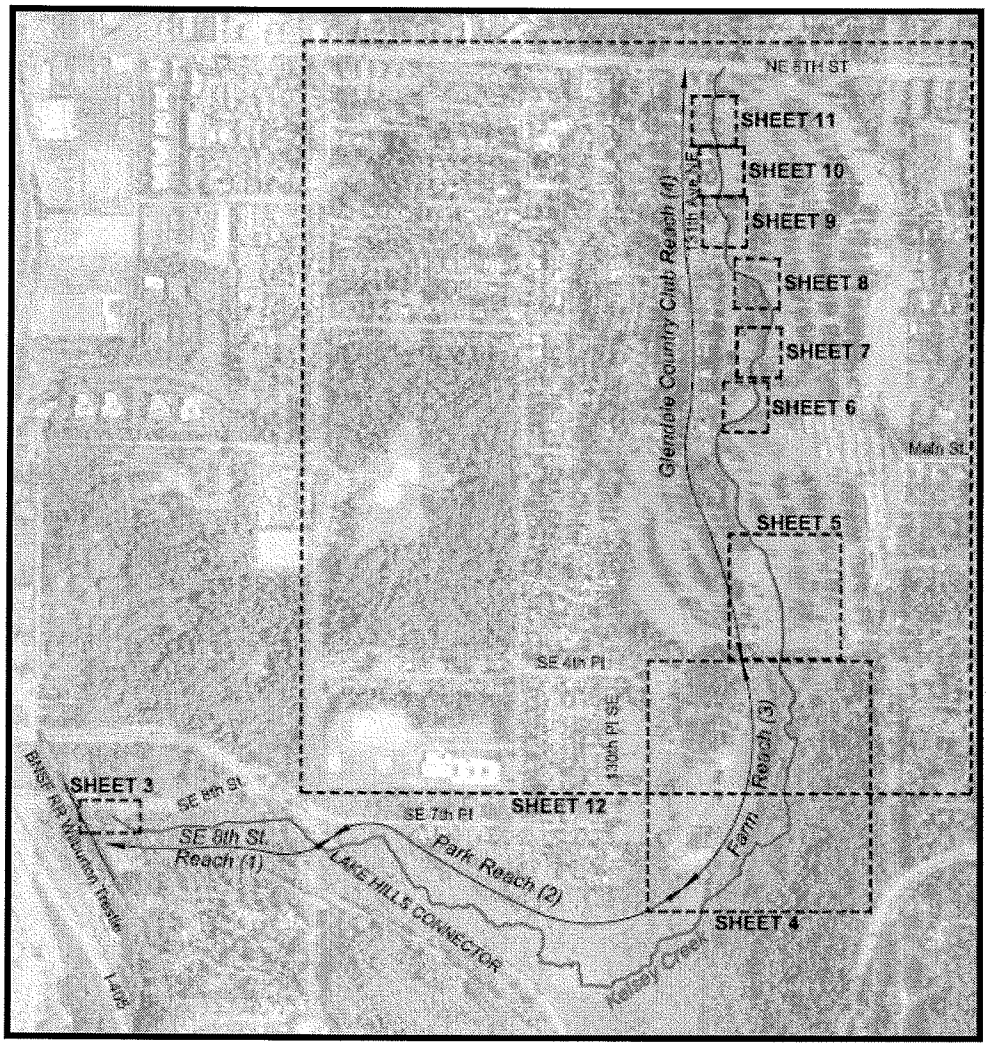
Technical Documents:

1. Project Narrative and Description – **Attachment 1**
2. Project Critical Areas Report – **Attachment 2**

3. Wetland Inventory – **Attachment 3**
4. Stream Inventory – **Attachment 4**
5. Biological Evaluation – **Attachment 5**
6. Project Plans – **Attachment 6**

The City anticipates constructing the Project in a single phase during the summer and fall of 2010 or 2011 and expects construction of project improvements to take approximately 12 weeks for in-water work activities and approximately 18 weeks total to complete the entire project.

Figure 1 – Project Reaches



B. Need for Improvement

This is a stream channel and habitat improvement project designed to improve fish habitat and passage through four specific reaches of Kelsey Creek while minimizing disturbing the existing stream facilities and surrounding environment. By making these improvements, the City intends to bring the stream into compliance with Washington Administrative Code title 220 and the Revised Code Washington title 77 as these relate to fish passage. This stream is also identified in the July 2005 Final Lake Washington/Cedar/Sammamish Watershed (WRIA 8) Chinook Salmon Conservation Plan. Making improvements to this stream is part of this conservation plan.

In support of the project the applicant has prepared and submitted a complete critical areas report and project narrative that analyzes and documents deficiencies and opportunities within each reach and identifies design features intended to improve the reach to facilitate fish spawning and migration. The project narrative and critical areas report are included as **Attachments 1 and 2** to this staff report and provide detailed information on proposed improvements and modifications for each of the four reaches targeted for improvements.

C. Site Description

The proposed stream modification improvements are located in the City of Bellevue, King County, Washington, along Kelsey Creek, within Sections 33 an 34, Township 25N, Range 5E and Sections 3 and 4, Township 24N, Range 5E. The project reaches under consideration extend approximately 2.3 stream miles from the Burlington Northern Santa Fe (BNSF) Railroad Wilburton Trestle, located just upstream of Interstate 405 (I-405), to Northeast 8th Street at the north end of the Glendale Country Club (GCC) golf course. Surrounding properties include residential and park areas. A depiction of reach locations is included as **Figure 1** above. A complete description of each of the four stream reaches included in this proposed action is included in the project narrative and critical areas report, **Attachments 1 and 2**.

II. Critical Areas in Project Area:

A. **Shorelines:** The project area contains a portion of Kelsey Creek and associated wetlands that are functionally connected to a body of water that is regulated in the City of Bellevue as a Shoreline of the State. The boundary of this jurisdiction is contained within reach 1 of the proposed project, as identified by the City of Bellevue 2009 Shoreline Master Program update jurisdiction study and follows the jurisdictional definition. The boundary of the City's Shoreline Jurisdiction is indicated in **Figure 3** below. The location of the project's Reach 1 is depicted in **Figure 2** below. Due to location within the City's Shoreline Jurisdiction, fish passage and habitat improvement actions proposed within Reach 1 require approval through a shoreline substantial development permit application

process in accordance with LUC 20.25E. Compliance with Shoreline Substantial Development Permit requirements is discussed in Section IV of this staff report.

Figure 2 – Project Reach 1

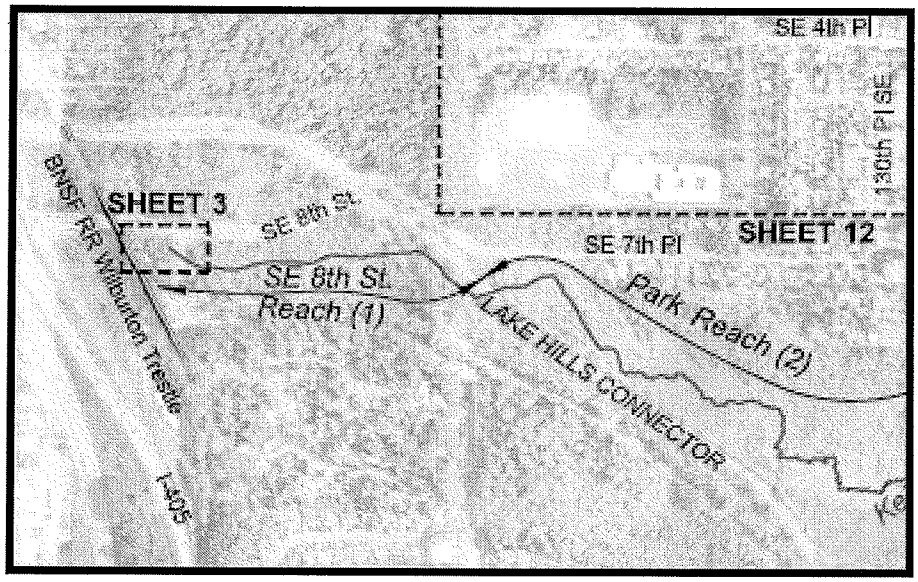
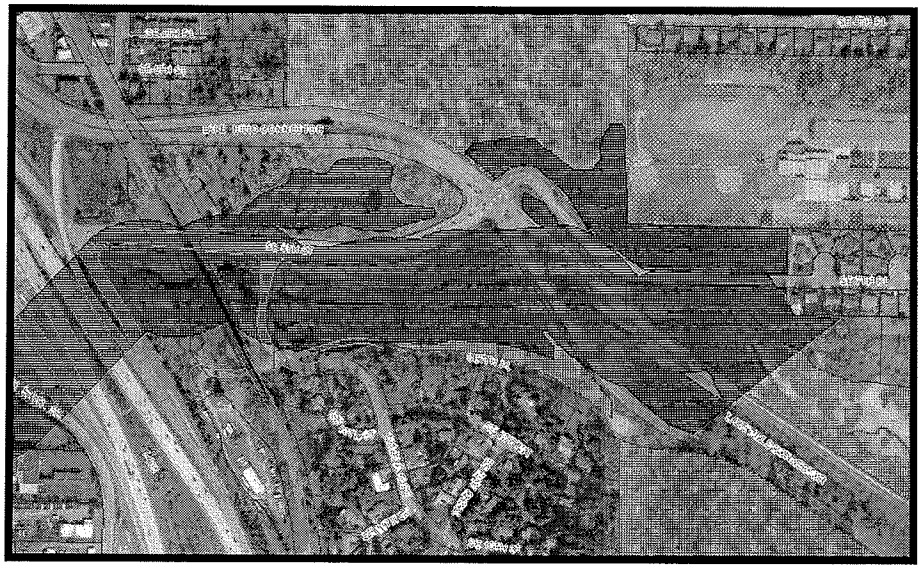


Figure 3 – Shoreline Jurisdiction

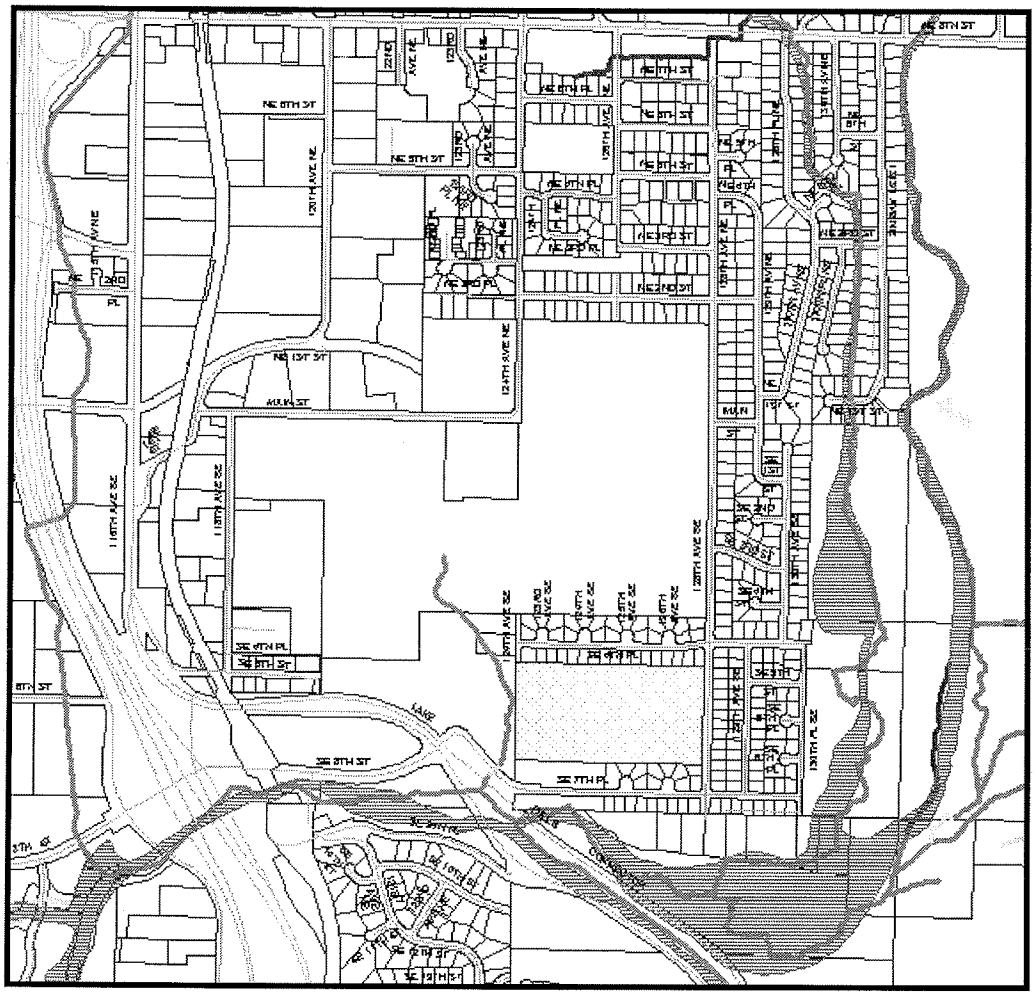


B. **Wetlands:** This proposal includes fish passage and habitat improvement actions along sections of Kelesey Creek and within sections of stream that are connected to a flow through wetland system or adjacent depressional wetlands. In support of project design and to identify impacts, wetlands were delineated, inventoried, and mapped by a qualified professional. A wetland inventory was included by the applicant as part of the permit submittal package and includes a detailed description of wetland resources located within each reach of the project. The wetland inventory is included as **Attachment 3** to this staff report. When proposed fish passage and habitat improvement actions will impact wetlands or their buffers, mitigation is proposed in compliance with City of Bellevue Land Use Code Requirements.

C. **Streams:** As a fish passage and habitat improvement project this proposal is centered on Kelsey Creek to the point that the project is designed to be located in a stream. Within reach 1 Kelsey Creek is designated as a Type S stream due to its association with the shoreline jurisdiction, however the stream is considered a Type F stream within reaches 2, 3, and 4. Streams within the project areas were surveyed, inventoried, and mapped by a qualified professional. A stream inventory was included by the applicant as part of the permit submittal package and includes a detailed description of resources located within each reach. The stream inventory is included as **Attachment III** to this staff report. When fish passage and habitat improvement actions as proposed will impact stream resources or their buffers, mitigation is proposed in compliance with City of Bellevue Land Use Code Requirements. It should be noted that as a fish passage and habitat improvement project this project is self mitigating as it provides improvements to fish habitat within the stream system.

D. **Areas of Special Flood Hazard:** A special flood hazard area is defined in LUC 20.25H.175 as land subject to the 100-year flood including areas identified on Flood Insurance Rate Maps (FIRM) as within the base floodplain. All of the project area is located in a special flood hazard area, although as a habitat improvement project the proposed activity is considered an allowed activity under LUC 20.25H.055, although specific performance standards must be met. Flood Hazard Areas within the project vicinity are depicted in **Figure 4** below.

Figure 4 – Areas of Special Flood Hazard



E. **<u>Habitat Associated with Species of Local Importance</u>:** The City of Bellevue regulates habitat features associated with the life cycle of a species of local importance. Species of local importance are recognized populations of native species that are at risk of being lost from the City. In response to restrictions on activity within proximity to habitat associated with species of local importance, the applicant prepared a habitat assessment as part of the critical areas report to evaluate the potential presence or absence of designated species of local importance or habitat for species of local importance. Information in the habitat assessment includes a description of vegetation communities and habitat conditions in the project area, the identification of species of local importance that occur or could potentially occur in the project area, and whether site conditions meet the needs of any species of local importance. Also included in the assessment is an analysis of federally

listed species protected under the Endangered Species Act (ESA) that may occur in the project area. The project critical areas report is available as **Attachment 2** to this staff report.

III. Consistency with Land Use Code Requirements (BCC Title 20):

A. Zoning District Dimensional Requirements (LUC 20.20.010):

This is a proposal to improve fish passage and habitat within specific reaches of Kelsey Creek. The project will not be constructing any structures or appurtenances that are regulated by the City of Bellevue Land Use Code dimensional requirements described in LUC 20.20.010. The project is in compliance with the standards of LUC 20.20.010.

B. Critical Areas Requirements (LUC 20.25E AND 20.25H):

The City of Bellevue Land Use Code 20.25H.025 designates streams, wetlands, shorelines, areas of special flood hazard and habitat associated with species of local importance as Critical Areas affected by this project regulated under the purview of LUC 20.25H and 20.25E. The project consists of multiple elements, but the essential main objective of the project is "habitat improvement", which is considered an allowable use per LUC 20.25H.055 and carries a set of performance standards and addition provisions. The applicable performance standards and additional provisions are as follows:

	SHORELINES	STREAMS	WETLANDS	AREAS OF SPECIAL FLOOD HAZARD	HABITAT ASSOCIATED WITH SPECIES OF LOCAL CONCERN
Performance Standards for Allowed Use - Habitat Improvement	20.25H.055.C.3.j 20.25E.080.B 20.25E.080.G	20.25H.055.C.3.j 20.25H.080.A 20.25H.080.B 20.25H.085 20.25H.090	20.25H.055.C.3.j 20.25H.100 20.25H.105 20.25H.110	20.25H.055.C.3.j 20.25H.180.C	20.25H.160

IV. Consistency With LUC Critical Areas and Shorelines Performance Standards:

A. Consistency with LUC 20.25H.055.C.3.j

Uses and Development Allowed within Critical Areas – Performance Standards – Habitat Improvement Projects

Disturbance, clearing and grading are allowed in the critical area or critical area buffer for habitat improvement projects demonstrating an improvement to function and values of a critical area or critical area buffer.

The proposed project has demonstrated a functional improvement to functions and values

to the critical area and critical area buffers. The project is also sponsored by a public agency in the City of Bellevue Utilities Department and is included in the July 2005 Final Lake Washington/Cedar/Sammamish Watershed (WRIA 8) Chinook Salmon Conservation Plan . The applicant's consultant prepared a Critical Areas Report (**Attachment 2**) that adequately demonstrates that the required performance standards (listed above) and the required critical areas report decision criteria have been met.

B. Consistency with LUC 20.25E.080.B
Shorelines - General Regulations Applicable to All Land Use Districts and Activities
The project is consistent with the performance standards set forth in LUC 20.25E.080.B. Vegetation will be preserved and erosion controls will be implemented in accordance with LUC 20.25H performance standards and BCC 23.76 clearing and grading regulations. Where impact is proposed, the project will include restoration as prescribed by the City's Land Use Code. No structures are proposed as part of the project; no watercraft will be stored as part of the project. No storm drainage facilities are proposed. Any use of herbicides, pesticides, and/or fertilizers will comply with the City's Environmental Best Management Practices.

C. Consistency with LUC 20.25E.080.G
Shorelines - Clearing and Grading Regulations
The project is consistent with the performance standards set forth in LUC 20.25E.080B. A Clearing and Grading permit will be acquired for this project and the clearing, grading, excavating, and fill activities within the shoreline critical area and its buffer are part of the restoration project permitted through LUC 20.25H.

D. Consistency with LUC 20.25H.080.A
Streams – Performance Standards – General
The project is proposing habitat improvements within a Type F stream. There will be no lighting associated with this project. There will be no addition of any noise generating activities associated with this project. There will be no additional impervious surface added as part of this project. There will be no addition of treated surface water entering the critical area or critical area buffer associated with this project. When impacted, the outer edge of the stream critical area buffer will be planted with dense native vegetation to limit pet and human use. The use of pesticides, insecticides, and fertilizers will be in accordance with the City of Bellevue's "Environmental Best Management Practices Manual."

E. Consistency with LUC 20.25H.080.B
Streams – Performance Standards – Modification of Stream Channel
Modification of the stream channel can be permitted in connection with a habitat

improvement project, per LUC 20.25H.080.B.1 and B.2, if approved through a Critical Areas Report.

A Critical Areas Report was prepared for this project and is attached as **Attachment 2** to this staff report. A discussion of how the Critical Areas Report satisfies the decision criteria is included below in Section VIII, Subsection C.

F. Consistency with LUC 20.25H.085
Streams – Mitigation and Monitoring – Additional Provisions
In addition to the provisions of LUC 20.25H.210, mitigation plans designed to mitigate impacts to stream and stream critical area buffers shall meet the requirements of this section.

Because the proposed Project's design and purpose is to improve and restore fish and wildlife habitat, impacts to streams, wetlands, and associated buffers will be self-mitigating. The proposed Project will add significantly more habitat value to the critical areas present in the project area than under existing conditions. The primary goals and objectives of the proposed Project are to improve fish passage where limitations to adult and juvenile salmonid mobility and upstream migration currently exist and to enhance fish and wildlife habitat features within the stream channel and its riparian corridor. In addition, the proposed Project will maintain reasonably stable and sustainable channel morphology and sediment transport without excessive scour or deposition, improve or have no adverse affect on the floodplain, enhance Kelsey Creek Park and Farm reach wetlands through invasive species control, and maintain consistency with recommended improvements laid out in the Kelsey Creek Park Master Plan.

Potential stream buffer impacts in Reach 1 are limited to clearing an approximately 1,400 square foot area (0.03 acre) for access to Kelsey Creek for in-stream work and LWD placement. Stream buffer impacts in Reach 3 will include clearing an approximately 5,600 square foot area (0.13 acre) for access to Kelsey Creek for LWD placement. Stream buffer impacts in Reach 4 will include clearing an approximately 9,250 square foot area (0.21 acre) for access to Kelsey Creek for in-stream work and LWD placement. Stream buffer impacts in the golf course include areas with existing vegetation that will be replanted with native vegetation and do not include mowed lawn. Total stream buffer impacts include 16,250 square feet (0.37 acre). Once construction access is no longer needed in the wetland buffer (approximately 18 weeks), the disturbed area will be revegetated with native plant species in accordance with LUC 20.25H.220.H.

G. Consistency with LUC 20.25H.090.A
Streams – Critical Areas Report – Additional Provisions
Limitation of Modifications – A stream critical area buffer shall not be modified below

25-feet in width, as measured from top of bank, for a Type F water.

The project does not propose to modify stream buffers. No changes to buffers are proposed.

H. Consistency with LUC 20.25H.100
Wetlands – Performance Standards

The project is proposing development within proximity to several known wetland areas. There will be no lighting associated with this project. There will be no addition of any noise generating activities associated with this project with the exception of the expected noise levels during construction. There will be no additional impervious surface added as part of this project. There will be no addition of treated surface water entering the critical area or critical area buffer associated with this project. When impacted, the outer edge of the wetland critical area buffer will be planted with dense native vegetation to limit pet and human use. The use of pesticides, insecticides, and fertilizers will be in accordance with the City of Bellevue's "Environmental Best Management Practices Manual."

I. Consistency with LUC 20.25H.105.A-D
Wetlands – Mitigation and Monitoring – Additional Provisions
Mitigation plans designed to mitigate for impacts on wetlands and wetland critical area buffers, shall meet additional provisions regarding preference of mitigation actions for impacts on wetlands and wetland buffer critical areas, type and location of mitigation, mitigation ratios, and use of enhancement as mitigation.

Permanent wetland impacts have been avoided. No wetland habitat was identified in the areas of proposed work in Reaches 1 and 4. In Reach 3, wetland habitat is not located within three of the four proposed work areas. The fourth, southernmost proposed work area was originally located within a large wetland system identified as Wetland A. Potential wetland impacts were avoided by modifying the project design in Reach 3 for access to Kelsey Creek for LWD placement. The proposed access area was moved to the north to avoid impacts to Wetland A. Within the project area, Wetland A includes all of Reach 2 and the southern portion of Reach 3. Wetland A is a large (estimated to be greater than 30 acres in size) wetland system associated with Kelsey Creek. Based on Ecology and City wetland rating criteria, Wetland A is rated as a Category I wetland with moderate water quality and habitat opportunity functions and high hydrologic and habitat for species functions. Wetland A has a protective wetland buffer width of 110 feet. Potential impacts to the Wetland A buffer are limited to the southernmost proposed work area in Reach 3 and are temproary. Because this is the only area of the project that includes wetland buffer impacts and the wetland buffer overlaps stream buffer, and all of

the proposed project impacts will occur within the stream buffer of Kelsey Creek, the wetland buffer impacts are accounted for under stream buffer disturbance. The disturbed wetland buffer area contains a mixture of native and nonnative vegetation species. Once construction access is no longer needed in the wetland buffer (approximately 18 weeks), the disturbed area will be revegetated with native plant species in accordance with LUC 20.25H.220.H. Wetland buffer impacts will be limited to clearing of vegetation, no ground clearing or grading is proposed. Vegetation clearing to access this portion of the creek will avoid significant trees located in the wetland and wetland buffer area.

J. Consistency with LUC 20.25H.110
Wetlands - Critical Areas Report – Additional Provisions
A critical areas report may not be used to fill a wetland critical area, except where filling is required to allow a use set forth in LUC 20.25.055.

"Habitat Improvement" is the overarching "use" of the proposed project as set forth in LUC 20.25H.055. As such, filling of the wetland can be approved provided the submitted critical areas report demonstrates the applicable codes and regulations have been satisfied.

The submitted Critical Areas Report adequately discusses measures, including avoidance, minimization, and mitigation, proposed to preserve existing wetlands and restore any wetlands and buffers that were degraded prior to the proposed land use activity. The Critical Areas Report includes a habitat and native vegetation management strategy that protects and enhances on-site habitat and wetland functions. The Critical Areas Report includes a functional evaluation of the wetland and associated buffer using system approved by the Washington State Department of Ecology.

K. Consistency with LUC 20.25H.180.C
Areas of Special Flood Hazard – General Performance Standards
Where use or development is allowed pursuant to LUC 20.25H.055, compliance with the performance standards set forth in LUC 20.25H.180.C must be demonstrated.

The proposed project will maintain established flood elevations within the area of special flood hazard equal to or less than those currently in place. As a habitat improvement project, pool height will be modified to an optimal level in an effort to provide enhanced fish passage. This adjusted pool height will not affect flood storage or flow capacity. The area of special flood hazard will maintain its hydraulic connectivity to the source of flooding. The construction is proposed to occur all in the same season/work window. The proposed project has been evaluated by a qualified engineer and demonstrates that the compensatory storage will not be adversely affected.

L. Consistency with LUC 20.25H.160

Habitat Associated with Species of Local Concern – Performance Standards

If habitat associated with species of local importance will be impacted by a proposal, the proposal shall implement the wildlife management plan developed by the Department of Fish and Wildlife for such species.

Of the twenty-three species identified on the City's species of local importance list, potential suitable habitat for 10 species (six bird and four fish species), is present within the project area. Potential impacts associated with the proposed Project to these species or habitat that supports these species will be short term in nature and associated with construction including noise, turbidity, limitations to habitat access while the creek is diverted around the project area, and vegetation clearing to access the creek. Noise levels will not be injurious to fish or birds because impact equipment will not be used Additionally, in-stream work will occur during approved in-water work windows and will be limited to the minimum necessary to construct the proposed Project. A temporary gravity stream flow diversion will be installed at work area where in-stream construction is required. This will provide for temporary downstream passage of fish during the short-term construction window for each weir. Fish will be collected from between the proposed upstream and downstream cofferdams for each work area prior to dewatering. Fish removal will be performed according to appropriate agency guidelines.

Long-term effects of the proposed Project would provide a net benefit to species of local importance and their habitat as fish passage and overall habitat conditions will be improved. By modifying the existing weirs and restoring pool habitat via LWD installation, the proposed Project will increase the habitat value to species of local importance. Fish passage partial barriers at culverts and weir steps with drop distances exceeding WDFW and NMFS standards will be reconfigured to allow for fish passage under the required range of flow conditions (approximately 1 to 49 cfs for Reach 4). LWD placed as part of the proposed Project will encourage the formation of pools (also contributing to cooler water), influence channel scour, and roughen the channel so as to reduce flow energy and subsequent erosion. Placement of spawning gravel mixes along with larger substrate mixes (i.e., cobble-boulder fill) in disturbed areas will temporarily improve sediment conditions. Because the proposed Project will not result in development (i.e., impervious surfaces) or long-term adverse impacts to habitat for species of local importance and will improve habitat over existing conditions, the implementation of WDFW management recommendations for species on the City's list of species of local importance is not applicable

V. Summary of Technical Reviews

A. Clearing and Grading: The Clearing and Grading Division of the Development Services Department has complete initial review of the project, although technical review will be done as part of the underlying clearing and grading permit. See related conditions of approval in Section X below.

VI. State Environmental Policy Act (SEPA)

The environmental review indicates no probability of significant adverse environmental impacts occurring as a result of the proposal. The Environmental Checklist submitted with the application adequately discloses expected environmental impacts associated with the project. The City codes and requirements, including the Clear and Grade Code, Utility Code, Land Use Code, Noise Ordinance, Building Code and other construction codes are expected to mitigate potential environmental impacts. Therefore, issuance of a Determination of Non-Significance (DNS) is the appropriate threshold determination under the State Environmental Policy Act (SEPA) requirements.

A. Earth: Soils in the project area are mapped as Bellingham silt loam and are listed as hydric soils. According to the Geotechnical Report prepared for the project, there are no indications of unstable soils in the project area. The risk of earthquake-induced landslides is considered low given the estimated long return period for the Seattle fault zone. This fault zone passes about 2 miles south of the project area. All areas temporarily disturbed will be restored with dense native wetland and riparian vegetation. See Conditions of Approval in Section X of this report.

B. Water: Kelsey Creek is identified as a Type F stream with a protective stream buffer width of 100 feet throughout the project area. Proposed impacts to the streambed in Reach 1 include removing angular rock, adding roughened channel cobble/boulder backfill, and placement of LWD. Impacts to the creek in Reach 3 include placement of LWD. In Reach 4, streambed impacts will include placement of LWD, placement of cobble/boulder and round rock, and modifying existing concrete weirs. Flows in the West Tributary will be diverted around the construction zone during in-water construction of the restored stream channel. No waste materials will be discharged into surface waters; water quality monitoring will be conducted during construction and during periodic maintenance of the sediment pond, as described in the Maintenance and Monitoring Plan. No groundwater will be withdrawn, nor will any water be discharged to the groundwater as a result of the project. The potential for surface water contamination exists, mainly from sedimentation, as a result of the project. An approved temporary erosion and sedimentation control (TESC) plan and a storm water pollution prevention plan

(CSWPPP) is required before the project's underlying clear & grade permit will be issued. See Conditions of Approval in Section X of this report.

C. **Animals:** Long-term effects of the proposed Project would provide a net benefit to species of local importance and their habitat as fish passage and overall habitat conditions will be improved. By modifying the existing weirs and restoring pool habitat via LWD installation, the proposed Project will increase the habitat value to species of local importance. Fish passage partial barriers at culverts and weir steps with drop distances exceeding WDFW and NMFS standards will be reconfigured to allow for fish passage under the required range of flow conditions (approximately 1 to 49 cfs for Reach 4). LWD placed as part of the proposed Project will encourage the formation of pools (also contributing to cooler water), influence channel scour, and roughen the channel so as to reduce flow energy and subsequent erosion. Placement of spawning gravel mixes along with larger substrate mixes (i.e., cobble-boulder fill) in disturbed areas will temporarily improve sediment conditions. Because the proposed Project will not result in development (i.e., impervious surfaces) or long-term adverse impacts to habitat for species of local importance and will improve habitat over existing conditions. See Conditions of Approval in Section X of this report.

D. **Plants:** Existing vegetation in the project area includes a combination of native and nonnative plant species, with a dominant presence of nonnative vegetation in several of the proposed work areas in Reaches 1, 3, and 4. In Reach 4, mowed lawn associated with the GCC golf course and residential property is also a dominant feature of the stream buffer. Following construction native facultative vegetation will be planted, replacing the existing nonnative vegetation and mowed lawn. Potential stream buffer impacts in Reach 1 are limited to clearing an approximately 1,400 square foot area (0.03 acre) for access to Kelsey Creek for in-stream work and LWD placement. Stream buffer impacts in Reach 3 will include clearing an approximately 5,600 square foot area (0.13 acre) for access to Kelsey Creek for LWD placement. Stream buffer impacts in Reach 4 will include clearing an approximately 9,250 square foot area (0.21 acre) for access to Kelsey Creek for in-stream work and LWD placement. Stream buffer impacts in the golf course include areas with existing vegetation that will be replanted with native vegetation and do not include mowed lawn. Total stream buffer impacts include 16,250 square feet (0.37 acre). Once construction access is no longer needed in the stream buffer (approximately 18 weeks), the disturbed area will be revegetated with native wetland species. No ground clearing or grading outside of the creek channel is proposed. See Conditions of Approval in Section X of this report.

E. **Noise:** The project will create short-term increases in noise associated with typical construction equipment (trackhoe, dump truck, front-end loader) operated during

approved work-windows (the standard work period is 7 am to 5 pm, Monday through Friday). There will be no long-term increase in noise associated with the restoration project. Short-term increases in noise will be limited to the construction period (approximately 18 weekss). Construction noise will be concentrated between 7 am to 5 pm, Monday through Friday, unless longer hours or weekend work is approved by the City to allow completion of the stream channel restoration within the in-water work window specified to protect salmonids. See Conditions of Approval in Section X of this report.

VII. Public Notice and Comment

Application Date:	November 25, 2009
Public Notice (500 feet):	December 24, 2009
Minimum Comment Period:	January 19, 2010

The Notice of Application for this project was published in the City of Bellevue weekly permit bulletin on December 24, 2009. It was mailed to property owners within 500 feet of the project site. Three comments were received. The first was from a local Bellevue Citizen who inquired about the importance of the project and overall project budget. A response to this inquiry is included as **Attachment 7**. The second comment was received from King County and was a request for more information about the location of work in Reach 1 where the County operates and maintains a sewer main. Additional information was provided to the County and a condition of approval was added to the project requiring inter-agency coordination prior to the commencement of construction. The response to this comment is included as **Attachment 8**. The third comment was a request for more information from the Muckleshoot Indian Tribe Fisheries Division. A response to this request is included as **Attachment 9.**

VIII. Decision Criteria

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 and the Shoreline Substantial Development Permit pursuant to LUC Section 20.30C.

A. Shoreline Substantial Development Permit Decision Criteria (LUC 20.30C)

1. The proposed use will be consistent with the policies of RCW 90.58.020 and the policies of the Bellevue Shoreline Master Program; and;

Finding: The proposed project is consistent with the policies of the Shoreline

Management Act of 1971, enunciated in RCW 90.58.020. Similarly, the proposed project is consistent with the policies of Bellevue's Shoreline Master Program and Comprehensive Plan.

2. **The proposed use will not interfere with the normal public use of public shorelines; and;**

Finding: A fish passage and habitat improvement project, the project will not interfere with the normal public use of the work area. Areas where improvements are being made (within the stream channel) are not typically accessible to the public.

3. **The proposed use of the site and design of the project will be compatible with other permitted uses within the area; and;**

Finding: The proposed use is compatible with the current use in the project area. The surrounding land uses of residential subdivisions will not be adversely affected by the proposed project.

4. **The proposed use will cause no unreasonably adverse effects to the shoreline environment designation in which it is to be located; and;**

Finding: The proposed project will cause no adverse effects to the shoreline. The project is designed to enhance the function and value of the shoreline environment by increasing the habitat value for salmonids, as well as terrestrial species.

5. **The public interest suffers no substantial detrimental effect; and;**

Finding: The project provides net benefit to the public interest. The proposed project will improve fish passage and restore and enhance fish and wildlife habitat.

6. **The proposed use complies with all requirements of WAC 173-14-140; and;**

Finding: The project complies with all of the requirements of the State Shoreline Management Act and provides cumulative benefit as a habitat improvement.

7. **The proposed use is harmonious and appropriate in design, character and appearance with the existing or intended character and quality of development in the immediate vicinity of the subject property and with the physical characteristics of the subject property; and;**

Finding: The proposed use is harmonious and appropriate with the existing and intended character and quality of development in the immediate vicinity of the project area.

8. The proposed use will be served by adequate public facilities including streets, fire protection, water, storm water control and sanitary sewer; and;

Finding: The proposed habitat improvement does not require public facilities to function.

9. The proposed use will not be materially detrimental to uses or property in the immediate vicinity of the subject property; and;

Finding: The increase in habitat structure and diversity should increase the ability of fish and wildlife to use the project area.

10. The proposed use has merit and value for the community as a whole; and;

Finding: The project has merit and value for the community through enhanced fish passage and habitat.

11. The proposed use is in accord with the Comprehensive Plan; and;

Finding: The project is in accord with the Comprehensive Plan – Shoreline Management Program Element. It directly supports the goals stated in this section.

12. The proposed use complies with all other applicable criteria and standards of the Bellevue City Code.

Finding: The applicant submitted documentation consistent with the requirement to demonstrate compliance with the requirements of LUC 20.30P, 20.30C, 20.25H and 20.25E.

B. Critical Areas Land Use Permit Decision Criteria (LUC 20.30P)

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

Finding: The proposed project has applied and for and will receive the following City of Bellevue Permits prior to implementation of the project: Critical Areas Land Use (XE), Shoreline Substantial Development (XQ), Clearing and Grading (XD),

Right of Way Use (XT).

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 submitted application materials describe the project's use of the best available construction design and development techniques to minimize temporary impacts on critical areas and their buffers. This approach is consistent with the intent of a habitat improvement project, an allowed use under 20.25H.055.

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

Finding: The proposed project incorporates all of the applicable performance standards specified in LUC 20.25H. They are addressed in detail in Section V above for the critical areas present within the project area.

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

Finding: The proposed restoration does not require public facilities to function.

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

Finding: The Preliminary Construction Plans for the restoration project (**Attachment 6**) and the associated documents prepared as part of the permitting package are consistent with the requirements of LUC 20.25H.210, all areas of temporary disturbance will be restored upon project completion.

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

Finding: The applicant submitted documentation consistent with the requirement to demonstrate compliance with the requirements of LUC 20.30P, 20.30C, 20.25H and 20.25E.

C. Critical Areas Report Decision Criteria (20.25H.055.A)

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 primary project object is restoration of critical area and critical area buffer functions and values. The Critical Areas Report demonstrates that the modifications proposed by the project will result in an increase in functions and values within the project area.

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

Finding: The project is being initiated and implemented by the City of Bellevue Utilities Department. The Department has sufficient resources to complete the restoration and monitoring required for areas of temporary disturbance.

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 proposed project is not requesting a modification of the performance standards and will not result in a detriment to critical areas and critical area buffer functions and values off-site.

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

Finding: The project area is within Kelsey Creek. The proposed project of shoreline, stream and wetland habitat restoration is compatible with the residential land uses to the west of the project area and the golf course to the north.

IX. Conclusion and Decision

After conducting the various administrative reviews associated with this 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 implement the fish passage and habitat improvement project proposed within four specific reaches of Kelsey Creek.

Note- Expiration of Approval: In accordance with LUC 20.30P.150, the Critical Areas Land Use Permit for habitat improvement 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.

In accordance with LUC 20.30R.175, the Shoreline Substantial Development Permit automatically expires and is void if the applicant fails to file for a Building Permit or other necessary development permit and fails to make substantial progress towards completion of the project within two years of the effective date of the Shoreline Substantial Development Permit unless the applicant has received an extension for the Shoreline Substantial Development Permit pursuant to LUC 20.30R.180.

X. Conditions of Approval

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

Applicable Codes or Ordinances	Contact Person
Clearing and Grading Code – BCC 23.76	Clearing and Grading Division, 425-452-2019
Land Use Code – BCC 20.25H	David Pyle, 425-452-2973

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

1. **Clearing and Grading Permit:** Before commencing any construction activity the applicant must apply for and obtain a Clearing and Grading Permit. On-going turbidity monitoring and submittal of turbidity monitoring data sheets will be required as part of the clearing and grading permit inspection process.

Authority: Bellevue City Code Section 23.76.025
Reviewer: David Pyle, Land Use

2. **Restoration for Areas of Temporary Disturbance:** Following unavoidable disturbance of stream or wetland areas or their buffers, areas disturbed must be restored. Restoration must occur within 30 days of closure of activity in the restored area. Restoration shall at a minimum meet the requirements of the City's Critical Areas Handbook. Restoration for areas of temporary disturbance must be monitored for a period of not less than three years.

Authority: Land Use Code 20.25H.220.H
Reviewer: David Pyle, Land Use

3. **Construction Stormwater Pollution Prevention Plan:** To ensure contaminated stormwater or construction-related runoff does not pollute adjacent surface water, a construction stormwater pollution prevention plan (CSWPPP) is required for all clearing and grading permit applications for industrial, commercial, multi-family, plat and short plat developments. The CSWPPP outline should be generally consistent with the SWPPP requirements of the National Pollutant Discharge Elimination System (NPDES) General Storm water Permit for Construction Activities.

Turbidity and pH monitoring will be required during the site grading. A monitoring plan must be submitted as part of the CSWPPP with the Clearing & Grading permit application or during review of the Clearing and Grading permit application.

Authority: Bellevue City Code 23.76
Reviewer: David Pyle, Land Use

4. **Rainy Season Restrictions:** Due to the location of the project area, 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: David Pyle, Land Use

5. **Right-of-Way Use:** The proposed habitat improvement project will likely require the use of a portion of the right-of-way adjacent to the subject property, specifically as a haul route for excavated material and imported fill and materials. If required, a right-of-way use permit from the Transportation Department should be obtained.

Authority: Bellevue City Code 14.30
Reviewer: David Pyle, Land Use

6. **Noise Control:** Noise related to construction is exempt from the provisions of BCC 9.18 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 hours permit.

Authority: Bellevue City Code 9.18
Reviewer: David Pyle, Land Use

7. **Temporary Erosion and Sedimentation Control Plan:** Prior to the initiation of any clearing or grading activities, a Temporary Erosion and Sedimentation Control Plan must be approved as part of a Clearing and Grading permit and all clearing limits and the location of temporary erosion and sedimentation control measures shall be field staked for approval by the on-site clearing and grading inspector's approval.

Authority: Bellevue City Code 23.76.060 and 23.76.090
Reviewer: David Pyle, Land Use

8. **Applicable State and Federal Permits:** To mitigate adverse impacts, Federal and state water quality standards shall be met. All required federal and state permits and approvals must be received by the applicant prior to the commencement of any work. A copy of the approved State and Federal permits shall be submitted to the City of Bellevue Development Services Department Land Use Division prior to construction.

Authority: Land Use Code 20.25H.055.C.3.d
Reviewer: David Pyle, Land Use

9. **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: David Pyle, Land Use

10. **Maintenance and Monitoring Plan:** A Maintenance and Monitoring Plan for restoration of areas of temporary disturbance be included as an element of the underlying Clearing and Grading Permit. Monitoring reports must be submitted on an annual basis to the Development Services Department for a period of not less than three years. Reports should be submitted at the end of the growing season for the year monitored by the end of the calendar year.

Authority: Land Use Code 20.25H.220.D

Reviewer: David Pyle, Land Use

11. In-Water Work Window: Work in the active channel approved by the underlying Clearing and Grading Permit must be completed during an in-water work window of July 1 through August 31, unless otherwise authorized in writing by the Washington State Department of Fish and Wildlife.

Authority: Land Use Code 20.25H.160
Reviewer: David Pyle, Land Use

12. Turbidity Monitoring Plan: A turbidity monitoring plan that meets the requirements of BCC 23.76 must be submitted and approved as part of the underlying clearing and grading permit.

Authority: Bellevue City Code 23.76
Reviewer: David Pyle, Land Use

13. King County Sewer Main: Prior to issuance of a Clearing and Grading Permit, contact King County to verify location of sewer utilities in the project vicinity and coordinate final design details to ensure no impact to existing or proposed King County utility operations.

Authority: Land Use Code 20.25E
Reviewer: David Pyle, Land Use

XI. Attachments:

1. **Project Narrative and Description**
2. **Project Critical Areas Report**
3. **Wetland Inventory**
4. **Stream Inventory**
5. **Biological Evaluation**
6. **Project Plans**
7. **Public Comment #1**
8. **Public Comment #2**
9. **Public Comment #3**
10. **SEPA Checklist**