



DEVELOPMENT SERVICES DEPARTMENT
 ENVIRONMENTAL COORDINATOR
 11511 MAIN ST., P.O. BOX 90012
 BELLEVUE, WA 98009-9012

DETERMINATION OF NON-SIGNIFICANCE

PROPONENT: Witold Szczepaniak

LOCATION OF PROPOSAL: 16228 SE 35th Pl.

NAME & DESCRIPTION OF PROPOSAL: Szczepaniak Fence

Installation of a fence around a yard associated with a single-family residence partially in a stream buffer.

FILE NUMBER: 11-118692-LO

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 Development Services Department. This information is available to the public on request.

- There is no comment period for this DNS. There is a 14-day appeal period. Only persons who submitted written comments before the DNS was issued may appeal the decision. A written appeal must be filed in the City Clerk's office by 5:00 p.m. on _____.
- This DNS is issued after using the optional DNS process in WAC 197-11-355. There is no further comment period on the DNS. There is a 14-day appeal period. Only persons who submitted written comments before the DNS was issued may appeal the decision. A written appeal must be filed in the City Clerk's Office by 5 p.m. on 12/15/11.
- This DNS 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 DNS is also subject to appeal. A written appeal must be filed in the City Clerk's Office by 5 p.m. on _____.

This DNS may be withdrawn at any time if the proposal is modified so that it is likely to have significant adverse environmental impacts; if there is significant new information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 DNS was procured by misrepresentation or lack of material disclosure.

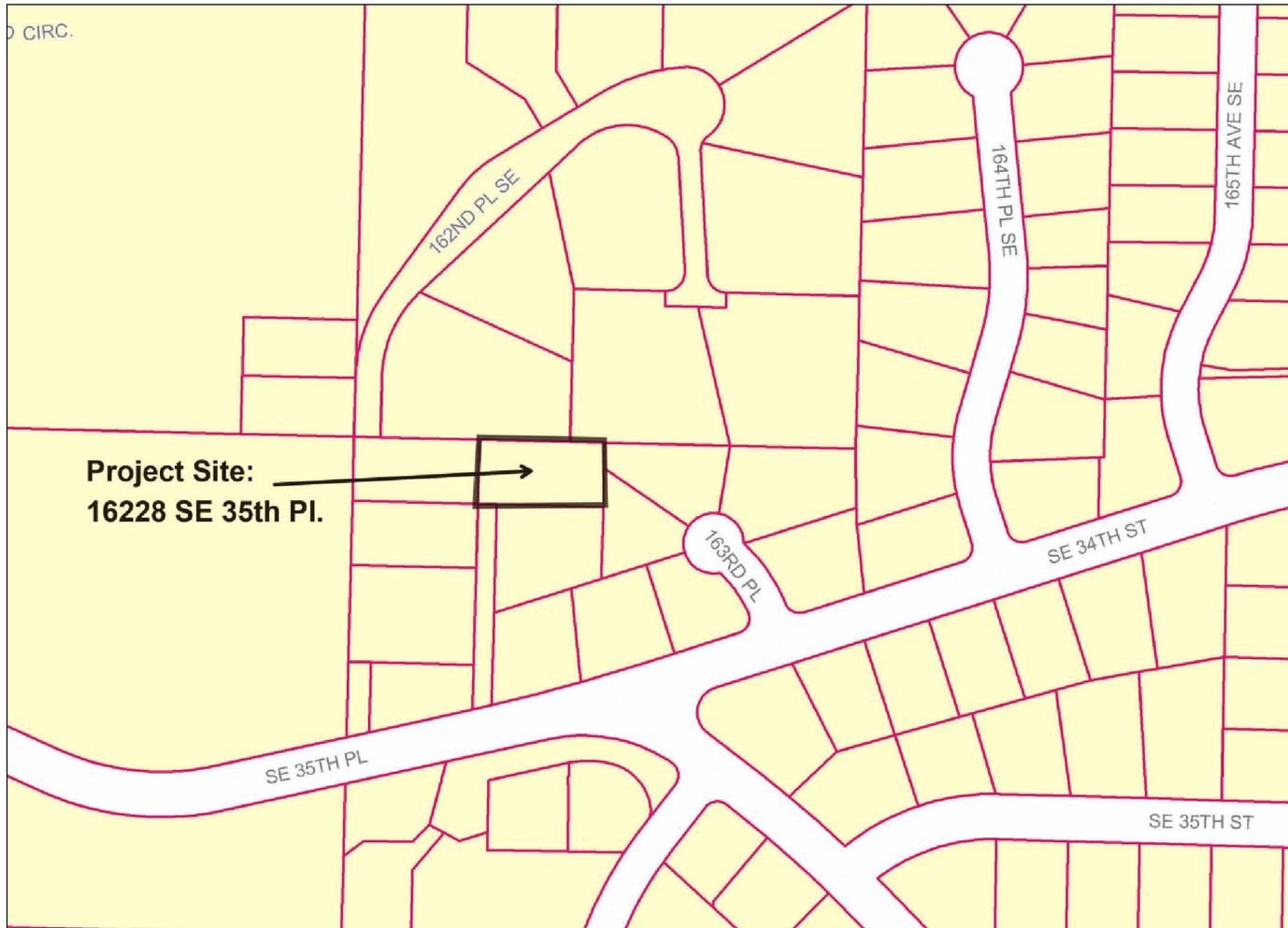

 Environmental Coordinator

12/15/11
 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

Szczepeniak Fence
File Number: 11-118692-LO





**City of Bellevue
Development Services Department
Land Use Staff Report**

Proposal Name: Szczepaniak Fence

Proposal Address: 16228 SE 35th Pl.

Proposal Description: Land Use review to allow a fence around a yard associated with a single-family residence to be partially in a stream buffer.

File Number: 11-118692-LO

Applicant: Witold Szczepaniak, Property Owners

Decisions Included Critical Areas Land Use Permit
(Process II. 20.30P)

Planner: Reilly Pittman, Land Use Planner

**State Environmental Policy Act
Threshold Determination:**

Determination of Non-Significance

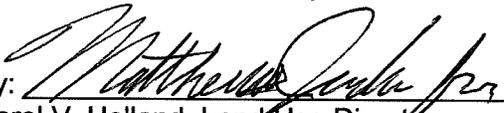


Carol V. Helland, Environmental Coordinator
Development Services Department

Director's Decision:

Approval with Conditions

Michael A. Brennan, Director
Development Services Department

By: 

Carol V. Helland, Land Use Director

Application Date: July 7, 2011
Notice of Application Date: November 10, 2011
Decision Publication Date: December 1, 2011
Project Appeal Deadline: December 15, 2011

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.

CONTENTS

I.	Proposal Description.....	Pg 3
II.	Site Description, Zoning & Land Use Context.....	Pg 3-5
III.	Consistency with Land Use Code Requirements.....	Pg 5-6
IV.	Public Notice & Comment.....	Pg 6
V.	Summary of Technical Review.....	Pg 7
VI.	State Environmental Policy Act (SEPA).....	Pg 6-7
VII.	Changes to Proposal Due to Staff Review.....	Pg 7
VIII.	Decision Criteria.....	Pg 7-9
IX.	Conclusion and Decision.....	Pg 9
X.	Conditions of Approval.....	Pg 9-10

Attachments

1. Biologist Letter, Authorization Letter, Plans, SEPA Checklist, application materials – In File

I. Proposal Description

The applicant constructed a fence around the yard associated with a single-family residence. No permit is normally required for fence construction unless the fence is over 8 feet tall. However, a portion of the fence is located within a stream buffer which resulted in a code enforcement action on the property (09-124570-EA). The approval of a Critical Areas Land Use Permit is required for the fence to remain and reduce the stream buffer and setback to the property line. An area of invasive vegetation is proposed to be removed and replanted with native plants.

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

A. Site Description

The project site is located at 16228 SE 35th Pl. in the Eastgate subarea of the City. Other developed single-family zoned properties are located to the north, south, east, and west. The property obtains vehicle access from a private road which accesses SE 35th Pl. The stream is located off-site to the northeast of the property and the buffer from the stream crosses the northeast corner of the site. The stream is unmapped and is entirely surrounded by multi-family and single-family residential development. The vegetation in this brief riparian corridor does not connect to any larger vegetated areas. The stream drainage is collected upland of the site which is piped into drains that outfall into a wetland north of 162nd Pl SE. The water then enters another drain system that flows southeast for approximately 330 feet where it outfalls and forms the stream which is the subject of this application. The stream then reenters the public storm drainage system and via further open and closed segments eventually connects to Vasa Creek. The stream segment associated with this application is determined to be a Type-N stream. See Figure 1 for existing site condition.

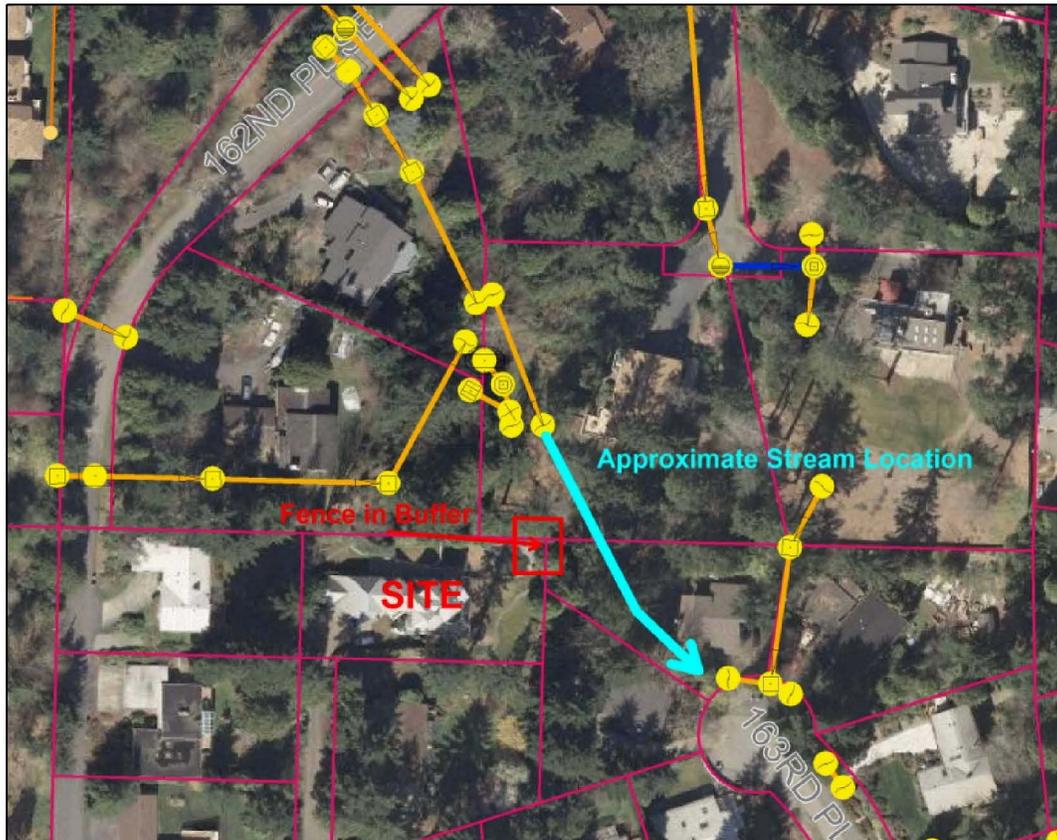
B. Zoning

The property is zoned R-5, single-family residential which allows the construction of fences that are 8 feet or less without a permit.

C. Land Use Context

The property has a Comprehensive plan Land Use Designation of SF-H (Single Family High Density). Construction of a wall is consistent with this residential land use.

Figure 1



D. Critical Areas On-Site and Regulations

i. Streams and Riparian Areas

Most of the elements necessary for a healthy aquatic environment rely on processes sustained by dynamic interaction between the stream and the adjacent riparian area (Naiman et al., 1992). Riparian vegetation in floodplains and along stream banks provides a buffer to help mitigate the impacts of urbanization (Finkenbine et al., 2000 in Bolton and Shellberg, 2001). Riparian areas support healthy stream conditions.

Riparian vegetation, particularly forested riparian areas, affect water temperature by providing shade to reduce solar exposure and regulate high ambient air temperatures, slowing or preventing increases in water temperature (Brazier and Brown, 1973; Corbett and Lynch, 1985).

Upland and wetland riparian areas retain sediments, nutrients, pesticides, pathogens, and other pollutants that may be present in runoff, protecting water quality in streams (Ecology, 2001; City of Portland 2001). The roots of riparian plants also hold soil and prevent erosion and sedimentation that may affect spawning success or other behaviors, such as feeding.

Both upland and wetland riparian areas reduce the effects of flood flows. Riparian

areas and wetlands reduce and desynchronize peak crests and flow rates of floods (Novitzki, 1979; Verry and Boelter, 1979 in Mitsch and Gosselink, 1993). Upland and wetland areas can infiltrate floodflows, which in turn, are released to the stream as baseflow

Stream riparian areas, or buffers, can be a significant factor in determining the quality of wildlife habitat. For example, buffers comprised of native vegetation with multi- canopy structure, snags, and down logs provide habitat for the greatest range of wildlife species (McMillan, 2000). Vegetated riparian areas also provide a source of large woody debris that helps create and maintain diverse in-stream habitat, as well as create woody debris jams that store sediments and moderate flood velocities.

Sparsely vegetated or vegetated buffers with non-native species may not perform the needed functions of stream buffers. In cases where the buffer is not well vegetated, it is necessary to either increase the buffer width or require that the standard buffer width be restored or revegetated (May 2003). Until the newly planted buffer is established the near term goals for buffer functions may not be attained.

Riparian areas often have shallow groundwater tables, as well as areas where groundwater and surface waters interact. Groundwater flows out of riparian wetlands, seeps, and springs to support stream baseflows. Surface water that flows into riparian areas during floods or as direct precipitation infiltrates into groundwater in riparian areas and is stored for later discharge to the stream (Ecology, 2001; City of Portland, 2001).

III. Consistency with Land Use Code Requirements:

A. Zoning District Dimensional Requirements:

The fence complies with the R-5 zoning dimensional requirements found in LUC 20.20.010. There is no height restriction on the fence where it is located in the rear yard.

B. Critical Areas Requirements LUC 20.25H:

The City of Bellevue Land Use Code Critical Areas Overlay District (LUC 20.25H) establishes performance standards and procedures that apply to development on any site which contains in whole or in part any portion designated as critical area, critical area buffer or structure setback from a critical area or buffer. The project is subject to the performance standards found below.

i. Consistency With LUC 20.25H.080

Development on sites within a stream buffer shall incorporate the following performance standards in design of the development, as applicable:

- 1. Lights shall be directed away from the stream.**
- 2. Activity that generates noise such as parking lots, generators, and residential uses, shall be located away from the stream, or any noise shall be minimized through use of design and insulation techniques.**

3. Toxic runoff from new impervious area shall be routed away from the stream.
4. Treated water may be allowed to enter the stream critical area buffer.
5. The outer edge of the stream critical area buffer shall be planted with dense vegetation to limit pet or human use.
6. Use of pesticides, insecticides and fertilizers within 150 feet of the edge of the stream buffer shall be in accordance with the City of Bellevue's "Environmental Best Management Practices," now or as hereafter amended.

No runoff, treated water, or toxic chemicals will be created by the fence. The fence location was reviewed by a biologist that found the "presence of the fence does not negatively impact wildlife or stream functions" (Biologist Letter, Pg. 4). The open stream segment is surrounded by residential development and the biologist found that larger animals have been generally "extirpated" from the area (Pg. 3). If larger animals did use this corridor they would most likely keep to the more forested locations to be as far away as possible from yards and houses. This vegetated stream corridor has potential to provide habitat to bird species and small mammals which the biologist finds "will not be adversely impacted" by the fence (Pg. 3). A small area of invasive plants will be removed near the fence and some native trees and shrubs will be installed to improve vegetation on the outside of the fence. The fence itself will also "have some beneficial effects in that it would reduce both light and noise emanating from the subject parcel from penetrating into the forested corridor. It would also reduce human and pet intrusions, which are likely the most significant on-going impact occurring at present" (Pg. 3).

IV. Public Notice and Comment

Application Date:	July 7, 2011
Public Notice (500 feet):	November 10, 2011
Minimum Comment Period:	November 24, 2011

The project was deemed complete on November 4, 2011 and the Notice of Application for this project was published in the City of Bellevue weekly permit bulletin on November 10, 2011. It was mailed to property owners within 500 feet of the project site. Comments were received from the Muckleshoot Indian Tribe concerning the location of the planting and the removal of ivy and bamboo. The applicant has permission from an adjacent property owner to install and maintain mitigation plants at the location specified which is on adjacent property, to the north. The ivy and bamboo were removed by the fence construction and from where the new plants will be installed.

V. Summary of Technical Reviews

A. 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. The Clearing and Grading staff found no issues with the proposed development and has approved the application.

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, Air, and Water

Fence construction results in some temporary earth digging to install the posts but is so minimal that no permit for fence construction is normally required. The fence is surrounded by existing vegetation which limited potential erosion and it was constructed in the dry summer months.

B. Plants and Animals

No significant trees or other vegetation was removed and no impacts to species of local importance are anticipated. Blackberry and other invasive plants are to be removed and the area replanted with native plants.

D. Noise

The only noise anticipated as a result of this work will be from construction equipment. Any noise is regulated by Chapter 9.18 BCC. See Conditions of Approval in Section X of this report.

VII. Changes to Proposal Due to Staff Review

Staff requested information to make the application a complete application so that review could start, which the applicant provided.

VIII. Decision Criteria

A. 20.25H.255.B Critical Areas Report Decision Criteria

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;**

The proposed planting will remove an area of invasive blackberry and non-native bamboo and replant with native trees and shrubs. Per page 3 of the submitted biologist letter the existing buffer and setback has degraded functions and values which are being improved.

- 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;**

The fence will protect the stream buffer and riparian corridor from spill-over noise and light glare. The proposed planting removes an area of invasive plants and replaces the area with native plants.

- 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;**

Stormwater quality will not be impacted by the fence as no new impervious surface is created.

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

The property owner has already purchased and installed the required planting which will be inspected by staff under the required clearing and grading permit. See 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**

The modifications and performance measures in this proposal are not detrimental to the functions and values of the stream buffer. The area has already been disturbed by prior clearing and development and consists of ornamental landscaping and lawn. The fence will shield the stream corridor from impacts from this residence.

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

Fences are compatible with residential development.

B. 20.30P.140 Critical Area Land Use Permit Decision Criteria – Decision Criteria

The Director may approve, or approve with modifications an application for a Critical Area Land Use Permit if:

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

The applicant must obtain a clearing and grading permit for work in a critical area. See 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.**

The fence construction utilized the best available techniques.

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

As discussed in Section III of this report, the applicable performance standards of LUC Section 20.25H are being met.

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

The proposed fence will not impact public facilities.

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

The restoration planting is proposed to be consistent with the City's planting templates for streams. The planting will be inspected as part of the required clearing and grading permit. See Conditions of Approval in Section X of this report.

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

As discussed in 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 proposal, including Land Use Code consistency, SEPA, City Code and Standard compliance reviews, the Director of the Development Services Department does hereby **approve with conditions** the modification of the stream buffer and structure setback to the property line and the placement of a fence on the property line. **Approval of this Critical Areas Land Use Permit does not constitute a permit for construction. A clear and grade permit, and/or other permit is required and all plans are subject to review for compliance with applicable City of Bellevue codes and standards.**

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 building 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	Janney Gwo, 425-452-6190
Land Use Code- BCC Title 20	Reilly Pittman, 425-452-4350
Noise Control- BCC 9.18	Reilly Pittman, 425-452-2973

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

authority referenced:

1. **Clearing and Grading Permit:** Approval of this Critical Areas Land Use Permit does not constitute an approval of a development permit. Application for a clearing and grading permit must be submitted and approved. Plans submitted as part of either permit application shall be consistent with the activity permitted under this approval.

Authority: Land Use Code 20.30P.140
Reviewer: Reilly Pittman, Development Services Department

2. **Land Use Inspection:** Following installation of planting the applicant shall contact Land Use staff to inspect the planting area prior to final building inspection. Staff will need to find that the plants are in a healthy and growing condition. Land Use inspection is also required to release the maintenance surety at the end of the 3-year monitoring period. Release of the maintenance surety is contingent upon successful monitoring and maintenance.

Authority: Land Use Code 20.30P.140
Reviewer: Reilly Pittman, Development Services Department

3. **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: Reilly Pittman, Development Services Department