# City of Bellevue
**Parks & Community Services Department**

# MEMORANDUM

Date: November 1, 2010

To: Parks & Community Services Board

From: Terry Smith, Assistant Director
Parks & Community Services

Subject: Letter from Terry Foulon

Following this memo you will see a letter from Terry Foulon, addressed to the Park Board, and an attachment letter which she gave to the City Council recently.

Ms. Foulon also included a number of addenda to her letter, which we will keep on hand in the Parks Department office. You are welcome to read these additional attachments.

As Ms. Foulon states in her letter, Mayor Davidson asked the City Manager to respond to this issue. Staff are working on the response.

Oct. 28, 2010

Ms. Faith Roland, Chair

Ms. Lynne Robinson, Vice-Chair

Ms. Kathy George, Ms. Sherry Grindeland, Mr. Matt LaPine, Mr. John Stokes, Mr. Mark Van Hollebeke

Parks and Community Services Board

City of Bellevue

450 110th Ave. N.E./P.O. Box 90012

Bellevue, WA 98009-9012

Re: WSDOT Project Will Present a Potential Public Health Risk for Swimmers at **NEWCASTLE BEACH PARK**

Dear Mr. Roland and Board Members,

I addressed the board last summer concerning a project between the City of Bellevue and WSDOT known as the Newcastle Beach Park Storm water Initiative. It has to do draining storm water from a section of I-405 improved as a part of the I-405 Bellevue to Renton Project, which is being done in stages. I've recently learned that the agreements for this project are pending, after several years of negotiation, and are about to be signed. This project will create an unnecessary health risk to users of the city's singly most used swim beach, according to The Watershed Company, in a report prepared for the city's Parks Department. It will have other negative impacts as well.

I addressed the City Council earlier this week. I've sent the attached letters. (See "WSDOT Project to Use Exceptions to Bellevue Code to Cross Basins and Drain I-405 Water Without Detention to Small Stream in Newcastle Beach Park, Oct. 15, 2010, and its Addendum, Oct. 20, 2010, attached; the attachments to these letters provide the same documentation for the

factual data mentioned in this letter.) Mayor Davidson asked that the City Manager to respond to the issues I have raised. I am told staff is working on a response.

I hope the commission will avail itself of the information compiled here, which I was able to obtain over several months of public information requests and meetings with city and WSDOT staff. I hope the commission will find this information helpful should it elect to advise the council on this subject.

These pending agreements are known as "the Storm water Management Agreement for I-405 Water Resource Initiative at Newcastle Beach Park" and "the Water Resource Initiative at Newcastle Beach Park Storm Water Use Permit".

The project was initially described to council by WSDOT as an "innovative" solution for helping solve flooding and water quality problems in Coal Creek, which is in the Coal Creek Basin. The plan would involve diverting both WSDOT storm water and city storm water, and ground water from a new under drain system, to the small stream in Newcastle Beach Park, in the Lakehurst Basin. In other words, placing unwanted, degraded water historic to the Coal Creek Basin in the small stream in the park, increasing the amount of water in the small stream by ten-fold.

The small stream in the park (un-named; known technically as Newcastle Beach Park Stream or LW-9.8, with its tributary, LW-9.75, both of which originate east of I-405 but exist almost entirely within the park) would "benefit", according to the WSDOT plan. It would "benefit" from ten times the amount of water currently in the stream, released into the stream without detention, as required by code for release of storm water into a stream, because of the "fish-friendly habitat" that would be created with the addition of water and mitigation to the stream, provided by WSDOT. Other park benefits have been promised in the mitigation, including a new parking lot, with room for additional cars, a new bridge, and work to the stream in the park to accommodate the additional water. Currently, there is no "outlet" to the lake from this stream for up to half a year, when the lake level is low and the beach sand is higher than the stream, preventing it from reaching the lake.

Among other benefits: city Utilities was promised the benefit of adding city water to the state system; the savings to taxpayers would be the difference between $4 million for the "innovative" solution, compared to $19 million for "conventional" storm water drainage, which would require detention and vaults before release into a stream, or, in the alternative, a "direct release" to the lake, which would require vaults only.

The Watershed report asserts the proposal would not solve the existing flooding problem in Coal Creek, " . . . nor is it likely that keeping the water in Coal Creek would aggravate flooding in Coal Creek." Meanwhile, the diverted water to the small stream in the park *would* impact the stream, and not likely in the manner suggested by WSDOT. Watershed contends no true cost

comparison of the alternatives was completed before the project was presented to the Bellevue Hearing Examiner for exceptions to Bellevue Code, which were granted.

Watershed contends (See "Draft Assessment of Proposed highway-Related Storm water Impacts: Newcastle Beach Park") the amount of water to be diverted from Coal Creek, in the Coal Creek Basin, to Newcastle Beach Park in the Lakehurst Basin is not enough to make an impact on the problems in Coal Creek – but *is* enough o negatively impact the small stream in the park and pose a potential threat to park users that otherwise would not be there.

Small streams are "inherently vulnerable" to storm water discharges, according to Watershed, and are " . . . the very resource that applicable city and state water quality control standards were meant to protect."

Watershed reports "innovative approaches provide new, or new combinations of ideas, whereas the proposed approach is largely a throwback to the methods used at a time when aquatic resources were less protected." In adds: "In this case, discharging undetained storm water from a major freeway system to a small stream might more usefully be termed 'outdated' or 'regressive' than innovative."

Its Watershed's opinion the plan would conduct a ten-fold increase in water to the park, but in a way that is " . . . quite the opposite of what fish could be expected to benefit from". Meanwhile, there are risks associated with the plan: erosion of the banks in the upper reach of the small stream, sedimentation in the lower reach, sediment contamination in stream sediments, **sediment contamination in beach sediments, contaminants in swimming area,** damage to park paths from flood flows, and others.

I've lived adjacent to the park, at its northwest corner, where it abuts the lake. Wind surfers utilize the park on the beach at the stream's outlet, which would require changes to remain open all year, and not just the part of the year when the lake is high. "Metals absorbed onto the organic matter and sediments could accumulate in the channel, at the mouth of the stream, and then once in the lake be carried northward to the swimming area," Watershed contends. "Over the long term, this could present a public health hazard that otherwise would not be present."

Watershed advises that if the project goes through, there should be monitoring at the beach for Nitrate, phosphorous, bromide, sulfate, cyanide, total suspended solids, pH, diesel and heavy oil organics, gasoline range organics, hydrocarbons, and metals, including: **lead, iron, zinc, cadmium, chromium, copper, nickel, manganese, magnesium and silver.**

The city's most singly used swim beach would be the only Bellevue swim beach that would need to be tested for these contaminants – which wouldn't *be* in the park without the exceptions to the City Code and with the storm water drained in the "conventional" manner.

The City Code would have *protected* swimmers, and other users of the park, and the natural resources of the park, including endangered species salmon in this critical use shoreline area, from these risks *had the exceptions not been granted – with the city's support.*

Joe O'Leary, in an email to other city staff, wrote: "With the amount of flow coming off the runoff road areas I have no doubt that there will be sediment and it will contain heavy metals."

Another concern for the park is the inundation of water already present in the park. This appears to have increased in the past couple years, likely due to the placement of WSDOT storm water blended with city storm water and ground water from a new under drain system into the small stream in the park *without detention* and without the agreements with the city signed. This was done in a part of the overall Bellevue to Renton Project known as the "South Bellevue Widening". Lead project engineer, confirmed, in writing, that new water has been placed in the small stream in the park, although she characterized it as a "small amount." She said none of the mitigation that was promised, and required by the Bellevue Hearing Examiner for the exceptions, was performed. WSDOT has not responded to questions regarding just "how much" new water exists in the small stream in the park. It is concerning that *any* new water is in the park without the promised mitigation because of the loss of a recommended "baseline" of measurement prior to the addition of the new storm water, so that the project can be tied to recommended performance standards. No *permits* were applied for to place new water in the stream, which is unexplained. Parks staff did not *know* new water had been placed in the stream, and city Utilities has denied that new water was placed in the stream as recently as last month. All of the water planned for placement in the small stream – from as far away as close to I-90 and Factoria – will not be placed in the stream until more funding becomes available to complete the overall Renton to Bellevue Project (of which the "South Bellevue Widening" was a part). It unknown if the new water will be treated as an "existing condition" when permitting takes place for the remaining parts of the overall project when funding is available, estimated to be within the next four years.

The inundation of the park that existed even before the addition of new water by WSDOT (sometime in late 2007 or 2008) is illustrated by the fact that there were only 1.2 acres of wetlands that existed in the park in 1986, when the park was developed. This included the "upper wetlands" and the "lower wetlands", both fed by the small stream in the park (Newcastle Beach Park Stream, or LW-9.8, joined by its tributary, LW-9.75). In 2006, there were 10.45 acres of wetlands.

The upper and lower wetlands have visibly increased beyond the acreage quoted in 2006, presumably owing to the placement of new water in the park.

In addition, there is widespread tree death and loss of canopy in both the upper and lower wetlands, and between the upper wetlands and the lake, including the area behind the children's play structure. There has been "ponding" and "perching" of water in this area, when it has never been there before. Photographs of this ponding and perching and of the downed trees have been provided to city Utilities and Parks staff. The erosion in the area of the lower wetlands is visible in pictures taken on the trail between April and October of this year. This past week, the trail was closed because of many downed trees. The Parks maintenance supervisor has confirmed the loss of trees. This past week, many trees were downed in the lower wetlands, requiring the closure of the park trail. It is well known that too much water makes trees susceptible to root rot and falling, with or without wind, although the wind from the south that buffets the park likely adds to the tree loss in the water inundated areas.

It would be highly advisable for commission members, if they have the time, to visit the park and walk the trail, also the wooded area between the upper wetlands (just east of the overflow parking lot), to the lake. I believe such a visit would be highly informative as to the conditions in the park due to the inundation of water in the loose, fine soils of the park.

The additional storm water planned for the park would take the small stream in the park from 2.2 cfs to 23 cfs.

This is concerning given the existing inundation and the history of inundation, which has seen the wetland area grow from a total of 1.2 acres to the 10.45 acres surveyed in 2006, and visibly more now. The park, at 28 acres, was originally one twenty-fourth of the overall park property. As of 2006, wetlands comprised a *third* of the park.

City records show the park was purchased in 1971, with Forward Thrust Funds, and part of the cost of the park property donated by the property owner at the time, Irene Havercamp Jones. The Forward Thrust Funds specified the use of the funds go for "public recreation". Ms. Jones specified her donation to the purchase of the park ($50,000) go for the same.

Unfortunately, a second trail and bridges planned for the park in the area east of the upper wetlands was not added, as planned, as part of the Phase Two development of the park. Now, with the inundation of water in the area of the upper wetlands, there is no place for a trail, similar to the trail south of the access road in the park.

Given the type funds the park property was purchased with, the allowed current inundation of the park with water, and potential for even more flooding, tree death, damage to trails and and potential for possible beach closures there likely already exists, or will exist, with the proposal

to divert storm water to the park, what is known as a "4f" or '6f' violation of federal law, which protects parks developed under Forward Thrust Funds for public recreation from being "converted' to "another use".

I hope commission members will read the attached letter and its addendum; I apologize in advance for the attached letter and its addendum containing much of the same information I have included here. However, it also contains information relating to landslides in the park, the flawed hearing process for the exceptions and information on other issues.

I appreciate the time involved being a commission member. I hope this letter, and the letters with attachments included, is helpful to your job. If I can be of further assistance, please let me know. Thank you for your time.

Sincerely,

Terry Foulon

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Oct. 15, 2010

Mayor Don Davidson

Bellevue City Council

City of Bellevue

450 110th Ave. N.E./P.O. Box 90012

Bellevue, WA 98009-9012

**RE:** WSDOT Project to Use Exceptions to Bellevue Code to Cross Basins and Drain I-405 Water Without Detention to Small Stream in **NEWCASTLE BEACH PARK**

Dear Mayor Davidson and Council Members,

This letter addresses the pending agreements between city staff and WSDOT that will divert new WSDOT storm water from I-405 improvements away from the Coal Creek, in the Coal Creek Basin, to the stream in Newcastle Beach Park, in the Lakehurst Basin.

These agreements are a departure in policy and utilize exceptions granted by the Bellevue Hearing Examiner to place this water in the stream in the park without the detention required by state law and Bellevue Code.

This poses a potential risk to swimmers, constituting an unnecessary public health hazard at the city's singly most utilized swimming beach. It poses an *additional* unnecessary risk to a scarce environmental resource: undeveloped shoreline. A troubling precedent will be set for a "double standard" when it comes to compliance with state law and city storm water code.

Parks has had serious concerns about the agreements, which have been negotiated for several years with WSDOT -- in fact, so much concern that The Watershed Company, the well respected environmental consultant retained by the city for its Draft Shoreline Analysis Report, was retained by Parks to review the flawed and incomplete information, including science, provided to the Bellevue Hearing Examiner for the exemptions.

I live adjacent to the park and became aware of this project, and the serious problems associated with it, while researching a problem that appears to be indirectly tied to the issues concerning the park. This letter is not about that problem. I have taken my concerns for this proposed project to the city, to WSDOT, and to the Environmental Services Commission at the city, and the Parks Commission. I recently became aware, through public information requests, that the agreements in question are about to be signed. At this point, I believe council should intervene to review this project, take control of it, and, hopefully, find a better solution for draining water from the I-405 improvements than any that would subject users of the park, and swimmers at the beach, and a scarce natural resource, to unnecessary risk. There is a lot of information here, but I hope council will take the time to read through the information I have gathered on this serious subject and act.

The pending agreements are known as:

THE STORMWATER MANAGEMENT AGREEMENT FOR I-405 WATER RESOURCE INITIATIVE AT NEWCASTLE BEACH PARK

and

THE WATER RESOURCE INITIATIVE AT NEWCASTLE BEACH PARK STORM WATER USE PERMIT AND MAINTENACE PLAN

The idea for these agreements came before the council in 2006. Council gave support for the general idea of the "Newcastle Beach Park Storm Water Initiative" as presented by WSDOT and city staff; city staff took over from there.

The project was presented as "innovative". It would help solve flooding and water quality problems in Coal Creek. This would be accomplished with diverting new WSDOT I-405 storm water *away* from Coal Creek, in the Coal Creek Basin, to the small stream in Newcastle Beach Park, in the Lakehurst Basin. The stream would *benefit,* council was told from ten times the additional water which would be released *without* detention, which is against both state law and Bellevue Code. The *savings* to the state over the "conventional" (and lawful) method of retention before discharge to a stream would be huge; $4 million versus $19 million. In addition, the storm water diverted to the small stream in Newcastle Beach Park would contain some city storm water – a benefit to the city – thus comprising "blended storm water". Council, and later the Bellevue Hearing Examiner, was told this "innovative" approach would provide additional water to a stream that could "use" it; a fish-friendly habitat would result in the small stream in the park, known to have no fish, and other park benefits were promised as mitigation, for the use of the small stream by WSDOT.

The Watershed report done for Parks asserts the proposal would not solve the existing flooding problem in Coal Creek, " . . . nor is it likely that keeping the water in Coal Creek would aggravate flooding in Coal Creek." Meanwhile, the diverted water *would* affect the stream in Newcastle Beach Park, and not likely in the positive manner suggested by WSDOT. Watershed contends, and I have found in my own inquiry, no true cost comparison of other alternatives was ever completed to make the argument for the savings presented to council and others, including the Bellevue Hearing Examiner.

Watershed contends (See Draft Assessment of Proposed Highway-Related Stormwater Impacts: Newcastle Beach Park") the amount of water to be diverted from the Coal Creek Basin to Newcastle Beach Park in the Lakehurst Basin is not enough to make an impact on the problems in Coal Creek – but *is* enough to negatively impact the small stream in the park and pose a potential threat to park users that otherwise would not be there.

Small streams are "inherently vulnerable" to storm water discharges, according to Watershed, and are " . . . the very resource that applicable city and state water quantity control standards were meant to protect."

Watershed reports "Innovative approaches provide new, or new combinations of ideas, whereas the proposed approach is largely a throwback to the methods used at a time when aquatic resources were less protected." It adds: "In this case, discharging undetained storm water from a major freeway system to a small stream might more usefully be termed "outdated" or "regressive" than innovative."

The proposal would conduct a ten-fold increase in water to the park, but in a way that is " . . . quite the opposite of what fish could be expected to benefit from" according to Watershed, which notes. Watershed states: "It is our professional judgment that providing stream flows via detention and infiltration would provide far greater benefits to fish than the outdated approach proposed." Meanwhile, it identifies potential risks: erosion of the banks in the upper reach of the small stream, sedimentation in the lower reach, sediment contamination in stream sediments, **sediment contamination in beach sediments, contaminants in swimming area,** damage to park paths from flood flows, and others.

The new water would be partially treated, and the project, overall, may achieve lower pollutant concentrations – but that would be due to *dilution.* Overall pollutant loadings would *increase,* which WSDOT admits (See "Conceptual Wetland, Stream, and Drainage Improvement Plan" by WSDOT). The outlet of the stream in the park is south of the park's swim beach. Historic photos in the Watershed report illustrate the off-shore sediment moves north. "Metals absorbed onto organic matter and sediments could accumulate in the channel, at the mouth of the stream, and then once in the lake be carried northward to the swimming area," Watershed projects.

"Over the long-term, this could present a public health hazard that otherwise would not be present."

It stands to reason that one of the reasons the proposal has gone back and forth between the city and WSDOT for several years is the concern Parks has for the water problems that already *exist* in the park.

There is evidence of many recent dying trees (See photos) and loss of tree canopy. Parks Maintenance has confirmed the loss of trees. There has been recent erosion of the park trail just between April, 2010 and October, 2010 (See photos) due to wind and wave action on the west side of the trail and the opposing force of an inundation of water on its eastern side. The blow down that occurred in the 2006 storm was made worse by the inundation of water in the park, which makes trees vulnerable to wind.

The magnitude of this inundation, which some would call "flooding", is revealed by the loss of land available for public recreation. Public recreation was the purpose of the proposed park when purchased by Forward Thrust Funds in 1971. At the time the park was developed, only 1.2 acres of wetlands existed. These were the "upper wetlands" and the "lower wetlands", both part of the stream in the park, LW-9.8 and its tributary, LW-9.75, which start east of I-405 but exist almost entirely within the park. (See "Geotechnical Engineering Study Newcastle Beach Park," by Applied Geotechnology Inc., to Jones and Jones Architects, 1986; also Park Master Plan, Jones and Jones, 1987, also "Findings and Recommendation of the Hearing Examiner for the City of Bellevue", File No. HE-D 86-14).

These 1.2. acres of surveyed wetlands have increased to a toal of *10.45 acres* today, as of 2006. (See WSDOT "Conceptual Wetland, Stream and Drainage Improvement Plan).

WSDOT, in its report, states that the overflow parking lot has "encroached' on the upper wetland area.

In *fact,* the upper wetland, which has increased from under an acre in size, originally, has *encroached, at the cited 3.95 acres, on the overflow parking lot.*

Lacey Madche of the city has written that the upper wetlands have "migrated", adding that this is something that wetlands "do".

In *fact,* the upper wetlands continue to occupy its original footprint from more than twenty years ago *in addition to increasing to encompass the additional surrounding acreage.* (See Master Plan, Jones and Jones, 1987, Schematic Design Newcastle Beach Park Existing Conditions, 1986 and compare with WSDOT illustrations in "Conceptual Wetland, Stream and

Drainage Improvement Plan, and WSDOT color illustration, "Existing Drainage and Proposed Drainage", attached).

Bellevue staff, including Don McQuilliams, of Utilities, has expressed concern for private property in Newport Shores, to the north of the park that is in close proximity to the spreading upper wetland and is "lower" than the spreading water in the inundated upper wetlands.

Bellevue Utilities nonetheless *supported* the addition of a ten-fold increase in new water to the small stream in the park with the WSDOT project, which, in addition, now will include not only city water but ground water from a new, extensive WSDOT under drain along the improved sections of I-405.

Bellevue Utilities is aware that the stream in the park does not even *drain, at current, to the lake year round* (See City of Bellevue website, Lakehurst Area, Lake Washington Watershed".

The small stream in the park has drained the same amount of water over the years, averaging 2.2 cfs (See "Geotechnical Engineering Study Newcastle Beach Park, 1986, and "Conceptual Wetland, Stream and Drainage Improvement Plan") so there is some other reason the park has become inundated over the years, from the 1.2 acres of wetlands in the park in 1986 to 10.45 acres in 2006. The 10.45 acres identified as wetlands in 2006 represent *one-third of the 28.8 acre park. In 1986, wetlands accounted for only one-twenty-fourth of park land.*

The difference in park property available for the use for which the park was established and federal funds spent – *public recreation* – has been seriously diminished.

A second walking trail with bridges for the north half of the park, east of the overflow parking area, similar to the walking trail in the south half of the park was to have been constructed for park users in "Phase Two" of park construction, within a defined time line (See "Findings and Recommendations of the Hearing Examiner for the City of Bellevue, File No. HE-D 86-14). Now, with the inundation of water in the upper wetland, there is no place for that second trail to be built.

The support for the plan by Bellevue Utilities, which was provided to the Bellevue Hearing Examiner for the exceptions (See "Memorandum, Utility Code Exception Request by WSDOT Findings of Fact, Denny Vidmar", 2006) does not reveal the extensive amount of new water to be placed in the park. Vidmar wrote: "A small amount of drainage is diverted from Coal creek, where flooding problems have historically occurred." The full impact of placing ten times the amount of water presently in the small stream *is* made clear by Watershed's report, which was *not* provided to the Hearing Examiner. It states: ". . . the proposal would increase the paved contributing area to Newcastle Beach Park's basin by nearly 10-fold, from 2.7 acres to 23.6 acres."

Watershed calls attention to the WSDOT assumption that if even *treated* storm water will contribute to water quality problems in Coal Creek, it follows that the water quality of the runoff is poor and detrimental. "It is not explained, nor is it inherently clear, how such storm water, which degrades the quality of its receiving water, would contribute positive to fish habitat in Newcastle Beach Park."

The Watershed report goes on to state: "The implication is that Coal Creek's water quality would be improved to the detriment and at the expense of water quality in Newcastle Beach Park. Without significant mitigation and compensation, it is unclear why Bellevue Parks Department, acting as stewards of the park for the city residents, should be in favor of this. Furthermore, transfer of runoff between basins is generally to be avoided."

In addition to these concerns for the project, there are others that require the council's attention:

- Past *landslides* have occurred in the very area of the park where increased storm water would enter the (See "Geotechnical Engineering Study Newcastle Beach Park", Applied Geotechnology, Inc. This was not presented to the Bellevue Hearing Examiner at the time the exceptions were granted. A map of these existing slide scarps is attached (See "Vicinity Map", Applied Geotechnology, Inc.). Council should compare the locations of these slides to the location of the small stream in the park, where it enters the park. (See "Existing Drainage and Proposed Drainage" and other WSDOT maps, attached).
- The potential for a *4f or 6f conversion of park property* has been a concern of both WSDOT and city staff, particularly after the original plan for giving WSDOT an "easement" in the park met with NPS disapproval. That the new water would potentially *add* to the problems in the park, and loss of park land for recreational opportunity already due to *inundation* of water already in the park, which already includes WSDOT water and city water, encroaching on the park uses, raises additional 4f and 6f issues.
- *Perceived legal issues* which may no longer exist or perhaps were never relevant appear to have been the instigation of the project. The 2004 Settlement with Newport Shores Yacht Club and William Weinstein required the parties to work cooperatively and in good faith to have WSDOT allocate monies to improve storm water detention and sediment capture capacity at the I-405/Coal Creek Parkway exchange as it impacts Coal Creek. Apparently, a letter sent by city staff to WSDOT initiated the discussion for an "innovative" solution to the I-405 storm water. An email from Brad Miyake of the City of Bellevue to other city staff in 2004 (See attached) states: "WSDOT has three concerns about working with us: 1.) the Coal Creek lawsuit. WSDOT does not want to assume liability for ongoing problems prior to their involvement. 2.) Community Issues. WSDOT is aware there is intense citizen interest in public works projects within the Coal Creek

area." Scott Taylor of the City of Bellevue wrote in email to staff in 2004 (See attached) that Bellevue's support for the WSDOT idea of "direct discharge" of state storm water to Lake Washington, which would bypass Coal Creek " . . . could be viewed as the city watching out for flood prone residents in NW (PR bennie)." He wrote about a perception in Newport Shores that " . . . more water is being dumped on them. Given the current litigation, this is a biggie." During the most recent litigation between the city and Newport Shores and Mr. Weinstein the subject of the proposal to divert the new I-405 WSDOT storm water to Newcastle Beach Park does not appear to have been raised.

- *Benefits to the Bellevue system* may or not have have influenced Utilities support for the project, but if it was a determining factor, it likely should have been disclosed to the Bellevue Hearing Examiner. An offer by WSDOT for the city to add its own water to the project was offered by David Masters of HNTB, a contractor to WSDOT. He wrote Scott Taylor in 2004: "Would be happy to size wq facility appropriate to handle some local flows also, if that would help."
- The lack of *cost comparisons* and *consideration of alternative conveyance* is missing from the process. Scott Taylor asked David Masters for cost comparisons in email in 2004 and got this answer: "No good avoided cost info for comparison at the moment. *Vault* only solutions previously estimated were spendy but unrealistic, so I doubt they hold much meaning. We have some prelim engineering on bypass and direct discharge, but not enough detail for a meaningful estimate. Both bypass and direct discharge cheaper than vaults by a fair amount. Direct discharge still has some significant costs – conveyance system, water quality treatment facilities, bridge needed for ped trail to get across wq facilities, and drainage improvements in park." Watershed reports: "The cost of direct lake discharge versus detention has not been fully explored. A tightline discharge to the lake, providing actual direct discharge would still cost less than the $19 million cost of providing conventional detention. Other alternatives for truly direct discharge also exist. After all mitigation is completed, other options might be less expensive than the proposed option, yet provide comparable or improved ecological benefit." That said, options the "direct discharge" Watershed offers *through the park* (piped, not in the stream, for direct discharge in the lake) may still, admittedly have the potential for pollutants to reach the beach. I would offer it has, by application of the same science, the potential to reach swim beaches north of the park, once again placing pollutants in a location where, except for the diversion of water from the Coal Creek Basin, they otherwise would not be. It is worth noting there *are* no swimming beaches at the mouth of Coal Creek, or even north of the mouth, including at the Newport Shores Yacht Club marina property or north of it. No swim beaches exist until *beyond* the entrance to the Mercer Slough. Watershed offers a solution never considered by WSDOT. One of these involves placing the water in Newcastle Beach Park, but in a

"dispersed discharge through enhanced, forested, lakeshore wetlands to minimize pollutant impacts on public beach areas or the relatively natural lake shoreline in the park." Watershed wrote: "it is unclear whether sufficient modeling of the discharge to Coal Creek has been done to determine if releasing undetained water to Coal Creek would be feasible, but it may be another option to explore. If direct discharge to Coal Creek would not increase flood levels, then it may be a better option, with less ecological impact, than discharging directly to the creek at Newcastle Beach Park."

- The *precedent* that would be established by the project creates a potential for a "double standard" to be seen between state agencies: " . . . there would appear to be a double standard, with the regulations of one state agency (Ecology) not being enforced with respect to another state agency (WSDOT). The appearance of a double standard, even if there is not actual double standard, could have negative effects on overall storm water management compliance." Watershed states: "A lack of detention is best justified when treated storm water is discharged to the largest of waterbodies (Puget Sound, Lake Washington, the Columbia River, etc.), not the smallest (Newcastle Beach Park Cree), and all other developers are held to that standard." City staff appears to have had concerns about precedent. Kit Paulsen of the city wrote to other staff: "I would like Joy and Scott to weigh in on this, too, as this is a big change from the way we usually require WSDOT to manage storm water. This should be considered a PILOT project that allows them to release water with no detention to a Bellevue stream. This is a big code and policy change that should be taken lightly." Kim Becklund used these words in a 2006 email: "This is new territory since the Utility code for which we're seeking the exemption has never been tested." Some staff seem concerned with what the city has *given away* in the project, including compensation from WSDOT for the savings provided while the city has increased risk and liability. Joe O'Leary of Utilities wrote in a 2007 email: "If our elected officials were cognizant of these facts I think they would have a difficult time accepting the terms of the WSDOT proposal."

One of the greatest concerns I have about the project, and believe others would have, were they aware of it, is the appearance that the project is already *underway*. The project appears to have already been instituted, in *part, without any signed agreement between the city and WSDOT first, without permitting and without the promised mitigation for the project that was a key piece of the initiative for gaining Bellevue's support and obtaining the exceptions from the Bellevue Hearing Examiner* with the recent improvements constructed on I-405 in the northbound lanes between 112th Ave. S.E. to Coal Creek Parkway, between 2007 and 2009. The work on this section, which is a part of the overall Bellevue to Renton Project, known as the South Bellevue Widening Project, is *complete*. It is only the work on the southbound lanes in

the same area that has *not* been done, pending funding. *All* of the Renton to Bellevue Project is part of a "Master Plan" of improvements addressed in the I-405 Corridor program EIS.

Many of the improvements, including additional impervious surfaces and the new under drain, and new connections to city water to replace old connections, has been done in the very area planned to be drained to the small stream in Newcastle Beach Park.

Bill Jordan of WSDOT appears to have confused the issue when he wrote to the city in Nov., 2008 (See attached) that WSDOT did not have the funding to construct the I-405, SR 169 to I-90 Renton to Bellevue Project. This *ignored* that work on the portion of the project between 112th Ave. S.E. and Coal Creek Parkway *which was one of the sections that would require the storm water discharge to the stream in Newcastle Beach Park* was underway at the time.

The "new" work, in the northbound lanes to drain I-405 storm water blended with city water and ground water in a new under drain system that never existed before was "joined" to the "old" culverts containing the waters of the stream of in Newcastle Beach Park (LW-9.8 and its tributary, LW-9.75) by fitting the new pipes the old culverts with sleeves, according to Alan Black of HNTB, a contractor for WSDOT, in a meeting with Mr. Black and Seema Javeri, lead engineer for the project, at Bellevue WSDOT offices.

The southbound, or "old" parts will be replaced when funding becomes available for the remaining portions of the Renton to Bellevue Project. Seema Javeri, lead project engineer for the South Bellevue Widening Project, has confirmed in writing that additional new water, which she characterized as a small amount, was added to the stream Newcastle Beach Park.

This raises serious concerns because all WSDOT projects that affect existing roadway must bring the existing roadway up to current state law. This implies the exceptions granted by Bellevue were understood to be available to WSDOT and, despite no signed agreements in place at the time, and no mitigation provided in advance of the new water in the park (promised in the exception process), the project went forward.

Additionally concerning is the absence of *permitting* for the part of the project that was completed.

Ms. Madche denies any work was done that affected the park, but this begs the question: where, then, was the new, additional storm water from the additional impervious surfaces placed?

Of great concern to all should be the *loss of a baseline* obtained from studies *prior* to implementation of a project of this magnitude. Watershed presented a list of "Specific Studies that should be implemented" *prior* to implementation of the project, including: Fish Use

Survey, Water and Sediment Quality Analysis, Comprehensive Habitat and Geomorphic Assessment, Large Woody Debris Monitoring, Comprehensive Tree Survey, Hydroperiod Monitoring, and Park Paths, Watershed advised that an "enhanced treatment design for review" be developed and that benefits of the project should be tied to performance standards. With I-405 water, city water and new ground water already *in* the small stream in the park, it's unknown how this monitoring will be affected. It is unknown if the new water will be treated as an "existing condition" for permitting, thereby bypassing the need for the new water to have been considered in the permitting process. Bellevue Utilities, which has insisted there has been no new water from the new work completed and additional impervious surfaces created on I-405 between 112th Ave. S.E. and Coal Creek Parkway, including a new under drain that was not there before, should be required to answer: if the new, additional water is not in the park, *where is it? Coal Creek?* Also, Utilities must be made to explain where the permitting for this project is. Were the exceptions to the Bellevue Code employed without the necessary mitigation promised as a condition of the exceptions? Or, conversely, is the water being retained? *If the water is not being retained, and is not a "direct discharge" to the lake, and it not making use of the exceptions obtained, it would appear to be in violation of both state law and city code.*

It should be noted, before closing that Watershed *does* support the project, but with qualifications: "Overall, we believe that an innovative approach to dealing with runoff from I-405 using the Newcastle Beach Park stream to convey water indirectly to lake Washington could work. Such an approach, if properly implemented, could save the WSDOT and the taxpayers a significant amount of money while at the same time providing a net benefit to the However, we also believe that the options for providing storm water conveyance to the lake in a *truly* direct manner have not yet been adequately explored or considered, and that the cost savings and park benefits may be comparable."

As a resident of Bellevue, a resident of Newport Shores who lives adjacent to the park (I do not live in the vicinity of the inundation of the upper wetland) and user of the park, I can assure the council that most persons in Newport Shores would not elect to have Coal Creek improved *at the expense of* a potential threat to users of the park, or the scarce natural resource undeveloped park shoreline provides.

I can *guarantee* users of the park would likely *not* be in favor of any plan to obtain *exceptions from state law and City Code* to cross basins, when the practiced of crossing basins is to be discouraged, to place unwanted waters from another basin in the small stream in Newcastle Beach park, *delivering* to Newcastle Beach Park, and it users, the potential of a health risk that did not exist before. I do not think the users of city's singly most popular swimming beach, including parents of small children and dog walkers, who exercise their dogs at the beach,

would find the *cost savings,* which appears to be the one undeniable positive to the project, would be worth the savings for the potential for harm to users of the park, worth the unnecessary risk *which their state laws and Bellevue City Code, when fairly and uniformly applied, would have protect against.*

I *strongly urge* council to not allow the pending agreements with WSDOT to be signed by city staff; I urge council to review this project and any agreement that could be signed before it is signed, and to allow for public comment on information that was never made available to the public on this project in the very minimal, some would say misleading, description afforded in the notice given in 2006, which attracted *no* members of the public to the public hearing, but which would have attracted *many* members of the public had the project been fully disclosed.

This letter is being sent via email without attachments; a hard copy, with attachments, will be delivered to City Council offices.

Thank you,

Terry Foulon

64 Cascade Key

Bellevue, WA 98006

Oct. 20, 2010

Mayor Don Davidson

Members of the city Council

City of Bellevue

450 110th Ave. N.E./P.O. Box 90012

Bellevue, WA 98009-9012

**RE:** **Addendum** to Letter of Oct. 15, 2010: WSDOT Project to Use Exceptions to Bellevue Code to Cross Basins and Drain I-405 Water Without Detention to Small Stream in Newcastle Beach Park

**Subject:** Problems With Public Noticing for WSDOT Exceptions not in Accord with Bellevue Code; Bellevue and WSDOT Project Draining I-405 WSDOT Storm Water, Bellevue Water and Ground Water With New Or Modified Systems in Advance of Signed Agreements between Bellevue and Required Improvements; List of 22 Potential Pollutants Requiring Monitoring for Public Health Hazard in Newcastle Beach Park

Dear Mayor Davidson and Members of the City Council:

Please consider this addition to my letter sent earlier. This addendum addresses important information left out of the earlier letter.

As noted in my earlier letter, it was noted there was no opportunity for public comment on the information concerning exceptions to the Bellevue Code and Newcastle Beach Park due to the very minimal, in some ways misleading, description of the notice that was given, the manner in which it was provided, and the minimum days required for notice and public comment that was instituted and what may be the failure of the process to notice the public in the manner

required. In sum, a bare bones "shortcut" approach was employed to get the exceptions as speedily as possible with as little time as possible for the public to become involved.

An email from David Masters of WSDOT, and HNTB (contractor) shows WSDOT and city staff were aware of the hurdle of a public hearing. Masters wrote to Scott Taylor of Utilities: *"Public hearing not a fatal issue if we are really improving stream with the direct discharge."* (See David Masters email, 2004, attached).

But the way the hearing was noticed appears to have been the cause of *no* member of the public attending the hearing.

Fourteen days' notice is required for the type process used for the exceptions granted to WSDOT, with Bellevue's support, under Bellevue Code. *Also* required is mailed notice to persons with 500 feet of the project location and signage at the project location. Notice of a director's recommendation is required. The notice must include a description of the project and exceptions being requested.

Bellevue staff knew at the time they sought to schedule the hearing that they had a problem with timing given WSDOT's schedule. WSDOT needed the exceptions by a certain date. Bellevue's Hearing Examiner's schedule at the time and the code requirements caused staff to meet the minimum requirement of fourteen days for notice but may *not* have met other requirements. The hearing was held May 11, 2006. The application was *"deemed complete"* fourteen days earlier, on April 25th.

On April 24th, Michel Paine warned city staff they had to make notice that day. In an email to Kim Becklund and other city staff, he wrote: *"PCD needs a notice by end of work today to make the paper by Thursday and even that is pushing it. The next noticing date is May 4. Notice should be to Ruth by Monday, May 1. The earliest hearing date would then be evening of May 18 or the following Wednesday, May 24."* (See Michael Paine email, 2006).

It was clear that if the *"earliest hearing date would then be evening of May 18",* then the noticing and scheduling was unusual, given the date of hearing would become **May 11, 2006.**

As late as **May 5, 2006,** materials that were to have been gathered earlier were still being rounded up. Mary Lou Anderson of the city wrote to Joy Ramshur on April 25, 2010: *"With this date (May 11th) we should have the background file no later than Kay 2, 2006."* On Friday, May 5, 2010, Mary Lou Anderson wrote Joy Ramshur: *"Joy – with the hearing next week – we should have received a copy of the department's file no later than Tuesday of this week (she was writing on Friday of the week in question). Is it coming to me soon?"* (See Mary Lou Anderson and Joy Ramshur emails, 2006, attached)

These emails indicate notice may not have been timely, for, among other reasons, the application was not complete.

There is, in addition, the *description* of the hearing given in the Weekly Permit Bulletin. *No notices for the city's legal newspaper, The Seattle Times, or mailed notices, required for persons who live within five-hundred feet of the project, were found in a response to a city records' request.* It is possible there was a legal notice published, and mailed notices, but no evidence exists of this in response to my requests. *Neither is there any record of a "sign" being placed in the park,* which is also appears to be a requirement. I could find no record of a "Director's" recommendation with the noticing, which also appears to have been required.

In the Weekly Permit Bulletin, the description of the project failed to identify that discharging "combined" (WSDOT and city storm water) from I-405 to the small stream in Newcastle Beach Park was a practice prevented by Bellevue code and state law. Only a notice that an "exception process outlined in BCC 24.06135" had been required. It did not specify that storm water from one basin was being diverted to another basin, and, in this case, a public park with a swim beach. There is no way for the general public to have understood from the various brief description (See attached) the very significant "*departure from policy*" and "*policy change*", in the words of Bellevue staff, that the project represented; nor is there any way to understand a potential risk to users of the park from a source that *were* state law and city code followed, the potential to be exposed to these risks *would not exist.*

The permit notice *failed* to inform the public of the size of the project and deviation from standard procedure given the project would divert I-405 storm water from almost as far north as the I-90 to the small stream in Newcastle Beach Park. Also, that it would add city storm water from *Factoria, historically drained to its tributary, Coal Creek.* It *failed, entirely, to notice in any way that* the project would add *ground water – which isn't storm water but a different type source altogether* -- to the small stream in the park, along with the other water.

All of this is objectionable, and raises serious questions about the hearing process. The *magnitude* of the project was never made clear.

For example, the hydraulic engineer who has worked for my family on our property, has looked at the WSDOT project at my request. He believes the amount of water being planned for placement in the park, with its existing drainage problems (loose soils that do not hold water) will cause Newcastle Beach Park, in ten years, to "*look like the Mercer Slough*".

Other issues for consideration in this Addendum:

- Work that would cause modifications and changes to the existing drainage system on I(-405 and in the associated city basins was initiated by both the city and WSDOT prior to

the project agreements being signed and the promised improvements for mitigation work for the park done. There is WSDOT I-405 *new* storm water and ground water in the park at this time, and city water is also in the park, although no one has admitted to an "increase" in city water, only that city systems were modified and/or changed along with the state system, which required bringing the system up to date with existing state law or code or seek an exception; if the exceptions awarded WSDOT were used, did they extend to the city's modifications and changes? How could they be construed to extend to drainage for the new retaining wall – or ground water? In an email from Rick Logwood to city staff, he noted "The city expects to complete design of its drainage modification this fa.,., with construction scheduled for early 2008". (See Rick Logwood email, 2007, attached). Also discussed in the same email is a modification to a city system in the same vicinity and other WSDOT and city storm water work. There was an informal agreement between Utilities and WSDOT to facilitate the modifications to the city system required by the I-405 widening *due to the accelerated "schedule of this project"*. (See "Utilities Engineering Memorandum", from Rick Logwood of the city to Wes Jorgenson, of the city, attached.)

- The Watershed Company has been maintained by the city to test water and soils in the park to establish a baseline for specific pollutants; this was in 2007, perhaps in anticipation of the project that was about to be implemented (before agreements were signed and mitigation performed) in 2008. The beach samples were/are to include testing for Nitrate, phosphorous, bromide, sulfate, cyanide, total suspended solids, pH, diesel and heavy oil organics, gasoline range organics, hydrocarbons, and metals, including: **lead, iron, zinc, cadmium, chromium, copper, nickel, manganese, magnesium and silver** at a *swim beach; this is the only swim beach in Bellevue that will is, or will be tested for these pollutants – Newcastle Beach Park, the city's singly most used swimming beach, with the pollutants potentially there due to* ***exceptions*** in state law and city code – and otherwise would ***not*** have the potential to be there without such exceptions, obtained under the questionable procedures, described above. Joe O'Leary, of the city, wrote in email to other staff: "*With the amount o flow coming off the runoff road areas I have no doubt that there will be sediment and it will contain heavy metals*". (See O'Leary email, 2007).

Thank you for your time and attention to this issue.

Terry Foulon

64 Cascade Key

Bellevue, WA 98006

# City of Bellevue
**Parks & Community Services Department**

# MEMORANDUM

Date: October 7, 2010

To: Parks & Community Services Board

From: Terry Smith, Assistant Director
Parks & Community Services

Subject: Follow-up to Terry Foulon's Comments in Oral Communications, July 13, 2010 Board Meeting

This communication is a follow-up regarding information shared by Terry Foulon, (64 Cascade Key, Bellevue) at the July 13, 2010 Board Meeting. During Oral Communications, Ms. Foulon expressed concerns about the impacts that may occur on her property as a result of drainage issues and the Newcastle Beach storm water initiative (Washington State Department of Transportation, I-405 Nickel Project). She also expressed concerns that Newcastle Beach Park, which borders her property, will be impacted by the project.

At the Chair's request, I contacted Parks staff familiar with the project. Staff informed me that Ms. Foulon has been working with Bellevue's Utilities Department on her drainage concern and with the Transportation Department and the City Clerk regarding her request for public records.

I have attached a link to the Washington Department of Transportation website for this project. http://www.wsdot.wa.gov/Projects/I405/RentontoBellevue/ . This project is still awaiting funding.