City of Bellevue
Development Services Department
Land Use Staff Report

Proposal Name:	Cantu Residence
Proposal Address:	5229 120th Avenue SE
Proposal Description:	The applicant requests a Critical Areas Land Use Permit to modify a critical area steep slope fifty-foot (50') top of slope buffer, to allow for the construction of a 278 square foot deck and an 89 square foot mudroom addition to the single-family home. The proposal includes slope buffer mitigation and is supported by a Critical Areas Report.
File Number:	18-124741-LO
Applicant:	Brian Howard, Property Effects LLC
Decisions Included:	Critical Areas Land Use Permit (Process II. LUC 20.30P)
Planner:	Nick Whipple, Planner
State Environmental Policy Act Threshold Determination:	**SEPA Exempt per WAC 197-11-800**
Director's Decision:	**Approval with Conditions** Michael A. Brennan, Director Development Services Department By: _____ Elizabeth Stead, Land Use Director Development Services Department

Application Date:	September 17, 2018
Notice of Application Publication Date:	October 25, 2018
Decision Publication Date:	September 12, 2019
Project Appeal Deadline:	September 26, 2019

For information on how to appeal a proposal, visit Development Services Center at City Hall or call (425) 452-6800. Appeal of the Decision must be received in the City's Clerk's Office by 5 PM on the date noted for appeal of the decision.

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Attachments

1. Site Plan
2. Geotechnical Report

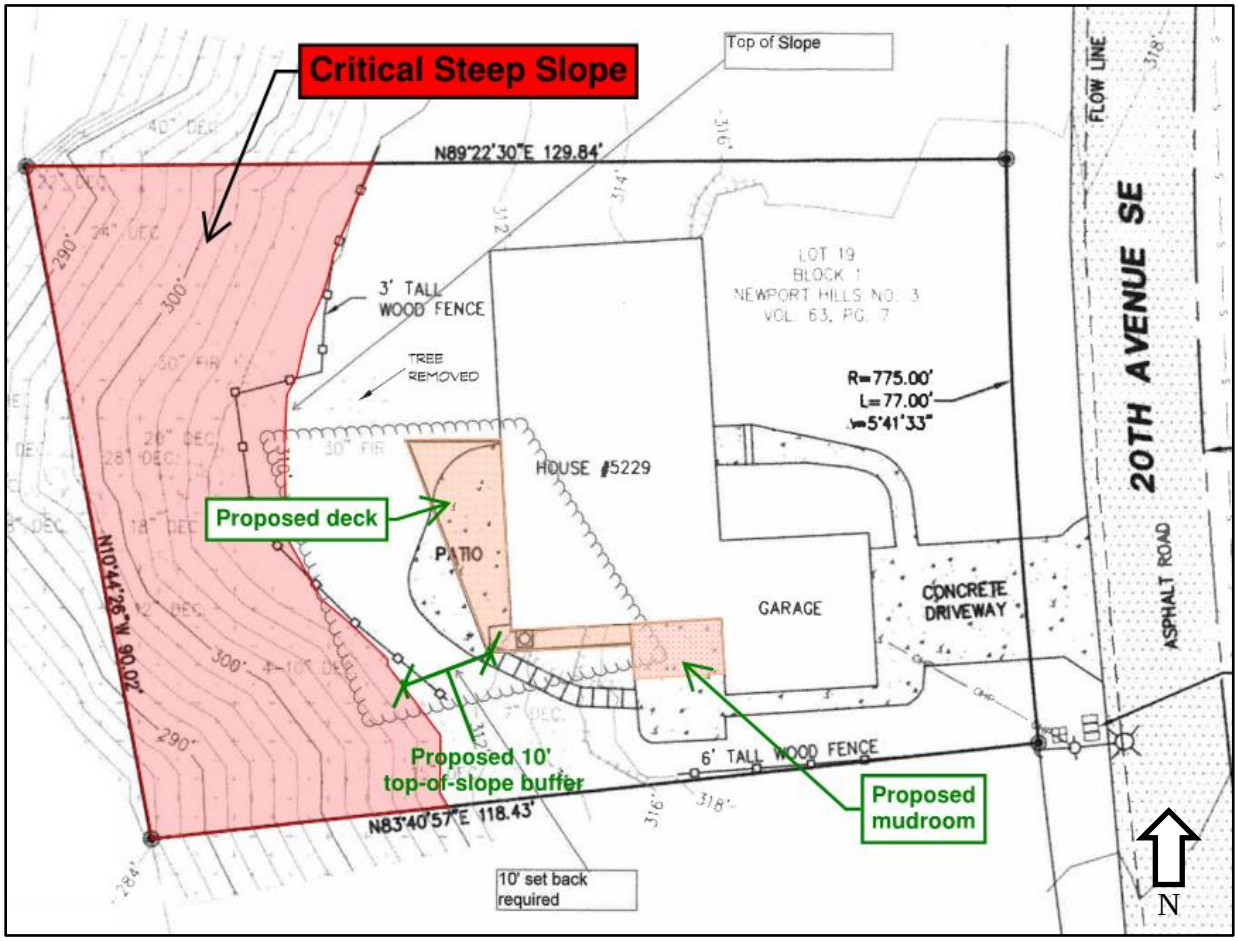
I. REQUEST AND REVIEW PROCESS

A. Request

The proposal is to construct a new deck addition along the west side of the existing single-family home within the top-of-slope buffer. The project will add 157 square feet of new impervious surface, and 367 square feet of new structure, including a deck and mudroom within the slope buffer. Due to the extent and location of the regulated critical area on-site, the property owner has requested modifications to the 50-foot top-of-slope buffer required in Land Use Code section 20.25H. Modifications to the steep slope buffer may be considered through a Critical Areas Land Use Permit and Critical Areas Report consistent with LUC 20.25H.230.

To mitigate impacts, the applicant is proposing the removal of invasive species such as English ivy and Himalayan blackberry within the slope buffer, and approximately 157 square feet of mitigation plantings within the top-of-slope buffer. Mitigation plants include a variety of densely planted native trees, shrubs, and ground cover to improve the site's condition and provide a net increase in ecological function over existing conditions. A Critical Areas Land Use Permit with a Critical Areas Report is required when a project proposes to modify the prescriptive code standards. This permit establishes conditions and performance standards designed to avoid and minimize impact to the site's sensitive features which must be met in order to obtain subsequent permits for construction of the single-family addition on the property.

Figure 1 – Proposed Site Plan with Critical Areas



B. Review Process

A Critical Areas Land Use Permit is a Process II application (LUC 20.35.200) with an administrative decision by the Director of Development Services (LUC 20.30P). Any appeal of a Process II decision is heard and decided upon by the City of Bellevue Hearing Examiner.

II. SITE DESCRIPTION, ZONING, LAND USE AND CRITICAL AREAS

A. Site Description

The subject site is located east of Interstate 405 in the Newport Hills subarea. The property is 10,267 square feet (0.24 acres) in size and is approximately 90-feet wide by 129-feet deep. Site topography is relatively flat, with the exception of the area on the west end of the property, which steeply descends to the adjacent City of Bellevue Parks' property. The site is currently improved with an existing single-family dwelling.

Figure 2 – Aerial Map of Subject Site

Critical areas exist on this site, as identified by the geotechnical report prepared by Riley Group, dated April 8, 2019. In its report, the engineer and geologist identified a steep slope along the western portion of the property, approximately 30 feet from the existing single-family dwelling.

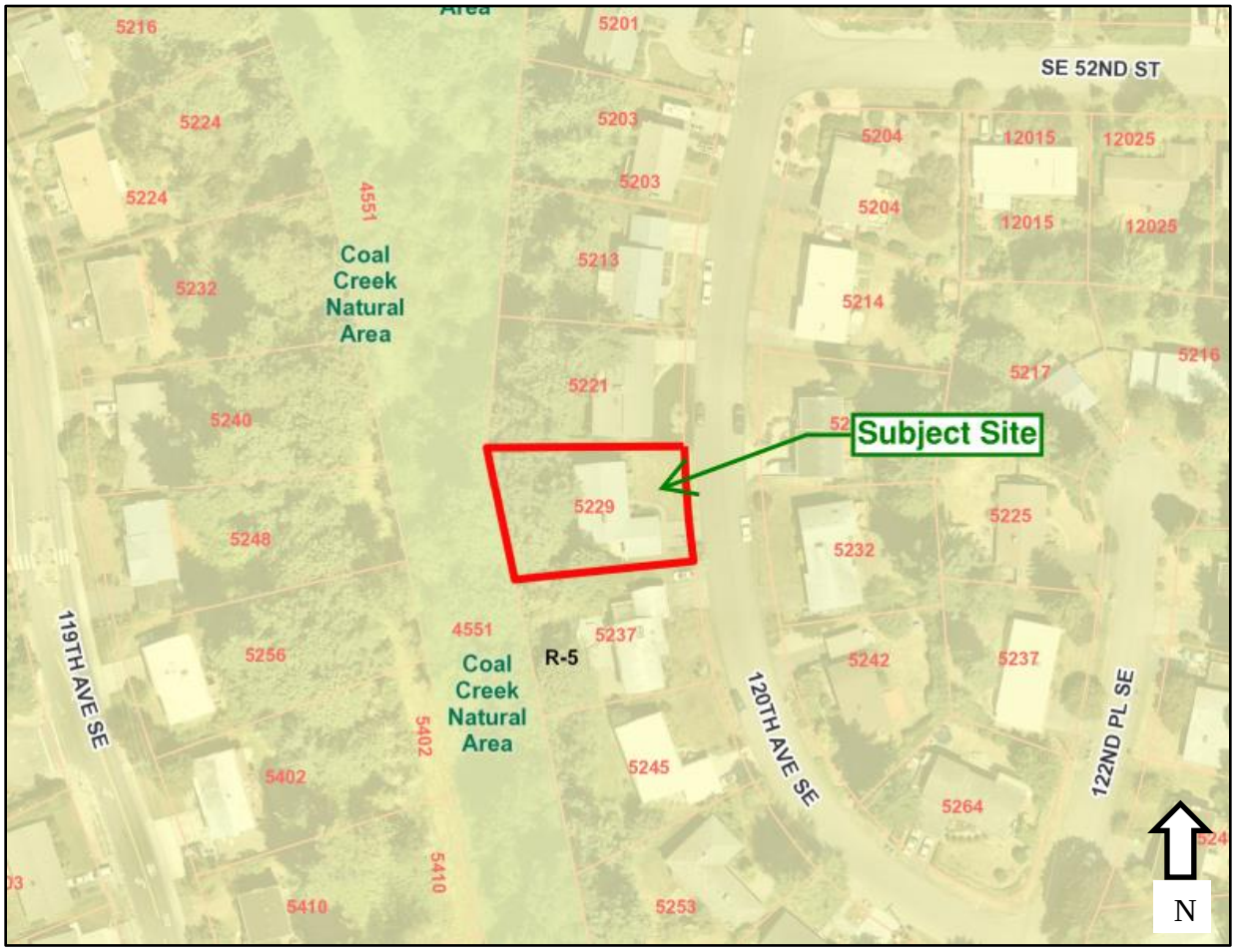
The steep slope is currently vegetated with various tree species and some understory plantings, some of which are invasive species such as Himalayan blackberry. Below the slope, the property to the west is the Coal Creek Natural Area which belongs to the City of Bellevue Parks

Department. The natural ravine area adjacent to the Cantu property has a city-owned 48" diameter storm water main.

B. Zoning and Land Use Context

The subject site is zoned Single-Family Residential (R-5) and is located within the Newport Hills Subarea. The property has a Comprehensive Plan designation of Single-Family – High (SF-H) density. The site is surrounded by single-family dwellings to the east, north and south, and a City of Bellevue Parks' natural greenbelt property to the west.

Figure 3 - Zoning Map



C. Critical Areas Functions and Values

Geologic Hazard Areas

Geologic hazards pose a threat to the health and safety of citizens when commercial, residential, or industrial development is inappropriately sited in areas of significant hazard. Some geologic hazards can be reduced or mitigated by engineering, design, or modified construction practices. When technology cannot reduce risks to acceptable levels, building in geologically hazardous areas is best avoided (WAC 365-190).

Steep slopes may serve several other functions and possess other values for the City and its

residents. Several of Bellevue's remaining large blocks of forest are located in steep slope areas, providing habitat for a variety of wildlife species and important linkages between habitat areas in the City. These steep slope areas also act as conduits for groundwater, which drains from hillsides to provide a water source for the City's wetlands and stream systems. Vegetated steep slopes also provide a visual amenity in the City, providing a "green" backdrop for urbanized areas enhancing property values and buffering urban development.

III. CONSISTENCY WITH LAND USE AND CRITICAL AREAS CODE REQUIREMENTS

A. Land Use District Dimensional Requirements

The site is located in the R-5 land use district. The plans submitted for the new deck demonstrate conformance with the Land Use Code standards in Section 20.20.010. However, as part of the building permit, the applicant will be required to comply with all applicable Land Use Code standards prior to City approval.

B. Critical Areas Requirements LUC 20.25H: Consistency with Land Use Code Critical Areas Performance Standards for Steep Slopes – 20.25H.125.

In addition to generally applicable performance standards set forth in LUC 20.25H.055 and 20.25H.065, development within a landslide hazard or steep slope critical area or the critical area buffers of such hazards shall incorporate the following additional performance standards in design of the development, as applicable. The requirement for long-term slope stability shall exclude designs that require regular and periodic maintenance to maintain their level of function.

- **Structures and improvements shall minimize alterations to the natural contour of the slope, and foundations shall be tiered where possible to conform to existing topography;**

  Response: *The proposed deck and mudroom addition on the site is located outside of the critical area steep slope. The proposed structure will encroach into the prescribed 50-foot top of slope buffer and a distance of 10 feet is proposed from the top-of-slope buffer. No alterations to the natural contour of the slope are proposed.*

- **Structures and improvements shall be located to preserve the most critical portion of the site and its natural landforms and vegetation;**

  Response: *The proposed deck addition and mudroom addition will utilize previously altered areas by constructing the deck and enclosed floor area above an existing at-grade patio and over existing lawn area. The proposed additions will have no impact on the area of steep slope.*

- **The proposed development shall not result in greater risk or a need for increased buffers on neighboring properties;**

  Response: *As discussed in the Geotechnical Report, prepared by Riley Group, dated April 8, 2019, the proposal will not result in greater risks or a need for an increased buffer*

on neighboring properties. During reconnaissance of the site, the geotechnical engineer indicates that the slope is currently stable. The property owner will be required to execute a Hold Harmless Agreement, releasing the City from liability for any improvements within the slope critical area buffer. **Refer to Section IX for Conditions of Approval regarding Hold Harmless Agreement.**

- **The use of retaining walls that allow the maintenance of existing natural slope area is preferred over graded artificial slopes where graded slopes would result in increased disturbance as compared to use of retaining wall;**

  Response: *No retaining walls or artificially graded slopes are proposed for this project*

- **Development shall be designed to minimize impervious surfaces within the critical area and critical area buffer;**

  Response: *The applicant has minimized the placement of impervious surfaces within the slope buffer by locating structure over existing patios and walkways. The project proposes 157 square feet of new impervious surface within the slope buffer.*

- **Where change in grade outside the building footprint is necessary, the site retention system should be stepped, and regrading should be designed to minimize topographic modification. On slopes in excess of 40 percent, grading for yard area may be disallowed where inconsistent with this criteria;**

  Response: *Grading is not proposed within the on-site steep slope, nor is a change in grade proposed outside of the building footprint for the proposed deck and mudroom addition.*

- **Building foundation walls shall be utilized as retaining walls rather than rockeries or retaining structures built separately and away from the building wherever feasible. Freestanding retaining devices are only permitted when they cannot be designed as structural elements of the building foundation;**

  Response: *Retaining walls, rockeries and other retaining structures are not required or proposed for this project.*

- **On slopes in excess of 40 percent, use of pole-type construction which conforms to the existing topography is required where feasible. If pole-type construction is not technically feasible, the structure must be tiered to conform to the existing topography and to minimize topographic modification;**

  Response: *No construction or disturbance is proposed within the on-site steep slope area.*

- **On slopes in excess of 40 percent, pile deck support structures are required where technically feasible for parking or garages over fill-based construction types; and**

  Response: *Not applicable as this proposal is not for parking or a parking garage.*

- **Areas of new permanent disturbance and all areas of temporary disturbance shall be mitigated and/or restored pursuant to a mitigation and restoration plan meeting the requirements of LUC 20.25H.210.**

  Response: *The applicant submitted a mitigation planting plan which includes the removal of invasive English ivy and Himalayan blackberry, as well as 157 square feet of new native trees, shrubs, and groundcover to mitigate for the addition of 157 square feet of new impervious surfaces. The species and densities provided in the plan generally conform to the requirement of the City's Critical Areas Handbook, and the application will be required to provide a final mitigation planting plan under the Building Permit application. Conformance with the City's Critical Areas Handbook will be determined at the time of Building Permit review.* **Refer to Section IX for Conditions of Approval regarding Mitigation Plan.**

IV. PUBLIC NOTICE AND COMMENT

Application Date:	September 17, 2018
Public Notice:	October 25, 2018
Minimum Comment Period:	November 8, 2018

The Notice of Application for this project was published in the City of Bellevue Weekly Permit Bulletin and Seattle Times on October 25, 2018. It was mailed to property owners within 500 feet of the project site. No comments have been received from the public as of the publication of this decision.

V. SUMMARY OF TECHNICAL REVIEWS

A. Clearing and Grading

The Clearing and Grading Division of the Development Services Department has reviewed the plans and materials submitted for this project and has approved the clearing and grading portion of this land use application. The future building permit application for this development must comply with conditions of approval for this permit and City of Bellevue Clearing and Grading Code (BCC 23.76). **Refer to Section IX for Conditions of Approval regarding Geotechnical Review and Geotechnical Inspection.**

B. Utilities

This project conforms to the 2014 Department of Ecology Stormwater Management Manual for Western Washington and meets stormwater requirements of the 2018 City of Bellevue Surface Water Engineering Standards.

VI. STATE ENVIRONMENTAL POLICY ACT (SEPA)

The proposal is exempt from SEPA review, per WAC 197-11-800 and BCC 22.02.032. Construction of a single-family residence is a categorical exemption.

VII. CRITICAL AREAS LAND USE PERMIT DECISION CRITERIA

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

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

- **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 functions;**

  Finding: The proposal includes a mitigation plan that includes native planting within the small area of the top of slope buffer. The critical areas report identifies and documents the degraded conditions on-site, which this proposal seeks to mitigate and enhance to further protect the functions of the steep slope and buffer area for slope stability, stormwater quality and wildlife habitat. With the installation of native vegetation, a net gain in buffer functions and values is expected. **Refer to Section X for Condition of Approval regarding Mitigation Plan.**

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

  Finding: A majority of the critical area and buffer are degraded, due to the presence of existing lawn, landscaping and impervious surface. Functions provided by this area are therefore limited. The proposed enhancement area (157 sq. ft.) will provide greater slope habitat function and further enhance slope stability. The restoration plantings will also provide greater erosion protection to the adjacent steep slope area.

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

  Finding: The proposed enhancement area is located between the single-family dwelling and steep slope area. The new native mitigation plantings will increase stormwater quality functions of the buffer area over the currently degraded condition (lawn, blackberries, and ivy).

- **Adequate resources to ensure completion of any required restoration, mitigation**

and monitoring efforts;

Finding: A five-year maintenance and monitoring plan has been included in the proposal. In addition to maintenance and monitoring activities, an assurance device associated with the maintenance and monitoring will be required as part of the Building Permit. **Refer to Section IX for Conditions of Approval regarding Maintenance and Monitoring and Maintenance and Monitoring Assurance Device.**

- **The modifications and performance standards included in the proposal area not detrimental to the functions and values of critical area and critical area buffer off-site; and**

Finding: The modifications and performance standards included in the proposal are not detrimental to off-site critical areas and buffers and are expected to lead to improved buffer function for on-site and off-site steep slope critical areas and buffers. It is anticipated that the slope buffer functions will be enhanced with the proposed actions to mitigate for the disturbance proposed by the deck and mudroom addition.

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

Finding: The proposal does not change the underlying zoning or existing land use. The existing single-family residence will remain with a relatively modest deck and mudroom addition.

B. The Director may approve or approve with modifications an application for a Critical Areas Land Use Permit if (LUC 20.30P.140):

- **The proposal obtains all other permits required by the Land Use Code; and**

Finding: The applicant will be required to obtain a building permit after approval of the Critical Areas Land Use Permit in order to execute the project. **Refer to Section IX for Condition of Approval regarding Building Permit.**

- **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; and**

Finding: The proposed project has been designed and located to minimize impacts to and improve critical area and buffer functions. The proposed single-family home is located within an area of existing development and within a top of slope buffer area of low buffer function due to degraded conditions. The design includes the removal of existing non-native and invasive vegetation within the small area of the top of slope buffer and includes mitigation planting of native species commonly found within steep slope and steep slope buffers, as prescribed in the City's Critical Areas Handbook.

The review of this permit is reliant upon the findings of qualified professionals submitted by the applicant as part of this proposal. All recommendations provided by The Riley Group, within the geotechnical engineering report dated April 8, 2019, must be adhered to. The property owner will be required to execute a Hold Harmless Agreement, releasing the City from liability for any improvements within the critical area or critical area buffer. **Refer to Section IX for Conditions of Approval regarding Hold Harmless Agreement.**

- **The proposal incorporates the performance standards of Part 20.25H LUC to the maximum extent applicable; and**

  Finding: Performance standards related to steep slopes are being met by this proposal as described in Section III.B above.

- **The proposal will be served by adequate public facilities including streets, fire protection, and utilities; and**

  Finding: The project will be served by adequate public facilities which currently exist on and adjacent to the subject site.

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

  Finding: The applicant has prepared a preliminary restoration and enhancement planting plan to mitigate for the impacts to the small area of the steep slope buffer, consistent with LUC 20.25H.210. The plan also contains a five-year maintenance and monitoring plan to ensure successful establishment of installed planting. Following installation of the mitigation planting, the applicant will be required to contact staff to inspect the planting to ensure it meets the approved mitigation plan. **Refer to Section IX for Conditions of Approval regarding Maintenance and Monitoring and Land Use Inspection.**

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

  Finding: As discussed within this report, the proposal will comply with all applicable requirements of the Land Use Code.

VIII. CONCLUSION AND DECISION

After conducting the various administrative reviews associated with this proposal, including Land Use Code, Bellevue City Code and Standard compliance reviews, the Director of the Development Services Department does hereby **approve with conditions** the proposal to modify the 50-foot top of slope buffer, to allow for the encroachment of a new deck and mudroom associated with the existing single-family dwelling.

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.

IX. CONDITIONS OF APPROVAL

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

Applicable Ordinances	Contact Person
Clearing and Grading Code- BCC 23.76	Savina Uzunow, 425-452-7860
Land Use Code- BCC 20.25H	Nick Whipple, 425-452-4578
Noise Control- BCC 9.18	Nick Whipple, 425-452-4578

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

1. Building Permit Required: Approval of this Critical Areas Land Use Permit does not constitute an approval of a development permit. Plans submitted as part of the building permit application shall be consistent with the plans reviewed for this approval.

Authority: Land Use Code 20.30P.140
Reviewer: Nick Whipple, Land Use

2. Geotechnical Review: The project geotechnical engineer must review the final construction plans, including all post/foundation, slab-on-grade floor, and infiltration designs. A letter from the geotechnical engineer stating that the plans conform to the recommendations in the geotechnical report and any addendums and supplements must be submitted to the clearing and grading division prior to issuance of the construction permit.

Authority: Clearing & Grading Code 23.76.050
Reviewer: Savina Uzunow, Clearing and Grading

3. Mitigation Plan: A final mitigation plan in accordance with the conceptual mitigation plan provided under this application shall be submitted for review and approval by the City of Bellevue prior to issuance of the Building Permit. The plan shall document the total area of new critical area buffer planting and the plans shall be consistent with the guidance provided in the City's Critical Areas Handbook.

Authority: Land Use Code 20.25H.105.C.3
Reviewer: Nick Whipple, Land Use

4. Maintenance & Monitoring: A maintenance & monitoring plan in conformance with the plan submitted under this application shall be submitted for review and approval by the City of Bellevue prior to issuance of the Building Permit. The mitigation plan shall be maintained and

monitored for a minimum of **five (5) years.** Annual reporting shall be submitted at the end of each growing season or by December 1 for each of the five years this plan is applicable. All reporting shall be submitted by email to **nwhipple@bellevuewa.gov**. or by mail to:

Environmental Planning Manager
Land Use Division
Development Services Department
City of Bellevue
PO Box 90012
Bellevue, WA 98009-9012

Authority: Land Use Code 20.25H.220.D, 20.25H.220.H
Reviewer: Nick Whipple, Land Use

5. Land Use Inspection: Following installation of the restoration planting, the applicant shall contact Land Use Staff to inspect the restoration enhancement area. Staff shall verify the quantity and quality of the proposed plants to be installed, and that the restoration area is in a healthy and growing condition.

Authority: Land Use Code 20.30P.140
Reviewer: Nick Whipple, Land Use

6. Maintenance and Monitoring Assurance Device: After the Land Use Inspection and acceptance of the restoration planting, a financial surety is required to be submitted to ensure the mitigation planting successfully establishes. A maintenance assurance device that is equal to 20% of the cost of plants, installation, and the cost of monitoring is required to be held for a period of five (5) years from the date of building permit issuance. A cost estimate is required to be provided with the building permit. The financial surety is required to be posted prior to signoff of land use inspection. Release of the surety after the 5-year monitoring period is contingent upon a final inspection of the planting by Land Use Staff that finds the maintenance and monitoring plan was successful and the mitigation meets performance standards.

Authority: Land Use Code 20.25H.220.F
Reviewer: Nick Whipple, Land Use

7. Hold Harmless Agreement: Prior to building permit approval, the applicant or property owner shall submit a hold harmless agreement releasing the City of Bellevue from any and all liability associated with the steep slope buffer modification. The agreement must meet city requirements and must be reviewed by the City Attorney's Office for formal approval.

Authority: Land Use Code 20.30P.170
Reviewer: Nick Whipple, Land Use