

## Langley Passage Closed Record Hearing

Questions of the Record; Langley Passage (10/19/10)  
Council member Fran Abel  
Responses of Langley Critical Area Alliance (LCAA)

### A. Downstream Conveyance System

- 1) Does the evidence show if Island County was contacted to see what their requirements are, or if permits are required to accomplish what's spelled out, or what it will cost? Staff Report, #8, p. 23?

The record shows that the County asked for a formal review at a very early stage of this application. Evidence: note from Phil Cohen to Alice Schisel 10/5/2006 (LCAA Exhibit 24): *Relevant extract: "I would like the Town of Langley to formally request a review by the County for impacts/concerns to/of County residents"*

The record shows that a Shoreline Development permit may be required. Evidence: email correspondence between Rolf Seitle and Jeff Tate 9/9/2006 (LCAA Exhibit 26): *Relevant extract: Tate: "While the outfall is already in place, allowing additional stormwater to utilize the outfall in support of a development proposal likely meets the definition of development and therefore subject to the county's shoreline regulations"*

The record shows that, despite the above, the applicant states that no governmental approvals other than by the City are required. Evidence in SEPA checklist, question 10.

The record shows that the Mr. Cort has not contacted the County about whether or not its outfall is sufficient for the increase in water or formally considered the matter. Evidence: PAB minutes 6/2/2010, page 12. *Relevant extract: Adams asked Cort if he had any contact with the County about whether the outfall was sufficient for the increase in water. Cort said that he had not and recommended that Adams ask Ryan Goodman about the issue."*

The record establishes that there have been no meaningful discussions with the County about the issue by any relevant party. Evidence: email correspondence between Rolf Seitle and Phil Cohen 5/17/2010 (LCAA Exhibit 29): *Relevant extracts: Seitle "I wonder if you have been contacted by either the developer (Whidbey Neighborhood Partners), Davido Consulting or Langley City Staff regarding this." Cohen: "I haven't been contacted by the persons mentioned"*

The record does not contain any estimates of the costs that are likely to be incurred in complying with any County ditch and outfall improvement requirements.

- 2) Regarding the performance bond, does that apply to the city's portion of the downstream drainage system or the county's or both? Staff Report, Supplement No. 1, 5/20/10, # 1, Page 4.

The document referenced is not explicit on this matter. The record shows that Mr. Cort has not considered the County portion of the drainage system in his review. Evidence in answers to question 1.

The record does not include any estimates of the cost of any necessary upgrades to the County portion of the system against which the adequacy of the proposed bond can be evaluated. The inference, therefore, must be that the bond applies only to the City portion of the system.

- 3) Although the applicant will monitor the ditch for 3 years after 75% buildout, how do we know when that will occur? What is the rationale for using 3 years from 75% buildout occupancy to trigger monitoring? Cort, PAB Minutes, 3/24/20, ¶6, p. 4

The record does not contain any technical or scientific evidence to the effect that the full environmental impact of this development can be reliably established in a period of 3 years after 75% build out.

Evidence: PAB minutes 6/2/2010 page 8. *Relevant extract:*

*"Erikson....asked Reese if mitigating measure 1 and 2 were sufficient to find any impacts to the ditch or outfall caused by the development. Reese said no."*

The record shows that the PAB discussed this issue but that this part of the meeting was not captured in the minutes. Evidence: audio recording of PAB meeting of 8/4/2010 starting at 2:33:04 and ending at 2:39:03. (A transcript of this has been supplied by WEAN in response to earlier questions from Council and is not reproduced here in the interest of space).

- 4) Does the "downstream drainage system" include the County's outflow as well as the city ditch? Staff Report, Supplement No. 1, 5/20/10, # 1, p. 4.

The appellants believe that it should. Reference LCAA appeal brief dated 9/2/2010, paragraph 40. *"In this case it is the position of Mr Cort that all of the additional water created by this project will be infiltrated into the ground by rain gardens or other devices, flow down*

*to the first aquifer that daylights at the wetland, overflow down the drainage ditch which starts inside the City limit and extends into the County and, finally enter a pipe which directs it through a culvert under Edgecliff Drive and through an outfall to Puget Sound. All of these elements constitute a single storm water management system. Therefore under the SEPA rules, Mr Cort should have included an explicit consideration of the project's impact on the County portion of this system and included any improvements that might be necessary. "*

- 5) Who monitors the system or pays bond if developer leaves before 75% buildout or if the buildout never happens? Cort, PAB Minutes, 3/24/20, ¶6, p. 4

The record does not provide details regarding what happens under this scenario. The record does not provide details of any technical criteria or related conditions that have to be met before the bond can be released.

- 6) What happens if there is a system failure before monitoring begins? Cort, PAB Minutes, 3/24/20, ¶6, p. 4

The record does not address this matter. Environmental impact begins as soon as construction begins on streets and other common infrastructure.

- 7) What does "buildout occupancy" mean? Staff Report, #6, p. 23

The record does not define this term. The expression does not occur in the LMC. We assume that it means the houses are both built and occupied.

- 8) "The applicant shall be solely responsible for making any improvements to the Island County portion of the system that may be identified by Island County to accommodate likely impacts." When will this happen? Staff Report, #8, p. 23

The record contains mitigation provision 4 requiring the applicant to obtain approval from Island County and provide documentation to the City as a condition of development. Because the County has not been consulted (see answer 1 above), there is no information in the record to establish when the County will require any improvements that are necessary to be made.

B Water line through wetland

- 1) Where in the record is there evidence to support other options were explored, or if applicant applied for an exception. LMC 16, 20. 080

The record shows that when the water system plan was prepared in 2002 an alternative route along the City limits east of the Langley Passage property was proposed. Evidence in proposed water system map. April 2001, (LCAA Exhibit 13).

The record shows that if this plan is implemented, no waterline need cross the wetland. Evidence in PAB minutes 6/9/2010 page 13.

*Relevant extract: "Adams asked Cort if any point would be greater than 800 feet from a main if the loop marked 12 was constructed and the project was being served from Sandy Point Road, Cort said no."*

The record indicates that no other options were explored. Evidence in PAB minutes 6/9/2010 page 11. *Relevant extracts: "Erikson*

*questioned if the City had contacted any individuals east of the proposed project about the placement of the water line. Cort said no. Erickson questioned if the City had done any investigation about the placement of the waterline that did (not) go through a wetland or went through a wetland with less impact. Cort said no."* Further evidence in PAB minutes 6/9/2010 page 10. *Relevant extract" Adams questioned if Goodman had spoken with any property owners about the potential of putting a water line through their property. Goodman said no."*

Respectfully submitted on behalf of LCAA



Robin G Adams  
27 September 2010