

**MINUTES  
CITY OF LANGLEY  
PLANNING ADVISORY BOARD  
June 9, 2010**

Jim Sundberg called the meeting to order at 4:07.

**ATTENDANCE**

**Members Present:** Roger Gage, Julie Buktenica, Melanie Shafaat, and Jim Sundberg

**Members Absent:** Fred Geisler

**Staff Present:** Larry Cort, Director of Community Planning, Thomas Graafstra, City Attorney, Challis Stringer, Director of Public Works, Ryan Goodman, City Engineer, and Fred Evander, Community Planner

**APPROVAL OF MINUTES**

The Board reviewed the minutes of the May 26, 2010 meeting. Sundberg noted that on the third page of the minutes the groundwater levels would be increased under the area where the actual housing was proposed. Melanie Shafaat moved to approve the minutes. Roger Gage seconded. The minutes were approved unanimously.

**PUBLIC HEARING – LANGLEY PASSAGE PRELIMINARY PLAT**

The Board and the appellants discussed the potential that the Board would not finish the discussion about the plat at the meeting. Cort said that Robin Adams, the representative for the Langley Critical Areas Alliance (LCAA), would not be available for another hearing until July 10, 2010. Cort said that, to keep all parties together, the next possible meeting date would be in early July. The Board determined the second Wednesday in July, the 14<sup>th</sup>, would be the best date for the continuation of the Public Hearing. .

Robin Adams said that he would waive his continued questioning of Director of Community Planning Larry Cort.

Erickson, representing the Whidbey Environmental Action Network (WEAN), began his questioning of Cort. Erickson asked what Cort meant when he said that infiltration was the preferred method of stormwater treatment unless it did not work on a site. Cort said that the standard of the Langley Municipal Code (LMC) was that infiltration should be examined and utilized unless it was determined that the approach did not work for an area.

Erickson referred Cort to Langley Critical Areas Alliance (LCAA) Exhibit 3, the memo from the United States Geologic Survey (USGS). Erickson read from the third full paragraph on page three and said that the time lag between the surface water inputs and deep landslides was months to years. Erickson questioned how Cort considered this statement from USGS in the review of the application. Cort said that the City looked at the USGS report as a great primer on landslides and the undercutting on slopes, and he explained that the staff was aware of the issues addressed in the report. Cort explained that the USGS did not perform a detailed analysis of the area and he said that the report did not substitute for a more thorough site by site analysis. Cort said that staff took the report into account as background information, and he explained that the report helped formulate some of the City's requests for information from the applicant. Cort said that the City received detailed information from the studies and the peer-review for the project and he explained that these studies had led to the conclusion that infiltration was a viable alternative for the site.

Erickson questioned if Cort was disagreeing with the USGS statement that infiltration at the location was a cause of deeper landsliding. Cort said that in reviewing the hydrogeologist's report and the peer-review of the report, there was not a causative relationship between infiltration from the site and deeper landsliding. Erickson referred to the HWA diagram, Appendix A of LCAA Exhibit 10, and said that there was a black box as to what was happening on the bluff. Erickson said that the diagram showed the water discharged to the wetland, but did not demonstrate whether water was infiltrating lower, or moving to the bluff. Cort said that staff role as a reviewer for the proposal was to look at the impact of the proposal on the environment. Cort said that that there likely wasn't anyone on staff that denied that water was traveling subsurface throughout the basin and he said that the City's role as reviewers was to look at the impact of the proposal given those circumstances. Cort said that the analyses looking at the issue suggested that there would not be a significant impact from the infiltration.

Erickson asked if Cort's position was that no additional water was going to make it across the road or to the lower aquifers. Cort reminded Erickson that the developed portion of the site was located 700 feet from the bluff and he explained that the consensus of the City staff's reading of the two reports was that a large proportion of the water from the site would enter the wetland. Cort said that neither of the reports had said that all of the water from the site would go to the wetland, and as a result there may be some increase in water moving toward the bluff. Nevertheless, Cort explained that the reports had said that the increase of water moving to the bluff would be insignificant. Erickson noted that the USGS report said that one of the reasons for deep landsliding was a greater distance of infiltration from the bluff and he questioned how the distance of the project from the bluff eliminated that factor. Cort said that he didn't know exactly how to answer that question.

Erickson questioned if Comprehensive Plan Goals and Policies were used to implement code. Cort said yes. Erickson questioned what else was used to implement the code. Cort said that other plans and policies in place and good judgment were also used to implement the code. Erickson questioned what other plans and policies Cort relied on. Cort said that he relied on the three utility plans of the City, the sanitary sewer, water, and stormwater plans, as well as any policies that may have come from the City Council. Erickson questioned if any of those plans or documents spoke about how to deal with water moving through a steep slope area. Cort said no, the plans and policies generally did not get that specific, and the code tended to provide the guidance on what materials were necessary to analyze that issue.

Erickson directed Cort to Attachment A of WEAN's hearing brief and read Policy j of the document, which says that the "primary emphasis shall be on infiltrating water onsite except in those instances where water flows to and through steep bluffs." Erickson said that the statement seemed pretty explicit about how to handle stormwater on a site. Cort said that the statement was a policy in the Comprehensive Plan, and as a result was something that the City needed to consider. Cort explained, however, that as with all policies in the Comprehensive Plan there was an effort to try and implement the policy through the Langley Municipal Code. Cort referred Erickson to LMC 15.01.430 and said that the section was the key section of the code for implementing Policy j. Cort explained that the section states that "the use of all reasonable and appropriate LID measures shall be required prior to consideration of conventional stormwater management methods." Cort also said that this approach was backed in the Comprehensive Stormwater Plan, though both the code and the stormwater plan acknowledged that there may be places where infiltration was not an appropriate approach.

Erickson questioned if there was anyplace where the City had implemented Policy j. Cort said that he did not know for sure and asked that the question be directed to Ryan Goodman. Erickson questioned under what circumstances Cort would implement Policy j. Cort said that he would utilize Policy j when the analysis determined that there would be a significant impact from the infiltrative approach. Erickson questioned if Cort was convinced that there would not be a significant impact from the maximum infiltration of water on the site. Cort said that City staff's reading of the materials suggested that there would not be a significant impact. Erickson asked Cort if, as the SEPA Responsible Official, he was convinced that there would not be a significant impact. Cort said that he was.

Erickson questioned where the water currently traveled on the site. Cort said that the water left the site through a combination of evapotranspiration, surface flow, interflow and infiltration. Erickson questioned where the infiltrated water traveled. Cort said that the reports provided based on the deep borings gave a good description of where the water travelled when it infiltrated on the site. Erickson referred Cort to the HWA diagram and asked him where the water moved. Cort said that the water infiltrated to the level of the water table and then moved northward. Erickson asked where the water then went. Cort said that large portions of it would reach the wetland and some could reach the bluff. Erickson asked if Cort was uncertain if some could reach the bluff. Cort said that to answer the question, he would have to pull out the analysis of the water on the site and read Erickson the section about the characterization of the infiltrated flow.

Erickson said that, as he understood the applicant's position, all the water would go into the wetland and he asked Cort if that was his position. Cort said that he did not believe that the applicant had said that all the water would enter into the wetland. Cort pulled out Mark Varljyn's response as a peer-reviewer in Exhibit 11 of the LCAA brief and read "while the borings did reveal an impermeable layer that could allow infiltrated precipitation to perch and then move horizontally, the elevations of this layer indicate that the water will not discharge to the bluff as feared by the project opponents. The data indicate that infiltrated precipitation will most likely discharge to the wetlands and the ditch on the upland (south) side of Edgecliff Road, well about the elevation of the bluff." Cort said that this conclusion implied that there was strong scientific certainty, but not absolute certainty, that the water would move toward the wetland. Erickson questioned how the uncertainty could be resolved. Cort said that he would defer the question to the City Engineer Ryan Goodman, but noted that the conclusion of Varljen was that the conditions identified by the exploratory work indicated that the project could proceed without undesirable impacts. Cort read the statement of Varljen that "further exploration or analysis is unnecessary" for the site and explained that there was a strong scientifically-based conclusion that the project would not cause significant impacts and that no additional work was needed to remove any of the remaining doubt.

Erickson asked if Cort knew whether the water was moving out to the bluff. Cort said that the City staff knew that the water was moving toward the bluff and he said that water had been doing that for millennia. Erickson questioned if the increased groundwater would move to the bluff and stated that he did not recall seeing anything about the monitoring of groundwater flow. Cort said that City staff did not feel that monitoring groundwater flow was needed.

Erickson asked Cort what SEPA said about unavailable information or scientific uncertainty and referred Cort to Washington Administrative Code (WAC) 197.11.080. Cort asked if Erickson wanted him to read the section. Erickson read item number 1 in the section, which says "if information on significant adverse impacts essential to a reasoned choice among alternatives is not known and the costs of obtaining it are not exorbitant, agencies shall obtain and include the information in their environmental documents." Cort said that staff did not believe that there was incomplete information in the proposal and he said that the studies in the record were sufficiently rigorous and complete for staff to draw the conclusion that there would not be a significant impact from the additional groundwater from the site. Cort explained that, because of those factors, the section that Erickson read did not apply to the groundwater from the proposal.

Erickson said that, as he understood SEPA, one could only apply mitigation when it was shown that there would be a probable significant adverse environmental impact that resulted from a proposal. Cort said that there were many ways to use SEPA. Erickson said that the reason that an action was imposed under SEPA was because there would be a probable significant adverse impact. Cort said that there were a couple of issues that were included in the Mitigated Determination of Nonsignificance (MDNS) that staff wanted to have addressed between the preliminary plat and the final plat. Erickson questioned if impacts to the bluffs associated with infiltration were among those issues. Cort said that they were not. Erickson questioned if even unmitigated, Cort felt that the project would not have significant adverse to the bluff. Cort said that based on City staff's readings, analysis and conclusions regarding the studies, they did not believe that the project would have a significant

impact to the bluff. Erickson asked if any of the mitigations included in the MDNS were intended to address impacts to the bluff. Cort said that they were not.

Erickson referred to LCAA Exhibit 27, a document that showed monthly well pumping from 2001 to 2003, and passed out a document (Exhibit A-1) that graphed those values for all individuals served by the water system. Erickson asked Cort if the documents showed anything about seasonal water use. Cort said that there was clearly a summertime peak. Erickson asked why Cort thought use increased in the summer. Cort said that the City had a 114 rental units and the high season for those rentals was in the summer. Cort also said that there were a number of people who summered in Langley and the overall seasonal population shift accounted for a large portion of the increase. Erickson referred Cort to the numbers and said that a fifth of the total did not account for the overall seasonal fluctuation. Erickson asked Cort if he thought there would be any seasonal increase associated with irrigation or watering lawns. Cort said that he did not think lawns would influence the increase per say, but that people would water plant starts and vegetable gardens. Erickson asked Cort if having a lawn and garden would be a normal part of living in the Langley Passage development. Cort said yes. Erickson questioned if Cort knew of any reason why the residents couldn't have lawns and gardens. Cort said that there was only a restriction on irrigation systems in the development. Erickson questioned if the restriction on irrigation would preclude a garden hose and sprinkler. Cort said no. Erickson asked Cort if any of the studies for the site took into account of water imported to the site. Cort said that he was not aware of any.

City Attorney Thomas Graafstra began questioning Cort. Graafstra asked Cort about his educational background. Cort said that he had a Bachelor's Degree in Geography from the University of Washington, a Master's Degree in Geography from Exeter University in England, and a Doctorate's Degree in Geography from the University College London. Graafstra asked Cort to describe his course of study. Cort said that geography was the study of change in patterns on the land, whether they were physical or human patterns. Cort said that, in his case, he studied the role of human agency in modifying the landscape. Graafstra remarked that Cort's course of study sounded sort of like a project application. Cort said that several geographers moved into planning, because as a planner they were able to look site by site, or citywide, at the overall patterns of land use and natural and human conditions.

Graafstra questioned the education that Cort had to act as the SEPA Official for the City of Langley. Cort said that he made maps for a living for a number of years after receiving his Master's degree, but in 1989 he became a planner for Pierce County. Cort explained that he had been a planner since 1989, except for time that he took off to pursue his Doctorate. Cort further stated that he had been the SEPA Responsible Official in Steilacoom for two years, Coupeville for eight years and Langley for three years. Graafstra questioned how many SEPA determinations Cort had made. Cort said that he had probably made one hundred SEPA determinations over his career. Graafstra asked if he had ever had one appealed. Cort said no; this application represented his first appealed case.

Graafstra said that, as he understood Cort's employment with the City, Cort was the planner for a period of time and then left. Graafstra asked how the application related to Cort's periods of employment. Cort explained that the application predated his employment with the City and that the application was received after a pre-application with the applicant in April of 2006. Cort said that Alice Schisel was the planner for Langley at that time the application was received. Cort said that Schisel left the City in either September or October of 2006; Jack Lynch was the interim planner for a couple of months in late 2006; and he became planner in December of 2006. Cort said that he was employed for eleven months by the City and then resigned and moved to Seattle.

Graafstra said that there had been multiple SEPA determinations in the case and he asked Cort to explain those determinations. Cort said that the first MDNS for the project was issued by Donna Keeler in the period between his two employment terms (or the period between October 2007 and January 2008). Cort said that Keeler issued the MDNS with the standard fourteen day comment period and she received a number of public comments that caused her to withdraw the determination. Cort said there was no further action under SEPA until he issued an

MDNS in April of 2009 with a fourteen day comment period. Cort said that he received about twenty comments on the MDNS and based on those comments, issued a revised and final MDNS on May 13, 2009.

Graafstra questioned what the differences were between the MDNS of April and May of 2009. Cort said that there were several conditions that were added based on the comments received. Cort said that one of the changes was to add a condition through SEPA to coordinate improvements to the downstream system with Island County. Cort said that this process would have been necessary anyway and was not related to a significant impact, but was an appropriate thing to put into SEPA to insure the connection with SEPA was made.

Graafstra questioned how the SEPA process worked and what started the process. Cort said that SEPA was started by the submittal of an Environmental Checklist by an applicant. Graafstra questioned Cort's use of the word "issue" and he asked if the word meant that there was a probable significant adverse impact. Cort said that an issue, as he used it, was a question about the project for the City. Graafstra clarified by saying that Cort hadn't meant in his earlier testimony that an issue was a significant probable adverse impact. Cort said that Graafstra was correct.

Graafstra asked Cort what evidence he had before him when he issued the MDNS in May of 2009. Cort replied that the entire list of evidence was set out in the MDNS. Cort referred to the list and said that there were thirteen reports and analyses, as well as a number of comments from individuals and interested parties that were the basis of the determination.

Graafstra questioned if Cort, as he sat here today, would change his MDNS. Cort said that he would not. Graafstra questioned if Cort found any significant probable adverse environmental impacts that would result from this proposal. Cort said that City staff did not find anything rising to the level of a significant probable adverse environmental impact. Graafstra questioned why Cort added conditions to his MDNS. Cort said that one of the ways that he had traditionally used the MDNS process was to use the substantive authority of SEPA to add conditions where a municipal code did not address the issue, or where the issue was better addressed using the substantive authority of SEPA. Cort explained that this was why City staff applied mitigation measures to this application. Graafstra said he did not have any further questions.

Doug Kelly, attorney for the applicant, said that he would ask Cort a few questions and reserved the right to recall him. Kelly referred Cort to the well logs of Exhibit 27 of the LCAA brief and the graph distributed by Erickson (Exhibit A-1), and summarized the documents by saying that the use of water increased during the summer months. Kelly asked Cort if he would say that the summer months were the months that experienced the least amount of rain. Cort said yes, he would expect to see a reverse trending line if precipitation was considered.

Kelly asked about Cort's process in formulating the MDNS. Kelly summarized the fact that Cort had looked at the USGS letter and considered its information in light of its broad scope and had also considered the studies and reports done by HWA, Varljen and Aspect Consulting. Kelly questioned if Mr. Sugar of HWA and Mr. Varljen were hydrogeologists. Cort said yes. Kelly asked if Mr. Reese of Aspect Consulting was a hydrogeologist. Cort said no.

Kelly asked if Cort relied on the peer-review from Varljen in making his determination. Cort said yes. Kelly read the first sentence from the third paragraph of LCAA Exhibit 11 and asked Cort what the sentence meant to him. Cort said that he thought the statement meant that, based on the review of the HWA methodology and the work necessary to determine the potential impacts of the development, Varljen felt that there was sufficient information to conclude that there would be no impact to bluff stability. Kelly stated that it was Cort's conclusion that there would be no impact to bluff stability from the project and he questioned if that conclusion was based on the reports by HWA and Varljen. Cort said that his conclusion was based on the totality of the record. Cort noted however that the record contained only one analysis and report that considered the deep

borings on the site, and one peer-review, and as a result, those documents carried substantial weight. Kelly verified that the HWA report was the last report prepared after the borings. Cort said that that was correct.

Kelly asked if Cort would explain a categorically exempt activity under SEPA. Cort said that SEPA had a number of activities that were categorically exempt. Cort explained that state law defaulted to a categorically exempt threshold, but that a city could raise that threshold to a higher level if they wanted. Cort provided an example and said that the number of units that could be built without requiring SEPA was four in state law, but that the number could be raised by a municipality. Cort explained that if a development was at or below an established threshold, then it could be exempt from SEPA. Cort noted however that a SEPA Responsible Official could require an environmental checklist, if a project was below the threshold but appeared to require a SEPA. Kelly clarified that no SEPA process would be involved if a project was categorically exempt. Cort said that was correct.

Erickson wanted to redirect and referred Cort to the MDNS, Attachment E of the WEAN brief. Erickson read the first sentence of the paragraph under Lead agency: City of Langley, WA, which says that “the lead agency has determined that this proposal does not have a probable significant adverse impact on the environment, so long as certain mitigating measures (identified and explained below) are implemented to reduce potential significant impacts to a level of nonsignificance.” Erickson also read the paragraph on the first page that starts, “most of the potential impacts from the Langley Passage proposal can be addressed through diligent application of the City’s development regulations and critical areas ordinance.” Erickson said that it was unclear to him how Cort could use mitigation measures that did not meet a probable significant adverse impact. Cort said that it was very common to apply mitigation measures for items that weren’t a probable significant adverse environmental impact, and he said that the section was included in the act. Erickson asked if Cort could tell him the portion of SEPA that allowed mitigation for something other than a probable significant adverse impact and said that he thought Cort was misinterpreting SEPA. Cort looked for the section and said that he was not able to find it at the time. Erickson said that perhaps if Cort found it later on he could let people in the hearing know. Erickson said that based on his understanding, SEPA was meant to create mitigation only when there was a probable significant adverse impact and Erickson said that he was perplexed by Cort’s interpretation of SEPA.

Erickson read from the MDNS and commented how the document spoke about the long history of unstable bluffs in the area. Erickson read the statement on page 2 of the document that said, “there remains enough uncertainty in the best available science with respect to conductivity of the subsurface soils (the speed at which groundwater migrates through soil) to warrant mitigation for potential downstream impacts” and argued that the document sounded as if Cort had made a decision that there would be a probable significant impact. Cort said no and said that Varljen’s conclusion was that there would not be an impact to bluff stability. Cort explained that Varljen’s only caution to the City was to acknowledge the possibility that all the infiltrated water could enter the downstream system and ensure the downstream system had the capability to handle that flow. Cort explained that if a lot of things came together in the worst possible case, Varljen said that the downstream system should have the capability to handle the water.

Erickson clarified that it was Cort’s understanding that a SEPA Responsible Official could impose mitigation measures for items for which there was not a significant impact. Cort said that the City utilized the substantive authority of SEPA to mitigate items that weren’t effectively addressed within the City code.

Erickson asked if the downstream conveyance system was adequate to handle downstream flows. Cort said that according to the City Engineer the downstream conveyance system was adequate to handle the water and according to the analysis by Davido, the outfall also had capacity. Erickson asked Cort if he had seen the comments from the County about the volume of the water in the downstream system. Cort said that volume was not exactly what the County had said and he explained that the County based their analysis on rate not volume. Erickson read WEAN Exhibit D and said that the letter from Jeff Tate specified rate and quantity, not just rate. Cort referred to Exhibit 29 of the LCAA brief and said that the County Surface Water Manager, the individual who would review the proposal, specified no increase in flow in events up to the 100-year storm. Cort further

said that it was the City's understanding that final engineering would go to the County for review, and if improvements were needed, those improvements would be based on the County's review of the final engineering.

Erickson questioned if a pipe protruding out of a bluff was a typical way of handling stormwater flows. Cort said that the pipe probably would not be permitted now, but that there were a number of similar systems that currently existed around the county.

Erickson questioned if the drainage should be considered as part of the environmental document, even though it was not part of the City's jurisdiction. Cort said that the drainage was considered with the project in one environmental document. Cort said that, if the project preliminary plat was approved, then the project would have to develop the final engineering and have the engineering approved by the County. Cort said that if the County determined that the project did not meet their standards, then it would be up to the applicant to meet those standards. Cort explained that the recommendation to the Board was that the SEPA conditions act as conditions to the plat, and nothing happen on the site until the County determined that the downstream system was appropriate for their standards. Erickson questioned at what point improvements or the review of the adequacy of the outfall would occur under SEPA, and stated that it was his understanding that monitoring of the outfall would not occur until after development started. Cort said that, if the County determined that the application would require a new tightline system based on the final engineering, then the applicant would have to go through the SEPA process with the County prior to the development of the site. Cort said that nothing would occur on the site, while the consideration of the tightline by the County occurred. Cort also explained that the monitoring of the ditch would not occur until after the County had made its decision about the impact of the proposal on the system. Erickson asked Cort whether or not there was a guarantee that any improvements to the downstream system would be subject to SEPA. Cort said that it would be the County's decision.

Erickson asked if SEPA specified that you couldn't segment a SEPA so parts were omitted from review. Cort said that, in terms of the work that occurred as part of the preliminary plat, the SEPA was fine. Cort explained that the work associated with the preliminary plat included a preliminary conceptual engineering and he explained that the preliminary engineering for the site showed that there was capacity in the downstream outfall. Cort reiterated that the final engineering would clarify the need for a SEPA for that system. Erickson questioned if Cort could direct him to the studies in the record about the capacity of the downstream system, including the adequacy of the outfall. Cort referred Erickson to Exhibit 8 of the staff brief, the Davido drainage report submitted by Whidbey Neighborhood Partners in September of 2006. Cort told Erickson that the outflow pipe capacity analysis started on page five. Erickson acknowledged the section and said that he wondered if there was an analysis. Erickson clarified that Cort was saying that it was up to the County to determine whether a SEPA was required for a downstream outfall. Cort said yes; it was a proposed condition to the preliminary plat that the County approved of the final engineering before moving on with the final plat.

Adams began questioning Cort. Adams clarified that when Cort was talking about categorically exempt actions under SEPA, Cort seemed to say that he could review a categorically exempt activity. Cort said yes, and that he had used the approach to consider a SEPA for one categorically exempt action before. Adams referred Cort to the analysis of a categorically exempt activity in the Staff Brief and asked whether the application could still be potentially subject to SEPA if the applicant were to withdraw the application and propose a categorically exempt action. Cort said according to the law it could be reviewed.

Adams called Challis Stringer. Sundberg swore in Stringer. Adams asked Stringer to summarize her employment with the City. Stringer said that she had worked for the City of Langley since May of 2003 and in April of 2008 she became the Director of Public Works. Adams asked what Stringer had done prior to being the Director of Public Works. Stringer said that she was a Maintenance Laborer for the City. Adams asked Stringer if, as Director of Public Works, it is was her responsibility to manage the water and sewer plant. Stringer said yes. Adams asked Stringer's background and if she had studied engineering. Stringer said that she had not.

Adams questioned if Stringer relied on other staff members when she needed technical information. Stringer said yes, Larry Cort and Ryan Goodman.

Adams showed Stringer the document circulated by Erickson (Exhibit A-1) that was based on Exhibit 27. Adams asked if Stringer heard Cort testify that the increase in water could be attributed to the increase in residents and possibly attributed to people watering their gardens. Stringer said that she heard the testimony. Adams asked if there was anyway to sort out the amount of water that went to the seasonal increase in residents and the additional amount of water that went irrigation. Stringer said that, unless every home had an individual irrigation measure, there would not be a way to determine how much water was used for each.

Adams showed Stringer Exhibit 28, data related to water use by homes on sewer, and questioned if she saw a pronounced seasonal shift, or if the seasonal shift was in sewer use was more continuous. Stringer said that the shift was more continuous. Stringer additionally clarified that Exhibit 28 did not measure the amount of water that was entering the sewer system; the data represented the amount of water that was travelling through the water meters of homes on sewer. Adams questioned if everyone on the water system was on the sewer system, and if a conclusion could be drawn from that fact. Stringer said that she did not believe that she could draw a conclusion. Adams clarified that all of the data in Exhibit 28 came from household meters and he questioned what was happening to all of the water in the summer. Stringer said that the data displayed a slight rise in July and August of 2008, and Adams pointed out that you could also see a rise in January and February of 2007. Stringer reiterated that you would need to use an irrigation meter if you wanted to find the specific amount of water used for irrigation.

Adams clarified that the figures were not taken from the sewage plant. Stringer said that the influent meter did not work at the treatment plant. Adams questioned how long the meter had not worked. Stringer said that the meter had not worked for as long as it had been installed.

Sundberg questioned what the third column on Exhibit 28 represented and Adams said that he was mystified as well. Stringer said that Exhibit 27 represented the total amount of water pumped from the well and Exhibit 28 represented the amount of water that traveled past a meter at a house with a sewer account. Adams stated that the data implied that it was only those who were not on sewer that would irrigate their gardens. Stringer said that she would not make that assumption. Adams asked if what Stringer was saying was that water coming out of the well doubled in the summer, but the people who were on sewer did not use that much more water in the summer. Stringer said that that was correct. Adams said that the area of the proposed development was not on sewer. Stringer said that was correct.

Adams referred Stringer to the statement in the Staff Report that there had been no problems in the drainage ditch since it was maintained in 2005 and questioned if, as Director of Public Works, Stringer was responsible for that maintenance. Stringer said yes. Adams said that the Staff Report stated that the ditch was only one third full during heavy storms and he asked if Stringer measured the height of the water in the ditch during those events. Stringer said that she visually measured the depth of the water. Adams questioned if Stringer kept a log of the measurements. Stringer said no.

Adams questioned if Stringer would be responsible for the baseline conditions report for the ditch. Stringer said that she would. Adams questioned how Stringer would determine when to conduct the measurement. Stringer said that she would review daily rainfall patterns collected by the City and determine a good time to take the measurement. Adams questioned what characteristics Stringer would measure in the ditch. Stringer said that how the ditch was measured would be determined by the City Engineer and herself.

Erickson asked Stringer if there were any places in Langley that were hooked to a grey water system. Stringer said yes there were several bed and breakfasts on septic. Sundberg clarified that Erickson was talking about grey water systems. Stringer said that she did not know of any grey water systems. Erickson said that most of the water used would then go back to the sewer. Stringer said yes.

The attorney for the City and the attorney for the applicant had no questions for Stringer.

The Board took a five minute break beginning at 6:08. The Board reconvened at 6:14.

Adams called Ryan Goodman and Sundberg swore in Goodman. Adams asked Goodman to summarize his employment history for Langley. Goodman said that he started work for the City in 1993 and he was employed as a contract worker in 1994.

Adams questioned if Goodman had worked for the City for the entire project. Goodman said yes. Adams asked if Goodman was familiar with the technical history of the project. Goodman said yes.

Adams showed Goodman LCAA Exhibit 7, the letter to Donna Keeler from Quin Clements. Adams referred to the phrase, "the applicant met with City staff to discuss alternate options for handling the storm drainage generated from the site" and asked Goodman if that statement was true. Goodman said that he did not recall the meeting with the applicant, but said that he had no reason to believe that the letter was incorrect. Adams questioned if the letter was drafted before any of the reports had been written by Mr. Varljen. Goodman said yes. Adams questioned at what point the City advised the applicant to move away from the tightline approach. Goodman said that, judging from the letter, it would have been October 2007. Adams questioned who would have given the applicant that advice. Goodman said that it would have either been himself or the planner. Adams asked Goodman why the City determined that the tightline was an inappropriate alternative. Goodman said that the City encouraged the applicant to pursue infiltration because the tightline would cross the wetland and because of the City's preference for low-impact development.

Adams showed Goodman LCAA Exhibit 16, LMC Section 15.01.430.B, and questioned what Goodman thought appropriate meant. Goodman said that he thought appropriate meant that a system would function and work properly. Adams asked if there could be an inappropriate low-impact development technique. Goodman said yes. Adams showed Goodman Policy j of Exhibit 15, an excerpt from the Langley Comprehensive Plan, and asked if the policy suggested a case where low-impact development would be inappropriate. Goodman said that the policy did suggest an instance where low-impact development could be inappropriate. Adams questioned if the site was located in such a way that the water from the area may move to or through a steep slope. Goodman said that the issue was one of the items studied in evaluating the site for the appropriateness of low-impact development.

Adams questioned if the code and the Comprehensive Plan required the City to reject the tightline solution. Goodman said that the code required him to investigate the low-impact development approach. Adams said that that was not what he asked and he restated the question. Goodman said that the City did not reject anything; the City told the applicant to investigate low-impact development and if the approach proved to be unfeasible, then the City would have told the applicant to utilize to another approach. Goodman further clarified that the City did not have a system to reject at the time of the letter.

Adams asked if the applicant talked to Goodman about cost of a tightline. Goodman said that the applicant talked about it in the letter, but there was no discussion with City staff about the cost. Adams said that a discussion about cost with staff wouldn't have been an appropriate conversation. Goodman said that he would not have entertained the conversation.

Adams referred Goodman to page 3 of the Comprehensive Sewer Plan in LCAA Exhibit 14 and said that the page included 1.7 million dollars of sewer line extensions and 260,000 dollars for a sewer line extension along Edgecliff Drive. City Attorney Thomas Graafstra objected to the question for relevancy to the case. Sundberg questioned if Adams was going to relate the question to some alternative that had not been considered. Adams said that he was trying to find out why it was okay for a waterline to cross a wetland, but not a sewer line. Goodman said that the City needed to evaluate alternative routes for each of the utilities, and he noted that the sewer plan did originally envision serving the site via Edgecliff. Adams asked Goodman why that plan to sewer

Edgecliff was abandoned. Goodman said that the City could go down Sandy Point with the sewer now that a low-pressure sewer system had been adopted. Adams questioned if a sewer down Edgecliff would have been consistent with the Comprehensive Sewer Plan in affect at the time and provided benefits for the Edgecliff area. Goodman said yes.

Adams referred Goodman to Exhibit 13, the existing Comprehensive Water Plan. Adams asked a series of questions about the location of existing water lines and concluded by saying that everyone to the west of Furman had a water loop and everyone to the east of Furman did not have a loop. Goodman said that was correct.

Adams showed Goodman the proposed system in the Comprehensive Water Plan map and said that the plan proposed extending the water line all the way down Sandy Point Road to Clyde Road and then hooking into the Sandy Point network. Adams questioned if part of the reason for providing the two water lines to the Sandy Point area was over concern for the single water line along Edgecliff. Goodman said that was part of the reason for the approach.

Adams noted that there were a number of areas where a loop connected water lines and he specifically showed Goodman Loop 12 on the map. Adams questioned if Loop 12 traveled through a wetland. Goodman said that he did not know. Goodman said that the map was conceptual and he noted that the written part of the plan simply called for a connection between Edgecliff and Sandy Point east of Furman Avenue. Adams questioned if Goodman was responsible for knowing where wetlands existed as a City Engineer. Goodman said that he would rely on a planner for information regarding where wetlands existed.

Adams said that Cort's Staff Brief said that fifty-eight homes would benefit from the water loop through the wetland and said that he did not understand how the City got the number fifty-eight or even close to it. Adams led Goodman through the map and Goodman said that the total houses equaled only about half of fifty-eight. Adams questioned if Goodman remembered showing the PAB a diagram displaying the properties that would benefit from this improvement. Goodman said yes. Adams questioned if Goodman remembered the fact that the map showed the houses on Furman and Decker benefiting from the waterline loop. Goodman said that the map may have, but that he did not remember. Adams said that he thought Goodman's presentation was grossly misleading in regard to the benefits of the water line. Goodman said that that aspect in the presentation may have been incorrect.

Adams referred to the City's MDNS and said that the document argued that the water line couldn't be placed on another property, because there were wetlands and the character of the property ownership. Adams noted that Goodman had said that he did not know where the wetlands were located and he asked Goodman what he meant about the character of property ownership. Goodman said that the City didn't have commission from property owners to put a water line through their property. Adams questioned if Goodman had spoken with any property owners about the potential of putting a water line through their property. Goodman said no. Adams questioned if the City had the power of eminent domain, or the ability to acquire land for a water line if a property owner refused. Goodman said yes, the City had the power of eminent domain. Adams asked Goodman whether either of the reasons stated for placing the water line through the wetland were valid, if the City did not know about the presence of wetlands and if the City had the power of eminent domain. Goodman said that the reasons were valid if you had access to the property, the damage to the wetland could be mitigated, and the project could pass the test in the code. Adams asked for clarification from Goodman regarding whether the City had the potential to acquire an easement using eminent domain on land where no wetland existed. Goodman said it was his understanding that the City had the power of eminent domain.

Adams referred Goodman to Appendix A of LCAA Exhibit 10. Adams questioned if the silt layer on the diagram prevented the water from entering the deeper layers. Goodman said that the layer was less permeable than the surface above it. Adams stated that the triangles in the diagram represented the area that the borings first found water and he questioned if it was a reasonable inference that the area between the triangles and the layer of silt was wet. Goodman said yes, the area should mostly be wet. Adams questioned if the area between the

triangles was above or below the top of the bluff. Goodman said that, based on the diagram, the area was below the top of the bluff. Adams questioned how deep the layer was below the top of the bluff. Goodman said that it appeared to be 25 feet. Adams asked Goodman about the depth of the drainage ditch. Goodman said that the ditch was approximately 2.5 feet deep. Adams said that, of the water moving towards the drainage ditch, the top 2.5 feet could reach the ditch, but the other water would not reach the ditch.

Adams questioned if Goodman could tell how much water was moving horizontally instead of to the ditch as a result of the borings. Goodman said no.

Erickson questioned why Goodman was concerned about the waterline along the bluff. Goodman said that the line was close to the bluff and a slide occurred near the waterline approximately 40 years ago. Erickson clarified that Goodman was concerned with bluff instability and Goodman said that instability was one part of the reason. Goodman also noted that the City wanted to have at least two sources of supply for each water user.

Graafstra asked Goodman where the nearest valve was located if all of the line east of Furman and Decker along Edgecliff were shut down. Goodman asked for clarification. Graafstra asked if all the area east of Decker was shut down absent a loop in the system. Goodman said yes.

Kelly had no questions, but reserved the right to recall Goodman.

Steve Erickson called Cort. Erickson questioned if Cort had wetland surveys or delineations for the properties between the eastern edge of the Langley Passage development site and the City limits. Cort said that beyond the wetlands delineated on the project site and the site adjacent to the property, the City only had a general understanding of the potential areas where wetlands further east existed. Erickson questioned if the City had contacted any individuals east of the proposed project about the placement of the waterline. Cort said no. Erickson questioned if the City had done any investigation about the placement of the water line that did go through a wetland or that went through a wetland with less impact. Cort said no, but he noted that the water line needed to serve the subdivision.

Erickson referred to LCAA Exhibit 13, the Water System Plan map, and he asked if the map represented the current map for the system. Cort said yes. Erickson noted that the map showed a water main east of the Langley Passage site.

Erickson said that Cort's brief argued that locating the waterline elsewhere was not possible, because it would require cooperation with other landowners and that cooperation was not guaranteed. Cort said that the statement was correct and noted that the waterline fundamentally needed to serve the subdivision. Cort said that the Langley Municipal Code set a maximum dead end limit of 800 feet for a water main and he said that the line would total about 1600 feet if the water main dead ended on the project site. Erickson questioned if any of the other properties east of the project site were 800 feet deep. Cort said that he did not know, but he noted that the areas were also not near the project site. Erickson did a quick measurement of the areas east of the site and said that they were near 800 feet deep.

Erickson questioned if the properties to the east of the site were zoned similarly. Cort said yes. Erickson questioned whether the properties would need similar size water lines if they were developed to similar densities. Cort said that they could conceivably require similar size water lines and he noted that the parcels would also need to meet the standard of 800 feet for a dead end water line. Erickson questioned if another property were developed, if it would need to loop the water line. Cort said that if another property were developed, the line could be brought in off Edgecliff or Sandy Point and stubbed if it was less than 800 linear feet. Erickson said that the properties were around 800 feet deep, and depending on where the development was located on them, they would run into that 800 foot standard.

Erickson questioned if it was Cort's position that all future development east of the site would require a looped water line. Cort said that projects east of the project site would not necessarily require a loop. Cort explained

that, in the case of the Langley Passage proposal, it was the City's responsibility to see how to best serve the site with utilities. Cort said that to serve the site the water line had to come from Decker, down Sandy Point, and then dead end in the hammerhead on the project site. Cort explained that, without a loop in this situation, the City would have an inappropriate dead end length for a water main.

Erickson questioned if the loop associated with the project would take the place of the loop shown on the water system plan. Cort said that the idea was to loop whenever possible, and he noted the number 12 on the map represented a conceptual loop. Cort said that written portion of the plan simply sought a loop somewhere east of Furman. Erickson questioned what standard would take precedence if the City wanted to loop wherever possible: the provision that a line should not be located in a wetland, or the standard that a dead end line should not exceed 800 feet. Cort said that question was not a policy issue; it was based on the City standard. Cort said that, while the law allowed some discretion for the City Engineer, the staff did not feel that they should use discretion on a project that would double the standard for a dead end water line.

Erickson said that there were seven or eight properties east of the project site and he asked Cort if each of the properties would need a looped water line if they were developed with no other reasonable or feasible alternative but to go through a wetland. Cort said that the City would consider whether the sites needed a looped water line on a case by case basis. Cort said that, if the situation involved a property east of the project site, and the line created a dead end that was longer than 800 feet, the City would look at alternatives to serve the site.

Erickson questioned if the City had a policy renouncing the use of eminent domain for the siting of public utilities. Cort said that the City did not have such a policy. Cort said that the City could potentially use eminent domain, but he noted that the project was not the City's application. Cort said that the City was reviewing the application, and he noted that the City had a specific remedy in the Critical Areas Ordinance for handling the placement of water line. Cort said that the staff recommendation to the Board and the Council was to consider the specific remedy for the situation that was specified in the Critical Areas Ordinance. Cort said that, if the Board or the City Council felt that the remedy in the ordinance was inappropriate, they could say that the City should work with the applicant to pursue eminent domain or make the decision that a 1600 foot dead end water line was okay. Cort said that, in this case, staff did not have the discretion to make that decision.

Erickson questioned whether the loop would be needed if conceptual loop 12 on the map existed. Cort said that he thought that the answer would be yes, but that he would want to consult with Goodman. Goodman said that it would depend on the circumstances.

Erickson moved to LMC 16.20.080.C.2(a), Public agency and utility exceptions, and read the first criterion: "no other feasible and reasonable alternative for the development exists with less impact". Erickson said that his reading of the section stated that a pipe should not be placed in a wetland, unless it was shown that there was no other feasible and reasonable alternative. Cort said that the standard was both feasibility and reasonability and he explained that both of the requirements needed to be met. Cort argued that, while the City could approve the application with the condition that eminent domain be used, the approach did not seem reasonable, because the City already had a standard in the Critical Areas Ordinance that specifically provided a remedy for the issue. Erickson questioned when there would not be a reasonable and feasible alternative for looping the waterline in the area, even when there were wetlands. Cort said that conditioning a land use action based on an action of others was not a reasonable circumstance for conditioning an application. Cort said that it may be feasible, but it was not reasonable, especially when the City had an exception in the code.

Erickson questioned if the City was expecting numerous loops through the area. Cort said that he could not say, the issue was not his expertise and the water plan showed only one line. Cort noted that a site developed with a single house would not need a water main. Erickson said that the entire area was currently zoned for higher density. Cort said that that was correct.

Erickson questioned if the City considered having the developer pay into a fund for the creation of a loop. Cort said that the City did not; the City was constrained by concurrency to provide facilities that were available when the application was constructed. Cort said that the loop was not funded, and the water line would fundamentally need to serve the subdivision. Erickson questioned if he had just heard Cort say that some of the projects in the Comprehensive Water Plan were not included in the Capital Facilities Plan. Cort said that some were and some were not; improvements that were included in the water plan were based on a twenty-year time horizon, while items in the Capital Improvement Program (CIP) were based on a six-year period. Erickson questioned if the project was on the CIP and he asked if it would be better to construct the line and have the developer pay in later. Cort said that the project was not funded on the CIP.

Erickson questioned if a pipeline would be required in all the properties east of the project site, even if the site had a wetland. Cort said that he could not generalize about the situation and the City would evaluate the issue on a case by case basis. Erickson questioned if the 800 foot linear dead end limit had ever been invoked to override other reasonable and feasible alternatives in the past. Cort said that he did not know. Erickson questioned if the project would set a precedent for future applications. Cort said no, the City looked at applications independently. Sundberg said that he thought that some of the discussion was based on hypothetical distances and he noted that, if the project site was 800 feet deep, the properties to the east had to be smaller than 800 feet.

Erickson said that Cort testified that under SEPA the avoidance of an impact was the highest priority and he noted that Cort didn't look into the properties further east of the property having wetlands. Cort said that the City began with the fundamental assumption that the water line had to serve the project. Cort said that the project was not a City project, it was the extension of City utilities to serve a project site. Cort said that, while staff would love to have delineations for all the properties east of the project, the fact that the City did not have the delineations was not relevant to the review of the application.

Erickson questioned if Cort had considered the cumulative impacts of the approach. Cort asked Erickson to be more specific. Erickson spoke about the precedent of the project and asked if it was ultimately better to place one pipeline through an area rather than multiple pipelines. Cort said that it was inappropriate to talk about anything that the City did as a precedent. Cort said that the City looked at projects based on their merits and for this project specifically considered how best to provide utilities to the site.

Erickson questioned if this use of the Critical Areas Ordinance would influence how the City would interpret the code in the future. Cort said that the City would use whatever rules they had in place at the time to evaluate an application. Erickson questioned if the situation stayed the same, if Cort would expect to change his interpretation. Cort said that he did not know.

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.

Graafstra asked Cort if the applicant had the power of eminent domain. Cort said no.

Kelly asked Cort if the plan as developed was a schematic. Cort said yes. Kelly asked if it was a proposal for what could occur at the time that it was adopted. Cort said yes. Kelly asked if, as a plan, if the City was bound by it in anyway. Cort said no and clarified that he was talking about the Capital Facilities Plan.

Erickson questioned if the Comprehensive Water Plan was part of the Comprehensive Plan. Cort said that the document was adopted by reference into the Comprehensive Plan. Erickson said that the plan then was not purely advisory and could not be disregarded. Cort said that in the list of capital projects, some were funded and some were not. Cort said that in the Capital Improvement Program, year one was usually the year that things were funded, but it was not unusual for a city council to change their highest priority. Cort summarized by saying that the plans specified the highest priorities for projects, but did not specify how the project would be

funded. Cort said that the capital program of the Comprehensive Water Plan said that there would be an intertie between Sandy Point Road and Edgecliff.

Erickson asked Goodman under what circumstances a water line would not be reasonable through the area near the project site. Goodman said that in the case of future water lines through the area, the City would look for alternatives in cases when there was a wetland. Goodman said however that there were no other alternatives in this case. Goodman said that hypothetically, assuming that all the area near the project site was developed with the same density and a number of lines were placed through the area, the City would be looking for some sort of gridded system.

Goodman further noted that the line through the area on the water plan was shown specifically to improve circulation and water quality for houses now, and the plan was not meant to show the buildout condition of the area. Sundberg clarified that the line shown as number 12 on the map was meant to improve the current water supply. Goodman said that Sundberg was correct. Goodman said that it was the additional housing that was driving the creation of the line at this point. Goodman said that the addition of the housing and the extension of the dead end were the big reasons why the City recommended the loop now. Erickson said that, as he understood Goodman, there could be a number of lines through the area. Goodman said yes, the system could be a gridded system, but the lines would not necessarily go all the way through from Edgecliff to Sandy Point. Erickson questioned if the line for the development could loop back on itself. Goodman said no, but noted that the City had required a stub in the development that could be extended to the properties on the west if they were further developed.

Erickson said that the density could increase a great deal in the area under the current zoning and he questioned if the City was planning on doing proactive utility planning, rather than planning for utilities when development happened. Goodman said that this was the first time that the City had proposed to place a waterline in a wetland and he explained that LCAA Exhibit 13, the Comprehensive Water Plan map, represented the City's proactive utility planning. Goodman said that over the twenty-year planning horizon, the water lines on the map were what the City expected to see. Sundberg noted that there was the possibility that the area could be zoned for less density.

Erickson said that he had no more witnesses, but said that he would like to question Kelly's witnesses. Erickson also said that when the Board reconvened, he would like twenty to thirty minutes to move through his brief.

## **ADJOURN**

Gage moved to continue the hearing to July 14<sup>th</sup> at 4:00 in the Langley City Council Chambers. Shafaat seconded. The motion was approved unanimously.

The meeting adjourned at 7:26. The meeting was held in the Langley Council Chambers at Langley City Hall. The next regular meeting of the Board is scheduled for June 23<sup>rd</sup>, 2010 and the continuation of the public hearing will occur on July 14<sup>th</sup>, 2010. Fred Evander recorded the minutes for the meeting.