

**To:** Members of Planning Advisory Board

**Date of Report:** May 28, 2010

**Staff Contact:** Larry E. Cort, Director of Community Planning

**Meeting Date:** June 2, 2010

**Subject:** PUBLIC HEARING (Cont) – LANGLEY PASSAGE SEPA APPEAL

**Application:** SUB 2006-01, Langley Passage 20-Lot Long Plat  
CA 2006-01, Critical Area Permit – Wetland

**Applicant:** Whidbey Neighborhood Partners  
PO Box 1355, Freeland, WA 98249  
Contact Person: Gary Roth

**Appellants:** Whidbey Environmental Action Network (WEAN)  
PO Box 53, Langley, WA 98260  
Contact Person: Steve Erickson

Langley Critical Areas Alliance (LCAA)  
c/o CRU Strategies Ltd., PO Box 1269, Langley, WA 98260  
Contact Person: Robin G. Adams

**Location:** Between Edgecliff Drive and Sandy Point Road approximately 2,000 feet east of Camano Avenue

**LIST OF EXHIBITS:**

Except as noted, these Exhibits have been distributed previously during the preliminary plat review and are therefore already part of the record. This numbered list is provided as a reference for those Exhibits that are specifically referred to in the staff brief.

- Exhibit 1** Chapter 43.21C RCW, WAC Chapter 197-11, LMC Chapter 16.04 (excerpts)
- Exhibit 2** Langley Passage Environmental Checklist (distributed previously)
- Exhibit 3** Final Mitigated Determination of Nonsignificance (MDNS) (distributed previously) All studies referenced in the Final MDNS are also included in the public record by the this reference.
- Exhibit 4** Notice of Appeal (Langley Critical Areas Alliance), 26 May 2009 (distributed previously)
- Exhibit 5** Notice of Appeal (Whidbey Environmental Action Network), 26 May 2009 (distributed previously)
- Exhibit 6** HWA Geosciences, Potential Impact of On-Site Stormwater Infiltration, December 19, 2010 (distributed previously)

- Exhibit 7** Mark Varljen, Peer Review entitled “Langley Passage Project Hydrogeologic Issues, March 1, 2009 (distributed previously)
- Exhibit 8** Davido Consulting Group, Drainage Report, September 2006
- Exhibit 9** Cantrell and Associates, Critical Areas Assessment Report: Wetland Delineation, August 18, 2006
- Exhibit 10** Steward and Associates, Edgecliff Drive Property Wetland Delineation and Review, April 6, 2007 (distributed previously)
- Exhibit 11** Langley Municipal Code, Section 15.01.315(A) (excerpt only, full code already entered into the record)
- Exhibit 12** City of Langley Water System Plan, pages 70-71 (excerpt only, full Water System Plan already entered into the record)

## **INTRODUCTION**

On May 13, 2009, the SEPA Responsible Official for Langley issued a Final Revised Mitigated Determination of Nonsignificance for the proposed Langley Passage Subdivision. In accordance with Section 16.04.150 of the Langley Municipal Code, this decision was appealed in a timely manner by the Langley Critical Areas Alliance (LCAA) and the Whidbey Environmental Action Network (WEAN). This staff brief is intended to explain how the public record for the Langley Passage application supports the Responsible Official’s decision in this matter and therefore why this decision should be affirmed. The Planning Advisory Board will make a recommendation to the City Council on this matter.

## **BACKGROUND ON SEPA**

The State Environmental Policy Act, or SEPA for short, was first passed in 1971 and is codified in State law as Chapter 43.21C of the Revised Code of Washington (RCW). Chapter 197-11 of the Washington Administrative Code (WAC), also known as the SEPA Rules, establishes uniform requirements for compliance with SEPA. Finally, Chapter 16.04 of the Langley Municipal Code (LMC), entitled Environmental Policy, contains the SEPA rules as they apply within the City of Langley. The purpose of SEPA and other excerpts from these three documents which are referred to in this brief are attached as Exhibit 1.

Review under SEPA is required for all project and non-project actions proposed in the State of Washington except when it can be determined that a proposal is categorically exempt. According to the SEPA rules, a “categorical exemption means a type of action, specified in these rules, which does not significantly affect the environment.”<sup>1</sup> The proposed Langley Passage subdivision is not a categorically exempt action so it is therefore subject to review under SEPA using the broad authority contained in the documents cited above. The policy basis for applying SEPA in a review process such as Langley Passage is established at WAC 197-11-030, is included in Exhibit 1 to this brief.

## **LOCAL REVIEW UNDER SEPA**

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<sup>1</sup> WAC 197-11-720

Local review under SEPA is initiated through the submittal by the applicant of an Environmental Checklist. In completing this document, applicants are asked to consider the potential impacts on the environment that could result from implementation of their proposal. The Environmental Checklist for the proposed Langley Passage subdivision was attached to the Staff Report and is noted as Exhibit 2 to this brief. Please note the range of environmental elements that must be considered for potential impacts under SEPA. The handwritten notes originated with the staff review of this document.

Typically, the Environmental Checklist is the starting point for assessing the potential impact of a project on the different elements of the environment. In accordance with WAC 197-11-100, the City's SEPA Responsible Official (the Planning Officer in Langley) may request additional information after the initial review but such a request is "limited to those elements on the checklist for which the lead agency has determined that information accessible to the agency is not reasonably sufficient to evaluate the environmental impacts of the proposal."<sup>2</sup> The Final Revised Mitigated Determination of Nonsignificance (Exhibit 3), cites the studies prepared by the applicant that allowed City staff to fully evaluate the environmental impacts of the proposed Langley Passage Subdivision. Guidance on evaluating impacts is described in WAC 197-11-060(4), also reproduced in Exhibit 1

Following the evaluation and analysis of all available and requested environmental documents, the SEPA Responsible Official is required to issue a 'threshold determination.' As defined in the SEPA Rules, a threshold determination "means the decision by the responsible official of the lead agency whether or not an EIS is required for a proposal that is not categorically exempt."<sup>3</sup> The general responsibilities of the SEPA Responsible Official in making this decision are described in WAC 197-11-330, the text of which is contained in Exhibit 1.

### **ISSUANCE OF THE MDNS THRESHOLD DETERMINATION**

On May 13, 2009, the SEPA Responsible Official for Langley issued a Final Revised Mitigated Determination of Nonsignificance for the proposed Langley Passage Subdivision. State law defines a Mitigated Determination of Nonsignificance as "a DNS that includes mitigation measures"<sup>4</sup> with "mitigation" itself defined as noted in Exhibit 1. This decision was based on all information available in the record that had a bearing on evaluating the potential environmental impacts of the proposed project and, by extension, whether or not an EIS would be required for this proposal.

All project and non-project actions are interpreted to have likely impacts, some positive and some negative. RCW 43.21C.031(1) states that "an environmental impact statement shall be prepared on proposals for legislation and other major actions that have a probable significant, adverse environmental impact." Two key words from this statement, "probable" and "significant" have very specific meanings within SEPA, as defined below:

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<sup>2</sup> WAC 197-11-100(2)

<sup>3</sup> WAC 197-11-797

<sup>4</sup> WAC 197-11-766

“Probable” means likely or reasonably likely to occur, as in “a reasonable probability of more than a moderate effect on the quality of the environment.” Probable is used to distinguish likely impacts from those that merely have a possibility of occurring, but are remote or speculative. This is not meant as a strict statistical probability test.<sup>5</sup>

(1) “Significant” as used in SEPA means a reasonable likelihood of more than a moderate adverse impact on environmental quality. (2) Significance involves context and intensity and does not lend itself to a formula or quantifiable tests. The context may vary with the physical setting. Intensity depends on the magnitude and duration of an impact. The severity of an impact should be weighed along with the likelihood of its occurrence. An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred.<sup>6</sup>

To comply with SEPA, each potential environmental impact from the proposed Langley Passage Subdivision was evaluated to determine whether or not the proposal would result in a probable significant, adverse environmental impact or, in other words, more than a moderate adverse impact. The summary of this analysis is contained in the Final Revised Mitigated Determination of Nonsignificance (Exhibit 3), but the following subsections provide the technical, scientific, policy and regulatory information used by the SEPA Responsible Official to make the decision not to require an Environmental Impact Statement.

### **APPEAL ISSUES – BASIS OF RESPONSIBLE OFFICIAL’S DECISION**

In accordance with Section 16.04.150 of the Langley Municipal Code, the decision of the SEPA Responsible Official to issue a Mitigated Determination of Nonsignificance on the proposed Langley Passage Subdivision was appealed in a timely manner by the Langley Critical Areas Alliance (LCAA) and the Whidbey Environmental Action Network (WEAN). In accordance with LMC 16.04.150(F), the staff response as follows is “limited to consideration of the matters raised in the appeal statements filed within the specified time,” or Exhibits 4 and 5. Specifically, this section examines impacts from groundwater on slope stability, impacts from drainage on downstream systems, impacts on the wetland and buffer, impacts on emergency access and impacts on traffic.

#### **Impacts from Groundwater on Slope Stability**

Both appellants assert that this proposal will have probable significant, adverse environmental impacts on the stability of the bluff located north of the project site and, further, that there is a lack of information to effectively evaluate this potential impact. In fact, as part of its review process, the City required and the applicant provided several studies that collectively and comprehensively characterize the subsurface stratigraphy and its likely ability to accommodate the calculated increase in groundwater infiltration. In particular, the HWA Geosciences Report (see Exhibit 6) from December 2008 entitled “Potential Impact of On-Site Stormwater Infiltration” analyzes the results of two deep borings drilled by HWA at the request of the City. Their conclusion was that “the predicted additional flows generated by the proposed development [estimated at 2,590 gallons per day average or 945,350 gallons per year per Davido, 2008] are

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<sup>5</sup> WAC 197-11-782

<sup>6</sup> WAC 197-11-794

minimal compared to existing ground water flows, and are not expected to have any adverse impacts on downgradient slope stability or drainage.”<sup>7</sup>

Pursuant to LMC 16.20.020(C), the City requested a peer review of the HWA Geosciences Report from Mark Varljen, LG, LHG. Mr. Varljen’s peer review, entitled “Langley Passage Project Hydrogeologic Issues” from March 1, 2009 (see Exhibit 7), concluded broadly as follows: “Overall it is my opinion that this work conforms with the requirements of the MDNS and my recommendations, and that further exploration or analysis is unnecessary.” More specifically on the potential impact of the proposed action on bluff stability, his professional judgment is that the project will not result in “any negative impacts from this project with respect to additional groundwater seepage along the face of the bluff.” Further, “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 above the elevation of the bluff.”<sup>8</sup>

The Report provided by HWA Geosciences and the peer review provided by Mark Varljen are the only two studies using a valid scientific process in the record that base their conclusions on the deep borings that effectively characterize the subsurface geology at the site. Certainly, there is no evidence in the record to refute the expert conclusions reached by HWA Geosciences or the peer review of this study conducted by Mr. Varljen. Consequently, the SEPA Responsible Official relied primarily on these two documents to draw two conclusions: (a) the available information is adequate to analyze the potential impact on bluff stability and (b) the potential impact on bluff stability falls well short of the “probable significant, adverse” impact threshold which triggers an EIS. Consequently, the SEPA Responsible Official concluded that the potential impacts on overall bluff stability did not meet the significance standard as defined by SEPA and therefore that no EIS was needed to examine this issue further.

### **Impacts from Drainage on the Downstream System**

Both appellants assert that the proposed Langley Passage subdivision will lead to probable significant, adverse impacts on the downstream drainage system and that the mitigation measures contained in the Final MDNS are not effective in reducing this impact to a level where an EIS would not be required. In analyzing these potential environmental impacts, City staff reviewed the following technical studies: Aspect Consulting – Comments Regarding Langley Passage Long Plat, October 2007; Davido Consulting Group – Drainage Report (revised), October 2007; Davido Consulting Group – Hydrologic Modeling Review, April 2008; SCS Engineers – Review of Langley Passage Project Hydrogeologic Issues (peer review), June 2008; HWA Geosciences – Potential Impact of On-Site Stormwater Infiltration, September 2008; HWA Geosciences – Potential Impact of On-Site Stormwater Infiltration (revised), December 2008; Mark Varljen, LG, LHG – Langley Passage Project Hydrogeologic Issues (peer review), March 2009. All of these documents are part of the public record for the Langley Passage project.

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<sup>7</sup> HWA Geosciences, Potential Impact of On-Site Stormwater Infiltration, December 19, 2008, p. 6.

<sup>8</sup> All quotations in this paragraph are from the peer review letter from Mark Varljen to Larry Cort entitled “Langley Passage Project Hydrogeologic Issues,” March 1, 2009.

All these studies agree that there will be an increase in the amount of water that is discharged to surface drainage or infiltrated to groundwater as a result of this project. This is attributable to calculated decrease in the amount of precipitation that currently leaves the site through evapotranspiration caused by the increase in hard surfaces and the removal of vegetative ground cover. In their response to the Aspect Consulting Report, Davido Consulting Group in April of 2008 estimated using a valid scientific process an increase of 2,590 gallons per day average or 945,350 gallons per year over pre-development volumes. It is this estimate that was used as a baseline in both the HWA Geosciences Impact Reports from September and December of 2008 and the Varljen peer review of these Reports from March of 2009. As noted above, both HWA and Varljen concluded that the proposed project could proceed without “adverse” and “undesirable” impacts respectively.

That said, Mr. Varljen’s peer review highlights some level of scientific uncertainty in the flow rate conclusions forwarded by HWA Geosciences and the MDNS acknowledges this uncertainty. The SEPA rules, at WAC 197-11-080, anticipate such gaps in certainty and require that agencies “make clear that such information is lacking or that substantial uncertainty exists.”<sup>9</sup> Mr. Varljen is clear that while the HWA analysis is “technically justified and reasonable as a best guess given the available information,” it is based on parameter values that could vary by an order of magnitude or more. Justifiably, he urges the City to be cautious in accepting HWA’s conclusions as absolute, but he also concludes that further exploration or analysis is unnecessary because, “from a practical standpoint, however, this uncertainty may not matter because of the stratigraphy identified in the borings completed by HWA.” Mr. Varljen concludes his peer review with his opinion that “whatever the discharge is, it doesn’t matter as long as the wetland system and/or conveyance system on the south side of Edgecliff Road can handle the additional input.”<sup>10</sup>

Given Mr. Varljen’s caution concerning the calculation of flow rates, the Responsible Official used the substantive authority of SEPA to reduce the potential uncertainty. First, City staff examined the plat design for ways to reduce the amount of potential impervious cover, to direct surface water runoff into rain gardens and to ensure that the post-development tree canopy is equal in percent site coverage to what is there now (30%). The exact language of the mitigation is contained in the Final MDNS. It should be noted that re-modeling the post-development site drainage based on reducing impervious lot coverage to a maximum of 50,000 square feet has, by itself, resulted in a 23% decrease in the total amount of drainage increase (from 945,350 gallons per year to 727,000 gallons per year). Further, this revised total does not account for likely further reductions in this total increase that would result from the 30% tree canopy preservation measure and the uptake from the 25 planned rain gardens.

Second, City staff analyzed the downstream system to determine if mitigation through SEPA was needed to reduce or eliminate potential impacts from the project. There are two parts to the downstream drainage system – inside and outside the City limits. Island County’s portion includes a short distance of open ditch and driveway culverts, the crossing underneath Edgecliff

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<sup>9</sup> WAC 197-11-080(2)

<sup>10</sup> All quotations in this paragraph attributed to Mark Varljen are from the peer review letter from Mark Varljen to Larry Cort entitled “Langley Passage Project Hydrogeologic Issues,” March 1, 2009.

Drive and the outfall to the beach. In September of 2006, the project proponents studied the capacity of the County's crossing underneath Edgecliff Drive and the outfall (see Exhibit 8) and determined that the facility has sufficient capacity for build-out of the drainage basin (of which the proposal is a small part). However, the MDNS confirms that Island County has full authority for review and approval of any needed improvements to this portion of the system prior to final plat approval.<sup>11</sup> In other words, no lots are created and no site disturbance occurs until the County informs the City that its requirements have been met with respect to their portion of the downstream system.

With respect to the City's portion of the downstream system, poor maintenance in the past had resulted in some ponding along south side of Edgecliff Drive. In November 2005, the Langley Public Works Department cleaned the open ditch to ensure efficient flow through the facility and now performs routine maintenance along this route. No ponding has been observed since that date and even heavy precipitation events do not cause the ditch to overflow.<sup>12</sup> Based on the likely minimal peak flow increases (the standard for measuring capacity – not volume as asserted by the appellants) from the proposed development, the City Engineer has determined that the proposal will not trigger improvements to City section of the downstream drainage system. However, the SEPA Responsible Official acknowledges the uncertainty expressed by Mr. Varljen and decided on mitigation to include a baseline pre-development conditions report to be prepared by the applicant (content to be established by the City Engineer), a monitoring program tied to a specific build-out time frame, the assignment of responsibility for remedial action to the developer should problems in the system occur as a result of the project during the monitoring period, and a financial guarantee in an amount equal to the engineer's estimate plus contingency for the capital project identified in the City's Comprehensive Stormwater Plan to improve the east Edgecliff drainage.<sup>13</sup> The precise language of these mitigating measures is contained in the MDNS.

In addressing the potential impacts from drainage on the downstream system raised by some degree of uncertainty in the parameters used to calculate subsurface flow rates, the SEPA Responsible Official used the substantive authority of SEPA to mitigate potential impacts in two ways: (1) alter the design and development potential of the proposed subdivision to reduce the amount of new drainage entering the system and (2) establish a baseline, require monitoring and secure financial responsibility and guarantees from the developer for potential improvements to the downstream system should they be necessary. Given that these mitigation measures effectively reduce the amount of drainage increase from the site by 23% (or more if the 30% tree canopy and rain gardens are factored in) and secure downstream improvements if needed, all

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<sup>11</sup> LCAA's appeal brief – Exhibit 29 - contains two emails from Phil Cohen, Island County Surface Water Manager, about the County's position on the proposed development. Mr. Cohen confirms the City's understanding from our discussion with him in 1997 and also confirms that the County will base its evaluation on the potential flow increase for all storm sizes up to the 100-year storm.

<sup>12</sup> The Langley Public Works Director reports that the ditch typically flows one-third full during heavy precipitation events since the maintenance regime was instituted.

<sup>13</sup> While the MDNS is clear in confirming that Island County has authority to review and potentially condition the final engineering plans for impact on their portion of the downstream system, and that the applicant bears financial responsibility for making any required improvements to the County's facility, the applicant has offered to increase the total amount of the bond for potential downstream improvements to \$250,000 to cover the cost of the City's capital project to improve drainage on east Edgecliff Drive (\$127,000), the cost of replacing the County's Edgecliff Drive crossing and installing a tightline to the beach (\$65,000 engineers estimate) and a 26% contingency (\$58,000).

potential impacts from drainage to the downstream system have been mitigated to moderate or less levels.

### **Impacts to Wetland and Buffer**

The Wetland Report by Cantrell and Associates (Exhibit 9) was prepared using best available science and in compliance with the City's critical area application requirements. Upon receiving this Report, City staff noted a discrepancy along the western boundary of the Cantrell delineation between this study and an earlier study prepared by IES. To resolve the discrepancy, the City contracted with Steward and Associates to perform a peer review of the western boundary of the wetland, the results of which are contained in the report entitled Steward Report (Exhibit 10). The western boundary as mapped by Steward and Associates was adopted by the City as accurately delineating this section of the wetland so the final delineation represents a hybrid of the Cantrell and Steward studies. The appellants assert that the delineation is not accurate but there is nothing in the record to scientifically support this assertion.

With one exception, the wetland and associated 110-foot buffer will remain undisturbed and all measures to minimize impacts to the wetland and buffer contained in LMC 16.20.060 will apply to this proposed action. The exception is the proposed installation of a water main that will connect the new main serving the homes in Langley Passage with the existing main in Edgecliff Drive. This connection is important for consistency with the City's Development Regulations, in particular LMC Section 15.01.315, which states that "no dead end 8-inch main shall be longer than 800 lineal feet unless approved by the City Engineer" (Exhibit 11) In order to serve the proposed subdivision, the applicant must connect to the existing main at the corner of Sandy Point Road and Furman Avenue, then east 500 feet on Sandy Point Road to the entrance of Langley Passage, and then 800 feet north to the end of the private street. This 1,300 foot dead end lay far exceeds the City standard for dead end mains.

In addition to the cited code requirement, an inter-tie or "loop" between Sandy Point Road and Edgecliff Drive between Furman Avenue and the City limits is a project that has been identified within the Water System Plan (see Exhibit 12) as a needed improvement to the City's water system (although a precise location is not identified) and is considered to be essential to enhancing reliability within the water distribution system and for promoting public health by securing a second water source for homes along Edgecliff Drive that can remain in operation during planned or unplanned shutdowns. Benefits would also accrue for enhanced fire protection and water quality. Not counting the proposed lots in the Langley Passage Subdivision, 58 existing lots within the surrounding Edgecliff neighborhood would realize peripheral benefits from connecting this loop.

In addressing the functional benefits of completing the loop with the need to consider mitigation sequencing about whether or not it is better to avoid the impact (preferred) or compensate for the impact through mitigation, it is important to note that the City's Critical Area Standards explicitly anticipate the potential need for public agencies to locate utilities within a wetland under certain conditions through LMC Section 16.20.080.C, Public Agency and Utility Exceptions. Specifically, this section states that "if the application of the wetland and stream provisions of this chapter would prohibit a street, road, or utility line proposal by a public agency

for a development proposal by a public agency or utility, the agency, utility or private applicant may apply for an exception pursuant to this section.” While City staff have steered the applicant to avoid impacts to the wetland by taking the sewer to Sandy Point Road and by infiltration of drainage in lieu of installing a tightline through the wetland, there is no such feasible or reasonable alternative to complete the waterline loop and still serve the proposed subdivision. Moving the line to the west or east to completely avoid the wetland and buffer, and still serve the proposed subdivision, would involve other privately-owned properties and there is no guarantee of cooperation for this option. The City remains open to this option pending willing owners.

Consequently, City staff support completing the loop along the westernmost property line of the subject site, avoiding the wetland in all but two short stretches totaling approximately 60 feet. Required mitigation for this disturbance is stipulated within the Critical Areas Regulations and the SEPA Responsible Official has added additional mitigation to the MDNS that calls for a design, installation, restoration and monitoring in keeping with final approved mitigation plans and best management practices.

### **Impacts on Emergency Access**

Staff from Fire District No. 3 and City of Langley Police have reviewed the Langley Passage Preliminary Plat and find emergency access to be adequate. Approval of the final street design and turnaround radii will be subject to a second review and approval by emergency service providers.

### **Impacts on Traffic**

Projects in the pipeline at the time of application vesting included The Highlands and Langley Bungalows. Both of these projects were factored into the analysis provided by Transportation Engineering NW<sup>14</sup> and the Level of Service impact for intersections affected by the proposed developments remains at pre-development levels and well within adopted Level of Service standards.

### **CATEGORICALLY EXEMPT COMPARISON**

Finally, as part of its review of the proposed Langley Passage Subdivision, the staff analyzed the potential impacts of an alternative development scenario at this site that would be categorically exempt from SEPA. Actions categorically exempt under RCW 43.21C.110(1)(a) do not require environmental review or the preparation of an environmental impact statement under this chapter. The intent in offering this scenario is to illustrate how the application of the mitigation measures contained in the MDNS, in combination with the requirements of the Langley Municipal Code, effectively reduces potential environmental impacts of the proposed project to levels that might be anticipated for a categorically exempt project and certainly well below the “probable significant, adverse impact” threshold that would trigger the need for and EIS

Specifically in this illustrative comparison, the staff focused on the drainage and groundwater elements of the environment to test the relative environmental impacts from a substantially

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<sup>14</sup> Transportation Engineering Northwest, LLC, Langley Passage Traffic Study, November 29, 2006, p 8.

smaller project that could be built under current City regulations. This scenario is based on the construction of a single family dwelling on each of the two existing lots. Single family dwellings are permitted uses within the RS-15,000 zoning district and would be considered a categorically exempt action under SEPA.

	<b>Categorically-Exempt Action</b>	<b>Proposed Action</b>
Number of Building Lots	2	20
Number of Homes	2	20
Total Site Area	8.52 ac.	8.52 ac.
Wetland/Buffer Tract Area	3.18 ac.	3.33 ac.
Eastern Buffer	no buffer	0.48 ac.
Scenic Corridor Buffer	0.39 ac.	0.39 ac.
Net Developable Area	4.95 ac.	4.32 ac.
Maximum Impervious Area	1.63 ac. <sup>15</sup>	1.59 ac. <sup>16</sup>
Preserved Tree Canopy within non-wetland/buffer area	No regulatory protection	30% <sup>17</sup>
New groundwater from on-site septic systems	117,530 gallons/year <sup>18</sup>	0
Total increase in groundwater infiltration from non-septic sources	210,830 gallons/year <sup>19</sup> up to 727,000 gallons/year <sup>20</sup>	727,000 gallons/year <sup>21</sup>
Performance Monitoring during and after Buildout?	No	Yes
Review by Island County?	No	Yes
Financial Guarantee in Place?	No	Yes
Wetland Enhancement?	No	Yes (partial)
Wetland Native Growth Protection Area Dedication?	No	Yes

## **PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based on the analysis presented in this brief and the information available in the public record to evaluate the potential environmental impacts of the proposed Langley Passage Subdivision, staff

<sup>15</sup> Lot coverage maximum within the RS-15,000 zoning district is 25% of lot area, exclusive of critical areas but including buffer areas.

<sup>16</sup> Includes 50,000 square foot maximum for impervious lot coverage (from the MDNS) and 19,100 square feet for the private street.

<sup>17</sup> As required by the MDNS.

<sup>18</sup> Two homes with average water use (58,765 gallons per year).

<sup>19</sup> Calculated using 20,000 square feet of impervious cover (4,000 square feet impervious cover per lot plus 12,000 square feet impervious cover for a shared access drive). At 29% of the maximum impervious cover for the proposed subdivision, 210,830 gallons per year is 29% of 727,000 gallons per year.

<sup>20</sup> This 'maximum' number assumes a post-development site scenario similar to the proposed subdivision but could in fact be higher if more of the site was cleared.

<sup>21</sup> As noted earlier in this brief, this total would likely decrease by factoring in a higher evapo-transpiration rate retention by preserving the 30% canopy cover and from uptake through the 25 rain gardens.

recommend that the Planning Advisory Board consider the following findings of fact and conclusions of law in support of a recommendation to the City Council to uphold the Responsible Official's decision to issue an MDNS for this proposal.

#### PROPOSED FINDINGS OF FACT

1. The City of Langley issued on January 30, 2007 a Determination of Complete Application for the Langley Passage Preliminary Plat, a proposed 20-lot subdivision in the Edgecliff neighborhood of Langley.
2. This proposal is subject to review under the substantive authority of the State Environmental Policy Act (SEPA) and the applicant submitted an environmental checklist evaluating the potential environmental impacts from this proposal.
3. City staff requested and received a number of technical analyses, reports and studies to assist in its evaluation of the potential environmental impacts from the Langley Passage proposal, including studies on traffic, wetland critical area, drainage, hydro-geology, and engineering.
4. City staff analyzed these studies to determine if any of the potential impacts from the Langley Passage proposal would cause a probable significant, adverse environmental impact which would cause the SEPA Responsible Official to require an Environmental Impact Study.
5. At the conclusion of this analysis and based on the public record for the Langley Passage proposal, the SEPA Responsible Official for Langley determined that the record was adequate to conclude that the proposal will not have a probable significant, adverse impact on the environment and an EIS is not required, so long as certain mitigating measures are implemented.
6. On May 13, 2009, the SEPA Responsible Official for Langley issued a Final Mitigated Determination of Nonsignificance for the Langley Passage proposal with a 14-day appeal period that expired on May 27, 2009.
7. The decision of the SEPA Responsible Official to issue a Mitigated Determination of Nonsignificance for the Langley Passage proposal was appealed in a timely manner and in the proper form by the Langley Critical Areas Alliance (LCAA) and the Whidbey Environmental Action Network (WEAN).
8. The appellants, LCAA and WEAN submitted briefs to the Planning Advisory Board, staff and applicant in a timely manner on May 21, 2010.
9. The applicants, Whidbey Neighborhood Partners, and the City submitted briefs to the Planning Advisory Board, the appellants and each other in a timely manner on May 28, 2010.

10. The combined open record public hearing for the Langley Passage proposal and the SEPA appeals was opened on March 24, 2010 and, following four continuances, was continued to a special meeting of the Planning Advisory Board on June 2, 2010, which was itself continued to June 9, 2010, to consider the SEPA appeals by LCAA and WEAN.
11. On \_\_\_\_\_, following due deliberation and consideration of the public record, the Planning Advisory Board did vote to recommend that the City Council deny the appeals by LCAA and WEAN, thereby affirming the decision by the Langley SEPA Responsible Official to issue an MDNS for the Langley Passage proposal.

#### PROPOSED CONCLUSIONS OF LAW

1. Pursuant to LMC 16.04.030, the City Planning Officer is designated as the responsible official under SEPA with responsibility to make the threshold determination, supervise any required EIS and perform other duties related to SEPA when the City of Langley is the lead agency,
2. Consistent with LMC 18.36.040(A)(9), the Planning Advisory Board is assigned the authority to conduct a public hearing on appeals of SEPA Determinations of Nonsignificance and make a recommendation to the City Council to affirm, remand, modify or reverse the threshold determination.
3. In making its recommendation to the City Council, the Planning Advisory Board shall recognize the weight that is to be accorded the threshold determination of Langley's SEPA Responsible Official per LMC 16.04.150(D).
4. After reviewing the briefs provided by the appellants, the City and the applicant, and after considering the information provided during the public hearing, the Planning Advisory Board concludes that the public record for the Langley Passage proposal is adequate to determine that the proposal will not cause any probable significant, adverse impacts on the environment and that an EIS is not required.
5. Accordingly, and recognizing the weight that is be accorded to the decision of the SEPA Responsible Official, the Planning Advisory Board concludes that said official did not error in making this decision and that the decision should be affirmed.

#### **STAFF RECOMMENDATION**

Motion to recommend that the City Council deny the appeals by LCAA and WEAN, thereby affirming the decision by the Langley SEPA Responsible Official to not require an EIS for the proposed Langley Passage Subdivision based on the Findings of Fact and Conclusions of Law contained in the Staff Brief.