

**Langley Passage Preliminary Plat
City Council Closed Record Review
Staff Response to Questions to the Record – Round 2
October 27, 2010**

QUESTIONS FROM COUNCILMEMBER WATERMAN

Sewer

1. Where in the record is the agreement between the applicant and the Woodside subdivision to tie into the latter's sewer and lift station documented?

There is no agreement in the record. Such an agreement was proposed as a condition of approval in the March 18, 2010 Staff Report (p 26, no. 32). If this agreement is not forthcoming, the applicant has the option to extend the public main from Cork Lane to the subject site. Both projects are in the City's adopted Sewer Comprehensive Plan. See the plat review sequence outline on p 2 of the April 28, 2010 PAB minutes.

Waterline

2. Where is it documented that the City is legally required to explore options for waterline options?

In making its unanimous recommendation to the City Council to uphold the SEPA Responsible Official's decision to issue an MDNS for the Langley Passage proposal, the PAB made four amendments to the MDNS. For one of these amendments, the PAB specifically added the following: "City and Applicant will jointly further explore feasibility of securing an alternate route for the water line 'loop' installation, and report findings before waterline construction begins. Final feasibility will be determined by the Department of Public Works." In the May 28, 2010 Staff SEPA Appeal Brief (p 9, end of the first paragraph), it is noted that "the City remains open to this option pending willing owners."

Further, in direct testimony at the June 9, 2010 PAB hearing, the option was discussed by the Community Planning Director that the PAB or Council could decide that the test for utility exceptions could not appropriately be met in this instance and that the option existed to dead end the waterline before it entered the wetland (see p 12, paragraphs 4-6), thereby avoiding disturbance to the wetland.

3. Where in the record are the relative environmental effects to the wetland and buffer of the various waterline options discussed (underground waterline, line raised on pillars, alternative location)?

See above response with respect to alternative locations or dead ending the line. There is no best available science analysis in the record comparing the relative impacts of under- or over-ground options.

Water to bluff

4. Where does the record document that the City is responsible for exploring alternative routes/mechanisms for conducting any increase in runoff from the development site?

There is no such requirement of the City to consider alternate routes/mechanisms unless it can be demonstrated that low impact development measures will not work at a specific location. See LMC 15.01.430(B) and 15.01.445(A,F) for City code.

5. Where is it stated what would constitute “best available science” in establishing the pre-and post-development amount of runoff reaching the bluff?

The standards for the application of Best Available Science are contained in LMC 16.20.015. This section was distributed to the Planning Advisory Board on April 28, 2010 and explained by the Community Planning Director as noted on p 4, paragraph 6 of the minutes from that meeting. “Cort read a portion of the document and said that the Critical Areas Ordinance was very specific about what constituted scientific evidence and non-scientific evidence. Cort said that the City staff needed to base their decision on scientific information and he explained that he felt that this standard had been met.”

6. The record documents that there is agreement that slides of the bluff have periodically occurred along the north side of Edgecliff Drive. Since slides may reasonably be expected to occur in the future, **where in the record is it documented how future slides would be determined to be the direct result of alterations resulting from the proposed development.**

Since the staff concluded that the Best Available Science indicated no significant impacts on overall bluff stability (see Staff Appeal Brief, May 28, 2010, p 5, paragraphs 1 and 2), there is nothing in the record that requires a determination of responsibility for future slides.

7. Where are the reasons that led the City Staff to “steer” the applicant to consider mitigation via infiltration vs. a tight line to conduct water to the toe of the bluff documented?

LMC 15.01.430(B) is clear in stating that “The use of all reasonable and appropriate low impact development measures shall be required prior to consideration of conventional storm-water management methods.” Further, LMC 15.01.445(A) states that “All reasonable and appropriate low impact development measures shall be incorporated into site design before conventional on-site detention and infiltration methods are considered.” For a discussion of how the study results led the City staff to the conclusion that low impact development measures would work at this location, please refer to the Staff Appeal Brief, May 28, 2010, pp 4-8.

8. Where in the record is the “wetland mitigation plan” presented? (see May 13, 2020 revised MDNS document).

The Wetland Mitigation Plan, dated September 6, 2006 and prepared by Cantrell and Associates, was attached to the March 18, 2010 Staff Report. Further mitigation measures are addressed in the May 13, 2009 MDNS (p 3-5) and the final mitigation plan is subject to the requirements in LMC 16.20.085.

Drainage ditch

9. Where does the record document Island County’s agreement to maintain and/or modify the portion of the drainage ditch east of the Langley City Limits?

With respect to Island County’s general stormwater maintenance standards, the Island County Code has not been included in the record. With respect to potential modifications precipitated by the Langley Passage application, please refer to the following documents:

**MDNS – May 13, 2009, p 3, mitigating measure no. 4
Staff Report – March 18, 2010, p 23, condition no. 8
Staff Report Supplement – May 20, 2010, p 3, paragraph 3
Staff Brief – May 28, 2010, p 6-7**

10. Where is it documented that “reasonable efforts” were made to quantify the destination of water collecting in the wetland?

David Consulting Group Report – April 17, 2008, p 9
HWA Reports – August 14, 2007 and December 19, 2008
Varljen Peer Review – March 1, 2009
Staff Report – March 18, 2010, pp 10-12
Staff Report Supplement – May 20, 2010, pp 1-3

Mitigation

11. Where is it documented that the SEPA Responsible Officer has the option to require mitigation to address possible potential adverse effects for a proposal that is judged to have no probable significant adverse environmental effects?

WAC 197-11-660

Department of Ecology SEPA Guidebook – Section 2.8.1 (this Section was read into the record at the July 14, 2010 PAB hearing as follows: “It can also be possible to require conditions through the use of SEPA substantive authority to reduce or eliminate adverse environmental impacts that may be less than “significant.””

Mitigated Determination of Nonsignificance

PAB Minutes July 14, 2010 – p 4, last paragraph, to p 5 third paragraph

12. Where is it documented that imposition of mitigations automatically means that the proposal will have probable adverse effects on the environment and prohibit issuing a MDNS?

No such documentation exists. See previous response.

Pedestrian facilities

13. Where is it documented that alternative sites exist for park or pedestrian walkways “within one-half mile of Langley Passage”?

The City’s Six-Year Transportation Improvement Program (TIP), adopted by reference at LMC 15.01.025(16) shows trail improvements as a project. A number of potential locations for trail improvements are located within one-half mile of Langley Passage.

Responsibility of SEPA responsible officer

14. Where in the record is it documented that the SEPA Responsible Official adequately considered a tight line alternative for conducting any runoff from the development site?

There is no such requirement that the SEPA Responsible Official, or any City staff or consultant, consider a tightline alternative unless it can be demonstrated by the applicant that infiltration will not work. See LMC 15.01.430(B) and 15.01.445(A,F) for City code; see HWA Report of December 19, 2008 and Varljen Peer Review of March 1, 2009 for infiltration impact analyses.

15. Where is it documented that the SEPA Responsible Official concluded that, as of January 30, 2007, the proposal would have a “probable significant adverse environmental impact on neighboring properties and the Edgecliff bluff? (Initial appeal brief of LCAA, 75.5; May 10, 2010).

There is no such documentation in the record.

16. Where in the record is the SEPA Responsible Official's "worst case scenario" presented?

It is assumed that this question relates to drainage. The PAB Minutes, July 14, 2010, p 8 (final paragraph continuing on to p 9) discuss the worst case scenarios – either all the water infiltrates to bluff or all the water resurfaces at the wetland and enters the surface drainage system – and the City Engineer offers his conclusions about each scenario.

QUESTIONS FROM COUNCILMEMBER ABEL

Downstream Conveyance System

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

Yes, Formal Review Distribution memorandum from Larry Cort, Langley City Planner, to Phil Cohen, Island County Surface Water Manager, 6 February 2007; Response from Phil Cohen, Island County Surface Water Manager to Larry Cort, Langley City Planner, 7 March 2007

As part of the required sequencing of plat review (see PAB Minutes, 28 April 2010, p 2 bottom of page to p 3 top of page), the County retains authority to review and approve the final drainage plans for Langley Passage and to require improvements if merited.

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

The performance bond applies to potential improvements in both jurisdictions – see Staff Report Supplement No. 1, p 3, paragraph 4.

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

The condition laying out the monitoring requirement was amended by the Planning Advisory Board as part of their unanimous decision to uphold the Responsible Official's SEPA decision with four changes. The new condition reads as follows: "Applicant shall monitor flow and overall performance of the surface drainage system along the south side of Edgecliff Road from the plat boundary up to and including the outfall to the beach for a period of three years from the date *final plat approval*, and for a period of two years from date of 50% buildout occupancy, and for a period of two years from the date of 75% buildout occupancy."

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

Yes, both the ditch and the outfall constitute the downstream system.

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

See MDNS, May 13, 2009, p 3, Mitigating Measure No. 5. The developer is required to supply the bond until the conclusion of the final monitoring period.

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

Response to this question would require the introduction of a conclusion that is not in the record.

7. What does “buildout occupancy” mean? Staff Report, #6, p. 23

This is a standard planning term that means a point in time when all lots have been built.

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

In accordance with State law, the applicant has ten years to proceed from preliminary to final plat. Any improvements required by Island County would have to be completed within that period before the Council could consider an application for final plat approval.

Water line through wetland

9. Where in the record is there evidence to support other options were explored, or if applicant applied for an exception. LMC 16.20.080

See the response above – Waterman Question 2.