

**Langley Passage Preliminary Plat  
City Council Closed Record Review  
Answers from Applicant Whidbey Neighborhood Partners  
To Supplemental Council Questions to the Record of Councilmember Fran Abel**

**Councilmember Abel's Questions:**

**A. Downstream Conveyance System**

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

**References in the Record:**

WNP Responsive Briefs, Exhibit A.15, Email from Phil Cohen (Island County Public Works) to Rolf Seitle, 5/17/10, 9:38 p.m.; Reply regarding County outfall

*Quote from Record:*

"The County's position is that the development causes no additional flow increase for all storm sizes up to the 100 year storm. If the applicant can't do that, then the County will ask that an outfall conveyance be created that does handle the increase in flow."

City of Langley, Staff Brief, Langley Passage SEPA Appeal, 5/28/10, p.7, footnote #11

*Quote from Record:*

<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.

WNP Responsive Briefs, Exhibit A.1, Cort, Staff Report, 3/18/10, p. 23, Condition #8

*Quote from Record:*

8. Applicant shall gain approval from Island County and provide documentation to the City that the County-owned section of the downstream conveyance system, from the Langley City Limits to the bottom of the outfall in the 900 block of Edgecliff Drive, is adequate to accommodate any increase in the volume of flow from the build out of Langley Passage. 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.

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.

**References in the Record:**

WNP Responsive Briefs, Exhibit A.16, Cort, Staff Report Supplement No.1, 5/20/10, p.4

*Quote from Record:*

1. **Amend Proposed Condition No. 9 to read as follows:** Applicant shall provide the City of Langley with a performance bond or other acceptable financial guarantee in the amount of \$250,000 as assurance that monies are available to make any necessary capital improvements to the downstream drainage system over the life of the monitoring period. The applicant shall be responsible for obtaining all necessary permits to make these improvements. This financial guarantee shall be maintained by the developer and may not be transferred to a Homeowners' Association.

WNP Responsive Briefs, Exhibit A.1, Cort, Staff Report, 3/18/10, p. 23, condition #8

*Quote from Record:*

8. Applicant shall gain approval from Island County and provide documentation to the City that the County-owned section of the downstream conveyance system, from the Langley City Limits to the bottom of the outfall in the 900 block of Edgecliff Drive, is adequate to accommodate any increase in the volume of flow from the build out of Langley Passage. 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.
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

Answer: There are 20 lots in the plat. 75% of 20 equals 15. Therefore, 75% of buildout will occur when 15 lots are developed and occupied. Date of buildout is not in record.

**References to the Record:**

WNP Responsive Briefs, Exhibit A.1, Cort, Staff Report, 3/18/10, p. 22, Recommended Motion #2

*Quote from Record:*

2. Within five years of the preliminary plat approval, the applicant shall prepare and have approved for recording by the City Council a final plat in conformance with State law and the Langley Municipal Code.”

WNP Responsive Briefs, Exhibit A.1, Cort, Staff Report, 3/18/10, p. 23, condition #6:

*Quote from Record:*

6. 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 of 75% buildout occupancy. Monitoring shall occur four times per year (three times between October and April and one time between May and September). Monitoring shall be performed by a licensed engineer selected by the City of Langley and paid for by the applicant who shall submit a written report to the City within one month of the monitoring event.”

PAB Meeting Minutes, 8/11/10, Exhibit A-5, Recommendation: Mitigation Measure #2

*Quote from Record:*

Mitigation Measure No. 2: 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.

**Reference in the Record:**

City of Langley, Staff Brief, Langley Passage SEPA Appeal, 5/28/10, p. 6, paragraph 4 (to top of page 7)

*Quote from the Record:*

“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 Drive and the outfall to the beach...”

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

Answer: The bond is to be given by the developer to the City. If buildout never occurs, then there is no impact, which would eliminate need for bond.

**Reference in the Record:**

WNP Responsive Briefs, Exhibit A.16, Cort, Staff Report Supplement No.1, 5/20/10, p.4, Staff Recommendation #1

*Quote from the Record:*

1. **Amend Proposed Condition No. 9 to read as follows:** Applicant shall provide the City of Langley with a performance bond or other acceptable financial guarantee in the amount of \$250,000 as assurance that monies are available to make any necessary capital improvements to the downstream drainage system over the life of the monitoring period. The applicant shall be responsible for obtaining all necessary permits to make these improvements. This financial guarantee shall be maintained by the developer and may not be transferred to a Homeowners’ Association.

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

**References in the Record:**

WNP Responsive Briefs, Exhibit A.16, Cort, Staff Report Supplement No.1, 5/20/10, p.4, Staff Recommendation #1

1. **Amend Proposed Condition No. 9 to read as follows:** Applicant shall provide the City of Langley with a performance bond or other acceptable financial guarantee in the amount of \$250,000 as assurance that monies are available to make any necessary capital improvements to the downstream drainage system over the life of the monitoring period. The applicant shall be responsible for obtaining all necessary permits to make these improvements. This financial guarantee shall be maintained by the developer and may not be transferred to a Homeowners' Association.

WNP Responsive Briefs, Exhibit A.1, Cort, Staff Report, 3/18/10, p.23, condition #7

*Quote from the Record:*

7. Applicant shall be responsible for correcting any and all drainage problems along the south side of Edgecliff Road from the plat boundary up to and including the outfall to the beach when it can reasonably be determined that the problem has demonstrably worsened as a result of increased drainage volumes from the Langley Passage subdivision. The Langley Public Works Director shall make the final decision with respect to financial responsibility. The decision of the Public Works Director may be appealed to the City Council.

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

Answer: No specific definition of "buildout occupancy" found in record.

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

**Reference in the Record:**

Cort, PAB Meeting Minutes, 04/28/10, p. 2, paragraph 9

*Quote from the Record:*

"Cort said that, if the application was approved, a number of things would have to happen before the final plat was recorded. Cort said that the subdivision review process involved two primary steps (the preliminary plat and the final plat) and that a number of approvals must occur between the two steps. Cort said that these approvals included:

1. Submittal and approval of site engineering. Cort said that the existing engineering for the project was conceptual and that it was not anticipated that the existing proposal included the final site engineering.
2. Installation or bonding for infrastructure and other utilities. Cort said that the applicant would need to either install the utilities or bond for the infrastructure on the site.
3. Compliance with the conditions of approval. Cort said that all the conditions for the project would need to be met before the project could move to final plat. “

B. Water line through wetland

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

Answer/References in the Record:

Waterline located through wetland and buffer along proposed pedestrian pathway. *See Langley Passage Water, Sewer and Storm Drainage Plan, 9/15/06; Sheet C-03 of 11*  
Pathway removed and waterline relocated in wetland buffer; *See Final Plan submittal Langley Passage Water, Sewer and Storm Drainage Plan, 09/17/2009; Sheet C-04 of 8*

City of Langley Staff Brief, Langley Passage SEPA Appeal, 5/28/10, p.8-9, **Impacts to Wetland and Buffer**

*Quote from Record:*

**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.

PAB Meeting Minutes, 8/11/10, Exhibit A5, Recommendation: Mitigation Measure Addition

*Quote from Record:*

Mitigation Measure addition: 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.