

Whidbey Environmental Action Network

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City of Langley City Council and Mayor Kennedy Horstman
112 Second Street / P.O. Box 366
Langley, WA 98260

June 12, 2026

Opposition to Proposed Coles Valley Land Use Agreement—Permit PLP-25-001 / CA-25-002

Dear Mayor Horstman and Council Members,

First, I'd like to thank you for deferring your vote on this matter from June 1, in light of the fact that the city's website had not been updated to reflect the proposal currently under consideration until May 27. It speaks to your care for constituent voices, and your recognition of the need for transparency in this vitally important matter.

Whidbey Environmental Action Network (WEAN) submits these comments in opposition to the proposed Land Use Agreement (LUA) that would replace the 2005 Annexation Agreement (AFN #4124982) governing development of the Coles Valley property. WEAN is an organization with a history of legal action on substantive and procedural failures to protect ecosystems as required by Washington law, including actions before the Western Washington Growth Management Hearings Board and in state court.

The Council has indicated that environmental and infrastructure review can be deferred to later permit stages. That position might be defensible on an unstudied site. This site is not unstudied. Substantial agency review is already in the record, and those reviews raise serious, specific, unresolved concerns about whether this site can support the scale of development the LUA would authorize. Approving the LUA now does not defer those questions—it prejudices them in the developer's favor before they are answered, while vesting density expectations that will be difficult to walk back regardless of what subsequent studies reveal.

I. THE PROPOSAL DRAMATICALLY EXCEEDS THE AGREED-UPON DENSITY

The 2005 Annexation Agreement established that up to 24 single-family residences would be constructed on the annexed parcel. The LUA under consideration proposes 65 single-family lots and 2 cottage tracts of 10 units each, for a base count of 85 dwelling units. Under Washington

State law and applicable City code, each single-family lot may also accommodate an attached accessory dwelling unit (ADU) and a detached ADU, producing a theoretical maximum buildout of approximately 215 dwelling units—nearly nine times the 24-unit commitment made when this property was annexed.

Island County Public Works, in its September 8, 2025 comment letter on the underlying long plat application, specifically noted that “this proposed development is dramatically larger than the agreed-upon amount” and that “over 10% of Langley’s current population is proposed to live within the proposed development.” A prior WEAN commenter has placed in the record the concern that if ADU rights are fully exercised, total units could reach 214 or more, and that the City has not identified who bears the cost of infrastructure upgrades at full buildout.

The LUA process cannot be used to silently void a negotiated annexation commitment. If the density cap is to be renegotiated, that renegotiation must be transparent, publicly noticed as such, and supported by a record demonstrating that the infrastructure can bear the load.

II. THE WEST PARCEL DONATION IS PERFORMANCE OF AN EXISTING OBLIGATION, NOT NEW CONSIDERATION

WEAN acknowledges that the LUA includes a donation of the parcel west of Coles Road to the City. This dedication, however, was already required under the 2005 Annexation Agreement, which mandated that a minimum of 15 acres west of Coles Road be dedicated and transferred to the City, along with a minimum of 13 acres of private open space and buffer on the east side.

The fulfillment of a pre-existing legal obligation is not new consideration. Under basic principles of contract law, a party cannot offer performance of a duty already owed as consideration for a new benefit. The developer’s predecessor accepted the dedication requirement as a condition of annexation. The developer is not giving the City something new—he is belatedly performing an obligation already on the books. The City is being asked, in exchange, to confer a density increase worth millions of dollars in land value uplift. That is not a negotiated exchange of equivalent value. It is the City conferring a regulatory windfall in exchange for receiving what it was already owed.

WEAN further requests that before any approval, the City confirm that the west parcel dedication in the LUA is in fee simple absolute, with no reversionary interest, deed restrictions favoring the developer, encumbrances, or conditions that would allow the developer or his successors to reclaim or monetize the parcel. The record should show clearly what the City is actually receiving and on what terms.

III. THERE IS NO TRAFFIC ANALYSIS FOR THE PROJECT ACTUALLY UNDER CONSIDERATION

The Traffic Impact Analysis (TIA) prepared by Kimley-Horn (March 2025) was prepared for the long plat application (PLP-25-001)—not for the LUA currently before the Council. The two applications reflect different project configurations. There is therefore no traffic analysis in the record for the project the Council is being asked to approve.

That TIA has also been formally rejected by WSDOT. In its August 22, 2025 comment letter, WSDOT's Development Services office stated that it disagrees with the trip distribution reasoning and the proposed mitigation at SR 525/Coles Road, and has requested that the applicant revise and resubmit the TIA for agency review and approval before any decision. That revised analysis has not been submitted.

The TIA has additional independent deficiencies:

- Traffic counts are from July 2021, during COVID-19 recovery—a period of demonstrably suppressed travel demand. The analysis did not account for ferry traffic or park-and-ride usage patterns.
- ADUs were excluded from trip generation entirely. Under full buildout, ADU-generated trips could approach or exceed the trips attributed to the primary units.
- Even based on the smaller long plat configuration, the TIA projects the Coles Road/SR-525 intersection will degrade to LOS E under future with-development conditions. The proposed “mitigation” for this LOS E failure is not an infrastructure improvement of any kind—it is signage redirecting development traffic onto Maxwellton Road. Maxwellton Road is the primary corridor serving both the primary and secondary campuses of the South Whidbey School District. Redirecting a material volume of new residential traffic through an active school corridor is not mitigation. It is the transfer of a traffic and safety burden from one public road to another that is demonstrably less appropriate to bear it. WSDOT has already rejected this analysis; the school district corridor context makes clear why.
- Island County Public Works has independently calculated that the development will add approximately 1,090 trips per day to Coles Road against an existing ADT of 913—not including ADU trips—and has found that the development “adversely impacts the County Road system within the UGA of Langley and does not propose mitigation.”

IV. ROAD ACCESS AND STANDARDS ARE NOT MET

Island County Public Works has identified that the single access point shown in the application does not meet County code. The single-access provision in the Annexation Agreement was conditioned on 24 units—not a development of 85 to 215 units. The Coles Road/Brooks Hill Road intersection is skewed and does not meet road standards, impeding future transit access.

The County has requested that the developer either upgrade Coles Road to City standards from the south parcel boundary through Brooks Hill Road, or adhere to the original Annexation Agreement density. No road upgrade agreement has been proposed.

The City's own transmittal letter to Island Transit acknowledges that Coles Road is narrow, winding, has little shoulder, and is constrained by steep slope and wetland on both sides—making pedestrian and cycling infrastructure infeasible. The Council should not approve a development of this scale on a road the City itself has characterized as unsuitable for active transportation.

V. FIRE AND LIFE SAFETY CONCERNS ARE UNRESOLVED

South Whidbey Fire Chief Nicholas Walsh, in his September 8, 2025 comment letter, identified three specific unresolved life safety issues:

- Hydrant locations and quantities are not specified in the application, and Storz fittings have not been confirmed.
- Turn radius verification for all internal road turns has not been completed to confirm Type 1 fire engine access.
- The cottage cluster layout raises specific concerns about fire spread between closely-spaced buildings and emergency access.

These are foundational fire code questions that must be resolved in the design before the City commits to the density and configuration the LUA would authorize.

VI. CRITICAL AQUIFER, GROUNDWATER, AND ENVIRONMENTAL CONCERNS HAVE NOT BEEN ASSESSED

The site lies within a Critical Aquifer Recharge Area (CARA) designated as high-susceptibility. Whidbey Island holds an EPA Sole Source Aquifer designation, meaning the aquifer supplies 100% of South Whidbey's drinking water with no viable alternative. Technically detailed comments in the public record document that the preliminary geotechnical report fails to adequately address Washington Department of Ecology's 8-step CARA protection process, particularly susceptibility analysis, contaminant inventory, vulnerability classification, and BMP implementation.

Specific documented concerns include:

- Shallow groundwater at 2 to 13 feet historically, making the site highly susceptible to contamination from development-related infiltration.

- Proximity to an unremediated former dump, wastewater treatment plant, and gravel pit. The 1986 Drinking Water Report warned of high pollution potential at this location due to shallow groundwater. Grading and deforestation could mobilize contaminants via preferential flow paths into the shallow aquifer and toward City Well #5.
- The geotechnical report defers key investigative work including deep borings and percolation tests, and does not model post-grading hydrologic flows or address City Well #5's Wellhead Protection Area.
- Infiltration rates of 8 to 22 inches per hour indicate rapid contaminant transport in a high-susceptibility CARA, with no hydrologic modeling of post-development conditions.
- The LMC requires a factor of safety of 1.5 static and 1.1 seismic for modifications to geologically hazardous areas. Adjacent property owners have documented that the geotechnical report does not provide the required slope stability analysis for slopes over 40%.

A prior review of this development under the PUD application found that the wastewater analysis used incorrect flow rates and failed to address BOD loading and Puget Sound Nutrient General Permit requirements. Those issues have not been revisited for the current proposal, which adds ADU potential to every lot and materially increases projected wastewater loading.

VII. PROXIMITY TO THE WASTEWATER TREATMENT PLANT IS NOT ADDRESSED

The proposed development places housing lots up to the boundary of the City's wastewater treatment plant property. Application materials do not address bioaerosol risk, vector transmission pathways, or minimum separation standards between high-density residential use and wastewater processing and biosolid storage. The removal of the existing mature forest buffer—which currently provides the primary natural barrier—is not evaluated. The City has not addressed this issue in staff review. Commenters with technical expertise and standing as adjacent property owners have placed detailed documentation of this risk in the public record.

VIII. TRANSIT SERVICE IS SPECULATIVE

Island Transit's September 5, 2025 comment requests only that space be reserved for possible future bus stops. It does not commit to service. Island Transit is currently conducting a long-range planning process and has not determined whether fixed-route service will operate in this area. No land use commitment should rest on the assumption that transit will materialize.

IX. THE COUNCIL'S "DEFER TO LATER" RATIONALE DOES NOT APPLY TO THIS RECORD

The Council has indicated that SEPA review, traffic analysis, hydrogeology, and other technical studies can wait for subsequent permit stages. That position is tenable when a site is unstudied. This site is not unstudied. The record already contains:

- A formal WSDOT rejection of the traffic analysis;
- An Island County Public Works finding that traffic impacts are unmitigated and road access is noncompliant;
- A South Whidbey Fire finding of unresolved fire and life safety questions specific to the proposed layout;
- Technically detailed comments documenting inadequate CARA, groundwater, and geotechnical analysis;
- A prior finding of inadequate wastewater flow rates and nutrient loading analysis; and
- A City acknowledgement that pedestrian infrastructure on Coles Road is infeasible.

Approving the LUA in the face of this record does not defer these questions—it forecloses them by vesting the developer's density expectations before they are answered. Future permit-stage review will operate under the pressure of a vested commitment. The sequencing is backwards, and it is not a legally defensible basis for approval.

X. WHO BENEFITS FROM THIS DECISION

The Council should be clear-eyed about what the LUA actually does and who it benefits. The developer, Bob Libolt, has been associated with efforts to develop this property since at least 2003, when his firm NJB Development first sought annexation, and is a former employee of Trillium Corporation. He is now a principal of South Whidbey LLC. In a meeting with me in my capacity as Executive Director of WEAN, the developer represented that the current asking price exceeds \$1.6 million—against a verified assessed value of approximately \$450,000. That gap between assessed value and sale price does not reflect any investment in infrastructure, environmental mitigation, or community benefit. It reflects, almost entirely, the land value uplift that the LUA would create by releasing the property from the 24-unit density commitment the developer's predecessor accepted as a condition of annexation.

As noted in Section II, the west parcel donation that the LUA presents as the developer's contribution was already required under the 2005 Annexation Agreement. It is not a new concession. After accounting for that pre-existing obligation, the LUA asks the City to confer a

density increase worth more than a million dollars in exchange for nothing the City was not already owed. In fact, the net movement of buffer and open-space terms runs toward the developer: among them, the south-property-line buffer reduction from 150 feet (2005 Section E) to 50 feet (LUA Section 5), and the Coles Road buffer loss of "average of fifty feet" language.

The community's legitimate concerns about this deal have been deflected in part by association of the project with Habitat for Humanity and the affordable housing needs of the region. These needs are real, but this agreement doesn't promise to address them. They are no reason to enter into a flawed agreement that cedes ground where community safety and health needs don't warrant it.

XI. NOTICE FROM WEAN

WEAN provides the following formal notice to the Council:

A. **GMA Internal Consistency.** Washington's Growth Management Act requires that a city's development regulations and land use decisions be internally consistent with its comprehensive plan and with the GMA's planning goals, including the goal that adequate public facilities and services be planned concurrently with development. RCW 36.70A.020(12); RCW 36.70A.070. If the City approves a land use agreement authorizing density that the City's own record—including WSDOT's rejected traffic analysis, Island County's road findings, and Fire's unresolved safety comments—already indicates the surrounding infrastructure cannot support, that approval is vulnerable to challenge before the Western Washington Growth Management Hearings Board as inconsistent with the City's comprehensive plan and GMA obligations. WEAN reserves its right to file such a challenge.

B. **SEPA Adequacy.** Washington's SEPA (RCW 43.21C) grants local governments substantive authority to condition or deny projects based on environmental impacts. It also creates procedural vulnerability when a lead agency approves a project relying on a SEPA checklist containing material misstatements. The SEPA checklist for this application states that no surface water exists on site, despite cartographic evidence of a stream in the project vicinity. If a Determination of Non-Significance is issued on the basis of that checklist without requiring delineation, that DNS is vulnerable to appeal. WEAN reserves its right to challenge SEPA adequacy.

C. **Arbitrary and Capricious Decision-Making / Pretextual Rationale.** If the Council's stated rationale for approving the LUA relies materially on affordable housing representations—whether attributed to Habitat for Humanity or otherwise—it needs to look under the hood. While the LUA reserves 13 of 85+ lots for permanently affordable housing under recorded covenants, affordability is not load-bearing in the agreement's enforceable structure: the LUA is expressly written to accommodate, from the May 18 City Council packet, "either a market rate or

permanently affordable housing developer.” No affordability provision binds any *named* provider, and Habitat—the organization invoked to build public support—appears nowhere in the operative terms. An approval premised on affordable-housing representations that the agreement does not require in its market-rate form is the pretext concern.

The land is assessed at approximately \$450,000 and is being offered for sale in the 7 figures. The west parcel donation, as discussed above, is performance of an obligation already owed and does not constitute meaningful consideration for the density increase being sought. An approval premised on affordable housing goals that are nowhere reflected in the LUA’s enforceable terms, and that would in practice deliver a seven-figure land value windfall to a private party in exchange for obligations already owed, is arbitrary and capricious under Washington administrative law and is subject to challenge in superior court. WEAN puts the Council on notice that using an unenforceable association with a community-trusted organization as political cover for a density approval the infrastructure record does not support is not a legally defensible basis for action.

- D. Regulatory Takings—Rebuttal. WEAN has been told by the Developer that he asserts potential regulatory takings liability as a reason for the city to approve the LUA. WEAN does not find that concern persuasive on these facts, and the Council should not allow it to substitute for the obligation to make findings supported by the record.

E. Appearance of Fairness. The public comment record contains allegations that the City’s infill code was drafted by a consultant with financial ties to the developer, and that City staff hours were billed to the developer during the application process. WEAN places these concerns on the record as preserved issues. If documented, they raise appearance of fairness concerns under RCW 42.36 that could independently invalidate a Council approval. The developer’s longstanding association with the property, his position as a primary stakeholder in South Whidbey LLC, the pre-existing nature of the west parcel dedication obligation, and the enormous gap between assessed value and proposed sale price collectively make transparency in the City’s decision-making process not merely advisable but legally necessary.

XII. REQUESTS

WEAN respectfully requests that the Council decline to approve the Land Use Agreement until the following have been completed and placed in the record:

1. A revised Traffic Impact Analysis prepared specifically for the LUA proposal, approved by WSDOT, based on current (post-2023) traffic counts, and including ADU trip generation;
2. Confirmation that the west parcel dedication in the LUA is in fee simple absolute, with no reversionary interest, encumbrances, conditions, or deed restrictions favoring the developer or his

successors, and a legal finding that this dedication satisfies—rather than renegotiates—the obligations of the 2005 Annexation Agreement;

3. A written finding addressing the status of the Annexation Agreement’s 13-acre open space and buffer obligation on the east side of Coles Road, with clear public justification for any departure from that requirement;
4. Complete fire access, hydrant placement, and apparatus turn-radius plans reviewed and approved by South Whidbey Fire/EMS;
5. A professional stream and wetland delineation of the full property, including the western parcel, and a corrected SEPA checklist addressing surface water;
6. An independent hydrogeological study addressing CARA protection, groundwater and contamination risk from the former landfill and gravel pit, City Well #5 Wellhead Protection Area delineation, and post-grading hydrologic modeling;
7. Updated wastewater capacity and nutrient loading analysis reflecting the current proposal including maximum ADU buildout;
8. A road access and upgrade agreement with Island County addressing the Coles Road deficiencies identified in the County’s September 8, 2025 comment letter; and
9. If affordable housing is to be a stated basis for the LUA, an enforceable agreement with the named affordable housing provider containing binding affordability covenants, price restrictions, and remedies for non-performance, executed prior to any approval.

WEAN respectfully urges the Council to make findings on the record, and to require that the record support those findings, before any approval is granted.

Sincerely,



Marnie Jackson
Executive Director
Whidbey Environmental Action Network