No. 35592-2-II

COURT OF APPEALS
DIVISION II
STATE OF WASHINGTON

Charles and Billye Gaye Lawrence, a marital community,
Appellant,

v.

Private Capital, LLC, a Washington limited liability company, Shane McGuffin, the applicant, and City of Camas, a municipal corporation,
Respondents.

RESPONDENTS' BRIEF

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I. SUMMARY OF ARGUMENT

This Court should affirm the Superior Court's judgment upholding the City of Camas' conditional approval of the Hancock Springs subdivision. Before coming to this Court, appellants Billye Gaye and Charles Lawrence have had five opportunities to challenge Private Capital's application to develop Hancock Springs. The Lawrences have failed at every turn. The City of Camas Planning Commission, the City Council, and the Superior Court have all rejected the Lawrences' arguments.

The City correctly interpreted and applied its tree preservation ordinance. Substantial evidence supports the City's factual findings and the City's interpretation of its tree preservation is correct, especially "after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise."[1]

Moreover, the City committed no procedural errors. The Lawrences incorrectly assert that the City relied on evidence outside the record in rendering its final decision. The record makes plain that the City simply relied on existing record evidence, that provisions of the Camas

[1] RCW 36.70C.130(1)(b).

Municipal Code and Chapter 36.70B RCW allow the City to receive limited additional information in all events, and that any alleged procedural error was invited by the Lawrences. Finally, the Lawrences' complaint about the inadequacy of the City's findings is incorrect and does not entitle them to relief under LUPA in any event.

The Lawrences ask this Court to review the same arguments that have already been rejected by everybody asked to pass on Private Capitals' development application. The City and the Superior Court, however, got it right. For the reasons that follow, this Court should reject the Lawrences' arguments, affirm the Superior Court's judgment, and award respondents Private Capital and the City of Camas the attorney fees incurred in defending this appeal.

II. STATEMENT OF THE CASE

A. BACKGROUND

Respondent Private Capital, LLC ("Private Capital") submitted to the City of Camas an application for the Hancock Springs Subdivision. Private Capital proposed to develop a 16-lot subdivision on approximately eight acres of land located in the Prune Hill area of Camas. The application was deemed complete on June 16, 2005, and the City issued a mitigated determination of non-significance (MDNS) on August 26, 2005.

Appellants Charles and Billye Gaye Lawrence (the "Lawrences") own property adjacent to the proposed Hancock Springs subdivision. The Lawrences objected to Private Capital's application and filed a SEPA appeal on September 9, 2005.

B. FIRST PLANNING COMMISSION MEETING

The first Planning Commission hearing, which consolidated both the SEPA appeal and the hearing on the subdivision application, was conducted on October 18, 2005. At that hearing, the Lawrences raised a number of objections to the project.

After a full hearing and extensive debate, the Planning Commission recommended approval of the subdivision, with a number of conditions, and recommended denial of the SEPA appeal.

C. FIRST CITY COUNCIL MEETING

Both parties submitted written argument to the City Council, as allowed by code. The Lawrences requested that the application either be denied or remanded to the Planning Commission for further consideration of issues relating to tree removal, wetlands, and hydro-geological issues.[2] Prior to opening the closed record meeting on November 21, 2005, the

[2] AR at Tab C.

Camas City Council unanimously voted to remand to the Planning Commission for additional testimony on wetlands and habitat.

D. SECOND PLANNING COMMISSION MEETING

The Planning Commission took additional testimony from all parties regarding the contested issues of wetlands and habitat. Private Capital then proposed to reduce the number of lots from 16 to 14 to further address wetland mitigation concerns.[3] The Planning Commission recommended approval of a 14 lot subdivision, with conditions, and again recommended denial of the SEPA appeal.

E. SECOND CITY COUNCIL MEETING

At the City Council meeting of January 17, 2006, the City conducted a closed record hearing and rendered a final decision on the subdivision application. In the course of the hearing, the City heard argument from the attorney for the Lawrences, who raised a number of issues relating to geohydrological issues. In response, Mr. Albright, the geotechnical expert for Private Capital, reiterated the recommendation in

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[3] AR at Tab C (Letter from Mr. Howsley to Mayor Dennis dated January 13, 2006) ("[Private Capital] has evaluated the planning commission recommendation in light of their objectives and has determined that they would like to move forward with the fourteen lot subdivision request, as approved by the planning commission[.] [Private Capital] did not base the decision to move forward with the fourteen lot subdivision on any correspondence from the City or Mr. Karpinski. They arrived at this decision on their own.").

his report relating to the relative cost advantages of conducting site preparation in dry weather.[4]

The City Council thereafter filed a First Notice of Final Decision on January 18, 2006. Counsel for the Lawrences was notified soon thereafter that the City intended to withdraw the Notice of Decision of January 18, 2006, for the purposes of issuing a new decision with findings. Resolution No. 1044, adopting Findings for the Hancock Springs Subdivision were approved by the City Council on March 6, 2006.[5]

III. ARGUMENT

A. PRIVATE CAPITAL COMPLIED WITH THE CITY'S TREE PRESERVATION REQUIREMENTS

The Lawrences complain that the City erred "when it concluded a developer could 'preserve existing significant trees' under CMC 17.19.030(A)(2) by cutting them down and replacing them with saplings."[6] Specifically, the Lawrences assert that the City's decision "was not based on substantial evidence…,was an erroneous application of law to fact, as well as a clear error of law under LUPA."[7]

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[4] RP at 137.

[5] AR at Tab AB.

[6] Appellants' Opening Brief at 13.

[7] Appellants' Opening Brief at 17.

The Lawrences' arguments fail. The City correctly interpreted its tree preservation ordinance. Moreover, substantial evidence supports the City's finding that Private Capital's application complies with that ordinance.

1. Standards of review.

This Court reviews the City's interpretation of its code for legal error, "after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise."[8] In other words, "local jurisdictions with expertise in land use decisions are afforded an appropriate level of deference in interpretations of law under the Land Use Petition Act."[9]

This Court tests a local government's findings of fact for substantial evidence. Substantial evidence is evidence "sufficient to convince an unprejudiced, rational person that a finding is true."[10] Under LUPA, "[t]his factual review is deferential, requiring [a reviewing court] to view all the evidence and reasonable inferences in the light most favorable to the party who prevailed in the highest forum that exercised

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[8] RCW 36.70C.130(1)(b).

[9] *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 412, 120 P.3d 56 (2005).

[10] *Peste v. Mason County*, 133 Wn. App. 456, 477, 136 P.3d 140 (2006).

fact-finding authority."[11] Here, respondent Private Capital prevailed in all fora, including before the Planning Commission, the City Council, and the Superior Court. As such, all facts and reasonable inferences must be viewed in the light most favorable to Private Capital.

When reviewing the City's application of the law to the facts under the clearly erroneous standard, RCW 36.70C.130(1)(d), this Court similarly views all the evidence and reasonable inferences drawn therefrom in the light most favorable to Private Capital and the City.[12] After taking that view of the facts, the Court must then determine whether it is "left with a definite and firm conviction that a mistake has been committed, even though there is evidence to support a finding."[13]

2. The City correctly interpreted and applied its tree preservation ordinance.

The relevant portion of the City's findings state that "[t]he applicant submitted a tree study that complies with code," that "the mitigation measures proposed by the applicant satisfy the preservation measures of CMC 17.19.030," and that "adverse impacts will be mitigated

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[11] *Id.*

[12] *Id.*

[13] *Id.*

through replanting."[14] The revised staff report states that "[t]here are groves of significant trees that were identified in the Tree Conservation report that should be retained[.]"[15] Consistent with staff's recommendation, the City's special conditions of approval included a condition that "[s]ignificant trees will be retained in groupings 1 through 7 as per the Tree Survey (dated October 18, 2005)."[16]

a. Substantial evidence supports the City's findings.

Private Capital submitted a Tree Conservation Plan Report (the "Tree Report") prepared by the Illahee Group in February 2005.[17] That Tree Report analyzes the proposed project, existing site conditions, soil classifications, and the inventory of existing trees.[18]

Based on site reconnaissance conducted in January 2005, Illahee Group recommended retaining trees in good or moderate condition that do not conflict with the proposed development, removing trees in poor condition, and the addition of 102 new trees. Finally, the Tree Report

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[14] AR at Tab AB, p. 2.

[15] AR at Tab C (Revised Staff Report, p. 5).

[16] AR at Tab B (January 18, 2006 Notice of Final Decision at page 2).

[17] AR at Tab S (February 1, 2005 Tree Conservation Plan Report).

[18] AR at Tab S.

made a number of recommendations for protecting existing trees during construction.[19]

The Lawrences do not articulate why the Tree Report does not support the City's finding number 14. Instead, the Lawrences merely assert, without elaboration, that "the City's Decision was not based on substantial evidence."[20] The Tree Report, however, amply supports the City's finding that Private Capital "submitted a tree study that complies with code," and that "adverse impacts will be mitigated through replanting."[21] The extensive analysis contained in the Tree Report is evidence "sufficient to convince an unprejudiced, rational person that a finding is true."[22] As such, the Lawrences' substantial evidence argument fails.

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[19] The Illahee Group supplemented the Tree Report by letter dated October 18, 2005. AR at Tab c (October 18, 2005 letter regarding Tree Conservation Plan Report). The purpose of the October 18, 2005 letter was to amend the exhibits supplied with the original Tree Report to more accurately reflect the location of existing trees on the Hancock Springs site.

[20] Appellants' Opening Brief at 17.

[21] AR at Tab AB, page 2.

[22] *Peste*, 133 Wn. App. at 477.

b. The City's interpretation of its tree preservation ordinance is correct.

The Lawrences nevertheless assert that the City and the Superior Court did not correctly interpret Camas Municipal Code ("CMC") 17.19.030(A)(1). That section provides that, "[i]n addition to meeting the requirements of CMC Chapter 18.31, Tree Regulations,[23] every reasonable effort shall be made to preserve existing trees and vegetation, and integrate them into the land use design."

The Lawrences assert that the word "every" should be given its common meaning, which they define as "[e]ach single one without exception."[24] Significantly, the Lawrences do not explain what level of tree removal is permissible under their proposed construction of CMC 17.19.030(A)(1). Instead, they assert, without citation to authority, that the plan proposed by Private Capital and approved by the City's staff and City Council, does ***not*** meet that standard.

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[23] *Former* Camas Municipal Code 18.31.080(B) provided that "***[t]o the extent possible***, existing healthy significant trees shall be preserved. Preservation of groups of significant trees rather than individual trees shall be preferred." (Emphasis added) There is no dispute that Private Capital proposed and the City required the preservation of seven different groves of trees, all but one of which include multiple trees. *See* AR at Tab S (Tree Report, Exhibit A); and AR at Tab B (January 18, 2006 Notice of Final Decision at page 2) ("[s]ignificant trees will be retained in groupings 1 through 7 as per the Tree Survey (dated October 18, 2005).").

[24] Appellants' Opening Brief at 14.

The Lawrences' argument basically reduces to the following: Although the City required Private Capital to retain seven groves of significant trees and plant an additional 102 trees, even that condition of approval does not meet the requirements of CMC 17.19.030 as construed by the Lawrences. Rather, the City should have required Private Capital to retain ***even more*** significant trees.

The Lawrences do not, however, indicate how many more. Nor can they. The standard set forth in CMC 17.90.030—that an applicant make "every reasonable effort" to retain significant trees—is simply not susceptible to a precise quantitative measurement. Instead, it is for the City to determine, with the assistance of its staff, whether that standard is met in the context of any given subdivision proposal.

Here, the City imposed a condition requiring Private Capital to retain seven groves of significant trees and to add over 100 trees to the Hancock Springs development. In the City's judgment, that plan, which actually increased the number of trees on site, satisfied the requirement that Private Capital make "every reasonable effort...to preserve existing trees."[25] The City's interpretation of its tree preservation ordinance is

[25] CMC 17.90.030(A)(1).

correct, especially "after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise."[26] As such, the Lawrences cannot show that the City erred in interpreting its tree preservation ordinance.

B. THE CITY COMMITTED NO PROCEDURAL ERRORS

ANSWER TO ASSIGNMENT OF ERROR NO. 2: Acting as the final decision maker on a recommendation from the Planning Commission, the Camas City Council properly followed code and statutory procedural requirements relating to the admission of evidence.

ISSUE 1: The Camas City Council was acting as the final decision maker and not in an appellate capacity.

Type III decisions are governed by CMC Chapter 18.55:

> C) Type III - The City Council shall render all Type III decisions.
>
> Type III decisions involve the greatest amount of discretion and/or evaluation of approval criteria. Applications evaluated through this process commonly involve conditional uses, subdivisions and development within the City's light industrial/business park... The Planning Commission shall accept into the record all testimony and evidence relevant to the matter, prior to the close of the hearing. The Planning

[26] RCW 36.70C.130(1)(b).

> Commission makes a recommendation to the City Council who makes the **final decision** based on the record (emphasis added).

CMC 18.55.180 further describes the hearings process for Type III applications:

> F) The City Council, in a closed record meeting, considers the Planning Commission record and **makes the final decision** on the matter. The City Council may approve, approve the conditions, deny, or **remand the matter for further specific consideration**. (emphasis added).

In addition, the CMC 18.55.200(C) provides as follows:

> (C) Type III - Planning Commission recommendations are **not appealable.** However, any party may submit written arguments based on the record to refute the Planning Commission recommendation no later than seven (7) days prior to the City Council meeting on the matter. (emphasis added).

The City Council is thus specifically authorized to remand to Planning Commission for receipt of additional information. Under the Camas Municipal Code, the City Council is clearly designated as the final decision maker and not as an appellate body.

"In order to give proper deference on factual issues, it is necessary to determine whether each tribunal below had original or appellate

jurisdiction."[27] As the 'final decision maker', the Camas City Council had original jurisdiction. Thus, *Maranatha Mining, Inc. v. Pierce County*,[28] and the associated line of cases relied upon by the Lawrences do not apply given the fact that the jurisdictions in those cases were sitting as appellate bodies. As the final decision maker, however, the City Council should be given judicial deference as to all factual determinations.[29]

ISSUE 2: Camas City Council did not take testimony or admit new information into the record at the first City Council hearing and the limited information received at the second Council hearing was not a violation.

1. First Council Hearing.

With original jurisdiction lying with the City Council, CMC 18.55.180 specifically allows a remand of the matter "for further specific consideration" by the Planning Commission. A close reading of the November 21, 2005 transcript of the first City Council hearing reveals that the Council did not formally accept or review any new evidence at

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[27] *J.L. Storedahl & Sons v. Cowlitz County*, 125 Wn. App. 1, 7, 103 P.3d 802 (2004), *rev. den.*, 155 Wn.2d 1002 (2005).

[28] 59 Wn. App. 795, 801 P.2d 985 (1990).

[29] *Dev. Servs. v. City of Seattle*, 138 Wn.2d 107, 979 P.2d 387 (1999); *Schofield v. Spokane County*, 96 Wn. App. 581, 980 P.2d 277 (1999).

this hearing. All that was done was a motion before the hearing even opened for a remand back to the Planning Commission for further hearing which, as will be discussed, was a remedy the Lawrences were themselves requesting.

The transcript of the November 21, 2005 City Council meeting (Appellant's Opening Brief, 26 - 27) indicates that the motion was worded in a manner not reflecting what had actually occurred, noting a remand for "reconsideration of the new information that has been **introduced into the record**." (emphasis added) The motion should obviously have not included the phrase "introduced into the record." When Mayor Dennis restated the motion for the vote, he correctly referred to the information not as being introduced into the 'record' but as "additional information brought forward."[30] No new information was reviewed or introduced into the record at this stage.

In any event, the invited error doctrine precludes any allegation of procedural errors from the first Council hearing. Prior to the first City Council hearing, the Lawrences submitted "additional comments."[31] These comments were submitted as part of the SEPA appeal. However,

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[30] RP at 86.

[31] AR at Tab E.

all SEPA related appeals are consolidated under the Camas Municipal Code with the Open Record Hearing. CMC 18.55.165(C).

In their request to the City Council, the Lawrences related as follows:

> Therefore, you must deny the project (or at least remand back to correct these errors)... Thus, the only choice the Council has would be to either deny this project, or to remand this project to fix all the issues contained in our appeal, including but not limited to, the wetland, trees, and SEPA further study issues. Please note that the further study issue could be for new studies on the issues that we brought, it would be up to the Council whether that would be under a new threshold determination or under an EIS. But clearly, further information is needed on geo-hydrology, wildlife habitat, wetlands, and the like.[32]

Resolution No. 1044, which adopted the Findings for this Hancock Springs Subdivision, indicates:

> No. 6. Both parties submitted written arguments to the City Council. The Lawrences requested that the application either be denied or remanded to the Planning Commission for further consideration of issues relating to tree removal, wetlands, and hydro-geological issues. **Prior to opening the closed record meeting** on November 21, 2005, the Camas City Council unanimously voted to remand to the

[32] *Id.*

Planning Commission for additional testimony on wetlands and habitat.[33]

Under the invited error doctrine, a party cannot complain about an alleged error for which the party was responsible or about a ruling that the party invited the trial court to make.[34] The Lawrences requested the very remedy on which their appeal is now based, namely, that the matter be remanded to the Planning Commission for further review. This is another reason why the Lawrences' claims of procedural error fail.

2. Second Council Hearing.

The Council did not commit procedural error by allowing limited discussions relating to hydrological issues at the second Council meeting. At the second City Council meeting, counsel for the Lawrences addressed the City Council. During this address, counsel raised a geo-tech issue concerning construction during wet weather months.[35]

In response to this inquiry, then and only then was Private Capital's geo-tech expert engaged to provide input. It is important to review the statements received from the applicant's expert at the second Council

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[33] AR at Tab AB.

[34] *Casper v. SWS Enterprises, Inc.,* 119 Wn. App. 759 (2004); *JDFG Corp. of the International Raceway, Inc.,* 97 Wn. App. 1 (1999); *Prater v. City of Kent,* 40 Wn. App. 639 (1985).

[35] RP at 129.

hearing, as Petitioner continues to refer to the admission of new 'evidence.' Mr. Karpinski stated that Private Capital "came up with some geotech recommendations such as don't do anything on site during the wet weather months."[36] In response to that statement, Mr. Albright offered to clarify his report:

> There is nothing in the report that says the site can't be graded in wet weather. We said we strongly recommend it be done in dry weather and it specifically references the development costs are significantly higher in wet weather. It's possible that it can be done in wet weather. We recommend to our client that they not do so but I don't believe there's a necessity for this to be a mandatory dry weather construction project.[37]

The information submitted at the second hearing was thus both limited and consistent with Mr. Albright's report.

A further basis for allowing this type of information can be found by comparing CMC 18.55.180(F), which provides for a 'closed record meeting' on Type III applications, and RCW Chapter 36.70B, which concerns local project review of land use decisions. RCW 36.70B.020(1) defines "closed record appeal" as:

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[36] RP at 129.

[37] RP at 137.

> An appeal on the record to a local government body following an open record hearing on a project permit application when the appeal is on the record with no or **limited new evidence or information** allowed to be submitted and only appeal argument allowed. (emphasis added).

Therefore, even in circumstances where a local jurisdiction avails themselves of this process, and sits as an appellate body, the legislature has allowed for the receipt of "limited new evidence or information." Camas has not adopted a "closed record appeal" process, but a "closed record meeting" procedure which presumably would be given as much deference in admitting limited information.[38]

In sum, the Council simply did not admit new information into the record at the first council hearing, and therefore the analysis in *Maranatha Mining* does not apply. As to the second hearing, the limited information received was consistent with prior testimony and came **following** issues raised by the Petitioner, creating no procedural violation.

ISSUE 3: Hydro-geological impacts were considered by the City and appropriate mitigation measures implemented.

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[38] *See Citizens v. Mercer Island*, 106 Wn. App. 461 (2001) (upholding the consideration of limited new information where the council acted as an appellate body).

RCW 58.17.100(2)(a) and (b) provide as follows:

> A proposed subdivision and dedication shall not be approved unless the city, town, or the county legislative body **makes written findings that: (a) appropriate provisions** are made for the public health, safety and general welfare and for such open spaces, **drainage ways**, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the pubic use and interests will be served by the platting of such subdivision dedication. (Emphasis added).

The City's written findings provide:

> The City issued a Mitigated Determination of Non-Significance on August 26, 2005. The conditions of mitigation set forth in the MDNS related to erosion control, storm water run off, noise, and emissions.[39]

The sum and substance of Petitioners' argument regarding the City's geohydrological determination is that the City erred in not adopting the entirety of the analysis and recommendations of the **January 28, 2005** Redmond Associates geotechnical report. What the Petitioner fails to

[39] AR at Tab AB.

address is the report submitted into the record by Ash Creek Associates, Inc. dated October 14, 2005.[40]

In that report, Ash Creek cited "the moisture-sensitive, near-surface soils and the potential for encountering shallow perched groundwater during the wet weather months."[41] In light of those conditions, Ash Creek Associates "strongly recommend[ed] that site grading and utility trenching be conducted during extended periods of relatively dry weather conditions."[42] The report, however, went on to state that "[i]f wet weather construction is attempted, development costs could be significantly higher...."[43] In other words, contrary to the Lawrences' intimation, Ash Creek did not recommend a condition of approval ***barring*** wet weather construction.[44] Rather, Ash Creek recommended that site grading and utility trenching be conducted in dry weather conditions, but

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[40] That report does not appear to have been included in the Administrative Record. The City's revised staff report, found at AR Tab C, specifically refers to the report in Plat Note 10. A copy of the October 14, 2005 report is attached to this brief as Appendix A. Respondents hereby move, pursuant to RAP 9.2, to include Appendix A as a portion of the record on review.

[41] Appendix A, page 8.

[42] *Id.*

[43] *Id.*

[44] *See* Appellants' Opening Brief at 36.

recognized that those tasks may be completed in wet weather conditions, although at additional cost.[45]

Hydrological issues were extensively discussed and commented upon at both Planning Commission meetings. The Planning Commission also considered the report from the Petitioners' expert, Martin S. Burke & Associates, who was retained by the applicant to provide a "preliminary review of site studies and proposed development."[46] This report puzzlingly failed to address the January 28, 2005 geotech report of Redmond Associates. As Mr. Albright noted for the Planning Commission, there is no indication that Mr. Burke read any of the other reports available to him, no description of the site, and no indication in Mr. Burke's report that Mr. Burke actually visited the site.[47]

RCW 36.70C.130(1)(b) and (d) provide that the burden is on the Petitioners to show that the city either erroneously interpreted its code, "after allowing such deference as is due the construction of a law by a

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[45] As noted, Mr. Albright's view was that wet weather grading was permissible, but not recommended. *See* RP at 137 ("There is nothing in the report that says the site can't be graded in wet weather....It's possible that it can be done in wet weather. We recommend to our client that they not do so but I don't believe there's a necessity for this to be a mandatory dry weather construction project.").

[46] AR at Tab K.

[47] RP at 42.

local jurisdiction with expertise," or erroneously applied the code to the facts. Petitioners have failed to make either showing. The concerns of the Petitioner relating to drainage were given substantial consideration by the City during the course of the application process. The City in no manner disregarded public interests or safety in the consideration of this application.

C. THE CITY'S FINDINGS SUPPORT ITS DISPOSITION OF PRIVATE CAPITAL'S APPLICATION

In their final assignment of error, the Lawrences complain that the City erred by "failing to make adequate findings for factually contested issues," citing *Weyerhaeuser v. Pierce County.*[48] Without any supporting argument, the Lawrences purport to "appeal each of [the City's] Findings of Fact as not supported by substantial evidence."[49] Then, after posing a series of rhetorical questions, the Lawrences assert that the City's "Findings were inadequate under *Weyerhaeuser.*"[50]

As an initial matter, even if well-founded, the Lawrences' complaint about the alleged inadequacy of the City's findings does not entitle them to relief under LUPA. A court may grant relief under LUPA

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[48] 124 Wn.2d 26, 873 P.2d 498 (1994).

[49] Appellants' Opening Brief at 37.

[50] Appellants' Opening Brief at 39.

"only if the party seeking relief has carried the burden of establishing that one of the standards set forth in (a) through (f) of [RCW 36.70C.130] has been met."[51] The Lawrences do not specify which of those standards applies to their third assignment of error.

One potentially relevant section—RCW 36.70C.130(1)(c)—entitles a party to relief only when "***the land use decision*** is not supported by evidence that is substantial when viewed in light of the whole record before the court."[52] In other words, under LUPA, the focus of the inquiry is the ***land use decision***, not the local government's findings of fact. Here, the City's land use decision is its conditional approval of Private Capital's application.

LUPA requires the Lawrences to establish that there is no substantial record evidence to support the City's decision to approve Private Capital's application. Regardless of the requirements for pre-LUPA review of local government decisions, the Lawrences may not

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[51] RCW 36.70C.130(1).

[52] Emphasis added.

obtain relief under LUPA by simply complaining about perceived deficiencies in the City's findings.[53] As such, *Weyerhaeuser* is inapposite.

Another potentially relevant section—RCW 36.70C.130(1)(a)—entitles a party to relief only when "[t]he body...that made the land use decision engaged in an unlawful procedure or failed to follow a prescribed process, unless the error was harmless[.]" The Lawrences do not contend that, in entering allegedly inadequate findings, the City "engaged in an unlawful procedure or failed to follow a prescribed process." Unlike the code provisions at issue in *Weyerhaeuser*, no provision of the Camas Municipal Code required the City to enter written findings. Thus, the Lawrences cannot point to any procedural requirement that the City failed to follow in entering its findings. In all events, even if the City's findings were deficient, that deficiency would merely constitute harmless error. The Lawrences do not contend otherwise.

For those reasons, the Lawrences' complaint about the adequacy of the City's findings is not a basis for relief under LUPA.

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[53] That heightened standard for granting relief if consistent with LUPA's policy favoring administrative finality of land use decisions. *See, e.g.*, *Chelan County v. Nykreim*, 146 Wn.2d 904, 931, 52 P.3d 1 (2002) ("This court has also recognized a strong public policy supporting administrative finality in land use decisions.").

IV. ATTORNEY FEES

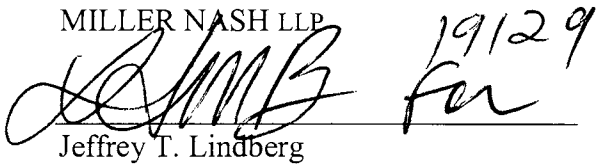
Having prevailed at every stage of the proceedings below, Respondents Private Capital, LLC and the City of Camas are entitled to an award of attorney fees on appeal pursuant to RCW 4.84.370(1).

V. CONCLUSION

The Lawrences' appeal should be denied on all grounds. This Court should award Private Capital, LLC and the City of Camas the attorney fees incurred in responding to this appeal.

DATED this 26th day of June, 2007.

MILLER NASH LLP



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APPENDIX A

Subsurface Explorations and Geotechnical Engineering Analysis Proposed Hancock Springs Subdivision Camas, Washington

Prepared for:
Private Capital, LLC

October 14, 2005
1138-00

Ash Creek Associates, Inc.
Environmental and Geotechnical Consultants

Subsurface Explorations and Geotechnical Engineering Analysis – Proposed Hancock Springs Subdivision Camas, Washington

Prepared for
Private Capital, LLC

October 14, 2005
1138-00

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1.0 Introduction and Limitations

This report presents Ash Creek Associates' geologic and geotechnical engineering evaluation and preliminary recommendations for the proposed Hancock Springs subdivision, located in Camas, Washington. Geotechnically-related site development is expected to include site grading and the installation of various underground utilities and services.

The purpose of our work was to provide geotechnical engineering recommendations for the design and construction of the proposed project. Our recommendations include:

- Site preparation;
- Grading and fill construction; and
- Other pertinent geotechnical design criteria and construction considerations.

Ash Creek Associates' Scope of Work was detailed in our proposal 05-0073 and entitled Proposal for Geotechnical Services, Hancock Springs Development, Camas, Washington. The work was performed for the exclusive use of Private Capital, LLC, for specific geotechnically-related application to this project. This work was conducted in accordance with generally accepted professional practices in the same or similar localities related to the nature of the work accomplished, at the time the services were performed. No other warranty, express or implied, is made.

Our scope of work included a preliminary geologic site reconnaissance followed by a subsurface investigation. The subsurface investigation included the excavation of 5 backhoe test pits (TP) on the project site. Additional aspects of our work scope included a site vicinity geologic reference review, as well as the preparation of this report. Storm water disposal studies and infiltration testing were specifically not included within our scope of work.

2.0 Executive Summary

Overview. The following is a summary of the geotechnical findings provided within this report. Please refer to the full report for all of the assumptions and details regarding our findings. As a result of our subsurface investigation, geologic and geotechnical document review for the project area, our previous experience in the project vicinity, and our professional judgment, and subject to the recommendations and constraints detailed within this report, the project is geotechnically feasible.

Geologic Hazard Area. Ash Creek has reviewed Section 16.90 of The City of Camas Critical Areas Ordinance. Based on our work to date, the site does not contain geologic hazards as addressed in the city

ordinance 16.90.010 - .020. Specific geologic and geotechnical challenges associated with the site, as well as our mitigation recommendations, have been addressed within the body of this report.

Site Grading. A finalized grading plan was not available to Ash Creek at the time of this report preparation. However, we assume that the site grading plan will be prepared by a licensed Civil Engineer in accordance with the recommendations provided in the body of this report and the City of Camas Standards.

2.1 Summary of Subsurface Conditions

Topsoil. Topsoil was encountered in our explorations between 4 and 6 inches in thickness. Root mat and duff were observed within the wooded area in the middle of the site to be between 6 and 12 inches in thickness.

Native SILT. Soils observed in our test pits typically consisted of a medium stiff or stiff, damp to wet, brown, rust mottled, SILT. Intermittent cobbles were noted at depths below about 7 feet in our test pit explorations along the south side of the site.

Sandstone. Dense, brown, moderately cemented, sandstone was observed in Test Pit TP-2 at a depth of approximately 5 feet below the ground surface (bgs).

Groundwater. Light to moderate seepage was observed in test pits TP-3 and TP-4 at depths of approximately 7 to 8 feet bgs. Based upon our experience in the Prune Hill vicinity, it is typical for groundwater levels to rise a number of feet during the wet season, approaching ground surface elevations during particularly wet years.

2.2 Summary of Site Preparation and Excavations

Dry Weather Grading. It is strongly recommended that site preparation, earthwork/ grading, paving, and utility work be conducted during extended periods of warm, dry weather, typical of summer through early fall months.

Site Preparation. Topsoil should be stripped from all building pads, fill subgrade areas, road subgrades, and other settlement prone appurtenant structures and features. Topsoil should not be reused as structural fill.

Compaction Standards. Recommended compaction specifications should be based upon ASTM D 1557 (or AASHTO T-180) moisture density relationships. Compaction of fine-grained soils (native silt) to acceptable density levels during the wet season will be very difficult. If wet weather grading is attempted, structural fill should consist of imported, clean, granular material.

Key and Benching Fills. The site is located on moderately sloping ground. New fills should be keyed and benched into firm native soils.

3.0 Project Understanding and Site Description

The project consists of developing a 13-lot subdivision on a site located south of NW 18th Avenue along the southern gravel extension of NE Cascade Street, in the city of Camas, Washington. The City of Camas has adopted a set of criteria for geotechnical reports in certain areas of the city deemed to have potentially hazardous conditions such as steep slopes, springs, landslides, etc.

The site grades downward from north to south with a change in elevation of 90 to 95 feet, from El. 753 in the northern portion to El. 660 in the southwestern corner. The developable portion of the site is above El. 685. The surface vegetation typically consists of grass, blackberry brush, and a wooded area along the west central portion of the site. A single-family residence is located along the southwestern side of the site. Utilities and services for this residence are also present on the site.

Major construction aspects are anticipated to include site stripping and grading, access road construction, and the installation of various underground utilities and services.

4.0 Geologic Setting

Office review of regional geological references included:

- Geology of Portland, Oregon and Adjacent Areas, United States Geologic Survey Bulletin 1119, D.E. Trimble, 1963; and
- Geologic Map of Washington – Southwest Quadrant, Timothy Walsh et al., Washington Division of Geology and Earth Resources, GM-34, 1984.
- Soil Survey of Clark County, Washington, Dale McGee et al., NRCS National Soil Information System, November 1972.

Regional geology for the site vicinity indicates the presence of one major geologic unit defined as the Pliocene Aged Troutdale Formation. The Troutdale formation is the dominate geology unit in the Prune Hill Vicinity and extends from about Lackamas Lake in the north and east, NW Brady Road to the west, and NW Mcintosh Road and NW 10th Avenue to the south. This geologic unit consists of sandstone and conglomerate with minor amounts of siltstone or claystone. The Troutdale Formation in the Prune Hill vicinity is typically mantled with 5 to 20 feet of silt or clayey silt, most likely of the Portland Hills Silt Formation (PHS).

Our subsurface explorations suggest the site to be typical of the geology associated with the Prune Hill vicinity. In TP-1 we encountered deeply weathered conglomerate, consisting of silt with some cobbles, at approximately 7 feet bgs. In TP-2 we encountered cemented sandstone at approximately 5 feet bgs. The remaining test pits, and those excavated during a previous exploration, terminated within the PHS.

4.1 Soil Survey of Clark County

Soil survey reports developed by the Natural Resources Conservation Service (NRCS, formally SCS) were reviewed during the preparation of this report. Specifically, the NRCS study for Clark County was consulted. The NRCS soil classification studies typically are confined to the upper 4 to 6 feet of soil nearest the ground surface.

One potential near surface soil unit was identified within the project vicinity. This soil unit is defined as Powell Silt Loam. This soil unit is typical of the Prune Hill area and underlays both the proposed project site, as well as all properties immediately adjacent to the project site. Powell Silt Loam has been classified by NRCS under the USCS system as an ML soil (low plasticity silt or low plasticity clay). NRCS has also classified the soil under the AASHTO soil classification system as an A-4 soil. The liquid limit (LL) is indicated as falling into the range of 25 to 30, and the plasticity index (PI) is indicated as falling between NP (non-plastic soil) and 5 (very low plasticity). Soil pH is between 5.1 and 6.0. The fines content of this soil unit typically ranges from about 75 to 90 percent by weight.

4.2 Seismicity and Earthquake Sources

The seismicity of the Camas and Clark County area, and hence the potential for ground shaking, is controlled by three separate fault mechanisms. These include the Cascadia Subduction Zone (CSZ), the mid-depth intraplate zone, and the relatively shallow crustal zone. Descriptions of these potential earthquake sources are presented below.

The CSZ is located offshore and extends from Northern California to British Columbia. Within this zone, the oceanic Juan De Fuca Plate is being subducted beneath the continental North American Plate to the east. The interface between these two plates is located at a depth of approximately 15 to 20 kilometers (km). The seismicity of the CSZ is subject to several uncertainties, including the maximum earthquake magnitude and the recurrence intervals associated with various magnitude earthquakes. Anecdotal evidence of previous CSZ earthquakes has been observed within coastal marshes along the Washington coast. Sequences of interlayered peat and sands have been interpreted to be the result of large subduction zone earthquakes occurring at intervals on the order of 300 to 500 years, with the most recent event taking place approximately 300 years ago. A recent study by Geomatrix (1995) suggests that the maximum earthquake associated with the CSZ is moment magnitude (Mw) 8 to 9. This is based on an empirical expression relating moment magnitude to the area of fault rupture derived from earthquakes that have occurred within

subduction zones in other parts of the world. An Mw 9 earthquake would involve a rupture of the entire CSZ. As discussed by Geomatrix (1995) this has not occurred in other subduction zones that have exhibited much higher levels of historical seismicity than the CSZ, and is considered unlikely. For the purpose of this study, an earthquake of Mw 8.5 was assumed to occur within the CSZ.

The intraplate zone encompasses the portion of the subducting Juan De Fuca Plate located at a depth of approximately 30 to 50 km below western Washington and western Oregon. Very low levels of seismicity have been observed within the intraplate zone in Oregon. However, much higher levels of seismicity within this zone have been recorded in Washington and California. Several reasons for this seismic quiescence were suggested in the Geomatrix (1995) study and include changes in the direction of subduction between Oregon, Washington, and British Columbia as well as the effects of volcanic activity along the Cascade Range. Historical activity associated with the intraplate zone includes the 1949 Olympia magnitude 7.1 and the 1965 Puget Sound magnitude 6.5 earthquakes. Based on the data presented within the Geomatrix (1995) report, an earthquake of magnitude 7.25 has been chosen to represent the seismic potential of the intraplate zone.

The third source of seismicity that can result in ground shaking within the Vancouver, Camas and Washougal areas is near-surface crustal earthquakes occurring within the North American Plate. The historical seismicity of crustal earthquakes in western Washington and western Oregon is higher than the seismicity associated with the CSZ and the intraplate zone. The 1993 Scotts Mills (magnitude 5.6) and Klamath Falls (magnitude 6.0) earthquakes were crustal earthquakes.

4.3 City of Camas Critical Areas Ordinance

Section 16.90 of the City of Camas "Critical Areas Ordinance" designates specific geologic hazards associated with site development within the City limits. These include Erosion Hazards, Landslide Hazards, and Seismic Hazards. Other geologic hazards addressed in Section 16.90 include, mass wasting, debris flows, rock falls, and differential settlement. The following represents Ash Creek's assessment of each of these potential hazards relative to the project site, and the proposed residential development.

Erosion Hazards. The NRCS for Clark County indicates that the native soil mantling the project site has slow run-off characteristics and that the erosion hazard is low. Industry standard construction detailing for erosion control will be sufficient during site development.

Landslide Hazards. No evidence of previous landslide activity, debris flows, rapid mass wasting, or rock fall was observed on the site during Ash Creek's geologic reconnaissance. In addition, no evidence of any such ground movement was found during our office review of geologic studies conducted in the project vicinity.

Differential Settlement. If structural foundations are designed in accordance with the recommendations provided in this report, and new structural fill is placed and compacted in accordance with this report, the risk of large magnitude differential settlements are minimal.

Seismic Hazards. The project site seismic exposure is detailed in Section 4.2 of this report. No evidence was found that might suggest the site is susceptible to seismically induced landsliding, soil liquefaction, fault rupture, Seiche, or Tsunami. In addition, no evidence was found of active faulting beneath the project site. The nearest semi-active fault to the project site is the Lackamas Creek Fault Zone.

Seepage and Spring Activity. Spring and seepage activity is typical of the Prune Hill vicinity. Spring activity will usually manifest itself during late fall through late spring months. The spring activity is associated with water perching on the low permeability surface of the Troutdale Formation, then migrating laterally and seeping from the ground surface at slope breaks. We recommend that when seeps of springs are encountered during construction they should be intercepted with cut-off drains. The drains should in turn be tight-lined to the project storm sewer system. In addition it is recommended that all structures be designed with perimeter drain systems. Additional details regarding cut-off drains and perimeter drains are provided in the Conclusions and Recommendations section of this report.

5.0 Subsurface Conditions

Five exploratory test pits were excavated on the project site on October 7, 2005, using a rubber-tired backhoe under contract to Ash Creek Associates. The maximum depth of our exploratory test pits was approximately 13 feet bgs. The test pit exploration was undertaken to determine the excavation characteristics of the materials and the suitability of native soils for reuse as structural fill, and the ability of native strata to support residential structures.

A previous exploration on the site was made by Redmond and Associates, documented in a report dated January 28, 2005, entitled Geotechnical Investigation Proposed Hancock Springs Residential Development Site NW 18th Avenue Camas (Clark County), Washington. The field investigation for that report consisted of excavating 4 backhoe test pits to maximum depths of 6 feet. The information contained in the Redmond report was used to augment the Ash Creek Associates field investigation.

The locations of test pit explorations are shown on the accompanying Site Plan (Figure 2). The locations of the test pits were established by pacing from prominent surface features and should therefore be considered approximate.

Test pit logs have been included in the appendix of this report. The attached logs describe soils encountered during Ash Creek Associates' subsurface exploration. Descriptions are based upon field classification of soil samples.

It should be emphasized that our exploration revealed subsurface conditions only at discrete locations on the project site and that actual conditions could vary at other locations. Furthermore, the nature and extent of any such variations may not become evident until construction activities have begun. If significant variations are observed at that time, we may need to modify our conclusions and recommendations to reflect actual conditions. For ease of outside interpretation, subsurface conditions have been generalized into the major categories described below.

Topsoil. A stiff to medium stiff, damp, dark brown, silty topsoil layer mantels the entire site. Topsoil thicknesses observed in the test pits are moderately thick, varying from 4 to 6 inches in depth. Thicker topsoil and organic rich soil may be encountered in areas of blackberry brush and trees.

Topsoil, root mat, forest duff, and root ball material should be stripped and removed from all proposed fill subgrade areas, structural areas, pavement subgrade areas, building lots, and any other areas that may be sensitive to subgrade related settlements. Reuse of topsoil strippings should be limited to shallow landscaping fill at the surface of building lots (fills with maximum thicknesses of 8 inches or less). These landscape fills should be limited to non-structural/non-pavement areas of building lots. Topsoil stripping can also potentially be employed in low-lying landscape berms.

SILT. Native soils underlying the topsoil zone consist of medium stiff to stiff, damp, brown, mottled, SILT to clayey SILT of the PHS Formation.

BEDROCK. Intermittent cobbles and sandstone were encountered in TP-1 at depths below about 7 feet. A dense, partially cemented sandstone formation was encountered at depths below about 5 feet in TP-2. Both the cobbles, and sandstone have been interpreted by Ash Creek as the interface between the near surface Powell Silt Loam (or PHS), and the Troutdale Formation.

The on-site native soils, excluding the organic topsoil, will function adequately as structural fill if placed and compacted in accordance with the recommendations of this report and if site grading is limited to extended periods of warm dry weather. The on-site native soils will also function adequately as bearing strata for single family residential structures founded on conventional footings.

Groundwater. Light to moderate seepage was observed in test pits TP-3 and TP-4 at depths of approximately 7 to 8 feet bgs. It is typical for groundwater levels in the Prune Hill area to rise several feet during winter and spring months. This rise in groundwater will often manifest itself in the form of surface springs or seeps during the wet season.

6.0 Conclusions and Recommendations

Our recommendations are based on our current understanding of the project. If the nature or location of the planned construction changes, Ash Creek Associates should be contacted so that we can confirm or revise our recommendations.

6.1 Site Preparation

We have provided recommendations for dry weather construction as well as other geotechnical concerns and issues relative to the project site. Because of the moisture-sensitive, near-surface soils and the potential for encountering shallow perched groundwater during the wet months, Ash Creek Associates strongly recommends that site grading and utility trenching be conducted during extended periods of relatively dry weather conditions. If wet weather construction is attempted, development costs could be significantly higher due in part to the increased cost of imported granular fill, maintenance of soft subgrade areas generated as a result of construction activities, and installation of a granular working blanket over construction trafficked portions of the site.

Stripping and Grubbing. The majority of the project site is presently mantled in approximately 4 to 6 inches of topsoil.

Pockets of deeper topsoil, fill, or organic rich soil are anticipated within wooded areas and areas with heavy blackberry brush coverage. These areas that will require deeper stripping may entail removal of up to 12 to 18 inches of near surface organic rich soil or unsuitable fill.

Prior to commencing construction activities, the site should be stripped of surficial topsoil, organic silts, and tree and brush roots. Material generated from site stripping should be considered unsuitable for reuse in engineered fills. Stripped topsoil can be stockpiled for later use as non-structural thin landscape fills. These landscape fills should be limited to non-structural/non-pavement areas of building lots, and fill thicknesses should not exceed 8 inches.

We recommend that a representative of Ash Creek Associates' geotechnical engineering staff be retained during stripping and grubbing to confirm that unsuitable soil has been removed from structural and pavement areas, and root ball excavations are backfilled with compacted fill.

Dry Weather Construction. On-site non-organic native soils should provide adequate structural fill material if placed and compacted during dry weather months. Proper moisture conditioning should be conducted prior to placement and compaction. Engineered fill should be compacted to 92 percent of the material's maximum dry density as determined by ASTM D 1557.

Minimum compaction for the 8 inches immediately underlying pavement sections should be 95 percent of the soil or gravel's maximum density as determined by ASTM D 1557. Even during dry weather it is possible that some areas of the subgrade will become soft or may "pump" (deflect under wheel load), particularly in deeper cuts, spring/seep areas, poorly drained areas, abandoned drainage ditches, swales, etc.

Proof-Rolling. We recommend that prior to fill placement or base course installation, the subgrade or granular working blanket be proof-rolled with a loaded 10- to 12-yard dump truck or other suitable equipment. This pertains to all pavement and structural fill subgrade areas. Any areas of subgrade that pump, weave, or appear soft and muddy should be scarified, dried, and compacted, or over-excavated and backfilled with compacted granular fill. If a significant length of time passes between fill placement and commencement of construction operations, or if significant traffic has been routed over these areas, we recommend that the subgrade be similarly proof-rolled again before any foundation or pavement installation is allowed. We recommend that we be retained to observe this operation to evaluate preparation of structural grades.

6.2 Structural Fills

Structural fill should be installed on a subgrade that has been prepared in accordance with the above recommendations. Fills should be installed in horizontal lifts not exceeding 8 inches in thickness (loose - prior to compaction). Actual lift thickness will likely be a function of construction methods and compaction equipment employed, and the ability of the equipment to achieve specified compaction levels. Typically, this applies to lightweight compaction equipment that often requires very thin lifts be employed in order that specified levels of compaction can be achieved. Engineered fills should be compacted to at least 92 percent of the maximum dry density for fine-grained native soils. The final 6 to 8 inches of fill immediately below pavements should be compacted to at least 95 percent of the material's maximum dry density. The maximum dry densities should be determined in accordance with ASTM D 1557 (Modified Proctor Test). The compaction criteria may be reduced to 85 percent in non-structural landscape or planter areas. A summary of recommended compaction specifications is provided in the table below.

Table 6.2 Recommended Fill Compaction Specifications

Material	Percent of Maximum Dry Density ASTM D 1557
Fine Grained Fill	92
Landscaping Fills	85
Imported Granular Fill	95
Pavement Subgrade	95

During dry weather, structural fills may consist of virtually any relatively well-graded soil that is free of debris, organic matter, and high percentages of clay or clay lumps, and can be compacted to the preceding specifications. However, if excess moisture causes the fill to pump or weave, these areas should be dried and recompacted, or removed and backfilled with compacted granular fill. We recommend that these fills consist of well-graded granular soils (sand or sand and gravel) that do not contain more than 5 percent material by weight passing the No. 200 sieve. In addition, it is usually desirable to limit this material to a maximum 6 inches in diameter for ease of compaction and future installation of utilities.

Adequate compaction levels for structural fills can usually be obtained within fine-grained native soils at +/-3 or 4 percent of the optimum moisture content. Typically, the biggest challenge with obtaining specified compaction levels within fine-grained soils can be traced to excessive soil moisture levels. If excess soil moisture is present in potential fill soils, soil drying via aeration should be conducted. Soil drying is commonly performed by ripping and turning soils in order to remove excess moisture within the soil via evaporation. Soil drying of fine-grained soils is generally only possible during extended periods of warm dry weather. Optimal time for this type of operation is during early July through mid-October months.

We recommend that regular fill inspections be scheduled during site work. Inspections should include periodic observation of soil drying, fill placement and spreading as well as compaction techniques. Regular density testing should also be conducted during site work to determine compaction levels of engineered fill.

6.3 Suitable Fill Materials

Structural Fills During Summer Grading. During dry weather, structural fills may consist of virtually any relatively well-graded soil that is free of debris, organic matter, and high percentages of clay or clay lumps, and that can be compacted to the preceding specifications. However, if excess moisture causes the fill to pump or weave, those areas should be dried and recompacted, or be removed and backfilled with compacted granular fill. In order to achieve adequate compaction during wet weather, or if proper moisture content cannot be achieved by drying, we recommend that fills consist of well-graded granular soils (sand or sand and gravel) that do not contain more than 5 percent material by weight passing the No. 200 sieve. In addition, it is usually desirable to limit this material to a maximum 6 inches in diameter for ease of compaction and future installation of utilities.

Wet Weather Grading. Because moisture levels are difficult to control in fine-grained soils, and soil drying via aeration is not realistically an option, structural fill constructed during the wet season should consist of clean, durable crushed rock, or clean granular fill. Ideally, structural fill material placed during the wet season will contain less than 5 percent fines by weight passing á standard No. 200 sieve. Wet weather grading conditions should be assumed between the months of mid-October through early to late June. Working blankets for subgrade protection and haul roads employed during wet weather grading should consist of a minimum of 12 inches of clean granular fill. Periodic maintenance of the working pad and

graveled haul roads will be required during wet weather construction. This routine maintenance would typically consist of over-excavating subgrade areas disturbed as a result of construction traffic, and subsequent backfilling with clean granular fill.

Pavement Base Rock. Crushed rock utilized in these areas should consist of clean, durable crushed rock. The materials fines content should not exceed levels recommended within WSDOT material standards for pavement base rock.

Trench Backfill. Utility conduits should be bedded in clean sand or crushed rock within one conduit diameter. Bedding should surround the pipe in all directions. Trench backfill should be lightly compacted within two pipe diameters or 18 inches, whichever is greater, above breakable conduits. Trench backfill underlying pavements, building lots, or other settlement sensitive structures or features should consist of durable, clean, crushed rock. This material should contain less than 5 to 7 percent fines by weight passing a standard No. 200 sieve.

Working Pad or Haul Roads for Wet Weather Grading. Any working pads or haul roads utilized during wet weather construction should consist of durable, clean crushed rock, bank-run, or pit run material. Nominal size should be between 1.5-inch (minus) and 4-inch (minus) material. The material should contain less than 5 to 7 percent fines by weight passing a standard No. 200 sieve. Geotextile filter fabric should also be considered under all working blankets and haul roads.

6.4 Areal Fill Settlements

Areal settlements within fills constructed to maximum heights of 8 feet or less are estimated to be less than approximately 1 or 2 inches. If fills are constructed in accordance with Ash Creek Associates' recommendations regarding fill compaction and optimal moisture levels for fill placement, the majority of areal fill settlement is expected to occur during fill construction.

6.5 Structural Fill on Sloping Ground

Because the project site is located on moderately sloping ground, all new fills should be keyed and benched into firm native mineral soils. Where slopes are steeper than 5H:1V, and the fill height greater than 4 feet, benching into competent native soil should be conducted. The bench under the toe of a fill on a slope steeper than 5H:1V should be at least 10 feet wide. A typical key and bench detail is included as Figure 3.

6.6 Finished Cut and Fill Slopes

Finished cut and fill slopes should not exceed gradients of 2H:1V. Cut and fill slopes should be protected immediately from erosion following completion of grading. Erosion protection should consist of placement of jute mesh and seeding with erosion resistant vegetation or other engineer approved erosion control

methods. New finished cut and fill slopes that exceed 15 feet in height should be assessed on a case-by-case basis for global stability.

6.7 Springs and Seeps

The hills and slopes located along the north side of Camas are often associated with seasonally activated ground surface springs. When springs are encountered during site work, we recommend that the seepage be intercepted and cut off from flowing over or under structural or road subgrade areas. This will limit the potential for long term softening and settlement of subgrade soils. When springs or seeps are encountered in cut or fill slopes, the slopes should be provided with subdrainage for stability. Adequate culverts should be placed under all fills over natural drainages and along the flow line of any tributary branches of such drainages. In addition, subdrainage should be installed if active or potential springs or seeps are covered by the fill.

Cut-off drains and subdrains should consist of clean drain rock surrounding a 4- or 6-inch- diameter perforated pipe. The drain rock blanket surrounding the perf-pipe should extend a minimum of 12 inches on all sides of the perforated pipe. The drain rock should be wrapped in a filter fabric to limit the potential for long term clogging resultant from siltation. The perforated pipe should be designed to drain via gravity flow. The cutoff drain should be tight-lined to the project's storm sewer or rip-rap armored outfalls within project storm water ponds.

6.8 Retaining Walls

Non-Restrained Walls. Non-restrained walls have no restraint at the top and are free to rotate about their base. Most cantilever retaining walls fall into this category. We recommend that non-restrained walls be designed for pressures developed from the equivalent fluid weights shown in the following table.

Table 6.8 Non-restrained Retaining Wall Pressure Design Recommendations

Backfill Slope Horizontal/Vertical	Equivalent Fluid Weight (pcf)
Level	35
3H:1V	50
2H:1V	75

These pressures represent our best estimate of actual pressures that may develop and do not contain a factor of safety. These pressures assume retaining wall backfill material is clean, durable, well-drained granular backfill as described in the Structural Fill Section of this report. If traffic loads are expected within a

horizontal distance from the top of the wall equal to the wall height, a uniform lateral earth pressure acting horizontally on unrestrained walls equal to 60 psf should be added to earth loads acting on the wall.

Restrained Walls. Restrained walls are any walls that are prevented from rotation during backfilling. Walls with corners and jogs, and those that are restrained by a floor slab and/or roof fall into the category of restrained walls. We recommend that restrained walls be designed for pressures developed from the equivalent fluid weights shown in the following table.

Table 6.8B Restrained Wall Pressure Design Recommendations

Backfill Slope Horizontal/Vertical	Equivalent Fluid Weight (pcf)
Level	45
3H:1V	60
2H:1V	85

These pressures represent our best estimates of actual pressures that may develop and do not contain a factor of safety. These pressures are assumed to act horizontally (normal to the wall). This is based on the assumption that drainage membranes or impervious wall coatings will prevent friction between the wall and backfill. These pressures assume retaining wall backfill material is high shear strength gravel backfill that is well drained. If traffic loads are expected within a horizontal distance from the top of the wall equal to the wall height, an additional uniform lateral earth pressure acting horizontally on restrained walls equal to 80 psf should be added to earth loads acting on the wall.

Retaining Wall Backfill. The backfill behind and within 5 feet of the retaining walls should consist of free-draining granular material and should meet recommended specifications provided in Ash Creek Associates' Report Section regarding Suitable Fill.

6.9 Foundation Design Considerations

Foundation design in accordance with CABO, IBC, or other jurisdictionally employed residential building codes is appropriate for the native mineral soils underlying the project site. As the project site is moderately sloping, special attention should be given to code requirements for foundation embedment depths. Actual embedment depth on sloping grounding is typically a function of the downslope gradient adjacent to the structure.

6.10 Drainage

It is recommended that building designs include perimeter-footing drains around each structure at approximately the base of foundation grade, designed to drain water away from structures by gravity. Drains should consist of a 4- to 6-inch-diameter perforated pipe surrounded on all sides by approximately 8 inches of clean drain rock.

Floor Slabs. If slab on grade construction is utilized, a vapor retarder and a minimum of a 6-inch clean crushed rock or clean sand should be placed immediately below the bottom of the slab to form a capillary break between ground moisture and the base of slabs.

6.11 Excavations and Utilities

Excavations. Subsurface conditions encountered during the site investigation indicate that precautions in utility excavations will be required due to the potential for caving/sloughing. Any excavations deeper than 4 feet should be sloped or shored in accordance with OSHA regulations. Normally, shoring systems (for excavations less than 20 feet in depth) are contractor designed and installed items.

Dewatering. Seepage was encountered within several of our test pit locations. Trench and excavation dewatering during utility construction should be anticipated.

Utilities. Utilities sensitive to moisture should be placed in watertight conduits. Utility conduits should be bedded in sand or 1/2-inch (minus) or 5/8-inch (minus) crushed rock within one conduit diameter. Bedding should surround the pipe in all directions. Trench backfill should be lightly compacted within two diameters or 18 inches, whichever is greater, above breakable conduits. The remaining backfill should be compacted to 95 percent of the maximum dry density of the material as determined by ASTM D 1557 for granular/crushed rock backfill.

6.12 Erosion Control

Ash Creek Associates recommends that finished cut and fill slopes be protected immediately following grading with vegetation, gravel, or other approved erosion control methods. Water should not be allowed to flow over slope faces or drop from outfalls, but should be collected and routed to storm water disposal systems. Riprap, gabion baskets, or similar erosion control methods may be necessary at storm water outfalls or to reduce water velocity in ditches. Silt fences should be established and maintained throughout the construction period. Silt fence barriers should be established down slope from all construction areas to protect natural drainage channels from erosion and/or siltation. In order to decrease erosion potential, care should be taken to maintain native vegetation and organic soil cover in as much of the site as possible.

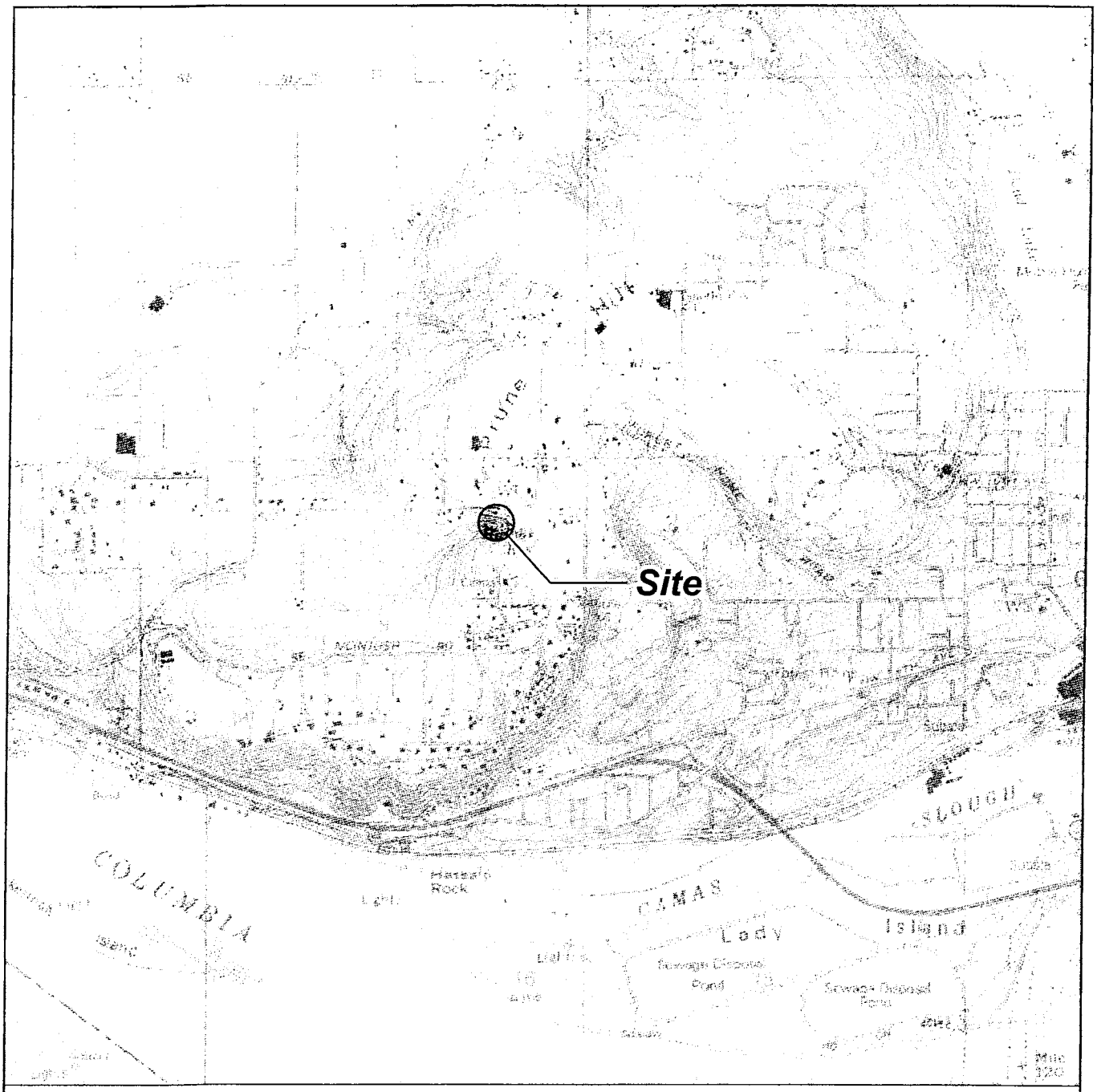
7.0 Recommendations for Additional Services

Prior to construction, we recommend that Ash Creek Associates be retained to review the final design plans and specifications. This review will allow us to evaluate whether any change in concept may affect the validity of our recommendations, and whether our recommendations have been correctly interpreted. In order to correlate preliminary soil data with the actual soil conditions encountered during construction, and to assess construction conformance to our report, we recommend that we be retained for construction observation of the following:

- Site preparation activities including stripping, key and bench construction, and fill placement and compaction;
- Footing excavations to verify suitability of bearing soils;
- Subgrades beneath pavements; and
- Other geotechnical considerations which may arise during the course of construction.

8.0 Closing

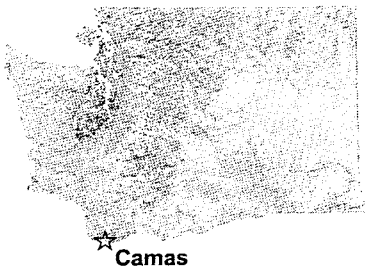
This report presented Ash Creek Associates' geotechnical engineering evaluation and recommendations for the proposed project. Subject to the recommendations provided within this report, construction of the proposed project is feasible from a geotechnical standpoint. We trust that this report meets your needs. If you have any questions, or if we can be of further assistance, please call. We look forward to working with you in the future.



Base map prepared from USGS 7.5-minute quadrangles as provided by Topozone.

0 2000 4000

Scale in Feet



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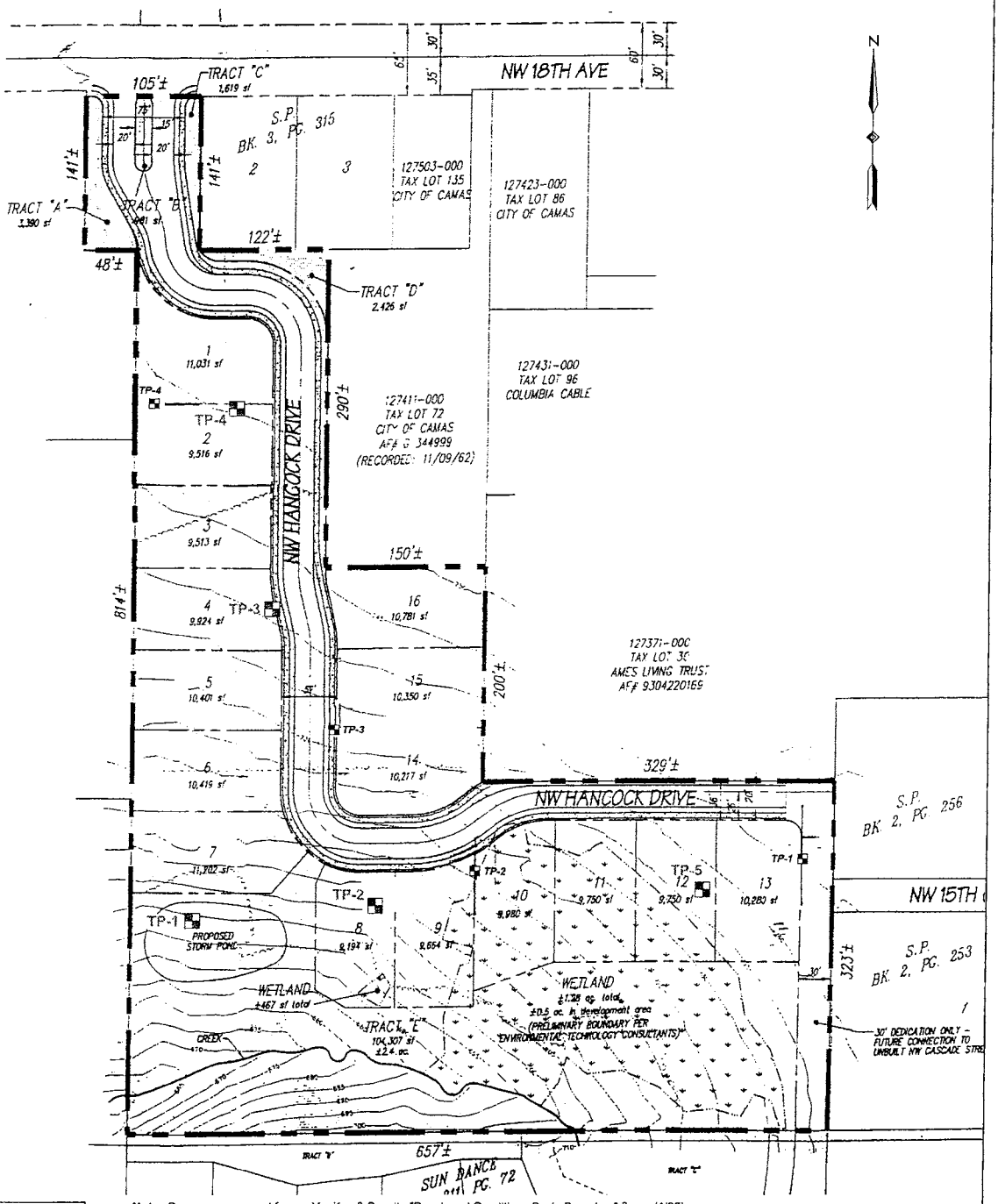
Site Location Map

Private Capital, LLC
Proposed Hancock Springs Subdivision
Camas, Washington

Ash Creek Associates, Inc. Environmental and Geotechnical Consultants	Project Number 1138-00	Figure
	October 2005	1



Note: Base map prepared from a MacKay & Sposito "Developed Conditions Basin Boundary" figure (1/05).

Legend:

TP-1 Test Pit Location (Ash Creek Associates)

TP-1 Test Pit Location (Redmond and Associates)

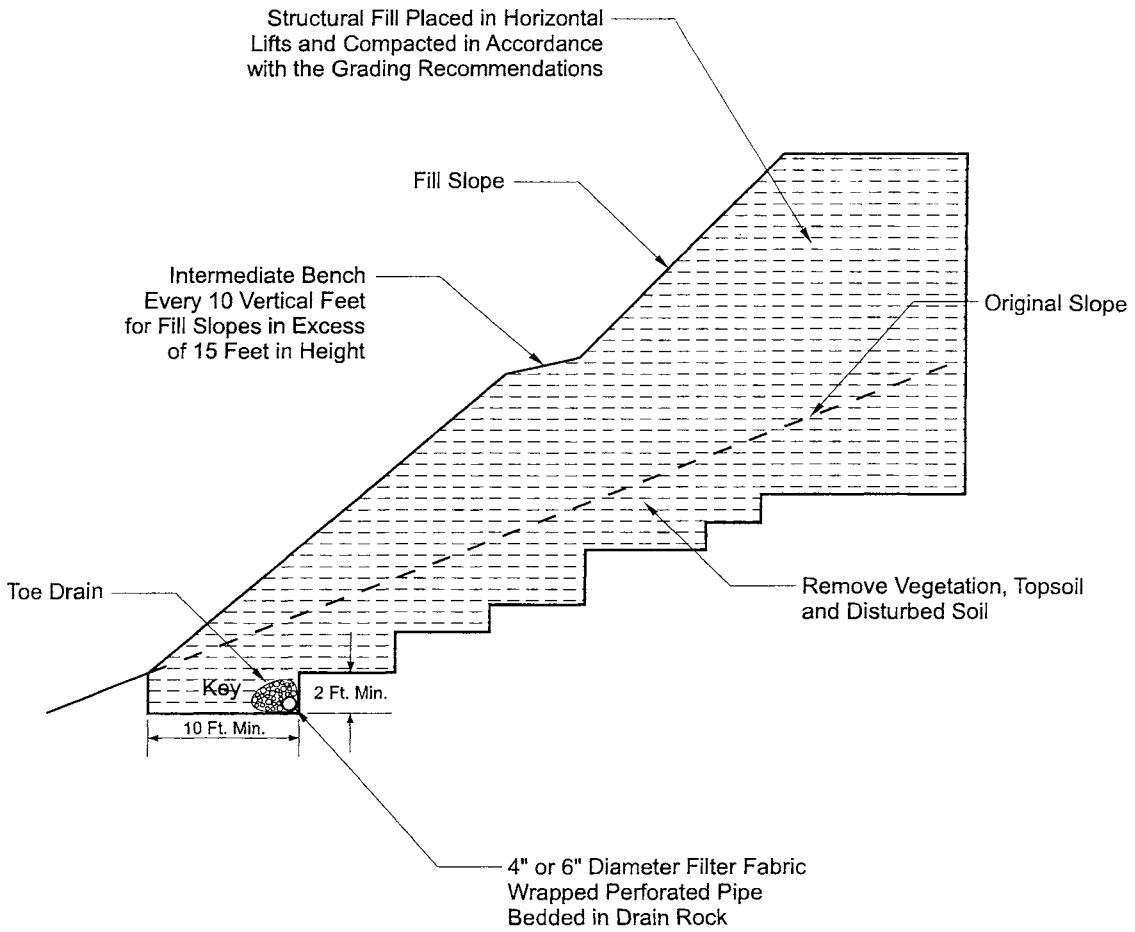
0 100 200
Scale in Feet

Ash Creek Associates, Inc.
Environmental and Geotechnical Consultants

Site Exploration Plan

Private Capital, LLC
Proposed Hancock Springs Subdivision
Camas, Washington

Project Number	1138-00
October 2005	Figure 2



Typical Key and Bench Detail

Private Capital, LLC
Proposed Hancock Springs Subdivision
Camas, Washington

Ash Creek Associates, Inc. Environmental and Geotechnical Consultants	Project Number	1138-00	Figure
	October 2005		3

Appendix A

Test Pit Logs

Ash Creek Associates, Inc.
Environmental and Geotechnical Consultants

Private Capital, LLC
Proposed Hancock Springs Subdivision
Camas, Washington

Project Number 1138-00

Test Pit Number TP-1

Test Pit Location: See Figure 2	Surface Elevation: Not Measured
Excavation Contractor: Norm Prouty	Date Completed: 10/07/05
Excavation Equipment: Backhoe	Logged By: J. Duquette

Depth, feet	Material Description
	TOPSOIL.
	(Stiff), damp, brown, mottled SILT.
5	
	(Stiff), damp, brown, mottled, clayey SILT with some cobbles. (Weathered Sandstone)
10	
	Bottom of Test Pit at 13.0' BGS. No Groundwater or Seepage Noted.

Test Pit Number TP-2

Test Pit Location: See Figure 2	Surface Elevation: Not Measured
Excavation Contractor: Norm Prouty	Date Completed: 10/07/05
Excavation Equipment: Backhoe	Logged By: J. Duquette

Depth, feet	Material Description
	TOPSOIL.
	(Stiff), dry, brown, mottled SILT.
5	
	(Very stiff), damp to dry, cemented SANDSTONE with trace cobbles.
10	
	Bottom of Test Pit at 10.0' BGS. No Groundwater or Seepage Noted.

Ash Creek Associates, Inc.
Environmental and Geotechnical Consultants

Private Capital, LLC
Proposed Hancock Springs Subdivision
Camas, Washington

Project Number 1138-00

Test Pit Number TP-3

Test Pit Location: See Figure 2	Surface Elevation: Not Measured
Excavation Contractor: Norm Prouty	Date Completed: 10/07/05
Excavation Equipment: Backhoe	Logged By: J. Duquette

Depth, feet	Material Description
	TOPSOIL.
	(Stiff), dry to damp, brown, slightly mottled SILT.
5	
10	
	Bottom of Test Pit at 12.0' BGS.
	Seepage Noted at ~7.0' BGS.

Test Pit Number TP-4

Test Pit Location: See Figure 2	Surface Elevation: Not Measured
Excavation Contractor: Norm Prouty	Date Completed: 10/07/05
Excavation Equipment: Backhoe	Logged By: J. Duquette

Depth, feet	Material Description
	TOPSOIL.
	(Stiff), dry to damp, brown, mottled SILT.
5	
10	
	Bottom of Test Pit at 10.0' BGS.
	Moderate Seepage Noted at ~8.0' BGS.

Ash Creek Associates, Inc.
Environmental and Geotechnical Consultants

Private Capital, LLC
Proposed Hancock Springs Subdivision
Camas, Washington

Project Number 1138-00

Test Pit Number TP-5

Test Pit Location See Figure 2	Surface Elevation: Not Measured
Excavation Contractor: Norm Prouty	Date Completed: 10/07/05
Excavation Equipment Backhoe	Logged By: J. Duquette

Depth, feet	Material Description
	TOPSOIL.
	(Stiff), dry, brown, mottled SILT.
5	(Medium stiff to stiff), damp, brown, mottled SILT.
10	
	Bottom of Test Pit at 12.0' BGS. No Groundwater or Seepage Noted.

FILED
COURT OF APPEALS
DIVISION II

07 JUN 27 AM 9:26

STATE OF WASHINGTON
BY _____
DEPUTY

I hereby certify that I served the foregoing RESPONDENTS' BRIEF on:

Mr. John S. Karpinski
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Law Lyman Daniel Kamerrer et al
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Olympia, WA 98508-1880
Fax: (360) 357-3511

by the following indicated method or methods:

☒ by **faxing** full, true, and correct copies thereof to the attorney at the fax number shown above, which is the last-known fax number for the attorney's office, **and** by **mailing** full, true, and correct copies thereof in a sealed, first-class postage-prepaid envelope, addressed to the attorney as shown above, the last-known office address of the attorney, and deposited with the United States Postal Service at Vancouver, Washington, on the date set forth below.

☐ by **mailing** full, true, and correct copies thereof in a sealed, first-class postage-prepaid envelope, addressed to the attorney as shown above, the last-known office address of the attorney, and deposited with the United States Postal Service at Vancouver, Washington, on the date set forth below.

☐ by sending full, true, and correct copies thereof via **overnight courier** in a sealed, prepaid envelope, addressed to the attorney as shown above, the last-known office address of the attorney, on the date set forth below.

☐ by causing full, true, and correct copies thereof to be **hand-delivered** to the attorney at the attorney's last-known office address listed above on the date set forth below.

Under the laws of the state of Washington, the undersigned hereby declares, under the penalty of perjury, that the foregoing statements are true and correct to the best of my knowledge.

Executed at Vancouver, Washington, this 26th day of June, 2007

James D. Howsley
WSBA No. 32442