



July 23, 2026

Greetings Party of Record,

Subject: West Bay Yards – Shoreline Substantial Development Permit, Shoreline Conditional Use Permit and SEPA Appeal decisions
File Numbers: 21-2854 & 26-1023

The enclosed decision of the Olympia Hearing Examiner hereby issued on the above date may be of interest to you. There are three interrelated actions enclosed: Approval of the Shoreline Substantial Development Permit, approval of the Shoreline Conditional Use Permit, and denial of the SEPA Appeal. These decisions represent the City's final action on this project; as such they will be sent to the Washington State Department of Ecology ("Ecology") for continued processing.

According to OMC 18.82.225 and OMC 18.82.230, requests for reconsideration and clarification must be submitted to the City within 10 days of receipt of this letter. Following any reconsideration/clarifications the City will send the project to Ecology. The Shoreline Conditional Use Permit is subject to approval or disapproval by Ecology. The Shoreline Substantial Development Permit and Shoreline Conditional Use Permit are subject to appeal to the State Shorelines Hearings Board pursuant to the procedures established in Chapter 90.58 RCW, the Shoreline Management Act of 1971. Please refer to Chapter 90.58 RCW and Washington Administrative Code regulations for further guidance regarding Ecology Review and Hearings Board appeal procedures.

Please contact the City of Olympia, Community Planning and Development Department, at 601 4th Avenue East or at PO Box 1967, Olympia, WA 98507-1967, by phone at 360-753-8314, or by email cpdinfo@ci.olympia.wa.us if you have questions.

Sincerely,

Kenneth Haner
Program Specialist
Community Planning and Economic Development

Enclosure

BEFORE THE CITY OF OLYMPIA HEARINGS EXAMINER

IN RE:) HEARING NO. 21-2854
WEST BAY YARDS DEVELOPMENT) FINDINGS OF FACT, CONCLUSIONS
OF LAW AND SHORELINE DECISION

APPLICANT: West Bay Development, LLC

REPRESENTATIVES: Heather Burgess

Ronald Thomas, Principal Architect

Brandon Smith, Member

SUMMARY OF REQUEST:

A Shoreline Conditional Use Permit to construct five buildings above a public plaza and structured parking. The five buildings are each five stories in height and collectively contain 478 residential units and approximately 22,000 square feet of commercial use on a previously contaminated site along West Bay of Budd Inlet. The project also includes frontage improvements along West Bay Drive; an esplanade and trail corridor; trails to a newly created beach and kayak put in and other public amenities.

The Applicant also proposes voluntary restoration of the shoreline including the partial cutback of the existing steep revetment and the placement of granular fill to create a naturally functioning intertidal beach. Aquatic areas will be revegetated with salt marsh and other aquatic plants while a Vegetation Conservation Area (VCA) will be established above the Ordinary High Water Mark and planted with native vegetation. Construction of the new intertidal beach will result in approximately 0.5 acres of new upland, all of which will be included in the VCA.

The second of the five buildings (Building B) includes a mix of residential and commercial uses and a portion of it is located within 100 feet of the Ordinary High Water Mark of West Bay. As a result, this portion of the project also requires a Shoreline Conditional Use Permit.

LOCATION OF PROPOSAL:

1210 West Bay Drive NW, Olympia, Washington.

1 **SUMMARY OF DECISION:**

2 The requested Shoreline Permits are **approved** subject to slightly modified conditions.

3 **BACKGROUND**

4 Dating back to the early 1900's, the project site was used for a variety of marine and
5 timber-related industries, as were other properties along the West Bay of Budd Inlet. In about
6 1980, the property was acquired by Hardel Plywood and used as a plywood manufacturing site.
7 The plywood manufacturing plant was destroyed by a major fire in 1996. Decades of industrial
8 use, coupled with the results of the fire, left the site badly contaminated. Under the Model
9 Toxics Control Act (MTCA), the Department of Ecology ultimately approved the cleanup of the
10 site around 2010. The buildings were removed and tens of thousands of cubic yards of
11 contaminated soil and concrete were also removed, and a cap of asphalt and crushed concrete
12 was placed on top of remaining soils leaving a barren upland that remains today.

14 In around 1980, a heavily armored revetment was constructed around the site's shoreline,
15 creating a steep, bouldered slope between the uplands and the tidelands. This armored shoreline,
16 coupled with historic industrial uses, has left the aquatic area highly degraded and largely void of
17 vegetation and with limited function.

18 In 2001, the City updated its Comprehensive Plan and reenvisioned the future of this and
19 other properties along West Bay. The site's land use designation, as well as its zoning
20 designation, was changed to "Urban Waterfront" with the goal of seeing it used for a mix of
21 commercial and higher density residential uses and buildings up to seven stories. This vision for
22 the project site has remained through subsequent updates to the Comprehensive Plan, including a
23 2024 update.
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1 A century of industrial use along West Bay has left almost the entirety of its shoreline
2 heavily armored and degraded. In 2016, the City, along with the Port of Olympia and the
3 Squaxin Tribe, undertook an analysis of the shoreline and possibilities for its restoration. The
4 study concluded that the best means of shoreline restoration would be to reestablish intertidal
5 graveled beaches. The study also recognized that most of the properties along the Bay are
6 privately owned and would likely be restored by each private landowner and need to be restored
7 in a way which encourages restoration while allowing for private development.

8
9 In 2021, the City and the Applicant entered into a Development Agreement (DA)
10 approving in concept the development of the site as currently proposed. As part of the DA, the
11 Applicant agrees to voluntarily restore the shoreline in a manner consistent with the principles
12 established in the 2016 Restoration Study.

13 Following the DA in 2021, the Applicant promptly submitted its application for
14 development, including a Shoreline Conditional Use Permit. The application has since
15 undertone five years of review and revision, most notably to the proposed shoreline restoration.
16 Working closely with the Squaxin and Nisqually Tribes; the Washington Department of Fish and
17 Wildlife (WDFW), the Department of Ecology (Ecology), the Department of Archaeology and
18 Historic Preservation (DAHP) and the US Army Corps of Engineers, the City has revised the
19 Applicant's original proposal to create a new graveled intertidal beach extending to the top of the
20 existing revetment, with one that involves cutting back the height of the revetment and creating
21 new intertidal beach running to this reduced revetment, and continuing to the uplands at a point
22 further landward than originally proposed. Before this work is done, approximately 200
23 creosote-treated pilings and large amounts of concrete rubble would first be removed from the
24 shoreline and then, once the new beach is completed, the aquatic area would be revegetated with

1 salt marsh and other aquatic plants, while the upland portions would be revegetated with natural
2 vegetation. Further upland, a trail corridor would be extended along the length of the site with a
3 public esplanade and, above the trail corridor/esplanade, the construction of five, five story
4 buildings containing nearly 500 residential units and 20,000 square feet of commercial area.

5 During project review it was recognized that the second building (Building B), which
6 contains a mix of commercial and residential uses, is partially located within 100 feet of the
7 shoreline. This triggers the further need for a Shoreline Conditional Use Permit.

8 In about 2020, it was discovered that the site's uplands still contained pockets of
9 contamination which the Applicant proposed to remedy as part of the site's development. After
10 the application was submitted in 2021, further studies suggested the possibility of contamination
11 in the site's aquatic sediments. Ultimately, these discoveries led to an Agreed Order in 2025
12 between the Applicant and Ecology under MTCA to undertake a Cleanup Action Plan. Cleanup
13 under MTCA, including supplemental cleanup, is a lengthy process and it may be some time
14 before the plan is approved. This project's proposal to reestablish an intertidal graveled beach
15 may serve as the remediation for any contaminated sediments, thus serving two entirely different
16 purposes.

17 City Staff recommends approval of the requested Shoreline Conditional Use Permits
18 subject to a long list of conditions. Through this project's five-year review, hundreds of public
19 comments have been received, largely in opposition. Concerns are wide ranging and extend
20 from environmental concerns (impact to shellfish and other benthic organisms, salmon, and other
21 fish and sea wildlife; interference with efforts to remove the 5th Avenue Dam and restore the
22 Deschutes Estuary; impact to marine birds, other birds, and area wildlife; and impacts to nearby
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critical areas) as well as to impacts to neighboring properties and City residents, especially due to increased traffic and impacts to views.

PUBLIC HEARING

The public hearing commenced at 9:00 a.m. on June 8, 2026. The hearing occurred in a hybrid format utilizing the Zoom platform with the opportunity to appear in person or by remote attendance with the City serving as host. The public hearing was held concurrently with the hearing on the appeal brought by Oly Ecoystems of the SEPA Determination of Nonsignificance (DNS). Testimony and exhibits received as part of the appeal hearing were considered in the Shoreline Determination, but the public was reminded that comment received during the shoreline hearing would not be considered as part of the appeal determination. The City appears through Nicole Floyd, Planning Director, Dave Smith, Senior Traffic Engineer, and James Patton, Stormwater Engineer, and is represented by Jeff Myers and Erin Hillier. The Applicant, West Bay Development, Inc., appears through one of its Members, Brandon Smith, along with its Principal Architect, Ron Thomas, and its attorney, Heather Burgess. The Appellant, OlyEcosystems, ("OlyEcosystems") appears through Dr. Daniel Einstein and is represented by Michael Rea.

The application has undergone five years of review resulting in several thousand pages of exhibits, collectively identified as the "Core Documents", identified in Attachment 1. A few additional exhibits were submitted during the hearing and are identified in Attachment 2. In addition to these exhibits, the Applicant has provided 14 additional exhibits identified as Applicant's Exhibits 1-14 and included as Attachment 3, and OlyEcosystems has provided 29 exhibits, identified as Appellant's Exhibits 1-29 and included as Attachment 4. All of these documents were recognized and admitted as exhibits.

1 The public hearing began with 15-minute presentations each by City Staff and the
2 Applicant. These presentations were at the request of the Hearing Examiner for the purpose of
3 better informing the public as to the scope of the project before public testimony was received.
4 The City's opening presentation was similar in nature to what is found in the Background
5 Section, while the Applicant's opening presentation focused on the project's design; its mix of
6 residential and commercial uses; the preservation of shoreline views; and the creation of public
7 amenities including: trails, and esplanade; beach areas and access to that beach; seating and
8 other viewing areas opportunities; and various recreational facilities. The Applicant also briefly
9 described plans to restore the shoreline both above and below the Ordinary High Water Mark;
10 reestablish a functioning intertidal beach; and develop an extensive Vegetation Conservation
11 Area between the shoreline and the upland development.

12 **Public Comment:**

13 Five years of project review has resulted in hundreds of public comments received prior
14 to the public hearing. These comments are collected as Core Documents 20.a-d. Written public
15 comments continued to be received during the hearing up to the conclusion of testimony on
16 Wednesday, June 10, 2026 (Hearing Exhibits 1 and 2). Collectively, these written public
17 comments are largely in opposition and include concerns over traffic, the scale of the project,
18 impacts to views, building height, the proposed shoreline restoration and its creation of new
19 uplands, impacts to sea life including shellfish and salmon, impacts to birds, and the need to
20 undertake a more comprehensive environmental review, including an Environmental Impact
21 Statement (EIS).

22 The public hearing was designed to provide two opportunities to provide public
23 comment: an opportunity at the commencement of the hearing on Monday morning and a
24 second opportunity commencing at 6:00 p.m. on Monday evening (to accommodate those
25 members of the public who could not attend during the day). More than 20 individuals offered

1 testimony during the two public comment sessions. A list of those providing public comment is
2 found on Attachment 5.

3 Most public testimony was in opposition to the application for a wide ranging set of
4 reasons:

5 • Traffic. A number of witnesses (Kingsbury, Lohmann, Staal-Cowley, Riordan,
6 Newman, Dublanica) expressed concerns over traffic impacts. As with earlier written comments,
7 members of the public questioned the accuracy of the Applicant's Traffic Impact Analysis (TIA)
8 and its reliance on traffic counts during Covid. Commenters believe that the project's impacts to
9 the neighborhood street system are not fully recognized, especially impacts to the roundabout at
10 West Bay Drive and Harrison. Commenters also express concern that the TIA did not recognize
11 the "West Bayviews Landing" project that has been recently proposed for the property
12 immediately to the north of the site and would add several hundred new senior housing units.
13 Commenters also express concern over speeding along West Bay Drive and that the road is not
14 wide enough to accommodate significant additional traffic.

15 • Scale/Intensity. Several commenters (Pavelchek, Staal-Cowley, Luman Tobing,
16 Cleaver) expressed a belief that the scope of the project was disproportionate to the size of the
17 site, with too large and tall of buildings and too much development relative to surrounding
18 properties.

19 • "No Net Loss". Several witnesses (Reiner, Lazar, Luman Tobing, Sowers,
20 Bardin, Cramer) expressed the belief that the Applicant had failed to demonstrate that the project
21 would result in no net loss of ecological functions and processes of the shoreline.

22 • Compliance with the Shoreline Master Program (SMP). Several witnesses
23 (Reiner, Tomkins, Newman, Bardin, Cramer) believe that the project is in violation of the
24 Shoreline Master Program (SMP) especially with respect to restrictions on the creation of new
25 upland areas.

1 • Sea Level Rise. Several witnesses (Lumban Tobing, Pavelchek, Staal-Cowley)
2 do not believe that the project fully accommodates future sea level rise and has not been
3 designed in accordance with City requirements.

4 • Stormwater/Contaminants. At least two witnesses (Pavelchek, LaValle)
5 expressed concerns over the project's proposed stormwater management and the control of
6 vehicle-related contaminants, especially 6-PPD-q, coming from new roadways and parking
7 areas.

8 • Not True "Restoration". Many commenters (Lazar, Riordan, Newman,
9 Dublanica, Branch, Mercker) assert that the proposed restoration of the shoreline is not true
10 "restoration" as it merely creates new beach over the existing revetment, and does not remove the
11 revetment and restore the shoreline to its original location.

12 • Consistency with the Comprehensive Plan. Some witnesses (Lazar, Cramer)
13 assert that the project is inconsistent with many of the goals and policies of the Comprehensive
14 Plan in addition to not being consistent with the goals and policies of the Shoreline Master
15 Program.

16 • Shoreline Maintenance. Some witnesses (Blessing, LaValle) expressed concern
17 that the proposed new intertidal beach will be unable to withstand strong tidal and wave action,
18 sea level rise and sediment deposits.

19 • Deschutes Estuary Restoration. Several witnesses (Dublanica, Sowers, Cleaver,
20 Furber) spoke to current efforts by the State of Washington, as the owner of Capital Lake, to
21 remove the 5th Avenue Dam and restore the upper Deschutes estuary. Commenters expressed
22 concern that the current project is not well integrated with that project; that elimination of the
23 dam and release of sediments could negate the project's proposed restoration or, conversely, that
24 the project could interfere with the goals of the dam removal; and that more time and study is
25 needed to determine if there is any interaction between these projects.

1 ● Tribal Impacts. At least one witness (Dublanica) expressed concern that the
2 project violated local tribes treaty rights while others (Mercker) referred to the Squaxin Tribe's
3 recent installation of the sculpture known as "Mother of Restoration" near downtown, and the
4 concepts that it stands for including the fuller restoration of West Bay.

5 ● Impacts to Shellfish. Consistent with some of the arguments raised by
6 OlyEcosystems in its appeal, several witnesses (Sowers, Bardin, Branch, Cramer) expressed the
7 belief that the project would have significant negative impacts upon shellfish populations; that
8 existing populations would be smothered by the new graveled beach; that the proposed slope of
9 the beach would discourage some types of shellfish; that disruptions to the shellfish population
10 would reduce their current function in the site's aquatic areas while also reduce an important food
11 source for marine birds; and that alternatives with less impact to shellfish have not been
12 adequately considered.

13 ● Impacts to Salmon. Several witnesses (Sowers, White, Cleaver) expressed
14 various concerns to potential impacts to local salmon populations including the introduction of
15 artificial light along the shoreline; the potential loss of salmon habitat; and the displacement of
16 salmon during the beach restoration process.

17 ● Impacts to Birds. Several witnesses spoke generally about impacts to local bird
18 populations, while Ms. Norton expressed concerns over the loss of avian habitat and, separately,
19 expressed her support for the City's recommended condition that the buildings utilize bird
20 friendly glass to avoid bird strikes.

21 ● Premature Nature of the Decision Making. Several witnesses (Cleaver, LaValle,
22 Cramer, Mercker) noted that Ecology's review of site cleanup under MTCA is in its early stages
23 and that this project should be deferred until an MTCA cleanup plan has been determined.
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1 • Landscaping Survival. At least one commenter (Sowers) expressed doubt that the
2 project's required tree plantings and other Vegetation Conservation Areas could survive given
3 the site's limited soil.

4 • Impacts to Surrounding Critical Areas and Other Properties. Some witnesses
5 (LaValle, White and others) spoke generally about worries over the project's impact to nearby
6 critical areas including the nearby wetland, Schneider Creek, and West Bay Woods. Somewhat
7 relatedly, concern was expressed over the cumulative impacts of this and other projects on
8 critical areas and wildlife from this and other development including the proposed West
9 Bayviews Landing project.

10 • Support of OlyEcosystems. Many witnesses (Staal-Cowley, Edmonds, Cleaver,
11 LaValle, etc.) stated that they "support Olympia Ecosystems in its challenge to the project".
12 Although the statements of support can be considered to apply to the various legal arguments
13 OlyEcosystems has raised in its SEPA challenge, it is reasonable to assume that these witnesses
14 meant their statement to apply in a larger context, and to express support for each of the many
15 challenges OlyEcosystems has made not only to the SEPA Determination but also to the
16 Shoreline Application:

- 17 - That the project requires a more comprehensive SEPA review.
- 18 - That the project should await a cleanup plan approved by Ecology under MTCA.
- 19 - The project fails to fully consider the impacts to the existing shoreline functions,
20 most notably to shellfish populations; the killing of many of those shellfish; and the impact of
21 those lost shellfish to birds and to shoreline functions.
- 22 - That project review has not sufficiently considered the interconnection between
23 the project site, and surrounding properties, most notably, West Bay Woods on the west side of
24 West Bay Drive.

1 - The project's review has failed to fully consider impacts to critical areas including
2 the impact of light and noise on the wetland across West Bay Drive from the project.

3 - Proposed stormwater management fails to fully consider the impact of increased
4 traffic resulting on 6 PPD-q, and its potential release to West Bay if the stormwater system fails
5 or is overwhelmed.

6 In addition to those who testified during the public hearing, approximately 50 written
7 comments were received just prior to or during the public hearing. The list of those commenters
8 is found on Attachment 6, and their comments are included in Hearing Exhibits 1 and 2. The
9 majority of these written comments were in opposition to the requested permits. Those in
10 opposition expressed various concerns including:

11 • A large number of commenters (Chambers, Hillman, Zable, Piening, Wright,
12 Weiner/Donlan, Smith, Kruidenier/Bryant, Lindsay, Hayden, Nelson, Clark) express concerns
13 over traffic impacts including impacts to the roundabout at Harrison and West Bay Drive, as well
14 as concerns over the adequacy of the Traffic Impact Study.

15 • Similarly, a large number express the belief that the SEPA DNS was inadequate
16 and that the project required an EIS (Chambers, Horton, Vesenka, Leadingham, Zable, Degranis,
17 Kammerer, Piening, Lindsay, Bednarek, Ruth, Kleindle, Black River Environmental, Drabandt,
18 Ruth, Dobson, Hayden, Sykes, and Nelson). [Note: None of these individuals were identified as
19 witnesses in the SEPA Appeal and their testimony is not being considered as part of that appeal.]

20 • Several argue that the project negatively impacts birds and other wildlife as well
21 as West Bay Woods across the street (Stephani, Vesenka, Kleindle).

22 • A few commenters argue that the Shoreline Restoration project is not true
23 "restoration" as it merely applies fill to existing conditions (Messmer, Peining) and that it is
24 inconsistent with the environmental goals of the Comprehensive Plan (Messmer).

1 • Some argue that the project is not well integrated with the proposed restoration of
2 the Deschutes Estuary (Leadingham, Ruth).

3 • Others assert that the proposed beach restoration is in violation of the Shoreline
4 Master Program (Kleindle, Dobson).

5 • Some commenters assert that the project violates the tribal rights of the Squaxin
6 Tribe and other tribes (Leadingham, Norrel).

7 • Several commenters express concern over the scale of the project as well as its
8 aesthetics and impacts to views (Hillman, Smith, Kruidenier/Bryant, Coon).

9 • Other commenters express concern over the effects of sea level rise on the project
10 (Coon, Degranis).

11 • Others express concern over the proposed soil cap and its propriety/effectiveness
12 (Piening, Kronenberg, Kruidenier/Bryant).

13 • Some assert that the Applicant has not demonstrated "no net loss" of ecological
14 functions of the shoreline (Lindsey, Kleindle).

15 • Other commenters assert that the project has not been properly integrated with the
16 MTCA investigation and cleanup and should await the completion of that investigation before
17 going forward (Black River Environmental, Drabandt, Harben, Nelson, Graney).

18 • Several argue that the proposed fill for the beach restoration has not been proven
19 to be the minimum necessary (Kleindle, Olympia Ecosystems, Harmon, Graney, Toler).

20 Some additional comments expressed during both in oral and written testimony
21 extended to topics that are outside the scope of these Shoreline Permits and were therefore not
22 considered:

23 • Several commenters expressed the desire that the project site simply be made a
24 public park. It is to be remembered that this is private property and cannot be "taken" for public
25 use unless purchased by the City - something the City is not willing to do.

1 • Several commenters expressed the belief that the project violates the Public Trust
2 Doctrine. The Public Trust Doctrine is not implicated by this project as it is solely restricted to
3 private property, including privately owned tidelands.

4 • A number of individuals have expressed concern that the project does not include
5 affordable housing, but that is not a required component for project approval

6 • Several commenters have expressed the wish that the project was "located
7 elsewhere" but the Applicant is entitled to the review of this project at its current location
8 without consideration of possible alternative locations.

9 • Some commenters have expressed concern about the project's noise but have not
10 explained what noise is being referred to. It must be remembered that this project largely
11 involves apartment units with a small mix of commercial uses, primarily cafes and restaurants.
12 Nothing suggests that any of these proposed uses, or the public uses along the shoreline, will
13 result in high levels of noise.

14 Included among the written comments were approximately 15 letters in support of the
15 project (McClean, Stonefly, Harding, Bettridge, Bradley, Flutch, Pantier, Bednarek, Brewer,
16 Bulleson, Lanham, Olympia Master Builders, Rice, Monohon, and Robinson). Commenters
17 expressed several reasons for their support including: that the project was wholly consistent with
18 the City's Comprehensive Plan and its vision for West Bay; that it provided needed restoration to
19 the area's shoreline; that it provided important additional housing; and that it served as an
20 economic benefit to the West Bay Area.

21 **City's Presentation:**

22 The City began its presentation through the testimony of Nicole Floyd, Project Manager
23 and the City's Director of Planning. Like the remaining witnesses of all parties to the appeal,
24 Ms. Floyd's testimony was intended to address both the issues relating to the requested Shoreline
25 Permits as well as OlyEcosystems' Appeal of the SEPA Determination.

1 Ms. Floyd's testimony was largely a summary of what can be found in her extensive Staff
2 Report, and that report is the primary basis of her testimony.

3 Ms. Floyd began by first noting the large City team assembled to review this project, and
4 the extensive amount of time that went into project review. Eighteen staff members from the
5 City were involved in project review, with continuous and close involvement by multiple tribal,
6 State and federal agencies including both the Squaxin and Nisqually Tribes; Washington
7 Department of Fish and Wildlife (WDFW); the Department of Ecology (Ecology) including
8 three different divisions; the Department of Archaeology and Historic Preservation (DAHP); and
9 the US Army Corps of Engineers. Project review began in 2021 and continued for five years to
10 early 2026, with the project undergoing six rounds of review before approval by the Site Plan
11 Review Committee (SPRC).

12 Ms. Floyd then examined the project in relation to the City's Comprehensive Plan. As
13 noted in the Background Section, in 2001 the City significantly revised its planning for West Bay
14 and redesignated its future land use as Urban Waterfront development. This land use designation
15 has remained in place through several plan upgrades, including one in 2024. Staff finds that the
16 project, is consistent with this land use designation and that it is also consistent with many other
17 goals and policies of the Comprehensive Plan including those relating to transportation, shoreline
18 protection, parks, land use and density.

19 Ms. Floyd then turned to the project's compliance with Development Regulations and
20 summarized the extensive Findings found in her Staff Report. Staff finds that the project satisfies
21 all transportation requirements; requirements for tree, soil and native vegetation protection; flood
22 damage prevention; critical areas; landscaping; parking; and the various requirements of the
23 City's Engineering Design and Development Standards (EDDS) and Drainage Design and
24 Erosion Control Manual (DDECM) with respect to transportation, frontage improvements, solid
25 waste, stormwater management, water and sewer.

1 Ms. Floyd then turned to the project's compliance with the City's Shoreline Master
2 Program and the various requirements of Chapter 18.20 OMC. The project has a Shoreline
3 Environmental Designation (SED) of "Urban Intensity" for its uplands and "Aquatic" for its
4 areas below the Ordinary High Water Mark. Staff finds that the project is consistent with both
5 designations. Ms. Floyd then undertook an analysis of the project's compliance with the "No Net
6 Loss" provisions of OMC 18.20.410 and stated that Staff finds the project, as conditioned, to
7 result in no net loss of ecological functions and processes and, to the contrary, will result in a net
8 gain in ecological functions and processes. Ms. Floyd then analyzed various other requirements
9 of the SMP including those for public access, Vegetation Conservation Areas (VCA), view
10 protection; commercial development, lighting, shoreline modification; use of fill; shoreline
11 restoration and enhancement; and shoreline stabilization. Staff again finds that, as conditioned,
12 the project complies with all requirements of the Shoreline Master Program and results in no net
13 loss of ecological function.

14 The project's "Building 2" (the second southernmost building) includes a mix of
15 commercial and residential uses and lies within 100 feet of the Ordinary High Water Mark. This
16 triggers a requirement for a Shoreline Conditional Use Permit (SCUP) for that portion of
17 Building B within 100 feet of the shoreline (a small portion of the building at its east end). In
18 order to be granted a Shoreline Conditional Use Permit the Applicant must demonstrate
19 compliance with all criteria found within WAC 173-27-160. Staff adopts the Applicant's
20 analysis of compliance with these requirements as found in its Shoreline Narrative (Core
21 Document 4.b) and finds that the project satisfies all requirements for a Conditional Use Permit.

22 Ms. Floyd then focused on a few specific issues:

23 • Building Height and Views. The proposed height of buildings, and view
24 protection, are somewhat tied together. Building height is normally limited to 42 feet in the
25 Urban Waterfront zone but can be increased to 65 feet if several conditions are met. The

1 Applicant is requesting buildings of 65 feet in height based upon satisfying the required
2 conditions for bonus height. One of those conditions is that the higher buildings do not obstruct
3 the views of a substantial number of neighboring properties. The City has undertaken an analysis
4 of neighboring properties and determined that only three residences would be blocked by the
5 higher buildings, and that this is not a substantial number. A second form of view protection
6 focuses on protecting public views from the right-of-way (West Bay Drive). The Applicant has
7 provided a View Narrative (Core Document 4.e) demonstrating that the project will provide
8 several view corridors as required by the City's regulations, and that these corridors will exceed
9 the minimum necessary.

10 • Traffic. Ms. Floyd acknowledges that there have been many traffic concerns by
11 members of the public but that the City's Traffic Impact Analysis confirms that the project will
12 not impose unreasonable burdens upon the traffic system. In addition, previous studies of West
13 Bay Drive have demonstrated that it has available capacity for the project's added traffic.

14 • Vegetation Conservation Area. Ms. Floyd notes that an important aspect of the
15 project is its Vegetation Conservation Area, or VCA. The City's Shoreline Regulations impose a
16 VCA along the nearest 30 feet to the Ordinary High Water Mark. Currently, this portion of the
17 site is essentially devoid of any vegetation. Requiring a VCA will substantially improve existing
18 shoreline functions. In addition, the Applicant's proposed shoreline restoration and its
19 construction of graveled beach will create another 12 to 18 feet of upland along the current
20 shoreline. This additional upland will be added to the required VCA, creating a total VCA of 42
21 to 48 feet in width. Importantly, none of the newly created upland will be used for any purpose
22 other than increased VCA.

23 • Shoreline Restoration. Ms. Floyd notes that the Development Agreement entered
24 into between the City and the Applicant requires the Applicant to voluntarily restore the
25 shoreline consistent with the 2016 Restoration Plan developed by the City, Port of Olympia, and

1 the Squaxin Tribe. This plan recognizes the importance of restoring intertidal beaches along all
2 of West Bay but also recognizes that restoration efforts will likely be undertaken by each private
3 landowner and must therefore offer sufficient incentive (the retention of uplands) to encourage
4 voluntary restoration. The Applicant's proposed restoration achieves the desired new intertidal
5 beach while generally maintaining existing uplands. The proposed restoration has been
6 compared to all alternatives, including the complete removal of the existing steep revetment, and
7 found to be superior to those alternatives. City Staff finds that the resulting new uplands are the
8 minimum necessary to achieve a properly functioning intertidal beach. Once constructed, the
9 restored shoreline will experience a significant "lift" in ecological function. Thus, not only is
10 there "no net loss" of ecological functions resulting from the project, there is instead a significant
11 gain in functions, including improved salmon habitat and healthier shellfish beds. In summary,
12 Staff concludes that the shoreline restoration will fulfill the obligations of the Development
13 Agreement while also satisfying all requirements of the Shoreline Master Program.

14 **Dave Smith.** Following Ms. Floyd's testimony, the City's Senior Traffic Engineer and
15 Lead Traffic Analyst, Dave Smith, testified regarding traffic impacts. Mr. Smith is responsible
16 for reviewing all Traffic Impact Analyses for proposed development in the City. He reviewed
17 the Applicant's original Traffic Impact Analysis (TIA) begun in 2021 and completed in 2022.
18 Although its data was obtained during the Covid pandemic, Mr. Smith found that its analysis was
19 sound and that it accurately represented traffic conditions as well as the project's traffic impacts.
20 Mr. Smith concurs with its conclusions that the project, as conditioned, will not have a
21 significant impact on regional traffic. Mr. Smith also declares that West Bay Drive has sufficient
22 capacity for the added traffic produced by the project.

23 Mr. Smith acknowledges that the Applicant's original TIA was undertaken before the
24 proposed West Bayviews Landing project was recently submitted to the City and therefore not
25 included in the TIA. The West Bayviews Landing project is proposed for the property

1 immediately north of the project site on the east side of West Bay Drive. It proposes several
2 hundred senior housing units. Importantly, although the Applicant's initial TIA does not
3 recognize the West Bayviews Landing project, the TIA for the West Bayviews Landing project
4 does recognize this project (Hearing Exhibit 6). That TIA, undertaken by a different traffic
5 expert than the one who prepared the Applicant's TIA, concludes that the combination of the two
6 projects will not result in significant traffic impacts. In other words, it concurs with the Findings
7 of the Applicant's TIA while adding that the subsequent development of the West Bayviews
8 Landing project will not significantly impact traffic in the neighborhood.

9 Mr. Smith acknowledged the many public concerns about the project's potential to further
10 worsen the flow of traffic at the roundabout at West Bay Drive and Harrison, especially during
11 the evening commuting hours. Mr. Smith felt it important to point out that the project may add
12 to the current delay during the peak 15-to-30 minute period of the evening commute, but will not
13 significantly affect the functioning of the roundabout during the remainder of the two-hour
14 commuting period, or during the rest of the day. In other words, the project's traffic impacts are
15 likely to only involve a very brief period when traffic volumes are at their highest, and that the
16 areas roads and roundabouts will function satisfactorily at all other times.

17 Mr. Smith also addressed public concerns regarding speeding along West Bay Drive.
18 Studies have confirmed that current speeds along West Bay Drive substantially exceed the speed
19 limit. This project has been designed to include three traffic calming devices in the form of
20 elevated pedestrian crosswalks. These crosswalks will not only improve pedestrian safety but
21 will force traffic to slow, thereby reducing the current speed of traffic along West Bay Drive.

22 **James Patton.** Mr. Patton is the Stormwater Engineer for the City and has been
23 responsible for reviewing the project's stormwater design including its preliminary stormwater
24 plan. Mr. Patton confirms that the preliminary stormwater plan complies with the most current
25

1 Stormwater Manual and the DDECM/EDDS. He added that the project does not vest to current
2 standards and must satisfy those standards in effect at the time of permit application.

3 Mr. Patton explained that the site, as well West Bay Drive and neighborhoods above the
4 road, currently have no stormwater management: stormwater from the residential area above
5 West Bay Drive, as well as from the roadway, is simply captured and sent to West Bay without
6 treatment by means of existing culverts crossing the subject property.

7 The preliminary stormwater design for the project includes two systems: (1) "clean"
8 stormwater coming from rooftops will be sent to existing culverts and will join the stormwater
9 coming from West Bay Drive and will be discharged directly to West Bay without treatment; and
10 (2) stormwater coming from driveways and parking areas as well as other impervious surfaces
11 will be collected and sent to onsite treatment facilities consisting of a vault with a modular,
12 plant-based system designed to trap nutrients and pollutants before discharge. Mr. Patton
13 explained that this is a commonly used system, especially in this type of development, and has
14 proven to be effective.

15 Mr. Patton also noted that that portion of West Bay Drive fronting the project site will be
16 required to have its stormwater sent to the treatment facilities and will not be allowed to flow
17 untreated to West Bay. This will result in a small amount of the current stormwater coming from
18 West Bay Drive having enhanced treatment over current conditions.

19 In the event that flooding might occur in the lower level parking area, the lower level
20 does not send stormwater to the site's stormwater system but instead directs it to the regional
21 wastewater system (LOTT) where it would undergo treatment consistent with all other
22 wastewater.

23 **Scott Stetzner**. Mr. Stetzner is the Biologist for the Squaxin Island Tribe and manages
24 its environmental department. Mr. Stetzner has been involved in the Tribe's review of this
25 project since the application was presented in 2021. He was also the Tribe's representative in the

1 2016 Restoration Assessment undertaken by the Tribe in conjunction with the City and the Port
2 of Olympia.

3 Mr. Stetzner explained that the 2016 Restoration Assessment looked at removing the
4 many bulkheads along West Bay but recognized that total bulkhead removal would be difficult to
5 achieve on many private properties and that shoreline restoration could still occur without
6 needing to fully remove existing bulkheads, and that the burial of bulkheads could achieve
7 desired restoration outcomes.

8 Turning to this project, Mr. Stetzner believes that the design is consistent with the 2016
9 Restoration Assessment. Again, the Tribe has been involved with project review since it began
10 and has formally declared its support of the objectives proposed by the Applicant's shoreline
11 restoration program. Mr. Stetzner and the Tribe believe that the proposed shoreline restoration
12 will restore the fundamental functions of the shoreline and provide a more natural environment.
13 In particular, the Tribe concludes that the proposed restoration will achieve a net gain in the
14 ecological functions and processes of the shoreline.

15 Mr. Stetzner concurs with the Applicant's experts that the current shoreline and aquatic
16 lands of the project site are highly degraded and provide limited ecological functions. The
17 proposed shoreline restoration will provide significant "lift" to these functions. Shellfish
18 populations will be substantially benefited while foraging opportunities for salmon and other fish
19 will be greatly improved. Mr. Stetzner also confirmed that most of the proposed new graveled
20 beach will be placed above the Ordinary High Water Mark and is the minimum necessary.
21 While the Tribe would prefer the removal of the existing bulkhead all together, it recognizes that
22 this alternative has been shown to be inappropriate for this location and is simply not a suitable
23 option.

24 Mr. Stetzner also added that the Tribe is not opposed to the City's issuance of a SEPA
25 DNS.

1 Mr. Stetzner then responded to various comments made by members of the public which
2 had a bearing on the Tribe:

3 • That the proposed shoreline restoration is not true "restoration" of the shoreline.
4 Mr. Stetzner respectfully disagrees with those who claim that this shoreline project does not
5 qualify as "restoration" since it involves partially burying an existing bulkhead instead of
6 returning to the historic shoreline. While Mr. Stetzner and the Tribe appreciate this sentiment,
7 the Tribe recognizes that "true" restoration is unrealistic and, if applied uniformly, would require
8 that all of downtown Olympia be removed. Instead, the Tribe recognizes that restoration should
9 focus on restoring ecological functions and processes and less on historic shoreline locations.

10 • The "Mother of Restoration" wooden sculpture. Several commenters noted that
11 the Squaxin Tribe has recently placed the "Mother of Restoration" carved wooden sculpture in
12 Downtown Olympia, and that this project is in conflict with the values expressed by that
13 sculpture. Again, Mr. Stetzner respectfully disagrees and believes that, to the contrary, the
14 current project is consistent with the Tribe's goals for shoreline restoration.

15 • Conflict with tribal treaty rights. A few commenters have expressed the belief
16 that the project is inconsistent with the tribal treaty rights of either the Squaxin Tribe or other
17 local tribes. Mr. Stetzner disagrees and instead believes that the project will work toward
18 restoring tribal fishing and other rights.

19 • Conflict with restoration of the Deschutes Estuary. A number of commenters
20 have expressed the belief that this project will interfere with efforts to restore the Deschutes
21 Estuary. Mr. Stetzner has been involved with both projects and again disagrees with these
22 opinions. To the contrary, he does not find anything in this project that is inconsistent with or
23 will interfere with the Deschutes Estuary restoration.

1 Lastly, Mr. Stetzner confirmed that he and the Tribe will remain active in the review of
2 all remaining permits required for shoreline restoration including those issued by WDFW,
3 Ecology, and any federal permits.

4 **Witnesses of the Applicant.**

5 **Ron Thomas.** Ron Thomas is the principal architect for the project. Mr. Thomas has
6 served as a professional architect for 51 years including several decades of work in Olympia.

7 Mr. Thomas' testimony followed closely with the Applicant's Hearing Presentation
8 (Hearing Exhibit 7). The following reviews each page of the presentation by its page title:

9 • **Project Location.** The project is located at 1210 West Bay Drive NW and is
10 located in the "Urban Waterfront " (UW) zoning designation. It is in the West Bay Drive district
11 in the City's Design Review Map and has a Shoreline Environmental Designation (SED) of
12 Urban Intensity in the Shoreline Master Program. The site is located east of West Bay Drive
13 and continues to West Bay. To the west of the property is West Bay Drive and, further west, two
14 professional buildings immediately across West Bay Drive; a residence across West Bay Drive
15 to the southwest; and several other residential properties extending westerly uphill. A sidewalk
16 currently exists on the west side of West Bay Drive but there is no sidewalk along the east side in
17 or near the project site. To the south of the site is the "Reliable Steel" property containing
18 several large, vacant, dilapidated buildings. Further south of the Reliable Steel property is the
19 City-owned West Bay Park. To the east is West Bay. To the north is property being considered
20 for development as the West Bayviews Landing project, a senior housing project.

21 • **Site Context Images.** Several photos depict the project site and surrounding
22 properties as well as views from the site as well as other properties.

23 • **Site 100-foot Context.** This diagram identifies existing nearby businesses in
24 yellow; existing residential properties in purple; industrial properties in brown; and waterfront in
25 blue. Again, this diagram shows two professional buildings immediately across the street from

1 the property along with one further north as well as one residence to the south. Other parcels
2 along the west side of West Bay are either undeveloped or previously contained residences and
3 other buildings that have been removed.

4 Working from west to east across this site plan, the diagram identifies several frontage
5 improvements along West Bay Drive including a new sidewalk, bicycle path, three access
6 locations including the main entrance between Buildings 2 and 3 and secondary entrances at the
7 north and south boundaries of the property; three pedestrian crossings including a primary
8 crossing in front of Building 3 with a pedestrian refuge island. All pedestrian crossings are
9 elevated to increase pedestrian safety and slow traffic. East of the new sidewalk, the proposed
10 five buildings are in close proximity to the sidewalk, extending east across the property toward
11 the Bay. The primary entrance is located between Buildings 2 and 3 and leads to a large open
12 area as well as driveways leading to underground parking below all of the buildings.
13 Surrounding all five buildings is a public trail system connecting to West Bay Drive at both ends
14 and expanding to an esplanade along the east boundary of the project. Beyond the esplanade is
15 the Vegetative Conservation Area (VCA) which, with the inclusion of newly created upland, is
16 expanded to more than 40 feet in width. East of the VCA is the shoreline. Three narrow paths
17 breach the VCA to allow public access to the shoreline.

18 • Project Massing, Use and Access. Sheet A2, found in Core Document 12,
19 indicates that the Buildings 2 and 3 are intended as a mix of residential and commercial uses,
20 while Buildings 1, 4 and 5 are for multi-residential use only. The diagram further identifies
21 vehicle traffic flows as well as pedestrian accesses.

22 • Site Information. The diagram found at Sheet SV1 of Core Document 3.a, helps
23 explain that the total site area is 19.48 acres of which 8.05 acres is landward of the Ordinary
24 High Water Mark (the "Uplands"), and that 7.24 acres of these Uplands are the buildable area
25 (after excluding rights-of-way).

1 • Boundary Line Adjustment. Sheet SV1 of Core Document 3.a, provides a
2 diagram of how the property has been divided into five parcels, Parcels A-E, to coincide with the
3 five proposed buildings.

4 • Buildings Per Parcel. Sheet A6.1 of Core Document 2, identifies the location and
5 size of each of the five buildings: Building 1, located on Parcel E, contains 34,337 square feet
6 on a parcel containing 1.97 acres; Building 2, on Parcel D, has a building containing 46,195
7 square feet on a parcel containing 2.7 acres; Building 3, on Parcel C, contains 48,233 square feet
8 on a property containing 2.89 acres; Building 4, on Parcel B, contains 42,322 square feet on a
9 parcel with 2.57 acres; and Building 5, on Parcel A, has 29,559 square feet on a parcel with 9.33
10 acres.

11 • Buildings Per Parcel and Coverage. Sheet A6.2 of Core Document 2 describes
12 each building's lot coverage. Based upon the numbers cited above, Building 1 has a lot coverage
13 of 50%; Building 2 has a lot coverage of 67%; Building 3 has a lot coverage of 65%; Building 4
14 has a lot coverage of 64%; and Building 5 has a lot coverage of 40%, resulting in average lot
15 converge of 57%. The maximum allowed lot coverage is 60% and the project is therefore in
16 compliance with maximum lot coverage requirements.

17 • Project Scope. Sheet A6.1 of Core Document 2 describes each parcel's total
18 residential units as well as commercial areas: Building 1 has 97 residential units and no
19 commercial area; Building 2 has 85 residential units and 16,587 square feet of commercial area;
20 Building 3 has 84 residential units and 4,378 square feet of commercial area; Building 4 has 126
21 residential units and no commercial area; and Building 5 has 86 residential units and no
22 commercial area. In total, the project has 478 residential units and 20,965 square feet of
23 commercial area. Based upon these numbers, total parking required for the project is 819 stalls.
24 The project proposes 823 stalls, or more than is required. Parking includes 711 stalls in the
25

lower level parking and 112 stalls at the plaza level. The project also includes 401 long term bicycle stalls and 62 short term bicycle stalls.

- Mix of Uses - Lower Level and Plaza Level. Sheet A30 of Core Document 2 includes two diagrams: the first diagram demonstrates the use of the lower level for parking. There are 711 lower level parking stalls. There are no habitable spaces in the lower parking area. This level will also be used for the collection of solid waste. Access points are provided to gain access to the esplanade.

The other diagram identifies uses along the plaza level above the parking level. Commercial uses at this level include opportunities for restaurants, café with outdoor seating, retail stores, a health center, community hall and business office, studio residential units and 1-3 bedroom units are provided.

- Mix of Uses - Lower Two to Roof. Sheet A31-A32 of Core Document 2 identifies the mix of studio apartment and 1-3 bedroom units in each building and on each floor.

- Building Height and Levels. Sheet A6.2 and A29 of Core Document 2, help identify the height of the buildings relative to average grade, which is located at roughly the midpoint of the parking level. From this average grade, building height extends to 65 feet utilizing the bonus height as allowed by Development Regulations. The four highest floors are 10 feet each in height, while the first floor is 18 feet in height to accommodate commercial uses as well as other common amenities.

This diagram also identifies the height and scale of the building relative to the esplanade and shoreline. As demonstrated, the esplanade is at the parking garage level, with the VCA descending from the esplanade, followed then by the riparian zone.

- Building Spacing and View Corridor. Sheets A1 and A15 of Core Document 2 collectively demonstrate how each building appears from the waterfront, the width of each building; and the width of each opening between buildings. This diagram notes that this project

1 extends 926 feet along West Bay Drive. Based upon this amount of frontage, the project is
2 required to have open space of 30% of the lineal footage, or 278 feet. The project actually
3 provides 394 feet of open space, or 43% of the total lineal footage.

4 • Building Spacing and View Corridor (Next Page). Sheets A1 and A15 further
5 identify how the buildings impact views both from West Bay Drive and from further uphill on
6 the west side of the road. The Applicant explains that view corridors are located between the
7 five buildings and also north and south of the buildings, and that these corridors are intended to
8 align with uphill streets located on the west side of West Bay Drive in order to maximize the
9 public's opportunity to view West Bay from the west side of West Bay Drive.

10 • View Corridors. Sheet A17 of Core Document 3 provides a before/after depiction
11 of the view of West Bay from the hillside across from the project, noting that a view of the Bay
12 is retained through the primary view corridor.

13 • Project Features. As identified on Sheets A30 and A19 of Core Document 2 the
14 Applicant notes that the project includes a list of public features including: kayak launch, water-
15 oriented commercial areas; three shoreline access paths; public parking for waterfront access;
16 public access to all amenities; orientation signage and restored beach area. In addition,
17 pedestrian benefits include a central view corridor from West Bay Road and along with other
18 view corridors; long and short term bike storage; benches, seawalls and outdoor seating, ramps
19 and other access means; elevated crosswalks and other traffic control devices; and landscaping
20 and water features.

21 • Building Design Height Elevation. Sheet A33 of Core Document 2 provides a
22 depiction of Building 1 as viewed from both the north and south. Mr. Thomas notes that these
23 buildings have been designed in a manner similar to those recently constructed in Downtown
24 Olympia and with the same type of scale and massing.

1 • Building Designs - Materials. Sheet A34 of Core Document 2 is intended to
2 provide a similar demonstration of the buildings' design, mass and scale.

3 • Conceptual Designs. The last three sheets of the Applicant's Hearing Presentation
4 provide conceptual looks for the buildings as viewed from the shoreline, and include views of the
5 new beach, VCA, esplanade, plaza, commercial areas, and each building.

6 Mr. Thomas provided a few other details of the project:

7 • Trails. The esplanade/trail corridor will connect to West Bay Drive at the north
8 and south and is also designed to connect to extensions of the trail as properties to the north and
9 south are developed.

10 • View Blockage. The buildings have been located to minimize the blockage of
11 views resulting from the expanded height of the buildings. Only three residences will have their
12 views impacted by the increased height.

13 • Phasing. All shoreline restoration will occur in the first phase. Similarly, the
14 esplanade, VCA, access points and frontage improvements will be undertaken as part of Phase 1.

15 • Lighting. The project has been designed to avoid any light spillage with
16 application of Dark Sky lighting design.

17 • Scale. The buildings have been designed to be consistent in their scale with the
18 scale of existing buildings along West Bay Drive and with a similar look and feel.

19 **Brandon Smith**. Brandon Smith is one of the partners in the Applicant, West Bay
20 Development, LLC. Mr. Smith is a licensed civil engineer.

21 The Applicant acquired the property from Hardel Plywood in March, 2021, with the
22 purpose of redeveloping it as currently proposed. Before purchasing the Applicant examined the
23 title report for the property to determine what encumbrances may exist, including any view
24 easements or rights of access. There are no view easements granted to properties on the west
25 side of West Bay Road, nor are there any private rights of access from any other properties.

1 The site includes more than 19 acres in total including more than 11 acres of tidelands.
2 All proposed beach restoration takes place within these privately owned tidelands and does not
3 occur outside of the private ownership.

4 Utilizing grant funding provided through EPA's "Brownfield" grant funding, the
5 Applicant undertook several due diligence studies prior to purchase, including a Phase 1 and a
6 Phase 2 Environmental Assessment. The property had previously received a "No Further
7 Action" letter from Ecology, officially declaring that the site was free of contaminants.
8 Nonetheless, the Applicant's Phase 1 and Phase 2 Environmental Studies revealed small amounts
9 of remaining contamination. This discovery was reported to Ecology and the Applicant entered
10 into a Voluntary Cleanup Program (VCP) to address the remaining contamination found during
11 the environmental assessments.

12 Shortly after purchasing the property, the Applicant entered into a Development
13 Agreement with the City in which the current proposal was agreed upon by the parties. In return,
14 the Applicant agree to pay a fee to the City to assist with low income housing, and also agreed to
15 voluntarily restore the shore even though this was not required as part of the uplands
16 development. The Applicant did not object as it saw this as an opportunity to more fully restore
17 the site, provide a more natural environment, and improve the site's aesthetics. The Applicant
18 understood that shoreline restoration would need to be consistent with the 2016 Restoration
19 Assessment and the need to reestablish a functioning beach. The Applicant believes that the
20 current restoration project is consistent with the 2016 Restoration Assessment.

21 When the Applicant entered into the Development Agreement with the City in 2021 and
22 shortly thereafter submitted its development application, none of the parties had any idea that
23 there might be concerns with contaminated sediments in the tidelands. Instead, the only
24 contamination issue was the small amount of upland residual contamination discovered during
25 the Phase 1 and Phase 2 Environmental Assessments and covered under the Voluntary Cleanup

1 Program. It was not until some time after the development application was submitted that there
2 was an issue of sediment contamination and the need for remediation under the MTCA. This
3 ultimately led to the Agreed Order with Ecology entered in 2025, or four years after the
4 development application had been submitted.

5 When asked to describe the expected commercial uses of the site, Mr. Smith explained
6 that no tenants have been signed but that the Applicant anticipates restaurant uses; some uses
7 internal to the residents of the apartments; and some remaining uses that are market driven,
8 recognizing the need to have uses that are water dependent.

9 Mr. Smith indicated that the Applicant generally has no objection to the proposed
10 conditions of project approval. Noting concerns by the Hearing Examiner over the Reliable
11 Steel property to the south and its dangers, Mr. Smith indicated that the Applicant would have no
12 objection to any conditions which might require fencing and signage along this common
13 boundary in order to prevent members of the public from entering this dangerous site.

14 The only condition the Applicant has any concern with is proposed Condition 8 relating
15 to the requirement of bird safety glass. The Applicant has no objection to such glass but asks that
16 it be limited to the lower three floors for the reasons explained by the Applicant's consultants.

17 Mr. Smith concluded his testimony by noting that the Applicant has been working on this
18 project for seven years (two years of due diligence followed by five years of project review) and
19 that it has been fully and carefully analyzed. The Applicant has relied upon the top
20 environmental consultants and these same consultants worked on the West Bay Park project as
21 well as the Deschutes Estuary restoration project. The restoration plan proposed by these experts
22 is meant to leave a legacy beneficial to the public.

23 Whitney Holm. Whitney Holm is a licensed professional engineer with 18 years of
24 experience and is employed by SCJ Alliance. She is the site's project engineer for drainage
25 design and civil site plans, and is the project manager and landscape plan manager. Ms. Holm's

1 testimony was largely relating to the project's proposed stormwater design (Core Document
2 11.a).

3 Ms. Holm first described existing drainage conditions on and near the site. The uplands
4 consist of approximately 7 acres that slope gently to the east at a 1% to 4% grade. The entire
5 project site is covered in asphalt and crushed concrete. There is no existing storm drainage
6 system and all stormwaters "sheet flows" across the site toward West Bay. Meanwhile,
7 stormwater from the upper (west) side of West Bay Road, as well as the road itself, collects in a
8 a series of culverts and flows untreated to West Bay.

9 The project will require the capture and management of all stormwater consistent with
10 Ecology's Stormwater Design Manual and the City's DDECM and EDDS. The project does not
11 vest to these requirements and must instead satisfy the version of these regulations then in effect
12 at the time of permit submission.

13 The preliminary stormwater design has two separate systems: "clean" water collected
14 from roofs will be sent to existing points of discharge along with water currently coming from
15 West Bay Drive and the west side of the road. This stormwater will continue to go untreated
16 toward West Bay. All remaining portions of the site, including all drives, parking areas, trails,
17 etc. will have stormwater collected and sent to three modular treatment facilities located
18 throughout the site where stormwater will be filtered and treated in a "modular wetland" similar
19 to bioretention facilities often used as part of stormwater systems. This system is commonly
20 used for this type of development. The system will treat and then discharge stormwater to West
21 Bay.

22 The City's engineering requirements also require that that portion of West Bay Drive
23 located adjacent to the site will have its stormwater collected and treated in the same manner,
24 thereby reducing some of the untreated stormwater from West Bay Drive currently going to the
25 Bay.

1 The collection system will also capture 6 PPD-q and retain it in the bioretention media
2 consistent with current Best Management Practices (BMP's). Currently, this is the best means of
3 managing 6 PPD-q and preventing its entry into the Bay.

4 The stormwater management system does not extend to the underground parking area.
5 Instead, if there are any stormwaters, floodwaters, or tidal waters entering the parking level,
6 these waters will be sent to collection points and onto the LOTT stormwater system where they
7 will be treated like all other waters entering the LOTT system. Before entering that system these
8 waters will first pass through an oil/water separator to reduce any contamination.

9 Like virtually all private stormwater systems, this project's system is not designed to
10 manage unusually large stormwater events such as a 100-year flood. Events of that magnitude
11 will exceed the system's capacity and bypass the system's stormwater treatment mechanisms and
12 pass directly to West Bay. High tides and flooding could also affect the treatment media but this
13 would simply require replacement of the media.

14 In addition to this stormwater management system, further protection from stormwater
15 contamination will be provided by imposing restrictions on fertilizer use, the handling of pet
16 waste, and car washing. With all of these conditions in place, Ms. Holm concludes that the
17 project satisfies all requirements of the current Ecology Manual, the DDECM and EDDS, but
18 that the design will be further refined as needed to satisfy any additional stormwater
19 requirements that may be imposed prior to permit submission.

20 Separately, water and sewer utilities will be provided to the site by the City/LOTT. Both
21 currently exist to the site and have sufficient capacity for this project. The water system will be
22 expanded to include a looped system through the project to improve water delivery.

23 Aaron Van Aken. Mr. Van Aken is a licensed professional engineer and a principal at
24 Heath & Associates, a transportation planning and engineering firm. Recently, Mr. Vam Aken
25 was tasked with conducting an independent technical review (Appellant's Exhibit 9) of the

1 Traffic Impact Analysis (TIA) previously prepared for the project in 2022 by SCJ Alliance (Core
2 Document 9). This supplemental traffic review was undertaken in response to a large number of
3 public concerns that the earlier TIA relied on traffic counts undertaken during the Covid
4 pandemic when traffic volumes were generally lower and travel habits were altered. Mr. Van
5 Aken was asked by the Applicant to provide an independent review and determine whether
6 current traffic conditions remain the same as those found in the SCJ Alliance TIA.

7 The original TIA was prepared in May, 2021, and updated in February, 2022, utilizing
8 traffic data collected between 2015 and 2019. In March, 2026, Mr. Van Aken undertook new
9 traffic counts at the same seven study intersections evaluated in the original TIA. These counts
10 were then examined in relation to the counts relied upon in the original TIA. At all seven
11 measuring locations, traffic volumes during the PM peak hour had *decreased* from the earlier
12 counts from between 3.5% to as much as 29.4% at the seven intersections. Overall, Mr. Van
13 Aken's new traffic counts suggest that current traffic volumes are consistent with, or lower than,
14 the conditions assumed during the original TIA. When asked why, Mr. Van Aken opined that
15 vehicle traffic is not rebounding from Covid as fully as anticipated, with less travel to and from
16 work, and with fewer State employees working in the office.

17 Mr. Van Aken was then asked to evaluate the original TIA's estimate of trips generated
18 by this project and whether those estimates remain accurate. As explained in his Supplemental
19 Analysis, the earlier TIA evaluated the project as a mixed use development consisting of 478
20 residential units, 6,300 square feet of restaurant, 4,400 square feet of café/coffee house, 3,200
21 square feet of commercial space, and 2,400 square feet of office space. Trip generation rates
22 commonly used by the City were then applied to these numbers resulting in an estimate of 250
23 new external trips (after deducting bypass trips and internal capture trips). While Mr. Aken might
24 find small adjustments to the methodology relied upon, he concludes that the earlier calculation
25 of 250 new external trips is accurate.

1 Mr. Van Aken was then asked to analyze whether the original TIA had accurately
2 evaluated current Levels of Service (LOS) at the seven intersections. Mr. Van Aken's
3 conclusions as to current LOS at the seven relevant intersections differs only slightly from the
4 original TIA, with no appreciable difference between the two.

5 Mr. Van Aken was then asked to undertake a forecast of future Levels of Service (2033)
6 at the seven key intersections and compare that to the original TIA. Again, while slight
7 differences were found between his Findings and the original TIA, these differences are
8 insignificant. Most importantly, Mr. Van Aken finds that future LOS at all seven critical
9 intersections will remain at LOS D or better with the project. In other words, the project will not
10 cause any key nearby intersections to have a failed Level of Service. In summary, Mr. Van Aken
11 comes to the same conclusions as the original TIA with respect to traffic impacts. While he finds
12 that several of the affected intersections will experience minor changes in LOS compared to the
13 original TIA, the overall operational conclusions are consistent. These conclusions are
14 summarized on page 13 of his Supplemental Report:
15

16 Based on the updated information and analysis, surrounding roadway network and
17 study intersections continue to operate within the City's adopted concurrency and
18 Level of Service (LOS) standards with the proposed development
in place. . . .

19 Based on the findings of this review, the original TIA conclusions generally
20 remain reasonable and supported under current conditions. Updated traffic
21 volumes collected in 2026 were found to be generally consistent with, or lower
22 than, the baseline conditions utilized in the original analysis, and all study
intersections continue to operate within the City of Olympia's adopted
concurrency and Level of Service standards with the proposed development in
place.

23 While congestion and queuing do occur during peak commute periods
24 along portions of West Bay Drive and at the Harrison Avenue/Olympic Way
25 roundabout, the overall intersection and two-hour LOS analysis remain within the
operational thresholds utilized by the City. . . .

1 Overall, the proposed project is not anticipated to result in significant
2 adverse transportation impacts beyond those identified and mitigated through the
3 approved improvements and City concurrency requirements.

4 Mr. Van Aken also noted that the project is conditioned upon a number of traffic
5 mitigation measures including: a new 10-foot sidewalk along the east side of West Bay Drive;
6 an 8-foot planter strip; a 5-foot bike lane; and a new 11-foot travel lane. Three pedestrian
7 crossings are proposed including one at the Woodard Avenue NW trailhead. This crossing
8 includes a pedestrian refuge island to allow pedestrians to cross the street in two stages.
9 Additional crossings are located north and south of the Central Woodard Avenue crossing and
10 help allow traffic to connect to existing sidewalks along West Bay Drive north and south of the
11 project. These pedestrian crossings will have elevated pathways to reduce vehicle speeds,
12 improve pedestrian safety, and reduce the possibility of collisions including wildlife.

13 In addition to traffic mitigation measures imposed at the site, the Applicant will also be
14 required to pay a traffic impact fee estimated at \$1.16 million for the residential units and
15 additional impact fees for the commercial use. These funds will be used for future funding of
16 transportation infrastructure including improvements along West Bay Drive.

17 Finally, Mr. Van Aken noted that the 2005 West Bay Drive Corridor Study established a
18 vehicle capacity for West Bay Drive of 17,600 vehicles per day. With the project, actual traffic
19 is estimated to reach only 12,585 vehicles trips per day, or well below the road's recognized
20 capacity.

21 Mr. Van Aken was asked to give his opinion as to why there is a strong public belief that
22 West Bay Drive and surrounding roads lack the capacity for this project. In particular, he was
23 asked to provide an opinion as to why the public believes that the roundabout at Harrison
24 Avenue and West Bay Drive is "not function properly". Mr. Van Aken responded by explaining
25

1 that brief periods during the day when traffic is unusually congested can lead to a perception that
2 the traffic system is inadequate. For example, there is a few-minute period shortly before 5:00
3 p.m. when queuing at the roundabout becomes lengthy. Mr. Van Aken explains that traffic
4 analyses are not focused on those few minutes of unusual queuing but rather on the full two-hour
5 PM peak hour period. Thus, while this project may add to that few minutes of lengthy queuing at
6 around 5:00 p.m., it will not result in significant, extended queuing problems. Mr. Van Aken
7 was asked about any additional traffic imposed by the proposed West Bayviews Landing project
8 proposed for property just north of the project site. It had not yet been proposed when the
9 earlier TIA was undertaken in 2021 and has only been under consideration more recently. Thus,
10 its potential traffic impacts are not included in the original TIA. Similarly, the West Bayviews
11 Landing project is not included in Mr. Van Aken's analysis (at least directly) as he was tasked
12 with reviewing the 2021 analysis, not undertaking a wholly new analysis. Nonetheless, Mr.
13 Aken concludes that, even if constructed, the West Bayviews Landing project, in combination
14 with this project, will not cause Levels of Service to fail at any of the key intersections:

15 1. Both the original TIA, as well as Mr. Van Aken's Supplemental Analysis,
16 incorporate a growth rate into current and future traffic. The West Bayviews Landing project
17 would not cause greater traffic than what this growth rate anticipates.

18 2. More importantly, the West Bayviews Landing project undertook its own TIA,
19 completed in December, 2023 (Hearing Exhibit 6). As part of that TIA, the traffic engineering
20 company (TENW) factored in this project's traffic with the traffic estimated from the West
21 Bayviews Landing project. Thus, that TIA, undertaken by a third, independent traffic engineer,
22 joins in the conclusions reached by this project's original TIA as well as Mr. Van Aken's
23 Supplemental Analysis that the combination of both projects will not result in any failed Level of
24 Service along the West Bay Drive corridor.

1 Jim Brennan. Mr. Brennan is a licensed landscape architect whose work focuses
2 primarily on waterfront projects. Mr. Brennan was tasked with designing a vegetation plan both
3 above and below the Ordinary High Water Mark in order to reestablish a functional intertidal
4 beach. Mr. Brennan has assisted in a number of similar projects in the Puget Sound area and also
5 served as lead landscape architect on the City's West Bay Park located a short distance south of
6 this project along West Bay. Similar to this project, Mr. Brennan worked closely with both the
7 City and tribe in fashioning an appropriate landscape for the park and utilized many of its
8 concepts for this project.

9 Here, Mr. Brennan was part of a team to design native plant landscaping for each level
10 along the waterfront, commencing with the VCR and then heading down to the riparian zone and
11 finally the aquatic zone, while taking into consideration available soil depths, aesthetics, and
12 public pathways to the beach.

13 Currently, there is no upland vegetation, riparian vegetation, or salt marsh, vegetation and
14 no shading, organic materials, Large Woody Debris (LWD) or any other resources to aid wildlife
15 or fish or help with stabilizing the shoreline.

16 Mr. Brennan then turned to his landscape design found at Sheet L1-7 at Core Document
17 5A. Starting from the waterward side of the esplanade, the VCA begins with a standard width of
18 30 feet plus the additional newly created upland areas. This area will include a mix of native
19 trees and shrubs while limiting public access to a few small trails. Past the VCA, the site will
20 then move to the transition zone where plants better tolerate tidal waters. The site will then
21 transition to a salt marsh zone and, finally, mud flats.

22 The proposed plantings, both above and below the Ordinary High Water Mark, will
23 provide shade, organic material, woody debris and foraging material for fish and wildlife. The
24 newly planted trees will also provide nesting/perching for birds.

1 Mr. Brennan notes that the site has limited soil but believes it to have sufficient soil and
2 nutrients to support the required landscaping above the Ordinary High Water Mark. He also
3 believes that the landscape design is consistent with the 2016 Restoration Assessment.

4 Mr. Brennan believes that the landscape design does not conflict with the design of the
5 West Bay Park nor is it in any way inconsistent with the park's design. He is also familiar with
6 planning for restoration of the Deschutes Estuary and does not find anything in this project's
7 design that will negatively impact the estuary's restoration or, conversely, anything about the
8 estuary restoration that will negatively impact this project.

9 Mr. Brennan concluded his testimony by expressing the opinion that the project is
10 important for shoreline restoration, is doable, is functional, is appropriate for the site, and will
11 serve as a catalyst for other, similar projects.

12 Shane Phillips. Shane Phillips is a licensed professional engineer and a certified
13 floodplain manager with Moffat & Nichol, an engineering planning and environmental services
14 firm. Mr. Phillips is the coastal and waterfront engineer of record for the project. Notably, Mr.
15 Phillips has been involved with several related projects. He served as project director for the
16 2016 West Bay Restoration Assessment and was part of the West Bay Park study; has been
17 involved in South Sound salmon recovery projects and with Burfett Park. He has been involved
18 in waterfront engineering for 33 years.

19 Much of Mr. Phillips' testimony focused on three important documents:

- 20 ● The Shoreline Restoration Design (Core Document 14.a) prepared by Mr.
21 Brennan and his firm, Moffat & Nichol.
- 22 ● The Restoration Mitigation Plan (Core Document 14.b) prepared by Grette
23 Associates, environmental consultants.
- 24 ● The Preliminary Engineering Design Report (Core Document 14.c) prepared by
25 Moffat & Nichol.

1 Utilizing these documents, Mr. Phillips explained the proposed design for the beach
2 restoration project often referred to as the "Alternative 3" design due to its being the third of four
3 proposed designs for shoreline restoration (the "Shoreline Restoration Project").

4 As project director for the 2026 West Bay Restoration Assessment, Mr. Phillips is
5 intimately familiar with its purposes and recommendations. Based upon that knowledge, he
6 finds the proposed Shoreline Restoration Project to be consistent with the 2016 Restoration
7 Assessment as required by the parties' Development Agreement.

8 Mr. Phillips began his discussion of the project site by noting its current conditions. As
9 other experts have noted, the shoreline is "sediment starved" and has an armored shoreline with
10 limited habitat value. Lots of artificial debris line the shoreline and need removal.

11 The design of the Shoreline Restoration Project is found as Figure 5-3 in the Shoreline
12 Restoration Design, Core Document 14.a, while the details of its design are found in Section 4.2
13 of the Restoration and Mitigation Plan (Core Document 14.b). The project is described in detail
14 in the Restoration and Mitigation Plan but the following is a brief summary:

15 • The first stage would be the removal of all debris currently located offshore
16 including approximately 200 creosote-treated piles, the outline of a dilapidated timber dock, and
17 old concrete structures relating to the former rail trestle. Various other debris, metal beams,
18 wood waste, rock and iron pipes will also be removed.

19 • Approximately 4,180 cubic yards of existing revetment and underlying material
20 will be excavated from along the top of the revetment to create a cutback on the top of the slope
21 along the entire length of the site. Up to 24,965 cubic yards of mixed sand and gravel fill and
22 7,290 yards of washed gravel fill will then be added to the shoreline to improve habitat. The new
23 beach will be sloped at approximately 8:1. Topsoil and sand will then be placed on the bench
24 above the Ordinary High Water Mark to reduce wave action and provide an appropriate planting
25

1 medium. Again, greater detail is found in the Restoration and Mitigation Plan, and even more
2 detail is found in the Preliminary Engineering Design Report (Core Document 14.c).

3 An important aspect of the Shoreline Restoration Project includes the creation of
4 "backshore berm". Constructing a new beach without creating a backshore and berm feature
5 would significantly reduce its functionality, increase risk of its damage and require greater
6 maintenance. Here, the backshore berm width must be sufficient to provide for the required 30-
7 foot VCA imposed by City regulations.

8 Mr. Phillips explained that the project's design serves as an example of "Engineering
9 With Nature" developed by the US Army Corps of Engineers and intended to align nature and
10 engineering processes. Here, this explains why a gravel beach with a back berm is critical as it is
11 what would be normally found on a natural Puget Sound beach. This type of beach is intended
12 to create a sloped soft shore beach designed to improve its function. Its final design takes into
13 consideration coastal processes including tide, current and wind. Similar designs can be found at
14 a number of shoreline restoration sites including the Boeing Pier at Mukilteo and the Mt. Baker
15 Terminal a Birch Bay, both of which involve burying legacy features in a similar manner to this
16 project.

17 Mr. Phillips then discussed how the selected restoration option was chosen over other
18 alternatives. Initially, the Applicant had sought to simply establish a new gravel intertidal beach
19 running at an 8:1 slope to the height of the existing revetment, but this approach was discouraged
20 by the City and the various other State, tribal and federal agencies involved in review due to the
21 amount of fill it would require and the greater amount of new uplands created. The Shoreline
22 Restoration Design includes an analysis of this original design (referred to as Alternative 2),
23 along with the currently proposed design (Alternative 3), with making no change to the existing
24 (Alternative 1), and with removing the existing revetment altogether (Alternative 4). The
25 Shoreline Restoration Design carefully analyzes each of these four alternatives in Section 5 of

1 the Analysis. Briefly, it concludes that Alternative 1, the no action alternative, would not
2 provide any ecological benefit to the existing shoreline yet still require ongoing maintenance.
3 Alternative 2, the original design, would improve ecological functions but would place the
4 greatest amount of fill along the shoreline and create the largest amount of new uplands.
5 Alternative 3, the current proposal, provides similar ecological benefits as Alternative 2 but
6 requires substantially less fill and results in much less new upland. Alternative 4, removing the
7 existing revetment all together, has an intuitive quality as it would come closest to restoring
8 natural beach conditions, but it has been determined to be highly problematic if not impossible.
9 This is due to the fact that it would involve significant amounts of excavation into the existing
10 substrates, a process that would be in constant conflict with tides, groundwater, submerged
11 items, environmental constraints, unstable materials and uncertain results. Workers would be
12 placed at significant risk. Much of each days work would be lost and have to be repeated the
13 next day. In summary, this alternative, while seeming attractive, proves to be the poorest choice.

14 Mr. Phillips concludes that Alternative 3, the current proposal, imposes the minimum
15 amount of fill necessary to achieve a properly functioning intertidal beach. He concludes that it
16 meets all ecological goals, minimizes shoreline disturbance, aligns with good practices and best
17 available science and also aligns with the 2016 West Bay Restoration Assessment.

18 Mr. Phillips was asked if this project would have any negative impact upon efforts to
19 restore the Deschutes Estuary or, conversely, whether the Estuary's restoration would negatively
20 impact this project. Mr. Phillips is familiar with efforts to restore the Deschutes Estuary and
21 believes that this project will have no negative impact upon the estuary's restoration as it will aid
22 in mimicking natural functions along West Bay, while the estuary's restoration will not
23 negatively impact this project although it may introduce additional sediments but, if so, this
24 project is designed for that. If anything, restoration of the Deschutes estuary will be a benefit to
25 this project.

1 Calvin McCaughan. Mr. McCaughan has been an engineer for the project for seven
2 years. Mr. McCaughan has worked extensively on waterfront projects.

3 Mr. McCaughan began his testimony by explaining the history of site's use and the make-
4 up of its upland soils. The current upland soils consist of large amounts of wood waste and other
5 material lying atop historic "bay mud" with concerns about liquefaction. The depth of wood
6 waste and other fill over this bay mud is as much as 20 feet. Below the bay mud are glacial soils.
7 Groundwater coming off of the hill to the west transports across these uplands near the surface.

8 In 2021, Mr. McCaughan undertook a Geological Assessment of the site (Core Document
9 8a). It concludes that the proposed buildings will need deep foundations to offset the possibility
10 of liquefaction. Retaining the existing riprap revetment would aid in upland stability and would
11 be the preferred alternative from a geotechnical point of view, but the proposed Shoreline
12 Restoration alternative which partially removes the revetment will also provide important
13 stability, as does the proposed new beach which runs to the uplands and provides them with
14 added lateral support.

15 Mr. McCaughan has worked closely with all other engineers on the project and concurs
16 that the currently proposed restoration option (Alternative 3) is the best alternative among the
17 four. Like the previous witness, Shane Phillips, Mr. McCaughan finds Alternative 4 (a full
18 removal of the existing revetment) to be nearly impossible and the least favored of the four
19 alternatives. He explained that the process of removing the revetment and cutting into the
20 existing substrate would be a daily race against the tide on one side and enormous amounts of
21 groundwater on the other. Neither coffer dams or "portadams" would be effective in stopping
22 the entry of water from above (groundwater) and below (seawater) and would be like "trying to
23 dewater Puget Sound". Further, excavation is almost certain to encounter buried objects that
24 would make each day's work a challenge. One day might see some progress while the next day
25 would see none at all. And any obstructions that are found and needing to be excavated would

1 create large disturbed areas that could not simply be filled with surrounding material. Any
2 failure in the process could result in significant injury or worse. In short, attempting Alternative
3 4 would be reckless.

4 In contrast, the proposed Alternative 3 is supported by Mr. McCaughan's Geotechnical
5 Report and takes into consideration all of the site's conditions including its groundwater, wood
6 waste, fill material, bay mud, tide and other site conditions.

7 Scott Maharry. Scott Maharry is the principal scientist and managing principal with
8 Farallon Consulting, an environmental consulting firm doing business as Grette Associates. Mr.
9 Maharry is a biologist and prepared the Critical Areas Report (Core Document 10.a) and the
10 Habitat Assessment (Core Document 10.b) for this project. He is also the Applicant's lead
11 consultant for federal permits required from the US Army Corps of Engineers. Mr. Maharry has
12 25 years of practice in the area of aquatic habitat and wetlands including Submerged Aquatic
13 Vegetation (SAV) and eel grass. In addition to preparing the Critical Areas Report and Habitat
14 Assessment, Mr. Maharry was responsible for evaluating the process for "no net loss"
15 determinations.

16 Mr. Maharry began by explaining site conditions. As noted by others, the upland habitat
17 is largely void of any vegetation and is mostly covered in asphalt and crushed concrete with
18 scattered non-native trees and shrubs. Shoreline vegetation is nonexistent with the exception of a
19 few small trees trying to gain a foothold in the asphalt and some low quality grasses and forbs.
20 Habitat function throughout the uplands is minimal. It is probably used by raccoon, deer and
21 other urban animals but there is minimal foraging habitat. A row of utility poles are located
22 along the outer edge of the uplands and probably used by birds, but these poles are coated in
23 creosote and are harmful to wildlife.

1 Figure 2.6 in Core Document 14.a depicts the shoreline and shows that it has no
2 functional vegetation. Instead, it is a tall, steep, bouldered revetment below which there is
3 effectively no riparian habitat function.

4 In terms of connectivity with West Bay Woods and other habitats on the opposite side of
5 West Bay Drive, it is likely that birds travel to and from the two areas as well as some wildlife
6 crossings but otherwise there is limited connectivity between these two properties. And to the
7 extent that any wildlife crosses the street to this property, it offers no effective habitat or foraging
8 opportunities. There is a nearby Heron rookery but it is 750 feet from the south boundary of this
9 site and is not impacted by this project. There are no other important habitat or important species
10 located within West Bay Woods.

11 Turning to the aquatic area of the project site below the riprap and revetment, there is a
12 large amount of debris including 200 creosoted pilings, concrete foundations left over from the
13 rail trestle, relic marine structures, wood shingles and other wood waste, and various other relic
14 piles. All of this is proposed to be removed as part of the restoration project.

15 The site's aquatic areas are heavily degraded. There is no salt marsh or aquatic
16 vegetation. Lower down, the existing mud flats provide habitat for shellfish but these shellfish
17 have been declared to be contaminated and any birds feeding on them are consuming
18 contaminated food.

19 Without restoration, existing shoreline conditions will remain, the aquatic area will
20 remain degraded, no shellfish harvesting will be allowed, there will be no foraging for salmon,
21 and the shoreline will be of low quality.

22 At the request of WDFW, a Shellfish Survey was undertaken (Core Document 14.d). It
23 finds that shellfish exist throughout the mud flats, with higher quantities at higher elevation
24 along the shore. In total, several million shellfish are likely to be found in the site's tidelands.

1 Once the new intertidal gravel beach has been constructed, the shoreline will be
2 revegetated both above and below the Ordinary High Water Mark. Above the Ordinary High
3 Water Mark, in riparian areas, a 30-foot VCA will be established and then expanded an
4 additional 12-18 feet as the result of the additional uplands created by the beach restoration,
5 collectively resulting in a VCA of 42 to 48 feet in width. In this area, native trees, shrubs and
6 groundcover will be planted along with large woody debris as well as perch poles for birds and
7 other bird boxes. Below the VCA, in the transitional zone between uplands and tidelands,
8 adaptive vegetation will be planted including Ocean Spray and other hardy vegetation. Further
9 down, in aquatic areas, salt marsh vegetation will be planted.

10 As a result of this revegetation of the shoreline, habitat functions will significantly
11 improve and the riparian zone will benefit from added shade, thermal regulation, added detritus,
12 perching habitat for birds, screening and lighting attenuation - all things that currently do not
13 exist along this shoreline. These improvements, coupled with reliance on Dark Sky compliance,
14 will significantly reduce any light impacts to the shoreline.

15 Mr. Maharry acknowledges that placing fill for the new intertidal beach will likely result
16 in some shellfish mortality, especially in deeper areas. Importantly, however, much of the
17 shellfish population will survive and, even more importantly, other similar projects have
18 demonstrated that shellfish recovery is remarkably quick - perhaps as little as one month. In
19 addition, the site's shellfish population will now be located in clean material that will result in
20 shellfish suitable as food for birds and also safe for humans. It is also worth noting that the type
21 and size of the gravel used for the new beach will be carefully selected to be compatible with
22 what local shellfish prefer.

23 Construction impacts to the shoreline will be minimized/avoided through a number of
24 means: restricting work to approved "work windows" as determined by Ecology and WDFW;
25 using Best Management Practices; and having in place control plans to reduce and eliminate

1 risks. Once completed, the Restoration Project will be monitored for ten years and its
2 maintenance required consistent with local, State and federal standards. An Adaptive
3 Management Component will be included in the maintenance program to adjust the plan as
4 needed in order to be effective.

5 At the conclusion of his testimony, Mr. Maharry declared that the project will result in no
6 net loss of ecological functions or processes and, to the contrary, will result in a significant net
7 gain in ecological functions and increase in habitat value.

8 Mr. Maharry supplemented this claim by noting that the project has been analyzed
9 utilizing the Salish Sea Nearshore Calculator. This is an analysis established by NMFS and
10 examines projects for net environmental gains or losses as measured by "credits". In
11 consultation with the US Army Corps of Engineers and NMFS, Mr. Maharry imputed the data
12 from this project into the calculator and the result was a positive 1,311 credits. This is an
13 unusually large positive balance, as most projects result in negative balances and must therefore
14 provide credits to offset impacts. This project does not have any need to provide credits and is
15 instead significantly over rather than under. A positive balance, especially a large positive
16 balance, demonstrates a significant benefit to fish species including listed species such as
17 Chinook Salmon and others.

18 Mr. Maharry then turned to the issue of the project's potential impacts to birds. Through
19 public comments, Mr. Maharry was made aware that the site contains several nesting pairs of
20 Purple Martins. In response, he contacted WDFW for further guidance and obtained their
21 recommendation that several nesting boxes be placed throughout the VCA and in the intertidal
22 zone. WDFW has agreed to provide the required nesting boxes. He then turned to the issue of
23 bird strikes and concerns over bird mortality. The project site is located in the Pacific Flyway
24 and is visited by birds. Bird mortality is a concern. For this project, any impacts to birds will be
25 mitigated in several ways: utilization of Dark Sky lighting techniques; construction of perch

1 poles and nesting boxes in the VCA and intertidal areas; improved riparian habitat including
2 trees and dense shrubs; and the use of bird friendly glass in the construction of the buildings to
3 reduce bird strikes. As to this last mitigation, however, Mr. Maharry recommends that it be
4 restricted to the lower three floors of the building. He explains that the problem with standard
5 glass is that it reflects vegetation located outside the window and leaves birds with the
6 impression that they are flying toward vegetation and not into glass. Mr. Maharry acknowledges
7 that this is a problem for the lower three floors but not higher, as there is no vegetation taller than
8 three stories that would be reflected in the glass.

9 Mr. Maharry then turned to some public comments relating to concerns over the project's
10 impact on nearby Schneider Creek to the north of the site. He responded that these concerns are
11 not well founded and that he does not believe the project will have any impact to Schneider
12 Creek.

13 Mr. Maharry concluded his testimony by a brief discussion of 6 PPD-q, a contaminant
14 found in rubber particles resulting from vehicle use. He explained that the current Best
15 Management Practices for management of 6 PPD-q are to prevent rubber particles from entering
16 into the Sound by proper stormwater design which collects 6 PPD-q and other contaminants and
17 directs them to a filter media to prevent their release. Various types of filter media will bind to 6
18 PPD-q and trap it in the stormwater system. The project's current stormwater design is designed
19 to do this.

20 Hannah Morse. Hannah Morse is a licensed professional engineer and project manager at
21 Pioneer Technologies, an environmental consulting firm. Ms. Morse's testimony was largely
22 related to issues raised in the SEPA Appeal regarding the MTCA remediation process. Her
23 testimony can be found in the Appeal Decision.

1 Troy Bussey. Mr. Bussey is also involved in the MTCA remediation process. Mr.
2 Bussey's testimony was largely related to issues raised in the SEPA Appeal and his testimony
3 can be found in the Appeal Decision.

4 **Olympia Ecosystems Witnesses.**

5 Olympia Ecosystems presented the testimony of its Land Conservation Director, Dr.
6 Daniel Einstein, and its President, Dr. Sarah Hamman. Their testimony is largely associated
7 with OlyEcosystems appeal of the SEPA DNS. It is therefore set forth in detail in the Appeal
8 Decision rather than in this decision. Nonetheless, it is fully considered as part of this shoreline
9 application.

10 **Applicant's Response to Public Testimony.**

11 All testimony was completed on June 10, 2026. Following its completion, the Applicant
12 was afforded the opportunity to respond to all written and oral public comments. The Applicant
13 did so by written Response to each commenter's testimony. The Applicant' Response is attached
14 hereto as Attachment 7 and is incorporated herein by reference.

15 Based upon the testimony and exhibits received, I make the following:

16 **FINDINGS OF FACT**

17 1. The Applicant seeks a Shoreline Substantial Development Permit to construct five
18 buildings above a public plaza and parking area along West Bay of Budd Inlet. Each of the five
19 buildings includes five stores and collectively will provide for 478 residential units along with
20 22,000 square feet of commercial use, a waterfront trail and esplanade, and various public
21 amenities. Several copies of the Site Plan are included in the Applicant's hearing presentation
22 (Hearing Exhibit 7).

23 2. The project also requires a Shoreline Conditional Use Permit as a small portion of
24 Building 2 is to be used for a mix of residential and commercial purposes and lies within 100 feet
25 of the Ordinary High Water Mark along West Bay.

- 1 3. The project has an address of 1210 West Bay Drive NW.
- 2 4. The project has a Shoreline Designation of Urban Intensity (Budd 3A).
- 3 5. The project site has a zoning designation of Urban Waterfront (UW).
- 4 6. The project site has a land use designation of Urban Waterfront (UW) in the
- 5 City's Comprehensive Plan.
- 6 7. The site contains 19.48 acres of which 7.2 acres are considered developable with
- 7 the balance consisting of tidelands and aquatic areas extending east into West Bay.

8 Findings Relating to the Project Site's History.

- 9 8. Prior to the 1890's, much of what is West Bay consisted of tidal flats extending
- 10 south to the Deschutes River and forming the Deschutes Estuary.
- 11 9. In the 1890's and again in the early 1900's, dredging was undertaken through the
- 12 Deschutes Estuary, creating what is now West Bay. Dredged materials were placed west and
- 13 east of the channel, creating the current uplands west of West Bay, along West Bay Drive, as
- 14 well as the uplands that are now the Port Peninsula on the east side of West Bay. At the same
- 15 time, grading along what is now West Bay Drive created additional fill material that, along with
- 16 the dredged material, was used to establish the flat uplands now existing along all of West Bay
- 17 Drive.
- 18 10. Following the creation of these uplands along the west side of West Bay, they
- 19 began to be used for a mix of industrial and marine purposes including log shipping. Soon,
- 20 almost all of the west side of West Bay came to be utilized for industrial purposes.
- 21 11. Historical information suggests that the project site was first developed as a
- 22 lumber mill in the 1920's. For the next several decades, a succession of mills and log shipping
- 23 enterprises utilized the site. Several large industrial buildings were constructed. A dual set of
- 24 rail lines was constructed along the west boundary, adjacent to West Bay Drive, while a 1,000-
- 25 foot spur rail trestle was constructed along the south portion of the site and into West Bay.

1 Various wharfs were constructed along the shoreline including a large wharf along the site's
2 northeast shoreline.

3 12. In 1947, the large wharf off the site's northeast shore was destroyed by fire.
4 Remnants of the wharf remain and include a large number of creosote-treated pilings and an
5 assortment of other debris.

6 13. In 1951, the State of Washington constructed the "5th Avenue Dam" which
7 created Capitol Lake. The lake was intended to complete the original architectural design for the
8 State Capitol. Unfortunately, it resulted in physically disconnecting the Deschutes River from
9 West Bay and eliminated the tidal interaction between the two. This has had significant
10 environmental consequences above and below the dam ever since.

11 14. As industrial development of West Bay continued, individual property owners
12 began armoring their shorelines to protect their industrial activities from tidal and storm impacts.
13 Eventually, almost all of the west side of West Bay became armored, leaving little or no
14 naturally functioning shoreline. Long industrial use has also led to the contamination of
15 shoreline sediments, further reducing the ecological functions of the West Bay shoreline.

16 15. Literature suggests that Hardel Plywood first began using the site for industrial
17 purposes in the 1960's, using the site to process thin strips of wood veneer into plywood through
18 the use of glues and chemical processes.

19 16. Historical information suggests that the site was purchased by Hardel Plywood in
20 1980. Hardel then made significant changes to the site by expanding the usable area by placing
21 large amounts of fill, including wood waste and other debris, up to the shoreline's edge and then
22 encapsulating that fill within an armored embankment consisting of large basalt rock placed at a
23 steep angle to the shoreline. This left the site with no functioning beach and a steep, armored
24 embankment from the water's edge up to the developed area above the embankment.

1 17. As perhaps part of the embankment project, the rail trestle leading into West Bay
2 was removed but the trestle's substantial concrete foundation remains off the shoreline, along
3 with a substantial amount of other concrete and miscellaneous debris.

4 18. Use of the site as a plywood plant continued until 1996 when the plant was
5 destroyed in a large fire. All use of the site ceased and has been discontinued ever since, or for
6 approximately 30 years.

7 19. The combination of fire and long industrial use left the uplands on the project site
8 heavily contaminated. As discussed more fully in later Findings, Hardel plywood entered into an
9 Agreed Order with the Department of Ecology ("Ecology") in 2010. Pursuant to that Order,
10 Hardel removed all of the buildings and a substantial amount of soil. Altogether, 23,000 tons of
11 soil and debris were removed from the site. A layer, or "cap", of crushed concrete was then
12 placed across all exposed areas such that the entire 7 acres of upland are currently covered by
13 either asphalt or crushed concrete. This work was completed in about 2010 and the site has since
14 remained unchanged with the minor exception that various types of weeds and scrub vegetation
15 have slowly gained a foothold in this otherwise impenetrable surface.

16 20. Importantly, and as part of the remediation process, Ecology declared that to the
17 extent any contaminants existed in the site's tidelands, this contamination was not caused by
18 Hardel and was not its responsibility. As a result, Hardel's responsibility for remediation was
19 limited to the uplands and no remediation of sediments was required.

20 21. In 2012, Ecology issued a "No Further Action" letter declaring that the cleanup of
21 all contamination on the site was complete, and that no further contamination existed on site.
22 The site thus became a "Brownfield Site" suitable for new development.

23 22. Shortly after the fire in 1996, the City began envisioning a new future for West
24 Bay, moving away from its industrial legacy. This process culminated in the 2001 update to the
25 City's Comprehensive Plan which announces an all-together different future for this and all

1 nearby properties east of West Bay Drive. The properties along the shoreline are given a new
2 land use designation of "Urban Waterfront" intended to establish a new mix of commercial,
3 industrial and medium/high density residential uses along the shoreline, including buildings of
4 three to seven stories in height. At the same time, properties along the west side of West Bay
5 Drive are designated for professional office/medium density residential, with the goal of
6 establishing professional buildings and apartments along the upper side of the road.

7 23. Following these revisions to the Comprehensive Plan, the City undertook the
8 "West Bay Corridor Study" in 2005 in order to better determine the future of West Bay Drive.
9 This study led to a unique plan for the drive that includes goals for multi-modal transportation as
10 well as a system of trails along the shoreline. The combination of a new Comprehensive Plan and
11 West Bay Corridor Study envisioned a new mix of commercial and residential uses along the
12 waterfront combined with greater public access through improved sidewalks, bike lanes and
13 trails.

14 24. In 2012, the City began to take a harder look at the West Bay Shoreline and its
15 restoration. This led to the 2012 Restoration Plan incorporated into the City's Shoreline Master
16 Program. While more conceptual than detailed, the plan envisions efforts to remove the
17 armoring of the West Bay shoreline and reestablish natural ecological functions.

18 25. The concepts developed in the 2012 Restoration Plan were further refined in the
19 2016 West Bay Restoration Assessment entered into by the City, the Port of Olympia, and the
20 Squaxin Island Tribe. In this study, the entirety of the west side of West Bay was examined for
21 possible means of restoring a more natural shoreline. The study recognized that virtually the
22 entirety of the shore had been heavily armored and that its armoring was impairing ecological
23 functions. The parties looked for means of removing the armoring and restoring a more natural
24 beach, recognizing that almost all of these properties were privately owned and any restoration
25 would be privately undertaken. Thus, restoration efforts that could reestablish beach areas

1 without depriving the owner of the ability to develop were favored. The project site was
2 identified in the Restoration Assessment as the "Hardel Reach No. 5" and the Restoration
3 Assessment proposed its restoration by construction of a graveled, intertidal beach along its
4 entire shoreline and extending beyond the Ordinary High Water Mark. The study did not
5 propose a specific method of constructing the new intertidal beach.

6 26. The Applicant acquired the project site in about 2020. On March 30, 2021, the
7 Applicant entered into a Development Agreement ("DA") with the City to develop the project
8 site in a manner consistent with what is currently proposed. Pursuant to the DA, the application
9 vested to the 2021 Shoreline Master Program, Development Regulations and Comprehensive
10 Plan. In return, the Applicant agreed to pay a fee to the City to assist with low income housing
11 and further agreed to voluntarily restore the shoreline consistent with the 2016 West Bay
12 Restoration Assessment.

13 27. On June 10, 2021, the Applicant's application for a Shoreline Substantial
14 Development Permit and Land Use Review was deemed complete.

15 28. Since remediation work was completed in about 2010, the site has remained
16 unchanged and undeveloped.

17 Findings Relating to the Current Condition of the Project Site.

18 Existing Upland Conditions.

19 29. The upland area of this site contains approximately 7 acres.

20 30. The site abuts West Bay Drive to the west; the "Reliable Steel" property to the
21 south; West Bay to the east; and an undeveloped property to the north currently under review for
22 development as a retirement housing development (West Bayviews Landing).

23 31. The project site and adjoining and nearby properties along the east side of West
24 Bay Drive have a zoning designation of Urban Waterfront. Commercial and residential
25 development are permitted uses within this zoning designation.

1 32. Property immediate across West Bay Drive of the project site, as well as all other
2 nearby property along the west side of West Bay Drive, have a zoning designation of PO/RM
3 (Professional Office/Medium Density Residential). Permitted uses within this zoning
4 designation include professional buildings and apartment buildings. Several professional
5 buildings currently exist along the west side together with a scattering of single-family
6 residences, including several historic residences. OlyEcoystems has acquired several properties
7 along the west side including what is known as "West Bay Woods", a natural area west and
8 slightly south of the project site. Further west and uphill are the primarily single-family
9 residential neighborhoods of West Olympia.

10 34. On the opposite side of West Bay Drive from the project site's southwest corner is
11 a small (0.11 acre) wetland referred to as Wetland A. Wetland A is identified and discussed in
12 the project's Critical Areas Report (Core Document 10) and a map showing its location is
13 attached to the Critical Areas Report as Appendix A:

14 ● Wetland A is identified as a depressional wetland 0.11 acres in size. It has a
15 Habitat Score of 5 and a total wetland score of 17, resulting in it being categorized as a Category
16 III wetland with a 140-foot buffer.

17 ● Wetland A provides a moderate level of water quality function but its habitat
18 function is low due to its small size and highly urbanized environment.

19 ● Immediately south of Wetland A is an asphalt driveway associated with the
20 adjoining single-family residence, both of which lie wholly within the wetland's buffer.

21 ● Immediately east of the wetland is the West Bay Drive sidewalk and then West
22 Bay Drive. According to the project's Traffic Impact Analysis, West Bay Drive experiences
23 approximately 10,000 trips per day.

1 ● Street lighting currently exists along the south side of West Bay Drive, with the
2 light fixture approximately opposite Wetland A¹. A short distance north of the wetland are
3 several commercial/professional offices.

4 ● The wetland likely provides some foraging and refuge for small mammals as well
5 as bird foraging and refuge.

6 ● Wetland A's buffer does not extend to the project site due to its physical
7 separation by the West Bay Drive right-of-way.

8 35. West of the project site across West Bay Drive, and somewhat south of the project
9 site, is a natural area commonly referred to as "West Bay Woods" owned by the Appellant,
10 OlyEcosystems. West Bay Woods does not have well defined boundaries as its development is
11 ongoing and it has not sought official recognition from the City through the permitting process,
12 but OlyEcosystems describes it as a "public park" or a "conservation area". A fuller discussion
13 of West Bay Park and its purposes is explained in Dr. Einstein's testimony and is included in the
14 Appeal Decision.

15 36. OlyEcosystems owns several other properties on the west side of West Bay Drive
16 including one residential lot immediately across West Bay Drive from the project site at 1515
17 West Bay Drive (on which the residence was recently removed), with the remaining properties
18 located north and south of the project site and not immediately adjacent to it. Olympia
19 Ecosystems regards this collection of properties as having an "ecological connection" to each
20 other.

21 37. Commencing at its west boundary along West Bay Drive, the project site slopes
22 gently east toward West Bay. Two former rail lines run parallel to West Bay Drive and create a
23 four-foot depression. East of the former rail lines, the site is relatively flat and undeveloped.

24
25

¹ Viewed by the Hearing Examiner during his site inspection.
Findings of Fact,
Conclusions of Law and
Shoreline Decision - 54

1 38. As noted in earlier Findings, the remediation undertaken in around 2010 included
2 the placement of crushed concrete where soil and buildings had been removed. The site is now
3 an expansive mix of asphalted areas and areas covered by crushed concrete.

4 39. The site's covering by asphalt and crushed concrete makes vegetative growth
5 difficult and most of the site is barren of vegetation. Some scrub shrubs have succeeded in
6 gaining a foothold including small birches, blackberries, butterfly bush and some grasses. Shell
7 hash (broken shells) are common throughout, likely the result of seagulls and crows dropping
8 shellfish from height.

9 40. Habitat quality on the uplands is low. There is very little foraging opportunity.
10 While some grasses and forbs are present they are of low quality and provide very little grazing
11 opportunity for deer, which would more likely prefer the dense vegetation west of the road. More
12 likely species to use the site include ones best accustomed to urban sites including raccoons and
13 opossum.

14 Shoreline Conditions.

15 41. At the eastern end of the uplands is a steep revetment consisting of large basalt
16 riprap commencing at the end of the uplands and descending steeply to intertidal mud flats with
17 no beach area. This condition extends the entirety of the 1,100 linear feet of shoreline.

18 42. The project's shoreline is dominated by this steep revetment. The embankment is
19 almost entirely unvegetated and extends past (below) the Ordinary High Water Mark.

20 43. Above the revetment, along the east boundary of the uplands, is a scattering of
21 vegetation including blackberries, Scotch Broom and Red Elderberry along with a few small
22 trees including Madrona and Maple. Otherwise, the transition from uplands to embankment is
23 barren of vegetation. This is demonstrated through site photographs (Sheet A-5 of Core
24 Document 2).

1 44. At the base of the riprap revetment (below the Ordinary High Water Mark) the
2 shoreline flattens to a gentler slope and transitions to gravel and shell hash intermixed with
3 timber pile stubs and metal debris. Further down, the lower intertidal substrate consists of
4 unconsolidated silt with wood waste debris and gravel. Shellfish are present within this mud flat
5 habitat.

6 45. As noted in earlier Findings, a large amount of debris exists off the northeast
7 shoreline in the area where the large wharf was destroyed by fire in 1947. Along the east
8 shoreline are large derelict concrete structures where the rail trestle was once located. Additional
9 concrete debris and a sunken barge are also present along the eastern riprap slope. Collectively,
10 there are approximately 200 creosote-treated pilings along the project's shore.

11 46. Habitat quality along the shoreline, both riparian and aquatic, is low. Vegetation
12 is limited and consists mostly of invasive and nonnative species. Habitat along the base of the
13 slope is limited. Small pockets of gravel and shell hash are present and provide some limited
14 spawning habitat for sand lance but represent a very small percentage of the overall substrate.
15 No saltmarsh or other beneficial marine aquatic vegetation has been observed along the mid-to-
16 lower intertidal shoreline. As a result, the site does not provide quality foraging habitat for
17 juvenile or adult salmonids.

18 47. While shellfish are presently located along the site's shoreline substrate, the
19 harvesting of shellfish along this portion of West Bay is prohibited due to concerns over possible
20 contamination.

21 48. There are six metal pipe culverts along the site's shoreline ranging in size from 8
22 inches to 18 inches in diameter. Three are abandoned and will be removed as part of the project.
23 The remaining three are active and will be retained for stormwater management. The three
24 retained outfalls convey surface runoff from West Bay Drive and properties west of West Bay
25 Drive, through the site, and into West Bay. The outfalls will not be used by the project except

1 for water from rooftops. All other project stormwater will be managed by its own stormwater
2 system designed to current standards.

3 49. Several inspections of the site at low tide have determined that there is very little
4 Submerged Aquatic Vegetation (SAV) present along the shoreline. Normal SAV found within
5 near shore habitats of Puget Sound includes bull kelp, sugar kelp, eel grass and salt marsh.
6 Again, little or none of this vegetation is currently found along the shoreline. As a result, there is
7 little habitat function and the site does not provide quality foraging for salmonids.

8 50. The site does not provide supporting habitat for Puget Sound Chinook Salmon,
9 but adult and juvenile Chinook Salmon may use the area to reach more favorable habitats.

10 51. Juveniles Coho and Chum Salmon are likely to be present at the site, but only
11 during times of the year that are outside the site's authorized in-water work window.

12 52. Pink Salmon are not likely to be present at the site at any time.

13 53. Juvenile Steelhead may move rapidly through the site between March and June
14 but are not expected to be present during the approved in-water work window. Small numbers of
15 adult Steelhead could pass through the site at any time of the year but only in small numbers.

16 54. Great Blue Herons likely utilize the mud flat habitat during periods of low tide for
17 foraging, and are likely to be found on or near the site year round. Two small rookeries have
18 been identified near the project site but west of West Bay Drive along the forested slope above
19 West Bay Drive, and approximately 720 feet southwest of the southwest corner of the subject
20 property. This places the rookeries outside the 200-foot year round buffer as well as the 300-foot
21 seasonable buffer (or a total 500-foot buffer) imposed by OMC 18.32.320.

22 55. No other important species are believed to be found on or within 1000 feet of the
23 site.
24
25

1 Findings Relating to the Proposed Development.

2 Findings Relating to Upland Development.

3 56. The total site contains 19.48 acres of which 7.2 acres are buildable acres (the
4 "Upland Area").

5 57. Within the Upland Area, the Applicant proposes to construct five buildings above
6 a public plaza and structured parking. Each of the five buildings includes five stories.

7 58. The project includes 478 residential units and approximately 22,000 square feet of
8 commercial use such as restaurants, cafes, and other water-oriented activities.

9 59. Of the five buildings, Buildings 2 and 3 are intended for a mix of residential and
10 commercial uses, while Buildings 1, 4 and 5 are multi-family residential. Construction of the
11 five buildings is proposed to be phased, with Buildings 2 and 3 in Phase 1, Buildings 4 and 5 in
12 Phase 2, and Building 1 in Phase 3.

13 60. Using Sheet A2 of the Civil Plans (Core Document 2) as a guide, and as viewed
14 from west to east and north to south, the project includes the following:

15 Frontage Improvements.

16 Several improvements will be made to West Bay Drive NW, all consistent with
17 the 2005 West Bay Corridor Study. These improvements include: a new sidewalk and planter
18 strip along the east side of West Bay Drive; and three elevated pedestrian crossings, including a
19 south, central and north pedestrian crossing allowing access to the existing sidewalk on the west
20 side of West Bay Drive. Each pedestrian crossing will be elevated to improve its visibility and
21 help in slowing traffic.

22 Stormwater coming from the portion of West Bay Drive adjoining the project will
23 be included in the project's stormwater management system.

24 The project will have three vehicle access points at the south, central and north
25 portions of the site, with the central access site being the primary point of access.

1 Building Area.

2 The five buildings are located on individual lots identified as Parcels A (the
3 southernmost) to Parcel E (the northernmost). Building 1 is located on Parcel E and contains
4 34,337 square feet. Building 2 is located on Parcel D and contains 46,195 square feet. Building
5 3 is located on Parcel C and contains 48,233 square feet. Building 4 is located on Parcel B and
6 contains 42,322 square feet. Building 5 is located on Parcel and contains 29,559 square feet, all
7 as shown on Sheet A6.1 of the Civil Plan.

8 The primary vehicle access is between Buildings 2 and 3. From this access point,
9 traffic travels east to a roundabout and is then disbursed north and south to the five buildings and
10 their below ground parking as shown on Sheet A2 and A6.2.

11 A diagram of the lower level of the buildings is found at Sheet A30. The entire
12 lower level is dedicated to parking and solid waste storage. The lower level will contain 711
13 parking stalls.

14 The first floor, or plaza level, is also shown in Sheet A30. It provides for a mix of
15 parking areas, mixed use commercial and residential use. It provides an additional 112 parking
16 stalls, commercial areas and Buildings 2 and 3 including restaurant, café, retail, health center,
17 community hall and business offices. It also contains a mix of residential apartments including
18 studio units and one through three bedroom unit. The ceiling height at the plaza level is higher
19 than other residential floors to accommodate the commercial activities.

20 The remaining four floors, or two through five, are devoted entirely to residential
21 use in all five buildings, with each building containing a mix of studio and one through three-
22 bedroom units as shown on Sheets A31-A32.

23 The buildings have a height of 65 feet as measured from average grade, with
24 average grade being located at roughly the halfway point of the height of the parking level as
25

1 shown on Sheets A6.2 and A29. The height of the buildings relies upon a height bonus described
2 in later Findings.

3 The project maintains view corridors between each building and at the south and
4 north ends of the project for a total of six view corridors. A diagram of these corridors is found
5 in Sheets A1 and A15 of the Civil Plans. The width of view corridors varies between each
6 building and at the north and south ends of the development. The primary view corridor is
7 between Buildings 2 and 3 and is incorporated into the primary entrance into the site. The total
8 horizontal distance of the property is 926 feet. View corridors cover 394 feet, or 43% of the
9 project's horizontal distance. The exceeds the minimum requirement of 30% (278 feet).

10 Surrounding the five buildings on the south, east and north side is a waterfront
11 trail/expanded waterfront trail corridor:

12 The portion of the trail along the north and south boundaries of the project are
13 designed with a standard twelve-foot paved width with one foot of shoulder on each side. These
14 portions of the trail system provide connections to West Bay Drive as well as future connections
15 to extensions of the trail during future development of other properties.

16 The expanded waterfront trail corridor is located along the east portion of the site.
17 This section of the trail expands to twenty feet in width with one foot of shoulder on each side.
18 It also serves as the fire apparatus access road and must therefore meet International Fire Code
19 requirements in addition to standard trail requirements. Thus, it will need to be designed for
20 emergency operations along with standard trail use.

21 The proposed expanded waterfront trail is a critical design feature as it is used to
22 justify the requested height bonus to 65 feet (instead of 42 feet).

23 61. East and north of the waterfront trail is the Vegetation Conservation Area (VCA).
24 This area is a minimum of 30 feet in width but will be expanded to 42 to 48 feet in width due to
25 the creation of additional upland areas as part of the Shoreline Restoration Program. The VCA

1 will be planted with native trees and shrubs and will form a continuous vegetative buffer with the
2 exception of three narrow trails allowing pedestrian access. The VCA is an important component
3 in the Shoreline Restoration. The VCA will run the length of the shoreline and cover
4 approximately 37,000 square feet. A mix of native trees and shrubs will be planted including
5 Big Leaf Maple, Douglas Fir, Shore Pine, and Pacific Madron. Native shrubs will include Ocean
6 Spray, Willow and Elderberry. Native groundcover will include Yarrow, Coastal Strawberry and
7 Sword Fern.

8 62. In addition to various trails, other public amenities include a kayak launch, beach
9 access, parking for waterfront access, view corridors, long and short term bike storage, benches,
10 seawalls and other outdoor seating, ADA accessibility to the shoreline, and pedestrian
11 crosswalks. These amenities are intended to provide ample public opportunity to walk along,
12 view, and otherwise enjoy the shoreline and West Bay.

13 63. It is anticipated that approximately two-three feet of soil will be added to the
14 entirety of the upland area. This material is intended to serve as a cap upon the existing site; aid
15 in addressing sea level rise; and provide the necessary medium for trees, landscaping and
16 shoreline vegetation.

17 64. The project is conditioned on minimizing the impact of lighting on the shoreline
18 and adjoining properties through use of "Dark Sky" principles in order to minimize light and
19 avoid its spread.

20 Findings Relating to Shoreline Restoration.

21 65. Shoreline restoration is not required for this project but the Applicant has agreed
22 to undertake shoreline restoration as a condition of the Development Agreement entered into
23 with the City.

24 66. Pursuant to the Development Agreement, the Applicant is required to undertake
25 shoreline restoration consistent with the City's 2016 West Bay Environmental Restoration

1 Assessment. As discussed earlier, that assessment was undertaken by the City, the Port of
2 Olympia and the Squaxin Tribe and examined possibilities for restoring the shoreline along West
3 Bay, including the project site. The project site is referred to as "Reach 5 - Hardel" in the 2016
4 study.

5 67. The 2016 Study recognizes that the project site, as well as virtually all other
6 properties along West Bay, have heavily armored shorelines resulting in little or no functioning
7 beach. The study proposes that each designated shoreline area undertake appropriate restoration
8 efforts to reestablish a gravel beach and functioning shoreline. The specific means by which this
9 restoration is undertaken are not identified, and the study is more conceptual than specific in its
10 design.

11 68. As to the subject property, the 2016 Study includes a conceptual design which
12 proposes to place gravel and sand to create a gently sloped beach the length of the project site.

13 69. Once the Development Agreement was entered into, the Applicant presented its
14 initial proposal for the project, including shoreline restoration. The Applicant's original
15 restoration concept is described in Section 5.2 of the Shoreline Restoration Design Report, Core
16 Document 14.a. This original design proposed to create fronting intertidal beach and marsh areas
17 by placing gravel and sand at 8:1 slope from the top of the existing revetment and continuing
18 downward into tidal areas. This design would have covered the entire existing armored shoreline
19 with more natural sand and gravel substrate, thereby improving intertidal habitat function as well
20 as waterfront access, but would have done so at the cost of extending the current Ordinary High
21 Water Mark a substantial distance to the east and creating significant amounts of new upland,
22 thereby eliminating aquatic areas. This concept is hereafter referred to as "Alternative 2:
23 Original Design Concept".

24 70. After reviewing this proposal with tribes, affected State and federal agencies, the
25 City responded by requesting a restoration design that would create less new uplands and thereby

1 have fewer aquatic impacts. This request led to the current design for the restoration project,
2 referred to as "Alternative 3".

3 71. Under this alternative, restoration efforts would begin by the removal of all
4 existing shoreline debris. As noted in earlier Findings, this would include the remaining concrete
5 foundations for the old rail trestle; the old wharf off the northeast shore; and an assortment of
6 other pilings, concrete and metal debris. An estimated 200 creosote timber pilings would be
7 removed along with several large concrete structures, other concrete, and various metal debris.
8 Once the shoreline had been cleared of all debris, the entire face of the existing shoreline armory
9 would be cutback at a height of +17 feet MLLW. The cutback would extend 18 feet landward
10 resulting in an 8-foot wide bench. Approximately 2,175 cubic yards of clean topsoil would then
11 be placed on the cutback at a 4H:1V slope to match the grades from the restored beach fill, and
12 continuing up to the fill placed for the upland development. This topsoil will provide appropriate
13 planting media for riparian vegetation. Approximately 7,290 cubic yards of gravel fill will then
14 be placed along the face of the existing riprap slope below the cutback and extending offshore at
15 a slope of 4:1. This material will provide bedding for the placement of the beach material. Once
16 this underlying gravel fill had been placed, approximately 24,965 cubic yards of sand and gravel
17 beach material would then be placed over the other materials at a slope of 8H:1V, extending
18 offshore from the Ordinary High Water Mark approximately 100 to 150 feet. (Core Document
19 14.a).

20 72. Putting these concepts into lay person terms, the original Alternative 2 would
21 have created a new beach running to the top of the existing revetment, thereby creating large
22 amounts of new upland while extending fill further beyond the Ordinary High Water Mark.
23 Alternative 3 proposes to significantly cut back the height of the revetment and then create the
24 same gravel/sand beach as Alternative 2, with the same slope, but now at a much lower elevation
25

1 requiring much less material; less new upland; and not extending as far beyond the Ordinary
2 High Water Mark.

3 73. In November, 2025, a detailed analysis was undertaken by the Applicant's
4 consultants of the relative merits and disadvantages of four different approaches to the
5 shoreline's restoration (Core Exhibit 14.a):

6 Alternative 1. Not implement any comprehensive action to restore the shoreline,
7 allowing the existing steep armored slope to remain in place.

8 Alternative 2. The original design concept proposed by the Applicant, creating
9 fronting intertidal beach and marsh areas by placing gravel and sand beach materials at an 8:1
10 slope to the top of the existing armored slope, with a backshore buffer at the top of the slope to
11 transition to the new upland fill. See figure 5.2 of Core Document 14.a.

12 Alternative 3. The current design cutting back the top of the existing steep slope
13 to reduce the overall height of the new beach materials, thereby reducing the amount of fill
14 below the Ordinary High Water Mark. This design also has a backshore buffer transitioning to
15 the new fill on the upland portions. This buffer serves to dissipate wave action. See Figure 5.3
16 of Core Document 14.a.

17 Alternative 4. Fully remove the existing steep revetment, lowering the new beach
18 area and the amount of fill necessary, and cutting back into the upland area to achieve the
19 necessary gradual slope. Figure 5.4 of Core Document 14.a.

20 74. Of the four alternatives, Alternative 4 (fully removing the existing steep slope)
21 was determined to be the least possible to achieve as it would require excavating into the Bay
22 bottom to establish a necessary foundation for a new beach. Due to tidal, environmental,
23 engineering and other considerations, this approach is not feasible: It would be extremely
24 difficult; dangerous; unpredictable; unlikely to be permitted; and most likely unsuccessful even if
25 permitted, all as explained in detail by the Applicant's experts (Phillips, McCaughan).

1 75. Alternative 1 would not provide any restoration of the shoreline but would require
2 ongoing maintenance and expense despite offering no environmental benefit.

3 76. Alternatives 2 and 3 therefore become the remaining viable options, with the
4 current option (Alternative 3) having less impact to aquatic areas and producing the least amount
5 of new upland.

6 77. A more complete analysis of each alternative and its relative benefits and
7 disadvantages is found at Table 5.5 of Core Document 14.a.

8 78. As noted earlier, Alternative 3 (the current proposal) would have sand and gravel
9 beach material placed over the gravel bed at a slope of 8:1 extending offshore approximately 100
10 to 150 feet from the Ordinary High Water Mark. In total, this would require an estimated 32,813
11 cubic yards of fill material over approximately 165,000 square feet of aquatic substrate below the
12 Ordinary High Water Mark.

13 79. The site's aquatic areas are known to contain a significant number of shellfish
14 (mostly clams). In 2022, and at the request of the Washington Department of Fish and Wildlife
15 (WDFW), the Applicant conducted a study of shellfish and Submerged Aquatic Vegetation
16 ("SAV") at the project site (Core Document 14.d). This study found that, overall, shellfish on
17 the site seem to appear more frequently in sandy and gravelly sediments (from +5 feet to +8 feet
18 MLLW) instead of fine silty sediments (from 0 feet to +5 feet MLLW). For the area from 0 to
19 +5 feet MLLW, there is an estimated population of shellfish of 2,877,216 clams. For the area of
20 +5 feet to +8 feet MLLW (near the shore) there is an estimated population of 1,715,956 clams
21 (this area has a higher density of clams but consists of a smaller portion of the aquatic area).

22 80. As previously noted, the restoration project proposes the installation of gravel and
23 sandy beach materials on top of the existing substrate in order to establish a new gradually
24 sloping beach reaching to the cut back revetment and then continuing to the uplands, resulting in
25 the placement of approximately 32,000 cubic yards of material below the Ordinary High Water

1 Mark. It is acknowledged that the placement of gravel and sandy materials for the new beach
2 will result in some shellfish mortality (Core Document 14.d).

3 81. The purpose of creating a new sand and gravel beach is to cover the existing
4 armored shoreline with a more natural sand and gravel fill in order to improve intertidal habitat
5 function as well as waterfront access for the public.

6 82. Once the sand and gravel materials have been installed to create the new beach,
7 approximately 2,175 cubic yards of topsoil will be placed over the beach material near the top of
8 the slope and then continue up to the uplands, thus creating a layer of topsoil along the shoreline
9 to allow for the planting of the VCA materials and a new vegetative buffer between the shoreline
10 and the upland development. Below the Ordinary High Water Mark, 8,762 square feet of salt
11 marsh plantings will then be planted. These salt marsh plants may include Pickleweed, Fleshy
12 Jaumea, Puget Sound Gumweed, and Salt Marsh Plantain. Between these new aquatic plants and
13 the new VCA above the shoreline, a transitional planting zone between the two will provide a
14 gradual transition from salt mash habitats to upland habitats and include the planting of Pacific
15 Silverweed, Dechampsia, Willow, and Ocean Spray.

16 83. Placement of the gravel and sand beach material will cause portions of the
17 existing aquatic are to be elevated above the Ordinary High Water Mark, thus creating new
18 upland. It is estimated that the project will create 0.42 acres of new upland as the Ordinary High
19 Water Mark is shifted waterward. As noted in the earlier analysis of alternatives, this outcome is
20 regarded as the minimum necessary to accomplish needed shoreline restoration.

21 84. The project's VCA has been established in accordance with the existing Ordinary
22 High Water Mark. The new uplands created by the shoreline restoration will be waterward of the
23 VCA and will be added to it, creating an additional 12 to 18 feet of VCA, or a total VCA of 42 to
24 48 feet in width along the entire shoreline. No new developable upland will result from the
25 shoreline restoration. The Ordinary High Water Mark will shift to the east.

1 85. The design of the restoration project has been guided by the Engineering With
2 Nature (EWN) set of principles developed by the US Army Corps of Engineers. Following these
3 principles represents the appropriate standard of care and Best Available Science for coastal
4 engineering design and shoreline beach fill restoration and soft shore stabilization systems for
5 Puget Sound beaches. (See Consistency Narrative - Core Document 14.b).

6 86. At its completion, the restoration project will create 3.79 acres of high quality
7 sand and gravel beach with native salt marsh, transitional and riparian vegetation.

8 87. The creation of intertidal beaches, salt marsh and riparian planting will
9 substantially improve substrate quality and enhance ecological functions of existing natural
10 resources and their buffers. The project will provide improved habitat for fish and other natural
11 resources, improve ecosystem services, water quality, and nutrient storage to increase ecosystem
12 stability over time. It will also lead to a substantial improvement to the near shore habitat
13 resulting in a substrate with higher primary productivity of benthic organisms with improved
14 migration and foraging habitat.

15 88. Creation of a gently sloped sand and gravel beach will also provide numerous
16 benefits to important species including Chinook Salmon.

17 89. Overall, the project will result in a net increase in shoreline ecological functions
18 and processes.

19 90. Conceptual drawings depicting the new intertidal beach and VCA in relation to
20 the proposed buildings can be found in the Applicant's Hearing Presentation (Hearing Exhibit 7).

21 Findings Relating to Application Review and Public Comment.

22 91. On March 30, 2021, the City and the Applicant entered into a Development
23 Agreement (the "DA") establishing parameters for the project. The City agreed to a fifteen-year
24 construction timeline in exchange for the Applicant's commitment to complete a robust
25

1 restoration project consistent with the 2016 West Bay Restoration Assessment, and also
2 contribute \$250,000 into the City's Home Fund to support low income housing.

3 92. Following the DA, the Shoreline Permit and Land Use Review Applications were
4 deemed complete on June 10, 2021. A Shoreline Conditional Use Permit was later applied for in
5 December, 2024 when it was recognized that the mixed residential/commercial use of Building
6 2, located within 100 feet of the Ordinary High Water Mark, requires a Shoreline Conditional
7 Use Permit for this portion of the project.

8 93. The City issued the Notice of Land Use Application on June 29, 2021. On July 7,
9 2021, a Project Information Meeting was held with members of the public expressing concerns
10 over traffic, scale of the project, protection of views, building heights, shoreline restoration, and
11 other concerns.

12 94. A review team consisting of 18 City Staff reviewed the application with
13 assistance from the Squaxin Island Tribe, Nisqually Tribe, DAHP, WDFW, Department of
14 Ecology and US Army Corps of Engineers.

15 95. From 2021 to 2026, the project underwent six rounds of review with significant
16 contribution by tribal, State and federal agencies and large numbers of public comments were
17 received (Core Document 20.a). Round one of review was completed September 20, 2021; round
18 two in July, 2022; round three in November, 2023; round four in April, 2025; round five in
19 November, 2025; and round six was completed on December 15, 2025. Most of these reviews
20 were focused on the Shoreline Restoration Program. It is during this review process that the
21 proposed alternative for shoreline restoration (Alternative 3) was recommended over the original
22 design (Alternative 2). It was also during this review that it was realized that a Shoreline
23 Conditional Use Permit would be required.

24 96. Public comments were received throughout the five years of project review.
25 Several hundred community members have participated in review. Ongoing public concerns

1 include the project's scale; traffic impacts; environmental protection; view preservation; and
2 public access to the shoreline. Comments received throughout the process are found in
3 Attachments 20.a through 20.d.

4 97. The City, as Lead Agency, issued a SEPA Determination of Nonsignificance
5 (DNS) on January 27, 2026. The SEPA DNS was timely appealed by OlyEcosystems. The DNS
6 resulted in additional significant public comment, with many commenters expressing the belief
7 that the DNS was issued in error and that an Environmental Impact Statement (EIS) should be
8 issued for the project.

9 98. Following issuance of the SEPA DNS, the Design Review Board (DRB)
10 convened on February 27, 2026, to consider the conceptual design of the project. The DRB
11 proposed several conditions of project approval (Core Document 18.a). These recommendations
12 have been incorporated into Staff's recommended conditions of project approval.

13 99. Public notification of this hearing was issued May 22, 2026, mailed to property
14 owners within 300 feet and to parties of record and recognized neighborhood associations;
15 posted onsite and published in The Olympian on May 23, 2026.

16 100. As noted in the Public Hearing Section, the Notice of Public Hearing resulted in a
17 final round of written comments together (Hearing Exhibits 1 and 2) with oral testimony, all as
18 described more fully in the Public Hearing Section.

19 101. The Applicant provided a detailed response to each oral or written public
20 comment (attached hereto as Attachment 7).

21 Findings Relating to Consistency with the Comprehensive Plan.

22 102. As noted in previous Findings, the site has a Future Land Use Designation of
23 Urban Waterfront in the Comprehensive Plan. The Plan envisions a "compatible mix of
24 commercial, light industrial, limited heavy industrial, and multi-family residential uses along the
25 waterfront". The Land Use Designation Table indicates the area should develop at a minimum

*Findings of Fact,
Conclusions of Law and
Shoreline Decision - 69*

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1 of fifteen units per acre with building heights ranging from three to seven stories. West Bay
2 Drive is identified as an area of transition from waterborne commerce toward a mix of urban
3 uses and habitat improvement. The Plan continues: "The result in mix of uses should form the
4 foundation for a vibrant mix of light industrial, office, restaurant, commercial, recreational, and
5 residential uses that also provide improved habitat for fish and wildlife. Future development and
6 street improvements in this corridor will be consistent with the West Bay Drive Corridor."

7 103. Staff finds that the project, as conditioned, is consistent with its Future Land Use
8 Designation of Urban Waterfront. The Hearing Examiner concurs.

9 104. The Staff Report, commencing at page 7, undertakes a lengthy analysis of the
10 project's consistency with the various goals and policies of the 2021 Comprehensive Plan. Staff
11 finds that the project, as conditioned, is consistent with the Plan's Transportation goals and
12 policies including GTF, PT4.3, and PT9.2; with Shoreline goals and policies PN12-11-F, PN12-
13 11-I, and PN12-11-J; with Parks goals and policies PR4.5, GR5, PR5.2 and PR5.4, and Parks
14 policies PN12.26.D, PN12.26.E and PN12.26.F; with Land Use and Density goals and policies
15 GL1, PL1.2, and PL1.5.

16 105. Several members of the public disagree with Staff's Findings and assert that the
17 project is not consistent with the City's Comprehensive Plan, especially its environmental
18 provisions.

19 106. The Hearing Examiner has reviewed the Staff's Findings relating to the project's
20 consistency with the Comprehensive Plan and concurs with Staff's Findings that the project, as
21 conditioned, is consistent with the goals and policies identified by Staff.

22 Findings Relating to Compliance with Title 16 OMC, Buildings and Construction..

23 107. Pursuant to the DA, the application vests to the 2021 Shoreline Regulations and
24 Zoning Codes.

Compliance with Tree, Soil and Native Vegetation Protection and Replacement, Chapter

16.60 OMC.

108. The project must satisfy the requirements of Chapter 16.60 OMC with respect to tree density and tree protection.

109. The site must provide a minimum of 30 tree units per acre of buildable area. OMC 16.60.080.A.

110. Fifty percent of these trees must be in a Soil and Vegetation Protection Area (SVPA), OMC 16.60.070.d.4, to be held in common ownership by the homeowner's association.

111. Designated trees must mature to a height of seven feet or more with a definite crown. OMC 16.60.020.dd.

112. The Applicant has prepared a Level V Soil and Vegetation Report (Core Document 5.c) dated May 30, 2025. The report concludes that there are 7.24 acres of developable land resulting in a required 217 tree units.

113. The site has been found to currently contain 284.5 tree units but all will be removed as part of site clearance, and replanting will be necessary to achieve the required 217 tree units.

114. As previously noted, the site contains a Vegetation Conservation Area (VCA) along the shoreline which is intended to also serve as the Soil and Vegetation Protection Area where at least fifty percent of the required trees will be placed.

115. The Soil and Vegetation Report does not show an adequate number of trees in the VCA (109 qualifying trees) and it must therefore be revised to increase the number of trees to the required minimum.

116. Trees within the VCA are proposed to be located in two distinct planting areas at the north and south ends of the VCA in order to maintain views through view corridors. It is

1 acknowledged that, as these trees mature, views from the residential units may become impaired
2 by the trees.

3 117. The remainder of the required tree units (108) are to be planted in upland areas
4 throughout the site. Landscape plans suggest that the remaining trees will be planted in
5 containers or tree pits on the roof of the parking garage structure, but Staff finds that the
6 proposed trees do not meet the definition of a "tree" as they either will not grow to a sufficient
7 height or lack a definite crown per OMC 16.60.020.dd.

8 118. Staff therefore finds that the project currently falls short of meeting tree density
9 requirements and has conditioned project approval upon requiring revisions to the landscape
10 plans at the point of engineering permit application to ensure that the proposed trees meet the
11 City's definition of a tree, and that the VCA includes the requisite 109 tree units.

12 119. Staff also remains concerned that trees proposed to be planted in the VCA will
13 lack sufficient soil due to the makeup of soil materials resulting from the Shoreline Restoration
14 Project. Staff therefore is requiring additional detail with future construction level plans to
15 demonstrate that there is sufficient usable soil in these areas.

16 120. Should the final MTCA Cleanup Plan restrict planting of trees in the VCA, this
17 will likely require a major redesign of the development proposal in order to satisfy tree planting
18 requirements. With these conditions, Staff finds that the project will comply with all Tree, Soil
19 and Native Vegetation Protection and Replacement requirements found in Chapter 16.60 OMC.

20 121. The Applicant's landscape consultants state that the soil levels within the VCA
21 will be sufficient to support the proposed vegetation, including trees (Brennan, Phillips).

22 122. The Hearing Examiner concurs with Staff that, as conditioned, the project
23 satisfies the requirements of the Tree, Soil and Native Vegetation Protection and Replacement
24 Ordinance, Chapter 16.60 OMC.

Flood Damage Protection, Chapter 16.70 OMC.

123. Staff notes that almost the entirety of the site is within the AE Flood Zone and is considered a "Special Flood Hazard Area."

124. A portion of the site is also located in a VE Flood Zone which is an area of coastal high hazard associated with high velocity waters from tidal surges.

125. All habitable or occupiable structures must be elevated at least one foot above the Base Flood Elevation (BFE).

126. For beach front and existing riprap revetment, the Base Flood Elevation is 17 feet NAVD 88 (North American Vertical Datum of 1988). For the remainder of the site, the BFE is 15 feet NAVD 88.

127. The ground level of all five proposed buildings is a parking structure and is non-habitable space.

128. The habitable portion of the project must sit at 10 feet above BFE, or at 26 feet NAVD 88. The project has been conditioned to comply with this requirement.

Sea Level Rise Flood Damage Prevention, Chapter 16.80 OMC.

129. The property is located in a Sea Level Rise (SLR) Flood Damage Area.

130. The Applicant has submitted a Flood Zone Recommendations Memo (Core Document 15) addressing how the project will meet Sea Level Rise requirements.

131. The project must be resilient to sea level rise up to 16 feet NAVD 88.

132. The finished first floor elevation is expected to be 26 NAVD 88, or far above the required elevation.

133. As noted earlier, the parking level is non-habitable space and exempt from Sea Level Rise requirements.

134. The site's proposed development includes the placement of approximately 2-3 feet of fill above existing materials. This fill is partially intended as a cap of any prior contamination;

1 and partially as a means of providing necessary soil for all landscape plantings, but also serves to
2 address Sea Level Rise requirements by elevating the site an additional 2-3 feet.

3 135. Staff also notes that the Shoreline Reestoration Project is intended to reduce the
4 impacts of Sea Level Rise by creating a more natural beachfront where wave action is reduced
5 and wave-related damage limited. In addition, the Shoreline Restoration Project includes a
6 backshore berm at the upper end of the proposed beach to mitigate storm surges.

7 136. Staff finds that, as conditioned, the project satisfies all requirements for Sea Level
8 Rise Flood Damage Prevention, Chapter 16.80 OMC. The Hearing Examiner concurs and
9 adopts the Staff's Findings as his own.

10 Findings Relating to Compliance with the Unified Development Code, Title 18 OMC.

11 137. As noted earlier, the project vests to the 2021 Development Code.

12 Development and Commercial Districts, Chapter 18.06 OMC.

13 138. The site's location within the Urban Waterfront zoning designation requires that it
14 comply with the provisions of Chapter 18.06 OMC which are intended to integrate multiple land
15 uses in the waterfront area of downtown.

16 139. The Urban Waterfront zone encourages high-amenity recreation, tourist-oriented,
17 and commercial development which will enhance public access and use of the shoreline, with an
18 emphasis on view preservation of views along the waterfront, with the goal of providing
19 shoreline access to significant numbers of the population.

20 140. The proposed use, as conditioned, is consistent with this intended use in the
21 Urban Waterfront zone.

22 141. Apartments, drinking establishments, offices, health and fitness centers, and retail
23 are all permitted uses in the UW zone.

24 142. The project must comply with the development standards set forth in Table 6.02:
25

1 Setbacks.

2 143. The UW zone has no setback requirements. The project has been designed
3 without a front setback and directly abuts the West Bay Drive right-of-way.

4 Coverage Limits.

5 144. The UW zone allows 100% impervious surface coverage but limits building
6 coverage to 60%.

7 145. Sheet A6.1 of Core Document 2 sets forth the building coverage for each of the
8 buildings and their respective parcels. As shown on that sheet, Building 1 has 34,337 square feet
9 of building resulting in 50% coverage; Building 2 has 46,195 square feet resulting in 67%
10 coverage; Building 3 has 48,233 square feet resulting in 65% coverage; Building 4 has 42,322
11 square feet resulting in 64% coverage; and Building 5 has 29,559 square feet resulting in 40%
12 coverage. Collectively, the five buildings result in 57% building coverage, or below the 60%
13 maximum allowed.

14 146. Building coverage calculations have excluded areas of landscaping and vegetative
15 roof areas on top of the parking garage. City Staff concurs with this approach as the rooftop of
16 the parking garage serves as a pedestrian plaza and, if that plaza was at grade, would be
17 permitted to be covered. Staff adds that this area will serve as open space, further justifying its
18 exclusion from building coverage calculations.

19 147. Staff has conditioned project approval on requiring that all areas to be counted as
20 vegetative roof must have at least four inches of soil and be planted with appropriate vegetation.
21 Synthetic turf will not be allowed.

22 148. The Hearing Examiner concurs with Staff's Findings relative to coverage limits.

23 Height.

24 149. To be approved for an increased building height and/or a reduced limit on view
25 blockage, the project must propose additional amenities over those commonly expected,

1 including a waterfront trail, waterfront park, or expanded trail corridor. When two of these three
2 items are provided, the code allows up to 65-foot building heights and allows view blockage of
3 up to 70%. A request for a bonus height must also demonstrate that at least 20% of the useable
4 building area is dedicated to residential use. The Applicant is asking for the building heights to
5 be increased to the maximum of 65 feet, and with view blockage of 57%, on the basis that it is
6 providing a waterfront trail and, separately, an expanded trail corridor, while the amount of
7 useable building area dedicated to residential use is well in excess of 20%.

8 150. The base height limit in the UW zone is 42 feet.

9 151. Developments may be eligible for height increase up to 65 feet provided the
10 criteria set forth in OMC 18.06.100.8.2.c are all met.

11 152. Determining whether the project qualifies for a height bonus is intertwined with
12 an analysis of its provisions for view corridors, as heights of building and views are related.
13 Building heights can be increased, and view corridors can be decreased, if the ultimate impact to
14 public views is offset by increased public amenities.

15 153. Commencing at page 12 of the Staff Report and continuing to page 15, Staff
16 undertakes a detailed analysis of the interaction between the project's compliance with the
17 requested height bonus; its provisions for view corridors, and how these are offset by public
18 amenities including the proposed waterfront trail and the proposed expanded waterfront trail
19 corridor.

20 154. The required width of view corridors is determined by OMC 18.06.100.A.2.c.v.
21 This table allows percentage of view blockage to range from 45% to 70% depending on the types
22 of public amenities offered in exchange.

23 155. The Applicant has provided a View Study Narrative (Core Document 4.e) and a
24 View Corridor Diagram (Sheet A1 and A15 of Core Document 2). While the code limits view
25

1 blockage to 70% (or 30% open views), the Applicant's View Narrative demonstrates that it will
2 result in view blockage of 57%, or well below the 70% maximum allowed.

3 156. The Applicant's View Narrative also explains how the buildings and their related
4 view corridors have been positioned so that the view corridors achieve the greatest public benefit
5 by being aligned with uphill streets on the west side of West Bay Drive. In other words, view
6 corridors have been located where the public is most likely to view the property from across
7 West Bay Drive (see Sheet A1 and A15 of Core Document 2).

8 157. In order to offset the requested increased height and the view corridors, the
9 Applicant is proposing both a waterfront trail and an "expanded waterfront trail corridor". As
10 noted in earlier Findings, the waterfront trail is to be located along the north and south portions
11 of the project site and have a standard width of 12 feet with 1 foot of shoulder on each side. The
12 trail will connect to West Bay Drive at both ends, with the entry points designed to avoid
13 unnecessary interaction with vehicles. The trail will be ADA Compliant.

14 158. Located between the north and south sections of the proposed waterfront trail will
15 be the "expanded waterfront trail corridor". It will run along the entire length of the east side of
16 the property and be 20 feet in width with 1 foot of shoulder on each side. Staff notes that this
17 width is significantly greater than City requirements.

18 159. In addition, the expanded waterfront trail corridor will provide access to a kayak
19 launch, several paths to the beach, and pedestrian resting areas including seating walls and
20 benches placed along the trails and down to the shoreline edge. Artists renderings of the
21 expanded waterfront trail corridor and its relation to the shoreline and to the proposed buildings
22 are found in the Appellant's Hearing Presentation (Hearing Exhibit 7).

23 160. The expanded trail corridor will also serve as a fire apparatus access road. As a
24 result, this portion of the trail must be designed to meet the International Fire Code Standards
25 and must be designed as a drive aisle for fire apparatus vehicles. This portion of the trail must

1 not be put to any use that would impede fire operations. Vehicular traffic, parking, benches, and
2 other amenities will not be permitted on this section of the trail.

3 161. Staff notes some concern where the north waterfront trail connects to the
4 expanded waterfront trail corridor, as this is the location where vehicles will be exiting the
5 parking garage; the solid waste compactors are located; and the pedestrian/bike trail and the fire
6 truck access point all use the same site. Conditions of approval have been added to ensure that
7 final plans assure the safety and compatibility of all uses at this location.

8 162. Staff has is also concerned about the long term maintenance of the trail, especially
9 the portion being used for emergency operations. Project approval has been conditioned on the
10 Applicant assuming perpetual responsibility for its maintenance, and a Maintenance
11 Acknowledgement Memo (Core Document 4.c) has been submitted.

12 163. City Staff finds that the proposed waterfront trail, together with the expanded trail
13 corridor, provide sufficient justification for the requested bonus height to 65 feet and view
14 blockage of 57%, recognizing that the project proposes residential use of the buildings far in
15 excess of 20% of the usable building area. Thus, all requirements have been satisfied. The
16 Hearing Examiner concurs and adopts Staff's Findings as his own.

17 164. As noted earlier, the point at which "grade" has been established for calculating
18 the building height is at a point roughly halfway between the upper and lower elevation of the
19 parking garage as demonstrated on Sheet A.6.2. This calculation of the site's grade level has not
20 been challenged and is accepted by the Hearing Examiner.

21 165. The development code allows some deviation from maximum building height for
22 elevator shafts and other rooftop features, but shoreline regulations impose stricter requirements
23 for maximum building height and require a demonstration that any increased height will not
24 affect views from a substantial number of properties. Should the Applicant seek a deviation
25 from the maximum 65-foot limit for such features, it will need to demonstrate that the

1 requirements of the development code as well as the Shoreline Master Program have been
2 satisfied. This includes use of the roof for outdoor space.

3 166. The requested bonus height and view corridors must also satisfy all requirements
4 of the Shoreline Master Program. Their compliance with these requirements is discussed in later
5 Findings.

6 Findings Relating to Cultural Resources, Chapter 18.12.

7 167. The project must demonstrate the protection of cultural resources pursuant to
8 Chapter 18.12 OMC.

9 168. The Staff Report indicates that there has been early and ongoing consultation
10 between the City and the Nisqually and Squaxin Tribes, along with the Department of
11 Archaeology and Historic Preservation (DAHP) to assure the protection of cultural resources.
12 Comments were received from the Squaxin Tribe and DAHP regarded needed modifications to
13 the project as well as recommended conditions of approval to ensure cultural resources have
14 been protected.

15 169. A DAHP Excavation Permit will be required for the site prior to any upland site
16 disturbing activities, while a Department of Army Permit, issued by the US Army Corps of
17 Engineers, is required before shoreline restoration work. As part of each of these permit review
18 processes, additional historic preservation and cultural resource review and consultation will
19 occur.

20 170. The Hearing Examiner concurs that, subject to these conditions, the requirements
21 of Chapter OMC 18.12 have been satisfied.

22 Findings Relating to Compliance with Critical Areas Regulations.

23 171. The project must demonstrate compliance with all critical areas regulations as
24 provided in Chapter 18.32 OMC.

1 172. In support of the project, the Applicant has provided a Critical Areas Report (the
2 "Critical Areas Report") and an Important Habitats and Species-Habitat Management Plan (the
3 "Habitat Management Plan"), both of which are authored by Scott Maharry, Senior Biologist for
4 Grette Associates and found at Core Document 10. Mr. Maharry testified at length regarding
5 these documents and their conclusions.

6 173. There are no critical areas located on the upland portions of the project site.

7 174. There is a small (0.11 acre) wetland southwest of the site, across West Bay Drive;
8 and Schneider Creek is north of the project site, both of which will be examined in subsequent
9 Findings.

10 175. The site is within 1,000 feet of estuarine and marine habitats. The Habitat
11 Management Plan finds:

12 • The site does not provide supporting habitat for Puget Sound Chinnoek salmon,
13 but juvenile Chinnoek Salmon may use the area to reach more favorable habitats.

14 • Juvenile Coho and Chump salmon are likely to be present at this site, but only
15 during times of the year that are outside the site's authorized in-water work window.

16 • Pink salmon are not likely to be present at the site at any time.

17 • Juvenile steelhead may move rapidly throughout the site between March and June
18 but are not expected to be present during the approved in-water work window. Small numbers of
19 adult steelhead could pass through the site at any time of the year, but only in small numbers.

20 • Great Blue Herons likely utilize the mud flat habitat during periods of low tide for
21 foraging, and are likely to be found on or near the site year round. Two rookeries have been
22 identified near the project site but are west of West Bay Drive along the forested sloped above
23 the road, and approximately 720 feet southwest of the southwest corner of the subject property.
24 This places the rookeries outside the 200-foot year round buffer as well as the 300-foot seasonal
25 buffer (or a total of 500-foot buffer imposed by OMC 18.32.320).

1 ● Other important species such as surf smelt, killer whales, humpback whales,
2 marbled murrelet, and other important birds, bats, etc., are not believed to utilize the site or be
3 found within 1,000 feet of the property.

4 ● With the exception of the Great Blue Heron Rookeries located approximately 720
5 feet from the site, no other important species are believed to be found within 1,000 feet of the
6 site's upland areas.

7 Birds.

8 176. The Staff Report, as well as the Habitat Management Plan, recognize that the
9 project site provides shellfish food for Heron and other birds, while Purple Martin have been
10 observed onsite and a large variety of birds habit the area.

11 177. To improve conditions for birds, the design of the VCA includes perch poles for
12 marine birds and nesting boxes for Purple Martins and others.

13 178. Of greatest concern to birds are the hazards posed by the buildings' glass. Birds
14 are generally unable to distinguish glass resulting in "bird strikes" that are often fatal, especially
15 at greater heights.

16 179. The South Sound Bird Alliance recommends that the project install "bird glass"
17 on the north and south sides of each building to aid birds in seeing the glass and avoiding its
18 contact. (Core Document 20).

19 180. The Applicant initially expressed opposition to the use of bird glass. Its "Bird
20 Strike Memo", Core Document 10.c, references the U.S. Fish and Wildlife recommendations for
21 reducing bird collision (Core Document 23.b) and suggests a "wait-and-see" approach that would
22 monitor bird mortality following building construction and make adjustments if mortality was
23 significant.

1 181. City Staff disagrees with the Applicant's suggestions while also finding that the
2 Bird Alliance's recommendations do not go far enough to protect birds. Instead, City Staff
3 recommends that bird glass be installed on all sides of each building and at all floors.

4 182. More recently, the Applicant no longer objects to the use of bird glass but its
5 consultant, Mr. Maharry, believes that its use should be limited to the first three floors, noting
6 that bird strikes are usually the result of birds seeing vegetation reflected in the glass, and that the
7 site's landscaping will generally not reach above three floors and therefore not be reflected in its
8 glass.

9 183. In response, City Staff refers to the American Bird Conservancy Website which
10 indicates that bird fatalities occur at all levels of buildings and on all sides, with resulting
11 fatalities increasing at higher floors due to the fall distance.

12 184. City Staff therefore proposes Condition #8 requiring the use of bird friendly glass
13 or window treatments for all exterior facing windows and which follow the recommendations of
14 the U.S. Fish and Wildlife Services Migratory Bird Program. In addition, balconies and railings
15 made of glass or see through material must also meet this design standard.

16 185. The Hearing Examiner concurs with Staff's Findings relative to the need to
17 robustly protect birds from bird strikes, and therefore concurs with its proposed recommendation
18 that bird friendly glass be applied on all floors and on all sides.

19 Shellfish.

20 186. At the request of WDFW, Grette Associates prepared an "Intertidal Shellfish and
21 Submerged Aquatic Vegetation Survey Report" (Core Document 14.d) (the "Shellfish Report").
22 This report concludes that there are several million shellfish (mostly clams) located in the
23 offshore sediments on the project site.

24 187. Existing shellfish populations are believed to be located in contaminated
25 sediments and are therefore prohibited from human harvesting.

1 188. Existing shellfish are an important food source for Heron and other birds, but this
2 is currently a contaminated food source.

3 189. The Shoreline Restoration Project proposes to place a large amount of gravel and
4 sand over the existing shellfish beds. Mr. Maharry acknowledges that this process will lead to
5 some shellfish mortality. To the extent that mortality occurs, other similar projects have
6 demonstrated that shellfish populations will recover quickly - perhaps in as little as a month.

7 190. Once the project is completed, onsite shellfish populations will now be located in
8 a clean seabed and become safe for human consumption and a safer food source for birds.

9 191. A more complete discussion of shellfish is included in the Appeal Decision.

10 Geologically Hazardous Areas.

11 192. The Staff Report, at page 29, notes that the project site is generally unstable due
12 to legacy fill materials as described in detail in the Applicant's Geotechnical materials (Core
13 Document 8).

14 193. Seismically induced soil liquefaction could cause 5 to 10 feet of lateral spreading,
15 requiring deep foundations.

16 194. The Applicant proposes to install site-wide ground improvements to transform the
17 current weak soils to a stiffened, more uniform material capable of supporting structures. Pilings
18 are also likely needed. At the conceptual level, City Staff finds that these approaches are
19 acceptable and constitute Best Management Practices for the site's soil conditions. The Hearing
20 Examiner concurs.

21 195. The project's detailed design plans must include a more detailed Geotechnical
22 Report to be submitted with engineering building permits.

23 Streams.

24 196. The Critical Areas Report identifies Schneider Creek as being located
25 approximately 300 feet north of the project's north boundary line.

1 197. Fish bearing streams require a 250-foot buffer. The project site is therefore
2 outside of the required stream buffer.

3 198. Several public commenters have expressed concern that there may be a greater
4 relationship between the project site and Schneider Creek through groundwater flows, but Mr.
5 Maharry concludes that there is no relationship between the project site and Schneider Creek.

6 Wetlands.

7 199. The Critical Areas Report identifies a small wetland near the southwest corner of
8 the project site on the opposite side of West Bay Drive. The location of this wetland is identified
9 on a map found in Appendix A to the Critical Areas Report ("Wetland A").

10 200. Wetland A is a Palustrine Forested/Emergent (PFO/EM), seasonally flooded
11 wetland approximately 0.11 acres in size. It is located at the base of a shallow ravine west of the
12 project site across West Bay Drive.

13 201. Wetland A is categorized as a Category III wetland with five habitat points and
14 therefore subject to a 140-foot buffer. OMC 18.32.535.

15 202. The standard 140-foot buffer would extend across West Bay Drive and into the
16 project near its southwest corner, but Wetland A is functionally separated from the project site by
17 West Bay Drive and its buffer therefore does not extend east of West Bay Drive. OMC
18 18.37.070.

19 203. A single-family residence is located a few feet to the south of Wetland A, while
20 several professional buildings are located a short distance to the north. Much of the immediate
21 area to the west is in hillside forest, while further west and uphill are residential neighborhoods.

22 204. There is an existing streetlight along West Bay Drive approximately opposite
23 Wetland A, with continuous streetlights north and south providing continuous illumination of
24 West Bay Drive in the area of the project site.

1 205. OlyEcosystems and various public commenters have expressed concern that the
2 project could indirectly impair the functions of Wetland A through its noise, lighting and
3 increased traffic. But these commenters have not identified what noise would emanate from this
4 largely residential project that is different or greater than existing noise from current traffic and
5 nearby residential and commercial properties, nor have commenters identified how this project's
6 lighting (which invokes "Dark-Sky" policies) will be significantly different or greater than
7 current lighting impacts from adjoining streetlights and nearby residential/commercial property.
8 Commenters have expressed concern that added traffic could lead to a greater number of
9 interactions between the wetland's wildlife, but the project's elevated crosswalks are expressly
10 designed to slow traffic and thereby reduce the likelihood of wildlife/vehicle interaction.

11 Findings Relating to Landscaping Requirements, Chapter 18.36 OMC.

12 206. The Applicant has provided conceptual Landscaping Plans (Core Document 5).

13 207. As noted in earlier Findings, the Applicant proposes to place 2-3 feet of soil
14 across the project site to serve as an additional cap; aid in sea level rise; and provide the
15 appropriate medium for landscaping.

16 208. As also noted in earlier Findings, the Applicant proposes to utilize the tops of all
17 parking garage areas as landscaped open space, thus avoiding its inclusion when calculating
18 maximum surface coverage.

19 209. Staff notes that the Landscape Plans identify rooftop areas as having 4 inches of
20 soil. This is sufficient to provide groundcover but not shrubs and trees. City Staff finds that use
21 of groundcover on these parking areas to be acceptable.

22 210. As noted in earlier Findings, Staff remains concerned that the Applicant has not
23 demonstrated adequate soil depth for required trees, both inside and outside of the VCA. The
24 Applicant will be required to demonstrate sufficient soil depths for all required trees at time of
25 construction plans.

1 Findings Relating to Vehicular and Bicycle Parking Standards, Chapter 18.38 OMC.

2 211. As noted earlier, the project vests to 2021 development regulations, including
3 parking standards found under Chapter 18.38 OMC.

4 212. Under the 2021 standards, the project requires 676 parking spaces for residential
5 use.

6 213. Under current parking regulations, the project would require 239 only spaces.

7 214. In total, 2021 parking regulations require the project to have 819 parking stalls.

8 215. The project provides 823 parking stalls including 711 stalls in the lower level
9 parking and 112 stalls in the plaza level parking. Proposed parking therefore satisfies the 2021
10 parking requirements and is well in excess of current parking requirements.

11 216 Bicycle parking requirements have not changed since 2021. The Applicant
12 proposes 401 long term bicycle stalls and 62 short term bicycle stalls. At the conceptual stage,
13 City Staff finds these numbers of bicycle stalls to be in compliance with the bicycle parking
14 standards.

15 217. The Hearing Examiner concurs with the Staff's Findings relating to parking.

16 Findings Relating to Design Review, Chapter 18.100 OMC.

17 218. The Staff Report, commencing at page 30, notes that the project is subject to the
18 design requirements of Chapter 18.110 OMC - Basic Commercial and Chapter 18.155 OMC -
19 West Bay Drive District. In combination, these two ordinances impose 24 design criterial
20 applicable to the project. The project's compliance with these design criteria is set forth in Core
21 Document 18. The Design Review Board has recommended project approval subject to several
22 conditions relating to design including:

- 23 ● Enhanced view preservation of existing outstanding scenic views. OMC
24 18.110.060.

1 ● Utilizing district-specific architectural character to the buildings while ensuring a
2 pedestrian scale. OMC 18.155.

3 219. With these criteria in mind, the DRB has recommended the preservation of views
4 from the West Bay Drive right-of-way through view corridors as well as by use of the public trail
5 surrounding the project. Additional conditions of approval include enhancing the pedestrian
6 scale and specific architectural aesthetic. Planning Staff have incorporated these
7 recommendations into conditions of project approval.

8 Findings Relating to Compliance with the Engineering Design and Development
9 Standards (EDDS) and the Drainage Design and Erosion Control Manual (DDECM).

10 220. The Applicant has the burden of demonstrating that the project is in compliance
11 with the Engineering Design and Development Standards (EDDS) and the Drainage Design and
12 Erosion Control Manual (DDECM), as well as other provisions of the OMC and applicable State
13 regulations with respect to transportation, frontage improvements, solid waste, sewer, water and
14 storm drainage.

15 Transportation.

16 221. The project must comply with the concurrency requirements of the Growth
17 Management Act with respect to transportation. Concurrency is evaluated through the City's
18 concurrency program as well as through Appendix 7 of the EDDS (Traffic Impact Analysis
19 Guidelines for New Developments).

20 222. The Applicant provide an initial Traffic Impact Analysis (TIA) prepared in
21 February, 2022. That analysis generated considerable public concern that its analysis was
22 undertaken during Covid and that many of its conclusions were skewed as a result. In response,
23 the Applicant has provided a Supplemental Traffic Analysis (the "Technical Review Summary")
24 (Appellant's Exhibit 9) dated May 20, 2026, and authored by a different traffic engineer. In
25 addition, the TIA for the proposed West Bayviews Landing senior living apartments, prepared by

1 a third traffic engineer, has been provided as it offers insight into this project (Hearing Exhibit
2 6). Each of these TIA's is analyzed below.

3 2022 TIA.

4 223. The 2022 TIA was initially prepared in May, 2021 by SCJ Alliance. City
5 comments were issued September 3, 2021, and the final TIA was approved by Dave Smith,
6 Senior Traffic Engineer for the City in February, 2022.

7 224. The 2022 TIA was conducted during the Covid 19 pandemic when regional traffic
8 volumes were generally lower. This has raised various questions about the analysis found in the
9 TIA.

10 225. Traffic counts used in the original TIA were obtained from the City and consisted
11 of data collected between 2015 and 2019, relying upon weekday PM peak period counts (4:00
12 p.m. to 6:00 p.m.).

13 226. Traffic counts were undertaken at seven nearby intersections: Brawne Avenue
14 NW and West Bay Drive; Harrison Avenue NW and Division Street NW; Harrison Avenue NW
15 and West Bay Drive NW; 4th Avenue SW and Olympic Way NW; 4th Avenue SW and Siemens
16 Street SW; Olympic Street SW and Deschutes Parkway SW; 5th Avenue SW and Seimens Street
17 SW.

18 227. The 2022 TIA then calculated the project's expected vehicle trips to determine if
19 these trips would impact Levels of Service (LOS) at any of the seven studied intersections. The
20 Traffic Engineer concluded that the project would generate 250 new trips in the PM peak hour.

21 228. Relying upon the estimated PM peak hour trips generated by the project, the TIA
22 analyzed the before/after consequences of the project to the seven intersections. The TIA
23 concludes that the inclusion of the project does not significantly impact the LOS at any of the
24 seven intersections, and that all seven intersections will continue to have an LOS of D or better
25 as required by the City. The TIA concludes:

*Findings of Fact,
Conclusions of Law and
Shoreline Decision - 88*

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1 "At full occupancy and operation, the project is estimated to generate 250 trip ends
2 during the PM peak hour. An evaluation of the existing 2020 and project opening
3 year (2027) with and without the project traffic was performed. All of the study
4 intersections currently operate within the City of Olympia Level of Service
5 standard and are projected to continue to remain within the adopted Level of
6 Service standard."

7
8 229. Dave Smith, the City's Senior Traffic Engineer, reviewed the TIA, found it to be
9 properly prepared, and concurred with its conclusions.
10

11 2026 Supplemental TIA.

12 230. Since the initial TIA was approved in 2022, a significant number of individuals
13 have voiced doubts as to its accuracy. Commenters believe that it undercounts traffic volume
14 along West Bay and in the general area, and that it finds the LOS at the West Bay Drive/Harrison
15 Avenue roundabout to be much higher than actual conditions suggest.
16

17 231. In response to these many public comments questioning the accuracy of the 2022
18 TIA, the Applicant arranged for a Supplemental TIA to be performed by a different traffic
19 company and different traffic engineer. Aaron Van Aken, a professional traffic engineer with
20 Heath & Associates, was retained to perform a Technical Review Summary of the 2022 TIA.
21 His Review Summary was completed on May 20, 2026 (Applicant's Exhibit 9) (the "2026
22 Supplemental TIA").
23

24 232. The 2026 Supplemental TIA begins by comparing current PM peak hour counts at
25 the seven intersections with the counts obtained in 2020. Mr. Van Aken's traffic count concludes
that the PM peak hour count at each of these seven intersections has *decreased* from 2020 to
2026, with the decrease ranging from 3.5% at the Harrison Avenue/Division Street intersection,
to 29.5% at Olympic Street/Deschutes Parkway (Table 1 to Appellant's Exhibit 9).

233. Mr. Van Aken was then asked to review the 2022 TIA's calculation of PM peak
hour trips for this project (250 trips). Mr. Van Aken concludes that a current calculation of the

1 project's PM peak hour trips would be measured slightly differently than was done in 2022 but,
2 nonetheless, that the resulting calculation of 250 PM peak hour trips remains accurate.

3 234. Mr. Van Aken then applied the project's PM peak hour trips to the seven
4 intersections, taking into consideration each intersection's reduced PM peak hour travel since the
5 earlier TIA. Mr. Van Aken generally concurs with the earlier TIA's findings regarding Levels of
6 Service at each of the seven intersections. Mr. Van Aken finds that the LOS at the Harrison
7 Avenue/Division Street intersection would be slightly worse than found in the 2022 TIA (LOS D
8 instead of LOS C) and the LOS at 4th Avenue/Olympic Way would also be slightly worse (LOS
9 B instead of LOS A) but these differences are minor and inconsequential, as all seven
10 intersections would have an acceptable LOS of D or better. Perhaps most importantly, the
11 roundabout at Harrison Avenue/West Bay Drive would continue to have an LOS A.

12 235. Mr. Van Aken then extended his analysis into the future to calculate future LOS
13 at the seven intersections in 2033, taking into consideration other development in the area and a
14 general growth in traffic. His conclusions are found in Table 4 of the 2026 Supplemental TIA.
15 Mr. Van Aken concludes that, with the addition of the project, together with other projected
16 growth in traffic, the expected LOS at all seven intersections will remain at LOS D or better and
17 thus satisfy City requirements for traffic. Once again, the LOS for the Harrison Avenue/West
18 Bay Drive roundabout remains good (LOS B).

19 236. In summary, Mr. Van Aken's Supplemental Analysis concludes that all of the
20 findings in the 2022 TIA remain accurate:

21 "Based on the updated information and analysis, the surrounding roads and study
22 intersections continue to operate within the City's adopted concurrency and Level of
23 Service (LOS) standards with the proposed development in place."
24
25

1 West Bayviews Landing TIA.

2 237. During the public hearing, Dave Smith, Senior Traffic Engineer for the City,
3 testified in regard to the 2022 TIA and confirmed that he had found its analysis accurate. Mr.
4 Smith acknowledged, however, that the 2022 TIA did not take into consideration the proposed
5 "West Bayviews Landing Senior Living Apartments" project proposed for the property
6 immediately north of the project site. This was for the simple reason that, when the 2022 TIA
7 was performed, the West Bayviews Landing project had not yet been presented to the City.
8 Since then, the West Bayviews Landing application has been submitted to the City and proposes
9 a development of up to 263 attached senior housing dwelling units in four buildings.

10 238. Mr. Van Aken's 2026 Supplemental TIA also fails to include an analysis of the
11 West Bayviews Landing project as his Supplemental Report was limited to the issues raised in
12 the 2022 TIA. Nonetheless, Mr. Van Aken explains that the projected traffic from this project
13 would fall within the traffic growth he has incorporated into his 2033 analysis, and thus is
14 included in this way.

15 239. Mr. Smith alerted the parties that the West Bayviews Landing project had
16 undertaken its own TIA (Hearing Exhibit 6) and a copy was made available to the parties. The
17 "West Bayviews Landing TIA".

18 240. The West Bayviews Landing TIA was undertaken by a third, independent traffic
19 engineer, Prabha Pratyaksay, a professional traffic engineer with TENW. Perhaps what is most
20 important about the West Bayviews Landing TIA is that it *does* include this project in its traffic
21 calculations. Stated differently, while this project's 2022 TIA and the 2026 Supplemental TIA
22 do not directly include the West Bayviews Landing project in their calculations, the West
23 Bayviews Landing TIA expressly includes the West Bay Yards project in its calculations.

24 241. The West Bayviews Landing TIA calculates that project to have a peak PM
25 vehicle count of 74 new trips.

1 242. Taking into consideration the 74 trips generated by the West Bayviews Landing
2 project, coupled with the trips to be generated by this project, the TIA concludes that the
3 combination of projects will not cause any applicable intersection LOS to fall below allowed
4 levels. This includes the roundabout at Harrison Avenue and West Bay Drive.

5 243. In summary, these three traffic analyses, undertaken at different times, by
6 different independent traffic engineers, and for different purposes, all reach the same conclusion
7 that Levels of Service at important nearby intersections, especially the Harrison Avenue/West
8 Bay Drive roundabout, will not fall below accepted standards even if the West Bayviews
9 Landing project is also constructed.

10 Other Traffic Issues.

11 West Bay Drive/Harrison Avenue Roundabout.

12 244. Public concerns have frequently focused on the West Bay Drive/Harrison Avenue
13 roundabout and a general perception that it develops unusually long queuing lines, especially
14 shortly before 5:00 p.m. Members of the public are concerned that this problem will only worsen
15 with the project.

16 245. Mr. Van Aken responds to these concerns by noting that the evidence suggests
17 longer queuing at the roundabout shortly before 5:00 p.m. but that this extended queuing is brief
18 in duration. When the roundabout is measured during the full two hour PM peak period (4:00
19 p.m. to 6:00 p.m.) the queuing quickly abates and the roundabout performs as intended. Mr. Van
20 Aken adds that it is difficult to design traffic systems to accommodate very brief periods of
21 excess traffic as this would be unusually expensive to accomplish and would result in large
22 amounts of excess capacity at considerable cost as well as environmental impacts.
23
24
25

1 Roadway Capacity.

2 246. Several public commenters have expressed the belief that West Bay Drive is
3 currently operating above its intended capacity and that this problem will only exacerbate this
4 capacity issue. Mr. Van Aken responds that the 2005 West Bay Corridor Study projected that
5 West Bay Drive would accommodate 17,600 vehicles per day. The 2022 TIA forecasts that,
6 including West Bay Yards, traffic volume on West Bay Drive would be up to only 12,585
7 vehicles per day, or well below what the 2005 Corridor Study found acceptable. Mr. Van Aken's
8 updated traffic counts find even lower traffic counts than those relied on in the 2020 TIA,
9 suggesting that West Bay Drive has even greater capacity than found in the 2022 TIA.
10

11 Traffic Mitigation.

12 247. Traffic mitigation for the project has three components: (1) frontage
13 improvements; (2) pedestrian crossing; and (3) traffic impact fees.

14 Frontage Improvements.

15 248. As part of the project, frontage improvements will be required along the entire
16 length (950 feet) of the project including a new 10-foot sidewalk, 8-foot planter strip, 5-foot bike
17 lane; and 11-foot travel lane. In addition, these improvements trigger improvements in
18 stormwater management for this portion of West Bay Drive, resulting in improved collection and
19 filtering of stormwater.
20

21 Pedestrian Crossing.

22 249. A pedestrian crossing is proposed at the Woodard Avenue NW trailhead. At this
23 crossing, there will be a pedestrian refuge island intended to allow pedestrians to cross West Bay
24 Drive in two stages. Additional street crossings will be provided near the south end and the
25 north end of the development and allow access to the existing sidewalk on the west side of West

1 Bay Drive. These improvements are shown on the diagram found on page 11 of the 2026
2 Supplemental TIA (Applicant's Exhibit 9).

3 250. Several public commenters have expressed concern that current vehicle speeds
4 along West Bay Drive are excessive and that this project will simply cause additional traffic at
5 excess speeds. In response to this concern, the three pedestrian crossings are all designed with
6 elevated crossing levels ("speed tables") having three benefits: they will cause vehicle traffic to
7 slow to a more desirable speed; will improve pedestrian visibility and safety; and will enhance
8 multi-modal operations. To the extent that they reduce speed to desired levels, they will have the
9 additional, indirect benefit of avoiding wildlife collisions.
10

11 Impact Fees.

12 251. The project will be subject to traffic impact fees which will be calculated at the
13 rates in effect at the time of building permit issuance. Presently, the project is estimated to
14 generate residential traffic impact fees of \$1,163,452, with additional commercial traffic impacts
15 fees to be assessed based upon final tenant occupancies and land use classifications.

16 252. The proposed elevated pedestrian crossings require a deviation from the EDDS
17 standards. The Applicant has requested this deviation and the request is supported by the City
18 Engineer. There has been no appeal of the deviation.
19

20 Solid Waste.

21 253. The project must comply with Chapter 8 of the EDDS with respect to solid waste.
22 The Staff Report, at page 32-33, analyzes the project's compliance with solid waste requirements
23 and finds that the project, as conditioned, satisfies these requirements. The Hearing Examiner
24 concurs.
25

1 Sewer.

2 254. The project must satisfy the requirements for sewer found in Chapter 7 of the
3 EDDS. The City finds that the sewer system has capacity for this project's anticipated sewage
4 discharge. The project will be required to connect to the existing sewer system in West Bay
5 Drive. Plans demonstrate conceptual compliance with sewer requirements.

6 Water.

7 255. The project must comply with required water facilities in accordance with
8 Chapter 6 of the EDDS. Staff finds that the City has capacity for the development's domestic
9 water and fire suppression needs. The project will connect to the existing water system in West
10 Bay Drive. In addition, a new water main will be installed under the pedestrian trail wrapping
11 the site to allow for improved flow. All requirements of Chapter 6 are therefore satisfied.

12 Storm Drainage.

13 256. The project must be shown to provide for the treatment, storage and disposal of
14 surface drainage through a storm drainage system designed to the current Drainage Design and
15 Erosion Control Manual (DDECM) for the City (the "Manual") as well as Chapter 5 of the
16 EDDS.
17

18 247. As explained by the Applicant's stormwater engineer, Whitney Holm, the
19 Applicant has provided a Preliminary Drainage Design set forth in its Preliminary Drainage
20 Report (Core Document 11.a).
21

22 258. As explained in Ms. Holm's testimony, the preliminary stormwater design
23 provides for a 2-pronged approach to stormwater management: "clean" stormwater coming from
24 rooftops will be allowed to join existing stormwater coming from West Bay Drive and
25 neighborhoods to the west and flow directly to West Bay. All remaining stormwater, including

1 along the project's improved portion of West Bay Drive, will flow to three modular stormwater
2 facilities where stormwater will be collected. Pollutants, including 6 PPD-q, will be filtered and
3 captured before stormwaters are then discharged. The system's design includes current best
4 available science as well as Best Management Practices, and will capture 6 PPD-q to the best
5 means currently possible.

6 Findings Relating to Compliance with the Shoreline Master Program.

7 259. Portions of the development are within 200 feet of the Ordinary High Water
8 Mark of West Bay and therefore the project must comply with the City's Shoreline Master
9 Program (SMP) as well as the Shoreline Management Act (SMA), Chapter 90.58 RCW, and
10 WAC 173-27-150.

11 260. As previously noted, the upland portion of the project site has a Shoreline
12 Environmental Designation (SED) of Urban Intensity. The purpose of this SED is to provide for
13 high intensity water-oriented commercial, transportation, industrial, recreational, and residential
14 uses, while protecting existing ecological functions, and restoring ecological function in areas
15 that have been previously degraded. It is also intended to provide public access and recreational
16 uses oriented toward the waterfront.

17 261. The aquatic portion of the project site has an SED of Aquatic. The purpose of this
18 SED is to protect, restore and manage the unique characteristics and resources of the areas
19 waterward of the Ordinary High Water Mark.

20 262. Staff finds that the project, as conditioned, is consistent with both shoreline
21 designations. The Hearing Examiner concurs.
22
23
24
25

1 Findings Relating to No Net Loss.

2 263. Like all shoreline uses and development, this project must be located, designed,
3 constructed and maintained in a manner that maintains shoreline ecological functions and
4 processes, and results in "no net loss" of these functions and processes.

5 264. A No Net Loss Analysis requires a before/after examination, comparing the site's
6 current shoreline functions and processes with conditions after the project is completed.

7 265. The site's current shoreline functions and processes have been described at length
8 in earlier Findings; the testimony of several witnesses, and various habitat reports including the
9 Shoreline Restoration Design Report (Core Document 14.a); the Restoration and Mitigation Plan
10 (Core Document 14.b); the Consistency Narrative (Core Document 14.b); and various other
11 documents including the Critical Areas Report (Core Document 10.a) and the Important Habitat
12 and Species-Habitat Management Plan (Core Document 10.b), all of which have been previously
13 discussed. Briefly: the upland portions of the shoreline above the existing steep revetment are
14 covered in asphalt and crushed concrete and have no vegetation except for a few small, sparse
15 trees and shrubs growing up through the crushed concrete and asphalt surfacing. Habitat quality
16 on these upland portions is low, with very little foraging opportunity. Past these uplands, the
17 riparian area is entirely dominated by a steep, bouldered revetment with no vegetation and little
18 or no habitat function. At the base of the riprap, the substrate consists of gravel and shell hash
19 mixed with 200 creosoted pilings, large amounts of concrete debris from an earlier rail trestle
20 and other debris. There is no Submerged Aquatic Vegetation (SAV) and no foraging
21 opportunities for either juvenile or adult salmonids. The mud flats contain a significant quantity
22 of shellfish, mostly clams, but these shellfish are located in contaminated sediments and cannot
23 be harvested by humans.
24
25

1 266. The proposed Shoreline Restoration Project is described in previous Findings,
2 testimony and the various reports. Restoration begins with the removal of all creosote-treated
3 pilings, concrete debris and other assorted debris currently located below the Ordinary High
4 Water Mark. Once all debris has been removed, the entire face of the existing shoreline
5 revetment will be cut back and extend 18 feet landward, resulting in an 8-foot wide bench at +17
6 feet NLLW. Approximately 2,175 cubic yards of clean topsoil will be imported and placed in
7 the cut back at a 4:1 slope and continue up to meet the fill placed on the upland portion.
8 Approximately 7,290 cubic yards of gravel fill will then be placed along the face of the existing
9 riprap slope below the cut back and extending offshore to a slope of 4:1. This material provides
10 a base for the placement of the final beach materials. Approximately 32,000 cubic yards of sand
11 and gravel and beach material will then be placed below the Ordinary High Water Mark over the
12 gravel bed at a slope of 8:1, extending offshore from the existing Ordinary High Water Mark
13 approximately 100 to 150 feet. Once completed, the portion of the shoreline above the existing
14 Ordinary High Water Mark will be added to the 30-foot Vegetation Conservation Area (VCA)
15 extending landward from the current Ordinary High Water Mark to the project's esplanade. A
16 mix of native trees, shrubs and groundcover will be planted, and Large Woody Debris, perch
17 poles and bird houses will be installed. In addition, the newly created upland resulting from the
18 placement of fill for the new intertidal beach will create an additional 0.42 acre of upland. This
19 newly created upland will be used to expand the VCA, the width of the new upland, or an
20 additional 12 to 18 feet, resulting in a total VCA width of 42 to 48 feet. No portion of the newly
21 created upland will be used for any purpose other than the expansion of the VCA.
22

23
24 267. Three narrow paths will be established through the VCA running from the
25 esplanade down to the newly created beach to allow public access to the new beach. These

1 minor encroachments into the VCA will be mitigated by the expansion of the VCA at its south
2 end in an amount of square footage equal to the square footage of the three pathways.

3 268. Below the VCA, the transitional zone between uplands and aquatic areas will be
4 planted with appropriate transitional vegetation. Further below the Ordinary High Water Mark,
5 salt marsh plants will be planted to reestablish SAV and restore foraging opportunities for
6 salmonids. The construction of the new beach will place large amount of fill on existing
7 shellfish beds, resulting in some mortality, but WDFW has assured that it will monitor the
8 placement of will carefully to minimize shellfish mortality, while empirical data indicates that
9 the site's shellfish populations will recover quickly from any construction impacts. Thereafter,
10 shellfish will be living in clean gravel rather than contaminated materials.

11
12 269. The project will abide by Dark Sky-compliant lighting policies and will utilize
13 light fixtures intended to minimize glare and light pollution to surrounding areas, including the
14 shoreline.

15 270. Collectively, the removal of 200 creosoted pilings and large amounts of other
16 debris; the construction of a new gravel intertidal beach mimicking natural Puget Sound beaches;
17 the revegetation of all shoreline areas above and below the Ordinary High Water Mark; the
18 protection of those newly created vegetated areas and their long term maintenance; and the
19 imposition of Dark Sky lighting component result in significant "functional lift" of the
20 shoreline's functions and processes.

21
22 271. The Applicant's consultant, Mr. Maharry, has provided a lengthy "Shoreline
23 Master Program Consistency Narrative" further describing the project's compliance with the no
24 net loss requirement (Core Document 4.b). City Staff concurs with its No Net Loss Analysis and

1 agrees that the project, as conditioned, results in no net loss of ecological functions and
2 processes. The Hearing Examiner also concurs with the Findings of the No Net Loss Narrative.

3 272. To further support a no net loss conclusion, the Applicant inputted the project's
4 data into the Salish Sea Near Shore Calculator with assistance from NMFS. These calculations
5 are discussed in previous Findings. These calculations find that the project has a significant net
6 environmental benefit, especially for salmonids and other threatened species.

7 Mitigation Sequencing.

8 273. In addition to requiring no net loss, OMC 18.20.410.B requires a demonstration
9 that all reasonable efforts have been taken to avoid adverse environmental impacts and that
10 "mitigation sequencing" has been followed. Mitigation sequencing requires: (1) avoiding
11 adverse impacts altogether; (2) minimizing adverse impacts; (3) rectifying adverse impacts by
12 repairing rehabilitating or restoring; (4) reducing or eliminating adverse impacts over time by
13 preservation and maintenance; (5) compensating for adverse impacts by replacing, enhancing or
14 providing substitute resources; and (6) monitoring the impact of the compensation projects and
15 taking appropriate corrective measures.
16

17 274. The requirement of mitigation sequencing is only triggered if the project requires
18 compensatory mitigation. City Staff notes at page 19 of the Staff Report that the upland portion
19 of the project does not require compensatory mitigation and, therefore, does not need to
20 demonstrate mitigation sequencing. Conversely, the portion of the restoration project waterward
21 of the existing Ordinary High Water Mark includes a conversion of 0.42 acres of aquatic land
22 into newly created upland. The conversion of aquatic areas to upland areas triggers the
23 mitigation requirements of OMC 18.20.410.B.
24
25

1 275. The Applicant's Shoreline Master Program Consistency Narrative referenced in
2 earlier Findings contains a lengthy analysis of the project's mitigation sequencing and its
3 compliance with OMC 18.20.410.B. Commencing at page 9 of the Narrative, the Applicant
4 describes how avoidance, minimization, restoration, compensation and monitoring have been
5 incorporated into the restoration project. City Staff concurs with the Applicant's analysis and
6 adopts it as the City's. The Hearing Examiner also concurs with the Applicant's mitigation
7 sequencing analysis and adopts it as his Findings.
8

9 Public Access.

10 276. Pursuant to OMC 18.20.450, the project must provide public access to the
11 shoreline as it is a residential development of more than nine units and also includes commercial
12 development. Access must be available to the public, and available daily from dawn to dusk. A
13 covenant running with the land must be recorded to ensure that access is opened to the public in
14 perpetuity. Signage must be provided and maintained, notifying the public of the right of access.

15 277. As noted in previous Findings, the Applicant proposes a waterfront trail along the
16 north and south portions of the site connecting to an expanded waterfront trail corridor along the
17 east boundary. Emanating from this trail corridor are three small paths leading to the shoreline
18 edge and providing access to the beach. As noted in previous Findings, the VCA will be
19 expanded in the southern portion to offset the three trails to the shoreline
20

21 278. The Applicant also proposes public benches and picnic tables but these must be
22 outside of the expanded trail corridor as it must be kept clear for fire access. Staff has included
23 conditions of approval to ensure that these issues are addressed during engineering permit
24 submittal.
25

1 279. In addition to those public amenities identified by the City, the Applicant also
2 notes that additional public amenities include a kayak put in spot, access to all restaurants, cafes
3 and commercial areas, expanded view corridors, public parking for shoreline use, and three
4 pedestrian crossings across West Bay Drive to provide safe access to the site by the public. The
5 Hearing Examiner concurs that the project provides public access in accordance with OMC
6 18.20.450 and .460.

7 Vegetation Conservation.

8 280. OMC 18.20.490 through .496, requires that a densely Vegetation Conservation
9 Area (VCA) must be established along the nearest 30 feet landward of the Ordinary High Water
10 Mark. The VCA must be composed of vegetation comparable in species, density and diversity to
11 an ecologically similar undisturbed area.
12

13 281. The project's proposed VCA has been discussed in previous Findings and
14 testimony and is described in detail in various reports including the Restoration Mitigation Plan,
15 Core Document 14.b.

16 282. The Staff Report, commencing at page 21, examines the project's requirement for
17 VCA. Staff notes that the existing shoreline is void of any native vegetation and must be
18 replanted in its entirety. The Mitigation Plan provides for its replanting with native trees, shrubs
19 and groundcover to establish a dense native vegetation, along with the incorporation of Large
20 Woody Debris.
21

22 283. Staff remain concerned that the site lacks sufficient soil to support the required
23 VCA. In particular, the VCA is required to provide at least half of the site's needed tree
24 plantings and Staff is concerned that soil depth will be inadequate for trees. The Applicant's
25 consultants respectfully disagree and express the belief that the soils placed on the site, both

upland and along the cut back revetment, will be of sufficient depth and quality to support all required plantings including trees. Nonetheless, City Staff proposes that the project be conditioned on requiring that engineering plans provide adequate details as to how the VCA will achieve a dense native plant community including large trees.

284. The standard width of a VCA is 30 feet as measured from the Ordinary High Water Mark. As discussed in other Findings, this project proposes the creation of new upland as part of the beach restoration. This new upland effectively shifts the location of the Ordinary High Water Mark 12 to 18 feet waterward of its current location, creating a strip of upland between the standard VCA and the new Ordinary High Water Mark. All parties agree that this newly created upland will simply be incorporated into the VCA, resulting in an expanded VCA of 42 to 48 feet in width. All requirements imposed on the standard 30-foot VCA will be imposed on the expanded VCA.

285. Public picnic tables, benches and other public amenities may be located in the VCA if all requirements are satisfied. These issues will be resolved during permit approval.

286. Staff finds that the project, as conditioned, satisfies all requirements for the VCA as imposed by OMC 18.20.490-.496. The Hearing Examiner concurs.

View Protection.

287. As noted in earlier Findings, the issues of view protection and building height are intertwined and, in addition, are addressed through the site's zoning regulations found in Chapter 18.06 as well as under the SMP at OMC 18.20.500-.507. The project must satisfy both sets of requirements.

288. The Staff Report, at page 22, includes an analysis of the project's protection of views as required by the SMP. Staff notes that projects greater than 35 feet in height must

1 provide a Visual Impact Assessment to ensure that the project does not obstruct views of a
2 substantial number of residences on areas adjoining the site. The SMP further requires that view
3 preservation requirements within the design standards are met, and that public views from the
4 right-of-way (West Bay Drive) are protected and that views of Budd Inlet, the Olympic
5 Mountains, Mt. Rainier, and the Capital Dome are preserved to the extent possible. The SMP
6 also requires that public shoreline views are protected through maintaining open spaces between
7 buildings, establishing view corridors, imposing height limits, and complying with other
8 development coverage standards. Rooftop equipment is discouraged under the SMP.
9

10 289. The Applicant has provided a View Narrative (Core Document 4.e) which
11 addresses the various view protections imposed by the SMP.

12 290. The View Narrative notes that this project's primary mechanism for preserving
13 views is by public access to the waterfront trails, the expanded trail corridor running the length
14 of the shoreline, and by providing ample opportunity for views of Budd Inlet, the Olympics, Mt.
15 Rainer and the Capital Dome (to the extent these are currently visible from the site). In addition,
16 the areas set aside for trees in the VCA have been placed to the far south and far north so as to
17 reduce the obstruction of views by required trees. Also, the five buildings have been carefully
18 placed to maximize views between the buildings and have them aligned with key areas on the
19 opposite side of West Bay Drive in order to maximize views from areas where the public is most
20 likely to be.
21

22 291. In addition, the View Narrative recognizes that of the seven homes located on the
23 hillside west of the project, four of these seven will have their views impaired even if building
24 height is limited to 35 feet, leaving only three houses where views will be impaired by increased
25 height. City Staff concurs with the Applicant that the increased height will not affect a

1 substantial number of residences adjoining the site. The Hearing Examiner also concurs with
2 this Finding.

3 Lighting.

4 292. The project includes recreational components (the waterfront trail and other
5 amenities) which are placed directly adjacent to the VCA and shoreline. This triggers the
6 provisions of OMC 18.20.680 relating to lighting. The Applicant must provide appropriate
7 mitigation to minimize light and noise impact to shoreline areas, and illumination must be the
8 minimum needed while also being shielded to avoid light and glare on the shoreline and water.
9

10 293. The Applicant's SMP Consistency Narrative (Core Document 4) declares that the
11 project will comply with all applicable "Dark-Sky" requirements:

12 "Artificial shoreline lighting has the potential to change the nighttime ambient
13 light regime and may alter nighttime light-induced behaviors for wildlife within
14 the shoreline area. The implementation of the Dark-Sky compliant measures to
15 minimize light will eliminate the sharp shadow edges and artificial patterns that
16 influence these behaviors. Furthermore, the bollards and proposed lighting
17 fixtures along the VCA, waterfront esplanade, and cantilevered overlook areas
18 will be positioned in a manner to eliminate light transmission into any potential
19 riparian and low-tide aquatic habitat.

20 Dark-Sky-compliant lighting fixtures shield the light source to minimize glare and
21 light pollution to surrounding areas. Utilizing these fixtures along the waterward
22 edge of the esplanade will minimize light intrusion into the VCA and riparian
23 corridor, thereby minimizing habitat impacts. Likewise, the use of Dark-Sky-
24 compliant lighting on the buildings and associated infrastructure will also prevent
25 light trespass from the developed portions of the site into the VCA and adjacent
26 shoreline. The use of Dark-Sky-compliant lighting features will ensure the
27 project development will not result in a net loss of shoreline ecological functions
28 with respect to site lighting." (Consistency Narrative at page 13. Similar
29 provisions are also found at page 25-26).

30 294. Staff fully agrees with the Applicant's Consistency Narrative but notes that this
31 promise is not formally contained in the project. Staff therefore recommends adding conditions
32 of approval that ensure these Dark-Sky features are fully incorporated into construction plans,

1 and that lighting in the VCA is limited to bollards and screened with thicker vegetation where
2 lighting might spill over into the shoreline environment. The Hearing Examiner concurs with
3 Staff's recommendations and proposed conditions.

4 Use of Fill in Shoreline Areas, OMC 18.20.810, .830, .833, .837, .850, .855, and .860.

5 295. Table 7.1, found at OMC 18.20.810, identifies the types of shoreline
6 modifications permitted in the Urban Intensity SED. This project proposes several types of
7 modification to the shoreline including fill, ecological restoration and enhancement, and
8 shoreline stabilization/soft armoring.

9
10 296. OMC 18.20.830 regulates the use of fill in the shoreline area. This project
11 includes three types of fill: (1) upland fill, where two to three feet of soil material will be placed
12 across the entirety of the seven acres of upland; (2) in-water fill directly adjacent to the existing
13 Ordinary High Water Mark to establish a new intertidal beach and in the process convert 0.42
14 acres of aquatic land to upland; and (3) in-water fill below the Ordinary High Water Mark to
15 establish a new aquatic sea floor.

16 297. The Staff notes that the Comprehensive Plan identifies several goals for the use of
17 fill in or near shorelines as set forth in PN12.32.

18 298. Consistent with the goals of PN12.32, OMC 18.20.833 establishes a specific set
19 of criteria that must be met for the design and location of fill near the shoreline. It must be
20 demonstrated that the proposed fill is:

- 21
- 22 ● The minimum necessary to accommodate the proposed use.
 - 23 ● Cannot result in significant damage to the environment.
 - 24 ● Cannot be used as a means to increase allowed building height except as

25 authorized to meet flood elevation requirements or is in response to sea level rise.

- 1 ● Cannot be used for the sole purpose of creating land area.
- 2 ● Must be designed to eliminate the potential for erosion.
- 3 ● Cannot be located where shoreline stabilization will be necessary to protect the
- 4 new materials.

5 299. Pursuant to OMC 18.20.837, fill waterward of the existing Ordinary High Water
6 Mark is only permitted for limited purposes including ecological restoration or enhancement
7 such as beach nourishment, habitat creation, or mitigation when consistent with an approved
8 restoration or mitigation plan, or for clean up of contaminated sites. When used for any such
9 purposes, the fill must be show to be the minimum necessary for the intended use.

11 300. Restrictions on the use of fill in or near the shoreline are closely tied to other
12 restrictions directed toward shoreline restoration and enhancement. Pursuant to OMC 18.20.850,
13 "restoration" is the reestablishment or upgrading of impaired ecological shoreline processes or
14 functions that may be accomplished through revegetation, removal of intrusive structures, and
15 removal or treatment of toxic materials. "Enhancement" includes actions within an existing
16 degraded shoreline to intentionally increase or augment its ecological functions or values and
17 includes increasing plant diversity and cover, increasing wildlife habitat and structural
18 complexity, and installing environmentally compatible erosion controls or removing non
19 indigenous plants or animal species. The use of fill may be an important element of restoration
20 and/or enhancement.

22 301. Proposed shoreline restoration and enhancement must be accompanied by a
23 restoration/enhancement plan consistent with the SMP. The plan must demonstrate that the
24 project provides an ecological benefit and is consistent with the SMP. Specific criteria needing
25 to be met include:

1 ● The City shall coordinate with other local, State and federal regulatory agencies,
2 tribes and non-government organizations to ensure that mitigation actions are likely to be
3 successful and achieve beneficial ecological outcomes.

4 ● Shoreline restoration and enhancement may be permitted if the Applicant
5 demonstrates that no significant change to sediment transport will result and that the restoration
6 or enhancement will not adversely affect the shoreline ecological processes, water quality,
7 properties, or habitat.

8 ● Restoration and enhancement project shall be designed, constructed and
9 maintained to avoid the use of shoreline stabilization measures.

10 ● *Restoration and enhancement projects shall not extend waterward more than the*
11 *minimum necessary to achieve the intended result and shall not result in the creation of*
12 *additional upland area.* (Emphasis mine).

13
14 302. Here, the proposed placement of two to three feet of fill material across the 7+
15 acres of uplands is proposed to serve as a cap on any legacy contaminants; aid in sea level rise
16 protection; and provide a suitable medium for all landscaping, as without this fill landscaping
17 would not be possible. City Staff finds that the use of fill across the upland area is well
18 demonstrated and is the minimum necessary for the intended use.

19 303. All remaining fill is for the proposed Shoreline Restoration Project as has been
20 described several times in previous Findings, testimony and various reports, most notably the
21 Shoreline Restoration Design (Core Document 14.a), Preliminary Engineering Design Report
22 (Core Document 14.c), Geotechnical Hazards Assessment (Core Document 8.a-c), and
23 Consistency Narrative (Core Document 4). Once all debris in aquatic areas has been removed,
24 and the existing revetment has been cut back as proposed, fill will be placed in the cut back areas
25

1 to reestablish a 4:1 slope running to the top of the fill material placed on the uplands; gravel will
2 be placed below the revetment to establish a bed for the new beach, and then approximately
3 32,000 cubic yards of gravel and sand beach material will be placed at an 8:1 slope extending
4 approximately 100 to 150 feet waterward of the existing Ordinary High Water Mark. The
5 placement of fill in aquatic areas will result in the creation of 0.42 acre of new upland to be
6 added to the 30-foot VCA.

7
8 304. As discussed extensively in testimony and referred to in earlier Findings, the
9 proposed Shoreline Restoration Project is often referred to as "Alternative 3" being the third of
10 four proposed alternatives for this site's shoreline restoration. See earlier Finding No. 65
11 explaining the four alternatives for shoreline restoration.

12 305. The Shoreline Restoration Design provides a detailed analysis of these four
13 alternatives as was explained through the testimony of Shane Phillips, Calvin McCaughan, and
14 others. This Shoreline Restoration Design and the testimony of experts amply demonstrates that:
15 Alternative 1 provides no environment benefit; Alternative 4, the entire removal of the
16 revetment, is not feasible; Alternative 2, the original design, is feasible and beneficial to the
17 shoreline but requires much greater fill and results in substantially greater creation of new
18 uplands; and the current design is the only practical alternative and is the minimum amount of
19 aquatic fill needed to establish a functioning intertidal beach consistent with the 2016 West Bay
20 Restoration Analysis.

21
22 306. Consistent with this Finding, and pursuant to OMC 18.20.855:

23 ● The proposed restoration has been accompanied by a Restoration/Enhancement
24 Plan that is consistent with the policies and regulations of the City's Shoreline Program.

1 ● The project provides an ecological benefit and is consistent with the City's
2 Shoreline Program.

3 ● In approving this shoreline project, the City has coordinated with other local,
4 State and federal regulatory agencies, tribes and non-governmental organizations, including the
5 Squaxin and Nisqually Tribes, WDFW, the Department of Ecology, including its shorelines,
6 SEPA and toxics divisions and the US Army Corps of Engineers in a five-year review process to
7 ensure that mitigation actions are likely to be successful and achieve beneficial ecological
8 outcomes.
9

10 ● The Applicant has demonstrated that no significant change to sediment transport
11 will result and that the project will not adversely affect shoreline ecological processes, water
12 quality, properties of habitat. As noted by Staff, the location of this site is unique as it is at the
13 bottom of Puget Sound where little to no literal drift occurs, while the project demonstrates the
14 distinct uplift in shoreline processes and habitat function.

15 ● The project is designed, constructed and maintained to avoid the use of shoreline
16 stabilization measures. Instead, shoreline stabilization is accomplished through non-structural
17 elements such as Large Woody Debris and various bioengineering approaches utilizing the
18 Engineering with Nature concept developed by the US Army Corps of Engineers.

19 ● The project does not extend waterward more than the minimum necessary to
20 achieve the intended result - and less than what would have been required for proposed
21 Alternative 2.
22

23 ● The project does not result in the creation of additional upland beyond what is
24 minimum necessary to achieve the intended result, whereas proposed Alternative 2 would have
25

1 achieved similar ecological gains but would have required the creation of additional upland
2 beyond what the current project demonstrates to be the minimum necessary.

3 307. OlyEcosystems and other commenters have asserted that the proper reading of
4 OMC 18.20.855 prohibits the creation of any new upland area, whether deemed minimally
5 necessary or not. Prior to the commencement of the public hearing, the Hearing Examiner
6 notified the parties that he disagreed with this interpretation of OMC 18.20.855 and interprets its
7 provisions to allow the creation of additional upland area so long as the additional upland area is
8 found to be the minimum necessary to achieve the intended result. The above Findings are based
9 upon this interpretation.
10

11 Shoreline Stabilization.

12 308. In addition to needing to demonstrate compliance with all shoreline regulations
13 relating to the use of fill, and those relating to shoreline restoration and enhancement, the
14 proposed Shoreline Restoration Project must also demonstrate that it is in compliance with all
15 regulations relating to shoreline stabilization. OMC 18.20.860. "Shoreline stabilization" is
16 broadly defined to include actions to address erosion to property dwellings, businesses, or
17 structures caused by natural processes including currents, flooding, tides, wind, and waves.
18 Methods of stabilization include both "hard" and "soft" methods:

19 • "Hard" stabilization, or "hard armoring" uses hardened structures that armor and
20 stabilize the shoreline from erosion and include bulkheads, riprap, revetments, and similar
21 structures.
22

23 • "Soft" stabilization methods, or "soft armoring" include practices that contribute
24 to restoration, protection or enhancement of shoreline ecological functions such as the use of a
25 mix of gravel, cobbles, boulders, logs and native vegetation to provide slope stability.

1 The existing shoreline is an example of hard stabilization as it includes a steep revetment
2 constructed of large boulders that physically separate the aquatic areas from the uplands.

3 The proposed Shoreline Restoration Program is an example of soft stabilization as it uses
4 a mix of gravel and sand, Large Woody Debris and native vegetation, both above and below the
5 Ordinary High Water Mark, to provide shoreline stability and reestablish a functioning beach.
6 As such, its proposed use of sand and gravel, Large Woody Debris, and native vegetation are
7 strongly encouraged.
8

9 309. The Staff Report, at page 27, declares that:

10 "Staff has paid careful attention to the intended purpose of the stabilization
11 elements proposed to ensure they function as the minimum necessary for the
12 restoration project rather than the upland mixed use development. The project
13 design complies with soft shore stabilization criteria and represents the minimum
necessary amount of soft shore stabilization warranted for the restoration
component of the project. Conditions of approval have been added to ensure non-
structural stabilization methods are used."

14 310. The Hearing Examiner concurs with these Findings and adopts them as his own.

15 Findings Relating to the Applicant's Request for a Shoreline Conditional Use Permit
16 (SCUP).

17 311. When this application was presented to the City in 2021, it was recognized by the
18 parties that the project would require a Shoreline Substantial Development Permit due to the
19 proposed development within shoreline jurisdiction. At that time, neither party believed that the
20 project would also require a Shoreline Conditional Use Permit.
21

22 312. After several rounds of project review, it was realized that a small portion of
23 Building 2, which contains a mix of residential and commercial uses, is located within 100 feet
24 of the current Ordinary High Water Mark. A diagram demonstrating the affected portion of
25 Building 2 is found on page 17 of the Staff Report. As the diagram indicates, the affected portion

1 of Building 2 is a small amount of the easternmost portion of the building adjoining the
2 esplanade.

3 313. As noted in other Findings, this project vests to the 2021 SMP. That version of the
4 SMP recognizes both residential and commercial uses as permitted uses if either water-related or
5 water enjoyment uses but further provides that a Shoreline Conditional Use Permit (SCUP) is
6 required if the mixed use is wholly or partially located within 100 feet of the Ordinary High
7 Water Mark, but uses and activities located more than 100 feet from the Ordinary High Water
8 Mark are permitted outright. Staff interprets this provision as requiring a SCUP only for that
9 portion of Building 2 located within 100 feet of the Ordinary High Water Mark, and not for the
10 remainder of the building or for the remainder of the project.
11

12 314. The portion of Building 2 located within 100 feet of the OHWM consists of
13 approximately 2,426 square feet of Building 2, which contains a total of 46,195 square feet, or
14 approximately 5% of Building 2.

15 315. A use requiring a SCUP may be authorized if the Applicant demonstrates that all
16 criteria set forth in WAC 173-27-160/OMC 18.20.230.B are satisfied.

17 316. The Staff Report, commencing at page 18, and the Applicant's Shoreline Master
18 Program Consistency Narrative (Core Document 4.b), at page 7, contain analyses of the project's
19 compliance with the requirements for a Shoreline Conditional Use Permit. Staff and the
20 Applicant concur that:
21

22 (1) The proposed use is consistent with the policies of RCW 90.58.020 and the City's
23 SMP. The proposed commercial space consists of area available for public use, such as a café or
24 restaurant, and ensures that public access and enjoyment of the shoreline is maintained.

25 Additionally, the small portion of Building 2 in the 100-foot setback does not reduce the area or

1 width of the public esplanade, the VCA, or the riparian corridor, and all of these important
2 project components. In addition, the encroachment does not affect the public use or access to the
3 esplanade or the shoreline, nor does it reduce the function or protection of the riparian habitat
4 within the VCA. The Hearing Examiner concurs.

5 (2) The proposed use does not interfere with the normal public use of public
6 shorelines. Again, the use does not constrain or diminish public access to the esplanade or the
7 shoreline. Additionally, the affected space will be commercial in nature and open to the public.
8 As such, the public use of the shoreline is not negatively affected. The Hearing Examiner
9 concurs.
10

11 (3) The design of Building 2 is compatible with other authorized uses within the area
12 and with uses planned for the area under the Comprehensive Plan and Shoreline Program.
13 Building 2 is designed to be consistent with the other four buildings on the site as well as with
14 other commercial buildings located along West Bay Drive, both in appearance and in use. The
15 project is also similar in design and character to other waterfront mixed use developments within
16 the City including several in the downtown area. In addition, the proposed use as a restaurant or
17 café is compatible with public uses commonly associated with the esplanade and beach access,
18 and facilitates the public's enjoyment of these areas.
19

20 (4) The proposed use does not cause significant adverse affects to the shoreline
21 environment in which it is located. Again, the width of the riparian habitat and the VCA will not
22 be reduced or otherwise compromised. All commercial space is landward of the public
23 esplanade and has no impact upon the quality of the habitat waterward of the esplanade in the
24 VCA or riparian areas. Further, stormwater management and other standard Best Management
25

1 Practices will prevent any potential impact during construction and operation. The Hearing
2 Examiner concurs.

3 (5) The Applicant must demonstrate that the public interest suffers no substantial
4 detrimental affect. As earlier noted, the affected commercial space consists of an area available
5 for public use while also ensuring that public access and enjoyment of the shoreline is
6 maintained. The minor encroachment into the 100-foot setback does not reduce the area or width
7 of the public esplanade, the VCA, or the riparian corridor. The encroachment does not affect the
8 public use or access to the esplanade or the shoreline, nor does it reduce the function or
9 protection of the riparian habitat within the VCA. As a result, the public interest will not be
10 adversely affected by the proposed mixed use space.
11

12 317. Again, City Staff concurs with each of these Findings found in the Applicant's
13 Shoreline Master Program Consistency Narrative. The Hearing Examiner also concurs and
14 concludes that all requirements for the requested Shoreline Conditional Use Permit have been
15 satisfied.

16 Findings Relating to Conditions of Project Approval.

17 318. City Staff recommends approval of the requested Shoreline Substantial
18 Development Permit and Shoreline Conditional Use Permit subject to the 21 conditions found in
19 the Staff Report commencing at page 35.

20 319. The Applicant has no objection to the proposed conditions of project approval
21 with the exception of proposed Condition #8 relating to the use of bird friendly glass. The
22 Applicant requests that this condition be modified to require the use of bird safety glass only on
23 the first three floors of each building and not on the upper two floors. Except for this requested
24 modification, the Applicant concurs with the proposed conditions of approval.
25

1 320. The Hearing Examiner finds that the City's proposed Condition #8 is well
2 supported and should be adopted over the modification suggested by the Applicant.

3 321. Although the project has experienced considerable opposition by OlyEcosystems
4 and many members of the public, none of its opponents have recommended or suggested any
5 additional conditions of project approval in the event the project is approved. Thus, the Hearing
6 Examiner has not been presented with any alternative or additional conditions of approval
7 beyond those recommended by City Staff.

8 322. The Hearing Examiner remains concerned about the relationship of the project
9 site with the adjoining "Reliable Steel" property to the south. The Reliable Steel property
10 contains several large, multi-story industrial buildings that are badly in disrepair and are without
11 upper story safeguards, and may be contaminated. As a result, these buildings pose considerable
12 risk to anyone entering them, especially children, and may serve to be an attractive nuisance.
13 The current design of the project does not include any fencing, vegetative buffer or other
14 mechanisms that prevent the project's residents, guests and invitees, including those using the
15 waterfront trail, from simply entering onto the Reliable Steel property and exploring its
16 dangerous buildings. The Hearing Examiner therefore finds that an additional condition should
17 be imposed requiring the Applicant to establish a suitable fence, vegetative buffer or other
18 mechanism to prevent the easy access onto the Reliable Steel property from the project site,
19 including the waterfront trail. Appropriate signage shall also be installed along the project's
20 south boundary advising the public to not enter into the Reliable Steel property. The buffer and
21 proposed signing shall be submitted to the City as part of permit review. City Staff shall have
22 the authority to determine if the proposed screening and signages are appropriate, and that it is in
23 compliance with the SMP, including view protection.
24
25

1 11. The project, as conditioned, complies with all requirements for trees, soil and
2 native vegetation protection and replacement pursuant to Chapter 16.60 OMC.

3 12. The project, as conditioned, complies with all requirements for flood damage
4 prevention pursuant to Chapter 16.70 OMC.

5 13. The project, as conditioned, complies with all requirements for sea level rise flood
6 damage prevention pursuant to Chapter 16.80 OMC.

7 14. The project, as conditioned, complies with all of the requirements of Chapter
8 18.06 OMC relating to development in commercial districts including the Urban Waterfront
9 zone.
10

11 15. The project, as conditioned, complies with all development standards established
12 in Table 6.02 of Chapter 18.06 OMC including limits on building coverage.

13 16. The project, as conditioned, has satisfied all requirements for a height bonus
14 whereby proposed buildings are allowed a height of 65 feet from grade.

15 17. The project, as conditioned, satisfies all view corridor established per OMC
16 18.06.100.8.2.c.v.

17 18. The proposed waterfront trail, together with the expanded waterfront trail
18 corridor, provide a sufficient basis for the Applicant's requested building height of up to 65 feet
19 as well as the Applicant's requested view blockage of 57% of the site (or a 43% view corridor).
20

21 19. The project, as conditioned, satisfies all requirements for historic
22 preservation/cultural resources pursuant to Chapter 18.12 OMC.

23 20. The project, a conditioned, complies with all requirements for the protection of
24 critical areas pursuant to Chapter 18.30 OMC.
25

1 21. The project, as conditioned, complies with all landscaping requirements pursuant
2 to Chapter 18.36 OMC.

3 22. The project, as conditioned, complies with all vehicle and bicycle parking
4 standards pursuant to Chapter 18.38 OMC.

5 23. The project, as conditioned, complies with all requirements for design review
6 pursuant to Chapter 18.100 OMC.

7 24. The project, as conditioned, is consistent with the City's Engineering Design and
8 Development Standards (EDDS) and Drainage Design and Erosion Control Manual (DDECM)
9 with respect to sewer, water, solid waste, streets, street trees, transportation, and stormwater.

10 25. The project, as conditioned, complies with the no net loss standard imposed by
11 OMC 18.20.410.

12 26. The project, as conditioned, satisfies all requirements for mitigation sequencing
13 imposed by OMC 18.20.410.B.

14 27. The project, as conditioned, complies with all public access requirements of the
15 SMP as imposed by OMC 18.20.450-.460.

16 28. The project, as conditioned, satisfies all requirements for a Vegetation
17 Conservation Area (VCA) as required by OMC 18.20.490 to .496.

18 29. The project, as conditioned, satisfies all requirements for view protection
19 imposed by OMC 18.20.500-.507.

20 30. The project, as conditioned, satisfies all general uses and development standards
21 imposed by OMC 18.20.610. The project proposed restaurants/cafes are "water enjoyment uses".
22
23
24
25

1 31. The project, as conditioned, satisfies all requirements for commercial use and
2 development imposed by OMC 18.20.658, and all conditions imposed on residential use and
3 development pursuant to OMC 18.20.690.

4 32. The project, as conditioned, complies with all lighting requirements imposed
5 under OMC 18.20.680.

6 33. The project, as conditioned, complies with all requirements for shoreline
7 modification, fill, shoreline restoration enhancement, and shoreline stabilization as imposed
8 under OMC 18.20.810-.860.

9 34. The amount of fill proposed in aquatic areas to establish a new gravel intertidal
10 beach is the minimum necessary to achieve the intended result.

11 35. OMC 18.20.855 does not preclude the creation of new upland areas as part of
12 shoreline restoration, and only prevents the creation of additional upland area not shown to be
13 the minimum necessary to achieve the intended result.

14 36. The project, as conditioned, satisfies all requirements for shoreline stabilization
15 pursuant to OMC 18.20.860-.864.

16 37. The project should be approved subject to the conditions recommended by City
17 Staff together with the additional condition imposed by the Hearing Examiner, to-wit:

18 "22. The Applicant shall be required to establish a suitable fence, vegetative buffer or
19 other mechanism to prevent the easy access onto the Reliable Steel property from the project site,
20 including the waterfront trail. Appropriate signage shall also be installed along the project's
21 south boundary advising the public to not enter into the Reliable Steel property. The buffer and
22 proposed signing shall be submitted to the City as part of permit review. City Staff shall have
23
24
25

the authority to determine if the proposed screening and signages are appropriate, and that it is in compliance with the SMP, including view protection."

DECISION

The Applicant's request for a Shoreline Substantial Development Permit and Shoreline Conditional Use Permits, are **approved** subject to the following:

CONDITIONS

1. **Site Plan.** The project shall be substantially in conformance with the Architectural Site Plan in Attachment 2, and as modified by the conditions of approval herein. The site plan must be modified with the engineering Phase 1 submittal as follows:
 - a. Show all public amenities such as picnic tables, benches, kayak launch etc. Demark the fire access lane to prohibit such features from being placed in the lane.
 - b. Show additional VCA width provided with completion of shoreline restoration resulting from waterward shift of the OHWM (expected to be 12' to 18').
 - c. Add note indicating the expanded waterfront trail is a fire access lane and must remain free and clear of obstructions.
2. **Development Agreement:**
 - a. The project must adhere to the 2021 Development Agreement. In particular, the project must be designed to achieve the restoration objectives of the 2016 West Bay Restoration Assessment.
 - b. The Applicant must propose a modification as provided for in Section 8 of the 2021 Development Agreement prior to construction permit application to conform with the approved permits as follows:
 - i. Show all of shoreline restoration work occurring in Engineering Phase I.
 - ii. Show construction of the entire waterfront trail, meeting EDDS standards as a component of Engineering Phase I.
 - iii. Update the construction timeline and term to account for the length of permit review associated with the shoreline permits.
 - iv. Modify conceptual images within the agreement to reflect the updated designs associated with the shoreline permits.
3. **Maintenance Agreements:** All applicable maintenance agreements and easements must be submitted with the applicable construction permit, including:
 - a. Shared Use: All shared use areas must be documented as accessible and maintained by the owners of the five individual properties. This includes, but is not limited to the parking garage, solid waste area, pedestrian plazas, vegetation conservation area etc. Agreements must be recorded prior to issuance of engineering phase I permit approval.
 - b. The waterfront pedestrian trail / expanded waterfront pedestrian trail shall be dedicated as ROW and must be designed, constructed, and maintained by the applicant, or their successors, in perpetuity. A maintenance agreement must be approved and recorded prior to phase 1 engineering permit approval.

- 1 c. The VCA must be placed in a conservation easement, dedicated to a conservation organization or land
2 trust, or similarly protected through a permanent mechanism acceptable to the City as provided for in OMC
3 18.20.495(H). This document must be submitted with the phase 1 engineering permit application.
- 4 4. **ROW Vacation:** Prior to issuance of any construction permits, the ROW Vacation / of the existing
5 approximately 17,052 SF of unopened Farwell Road ROW must be approved by City Council. Approval of this
6 ROW Vacation is expected to be conditioned on the dedication of replacement property comprising the
7 approximately 21,470 SF of improved waterfront trail for the project. Approval of the vacation must be
8 submitted with the Phase I engineering permit application.
- 9 5. **Fire:** Engineering and Building permit plans must be revised to adhere to OMC 16.05.060 Fire fighting access
10 as follows:
- 11 a. All Fire Department Connection (FDC) locations shall be shown on the civil plans and are subject to
12 approval by the Fire Marshal's Office. Fire hydrants shall be located within 40 feet of all FDCs.
- 13 b. At the northeast and southeast corners, where bollards have been replaced with WSDOT Standard Plan
14 1515.08 features, the design shall provide unobstructed and functional access to the West Bay Trail
15 emergency access route. These areas shall be designed to accommodate Olympia Fire Department
16 apparatus and shall meet or exceed minimum turning requirements of 14 feet 3 inches inside radius, 28 feet
17 3 inches curb-to-curb, and 31 feet 10 inches wall-to-wall, and be approved by the Fire Marshal's Office.
- 18 c. The applicant shall provide turning movement (CAD) exhibits demonstrating apparatus access, turning
19 capability, and operational functionality for review and approval.
- 20 d. While an approved NFPA 13 fire sprinkler system is being utilized in lieu of full fire apparatus access in
21 certain areas, access shall still be provided for medic and BLS transport units to all plaza turnaround
22 locations (east, west, north, and south). The central drive aisle shall be designed to support the weight of an
23 engine and ladder truck and must extend midway to the sites turnaround. It shall be clearly marked for fire
24 department use and will serve as a central parking area for emergency calls for buildings two and three.
- 25 6. **Engineering Permit Application.** An engineering permit application shall be submitted for review and
approval prior to construction for each of the two engineering phases. The permit submittal shall comply with
the 2021 Engineering Design and Development Standards (EDDS) and the current Drainage Design and
Erosion Control Manual (DDECM) in effect at the time of permit submittal. The following must be shown on
engineering permit plans submitted for review:
- a. Sewer mains located onsite shall be noted on the engineering plan set as private. A maintenance agreement
shall be recorded by the property owner and a copy provided to the city prior to occupancy/final inspection
of any structure.
- b. Northern Pedestrian Crossing shall be shifted south, and incorporated with the raised Table Top section on
West Bay Drive and in alignment with the shared use path. A receiving ramp shall also be installed on the
west side of West Bay Drive.
- c. The Waterfront Trail shall meet Engineering Design and Development Standards 4E and WSDOT Design
Manual 1515, Shared-Use Path Design. The shared-use pathway shall maintain a minimum of 14 feet (12'
paved with one-foot shoulders on each side) in width along the north and the south portions of the site.
- d. Portions of the Waterfront Trail and Expanded Waterfront Trail Corridor intended to serve as a fire access
lane shall be no less than 22 feet in width (20 feet paved with 1 ft shoulder on each side) to incorporate the
needs of emergency services.
- e. The corresponding dedication of the West Bay Trail/Shared use path shall be completed with the project
close out documents of the Phase 1 engineering permit, if not established prior to that time.
- f. All maintenance and upkeep of the Waterfront Trail / Expanded Waterfront Trail Corridor shall be the
property owners' responsibility. This requirement shall be incorporated in the dedication document or
alternatively by a separate document that has been approved and recorded. A separate agreement shall be
referenced on the right of way dedication.

- 1 g. Sheets 1-3 of the Refuse Truck Exhibit (Attachment 3.B) shall be incorporated into the civil engineering
2 permit submittal. In addition to this exhibit, a 3 foot clear separation shall be required and maintained
3 between the back wall of the enclosure and the compactors.
- 4 h. If for any reason, the phased construction creates conflict with the solid waste collection, an alternative
5 temporary location will be required and will need to include:
- 6 i. A temporary site will be required to support the estimated amounts for each type of waste stream as
7 well as access requirements as regulated by the EDDS.
- 8 ii. Compactors cannot be physically relocated. If a temporary site is needed, it will have to facilitate the
9 appropriate number of dumpsters/carts on concrete pads.
- 10 i. A signed Inadvertent Discovery Plan (IDP) which outlines how the project proponent and site crew will
11 respond in the event that archaeological resources are uncovered during the course of project work shall be
12 submitted by the applicant at the time of Engineering plan submittal (OMC 18.12.140).
- 13 j. Revise plans to show construction of the entire Waterfront Trail and Expanded Waterfront Trail Corridor to
14 the EDDS standard as part of Phase I engineering permit. Gravel will not be permitted.
- 15 k. Revise plans to ensure the access point to the Waterfront Trail and Expanded Waterfront Trail Corridor has
16 an inside corner greater than a 30' radius or prove with auto-turn that a 62' tillered aerial and a 34' Pierce
17 fire engine can navigate onto and off of the drive lane.
- 18 l. A final landscape plan prepared in compliance with OMC 18.36 shall be submitted in conjunction with the
19 engineering permit application. The landscaping plan must include:
- 20 i) Upland planting areas above the sitewide stabilization or on the rooftop garden will require additional
21 species-specific information to ensure the species is provided proper conditions to thrive. Plans must
22 show tree species, preferred soil type, soil volume and irrigation.
- 23 ii) The method and duration of irrigation, for all planting areas as well as planting details such as proper
24 depth, rootball, prep, staking mulch etc. Specifications will be consistent with ISA recommended
25 planting schematics.
- 26 iii) Green roof area calculations must be shown on the landscaping plan to include only those areas
27 covered by living plants that have at least 4" of soil.
- 28 7. **Urban Forestry:** Plans must show a minimum tree density of 217 trees of which 109 must be onsite within the
29 SVPA/VCA. Trees proposed must meet the definition of a tree and cannot be columnar nor achieve a height of
30 less than 6 feet. Prior to acceptance of tree species and location, demonstration that adequate soil volume for all
31 tree species and proposed locations will be required. Replacement tree locations shall otherwise meet the
32 requirements of OMC 16.60.080(C).
- 33 8. **Bird Strikes:** Building permit plans must show use bird-friendly glass or window treatments for all exterior
34 facing windows. Specific glass or window treatments selected must follow the recommendations of the United
35 States Fish and Wildlife Services Migratory Bird Program for new construction. Balconies and railing made of
36 glass or see through material must also meet this design standard.
- 37 9. **Shoreline Stabilization.** The restoration project is allowed to use non-structural (soft) shoreline stabilization
38 methods as shown in plans. Structural stabilization, such as new bulkheads, seawalls, groins and other hard
39 armoring is not permitted with this permit application.
- 40 10. **SVPA / VCA:** Project approval is contingent upon the adequacy of the soil volume available to achieve a native
41 plant community consisting of a mix of native trees, shrubs and ground cover. Vegetation within the
42 VCA/SVPA must be similar in species density and diversity to the native conditions found on the shoreline of
43 Squaxin Park. Adequate soil volume to support the needs of this vegetated buffer and tree preservation area is
44 required. Supplemental documentation supporting the soil depth is required. A minimum of 108 trees must be
45 planted in the SVPA / VCA. The soil contamination cleanup plan and sitewide stabilization methods must be
46 designed to allow for adequate soil depth to accommodate the requisite buffer and vegetation protection area.

11. **Restoration Plan.** Approval is based on the conceptual restoration approach outlined in "alternative 3" within the Shoreline Restoration Design Report and supported by the Mitigation Plan. A final design report and construction plans must be submitted with the Phase I engineering permit. The final design must include a final mitigation and restoration plan and an update to the important habitat and species report (or addendum). Specifically, the Shoreline Restoration Plans and supporting documents must include:

- a. A planting plan for the VCA that achieves a native plant community consisting of a mix of native trees, shrubs and ground cover with large woody debris, perch poles and other similar habitat enhancements.
- b. Provide plans that show the 30' VCA as measured from the existing OHWM plus the additional land from the waterward relocation anticipated of the OHWM. The VCA is likely to be approximately 48' in width.
- c. Plan must address the proposed location of tree planting in the VCA / SVPA areas. Provide written documentation from a qualified professional supporting the SVPA / VCA will provide and sustain the soil volume necessary to support large native trees including information about soil volume, root depth, saltwater intrusion etc. Such documentation should include discussion of previous successful projects either designed by applicants or others with shoreline mitigation plantings in the Pacific Northwest region.
- d. Planting plan for the VCA and restoration area must comply with OMC 18.36 and must show a minimum of 24" of soil amendment in the VCA and plant spacing that achieves 80% coverage within three (3) years.
- e. Plans must provide additional detail regarding "dark sky" features intended to be used where lighting is visible from the shoreline. VCA lighting is limited to bollards and other similar features. Plans must demonstrate how lighting will be limited, particularly where is closest to the shoreline. The planting plan must show screening with thicker vegetation where lighting might otherwise spill over into the shoreline environment.
- f. Address impacts to birds from the upland project. Species such as the Purple Martin must be addressed. Modifications such as adding perch poles and nesting boxes within the restoration area must be evaluated.
- g. Project design must be consistent with Ecology's sediment clean up user's manual.

12. **Outside Agency Permits:** Prior to any onsite construction, permits from the following agencies are required:

- a. WDFW: A Hydraulic Permit Approval is required. The approval must be submitted with the phase I engineering permit application. Compliance with requisite fish work windows must be adhered to and identified on plans.
- b. The Washington State Department of Ecology (Ecology) has issued Model Toxics Control Act (MTCA) Administrative Order (Agreed Order) DE 21726 to West Bay Development Group, LLC (WBDG). This Agreed Order requires WBDG to complete a supplemental remedial investigation, feasibility study, and preliminary draft Cleanup Action Plan. The applicant must complete the required Agreed Order tasks and implementation of the MTCA Cleanup Action Plan before any in-water work, site alteration or development is performed, unless the work is included as part of an Ecology-approved Interim Action Work Plan.
- c. A Department of Army (DA) permit, pursuant to Section 10 of the Rivers and Harbor Act of 1899 and Section 404 of the Clean Water Act, is required for the shoreline restoration work and a DAHP Excavation Permit is required per RCW 27.44 and 27.53 for the upland work that falls outside the scope of the USACE permit review. Issued DA and DAHP permits for the project must be submitted to the City as a submittal requirement for the engineering permit application.

1 13. **Building Codes.** At Building permit application, the project will be reviewed under the current version of the
2 International Building Code (IBC), International Residential Code (IRC), International Mechanical Code
3 (IMC), International Fuel Gas Code (IFGC), Uniform Plumbing Code (UPC) ICC A117.1, and Washington
State Energy Code (WSEC) as amended by Washington State. All structural plans and calculations must be
designed, stamped, and signed by a Washington State licensed Structural Engineer. The building permit
application must include:

- 4 a. Due to the project developing in a Special Flood Hazard Area (SFHA), AE15 and a VE17 zone,
an elevation certificate from a recognized Washington State licensed surveyor will need to be
5 submitted with the building permit application. Construction documents must show the method of
controlling the impacts of damage associated to sea level rise. Prior to Building Permit Approval,
6 applicant must secure applicable permits and approvals from US Army Corp of Engineers,
Washington Department of Fish and Wildlife, US Fish and Wildlife Service and State of
Washington Department of Ecology.
- 7 b. A FEMA Region X - Puget Sound BiOp Floodplain Habitat Assessment Worksheet and any
supportive documentation must be submitted with the building permit application for developing
8 in a SFHA .
- 9 c. A geotechnical report must be submitted addressing building on unstable soils. The Geotechnical
Engineer of record must approve the footing design done by the Structural Engineer.
- 10 d. Building permit plans for each building must show compliance with vehicular and bicycle parking
requirements. Signage for short term bicycle parking shall be identified on construction permit
11 plans. Signage shall be provided in all locations where the customer entry is more than 50' from
the required bicycle parking space or when the required bicycle parking space cannot be seen from
the customer entry.
- 12 e. Plans for each building must show compliance with the 65' height limit. Minor rooftop features
such as the 1' extension of parapet wall and limited mechanical equipment are permitted on the
13 rooftop in excess of the bonus height of 65'. Elevator penthouses or covered outdoor space are not
permitted on the roof as these features would significantly increase height and were not shown on
14 plans associated with the height bonus being approved. Such features have not been reviewed for
view related impacts and would need such review prior to approval. All rooftop features exceeding
15 the 65' height limit must be specifically called out on building permit plans to ensure they are
consistent with the limitations of the 65' height allowed for this project.

16 14. **Public Access.** The following conditions apply to public access areas including the Waterfront Trail, Expanded
17 Waterfront Trail Corridor, Vegetation Conservation Area and restoration area where public trails or access are
identified on plans:

- 18 a. Outside of dedicated ROWs, public access provisions shall run with the land and be recorded via a
legal instrument such as an easement prior to certificate of occupancy;
- 19 b. Public access areas shall be constructed and available for public use at the time of occupancy;
- 20 c. Signage shall be installed in conspicuous locations indicating the public's right of access and hours
of access; and
- 21 d. Public access shall be available to the public from 7:00 a.m., or dawn, whichever first occurs, and
6:00 p.m. or dusk, whichever later occurs.

22 15. **Vegetation Maintenance Bond.** A vegetation maintenance bond (or other assurance) shall be provided
following city acceptance of the landscape and restoration planting installation. The bond amount shall be 125%
of the cost estimate submitted with the final landscape and mitigation plan and approved by the City.

23 16. **Design Review.** Detail design review will occur with the building permit. The design packet submitted with the
building permit must address the following:

- 24 a) Add material changes, or other similar features to locations where pedestrians will cross drive aisles
on the plaza level.

- b) Add landscaping, artwork, and other features to break up large expanses of concrete wall at the parking garage level along the north and south sides of the parking garage.
- c) Provide specifics on the other nearby buildings used as examples for the waterfront heritage evoked by this buildings design. Consider looking at
- d) Reliable Steel and other past industrial sites.
- e) Differentiate the primary public plaza building facades of buildings 2 and 3 to create a more prominent core to the site so that it is clearly special from both the street façade and waterfront. Consider using scaling, color, building materials, canopies etc.

17. **Addressing.** Each of the five proposed buildings will receive a separate address. All suites and units will be assigned numbers as well. This must be coordinated before building permits are submitted as the address is a required component of the application.

18. **Hours of Operation/Construction Noise.** Pursuant to OMC 18.40.080.C.7, construction activity detectable beyond the site boundaries shall be restricted to the hours between 7:00 a.m. and 6:00 p.m.

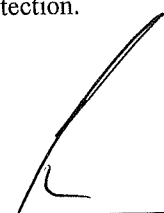
19. **Impact Fees.** In accordance with OMC Title 15, City of Olympia impact fees for transportation, parks, and schools shall follow the Development Agreement section 11.4 which vests impact fees to each building phase. All impact fees must be paid at time of building permit issuance unless deferred as provided for in OMC 15.04.040.J through an Impact Fee Deferral Agreement.

20. **Ecology Review.** Construction pursuant to the shoreline substantial development and conditional use permits shall not begin prior to 21 days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until review proceedings initiated within 21 days from the date of such filing have terminated.

21. **Expiration.** The provisions of Section 11 of the Development Agreement shall control permit expiration as authorized by WAC 197-27-090(1).

22. The Applicant shall be required to establish a suitable fence, vegetative buffer or other mechanism to prevent the easy access onto the Reliable Steel property from the project site, including the waterfront trail. Appropriate signage shall also be installed along the project's south boundary advising the public to not enter into the Reliable Steel property. The buffer and proposed signing shall be submitted to the City as part of permit review. City Staff shall have the authority to determine if the proposed screening and signages are appropriate, and that it is in compliance with the SMP, including view protection.

DATED this 22nd day of July, 2026.



Mark C. Scheibmeir
City of Olympia Hearing Examiner

ATTACHMENT 1

1. Staff Report for Hearing
2. Architectural Plan Set - 2025
3. Engineering Plan Submittals:
 - a. Upland Civil Plan Set - 2025
 - b. Refuse Truck Exhibit - 2025
 - c. Upland Civil Plan Set SCJ Markup - 2025
 - d. Engineering Design and Development Standards Deviation Request - 2022
4. Application / Narratives / Letters:
 - a. Joint Aquatic Resource Permit Application - 2025
 - b. Shoreline Master Program Consistency Narrative - 2025
 - c. Trail maintenance Acknowledgement Memo - 2025
 - d. Round 5 Applicant Response - 2026
 - e. View Narrative - 2024
 - f. Recreational Needs / View Analysis - 2024
 - g. Applicants Legal Response to 3rd Round Comments - (Feb. 15, 2024 & Mar. 3, 2024)
 - h. City Response to Applicants legal Response to 3rd Round comments - (Apr. 2024)
 - i. Technical Memo – Mitigation Sequencing and No Net Loss – 2024
 - j. Applicant's Legal Response to View, Height and Restoration – 2022
 - k. 2nd Round Applicant Response to City Review Table – 2022
 - l. 3rd Round Applicant Response to City Review Table -2023
 - m. 4th Round Applicant Response to Review Table – 2024
5. Landscaping Plans:
 - a. Shoreline Landscape Plan Set - 2025
 - b. Upland Landscape Plan Set - 2025
 - c. Soil and Vegetation Report - 2025
6. Phasing Plans Submittals:
 - a. Site Phasing Plan - 2026
 - b. Building Phasing Plan - 2026
 - c. Phasing Diagram 1st Phase - 2025
7. SEPA Checklist - 2025
8. Geotechnical Analysis:
 - a. Landau Preliminary Geotechnical Engineering Memorandum - 2020
 - b. Landau Geotechnical Hazards Assessment - 2021
 - c. Sage Geotechnical Response - 2025

1 9. Traffic Analysis Submittals:

- 2 a. Traffic Impact Analysis - 2022
3 b. Applicant Response to Traffic Comments
4 c. Trip Generation Counts -2022

5 10. Critical Area Report Submittals:

- 6 a. Critical Area Report - 2022
7 b. Important Habitats and Species Report - 2022
8 c. Bird Strikes Memo - 2025

9 11. Stormwater Plan Submittals:

- 10 a. Preliminary Drainage Design Report - 2024
11 b. Site Management Plan - 2021
12 c. Construction Stormwater Pollution Prevention Plan - 2021

13 12. Cultural Resources (*Documents Not Available for Public Review*):

- 14 a. Cultural Resource Desktop Review Report - 2021
15 b. Cultural Resources Assessment - 2023

16 13. Site Contamination Submittals:

- 17 a. Phase I Environmental Site Assessment - 2020
18 b. Phase II Environmental Site Assessment - 2020
19 c. Due Diligence Investigation Status Update Memorandum – 2020
20 d. Voluntary Cleanup Plan Application and Remedial Investigation Data Gap Report - 2021
21 e. Hardel Methane Summary Memorandum - 2022
22 f. Agreed Order DE 21726 - 2025

23 14. Restoration Plan Submittals:

- 24 a. Shoreline Restoration Design - 2025
25 b. Restoration and Mitigation Plan - 2025
c. Preliminary Engineering Design Report - 2022
d. Shellfish and SAV Report - 2022
e. Portadam Feasibility Assessment - 2025

15. Flood Zone - First Floor Elevation Recommendations – 2019

16. Property Line Modifications:

- a. Recorded Boundary Line Adjustment 2022
b. Proposed Road Vacation Location 2024

1 17. Notice of Application with:

- 2 a. Distribution List
3 b. Affidavit of Posting

4 18. Concept Design Review:

- 5 a. Design Review Board Minutes / Recommendations
6 b. Design Review Packet (Staff report, checklist, public comments)
7 c. Notice of Design Review Board Meeting

8 19. Agency Comments:

- 9 a. 2021 Agency Comments
10 b. 2022 Agency Comments
11 c. Jan – March 2025 Agency Comments
12 d. October 2025 Agency Comments
13 e. 2026 Agency Comments – SEPA Determination

14 20. Public Comments:

- 15 a. 2021 Public Comment Letters
16 b. 2022 Public Comment Letters
17 c. 2025 Comment Letters
18 d. 2026 Comment Letters – SEPA Determination
19 e. 2026 Comment Letters – Hearing Notice

20 21. Interested Party Email Notification:

- 21 a. 5.22.2022 Round 2 Review
22 b. 9.18.2023 Round 3 Review
23 c. 10.18.2023 DRB Postponement
24 d. 2.7.2025 DRB Meeting Date
25 e. 1.18.2026 SEPA Determination
f. 1.23.2026 SEPA Update
g. 5.22.2026 Hearing Notice Email

22 22. SEPA Determination of Non-Significance with:

- 23 a. Distribution List
24 b. Affidavit of Site Posting
25 c. SEPA Appeal Submittal by Olympia Ecosystems

26 23. Supplemental Documents:

- 27 a. 2021 Development Agreement
28 b. 2020 USFWS Methods to Reduce Bird Collisions with Glass
29 c. 2023 Regional Trails Plan
30 d. 2016 West Bay Restoration Assessment
31 e. 2012 Shoreline Master Program Restoration Plan
32 f. 2005 West Bay Corridor Study

*Findings of Fact,
Conclusions of Law and
Shoreline Decision - 129*

CITY OF OLYMPIA HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387

1 24. Hearing Notice

2 a. Notice

3 b. Affidavit of Posting

4 c. Distribution list

ATTACHMENT 2

1. Comment letters received pre-hearing
2. Comment letters received during hearing – Monday June 8.
3. City PowerPoint Short
4. Applicant PowerPoint Short
5. City PowerPoint Long
6. TIA for West Bay View Landing
7. Applicant TAS Hearing Presentation
8. Public Comments (Tuesday)
9. Public Comments (Wednesday)

ATTACHMENT 3

1. Curriculum Vitae – Sarah Amell, Aqua Terra Cultural Resource Consultants
2. Curriculum Vitae – Jim Brennan. J.A. Brennan Associates PLLC
3. Curriculum Vitae – Whitney Holm, SCJ Alliance
4. Curriculum Vitae – Calvin McLaughlin, Sage Geotechnical, LLC
5. Curriculum Vitae – Hannah Morse, Pioneer Technologies Corporation
6. Curriculum Vitae – Scott Maharry, Farrallon Consulting
7. Curriculum Vitae – R. Shane Phillips, Moffat & Nichol
8. Curriculum Vitae – Aaron van Aken, Heath & Associates
9. May 20, 2026, Technical Review Summary – West Bay Yards Traffic Impact Analysis – Heath & Associates
10. Shoreline Restoration – Beach Fill Diagram
11. West Bay Yards Restoration Salish Nearshore Calculator
12. Salish Nearshore Calculator Supporting Documentation
 - a. General Construction Measures and Essential Fish Habitat Conservation Recommendations (May 25, 2023)
 - b. Project Design Criteria #3 Stormwater Facilities and Outfalls (August 2, 2022)
 - c. Project Design Criteria #4, Shoreline Modifications
 - d. Project Design Criteria #11, Habitat Enhancement Activities
13. Curriculum Vitae – Troy Bussey, Pioneer Technologies Corporation
14. January 2026, Supplemental Remedial Investigation Work Plan – Pioneer Technologies Corporation

ATTACHMENT 4

- 1 2004 07 Salmon Habitat Protection and Restoration Plan.
- 2 2016 02 26 West Bay Environmental Restoration Assessment.
- 3 3. 2022 07 Fish and Wildlife Discipline Report.
- 4 4. 2023 10 03 Floyd and Washington Department of Ecology correspondence.
- 5 5. 2024 02 13 developer technical memorandum.
- 6 6. 2024 02 15 developer letter to City responding to 3rd round review comments
(with staff markup).
- 7 7. 2024 02 15 developer letter to City responding to 3rd round review comments.
- 8 8. 2024 02 28 Habitat Conservation and Land Protection Program 2024-2030.
- 9 9. 2024 04 25 City response letter to developer regarding 2023 review.
- 10 10. 2024 05 01 emails regarding Hardel Agreed Order.
- 11 11. 2024 06 01 Alternative Analysis Table.
- 12 12. 2024 06 26 emails regarding Shoreline Restoration Design Alternatives Analysis.
- 13 13. 2024 06 26 Floyd email to Barham.
- 14 14. 2024 07 02 Burgess email to Floyd.
- 15 15. 2024 07 08 Olympia Water Resources director email regarding Alternative 4.
- 16 16. 2024 07 19 citizen email describing Schneider's Creek watershed and estuary.
- 17 17. 2024 07 24 Floyd email regarding June alternative.
- 18 18. 2024 07 24 developer letter to City responding to July 8, 2024 questions.
- 19 19. 2024 07 31 emails regarding Shoreline Restoration Design Alternatives Analysis.
- 20 20. 2024 07 31 Floyd emails to Burgess regarding Alternatives 3 and 4.
- 21 21. 2024 09 25 Thomas Architecture Studios letter to City regarding Request for Code
Interpretation.
- 22 22. 2024 09 16 Burgess email to Floyd regarding Code Interpretation Request.
- 23 23. 2024 09 23 West Bay Yards Average Grade Calculations.
- 24 24. 2024 Shoreline Restoration Site Plan.
- 25 25. 2024 12 16 Floyd email regarding 4th round submittal.
- 26 26. 2025 10 03 City and Department of Ecology correspondence.
- 27 27. 2025 06 Draft Puget Sound Nutrient Reduction Plan.
- 28 28. 2022 10 Budd Inlet Dissolved Oxygen Maximum Daily Load.
- 29 29. 2022 10 EIS – Existing Conditions and Affected Environment.

ATTACHMENT 5

John Kingsbury
Lee Reiner
Karen Lohmann
David Pavelchek
David Schaffert
Marianne Tomkins
Gordon White
Michael Cade
Jim Lazar
Theresa Staal-Cowley
Nancy Riordan
John Newman
Bonnie Blessing
Keith Dublanica
Sharon Lumban Tobing
Doug Mah
Jeff Sowers
Judy Bardin
Ash Edmonds
Betsy Norton
Harry Branch
Marci Cleaver
Vanessa LaValle
Rhonda Cramer
Brad Furber
Mike Mercker
Omar White

ATTACHMENT 6

Elizabeth McClean
Jacqueline Chambers
Stonefly
Crayne Horton
Gabriel Vesenka
Karen Messmer
Tim Leadingham
Amy Harding
Jan Hillman
Joe Bettridge
Marjie Schubert
PG Coon
John Van Eenwyk and Juliette Van Eenwyk
Ryan Pantier
Cheryl Stephani and Stan Marshburn
D. Norrel
Fran and Erick Kammerer
Carol Piening
Warren and Esther Grace Kronenberg
Greg and Joan Wright
Jerald Weiner and Danella Donlan
Jerri Smith
Jim Kruidenier and Susan Bryant
JJ Lindsey
Jakub Bednarek
Maria Ruth
Mike Brewer
Black River Environmental
William Kleindle
Billy Olesen
Jean Hayden
Joseph Lanham
Laura Drabandt
Mike Ruth
Olympia Ecosystems
Olympia Master Builders
Kim Dobson
Rob Rice
Tom Hayden
Todd Monohon
Jeanne Harmon
Allison Sykes
Amy Nelson
*Findings of Fact,
Conclusions of Law and
Shoreline Decision - 135*

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1 Coleen Graney
Dave Toler
2 Michael and Jennifer Clark
Marianne McNabb
3 Michael Robinson

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*Findings of Fact,
Conclusions of Law and
Shoreline Decision - 136*

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ATTACHMENT 7 - APPLICANT'S WRITTEN RESPONSE

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*Findings of Fact,
Conclusions of Law and
Shoreline Decision - 137*

**CITY OF OLYMPIA HEARING EXAMINER
299 N.W. CENTER ST. / P.O. BOX 939
CHEHALIS, WASHINGTON 98532
Phone: 360-748-3386/Fax: 748-3387**

West Bay Yards Public Hearing, June 8-11, 2026
Applicant's Consolidated Response to Public Comments¹

No.	Commenter	Summary	Applicant's Response
1.	John Kingsbury	Resident of West side; questioned estimates of 1100 trips in traffic study. Concerned about roundabout at Harrison and West Bay. Estimated trip rate of .44 for the housing units. Believes if there are 1.4 residents per unit, so thinks .4 is underestimated. Believes roundabout needs to have capacity improvements.	Ref. Testimony of A. Van Aken, Traffic Engineer who clarified that 0.44/unit is the PM peak hour trip rate; daily trip rate is 4.54 trips per unit and confirmed that the Harrison Ave./West Bay Drive roundabout and all other intersections meet adopted City level of service standards with the project. The Applicant notes that Mr. Van Aken reviewed the prior accepted TIA and updated counts and analysis to capture current conditions as part of his work. See Core Doc. No. 9A (TIA 2022), Applicant Ex. 9 (Heath Technical Review), Core Doc. No. 1 (Staff Report) at 31-32; Testimony of A. Van Aken; Testimony of D. Smith.
1a.	John Kingsbury	Supports development of the site but considers current proposal inappropriately large and believes heights should be reduced. Demands concurrent traffic capacity improvements on West Bay Drive including the roundabout at Harrison, West Bay and Olympic Way to handle additional 2,000 trips per day.	Regarding scale, the size and scale of the proposed buildings is consistent with adopted City codes and design standards specific to the West Bay Drive district. See Core Doc. No. 1 (Staff Report) at 11-16 and 27-28. Regarding traffic, see prior response; capacity improvements are not warranted at the roundabout.
2.	Lee Reiner	Believes proposed project is in violation of the City's SMP through the creation of new uplands. Expressed concerns about impact to wildlife, birds from development and that stormwater will degrade water quality.	Regarding SMP compliance, see Core Doc. No. 1 (Staff Report) at 24-25 (Minimum Necessary Analysis) and technical submittals referenced therein. Regarding wildlife, birds, see Core Doc. No. 10.A (Critical Area Report); 10.B (Important Habitat and Species Report); 14.A (Shoreline Restoration Design); 14.B (Restoration Mitigation Plan); Testimony of S. Maharry; Testimony of S. Stelzner (Squaxin Island Tribe). Regarding stormwater/water quality, see Core Doc. No. 11.A (Drainage Design Report), Testimony of W. Holm; Testimony of J. Patten, describing stormwater management and treatment systems to be provided with project development.

¹ Where the same individual submitted multiple comments, but at different times or formats (i.e., via testimony and also in writing, or multiple times in writing), those comments have been grouped for purposes of response, and so may appear out of order when compared to order appearing at the hearing or in public comment exhibits.

No.	Commenter	Summary	Applicant's Response
3.	Karen Lohmann	Made various general comments, expressed specific concern about traffic management and safety for the roundabout.	See Response to Comment 1.
4.	David Pavelchek	Concerned about the scale of the project, traffic, water runoff, sea level rise and public liability, City's approach to managing shorelines.	Regarding scale, see Response to Comment 1a. Regarding traffic, see Response to Comment 1. Regarding stormwater, see Response to Comment 2. Regarding sea level rise, see Core Doc. No. 1 (Staff Report) at 11 and technical submittals referenced therein. The commenter's concern about the City's general approach to managing its shoreline is a policy matter outside the scope of project review.
5.	David Schaffert	Thurston Chamber CEO; supports project; supports housing and environmental cleanup.	Comment noted.
5a.	David Schaffert	Strongly supports the West Bay Yards project on behalf of the Thurston County Chamber of Commerce. Believes the project provides positive community benefit and addresses three significant needs: housing, economic development, and Budd Inlet shoreline restoration. Recognizes the project's complexity and encourages approval.	Comment noted.
6.	Marianne Tompkins	Opposes proposed filling intertidal shorelines and what commenter describes as permanent destruction of tidelands with reference to minimum necessary provisions of OMC 18.20.855.	See Response to Comment 2.
7.	Gordon White	Commenter, an Olympia resident and former statewide manager at Department of Ecology offered comments and opinions specific to the project's SEPA compliance and issuance of the DNS.	No response required as the comments made are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed expert witness.
8.	Michael Cade	Thurston EDC Executive Director, provided prior comment letters. Supports project.	Comment noted.
8a.	Michael Cade	EDC provides detailed economic impact analysis supporting the project. Projects \$176.5M in construction economic activity with 685 jobs and \$23M in tax revenue, plus \$7.3M annual operational activity with 33 jobs and \$1.1M annual taxes. Emphasizes 478 market-rate units addressing critical housing need toward City's 2045 goal of 14,295 units. Highlights commercial space, public access, shoreline	Comment noted.

No.	Commenter	Summary	Applicant's Response
		restoration with natural tidal beach, and habitat improvement for salmon and marine life on site vacant since 1996 mill fire.	
9.	Jim Lazar	Commenter asserts the shoreline restoration is increasing the building site. Believes that since site is on fill from an earlier millennium, that fill should be removed and placement of clean fill should be allowed only up to pre-industrial shoreline. Believes project will violate various provisions of the comprehensive plan (citing same).	The commenter is incorrect; the shoreline restoration is not increasing the building site. All setbacks and other bulk and density measurements associated with the upland development remain based on the existing, pre-restoration OHWM. Core Doc. No. 2, Architectural Plan Set, Sheet A.6.3. Regarding fill, the Shoreline Management Act (RCW 90.58) includes a savings clause which protected fill lawfully placed before December 4, 1969 from being subject to removal under the SMA. <i>See Chelan Basin Conservancy v. GBI Holding Co.</i>, 194 Wn. App. 478, 278 P.3d 222 (2016) (interpreting and applying the savings clause in a challenge to proposed development on pre-SMA fill in Lake Chelan asserting violation of the public trust doctrine). Industrial operations and associated fill at the project site date back to at least 1924. Core Doc. No. 13.F (Agreed Order) at 4 (describing the property's history). Finally, OMC 18.20.580 specifically provides that "Restoration does not imply a requirement for returning the shoreline area to original or pre-European settlement conditions." The Applicant also notes that as Mr. Stelzner from the Squaxin Island Tribe observed at the hearing, essentially all of downtown Olympia was developed on historic fill.
9a.	Jim Lazar	First, questioned expansion into tidelands protected by public trust doctrine, arguing this constitutes expropriation of public lands without proper permission. Second, criticized inadequate traffic impact analysis, noting the project plus other proposed developments would overwhelm West Bay Drive and the upper roundabout intersection. Third, expressed concern about biological function impacts from hundreds of thousands of yards of fill without adequate information about fill source and biological equivalency.	Regarding proposed tideland fill and associated SMA compliance, see Response to Comment 9. Regarding traffic, see Response to Comment 1. Regarding evaluation of impacts of proposed fill on "biological function," see Core Doc. No. 14.A (Shoreline Restoration Design); 14.B (Restoration Mitigation Plan); 14.D (Shellfish and SAV Report); Testimony of S. Maharry; Testimony of S. Stelzner (Squaxin Island Tribe).
9b.	Jim Lazar	Argued the project is not a true 'restoration' but rather traditional development fill that would reduce	The commenter's claims regarding fill v. restoration are previously addressed Response to Comment 9.

No.	Commenter	Summary	Applicant's Response
		shoreline function by narrowing the channel and increasing water velocity, leading to increased scouring. Cited multiple Comprehensive Plan provisions requiring no net loss of shoreline ecological functions and argued the proposal violates these requirements by creating a net loss rather than maintaining existing functions.	Regarding no net loss, the commenter is incorrect. See analysis in Core Doc. No. 1 (Staff Report) at 18-20 and supporting technical reports referenced therein.
10.	Teresa Staal- Cowley	Commenter expressed concern about traffic from the project, sea level rise, and requested to decrease the amount of parking and units to be more "respectful".	See Responses to Comments 1, 2, and 4.
11.	Nancy Riordan	Concerned whether another development proposed on West Bay – West Bayview Landing Senior Living Apartments (242 residential apartments in 3 or 4 buildings) was considered with traffic analysis due to impacts on West Bay Drive.	While the project TIA did not consider the West Bayview Landing trips (because it was submitted after the West Bay Yards application), West Bayview Landing was required to consider West Bay Yards as pipeline traffic. The West Bayview TIA reflects that the Harrison Ave. roundabout will continue to operate at LOS A with building of both projects. Testimony of A. Van Aken and Hearing Exhibit 6 (West Bayview TIA).
11a.	Nancy Riordan	Supports the Olympia Ecosystems appeal of the DNS determination and calls for a complete EIS before permit consideration. Argues the proposal violates the Public Trust Doctrine, involves excessive fill, and is inconsistent with Deschutes River restoration efforts. Raises major concerns about West Bay Drive's capacity to handle increased traffic from two major housing developments.	Comments on the SEPA determination are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness. Regarding traffic, see Response to Comments 1 and 11. Regarding the relationship of/compatibility of the project with the future Deschutes Estuary Restoration project, see Testimony of R. Shane Phillips, S. Maharry, and J. Brennan. Regarding alleged violation of the public trust doctrine, see Response to Comment 9.
12.	John Newman (Burbank/Elliott Neighborhood Association)	Concerns about traffic at roundabout on Harrison and questioned City's acceptance of traffic report, noted that there is no bus service on West Bay Drive. Expressed belief that project is "pushing of the boundary of the private property into the Bay" that is not legally allowable under City standards. Noted that there is no allowance for affordable housing provided with the project.	See Responses to Comments 1, 2, and 10 as to traffic and compliance of proposed fill for shoreline restoration with City/SMA standards. The commenter is correct that Intercity Transit does not have scheduled bus service to West Bay Drive, although on-demand "Dial a Lift" type service is available and fixed route service is available within .6 of a mile of the project site. The West Bay Corridor Study noted challenges with operating buses on steep grades in the area but included street design standards which

No.	Commenter	Summary	Applicant's Response
			accommodate future service. Testimony of N. Floyd; Testimony of A. Van Aken; Core Doc. No. 9.A (TIA) at 10; Core Doc. No. 23.F (West Bay Corridor Study) at 5. While the Hearing Examiner correctly noted following this comment that the project is not required to demonstrate affordable housing, making it not relevant to permit consideration, for the record, under the Development Agreement, the Applicant has agreed to provide a one-time \$250,000 payment to the City of Olympia Home Fund to develop and sustain supportive and affordable housing in the City. Core Doc. No. 23.A (Development Agreement) at 6.
12a.	John Newman (Burbank/Elliott Neighborhood Association)	Email asking why Schneider Creek was not discussed more, stating it is next to the site and is salmon-bearing.	Schneider Creek was identified during project review as being approximately 300' from the project site and is a fish bearing stream. The City's critical areas code requires a 250' buffer for Schneider Creek, which does not extend to the project site. See Core Doc. No. 1 (Staff Report) at 28, Testimony of N. Floyd, Core Doc. No. 10.A (Critical Area Report).
12b.	John Newman (Burbank/Elliott Neighborhood Association)	Email addressing heavy-rain runoff, claimed degradation of the Schneider Creek basin, and the city stormwater-plan description of the creek.	See Response to Comment 12a.
12c.	John Newman (Burbank/Elliott Neighborhood Association)	Email asking for discussion of methane issues at the site.	The Applicant's environmental consultants investigated the presence of subsurface methane and submitted the results of that investigation to the City during the course of project review. Core Doc. No. 13.E (Methane Investigation), Testimony of T. Bussey, Testimony of H. Morse. The Applicant anticipates completing additional limited testing as well completing any required remediation through the ongoing MTCA process. Core Doc. No. 13.F (Agreed Order); Testimony of H. Morse.
13.	Bonnie Blessing	Concerned about flood hazard compliance because of project location in a mapped Firm AE zone next to a VE zone. Expressed concern about difference in material between sand/gravel for beach restoration and existing mudflat and asked how that area would be maintained in the future with sediment movement along the beach.	Regarding flood hazard compliance, see Core Doc. No. 1 (Staff Report) at 11 and Core Doc. No. 15 (Mott McDonald, First Floor Elevation Recommendations), Testimony of R. Thomas. Regarding shoreline restoration (material, placement over mudflat, long-term maintenance), see Core Doc. No. 14.A (Shoreline Restoration Design), 14.B (Restoration and Mitigation Plan), 14.C (Preliminary

No.	Commenter	Summary	Applicant's Response
		Concerns about liquefaction on area which was historic fill. Expressed support for housing and shoreline access.	Engineering Design Report); Testimony of R. Shane Phillips; Testimony of S. Maharry. Regarding liquefaction, see Core Doc. No. 8.B (Geologic Hazards Assessment); Testimony of C. McCaughan.
13a.	Bonnie Blessing	Claims West Bay streams are not inventoried or monitored; increased development may increase flood volume; asserts mud and fine-grained sediment support food for waterbirds and juvenile Chinook.	This comment raises similar issues as Ms. Blessing's preceding comment; see Response to Comment 13.
13b.	Bonnie Blessing	Lengthy written comment raising FEMA/FIRM AE and VE zone issues; flood-hazard code; trail access; adequacy of traffic counts; shoreline restoration/nourishment uncertainty; mudflat versus sand/gravel habitat; skyglow; juvenile Chinook/chum, shorebirds, Olympia oysters, wave action, beach nourishment, liquefaction, and whether the project is restoration, stabilization, or capping.	This comment also raises similar issues as Ms. Blessing's preceding comment; see Response to Comment 13. Regarding traffic, see Response to Comment 1. Regarding the question posed, the proposed project is for an upland mixed use development and voluntary shoreline restoration.
13c.	Bonnie Blessing	The commenter provided additional West Bay/Budd Inlet and Schneider Creek watershed information, including untreated pollution-generating impervious area, unmonitored West Bay streams, development-related flood-volume concerns, and Schneider Creek stormwater/bank failure/water-quality issues.	The Applicant notes that the project is 300' from Schneider Creek. See Response to Comment 12a.
14.	Keith Dublanica	Long-time resident of West side. Concerned about scale of project, flow of traffic, tribal treaty rights, impacts to microorganisms/food change, TMDL status of Budd Inlet, believes dredging impacts and restoring estuary will increase sediments on site. Expressed disagreement with DNS/SEPA determination.	See Responses to Comments 1, 2, and 4. Regarding tribal treaty rights, the Applicant notes that the City developed the 2016 West Bay Restoration Assessment upon which the proposed shoreline restoration is based in cooperation with the Squaxin Island Tribe, which has also expressed its support for the restoration project. Core Doc. No. 23.D (2016 Restoration Assessment); Core Doc. No. 19.B (Tribe 2022 Comment); Testimony of S. Stetzner (Squaxin Island Tribe). Regarding the relationship of/compatibility of the project with the future Deschutes Estuary Restoration project, see Testimony of R. Shane Phillips, S. Maharry, and J. Brennan. Comments on the SEPA determination are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness.

No.	Commenter	Summary	Applicant's Response
15.	Valerie Krull	Expressed support for SEPA Appellant Oly Ecosystems, concerned that this is way too large a development to be where it belongs and that its impact environmentally will be destructive.	Comments on the SEPA determination are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness.
16.	Sharon Lumbantobing	Resident of West Olympia. Comments focused on reasons why commenter believed an EIS should have been required. Commenter also questioned whether findings can be made regarding no net loss, cumulative impacts , long term climate resilience.	Comments on the SEPA determination are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed expert witness. Regarding no net loss, see analysis in Core Doc. No. 1 (Staff Report) at 18-20 and supporting technical reports referenced therein. For shoreline permitting, cumulative impacts are only relevant to the Hearing Examiner's consideration of the SCUP for the mixed use element of the building. Core Doc. No. 1 (Staff Report) at 17-18. Both the upland development and shoreline restoration project consider and incorporate climate resilience in project design. See Core Doc. No. 1 (Staff Report) at 11 (upland) and Core Doc. No. 14.A (Shoreline Restoration Design), Core Doc. No. 14.C (Preliminary Engineering Design Report), Core Doc. No. 23.D (2016 Restoration Assessment), Testimony of R. Shane Phillips (shoreline).
17.	Doug Mah	Former Olympia Mayor, believes project meets or exceeds stated goals adopted for West Bay at the time. Expressed support for project.	Comment noted.
17a.	Doug Mah	Strongly supports the West Bay Yards project as a former Olympia City Council member (2001-2011). Believes the project exceeds city goals and provides enormous public benefit through improved public access, 478 housing units, and \$176 million in economic impact. Commends the complex navigation of rules and regulations to bring the project forward.	Comment noted.
18.	Jeff Sowers	Olympia resident. Believes project fails to show no net loss required for shoreline permit approval. Concerned that tree planting may not be workable based on Staff Report. Believes beach will end up smothered in silt after removal of the dam. Concerned about impacts of	The Applicant notes that while discussing concepts of no net loss this commenter also made several references to SEPA and the project "illegally" deferring review To the extent the comments are directed to the SEPA determination, that is outside the scope of permitted

No.	Commenter	Summary	Applicant's Response
		artificial light on salmon habitat due to large water facing buildings.	public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness. Regarding City analysis of no net loss, see Response to Comment 9b. Regarding adequacy of soil depth for planting in the VCA and viability of selected plant species, the Applicant provided the expert testimony of Jim Brennan, Registered Landscape Architect, who confirmed that there was both adequate soil depth and appropriate plant species selection for the shoreline environment. See Core Doc. No. 5.A (Shoreline Landscape Plan Set) at Sheet L-1.7 and L-1.3. Regarding the relationship of the proposed restoration to the Deschutes Estuary Restoration project, see Testimony of R. Shane Phillips, S. Maharry, and J. Brennan. Regarding potential impacts to adjacent habitat of artificial light, see analysis in Core Doc. No. 1 (Staff Report) at 23 and referenced condition of approval 11(b) requiring "dark sky" features and Testimony of S. Maharry.
18a.	Jeff Sowers	Argues the plan fails to demonstrate no net loss in multiple ways including an unworkable site plan with conflicting requirements, saltwater intrusion threats to required tree mitigation, habitat swap based on inadequate modeling, and light pollution impacts not addressed. Requested the project be remanded for a full Environmental Impact Statement due to incomplete environmental review.	This comment is substantively the same as Mr. Sowers' comment 18; see preceding response.
19.	Judy Bardin	Opposed to West Bay development. Deschutes Estuary restoration will widen the channel. Installing fill violates the City SMP and comp plan. Will result in loss of functioning shoreline. Modifications cannot result in loss of ecological functions. No more fill than necessary for restoration. Fill should be located to protect shoreline systems. Proposal destroys aquatic habitat. Asserts 2016 Restoration Assessment did not propose converting aquatic habitat to uplands.	Regarding the relationship of the proposed restoration to the Deschutes Estuary Restoration project, see Testimony of R. Shane Phillips, S. Maharry, and J. Brennan. Regarding compliance of proposed fill with City code and SMP requirements, see Response to Comment 2. Regarding the 2016 Restoration Assessment, the commenter is incorrect; the plan specifically envisioned beach nourishment/restoration on private property to occur "seaward of revetments". Core Doc. No. 23.D

No.	Commenter	Summary	Applicant's Response
			(2016 Restoration Assessment) at 12. Moreover, the new "uplands" expected to be created by the placement of this intertidal fill (that is, where the OHWM is anticipated to move) will be located almost entirely over existing rip rap; the balance of the fill extends into the mudflat, but does not create new "uplands." Applicant Exhibit 10; Testimony of R. Shane Phillips.
19a.	Judy Bardin	Opposed the development arguing that the large amount of fill violates Shoreline Master Program and Comprehensive Plan provisions requiring no net loss. Contended that while Deschutes Estuary restoration will widen the outlet and improve water flow, the West Bay development would have the opposite effect by narrowing the channel and increasing scouring. Argued the project destroys aquatic habitat inconsistent with the 2016 Restoration Assessment.	This comment is substantively the same as Ms. Bardin's comment 19; see preceding response.
20.	Ash Edmonds	Support Oly Ecosystems appeal. Request that the permit be denied or delayed until further examination of ecological impacts. Concern about ecosystem. Lot of dangerous material and waste, needs to be disposed of properly.	Comments on the SEPA determination are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness.
21.	Betsy Norton	Provided comments in support of City recommendation for bird glass, railings, and architectural components, preferably on all sides. Asserts that project should consider "aerial habitat loss," claims buildings remove 13 million SF of flying space from the area including hummingbirds, great blue heron, flock of cormorants. Believes species need more than nesting space and that loss of shoreline habitat means loss of food supply for species of birds and supply. Believes parking lots and trash have contaminants and 6 ppd and that parking lots are at an elevation where concurrent impact of sea level rise are likely to end up with floods in those areas and wash out to mud bay. Asks whether project boundary extends into Port of Olympia dredging.	The Applicant does not object to the City's proposed condition of approval (Condition 8, Core Doc. No. 1 (Staff Report) requiring the use of bird-friendly glass or window treatments on exterior facing windows and balconies, but believes that the requirement should be limited to the third story and below based on USFWS Migratory Bird Program recommendations. Testimony of S. Maharry. Regarding claimed "aerial habitat loss," the Applicant's biologist Scott Maharry, provided responsive expert testimony explaining that is not a quantifiable concept, that the heron rookery will continue to have direct access to the water with the project, and that the project proposes to provide a replacement nest pole for identified purple martin on site. Otherwise, the record shows that the existing uplands provide little to no habitat value, and the overall habitat for raptors and other shore-associated birds will be significantly

No.	Commenter	Summary	Applicant's Response
			improved with the proposed shoreline restoration and associated VCA. Core Doc. No. 4.I (Mitigation Sequencing and No Net Loss); Core Doc. No. 10.A (Critical Area Report); Core Doc. No. 10.B (Important Habitats and Species Report); Core Doc. No. 14.A (Shoreline Restoration Design); Core Doc. No. 14.B (Restoration and Mitigation Plan); Core Doc. No. 14.C (Preliminary Engineering Design Report); Testimony of S. Maharry, R. Shane Phillips, and J. Brennan. Regarding sea level rise/flooding protection/6 ppdq, see Response to Comments 2 and 4. The project boundary does not extend into the Port of Olympia's navigation channel.
21a.	Betsy Norton	Supports bird-friendly design requirements but raises several concerns. Objects to loss of 13 million cubic feet of flying habitat for birds and inadequate analysis of food web impacts to wildlife. Warns that parking lots at lowest building level will flood from king tides and sea level rise, washing contaminants including 6PPDQ (fatal to coho salmon) into Budd Bay. Questions whether cumulative impacts with Port of Olympia dredging were considered in shoreline permit analysis.	This comment is substantively the same as Ms. Norton's comment 21; see preceding response.
22.	Harry Branch	This commenter questioned various aspects of the restoration design, including the gradient and impact to buried benthic community.	The proposed voluntary shoreline restoration design was prepared by duly qualified and experienced experts, all of whom had also worked to develop the 2016 Restoration Assessment upon which the design was based. Core Doc. No. 14.A (Shoreline Restoration Design); Core Doc. No. 14.C (Preliminary Design Report); Core Doc. No. 23.D (West Bay Restoration Assessment); Testimony of R. Shane Phillips, S. Maharry, and J. Brennan. Impacts to the benthic community were evaluated in detail, with the conclusion that existing shellfish will be impacted by fill during construction but the end result will be improved shellfish habitat conditions because the project places clean materials, stabilizes the shoreline, plants vegetation, and removes debris. Core Doc. No. 14.D (Shellfish and SAV Report); Core Doc. No. 4.I (Mitigation Sequencing and No Net Loss); Testimony

No.	Commenter	Summary	Applicant's Response
			of S. Maharry. The Squaxin Island Tribe's biologist shared this opinion. Testimony of S. Stetzner (Squaxin Island Tribe).
22a.	Harry Branch	Submitted additional comments regarding Schneider Creek, stating the Schneider Creek estuary should resemble Tolmie State Park, including intact upper beach, a spit of land around the mixing zone, overhanging vegetation, salt marsh, tide flats, and a role for the Hardel site in those functions.	Regarding Schneider Creek, see Response to Comment 12A. To the extent that the commenter is expressing a preference for the Applicant's property to be used for a different future restoration purpose associated with Schneider Creek, the property is privately owned by the Applicant and not by the City or other public agency.
22b.	Harry Branch	Provides detailed technical critique of shoreline restoration design, arguing it fails to address impacts on chemical and biological parameters, questions loss of tide flat habitat. Argues project violates Shoreline Master Program restoration requirements and criticizes using 'restoration' terminology when actually destroying established benthic habitat.	This comment is substantively the same as Mr. Branch's comment 22; see corresponding response.
23.	Marcie Cleaver	Supports Oly Ecosystems appeal, and cites various reasons for doing so tied to appeal claims. Asserts market rate housing will not help housing shortage and that there are empty apartments in Olympia. Supports "clean" development.	Comments on the SEPA determination are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness. Otherwise, comment noted.
24.	Vanessa LaValle	Questioned lack of approved cleanup plan to review, relationship of project to removal of 5 th Ave. dam, compliance with CAO. Believes redeveloping other areas seems like a better approach. Concerned about liquefaction since residences are planned and that trying to make the site more stable further harms ecological restoration. Takes issue with amount of parking proposed, does not believe that there are plans for stormwater management and pollutant runoff. Given City's climate goals, believes bus routes would seem a logical part of the proposal. Expressed support for Oly Ecosystems appeal and asks to reject shoreline permit.	To the extent the comments are directed towards the SEPA determination, they are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness. Regarding liquefaction, see Response to Comment 13. Regarding stormwater management and pollutant runoff, the project has, and is required to have, plans to manage and treat its stormwater. See Response to Comment 2. Regarding bus service, neither the Applicant nor the City can mandate that Intercity Transit to provide bus service to any specific location. See Response to Comment 12.
25.	Ronda Larson Kramer	Olympia who believes permit should be denied or delayed. Questions burying existing mudflat and benthic habitat and ecological function of habitat being removed. Since it is a high energy shoreline,	Regarding impacts to mudflat, no net loss, evaluation of benthic habitat, and future expected benthic habitat see Response to Comment 22.

No.	Commenter	Summary	Applicant's Response
		conclusion of net ecological gain assumes performance of future beach. Believes the City should have evaluated alternative restoration conditions or methods, including a pocket embayment. Believes alternatives have to be analyzed to show no net loss of shoreline ecological functions because future habitat is uncertain and that record does not explain how existing mudflat and benthic habitat were evaluated.	Regarding expected maintenance and performance of the future beach, and associated habitat, see Core Doc. No. 14.A (Shoreline Restoration Design), 14.B (Restoration and Mitigation Plan), 14.C (Preliminary Engineering Design Report); Testimony of R. Shane Phillips; Testimony of S. Maharry. Regarding alternatives analysis, the 2021 Development Agreement required the Applicant to propose voluntary shoreline restoration consistent with the 2016 Restoration Assessment for the former Hardel Plywood site and the City's adopted Shoreline Master Program. Core Doc. No. 23.A (Development Agreement). The Applicant notes that the City's current 2021 SMP also incorporates the conceptual restoration approaches from the 2016 West Bay Restoration Assessment by reference.
25a.	Ronda Larson Kramer	Requested denial or delay of shoreline permit until more information obtained regarding no net loss of ecological functions. Argued that while degraded habitat isn't the same as non-functional habitat, the City failed to quantify existing ecological functions of mudflats and benthic habitat to be buried. Questioned how engineered beach/marsh system would perform in high-energy environment and whether alternatives were adequately explored.	This comment is substantively the same as Ms. Kramer's comment 25; see corresponding response.
26.	Brad Furber	Expressed concern about possible conflict with project and Deschutes Estuary restoration and compatibility.	See Response to Comment 14.
27.	Mike Mercker	Agrees with and supports the Oly Ecosystems appeal. Believes there should be full removal of all the old fill and all of the contamination and that future restoration is precluded by the development. Does not believe there has been proper input from community – to “collectively express” vision for the shoreline. Thinks project should be scaled down.	To the extent the comments are directed towards the SEPA determination, they are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness. Regarding removal of historic fill, see Response to Comment 9. Regarding the opportunity for the community to “collectively express” its vision for the shoreline, that

No.	Commenter	Summary	Applicant's Response
		Noted another development at end of 24 th Ave NW, 39 housing units there, will increase traffic down West Bay.	occurs through the periodic City's Shoreline Master Program update process, not at the time of a project-specific land use application. The proposed project is based upon City plans, policies, and regulations for this site which date back to at least 2001. See Core Doc. No. 1 (Staff Report) at 2 (discussing the history of City planning for redevelopment of this area). Regarding traffic, see Response to Comment 1. Regarding scale, see Response to Comment 1a.
28.	Omar White	Olympia resident. Concerned about traffic safety, light pollution on the birds and migration patterns.	Regarding traffic, see Response to Comment 1. Regarding birds/light pollution, see Response to Comment 18.
29.	Elizabeth Hart MacLean	Supports the West Bay Yards project and advocates for public waterfront access. References visiting waterfront areas in Seattle and Ruston as positive examples of public places. Believes West Bay Yards is needed to provide care for the waterfront and public access opportunities. Views the project as inspirational for the community.	Comment noted.
30.	Jacqueline Chambers	Opposes the development due to traffic and environmental concerns. Lives on the west side of Olympia and observes existing congestion on West Bay Drive including at the traffic circle. Considers it unimaginable to add 500+ new vehicles to existing congestion. Believes the decision to locate housing at the planned site is "ludicrous" due to both environmental and traffic impacts.	See Response to Comment 1.
31.	stonefly@comcast.net	Expressed strong support for the West Bay Yards development. Provided brief enthusiastic endorsement stating it is a great development and great job, with approval recommended.	Comment noted.
32.	Crayne Horton	Opposes proceeding with the project without first performing an Environmental Impact Review. Believes it is not possible or appropriate to move forward without this comprehensive environmental assessment.	Comments on the SEPA determination are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness.
33.	Gabriel Vesenska	Expressed fear about the development proposal and concerns about impacts to beauty and peace provided by West Bay Woods ecological restoration. Requested that the applicant be required to prepare an	Comments on the SEPA determination are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness.

No.	Commenter	Summary	Applicant's Response
		environmental impact statement so Olymplans can make an informed decision about how to proceed with the project.	
34.	Karen Messmer	Argues proposal does not comply with the Olympia Comprehensive Plan's natural environment goals and policies. Contends the project does not clean up prior contamination nor preserve and restore shoreline and aquatic habitat as required. Argues that destroying existing shoreline by covering with fill is neither protection nor restoration, and advocates for complete contamination removal rather than capping. Cites legal precedent that comprehensive plan goals control over development code when there are conflicts.	The project is consistent with all of the Natural Environment Chapter goals and policies cited in the comment. • PN 1.4. The project will restore the shoreline and create a riparian habitat on site which is presently non-existent. • PN 1.11. The project will clean up all remaining prior contamination as redevelopment occurs. This goal does not require remediation to occur prior to approval of a proposed development. • PN2.6, PN 6.6 The project restores and improves wildlife and aquatic habitat; the record shows that adverse impacts to shellfish habitat from the proposed fill will be temporary. Regarding PN 6.6, the applicant also notes that the overarching cited goal is GN6, which references protecting and restoring "healthy aquatic habitat," which this is not. The City's Staff Report (Core Doc. No. 1) includes additional detailed analysis of Comprehensive Plan consistency at pp. 6-9. It is unclear to the Applicant why the commenter cites and attaches the unpublished 2013 Trillium decision. However, to the extent it was directed towards transit connectivity or availability, that code decision involved interpretation of the City's neighborhood village zoning regulations and related Comprehensive Plan policies, which are not at issue for the West Bay Yards project.
35.	Tim Leadingham	Advocates for a full Environmental Impact Statement covering the entire West Budd Inlet shoreline to consider cumulative effects of all development proposals. Argues that considering each project in isolation defeats the purpose of environmental impact laws. Specifically concerned about restoration opportunities including Deschutes estuary and Schneider Creek salmon habitat. Requests inclusion of Squaxin tribe as equal partner in stewardship	Comments on the SEPA determination are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness. Regarding the relationship of/compatibility of the project with the future Deschutes Estuary Restoration project, see Response to Comment 14. Regarding engagement with the Squaxin Island Tribe, see Response to Comment 14.

No.	Commenter	Summary	Applicant's Response
		discussions and emphasizes passing natural heritage to future generations.	Regarding Schneider Creek, see Response to Comment 12A.
36.	Amy Evans Harding	Supports West Bay Yards project citing needs for housing, environmental cleanup, and diverse waterfront access and enhancement. Believes the project addresses multiple community needs and should receive approval.	Comment noted.
37.	Jan Hillman	Strongly opposes the project citing multiple concerns including traffic impacts, noise pollution, infrastructure capacity, and environmental damage. Specifically worried about water supply and sewage capacity for 400 units plus commercial space, traffic impacts on West Bay Drive, noise carrying across water, and ongoing construction impacts. Critical of city decision-making process.	To the extent this comment is directed towards the SEPA determination or appeal, comments on the SEPA determination are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness. Regarding traffic, see Response to Comment 1. Regarding water and sewer capacity, the City has adequate utility capacity to serve the project. See Core Doc. No. 1 (Staff Report) at 33; Testimony of W. Holm. Regarding scale, see Response to Comment 1a. Regarding noise, the project must comply with adopted City noise regulations, including during construction. See OMC 18.40.080 (adopting maximum noise levels and hours). Proposed Condition 18 also incorporates limitations on construction hours required by City codes.
37a.	Jan Hillman	Questions the timing of such an enormous project and expresses concerns about traffic congestion at the Harrison/West Bay Drive intersection, sea level rise, pollution impacts to Puget Sound, and infrastructure capacity for water and sewer systems. Agrees cleanup is needed but opposes the scale of development.	This comment is substantively the same as Ms. Hillman's preceding comment 37; see corresponding response.
38.	Joe Bettridge	Supports the project as a solution to the housing crisis and community revitalization. As a Habitat for Humanity board member, emphasizes the project's role in addressing housing supply shortages and helping young Americans achieve homeownership. Views it as economic revitalization of an overlooked industrial site that would maintain existing views while creating economic vitality and community engagement.	Comment noted.
39.	Margie Schubert	Emphasizes the importance of conducting land restoration before any new building begins on the site.	Comment noted.

No.	Commenter	Summary	Applicant's Response
40.	Pg Coon	Opposes the development, believes it will eliminate beautiful in-town drives and obstruct scenic views of West Bay. Expresses concerns about Schneider Creek restoration and protection from degradation, including release from narrow cement culvert. Discusses the importance of the hyporheic zone for water temperature control and aquatic habitat, and worries about impacts to the Deschutes Estuary restoration efforts. Questions whether true restoration can occur with development and argues the project should be shut down.	The project complies with all view standards and requirements in adopted City codes. See Core Doc. No. 1 (Staff Report) at 13-14 and technical documentation cited therein; Testimony of R. Thomas. There are no recorded view easements or covenants encumbering the property. Testimony of L. Brandon Smith. Regarding Schneider Creek, see Response to Comment 12A. The Applicant also offered the expert testimony of the project biologist, Scott Maharry, regarding the project's lack of impact to the hyporheic flow of Schneider Creek. Regarding the relationship of/compatibility of the project with the future Deschutes Estuary Restoration project, see Response to Comment 14.
41.	John Van Eenwyk and Juliet Van Eenwyk	Raises environmental concerns about construction impacts and pollution from increased traffic. Question wisdom of building on land vulnerable to sea level rise and flooding, asking about costs of future flood protection and city liability. Express traffic concerns about hundreds of additional vehicles with no room for West Bay Drive expansion. Criticizes aesthetic impacts.	To the extent this comment is directed towards the SEPA determination or appeal, comments on the SEPA determination are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness. Regarding traffic, see Response to Comment 1. Regarding sea level rise/flooding, see Responses to Comments 2 and 4.
42.	Tessa Bradley	Principal Architect and Chair of Thurston County Chamber of Commerce writing in support of the project. Emphasizes regional housing shortage and believes 500 homes would address important needs while enhancing waterfront. Supports cleanup and revitalization of the waterfront area, noting it would improve appearance, accessibility, and environmental quality. Highlights economic benefits including family-wage construction jobs and long-term support for local businesses, urging approval as important investment in community's future.	Comment noted.
43.	Trenton Fluetsch	Owner of Sunset Air and past chairman of Thurston County Chamber of Commerce supporting the project. Emphasizes community's desperate need for 500 additional homes and argues any new housing helps affordability by increasing supply. Highlights significant economic impact from construction jobs and indirect administrative work, creating trickle-down economic	Comment noted.

No.	Commenter	Summary	Applicant's Response
		activity throughout city and county for restaurants, stores, and recreation facilities.	
44.	Jim Zabel	Requests full EIS citing inadequate contamination testing with too few test sites and concerns about contamination migration from adjacent Reliable Steel Fabrication property. Questions impacts of extensive fill placement on aquatic lands and marine life. Criticizes inadequate traffic study given increased residential, office, and commercial traffic, arguing right-of-way too narrow and expressed safety concerns about bike lanes adjacent to vehicle lanes.	Comments on the SEPA determination are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness. Regarding fill placement, see Core Doc. No. 1 (Staff Report) at 24-25 (Minimum Necessary Analysis) and technical submittals referenced therein; Testimony of R. Shane Phillips; Testimony of S. Maharry. Regarding traffic, see Response to Comment 1.
45.	Joe Digranes	Criticizes city decision-makers for supporting shoreline development despite sea level rise and soil contamination concerns. Questions how city can ignore negative environmental implications without requiring EIS and requests information about when, how, and why developers are required to submit EIS.	Comments on the SEPA determination are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness.
46.	Kristina Gryboski	Argues "EIA" warranted for largest waterfront development in city history located in superfund site. Criticizes omission of Deschutes Estuary Restoration Project analysis and lack of sea level rise assessment for pollution risks from parking garages. Argues proposal violates Critical Areas Ordinance riparian protection and destroys aquatic habitat rather than providing restoration.	Comments on the SEPA determination are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness.
47.	Ryan Pantier	Engineer expressing strong support for project as addressing local housing, parking, and green space needs while providing community benefits. Emphasizes brownfield remediation, downtown waterfront connectivity, economic development, and job creation during extreme housing crisis. Argues project provides benefits without negative impacts like greenfield development and will benefit every community member.	Comment noted.
48.	Cheryl Stephani and Stan Marshburn	Assert specific mitigation needs including traffic pattern improvements at Harrison-West Bay roundabout, comprehensive bike lane and pedestrian safety planning, improved public transit access (.6	Regarding traffic, see Response to Comment 1. Regarding transit access, see Response to Comment 12. It is unclear to the Applicant what the commenter means by additional "wildlife habitat protection" with "nesting area identification; however, the Applicant

No.	Commenter	Summary	Applicant's Response
		miles to nearest stop with steep 300+ foot elevation gain) are required. Argue there should be wildlife habitat protection with explicit nesting area identification, and specific public access plans.	notes that conditions of approval require the VCA to be permanently protected through a conservation easement or other mechanism provided for in OMC 18.20.495(H). Core Doc. No. 1 (Staff report) at 36, Condition 3(c). Per WDFW recommendations, the purple martin nest boxes will be installed on a pole located in the water to protect them from disturbance. Testimony of S. Maharry. Public access is specifically included with the project. See Core Doc. No. 1 (Staff Report) at 12-13 (discussing public access requirements and amenities).
49.	D. Norrel	Opposes West Bay Yards as a terrible idea that the area cannot support. Argues the area should be protected as a precious community resource with superfund cleanup and a boardwalk instead of housing. Cites rising sea levels and reduced access as concerns. Notes the area's cultural significance to traditional Squaxin people and mentions artifacts found in the soil.	Comment noted. The property is privately owned by the Applicant and not by the City or other public agency. Consistent with code requirements, the project will provide significant new shoreline access and public amenities at private expense. See analysis in Core Doc. No. 1 (Staff Report) at 13, 20, technical reports referenced therein, and Testimony of R. Thomas. Regarding sea level rise, see Response to Comment 4. Regarding cultural significance to the Squaxin Island Tribe, the Applicant completed a Cultural Resources Report which was reviewed by the Tribe and DAHP. See Core Doc. No. 1 (Staff Report) at 16 (discussing reports, consultation, and additional cultural resources permitting requirements and conditions for development of the project).
50.	Fran & Eric Kammerer	Oppose the project, arguing Olympia lacks sufficient public shoreline access and this valuable waterfront land should be used for public purposes rather than private townhomes. Propose the land could be used for a waterside park with museums, botanical gardens, restaurants, and performance venues. Support requiring an Environmental Impact Statement and agree with Olympia Ecosystems' arguments.	See Response to Comment 49. To the extent the comment is directed towards the SEPA determination, it is outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness.
51.	Carol Piening	Strongly believes a DNS is inadequate and an EIS is needed for this complex shoreline project. Raises detailed concerns about traffic impacts on West Bay Drive, questions the 'innovative' restoration approach that buries rather than replaces armored shoreline, and seeks clarification on cumulative impacts. Also	Comments on the SEPA determination are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness.

No.	Commenter	Summary	Applicant's Response
		questions soil transformation to 'reinforced rock' and its permanent impacts.	The Applicant notes that several of the comments appear to be questions directed to City staff regarding the content of the Staff Report. Regarding traffic, see Response to Comment 1. Regarding geotechnical concerns, see Core Doc. No. 1 (Staff report) at 29 and technical documentation referenced therein.
52.	Warren and Esther Grace Kronenberg	Request revocation of the DNS and completion of a full EIS before development of the contaminated site. Argue that restoration is required, not voluntary, and that adding fill to cap toxic soil is risky and not science-based. Assert site's historical importance as a nursery for juvenile salmonids and state that meaningful public input has been lacking including claimed violation of public trust doctrine.	Comments on the SEPA determination are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness. Regarding claimed violation of the public trust doctrine, see Response to Comment 9.
53.	Greg and Joan Wright	Property owners at 208 West Bay Drive who are not necessarily opposed to the project but deeply concerned about access and traffic issues. Note that the Harrison hill roundabout is already undersized with frequent backups, and worry about safety for bikes and pedestrians. Hope the city has plans to upgrade West Bay Drive for safety and usability.	See Response to Comment 1.
54.	Jerald Weiner & Danella Donlan	West Bay Drive cannot support the magnitude of development and resulting traffic increase; potential traffic shortcuts through Brawne Street would negatively impact neighborhood peace and safety; and additional noise, pollution, and lights would irreversibly disturb wildlife habitat. Request significant scaling back of the project.	Regarding traffic, see Response to Comment 1. Regarding scale, see Response to Comment 1a. Regarding alleged impacts to wildlife, see Response to Comment 2.
54a.	Jerald Weiner & Danella Donlan	Residents expressed opposition citing concerns about traffic flow estimates being woefully underestimated and impacts on neighborhood streets like Brawne Street which lacks adequate shoulders and sidewalks for pedestrian safety. Noted current backup issues at West Bay-Harrison roundabout and concerns about traffic diversion through residential neighborhoods.	See Response to Comment 1.
55.	Jeri Robinson Smith	Expresses traffic concerns using specific flow figures showing increases from 1152 cars in 2020 to 1371 with the project in 2027. Worries about backups on contributory arterial streets, downtown congestion,	Regarding traffic, see Response to Comment 1. Regarding scale, see Response to Comment 1a.

No.	Commenter	Summary	Applicant's Response
		and the 4th Avenue bridge's capacity. Believes the project has too many occupants for the existing traffic setup and requests it be scaled down.	
56.	Jim Kruidenier and Susan Bryant	Feel the DNS is short-sighted and oppose using large amounts of fill to cap rather than remove contaminated soils, viewing this as not a long-term solution. Express concern about the density of nearly 500 apartments combined with the nearby West Bayview Landing project overwhelming West Bay Drive. Argue the traffic study from early pandemic recovery doesn't reflect current conditions and should be repeated.	Comments on the SEPA determination are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness. Regarding traffic, see Response to Comment 1.
56a.	Jim Kruidenier and Susan Bryant	Residents from West Bay Drive opposed the DNS, arguing that contaminated soil capping is not a long-term solution and risks future contamination issues. Expressed concerns about the density of nearly 500 apartments combined with the second proposed development creating unsustainable traffic burden on West Bay Drive. Recommended updated traffic studies and consideration of reduced density to address both contamination and traffic issues.	This comment is substantively the same as the commenter's preceding comment. See Response to Comment 56.
57.	JJ Lindsey	Strongly opposes the DNS decision, calling it 'ridiculous Chamber of Commerce hooey.' Argues that dropping 27,000 cubic yards of fill onto critical salmon migration habitat has significant environmental impact. Opposes the project on traffic grounds alone but focuses on environmental impacts and argues the proposal is inconsistent with science, fails no-net-loss standards, and violates the public trust doctrine.	Comments on the SEPA determination are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness. Regarding traffic, see Response to Comment 1. Regarding compliance with no net loss standards, see Response to Comment 9b. Regarding claimed violation of public trust doctrine, see Response to Comment 9.
58.	Jakub Bednarek	Supports the development but asks for reconsideration of the DNS determination due to potentially destructive effects on Budd Bay. Believes the project needs to be built with care and intent rather than haste, and requests due diligence for environmental review, mitigation, and restoration of the waterfront site.	Comments on the SEPA determination are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness.
59.	Marla Ruth	Argues a full draft EIS with public review is imperative for a project of this significance. States that restoration options for contaminated sediments	Comments on the SEPA determination are outside the scope of permitted public comment on the permit

No.	Commenter	Summary	Applicant's Response
		haven't been carefully considered, the project isn't based on best-available science, and doesn't consider the approved Deschutes Estuary Restoration Project plans.	applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness. Regarding the relationship of/compatibility of the project with the future Deschutes Estuary Restoration project, see Response to Comment 14.
60.	Mike Brewer	Strongly supports the project as a 42-year Olympia resident, praising its science-based environmental restoration approach, comprehensive cleanup of contaminated shoreline, and replacement of degraded armored shoreline with natural intertidal beach. Highlights the 478 residential units, economic benefits (\$176 million impact, 685 jobs), improved public access via shoreline trail, and alignment with community vision dating to 2001.	Comment noted.
61.	Black River Environmental, LLC (Andrew Yonkofski, LHG; Jessica Smith, LG)	Comment provides review of MTCA cleanup status for the West Bay Yards site and opinion regarding chosen cleanup remedy and potential action.	This comment states that it was prepared for SEPA Appellant OlyEcosystems, offers technical comments regarding the MTCA status of the site, and an opinion as to the timing of that process relative to the land use permit approval. This comment is clearly intended to be that of an expert offered in support of the SEPA appeal, but the comment was not disclosed as an expert report nor were its authors disclosed or called as expert witnesses and made available for cross-examination. The Applicant respectfully requests that the Hearing Examiner disregard this comment as it is not otherwise relevant to Hearing Examiner's consideration of the shoreline permits.
62.	William Kleindl	Ph.D. in aquatic ecology with 35+ years experience criticizes the project's adherence to Best Available Science requirements under the Shoreline Master Program and Critical Areas Ordinance.	Regarding criticisms of the No Net Loss analysis, the commenter's opinion is inconsistent with that of the Applicant's experts, who provided detailed testimony and reports in support of the project. The Applicant notes that the reports the commenter critiques were reviewed not only by City staff but also by outside agencies with expertise, including both Ecology and WDFW, who provided detailed comments. See Core Doc. No. 1 (Staff Report) at 26 (summarizing same and attaching agency comments referenced therein). Regarding the credit/debit methodology which the commenter indicated should be used to evaluate potential impacts, the Applicant also offered evidence of

No.	Commenter	Summary	Applicant's Response
			the results of the Sallish Nearshore Calculator completed in conjunction with federal permitting for the project. Applicant Ex. 12; Testimony of S. Maharry. Regarding avoidance and minimization, mitigation sequencing was completed for the project consistent with applicable code requirements. Core Doc. No. 4.I. Further, the commenter incorrectly characterizes the basis for Alternative 4 as "cost" and "reduction in upland area on the project." Alternative 4 is not simply more costly, it is not safely feasibly constructable. Core Doc. No. 14a (Shoreline Restoration Design); Core Doc. No. 14e (Portadam Feasibility Assessment); Testimony of R. Shane Phillips; Testimony of C. McCaughan. Regarding compliance of proposed fill with City code and SMP requirements, see Response to Comment 2. The Applicant notes that the 2016 Restoration Assessment specifically envisioned beach nourishment/restoration on private property to occur "seaward of revetments". Core Doc. No. 23.D (2016 Restoration Assessment) at 12. Moreover, the new "uplands" expected to be created by the placement of this intertidal fill (that is, where the OHWM is anticipated to move) will be located almost entirely over existing rip rap; the balance of the fill extends into the mudflat, but does not create new "uplands." Applicant Exhibit 10; Testimony of R. Shane Phillips. Regarding critical area ordinance compliance, the City correctly applied its code to determine that the buffer for the off-site wetland is functionally disconnected from the property by existing West Bay Drive. See Core Doc. No. 1 (Staff Report) at 29; Testimony of N. Floyd. The Critical Area Report for the project notes that the wetland's "habitat functions are low due to the highly urbanized environment surrounding the wetland." Core Doc. No. 10.A at 9. Further, to the extent that this comment is intended to support claims made in the Oly Ecosystems SEPA appeal regarding impacts to the adjacent wetland, it should be disregarded as this expert's opinion was not disclosed nor was the commenter made available for cross-examination.

No.	Commenter	Summary	Applicant's Response
			Regarding Schnelder Creek, see Response to Comment 12A. The Applicant also notes that neither WDFW nor Ecology suggested, much less requested, that a different or greater buffer for Schnelder Creek be provided than is provided for in the City's Critical Area Ordinance, and the commenter acknowledges that the purported "delta" for Schnelder Creek not itself require a buffer under City code.
63.	Billy Olesen	Owner of Pest Stop expressed strong support for the project, emphasizing the alignment of private capital with community goals. Highlighted the project's benefits including environmental restoration, public access, housing supply contribution, and economic development. Noted the substantial economic impact of \$176 million in construction and 685 employment opportunities.	Comment noted.
64.	Jean Penrose Hayden	Northwest Olympia resident opposed the development due to environmental concerns about Budd Inlet ecosystem and traffic impacts at Harrison Road roundabout. Expressed concern that the high-end housing doesn't serve those with true affordable housing needs and requested more study of alternatives including undeveloped land north of West Bay Park.	Comments on the SEPA determination are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness. Regarding traffic, see Response to Comment 1. Regarding affordable housing, see Response to Comment 12.
65.	Joseph Lanham	Financial advisor expressed support for the project, believing it to be very important to the community for rehabilitation of the area and favoring its proceeding forward.	Comment noted.
66.	Laura Drabandt	Olympia resident expressed concern that the project was pushed through without proper public information and City Hall transparency. Argued staff should not have authority to approve projects involving removal of aquatic habitat held in public trust and requested a proper Environmental Impact Statement considering that Ecology has not yet approved a cleanup plan for the contaminated site.	Comments on the SEPA determination are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness. The Applicant notes that it is the Hearing Examiner, and not City staff, which is the approval authority for the shoreline permits. See Core Doc. No. 1 (Staff Report) at 6 (explaining Hearing Examiner's authority).
67.	Mike Ruth	Olympia resident since 2006 argued there must be an Environmental Impact Statement before permitting is offered, emphasizing the need for thorough	Comments on the SEPA determination are outside the scope of permitted public comment on the permit

No.	Commenter	Summary	Applicant's Response
		evaluation of environmental, social, economic, and infrastructure impacts. Expressed concerns about contamination remediation preferring removal over capping, and questioned whether Deschutes restoration has been considered as a factor. Supported evidence-based decision making using best available science and engineering.	applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness. Regarding the relationship of/compatibility of the project with the future Deschutes Estuary Restoration project, see Response to Comment 14.
68.	Olympia Ecosystems (Daniel R. Einstein, Ph.D.)	Land Conservation Director for SEPA Appellant Oly Ecosystems; argues the proposal violates the 'minimum necessary' requirement of OMC 18.20.855(I) because the record is insufficient to determine if proposed fill is minimal for restoration purposes since Ecology has not reviewed or approved remedial investigation. Contends the entire proposal requires a conditional use permit and may impact shorelines of statewide significance. Argued environmental review must be completed before substantive decisions.	This comment is by an employee of the SEPA Appellant, Oly Ecosystems. Dr. Einstein was also called and testified as a lay witness in the SEPA appeal. To the extent this comment offers additional facts or argument in support of the SEPA appeal, the Hearing Examiner should disregard it as outside the scope of disclosed testimony and reports for the appeal. The commenter also asserts the entire proposal requires a Conditional Use Permit ("SCUP"). In response to earlier City review comments, a SCUP was submitted for the mixed use building where the mix of uses occurs within 100' of the OHWM. That applies only to Building 2. See Core Doc. No. 1 (Staff Report) at 17-18 and supporting narrative (Core Doc. No. 4.B). The Applicant understands that proposed commercial uses within 100' subject to the SCUP are limited to water-related or water-enjoyment uses. No groin otherwise triggering a SCUP is included with the proposal.
69.	Olympia Master Builders (Jessie Simmons)	Regional professional construction industry association expressed strong support for the project as aligned with decades of planning policy for redevelopment of underutilized urban properties. Emphasized the housing affordability benefits of 478 units and the extensive five-year review process the project has undergone. Argued for regulatory certainty and consistent application of adopted standards to maintain confidence in the permitting process.	Comment noted.
70.	Klm Dobson	Radio show host argued the project is being built over contaminated remains of burnt Hardel Plywood factory with long industrial history dating to late 1800s. Contended the benthic tidal zone burial violates Shoreline Management Act and SEPA rules, drawing parallels to East Bay contamination issues.	Comments on the SEPA determination are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness.

No.	Commenter	Summary	Applicant's Response
		Demanded EIS and SEPA scoping with core samples before any work begins to identify existing contamination.	
71.	Rob Rice	Developer and builder with 40 years experience in Thurston County expressed strong support for the project. Argued the site is a blight needing environmental cleanup and redevelopment, highlighting benefits including shoreline restoration, public access, native vegetation restoration, economic benefits, and needed housing supply. Acknowledged traffic impacts but noted they were studied and mitigated during SEPA review.	Comment noted.
72.	Tom Hayden	Northwest Olympia resident formally expressed disapproval due to environmental concerns about Budd Inlet ecosystem and inadequate Environmental Impact Study. Cited traffic concerns at Harrison Road roundabout affecting emergency vehicle access and questioned whether the project serves those in true need of affordable housing. Requested more comprehensive study of impacts on land, watershed, and surrounding communities.	Comments on the SEPA determination are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness. Regarding traffic, see Response to Comment 1. Regarding affordable housing, see Response to Comment 12.
73.	Todd Monohon	Designated broker/owner of rental property management company expressed strong support for the project, highlighting how it addresses multiple community needs including environmental remediation, waterfront access, housing creation near urban core, and both short-term construction benefits and long-term economic impacts from future residents and businesses.	Comment noted.
74.	Jeanne Harmon	Waterfront resident expressed concerns about plans to dump fill into the bay or place infrastructure near creek delta, arguing these actions endanger bay health and marine life. Emphasized that aquatic habitat should not be sacrificed for buildable space and that contamination mitigation plan should be approved by Ecology before any development decisions are made. Requested postponement until cleanup plan is enacted.	To the extent this comment is directed towards issues raised in the SEPA appeal, comments on the SEPA determination are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness. Regarding the extent of proposed shoreline fill, see Response to Comment 9.
75.	Allison Sykes	Opposes the determination of nonsignificance for the project, citing inadequate analysis of marine riparian	Comments on the SEPA determination are outside the scope of permitted public comment on the permit

No.	Commenter	Summary	Applicant's Response
		functions and impacts to Budd Inlet as a nursery for juvenile salmonids including Chinook. Argues the proposal is not consistent with best available science or no net loss standards and violates the Critical Areas Ordinance by including development within 130 feet of Schneider Creek's delta. Requests the city require appropriate buffers and consider restoration alternatives given the site's high restoration potential.	applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness. Regarding no net loss, the commenter is incorrect. See analysis in Core Doc. No. 1 (Staff Report) at 18-20 and supporting technical reports referenced therein. Regarding Schneider Creek, see Response to Comment 12a.
76.	Amy Myrtue Nelson	Opposes the development as too rushed, citing traffic concerns on West Bay Drive which cannot handle additional 1000 cars heading to Harrison traffic circle. Notes Division Avenue already backs up 2-3 signal cycles and emergency response would be delayed. Concerned that no environmental impact study has been completed and Washington Department of Ecology has not approved cleanup plan. Requests comprehensive Environmental Impact Study and community input before proceeding.	Comments on the SEPA determination are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness. Regarding traffic, see Response to Comment 1. Regarding the assertion that the development has been "rushed," the Applicant notes that as of June 29, 2026, City review of the project will have been going on for five years. Core Doc. No. 1 (Staff Report) at 3 (noting date of application).
77.	Colleen Graney	Opposes the project as premature, expressing sadness at losing the site's current function as wildlife refuge. Concerned about volume of fill to convert 0.42 acres of tidelands to uplands without an approved cleanup plan from Washington Department of Ecology. Notes contamination caps are prone to failure and requests delay until cleanup strategy is determined.	Comments on the SEPA determination are outside the scope of permitted public comment on the permit applications. Commenter is not a party to the SEPA appeal, nor a disclosed witness. The record shows that the site is substantially degraded and offers little to no habitat function, much less as a "wildlife refuge". See Core Doc. No. 10.A (Critical Area Report); 10.B (Important Habitat and Species Report); 14.A (Shoreline Restoration Design); 14.B (Restoration Mitigation Plan); Testimony of S. Maharry; Testimony of S. Stelzner (Squaxin Island Tribe). Regarding fill placement and volume, see Core Doc. No. 1 (Staff Report) at 24-25 (Minimum Necessary Analysis) and technical submittals referenced therein; Testimony of R. Shane Phillips; Testimony of S. Maharry. It is possible, with Ecology approval, that the very same fill may also ultimately serve as a sediment cleanup action under the Agreed Order, either alone, or in combination with the two other approved methods under Ecology sediment management standards: targeted removal and monitored natural recovery. Testimony of H. Morse; Testimony of T. Bussey. However, for purposes of the

No.	Commenter	Summary	Applicant's Response
			land use permits before the Hearing Examiner, the fill is proposed to construct the beach.
78.	Dave Toler	Opposes the project as contradicting the city's Budd Inlet Restoration Assessment by removing aquatic habitat. Argues restoration plans are ecologically damaging and will bury natural breeding habitat for multiple species. Claims geotechnical safety justification for habitat destruction lacks evidence and is a pretense. Calls for significant changes to restoration plan to embrace ecosystem enhancement objectives before approval.	Regarding evaluation of impacts of proposed fill on existing aquatic habitat, see Core Doc. No. 14.A (Shoreline Restoration Design); 14.B (Restoration Mitigation Plan); 14.D (Shellfish and SAV Report); Testimony of S. Maharry; Testimony of S. Stelzner (Squaxin Island Tribe). There is no evidence in the record which properly challenges the professional opinions of the Applicant's geotechnical expert regarding the construction risks associated with removing additional rip rap in conjunction with the proposed shoreline restoration. Core Docs. 8 a-c (Geotechnical reports); Core Doc. No. 14a (Shoreline Restoration Design); Testimony of C. McCaughan. The proposed voluntary shoreline restoration design was prepared by duly qualified and experienced experts, all of whom had also worked to develop the 2016 Restoration Assessment upon which the design was based. Core Doc. No. 14.A (Shoreline Restoration Design); Core Doc. No. 14.C (Preliminary Design Report); Core Doc. No. 23.D (West Bay Restoration Assessment); Testimony of R. Shane Phillips, S. Maharry, and J. Brennan.
79.	Michael & Jennifer Clark	Support multi-use development but have traffic concerns. Cite existing collisions at Brawne Avenue/West Bay Drive Intersection with limited sight distance. Worry about increased traffic at Harrison roundabout bottleneck, roadway geometry issues, construction impacts, and 6-PPDQ pollution from increased traffic. Request current traffic study data and mitigation for safety hazards to pedestrians, cyclists, and emergency vehicles.	Regarding traffic, see Response to Comment 1. Regarding stormwater impacts from increased traffic, see Response to Comment 2.
80.	Marianne McNabb	Expressed concerns about communication clarity in the hearing process.	Comment noted.
81.	Michael Robinson	Supports the proposed development as a local design-build contractor. Emphasizes need for additional housing in the region and views project as significant private investment providing housing, infrastructure	Comment noted.

No.	Commenter	Summary	Applicant's Response
		Improvements, environmental restoration, and economic benefits. Believes project aligns with community planning goals and will address housing supply challenges while creating construction jobs.	

BEFORE THE CITY OF OLYMPIA HEARINGS EXAMINER

IN RE:	)	HEARING NO. 21-2854
	)	
OLYMPIA ECOSYSTEMS SEPA	)	DECISION DENYING APPEAL
APPEAL	)	
	)	
WEST BAY YARDS DEVELOPMENT.	)	

THIS MATTER comes before the Hearing Examiner on an appeal brought by Olympia Ecosystems ("OlyEcosystems" or the "Appellant") of the SEPA Determination of Nonsignificance ("DNS") issued by the Responsible Official for the City of Olympia (the "City" or "Olympia") for the West Bay Development Project ("the "Project" or "West Bay").

OlyEcosystems appears through Dr. Daniel Einstein and is represented by Michael Rea. The City appears through Nicole Floyd, Planning Director, and Tim Smith, SEPA Official, and is represented by Jeff Myers and Erin Hillier. The Applicant, West Bay Development (the "Applicant") appears through Brandon Smith and is represented by Heather Burgess.

On January 27, 2026, Tim Smith, as SEPA Official, issued a SEPA DNS for the project. The SEPA Determination was timely appealed by OlyEcosystems. The Notice of Appeal identified ten issues on appeal. Cross-Motions for Summary Judgment resulted in the dismissal of Issues 3, 4, 5 and 6, leaving the following six issues to be resolved:

1. Appeal Issue No. 1. Whether the SEPA Determination violated requirements for the integration of SEPA review of this project and remediation undertaken pursuant to the Model Toxics Control Act ("MTCA").

2. Appeal Issue No. 2. Whether the City had sufficient information to issue its threshold determination, or whether the determination was premature in light of ongoing MTCA investigation and remediation. [NOTE: Appeal Issues 1 and 2 are related.]

1 3. Appeal Issue No. 7. Whether the City improperly relied on WAC 197-11-158 to
2 address environmental impacts through its Development Regulations.

3 4. Appeal Issue No. 8. Whether proposed shoreline restoration should have
4 undergone an alternatives analysis.

5 5. Appeal Issue No. 9. Whether the DNS was improper because the project has
6 probable significant adverse environmental impacts which are not fully mitigated.

7 6. Appeal Issue No. 10. Whether the City improperly balanced the beneficial
8 aspects of shoreline restoration in disregard of significant environmental impacts.
9

10 OlyEcosystems presented the testimony of the following witnesses:

- 11 1. Dr. Daniel Einstein.
12 2. Dr. Sarah Hammanan, President of OlyEcosystems.
13 3. Tim Smith, City SEPA Official.

14 The City presented the testimony of the following witnesses:

- 15 1. Nicole Floyd, Planning Director and Shoreline Administrator.
16 2. Dave Smith, Senior Transportation Engineer.
17 3. James Patton.
18 4. Scott Steltzner, Resource Biologist for the Squaxin Tribe.

19 The Applicant presented the following witnesses:

- 20 1. Jim Brennan, Registered Landscape Architect.
21 2. Whitney Holm, Professional Engineer and Civil Engineer of record for the
22 project.
23 3. Calvin McLaughlin, Professional Engineer and author of the Applicant's
24 Geotechnical Reports.

4. Hannah Morse, Professional Engineer and lead engineer for the ongoing MTCA remedial action.

5. Scott Maharry, Biologist, and author of the project's Critical Area Reports and Habitat Assessments, as well as lead consultant for federal permits for proposed shoreline restoration.

6. R. Shane Phillips, Professional Engineer and coastal and waterfront engineer of record for the project.

7. Aaron van Aken, Professional Engineer and author of the project's updated Traffic Impact Analysis.

8. Ron Thomas, Architect of record for the project.

9. L. Brandon Smith, Member of West Bay Development Group, LLC.

The project requires a Shoreline Substantial Development Permit ("SSDP"), while a small portion of the project requires a Shoreline Conditional Use Permit ("SCUP"). The hearing on the appeal was held concurrently with the public hearing for these shoreline permits. The combined hearing resulted in a substantial number of exhibits. All of the exhibits collected during the application review, including all applications, responses, reports and analyses, agency comment, and public comment, were collectively presented by the City as "Core Documents". The list of Core Documents is attached hereto as Attachment 1. Several additional exhibits were presented during the hearing and identified as Hearing Exhibits 1-9 in Attachment 2. The Applicant submitted 14 exhibits identified as Applicant's Exhibits 1-14 as set forth in Attachment 3. In addition, OlyEcosystems presented 29 exhibits identified as Appellant's Exhibits 1-29 as set forth in Attachment 4.

TESTIMONY

The SEPA Appeal hearing and the Shoreline Permit Public hearing were consolidated and their testimony was combined. As a result, some of the parties' witnesses were largely

1 associated with the SEPA Appeal, while others were mostly involved with the Shoreline Permits,
2 and with some witnesses being a mix of the two. The testimony described herein is largely
3 limited to the SEPA Appeal testimony, while the testimony relating to the Shoreline Permits is
4 set forth in detail in the Shoreline Decision (and incorporated herein by reference).

5 **City's Witnesses.**

6 Nicole Floyd. Nicole Floyd is currently the Director of Planning for the City and is also
7 the Shoreline Coordinator. Although she is not the City's SEPA Official for this project (Tim
8 Smith was), Ms. Floyd played a primary role in the SEPA Determination. During the project
9 review, Ms. Floyd served as Principal Planner and was in charge of an 18-member team of City
10 officials reviewing the application. Ms. Floyd also coordinated with all outside agencies and
11 worked closely with the Squaxin Island Tribe; the Nisqually Tribe; Washington Department of
12 Fish & Wildlife (WDFW); the Department of Ecology (Ecology) including three separate
13 divisions; and the US Army Corps of Engineers. The Shoreline Decision includes a lengthy
14 discussion of Ms. Floyd's testimony. Her Staff Report also provides substantial information
15 relating to both the Shoreline Permits and the SEPA issues. When asked to explain how Ms.
16 Floyd and the City's team examined the project relative to SEPA, Ms. Floyd explained that the
17 approach was to "look for gaps" in the City's environmental and development regulations to
18 determine if the project would result in significant environmental impacts not covered by the
19 City's regulations. Ultimately, City Staff concluded that the project was fully covered by these
20 regulations and that a DNS was therefore appropriate. In reaching this determination the
21 following were among those issues carefully considered:

22 • Critical Areas

23 Streams. There are three streams (Schneider Creek, West Bay Creek and Garfield
24 Creek) in the general vicinity of the project but none are within 300 feet and the project is not
25 expected to have an environmental impact on any of them.

1 Wetlands. There is a small 0.1 acre Category 2 Wetland across the street but the
2 wetland and its buffer are physically disconnected from the project site by the West Bay Drive
3 right-of-way and the project will have no direct impact on the wetland or its buffer. Ms. Floyd
4 was asked if consideration had been given to potential impacts on the wetland by the project's
5 noise and lighting. Ms. Floyd responded that the small wetland is already impacted by the noise
6 and lighting from West Bay Drive (and its traffic) and that the project is not expected to increase
7 those existing impacts.

8 Blue Heron Rookeries. There is a known Blue Heron Rookery nearby but the
9 project site is well outside of its protected area and the project is not expected to have any impact
10 on the Heron Rookery.

11 List and Protected Species. There are no other listed or protected species near the
12 upland portion of the project site.

13 Birds. There are a great many birds in the area but the project site currently does
14 not offer any nesting opportunities.

15 Wildlife. Various types of wildlife including deer, raccoons, etc., likely travel
16 across the project site but it currently offers no shelter or foraging materials for wildlife.

17 Upland Conditions. The upland site is covered in asphalt and crushed concrete
18 and is barren of vegetation except for a few hardy weeds and shrubs. Again, it does not offer
19 shelter or nesting for wildlife or birds, and does not aid in shoreline functions.

20 Aquatic Habitat. This site is lacking aquatic vegetation and there is no shoreline
21 habitat onsite.

22 Shellfish. Shellfish studies have confirmed that there are a large number of
23 shellfish in the site's aquatic areas but these shellfish are believed to be contaminated and are not
24 allowed to be consumed by humans. They may be a source of food for birds but, if so, the birds
25 are relying upon contaminated shellfish.

1 West Bay Woods. West Bay Woods is a natural area on the other side of West
2 Bay Drive and slightly south of the project site. Ms. Floyd acknowledges that her Staff Report
3 does not mention West Bay Woods or discuss any possible impacts to it resulting from the
4 project. Ms. Floyd explains that she is well aware of West Bay Woods but points out that it has
5 no official recognition or status. Rather, it is a loosely defined area owned by Olympia
6 Ecosystems and undergoing restoration, but it has no defined boundaries; no approved design
7 plans; and no approved permits for use as a park or urban reserve. Thus, Ms. Floyd considered it
8 along with the other uses of property on the west side of West Bay Drive but did not regard West
9 Bay Woods (or Olympia Ecosystems other scattered properties) to have special status, and that
10 these properties did not suffer significant probable environmental impacts as a result of the
11 project.

12 Creation of New Uplands and the "Minimum Necessary" Standard. As noted in the
13 Shoreline Decision, Ms. Floyd testified at length regarding the proposed Shoreline Restoration
14 and the development of a new intertidal gravel beach. This issue is discussed at length in her
15 Staff Report as well. As noted in both, the proposed new intertidal beach will result in the
16 creation of approximately one-half acre of new uplands. The City's Shoreline Master Program
17 restricts the development of new upland to only that which is "minimally necessary" (OMC
18 18.20.855). Ms. Floyd was asked to explain why she felt the proposed new upland to be the
19 minimum necessary. She then explained the four alternatives examined by the Applicant's
20 consultants and responded that City Staff concurs with these experts that the chosen alternative
21 (Alternative 3) accomplishes the desired outcome of a new functioning intertidal beach but with
22 the least amount of required fill and, therefore, the minimum necessary new uplands.

23 Balancing of Outcomes. It was suggested to Ms. Floyd by the Appellant that she has
24 been willing to accept significant environmental impacts to existing shellfish populations at the
25

1 site in order to achieve much improved shellfish conditions in the future, and that this
2 "balancing" of outcomes is in violation of SEPA. Ms. Floyd responded to this in several ways:

3 (1) She explained that she has worked closely with officials at WDFW, most
4 particularly Noel Steinway, to better understand and minimize the project's impacts on existing
5 shellfish populations. It is conceded that the project is likely to cause some shellfish mortality
6 but Mr. Steinway explained to Ms. Floyd that many shellfish will survive if the placement of
7 new fill is undertaken carefully and gradually, giving existing shellfish the greatest opportunity
8 to relocate as fill is placed in small amounts and not all at once. Mr. Steinway assured Ms. Floyd
9 that, under the guise of the project's hydraulics permit, WDFW will make sure that shellfish
10 mortality is minimized.

11 (2) As explained by Shane Phillips and other experts, shellfish have been shown to
12 recover quickly from such projects - perhaps as little as one month.

13 Given this information, Ms. Floyd reached the conclusion that there will not be a
14 *significant* impact to shellfish resulting from the placement of fill, and that the project is not
15 engaged in unlawful balancing of impacts.

16 Other Agency Response to the SEPA DNS. Ms. Floyd again noted the number of tribal,
17 State and federal agencies overseeing this project and observed that all of these agencies are in
18 agreement with the DNS, and none have objected to it.

19 Integration with MTCA. During cross-examination Ms. Floyd effectively conceded that
20 she was unaware of the integration requirement imposed under SEPA to integrate the project
21 SEPA review with the MTCA project. She also admits that she did not specifically ask Ecology
22 if it considered integration of SEPA processes to be impractical nor did she receive an express
23 statement from Ecology that it considered integration to be impractical. Nonetheless, Ms. Floyd
24 explains that Ecology expressly told her that she "had the green light" to proceed with issuing the
25 City's DNS, a clear declaration that Ecology understood that the City was proceeding with its

1 DNS without integration of the MTCA process. Steve Teel, Ecology's MTCA project
2 coordinator, advised Ms. Floyd that Ecology was in agreement with the DNS so long as
3 conditions were imposed on the Shoreline Permits prohibiting aquatic restoration until a MTCA
4 Interim Order had been entered (and the required conditions have been imposed).

5 Ms. Floyd recognizes that Ecology may not approve the Shoreline Restoration Project as
6 a suitable solution for the sediment contamination problem, and that it may require other forms
7 of remediation and, if so, this project will need to go through additional SEPA review. The
8 Applicant is also well aware of this possibility.

9 Dave Smith. Dave Smith is the City's Senior Transportation Engineer. He testified
10 regarding the project's traffic impacts, including the Traffic Impact Analysis. His testimony is
11 set forth in detail in the Shoreline Decision.

12 James Patton. Mr. Patton is the City's Stormwater Engineer. Mr. Patton described the
13 project's preliminary Stormwater Plan and its compliance with Ecology's Stormwater Manual as
14 well as the City's DDECM and EDDS. Mr. Patton's testimony is described in more detail in the
15 Shoreline Decision.

16 Mr. Patton was questioned about the issue of 6 PPD-q and its treatment. He
17 acknowledged that a solution to 6 PPD-q remains in progress and a complete solution does not
18 yet exist. Nonetheless, this project's stormwater design is intended to capture and filter 6 PPD-q
19 and avoid its discharge to West Bay. As such, Mr. Patton believes that the project, as
20 conditioned, will not result in probable significant adverse impacts relating to 6 PPD-q.

21 Scott Stetzner. Mr. Stetzner is a biologist for the Squaxin Island Tribe and manages the
22 Tribe's environmental department. Mr. Stetzner's testimony is described at length in the
23 Shoreline Decision. As explained there, Mr. Stetzner has been the Tribe's representative in both
24 the 2016 West Bay Restoration Assessment as well as throughout this project's lengthy review.

25 Mr. Stetzner and the Tribe have no objection to the City's SEPA DNS.

1 As explained more fully in the Shoreline Decision, Mr. Stetzner believes that the new
2 uplands created by the proposed Shoreline Restoration Project are the minimum necessary in
3 order to establish a functioning and intertidal beach.

4 Mr. Stetzner and the tribe further agree that the restoration project meets the "no net
5 loss" standard and in fact will result in significant "lift" in the ecological functions. The existing
6 shoreline is heavily degraded and the proposed new intertidal beach will provide better habitat
7 for shellfish and increased foraging opportunities for salmon and other fish.

8 **Appellant's Testimony.**

9 **Dr. Daniel Einstein.** Dr. Daniel Einstein is the Land Conservation Director or the
10 Appellant, Olympia Ecosystems. He testified that OlyEcosystems was established in around
11 2014 in response to concerns over a nearby Heron Rookery. Following the organization's initial
12 efforts to protect that rookery, it then began larger projects along West Bay and elsewhere. It
13 currently controls about 150 acres in several areas throughout Thurston County, and its strategic
14 plan calls for improved flood risks, stormwater management and protection of aquifer recharge
15 areas and sensitive sites, with an ongoing, adaptive approach to land management. Its current
16 biggest project is flood plain and groundwater restoration along a three-mile stretch of the lower
17 Deschutes River.

18 The West Bay Woods project along West Bay Drive was the first significant land
19 development project for the organization but is now its smallest project. In around 2016,
20 OlyEcosystems began acquiring properties on the upper, west side of West Bay Drive generally
21 between Brawne Avenue to the south and Woodard Avenue to the north. Ownership of
22 properties through this area is "fragmented" but the organization regards the properties as
23 "ecologically connected".

24 Since its formation, OlyEcosystems has gained a sizeable membership with a wide cross
25 section of members. It has also had a great deal of success in obtaining grant and other funding.

1 Included among its project partners are Forterra, the Nature Conservancy, Olympia, Thurston
2 County, the County Conservation District, EarthCorps and the Washington Conservation Corp.
3 It has received significant grant funding from the Washington RCO Office; Thurston County,
4 Flood Plains by Design, and NOAA, in addition to several millions in private donations.

5 OlyEcosystems has acquired 12 to 15 properties on the west side of West Bay Drive.
6 Many of them have been consolidated into West Bay Woods while others are scattered through
7 the area. Some have seen significant restoration, including West Bay Woods, while others await
8 restoration efforts.

9 OlyEcosystems properties above West Bay Drive have been granted a tax exemption as
10 conservancy properties. Thurston County provided \$1.5 million to aid in purchasing the
11 properties, while the City of Olympia has been granted conservation easements on some of these
12 properties. Signs in West Bay Woods declare that the area is "co-managed by the City of
13 Olympia", and the City's Parks Department assisted with grant funding, while the City provided
14 additional funding in exchange for an easement to its properties. There is an ongoing
15 Memorandum of Understanding (MOU) between the City and OlyEcosystems, agreeing to
16 restore each other's properties while the two work together to protect the Heron Rookery.

17 The area known as West Bay Woods does not yet have defined boundaries but is
18 generally regarded as a number of properties west and slightly south of the project site on the
19 west side of West Bay Drive. West Bay Woods has seen significant restoration efforts since its
20 purchase. Its most notable efforts have been in restoring the site's drainage and removing
21 invasive ivy through its drainage area. This has allowed the opportunity for the native plants to
22 return which, in turn, provides for a better plant root system and improved absorption of
23 stormwater and any pollutants it may carry.

24 West Bay Woods is home to a variety of wildlife including beaver, deer, coyotes,
25 bobcats, owls, raptors, shorebirds and other wildlife, and enjoys nighttime use by owl, deer,

1 raccoon, possum, mice, bats and frogs. Dr. Einstein asserts that it is a significant value to the
2 community by providing natural stormwater management, recreational opportunities, and various
3 ecosystem services. He further asserts that its values will be diminished by the project, and that
4 West Bay Woods will lose its exchange with the shoreline due to the project's development and,
5 further, that this urban reserve's purposes will be impacted by the development.

6 In response to cross-examination, Dr. Einstein acknowledged the following:

7 • Of the various properties owned by OlyEcosystems along West Bay, only one
8 property at 1515 West Bay Drive is directly across from the project site, with all other properties
9 being located either south or north and not directly across from the project.

10 • The property directly across at 1515 West Bay Drive was only recently purchased
11 and its restoration has not gotten underway (with the exception of removing the residence).

12 • Although properties were purchased as early as 2016, many of the properties now
13 owned were not acquired until after this project got underway in 2021, with OlyEcosystems
14 being aware that this project was pending when it purchased the properties.

15 • OlyEcosystems does not own any properties on the east side of West Bay Drive.

16 • OlyEcosystems does not have any view easements over the subject property or
17 any other properties on the east side of West Bay Drive.

18 • OlyEcosystems does not have any easements granting it access to the shoreline
19 across the subject property or any other properties along the east side of West Bay Drive.

20 • OlyEcosystems is aware that the west side of West Bay Drive has a zoning and
21 land use designation of Professional Office/Residential Multi-Family.

22 • Although West Bay Woods may possess several types of wildlife as described by
23 Dr. Einstein, it does not possess any listed or threatened species.

1 ● When the City updated its Comprehensive Plan in 2024, and retained the
2 Professional Office/Residential Multi-Family designation for the west side of West Bay Drive,
3 OlyEcosystems did not object or challenge this future land use designation.

4 ● OlyEcosystems describes West Bay Woods as a "urban reserve" or perhaps an
5 "urban park" but has not applied to the City for formal recognition as either, and the area remains
6 without a defined boundary or permit to operate as a park or urban reserve.

7 Dr. Sarah Hamman. Dr. Sarah Hamman is the President of OlyEcosystems. She has a
8 Bachelor of Science in Biology (focusing on several subjects) and a PhD in Ecology with 20
9 years of experience and work on invasive species. She is currently employed by EcoStudies
10 Institute undertaking restoration research primarily related to prairie and open ecosystems. She
11 is also an Adjunct Professor at Evergreen State College in Restoration Ecology. She has been
12 involved with OlyEcosystems for nine years and has served as its President for the past four
13 years.

14 Turning to West Bay Woods and surrounding areas, Dr. Hamman noted that Heron and
15 many varieties of birds travel from the west side of West Bay to the shoreline and back seeking
16 food as evidenced by the many broken shells found in West Bay Woods. Deer and other wildlife
17 are common through this area. She is concerned that this wildlife will be impacted by the
18 project's development with increased traffic, added noise, additional lighting and generally
19 higher mortality in shellfish affecting the food web. Indirectly, the project will impact the
20 nutrient exchange between the upland forest and the shoreline, largely through birds but also
21 through other wildlife.

22 As to the DNS, Dr. Hamman believes that it has failed to adequately consider a number
23 of "significant" probable environmental impacts, including impacts to birds, wildlife and the
24 forest/shoreline exchange. In addition, she believes that it has ignored significant impacts to
25 endangered Chinook salmon and the project's impact to their habitat. She also asserts that the

1 DNS has failed to consider significant probable environmental impacts to West Bay Woods and
2 its goal of restoring the structural and functional elements of the forest, noting that West Bay
3 Woods is not mentioned in the City's project review.

4 Turning to the project site's intertidal areas, she admits that its aquatic areas are degraded
5 but yet still have several functional attributes including providing shellfish food for avian
6 species; the filtering of contaminants by benthic organisms; and aiding in the decomposition and
7 recycling of organic material - all important functions that will be disrupted by construction of
8 the new intertidal beach.

9 In particular, Dr. Hamman expresses concern over the existing shellfish population,
10 noting that it currently contains more than four million clams that "will be covered by fill".
11 These clams are currently a primary resource for shorebirds, so mortality in shellfish results in
12 direct impacts to avian species. She is also concerned that the new gravel material will not be the
13 same as the existing composition of sand and gravel this could easily disrupt the shellfish
14 populations, as the makeup of the substrate affects its compatibility with different organisms.
15 She notes that the Applicant's various studies do not discuss this impact. She also asserts that the
16 studies do not discuss how loss of shellfish will affect higher organisms and habitat elsewhere.

17 Dr. Hamman concluded her direct testimony by discussing her concerns with 6 PPD-q
18 which exists in tire dust and has been found to cause mortality in salmonids. She is concerned
19 that this project will create more vehicle use and therefore more tire dust located in sensitive
20 areas. 6 PPD-q was only recently discovered and its resolution is still underway. Thus, it is a
21 significant concern due to its threat to salmonids. Dr. Hamman does not believe that the
22 Applicant's consultants have considered its impacts in their "no net loss" calculations. She
23 further asserts that it is "significant" if not shown to be adequately addressed through stormwater
24 management.

25 In response to cross-examination, Dr. Hamman admitted:

1 ● She has no experience as a marine biologist, nor in coastal engineering or any
2 other form of engineering.

3 ● She is not a wetland scientist and has not prepared any papers on shellfish,
4 salmonids or marine organisms.

5 ● She has not prepared any surveys for this project nor sought any to be prepared by
6 third party experts.

7 ● She has not prepared a Submerged Aquatic Vegetation (SAV) report or sought the
8 preparation of one by other experts.

9 ● She has not sought any reports assessing the site's current degree of degradation.
10 She has not sought any studies of upland species and their food sources.

11 ● She has not undertaken any shellfish studies or sought them from qualified
12 experts.

13 ● She admits that the project's current shoreline is significantly degraded.

14 ● She "doesn't necessarily disagree" that the project will result in a "lift" to the
15 intertidal environment.

16 ● She understands that the project is designed with a stormwater management
17 system designed to capture and retain 6 PPD-q unless that system is overwhelmed by a 100-year
18 flood.

19 Tim Smith. Tim Smith is employed by the City of Olympia and served as the SEPA
20 Official for the review of this project. Mr. Smith was presented as a witness by OlyEcosystems
21 to demonstrate his/the City's limited knowledge of the need to integrate the project's SEPA
22 Review with that needed for site remediation under MTCA. Mr. Smith conceded that this was
23 largely handled by Nicole Floyd, Project Manager, who was in close conversation with Steve
24 Teal at the Department of Ecology throughout the SEPA review process.

1 **Applicant's Witnesses.**

2 Ron Thomas. Mr. Thomas is the principal architect for the project and his testimony was
3 almost entirely related to the Shoreline Permits. A full description of his testimony is found in
4 the Shoreline Decision.

5 Mr. Thomas was asked about the project's lighting, especially on the waterward side. He
6 explained that, as a whole, the project is designed to achieve "Dark Sky" compliance with some
7 minimal lighting along the esplanade for basic safety. Standing on the beach and looking
8 landward, one would see the bollard lighting along the esplanade and then the apartment unit
9 lighting (to Dark Sky standards).

10 Brandon Smith. Mr. Smith is one of the partners of West Bay Development. Most of his
11 testimony was relating to the Shoreline Permits and is found in the Shoreline Decision. Included
12 in Mr. Smith's testimony are a few matters relating to the SEPA Appeal:

13 When the Applicant entered into the Development Agreement with the City in 2021, and
14 soon submitted its development application, it was unaware of any sediment contamination
15 issues that would require cleanup. It was aware of some remaining upland contamination but had
16 voluntarily agreed to its cleanup as part of the site's development. It was not until later that the
17 issue of sediment contamination arose, forcing the end of the Voluntary Cleanup Plan and the
18 eventual entry into an Agreed Order with Ecology in 2025.

19 Whitney Holm. Whitney Holm is a licensed professional engineer with 18 years of
20 experience and is employed by SCJ Alliance. Ms. Holm's testimony is largely related to the
21 Shoreline Permits and is described at length in the Shoreline Decision.

22 With respect to issues relating to the appeal, Ms. Holm explained that the proposed
23 stormwater system has two elements: (1) all "clean" stormwater coming from rooftops will be
24 allowed to flow directly to West Bay along with existing stormwater coming from West Bay
25 Drive and properties west of the road; and (2) stormwater from all other areas of the project,

1 including improved portions of West Bay Drive, will have stormwater sent to three modular
2 facilities where pollutants, including 6 PPD-q, will be captured and treated. The final
3 stormwater design will be based upon the most current stormwater regulations then in effect.
4 Meanwhile, any form of stormwater entering into the underground parking area will first flow to
5 an oil/water separator and then into the LOTT sewerage system where it will be handled like all
6 other wastewater in that system.

7 Aaron van Aken. Mr. van Aken is a licensed professional engineer and a principal at
8 Heath & Associates, a transportation planning and engineering firm. Mr. van Aken's testimony
9 was addressed solely to traffic related issues and is described in detail in the Shoreline Decision.
10 His testimony was generally not relevant to the appeal.

11 Jim Brennan. Mr. Brennan is a licensed landscape architect whose landscape design
12 focuses primarily on waterfront projects. Mr. Brennan was part of the team tasked with
13 designing the native plant vegetation for the VCA and lower zones; establishing necessary soil
14 depths for landscape survival; and aiding in the design of the esplanade and paths to the beach.
15 Mr. Brennan's testimony is discussed at length in the Shoreline Decision. Included within his
16 testimony were several matters relevant to the appeal:

17 Mr. Brennan had previously served as lead landscape architect for the West Bay Park
18 project a short distance south along West Bay. That project served as a foundation for this one
19 and has many similar features, and both involve close cooperation with the Squaxin Tribe and
20 other agencies.

21 Presently, the site's shoreline has little to no habitat value: It has an unvegetated hard
22 armored revetment; has almost no upland vegetation; has no riparian habitat and creates a steep
23 embankment to the aquatic areas which are heavily degraded.

24 Successful restoration of the ecological functions of the shoreline depend on an
25 appropriate design including aquatic areas of salt marsh, followed by transition area; and then

1 upland landscaping. It is also important to minimize public access to key points to allow the
2 shoreline vegetation to thrive. Currently, the shoreline has no riparian vegetation, no salt marsh,
3 has no trees and no shading, no organic materials, no Large Woody Debris or anything else to
4 aid in ecological functions. Restoring all of these will help stabilize the shoreline and improve
5 wildlife conditions.

6 The landscape design is found at Sheet L1-7 in Core Document 5.a. As shown on the
7 design, and beginning waterward of the public esplanade, the VCA will commence and will be a
8 minimum of 30 feet in width but will also include the newly created uplands, resulting in a total
9 width of 42 to 48 feet. It will be planted with a mix of native trees and shrubs. There will be
10 limited public access through the VCA in the form of a few narrow trails allowing public access
11 to the beach.

12 Below the VCA will be a transition zone with landscaping plantings capable of surviving
13 the transition from land to water.

14 Below the transition zone will be a salt marsh zone to encourage fish foraging and, below
15 that, the mud flats.

16 This project is consistent with the West Bay Park and will have no negative effect on the
17 park. It is also consistent with plans to restore the Deschutes estuary and will not have any
18 negative affect on those plans.

19 Shane Phillips. Shane Phillips is a licensed professional engineer and a certified
20 floodplain manager with Moffat & Nichol, an engineering planning and environmental services
21 firm. Mr. Phillips testimony was largely in relation to the Shoreline Permits and included an
22 explanation of the design of the new proposed intertidal gravel beach; how it compared to other
23 alternatives; and why it was the minimally necessary amount of created upland to reestablish a
24 functioning shoreline. Mr. Phillips' testimony as to these matters is explained in detail in the
25 Shoreline Decision.

1 With respect to the SEPA Appeal, Mr. Phillips' testimony reiterated that the current
2 shoreline is highly degraded and has no significant function. The proposed Restoration Plan
3 invokes the "Engineering With Nature" concept and is designed to reestablish a beach that one
4 would normally see along Puget Sound. This type of beach is intended to establish a sloped soft
5 shore beach improving ecological functions above and below the Ordinary High Water Mark.

6 As explained in detail in the Shoreline Decision, Mr. Phillips has undertaken a careful
7 analysis of all alternatives and finds that the proposed Restoration Plan is the best alternative. It
8 will involve the partial cut back of the existing steep revetment and then the placement of gravel
9 and sand at a gentle slope to mimic a natural Puget Sound beach. It will involve placing
10 approximately 32,255 cubic yards of gravel below the Ordinary High Water Mark and result in
11 the creation of 0.42 acre of new uplands but, in return, will achieve all desired ecological goals
12 with minimal disturbance and in alignment with the Engineering With Nature policies.

13 Mr. Phillips acknowledges that proposed Alternative 4 - the full elimination of the
14 existing revetment - has an intuitive quality but, in actuality, would be next to impossible to
15 achieve. Importantly, to establish a new beach in the absence of the revetment would first
16 require establishing a minimum thickness to the existing graveled bed. This would require not
17 only excavation of the revetment but further excavation into the substrate to establish the
18 necessary gravel bed. Doing so would be extraordinarily difficult if not impossible, again making
19 the current proposal the minimum upland creation necessary to achieve the project's goals of
20 shoreline restoration. When asked if deciding against Alternative 4 was a matter of cost, not
21 consequences, Mr. Phillips strongly disagreed and explained that this alternative is simply not
22 possible.

23 Calvin McCaughan. Mr. McCaughan is a licensed professional engineer and is the
24 principal geotechnical engineer for the project. Mr. McCaughan's testimony was largely relating
25 to the Shoreline Permits and the geotechnical engineering behind the project's design, including

1 the engineering of the new intertidal beach. His testimony is described in detail in the Shoreline
2 Decision.

3 With respect to the SEPA Appeal, Mr. McCaughan's testimony reenforced the earlier
4 testimony of Mr. Phillips and explained in even greater detail why proposed Alternative 4 - the
5 complete removal of the existing steep revetment - is highly problematic if not impossible. In
6 particular, Mr. McCaughan described why neither a "coffer dam" or a "portadam" would be an
7 effective mechanism to create a safe working area in intertidal waters in which the revetment
8 could safely be removed and a new gravel beach foundation established. Mr. McCaughan
9 described such an effort as "trying to dewater Puget Sound" and that it was not feasible. He
10 agreed that the current proposal is the one supported by the geotechnical evidence and that it
11 results in the minimum creation of uplands necessary to achieve shoreline restoration.

12 Scott Maharry. Scott Maharry is the principal scientist and managing principal with
13 Farallon Consulting, an environmental consulting firm doing business as Grette Associates. Mr.
14 Maharry's testimony is being presented for both the Shoreline Permits and in response to several
15 of the SEPA issues. A detailed description of his testimony is found in the Shoreline Decision
16 but much of it will be repeated here.

17 Mr. Maharry's role was to analyze the site's existing conditions; review the project site
18 and surrounding areas for critical areas; prepare the Shoreline Narrative; undertake a no net loss
19 analysis; prepare the Restoration Plan; and perform various other shoreline-related tasks. To
20 carry out these tasks he inspected the site numerous times beginning six years ago.

21 Currently, the upland areas are vacant and mostly covered in asphalt and crushed
22 concrete. An abandoned rail spur runs along the west boundary. The site has scattered non-
23 native trees and shrubs that have managed to break through the hard surface. As the uplands
24 approach the shoreline, vegetation remains nearly nonexistent with the exception of a few small
25 trees and some low quality shrubs and grasses. Habitat function along the uplands is minimal.

1 Without doubt, raccoon, deer and other small wild animals traverse the site but there is no shelter
2 and no forage for them. There are existing utility poles along the edge of the upland that birds
3 might currently use but these poles are covered in creosote and are harmful to wildlife.

4 Photos of the shoreline, found Core Document 14.a, show a steep, bouldered revetment
5 with no functional vegetation. There is no effective riparian habitat function.

6 Mr. Maharry was asked to respond to the testimony of Dr. Einstein and Dr. Hamman for
7 Olympia Ecosystems, particularly their discussion of West Bay Woods and its connectivity to the
8 project site. Mr. Maharry is familiar with West Bay Woods and its location relative to the
9 project. It is currently connected to the site through stormwater conveyance. It is also certainly
10 the case that birds fly to and from the two sites although, again, the project site offers no nesting
11 opportunities for birds other than creosote-covered poles while wildlife undoubtedly travels from
12 West Bay Park and other properties west of the road, across West Bay Drive, and then across the
13 project site, there is neither shelter or forage for them on the project site. Mr. Maharry agrees
14 with the list of likely wildlife species mentioned by Dr. Einstein that might travel from one site
15 to the other. These are typical urban wildlife species that have adjusted to exist in forested urban
16 settings. Importantly, however, Mr. Maharry concludes that the project will have no effect on
17 this wildlife; they will continue to be able to use the site in the same manner they are currently
18 using it; will face the same challenges crossing the street as they currently face; and will
19 experience the same lighting as is currently located along West Bay Drive. Should they travel
20 across the road, however, the project will provide them with significantly improved foraging
21 along the shoreline. Similarly, the project will have no significant negative impact upon birds
22 flying from one site to the other, while there will be several important positive benefits to birds
23 including perch poles and bird boxes, trees, and healthier shellfish populations to serve as a food
24 source.

1 Mr. Maharry concludes that there are no important habitats in or near West Bay Woods,
2 and no important or listed species within West Bay Woods or surrounding areas. There is a
3 Heron Rookery nearby but the project will have no impact upon it: it is 750 feet from the
4 southwest boundary of the site; well in excess of the seasonal and year round buffers provided
5 for Heron Rookeries. Meanwhile, temporary construction impacts will not have a significant
6 upon Heron foraging.

7 Moving into aquatic areas, Mr. Maharry described the site conditions below the steep
8 riprap embankment: there is a mix of artificial debris including 200 creosote pilings; the large
9 remnants of the former rail trestle; several relic structures and wharfs; and significant amounts of
10 sawdust, shingles and other wood waste. The project proposes to remove this debris and then
11 place beach sand and gravel to create a naturally sloping beach similar to that commonly found
12 in Puget Sound.

13 Below the Ordinary High Water Mark, the site is heavily degraded. There is no salt
14 marsh or other aquatic vegetation. The aquatic area currently provides no foraging opportunities
15 for salmon or other fish.

16 Further down, the mud flats provide fairly productive areas for shellfish, and the Shellfish
17 Study (Core Document 14.a) determined that the site contains several million shellfish. But
18 these mud flats are deemed contaminated, causing the shellfish to be contaminated as well, so
19 that any birds currently relying on shellfish for food are consuming contaminated food. Without
20 appropriate restoration of the shorelines, the shellfish beds will remain contaminated; no
21 shellfish harvesting will be allowed; and existing shellfish will be a poor food source for birds.

22 Looking beyond the project site, 90% of West Bay is armored with bulkheads; has a long
23 history of industrial use with associated contamination; has pockets of restoration but these are
24 fragmented; and is largely degraded to a point where it has limited aquatic function.

1 Mr. Maharry then turned to the project's proposed restoration of riparian areas. A
2 properly functioning shoreline along Puget Sound provides shade, thermal regulation, the
3 accumulation of detritis (organic material), perching habitat, screening and lighting attenuation
4 Currently, none of these habitat functions exist at the project site. The project hopes to restore
5 these functions through both upland and aquatic restoration of riparian areas. The riparian
6 upland area is proposed to be restored through a 30-foot Vegetation Conversation Area (VCA)
7 which will enjoy 12 to 18 feet of additional upland created by the Shoreline Restoration Project,
8 resulting in a VCA of 42 to 48 feet in total width. In the VCA, native trees, shrubs and
9 groundcovers will be planted along with Large Woody Debris (LWD), perch poles and bird
10 boxes. Waterward of the VCA, transitional areas between land and water will be vegetated with
11 appropriate adaptive vegetation. Further down, in the aquatic zone, salt marsh plants will be
12 planted to reestablish foraging sources for salmon and other fish. Again, none of this currently
13 existing onsite.

14 The VCA will have the added benefit of filtering light through trees and shrubs which, in
15 combination with application of Dark Sky practices, will significantly reduce light along the
16 shoreline.

17 Mr. Maharry then turned to the issue of impacts to shellfish as this has been an important
18 issue in the SEPA Appeal. Mr. Maharry finds that, as conditioned, the project will not have any
19 significant environmental impact to shellfish. The project will cause some shellfish mortality
20 from the placement of the gravel and sand for the new intertidal beach. This will be especially
21 true at the deepest portions of the work area. Importantly, however, most shellfish will survive if
22 gravel and sand materials are placed carefully. And, to the extent that there is mortality, shellfish
23 populations will reestablish quickly and perhaps in as little as one month.

24 Once the project is completed, the new intertidal beach will result in a significant
25 improvement in the biological function of the shoreline. With respect to shellfish, they will now

1 be living in clean gravel that no longer suffers from contamination, and the birds relying upon
2 shellfish for food will no longer be eating contaminated food.

3 In response to Dr. Hamman's concerns that the project would introduce a different type
4 and size of gravel that could disrupt the type of shellfish currently living in the substrate, Mr.
5 Maharry explained that the gravel chosen will be specifically selected to be compatible with
6 what local shellfish prefer. In summary, Mr. Maharry believes that the project will have no
7 significant negative impact to shellfish populations but will result in improved biological
8 functions in the aquatic zone resulting in an improved and healthier shellfish population.

9 Impacts to shellfish, salmon and other species will be further minimized or avoided by
10 carefully following allowed work windows and control plans as directed by WDFW and the
11 Corps of Engineers. Once completed, the project will then be monitored and maintained for ten
12 years. There will be an adaptive management component of the monitoring and maintenance to
13 adjust the design as needed to ensure its most effective results.

14 Mr. Maharry then turned to the issue of "no net loss". His No Net Loss Analysis (Core
15 Document 14.b) concludes that the project will result in no net loss of ecological functions and
16 processes, instead, will result in a net gain of ecological functions. As has been pointed out
17 several times, the site is currently heavily degraded with little or no habitat function. The project
18 will provide a significant net increase in habitat value and ecological functions. This is best
19 shown numerically by application of the Salish Sea Nearshore Calculator utilized by NMFS. In
20 consultation with the Corps of Engineers and NMFS, Mr. Maharry inputted this project's data
21 into the calculator, resulting in a calculation of 1,311 credits - a substantial net gain in ecological
22 functions (Appellant's Exhibit 11). This demonstrates that the project will have key benefits to
23 listed species including Chinook salmon and others.

24 Mr. Maharry then addressed several other issues raised by Olympia Ecosystems or
25 members of the public:

1 Impacts on the Deschutes Estuary Restoration. Mr. Maharry finds that this project will
2 have no negative impacts upon plans to restore the Deschutes estuary or vice versa, and that the
3 two would be complimentary to each other.

4 Birds. It has recently been brought to Mr. Maharry's attention that Purple Martins may
5 use the site for nesting. In response, the landscaping plan for the VCA has been slightly revised
6 to include nest boxes for Martins. These are in addition to the perch poles provided for other
7 types of birds. The VCA will provide various other benefits to birds including trees, shelter and
8 improved food sources.

9 Mr. Maharry is conscious of bird strike issues. If "bird friendly" glass is to be applied to
10 the buildings, however, Mr. Maharry recommends that it be limited to the lowest three floors
11 consistent with recommendations of U.S. Fish and Wildlife. He explains that birds see
12 vegetation reflected in glass but that this problem is generally limited to the lowest three floors,
13 as vegetation is generally limited to three floors in height.

14 Schneider Creek and Other Nearby Creeks. Some witnesses have suggested that this
15 project would affect Schneider Creek or perhaps other nearby creeks. Mr. Maharry finds that
16 there is no relationship between this project and Schneider Creek or any other nearby creek.

17 6 PPD-q. Mr. Maharry acknowledges that the science surrounding 6 PPD-q is evolving
18 and still in process. It is best addressed through applying Best Management Practices, especially
19 for stormwater management. This is best accomplished by utilizing filters in the stormwater
20 design intended to capture and hold 6 PPD-q and prevent it from discharge to West Bay. The
21 project's current preliminary stormwater design has this feature.

22 Hannah Morse. Hannah Morse is a licensed professional engineer and project manager at
23 Pioneer Technologies, an environmental consulting firm. She is the lead engineer for the
24 ongoing MTCA remedial action, including expected remedial cleanup actions for both uplands
25

1 and sediments. Ms. Morse's testimony was primarily related to the SEPA Appeal and a fuller
2 discussion of her testimony is found in the Appeal Decision.

3 For purposes of this shoreline hearing, Ms. Morse provided a brief history of the site's
4 historical contamination. The site has a long history of industrial use leading back to the early
5 1900's. From 1980 to 1996 it was used by Hardel Plywood until a large fire destroyed the
6 plywood plant and its storage of petroleum products, glues and other materials. The site was
7 found to have been contaminated by its historical use and the chemicals stored by Hardel
8 Plywood including fuels, resins and glues. There had also been historical spills and fires on the
9 site as well as large amounts of wood debris. Following the 1996 fire, a Remedial Investigation
10 (RI) was completed in 2007 and a Feasibility Study (FS) was completed in 2009. These led to a
11 2010 Interim Action which allowed for the removal of 23,000 tons of contaminated soils and
12 other materials. A layer of clean crushed concrete was then placed where soils had been
13 removed and groundwaters were treated and then monitored for an extended period. All of these
14 efforts resulted in a 2012 Cleanup Action Plan (CAP) approved by Ecology which concludes that
15 there are no remaining contaminants either upland or in sediments. This is referred to as a "No
16 Further Action" letter declaring to the public that the site is cleaned of contaminants and
17 available for reuse.

18 During the Applicant's "Due Diligence" investigations prior to its purchase of the
19 property, a Phase 1 and Phase 2 Environmental Study were undertaken in 2020. These studies
20 revealed low levels of remaining contamination in a few specific sites. Additional investigation
21 confirmed that the contamination was isolated. Groundwaters near the Reliable Steel boundary
22 were found to have excess levels of contamination, while methane levels were found to exceed
23 standards at a few select locations, especially a site referred to as "B-2". Upon discovering these
24 remaining contaminated areas, the Applicant prepared a Remedial Mitigation Plan in 2021 which
25 involved removing remaining contaminated soils at the B-2 site; placing a soil "cap cover" over

1 the site; continue monitoring the site; impose engineering controls on future construction;
2 establish a covenant against groundwater use in the future; and monitor the site for methane.
3 Ecology was notified of this Remedial Plan and a VCP (Voluntary Cleanup Plan) was approved.

4 After the Applicant purchased the property and submitted its proposed development plans
5 to the City, sediments along the shoreline were found to be contaminated. Cleanup of
6 contaminated sediments cannot be undertaken under the VCP and must instead be done through
7 an Agreed Order (in this case a Supplemental Agreed Order). In 2025, the Applicant entered
8 into an Agreed Order with Ecology to arrange for the cleanup of both upland and sediment
9 contamination. The Agreed Order requires a Supplemental Remedial Investigation Work Plan;
10 followed by a Supplemental RI/FS; an Interim Action Plan and, finally, a draft Cleanup Action
11 Plan.

12 In January of this year the Applicant submitted the required Supplemental Remedial
13 Investigation Work Plan (Appellant's Exhibit 14) but to date Ecology has not responded to this
14 Work Plan.

15 Ms. Morse noted that the Agreed Order specifically allows for an Interim Action while a
16 final Cleanup Action Plan is approved. Here, any Interim Action will recognize that this is not a
17 new site and has previously been carefully investigated and cleaned up, and that further follow-
18 up investigation has already been undertaken which has confirmed that contamination is isolated,
19 and that Ecology has been kept advised throughout the process. Ms. Morse would therefore
20 disagree with any suggestion that the MTCA remediation is in its "infancy" as the site's history
21 of cleanup has already moved it well along in the process.

22 Ms. Morse believes that the ultimate cleanup of uplands will be the "surgical removal" of
23 soils at the B-2 site; the placement of a soil cover over the site; and prohibition on the use of any
24 groundwater. All of this work can be undertaken as part of the site's development. Indeed,
25 Ecology anticipates development as part of the cleanup process.

1 Ms. Morse anticipates that sediment cleanup can also be accomplished through an
2 Interim Action and that the proposed beach restoration could serve as the approved remedy.

3 Ms. Morse concluded by responding to questions regarding the Vegetation Conservation
4 Area (VCA) and whether any contamination cleanup would interfere with the vegetative
5 plantings proposed through the VCA. Ms. Morse explained that the proposed soil cover would
6 not interfere with the VCA, or vice versa, and added that the vegetation planted in the VCA will
7 actually benefit contamination cleanup.

8 Troy Bussey. Like Ms. Morse, Mr. Bussey is involved in the site's MTCA cleanup
9 efforts and his testimony was largely limited to the scope and timing of cleanup under MTCA.

10 Mr. Bussey confirmed that before 2022 there had been no issue or knowledge of
11 sediment contamination and the only concerns were limited areas of recently-discovered residual
12 contamination in upland areas. These discoveries led to an agreed Voluntary Cleanup Plan for
13 the uplands. Then in January, 2022, the Ecology site supervisor expressed concern that there may
14 be residual contamination in sediments. The VCP program does not allow remediation of
15 sediment contamination and so the VCP was eventually discontinued and, ultimately, an Agreed
16 Order was entered in 2025 for more formal cleanup under MTCA. The Agreed Order identifies
17 a seven-step process to achieve cleanup. Mr. Bussey acknowledges that this project is at the first
18 step, with the other six steps still remaining, but that it should not be regarded to be in its
19 "infancy" as most of the work has already been performed. Mr. Bussey concurs with Ms. Morse
20 that the earlier Voluntary Cleanup Plan for the uplands is likely to be the accepted remediation
21 and can be accomplished during development, while the beach restoration project may serve as
22 effective remediation of sediments by imposing a "cap" over contaminated sediments.

23 Based upon the foregoing testimony and the exhibits, the Hearing Examiner makes the
24 following:

1 **FINDINGS OF FACT**

2 1. The Applicant is seeking Shoreline Substantial Development and Shoreline
3 Conditional Use Permits to construct five buildings above a public plaza and parking area. Each
4 of the five buildings includes five stories and collectively will provide for 478 residential units
5 along with 22,000 square feet of commercial use, a waterfront trail and esplanade, and various
6 public amenities. A copy of the Site Plan is found at Core Documents C and D. Several
7 versions of the Site Plan are included in the Applicant's hearing presentation, Hearing Exhibit 7_.
8 A more detailed description of the Site Plan is set forth in later Findings.

9 2. The project also proposes shoreline restoration including the placement of
10 granular fill over the existing armored shoreline in order to establish a naturally functioning
11 intertidal beach (more fully described in later Findings).

12 3. The project requires a Shoreline Substantial Development Permit as it involves
13 substantial development within shoreline jurisdiction along West Bay, an arm of Budd Inlet.

14 4. The project also requires a Shoreline Conditional Use Permit, as a small portion
15 of Building 2 is to be used for a mix of residential and commercial purposes and lies within 100
16 feet of the Ordinary High Water Mark along West Bay.

17 5. The project has an address of 1210 West Bay Drive NW, Olympia.

18 6. The project has a Shoreline Designation of Urban Intensity (Budd 3A).

19 7. The project site has a zoning designation of Urban Waterfront (UW).

20 8. The project site has a land use designation of Urban Waterfront (UW) in the City
21 Comprehensive Plan.

22 9. The site contains 19.4 acres of which 7.2 acres are considered developable with
23 the balance consisting of tidelands and aquatic areas extending east site into West Bay.
24
25

1 Findings Relating to the Project Site's History.

2 10. Prior to the 1890's, much of what is West Bay consisted of tidal flats extending
3 south to the Deschutes River and forming the Deschutes Estuary.

4 11. In the 1890's and again in the early 1900's, dredging was undertaken through the
5 Deschutes Estuary, creating what is now West Bay. Dredged materials were placed west and
6 east of the channel, creating the current uplands west of West Bay, along West Bay Drive, as
7 well as the uplands that are now the Port Peninsula on the east side of West Bay. At the same
8 time, grading along what is now West Bay Drive created additional fill material that, along with
9 the dredged material, was used to establish the flat uplands now existing along all of West Bay
10 Drive.

11 12. Following the creation of these uplands along the west side of West Bay, they
12 began to be used for a mix of industrial and marine purposes including log shipping. Soon,
13 almost all of the west side of West Bay came to be utilized for industrial purposes.

14 13. Historical information suggests that the project site was first developed as a
15 lumber mill in the 1920's. For the next several decades, a succession of mills and log shipping
16 enterprises utilized the site. Several large industrial buildings were constructed. A dual set of
17 rail lines was constructed along the west boundary, adjacent to West Bay Drive, while a 1,000-
18 foot spur rail trestle was constructed along the south portion of the site and into West Bay.
19 Various wharfs were constructed along the shoreline including a large wharf along the site's
20 northeast shoreline.

21 14. In 1947, the large wharf off the site's northeast shore was destroyed by fire.
22 Remnants of the wharf remain and include a large number of creosote-treated pilings and an
23 assortment of other debris.

24 15. In 1951, the State of Washington constructed the "5th Avenue Dam" which
25 created Capitol Lake. The lake was intended to complete the original architectural design for the

1 State Capitol. Unfortunately, it resulted in physically disconnecting the Deschutes River from
2 West Bay and eliminated the tidal interaction between the two. This has had significant
3 environmental consequences above and below the dam ever since.

4 16. As industrial development of West Bay continued, individual property owners
5 began armoring their shorelines to protect their industrial activities from tidal and storm impacts.
6 Eventually, almost all of the west side of West Bay became armored, leaving little or no
7 naturally functioning shoreline. Long industrial use has also led to the contamination of
8 shoreline sediments, further reducing the ecological functions of the West Bay shoreline.

9 17. Literature suggests that Hardel Plywood first began using the site for industrial
10 purposes in the 1960's, using the site to process thin strips of wood veneer into plywood through
11 the use of glues and chemical processes.

12 18. Historical information suggests that the site was purchased by Hardel Plywood in
13 1980. Hardel then made significant changes to the site by expanding the usable area by placing
14 large amounts of fill, including wood waste and other debris, up to the shoreline's edge and then
15 encapsulating that fill within an armored embankment consisting of large basalt rock placed at a
16 steep angle to the shoreline. This left the site with no functioning beach and a steep, armored
17 embankment from the water's edge up to the developed area above the embankment.

18 19. As perhaps part of the embankment project, the rail trestle leading into West Bay
19 was removed but the trestle's substantial concrete foundation remains off the shoreline, along
20 with a substantial amount of other concrete and miscellaneous debris.

21 20. Use of the site as a plywood plant continued until 1996 when the plant was
22 destroyed in a large fire. All use of the site ceased and has been discontinued ever since, or for
23 approximately 30 years.

24 21. The combination of fire and long industrial use left the uplands on the project site
25 heavily contaminated. As discussed more fully in later Findings, Hardel plywood entered into an

1 Agreed Order with the Department of Ecology ("Ecology") in 2010. Pursuant to that Order,
2 Hardel removed all of the buildings and a substantial amount of soil. Altogether, 23,000 tons of
3 soil and debris were removed from the site. A layer, or "cap", of crushed concrete was then
4 placed across all exposed areas such that the entire 7 acres of upland are currently covered by
5 either asphalt or crushed concrete. This work was completed in about 2010 and the site has since
6 remained unchanged with the minor exception that various types of weeds and scrub vegetation
7 have slowly gained a foothold in this otherwise impenetrable surface.

8 22. Importantly, and as part of the remediation process, Ecology declared that to the
9 extent any contaminants existed in the site's tidelands, this contamination was not caused by
10 Hardel and was not its responsibility. As a result, Hardel's responsibility for remediation was
11 limited to the uplands and no remediation of sediments was required.

12 23. In 2012, Ecology issued a "No Further Action" letter declaring that the cleanup of
13 all contamination on the site was complete, and that no further contamination existed on site.
14 The site thus became a "Brownfield Site" suitable for new development.

15 24. Shortly after the fire in 1996, the City began envisioning a new future for West
16 Bay, moving away from its industrial legacy. This process culminated in the 2001 update to the
17 City's Comprehensive Plan which announces an all-together different future for this and all
18 nearby properties east of West Bay Drive. The properties along the shoreline are given a new
19 land use designation of "Urban Waterfront" intended to establish a new mix of commercial,
20 industrial and medium/high density residential uses along the shoreline, including buildings of
21 three to seven stories in height. At the same time, properties along the west side of West Bay
22 Drive are designated for professional office/medium density residential, with the goal of
23 establishing professional buildings and apartments along the upper side of the road.

24 25. Following these revisions to the Comprehensive Plan, the City undertook the
25 "West Bay Corridor Study" in 2005 in order to better determine the future of West Bay Drive.

1 This study led to a unique plan for the drive that includes goals for multi-modal transportation as
2 well as a system of trails along the shoreline. The combination of a new Comprehensive Plan and
3 West Bay Corridor Study envisioned a new mix of commercial and residential uses along the
4 waterfront combined with greater public access through improved sidewalks, bike lanes and
5 trails.

6 26. In 2012, the City began to take a harder look at the West Bay Shoreline and its
7 restoration. This led to the 2012 Restoration Plan incorporated into the City's Shoreline Master
8 Program. While more conceptual than detailed, the plan envisions efforts to remove the
9 armoring of the West Bay shoreline and reestablish natural ecological functions.

10 27. The concepts developed in the 2012 Restoration Plan were further refined in the
11 2016 West Bay Environmental Restoration Assessment (the "Restoration Assessment") entered
12 into by the City, the Port of Olympia, and the Squaxin Island Tribe. In this study, the entirety of
13 the west side of West Bay was examined for possible means of restoring a more natural
14 shoreline. The study recognized that virtually the entirety of the shore had been heavily armored
15 and that its armoring was impairing ecological functions. The parties looked for means of
16 removing the armoring and restoring a more natural beach, recognizing that almost all of these
17 properties were privately owned and any restoration would be privately undertaken. Thus,
18 restoration efforts that could reestablish beach areas without depriving the owner of the ability to
19 develop were favored.

20 28. The project site was identified in the Restoration Assessment as the "Hardel
21 Reach No. 5" and the 2016 Restoration Assessment proposed its restoration by construction of a
22 gravel intertidal beach along its entire shoreline. The study did not propose a specific method of
23 constructing the new intertidal beach.

24 29. The Applicant acquired the project site in about 2020. On March 30, 2021, the
25 Applicant entered into a Development Agreement ("DA") with the City to develop the project

1 site in a manner consistent with what is currently proposed. Pursuant to the DA, the application
2 vested to the 2021 Shoreline Master Program, Development Regulations and Comprehensive
3 Plan. In return, the Applicant agreed to pay a fee to the City and further agreed to voluntarily
4 restore the shoreline consistent with the 2016 West Bay Restoration Assessment.

5 30. On June 10, 2021, the Applicant's application for Shoreline Substantial
6 Development Permit and Land Use Review was deemed complete.

7 Findings Relating to the Current Condition of the Project Site.

8 Existing Upland Conditions.

9 31. The upland area of this site contains approximately 7 acres.

10 32. Since remediation work was completed in about 2010, the site has remained
11 unchanged and undeveloped.

12 33. The site abuts West Bay Drive to the west; the "Reliable Steel" property to the
13 south; West Bay to the east; and an undeveloped property to the north currently under review as
14 a retirement housing development (West Bayviews Landing).

15 34. The project site and adjoining and nearby properties along the east side of West
16 Bay Drive have a zoning designation of Urban Waterfront. Commercial and residential
17 development are permitted uses within this zoning designation.

18 35. Property immediate across West Bay Drive of the project site, as well as all other
19 nearby property along the west side of West Bay Drive, have a zoning designation of PO/RM
20 (Professional Office/Medium Density Residential). Permitted uses within this zoning
21 designation include professional buildings and apartment buildings. Several professional
22 buildings currently exist along the west side together with a scattering of single-family
23 residences, including several historic residences.

24 36. On the opposite side of West Bay Drive from the project site's southwest corner is
25 a small (0.11 acre) wetland referred to as Wetland A. Wetland A is identified and discussed in

1 the project's Critical Areas Report (Core Document 10) and a map showing its location is
2 attached to the Critical Areas Report as Appendix A:

3 • Wetland A is identified as a depressional wetland 0.11 acres in size. It has a
4 Habitat Score of 5 and a total wetland score of 17, resulting in being categorized as a Category
5 III wetland with a 140-foot buffer.

6 • Wetland A provides a moderate level of water quality function but its habitat
7 function is low due to its small size and highly urbanized environment.

8 • Immediately south of Wetland A is an asphalt driveway associated with the
9 adjoining single-family residence, both of which lie wholly within the wetland's buffer.

10 • Immediately east of the wetland is the West Bay Drive sidewalk and then West
11 Bay Drive. According to the project's Traffic Impact Analysis, West Bay Drive experiences
12 approximately 10,000 trips per day.

13 • Street lighting currently exists along the south side of West Bay Drive, with the
14 light fixture approximately opposite Wetland A¹. A short distance north of the wetland are
15 several commercial/professional offices.

16 • The wetland likely provides some foraging and refuge for small mammals as well
17 as bird foraging and refuge.

18 • Wetland A's buffer does not extend to the project site due to its physical
19 separation by the West Bay Drive right-of-way.

20 37. West of the project site across West Bay Drive, and somewhat south of the project
21 site, is a natural area commonly referred to as "West Bay Woods" owned by the Appellant,
22 OlyEcosystems. West Bay Woods does not have well defined boundaries as its development is
23 ongoing and it has not sought official recognition from the City through the permitting process,
24

25 ¹ Viewed by the Hearing Examiner during his site inspection.

1 but OlyEcosystems describes it as a "public park" or a "conservation area". A fuller discussion
2 of West Bay Park and its purposes is explained in Dr. Einstein's testimony.

3 38. OlyEcosystems owns several other properties on the west side of West Bay Drive
4 including one residential lot immediately across West Bay Drive from the project site at 1515
5 West Bay Drive (on which the residence was recently removed), with the remaining properties
6 located north and south of the project site and not immediately adjacent to it. Olympia
7 Ecosystems regards this collection of properties as having an "ecological connection" to each
8 other.

9 39. Commencing at its west boundary along West Bay Drive, the project site slopes
10 gently east toward West Bay. Two former rail lines run parallel to West Bay Drive and create a
11 four-foot depression. East of the former rail lines, the site is relatively flat and undeveloped.

12 40. As noted in earlier Findings, the remediation undertaken in around 2010 included
13 the placement of crushed concrete where soil and buildings had been removed. The site is now
14 an expansive mix of asphalted areas and areas covered by crushed concrete.

15 41. The site's covering by asphalt and crushed concrete makes vegetative growth
16 difficult and most of the site is barren of vegetation. Some scrub shrubs have succeeded in
17 gaining a foothold including small birches, blackberries, butterfly bush and some grasses. Shell
18 hash (broken shells) its common throughout, likely the result of seagulls and crows dropping
19 shellfish from height.

20 42. Habitat quality on the uplands is low and there is very little foraging opportunity.
21 While some grasses and forbs are present, they are of low quality and provide very little grazing
22 opportunity for deer which would more likely prefer the dense vegetation west of the road. More
23 likely species to use the site include ones best accustomed to urban sites including raccoons and
24 opossum.

1 Shoreline Conditions.

2 43. At the eastern end of the uplands is a steep revetment consisting of large basalt
3 riprap commencing at the end of the uplands and descending steeply to intertidal mud flats with
4 no beach area. This condition extends the entirety of the 1,100 linear feet of shoreline.

5 44. The project's shoreline is dominated by this steep revetment. The embankment is
6 almost entirely unvegetated and extends past (below) the Ordinary High Water Mark.

7 45. Above the revetment, along the east boundary of the uplands, is a scattering of
8 vegetation including blackberries, Scotch Broom and Red Elderberry along with a few small
9 trees including Madrona and Maple. Otherwise, the transition from uplands to embankment is
10 barren of vegetation. This is demonstrated through site photographs (Core Document 14.b).

11 46. At the base of the riprap revetment (below the Ordinary High Water Mark) the
12 shoreline flattens to a gentler slope and transitions to gravel and shell hash intermixed with
13 timber pile stubs and metal debris. Further down, the lower intertidal substrate consists of
14 unconsolidated silt with wood waste debris and gravel. Shellfish are present within this mud flat
15 habitat.

16 47. As noted in earlier Findings, a large amount of debris exists off the northeast
17 shoreline in the area where the large wharf was destroyed by fire in 1947. Along the east
18 shoreline are large derelict concrete structures where the rail trestle was once located. Additional
19 concrete debris and a sunken barge are also present along the eastern riprap slope. Collectively,
20 there are approximately 200 creosote-treated pilings along the project's shore.

21 48. Habitat quality along the shoreline, both riparian and aquatic, is low. Vegetation
22 is limited and consists mostly of invasive and nonnative species. Habitat along the base of the
23 slope is limited. Small pockets of gravel and shell hash are present and provide some limited
24 spawning habitat for sand lance but represent a very small percentage of the overall substrate.
25 No saltmarsh or other beneficial marine aquatic vegetation has been observed along the mid-to-

1 lower intertidal shoreline. As a result, the site does not provide quality foraging habitat for
2 juvenile or adult salmonids.

3 49. While shellfish are presently located along the site's shoreline substrate in
4 significant number, the harvesting of shellfish along this portion of West Bay is prohibited due to
5 concerns over possible contamination.

6 50. There are six metal pipe culverts along the site's shoreline ranging in size from 8
7 inches to 18 inches in diameter. Three are abandoned and will be removed as part of the project.
8 The remaining three are active and will be retained for stormwater management. The three
9 retained outfalls convey surface runoff from West Bay Drive and properties west of West Bay
10 Drive, through the site, and into West Bay. The outfalls will not be used by the project except
11 for water from rooftops. All other project stormwater will be managed by its own stormwater
12 system designed to current standards.

13 51. Several inspections of the site at low tide have determined that there is very little
14 Submerged Aquatic Vegetation (SAV) present along the shoreline. Normal SAV found within
15 near shore habitats of Puget Sound includes bull kelp, sugar kelp, eel grass and salt marsh.
16 Again, little or none of this vegetation is currently found along the shoreline. As a result, there is
17 little habitat function and the site does not provide quality foraging for salmonids.

18 52. The site does not provide supporting habitat for Puget Sound Chinook Salmon,
19 but adult and juvenile Chinook Salmon may use the area to reach more favorable habitats.

20 53. Juveniles Coho and Chum Salmon are likely to be present at the site, but only
21 during times of the year that are outside the site's authorized in-water work window.

22 54. Pink Salmon are not likely to be present at the site at any time.

23 55. Juvenile Steelhead may move rapidly through the site between March and June
24 but are not expected to be present during the approved in-water work window. Small numbers of
25 adult Steelhead could pass through the site at any time of the year but only in small numbers.

1 56. Great Blue Herons likely utilize the mud flat habitat during periods of low tide for
2 foraging, and are likely to be found on or near the site year round. Two small rookeries have
3 been identified near the project site but west of West Bay Drive along the forested slope above
4 West Bay Drive, and approximately 720 feet southwest of the southwest corner of the subject
5 property. This places the rookeries outside the 200-foot year round buffer as well as the 300-foot
6 seasonable buffer (or a total 500-foot buffer) imposed by OMC 18.32.320.

7 57. No other important species are believed to be found on or within 1000 feet of the
8 site.

9 Findings Relating to the Proposed Development.

10 Findings Relating to Upland Development.

11 58. The total site contains 19.48 acres. Of this acreage, approximately 11 and 1/2
12 acres are located below the current Ordinary High Water Mark. The remaining 8 acres is
13 landward of the Ordinary High Water Mark, of which 7.24 acres are buildable acres (the "Upland
14 Area").

15 59. Within the Upland Area, the Applicant proposes to construct 5 buildings above a
16 public plaza and structured parking. Each of the 5 buildings includes 5 stories.

17 60. The project includes 478 residential units and approximately 22,000 square feet of
18 commercial use such as restaurants, cafes and other water-oriented activities.

19 61. Of the 5 buildings, Buildings 2 and 3 are intended for a mix of residential and
20 commercial uses, while Buildings 1, 4 and 5 are multi-family residential. Construction of the 5
21 buildings is proposed to be phased, with Buildings 2 and 3 in Phase 1, Buildings 4 and 5 in Phase
22 2 and Building 1 in Phase 3.

23 62. A central view corridor is proposed between Buildings 2 and 3, with additional
24 view corridors of varying width between all other buildings, as well as north and south of the
25 buildings.

1 63. Buildings are 65 feet in height from average grade. The allowed height is based
2 upon use of a height bonus pursuant to OMC 18.06.100.8.2.c. The Applicant qualifies for this
3 height bonus by ensuring visual access to the shoreline from West Bay Road by maintaining
4 view corridors, and by providing enhanced amenities including both a waterfront trail and an
5 expanded trail corridor.

6 64. Proposed public amenities include a kayak launch; trail corridor running the
7 length of the project site and connecting to West Bay Road to the south and north, and including
8 an expanded corridor along the east side of the project; 3 shoreline access paths through the
9 Vegetation Conservation Area ("VCA") to allow public access to the beach; parking for
10 waterfront access; public use of the beach; public parking for waterfront activities; several view
11 corridors from West Bay Drive; long and short term bike storage; benches, seawalls and other
12 outdoor seating; ADA accessibility to the shoreline; and pedestrian crosswalks with traffic
13 calming devices along West Bay Drive. Through these various amenities, the goal is to provide
14 ample public opportunity to walk along, view and otherwise enjoy the shoreline and West Bay.

15 65. It is anticipated that approximately 2-3 feet of soil will be added to entirety of the
16 upland area. This material is intended to serve as a cap on the existing site; aid in addressing sea
17 level rise; and provide the necessary medium for trees, landscaping and shoreline vegetation.

18 66. The project is conditioned on minimizing the impact of lighting on the shoreline
19 and adjoining properties. The Applicant will comply with "Dark Sky" lighting principles in order
20 to minimize light and avoid its spread.

21 67. A densely Vegetated Conservation Area (the "VCA") is required along the nearest
22 30 feet to the Ordinary High Water Mark). The VCA must be composed of native vegetation
23 comparable in species, density and diversity to an ecologically similar undisturbed area. The
24 VCA will run the length of the shoreline and cover approximately 37,000 square feet. A mix of
25 native trees and shrubs will be planted including Big Leaf Maple, Douglas Fir, Shore Pine and

1 Pacific Madrone. Native shrubs will include Ocean Spray, Willow and Elderberry. Native
2 ground cover will be planted in the VCA and include Yarrow, Coastal Strawberry and Sword
3 Fern.

4 68. Water and sewer utilities will be provided by the City. Municipal water and
5 sewer lines are currently located along West Bay Drive. Storm drainage will be managed
6 through a storm drainage system designed to the most current Drainage Design and Erosion
7 Control Manual ("DDECM") for Olympia along with Chapter 5 of the Engineering Design and
8 Development Standards ("EDDS"). The Applicant has prepared a preliminary proposed
9 stormwater system (Core Document 11.a) which complies with the most recent DDECM. As
10 stormwater systems do not vest, a future construction permit will be required to comply with the
11 then applicable version of the DDECM. Any stormwater reaching the underground parking area
12 will not be directed toward the storm drainage system but instead will be routed to the sewer
13 system.

14 69. A more detailed set of Findings relating to the upland project are found in the
15 Hearing Examiner's Shoreline Permit Decision. Those Findings are incorporated herein by
16 reference.

17 Findings Related to Shoreline Restoration.

18 70. Shoreline restoration is not required for this project but the Applicant has agreed
19 to undertake shoreline restoration as a condition of the Development Agreement entered into
20 with the City.

21 71. Pursuant to the Development Agreement, the Applicant is required to undertake
22 shoreline restoration consistent with the City's 2016 West Bay Environmental Restoration
23 Assessment. As discussed earlier, the Restoration Assessment was undertaken by the City, the
24 Port of Olympia and the Squaxin Tribe and examined possibilities for restoring the shoreline
25

1 along West Bay, including the project site. The project site is referred to as "Reach 5 - Hardel"
2 in the 2016 Restoration Assessment.

3 72. The 2016 Restoration Assessment recognizes that the project site, as well as
4 virtually all other properties along West Bay, have heavily armored shorelines resulting in little
5 or no functioning beach. The study proposes that each designated shoreline area undertake
6 appropriate restoration efforts to reestablish a gravel beach and functioning shoreline. The
7 specific means by which this restoration is undertaken are not identified and the study is more
8 conceptual than specific in its design.

9 73. As to the subject property, the 2016 Restoration Assessment includes a conceptual
10 design which proposes to place gravel and sand to create a gently sloped beach the length of the
11 project site.

12 74. Once the Development Agreement was entered into, the Applicant presented its
13 initial proposal for the project, including shoreline restoration. The Applicant's original
14 restoration concept is described in Section 5.2 of the Shoreline Restoration Design Report, Core
15 Document 14. This original design proposed to create fronting intertidal beach and marsh areas
16 by placing gravel and sand at 8:1 slope from the top of the existing revetment and continuing
17 downward into tidal areas. This design would have covered the entire existing armored shoreline
18 with more natural sand and gravel substrate, thereby improving intertidal habitat function as well
19 as waterfront access, but would have done so at the cost of extending the current Ordinary High
20 Water Mark a substantial distance to the east and creating significant amounts of new upland,
21 thereby eliminating aquatic areas. This concept is hereafter referred to as "Alternative 2:
22 Original Design Concept").

23 75. After reviewing this proposal with the Tribes and affected State and federal
24 agencies, the City responded by requesting a restoration design that would create less new
25

1 uplands and thereby have fewer aquatic impacts. This request led to the current design for the
2 restoration project, referred to as "Alternative 3".

3 76. Under this alternative, restoration efforts would begin by the removal of all
4 existing shoreline debris. As noted in earlier Findings, this would include the remaining concrete
5 foundations for the old rail trestle; the old wharf off the northeast shore; and an assortment of
6 other pilings, concrete and metal debris. An estimated 200 creosoted timber pilings would be
7 removed. Once the shoreline had been cleared of all debris, the entire face of the existing
8 shoreline armory would be cut back at a height of +17 feet MLLW. The cut back would extend
9 18 feet landward resulting in an 8-foot wide bench. Approximately 2,175 cubic yards of clean
10 topsoil would then be placed on the cut back at a 4H:1V slope to match the grades from the
11 restored beach fill, and continuing up to the fill placed for the upland development. This topsoil
12 will provide appropriate planting media for riparian vegetation. Approximately 7,290 cubic
13 yards of gravel fill will then be placed along the face of the existing riprap slope below the cut
14 back and extending offshore at a slope of 4:1. This material will provide bedding for the
15 placement of the beach material. Once this underlying gravel fill had been placed,
16 approximately 24,965 cubic yards of sand and gravel beach material would then be placed over
17 the other materials at a slope of 8H:1V, extending offshore from the Ordinary High Water Mark
18 approximately 100 to 150 feet.

19 77. Putting these concepts into layperson terms, the original Alternative 2 would have
20 created a new beach running to the top of the existing revetment, thereby creating large amounts
21 of new upland while extending fill further beyond the Ordinary High Water Mark. Alternative 3
22 proposes to significantly cut back the height of the revetment and then create the same
23 gravel/sand beach as Alternative 2, with the same slope, but now at a much lower elevation
24 requiring much less material; less new upland; and not extending as far beyond the Ordinary
25 High Water Mark.

1 78. In November, 2025, a detailed analysis was undertaken by the Applicant's
2 consultants of the relative merits and disadvantages of four different approaches to the
3 shoreline's restoration (Core Exhibit 14.a):

4 Alternative 1. Not implement any comprehensive action to restore the shoreline,
5 allowing the existing steep armored slope to remain in place.

6 Alternative 2. The original design concept proposed by the Applicant, creating
7 fronting intertidal beach and marsh areas by placing gravel and sand beach materials at an 8:1
8 slope to the top of the existing armored slope, with a backshore buffer at the top of the slope to
9 transition to the new upland fill. See figure 5.2 of Core Document 14.a.

10 Alternative 3. The current design cutting back the top of the existing steep slope
11 to reduce the overall height of the new beach materials, thereby reducing the amount of fill
12 below the Ordinary High Water Mark. This design also has a backshore buffer transitioning to
13 the new fill on the upland portions. This buffer serves to dissipate wave action. See Figure 5.3
14 of Core Document 14.a.

15 Alternative 4. Fully remove the existing steep revetment, lowering the new beach
16 area and the amount of fill necessary, and cutting back into the upland area to achieve the
17 necessary gradual slope. Figure 5.4 of Core Document 14.a.

18 79. Of the four alternatives, Alternative 4 (fully removing the existing steep slope)
19 was determined to be the least possible to achieve as it would require excavating into the Bay
20 bottom to establish a necessary foundation for a new beach. Due to tidal, environmental,
21 engineering and other considerations, this approach is not feasible; It would be extremely
22 difficult; dangerous; unpredictable; unlikely to be permitted; and most likely unsuccessful even if
23 permitted, all as explained in detail by the Applicant's experts (Phillips, McCaughan).

24 80. Alternative 1 would not provide any restoration of the shoreline but would require
25 ongoing maintenance and expense despite offering no environmental benefit.

1 81. Alternatives 2 and 3 therefore become the remaining viable options, with the
2 current option (Alternative 3) having less impact to aquatic areas and producing the least amount
3 of new upland.

4 82. A more complete analysis of each alternative and its relative benefits and
5 disadvantages is found at Table 5.5 of Core Document 14.a.

6 83. As noted earlier, Alternative 3 (the current proposal) would have sand and gravel
7 beach material placed over a gravel bed at a slope of 8:1 extending offshore approximately 100
8 to 150 feet from the Ordinary High Water Mark. In total, this would require an estimated 32,813
9 cubic yards of fill material over approximately 165,000 square feet of aquatic substrate below the
10 Ordinary High Water Mark.

11 84. The site's aquatic areas are known to contain a significant number of shellfish
12 (mostly clams). In 2022, and at the request of the Washington Department of Fish and Wildlife
13 (WDFW), the Applicant conducted a study of shellfish and Submerged Aquatic Vegetation
14 ("SAV") at the project site (Core Document 14d). This study found that, overall, shellfish on the
15 site seem to appear more frequently in sandy and gravelly sediments (from +5 feet to +8 feet
16 MLLW) instead of fine silty sediments (from 0 feet to +5 feet MLLW). For the area from 0 to
17 +5 feet MLLW, there is an estimated population of shellfish of 2,877,216 clams. For the area of
18 +5 feet to +8 feet MLLW (near the shore) there is an estimated population of 1,715,956 clams
19 (this area has a higher density of clams but consists of a smaller portion of the aquatic area).

20 85. As previously noted, the restoration project proposes the installation of gravel and
21 sandy beach materials on top of the existing substrate in order to establish a new gradually
22 sloping beach reaching to the cut back revetment and then continuing to the uplands, resulting in
23 the placement of approximately 32,000 cubic yards of material below the Ordinary High Water
24 Mark. It is acknowledged that the placement of gravel and sandy materials for the new beach
25 will result in some shellfish mortality (Core Document 14.d).

1 86. The purpose of creating a new sand and gravel beach is to cover the existing
2 armored shoreline with a more natural sand and gravel fill in order to improve intertidal habitat
3 function as well as waterfront access for the public.

4 87. Once the sand and gravel materials have been installed to create the new beach,
5 approximately 2,175 cubic yards of topsoil will be placed over the beach material near the top of
6 the slope and then continue up to the uplands, thus creating a layer of topsoil along the shoreline
7 to allow for the planting of the VCA materials and a new vegetative buffer between the shoreline
8 and the upland development. Below the Ordinary High Water Mark, 8,762 square feet of salt
9 marsh plantings will then be planted. These salt marsh plants may include Pickleweed, Fleshy
10 Jaumea, Puget Sound Gumweed, and Salt Marsh Plantain. Between these new aquatic plants and
11 the new VCA above the shoreline, a transitional planting zone between the two will provide a
12 gradual transition from salt mash habitats to upland habitats and include the planting of Pacific
13 Silverweed, Dechampsia, Willow, and Ocean Spray.

14 88. Placement of the gravel and sand beach material will cause portions of the
15 existing aquatic are to be elevated above the Ordinary High Water Mark, thus creating new
16 upland. It is estimated that the project will create 0.42 acres of new upland as the Ordinary High
17 Water Mark is shifted waterward. As noted in the earlier analysis of alternatives, this outcome is
18 regarded as the minimum necessary to accomplish needed shoreline restoration.

19 89. The project's VCA has been established in accordance with the existing Ordinary
20 High Water Mark. The new uplands created by the shoreline restoration will be waterward of the
21 VCA and will be added to it, creating an additional 12 to 18 feet of VCA, or a total VCA of 42 to
22 48 feet in width along the entire shoreline. No new developable upland will result from the
23 shoreline restoration. The Ordinary High Water Mark will shift to the east.

24 90. The design of the restoration project has been guided by the Engineering With
25 Nature (EWN) set of principles developed by the US Army Corps of Engineers. Following these

principles represents the appropriate standard of care and Best Available Science for coastal engineering design and shoreline beach fill restoration and soft shore stabilization systems for Puget Sound beaches. (See Consistency Narrative - Core Document 14.b).

91. At its completion, the restoration project will create 3.79 acres of high quality sand and gravel beach with native salt marsh, transitional and riparian vegetation.

92. The creation of intertidal beaches, salt marsh and riparian planting will substantially improve substrate quality and enhance ecological functions of existing natural resources and their buffers. The project will provide improved habitat for fish and other natural resources, improve ecosystem services, water quality, and nutrient storage to increase ecosystem stability over time. It will also lead to a substantial improvement to the near shore habitat resulting in a substrate with higher primary productivity of benthic organisms with improved migration and foraging habitat.

93. Creation of a gently sloped sand and gravel beach will also provide numerous benefits to important species including Chinook Salmon.

94. Overall, the project will result in a net increase in shoreline ecological functions and processes.

Findings Relating to the Chronology of the Cleanup of Contaminants on Uplands and Aquatic Areas, and the Relationship of these Cleanup Efforts to the Project.

95. As noted earlier, the Hardel Plywood Plant on the project site was destroyed by fire in 1996. That fire, coupled with many decades of industrial use, left the uplands portion of the site heavily contaminated. Contamination included total petroleum hydrocarbons, volatile organic compounds, semi volatile organic compounds, carcinogenic polycyclic aromatic hydrocarbons, metals, and dioxins/furans.

96. More than 10 years after the fire, on April 30, 2007, the Department of Ecology ("Ecology") issued Agreed Order No. DE4108 to Hardel Mutual Plywood, allowing Hardel to

1 conduct a RI ("Remedial Investigation")/FS ("Feasibility Study") to determine appropriate
2 remediation. The resulting RI report found concentrations of contaminations in soil,
3 groundwater and sediment samples exceeding cleanup levels.

4 97. In 2009, the approved Feasibility Study ("FS") proposed to remove contaminants
5 from groundwater via excavation and pumping, and to remove contaminants from uplands
6 through excavation and offsite disposal of contaminated soil.

7 98. Following public hearings in late 2009 and early 2010, Ecology approved an
8 Interim Action which included:

- 9 ● Removing and crushing concrete building foundations, and retaining the concrete
10 to use as fill.
- 11 ● Removing contaminated soil and replacing it with clean soil.
- 12 ● Covering the property with one foot of clean, recycled crushed concrete.
- 13 ● Pumping and treating groundwater where soil had been removed.
- 14 ● Removing all free-floating contaminants.
- 15 ● Sampling soil to make sure all contaminated soil was removed.

16 99. In response to the approved Interim Action, Hardel removed approximately
17 23,331 tons of contaminated soils and debris, and pumped 1,250,600 gallons of treated water into
18 the sewer system.

19 100. After completing the interim action, Hardel sampled groundwater for four
20 quarters through August 2011. No contaminants were found and Ecology determined that no
21 more investigations or remedial actions were necessary.

22 101. In January, 2012, Ecology prepared a draft Cleanup Action Plan ("CAP")
23 incorporating the 2007 RI and the 2009 FS. Following a public comment period, Ecology
24 prepared the final CAP in April, 2012. Its selected cleanup action was the cleanup recommended
25 in the 2009 FS and implemented in the 2010 Interim Action.

1 102. Following another public comment period in June and July, 2012, Ecology
2 removed the site from the Hazardous Sites List and issued an Agreed Order of Satisfaction letter
3 ('No Further Action") on August 22, 2012. The No Further Action letter stated that no additional
4 remedial action was necessary.

5 103. As part of the site's cleanup, Ecology declared that Hardel was not responsible for
6 any contaminants found in shoreline sediments, and that any such contaminants were the result
7 of either historical use predating Hardel, or had drifted in from other sites (such as the Cascade
8 Pole site). As a result, the cleanup of the Hardel site did not extend to the aquatic portion of the
9 site; and its condition remains the same as when the plywood plant was destroyed in 1996.

10 104. Following the site's cleanup in 2010, it remained unchanged for the next ten years.
11 In 2020, the Applicant asked Pioneer Technologies Corporation ("Pioneer") to undertake a due
12 diligence investigation of the site as part of the Applicant's plans to purchase and develop the
13 property. Through Phase 1 and Phase 2 Environmental Site Assessments completed in 2020,
14 Pioneer discovered that there were additional areas of contamination in the site's uplands that had
15 not been addressed during the 2010 cleanup.

16 105. As noted earlier, in 2021, the Applicant and the City entered into a Development
17 Agreement on March 30, 2021, setting the parameters for the current project, including voluntary
18 restoration of the shoreline.

19 106. Following the approval of the Development Agreement, the Applicant promptly
20 submitted its Shoreline Substantial Development and Land Use Review applications. These
21 applications were deemed complete on June 10, 2021.

22 107. On August 17, 2021, **after** the Applicant's application was deemed complete,
23 Ecology rescinded its earlier No Further Action Determination from 2012, and the site was
24 added to the Confirmed and Suspected Contaminated Site's List.

1 108. Shortly thereafter, on August 31, 2021, the Applicant applied for the site to be
2 entered into Ecology's Voluntary Cleanup Program ("VCP").

3 109. The VCP allows for voluntary cleanup of contaminants under Ecology's
4 supervision, but not its involvement. Thus, the cleanup can occur without the need for formal
5 action and without SEPA review.

6 110. The VCP allows for the voluntary cleanup of the site's uplands but does not allow
7 for voluntary cleanup of aquatic lands. This was not thought to be problematic as, in 2021, none
8 of the parties - Ecology, the Applicant, or the City - believed there to be a need to engage in
9 cleanup of contaminants in sediments. As a result, all proposed cleanup was limited to uplands
10 with no plans to engage in cleanup of sediments.

11 111. The Applicant's voluntary plans to clean up remaining contaminants in the
12 uplands were to be folded into the site's development, including the two feet of soil to be placed
13 as a "cap" over the existing surface, coupled with ongoing monitoring of a few "hotspots" where
14 contamination had been found to still exist.

15 112. Additional sampling in 2022 revealed the presence of contaminants in aquatic
16 sediments. Ecology therefore determined that additional remedial action would be needed for
17 the sediment portions of the site.

18 113. As noted earlier, the VCP only applies to uplands and not sediments. The
19 Applicant is therefore not allowed to undertake voluntary cleanup of sediments but is instead
20 required to undergo more formal remedial action.

21 114. On March 7, 2023, the Applicant notified Ecology that it was terminating the
22 VCP Agreement due to Ecology's request for sediment sampling. The Applicant then requested
23 an Agreed Order with Ecology to further the investigation and cleanup of the site.

24 115. Between the Applicant's development application being deemed completed in
25 June, 2021, and the revocation of the VCP Agreement with Ecology in March, 2023, the

1 development application had undergone extensive review by the City in cooperation with tribal,
2 State and federal agencies including the Nisqually Tribe, the Squaxin Tribe, WDFW, the US
3 Army Corps of Engineers and three separate divisions of Ecology (Shorelines, SEPA and Toxics
4 Divisions).

5 116. Between the application being deemed complete in July, 2021, and termination of
6 the VCP Agreement in March, 2023, the project had undergone at least two rounds of review. It
7 had undergone significant modifications including the adoption of the "Alternative 3" restoration
8 plan in lieu of the original "Alternative 2" plan.

9 117. RCW 70A.305.030(1) and .050(1) give Ecology the authority to require
10 Potentially Liable Persons ("PLP's) to investigate or conduct remedial actions with respect to any
11 release of or threatened release of hazardous substances whenever Ecology believes such action
12 to be in the public interest. As the current owner of the property, the Applicant is a PLP and
13 Ecology notified the Applicant of this by letter dated April 17, 2023.

14 118. Following Ecology's notice to the Applicant that it was considered a PLP,
15 Ecology and the Applicant underwent discussions to establish an Agreed Order for additional
16 site remediation. These discussions lasted more than two years and it was not until July 23,
17 2025, that Ecology and the Applicant entered into Agreed Order No. DE21726 for the
18 supplemental remediation of the project site.

19 119. Between the termination of the VCP in March, 2023, and the entry of the Agreed
20 Order in July, 2025, the project underwent a third (November 20, 2023) and fourth (April, 2025)
21 round of review during which the restoration project was further refined. During these additional
22 reviews it was agreed that the project would also require a Shoreline Conditional Use Permit for
23 the mix of uses within Building B located within 100 feet of the existing Ordinary High Water
24 Mark.

1 120. The Agreed Order identifies the project coordinator for Ecology as Steve Teel of
2 the Toxics Cleanup Program. The Order directs that Mr. Teel shall be responsible for overseeing
3 the implementation of the Order and will be Ecology's Designated Representative for this site.

4 121. Following Mr. Teel's appointment as Ecology's Project Coordinator for the
5 remediation project, Mr. Teel worked closely with Nicole Floyd, the City's Planning Director
6 and the Staff member responsible for the application's review. Ms. Floyd and Mr. Teel engaged
7 in regular and ongoing communication over the completion of the review of the shoreline project
8 and the remediation process that would be undertaken under the Agreed Order.

9 122. Working with Mr. Teel and other agencies, Round 5 of project review was
10 completed in November, 2025, and a final Round 6 was finished in December, 2025. During
11 these final project reviews, City Staff continued to work closely with Mr. Teel and received his
12 input on the City's proposed conditions of project approval as well as on the City's plan to issue a
13 SEPA DNS for the project.

14 123. On about January 27, 2026, the City issued its Notice of SEPA Determination of
15 Nonsignificance for the project. Upon its receipt, Mr. Teel immediately responded by email on
16 January 27, thanking Ms. Floyd for its receipt and informing her that Ecology had no objection
17 to the DNS but that it would formally respond with the following comment:

18 "The project area contains contaminated upland soil and groundwater and marine
19 sediments and is on the State Contaminated Sites List (Hardel Mutual Plywood
20 Site, CSID3704). Contaminates include metals, total petroleum hydrocarbons,
21 volatile and semi-volatile organic compounds, and dioxins/furans. The
22 Washington State Department of Ecology (Ecology) has issued Model Toxics
23 Control Act (MTCA) Administrative Order (Agreed Order) DE21726 to West
24 Bay Development Group, LLC (WBDG). This Agreed Order requires WBDG to
25 complete a Supplemental Remedial Investigation, Feasibility Study, and
Preliminary Draft Cleanup Action Plan. The Applicant needs to complete the
required Agreed Order tasks and implementation of the MTCA Cleanup Action
Plan before any in-water work, site alteration, or development is performed,

1 unless the work is included as part of an Ecology-approved Interim Action Work
2 Plan. For additional information about subsequent cleanup and to identify the
3 type of testing that will be required at the Site, contact Steve Teel with the Toxics
Cleanup Program at the Southwest Regional Office at (360) 890-0059."

4 124. Ms. Floyd promptly responded to Mr. Teel's email by confirming that his
5 recommendation would be incorporated as a condition of project approval. The SEPA DNS was
6 thereafter retained by the City. Ecology's recommended condition was then adopted by the City
7 in the required conditions for project approval.

8 125. WAC 197-11-250(4), adopted by the City at OMC 14.04.020, requires that SEPA
9 review of a development project be combined with SEPA review for an associated MTCA
10 remedial action "to the extent practicable".

11 126. It does not appear that Nicole Floyd, the Director of Planning for the City and the
12 person responsible for the application review, or Tim Smith, the City's SEPA Official, were
13 aware that the WAC requires integration of the SEPA review for the project was an associated
14 MTCA remediation to the extent practicable.

15 127. Neither Ms. Floyd or Mr. Smith discussed integration of SEPA review with Mr.
16 Teel.

17 128. Neither Ms. Floyd or Mr. Smith specifically asked Mr. Teel if he had any
18 objection to the City proceeding on its SEPA Determination separately from the MTCA SEPA
19 review.

20 129. Mr. Teel did not expressly state that Ecology felt that integration of the two SEPA
21 processes was impracticable. Nonetheless, it is clear that Ms. Floyd and Mr. Teel engaged in
22 lengthy, ongoing and detailed communications regarding the project and the separate MTCA
23 action; that Ms. Floyd informed Mr. Teel that the City was prepared to proceed with issuing a
24 SEPA DNS for the project; that Mr. Teel's prompt response made clear that Ecology had no
25 objection to the City proceeding on its own, nor did it have any objection to the proposed DNS;

1 and that the only requirement of Ecology was that project approval be conditioned on first
2 completing the required Agreed Order tasks and implementing the MTCA Cleanup Action Plan
3 before any shoreline restoration was commenced - unless that restoration had been included in an
4 Interim Action Work Plan approved by Ecology.

5 130. Although the record does not include a statement by Mr. Teel that he is familiar
6 with the SEPA integration requirements of WAC 197-11-250, his knowledge of this requirement
7 can reasonably be assumed due to his role as Ecology's Project Manager for MTCA projects.
8 Thus, it can be reasonably assumed that Ecology's approval of the City's DNS was
9 acknowledgment that integrating SEPA reviews was impracticable.

10 131. The Agreed Order sets forth a specific list of actions that must be accomplished,
11 and the order of those actions. Exhibit B to the Agreed Order incorporates a scope of work
12 divided into six major tasks:

13 Task 1 - Supplemental Remedial Investigation Work Plan.

14 Task 2 - Submittal of data from previous investigations.

15 Task 3 - Supplemental Remedial Investigation/Feasibility Study Report (RI/FS).

16 Task 4 - SEPA compliance.

17 Task 5 - Public participation.

18 Task 6 - DCAP (Draft Cleanup Action Plan).

19 To date, none of these tasks have been completed. Task 1, preparing a Supplemental
20 Remedial Investigation Work Plan, has gotten underway. In January, 2026, the Applicant
21 submitted its proposed Supplemental Remedial Investigation Work Plan to Ecology (Applicant's
22 Exhibit 14). Ecology has yet to respond to this draft Investigation Work Plan. It is unknown
23 when Ecology will respond, or how it will respond. No further action on the Agreed Order can
24 take place until this task has been completed.

1 132. Pursuant to the Agreed Order, SEPA review of the remedial action cannot begin
2 until Tasks 1-3 have been completed. Task 3 requires approval of a Supplemental Remedial
3 Investigation/Feasibility Study Report. During the original site cleanup following the 1996 fire,
4 the original Remedial Investigation was not completed until 2007, or eleven years after the fire,
5 while the Feasibility Study Report was not approved until 2009, or thirteen years after the fire.
6 There is no reason to believe that the supplemental RI/FS will require thirteen years but it is
7 reasonable to assume that it may take several years, especially as the Supplemental Remedial
8 Investigation Work Plan has yet to be approved six months after it was submitted and a year has
9 passed since the Agreed Order was entered. In summary, it is reasonable to assume that SEPA
10 review under the Agreed Order will not commence anytime soon.

11 133. It has been proposed that the placement of gravel and sand for the establishment
12 of a new beach as proposed by Alternative 3 will be found to serve as an appropriate method of
13 also remediating any sediment contamination by serving as a "cap" on any existing contaminated
14 substrate. If so, proposed Alternative 3 will have served the dual purposes of: (1) restoring
15 shoreline functions and processes; and (2) remediating contaminated sediments.

16 134. It cannot be known with certainty whether the Applicant's proposed beach
17 restoration will be approved as a means of remediating contamination, but the Applicant's
18 experts have a high level of confidence that this approach will be approved by Ecology.
19 Nonetheless, the Applicant recognizes that this approach may not be approved by Ecology; that
20 required remediation may involve different remedies; that a different remedy could impact its
21 proposed beach restoration plan; and that any alteration could affect SEPA review and project
22 approval.

1 ANALYSIS

2 Again, six of the ten original issues on appeal remain and are the subject of this hearing.
3 Based upon the expansive record, the testimony of the witnesses and my Findings of Fact, the
4 following is my analysis of each issue on appeal and my reasons for my denial of the appeal.

5 Before undertaking this analysis it is important to recognize the various legal standards
6 relevant to this appeal, all of which the parties have recognized:

7 The City's issuance of a DNS is reviewed under the "clearly erroneous" standard. An
8 agency's decision to issue a DNS is clearly erroneous when "based on the entirety of the
9 evidence, the Hearing Examiner is left with the definite and firm conviction that a mistake has
10 been committed." The Hearing Examiner must give the SEPA Responsible Official's Threshold
11 Determination "substantial weight". OlyEcosystems, as Appellant, bears the burden of proving
12 that the DNS is clearly erroneous.

13 Appeal Issues No. 1 and No. 2.

14 **Whether the SEPA Determination violated requirements for the integration of**
15 **SEPA review of this project and remediation undertaken pursuant to the Model Toxics**
16 **Control Act (MTCA), and whether the City had sufficient information to issue its**
17 **threshold determination, or whether the determination was premature in light of ongoing**
18 **MTCA investigation and remediation.**

19 WAC 197-11-240(4) provides: "When the [MCTA] remedial action is part of a
20 development proposal, the procedures in WAC 197-11-256 through 197-11-268 shall be used to
21 combine the procedural requirements of SEPA and MTCA, *to the extent practicable.*"

22 The requirement of integrating the project and MTCA SEPA review has not been
23 analyzed in any published decision and, further, arises in a truly unique set of circumstances in
24 this project for the reason that *a MTCA issue did not exist when the project began.* This appeal,
25 then, becomes a matter of first impression.

OlyEcosystems asserts:

- That the remedial action is clearly part of the development proposal.
- That the City was unaware of the integration requirement.
- That the City did not consult with Ecology on integration, nor did it get Ecology's approval to proceed separately.
- That there is nothing impractical with integrating SEPA review.
- Failure to integrate requires remand of the SEPA Determination.

The Applicant sees this issue far differently:

- The remedial action is *not* part of the development proposal and, therefore, integration is not required.
- If integration is required, the late arrival of the MTCA issue makes integration highly impractical.
- The MTCA action cannot proceed unless/until it knows that this project's shoreline restoration is permitted.
- In any event, lack of integration does not constitute clear error based on the entirety of the evidence.

I concur with the Applicant on its first three points, making it unnecessary to address it "clear error" issue.

The remedial action is *not* part of the development proposal and, therefore, integration is not required.

In 2012, Ecology issued its "No Further Action" letter announcing that the project site, both uplands and aquatic areas, was free of contamination. In 2016, the City, the Port of Olympia and the Squaxin Island Tribe joined to undertake the West Bay Restoration Analysis. This analysis resulted in a plan to restore the ecological functions and processes of the shoreline through the reestablishment of functioning gravel intertidal beaches. The resulting concept for

1 shoreline restoration was focused entirely on restoring shoreline functions, not remediating
2 historic contamination. In 2020, as the Applicant was about to purchase the site, its consultants
3 discovered a few minor "hot spots" of residual contamination in the site's uplands, but no
4 discoveries of contamination in aquatic areas. The Appellant proceeded with the purchase of the
5 site and promptly entered into a Development Agreement with the City in which it promised to
6 restore the shoreline consistent with the concept developed in the 2016 Restoration Assessment -
7 again, a concept designed to address the restoration of ecological functions and processes, not the
8 remediation of historic contamination. Thus, in 2021 no one - the Applicant, the City or Ecology
9 - was planning for remediation of historic contamination in the site's aquatic areas, and the
10 proposed restoration had nothing to do with remediation of contamination.

11 The Development Agreement led to the prompt submission of the Applicant's
12 development application which was deemed complete on June 10, 2021. Again, as of that date
13 no one envisioned the project to include remediation of contamination in sediments. Instead, the
14 application was focused entirely on shoreline restoration consistent with the 2016 Restoration
15 Assessment.

16 Through the next several years and through multiple rounds of review, the proposed
17 beach restoration was carefully examined and modified to a less impactful design - all with the
18 direct involvement of Ecology and for the sole purpose of restoring shoreline functions and
19 processes and not remediating contamination. Indeed, nowhere in the various reports supporting
20 the final alternative restoration design is there any mention of its use for remediation.

21 Later, when Ecology concluded that contamination might exist in the sediments and
22 began working with the Applicant on an Agreed Order, it was realized that, by good fortune,
23 what was always intended as a shoreline restoration project could, possibly, serve a second
24 purpose of remediating contaminated sediments. But this was just one possible remediation
25 remedy among several, and is not the reason why restoration was first proposed. And, for

1 purposes of the needed shoreline permits, the proposed restoration satisfies all shoreline
2 requirements whether it satisfies MTCA requirements or not.

3 This situation is somewhat like two sets of train tracks that run parallel to each other for a
4 lengthy distance and then, for whatever reason, briefly cross paths. That does not make one set of
5 tracks "a part of" the other set of tracks but merely means that they have an intersection point.
6 The development project and the MTCA project are separate tracks that happen to have an
7 intersection point in the form of a possible common restoration/remediation project, but
8 otherwise are independent of each other.

9 I therefore concur with the Applicant that the MTCA remedial action is not part of the
10 development proposal and integration of SEPA processes is not required.

11 If integration is required, the late arrival of the MTCA issue makes integration highly
12 impractical.

13 Should a court disagree with the first conclusion, it then becomes necessary to determine
14 whether the SEPA processes for the two projects were integrated "to the extent practicable".
15 OlyEcosystems notes that the City was clearly unaware of the integration issue; that it did not
16 discuss integration with Ecology, and that Ecology did not expressly acknowledge that the
17 MTCA SEPA should proceed independently. The City and Applicant respond that the issue of
18 whether integration was practicable does not require a knowing decision by the two agencies but
19 is instead determined by the circumstances, and the circumstances demonstrate that integration
20 was not practicable. I concur.

21 The SEPA DNS was the end product of five years of intensive project review by a large
22 City Staff and representatives from tribal, State and federal agencies, resulting in a shoreline
23 restoration design that was agreed upon by all interested agencies, including Ecology. All work
24 on the design of the shoreline restoration was done and its pluses and minuses were calculated.

25 Then, just before this lengthy process was complete, the Agreed Order was entered into and the

1 MTCA procedures were invoked. The Agreed Order expressly identifies Steve Teel as Ecology's
2 representative for all matters relating to the Order. Unlike the City's Staff, which had not
3 previously encountered an MTCA integration issue, it can reasonably be assumed that Mr. Teel
4 was well aware of it as the agency's MTCA representative. Mr. Teel had been working closely
5 with Ms. Floyd on the Shoreline Restoration Project. When the City's DNS was issued in early
6 2026, Mr. Teel responded that he had no objection to it but asked for a condition of project
7 approval that no in-water work occur until the MTCA process had reached the point of an
8 Interim Action. At this point the two agencies tacitly acknowledged that the work on the
9 restoration project's design was complete, and consideration of its secondary use for remediation
10 was now beginning.

11 The restoration design is fully informed from five years of research, review and revision.
12 Further research and review of the remediation options will inform the remediation decision but
13 it will not inform the restoration decision, as that decision has already been carefully made.
14 Requiring the fully informed shoreline restoration decision to wait for the remediation decision
15 to "catch up" is of no practical benefit. [NOTE: This conclusion supports the Applicant's final
16 "no clear error" argument but that issue does not need to be reached.]

17 The impracticability of the shoreline decision waiting for the MTCA process to catch up
18 is further increased by just how long it will take the MTCA process to catch up. SEPA review is
19 the fourth chronological task of the Agreed Order and cannot get underway until the first three
20 tasks have been completed. None of those tasks have been completed a year after the Agreed
21 Order was entered. Perhaps the two most important tasks, a Remedial Investigation (RI) and a
22 Feasibility Study (FS) have yet to get underway. In the original remediation, it required thirteen
23 years for these two tasks to be completed. There is no reason to expect the Supplemental RI/FS
24 to take anywhere near as long but it is not unreasonable to assume it may take several years. This
25 lengthy wait is of no practical benefit to the Shoreline Restoration Project.

1 The MTCA action cannot proceed unless/until it knows that this project's shoreline
2 restoration is permitted.

3 The analysis above analyzes "practicability" from the standpoint of whether the SEPA
4 review for the shoreline project is benefited by delaying until the MTCA project catches up, with
5 the conclusion that there is no benefit. The Applicant's third argument reverses the question, and
6 addresses the issue of whether it is impracticable for Ecology to proceed on the MTCA project
7 without knowing if the shoreline restoration project is approved. The Applicant asserts that it is
8 impracticable for Ecology to move forward on possible options for remediation without knowing
9 if the shoreline restoration project is an available option. Again, I concur.

10 As earlier noted, it is serendipitous that a carefully planned restoration project might, by
11 coincidence, serve to solve a contamination issue as well, but it is only one option for
12 remediation. Confirmation that the restoration project satisfies shoreline requirements will
13 greatly inform the MTCA process. Thus, it is not only impracticable but counterproductive to
14 defer a decision on the shoreline restoration project.

15 For all of the foregoing reasons I respectfully disagree with OlyEcosystems first and
16 second issues on appeal.

17 At the end of the hearing there was an unresolved motion by OlyEcosystems to strike the
18 answers given by Troy Bussey to questions about the relationship between MTCA and SEPA, as
19 Mr. Bussey acknowledges that he is not a SEPA expert. I concur with OlyEcosystems objection
20 and therefore sustain the motion to strike but also note that, even if the testimony had been
21 allowed, it would not have informed my decision.

22 Appeal Issue No. 7.

23 **Whether the City improperly relied on WAC 197-11-158 to address environmental**
24 **impacts through its Development Regulations.**

1 WAC 197-11-158 provides that when undertaking SEPA review and making a Threshold
2 Determination, the City may, at its option, determine that the requirements for environmental
3 analysis, protection, and mitigation measures in its development regulations and Comprehensive
4 Plan, and in other applicable local, State or federal rules, provide adequate analysis of and
5 mitigation for some or all of the specific adverse environmental impacts of the project.

6 In its appeal, OlyEcosystems asserts that the City has improperly relied on this provision,
7 and that the City's regulations do not provide adequate analysis of and mitigation for some of this
8 project's adverse environmental impacts.

9 In OlyEcosystems Statement of Appeal, its basis for this argument is vague. The same is
10 true in its response to the Applicant's Motion for Summary Judgment on this issue. The same is
11 true of its pre-hearing briefing. It is not until the Appellant's post-hearing briefing that it asserts,
12 for the first time, that the specific issue on which this challenge is based is the City's alleged lack
13 of regulation of 6 PPD-q. Perhaps understandably, the Applicant is frustrated by the lateness of
14 this issue, noting that 6 PPD-q is never mentioned in any of OlyEcosystems pre-hearing
15 materials. While I understand the Applicant's frustration, I am not willing to strike the issue from
16 the appeal. Nonetheless, I disagree with the Appellant's argument and conclude that the City's
17 reliance on Ecology's most recent Stormwater Manual, in combination with the City's EDDS and
18 DDECM, provide the fullest mitigation for 6 PPD-q currently available, satisfying the
19 requirements of WAC 197-11-158.

20 The testimony of the City's Stormwater Engineer, James Patton, and the Applicant's
21 Stormwater Engineer, Whitney Holm, provides expert evidence that the stormwater treatment
22 standards imposed on this project by the Ecology Manual and the EDDS/DDECM are the best
23 available mechanisms for capturing and retaining 6 PPD-q. OlyEcosystems' expert, Dr.
24 Hamman, concurs. OlyEcosystems has not presented the testimony of any experts demonstrating
25 that the City's current stormwater regulations are not the most effective means of preventing the

1 discharge of 6 PPD-q into West Bay. I therefore conclude that the Appellant has failed to meet
2 its burden of demonstrating that the City improperly relied on WAC 197-11-158.

3 Appeal Issue No. 8.

4 **Whether proposed shoreline restoration should have undergone an alternatives**
5 **analysis.**

6 OlyEcosystems asserts that the Shoreline Restoration Project's plan to place additional
7 gravel on top of existing shellfish beds should have undergone an alternatives analysis per RCW
8 43.21C.030(2)(e) and pursuant to *Wild Fish Conservancy*, 198 Wn.2d 846:

9 "An alternatives analysis is appropriate when a proposal involves a competition over
10 the use of a resource whereby selecting one manner of using the resource will
11 preclude all other uses. . . . These competing uses cannot be theoretical. The choice
12 is between different uses of available resources. The competing options for how to
13 use the resource must concern a resource that is actually capable of being used to
accomplish its relative purpose. Finally, this competition must be unsolved,
unsettled, or, in other words, actively in dispute." *Wild Fish Conservancy*, Supra at
864-865.

14 OlyEcosystems asserts that there an unresolved competition of uses between keeping the
15 shellfish beds as they are or having gravel materials placed atop in order to establish a new
16 intertidal beach and better shellfish beds.

17 I concur with the City and the Applicant that this project does not involve a competition
18 over the use of shellfish beds - it is the same use only better. The project does not preclude the
19 aquatic areas from serving as shellfish beds but, instead, merely makes those beds cleaner,
20 healthier, a better food resource for birds and suitable for human consumption, while retaining
21 the existing beds functions. There is no competition over use that requires an alternatives
22 analysis.

23 OlyEcosystems relies heavily upon the recent decision in *Center for Sustainable*
24 *Economy v. Washington State Department of Natural Resources*, 587 P. 3rd 449. In its decision,

1 the Court of Appeals concludes that DNR was required to conduct an alternatives analysis for a
2 timber sale because the sale presented a situation involving a choice of uses between harvesting
3 trees versus setting them aside as a carbon reserve. But that decision has no bearing on these
4 facts: this project does not involve a choice between two separate uses of the shellfish beds as a
5 resource but is, instead, merely the improvement of that resource. *Center for Sustainable*
6 *Economy* does not apply. OlyEcosystems has failed to demonstrate that the City's SEPA decision
7 was in error for failing to undertake an alternatives analysis. Indeed, of the Appellant's various
8 issues this is the least persuasive.

9 Appeal Issue No. 9.

10 **Whether the DNS was improper because the project has probable significant**
11 **adverse environmental impacts which are not fully mitigated.**

12 OlyEcosystems asserts that the City's DNS failed to adequately consider the project's
13 impacts to:

- 14 1. West Bay Woods.
- 15 2. The marine environment.
- 16 3. The adjacent wetland.

17 West Bay Woods. In its closing brief OlyEcosystems declares that the record established
18 by the City "is devoid of any mention of West Bay Woods - a public access park and
19 conservation area . . .". It is true that West Bay Woods is not expressly referenced, but it is not
20 true that West Bay Woods is a recognized "public access park" or a "conservation area". This
21 lack of recognition is OlyEcosystems own doing and is self-imposed.

22 In its testimony and its briefing, OlyEcosystems never declares just what "West Bay
23 Woods" consists of. There are no maps describing its boundaries, no list of properties it
24 incorporates, and no other description as to what it includes. At the end of this lengthy hearing,
25 the Hearing Examiner remains unclear as to just what OlyEcosystems includes in the concept of

1 West Bay Woods. Possibly, this is because the Appellant is uncertain as to what the term means
2 and what is included.

3 OlyEcosystems describes West Bay Woods as "adjacent" to the project site but this is a
4 mischaracterization. OlyEcosystems owns a number of parcels on the west side of West Bay
5 Drive but only one parcel, 1515 West Bay Drive, is adjacent to the project site. That parcel is a
6 recently acquired residential lot that, until just recently, contained a house that has since been
7 demolished, leaving its foundation. No other of its properties adjoin the project and are north or
8 south of it. These other properties are, to some extent, fragmented and physically disconnected
9 from each other. In his testimony, Dr. Einstein expresses the belief that all of OlyEcosystems'
10 properties are "West Bay Woods", as he regards them as ecologically connected. But while this
11 may be Dr. Einstein's subjective belief, an objective view would be that these are unrelated
12 properties, some of which have undergone environmental restoration, some have not, and almost
13 all of which are not adjacent to the project, and with no present collective identity.

14 As noted above, OlyEcosystems describes West Bay Woods as "a public access park"
15 and "conservation area" but it knowingly uses these terms in a vague manner. In the City's land
16 use regulations, a "public access park" is a term of art, not a general concept. The Appellant's
17 properties are all located within the PO/RM zoning district intending to provide for professional
18 offices and apartment buildings. Nonetheless, a public park is a "permitted" use within the
19 PO/RM zone. But the mere fact that public parks are permitted in the PO/RM zone does not
20 mean that West Bay Woods is a public park. By analogy, in a single-family residential zone a
21 house is a "permitted" use but that does not mean the property owner has the right to build a
22 house without first submitting a building application, paying all application fees, providing
23 evidence that all building, fire and electrical codes are met, demonstrating that all critical areas
24 are protected, showing that parking, access and utilities are provided, demonstrating compliance
25 with all setback and other development regulations, and paying all impact fees. Only until all of

1 these things are accomplished can the owner then build a house. Here, OlyEcosystems wants to
2 claim that West Bay Woods is a "public park" but has not applied for this designation, has not
3 paid application fees, shown protection to all critical areas, provided access and parking, both for
4 vehicles and bicycles, demonstrated compliance with all setback and other regulations, submitted
5 a stormwater design consistent with current regulations or paid any applicable impact fees.
6 Stated somewhat differently, OlyEcosystems insists upon the rights and privileges associated
7 with being a recognized park but disregards the burdens and responsibilities that come with that
8 recognition. And without that recognition it is not possible to know just what the Appellant is
9 referring to as being West Bay Woods.

10 Separately, Dr. Hamman testified to her opinion that there is a connectedness between
11 what is loosely described as West Bay Woods and the shoreline, and that this connectedness has
12 not been recognized and addressed in the SEPA review. The Applicant's Critical Areas Report,
13 together with the testimony of Scott Maharry, acknowledge that a variety of wildlife adapted to
14 urban conditions can be found on the properties west of the project site including
15 OlyEcosystems' properties, and that this wildlife may venture onto the project site, but that the
16 current site conditions offer neither food or shelter for wildlife and that the properties therefore
17 have a very limited connectedness. The project does not impair that limited connectedness but,
18 instead, improves upon it by creating foraging and shelter opportunities that currently do not
19 exist. Similarly, the Critical Areas Report and Mr. Maharry note that a variety of birds use the
20 site in some way including birds that also may fly to/from properties to the west, but the project
21 does not disrupt that relationship and, instead, creates new shelter and new food sources, and
22 provides adequate protection through bird friendly glass. In summary, I respectfully disagree
23 with the assertion that this project has failed to consider the environmental issues OlyEcosystems
24 is seeking to enhance through its West Bay Woods project.

1 For all of these reasons I conclude that OlyEcosystems' issues relating to West Bay
2 Woods are not well founded.

3 This analysis might be interpreted as a criticism of OlyEcosystems efforts to restore
4 ecological functions to properties west of the site and elsewhere. That is wholly not the case. To
5 the contrary, OlyEcosystems is to be complimented for its various and ongoing restoration
6 efforts.

7 Marine Environment.

8 In its closing brief, OlyEcosystems asserts that the City's SEPA review has failed to fully
9 consider the projects to the marine environment, including the death of shellfish and the impact
10 of their mortality on birds, salmon and other species. This argument is related to the Appellant's
11 final issue on appeal (the "balancing" argument) and will be discussed more fully in that issue's
12 analysis. Here, it is sufficient to respond that OlyEcosystems only witness on this issue, Dr.
13 Hamman, has no experience with these issues and is, at best, vague about what aspects of the
14 marine environment that should have been more carefully examined. Conversely, the many
15 experts reports regarding the before/after marine environment, and the testimony of the authors
16 of those reports, collectively provide convincing evidence that these issues have been adequately
17 addressed.

18 Separately, OlyEcosystems turns to an issue raised by the Hearing Examiner during the
19 hearing in which he discovered an error in the Staff Report as to the amount of fill the Shoreline
20 Restoration Project will place below the Ordinary High Water Mark: the Staff Report identifies
21 the amount of fill as being 27,000 cubic yards, but the correct amount is approximately 32,800
22 cubic yards. The correct amount is found in the Applicant's Restoration and Mitigation Plan
23 (Core Document 14.a) but was misstated as 27,000 cubic yards in the Shoreline Restoration
24 Design (Core Document 14.b). The Staff Report relied upon the amount in the second
25 document. OlyEcosystems argues that this error is substantive (or at least may be) and requires

1 remand of the SEPA. But I find no evidence that the stated amount of fill is anything other than
2 a scrivener's error with no material consequence, and the Appellant has not demonstrated to the
3 contrary. Instead, all critical calculations for the project have been based upon the correct
4 amount and the error is of no consequence.

5 The Adjacent Wetland.

6 OlyEcosystems' reference to "the adjacent wetland" is to "Wetland A" as identified in the
7 Applicant's Critical Areas Report. Wetland A is a small (0.11 acre) depressional wetland located
8 across West Bay Drive from the southwest corner of the project site. OlyEcosystems asserts that
9 the City's SEPA review failed to give consideration to the impacts of the project's noise and light
10 on this wetland.

11 Wetland A lies a small depression immediately north of a driveway servicing an adjacent
12 house, and is immediately west of the West Bay Drive sidewalk. The adjoining West Bay Drive
13 currently experiences approximately 10,000 vehicle trips per day. Along West Bay Drive are a
14 series of street lights located along its east boundary, with one located approximately opposite
15 from the wetland. A short distance north of the wetland are several professional offices. The
16 Critical Areas Report describes Wetland A as having limited habitat function due to its small size
17 and its location within a highly urbanized landscape.

18 Noise.

19 OlyEcosystems argues that the project's SEPA review failed to consider the impact of the
20 project's noise on this wetland. But the Appellant never explains what "noise" is coming from
21 the project and impacting the wetland, and instead uses the term in a general way, leaving the
22 reader to decide what it means. This is a troublesome form of "shadow boxing" in which the
23 opposing party is left to "fill in the blanks" as to what the term means and then respond to that
24 meaning. It remains unclear what noise the Appellant is referring to. It may be helpful to
25 identify the location of Wetland A relative to the proposed development: Sheet A2 of Core

Document 2 (also included in the Applicant's hearing presentation, Hearing Exhibit 7) identifies all development on the project site in relation to the single-family residence located southwest of the project site and across West Bay Drive (shown in purple). Wetland A is immediately left (north) of the driveway servicing the house. This places it south of the project's southernmost building (Building 1) and roughly across from the beginning of the waterfront trail and the south entrance into the development. Building 1's parking is located underneath the building with a small amount located to the north of the building, on the opposite side of the building from the wetland. Sheet A33 of Core Document 2 (again in the hearing presentation) provides the south elevation for Building 1. It contains only apartments and no commercial area, and has no balconies along its frontage along West Bay Drive, although balconies do occur further east along the south side but some distance from West Bay Drive. Given these site conditions, what impactful noise is the Appellant referring to? And how is this noise different or greater than the current noise impacts from the adjoining house, the nearby professional offices, or the 10,000 cars going by each day? Without any attempt by OlyEcosystems to define what it means by "noise" and show its potential impact, its challenge is without merit.

Light.

The project is conditioned upon being "Dark Sky" compliant. What "light" is emanating from near the front of Building 1 or the south access that is different or greater than the light currently shining upon the wetland from the adjoining house, the nearby professional offices, the streetlight on the opposite side of the street, or thousands of vehicle headlights? Again, without further explanation or demonstration of light impacts, the Appellant's challenge is without merit.

Appeal Issue No. 10.

Whether the City improperly balanced the beneficial aspects of shoreline restoration in disregard of its significant environmental impacts.

1 WAC 197-11-330(5) requires that the SEPA Determination "shall not balance whether
2 the beneficial aspects of a proposal outweigh its adverse impacts" and must instead consider
3 whether the proposal has "any probable significant adverse environmental impacts." Stated
4 slightly differently, the SEPA Determination must not disregard significant adverse
5 environmental impacts just because the project, as a whole, provides an environmental benefit.

6 OlyEcosystems asserts that the City has engaged in inappropriate balancing with respect
7 to the project's impact upon shellfish populations. The project's shellfish study concludes that
8 the site's aquatic areas contain more than four million clams. It is acknowledged that the
9 proposed placement of gravel and sand to establish a new functioning intertidal beach will result
10 in some shellfish mortality, as existing shellfish beds will be buried below this fill.

11 OlyEcosystems argues that shellfish mortality is a probable significant adverse environmental
12 impact that the City has disregarded because the project will ultimately create better, cleaner
13 shellfish beds.

14 The issue, then, is whether the loss of some amount of existing shellfish is a "significant"
15 adverse impact. A "significant" impact means a reasonable likelihood of more than a moderate
16 adverse impact. WAC 197-11-794(1). This determination is to be based upon the physical setting
17 and the *duration* of the impact.

18 The City argues, and the Applicant concurs, that the project does not result in any
19 significant adverse impact to the existing shellfish population. I agree.

20 Nicole Floyd's testimony in regard to this issue is persuasive. She explained that the
21 project's impacts to existing shellfish population are not regarded as significant for two different
22 reasons:

23 (1) In analyzing the project's impacts to shellfish, Ms. Floyd worked closely with her
24 counterpart at WDFW, Noel Steinway, who, in response to her concerns about shellfish impacts,
25 assured her that WDFW would carefully regulate the placement of fill under the project's

1 required Hydraulics Permit. With proper, careful placement of gravel, existing shellfish
2 populations will have the opportunity to adjust, thereby significantly reducing mortality.

3 (2) As explained by Scot Maharry and others, empirical data from similar projects
4 has demonstrated that shellfish populations recover quickly and in "perhaps in as little as one
5 month".

6 For these reasons, Ms. Floyd concluded that impacts to existing shellfish are not
7 "significant" and that SEPA review has not balanced the project's overall benefits against a
8 significant adverse impact. I conclude that Ms. Floyd's analysis is well founded and that
9 inappropriate balancing has not occurred.

10 The Hearing Examiner having entered his Findings of Fact, now, therefore, makes the
11 following:

12 CONCLUSIONS OF LAW

13 1. Any Conclusions of Law contained in the foregoing Findings of Fact or Analysis
14 Sections are incorporated herein.

15 2. The City's issuance of a DNS is reviewed under the "clearly erroneous" standard.

16 3. An agency's decision to issue a DNS is clearly erroneous when, based on the
17 entirety of the evidence the Hearing Examiner is left with the definite and firm conviction that a
18 mistake has been committed.

19 4. The record must show that environmental factors were considered in a manner
20 sufficient to amount to prima facie compliance with SEPA.

21 5. The Hearing Examiner must give the SEPA Responsible Official's determination
22 substantial weight.

23 6. The Appellant has the burden of proving that the DNS was clearly erroneous.

24 7. The MTCA remediation action is not part of the development proposal and
25 integration of the SEPA processes is not required per WAC 197-11-250(4).

8. If the MTCA action is deemed a part of the project, integration of the SEPA processes is not practicable.

9. The City correctly determined that there are no significant unmitigated adverse impacts of the project.

10. The City did not improperly rely on WAC 197-11-158 to address environmental impacts through its development regulations.

11. The City did not engage in improper balancing of significant environmental impacts.

12. The project was not required to undergo an Alternative's Analysis of its impacts upon shellfish populations.

13. The Appellant has not met its burden of proving that the SEPA DNS was clearly erroneous.

DECISION

The Hearing Examiner having entered his Findings of Fact and Conclusions of Law,
now, therefore, the Appellant's appeal is **DENIED**. 

DATED this 22 day of July, 2026.

Mark C. Scheibmeir
City of Olympia Hearing Examiner

ATTACHMENT 1

1. Staff Report for Hearing
2. Architectural Plan Set - 2025
3. Engineering Plan Submittals:
 - a. Upland Civil Plan Set - 2025
 - b. Refuse Truck Exhibit - 2025
 - c. Upland Civil Plan Set SCJ Markup - 2025
 - d. Engineering Design and Development Standards Deviation Request - 2022
4. Application / Narratives / Letters:
 - a. Joint Aquatic Resource Permit Application - 2025
 - b. Shoreline Master Program Consistency Narrative - 2025
 - c. Trail maintenance Acknowledgement Memo - 2025
 - d. Round 5 Applicant Response - 2026
 - e. View Narrative - 2024
 - f. Recreational Needs / View Analysis - 2024
 - g. Applicants Legal Response to 3rd Round Comments - (Feb. 15, 2024 & Mar. 3, 2024)
 - h. City Response to Applicants legal Response to 3rd Round comments - (Apr. 2024)
 - i. Technical Memo – Mitigation Sequencing and No Net Loss – 2024
 - j. Applicant's Legal Response to View, Height and Restoration – 2022
 - k. 2nd Round Applicant Response to City Review Table – 2022
 - l. 3rd Round Applicant Response to City Review Table -2023
 - m. 4th Round Applicant Response to Review Table – 2024
5. Landscaping Plans:
 - a. Shoreline Landscape Plan Set - 2025
 - b. Upland Landscape Plan Set - 2025
 - c. Soil and Vegetation Report - 2025
6. Phasing Plans Submittals:
 - a. Site Phasing Plan - 2026
 - b. Building Phasing Plan - 2026
 - c. Phasing Diagram 1st Phase - 2025
7. SEPA Checklist - 2025
8. Geotechnical Analysis:
 - a. Landau Preliminary Geotechnical Engineering Memorandum - 2020
 - b. Landau Geotechnical Hazards Assessment - 2021
 - c. Sage Geotechnical Response - 2025

1 9. Traffic Analysis Submittals:

- 2 a. Traffic Impact Analysis - 2022
3 b. Applicant Response to Traffic Comments
4 c. Trip Generation Counts -2022

5 10. Critical Area Report Submittals:

- 6 a. Critical Area Report - 2022
7 b. Important Habitats and Species Report - 2022
8 c. Bird Strikes Memo - 2025

9 11. Stormwater Plan Submittals:

- 10 a. Preliminary Drainage Design Report - 2024
11 b. Site Management Plan - 2021
12 c. Construction Stormwater Pollution Prevention Plan - 2021

13 12. Cultural Resources (*Documents Not Available for Public Review*):

- 14 a. Cultural Resource Desktop Review Report - 2021
15 b. Cultural Resources Assessment - 2023

16 13. Site Contamination Submittals:

- 17 a. Phase I Environmental Site Assessment - 2020
18 b. Phase II Environmental Site Assessment - 2020
19 c. Due Diligence Investigation Status Update Memorandum – 2020
20 d. Voluntary Cleanup Plan Application and Remedial Investigation Data Gap Report -
21 2021
22 e. Hardel Methane Summary Memorandum - 2022
23 f. Agreed Order DE 21726 - 2025

24 14. Restoration Plan Submittals:

- 25 a. Shoreline Restoration Design - 2025
a. Restoration and Mitigation Plan - 2025
a. Preliminary Engineering Design Report - 2022
a. Shellfish and SAV Report - 2022
a. Portadam Feasibility Assessment - 2025

15. Flood Zone - First Floor Elevation Recommendations – 2019

16. Property Line Modifications:

- a. Recorded Boundary Line Adjustment 2022
b. Proposed Road Vacation Location 2024

1 17. Notice of Application with:

- 2 a. Distribution List
3 b. Affidavit of Posting

4 18. Concept Design Review:

- 5 a. Design Review Board Minutes / Recommendations
6 b. Design Review Packet (Staff report, checklist, public comments)
7 c. Notice of Design Review Board Meeting

8 19. Agency Comments:

- 9 a. 2021 Agency Comments
10 b. 2022 Agency Comments
11 c. Jan – March 2025 Agency Comments
12 d. October 2025 Agency Comments
13 e. 2026 Agency Comments – SEPA Determination

14 20. Public Comments:

- 15 a. 2021 Public Comment Letters
16 b. 2022 Public Comment Letters
17 c. 2025 Comment Letters
18 d. 2026 Comment Letters – SEPA Determination
19 e. 2026 Comment Letters – Hearing Notice

20 21. Interested Party Email Notification:

- 21 a. 5.22.2022 Round 2 Review
22 b. 9.18.2023 Round 3 Review
23 c. 10.18.2023 DRB Postponement
24 d. 2.7.2025 DRB Meeting Date
25 e. 1.18.2026 SEPA Determination
f. 1.23.2026 SEPA Update
g. 5.22.2026 Hearing Notice Email

22 22. SEPA Determination of Non-Significance with:

- 23 a. Distribution List
24 b. Affidavit of Site Posting
25 c. SEPA Appeal Submittal by Olympia Ecosystems

26 23. Supplemental Documents:

- 27 a. 2021 Development Agreement
28 b. 2020 USFWS Methods to Reduce Bird Collisions with Glass
29 c. 2023 Regional Trails Plan
30 d. 2016 West Bay Restoration Assessment
31 e. 2012 Shoreline Master Program Restoration Plan
32 f. 2005 West Bay Corridor Study

1 24. Hearing Notice

2 a. Notice

3 b. Affidavit of Posting

4 c. Distribution list

ATTACHMENT 2

1. Comment letters received pre-hearing
2. Comment letters received during hearing – Monday June 8.
3. City PowerPoint Short
4. Applicant PowerPoint Short
5. City PowerPoint Long
6. TIA for West Bay View Landing
7. Applicant TAS Hearing Presentation
8. Public Comments (Tuesday)
9. Public Comments (Wednesday)

ATTACHMENT 3

1. Curriculum Vitae – Sarah Amell, Aqua Terra Cultural Resource Consultants
2. Curriculum Vitae – Jim Brennan. J.A. Brennan Associates PLLC
3. Curriculum Vitae – Whitney Holm, SCJ Alliance
4. Curriculum Vitae – Calvin McLaughlin, Sage Geotechnical, LLC
5. Curriculum Vitae – Hannah Morse, Pioneer Technologies Corporation
6. Curriculum Vitae – Scott Maharry, Farrallon Consulting
7. Curriculum Vitae – R. Shane Phillips, Moffat & Nichol
8. Curriculum Vitae – Aaron van Aken, Heath & Associates
9. May 20, 2026, Technical Review Summary – West Bay Yards Traffic Impact Analysis – Heath & Associates
10. Shoreline Restoration – Beach Fill Diagram
11. West Bay Yards Restoration Salish Nearshore Calculator
12. Salish Nearshore Calculator Supporting Documentation
 - a. General Construction Measures and Essential Fish Habitat Conservation Recommendations (May 25, 2023)
 - b. Project Design Criteria #3 Stormwater Facilities and Outfalls (August 2, 2022)
 - c. Project Design Criteria #4, Shoreline Modifications
 - d. Project Design Criteria #11, Habitat Enhancement Activities
13. Curriculum Vitae – Troy Bussey, Pioneer Technologies Corporation
14. January 2026, Supplemental Remedial Investigation Work Plan – Pioneer Technologies Corporation

ATTACHMENT 4

1. 2004 07 Salmon Habitat Protection and Restoration Plan.
2. 2016 02 26 West Bay Environmental Restoration Assessment.
3. 2022 07 Fish and Wildlife Discipline Report.
4. 2023 10 03 Floyd and Washington Department of Ecology correspondence.
5. 2024 02 13 developer technical memorandum.
6. 2024 02 15 developer letter to City responding to 3rd round review comments (with staff markup).
7. 2024 02 15 developer letter to City responding to 3rd round review comments.
8. 2024 02 28 Habitat Conservation and Land Protection Program 2024-2030.
9. 2024 04 25 City response letter to developer regarding 2023 review.
10. 2024 05 01 emails regarding Hardel Agreed Order.
11. 2024 06 01 Alternative Analysis Table.
12. 2024 06 26 emails regarding Shoreline Restoration Design Alternatives Analysis.
13. 2024 06 26 Floyd email to Barham.
14. 2024 07 02 Burgess email to Floyd.
15. 2024 07 08 Olympia Water Resources director email regarding Alternative 4.
16. 2024 07 19 citizen email describing Schneider's Creek watershed and estuary.
17. 2024 07 24 Floyd email regarding June alternative.
18. 2024 07 24 developer letter to City responding to July 8, 2024 questions.
19. 2024 07 31 emails regarding Shoreline Restoration Design Alternatives Analysis.
20. 2024 07 31 Floyd emails to Burgess regarding Alternatives 3 and 4.
21. 2024 09 25 Thomas Architecture Studios letter to City regarding Request for Code Interpretation.
22. 2024 09 16 Burgess email to Floyd regarding Code Interpretation Request.
23. 2024 09 23 West Bay Yards Average Grade Calculations.
24. 2024 Shoreline Restoration Site Plan.
25. 2024 12 16 Floyd email regarding 4th round submittal.
26. 2025 10 03 City and Department of Ecology correspondence.
27. 2025 06 Draft Puget Sound Nutrient Reduction Plan.
28. 2022 10 Budd Inlet Dissolved Oxygen Maximum Daily Load.
29. 2022 10 EIS – Existing Conditions and Affected Environment.