

**Shoreline Master Program
Public Comments for Council Meeting Staff Report, 8/27/2013**

Commenters
Lea Mitchell
Jeanette Dickison on behalf of Sara Smyth McIntosh
Mike Reid on behalf of E.B. Galligan, Port of Olympia
Walt Jorgensen
Bonnie Jacobs on behalf of Friends of the Waterfront
Bob Jacobs on behalf of Friends of the Waterfront
Deanna Gonzalez of Phillips, Wesch, Burgess representing Olympia Yacht Club, West Bay Marina Associates, Stormans, Inc., LABAS 612 and Thurston County Chamber
Deanna Gonzalez of Phillips, Wesch, Burgess representing Olympia Yacht Club, West Bay Marina Associates, Stormans, Inc., LABAS 612 and Thurston County Chamber
Chrissy Bailey, WA ST Department of Ecology

Janet Sanders

From: Lea Mitchell <lea@mitcub.net>
Sent: Tuesday, July 23, 2013 4:27 PM
To: Shoreline Update
Subject: Attached - comments on the city's July 13, 2013 draft SMP and draft Restoration Plan
Attachments: leamitchellsmp.july2013.doc

Lea Mitchell
1827 Arbutus Street NE
Olympia, Washington 98506
(360) 866-9773

To: City of Olympia Council Members and Shoreline Planning Team Staff
From: Lea Mitchell
Date: July 23,2013
Subject: Comments on the draft Shoreline Master Program dated July 9, 2013 and the associated Appendix A: Draft Restoration Plan dated June 12, 2012.

Thank you for the opportunity to comment on Olympia’s draft Shoreline Master Program (SMP) and the associated draft Restoration Plan.

My attached comments include both general comments and comments on specific elements of the plan. They are shared in the spirit of a long time community member, swimmer, parks and marina user, and member of the interested public. I strongly support shoreline protection, public access, clear and transparent permitting processes, and long term thinking that honors private rights and interests without sacrificing public assets or future opportunities.

Each of my comments is numbered and includes an **observation (O) and a suggestion (S)**. In cases where there is more than one suggestion they are labeled as, for example S3a,S3b,S3c,S3d.

Thank you for considering these and other comments you receive on the draft plan. I realize it is a difficult task to create broad visions along with specific regulations that impact specific properties. Please take the time needed to ensure that the next public draft of the SMP is a document we can all understand and help support.

Sincerely,
Lea Mitchell (**sent via email – hard copy to follow**).

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GENERAL COMMENTS --ABILITY TO UNDERSTAND THE DRAFT

- O1: The current draft puts forth a worthy vision but is confusing, has areas of conflicting language, lacks definitions in places, and does not include readable and complete maps or tables to help the public understand the proposal.
- S1a: Re-issue a draft that the public, property owners, and others can more easily understand and comment on.
- S1b: Before tweaking the development regulations, clearly define and articulate the guiding principles and planning methods that will be used to finalize the plan. For example, state regulations that guide the SMP clearly list core principles (WAC 173-26-221). Consider using these as a base or listing them in the Appendix.

- S1c: As an overriding principle, make more of the difficult decisions now in policy and regulation instead of deferring them to permit decisions. As drafted, the SMP leaves too much up to discretionary decisions that are not always transparent, known, or accessible to the public until after a decision has been made or a promise granted.
- O2: In some places, the regulations do not align with the goals and policies.
- S2: After the goals and policies are refined as needed, create a matrix that shows the development regulations and associated guidance that will be used to implement the policy. Without this, the policies have the potential to become lofty aspirations that are not linked to the complicated realities of permitting and enforcement. The public needs to be able to see and understand clear and consistent links between the proposed policies and the proposed implementing regulations.
- O3: Some of the most critical information regarding designations and associated regulations is difficult to read and understand. It is difficult for the public to comment on this draft.
- S3a: Create readable maps and tables that allow the reader to see how the many different parts of the SMP come into play at particular shoreline designations.
- S3b: For future public meetings and online resources, create a map that helps the public see how proposed regulations could potentially impact specific shoreline environments and reaches.
- S3c: Create a map that overlays restoration priorities (from draft Restoration Plan) with each reach. Restoration cannot be required by SMP permits but if there are restoration incentives, they must be science based and coordinated with science based restoration priorities. Currently they are not.
- S3d: Create one matrix that shows, by shoreline environment and reach, the core shoreline regulations, incentives, and restoration priorities (from Restoration plan) for the reach. At a minimum, the table should include the following items listed below.

<u>1Shoreline Env/Reach #</u>	<u>2 Setback</u>	<u>3Veg. Cons. Areas</u>	<u>4Height</u>	<u>5Public Access Req?</u>	<u>6Restoration priority</u>
	Min/max	Min/max	base/max		

- O4: The draft uses terms that are not defined in the glossary, mis-uses other terms, and is contradictory in other places. In some cases it is not possible to understand or comment on concepts because the terms are not defined.
- S4: Create a complete glossary. For example, the following terms are used in the plan but are not defined in the glossary.
- Avoidance
 - Completed Shoreline Application
 - Minimization

Physical access
Shoreline setback – is defined but is vague.
Water oriented

- O5: It is difficult to find the record from past Council and Planning Commission meetings where concepts were discussed and information relevant to the plan and Council’s deliberations was presented. Currently, Council and Commission work is listed by date only.
- S5: For major city initiatives such as this plan, the website for the plan should include a listing of the Council and Commission meeting dates where the plan was discussed and various attachments can be found. Staff took the time to define those dates and send them to me and that was very helpful. However, the general public cannot easily find various attachments or meeting minutes. This is essential in order to engage people who are interested but cannot attend all meetings.
- O6: Some copies of the bound draft that were distributed appear to be missing pages. Page 38 of 54 starts with item J but the page before that ends with item 3.b.6.
- S6: Ensure the next draft has all pages in it. Reduce costs to the public who want to purchase a draft —staple the draft instead of binding it and do not put a colored photo on the cover.
- O7: Restoration and remediation are different actions, but related. The draft SMP does not have a map or table of the Department of Ecology toxic clean-up sites within the shoreline.
- S7: Add a table or map overlap showing the location and extent of the 10 state listed toxic clean-up sites with the City of Olympia’s shorelines.

GENERAL COMMENTS – PROCESS AND RELATIONSHIP TO OTHER PLANS

- O8: It is unclear whether or not any of the planned shoreline projects are or will be placed into the City’s Capital Improvement Plan.
- S8: If they are not already in it, ensure that the West Bay Trail, Percival Phase II, and other capital projects within the shoreline, are in the city’s Capital Facilities Plan (CFP).

Add a table in the next version of the SMP that clearly lists all planned Capital Improvement projects that are in the shoreline area.
- O9: Under certain conditions, current codes allow the city to grant reductions for impact fees. Along with other conditions, the land, improvements, and/or facility must be within the City’s adopted Capital Facilities Plan. However, the SMP is mute on the option of a reduced parks or transportation impact fee as a potential incentive. In some cases this may be a more appropriate and acceptable incentive instead of reduced setbacks and increased building heights.

- S9: Add language to the draft that cites or refers to current impact fee regulations that allow developers to pursue a reduction in the fee for certain types of improvements –recognize and analyze this as a potential incentive.
- O10: Managing, protecting, and restoring the shoreline is expensive. Developers can be expected only to mitigate for things they could not avoid or minimize. They should be encouraged to incorporate restoration but we should not bribe them into it through reduced setbacks and height increases. The City of Olympia needs a viable long term financing strategy for creating and maintaining the shoreline public access, implementing restoration projects, preparing for climate change, and other related shoreline needs.
- S10: Along with viable permitting and partnerships with shoreline property owners, the city needs to envision long term financing that could for example include a parks bond, increased park impact fees, a community renewal zone, utility fees to help finance sea level rise related infrastructure needs, a permit fee element to help finance ongoing communication and enforcement of shoreline regulations (for example vegetation areas). I realize the SMP does not need to include a finance plan. However, achieving the vision in the plan requires significant financing and coordination with other city efforts. Council should develop diverse financing options that will help support the SMP.
- O11: The plan leaves too many permitting decisions up to the discretion of the Administrator and does not define or require the Administrator to create a checklist, or related record, to document how he or she “considered” various factors. For example, Section 2.3d, page 5, states that the Administrator “*should consider the expected impacts associated with proposed shoreline development when assessing compliance with this policy.*” How will this occur? We can’t tell. This is one of several places in the plan where similar language is used. This is not acceptable. The public will not be able to understand the basis of various decisions.
- S11: Increase transparency and certainty by reducing discretionary authorities and variances.

SECTION 2 – GOALS AND POLICIES

- O12: I generally can understand and support the goals listed on pages 3 and 4. However, two of them are confusing and should be combined into one goal.
- S12: Goals 2.1 A5. and 2.1A6 should be combined into one statement that says, “*Increase public access to the shorelines.*” Goals C and D make it clear that the plan will comply with constitutional and related private property rights.
- O13: The plan incorporates state and federal policy by stating that avoidance and minimization are to be priority approaches to be considered before mitigation. I fully support this. However, the plan does not provide any policies, guidance, or regulations regarding how to ensure avoidance and minimization are considered prior to considering mitigation. As drafted, the

public cannot read this plan and understand what types of mitigation will be allowed, under what specific conditions, how the conditions will be monitored and enforced, whether or not performance bonds will be required, or why avoidance and minimization were not possible at the specific area in question. For example, Section 2.2 (pages 4-5) defines numerous mitigation goals and policies. I could not locate any policies regarding avoidance or minimization.

- S13a: Add specific language to help both the landowner and the Administrator and staff implement state and local policies that require avoidance and minimization to be considered prior to mitigation. Without this guidance, the public has no way to know how the policy will be implemented and property owners and developers have no guidance on how to follow the policy.
- S13b: Along with other changes, the regulatory language on Variances (Section 3.8, page 29), or some other appropriate section in the regulations chapter of the SMP should be amended to require that applicants seeking to pursue mitigation submit information clearly demonstrating how they attempted to avoid and minimize shoreline impacts and why it is not possible to modify their plans in order to avoid and minimize instead of relying on mitigation.
- O14: The plan embraces mitigation without having a viable structure to help ensure success (staffing, science based mitigation recommendations, financing to enforce outcomes). The City of Olympia should not rely on or embrace mitigation in situations where mitigation needs are complex and outcomes are uncertain.
- S14: Rethink and rewrite the mitigation language to reduce reliance on mitigation and to ensure that any mitigation decisions and associated projects are science based, enforceable, and backed up by a performance bond. There is too much imbalance here. The many variances allowed by this plan (defined in Section 3) are part of “regulations.” In contrast, the guidance on mitigation is vague goals and policies with limited to no regulatory guidance that I could readily locate. At a minimum, incorporate state guidance on Compensatory Mitigation, WAC 173-26-221, (F).
- O15: The terms “mitigation” and “restoration” are mis-used in several places in the document.
- S15: Do alt search replace for the terms “mitigation” and “restoration” and ensure they are used correctly. Add the term “remediation” to describe the process that guides clean up of the state listed sites in the shoreline that are contaminated with toxics.
- O16: The goals and policies section relies heavily on the term “should.” This is a vague term.
- S16: Re-examine the goals and policies and replace “*should*” with “*shall*” unless the concept is truly aspirational and something that does not, and cannot, have a clear implementation path.

SECTIONS 3.69 and 3.70 – RESTORATION

- O17: Under current state law, developers can only be required to mitigate unavoidable impacts and ensure no net loss. The SMP embraces a strategy that requires trading one public asset (views, adequate set backs) in order to achieve another – environmental restoration. This is bad public policy. By doing this, you are asking the public to swallow smaller setbacks and embrace large buildings in order to get shoreline restoration. I adamantly oppose this especially in cases where the restoration incentive that is proposed in the SMP is not a listed priority in the draft Restoration Plan – Appendix A.
- S17a: Provide the option for developers to contribute to restoration but do not encourage it as the primary route for getting a variance.
- S17b: Require restoration to be science based. In Section 3.70, add an element requiring plans and associated mitigation to be compatible with the restoration projects and associated priorities and policies defined by the Restoration Plan and, as applicable, the PSNERP guidance on Strategies for Nearshore Protection and Restoration.
- O18: Sections 3.69 and 3.70 does not mention the city’s draft Restoration Plan (Appendix A). Instead, it seems to rely on a vision where applicants create an approved restoration plan for their site. Approved by whom? Based on what?
- S18: Reference the Restoration Plan and add specific language to require any site/parcel specific restoration actions to comply with: a) the Restoration Plan and associated goals, policies, and priorities; and b) as applicable, the PSNERP guidance on Strategies for Nearshore Protection and Restoration.
- O19: Section 3.69 lists “*removal or treatment of toxic materials*” as a form of restoration. This is misleading. While removal or treatment does help restore the environment, it is required by federal and state regulations and occurs under those authorities. As part of the clean-up process, there is precedent for sites to incorporate soft bank, vegetation, and other beneficial features.
- S19: Rewrite Section 3.69 to more clearly link the intent statements to the goals of the Restoration Plan.
- S19a: Eliminate toxics treatment/removal as an implied restoration action that can be used to get a variance or regulatory relief from shoreline management requirements. In practice, the city should work with Ecology and property owners to define opportunities where restoration can be incorporated into remediation.

SECTION 3.8 – VARIANCES

- O20: The plan relies on a fragile, uncertain, and murky process to provide many types of variances. It has the potential to create conditions where one entity gets a variances and the stage is then set, via policy

3.8.E.4 to grant somebody else a similar variance so that no special privileges are granted. This is difficult to manage over the long term.

S20: Review and rewrite the variance section to limit, instead of rely on variances.

O21: The variance section, and other sections of the plan, seem to presume variances will be granted and non-conforming uses will be allowed. For example, 3.8b states that, “*shoreline variance permits should be granted in circumstances where.....*”

S21: Eliminate language here and elsewhere in the plan that presumes variances will be “*granted*” or nonconforming uses “*may be authorized*.” Replace the word granted with “*considered*.” Instead of saying nonconforming uses “*may be authorized*”, say they “*will be considered*.” These are two examples of several areas throughout the plan where there is an implied presumption. Fixing them requires doing an alt search of granted, *may be authorized*, and other related terms that imply the outcome of the permit consideration process.

O22: [RCW 90.58.320](#) states that: No permit shall be issued pursuant to this chapter for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then ***only when overriding considerations of the public interest will be served***. (italic added). The SMP has not defined areas where the overriding considerations of the public interest are served by height variances.

S22: In areas where significant height variances are being offered, the plan needs to either eliminate them or clearly demonstrate how ***overriding considerations of the public interest will be served***.

SECTION 3.10 – Submittal requirements

O23: The draft SMP does not define what constitutes a completed application and instead relies on language in the current code that is vague and does not related to shoreline permits. Other communities have defined, in their plan, the information needed for an application to be considered complete. Failing to do this creates conditions where applicants submit partial information, deliberations occur, and expectations are raised in the absences of complete information.

S23: Clearly define what constitutes a completed shoreline application and provide this list in the Appendix of the SMP.

O24: Depending what is being requested, permit applications take various routes with various decision makers. As drafted, it is difficult for permit applicants and the public to understand the journey.

S24: For the final draft SMP, include a chart in the Appendix that clearly defines the various application, hearings, and appeal routes for various types of shoreline permits.

O25: Some of the variances envisioned would occur through mitigation and restoration. However, the city does not have a clear fee in lieu or mitigation program that has been develop and approved through a public review process.

- S25: As stated before, reduce reliance on mitigation and variances to achieve public access and restoration. The city is not equipped to manage complex mitigation projects and therefore should not bargain them into the equation or allow fee in lieu at this point in time.
- S25a: In cases where restoration incentives are offered, they should be science-based priorities defined by the draft Restoration Plan. For example, it appears that in some reaches setbacks could be greatly reduced if hardened shorelines were replaced with softbank. However, I don't think these restoration actions are restoration priorities. Thus, we may be offering to reduce setbacks or increase heights for something may not be defined as a restoration priority at these reaches.
- O26: The plan does not appear to define a clear mechanism for tracking, and periodically evaluating the cumulative effects of all project review actions in shoreline areas. This is required by WAC 173-26-191(2)(a)(iii)(D).
- S26: Define a clear, science based, and cost effective mechanism for tracking, and periodically evaluating the cumulative effects of all project review actions in shoreline areas. This is required by WAC 173-26-191(2)(a)(iii)(D).

SECTION 3.25 - PUBLIC ACCESS

- O27: Overall, I am confused about the public access vision and outcomes.

For example: 1) one of the staff responses to Council questions stated that, *"In some areas the trail could extend over the water and in some areas it could go beneath a second story and in some cases it could be routed around a building entirely. Really? Is that the vision?"* (page 19smp.july2013);

2) It is difficult to understand how the SMP would help advance the West Bay Trail defined in the parks plan. The trail was one of the 2009 City Initiatives by Olympia City Council and received the second highest number of email comments in support of it during the public comment period process.;

3) According to the Parks plan, there are approximately 24.5 miles of saltwater and freshwater shoreline in the Olympia but less than ¼ of it (about 19%) is accessible to the public. How will the SMP help change this?

- S27: Clarify how the SMP relates to, and helps advance, other city plans and initiatives relating to public access to the shoreline.
- O28: The draft SMP does not seem to mention, map, or address management of streets or alleys that abut the shoreline. It is my understanding state law encourages preserving them (RCW 35.79.035) and our local code (Section 12.16.050(D) OMC) states that street ends abutting the water shall be preserved to provide views of and public access to the water. I am aware of several city owned shoreline areas that property owners have taken over. For example, the one at the end of Howard Street off East Bay somewhat blocked off and the shoreline area has concrete rubble covering the natural substrate.
- S28: The final draft should include a map of all current and future alleys and streets that abut shorelines include policies to ensure they are not vacated, and include actions to ensure these sites are maintained as public property and public access areas.

RESTORATION PLAN – Appendix A – Initial Comments

- O29: The draft Restoration Plan is an excellent vision for the shoreline, reflects current science, and clearly defines partners in restoration efforts. The SMP barely mentions it.
- S29: The final draft needs to more clearly articulate how the SMP will help advance the Restoration Plan and the associated science based restoration priorities. I realize the SMP and associate permits cannot require restoration. Any restoration accepted as part of a shoreline permit should be a science based restoration priority as defined by the restoration plan.
- O30: The restoration projects defined in Chapters 4. and 5. are listed in a variety of ways. Some are listed according to their project lead and others are listed geographically. This is confusing and will make the restoration vision difficult to track and advance over time
- S30: Create a table and a map in the final Restoration Plan and final SMP that:
- lists – and maps - all of the restoration projects that are now dispersed in Chapters 4 and 5 and a few other places.
 - For each potential project, list it not only according to the site address, implementation schedule, funding source, and restoration goal (as is currently done in table 5.1) but that also defines which shoreline environment designation the potential project is in (e.g. aquatic, marine resources, natural, port industrial, etc), and - if known – which entity is the lead.
 - Defines which, if any, restoration projects are in the CFP.
 - Defines a process for how projects will be considered to be added to the CFP
- O31: The SMP does not clearly demonstrate how it will ensure that future developments will not preclude or interfere with future restoration actions. For example, smaller setbacks reduce future restoration options and future planning for Sea Level Rise.
- S31: As part of the principles element of the final SMP, define how permitting will be managed in order to ensure that current and future restoration opportunities are not precluded.
- O32: The SMP is mute on the dam removal proposal associated with restoration of the Deschutes Estuary (by removing the dam). The Puget Sound Nearshore Ecosystem Restoration Project (PSNERP) defines dam removal as a high priority restoration action for improving the health of Puget Sound.
- S32: Along with other plans cited as influencing the future of the shoreline, the SMP should mention Deschutes estuary restoration efforts and the need to coordinate with them.

Janet Sanders

From: Jeanette Dickison <jeanette@smythlanding.com>
Sent: Tuesday, July 23, 2013 11:16 AM
To: Shoreline Update; Keith Stahley
Cc: CityCouncil
Subject: SMP Comments for July 2013 Draft
Attachments: SMP comments SmythMcIntoshPS(Hardel_Dunlap_SL_Wbay)(7 23 13).docx; Redline of SMP JULY 9TH DRAFT (ssm)Final.docx; SMP Table 6.2 and 6.3 Rev 4.pdf; Olympia Code West Bay Views and heights excerpts (w map).pdf

Dear Todd,

I am submitting these comments on behalf of Sarah Smyth McIntosh.

Thank you,

Jeanette Dickison
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TABLE 6.3 - SETBACKS

Shoreline Environment	Setback/VCA	Setback with maximum reduction- Non-water Oriented	Incentive eligible provisions – See 18.34.620.E. 1	Setback reduction	Required Standards
			<u>achieve a maximum setback reduction of 25 feet.</u>		
*Water Dependent and Water Related Uses Reduce from 50'-0'			Water Dependent/Related Use	100% (50')	See 18.34.620.E. 8
Waterfront Recreation – Budd 3B	150' or the east side of West Bay Drive whichever is less.	150'	None	None	None
Listed Uses may reduce the required setback from 150' to 0'. Listed uses: 1. Paved or unpaved trails, bridges and pedestrian access, 2. picnic shelters, tables and pads not greater than 400 square feet in size, 3. seating, benches, drinking fountains, garbage cans and other site furnishing, 4. public art, 5. signs, environmental interpretive facilities and information kiosks 6. wildlife viewing, 7. play equipment and other similar passive parks furnishing and fixtures.			Use as listed	150'	See 18.34.620.E. 8
Waterfront Recreation – Cap 6	30'/30'	30'	Restoration of vegetation	50% (12.5')	See 18.34.620.E. 5
Water Dependent Uses Reduce from 30'-0'			Water Dependent Use	100% (30')	See 18.34.620.E. 8
Urban Intensity - Budd 3A	30'/30'	30'	N/A	N/A	N/A
Water Oriented Uses Reduce from 30'-0' ^{15'}			Water Oriented Use	100% (30')	See 18.34.620.E. 8 ¹⁰ *
→ Water Dependent Uses Reduce from 30'-0'					
Urban Intensity - Budd 4	50'/30'	30'	Trail <u>Water Related Recreation</u>	100% (20') <u>Up to 50% (10')</u>	See 18.34.620.E.4 <u>See 18.34.620.E.3</u>

* Reference new section 18.34.620 E.10 for West Bay

Table 6.2 – Development Standards

Shoreline Environment	Shoreline Segment	Maximum Standard Building Height	Maximum Building Height with 'VCA' Bonus*
Aquatic	All	20 feet	N/A
Natural	All	20 feet	N/A
Waterfront Recreation	Budd Inlet	42 feet	65 feet
	Capitol Lake	35 feet	N/A
Urban Conservancy	All	35 feet	N/A
Shoreline Residential	Ward Lake	35 feet	N/A
	Ken Lake & Budd Inlet	35 feet	N/A
Marine Recreation	Budd Inlet	40 feet; 25 feet within 75 feet of OHWM	N/A
Urban Intensity	Capitol Lake & Budd Inlet north of Brawne Ave. extended	42 feet - 65 feet **	65 feet **
	Budd Inlet south of Brawne Avenue extended	35 feet waterward of streets; 90 feet remainder	N/A
Port Marine Industrial	All	65 feet	N/A

*See OMC 18.34.620(D) regarding bonus height with vegetation conservation area.

** SEE WEST BAY DEVELOPMENT REGULATIONS FOR HEIGHT INCENTIVES, OMC 18.06.100.A.2.C

SMYTH McINTOSH

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July 23, 2013

Olympia City Council
P.O. Box 1967
Olympia, WA 98507-1967

RE: Shoreline Master Program – City Council Draft July 9, 2013

Dear Mayor Buxbaum and Members of the City Council:

We represent Smyth Landing, Hardel Mutual Plywood Corporation, West Bay Marina and Dunlap Towing along with the members of the West Bay Neighborhood Association in the above referenced matter and are providing the following written comments on the Shoreline Master Program Council draft dated July 9, 2013.

We would like to thank the Mayor and Council members for bringing this draft Shoreline Plan into greater balance, legal compliance and consistency with the Comprehensive Plan, and for listening to the various stakeholders to find a way to create a much more acceptable compromise.

However, the well-intentioned effort to develop incentives for shoreline restoration and public access has become far too complicated and piled on too many requirements, especially on West Bay.

1. Flexibility is Good, but Incentives have turned into Disincentives. The Council July 9th Shoreline Plan has gone too far, especially on West Bay, and we don't believe that was intended. It has turned incentives for trails and parks and shoreline restoration into disincentives. The Council has piled on so many requirements that the "incentives will never be used and the trail, parks and restoration won't get done. **This proposed plan now puts the trail along West Bay at risk!** Is that what was intended?

2. Where is the public/private partnership? We have participated in each and every workshop and public hearing over the last three years and now right at the very end changes are being made, without the majority of the Council on board, and put out to the public in a very short time frame for analysis and response. We have been your proven partners for trails and parks on West Bay, helping build and leverage support for public amenities along the shoreline. You have sent, intentionally or not, a negative message to the very partners that you need to continue to invest in the public amenities and shoreline restoration on West Bay.

3. What happened to the Council support of the Balance in the West Bay Plan? The Council clearly stated their support of the balance of incentives for heights and view corridors in the West Bay Plan, and only wanted to add the minimum shoreline setbacks to protect the shoreline and allow redevelopment to provide these public amenities. Now, the effort to pile on additional requirements for height increase on West Bay has created much greater complexity and lack of coordination and consistency with the West Bay Plan. Was this really intended for West Bay area?

4. These new requirements are overly complex and are not coordinated and integrated with the West Bay Plan. Preserve the existing height incentives in the West Bay plan, but add additional incentives for setback reduction tied to shoreline restoration, especially on the narrow properties at the northern end of Reach 3A from Smyth Landing north.

The planning policies and regulatory provisions of master programs and the comprehensive plans and development regulations, adopted under RCW 36.70A.040 *shall be integrated and coordinated* in accordance with RCW 90.58.340, 36.70A.480, 34.05.328(1)(h), and section 1, chapter 347, Laws of 1995. See WAC 173-26-186 (7)(*emphasis added*).

5. Remember the topography of West Bay and the basis for the West Bay Subarea Plan. The narrower properties from Smyth Landing north are located at the end of the proposed waterfront trail in the comprehensive plan and are behind a high bank with no view blockage issues, but have great opportunities for public access and shoreline restoration in partnership with the Tribe and the City.

The areas to the south of Smyth Landing are challenged to design view corridors that balance development needs. These areas present great opportunities for park and trails in conjunction with denser development, and need the current height and

view corridor incentives in the West Bay plan for providing this trail connection and public amenities.

6. We should be encouraging building to 65 feet heights on West Bay. Allowing higher buildings with smaller building footprints will ensure the funds are available for building the trails and parks, and restoring the shoreline. The West Bay plan already has incentives tied to building height increases and view corridors for increased public access and shoreline trails and parks.

7. If you support shoreline restoration, tie these new shoreline setback incentives to setback reductions not height increases on West Bay. Incentives for height increase and view corridors are already in place under the West Bay plan and are tied to public access, trails and parks. There is no rationale or legal relationship between shoreline restoration and bulkhead removal to height increase.

However, tying the area of setback reduction to an area of shoreline restoration has a clear definitive relationship that can be understood and administered. To impose an *additional* minimum of 1 acre of vegetation conservation areas (VCA) *and* removal of bulkhead or riprap based on some undetermined or extreme measurement in relationship to building size, is absolutely absurd when you try to overlay this on top of the existing requirements for height increases in the West Bay plan.

6. Remember, a waterfront trail and/or shoreline restoration cannot be legally mandated. So, if the incentives aren't used, the trail won't get built, and the restoration will not get done. If you pile on so many requirements in your incentives that they become disincentives, then we will get low level office buildings outside of the setback with no height increases and flat roof designs. Is that the legacy you will be leaving in this plan? NO trail, NO parks, NO restoration, no one living, working and playing on West Bay. That is not our vision for this area.

See the recent U.S. Supreme Court case on this point, *Koontz v. St. Johns River Water Management Dist.*, No. 11-1447 (June 25, 2013), holding that when a government agency demands a property right or cash payment as a condition precedent to granting a land-use permit, the government's demand must have a *nexus and rough proportionality* with the effects of the proposed land use, even if the landowner's rejection of the demand leads to denial of the permit.

The unconstitutional conditions doctrine precludes a government agency from effectively withholding a benefit, even one that is gratuitous, by conditioning benefit on the applicant's agreement to sacrifice rights protected by the U.S. Constitution. To hold otherwise would allow governments to circumvent the principles of *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard* cases by phrasing all permit requirements in terms of conditions precedent. ***"Extortionate demands for property in the land- use permitting context run afoul of the Takings Clause not because they take property but because they impermissibly burden the right not to have property taken without just compensation."*** *Koontz v. St. Johns River Water Management Dist.*, No. 11-1447 (June 25, 2013) p.2 (*emphasis added*)

7. Large Setbacks DO NOT Produce Trails and Restoration. In fact, as we have argued all along since the Planning Commission's draft, large setbacks (along with layers of complicated regulations) will hinder well-designed waterfront development that is mixed-use and provides housing for our neighborhood. The development has to be ***feasible*** to pay for amenities like the trail or park and shoreline restoration, all of which cannot be mandated, only incentivized. We have a chance to "do it all" along West Bay, unlike other areas of shoreline in our City.

8. The Solution on West Bay. The solution on West Bay is to preserve the existing height incentives in West Bay plan, but add additional incentives for setback reduction tied only to shoreline restoration, which is coordinated with the West Bay plan.

An easy solution that would be consistent with the Council's direction not to undermine or rewrite the West Bay plan, is to simply add a 30" setback under the shoreline plan, and then reference to the West Bay regulations in the Table 6.2 on development regulations and in Table 6.3 for setback reduction. See the attached Tables marked up with West Bay development regulations reference.

The West Bay development regulations (OMC 18.06.100.A.2.c) attached already provide for height bonuses and distinguish between the narrower areas with less view blockage from Smyth Landing north from the West Bay areas to the south. These regulations balance view blockage and building height incentives in exchange for providing a trail and or park or both. *These regulations also provide the legal balance of nexus and proportionality to the impacts of the particular project.*

We believe it's very important to be legally consistent with the Comprehensive plan and development regulations on West Bay and tie the two together to create a cohesive, easy to understand document.

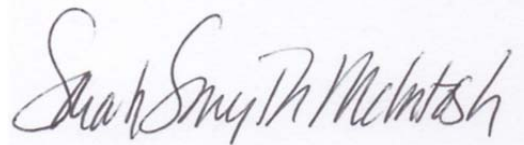
Attached is a redlined version of the key sections of the July 9th draft plan. We believe the proposed language will provide the needed incentive to property owners to both develop and restore the shoreline and provide for the desired public access.

Please take the time to make these minor, but powerful revisions to the draft plan to ensure that the council's goal to encourage restoration and waterfront trail on West Bay in this plan can actually be accomplished in the real world.

If we want to see restoration of the shoreline and a waterfront trail we must forge partnerships to accomplish these goals, and any effort to revert back to illegal methods to regulate restoration and imposition of open space and buffers will send a very negative message to the very partners in this process that can help the City accomplish its goals.

Its time to move forward and send the right message to those important partners that can bring this vision to a reality and actually accomplish the goals rather than prevent any redevelopment for the next generation. We do not want our beautiful waterfront to continue to deteriorate. We want to breathe new life into our waterfront with a positive plan that encourages restoration and public access to the shoreline through the necessary partnerships that can make it happen.

Very truly yours,

A handwritten signature in black ink, reading "Sarah Smyth McIntosh". The signature is written in a cursive, flowing style.

SARAH SMYTH MCINTOSH

SSM/jd
Cc: Clients
Enclosures

**Shoreline Master Program July 9,2013 Draft
Redline by Sarah Smyth McIntosh**

3.41 18.34.620 - Use and Development Standards Tables – p.49-50

D. OMC 18.34.620(D). Upon provision of setback reduction incentives as described in E.5 and E.6 or 7, to the extent that they apply, an applicant may obtain approval of a development including an increased maximum building height ('VCA bonus') as set forth in Table 6.2.

Incentives may be provided on the same property or offsite as described herein. On West Bay Reach 3A, the height and view corridor blockage limits contained in the West Bay development regulations, OMC18.06.100.A.2.c. shall apply.

E. Reductions shall be allowed as provided in Table 6.3 and subject to the following:

1. Incentives for setback reductions noted herein are cumulative up to the maximum reduction allowed. Incentive eligible restoration projects may be completed in association with, or in addition to, required mitigation projects, however, no setback reductions shall be allowed for required mitigation projects.

2. Physical access shall be access to the marine shoreline from the public right- of- way via a sidewalk or paved trail on a publicly dedicated easement no less than 6 feet in width and constructed to City standards as included in the City's Engineering Design and Development Standards. Other forms of indirect access such as viewing towers and platforms may be considered where direct access to the shoreline is deemed dangerous due to the nature of the use of the property or the conditions at the shoreline. Existing access meeting the standards described herein may be used to meet setback incentive provisions.

3. Water Related Recreation shall be an open space accessible to the public providing direct access to the shoreline. The water related recreation area of the park shall be no less than the area of the shoreline reduction and in no case shall the area be less than 1,000 square feet. Such areas shall include active playgrounds, significant art installations, performance space or interpretive features. Existing park space meeting the requirements described herein may be used to meet setback incentive provisions.

4. Trail shall be a commuter multi-use trail on a public easement no less than 12 feet in width providing continuous public access across the site and shall be placed upland of the ordinary high water mark and constructed to commuter multi-use trail standards as included in the City's Engineering Design and Development Standards. Existing trails meeting the requirements described herein may be used to meet setback incentive provisions. To receive setback reduction credit the trail must be built on the site.

5. Vegetation restoration shall be planting of native shoreline vegetation in excess of that required to achieve no net loss of environmental function and shall substantially mimic undisturbed native shorelines in the South Puget Sound in plant species, species mixture and plant density. Vegetation restoration shall be accomplished through an approved Vegetation Management Plan. Uses may encroach the required setback area as described above so long as they provide for mitigation of the encroachment at a ratio determined to offset the impacts of the encroachment and in no case less than a 2 square feet of mitigation for every 1 square foot of encroachment within the required setback area and demonstrate no net loss of environmental function. Where the required mitigation for setback reduction results in less than a

¼ of an acre or 10,890 SF the preference is to cumulate mitigation offsite in areas already designated for off-site restoration where possible. Such areas shall be no less than 25 feet in depth measured from the ordinary highwater mark and shall be no less than one acre in area.

6. Removal of bulkhead shall be the physical removal of a vertical structure and replacement with a softened shoreline treatment. Measures may include use of shoreline contouring, gravels, cobbles, limited use boulders, logs, and vegetation in a manner that promotes native aquatic species and protects the shoreline from erosion.

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7. Replacement of a hardened shoreline shall be the physical removal of rip rap or other nonvertical shoreline protection with a softened shoreline treatment. Measures may include use of shoreline contouring, gravels, cobbles, limited use boulders, logs, and vegetation in a manner that promotes native aquatic species and protects the shoreline from erosion.

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8. In addition to items 1-7 above, Water Dependent, Water Related, and Water Oriented and uses may encroach the required setback and vegetation conservation area as described in Table 6.3 so long as they provide for mitigation of the encroachment at a ratio determined to offset the impacts of the encroachment and in no case less than a 2 square feet of mitigation for every 1 square foot of encroachment within the required vegetation conservation area and demonstrate no net loss of environmental function. Required mitigation shall meet the vegetation restoration standards noted in 5 above. Reductions to less than a 20 foot setback shall only be allowed where alternative public access has been provided sufficient to mitigate the loss of direct public access to the shoreline and in no case shall public access be less than 12 feet as described in paragraph 4 above. Projects proposing setbacks less than 20 feet shall also meet the shoreline bulkhead removal or hardening replacement requirements of 6 or 7 above for each linear foot of shoreline impacted. Mitigation required may take place onsite or offsite.

9. No setback shall be required in the Port Marine Industrial shoreline environmental designation, however, mitigation shall be required to offset any impacts determined through the mitigation sequencing process to ensure no net loss of environmental function and to mitigate for loss of public access.

10. Setback reductions for West Bay Reach 3A are allowed and may encroach the required setback and vegetation conservation areas as described in Table 6.3 so long as they provide for restoration of the encroachment to offset the impacts at a ratio of 1 square feet of restoration for every 1 square foot of encroachment and demonstrate no net loss of environmental function. Restoration required may take place on or offsite.

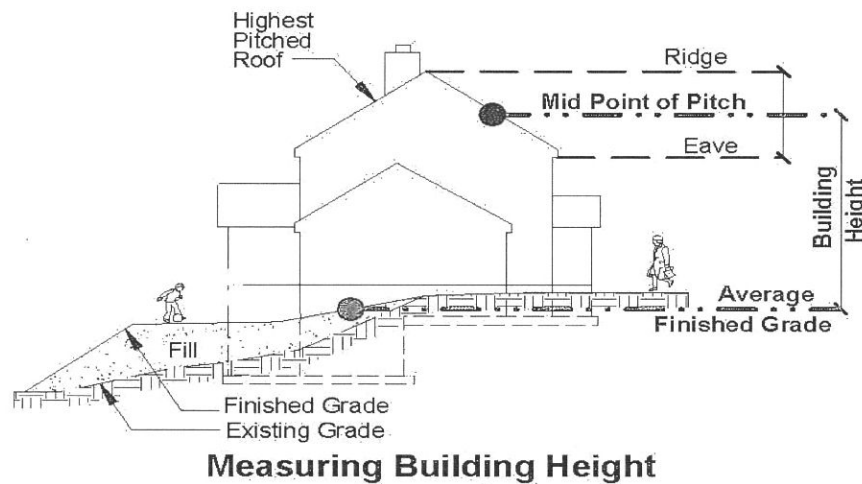
LEGEND

MS = Medical Services	CS-H = Commercial Services - High Density	UW = Urban Waterfront
DB = Downtown Business		UW-H = Urban Waterfront-Housing
		AS=Auto Services

(Ord. 6666 §1, 2009; Ord. 6490 §2, 2007).

18.06.100 Commercial districts' development standards--Specific**A. Height.**

1. Roof structures for the housing of elevators, stairways, tanks, ventilating fans and similar equipment required to operate and maintain the building, fire or parapet walls, skylights, towers, flagpoles, chimneys, smoke stacks, wireless masts, T.V. antennas, steeples and similar structures may be erected above the height limits prescribed in this Title, provided that no roof structure, feature or any other device above the prescribed height limit shall be allowed or used for the purpose of providing additional floor space. This height exception does not apply to the additional story provision for residential development described in OMC 18.06.100.A.6. Provided, further, that no roof structure or architectural feature shall be erected more than eighteen (18) feet above the height limit of the district, whether such structure is attached to it or free-standing.

**FIGURE 6-1A****2. Urban Waterfront (UW) District.**

a. Allowed building heights in the Urban Waterfront (UW) District are specified in Figure 6-2.

- b. Bonus for residential development.
 - i. In the area labeled sixty-five (65) feet on Figure 6-2, up to two additional stories may be built, if the project is located in the downtown, if the added stories are stepped back from the street wall at least eight (8) feet, and if floor area equal to the amount from the added stories is provided for residences:
 - (a) In the same building--i.e., it is a residential or a mixed use building; or
 - (b) With commercial and residential uses in separate buildings on the same site; or
 - (c) With commercial and residential uses on separate sites within the Urban Waterfront (UW) district.
 - ii. Occupancy. Housing provided under this bonus provision as part of a mixed use project must receive an occupancy permit at the same time as, or in advance of, issuance of an occupancy permit for non-residential portions of the project.
 - iii. Conversion. Housing provided under this bonus provision shall not be converted to commercial use.
 - iv. Source of housing units. Housing provided under this bonus provision may be:
 - (a) New construction,
 - (b) Adaptive reuse of a formerly non-residential structure, or
 - (c) Rehabilitation of existing housing.
- c. West Bay Drive building height and view blockage limits.
 - i. In order to retain public and private view access to Budd Inlet from hillside sites above West Bay Drive, the maximum building height in the West Bay Drive portion of the Urban Waterfront (UW) District labeled " 42'-65' " on Figure 6-2 shall be up to a maximum of 42 feet, except as provided in subsections (iii) and (iv) below.
 - ii. In order to retain public view access of Budd Inlet from street level in the West Bay Drive portion of the Urban Waterfront (UW) District labeled " 42'-65' " on Figure 6-2, view blockage shall be limited as follows:

- (a) Views of the water will be defined as area without obstruction by buildings or major structures measured between 45 and 90 degrees to West Bay Drive, as illustrated in Figure 6-2A.
 - (b) Said view blockage shall be limited to 45 percent of the views of the water from West Bay Drive by buildings or major structures located between West Bay Drive and the mean high water line.
 - (c) Exceptions are provided in subsections (iii) and (iv) below.
- iii. Development shall be subject to the alternate standards for building height and view blockage, if alternate waterfront view access is provided through public amenities as follows:

Amenity Provided	Limits on Horizontal View Blockage and Height
Waterfront Trail	70% up to 42 ft., OR 45% up to 65 ft.
Expanded Waterfront Trail Corridor Facility (or small waterfront park area).	50% up to 42 ft., OR 45% up to 50 ft.
Both	70% up to 65 ft.

Any development over 42 feet shall be required to include a minimum of 20% of the usable building area for residential purposes.

- iv. Criteria for approval of alternate waterfront view access.
 - (a) Waterfront Trail.
 - (1) Trail right-of-way consistent with City trail standards shall be dedicated to the City.
 - (2) The trail shall be designed consistent with City standards and requirements, or as otherwise approved by the Olympia Parks, Arts and Recreation Department. Because the trail passes by different land uses, it may take a different character in different locations, for reasons of safety, privacy, or environmental protection.
 - (3) The developer shall design, build, and dedicate the facility to the City.
 - (4) An analysis of recreation needs shall be provided by the Olympia Parks, Arts and Recreation Department. An analysis of environmental impacts, hazardous waste risks, and engineering issues sufficient to determine the design and location for the trail facility shall be approved by the Olympia Parks, Arts and

Recreation Department but provided by the developer. All analysis shall be complete prior to approval.

(b) Expanded Waterfront Trail Corridor Facility or Small Waterfront Park.

(1) The developer shall build and dedicate the facility and its site to the City.

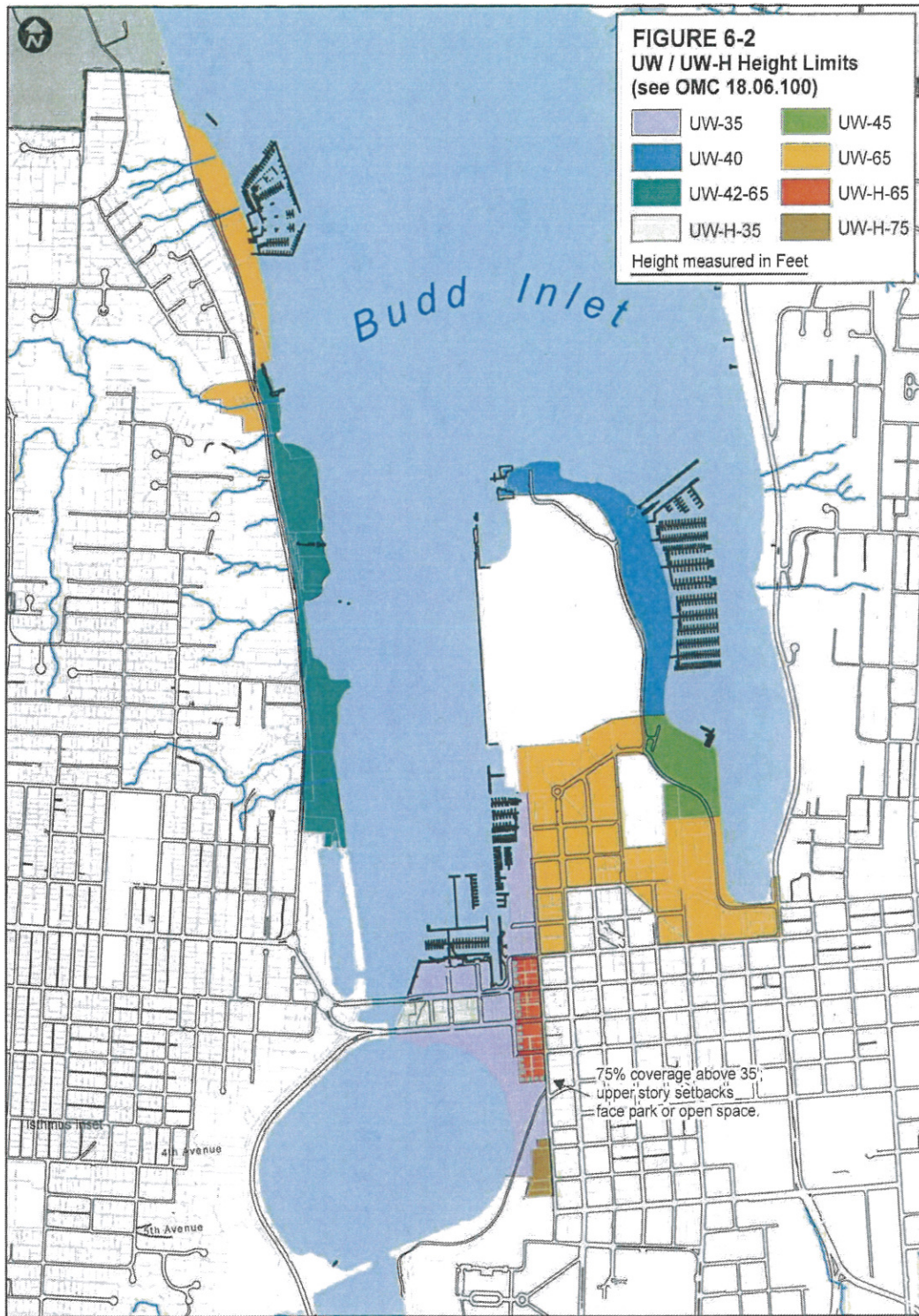
(2) The expanded waterfront trail corridor facility or small park area shall be designed consistent with City and other applicable government standards and requirements, or as otherwise approved by the Olympia Parks, Arts and Recreation Department. The expanded waterfront trail corridor facility or small park may vary in size from City park standards and could include additional right-of-way for the expanded trail, landscaping, habitat enhancement, benches, lighting, parking, restrooms, garbage receptacles, telephones, interpretive signs and other park facilities.

(3) An analysis of environmental impacts, hazardous waste risks, trail improvements, and engineering issues sufficient to design the expanded waterfront trail corridor facility or small park area shall be approved by Olympia Parks, Arts and Recreation Department but provided by the developer. All analysis shall be complete prior to approval.

(4) The expanded waterfront trail corridor facility or small park shall have a publicly accessible connection to West Bay Drive, designed, constructed, and dedicated for public use by the developer.

v. The view blockage rules shall be applied on a project-wide basis and not for each lot or parcel in a project, thus allowing projects providing more views on some lots to have more view blockage on other lots as long as the overall project meets the view blockage requirements.

Figure 6-2 Urban Waterfront and Urban Waterfront Height Limits



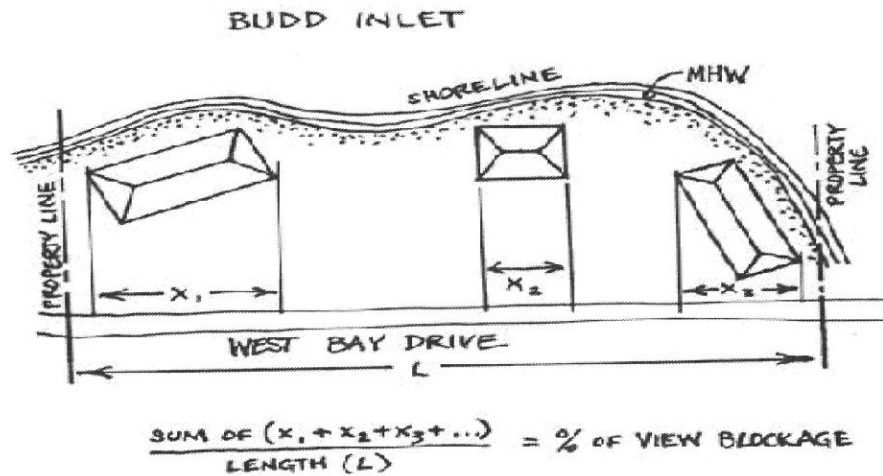


FIGURE 6-2A

**Calculating View Blockage in a portion of the Urban Waterfront District
along West Bay Drive.**

3. Commercial Services-High Density. The maximum building height allowed is one hundred (100) feet. Provided, however, that no building or structure may exceed seventy-five (75) feet in height without conditional review and approval by the Hearing Examiner. Approval of structures exceeding seventy-five (75) feet in height shall meet the following criteria:

- a. The building design shall be compatible with or enhance the physical characteristics of the site, the appearance of buildings adjacent to the site and the character of the district.
- b. The site plan shall facilitate efficient and convenient circulation, shall include landscaping that creates a pleasing appearance from both within and off the site and shall be an asset to the community at large.
- c. Enhancement of public view access or direct public access to usable open space areas shall offset any potential upland view loss which may occur as a result of the proposal.

4. Downtown Business District.

- a. Building height allowed outright in the DB zone is seventy-five (75) feet.
- b. Bonus for residential development.
- c. Enhancement of public view access or direct public access to usable open space areas shall offset any potential upland view loss which may occur as a result of the proposal.
 - i. Buildings may exceed the height allowed outright (75 feet) by up to two (2) stories, if the added stories are stepped back from the street

Janet Sanders

From: Mike Reid <MikeR@portolympia.com>
Sent: Tuesday, July 23, 2013 4:04 PM
To: Shoreline Update
Subject: Port of Olympia SMP Letter - 07 23 13

Please find the attached letter from the Port of Olympia concerning the SMP Update. Hard copies are en route

Thank you -

Mike Reid
Senior Manager Business Development
Port of Olympia
915 Washington St. NE, Olympia, WA 98501
(360) 528-8076 (tel)
(360) 528-8091 (fax)
miker@portolympia.com
www.portolympia.com



Commissioners

**Bill McGregor
George Barner
Jeff Davls**

VIA ELECTRONIC SUBMITTAL

July 23, 2013

Mayor Stephen H. Buxbaum
City of Olympia
P.O. Box 1967
Olympia, WA 98507

Dear Mayor Buxbaum and Olympia City Council Members:

The Port of Olympia (Port) submits the following comments on the City of Olympia's (City) July 9, 2013, draft of the City's Shoreline Master Program (SMP). Overall, the Port generally supports the current draft of the SMP. The Port's remaining concerns relate to a few technical issues that the Port believes will retain the flexibility provided in the current draft – flexibility that will allow the Port to meet its statutory obligation to foster economic development, and allow the Port to complete projects currently outlined in the Port's planning document, the Comprehensive Scheme of Harbor Improvements (CSHI).

The Port's concerns set forth below are addressed by the draft setback reduction provisions developed by a coalition of shoreline property owners, a copy of which is attached to this letter. The Port supports the City incorporating the draft setback reduction provisions into the draft SMP because the Port believes they: (a) tailor setbacks and setback reduction incentives to the Shoreline Management Act's (SMA) preference for water-dependent uses of the shoreline; (b) retain incentive-based setback reductions that improve the quality of the shorelines while allowing appropriate development to occur; and (c) alleviate the Port's concerns about the current SMP draft's impact on Port-owned properties.

The Port's concerns with the current draft of the SMP are as follows:

A. Consistency With Port Planning Documents

The Port remains concerned about whether the current draft allows it to maintain operations at Swantown Marina, and whether it allows the Port to realize the expansion goals laid out in the Port's CSHI. Indeed, some of the setbacks and use restrictions in the current draft of the SMP are at odds with the Port's planned shoreline uses. As set forth in prior correspondence, regulations promulgated to implement the Shoreline Management Act (SMA) require the City to "work . . . with port authorities to ensure consistency with harbor area statutes and regulations, and to address port plans" as part of the process of drafting the SMP. See WAC

Mayor Stephen Buxbaum

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173-26-201(E)(ii). The Port believes that to comply with this regulation, the current draft of the SMP needs to be modified to remove restrictions that will make it impossible for the Port to complete the projects laid out in the CSHI.

According to the CSHI, the Port has several projects that are in the planning and preliminary engineering phases, including expansion of recreational moorage at Swantown marina, adding three major moorage floats and 167 new slips, a guest moorage facility, parking area, public plaza, and other amenities upland of new floating structures. The expansion project is also slated to include sidewalks and bank stabilization in erosion-damaged areas in the marina. Other plans in the works include a boat fueling facility at or near Swantown Marina.

The 2013 Comprehensive Scheme of harbor Improvements also contemplates expansion of the NorthPoint development, which began in 2006 with the construction of Anthony's Hearthfire Restaurant. The proposed development includes a shoreline walking path and open areas as well as commercial structures. The setbacks in Table 6.3 of the draft SMP as well as the allowed uses in table 6.1 are incompatible with the Port's proposed marina expansion and the proposed mixed-use developments, which must be taken into consideration by the City before it adopts a final SMP.

B. Concerns Related to Reach 5C

Reach 5C is designated as "Marine Recreation" under the current draft of the SMP. Reach 5C covers all of the Swantown Marina area, reaching from the Swantown Boatworks on the south east side of the Port peninsula north to the Northpoint area at the north eastern end of the Port peninsula. The Port generally supports incentive-based setback reductions for 5C and other reaches that improve the quality of the waterfront, while protecting the existing investments that the community enjoys. In particular, the Port understands the City's desire to see additional shoreline stabilization along Reach 5C. Yet, the setback incentives in the current SMP draft are of concern to the Port. As set forth above, the Port believes the draft setback reduction provisions attached to this letter will alleviate its concerns as to the setback reduction incentives for Reach 5C. If, however, the City does not incorporate the attached setback reduction provisions, we believe some clarifications in the language will achieve the same ecological goals, yet be clearer and more workable than what is in the current draft.

First, the current SMP draft for reach 5C requires "replacement of hardened shoreline with soft structural stabilization measures waterward of [the ordinary high water mark]" (see Table 6.3) before any setback reduction will be allowed for non-water oriented uses. Indeed, the SMP goes further to provide that "hardened" shorelines must be softened before any other incentives (for a trail, etc.) can be used. The Port notes that Reach 5C is unique in this regard – no other reach requires shoreline softening before any setback incentives may be utilized. What concerns the Port is that the majority of Reach 5C is a softened shoreline. Only at the very north end of the shoreline is there anything other than a softened shoreline (where some rip rap was used), and that exists only in the vicinity of the Cascade Pole site where armored shorelines are required by the Department of Ecology to protect the integrity of the sheet pile wall that contains contaminated soil and groundwater within the Site. If there is no "hardened"

shoreline to soften, no other setback incentive can be used, making the setback reduction incentives for Reach 5C meaningless.¹

The Port has an additional concern related to the very north end of Reach 5C. That area was recently redeveloped in conjunction with the Cascade Pole Site cleanup. The Port worked with the Department of Ecology and the City to ensure the shoreline was armored appropriately, that appropriate intertidal habitat was created and/or maintained, and that native vegetation was planted along the shoreline to stabilize the area surrounding the sheet pile wall that contains the Cascade Pole Site. The Port also extended the public walking trail to the northern tip of the Port peninsula and installed benches and other public amenities along the shoreline. The Port believes it has done all it needs to do in terms of protecting and enhancing the shoreline in this area – whether under the prior version of the SMP or the current draft. The Port would therefore like this section of the shoreline exempted from any future incentives or mitigation requirements.

Second, the setbacks in comparable “Urban Intensity” designations in Reach 5A have more generous incentives, including greater bonuses for identical uses and no initial requirement of shoreline softening. Setbacks designated “waterfront recreation,” “urban intensity,” and even some residential reaches all have smaller setbacks than those in reach 5C – which include the Port’s working marina.

Finally, the Port is concerned that reducing the setbacks on Reach 5C – under the current incentive scheme – to a workable level may be nearly impossible, with the onerous softening requirements, limited incentives, and lack of offsite mitigation areas. For instance, the Draft SMP requires an offset to impacts of setback encroachment of no less than 2 square feet of mitigation for every 1 square feet of encroachment. This means that the Port will have to find double the offsite mitigation site for any setbacks in Reach 5C. This requirement is beyond the “no net loss standard” required by the SMA. In addition, the vegetation restoration requirement may interfere with a working marina in which the public needs access in a variety of ways that are incompatible with maintaining a strip of native vegetation.

In sum, the Port requests an incentive-based setback reduction method that provides greater flexibility to meet the Port’s planned uses for reach 5C. The Port believes this can be achieved through the City’s incorporation of the attached draft setback reductions into the draft SMP.

C. Mandatory Vegetation Conservation Areas

The SMP setbacks implement mandatory “Vegetation Conservation Area” (VCAs) for Reach 5C. The mandatory VCAs may interfere with the Port’s marina and the proposed expansions set forth in the Comprehensive Scheme of Harbor Improvements.

¹ If what the City would really like to see in Reach 5C is soft shoreline stabilization measures where none currently exist, the Port is happy to work with the City to achieve that. The Port appreciates guidance from the City on what, specifically, City wants to see done and the likely costs that will need to be incurred to construct the “soft” shoreline stabilization in Reach 5C.

Mayor Stephen Buxbaum

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The Port appreciates the City's desire to protect native vegetation in order to conserve shoreline ecological functions. However, (as noted in previous correspondence) the Port peninsula is made up of fill. There is no vegetation that is "native" to the Port peninsula, which means that planting "native" foliage requires creating something that previously did not exist. At the end of the day, a requirement to plant "native" foliage on the Port peninsula is not protecting existing conditions, but creating a new environment on the shoreline.

In the Port's last correspondence to the City concerning the January 23 Draft SMP, we expressed concern about the difficulty of reaching VCA incentives. Unfortunately, the latest SMP draft seems to have taken a step backwards. VCAs are now mandatory for non-water oriented uses, and must be mitigated on a 2-to-1 ratio for setback reductions related to water-oriented uses. Because native vegetation may be incompatible adjacent to a working marina, the Port requests greater flexibility in utilizing VCAs to incentivize setbacks in Reach 5C. Again, the Port believes the attached draft setback reduction provisions set out a workable vision for how and when VCAs should be used – in a way that provides the desired ecological benefits, yet is workable for those developing shoreline properties.

D. Restricted Uses in Reach 5C

The Port is also concerned about the restriction on industrial uses in reach 5C. According to table 6.1, Industrial uses are "conditional" for water dependent, water-related, and non-water oriented uses. Yet industrial uses are permitted outright in the Urban Intensity designations (i.e., nearby reach 5A at Percival landing) for Water Dependent and Water Related uses. Water-oriented industrial uses should be permitted in Reach 5C as well – in furtherance of the Port's statutory charter under RCW ch. 53.

The Port is similarly concerned that Non-water oriented commercial uses are prohibited in the Swanton Marina area (Reach 5C), but allowed in Urban Intensity designations (Reach 5A) (conditional within 100 feet of the shoreline).

This issue was also raised in the Port's letter providing comments about the January 23, 2013 Draft SMP. Non-water oriented commercial development should be allowed in reach 5C as part of mixed-use developments that included water oriented uses and provide public access. Such a mixed-use facility is in harmony with the Port's vision for the Swantown Marina and the north end of the Port peninsula, which may include a restaurant near the marina or a hotel or other community gathering place such as a longhouse in the North Point area.

E. Nonconforming Uses

Several buildings on Port property will become nonconforming, including the Boatworks building, the Hearthfire restaurant, KGY, and several marina buildings. The Port is concerned about the viability of future uses for those buildings. The Port appreciates steps that have been taken to address prior concerns about nonconforming uses, but we are still concerned about confusion for property owners whose structures lie within setbacks or exceed height limitations. The Port's concerns with nonconforming uses are that existing buildings must

Mayor Stephen Buxbaum

Page 2

conform to the new SMP, and buildings that are unused for more than 12 months are considered "abandoned."

The Port reiterates its request that any existing structures in the Marine Recreation designation that are presently within setbacks or in excess of height limits be considered "conforming" without qualification.

F. Conclusion

The Port recognizes all the work that has gone into the current SMP draft. In particular, the Port approves the incentive-based approach to increasing setback flexibility. Yet, the Port remains concerned about the items outlined above and believes the attached draft setback reductions address the majority of the Port's concerns about how the SMP implements incentive-based setback reductions. We ask the City to incorporate the attached provisions. In addition, we ask the City to reconsider the restriction on uses in Reach 5C and the provisions on nonconforming uses so the Port can meet its statutory obligations and fulfill the plans set forth in the Port's Comprehensive Scheme of Harbor Improvements.

Sincerely,



E.B. Galligan
Executive Director

Cc:

Commissioner George L. Barner Jr.
Commissioner Bill McGregor
Commissioner Jeff Davis

Attachment A
Proposed Revisions to Setback and Setback Reduction Incentives

18.34.620 – Use and Development Standards Tables

...

D. An applicant may obtain approval of a development including an increased maximum building height and associated density as set forth in Table 6.2 by providing (1) public water-related recreation areas to mitigate view impacts and (2) public physical access to the shoreline. On West Bay Reach 3A, the height and view corridor blockage limits contained in the West Bay development regulations, OMC18.06.100(A)(2)(c), shall apply.

1. "Water-Related Recreation Areas" provided under this provision shall be no less than 1,000 square feet and shall include active playgrounds, significant art installations, performance space, or interpretive features. Existing park space meeting the requirements described herein may be used to meet building height bonus incentives. Incentives may be provided on the same property or offsite as described herein.
2. "Public Physical Access" provided under this provision shall be access to the marine shoreline from the public right-of-way via a trail on a public easement no less than 12 feet in width, providing continuous public access across the site. Such trail shall be between the development and the water and shall be placed upland of the ordinary high water mark and constructed to trail standards as included in the City's Engineering Design and Development Standards. However, indirect public access such as viewing towers and platforms shall satisfy this requirement where the Administrator finds that one of more of the limiting conditions set forth in OMC 18.34.450(C) is present and precludes requiring public physical access as a condition of project approval. Where existing public physical access on the property satisfies the requirements of this provision, no additional public access shall be required.

E. Setback reductions shall be allowed as provided in Table 6.3 subject to the following:

1. Incentives for setback reductions are cumulative up to the maximum reduction allowed. Incentive eligible restoration projects may be completed in association with, or in addition to, required mitigation projects, however, no setback reductions shall be allowed for required mitigation projects.
2. "Vegetation Restoration" under this provision shall be planting of native shoreline vegetation in excess of that required to achieve no net loss of environmental functions and values and shall substantially mimic undisturbed native shorelines in the South Puget Sound in plant species, species mixture and plant density. In order to qualify for setback reduction under this provision, the total area of vegetation restored on-site must equal the total area of the setback reduction to be granted. Vegetation restoration shall be accomplished through an approved Vegetation Management Plan pursuant to OMC 18.34.496. Where vegetation cannot be restored on site in excess of no net loss requirements consistent with this provision due to physical site limitations or constraints, the Administrator may allow vegetation restoration offsite through payment of a fee-in-lieu calculated at the same replacement ratio as for on-site

restoration, which shall be used towards completion of projects specified within the adopted Shoreline Restoration Plan (Appendix A).

3. "Shoreline Softening" under this provision shall be the physical removal of bulkheads, rip rap, or other vertical or nonvertical shoreline protections with a softened shoreline treatment. Shoreline softening measures may include use of shoreline contouring, gravels, cobbles, limited use boulders, logs, and vegetation in a manner that promotes native aquatic species and protects the shoreline from erosion. Shoreline softening may be utilized for setback reductions where existing shoreline stabilization measures are presently located at, below, or within five (5) feet landward of OHWM along at least 75 percent of the linear marine frontage of the subject property. If a project proponent is required to retain rip rap or other hardened shoreline measures as a requirement of a Department of Ecology-ordered remedial action, the Administrator may approve an alternative incentive to be used in lieu of shoreline softening to achieve setback reductions available under this subsection.
4. "Shoreline Stabilization Reconstruction" under this provision shall be reconstruction of existing hard structural shoreline stabilization measures so that it is set back from the OHWM between two (2) feet and four (4) feet based on feasibility and existing conditions and/are sloped at a maximum three (3) vertical (v): one (1) horizontal (h) angle to provide dissipation of wave energy and increase the quality or quantity of nearshore shallow-water habitat.
5. "Stormwater Retrofit" under this provision shall be the installation of biofiltration/infiltration mechanisms in lieu of piped discharge to the marine environment, such as mechanisms that infiltrate or disperse surface water on the surface of the subject property. These mechanisms shall be sized to store a minimum of 70 percent of the annual volume of runoff water from the subject property, for sites with poor soils, or 99 percent of the annual volume of runoff water from the subject property, for sites with well-draining soils. In order to qualify for a setback reduction, the stormwater retrofit must exceed what is required for the project to comply with minimum stormwater standards in effect at the time of permit application.
6. "Low Impact Development" under this provision shall be the use of Low Impact Development (LID) techniques at the subject property. LID techniques include, but are not limited to, the use of pervious materials for pollution generating surfaces, green roofs, and rain gardens. In order to qualify for a setback reduction, use of LID techniques related to stormwater management must exceed those required for the project to comply with minimum stormwater standards in effect at the time of permit application.
7. Shallow lots. If the maximum shoreline setback under Table 6.3, combined with other applicable site restrictions such as setbacks from rights of way, comprise 50% or more of the parcel, the maximum shoreline setback shall be equal to no more than 50 percent of the average depth of the parcel or 30 feet, whichever is less. An additional setback reduction of 15 feet is available to such properties by applying the setback reduction criteria above, but in no case shall the setback be reduced to less than 15 feet from OHWM. The Administrator may also consider a reduction in setbacks from rights of way when necessary to further accommodate development on narrow shoreline lots.

8. No setback shall be required for water-dependent uses as defined in OMC 18.34.120 in the Waterfront Recreation, Marine Recreation, and Urban Intensity shoreline environmental designations or in the Port Marine Industrial shoreline environmental designation regardless of use; however, mitigation may be required as set out in OMC 18.34.410 in order to ensure no net loss of shoreline ecological functions and values. In the Marine Recreation and Urban Intensity shoreline environmental designations, mitigation may also be required for any loss of public access resulting from a proposed water-dependent uses as provided for in OMC 18.34.450.

Table 6.2 – Development Standards

Shoreline Environment	Shoreline Segment	Maximum Standard Building Height	Maximum Building Height with Recreational "Bonus" OMC 18.34.620(D)
Aquatic	All	20 feet	N/A
Natural	All	20 feet	N/A
Waterfront Recreation	Bud Inlet	42 feet	65 feet
	Capitol Lake	35 feet	N/A
Urban Conservancy	All	35 feet	N/A
Shoreline Residential	Ward Lake	35 feet	N/A
	Ken Lake and Budd Inlet	35 feet	N/A
Marine Recreation	Budd Inlet	40 feet; 25 feet within 75 feet of OHWM	N/A
Urban Intensity	Capitol Lake & Budd Inlet North of Brawne Ave. extended	42 feet	65 feet
	Budd Inlet south of Brawne Ave. extended	35 feet waterward of streets; 90 feet remainder	N/A
Port Marine Industrial	All	65 feet	N/A

Table 6.3 – Setbacks and Setback Reduction Incentives

NO CHANGE IS PROPOSED TO AQUATIC, NATURAL, URBAN CONSERVANCY, AND SHORELINE RESIDENTIAL SETBACKS FROM JULY 9, 2013 DRAFT. NO SETBACK REDUCTION INCENTIVES ARE AVAILABLE FOR THESE DESIGNATIONS.

Shoreline Environment	Maximum Setback/VCA ¹	Minimum Setback	Setback Reductions
Marine Recreation – Budd 5C	Water-Dependent ² : 0'/none	Water-Dependent: 0'	Vegetation Restoration: 10' OMC 18.34.620(E)(4)
	Water-Enjoyment/ Water-Related/ Shoreline Mixed Uses: 50'/30'	Water-Enjoyment/ Water-Related/ Shoreline Mixed Uses In a structure: 30' On land ³ : 15'	Shoreline Softening: 10' OMC 18.34.620(E)(5)
	Non-Water-Oriented: 75'/30'	Non-Water-Oriented: 50'	Shoreline Stabilization Reconstruction: 10' OMC 18.34.620(E)(6)
			Stormwater Retrofit: 10' OMC 18.34.620(E)(7)
			Low Impact Development: 10' OMC 18.34.620(E)(8)
Waterfront Recreation – Budd 3B and Cap 6	Water-Dependent: 0'/none	Water-Dependent: 0'	N/A
	Water-Enjoyment/ Water-Related/ 30'/30'	Water-Enjoyment/ Water-Related/ 30'/30'	
Urban Intensity – Budd 3A and Budd 3B Dual Designation Area	Water-Dependent: 0'/none	Water-Dependent: 0'	Vegetation Restoration: 10' OMC 18.34.620(E)(4)
	Water-Enjoyment/ Water-Related/ Shoreline Mixed Uses: 30'/30'	Water-Enjoyment/ Water-Related/ Shoreline Mixed Uses In a structure: 30' On land: 15'	Shoreline Softening: 10' OMC 18.34.620(E)(5)
	Non-Water-Oriented: 50'/30'	Non-Water-Oriented: 30'	Shoreline Stabilization Reconstruction: 10' OMC 18.34.620(E)(6)

¹ In Reaches Budd 4, Budd 5A, and Budd 5C, VCAs apply only to areas of existing native vegetation, or vegetation areas created pursuant to mitigation sequencing and/or the vegetation restoration setback reduction incentive provisions.

² As used herein, "water dependent" includes water-dependent accessory structures. "Water-dependent accessory structure" is a detached building or other structure that is accessory to and associated with the primary water-dependent use.

³ As used herein, "On land" means non-structural amenities such as plazas, outdoor seating areas, and parks.

			<p>Stormwater Retrofit: 10' OMC 18.34.620(E)(7)</p> <p>Low Impact Development: 10' OMC 18.34.620(E)(8)</p>
<p>Urban Intensity – Budd 4 and 5A</p>	<p>Water-Dependent: 0'/none</p> <p>Water-Enjoyment/ Water-Related/ Shoreline Mixed Uses: 50'/30'</p> <p>Non-Water-Oriented: 100'/30'</p>	<p>Water-Dependent: 0'</p> <p>Water-Enjoyment/ Water-Related/ Shoreline Mixed Uses In a structure: 30' On land: 15'</p> <p>Non-Water-Oriented: 50'</p>	<p>Vegetation Restoration: 10' OMC 18.34.620(E)(4)</p> <p>Shoreline Softening: 10' OMC 18.34.620(E)(5)</p> <p>Shoreline Stabilization Reconstruction: 10' OMC 18.34.620(E)(6)</p> <p>Stormwater Retrofit: 10' OMC 18.34.620(E)(7)</p> <p>Low Impact Development: 10' OMC 18.34.620(E)(8)</p>
<p>Urban Intensity – Budd 6A (Dual Designation Area)</p>	<p>All uses - 0'/0'</p>	<p>0'</p>	<p>N/A</p>
<p>Port Marine Industrial – 5B</p>	<p>All uses – 0'/0'</p>	<p>0'</p>	<p>N/A</p>

Janet Sanders

From: waltjorgensen@comcast.net
Sent: Tuesday, July 23, 2013 4:12 PM
To: Shoreline Update
Cc: Stephen Buxbaum; Nathaniel Jones; Stephen Langer; Julie Hankins; Jeannine Roe; Karen Rogers; Jim Cooper; Keith Stahley
Subject: [BULK] SMP Comments
Attachments: My SMP Comments, 7-23-13.odt
Importance: Low

Council, My SMP comments are embedded and attached. Walt

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360-529-1581 (cell)

My SMP Comments 7-23-13

Shoreline Master Program
Olympia Community Planning & Development
PO Box 1967, Olympia WA 98507-1967
Email: shorelineupdate@ci.olympia.wa.us

I direct my comments to the City Council.

As a member of Friends of the Waterfront, I participated in the drafting of the group's official comments and subscribe to them all enthusiastically. I hope you will give appropriate weight to the thoughtful consideration that yielded these recommendations. Unlike the motive for a lot of the other advice and requests that you have received, we attempted to craft good public policy that would benefit all parties, some individually and some as members of the community.

Government should not categorically apologize for process. Government is and should be about process, especially when the decisions result in capital projects, i.e., built structures that will be with us for at least the lifetime of the builders and of those watching through the knotholes in the fence.

It's easier to get things done in a corporate or oligarchic organizational structure, if for no other reason than having to meet only the requirements of a select few individuals. It's been observed that democracy is messy. It should be no surprise the the process of distilling the preferences of a disparate collective is more complicated than compiling those of a comparatively small and homogenous group of "stakeholders." Prescribing policy for a city is a demanding job. It should not be run like a business. It is a government. Take the time to do your job well, in fact, to do the very best job you can. We'll wait.

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this stretch of linear shoreline at 3 miles. It's easy to adjust the equation with more precise data.

As the two larger cities both to the north and the south of us are engaged in transforming and repurposing their waterfronts, we are teetering on the brink of salvage or sacrifice. The decisions made in the next few weeks will define the waterfront of the State Capital City for the next several generations and will be our legacy to the community. And while the reclamation of this shoreline is about public right of way – public space – and not about development, it will raise all boats: people, environment and economy.

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Page 1-

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Ensuring and planning for restoration are not reassuring actions. Many kinds of behavior could be construed as fulfilling these intents.

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If the Critical Area Regulations are really adopted by reference, I wonder if they might not trump a lot of destructive development schemes. What portion of the Olympia urban shoreline wouldn't qualify as a critical area? It's barely on life support!

Use of OMC that results in the availability of a variance for “relief” from critical areas regulations is cloudy.

Pages 3 - ?

Way to many weasel words, e.g.,

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“This policy contemplates protecting against adverse effect to the public health...”

“... while protecting *generally* [italics mine] public rights...”

“Recognize and protect...”

“Preserve...”

“Protect...”

“Increase...”

“Requiring that current and potential ecological functions be identified and understood...”

“Preventing, to the greatest extent practicable, cumulative impacts...”

Page 4-

If offsite mitigation is even allowed (which it shouldn't be), it should have to be completed before any of the development it's mitigating for begins, i.e., should always be advance mitigation. This is because the record of follow through implementation, i.e., making sure it gets done, is abysmal, something like 10-15%.

Page 4-2.2 & 2.3

How long has the “no net loss' provision been operable, i.e., maybe we should be reverting to some earlier time as the baseline. Why should continuous failure to meet the no net loss requirement result in the baseline being continually reset?

Page 23- 26 Cumulative impacts of cumulative effects

We can hope that this provision is stringently enforced to hold the purveyor's of individual projects feet to the fire.

According to REMA, “floodway” apparently doesn't include “[those lands that can reasonably be expected to be protected...](#)” This seems unnecessarily presumptive. Why should there be any expectation of protection until there is a tangible City policy on this issue?

(somewhat tongue-in-cheek)

Shorelands or Shoreland areas- With sea level rise, I wonder if we should require that the 200' line be advanced annually. The lateral distance will increase much faster than the vertical distance, depending on the specific slope. If we aren't going to update the SMP for 8 years, shouldn't we make some special provision for those areas that will have most likely become shorelands by then?

Page 27-

Visual Access- Regardless that the Mithun visualization tool was shamefully misused, you should require that it be used to determine a “view plane” over the City that accommodates views to and from the Capitol and various other view “targets” and vantage points. In so doing, you will discover that there is 4 to 5 times as much three dimensional building capacity in downtown, especially the “north Capital neighborhood” than you will need for several decades to come without violating the constraints of the “view plane.”

Page 28-

The substance, or at least the applicable portions, of all off-page references should be embedded in this document with citations and electronic links pointing to the complete references as contained in other documents. It would be additionally useful to paraphrase some of the more arcane material in the vernacular.

3.7

Conditional uses can be hammered out by staff but should be required to be passed by the Planning Commission at least on their consent calendar. If the Planning Commission fails to approve the conditional use, staff is free to rework it or take it directly to Council *without PC endorsement*.

Many of the rules here need to be paraphrased in the vernacular, even if they are fully embedded, else they will never be vetted by anyone, e.g., "... the criteria set forth in WAC 173-27-160... "

Here is a transcript of my oral remarks at the recent public hearing.

Thank you for letting me speak.

I think for the Council, it's about legacy.

For the public, it's about being able to anticipate a marine waterfront, a beach if you will, where water meets earth in full view.

All over Puget Sound, the rest of the country, and the world, cities on seas are moving the opposite direction from the policies prescribed in the draft SMP before us. While they uncover and resurrect their shorelines, we're offering to seal ours shut, including the ultimate absurdity of meandering a public pathway through and around built structures on the upshore side. Yes, in buildings and in back of buildings!

The SMP is about balance among things like commerce, housing, and public places. We have some of that now but its skewed away from public uses. There is no balance in the urban core commercial areas, but there could be.

The Olympian editorial a few days ago excoriated the Friends of the Waterfront for the card they mailed out to 6000 Olympia households just before the 4th. An article posted by Olympian reporter, Matt Batchelor, two days ago on July 7th included many rebuttal statements by Bob Jacobs and is good reading for those wishing to understand this document. It's instructive to reflect on the pattern of the of the Olympian, i.e., promoting commercial projects and then deciding the public was right to decline them after all. Just a few years ago they supported building Larrida Passage on the isthmus and, if memory serves, selling off the Grassy Park to develop condominiums.

Mayor Buxbaum felt the photo illustrations on the postcard were misleading.

I disagree, but I would invite the City to show its own renderings to depict how the plan would affect the waterfront. (I insert here a suggestion that you peruse a copy of Tumwater's Captiol Boulevard Corridor Plan for a local example of how visuals consisting of photos, graphs, maps, diagrams and other miscellaneous graphics can inform, stimulate, and advance public engagement in the process of designing their community.) We have never been treated to any clarifying visuals, and our one attempt to provide the city with a sophisticated computer visualization tool was sabotaged.

None of us will be on the front lines as deciders or advocates when the results of this season's decisions will be experienced. Perhaps those for whom decisions are made today will not even miss what could have been. We have public treasures that people in our past had the vision to create and preserve: Sylvester Park, Heritage Park, the isthmus, the Grassy Park behind Percival Landing boardwalk – just to note a few in downtown Olympia.

Your decision, coming up in the not too distant future, *will indeed* define Olympia's waterfront for decades to come. Think of how you want to be remembered.

Thanks for listening.

My observations on the misuse of the Mithun visualization tool.

In mid-March of this year, we began to get glimpses of the view of our waterfront provided by the computer-based, Mithun visualization tool.

Councilmember Roe noted that, "It looks different." And when Councilmember Langer noted that it didn't look that much different, she noted that he hadn't attended the last two internal presentations.

The Mithun video needs to be slowed down and paused at frequent places to take in the gestalt of the visual impressions. It also needs to be modified so that you get a look over the WALL and up the front face of the buildings to get the full visual impact of the height differences.

Unfortunately, some waterfront property owners were given preferential access to preliminary versions of the Mithun presentation with probable opportunity for input affecting the final product. Even though Commissioner Ingman had been designated as one of the Planning Commission's official liaisons to the Mithun Project, he was rebuffed at every opportunity to view these preliminary "works-in-progress" and was never allowed to have any substantive input into the requirements phase.

As I had predicted in a February 19th email, "The point is that the results Keith Stahley and the Council liaison both described reflect requirements that were dramatically watered down from what was asked for *again* as recently as January 30th. I predict that the final Mithun offering will either not be presented to the full Council or, as now seems likely, it will be such a lightweight and unimpressive edition that it will be easy for the Council to discount its value at the Mayor's urging.

To know what Mithun or a number of other top architectural firms could produce in terms of a visualization / simulation experience and to watch this potential being squandered either deliberately or negligently is extremely frustrating."

As it actually evolved, "watered down" was a gross understatement. Most of the requirements that were provided to Mithun were incorrect, irrelevant, or distorted. Many of the visual elements of the presentation itself were negated by arbitrarily or erroneously applied land use restrictions, the inclusion of incorrect features, and a technical bias in the sight window perspective.

Here is a first impression critique of the presentation by one of the Planning Commission's member architects, who was not allowed to have substantive input during the project, even though he could have averted these problems.

MISREPRESENTATION of the WEST BAY VISUALIZATION

March 22, 2013

Why did the city staff concentrate the expenditure of public funds on the visualization of development codes and regulations for privatization, private development, and special interests

of private land owners, rather than on the visualization of required public land uses within the public setback?

Why did the Mayor involve “marketing studies” as a determinant for deciding local government land use requirements and public needs for the public setback distances towards enhancing juvenile salmon habitat, eel grass meadows, public shoreline treatments, vegetative conservation areas, walkways/bikeways, and public behavioral land uses along the shoreline?

Why did the city staff falsely claim that OPC recommended “offices” along the shoreline instead of “residential”?

Olympia Planning Commission’s public setback distance for Reach 3A:

Residential setback was 50’ (Highest priority: equal to “water oriented” land use.)

Office setback was 70’ setback (Lowest priority: equal to a utility building.)

OPC Recommendations, June 12, 2012, p.75

Note: The maximum residential density of one dwelling unit per acre applied to reaches Budd 2, Budd 3B, and Budd 3C **but not** reach 3A.

Why did the Mayor insist that the intended purpose of the visualization was for “private investors”; “form of development”; “what the development will bring forward”; and “development regulations” for private land owners, instead of informing the shoreline’s the public’s requirements and needs for public land uses within the public setback distance?

Why were representatives of the general public or members of the OPC not allowed to participate beforehand on programming the development of the visualization for the West Bay shoreline?

CONTRARY TO THE WEST BAY VISUALIZATION of REACH 3A, the OPC DID NOT RECOMMEND:

Armoring the public shoreline with retaining walls or rip-rap.

Eliminating “Vegetative Buffers” (treed and native under stories) or the “Vegetative Conservation Area” along shoreline edge.

Eliminating safety protection of small children, disabled persons, and elders through separating walkways and bikeways.

Eliminating consideration of sea-level rise forecasts.

Disguising city staff’s proposal is twice the height of OPC. (35’ versus 65’)

Disguising city staff’s proposal for non-water oriented commercial uses are more than twice as close to the shoreline as the OPC.

Walling-off and turning the community’s back to the waterfront as disguised in the visualization

by the narrow aperture and strategic tree placement.

Note that Councilmember Langer said, that the City Council and the Olympia Planning Commission's recommendations "look surprising similar". [City staff's visualization distorted the differences between the two recommendations which was not the purpose of the visualization's comparative analysis methodology.]

And finally, a note for those folks whose property holdings currently define our waterfront.

If you are a developer, builder or land owner and you contend it doesn't pencil-out..., prove it! I.E., you don't get to use that argument unless you show your work and share it with everyone else. The larger point is, "So what?!" Nobody ever guaranteed that you'd get rich or even make a profit investing in real estate. It's a crap shoot, just like the stock market or starting a business. Land use regulations are only a part of the speculation landscape that can change. How about interest rates, the cost of materials, labor, the market, etc? You gamble and sometimes you lose and sometimes you win.

I hope the public wins.

Walter R. Jorgensen
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"Increase..."

"Requiring that current and potential ecological functions be identified and understood..."

"Preventing, to the greatest extent practicable, cumulative impacts..."

Page 4-

If offsite mitigation is even allowed (which it shouldn't be), it should have to be completed before any of the development it's mitigating for begins, i.e., should always be advance mitigation. This is because the record of follow through implementation, i.e., making sure it gets done, is abysmal, something like 10-15%.

Page 4-2.2 & 2.3

How long has the "no net loss" provision been operable, i.e., maybe we should be reverting to some earlier time as the baseline. Why should continuous failure to meet the no net loss requirement result in the baseline being continually reset?

Page 23- 26 Cumulative impacts of cumulative effects

We can hope that this provision is stringently enforced to hold the purveyor's of individual projects feet to the fire.

According to REMA, "floodway" apparently doesn't include "those lands that can reasonably be expected to be protected..." This seems unnecessarily presumptive. Why should there be any expectation of protection until there is a tangible City policy on this issue?

(somewhat tongue-in-cheek)

Shorelands or Shoreland areas- With sea level rise, I wonder if we should require that the 200' line be advanced annually. The lateral distance will increase much faster than the vertical distance, depending on the specific slope. If we aren't going to update the SMP for 8 years, shouldn't we make some special provision for those areas that will have most likely become shorelands by then?

Page 27-

Visual Access- Regardless that the Mithun visualization tool was shamefully misused, you should require that it be used to determine a “view plane” over the City that accommodates views to and from the Capitol and various other view “targets” and vantage points. In so doing, you will discover that there is 4 to 5 times as much three dimensional building capacity in downtown, especially the “north Capital neighborhood” than you will need for several decades to come without violating the constraints of the “view plane.”

Page 28-

The substance, or at least the applicable portions, of all off-page references should be embedded in this document with citations and electronic links pointing to the complete references as contained in other documents. It would be additionally useful to paraphrase some of the more arcane material in the vernacular.

3.7

Conditional uses can be hammered out by staff but should be required to be passed by the Planning Commission at least on their consent calendar. If the Planning Commission fails to approve the conditional use, staff is free to rework it or take it directly to Council *without PC endorsement*.

Many of the rules here need to be paraphrased in the vernacular, even if they are fully embedded, else they will never be vetted by anyone, e.g., “... the criteria set forth in WAC 173-27-160...”

Here is a transcript of my oral remarks at the recent public hearing.

Thank you for letting me speak.

I think for the Council, it's about legacy.

For the public, it's about being able to anticipate a marine waterfront, a beach if you will, where water meets earth in full view.

All over Puget Sound, the rest of the country, and the world, cities on seas are moving the opposite direction from the policies prescribed in the draft SMP before us. While they uncover and resurrect their shorelines, we're offering to seal ours shut, including the ultimate absurdity of meandering a public pathway through and around built structures on the upshore side. Yes, in buildings and in back of buildings!

The SMP is about balance among things like commerce, housing, and public places. We have some of that now but its skewed away from public uses. There is no balance in the urban core commercial areas, but there could be.

The Olympian editorial a few days ago excoriated the Friends of the Waterfront for the card they mailed out to 6000 Olympia households just before the 4th. An article posted by Olympian reporter, Matt Batchelder, two days ago on July 7th included many rebuttal statements by Bob Jacobs and is good reading for those wishing to understand this document. It's instructive to reflect on the pattern of the of the Olympian, i.e., promoting commercial projects and then deciding the public was right to decline them after all. Just a few years ago they supported building Larrida Passage on the isthmus and, if memory serves, selling off the Grassy Park to develop condominiums.

Mayor Buxbaum felt the photo illustrations on the postcard were misleading.

I disagree, but I would invite the City to show its own renderings to depict how the plan would affect the waterfront. (I insert here a suggestion that you peruse a copy of Tumwater's Capitol Boulevard Corridor Plan for a local example of how visuals consisting of photos, graphs, maps, diagrams and other miscellaneous graphics can inform, stimulate, and advance public engagement in the process of designing their community.) We have never been treated to any clarifying visuals, and our one attempt to provide the city with a sophisticated computer visualization tool was sabotaged.

None of us will be on the front lines as deciders or advocates when the results of this season's decisions will be experienced. Perhaps those for whom decisions are made today will not even miss what could have been. We have public treasures that people in our past had the vision to create and preserve: Sylvester Park, Heritage Park, the isthmus, the Grassy Park behind Percival Landing boardwalk – just to note a few in downtown Olympia.

Your decision, coming up in the not too distant future, *will indeed* define Olympia's waterfront for decades to come. Think of how you want to be remembered.

Thanks for listening.

My observations on the misuse of the Mithun visualization tool.

In mid-March of this year, we began to get glimpses of the view of our waterfront provided by the computer-based, Mithun visualization tool.

Councilmember Roe noted that, "It looks different." And when Councilmember Langer noted that it didn't look that much different, she noted that he hadn't attended the last two internal presentations.

The Mithun video needs to be slowed down and paused at frequent places to take in the gestalt of the visual impressions. It also needs to be modified so that you get a look over the WALL and up the front face of the buildings to get the full visual impact of the height differences.

Unfortunately, some waterfront property owners were given preferential access to preliminary versions of the Mithun presentation with probable opportunity for input affecting the final product. Even though Commissioner Ingman had been designated as one of the Planning Commission's official liaisons to the Mithun Project, he was rebuffed at every opportunity to view these preliminary "works-in-progress" and was never allowed to have any substantive input into the requirements phase.

As I had predicted in a February 19th email, "The point is that the results Keith Stahley and the Council liaison both described reflect requirements that were dramatically watered down from what was asked for *again* as recently as January 30th. I predict that the final Mithun offering will either not be presented to the full Council or, as now seems likely, it will be such a lightweight and unimpressive edition that it will be easy for the Council to discount its value at the Mayor's urging.

To know what Mithun or a number of other top architectural firms could produce in terms of a visualization / simulation experience and to watch this potential being squandered either deliberately or negligently is extremely frustrating."

As it actually evolved, "watered down" was a gross understatement. Most of the requirements that were provided to Mithun were incorrect, irrelevant, or distorted. Many of the visual elements of the

presentation itself were negated by arbitrarily or erroneously applied land use restrictions, the inclusion of incorrect features, and a technical bias in the sight window perspective.

Here is a first impression critique of the presentation by one of the Planning Commission's member architects, who was not allowed to have substantive input during the project, even though he could have averted these problems.

MISREPRESENTATION of the WEST BAY VISUALIZATION

March 22, 2013

Why did the city staff concentrate the expenditure of public funds on the visualization of development codes and regulations for privatization, private development, and special interests of private land owners, rather than on the visualization of required public land uses within the public setback?

Why did the Mayor involve “marketing studies” as a determinant for deciding local government land use requirements and public needs for the public setback distances towards enhancing juvenile salmon habitat, eel grass meadows, public shoreline treatments, vegetative conservation areas, walkways/bikeways, and public behavioral land uses along the shoreline?

Why did the city staff falsely claim that OPC recommended “offices” along the shoreline instead of “residential”?

Olympia Planning Commission’s public setback distance for Reach 3A:

Residential setback was 50’ (Highest priority: equal to “water oriented” land use.)

Office setback was 70’ setback (Lowest priority: equal to a utility building.)

OPC Recommendations, June 12, 2012, p.75

Note: The maximum residential density of one dwelling unit per acre applied to reaches Budd 2, Budd 3B, and Budd 3C **but not** reach 3A.

Why did the Mayor insist that the intended purpose of the visualization was for “private investors”; “form of development”; “what the development will bring forward”; and “development regulations” for private land owners, instead of informing the shoreline’s the public’s requirements and needs for public land uses within the public setback distance?

Why were representatives of the general public or members of the OPC not allowed to participate beforehand on programming the development of the visualization for the West Bay shoreline?

CONTRARY TO THE WEST BAY VISUALIZATION of REACH 3A, the OPC DID NOT RECOMMEND:

Armoring the public shoreline with retaining walls or rip-rap.

Eliminating “Vegetative Buffers” (treed and native under stories) or the “Vegetative Conservation Area” along shoreline edge.

Eliminating safety protection of small children, disabled persons, and elders through separating walkways and bikeways.

Eliminating consideration of sea-level rise forecasts.

Disguising city staff's proposal is twice the height of OPC. (35' versus 65')

Disguising city staff's proposal for non-water oriented commercial uses are more than twice as close to the shoreline as the OPC.

Walling-off and turning the community's back to the waterfront as disguised in the visualization by the narrow aperture and strategic tree placement.

Note that Councilmember Langer said, that the City Council and the Olympia Planning Commission's recommendations "look surprising similar". [City staff's visualization distorted the differences between the two recommendations which was not the purpose of the visualization's comparative analysis methodology.]

And finally, a note for those folks whose property holdings currently define our waterfront.

If you are a developer, builder or land owner and you contend it doesn't pencil-out..., prove it! I.E., you don't get to use that argument unless you show your work and share it with everyone else. The larger point is, "So what?!" Nobody ever guaranteed that you'd get rich or even make a profit investing in real estate. It's a crap shoot, just like the stock market or starting a business. Land use regulations are only a part of the speculation landscape that can change. How about interest rates, the cost of materials, labor, the market, etc? You gamble and sometimes you lose and sometimes you win.

I hope the public wins.

Walter R. Jorgensen
waltjorgensen@comcast.net
360-489-0764 (home)
360-529-1581 (cell)

Janet Sanders

From: CityCouncil
Sent: Tuesday, July 23, 2013 4:58 PM
To: jcbsbonnie@aol.com
Cc: Councilmembers; Steve Hall; Keith Stahley; Todd Stamm; Nancy Lenzi; Janet Sanders
Subject: RE: Comments on the SMP Draft

Thank you for your comments. I will forward them on to all Councilmembers and appropriate staff.

Mary Nolan
Executive Secretary
City of Olympia
PO Box 1967
Olympia WA 98507
360-753-8244

Please note all emails may be considered as public records.

From: jcbsbonnie@aol.com [<mailto:jcbsbonnie@aol.com>]
Sent: Tuesday, July 23, 2013 4:57 PM
To: CityCouncil
Subject: Comments on the SMP Draft

July 23, 2013

Dear City Council Members,

"If people were angels we would not need government." Benjamin Franklin.

We, the citizens, trust you have our best interest at heart. We have no quarrel with developers nor business people. They are in the business of making money. But government, at its best, works for the common good. The folk who trust you, pay their taxes, work, volunteer, and care for families, deserve equal consideration with those who "have a dog in the race" -- developers, land owners, real estate professionals, business interests.

As we met with all of you over the past months regarding Olympia's Shoreline Master Program we shared our values:

- 1 We spoke of quality waterfront access for everyone - a broad trail - with adjacent building heights stair stepped back for openness.
2. We spoke of contouring and native plants to provide environmental restoration and beauty.
3. We spoke of providing space for higher tides and sea level rise protection.
4. We spoke of appropriate development to support a healthy economy.

Those seem quite reasonable and balanced. We believe now, as we did then, that the average Olympia resident holds those same values and would approve protections to insure them. And most likely expect the SMP has those protections built in. And yet this draft proposes to bargain away the first three for development.

As we sat in the Council Chambers we were indeed shocked to hear that Zero setbacks had been inserted in to the draft at the last minute, after years ... not months ... but years of discussion re. setbacks. Yes, this could mean buildings right up to water's edge with all sorts of non-water-dependent uses. We learned later, from city staff, it could even mean the BIG W could be in or behind the buildings.

All the SMP drafts were published without a single picture depicting anything. And yet Friends of the Waterfront's attempt to inform the people of Olympia of these last minute insertions so they could become meaningfully involved was mocked.

The population in Olympia & Thurston County is going to continue to grow and grow and grow and grow.

The need for quality waterfront access, particularly in the State Capitol, is going to grow with it.

Updates to the SMA are few and far between. This council has the opportunity to set the stage for years to come.

I urge you to keep in mind the average citizen as you decide your legacy.

Respectfully,

Bonnie Jacobs

Janet Sanders

From: JacobsOly@aol.com
Sent: Monday, July 22, 2013 8:39 PM
To: Shoreline Update
Cc: jcbsbonnie@aol.com
Subject: FOW submission for SMP record
Attachments: Cover Letter.doc; FOW SMP General.doc; FOW SMP Table 6.1.doc; FOW SMP Table 6.2.doc; FOW SMP Table 6.3.doc

Planning Staff:

I will be delivering the Friends of the Waterfront comments for the record on the SMP tomorrow.

Meantime, for your convenience, here are those comments in electronic form.

Best,

BobJ

Friends of the Waterfront

720 Governor Stevens Ave. SE
Olympia, WA 98501

July 22, 2013

Olympia City Council
P. O. Box 1967
Olympia, WA 98507

Dear Councilmembers:

Attached are the Friends of the Waterfront comments on the July 9, 2013 Proposed Public Hearing Draft of the Olympia Shoreline Master Program.

These comments are in four separate sections:

- Table 6.1
- Table 6.2
- Table 6.3
- General

Our comments were developed by a committee of FOW members who met daily over the past week. Committee members have followed the SMP development process closely since it began several years ago, and are therefore quite conversant with it.

Because of the complexity of this document, and because some significant changes were made recently, our understanding of the document may be incomplete. Therefore, some details of our comments may miss the mark a bit.

However, the overall thrust of our position is clear – on the urban intensity reaches that are in contention, Olympia deserves a waterfront that has an open, human scale feel, with adequate space for future public needs. This configuration represents a balanced approach that will be beneficial for all interests, both private and public.

As always, we look forward to discussing our recommendations with councilmembers and staff, as well as any other parties.

Sincerely,

Bonnie Jacobs, Coordinator

352-1346

Friends of the Waterfront

Suggestions regarding the July 9, 2013 Proposed Public Hearing Draft

General

Suggested for Substantive Changes

1. We do not believe that water related uses should have priority in the Urban Intensity area. They just don't seem to fit the Olympia waterfront. Therefore, we recommend that the first full sentence at the top of page 9 be changed to read "These types of uses should be allowed within the Urban Intensity environment, with preference given to water dependent and water enjoyment uses."
2. We believe that all mitigation should occur on-site with the exception of Port Marine Industrial which should occur in Budd Inlet within the city limits. There are special benefits to on-site mitigation, including better likelihood of enforcement and public education. This applies to sections 2.5 – 2.11 (pages 6-9), and also to section 3.21 starting on page 35. Specifically, we suggest that on page 37, 3.21.I.3, first line, "Urban Intensity, Marine Recreation" should be stricken, leaving just "Port Marine Industrial Environment".
3. We suggest that section 2.15B on page 10 be changed to require that public access be incorporated into all new development or redevelopment, not just that which creates demand for public access. Therefore we suggest the deletion of the following words: "if it creates or increases a demand for public access." This would comply with the requirements of the Shoreline Management Act, RCW 90.58.020, paragraph 4, which gives priority to "... developments that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state".
4. We suggest that in section 2.19A on page 12, wording be added to indicate that iconic views such as those of the Capitol and Olympics be protected.
5. We suggest that in section 2.19B on page 12, last line, the word "development" be deleted and the words "upland areas" be substituted. It is not views of the development from the water that we are interested in protecting, rather views of the whole upland area.
6. It appears that sea level rise is not dealt with in this draft. It definitely should be because the SMP is supposed to take a long-term perspective, and Olympia's analysis of sea level rise indicates that actions will need to be taken to deal with this global phenomenon. The SMP is invalid unless it deals with sea level rise.
7. On page 30, section 3.9, we believe that the expansion of nonconforming uses should not be allowed.
8. On page 31, 3.12C, we suggest that anyone, not just an interested party, should be able to request a public hearing. After all, the waterfront is a special area that belongs to and affects all of us.

9. On page 44, section 3.33C, 33% and 25% seem far too high. We believe that VCAs should be kept as “pure” as possible, with these percentages reduced substantially in order to improve the functioning of the VCAs. Facilities should be landward of VCAs to the extent possible.

10. On page 48, section 3.41C, we do not understand the need for structures in the VCAs. We believe structures should be landward of VCAs.

11. We understand that the city’s development standards call for “commuter multi-user trails” to be 12 feet wide, but in a 22 foot wide corridor (five-foot shoulders). On page 49, section E.4, both the trail width and the corridor width should be specified. Also page 50, section 8.

12. On page 50, section 8, there is protection for encroachments in VCAs but not for encroachments in setbacks. This should be corrected.

13. On page 59, section B.11, a 30-foot setback for marina buildings is inadequate, as demonstrated by the Swantown Marina restrooms. Setbacks should be at least 50 feet.

14. We suggest that section 3.52B on page 61 be amended to specify that it applies only to light industrial uses such as coffee roasters. We believe that non-water related and non-water dependent heavy industrial uses do not belong in the shoreline jurisdiction.

15. We suggest that sanitary sewer outfalls be removed from section 3.52G.5, page 61. Sanitary sewage should be processed by LOTT.

16. On page 80, sections 3.78B and C are missing text.

17. On page 82, we suggest deleting Section 3.81.A.2.b. New overwater structures are not allowed, so expansion of existing buildings outside their existing envelopes should not be allowed.

18. The question of SMA/SMP regulation vs. local regulation needs to be addressed squarely. We do not agree with the suggestion by a majority of the council that the SMP should be kept weak so that regulation in the shoreline jurisdiction can be carried out via local regulations without DOE involvement. We need the state’s support for our community’s vision of its redeveloped waterfront. The state’s assistance in enforcement and litigation is crucial. Furthermore, we believe the approach suggested by the council majority would violate the Shoreline Management Act.

Suggested for Substantive Consideration

1. Both the opening “Note to the reader” and page 1 refer to “page 88. This is confusing because there is no page 88 in this document. This should be explained or corrected.

2. Both the opening “note to the reader” and page 1 say that certain “SMP-Related Code Amendments . . . are NOT to be part of the Shoreline Program”. We believe this is an error.

3. We recommend that in Section 2.15G on page 10, the word “minimize” be changed to “limit”. Read literally, “minimize” is very nearly synonymous with “eliminate”, which is too strong for this provision.

4. Remove public golf courses from the definition of “water-enjoyment use”, page 27. We cannot think of any place where public golf courses could be placed in the shoreline jurisdiction.

5. We suggest that Section 3.31, page 43, be carefully reconsidered. This draft seems to allow activities in VCAs that are inconsistent with the function and purpose of VCAs and should be located behind them, e.g., “loading equipment for transport of logs” and “picnic shelters”.

Suggested for a More Understandable Document

1. We believe that the SMP should be made more readable and useable by placing general orientation information at the beginning, such as:

a. an introduction page that provides an overview.

b. definitions.

c. an enlarged version of the shoreline jurisdiction map (page 34), including reach designations.

d. Table 6.2, changed as indicated in our page for that table (one line for each reach).

e. An information page for each reach, to include (1) reach number, (2) reach map, (3) identification of existing parcels and buildings, (4) footprints of existing buildings, (5) reach boundaries in latitude and longitude, as well as narrative description, (6) photographs of existing conditions, aerial photograph(s) appropriately annotated, and (7) graphic representation of the reach at maximum build-out under the conditions of the proposed SMP and other applicable regulations (we note that photo simulations are required of applicants under section 3.37, so we assume this would not be onerous).

2. Add definitions for “commercial”, “water oriented use”, “floating homes,” and “advance mitigation”.

3. If the smallest setback allowed under all current regulations taken together is 30 feet, as has been stated, then it would help if the SMP setbacks were 30 feet instead of zero feet. Alternatively, a footnote to this effect would add clarity. [This assumes the current draft, not our suggestion to adopt wider setbacks.]

4. In section 2.20A, page 12, we suggest adding the word “negative” before “impacts” for clarity.

5. Add a definition for “physical access” (as distinguished from public access), and use these terms consistently throughout the SMP.

6. In the definitions of “water-dependent uses”, “water-related uses”, “water-enjoyment uses”, and “water-oriented uses”, please provide the actual definitions of the terms, not just the lists of examples given on page 27. This would make the document far more understandable.

7. On page 31, section 3.13C, the last word is “board”. We believe this is an error, because we could find no definition of or reference to any “board” in the document.

8. On page 49, section E.3, line 3, refers to “shoreline reduction”. Should this be “setback reduction”, or is another definition needed?

9. Section 3.48B on page 60 is unclear to us. We don’t know what sort of situation this section would cover, or where.

Suggested Edits

1. On page 21, line 5, the code reference appears to be incorrect – we think it should be 173-26-030.

FOW – SMP Recoms – General -- July 2013

Final (revised 7-21-13)

Friends of the Waterfront

Suggestions regarding the July 9, 2013 Proposed Public Hearing Draft

Table 6.1, pages 51 and 52

Suggested for Substantive Changes

None

Suggested for Substantive Consideration

1. In Table 6.1, page 51, under Shoreline Residential/Commercial, please consider changing from conditional to prohibited. Commercial activities seem inappropriate in the East Bay Drive residential neighborhood.
2. In Table 6.1, page 52, please consider allowing residential uses under Marine Recreation. Many Olympia residents find the concept of housing in this reach attractive, either as mixed use or stand-alone.
3. In Table 6.1, p. 52, under Transportation, parking as an ancillary use seems appropriate. Parking as a primary use does not seem appropriate.

Suggested for a More Understandable Document

1. In Table 6.1, page 51, it is unclear what kinds of uses are contemplated under Industrial for Urban Intensity and Marine Recreation. Are these appropriate? Should they perhaps be limited to light industrial?
2. In Table 6.1, page 52, under "Other", we suggest striking "Buildings, Structures, and" because these words seem to be redundant with the heading. We also suggest adding a couple of examples.

Suggested Edits

None

Friends of the Waterfront

Suggestions regarding the July 9, 2013 Proposed Public Hearing Draft

Table 6.2, page 53.

Suggested for Substantive Changes

1. In Table 6.2, page 53, Natural, we suggest changing the maximum height from 20 feet to 15 feet, which seems adequate for the types of structures we would expect within the shoreline jurisdiction of Priest Point Park, e.g., picnic shelters.

2. In Table 6.2, page 53, Waterfront recreation, we suggest changing the maximum standard building heights from 42 feet and 35 feet to 15 feet. We also suggest eliminating the maximum height with VCA bonus. These areas house only public parks, and buildings taller than 15 feet do not seem appropriate within the shoreline jurisdiction (with the exception of the proposed carillon).

3. In Table 6.2, page 53, we suggest changing the allowed heights for Urban Intensity as follows:

Capitol Lake – no changes

Reach 3A -- Standard Height 35 feet; 25 feet within 75 feet of OHWM.

Bonus Height 45 feet; 25 feet within 75 feet of OHWM.

Reaches 4, 5A, and 6A – Standard Height 35 feet waterward of streets, 45 feet remainder.

Suggested for Substantive Consideration

None

Suggested for a More Understandable Document

As a general matter, we find tables more understandable and accessible than narrative. However, we suggest that Table 6.2 on page 53 be re-formatted for clarity. Specifically, we suggest one line for each reach, with columns for reach number, shoreline designation, maximum standard building height, maximum building height with VCA bonus, and maximum building height for the adjacent aquatic area. Heights for adjacent aquatic areas would presumably not all be 20 feet.

Suggested Edits

None

Friends of the Waterfront

Suggestions regarding the July 9, 2013 Proposed Public Hearing Draft

Table 6.3, pages 54-56 -- July 2013

Suggested for Substantive Changes

1. We suggest that the minimum setback from the OHWM under any conditions be 50 feet, except for the Marine Terminal (Budd 5B), which should remain at zero, (2) Ward Lake and Ken Lake, which can remain as in the draft, and (3) shelters for public access to the water. This is the minimum amount of space needed for future public uses such as trails, flood control, and vegetative restoration. It is also the minimum space needed to provide for a human-scale built environment (along with limited adjacent heights and building step-backs).

2. In the East Bay UI area (Reach 6A), we recommend a 30-foot setback from Marine Drive.

Suggested for Substantive Consideration

None

Suggested for a More Understandable Document

1. We suggest that the setback reduction methodology be explained in the document. It is unclear what the percentages in the table mean.

Suggested Edits

None

Janet Sanders

From: Deanna Gonzalez <dgonzalez@pwblawgroup.com>
Sent: Tuesday, July 23, 2013 4:17 PM
To: Shoreline Update
Cc: Keith Stahley; Tom Morrill; georgecindy.smith@comcast.net;
westbaymarina@hotmail.com; kevin@stormans.com; vidafarler@msn.com;
victorz@imagesourceinc.com; zvirzdys@gmail.com; akatomz@gmail.com; Heather
Burgess; Kelly Wood
Subject: Public Comment - July 9, 2013 Draft Shoreline Master Program Proposal
Attachments: PublicComment07.09.13DraftSMP.pdf

Shoreline Update

On behalf of Heather Burgess, attached please find correspondence regarding the above-referenced matter.

Thank you,
Deanna

Deanna Gonzalez
Legal Assistant | Phillips Wesch Burgess PLLC
Olympia: 360-742-3500 | 724 Columbia St. NW Suite 140 | Olympia WA 98501
Tacoma: 253-292-6640 | 505 Broadway St. Suite 408 | Tacoma WA 98402
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July 23, 2013

TRANSMITTED VIA ELECTRONIC MAIL
shorelineupdate@ci.olympia.wa.us

Mayor Stephen H. Buxbaum
Councilmember Steve Langer
Councilmember Nathaniel Jones
Councilmember Karen Rogers
Councilmember Julie Hankins
Councilmember Jeannine Roe
Councilmember Jim Cooper
Olympia City Council
City Hall
601 – 4th Avenue East
Olympia, Washington 98501

**Re: Public Comment on City of Olympia July 9, 2013 Draft Shoreline Master
Program Proposal**

Dear Mayor Buxbaum and Councilmembers Langer, Jones, Rogers, Hankins, Roe, and Cooper:

This firm represents the **Olympia Yacht Club, West Bay Marina Associates, Stormans, Inc., LABAS 612 LLC** (owners of the Image Source building), and the **Thurston County Chamber of Commerce** with respect to the City's Shoreline Master Program ("SMP") update.¹

As expressed at the public hearing on July 9, 2013, my clients sincerely appreciate the hard work of the Council and the City Staff on the SMP to date. The July 9, 2013 draft SMP

¹ For purposes of the record, this comment letter is provided in addition to and in support of testimony given by members and representatives of these entities previously provided at the City Council July 9, 2013 public hearing on the draft SMP. Any and all prior written comment and testimony on the January 8, 2013 draft SMP provided by the Olympia Yacht Club, West Bay Marina Associates, LABAS 612 LLC, Stormans, Inc., and the Thurston County Chamber of Commerce, or by representatives thereof, is also hereby incorporated by reference to the extent consistent with the comments provided herein. Since our last written comments and materials were submitted, the Olympia Yacht Club achieved "clean marina" certification. A copy of the Clean Marina notice is included with this comment letter as **Exhibit 1**.

(“SMP”) represents a significant improvement over previous drafts, and many of the issues raised in our prior comments have been addressed. We offer the following written comments and proposed revisions in an effort to assist the Council and Staff in addressing those limited areas where the draft SMP requires additional clarity and/or refinement.

I. Shoreline Setbacks and Setback Reduction Provisions

We strongly support the flexibility provided by the setback reduction incentives included in the draft SMP. *See* OMC 18.34.620(D) and Table 6.3. Washington cities have increasingly incorporated innovative provisions with respect to setbacks in updates to their Shoreline Master Programs, and the Department of Ecology has approved them. Appropriately applied, these types of provisions provide flexibility to property owners while assuring the environmental protections necessary to achieve no net loss of shoreline ecological functions and values.

For the practical and policy reasons outlined below, however, we urge the Council to substantially revise the setback reduction provisions in a way that will:

- establish a middle ground between the greater setbacks being pursued by some members of the community and the “zero-foot” setbacks represented in the current draft SMP;
- simplify and expand the setback reduction provisions to reduce administrative burden and increase the likelihood that the provisions will ultimately be used; and
- more closely align the incentive standards with ecological analyses underlying the City’s SMP, including the Shoreline Inventory and the Cumulative Impacts Assessment, as well as site-specific ecological evaluations in the record.

To achieve these objectives, we urge the Council to adopt the proposed comprehensive revision to the setbacks and setback reduction provisions found at **Attachment A**. Our proposal was drafted in coordination with both the Port of Olympia and the West Bay Neighborhood Association, and both of these entities support and endorse the proposal.

Our proposed comprehensive revision addresses the issues identified above by making the following changes:

A. Limiting Zero-Foot Setbacks to Water Dependent Uses

The SMA and its implementing guidelines set out a “tiered” system of preferred uses that specifically prioritizes water-dependent uses. *See* RCW 90.58.020 and WAC 173-26-

241. Our proposal achieves this regulatory requirement by eliminating “zero-foot” setbacks for all but water-dependent uses and their associated accessory structures (defined as structures accessory to and associated with the primary water-dependent use). Water-dependent uses and their accessory structures would not require use of setback reductions to achieve a zero-foot setback, but would still be required to mitigate identified environmental impacts to achieve no net loss of shoreline functions and values and provide public access subject to the requirements set out in OMC 18.34.450.

Under our proposal, the next layer in the regulatory “tier,” water-enjoyment and water-related uses, as well as mixed uses that incorporate these water-oriented uses, would have a maximum setback of 50 feet in the downtown marine shoreline areas, but can reduce that to a minimum setback of 30 feet by selecting from a “menu” of setback incentives. Non-structural components of these developments, such as parks, plazas, and outdoor seating areas would be allowed to encroach an additional 15 feet into the minimum setbacks, again through the use of incentives. Finally, stand-alone, non-water-oriented uses in the shoreline would begin at a maximum setback of up to 100 feet, but could achieve a minimum 50-foot setback through application of incentive provisions.

Our proposed approach to setbacks has ample support in the record. As we have stressed in our prior written comments and testimony at public hearings, the SMP must be driven by best available science and from a baseline that begins with the shoreline inventory. *See* RCW 90.58.100(1); WAC 173-26-201(2)(a). Ecology cannot approve master program provisions not based upon solid, systematic scientific and technical information found in the record. *Id.* The 30-foot minimum structural setbacks in our proposal satisfy this requirement as they are consistent with the City’s Shoreline Inventory and Cumulative Impacts Assessment, as well as site-specific ecological analyses submitted as part of the record. As a result, in addition to representing a practical and reasonable compromise between competing public visions of appropriate setbacks on Olympia’s waterfront, our approach is consistent with the best available science in the record.

B. Simplifying Administration and Adding Proven Incentives

The current draft SMP’s menu of setback incentives is too limited, and the formula for achieving and incentivizing the reductions using these incentives is too complex. In order to achieve the minimum setback under the current draft, for example, properties must apply an entire series of mitigation measures. On some sites, the required mitigation measures are not practical or feasible to achieve. As a result, only a very limited number of properties would be able to and benefit from the maximum incentives. Therefore, it seems unlikely that future development projects would seek to implement the setback incentives as currently proposed.

Our proposed alternative attempts to solve this critical problem through a number of means. First, we propose expanding the “menu” of incentive options in the SMP to include stormwater retrofit and use of Low Impact Development techniques. Importantly, in both

instances, developers would receive setback reductions only by going beyond what is and can be required under applicable City standards in place at the time of development. As noted by Dr. Lyndon Lee, an experienced ecologist and nationally recognized expert, the application of such “engineered” solutions is more effective than VCAs and setbacks in achieving environmental benefits in urbanized settings where large setbacks are impractical and inappropriate due to existing development and transportation infrastructure. Dr. Lee’s report can be found at Exhibit 1 to our February 5, 2013 comment letter, and is incorporated herein by reference.

Next, our proposal greatly simplifies the amounts of setback reductions available through the various incentives. Rather than apply a system of percentages where maximum setback reductions are achievable only through application of essentially all of the incentive provisions, at varying percentages, our proposal assigns a simple, defined, setback reduction that can be granted for each type of incentive. The property owner can then choose a combination of one or more of these incentives to reduce up to no less than minimum setback for the proposed use. For example, under our approach, a proposed water-enjoyment use in the Budd-4 reach could achieve the maximum 30-foot setback by removing hard shoreline armoring and eliminating an existing “piped” stormwater discharge. Alternatively, the same development could achieve the same setback reduction by providing vegetative restoration (on- or off-site) and using Low Impact Development techniques. This “menu”-based approach reduces complexity and provides defined ecological outcomes for the City, while also allowing property owners to apply incentives that most feasibly fit their property and project.

C. Tying Setback Reduction Incentives to Ecological Impacts of Proposed Development

Our proposal also addresses and resolves the significant legal issues associated with the draft SMP’s requirement to provide physical public access as a condition of development by tying setback reduction incentives only to the ecological impacts of proposed development.

As currently drafted, the SMP incentive provisions include a requirement for projects to provide physical public access through development of a public trail. See OMC 18.34.620(D) and Table 6.3. Federal law flatly prohibits the City from requiring public access to private property as a condition of development. See *Nollan v. California Coastal Comm.*, 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 2d. 677 (1987); *Dolan v. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed. 2d 304 (1994); *Isla Verde Intern. Holdings, Ltd. v. City of Camas*, 147 Wn. App. 454, 196 P.3d 719 (2008); *Citizens Alliance for Property Rights v. Sims*, 145 Wn. App. 649, 187 P.3d 786 (2008). Public access may only be lawfully required under these standards to the extent the specific use creates a demand for access to the general public in excess of customer and client needs - a condition that very rarely exists in practice - and which certainly does not result solely from a setback reduction.

Even if property owners were willing, in principle, to “trade” providing public access for the benefit of a setback reduction, in the recently decided case of *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586 (2013), the United States Supreme Court strongly reiterated that this type of regulatory practice violates the doctrine of unconstitutional conditions. The Court observed:

“... land-use permit applicants are especially vulnerable to the type of coercion that the unconstitutional conditions doctrine prohibits because the government often has broad discretion to deny a permit that is worth far more than property it would like to take. By conditioning a building permit on the owner’s deeding over a public right-of-way, for example, the government can pressure an owner into voluntarily giving up property for which the Fifth Amendment would otherwise require just compensation. See *id.*, at 384, 114 S. Ct. 2309; *Nollan*, 483 U.S., at 831, 107 S. Ct. 3141. So long as the building permit is more valuable than any just compensation the owner could hope to receive for the right-of-way, the owner is likely to accede to the government’s demand, no matter how unreasonable. Extortionate demands of this sort frustrate the Fifth Amendment right to just compensation, and the unconstitutional conditions doctrine prohibits them.”

Koontz, 133 S. Ct. at 2594-95.

If the City wishes to develop a public trail along the shoreline, then it needs to acquire the property to do so and pay the property owners just compensation. The City cannot simply impose this requirement as a condition of development without nexus and proportionality between the condition and the impact of the proposed development. In light of this legal constraint, our proposal ties incentives for providing public access opportunities only to West Bay, where height incentives are available for development of public facilities in existing City plans, and increased demand for shoreline access could result from the increased density that will result. As the City has made a clear policy choice in the draft SMP not to allow increased building heights in other areas of the shoreline, no other area outside of West Bay is appropriate for this type of requirement or condition.

D. Providing Relief to Shallow Parcels

A number of parcels on Olympia’s shorelines are shallow and bounded by public streets or other site restrictions. Setback and VCA provisions on these properties, when combined with other site restrictions, can render redevelopment or expansions at these properties impossible, with the only recourse being an expensive and uncertain process for variance of SMP provisions. Our proposal includes a “shallow lot” exception that provides relief to these properties and appropriate incentives for the redevelopment of impacted areas.

II. West Bay Drive Parallel Shoreline Environmental Designations

The draft SMP retained the “Waterfront Recreation” Shoreline Environmental Designation (“SED”) along West Bay Drive from the Fourth Avenue Bridge to roughly the Reliable Steel property just north of West Bay Park. The draft SMP attempts to address concerns raised regarding the appropriateness of the Waterfront Recreation designation to the developed areas in this reach by terminating the setbacks and VCAs at the eastern edge of West Bay Drive.

We greatly appreciate the Council’s and Staff efforts in this regard. However, the effort does not go far enough, and significant concerns remain.

The Waterfront Recreation SED is among the most restrictive of shoreline designations in terms of both setbacks *and* use regulations. Despite the setback and VCA limitations in the present draft, the Waterfront Recreation designation strictly prohibits all non-water-oriented commercial uses, as well as all residential uses. While such use limitations may make sense for the areas that are currently (or planned to be) utilized for West Bay Park, the draft SMP designates large areas of existing development within the Waterfront Recreation designation that are not included in current or future plans for recreational use.

Specifically, the designation sweeps up several large mixed-use buildings waterward of West Bay Drive from the Harrison Avenue traffic circle to roughly Jackson Avenue NW (extended), as well as the mixed-use buildings immediately north of West Bay Park and upland of West Bay Drive (1107 and 1115 West Bay Drive). Inclusion of these areas within Waterfront Recreation is inconsistent with the current long-range planning for West Bay, including the latest draft of the Comprehensive Plan, and runs contrary to the stated policies of the Waterfront Recreation designation within the draft SMP.

The fix is simple. The Council can limit the Waterfront Recreation SED to only those areas along West Bay Drive that are actually intended to be used for recreational purposes. With only minimal modifications to the SMP, this can be accomplished via a parallel shoreline designation that applies an Urban Intensity designation for the areas of existing high-intensity development while preserving the remaining areas as Waterfront Recreation.

III. Non-Conforming Structures and Uses

We appreciate and support the efforts of the Council and Staff to strengthen and clarify the treatment of structures and uses that will be rendered non-conforming upon adoption of the updated draft SMP. The revised provisions are greatly improved from previous drafts and cover much of the ground necessary to implement the Council’s direction that the draft SMP should provide property owners with the ability to continue, repair, remodel, and restore their existing uses and structures. The recent destruction of the Oyster House drives home the importance of having non-conforming use and structure provisions

that allow property owners, and the businesses and jobs they support, to recover quickly in the event of disaster.

However, because the SMP is intended to guide the City and impacted property owners well into the future, we urge the City to adopt the specific edits to the draft SMP's non-conforming structure and use provisions found in **Attachment B** to provide absolute clarity with regard to future treatment of non-conforming structures. Our proposed revisions accomplish the following:

1. In order to avoid discouraging beautification or modernization projects on existing structures, OMC 18.34.900(A) and .910(A)(1)(c) should be amended to clarify that structures rendered non-conforming or housing a non-conforming use can be "repaired, remodeled, and/or restored" so long as the repair, remodel, or restoration does not increase the structural non-conformity or expand the non-conforming use.

2. To effectuate the Council's direction that non-conforming structures be continued, repaired, remodeled, and restored without condition, OMC 18.34.910(A)(3) should be amended to eliminate the possibility that such repair work can be conditioned upon the provision of a VCA. To avoid confusion and redundancies, OMC 18.34.910(A)(3) should also be amended to remove the reference to non-conforming structure provisions of the Critical Areas Ordinance.

3. As currently drafted, OMC 18.34.920 does not expressly permit existing non-conforming uses that are unintentionally damaged or destroyed to be re-established following destruction. The current provisions also consider a use abandoned following cessation of the use for twelve (12) consecutive months, regardless of whether cessation of the use was due to accidental destruction or damage to the structure housing the use. To align the re-establishment of non-conforming use provisions with the provisions allowing re-establishment of a non-conforming structure, we propose a new subsection be added to OMC 18.34.920 expressly stating that accidental destruction of a structure housing a non-conforming use does not qualify as a discontinuation of the use. The new section should also expressly allow non-conforming or conditional uses (separately from the *structures* housing them) to be re-established following destruction, so long as building permits are obtained within a reasonable timeframe.

IV. Vegetation Conservation Areas

We reiterate our February 5, 2013 comment that the SMP should not require VCAs in the highly developed reaches of Budd Inlet: Budd 3A, Budd 4, Budd 5A, Budd 5B, and Budd 5C. As identified in the Shoreline Inventory, Cumulative Impacts Assessment, and the technical assessment of Dr. Lyndon Lee, these reaches are areas of artificial fill that do not now contain, and have likely never contained, native vegetation. Given the lack of current or historical vegetation in these areas, neither the SMA nor Ecology's SMP Guidelines require establishment of buffers or VCAs within these reaches, and the City cannot lawfully require

vegetation to be restored or enhanced where none presently exists. *Swinomish Indian Tribal Community v. Western Washington Growth Management Hearings Bd.*, 161 Wn.2d 415, 166 P.3d 1198 (2007). The SMP should instead encourage the establishment and protection of native vegetation in these areas through mitigation sequencing or setback reduction incentive provisions.

Beyond this general comment, the draft SMP also updated several provisions related to Vegetation Conservation Areas. Some of these modifications are confusing and incompatible with SMP Guidelines. Specifically:

1. OMC 18.34.492(B), as written, is confusing and potentially overly broad in that it purports to apply VCAs to all “[p]arcels fronting lakes, marine waters, streams or wetlands” without regard to whether any new development activities have been proposed on the parcel. This language is incompatible with Ecology’s SMP Guidelines, which provide that “vegetation conservation standards do not apply retroactively to existing uses and structures...” WAC 173-26-221(5)(a). This subsection should be modified to expressly limit VCA applicability to future shoreline modifications or development.

2. OMC 18.34.492(D), as written, is similarly overbroad in that it purports to require the mitigation and/or restoration of native vegetation regardless of whether native vegetation presently exists, or had ever existed, at the subject property. While Ecology’s SMP Guidelines require local governments to adopt policies that encourage and incentivize vegetative restoration, and require the preservation of *existing* native vegetation, neither the SMA nor the Guidelines require property owners to mitigate vegetative impacts that are not the direct result of a proposed development or expansion of a shoreline structure or use. This section should be clarified to encourage vegetative restoration as a function of mitigation sequencing and incentive provisions.

Consistent with these comments, we propose the targeted and specific revisions found in **Attachment C** to bring the provisions more in line with the applicable SMP Guidelines and legal constraints.

V. Non-Water-Oriented Commercial and Mixed Shoreline Uses

Finally, the draft SMP provisions governing non-water-oriented commercial and mixed-use developments lack specificity regarding the ability for non-water-oriented uses to be paired with water-oriented uses within a mixed-use development. The draft SMP should be revised to allow for these uses as a practical matter, as well as to be consistent with Council deliberations on this point.

The draft SMP allows non-water-oriented commercial uses within shoreline jurisdiction as conditional uses within the Urban Intensity areas. The SMP should eliminate the conditional use requirement in favor of evincing preferences for water-oriented uses through the setback provisions and setting non-water-oriented commercial uses further back from the shoreline, as we have proposed (*see Attachment A*). In any event, the non-water-

oriented commercial use provisions in the draft SMP confusingly purport to restrict “non-water-oriented” uses only if part of a mixed-use development. *See* OMC 18.34.667. This section should be amended to reflect that non-water-oriented uses within shoreline jurisdiction fall within the parameters of the SMP.

Moreover, during Council deliberations and Staff SMP informational sessions, it seemed apparent to us that the intent of the draft SMP was to allow water- and non-water-oriented (including commercial and residential) mixed-use developments to qualify for the setbacks associated with the water-oriented use. However, the current draft SMP is ambiguous, at best, as to whether this is the case. In order to clarify this point, the draft SMP should expressly provide that non-water-oriented uses that are included as part of a mixed-use development with water-oriented uses can receive the setbacks associated with the water-oriented component of the proposal. Our proposed revisions to the setback incentives at **Appendix A** expressly include mixed-uses in this fashion.

Finally, the draft SMP in OMC 18.34.667 requires mixed-use development to provide “shoreline enhancement/restoration.” There is no best available science in the record to support a requirement for mixed uses to provide “shoreline enhancement/restoration” beyond what is necessary to assure no net loss of shoreline ecological functions and values. As drafted, this requirement goes beyond what is required by the SMA and applicable law, and would seem to discourage precisely the type of mixed-use developments within the urbanized shoreline that the City seems inclined to promote as a matter of policy and economic development. This provision should be eliminated.

VI. Other Specific Comments

1. Page 1, Section 1.4. As noted in our previous comments to the January 8, 2013 draft SMP, shoreline areas are not automatically subject to critical area regulation. RCW 36.70A.480. While the draft SMP now references a specific version of the City’s Critical Areas Ordinance, the draft SMP still attempts the wholesale incorporation of the Critical Areas Ordinance into the SMP. The Council should direct Staff to incorporate the regulation of critical areas within shoreline jurisdiction directly into the draft SMP (as the City of Bellingham has recently done). This method is cleaner, less confusing for regulated parties, and more legally defensible.

2. Page 46, OMC 18.34.504(B). As has been corrected in other sections, reference to other portions of the Olympia Municipal Code must include a specific version of the referenced Code and the referenced Code must be incorporated into the draft SMP proposal.

3. Page 47, OMC 18.34.504(J). This section should *exclude* the removal of native vegetation and should eliminate the three-to-one replacement of trees removed for view preservation.

4. Page 51, Table 6.1. Remove the "C/P" designation in favor of expressing a preference for water-oriented uses through the setback and setback reduction provisions (*see* comments regarding setback reduction incentives above).

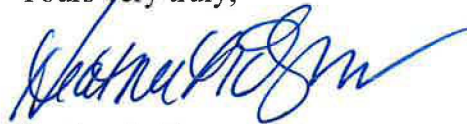
5. Page 58, OMC 18.34.654(4). This requirement goes beyond what is required by the SMA and Ecology's guidelines and is redundant given applicable mitigation provisions. This subsection should be deleted.

6. Page 59, OMC 18.34.654(11). This requirement is inconsistent with the setback reduction incentive provisions, as well as the SMA's preference for water-oriented uses, and should be deleted.

VII. Conclusion

In conclusion, we understand and appreciate that the City and community has invested considerable time, effort, and resources in the SMP update process to date. We strongly encourage the City Council to take the comparatively brief time required to enact the modest revisions to the draft SMP we have proposed in order to achieve the City's policy objectives in a manner consistent with applicable law.

Yours very truly,



Heather L. Burgess

Legal Counsel to the Olympia Yacht Club, West Bay Marina Associates, Stormans Inc., LABAS 612 LLC, and the Thurston County Chamber of Commerce

HLB/ktw

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ATTACHMENT LIST

A - Proposed Revisions to Setbacks and Setback Reduction Provisions

B - Proposed Revisions to Non-Conforming Use and Structure Provisions

C - Proposed Revisions to Vegetation Conservation Provisions

EXHIBIT LIST

1 - Olympia Yacht Club Clean Marina Designation

ATTACHMENT A

Attachment A
Proposed Revisions to Setback and Setback Reduction Incentives

18.34.620 – Use and Development Standards Tables

...

D. An applicant may obtain approval of a development including an increased maximum building height and associated density as set forth in Table 6.2 by providing: (1) public water-related recreation areas to mitigate view impacts; and (2) public physical access to the shoreline. On West Bay Reach 3A, the height and view corridor blockage limits contained in the West Bay development regulations, OMC18.06.100(A)(2)(c), shall apply.

1. “Water-Related Recreation Areas” provided under this provision shall be no less than 1,000 square feet and shall include active playgrounds, significant art installations, performance space, or interpretive features. Existing park space meeting the requirements described herein may be used to meet building height bonus incentives. Incentives may be provided on the same property or offsite as described herein.
2. “Public Physical Access” provided under this provision shall be access to the marine shoreline from the public right-of-way via a trail on a public easement no less than 12 feet in width, providing continuous public access across the site. Such trail shall be between the development and the water and shall be placed upland of the ordinary high water mark and constructed to trail standards as included in the City’s Engineering Design and Development Standards. However, indirect public access such as viewing towers and platforms shall satisfy this requirement where the Administrator finds that one of more of the limiting conditions set forth in OMC 18.34.450(C) is present and precludes requiring public physical access as a condition of project approval. Where existing public physical access on the property satisfies the requirements of this provision, no additional public access shall be required.

E. Setback reductions shall be allowed as provided in Table 6.3 subject to the following:

1. Incentives for setback reductions are cumulative up to the maximum reduction allowed. Incentive eligible restoration projects may be completed in association with, or in addition to, required mitigation projects, however, no setback reductions shall be allowed for required mitigation projects.
2. “Vegetation Restoration” under this provision shall be planting of native shoreline vegetation in excess of that required to achieve no net loss of environmental functions and values and shall substantially mimic undisturbed native shorelines in the South Puget Sound in plant species, species mixture and plant density. In order to qualify for setback reduction under this provision, the total area of vegetation restored on-site must equal the total area of the setback reduction to be granted. Vegetation restoration shall be accomplished through an approved Vegetation Management Plan pursuant to OMC 18.34.496. Where vegetation cannot be restored on site in excess of no net loss requirements consistent with this provision due to physical site limitations or constraints, the Administrator may allow vegetation restoration offsite through payment of a fee-in-lieu calculated at the same replacement ratio as for on-site restoration, which shall be used towards completion of projects specified within the adopted Shoreline Restoration Plan (Appendix A).
3. “Shoreline Softening” under this provision shall be the physical removal of bulkheads, rip rap, or other vertical or nonvertical shoreline protections with a softened shoreline

treatment. Shoreline softening measures may include use of shoreline contouring, gravels, cobbles, limited use boulders, logs, and vegetation in a manner that promotes native aquatic species and protects the shoreline from erosion. Shoreline softening may be utilized for setback reductions where existing shoreline stabilization measures are presently located at, below, or within five (5) feet landward of OHWM along at least 75 percent of the linear marine frontage of the subject property. If a project proponent is required to retain rip rap or other hardened shoreline measures as a requirement of a Department of Ecology-ordered remedial action, the Administrator may approve an alternative incentive to be used in lieu of shoreline softening to achieve setback reductions available under this subsection.

4. “Shoreline Stabilization Reconstruction” under this provision shall be reconstruction of existing hard structural shoreline stabilization measures so that it is set back from the OHWM between two (2) feet and four (4) feet based on feasibility and existing conditions and/are sloped at a maximum three (3) vertical (v): one (1) horizontal (h) angle to provide dissipation of wave energy and increase the quality or quantity of nearshore shallow-water habitat.
5. “Stormwater Retrofit” under this provision shall be the installation of biofiltration/infiltration mechanisms in lieu of piped discharge to the marine environment, such as mechanisms that infiltrate or disperse surface water on the surface of the subject property. These mechanisms shall be sized to store a minimum of 70 percent of the annual volume of runoff water from the subject property, for sites with poor soils, or 99 percent of the annual volume of runoff water from the subject property, for sites with well-draining soils. In order to qualify for a setback reduction, the stormwater retrofit must exceed what is required for the project to comply with minimum stormwater standards in effect at the time of permit application.
6. “Low Impact Development” under this provision shall be the use of Low Impact Development (LID) techniques at the subject property. LID techniques include, but are not limited to, the use of pervious materials for pollution generating surfaces, green roofs, and rain gardens. In order to qualify for a setback reduction, use of LID techniques related to stormwater management must exceed those required for the project to comply with minimum stormwater standards in effect at the time of permit application.
7. Shallow lots. If the maximum shoreline setback under Table 6.3, combined with other applicable site restrictions such as setbacks from rights of way, comprise 50% or more of the parcel, the maximum shoreline setback shall be equal to no more than 50 percent of the average depth of the parcel or 30 feet, whichever is less. An additional setback reduction of 15 feet is available to such properties by applying the setback reduction criteria above, but in no case shall the setback be reduced to less than 15 feet from OHWM. The Administrator may also consider a reduction in setbacks from rights of way when necessary to further accommodate development on narrow shoreline lots.
8. No setback shall be required for water-dependent uses as defined in OMC 18.34.120 in the Waterfront Recreation, Marine Recreation, and Urban Intensity shoreline environmental designations or in the Port Marine Industrial shoreline environmental designation regardless of use; however, mitigation may be required as set out in OMC 18.34.410 in order to ensure no net loss of shoreline ecological functions and values. In the Marine Recreation and Urban Intensity shoreline environmental designations, mitigation may also be required for any loss of public access resulting from a proposed water-dependent uses as provided for in OMC 18.34.450.

Table 6.2 – Development Standards

Shoreline Environment	Shoreline Segment	Maximum Standard Building Height	Maximum Building Height with Recreational “Bonus” OMC 18.34.620(D)
Aquatic	All	20 feet	N/A
Natural	All	20 feet	N/A
Waterfront Recreation	Budd Inlet	42 feet	65 feet
	Capitol Lake	35 feet	N/A
Urban Conservancy	All	35 feet	N/A
Shoreline Residential	Ward Lake	35 feet	N/A
	Ken Lake and Budd Inlet	35 feet	N/A
Marine Recreation	Budd Inlet	40 feet; 25 feet within 75 feet of OHWM	N/A
Urban Intensity	Capitol Lake & Budd Inlet North of Brawne Ave. extended	42 feet	65 feet
	Budd Inlet south of Brawne Ave. extended	35 feet waterward of streets; 90 feet remainder	N/A
Port Marine Industrial	All	65 feet	N/A

Table 6.3 – Setbacks and Setback Reduction Incentives

NO CHANGE IS PROPOSED TO AQUATIC, NATURAL, URBAN CONSERVANCY, AND SHORELINE RESIDENTIAL SETBACKS FROM JULY 9, 2013 DRAFT. NO SETBACK REDUCTION INCENTIVES ARE AVAILABLE FOR THESE DESIGNATIONS.

Shoreline Environment	Maximum Setback/VCA¹	Minimum Setback	Setback Reductions
Marine Recreation – Budd 5C	Water-Dependent ² : 0’/none Water-Enjoyment/ Water-Related/ Shoreline Mixed Uses: 50’/30’ Non-Water-Oriented: 75’/30’	Water-Dependent: 0’ Water-Enjoyment/ Water-Related/ Shoreline Mixed Uses In a structure: 30’ On land ³ : 15’ Non-Water-Oriented: 50’	Vegetation Restoration: 10’ OMC 18.34.620(E)(4) Shoreline Softening: 10’ OMC 18.34.620(E)(5) Shoreline Stabilization Reconstruction: 10’ OMC 18.34.620(E)(6) Stormwater Retrofit: 10’ OMC 18.34.620(E)(7) Low Impact Development: 10’ OMC 18.34.620(E)(8)
Waterfront Recreation – Budd 3B and Cap 6	Water-Dependent: 0’/none Water-Enjoyment/ Water-Related/ 30’/30’	Water-Dependent: 0’ Water-Enjoyment/ Water-Related/ 30’/30’	N/A
Urban Intensity – Budd 3A and Budd 3B Dual Designation Area	Water-Dependent: 0’/none Water-Enjoyment/ Water-Related/ Shoreline Mixed Uses: 30’/30’ Non-Water-Oriented: 50’/30’	Water-Dependent: 0’ Water-Enjoyment/ Water-Related/ Shoreline Mixed Uses In a structure: 30’ On land: 15’ Non-Water-Oriented: 30’	Vegetation Restoration: 10’ OMC 18.34.620(E)(4) Shoreline Softening: 10’ OMC 18.34.620(E)(5) Shoreline Stabilization Reconstruction: 10’ OMC 18.34.620(E)(6) Stormwater Retrofit: 10’ OMC 18.34.620(E)(7) Low Impact Development: 10’ OMC 18.34.620(E)(8)

¹ In Reaches Budd 4, Budd 5A, and Budd 5C, VCAs apply only to areas of existing native vegetation, or vegetation areas created pursuant to mitigation sequencing and/or the vegetation restoration setback reduction incentive provisions.

² As used herein, “water dependent” Includes water-dependent accessory structures. “Water-dependent accessory structure” is a detached building or other structure that is accessory to and associated with the primary water-dependent use.

³ As used herein, “On land” means non-structural amenities such as plazas, outdoor seating areas, and parks.

Urban Intensity – Budd 4 and 5A	Water-Dependent: 0'/none Water-Enjoyment/ Water-Related/ Shoreline Mixed Uses: 50'/30' Non-Water-Oriented: 100'/30'	Water-Dependent: 0' Water-Enjoyment/ Water-Related/ Shoreline Mixed Uses In a structure: 30' On land: 15' Non-Water-Oriented: 50'	Vegetation Restoration: 10' OMC 18.34.620(E)(4) Shoreline Softening: 10' OMC 18.34.620(E)(5) Shoreline Stabilization Reconstruction: 10' OMC 18.34.620(E)(6) Stormwater Retrofit: 10' OMC 18.34.620(E)(7) Low Impact Development: 10' OMC 18.34.620(E)(8)
Urban Intensity – Budd 6A (Dual Designation Area)	All uses - 0'/0'	0'	N/A
Port Marine Industrial – 5B	All uses – 0'/0'	0'	N/A

ATTACHMENT B

Attachment B
Proposed Revisions to Non-Conforming Use and Structure Provisions

3.80 18.34.900 – Existing Buildings and Uses within Shorelines

A. Subject to the provisions of this Chapter, a use, lot, or structure lawfully existing prior to the effective date of that chapter or any amendment thereto, which is rendered nonconforming may continue and may also be repaired, remodeled, and/or restored in the manner and to the extent that it existed upon the effective date of the relevant ordinance.

B. Existing roads, trails, utility lines and similar linear facilities, together with any associated facilities such as pump stations or stormwater treatment ponds, which do not conform to the provisions of Chapter 18.34 may expand within existing easements and rights-of-ways. Modification or expansion outside of existing easements or rights-of-way which would otherwise be prohibited may be authorized by the decision maker upon finding there is no feasible alternative, the development is necessary for the public welfare, as proposed and designed including appropriate mitigation, and the development is not likely to result in a net loss of shoreline ecological functions.

3.81 18.34.910 – Alteration of Structures in the Shoreline

A. Shoreline Structures—The following regulations apply to structures located in the shoreline:

1. Alteration of structures located landward of the Ordinary High Water Mark within a required shoreline setback is limited to:

- a. For structures located partially within the shoreline setback, alterations shall be limited to the addition of height and the area outside the shoreline setback.
- b. For structures located entirely within the shoreline setbacks, alterations shall be allowed for the addition of height or on the upland side of the structure or both.
- c. Interior and exterior remodels and the addition of upper stories isare permitted. Except as provided above, such additions shall not extend beyond the existing or approved building footprint.
- d. Alterations shall comply with applicable development regulations in the Olympia Municipal Code.

2. Overwater Structures – Alteration of structures located waterward of the Ordinary High Water Mark is prohibited except:

- a. Alterations that do not increase or expand the building footprint are permitted; and

- b. The addition of upper stories or additional height within the existing building footprint is permitted for water-oriented uses only.
 - c. Existing covered moorage may be maintained, repaired or replaced pursuant to WAC 173-27-040.
 - d. Except for modifications required by the Washington Department of Natural Resources for light penetration, alternations to the footprint or building envelop are prohibited.
3. Other Regulations applicable to OMC 18.374.092910(A)(1) and (2).
- a. Actions shall not result in a net loss of shoreline ecological functions and processes;
 - ~~b. As a condition of approval, the Administrator may require planting with a Vegetation Conservation Areas pursuant to OMC 18.34.492;~~
 - eb. The applicant shall obtain all required permits or approvals prior to construction;
 - ~~d. Alteration of structures or uses within critical areas or critical area buffers shall comply with the provisions of OMC 18.37.070; and~~
 - ec. Structures that are damaged and house a nonconforming use may be re-established in accordance with OMC 18.37.092920.

B. Unintentionally damaged or destroyed structures.

1. In the event that a structure or building that does not conform to the shoreline setback is damaged or destroyed by fire, explosion, act of nature, or act of public enemy, the structure may be restored within the existing footprint.

2. In order to take advantage of this section, a complete application for a building permit must be submitted within one year of the unintended event that caused the destruction of the structure. The applicant loses their rights under this subsection if the building permit lapses without construction of the structure proposed under the building permit.

3.82 18.34.920 – Existing Shoreline Uses

A. Conversions

- 1. A nonconforming use may be changed to a permitted use at any time.
- 2. The Hearing Examiner may grant a conditional use ~~permit for a period of not more than ten (10) years~~ that allows a nonconforming use to change to another nonconforming use that would not normally be allowed in the district in which it is located; provided, that the following can be clearly demonstrated by the applicant:

- a. The structure that houses the existing nonconforming use cannot be used for any permitted uses because of its particular design; and
- b. The proposed use will be more compatible with the permitted uses of the use district than the existing use; and
- c. Provisions have been made to safeguard the adjoining properties against any detrimental effects that might result from allowing the proposed use.

3. Historic properties. The Hearing Examiner also may grant a conditional use permit ~~for ten years~~ to allow the following uses to change to another residential or commercial use that is not typically allowed in the district in which it is located:

- a. An existing commercial or institutional structure in a residential zone when such structure is on the National, State or Olympia Heritage Register; or
- b. An existing commercial or institutional structure within a National, State or Olympia Historic District, excluding the South Capital Historic Register; or
- c. An existing commercial or institutional structure conditioned on restoration of a structure to achieve Register status; provided, that the following can clearly be demonstrated by the applicant:
 - 1) The structure cannot be utilized for any of the uses normally permitted within that district; and
 - 2) The proposed use will not alter the historic features documented at the time of Register placement; and
 - 3) Provisions have been made to safeguard the adjoining properties and the neighborhood against any detrimental effects that might result from allowing the proposed use, subject to the requirements in 18.48.040, Additional Conditions.

~~d. A conditional use permit under OMC 18.37.094(A)(2) and (3) may be renewed by the Hearing Examiner for a period of not more than ten (10) years if it can be clearly demonstrated that:~~

- ~~1) The continued use of the premises in the manner allowed by the permit will not have any detrimental effect upon the property values of the surrounding properties;~~
- ~~2) That such use has minimal adverse effect upon the people living or working in the vicinity of such use; and~~
- ~~3) That it will create a hardship for the owner of the structure if the conditional use permit is not renewed.~~

B. Discontinuation

1. Except as provided by OMC 18.34.91~~20~~(A), a nonconforming use, when abandoned or discontinued, shall not be resumed. Discontinuation or abandonment occurs under any of the following:

- a. When land used for a nonconforming use shall cease to be used for that particular use for twelve (12) consecutive months; or
- b. When a building designed or arranged for a nonconforming use shall cease to be used for that particular use for twelve (12) consecutive months; or
- c. When a building designed or arranged for a conforming use but used for a nonconforming use shall cease to be used for such nonconforming use for twelve (12) consecutive months.

2. The Hearing Examiner may, by conditional use permit, allow a discontinued or abandoned use to resume operations if it can be proven that all of the following conditions exist:

- a. That discontinuation or abandonment was caused by a condition over which the owner and operator of such use had no control; and
- b. That it is impossible for the owner to change the use of the premises to a permitted use without causing a hardship to himself; and
- c. That resumption of the nonconforming use will not have a detrimental effect on surrounding properties.

C. Unintentionally damaged or destroyed structures housing nonconforming or conditional uses.

1. In the event that a structure or building housing a nonconforming use is damaged or destroyed by fire, explosion, act of nature, or act of public enemy, such damage or destruction shall not constitute a discontinuation of the nonconforming use.

2. In the event that a structure or building housing an existing use considered a "conditional" use is damaged or destroyed by fire, explosion, act of nature, or act of public enemy, such use may be re-established without obtaining a conditional use permit.

3. In order to take advantage of this subsection, a complete application for a building permit must be submitted within one year of the unintended event that caused the destruction of the structure housing the use. The applicant loses their rights under this subsection if the building permit lapses without construction of the structure proposed under the building permit.

ATTACHMENT C

Attachment C
Proposed Revisions to Vegetation Conservation Provisions

3.30 18.34.492 – General Vegetation Conservation Regulations

A. Vegetation conservation provisions apply to all shoreline ~~uses and~~ developments. All vegetation conservation in these areas shall conform to the regulations and standards below.

~~B. Parcels fronting on lakes, marine waters, streams or wetlands shall preserve or provide native vegetation within vegetation conservation areas, also known as VCAs or buffers, upland of and adjacent to the ordinary high water mark.~~

BC. Except as provided herein, applicants for new development, expansion, or redevelopment shall protect and preserve existing native vegetation within the vegetation conservation area.

~~CD. If native vegetation within the vegetation conservation area did not exist, or has been destroyed or significantly degraded, m~~Mitigation in the form of restoration or creation of vegetation conservation area may be required as a condition of development approval consistent with mitigation sequencing priorities in OMC 18.34.410(B). Further, an applicant may propose such restoration consistent with the building height bonuses of OMC 18.34.620(D) or for reductions in required setbacks or for encroachments into required vegetation conservation areas for water oriented uses as provided in Table 6.3.

DE. Where applicable, Nonconforming and water dependent uses that cannot provide a vegetation conservation area due to the nature of the use or activity shall provide comparable mitigation. For example, if it is not feasible to provide vegetation on-site due to constraints such as lot size, topography, or existing site improvements, vegetation may be provided offsite in accordance with the provisions of OMC 18.34.410(H).

E. Like other Master Program provisions, native vegetation management standards do not apply retroactively to existing uses and structures.

EXHIBIT 1

OLYMPIA YACHT CLUB

**201 SIMMONS STREET NW
OLYMPIA, WASHINGTON 98501**

May 2, 2013

Mayor Stephen H. Buxbaum
Council member Steve Langer
Council member Nathaniel Jones
Council member Karen Rogers
Council member Julie Hankins
Council member Jeannine Roe
Council member Jim Cooper
Olympia City Council
City Hall
601 4th Avenue East
Olympia, Washington 98501

Re: Clean Marina Designation for Olympia Yacht Club

Dear Mayor Buxbaum and Council Members Langer, Jones, Rogers, Hankins, Roe and Cooper:

As part of the Olympia Yacht Club's ongoing effort to be a good citizen in our community, we just received the Clean Marina Washington certification. We were awarded the certification for our work protecting water quality and using environmental best management practices.

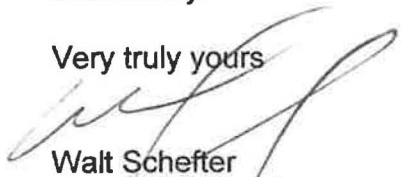
The OYC Board voted to adopt the Clean Marina Best Management Practices as part of our rules and regulations. We have long recognized the importance of protecting the environment and following the state, federal and local environmental laws. The motivation for the members of OYC is to be able to pass on to the next generation a Puget Sound that can be enjoyed as much as the one we found. The quality of life in the Puget Sound region can only be as good as the Puget Sound itself and we believe the Clean Marina designation can help us with that.

This year, we have chosen to focus our efforts on hazardous waste education for our members including specific training to avoid spills during fueling and proper disposal procedures for waste in the marina. We have worked diligently to improve marina practices and to find educational opportunities for our members. OYC is planning to partner with Swantown Marina, a Leadership Level Clean

Marina, to do clean boating outreach in the South Sound. Partnerships like these are one of the many benefits of the Clean Marina Program.

Reaching the qualification standards of Clean Marina Washington, we are proud we have earned the right to fly the Clean Marina flag. We thank you for your continued support in keeping the yacht club a viable contributor to our community.

Very truly yours



Walt Scheffer
President, Board of Trustees
Olympia Yacht Club



Mike Contris
Commodore
Olympia Yacht Club

Nancy Lenzi

From: Deanna Gonzalez <dgonzalez@pwblawgroup.com>
Sent: Tuesday, July 23, 2013 4:21 PM
To: Stephen Buxbaum; CityCouncil
Cc: Keith Stahley; Tom Morrill; Shoreline Update; georgecindy.smith@comcast.net; westbaymarina@hotmail.com; kevin@stormans.com; vidafarler@msn.com; victorz@imagesourceinc.com; zvirzdys@gmail.com; akatomz@gmail.com; Heather Burgess; Kelly Wood
Subject: Proposed Changes - July 9, 2013 Draft SMP
Attachments: ProposedChanges07.09.13 DraftSMP.pdf

Mayor Buxbaum and Councilmembers,

On behalf of Heather Burgess, attached please find correspondence regarding the above-referenced matter.

Thank you,
Deanna

Deanna Gonzalez
Legal Assistant | Phillips Wesch Burgess PLLC
Olympia: 360-742-3500 | 724 Columbia St. NW Suite 140 | Olympia WA 98501
Tacoma: 253-292-6640 | 505 Broadway St. Suite 408 | Tacoma WA 98402
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July 23, 2013

TRANSMITTED VIA ELECTRONIC MAIL

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Mayor Stephen H. Buxbaum

citycouncil@ci.olympia.wa.us

Councilmember Steve Langer
Councilmember Nathaniel Jones
Councilmember Karen Rogers
Councilmember Julie Hankins
Councilmember Jeannine Roe
Councilmember Jim Cooper
Olympia City Council
City Hall
601 – 4th Avenue East
Olympia, Washington 98501

Re: Proposed Changes to Flexible Setback Provisions
July 9, 2013 Draft Shoreline Master Program

Dear Mayor Buxbaum and Councilmembers Langer, Jones, Rogers, Hankins, Roe, and Cooper:

This firm represents the **Olympia Yacht Club, West Bay Marina Associates, Stormans, Inc., LABAS 612 LLC** (owners of the Image Source building), and the **Thurston County Chamber of Commerce**. Today, under separate cover, our office submitted detailed comments on the City's July 9, 2013 draft Shoreline Master Program ("SMP) on behalf of our clients. The purpose of this letter is to direct your specific attention to our proposed revisions to the draft SMP setback and incentive provisions. A copy of our proposal is attached to this letter and can also be found at **Attachment A** to our comment letter.

As you heard during the July 9, 2013 public hearing, our clients strongly support the City taking a flexible approach to setbacks, as do many others in the community. Unfortunately, the draft SMP provisions designed to meet this intent were not practically workable, and in some cases, may even have gone too far. We believe that our proposed revisions represent an alternative approach that addresses and balances community concerns in a manner supported by best available science in the record, for the following reasons:

- **Limits on Zero-Foot Setbacks.** Our proposal would allow zero-foot setbacks only for water-dependent uses, and appropriate setbacks for all others, representing a clear and effective compromise between advocates for large setbacks and proponents of reasonable development. We

July 23, 2013

Page 2

have worked with and received the support of the Port of Olympia and the West Bay Neighborhood Association for our approach. Ours is a balanced approach that can spur downtown revitalization while removing the specter of over-water office buildings towering over pedestrians on Olympia's waterfront.

- **Consistency with Best Available Science.** The "minimum" setbacks in our proposal, achievable after applying a menu of environmental incentives, are entirely consistent with the Shoreline Inventory and the Cumulative Impacts Assessment that was performed for the January draft.

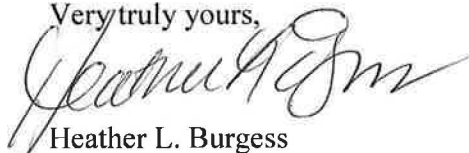
- **More Likely To Result In Ecological Benefits.** The July 9, 2013 SMP proposes a complicated system of setback incentives unlikely to be used because the complexity of applying reduction percentages and the stacking of incentives required to receive setback reductions. Our proposal simplifies administration of the system by associating a specific reduction width for each incentive measure. We also propose to add stormwater retrofit and low impact development techniques to the menu of environmental incentives, with an emphasis on achieving actual environmental enhancements to the shoreline beyond what can be required through existing regulation. Our proposal is more likely to be used and therefore achieve these enhanced ecological benefits for the shoreline.

- **Removes Incentives to Maintain the Status Quo.** By maximizing flexibility, our proposal provides incentives for property owners to redevelop their land at setbacks that are both legally and scientifically defensible. This flexible, incentive-based approach encourages property owners to do more than simply maintain the status quo in perpetuity.

- **Maintains Local Control and Certainty.** By building flexibility into the SMP to reduce setbacks and develop shallow lots outside of variance and conditional use provisions, our proposal keeps the majority of the City's shoreline decisions a matter of local review and approval and not subject to Ecology review and approval. Our proposed approach keeps land-use decisions at the lowest level and eliminates the burden of uncertainty and potential duplicative process on property owners.

We greatly appreciate the time and effort that the Council and Staff have invested to date in the SMP update process, and appreciate your consideration of our proposed approach as well as our remaining public comments on behalf of our clients.

Very truly yours,



Heather L. Burgess

HLB/ktw

cc: Clients (w/attachments via email)
Keith Staley, Director, Community Planning and Development (w/attachments via email: kstahley@ci.olympia.wa.us)
Tom Morrill, City Attorney (w/attachments via email: tmorrill@ci.olympia.wa.us)
Olympia Shoreline Master Program (via email: shorelineupdate@ci.olympia.wa.us)

Proposed Revisions to Setback and Setback Reduction Incentives

18.34.620 – Use and Development Standards Tables

...

D. An applicant may obtain approval of a development including an increased maximum building height and associated density as set forth in Table 6.2 by providing: (1) public water-related recreation areas to mitigate view impacts; and (2) public physical access to the shoreline. On West Bay Reach 3A, the height and view corridor blockage limits contained in the West Bay development regulations, OMC18.06.100(A)(2)(c), shall apply.

1. “Water-Related Recreation Areas” provided under this provision shall be no less than 1,000 square feet and shall include active playgrounds, significant art installations, performance space, or interpretive features. Existing park space meeting the requirements described herein may be used to meet building height bonus incentives. Incentives may be provided on the same property or offsite as described herein.
2. “Public Physical Access” provided under this provision shall be access to the marine shoreline from the public right-of-way via a trail on a public easement no less than 12 feet in width, providing continuous public access across the site. Such trail shall be between the development and the water and shall be placed upland of the ordinary high water mark and constructed to trail standards as included in the City’s Engineering Design and Development Standards. However, indirect public access such as viewing towers and platforms shall satisfy this requirement where the Administrator finds that one of more of the limiting conditions set forth in OMC 18.34.450(C) is present and precludes requiring public physical access as a condition of project approval. Where existing public physical access on the property satisfies the requirements of this provision, no additional public access shall be required.

E. Setback reductions shall be allowed as provided in Table 6.3 subject to the following:

1. Incentives for setback reductions are cumulative up to the maximum reduction allowed. Incentive eligible restoration projects may be completed in association with, or in addition to, required mitigation projects, however, no setback reductions shall be allowed for required mitigation projects.
2. “Vegetation Restoration” under this provision shall be planting of native shoreline vegetation in excess of that required to achieve no net loss of environmental functions and values and shall substantially mimic undisturbed native shorelines in the South Puget Sound in plant species, species mixture and plant density. In order to qualify for setback reduction under this provision, the total area of vegetation restored on-site must equal the total area of the setback reduction to be granted. Vegetation restoration shall be accomplished through an approved Vegetation Management Plan pursuant to OMC 18.34.496. Where vegetation cannot be restored on site in excess of no net loss requirements consistent with this provision due to physical site limitations or constraints, the Administrator may allow vegetation restoration offsite through payment of a fee-in-lieu calculated at the same replacement ratio as for on-site restoration, which shall be used towards completion of projects specified within the adopted Shoreline Restoration Plan (Appendix A).
3. “Shoreline Softening” under this provision shall be the physical removal of bulkheads, rip rap, or other vertical or nonvertical shoreline protections with a softened shoreline

treatment. Shoreline softening measures may include use of shoreline contouring, gravels, cobbles, limited use boulders, logs, and vegetation in a manner that promotes native aquatic species and protects the shoreline from erosion. Shoreline softening may be utilized for setback reductions where existing shoreline stabilization measures are presently located at, below, or within five (5) feet landward of OHWM along at least 75 percent of the linear marine frontage of the subject property. If a project proponent is required to retain rip rap or other hardened shoreline measures as a requirement of a Department of Ecology-ordered remedial action, the Administrator may approve an alternative incentive to be used in lieu of shoreline softening to achieve setback reductions available under this subsection.

4. "Shoreline Stabilization Reconstruction" under this provision shall be reconstruction of existing hard structural shoreline stabilization measures so that it is set back from the OHWM between two (2) feet and four (4) feet based on feasibility and existing conditions and/are sloped at a maximum three (3) vertical (v): one (1) horizontal (h) angle to provide dissipation of wave energy and increase the quality or quantity of nearshore shallow-water habitat.
5. "Stormwater Retrofit" under this provision shall be the installation of biofiltration/infiltration mechanisms in lieu of piped discharge to the marine environment, such as mechanisms that infiltrate or disperse surface water on the surface of the subject property. These mechanisms shall be sized to store a minimum of 70 percent of the annual volume of runoff water from the subject property, for sites with poor soils, or 99 percent of the annual volume of runoff water from the subject property, for sites with well-draining soils. In order to qualify for a setback reduction, the stormwater retrofit must exceed what is required for the project to comply with minimum stormwater standards in effect at the time of permit application.
6. "Low Impact Development" under this provision shall be the use of Low Impact Development (LID) techniques at the subject property. LID techniques include, but are not limited to, the use of pervious materials for pollution generating surfaces, green roofs, and rain gardens. In order to qualify for a setback reduction, use of LID techniques related to stormwater management must exceed those required for the project to comply with minimum stormwater standards in effect at the time of permit application.
7. Shallow lots. If the maximum shoreline setback under Table 6.3, combined with other applicable site restrictions such as setbacks from rights of way, comprise 50% or more of the parcel, the maximum shoreline setback shall be equal to no more than 50 percent of the average depth of the parcel or 30 feet, whichever is less. An additional setback reduction of 15 feet is available to such properties by applying the setback reduction criteria above, but in no case shall the setback be reduced to less than 15 feet from OHWM. The Administrator may also consider a reduction in setbacks from rights of way when necessary to further accommodate development on narrow shoreline lots.
8. No setback shall be required for water-dependent uses as defined in OMC 18.34.120 in the Waterfront Recreation, Marine Recreation, and Urban Intensity shoreline environmental designations or in the Port Marine Industrial shoreline environmental designation regardless of use; however, mitigation may be required as set out in OMC 18.34.410 in order to ensure no net loss of shoreline ecological functions and values. In the Marine Recreation and Urban Intensity shoreline environmental designations, mitigation may also be required for any loss of public access resulting from a proposed water-dependent uses as provided for in OMC 18.34.450.

Table 6.2 – Development Standards

Shoreline Environment	Shoreline Segment	Maximum Standard Building Height	Maximum Building Height with Recreational “Bonus” OMC 18.34.620(D)
Aquatic	All	20 feet	N/A
Natural	All	20 feet	N/A
Waterfront Recreation	Budd Inlet	42 feet	65 feet
	Capitol Lake	35 feet	N/A
Urban Conservancy	All	35 feet	N/A
Shoreline Residential	Ward Lake	35 feet	N/A
	Ken Lake and Budd Inlet	35 feet	N/A
Marine Recreation	Budd Inlet	40 feet; 25 feet within 75 feet of OHWM	N/A
Urban Intensity	Capitol Lake & Budd Inlet North of Brawne Ave. extended	42 feet	65 feet
	Budd Inlet south of Brawne Ave. extended	35 feet waterward of streets; 90 feet remainder	N/A
Port Marine Industrial	All	65 feet	N/A

Table 6.3 – Setbacks and Setback Reduction Incentives

NO CHANGE IS PROPOSED TO AQUATIC, NATURAL, URBAN CONSERVANCY, AND SHORELINE RESIDENTIAL SETBACKS FROM JULY 9, 2013 DRAFT. NO SETBACK REDUCTION INCENTIVES ARE AVAILABLE FOR THESE DESIGNATIONS.

Shoreline Environment	Maximum Setback/VCA¹	Minimum Setback	Setback Reductions
Marine Recreation – Budd 5C	Water-Dependent ² : 0’/none Water-Enjoyment/ Water-Related/ Shoreline Mixed Uses: 50’/30’ Non-Water-Oriented: 75’/30’	Water-Dependent: 0’ Water-Enjoyment/ Water-Related/ Shoreline Mixed Uses In a structure: 30’ On land ³ : 15’ Non-Water-Oriented: 50’	Vegetation Restoration: 10’ OMC 18.34.620(E)(4) Shoreline Softening: 10’ OMC 18.34.620(E)(5) Shoreline Stabilization Reconstruction: 10’ OMC 18.34.620(E)(6) Stormwater Retrofit: 10’ OMC 18.34.620(E)(7) Low Impact Development: 10’ OMC 18.34.620(E)(8)
Waterfront Recreation – Budd 3B and Cap 6	Water-Dependent: 0’/none Water-Enjoyment/ Water-Related/ 30’/30’	Water-Dependent: 0’ Water-Enjoyment/ Water-Related/ 30’/30’	N/A
Urban Intensity – Budd 3A and Budd 3B Dual Designation Area	Water-Dependent: 0’/none Water-Enjoyment/ Water-Related/ Shoreline Mixed Uses: 30’/30’ Non-Water-Oriented: 50’/30’	Water-Dependent: 0’ Water-Enjoyment/ Water-Related/ Shoreline Mixed Uses In a structure: 30’ On land: 15’ Non-Water-Oriented: 30’	Vegetation Restoration: 10’ OMC 18.34.620(E)(4) Shoreline Softening: 10’ OMC 18.34.620(E)(5) Shoreline Stabilization Reconstruction: 10’ OMC 18.34.620(E)(6) Stormwater Retrofit: 10’ OMC 18.34.620(E)(7) Low Impact Development: 10’ OMC 18.34.620(E)(8)

¹ In Reaches Budd 4, Budd 5A, and Budd 5C, VCAs apply only to areas of existing native vegetation, or vegetation areas created pursuant to mitigation sequencing and/or the vegetation restoration setback reduction incentive provisions.

² As used herein, “water dependent” Includes water-dependent accessory structures. “Water-dependent accessory structure” is a detached building or other structure that is accessory to and associated with the primary water-dependent use.

³ As used herein, “On land” means non-structural amenities such as plazas, outdoor seating areas, and parks.

Urban Intensity – Budd 4 and 5A	Water-Dependent: 0’/none Water-Enjoyment/ Water-Related/ Shoreline Mixed Uses: 50’/30’ Non-Water-Oriented: 100’/30’	Water-Dependent: 0’ Water-Enjoyment/ Water-Related/ Shoreline Mixed Uses In a structure: 30’ On land: 15’ Non-Water-Oriented: 50’	Vegetation Restoration: 10’ OMC 18.34.620(E)(4) Shoreline Softening: 10’ OMC 18.34.620(E)(5) Shoreline Stabilization Reconstruction: 10’ OMC 18.34.620(E)(6) Stormwater Retrofit: 10’ OMC 18.34.620(E)(7) Low Impact Development: 10’ OMC 18.34.620(E)(8)
Urban Intensity – Budd 6A (Dual Designation Area)	All uses - 0’/0’	0’	N/A
Port Marine Industrial – 5B	All uses – 0’/0’	0’	N/A



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

July 23, 2013

Olympia City Council
C/O Olympia Community Planning & Development
PO Box 1967
Olympia WA 98507-1967

Re: City of Olympia Shoreline Master Program update | Council Hearing Draft (July 9, 2013)

Dear Mayor and City Council Members,

The Department of Ecology (Ecology) appreciates the opportunity to provide comments on the draft Shoreline Master Program (SMP) currently pending before the Olympia City Council. Ecology recognizes the complexity of the Comprehensive update process and appreciates the time and energy invested in this process by citizens, City staff, elected officials, and volunteer advisory boards.

As your partner in implementation of the Shoreline Management Act (SMA), we look forward to continuing to work with you to ensure the Olympia SMP is consistent with the SMA (RCW 90.58), the Shoreline Guidelines (WAC 173-26) and will comply with the no net loss of shoreline ecological functions standard over time.

Ecology has provided input on this process over the years as drafts have been developed and we appreciate that some of our comments have been integrated into the current draft SMP¹. The comments included in this letter emphasize high level areas of concern that remain, most of which have previously been identified. Citations (where appropriate) and a brief explanation are provided in support of each of these comments. Where time allowed, detailed comments were also provided. Many of these comments are exactly the same as those conveyed with regard to previous drafts; see also those documents for further detail.

¹ Comments were provided on the October 2010 staff draft SMP, the OPC draft SMP dated June 2012, the November 2012 internal draft and December 18, 2012 draft SMPs, as well as the January 2013 draft SMP. A letter summarizing Ecology's likely required changes to the Critical Areas Ordinance for incorporation into the SMP was sent under separate cover on December 28, 2012.



Section 1

1. The July draft appears to incorporate the City's critical areas ordinance (CAO) by reference. Section 1.4 must reference the specific, dated ordinance that adopted the CAO. A reference to the effective date is not sufficient. This version of the CAO must also be made an appendix to the SMP. The critical area provisions in the specific dated version incorporated into the SMP will continue to apply to critical areas within shoreline jurisdiction in the event the city revises its CAO (OMC 18.32). An SMP amendment would be required to revise the critical areas provisions in the SMP. **In addition**, please see the letter from Ecology dated December 28, 2012 for further comments relating to the City's critical areas ordinance and incorporation into the SMP. Changes that Ecology outlined in that letter as required have not been addressed.
2. Section 1.2 – there is no page 88 in this draft.

Section 2

1. In areas throughout the document, policies appear to conflict with regulations. For example:
 - a. Policy B in section 2.24 (*the preferred location for non-water oriented commercial uses is in commercial areas as far from the shoreline as feasible*) conflicts with regulations in Table 6.3 that allow these types of uses within 50 and at times 30 feet of the shoreline in reaches Budd 3A, 4 and 5A.
 - b. Industrial policy 2.25 (B) contains the same language as in (a) above for non-water dependent industrial uses, yet in reach Budd 5C these uses have between a 75' and 50' setback, in reach Budd 5B they have a 0' setback, and in reaches Budd 3A, 4 and 5A these uses are allowed within 50 and at times 30 feet of the shoreline. Regulation 9 in section 3.41 (E) states that no setback is required in reach Budd 5B (Port Maritime Industrial designation).
 - c. With regard to section 2.34 (I), it would be useful to see how the City has connected the referenced restoration priorities (assumed to be from the June 2012 Restoration Plan) with the restoration incentives in section 3.41 (E).
 - d. Shoreline stabilization policy 2.35 (B) likely conflicts with regulations allowing zero foot setbacks. If structures are not already at zero feet, it is very difficult to understand how a structure built that close to the water would not require shoreline stabilization in the future. See also section 3 comments on shoreline stabilization provisions below.
2. Section 2.3 (I) – provision mixes restoration in with policies related to mitigation, which serve different purposes; suggest striking “and restoration”.
3. 2.8 (A) – still unclear how these provisions apply to the non-recreational or non-open space lands adjacent to and in the vicinity of the Port Lagoon.
4. Policy 2.26 (I) is lacking an implementing regulation.

5. Policy 2.27 (C) needs to specify that residential development be designed and located so that flood hazard reduction measures (in addition to shoreline armoring) will not be needed. WAC 173-26-241 (3) (j).
6. 2.30 (E) – recognize the mitigation sequence in **this** SMP (Section 3.21).
7. 2.32 (C) – conflicts with policy A in the same section. Policy A indicates that fill should protect shoreline processes and functions, and C states it should be allowed to prevent flooding, which the Guidelines (WAC 173-26-221 [3] [b]) recognize as a natural process. Suggest clarifying the intent and purposefully redrafting this language. See also section 3 comments on fill provisions below.
8. 2.35 (D) – must reference primary structures: *The reconstruction or expansion of existing hard armoring should only be permitted where necessary to protect an existing primary structure that is in danger of loss or substantial damage, and where mitigation of impacts is sufficient to assure no net loss of shoreline ecological functions and processes.* WAC 173-26-231 (2) (a) and (3) (a) (iii) (B) (I).
9. 2.35 (E) – the second sentence should not be limited to private property; this should apply to public property as well.

Section 3

1. The SMP contains some newly developed incentives for reducing shoreline setbacks and allowing height increases, based on the reach and the use. Ecology's most significant comment relates to an applicant's ability to achieve these incentives (bulkhead removal, replacement of hard with less rigid shoreline stabilization measures and restoration of vegetation), offsite. While recognizing the City's intent to be flexible, this allowance circumvents the requirement to comply with the mitigation sequence at the site level (avoiding and minimizing impacts) and will not be acceptable to Ecology. If some sort of bonus is desired at a specific site, any corresponding action to receive such a bonus needs to occur on the same site, especially given the lack of any formal plan to implement this idea at this time.
2. OMC 18.32 will no longer apply in shoreline jurisdiction when the SMP is in effect. All applicable critical area regulations will be in the SMP. We recognize the fact that the City intends to incorporate regulations in this document into the existing OMC, however we anticipate there will be refinements to the CAO (see above) for critical areas within shoreline jurisdiction. Throughout the SMP, language referencing OMC 18.32 needs to be revised to reflect this reality; see previous comments for suggested language.
3. There are gaps in the SMP where Guidelines-required topics are not addressed. These include critical saltwater habitat (WAC 173-26-221 2 iii) and flood hazard reduction (WAC 173-26-221 3). Some of the requirements for critical saltwater habitat are referenced in regulations for breakwaters, jetties, groins and weirs, but these are not the only uses or structures to which critical saltwater habitat provisions apply. With regard to flood hazard reduction, please note that most local flood ordinances do not address non-structural issues

related to this topic as required in the Guidelines. Most address only flood-proofing and other structural means of flood hazard mitigation. Please refer to Ecology's previous comments on this section of the City's CAO.

4. Although not required, if the City wishes to take advantage of the restoration relief provisions in RCW 90.58.580, applicable criteria and standards need to be outlined in the SMP.
5. With regard to the flood hazard reduction topic, many of the City's regulations related to fill for flood protection (sections 3.60-3.62), especially in reference to any future berm, should be addressed in the flood hazard section. Although a berm qualifies as fill, the purpose (flood protection) is specific. Regulation (E) references filling and flood elevation provisions in OMC 16.70, but it is not clear if the constructions standards therein include fill as an option to meet flood elevation requirements in areas subject to the flood ordinance. Most significantly, Ecology cannot support 3.62 (4), which allows fill waterward of the ordinary high water mark to prevent inundation by sea level rise. This is contrary to WAC 173-26-231 (3)(c), the policies in the SMP, and does not provide optimum implementation of policies related to Shorelines of Statewide Significance in the SMA and in the Guidelines (RCW 90.58.090 and WAC 173-26-251).
6. Section 3.3 –definitions. The following definitions are needed: accessory, aquaculture, floating home, instream structures, and should (see WAC 173-26-191 (2) – unlikely an existing definition in the City code carries this same significance for this word as the Guidelines). Some of these terms may be captured by adding WAC 173-26-020 to the list in 3.3 (B). The words floodplain, priority habitat, and priority species do not occur in the codes referenced in section 3.3 (B). As previously communicated, primary structure must also be defined in the context of structural shoreline modifications [WAC 173-26-231 (2)(a)]. Example language was submitted to the City in November and December 2012. The words vessel, water dependent use, water enjoyment use, and water related use are in the list in 3.3 (B) but then also defined in 3.3 (C).
7. 3.8 (G) – second sentence refers to Conditional Uses when it should refer to variances.
8. 3.13 (A) refers to WAC 173-19, which does not exist. This section also says nothing about the fact that Ecology must approve SMP amendments. See WAC 173-26-100.
9. 3.18 A – for clarity, consider: *The Olympia Comprehensive Plan sets forth the designation criteria and management policies for the shoreline environment designations established in the Olympia Shoreline Program.*
10. 3.21 (I)(2) – who makes this determination? In (b), the reference should not be to critical areas it should be to shoreline ecological functions.
11. 3.21 (I)(3) – same as above comment with regard to critical areas.
12. 3.21 (J) - suggest switching numbers 1 and 2 so it is clear that before an applicant may take advantage of a fee-in-lieu program, the City must formally establish such a program. And again, we assume this is not intended only to apply to critical areas.

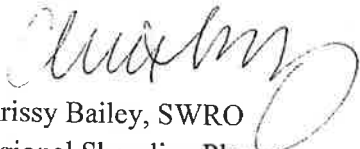
13. 3.26 (B) – we are still seeking confirmation that the intent is to **not** authorize informal trails under any circumstances (informal meaning trails not addressed in the Engineering Design and Development Standards). If such pedestrian or dirt path-type trails are intended to be authorized, the SMP must contain standards for them. Provisions the SMP would need to relate to width, avoiding and minimizing vegetation disturbance, appropriate surfacing, etc.
14. 3.31 - Ecology is still seeking clarity on whether the intent of this section is to allow these uses/activities within VCAs without a variance. In addition, there are other allowances sprinkled throughout the SMP that should be listed here as well, so the list is comprehensive. This includes the allowance for a waterfront deck/patio in section 3.54.
15. 3.32 – it is unclear why this provision would apply only to single family residences and not to all uses. This seems to restate 3.30 C, which appears to apply more broadly.
16. 3.33 (C) – VCA widths cannot be reduced by the administrator, but they may be averaged. Reductions to a dimensional standard such as a VCA would require a shoreline variance.
17. 3.33 (E) – are lawns completely prohibited or can they part of the 33% utilized under subsection 3.33 (C)?
18. 3.34 – this section includes specific information regarding Vegetation Management Plans. Other plans referenced in the SMP include restoration plans and mitigation plans. Some have differing monitoring periods, etc. It would be useful to have more detail about each plan, what it is required to contain and intended to achieve, and if plans can be combined for specific uses or activities, etc.
19. 3.36 (I) – unlisted accessory structures are prohibited in VCAs per subsection 3.31 (B). Fences are not listed in 3.31 (A). In fact residential fences are expressly prohibited from VCAs in section 3.54 (F).
20. Table 6.2 – it is not clear if an applicant would have to do everything in 3.41 (E) (5) and/or (6)/(7) to achieve these bonuses.
21. Table 6.3 – multiple comments. Generally, these need work. Specific comments are below:
 - a. As mentioned in the comments on Section 2, a concern with the City’s current incentive scheme is the ability for a structure to buy its way down to a zero foot setback, and as a result to need shoreline stabilization or flood hazard mitigation structures in the future. This does not comply with standards in the Guidelines, and would undo any ecological lift that the incentivized removal of a bulkhead would generate. In addition, in areas where structures are not already located at or over the water, it is unclear how future shoreline stabilization would result in no net loss of shoreline ecological functions.
 - b. In reaches CAP 6 and BUDD 3A and 3B, wouldn’t the non-water oriented setback column be N/A if those uses do not qualify for a reduction?
 - c. In reach CAP 6, doesn’t a 50% reduction of 30’ equate to 15’, not 25’?
 - d. It is not clear to Ecology why the city would offer setback incentives for a trail along reach BUDD 5A, where Percival Landing was just reconstructed.

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- e. In reach BUDD 5B, how does providing offsite mitigation for a reduction to a zero foot setback qualify as an incentive when the setback is already zero?
22. 3.55 (A) – please clarify it was the intent for all of these to apply only to expansion of these facilities.
23. 3.55 (E) – unclear how the mitigation sequence (referenced in 18.34.410 B) relates to whether trails are closer to the water than roads. In addition, 3.53(D) among other section indicates that these have a setback except when spurs are providing direct access to the water.
24. 3.63 through 3.68 – Ecology will be looking for thresholds in the SMP that clarify what level of alteration or modification to existing docks/piers triggers compliance with the new SMP standards. Additionally, maximum total areas for marine docks and piers (commercial/industrial and private) are required so the City, an applicant, and Ecology know at what point a variance is triggered.
25. 3.71 – there are no policies relating to instream structures in section 2.
26. 3.72 through 3.75 – With regard to the explanation at the beginning of section 3.72, hard structural stabilization does not have to be vertical – consider the rip rap revetments around portions of the Port Peninsula. Soft shoreline stabilization is primarily about using less rigid materials, not about restoration or enhancement. Additionally, Ecology’s required and recommended changes to portions of these sections were outlined on the December draft. The Guidelines are very prescriptive regarding shoreline stabilization for existing structures, versus new (water and non-water dependent) structures/uses, and versus replacement stabilization structures.
27. 3.76 (G) – gabions are a Best Management Practice for outfalls in Ecology’s stormwater manual. In (H 1), large stones at a 2:1 slope are probably considered rip rap revetments per the definition in the SMP, which are prohibited in (G). Consider if the prohibition on revetments encourages bulkheads. In (I), please clarify if the intent was to prohibit everything but vegetation from qualifying as bioengineering.

Please let me know if you have any questions; I look forward to continuing work with the City to complete the comprehensive SMP update process. Ecology would be more than happy to sit down and discuss any of our comments with you before a final draft is issued.

Sincerely,



Chrissy Bailey, SWRO
Regional Shoreline Planner

CC: Paula Ehlers, Section Manager
Peter Skowlund, Statewide Policy Lead
SMP file