

From: j d <digranesjl@gmail.com>
Sent: Tuesday, June 29, 2021 12:29 PM
To: Nicole Floyd; CityCouncil
Subject: 21-2854

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Brought to you by: The Olympia City Council and City Planners: THE GREAT LAND GIVEAWAY"
[continues] at taxpayers expense.

On the upside: elections right around the corner. Then - damage control.

From: tracy o <tosterh@yahoo.com>
Sent: Monday, July 05, 2021 4:23 PM
To: Nicole Floyd
Subject: West Bay Yards

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As neighbors of the West Bay area, we continue to oppose the West Bay Yards development as proposed. We also strongly believe the project should not proceed further without a complete EIS.

We are discouraged that our Olympia City Council Members did not listen to us, the people who live here, during the last meeting, and proceeded to approve the development without environmental review. The project as described will disastrously impact our neighborhood, our quality of life and our environment and the environment of the all other creatures living here.

We are talking about more than money here. We are talking about life and our environment and our future.

Listen.

Bill and Tracy Osterhout
1315 Cedar Lane NW
Olympia, WA 98502

From: Ginger and Jeff <ginger_jeff@comcast.net>
Sent: Wednesday, July 07, 2021 8:33 PM
To: Nicole Floyd
Subject: West Bay Yards Development question

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Hi Nicole,

Thank you for holding the public meeting. I had an additional question for David Smith regarding traffic analyses for this development project.

I live on Division Street and as one commenter noted, traffic changes on West Bay Drive will have resultant effects to surrounding traffic patterns on the westside of Olympia. My question is, will the city be conducting a more comprehensive analysis of traffic pattern impacts from the new development to the surrounding neighborhoods on the westside and be designing and implementing possible measures (e.g., reduce speed limits, 4 way stops, stop lights, new turn lanes, flashing crosswalks, additional sidewalks) to mitigate for those impacts along Division and other streets that see resultant increased use (i.e., more congestion on residential streets and at intersections, excessive speeds on residential streets, less safe walking and cycling conditions) ?

With the anticipated speed limit reductions and other traffic slowing measures on West Bay Drive that David alluded to (which I support by the way), it can be easily anticipated that some portion of existing and new residents in the West Bay and surrounding neighborhoods will be choosing alternative ("faster") routes to exit and enter the area. Specifically, drivers will likely increase their use of Brawn Ave and surrounding residential streets to access Division as well as using Scheider Hill Road NW and then Elliott to access Division. I strongly encourage the city to be proactive and to assess and address these westside neighborhood traffic impacts prior to the completion of the West Bay Yards Development before the issues begin to fully express themselves on these alternative routes. I actually suspect surrounding neighborhoods may start to get a flavor of these impacts during the development's construction along West Bay when traffic will at least need to be partially diverted and/or slowed.

Division Street has seen increasing traffic given new developments in the area, has speed limits that are commonly exceeded, and impatient drivers commonly pass other drivers and buses in an unsafe manner. Students attending schools in the area often walk in the bike lanes north of the intersection with Farwell Ave where the sidewalks end, raising conflicts and congestion with cyclists and drivers.

One last note, there are certain times of year when Brawn and Scheider Hill Road NW are too slick to use as alternative routes (sometimes even closed), making southbound on West Bay Drive and through the round about the only way to access this new development. Those times will create problematic congestion.

Thank you for considering these comments on means to more fully address the impacts of this new development.

Jeff Chan

From: j d <digranesjl@gmail.com>
Sent: Thursday, July 08, 2021 1:25 PM
To: Nicole Floyd
Subject: WBY development

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I feel that the city [Mayor/City Council/Planners] are just going through the motions:

1. Seek input. Check.
2. Discuss input. Check.
3. State that the city is going ahead with the agreement [without requiring an EIS] Check.
4. City and planners conclude that it is in the best interest of taxpayers to continue subsidizing real estate developers in so many ways.

Unfortunately, I NO LONGER trust the Mayor, City Council, City Planners - way too cozy with deep pocketed developers.

Looking forward to the November elections.

Joe Digranes

From: Polly Taylor <pollyktaylor@comcast.net>
Sent: Sunday, July 11, 2021 5:24 PM
To: Nicole Floyd
Subject: West Bay Development

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Dear Ms Floyd,

I do not support the proposed 478+ unit West BayYards proposal. I ask that you not authorize a development agreement until a full environmental analysis (EIS) has been conducted and shared with the community. Too much is at stake that could negatively impact Olympia's remaining ecosystems.

Thanks for hearing my voice.

Polly Taylor
312 18th Ave SE
Oly, WA 98501

July 13, 2021

Mayor Selby and Olympia Council Members,

I have two requests:

Remove your Hearing Examiner, Mark C. Scheibmeir, from any further land use decisions with regard to the opening of Decatur SW at the Public Pathway to automobile traffic.

Replace him as your Hearing Examiner due to his actions described below.

On December 10, 2018 Mr. Scheibmeir opened a hearing (No. 18-1315) with regard to the Wellington Heights Subdivision in the southwest section of Olympia's Westside. On February 19, 2019 he issued a decision approving the subdivision. His decision led to the clear cutting of 9.4 acres of woodland and the construction of fifty-seven single family houses.

In his decision, Mr. Scheibmeir repeatedly references the possibility that a Public Pathway linking Decatur St. SW to Caton Way and Cooper Point Road SW could be opened to automobile traffic. Mr. Scheibmeir has a business relationship with property owners on Cooper Point Road immediately to the south of Decatur St. SW. This property would be directly accessible from Decatur Street SW if it were opened to automobile traffic. Mr. Schbeimeier failed to disclose his relationship with property owners Robert and Heidi Pehl.

Mr. Scheibmeir is a Registered Agent for fourteen (14) Limited Liability Corporations (LLCs).

Ten of these LLCs have as their Governors Robert Pehl and Heidi Pehl.

Two of the ten LLCs, SSRE Investments LLC and SSRE2 Investments LLC , own property on Cooper Point Road SW

SSRE2 Investments LLC owns the property at 2015 Cooper Point Rd where the Pre-Owned Super Store and Awesome RV dealership is located. Robert and Heidi Pehl purchased this property on December 11, 2018, *one day after Mr. Scheibmeir opened this hearing*. It's reasonable to assume Mr. Scheibmeir was aware of this purchase at a site immediately south of the currently unconnected Decatur Street SW.

SSRE Investments LLC owns the property at 2107 Cooper Point Rd where Olympia Volkswagen is located. This property was purchased on February 2, 2014 by Robert and Heidi Pehl. It's reasonable to assume Mr. Scheibmeir (who was hired as Hearing Examiner in 2013) was aware of this purchase at a site two tenths of a mile south of the currently unconnected Decatur Street SW.

Mr. Scheibmeir addresses the opening of Decatur SW to automobile traffic several times in his decision.

On page three of his decision he cites one of the causes of the “firestorm of public hostility” to this proposed land use was the possible “conversion of Decatur into a major arterial, allowing access south to Cooper Point Road.”

Again, on page 7 of his decision, Mr. Scheibmeir observes that the Public Pathway (which he erroneously refers to as a “small park”) “serves to disconnect Decatur Street from Caton Way. This park (sic) prevents traffic on Cooper Point Road from using Caton Way/Decatur Street to gain access to Harrison Avenue, etc.”

Again, on page 9, he references “a possible future connection between Caton Way and Decatur Street.”

As an official required to be an expert on the Comprehensive Plan, we must assume that Mr. Scheibmeir knew that the possible automobile connection of Decatur to Caton Way and Cooper Point was no longer in Olympia’s Comprehensive Plan.

It is impossible to avoid the conclusion that he avoided mentioning this fact due to his business relationship with the property owners on Cooper Point Road SW.

The Council appointed Mr. Scheibmeir in April, 2013. The Planning Commission submitted their final draft to the Council in 2013. Their draft included the Decatur Connection. This was met with widespread public opposition, the source of one of the largest number of public comments.

The Council deleted from its 2014 Comprehensive Plan all five paragraphs describing the Decatur Connection. There is no word about a Decatur connection in the current plan’s “Westside Transportation Issues” section. (pp.178-181) We can only assume that Mr. Schbeimier, charged with interpreting the Comprehensive Plan, knew of this deletion.

Mr. Scheibmier makes numerous references to the Transportation Map of 2030 which is part of the 2014 Comprehensive Plan. (P.213). Mr. Scheibmeir must have known that this Map shows there is no automobile connection, nor a planned one from Decatur SW to Cooper Point Rd.

In response to the “firestorm of public hostility” one would expect Mr. Scheibmeir to point out that the Comprehensive Plan does not allow such a connection. He did not. Even in his discussion entitled, “Findings Related to the Comprehensive Plan,” he fails to mention that the Decatur automobile connection had been deleted by the City Council.

Before Mr. Scheibmeir opened his hearing on December 10, 2018, he should have revealed the relationship he has with the property owners on Cooper Point Road and recused himself. He did not.

Consequently, Mr. Scheibmeir failed to meet the appearance of fairness standard required in any adjudicated proceeding. Instead Mr. Scheibmeir made a decision to keep this relationship from the parties of record and the public.

While the Council cannot remedy the damage to our neighborhood that resulted from his approval of a development that clear cut 9.4 acres of woodland and is building inordinately expensive single family homes in the midst of an affordable housing crisis, you should not allow Mr. Scheibmeir to preside

over any further proceedings that involve decisions on opening Decatur St SW to automobile traffic at the Public Pathway.

The Council must also direct Mr. Scheibmeir to inform Councilmembers, Parties of Record and the general public as to the full extent of his relationship with the Pehls. It is reasonable to imagine, among other things, that Mr. Scheibmeir discussed the Wellington Heights project and its potential impact on Decatur SW with the Pehls. He must also be instructed to reveal any other business relationships he -- or any member of his firm -- has in the City of Olympia.

The City Council has the authority and responsibility to hire the City's Hearing Examiner. Because Mr. Scheibmeir had a business relationship with the Pehls that he failed to disclose, his decision in the Wellington Heights matter cannot be seen as fair and impartial -- the fundamental core of the Fairness Doctrine.

Given this fact, the City Council should replace Mr. Scheibmeir as the City's Hearing Examiner. You should exercise your authority in the name of the public welfare and standard of conduct that Mr. Scheibmeir failed to uphold.

Sincerely,

Dan Leahy, Party of Record
1415 6th Avenue SW
Olympia, Washington 98502

cc: Parties of Record

From: Cynthia Snow <outlook_1531675F1E1B96F4@outlook.com>
Sent: Thursday, July 15, 2021 11:54 AM
To: Nicole Floyd
Subject: West Bay Project

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The proposal for 460-480 apartment units is a very bad idea. West Bay Drive is a 2 lane road which is unlikely to be widened. The roundabouts on Harrison are already busy and the addition of so much more traffic would make them worse. I believe that developing the property as restaurants, retail, or office space would be acceptable if adequate parking was provided. Even though traffic would be increased, it would not be as bad as with apartments.

Sincerely,
Cynthia Snow
Sent from [Mail](#) for Windows 10

From: Aileen Liu <aileenliu168@gmail.com>
Sent: Monday, July 26, 2021 3:31 PM
To: Nicole Floyd
Subject: West Bay Yards Proposal is Inconsistent with the Shoreline Management Act

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Dear Ms. Floyd,

As an Olympia resident I am writing to voice my concerns about the proposed West Bay Yards development.

It is imperative that a comprehensive Environmental Impact Study (EIS) be conducted before this project moves any further. Please note my concerns support those raised by environmental scientists. As a resident I also feel the quality of life for current and future generations will be negatively impacted by the planned development.

The plan for 470+ leased apts on toxic landfill, given rising sea levels, is fundamentally flawed and the Surfside Fla. tragedy by way of example should give the planning commission pause and underscore the necessity of following through with legally required due diligence at minimum. While building sink is a variable, this situation is even more volatile given the toxic site. We want to ensure that, as stewards of our natural resources, The city adequately considers future safety as well as the risks of improperly building an over-scaled project over one of the most contaminated sites in the state.

Traffic And Parking

- Vehicle traffic and parking has not been factored in appropriately as greater traffic will likely cause more ecological damage to Budd bay. West Bay drive is a narrow roadway and the congestion from the traffic circle can become a matter of public safety. I have witnessed enough near misses when there is congestion and impatient drivers. Accidents will likely escalate and both pedestrians and vehicles will be impacted.

Shoreline changes not allowed under SMA

Source: Oly EcoSystems

• Proposed Shoreline Modifications

WBY proposes to relocate the ordinary high water mark (OHWM) by adding fill and moving the proposed building footprints waterward of what would be allowed given the existing OHWM. WBY project is inconsistent with the Shoreline Management Act.

Specifically, the WBY proposal violates the City's Shoreline Master Program with tideland fill that, under the guise of enhancing the beach, actually moves the dividing line between uplands and tidelands – the Ordinary High Water Mark (OHWM) – approximately 50 feet further towards the water.

Building further out into the inlet severely cuts access for boating and restricts views from west bay park, one of the local parks that is for now safe, clean and a highlight for Olympia's westside.

Thank you for your consideration.

Aileen Liu

 kind

From: Bhedges44 <Bhedges44@comcast.net>
Sent: Monday, July 26, 2021 8:11 PM
To: Nicole Floyd
Subject: West Bay Yard

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I am totally am against the proposal before the Council regarding a proposed development on West Bay Drive. The impact to the shoreline, the traffic and the environment will be significant to all citizens of the City.

I hope you and the rest of the Council totally understand the negative impact this will have and don't make your decision based on increased revenue for the City.

Bette Shultz
A Westside Resident

PS: Please share with the rest of the Council. Thank You.

From: Corey White <corey.r.white@outlook.com>
Sent: Monday, July 26, 2021 5:00 PM
To: Nicole Floyd
Subject: West Bay Yards (WBY) Development

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Nicole Floyd and the Site Plan Review Committee,

The West Bay Yards (WBY) Development on Olympia's West Bay shoreline proposed development is inconsistent with Olympia's Shoreline Master Program. As a local resident I have grave concerns regarding the expedited and short sighted process and insist that the City conduct a thorough environmental analysis of this project.

Sincerely,

Corey White
5217 Klahanie Dr NW
Olympia, WA 98502

From: Jeanne Miller <jamiller_studio@hotmail.com>
Sent: Monday, July 26, 2021 2:02 PM
To: Nicole Floyd
Subject: West Bay Yards Development

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Hello,

I am STRONGLY AGAINST the proposed development project at West Bay Yards.

I am also VERY CONCERNED that the City would accept as valid a manual peak-hour traffic count that was conducted during an unprecedented drop in traffic due to the covid-19 pandemic.

I am also VERY CONCERNED that the City would support any development that includes moving the Ordinary High Water Mark towards the bay and adding fill, in violation of the Shoreline Management Act.

In light of climate change and increasing sea-level rise, this development is FOOLISH.

Once again, the City is using underhanded methods to ignore the will of the residents of Olympia.

Thank you for considering my views.

Jeanne Miller

1916 Arietta Ave SE
Olympia, WA

From: northbeachcomm@cs.com
Sent: Monday, July 26, 2021 3:41 PM
To: Clark Gilman; Dani Madrone; Lisa Parshley; Renata Rollins; Yến Huỳnh
Cc: Nicole Floyd
Subject: : Site Plan Review committee Tues, July 26.....on West Bay Yards.....476
apts on West Bay DR

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Hello City Site Plan Review Committee;

The City of Olympia Site Plan Review Committee, is the first round of committee review focuses on code compliance for the West Bay Yards proposal, 476 apts on West Bay Drive. . The first comment period focused on code compliance ends Tuesday July 27th (tomorrow).

We believe that a lack of such analysis would foreclose the opportunity for Olympia to become a sustainable city and negatively impact our recovering marine life for generations to come.

We request that the City conduct a thorough environmental analysis (EIS) of this project. Traffic Commuters along West Bay Drive and those who travel through the roundabouts on Olympic Drive at the bottom of Harrison Avenue already know that there can be long backups during peak times. The proposed development has the potential to generate thousands of new vehicle trips per day at these intersections, increasing wait times.

This will impact those who use West Bay Drive and all who transit the rotaries in this areas. This not only lengthens commutes but also suggests longer response times for emergency vehicles. As part of its land-use application, WBY was required to submit a traffic analysis that looks at a qualitative metric known as level of service (LOS), not only along West Bay Drive but also at associated intersections, roundabouts and connectors.

The traffic analysis submitted by WBY is totally inadequate. Olympia's Traffic Impact Analysis (TIA) Guidelines for new developments requires manual peak-hour counts at all study intersections. For the WBY study, these manual measurements were all collected in Spring 2020, during the height of the pandemic, when traffic volumes around the region were known to be a fraction of typical volumes. You have first hand experience of the diminished traffic and should not accept such a misrepresentation.

The traffic analysis includes no disclaimer regarding the pandemic and its impact on number of trips across the study area; it as though the pandemic didn't happen and that 2020 peak-hour traffic volumes are representative. The traffic analysis is irremediable and should be repeated, preferably by a different contractor with a higher level of professionalism. Proposed Shoreline Modifications WBY proposes to relocate the ordinary high water mark (OHWM) by adding fill and moving the proposed building footprints waterward of what would be allowed given the existing OHWM. In so doing it encroaches on the navigable waters of Budd Inlet, buries existing aquatic habitat, increases the imperious surface compared to alternatives, precludes potential wetland function, and eliminates potential groundwater recharge. The proposed "restoration" is vulnerable to sea-level rise and vulnerable to erosion and lack of sediment nourishment, necessitating the introduction of new shoreline armoring in the form of a groin at the south end of the beach, further disrupting natural nearshore processes.

Finally, the proposed development is inconsistent with Olympia's Shoreline Master Program (SMP) and WA's Shoreline Management Act (SMA). Possible, but unexplored alternatives, would preserve and increase existing aquatic habitat by removing existing fill and armoring, enable natural erosion and beach nourishment, restore groundwater flow to the beach and improve stormwater infiltration.

Such alternatives would maintain a 100 foot buffer typically required for fish-bearing waters, thereby decreasing beach vulnerability by creating space for the shoreline to adapt with sea-level rise. Finally, such alternatives would be consistent with Olympia's SMP and WA's SMA. Inconsistencies with the Shoreline Master Act and Olympia's Shoreline Master Program WBY project is inconsistent with the Shoreline Management Act. Specifically, the WBY proposal violates the City's Shoreline Master Program with tideland fill that, under the guise of

enhancing the beach, actually moves the dividing line between uplands and tidelands – the Ordinary High Water Mark (OHWM) – approximately 50 feet further towards the water.

This relocated OHWM is not limited to “restoration” but rather underpins the entire WBY proposal by serving to increase the allowable building footprint with respect to the existing OHWM. The WBY proposal also erroneously relies on the City's 2016 West Bay Environmental Restoration Assessment as a backdoor to circumvent the SMP's

- 1) prohibition against creating new uplands and
- 2) requirement that restoration employ the minimum waterward fill necessary to accomplish the purposes of the project. However, the 2016 study has not been evaluated under SEPA and cannot authorize a contravention of State Law and Olympia Municipal Code.

In a third inconsistency, the proposal seeks to use municipal code to exceed allowable building heights and view blockages despite a specific contravention in the Shoreline Master Program against fill being used as a means to increase allowable building height. For these three reasons, the project application, as presented, should be denied. SEPA and Environmental Analysis.

While the City has not yet requested formal comments on SEPA compliance, the above review of the SMA necessarily touches on the need for environmental impact and alternatives assessment related to the proposed filling of tidelands.

In light of the compliance issues with respect to the SMP, the City should make a determination of probable significant environmental impact during its SEPA review and require an EIS to examine the environmental impacts of WBY's proposed restoration/creation of new uplands versus alternatives such as retaining the existing OHWM, or removing some of the historic fill and moving the OHMW landward, not waterward.

While a SEPA review has not yet occurred, the proposed inconsistencies do show that an EIS is the proper way forward to evaluate the impacts, benefits and alternatives to a modification of the Budd Inlet shoreline that will be felt by the community and our recovering marine life for generations to come.

Thanks;

Lee Riner
2103 Harrison
Oly., WA
98502

From: Phyllis Farrell <phyllisfarrell681@hotmail.com>
Sent: Monday, July 26, 2021 2:35 PM
To: Nicole Floyd
Cc: George Watland; Lois Ward
Subject: West Bay Yards Proposal

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I believe the City of Olympia should make a determination of probable significant environmental impact during its SEPA review and require an EIS to examine the environmental impacts of the West Bay Yards development proposal. There are concerns re traffic impacts, the use of fill (apparent violations of the Shoreline Management Act and the Olympia SMP), stormwater impacts, shoreline habitat destruction, and increased shoreline armoring (when the state is trying to reduce armoring).

Respectfully,

Phyllis Farrell
Sent from [Outlook](#)

From: Rob Penney <robpen11@gmail.com>
Sent: Monday, July 26, 2021 2:46 PM
To: Nicole Floyd
Cc: CityCouncil
Subject: West Bay Yards Public Comment

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Ms. Floyd,

I have lived happily in West Olympia for decades. In all that time, this is the greatest potential threat to our neighborhood and ecosystem I've ever encountered. I just walked along West Bay Drive with the already steady flow of traffic and I kayaked along the sensitive coastline, and I shudder to think of the potential impacts of this enormous project. Long backups at the roundabouts with more accidents from understandably impatient drivers, many more vehicles choosing instead to zip through the NW neighborhood streets not designed to handle it, endangering families who live there. The sensitive shoreline buried and armored rather than restored and protected, with all the ripple effects on aquatic life in Budd Inlet and beyond.

Your current focus is on code compliance, which brings up the fact that the City has already given away the ability to enforce code enhancements for the next 15 years--just as we're learning more about the quickly accelerating impacts of climate change, homelessness, affordable housing, and shore environmental degradation. This is very much a time of dynamic change, and locking in codes precludes us from becoming a more sustainable city. Beyond the 15-year period, the impacts of the "bricks and mortar" development will continue for decades.

The old Hardell site has been an eyesore for many years and you'd understandably love to have a developer clean up the site as Hardell and various government agencies have been unwilling and/or unable to do. I'm sure it would make you feel great to be at the ribbon-cutting ceremony by a gleaming new complex that seems to just scream economic development. I get that, I really do; I'd love to see it cleaned up as well. And I get that it's not every day that a developer is willing to do that on their own dime, especially with the degradation of much of downtown that most developers find off-putting.

However, I (and hundreds of others on social media) fear that the potential negative impacts--primarily on traffic and the environment--are not worth it. It's not that any development is bad, or maybe even this development, but until the city has assurance that these two issues have been adequately studied and a solid plan to limit these negative impacts have been completed, I strongly urge you--beg you--to hit pause. Let the very able City staff (as I've witnessed during my years on BPAC) to work with the developers and state officials to perform the needed studies and planning required before the City allows the process to continue.

The initial TIA is based on a pandemic-era baseline, which is a fraction of traffic flows in prior years, inconsistent with Olympia's TIA guidelines. The WBY plans include burying shoreline in fill to push back the ordinary high water mark instead of respecting it, adding impervious surfaces and armoring, and greatly impacting the aquatic and wetland habitat, all inconsistent to Olympia's Shoreline Master Program and the state's Shoreline Management Act. The City's 2016 West Bay Environmental Restoration Assessment was not evaluated under SEPA so cannot be used as an excuse for not following state and local regulations.

Thank you for your consideration of my concerns. I will be monitoring future City discussions on this project and see how they inform my votes for City Council candidates.

Sincerely,

Rob Penney
1621 Rogers Street NW
Olympia, WA 98502

From: Robert Ahlschwede <swedeberger@gmail.com>
Sent: Monday, July 26, 2021 3:24 PM
To: Nicole Floyd
Subject: West Bay Yards proposed development

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Sending this to comment on the proposed development on West Bay Drive called West Bay Yards.

I have several problems with this development beginning with the fact that West Bay Drive will not sustain the amount of traffic this development will bring to the road. Especially if there is any commercial involvement. The road barely handles the traffic that uses it now and the roundabout at Harrison backs up quite a ways now at drive times. I know that your traffic studies will indicate there is plenty of capacity, but those are "your studies".....

West Bay Drive is not a place to have any commercial offices or retail space. There is so much empty commercial space in the downtown and in West Oly now--even outside the pandemic losses--that any more square footage is unnecessary for years to come. And if there develops a need for more commercial space in the future, the downtown core and West Oly has the space to handle the need for years to come. And, THAT is where future development needs to be located. We do not need to subsidize a developer's dream of making a ton of money on a marginal piece of land.

Encroachment on the shoreline. Of course this development will "meet all requirements" of the SMP and the city codes(or they can be changed to make what they want to do ok), but this is an area that does not need buildings looming over the water. 30 foot setback is not enough. And mitigation is not an appropriate answer.

"Shoreline restoration" in this case sounds like more fill to allow building closer to the shore. With a walking path between the buildings and the water?? Right!! On fill..... True shoreline restoration should involve removing all the historic fill and leaving a natural edge at the shore. I do not know for sure but I am betting that even some of West Bay Drive is on historic fill.

And last buildings of any height along the east side of West Bay Drive will block the views of landward properties lowering their property values and decreasing their property taxes to the city, county and state. I would assume that the proposed development will not make up for the loss of property tax revenues making the development a net loss to the taxing authorities.

I realize that the City of Olympia Planning Department will make sure that this development goes forward, regardless of their own rules--"we can find a way to make it happen"--or the consensus in the community, but at least I thank you for allowing us all to talk into the wind.

The city and community is missing a fantastic opportunity to actually restore a piece of our shoreline and develop a wonderful public space. By allowing this development to go forward you are snubbing the community you are supposed to be serving!!

Robert Ahlschwede
3726 Wesley Loop NW
Olympia, Washington 98502

--

Rob Ahlschwede 3726 Wesley Loop NW Olympia, Washington 98502 360-866-1935

From: Sheila Chaney <sheilachaney@mac.com>
Sent: Monday, July 26, 2021 5:55 PM
To: Nicole Floyd
Subject: West Bay Yards

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I am writing to express my concerns about the West Bay Yards project that is steamrolling through the approval process. I have (virtually) attended the recent Neighborhood Meeting and the meeting in March and reviewed the information online. As I previously commented in writing, the project is **totally out of scale for the neighborhood and location**, comprised of 478 apartments, 800+ parking slots, 5 buildings and commercial space.

I attended a number of public meetings about extending a trail from West Bay Park to downtown, and it was my understanding that the city said West Bay Drive could not be widened. West Bay Drive is already dangerous at heavy traffic hours and when logging trucks come barreling through. There is no way to safely turn from Brawne onto West Bay Drive going south, due to limited visibility, at any time of day. The "compact roundabouts" the planner cited will not solve these problems. The thousands of additional car trips this project will add will require a greater intervention. If the traffic study was indeed done in the spring of 2020 when we were all avoiding death by staying in our homes and there **was** no normal traffic, it is incredible to me that it would be accepted.

It was my understanding the the Shoreline Master Program was developed to limit and regulate development along the edge of the bay, so that all could enjoy the bay, its views, and its wildlife. This huge, unsightly development will again add fill to the tideland and place 478 homes at the rising sea level. All without doing an Environmental Impact Study to fully understand the effect of the damage. It will destroy the natural beauty of the bay by its outsized presence, its limit on views, and its impact on water quality and wildlife. And I'm sure the citizens of Olympia will be struggling with problems resulting from this development for many decades.

From: Davenport Moore <sdavenportmoore@gmail.com>
Sent: Monday, July 26, 2021 7:32 PM
To: Nicole Floyd
Subject: westbay yards comment
Attachments: westbay yards .docx

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Ms Nichols I signed up for public comment and am not available to do this so am sending a written statement.

Susan Davenport
115 Sherman St. NW
Olympia, WA 98502

I am a homeowner and live two blocks up from the Harrison/Westbay round about. I abhor the Westbay Yards proposed development for the increased traffic flow alone. On the already stressed "Harrison arterial" I hear the loud collisions when there are accidents at the bottom of the 4th Ave. hill and cannot get out of Sherman St. at peak traffic hours even now. I have been stalled in my car on Westbay drive after enjoying Rotary Park for up to 5 minutes trying to pass the Round about at the juncture of Westbay and Harrison. There is no full flowing traffic during those peak traffic times. This makes being a pedestrian trying to walk across Westbay there risky because of frustrated drivers pushing through to the round about. The sidewalks are not continuous along Westbay and I do not risk walking from my home to the park and beyond.

I have often suggested a bridge span from Westbay to Eastbay to ease traffic with separations for bikes pedestrians and vehicles with the traffic issues already existing. The proposed development will exacerbate existing problems.

My additional concerns are that the SEPA review has not yet been concluded. There are unacceptable inconsistencies in the process to move the Westbay yard project forward that make an EIS necessary. The proposed filling of tidelines as a starting point is questionable as an offense to the Olympia Shoreline Master Plan. The Westbay Environmental Restoration Assessment is transparently development friendly as an end run around the Shoreline Master Plan. Planners can not be blind to these contradictions.

An in depth examination of the environment impacts of the Westbay Yards plan for restoration and new uplands is warranted. There is evidence of a pre-contact Native American midden nearby to the south of Rotary park that indicates a seasonal gathering village was along this shoreline and should be excavations to rule out archaeological examination alongside the environmental concerns.

My hope is that the cess pool and alien species habitat Capitol lake will become an estuary. It would make sense that theme of naturalizing the shoreline of Bud Inlet would be considered in a whole system design for the entire inlet shoreline ecosystem. This moves the development focus from high end housing and restaurants to appreciation of a beautiful natural environment such as what is on the shoreline near Victoria, Canada right in the city limits.

My expectation is that City Planning employees will accomplish true due diligence and not be swayed by a shallow gesture of remuneration to compensate for infrastructure impact and remediation plans that are ill conceived and not firmly rooted in our own municipal guidelines.

Susan Davenport

115 Sherman St. NW

Olympia, WA 98502

From: Beverly Postman <beverlypostman@gmail.com>
Sent: Tuesday, July 27, 2021 8:55 AM
To: Nicole Floyd
Subject: Opposition to West Bay Yards development

External Email Alert!

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Our family has lived on Thomas St. NW for 30 years. We frequently walk along West Bay Rd and are used to the amount of vehicles around the traffic circles on Harrison. Until recently, due to the pandemic, the amount of traffic was significantly reduced, altho it now seems back to normal, which at peak times is quite congested.

The traffic study that was done was based on the much reduced flow during the pandemic and is not accurate to the amount of traffic that now normally occurs.

I'm pretty flummoxed that this development and the scale of it is being actively considered by the city. The impact on the bay, the dangerous level of traffic including log trucks along West Bay, and the fact that these are luxury apartments, which have proliferated all over downtown, seem like a huge mistake to even consider.

I hope that comments from members of the community, especially those of us who live in close proximity to the proposed development, will be regarded with some seriousness by the city. This is not a NIMBY issue, but one of concern for the fragility of our ecosystems which are increasingly under pressure from climate change and development.

Beverly Postman
1431 Thomas St NW
Olympia

From: Brandon Chambers <leebrandonc751@gmail.com>
Sent: Tuesday, July 27, 2021 11:34 AM
To: Nicole Floyd
Cc: Tim Smith; CityCouncil
Subject: West Bay Yards

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We are greatly opposed to a development of this magnitude on West Bay. As commuter cyclists and avid walkers we already experience too much traffic on this narrow road.

On a Friday morning with log trucks, garbage pick-up, school buses and people trying to get to work it's almost impossible to safely ride a bike or even walk a dog.

Not to mention trying to get onto Harrison or downtown at the turning circle on most any day.

I see no room to add a sufficient a bike lane or turn lanes for people and businesses already on West Bay Dr.

We also understand that this property is polluted from way back when the Navy was there.

The city is completely out of control with all the building. Our once beautiful and charming city is becoming generically "anywhere" USA.

PLEASE STOP THE MADNESS

B & B Chambers

From: JIM KRUIDENIER <jkruid@comcast.net>
Sent: Tuesday, July 27, 2021 3:33 AM
To: Nicole Floyd
Subject: West Bay Yards development

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I live at the north end of West Bay Drive, and have followed information as it is released on the development of West Bay Yard. I attended the virtual meeting the city provided several months ago for the planned process to evaluate the development. I asked a question about the the traffic that would be added, thinking myself, from my own experience, that it would be significant, if not overwhelming for the 2 lane street. Because it cannot be widened, I was concerned there would be no way to increase traffic flow in the event that traffic exceeded expectations. I was told that traffic flow had been examined, and that with adequate planning, there was capacity. I was told today that traffic flow was studied, and data used, from a time period (April 2020) that gravely underestimated traffic. I saw the traffic flow myself during that time in the pandemic, and the street was a ghost town. It was at least less than 5% of normal. That can in no way represent current traffic. If indeed the study data was from that time period, to use and quote it as adequate, is misleading, if not an intentional deception. If this is the case, I have then learned that what I expect from the city, **good data for decisions made**, is absent. I will find it difficult in the future, to believe any data the city presents.

If it is true that data used for traffic flow was from the quarantine time in April 2020, with no acknowledgement of that point, by city officials, the data should be thrown out, and a second unbiased study should be completed. To do less would be to disregard the concerns of the residents of West Bay Drive, providing deceptive data to serve the city's point of view.

Jim Kruidenier
1801 West Bay Drive, 405.

From: jhawk@gglbbs.com
Sent: Tuesday, July 27, 2021 5:01 PM
To: Nicole Floyd
Subject: West Bay Yards comment

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Formal comments for the West Bay Yards development, per the current scoping and deadline:

There are MANY problems with this agreement...and the City erred greatly in giving such cooperative passage to this agreement.

Environment, traffic, Shoreline Management Act, Olympia's own Shoreline Master Program inconsistencies, etc.

Traffic

We already know there are long backups during peak times on the roundabouts at Harrison and 4th Ave. The proposed development would generate thousands of new vehicle trips per day at these intersections. This will vastly impact those who use West Bay Drive, especially since there are no reasonable alternative routes, and this road cannot be widened to accommodate more traffic.

And what about emergency vehicles getting through??

The traffic analysis submitted by WBY is totally inadequate.

Olympia's Traffic Impact Analysis (TIA) Guidelines for new developments requires *manual peak-hour counts* at all study intersections. For the WBY study, these manual measurements were all collected in Spring 2020, during the height of the pandemic, when traffic volumes around the region were known to be a fraction of typical volumes. The traffic analysis includes no disclaimer regarding the pandemic and its impact on number of trips across the study area.

It is completely irresponsible bordering on corrupt that this would be submitted using that data.

Proposed Shoreline Modifications

WBY proposes to relocate the ordinary high water mark (OHWM) by adding fill and moving the proposed building footprints waterward of what would be allowed given the existing OHWM. To do so would encroach on the

waters of Budd Inlet, bury existing aquatic habitat, increase the impervious surface compared to alternatives, preclude wetland function, and eliminate groundwater recharge.

The proposed "restoration" is vulnerable to sea-level rise and vulnerable to erosion and lack of sediment nourishment, necessitating the introduction of new shoreline armoring, further disrupting natural nearshore processes.

Finally, the proposed development is inconsistent with Olympia's Shoreline Master Program (SMP) and WA's Shoreline Management Act (SMA).

Inconsistencies with the Shoreline Master Act and Olympia's Shoreline Master Program

WBV project is inconsistent with the Shoreline Management Act. Specifically, the WBV proposal violates the City's Shoreline Master Program with tideland fill that, under the guise of enhancing the beach, actually moves the dividing line between uplands and tidelands – the Ordinary High Water Mark (OHWM) – approximately 50 feet further towards the water. This relocated OHWM is not limited to "restoration" but rather underpins the entire WBV proposal by serving to increase the allowable building footprint with respect to the existing OHWM.

The WBV proposal also erroneously relies on the City's *2016 West Bay Environmental Restoration Assessment* as a backdoor to circumvent the SMP's:

- 1) prohibition against creating new uplands, and
- 2) requirement that restoration employ the minimum waterward fill necessary to accomplish the purposes of the project.

However, the 2016 study has not been evaluated under SEPA and cannot authorize a contravention of State Law and Olympia Municipal Code.

3) the proposal seeks to use municipal code to exceed allowable building heights and view blockages despite a specific contravention in the Shoreline Master Program against fill being used as a means to increase allowable building height.

For these three reasons, the project application, as presented, should be denied.

Thank you,

JJ Lindsey
Olympia, WA

From: JOE CHIVENEY <jchive@comcast.net>
Sent: Tuesday, July 27, 2021 8:04 PM
To: Nicole Floyd
Subject: West Bay Yards

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Greetings

We should have an Environmental Impact Study for this area before moving ahead on this massive project. The reasons are as obvious as the the reasons the city has created an opportunity to not have to. Can you point to a model in our country where a shoreline project was actually done in a sustainable and forward thinking manner?...It would be great if Olympia could be that model city. Let there be a rare time where the lure of an easy dollar was put aside to promote out long term survival. There is the will here to do so. You need not look far, both up and down the sound, to see what these walled developments do to the health of the shorelines to the stealing of views,.to the indifference to creeks and watersheds. There are no shortages of these mistakes. WE are barreling toward building another domino in the contribution of the death of our watershed.

Sincerely
Joe Chiveney

From: John MacLean <jmaclean@eefinance.net>
Sent: Tuesday, July 27, 2021 10:46 AM
To: Nicole Floyd
Subject: Comments on West Bay Yards development proposal

External Email Alert!

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Dear Ms. Floyd and City Site Plan Review Committee Members: I am writing to express my concerns about the West Bay Yards (WBY) proposed development. I share the concerns raised by the Olympia Coalition for Ecosystems Preservation regarding SEPA and Shoreline Management compliance and violations and other impacts and believe the current proposal should be denied and a revised plan for this site developed. I live in unincorporated Thurston County, about a mile outside of the NE Olympia City limits; I had an office in downtown Olympia for many years (2009-2020) and count myself as an Olympia community member. I have been active with GRuB, Sidewalk, DERT (estuary restoration), the Thurston Housing Land Trust and the South of the Sound Community Farm Land Trust. My main comments are below, offered for consideration. Thank you! Sincerely, John MacLean

1. # of Units. The WBY development at 478 units + commercial space seems grossly over-sized for the site. I am concerned about traffic, shoreline and Budd Inlet water quality impacts. Why not permit a much much smaller number of units? If each housing unit has an average of 2.5 people, then the residential population of WBT = 1,195 people.

One visual I have imagined to communicate the WBY size is to draw a map of a portion of the adjacent Westside neighborhood that encompasses a similar # of units and/or building SF or population. Thurston County Census Tract 106 Block 2 (a Westside neighborhood) has a population of just over 1,000 and covers I think about one square mile. The whole Census Tract 106 population is around 7,000. While density can be good, the shoreline WBY site is such a sensitive and constrained area.

2. Affordable Housing Fund. I highly respect our City Council and City government, am concerned about affordable housing and understand that one important reason the Council approved this WBY Development Agreement at this stage is that the developer offered to make a \$250,000 contribution to the City's affordable housing fund. That is a significant amount of money but it is very small compared to the size of the development. If the average unit sale price = \$500,000 then the total sales value of the residential units = ~\$240 million and the \$250,000 = just 0.1% of the total project value, which is very small (calculation below) and inadequate given the huge size of WBY. My work is in finance and I would be delighted to discuss other affordable housing strategies with the City.

478 # units

\$500,000 sale price per unit average
\$239,000,000 total sales value
\$250,000 City affordable housing contribution
0.105% %

3. Budd Inlet Water Quality, Estuary Restoration & LOTT. The WBY project will likely have adverse impacts on water quality in Budd Inlet, which already is an impaired water body. I support estuary restoration, though this is a challenging and expensive proposition, the Lake status quo is not sustainable. LOTT recently received (I believe 2019) a Federal renewal of its discharge permit; while LOTT is an exemplary operation, a next renewal could be in jeopardy due to water quality issues. I understand that the State Department of Ecology, too, is critically evaluating WWT plant discharge permits in to Puget Sound, as well, and even considering summer suspensions to address water quality. I think there are potential linkages here between LOTT, future LOTT ratepayer impacts to address Budd Inlet water quality issues and the prospects for estuary restoration that the WBY could adversely affect.

John MacLean, President
Energy Efficiency Finance Corp.
3336 Libby Road NE
Olympia, WA 98506
Cell = 360-339-3936
Fax = 206-774-0411
jmaclean@eefinance.net
Skype handle = john.coleman.maclea

From: John Sisco <jonran1039@gmail.com>
Sent: Monday, July 26, 2021 9:15 PM
To: Nicole Floyd
Subject: West Bay Yards

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Dear Nicole or whomever is receiving correspondence on this project.

I believe this project is a huge mistake for Olympia. My reasons:

1. Seas are expected to rise substantially over the next 20 years and this hotel and parking garage are at or below sea level.
2. West Bay Drive is already heavily trafficked and there is no way to widen the road to accommodate all the additional cars. The traffic Circle at the corner of Harrison Ave and Westbay will be a nightmare in both directions.
3. The property is best used for a park. The population of Olympia is growing like mad and we will need more parks in the future, especially with waterfront access.
4. The project cannot help but further contaminate Budd Inlet with auto gas and oil runoff. We need to continue to improve the water quality of our lower Puget Sound waters not provide further contamination.

I think it's a disgrace how Olympia City government is rushing this project along in spite of public disapproval. Please read all the concerns of our citizens on the NextDoor website.

Thank you for considering this.

John R and Jean C Sisco
5731 Sunrise Beach Rd NW
Olympia, WA 98502

Please

John Stiggelbout
1221 Brawne Avenue NW
Olympia, WA 98502

26 July 2021

Ms Nicole Floyd
Principal Planner
601 4th Ave E,
Olympia, WA 98501

Dear Ms. Floyd,

While I am not opposed to the housing development being proposed by West Bay Yards, I am opposed to both the size of the development in terms of the number of units and the physical size of the development. I have a number of objections that can be summed up by noting that the developer's studies which have been provided to your office are wholly inadequate and incomplete.

a) Automobile Traffic: the traffic study on West Bay Drive was done in the midst of the pandemic when vehicle traffic was artificially low. A development of the size proposed could easily double the number of car-trips on a road which is already at capacity during rush hour. The study needs to be repeated using current data.

b) Shoreline Management: It appears that the developer's plan to add fill to Budd inlet and extend the shoreline eastward is inconsistent with WA State shoreline management act (and Olympia's Shoreline Master Program). It seems that WBY's objective is to create more land and thus a greater number of allowed housing units and more commercial space.

c) SEPA: A project of this magnitude should not be fast-tracked. As required by State law, a comprehensive EIR needs to be completed prior to any further discussion of shoreline remediation and how that will dovetail with the proposed development.

Thank you for your consideration of neighbor's interests in this project. In the end, my wife and I would like to see the number of units reduced by half. We look forward to seeing your conclusions following the upcoming hearing on this project.

Sincerely,

John Stiggelbout

From: Tower Ly <towerly@comcast.net>
Sent: Tuesday, July 27, 2021 6:43 AM
To: Nicole Floyd
Subject: West Bay Yards Flooding Risk

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Comments on West Bay Yards

Coastal cities around the world are contemplating the best approach for dealing with the inevitable sea level rise caused by global warming. Some coastal cities are already dealing with a higher frequency of damaging King Tides and some are even contemplating a 'Managed Retreat' from these flood prone lands. Olympia's approach is counter to such thinking since development on these flood prone lands is encouraged by Olympia's Comprehensive Plan. While consistent with this plan the West Bay Yards is going to be built directly on the Puget Sound Floodplain and will be subject to flooding from increasingly frequent and dramatically higher King Tides.

The City of Olympia's own Rising Sea Level web site:

(<https://olympiawa.maps.arcgis.com/apps/MapJournal/index.html?appid=ad5ae0366bd04a4b9aceb0e5d763478e>) shows half of the planned West Bay Yards project being flooded if sea level rise is limited to a modest 1 foot rise. The National Oceanographic and Atmospheric Administration states that the rate of sea-level rise is increasing, and is currently rising at a rate of about one-eighth of an inch per year. They state that the rate of sea level rise is expected to continue accelerating and could be as much 8 feet higher by 2100.

I believe that the City of Olympia should be forward thinking and show some leadership by starting to deal with the impacts due to rising sea levels on Budd Inlet. The development of the West Bay Yards on such an increasingly flood-prone site is counter to the approach being taken by other coastal cities.

As a taxpayer in the city of Olympia I feel that the city will be fiscally irresponsible by granting development and occupancy permits to West Bay Yards. At some future date the owners and occupants of West Bay Yards properties could likely file lawsuits against the city of Olympia for granting occupancy permits for such a foolish location.

--

John Tooley
604 Thomas St NW
Olympia, WA 98502

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may violate the electronic communication privacy act, 11 USC 2510 et. seq. The Washington Privacy Act, RCW 9.73 and Article I of the Washington State Constitution.

Sent from my iPad

From: Sasha Henry <jhenry.oly@gmail.com>
Sent: Tuesday, July 27, 2021 4:47 PM
To: Nicole Floyd
Subject: West Bay Yards comments

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Dear Mx. Floyd,

I attended the recent virtual Neighborhood Meeting on July 7th regarding the proposed West Bay Yards development and wanted to submit my comments to the review process. I am very concerned about the project's impact on my neighborhood, its massive scale, its effect on the shoreline, and the fact that it decreases the percentage of home ownership in the neighborhood by being entirely rental units and no condos.

My primary concern is about traffic on West Bay Drive. Due to the unique geography of the neighborhood, there are few alternatives to West Bay Drive for drivers heading downtown or to freeway entrances downtown. We can either go west to Division then down Harrison or 5th, or go east to West Bay Drive. Going south on one of the streets like Foote or Rogers and turning east on Harrison is not a viable option during normal traffic loads, as the gaps that develop between cars are insufficient for safe crossing.

During morning rush hour, pre-pandemic traffic regularly backed up a quarter mile or more on West Bay Drive north of the Harrison/West Bay Drive roundabout. At the Neighborhood Meeting, the Olympia traffic planner suggested that the roundabout could handle the additional traffic load of the West Bay Yards project and that the issue with a roundabout was balance. I understand this to mean that he thinks the roundabout will not experience additional backups as long as the flow through the various entrances and exits of the roundabout is roughly equal. While I'm sure this is true in theory, traffic during rush hour is *not* balanced. Adding 478 apartments' worth of cars will increase the imbalance. This is not just an issue of convenience; emergency vehicles also get caught in backups of this kind.

West Bay Drive is also extremely dangerous for cyclists. The last mile before the intersection with Olympic Drive/Harrison is an uphill climb for cyclists heading south. There is no shoulder, and it is unsafe for drivers to pass due to limited visibility from the hill. I know there are plans for a trail that would provide an alternate route for cyclists, but the fact is that trail has been planned for over 40 years. Even if it existed, trails are often not viable alternatives for commuting cyclists. I have witnessed many near misses between bikes and cars on West Bay Drive and heard of injuries and even deaths. The West Bay Yards planner implied that the bike lane in front of the project would alleviate the issue, but the worst part of the problem is not in front of the proposed project but further south where the cyclists slow down to climb the hill, and the additional traffic caused by 478 apartments will make this situation even worse.

I understand that the traffic analysis submitted by West Bay Yards was done during the pandemic on pandemic-level traffic loads. This is frankly shocking. Any data gathered during such an analysis would be misleading in the extreme.

Thank you for considering my comments and I hope this project will not be approved. I am in favor of sensible development, and I don't think this project fits into that category at all.

-- Joslyn Henry
1205 Woodard Ave NW
Olympia WA 98502

From: Marg We <marg.we52@gmail.com>
Sent: Monday, July 26, 2021 9:46 PM
To: Nicole Floyd
Subject: West Bay Yards comments

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Although the description of West Bay Yards sounds like it would be an asset to the community, I have several concerns about this proposed development:

1. Impact on traffic. I live on the westside of Olympia not far from this proposed projects. West Bay Drive traffic would be adversely affected by adding this many apartments and commercial space.
2. Sea level rise. I believe it is impractical to build on this piece of land with sea level rise on the increase.
3. Affordable housing issues. Olympia needs more housing for low income residents, not more high end rentals.

Thank you for considering my comments.

Margaret Wehrle
604 Thomas St., NW
Olympia, WA 98502

From: Michael S <gatoymiguel@gmail.com>
Sent: Tuesday, July 27, 2021 10:09 AM
To: Nicole Floyd
Subject: West Bay Project

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Dear Ms. Floyd,

I am writing to express my grave concerns about the proposed West Bay Yards project, and indeed, my concerns about how far the project has already proceeded in contravention of both existing Olympia Municipal codes and Olympia Shoreline Master Program. I am asking that the City complete a thorough Environmental Impact Analysis as a moral, civic, and legal precursor to any further progress with this project.

Olympia is a very livable city. I want it to remain so. The West Bay Yards project has potentially significant and unalterable effects on traffic flow, livability (more luxury apartments, really? Where is the comparable affordable housing?), socio/economic division, and the marine and shoreline environment of Olympia and Budd Inlet. It is unacceptable that an Environmental Impact Analysis has not been completed for a project of this scale.

The proposal to alter the OWHM in order to fit an oversized project is, frankly, immoral and in contravention of existing city and state Shoreline Management codes. These codes cannot and should not be overruled through a research assessment that has not been evaluated and approved by SEPA (2016 West Bay Environmental Restoration Assessment).

As a state and city resident, I demand an Environmental Impact Analysis before this project moves forward, in order to publicly, and transparently, more fully understand the long-term ramifications on our beloved city and Budd Inlet. It is simply the right thing to do.

Michael Stine
825 Percival St SW
Olympia, WA. 98502

From: olyclarks@hotmail.com
Sent: Tuesday, July 27, 2021 1:14 PM
To: Nicole Floyd
Subject: West Bay Yards Comments

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Please consider my comments regarding the above proposed mega apartment complex on West Bay Drive in Olympia.

It is impossible to think for one moment that this project is good for the environment just because the builder will be mitigating the area previously contaminated by various businesses located on that spot in the past. 478 units plus residential parking plus what will no doubt be parking (albeit a small designation for public parking) will not be a good use for that space.

Traffic on West Bay Drive is already a problem. There are logging truck, big box trucks, bicyclists and automobiles that use the road every hour of the day and night. There is not bus service. There is no way to increase the number of lanes due to residential housing on one side, businesses and Budd Inlet on the other side. Traffic at both roundabouts leaving the city on 4th Avenue and headed west to the upper West Side are already a bottle-neck at peak hours. Lets not add a minimum of 478 cars per day. Your traffic study completed during the pandemic in 2020 no way reflects the actual number of vehicles using West Bay Drive every day.

To say that this development will provide affordable housing is a joke. The small percentage does not outweigh or contribute to an environmentally sound use of this land.

I urge you to reconsider any and all impacts for this project...not just what revenue this could be for the city. THIS IS A BAD PROJECT FOR THE CITY AND ITS RESIDENTS.

Ann Clark
360 866 4848
Olyclarks@hotmail.com

From: Bethany Weidner <bethanyweidner@gmail.com>
Sent: Tuesday, July 27, 2021 3:27 PM
To: Nicole Floyd
Subject: Comment on West Bay Yard

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Dear Nicole,

Here are preliminary comments, as I have another job and am unfortunately unable to devote the time that would be needed to review all of the elements of the proposal to determine whether the staff has made errors or misinterpretations beyond the one I am flagging here. I know others have similar concerns about the rigor of the city's scrutiny and I hope that they are more able than I to take time from their day jobs to do a thorough review.

The traffic study -- or the staff's description of it -- appears to contain at least two obvious and meaningful errors. It also contains one fatal error of not noted by the staff

2 obvious errors

This is from 8. Summary and Conclusions in the Traffic Study stating the number of parking stalls as 805
Milestones Company, Inc proposed to construct the *West Bay Yards* project that will consist of 478 apartment units and approximately 11,700 square feet of restaurant space . The proposed project will also provide waterfront amenities with a 30-foot waterfront trail buffer and a kayak/boat rental. **A total of 805 parking stalls will be provided, with 115 of these stalls located at ground level, and the remaining 690 stalls located below ground.** The proposed project will also provide 417 long term bicycle storage spaces and 48 short term spaces.

this is from the Public Hearing announcement dated June 29 stating the number of parking stalls as 833
Lead Planner: Nicole Floyd, Principal Planner 360.570.3768 E-mail: nfloyd@ci.olympia.wa.us
Project Description: Project proposal is a mix of uses, including 478 residential units, approximately 10,000 square feet of retail and approximately 11,000 square feet of restaurant area. **Project includes 833 parking stalls in an elevated public plaza,**

Comment: 30 parking stall discrepancy is neither trivial as a number, nor trivial as a failure to accurately portray, or a failure to rigorously review, the project's filings. Are there 833 parking stalls and the Traffic Study 'experts' are wrong? Are there 805 parking stalls and the staff is careless?

Comment: are there 833 parking stalls in an elevated plaza? OR 115 parking stalls at ground level, and 690 located below ground?

An elevated parking plaza is a different project design than a design with parking stalls at ground level and below ground. This is clearly an error. Why should we assume there are not other errors throughout?

Yes, the city figures come from the Hearing Notice -- but the people who drafted the hearing notice got those figures from somewhere and either the traffic study figures and design description is wrong, in which case the firm drafting the traffic study cannot be relied on; or the city is disorganized and doesn't have a handle on the project and their work cannot be relied on.

The fatal error

Accurate traffic data is the prerequisite without which no traffic analysis can be accepted. An accurate and up to date base point is the foundation for forecasting future traffic volumes that will form the basis for accepting or rejecting a proposal. The traffic study submitted is based on demonstrably inaccurate traffic data from the extraordinary year 2020, when part of the city of Olympia was actually shut down for several months with corresponding deep declines in traffic volumes, and even when partially opened, the state and city remained closed and 90% of their employees worked from home -- did not commute to work. In addition, retail life downtown and on the westside was also radically curtailed. No study estimating LOS based on 2020 traffic volumes can be accepted as predictive of the level of service in 3-4 years.

Bethany Weidner

From: Elizabeth Hauser <elizha@comcast.net>
Sent: Tuesday, July 27, 2021 2:27 PM
To: Nicole Floyd
Cc: Elizabeth Hauser
Subject: West Bay Yards

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Site Plan Review Committee,

I wish to comment on the West Bay Yards plan and request for approval. I am not against reasonable development in any area of Olympia or Thurston County, but we must change the habit of approving things that really don't meet guidelines in order to "create jobs."

First, we must balance the urge to create new jobs that endanger the environment against the infinite number of possibilities that create new jobs without danger to water, wildlife or human quality of life. The West Bay Yards is not the only possibility of development, it's just the one this group has put together in order to make money. It is also development to increase the gulf between the rich and the poor and it's way past time we stop that trend.

Second, and even more troubling, is the temptation to make exceptions to regulations like the Shoreline Management Act or to actually change the land involved to sidestep the requirement. In this case, there is also the shameless attempt to slide under the traffic use regulations by doing a vehicle count in the middle of the pandemic. We all know that during the pandemic of 2020 Olympia looked like a ghost town compared to the amount of traffic in 2019. We still are not back to normal in that respect.

So don't go our of your way to make the West Bay Yards proposal look bad, just follow the regulations and let the regulations speak for themselves.

Thank you for your hard work and thank you for listening.

Betty Hauser
210 17th Ave SE
Olympia, WA 98501
elizha@comcast.net

From: Charles Gillespie <cagillespie@gmail.com>
Sent: Tuesday, July 27, 2021 5:01 PM
To: Nicole Floyd
Subject: Public Comment on West Bay Yards project

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I oppose the proposed project on environmental , climate change and traffic grounds, among others.

Charles Gillespie
cagillespie@gmail.com
619.990.8020

1119 Giles ave nw
Olympia, WA 98502

From: Chuck Rogers <chuckroger@att.net>
Sent: Wednesday, July 28, 2021 11:05 AM
To: Nicole Floyd
Subject: Environmental Impact ??

External Email Alert!

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Nicole Floyd
(Harrison Ave. Mixed building Site Plan 16-9112

My name is Chuck Rogers and I live at 418 Yauger Way NW.
the Grass Lakes area.

I know I am writing to you a little late maybe, but has anyone
been to the proposed project site ? If you had, you would see
how narrow the streets are and how inadequate our parking is
right now. There is proposed new entrance/exit driveway
planned, however, the exit only allows for a right turn onto
Harrison Ave. This will force all other traffic intending to go left
towards downtown Olympia back into the existing streets,
which right now are straining to accommodate existing residents.

The planned project intends to bring into this tight neighborhood
a large number of cars via an apartment building and a
restaurant. The restaurant alone will create a traffic situation
and add in the apartment resident's cars, we will have a big
problem that will happen.

I implore you or someone knowledgeable to these potential traffic
situations come to the proposed site area and take a closer look
at things.

Yers, there is enough land for the buildings, but the traffic that will
come along with this project will seriously impact the entire
neighborhood. I believe that the lead agency that has determined
that there will be no significant adverse impact upon the
environment may want to take a closer look. The environment may
not be impacted, but what about the residents living in this
environment ? The impact will affect the entire Grass Lakes Area.
There is only one entrance/exit at either end of the complex.

Thank you for taking the time to read this [plea for further involved
knowledge about our neighborhood

Yours Truly

Chuck Rogers

From: Chela2@Q.com
Sent: Thursday, July 29, 2021 8:28 PM
To: Nicole Floyd
Subject: RE: West Bay Yards SEPA and Development Application Comments

External Email Alert!

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Hi Nicole;

I think adding this newest part as a separate comment would be fine, if that works for you. Thanks for your consideration and reaching back out to me.

Joyce

From: Nicole Floyd [<mailto:nfloyd@ci.olympia.wa.us>]
Sent: Wednesday, July 28, 2021 3:05 PM
To: Chela2@Q.com
Subject: RE: West Bay Yards SEPA and Development Application Comments

Copy that – do you want this added bit forwarded to the Hearing Examiner at the point of the hearing? Or were you mostly informing me/ the review committee for our current review?

If you want it to go to the Hearing Examiner, you could revise your email, re-send or I can just add this newest part as a separate comment. I just was not sure, what your preference would be.

From: Chela2@Q.com <Chela2@Q.com>
Sent: Wednesday, July 28, 2021 12:43 PM
To: Nicole Floyd <nfloyd@ci.olympia.wa.us>
Subject: RE: West Bay Yards SEPA and Development Application Comments

External Email Alert!

This email originated from a source outside of the City's network. Use caution before clicking on links or opening attachments.

Hello Nicole;

After I sent this message, I found and reviewed the flooding analysis. I believe that a 50 year time horizon is unrealistic for recommendations of actions to prevent flooding. We have many buildings in Olympia far older than that. Sea level rise predictions are increasing as I understand it, so I hope they have taken that into consideration.

Thank you.

From: Chela2@Q.com [<mailto:Chela2@Q.com>]
Sent: Tuesday, July 27, 2021 3:47 PM
To: 'nfloyd@ci.olympia.wa.us'
Subject: West Bay Yards SEPA and Development Application Comments

West Bay Yards SEPA/Development Application Comments;
Joyce Mercuri, Olympia resident

Hello Nicole:

My comments on the West Bay Yards development proposal are below:

- 1) Geotechnical/earthquake safety.
 - a. The potential for liquefaction at this site is very high. Also, the site has a huge amount of wood debris fill on it, which could cause settling of structures over time. The site geotechnical report is not very definitive about what the “ground improvement” method might be, or whether it might be effective. The city needs to pay extra attention to the earthquake engineer to make sure whatever they propose to protect the building and residents from earthquakes is the highest quality and the best engineering. A statement in the geotechnical report states a preference for “ground improvement” because it is less expensive than using grout columns for stabilization. Whatever method is proposed should be done with the highest engineering standards and should be subject to peer review by a qualified outside expert – please just don’t take one company’s design at face value.
 - b. Groundwater is found about 4 feet below ground surface. Therefore, they need to explain how they will address dewatering the underground garage area and whether high water table will affect the building foundations.

- 2) Traffic.
 - a. Like so many others, I have concerns about increased traffic. It appears that some of the traffic assumptions are based on surveys completed during the spring 2020 ‘lockdown’ when there were very few cars on the road, which if true, is completely inappropriate and misleading. Looking at some of their assumptions about increased trips at nearby intersections does not seem to me to reflect the fact that there will be almost 500 apartments, each with likely at least 2 people living in them. If even as low as 50% of those people work normal working hours, then you would likely have many extra cars at peak times. The traffic analysis needs to be reviewed by a third party to make sure it is accurate and appropriate.
 - b. The traffic analysis should consider effects on major westside intersections such as Harrison and Division, and Madison and Division.
 - c. If the development does go through, the city and IT need to make sure there is bus access down West Bay drive.

- 3) Contamination issues:
 - a. The contamination status report describe sampling that was done in 2020, yet no report showing actual sample results is included. The full results of the soil and groundwater sampling need to be made available to the public. The status report also references cleanup levels based on “commercial/industrial” land uses. Be aware that the Model Toxics Control Act does not include “commercial” cleanup levels for soils. Industrial cleanup levels are for strictly industrial properties. The only other cleanup levels for soils are for unrestricted (e.g., residential) uses.

- b. The contamination report references the Ecology 2010 Cleanup Action Plan which stated that dioxin was not found to be a contaminant of concern at the Hardel site. Although Ecology did make such a statement, I believe this was a faulty decision on their part. The Cleanup Plan stated that dioxin was not considered a contaminant of concern because Hardel did not do activities that would have produced dioxin. No samples were analyzed for dioxin during the remedial investigation on the site uplands. However, it is well known that burning hog fuel at lumber mills is in fact a very common source of dioxin to soils as well as to sediments. The maps in the Remedial Investigation Report show that there was a boiler, hog fuel burning, and a boiler ash accumulation area. Dioxin would have accumulated on the surface of the land (unless the boiler ash was buried somewhere), so any sampling for dioxin should be focused on the former land surface before the addition of fill and crushed concrete added after the cleanup. The Remedial Investigation can be seen here: <https://apps.ecology.wa.gov/gsp/CleanupSiteDocuments.aspx?csid=3704>
- 4) Sea Level Rise: I could not find any information in the documents specific to analysis of sea level rise and how the development would be affected if the sea level rises up to 7 feet in the next decades, as predicted. Where is that information found? The City must ensure that adaptive measures are in place.

Sincerely,
Joyce Mercuri
804 Milas Avenue
Olympia, WA

From: Kathleen Byrd <katbyrd9@gmail.com>
Sent: Tuesday, July 27, 2021 11:18 AM
To: Nicole Floyd
Subject: Public Comment Period on West Bay Yards Development Application
Attachments: Where is Hope .pdf

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This is my official public comment on the West Bay Yards Land Use Application. The Application and the preceding development are illegal and out of compliance with Washington State's Shoreline Management Act. They application and development agreement bypass legal and moral necessities for traffic impact analysis and ecological and environmental impact that will affect quality of life in Olympia, for humans and other species, for eternity.

Please reject the application for the West Bay Yards proposed development of luxury housing and proceed with appropriate traffic impacts analysis and environmental impact assessments.

Attached is an additional public comment and response to the land use application. Please make this part of the public record.

Please keep me informed of any decisions regarding the West Bay Yards Development project.

Sincerely,

Kathleen Byrd

Where is Hope

A Poem

For the Citizen Science Initiative (CSI) students from Marshall Middle School

Olympia Washington, 2021

& for

Olympia Coalition for Ecosystem Preservation

& for

[Amitav Gosh](#) (AG) novelist and author of

The Great Derangement: Climate Change and The Unthinkable

& for

Herons everywhere

(1)

Terms

Where: At what place

Whereas: language being the fact

that in as much as language while at
the same time language while on the
contrary language where as an intro
ductory statement to a formal doc
ument language where as a pre
amble whereas language a conditional

where as voices, so many voices
where as shoreline
where as shadow

AG: *the shadow of language interposes itself*

preventing us

(2)

Whereas The Planner sends an Email

in response to a citizen's email about affordable housing and the proposed West Bay Yards Development of approximately 478 market-rate (read: luxury) units on West Bay Shoreline

~~There is no requirement for the units to be affordable. From a strictly supply and demand perspective, part of the problem with affordability is a lack of housing supply at all levels. If the project provides several hundred units, it is providing housing stock that is otherwise unavailable. As wealthier people move into these units, the units previously occupied would become available. This would allow for more availability of affordable units elsewhere that would otherwise be available because of lack of supply. I recognize that this leaves a lot undone. There are other solutions being worked on by the City related to the Homelessness Response Plan and affordable housing efforts. Future code changes could be enacted that would better incentivize inclusion of affordable housing into new housing developments, but at present that is not a requirement. (NF)~~

no units affordable

strictly supply and demand

the problem with affordability is

wealthier people

this leaves a lot undone

Homelessness

Future

(3)

Whereas The Students Write a Letter

big growth will not pay

You will be long gone

we will pay

we will be left

tired, tired of waiting

mistakes unfold

our fates doomed

time and time repeating

anyone/no

Climate Change

in hands your hands. We

hope you will

we

hope right

we

hope

(4)

The Resolution

AG: around the world very few civic bodies can hope to prevail against construction lobbies

Whereas West Bay Development Group intends approximately 478 market-rate rental housing units, retail, restaurant, and recreation, which will provide a benefit; and

Whereas the City's State Environmental Policy Act Responsible Official issued a *Determination of Non Significance*; and

AG: the reality is that growth in many coastal cities around the world now depends on ensuring that a blind eye is turned

Whereas a local organization, Olympia Coalition for Ecosystems Preservation appealed, claiming the city should have considered possible environmental impacts of development itself rather than just possible impacts of the Agreement; and

AG the shadow of language interposes itself preventing us from

Whereas the Hearing Examiner denying appeal, concluding DNS reflected proper consideration of possible impacts of an agreement and not the impacts of development itself; and

AG: Global Warming is a collective predicament and the idea of a collective has been exiled

Whereas The Olympia City Council approves West Bay Development Group

(6)

Whereas Amitav Gosh Writes

*A special place
ought to be reserved
in hell
for planners who build
with such reckless
disregard for their
surroundings*

(7)

Whereas the Surroundings Speak like Sympathetic Music*Water birds fly near the shore. Water birds fly away. Fly away when a human shows up.*

heron gulls cormorants kingfishers bufflehead
 shoreline bluffs barnacles urban shoreline Salish Sea
 mud shrimp neighborhood shoreline ravines upland properties brownfield
 Budd Inlet logging trucks low-dissolved oxygen eye-sore
 Coho Salmon Deschutes River Estuary resident Orcas Barrow's Golden-eye
 Schneider Creek dioxides furans phthalates blight contaminated land eye sore
 red-breasted Merganser Resident Orcas Oyster Reef desolate-
 waterfront humans common Merganser Cut-throat trout sea-level rise
 Loons tidal currents intertidal wetlands oil-barge unloading eye-sore
 neighborhood ecosystem preservation Garfield Creek
 benthic dioxin nutrient overload tank farms eye sore
 endangered salmon contaminated land sand homeless shoreline habitat
 endangered orca erosion blight homeless eyes
 estuary shore crabs mussels clams perch flounder
 tideland Ruddy Duck cobbles and gravel
 mudflat steep-slope topography logging trucks eyes sore
 future generations Hooded Merganser gulls soar
 humans ghost shrimp grebes herons soar

AG: The human and nonhuman echo each other with uncanny resonance like sympathetic music

(8)

Surroundings
Like Sympathetic Music

ring

wingsound

surrounding

sounds ring

surrounding

the Sound

where

hope

is

what

place

?

(9)

Over Whelm

On March 30, 2021, The city council approved, with only one opposing voice, a legally-binding contract on a 15-year development agreement for a project to develop market-rate housing with no requirement for an Environmental Impact Statement based on a city official's determination of non-significance DNS. Olympia Coalition for Ecosystem Preservation is appealing the decision.

I am tired from hours in the online archive reading an overwhelming number of letters in opposition to this project. I cannot read them all. At the public hearing in Zoom, overwhelming public opposition to this project was based on the need for a review of environmental impacts to this estuarine, shoreline habitat, as well as the need for affordable housing and considered impacts on existing neighborhood surroundings. The children are tired, tired of waiting, so young and so tired.

One council member reportedly said, in defense of her vote:

I couldn't think of any reason to oppose it.

over

whelm: to cover with water to submerge

(10)

Found

Texts used to write this poem include

- Marshall Middle School's Student Citizen Scientists Initiative (CSI) letter to the City of Olympia
- Olympia Ecosystems Preservations explanation of their appeal of the city's decision
- Resolution No M-2206 by Olympia City Council passed on March 30th 2021
- Amitav Gosh's *The Great Derangement: Climate Change and the Unthinkable* (AG)
- An email from an Olympia City Planner in response to a citizen concern about affordable housing
- The American Heritage Dictionary of the English Language
- Letters written by citizens and environmental groups to the city regarding the West Bay Yards Development Agreement

From: Kathy McCormick <kathy.mccormick@comcast.net>
Sent: Tuesday, July 27, 2021 4:33 PM
To: Nicole Floyd
Subject: Support for West Bay Yards Development Proposal

External Email Alert!

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I support the West Bay Yards development proposal. I worked as a planner for the City for 15 years (Comp Plan updates and amendment, zoning code and design guideline amendments and staff to the Planning Commission). The development proposal layout looks very similar to what was adopted when the rezone for this area was approved - and the proposed cleanup and public access proposals go beyond what was adopted. I worked closely with the long time planner who wrote this zone and know that it was very carefully done to assure that enough development could occur to support the essential cleanup and extension of the waterfront public access and view corridors envisioned as well as meet the other Comp Plan goals for focused growth and housing.

The Plan, Zoning and Shoreline Master Plans have been updated as required over the years and as such the area has gone through multiple public processes and environmental reviews along the way. Hopes for focused growth in and around downtown Olympia took decades to even begin to see progress toward providing a range of housing options - the linchpin to achieving the sustainable growth envisioned. Delays in development of housing for a full range of households has resulted in the housing crisis we are dealing with today. Substantial delays (and increases in the cost of development) have been caused by public opposition including legal challenges. Perhaps fear of change is also a big factor but both of these have resulted in huge amounts of money being spent on the process instead of the product!

Excess roadblocks for this project sends a message that 1) development proposals cannot count on City Plans, or Zoning or Design Guidelines to guide design or investment decisions, 2) erodes public confidence in years of work developing City plans, and 3) will result in decades of postponed cleanup and the envisioned extension of waterfront public access in this area.

This project is an opportunity to support the robust downtown envisioned, the opportunity for more people to live where less car dependence and fewer vehicle

miles traveled is possible, and the best chance to complete the waterfront public access development envisioned. Focused growth that meets City plans, development regulations and design guidelines is THE KEY to meet City foundation principles and Regional Sustainability Plans that are backed by years of research, the best information available and the most extensive processes ever undertaken in this region.

From: Nancy Curtis <fmojazz1@gmail.com>
Sent: Tuesday, July 27, 2021 11:38 AM
To: Nicole Floyd
Subject: West Bay Yards

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This email originated from a source outside of the City's network. Use caution before clicking on links or opening attachments.

I am submitting comments on the West Bay Yards project.

I looked at a couple of the studies funded by (I assume) the developer: the geotechnical analysis and the traffic study. The geotechnical study didn't take into account 2 things: the accelerating effects of climate change which will lead to sea-level rise; and the capacity of West Bay Road: the difficulty of widening it (road work being the responsibility of the City—it will cost the taxpayers) and the stability of the slope above it.

The traffic study was done in spring 2020, when car travel was a fraction of normal. It also did not include a route which (as a Westside resident myself) I am sure will cause a possibly major impact to the Westside: Harbor View Drive NW to Raft St. to Elliott Ave NW to Division. Some traffic may continue from Elliott onto 20th Ave NW to Cooper Point Rd. The fact that this was not a part of the traffic study is a major omission. Nearly 500 residential units (some of them with more than one car), plus retail and restaurants will have a major impact. Also, some of those well-heeled residents of West Bay luxury condominiums will join the Olympia Golf and Country club and will use this route (add Crestline/French Road to the traffic study). These are expensive residential areas that will lose quality of life and property value. This route was not even included on the maps of the traffic study.

Division St. NW is already becoming congested at certain times, sometimes backed-up at the Harrison Ave. traffic signal all the way to Bush Ave NW. I have often waited for the Harrison signal to turn green twice (and it is a long wait for this particular signal cycle) before being able to turn on or go through Harrison. I often cut through the neighborhood north of Harrison just to avoid that traffic signal. There is a smaller apartment project being planned, the Bing St Apartments, that will also dump more traffic onto Division at Jackson Ave. NW. I predict that if both these developments are built, that the Bing St. apartment residents will have difficulty turning on Division. I foresee a need for more traffic signals on Division because of the West Bay Yards development (if it is built as planned): one at Elliott and one at Bowman.

I noticed that the traffic study included Brawne Ave NW, but did not study what would happen to the traffic once it reached Rogers St NW. Bowman to Division? Rogers to Harrison? The traffic study assumes that there would be no traffic impacts on the westside, west of the roundabouts. Or were they simply conveniently oblivious?

The developer of the West Bay Yards is dreaming of wealthy refugees from California and remote workers from tech hubs who want to be near their boat slips (in this case, at West Bay Marina, which will also need to expand). They paid \$250,000 for a 15-year freeze on the development rules so they can go ahead with their plans. Olympia will be harmed if their vision is carried out.

Sincerely,

Nancy Curtis
2102 Bush Ave NW
Olympia, WA 98502

From: NANCY PARTLOW <nanpartlow@comcast.net>
Sent: Wednesday, July 28, 2021 9:20 AM
To: Nicole Floyd
Subject: West Bay Yards comments
Attachments: Schneider Creek 2.JPG

External Email Alert!

This email originated from a source outside of the City's network. Use caution before clicking on links or opening attachments.

Dear Ms. Floyd,

I realize that my comments are being submitted after the cut-off time of yesterday at 5 p.m., but if you could accept them anyway, I would greatly appreciate it.

What jumped out at me from the Critical Area Report is that it says the project site is 300 feet from the Schneider Creek outfall:

In addition, one off-site stream is located approximately 300 feet north of the subject property (Table 2). The outfall for Schneider Creek is located 300 feet north of the north property boundary. The outfall discharges the creek after it is conveyed beneath West Bay Drive in a culvert. Schneider Creek is mapped as a fish-bearing stream.

*Schneider Creek
Feature Water Type 1
Buffer Width F 250 ft.*

A few thoughts on this:

The stream's outfall is not where the culverted stream is. I've attached a Thurston County geodata map of Schneider Creek's course under West Bay Drive and Sarah Smyth McIntosh's property. It flows at an angle from south to north. At it's southern most point it may be within 250 feet of the Hardel property.

Just because the creek's outfall is 300 feet away from the Hardel property, it doesn't mean that the creeks estuary is. Wildlife attracted to the Schneider Creek estuary are using that entire beach area, including the southern shoreline of the Hardel property. For that matter, the whole Hardel shoreline is on an estuary - the Deschutes estuary. Are there any WAC's requiring special buffers for estuaries?

Just because the Schneider Creek culverted outfall is located where it is now, that does not mean that the creek entered Budd Inlet at this exact location in the past or wouldn't do so again if the estuary was properly restored, which many folks hope will happen at a future date.. A free-flowing Schneider Creek's entrance onto Budd Inlet shoreline would undoubtedly be much wider than it is now.

Salish Sea Wiki has some maps and aerial images of Schneider Creek :

https://salishsearestoration.org/wiki/Schneider_Creek_Watershed

If you zoom into this image in particular, it really shows how the Smyth's Landing building is sitting right on top of the former stream bed of Schneider Creek, bifurcating the stream buffers and habitat:

https://salishsearestoration.org/wiki/File:Schneider_stream_sewer.jpg

OlyEcosystems info on Schneider Creek:

<https://olyecosystems.org/where-we-work/>

Ecologically speaking, the West Bay Yards documents seem to be the bare minimum required, which is not what is needed for this important shoreline. There appears to be no historical or or ecological context or baseline studies provided for the site or surrounding area, which would be required in an Environmental Impact Study. This is just one way that requiring an EIS would result in a better project,

I wonder if this developer has ever built a project on a shoreline before? They seem oblivious to the most basic understanding of what a shoreline ecosystem is.

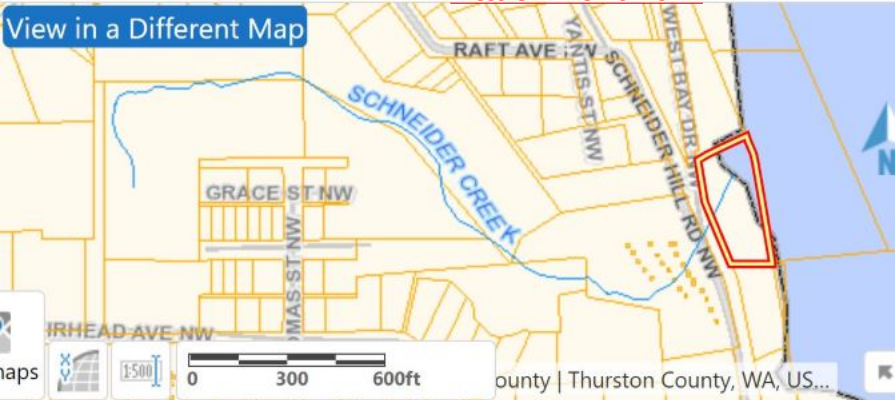
The standard development template should not be allowed here. Because of the project's size, scope and location, and all the real and professed concern about the health of the Salish Sea, this particular development should be required to go far above and beyond what has been required for any previous developments in Olympia. An EIS should be required.

Nancy Partlow



Attachment 20.A

View in a Different Map



GRACE ST NW
MAS ST NW
IRHEAD AVE NW

RAFT AVE NW
YANTIS ST NW
SCHNEIDER HILL RD NW
WEST BAY DR NW

SCHNEIDER CREEK

county | Thurston County, WA, US...

From: Daniel Einstein <daniel@olyecosystems.org>
Sent: Tuesday, July 27, 2021 12:28 PM
To: Nicole Floyd
Subject: OCEP Comments on WBY Land-Use Application: File Number 21-2854
Attachments: OCEP_WBY_SMP_Comments.pdf

External Email Alert!

This email originated from a source outside of the City's network. Use caution before clicking on links or opening attachments.

Dear Ms. Floyd,

On June 29, 2021, the City invited a first round of public comments, focused on site plan review and local code compliance regarding the West Bay Yards mixed-use project at 1210 West Bay Drive NW. These comments are submitted in response to that invitation.

The bulk of our comments address inconsistencies with the Shoreline Management Act and Olympia's Shoreline Master Program. These comments can be found in the attached document. Based on our analysis, OCEP believes that the City should deny the permit applications until the project can be redesigned to show compliance with the SMA and SMP.

As you know, traffic is also an important concern. However, OCEP was unable to address traffic from a code compliance point of view because the submitted traffic analysis is unserious. As part of its land-use application, WBY was required to submit a traffic analysis that looks at a qualitative metric known as level of service (LOS), not only along West Bay Drive but also at associated intersections, roundabouts and connectors.

Specifically, Olympia's Traffic Impact Analysis (TIA) Guidelines for new developments requires *manual peak-hour counts* at all study intersections. For the WBY study, these manual measurements were all collected in spring 2020, during the height of the pandemic, when traffic volumes around the region were known to be a fraction of typical volumes. The submitted traffic analysis includes no disclaimer regarding the pandemic and its impact on number of trips across the study area; it is as though the pandemic didn't happen and that 2020 peak-hour traffic volumes are representative.

The City should reject this analysis and request a new study that corrects these deficiencies. Once completed, it will be possible to consider consistency with municipal code.

An additional deficiency can be found in the JARPA form and accompanying diagrams. The diagrams clearly show the addition of new armoring in the form of an upstream groin. Description of this groin is absent from the JARPA narrative. This deficiency should also be corrected.

Thank you for your review of this application and your consideration of our input.

Kind regards,
Dan

-- A true conservationist is a man who knows that the world is not given by his fathers, but borrowed from his children. -- John James Audubon

Daniel Einstein, Ph.D.
Olympia Coalition for Ecosystems Preservation
www.OlyEcosystems.org
<https://www.facebook.com/OlyEcosystems>

To: Nicole Floyd

Date: July 27, 2021

City of Olympia: Community Planning & Development
P.O. Box 1967
Olympia, WA 98507-1967

RE: Detailed Comments on West Bay Yards Project Inconsistency with Olympia Shoreline Master Program Limitations on Filling and Creation of Additional Uplands

INTRODUCTION:

These comments are submitted on behalf of the Olympia Coalition for Ecosystems Preservation (OCEP), a community-based, urban conservation organization in Olympia, WA, whose mission is to protect, preserve and restore Olympia’s key shoreline, nearshore and riparian areas, as well as their associated watersheds, in order to enhance the ecological health of Budd Inlet in Puget Sound and that of our urban marine, nearshore and woodland wildlife. OCEP has conserved approximately 20 acres of shoreline forest directly upland of the proposed West Bay Yards development, including properties within 300 feet of the area proposed for development. Thus, OCEP not only has a mission-specific interest in the future of the area proposed for development but also clear legal standing under Washington State law.

To assist the City in evaluating OCEP’s comments, this submittal will focus solely on inconsistencies with the Shoreline Management Act (SMA) requirements only. Although the City has not initiated formal comments on SEPA compliance, this review of the SMA necessarily touches on the need for environmental impact and alternatives assessment related to the proposed filling of tidelands. OCEP will submit separate comments on the SEPA Checklist, the submitted Traffic Analysis, and the Critical Areas Report, among other topics.

OVERVIEW:

The West Bay Yards (WBY) project as currently proposed is inconsistent with significant requirements of the Shoreline Management Act and the Olympia Shoreline Master Program, which limit filling of tidelands and creation of new uplands. The origin of this inconsistency is the shoreline “restoration” proposed by WBY. That restoration violates the City’s Shoreline Master Program with its proposal to fill tidelands in a manner that literally creates additional upland, approximately 50 feet by 1000 feet, which WBY proposes to use as part of its overall mixed use project.

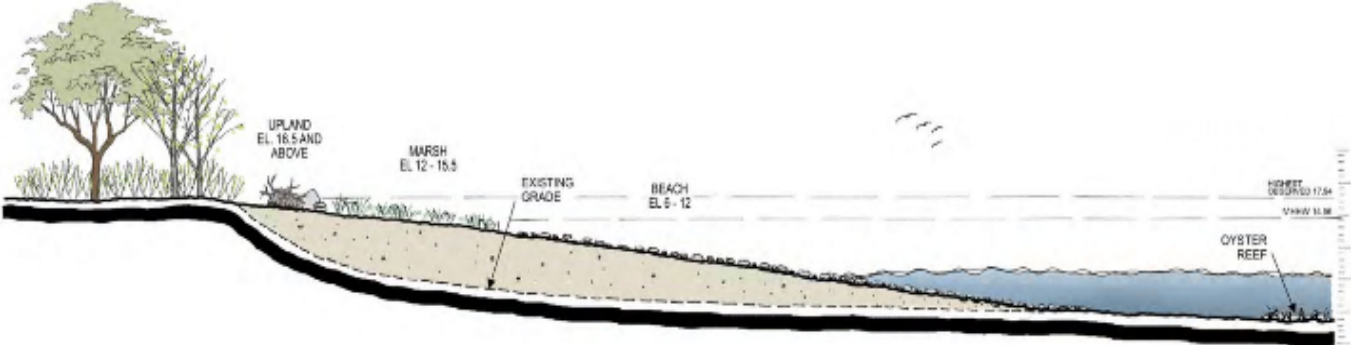
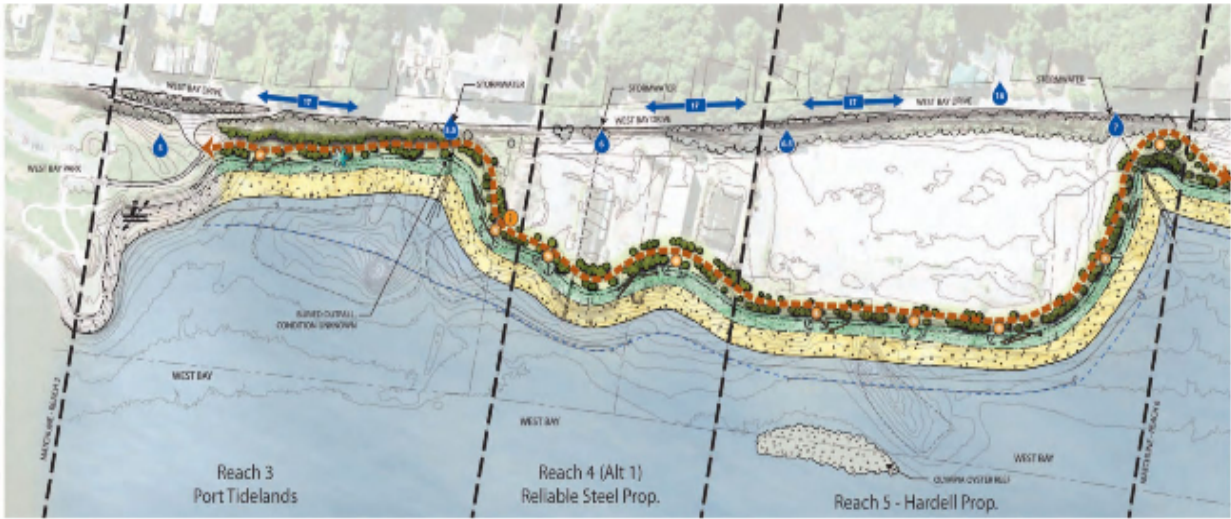
Specifically, the WBY proposal violates the City’s Shoreline Master Program with tideland fill that, under the guise of enhancing the beach, actually moves the dividing line between uplands and tidelands – the Ordinary High Water Mark (OHWM) – approximately 50 feet further towards the water. This movement of the OHWM creates

additional upland and a significantly larger building site. Indeed, the five towers that make up the WBY project could not be built as proposed without the proposed tideland filling and attendant creation of new uplands because the buildings would not have a sufficient setback from the existing OHWM. In short, every WBY proposed building footprint, every setback, and every vegetation zone of the project takes advantage of this newly created upland that WBY proposes adding under the guise of a restoration project.

The tideland fill proposal is shown in slide 10 of the City’s PowerPoint and on page 6 of the Site Plan documents (Conceptual Section 17 from the 2016 West Bay Environmental Restoration Assessment). This diagram from the City’s PowerPoint illustrates how the filling of tidelands will place the Ordinary High Water Mark waterward and create additional uplands. In comparison, the current OHWM is significantly more landward, located along the existing armored shoreline.

2016 West Bay Environmental Restoration Assessment

Identifies environmental restoration opportunities for the West Bay Shoreline



Conceptual Section 17

OCEP’s analysis is divided into three sections.

In Part A, OCEP shows how the proposed filling is inconsistent with plain language requirements of the Olympia Shoreline Master Program. The Olympia Shoreline Master Program expressly prohibits filling tidelands that creates additional uplands. The WBY project, however, creates additional upland and violates this provision. The Master Program also requires that all fill be the minimum necessary to accomplish the need of the project. Here, restoration can be better accomplished without the extensive filling of the tidelands. There is no barrier to removing historic fill and armoring and to placing the proposed beach enhancement in a location that does not change the OHWM. Thus, the project cannot be approved based on a plan that creates new uplands, that engages in unnecessary tideland filling, and that increases the upland project area.

Part B addresses the restoration/enhancement justification for this illegal fill put forth by WBY. WBY misinterprets City restoration planning and a short passage in a 2016 consultant’s report as a backdoor to allow this expansion of its upland footprint. However, that is not an allowable interpretation of the restoration policies or plans in light of the controlling requirements of the Olympia Shoreline Master Program. Indeed, a better approach to restoration would be to remove some historic fill and armoring along this shoreline in a way that truly brings historic tidelands back into the Budd Inlet habitat.

Part C addresses how the proposed filling and restoration confirms the need for further detailed environmental analysis to explore the impacts and alternatives to WBY’s proposal, especially by addressing restoration alternatives that avoid creating new uplands. When it conducts its SEPA review of the project, the City should make a determination of probable significant environmental impact and require an EIS to examine the environmental impacts of WBY’s proposed restoration/creation of new uplands versus alternatives such as retaining the existing OHWM, or removing some of the historic fill and moving the OHMW landward, not waterward.

The inconsistency shown below does not bar development. It requires to WBY to reduce the footprint of its project. That would, in turn, result in a a more appropriately sized mixed use development project on the property.

WBY’S PROPOSED FILLING AND CREATION OF UPLANDS IS INCONSISTENT WITH THE OLYMPIA SHORELINE MASTER PROGRAM

A. WBY Seeks to Fill Tidelands Waterward of the OHWM and Create New Upland in Violation of the Olympia Shoreline Master Program.

The Olympia Shoreline Master Program Section 3.70, OMC 18.20.855 (I)¹ prohibits restoration or enhancement projects that extend waterward beyond “the minimum

¹ The Shoreline Master Program was readopted by Ordinance 7280 and effective June 29, 2021. The language of this regulation is unchanged and is now codified as OMC 18.20.855(I); it was previously OMC 18.34.855.

necessary to achieve the intended result” and requires that restoration and enhancement projects “shall not result in the creation of additional upland area.”

“Restoration and enhancement projects shall not extend water-ward more than the minimum necessary to achieve the intended result and shall not result in the creation of additional upland area.”

The WBY application violates the prohibition on creating additional upland area. Nor is there any basis for the claim that the restoration and enhancement project is the minimum necessary. As a result, until the project is modified to eliminate creating new uplands, it must be denied.

1. The WBY project seeks to fill tidelands and create additional uplands.

There can be little doubt that the WBY project would engage in filling that creates additional upland because the WBY proposal treats all the lands created landward of the new OHWM as “upland” that it uses for the project.

The OHWM is, as a matter of state law, the dividing line between “uplands” and “tidelands.” Numerous Shoreline Management Act definitions confirm that areas landward of the OHWM are “upland.”

For example, the definition of OHWM in the SMA shows that areas landward of the OHWM are upland. Again, this confirms how WBY’s proposal to fill tidelands and moving the OHWM waterward seeks to create more upland.

RCW 90.58.030(2) (c) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide [MHHT] and the ordinary high water mark adjoining fresh water shall be the line of mean high water;

Applying either SMA definition—examining a “mark” on the soil, or finding the MHHT – it is clear that areas landward of an OHWM is “abutting upland.” See also RCW 90.58.020(2) (d) defining "Shorelands" or "shoreland areas" as “lands extending ...”).

The WBY project seeks to place fill on tidelands in a manner that literally moves the OHWM fifty feet waterward and in the process creates new uplands. But “[r]estoration and enhancement projects ... shall not result in the creation of additional upland area.” [Olympia Shoreline Master Program Section 3.70 18.20.855 (I)]. [Emphasis added.]

This prohibition echoes other sections of the Olympia Shoreline Master Program that also prohibit creating new uplands. For example, 18.20.864(B) provides:

Structural shoreline armoring for the sole purpose of leveling or extending property or creating or preserving residential lawns, yards, or landscaping shall be prohibited. Where hard shoreline armoring already exists, property owners are encouraged to remove it and replace with soft armoring, or if conditions allow, return the shoreline to a natural condition. [Emphasis added.]

The strong prohibitions on filling shorelines to create new upland is an important aspect of the Olympia Shoreline Master Program that cannot be violated without creating a harmful precedent. For example, Olympia tideland owners cannot currently fill on the waterward side of existing tideland armoring in a way that creates additional upland. As quoted above, if tideland owners want to restore tideland habitats impacted by hard armoring, owners should “remove it” and place “soft armoring” where the hard armoring currently exists.

If this WBY approach to restoration became city-wide precedent, other landowners with armored shoreline will surely ask the City to approve other “restoration fills” that move the OHWM waterward and create additional uplands. The financial incentive for such “restoration” would be obvious—the landowner increases their lot size and buildable area. The Olympia Shoreline Master Program, however, prohibits restoration that creates uplands. Olympia Shoreline Master Program, OMC 18.20.855(I).

2. The fill is not the minimum necessary to accomplish the intended restoration.

WBY’s proposal also violates the independent Olympia Shoreline Master Program requirement that restoration employ the minimum water-ward fill necessary to accomplish the result intended. OMC18.20.855 (I). This means that WBY must prove that the restoration and beach enhancement intended is using the minimum fill necessary to accomplish such restoration.

WBY offers nothing to explain why the beach creation cannot minimize fill by retaining the OHWM, such as could be obtained by removing existing fill and armoring and placing beach enhancement features like the upper beach vegetation landward of the existing OHWM. WBY gives no attention to making the fill be the minimum necessary:

Placement of fill material to create the sloped beach and maintain appropriate transitional grades in the riparian corridor will necessitate moving the OHWM waterward of its existing location. In places, the new OHWM may extend up to 50 feet waterward to maintain appropriate grades. This movement of the OHWM is required to maintain appropriate slopes within the riparian corridor that will avoid the potential for erosion and allow for public access at the public access points. [WBY Shoreline Narrative at page 13] [Emphasis added].

This narrative by WBY does not consider why the intended slope cannot avoid placing fill waterward and moving the OHWM. It simply recites how WBY decided to avoid removing existing fill in favor of moving the OHWM.

WBY also claims, again with no analysis or showing why it cannot minimize this fill by retaining the existing OHWM, that “[t]his waterward shift in the OHWM will be the minimum necessary to achieve the shoreline restoration designs for stability/resiliency and habitat functions, and is not intended to increase the developable area within the site.” This bald, unsupported statement cannot satisfy the requirement that the fill be the minimum necessary to create an enhanced beach because it never addresses the obvious question: why not remove some historic fill so that the sloped beach does not move the OHWM? This unexamined alternative could retain the OHWH, avoid creating new uplands, and minimize the amount of waterward filling that eliminates part of the navigable waters of Budd Inlet. Moreover, the this unexamined alternative could avoid the placement of new armoring in the form of a massive groin that WBY relies on to protect the unnecessary beach fill it uses to create the additional uplands.

In light of these facts, WBY’s claim that it is not “intending” to increase the developable area is immaterial. Moreover, WBY obviously intends that result because it exploits this significant waterward shift in the OHWM to increase the developable area for its project.

Thus, for this second independent reason, the WBY project is inconsistent with the Code requirements and express language of OMC 18.20.855 (I). The City cannot permit the proposed filling of tidelands when, as recognized by the City’s own restoration planning process discussed next, restoration can be accomplished without the extraordinary tideland filling, the loss of navigable waters, and without creating additional uplands. In short, unless WBY can verifiably demonstrate through analysis that beach enhancement without moving the OHWM is impossible, the City must find the project inconsistent with Olympia Shoreline Master Program, OMC 18.20.855 (I).²

On a related note, the fill creates an additional inconsistency in the WBY proposal. WBY claims in its Joint Aquatic Resources Permit Application (JARPA), Section 6a, that “[a]llowable building height and view blockage increases have been achieved per OMC 18.06.100 by providing the restoration of the shoreline and the construction of a 22-foot-widepublically accessible esplanade trail ...” But the restoration of the shoreline cited by WBY is, as shown above, based on a proposal to fill tidelands. The Olympia Shoreline Master Program OMC 18.20.833, states that fill cannot be cannot “be used as a means to

² Notably, this interpretation of the Shoreline Master Program is also consistent with the ordinary meaning of “restoration,” because it would involve removal of historic fill that would restore shoreline functions to filled tidelands. See WAC 173-26-020(33) ([Restoration] “may be accomplished through measures including, but not limited to, revegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials.”) The point is not to deny that restoration may, in some circumstances, include filling and beach enhancement. The point is simply that more meaningful restoration removes historic fill and armoring occupying historic shoreline habitats.

increase the allowable building height[.]” WBY’s proposal is inconsistent with this requirement because it cannot use filling to increase the height of its project.

B. No Olympia Shoreline Master Program Restoration Plan Authorizes WBY to Fill Tidelands to Create Additional Uplands.

WBY does not claim that the project is consistent with OMC 18.20.855(I). Instead, it argues that it can simply avoid these express prohibitions on restoration that moves the OHWM and filling that is not minimum necessary.

WBY’s Shoreline Narrative (pages 10-14) argues that WBY need only show that filling would be consistent with a brief statement in a conceptual report commissioned by the City that explores a possible subset of restoration projects on the West Bay shoreline (West Bay Environmental Restoration Assessment, Coast & Harbor 2016). WBY relies on OMC 18.20.837(A)(3), which anticipates fill waterward of the OHWM for “[e]cological restoration or enhancement such as beach nourishment, habitat creation, or mitigation when consistent with an approved restoration or mitigation plan[.]” WBY apparently claims the 2016 restoration report is an “approved restoration...plan.” However, the City should reject that view of the 2016 restoration planning report and the misinterpretation of OMC 18.20.837(A)(3) that guts the substantive limitations on filling in the Shoreline Master Program.

OMC 18.20.837(A)(3) can easily be read harmoniously with the requirements of OMC 18.20.855(I), and both sections can be given effect. This is critical because the requirements in OMC 18.20.855(I) were adopted after robust review by the public and approval by the WA Department of Ecology. . See WAC 173-26 (process for local government adoption of master programs and Ecology review and approval). In contrast, the 2016 consultant’s report is not a law and did not undergo rigorous public review or Ecology approval. In any event, both OMC 18.20.837(A)(3) and OMC 18.20.855(I) can be given effect and there is no reason restoration plans allow restoration in violation of the Shoreline Master Program. In contrast, WBY’s argument gives no effect to express requirements for restoration in OMC 18.20.855(I).

Not only does the Code not support WBY’s argument that the 2016 report allows approval of this fill, the 2016 report never pretends to approve the filling and upland creation proposed here. On its face, the report simply “accesses” some restoration alternatives for the West Bay shorelines in order to support future decision making that could prioritize projects.

The purpose of the [February 26, 2016 Restoration Report] is to complete a science-based environmental restoration assessment for West Bay, Budd Inlet, located in Olympia, WA. The project will support the implementation of a water quality and habitat restoration strategy, including the prioritization of restoration projects for planning by the City of Olympia, Port of Olympia (Port), Squaxin Island Tribe (Tribe), and other public entities. [Restoration Report at 1.]

Clearly, the 2016 Report is not s an approved restoration plan. It does not mention creation of additional uplands as now proposed by WBY. It does not mention the large groin or engineering WBY proposes to protect the extraordinary fill. Nor is the 2016 Report equivalent to the City’s official 2012 Restoration Plan, adopted as an appendix to the Shoreline Master Program.³

Not only does the 2016 Report not purport to approve the WBY fill, it illustrates why it would be entirely arbitrary to interpret that Report as if it preordains approval of WBY’s proposal for creation of new uplands and unnecessary fill of the tidelands in violation of OMC 18.20.855(I). On pages 19-23, the report briefly assesses restoration “alternatives” for nine “reaches” along West Bay. For the West Bay Park reach, the report briefly describes alternatives that consider removal of historic fill as restoration:

Alternative 1 removes fill from the historic tidelands to create a beach and wide salt marsh complex, with improved connections to partially daylighted Garfield Creek and South Garfield Creek. New beaches would be created and tied into the developed portion of West Bay Park to the north. Riparian and meadow areas would be planted above the intertidal salt marsh zone.

Alternative 2 partially recreates the historic pocket estuary shore form by cutting further back into the uplands and Garfield Creek and creating a pocket estuary by pulling back the adjacent shoreline and creating beach areas. [2016 Report at 20.] [Emphasis added.]

For the Reliable Steel property (literally next door to WBY site) notes that the “[p]rimary opportunities for restoration include ... removal of armor/debris to create intertidal beach areas, re-contouring of the shoreline, and riparian plantings.” 2016 Report at 21. Again, the Report acknowledges “fill would be removed to create a large intertidal marsh and pocket beach area near the Hardel site to the north.” 2016 Report at 21.

The 2016 Report then fails to address removal of fill at the WBY site. It simply “assum[es] that the existing uplands are to remain intact.” 2016 Report at 21. Based on that bare assumption and without any evaluation of other restoration alternatives, the reports states that it limited its review to “creation of intertidal beach and marsh areas through substrate placement, riparian plantings along the backshore, and removal and restoration of intertidal structures areas.” This arbitrary assumption is the entire reason why the Report ignores removal of historic fill at the WBY site, even as it recognizes removal as a restoration alternative on the rest of West Bay. Even then, the 2016 Report

³ The Shoreline Management Act Guidelines for local master programs required “Shoreline restoration planning” to describe “goals, policies and actions for restoration of impaired shoreline ecological functions.” WAC 173-26-201(f). That planning process describes a number of elements that led to the development of the City’s 2012 Restoration Plan. As the 2016 Report recognizes, the 2012 Plan did not approve filling of this site and instead contemplated removal of historic fill along this shoreline.

admits that the “Shoreline Restoration Plan (City of Olympia 2012) identifies West Bay Project No. 27 in this reach for potential removal of nearshore fill.”

For the above reasons, the City should reject WBY’s argument that the brief assessment of one restoration concept in the 2016 consultant’s report constitutes an “approved . . . restoration plan,” and also reject WBY’s argument that restoration mentioned in such a report could violate the limits on filling adopted by OMC 18.20.855(I). The 2016 Report did not and cannot approve filling that violates the specific limits in OMC 18.20.855(I). See also OMC 18.20.833 (“Fill shall be the minimum necessary to accommodate the proposed use or development or protect it from flooding, and allowed only in conjunction with approved shoreline use and development activities that are consistent with Olympia’s Shoreline Program.”)

C. The WBY Proposal to Fill Tidelands Will Require SEPA Compliance and Analysis of the Impacts and Alternatives to that Proposal

OCEP recognizes that the City has not initiated SEPA processes for this project. The WBY proposal, however, illustrates why there should be a determination of significant environmental impact. Such a determination would not only enable the City to understand all the impacts that would be caused by filling navigable waters in Budd Inlet, but also to analyze alternative restoration options that do not require significant waterward fill nor groin construction, that enhance habitat sustainability and adaptability and that are not inconsistent with Olympia’s Shoreline Master Program.

OCEP is not aware of any SEPA review to which the 2016 consultant’s report has been subjected. Indeed, the City attorney allowed in the hearing of OCEP’s appeal of the determination of non-significance for the Development Agreement between to WBY and the City of Olympia that the 2016 report had not undergone SEPA when questioned by the Hearings Examiner.

But SEPA is required before permitting this project. And, before the City can lawfully consider issuing approval to restoration that massively fills tidelands and creates additional uplands under the guise of beach enhancement, the City should plan on making a determination of likely significant environmental impact and requiring an EIS. An EIS would allow the City and general public to see exactly what is lost when existing mudflats are changed to beach, what is lost when more of Budd Inlet’s navigable waters are filled and lost, and whether there are alternatives involving removal of historic fill and armoring that would avoid such impacts.

For example, an EIS would allow the City to fairly evaluate if the proposal really meets the City’s restoration goals. In the City’s 2012 Restoration Plan, Section **3.1. describes “Restoration Overall Goals”:**

- a) ***Improve water quality in Budd Inlet and its tributaries.*** Improving water quality is necessary to protect and enhance native wildlife and vegetation habitat, restore opportunities for aquaculture, and ensure safe and healthy recreation

opportunities. Improving water quality will require a comprehensive, multi-pronged, proactive approach that incorporates a variety of tools including stormwater treatment retrofits, public education, low impact development, sanitary sewer expansion, community-based programs, and site-specific restoration efforts.

b) **Improve natural sediment processes.** Improving natural sediment processes is necessary for healthy aquatic habitat, and is achieved in part by minimizing bulkheads, protecting and enhancing estuaries, creating salt marsh environments, and re-vegetating shorelines.

c) **Preservation and restoration of wildlife habitat.** The South Puget Sound's diverse shoreline habitat and numerous stream corridors support or have the potential to support populations of native fish, shellfish, amphibians, and birds. With ready access to natural areas and educational programming, Olympians desire protection of existing wildlife habitat and restoration of those areas that have the potential to support or promote the recovery of a native wildlife population.

d) **Restore shorelines as opportunities for humans to connect with the natural environment.** When designing and implementing restoration of shorelines, consider the desire and potential for human inclusiveness; provide access and learning experiences for people to feel welcome, engaged, and invested in the natural and restored environment.

An EIS could examine restoration objectives specific to Budd Inlet, such as where the 2012 Plan contemplates preserving existing subtidal and intertidal mudflats and eliminating the armoring of shorelines. See 3.2 a) and b). An EIS could examine how restoration could be accomplished in support of the WBY project without expanding the developable area, and without moving the OHWM waterward to create additional uplands.⁴

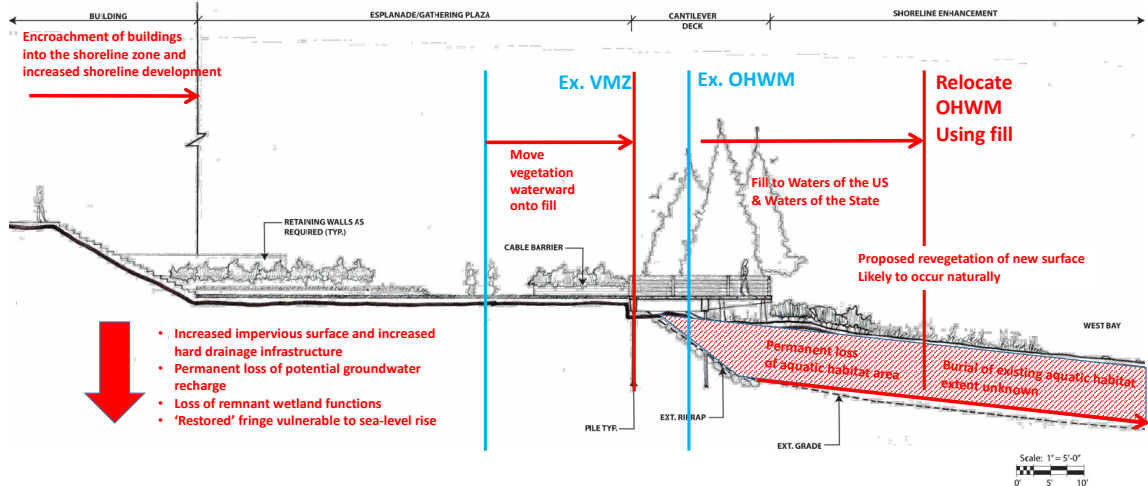
An EIS could examine compliance with the specific relevant goals and policies that govern restoration such as Restoration Plan Policy 6.7, which seeks to avoid any “loss” of Budd Inlet and limits any use of fill. Indeed, this policy cries out for a robust EIS examining this proposal. See POLICY 6.7 (2) (“When evaluating the need for filling a tideland, consider such factors as whether the proposed fill would... (c) Further limit the flushing action of Budd Inlet, making it harder to protect water quality, especially respective of the LOTT treatment plant outfall and recreational uses;... (e) Reduce or degrade fish and wildlife habitat, particularly for rearing and migrating salmon; (f) Impede the public's right of navigation; or (g) Harm the environment.”... “Any such adverse impacts may be grounds for mitigation or denial of a proposal”.)

⁴ See 2012 Restoration Plan, Section 3.2. Restoration Objectives for Budd Inlet

- a) Preserve and restore estuarine habitat. Subtidal and intertidal mudflats and salt marshes provide transition habitat between fresh and salt water environments.
- b) Enable natural wave energy attenuation, which is restricted by the hardening of shorelines with bulkheads, revetments, docks, etc.

The following diagrams compare the waterward shoreline modifications proposed by WBY and some important potential ecosystem benefits of unexplored alternatives. It is meant to be illustrative. OCEP makes no claim to have carefully analyzed the impacts of either alternative. For such a complex project, only an EIS can offer the budget, space, expertise and public analysis warranted by this project.

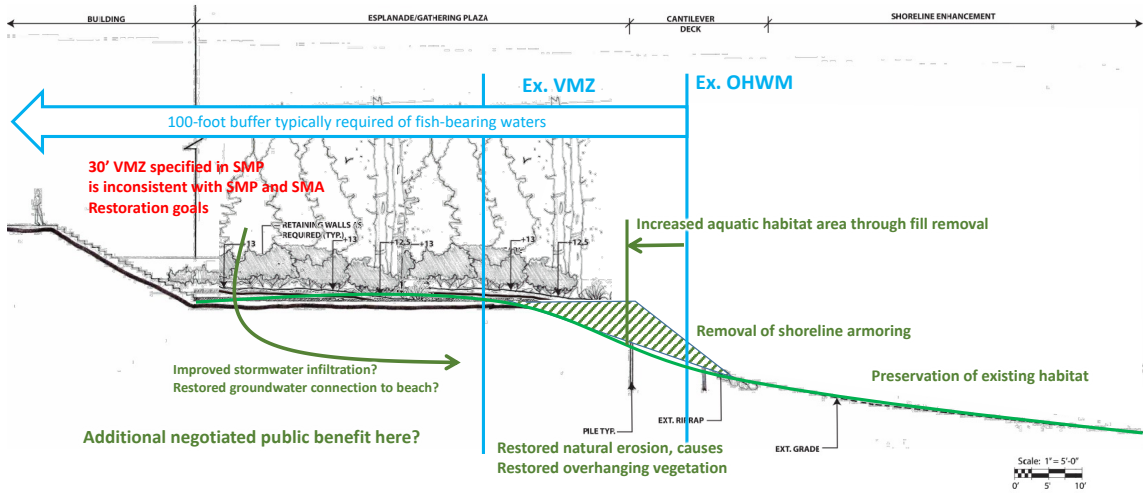
Alternative A – Development proposed by WBY without environmental analysis



As illustrated in this diagram, WBY relocates the OHWM using fill and in so doing moves the proposed building footprints waterward of what would be allowed given the existing OHWM. In so doing it encroaches on the navigable waters of Budd Inlet, buries existing aquatic habitat, increases the impervious surface compared to the alternative, precludes potential wetland function, and eliminates potential groundwater recharge. Alternative A is vulnerable to sea-level rise and vulnerable to erosion and lack of nourishment, necessitating the introduction of new armoring in the form of a groin at the south end of the beach. Finally, Alternative B is inconsistent with Olympia’s SMP and WA’s SMA.

Alternatively, Alternative B in the next diagram shows how the intended restoration can occur while preserving and increasing existing aquatic habitat. The EIS can examine the alternative of removing existing fill and armoring, which enables natural erosion and nourishment, restores groundwater flow to the beach and improves stormwater infiltration. Moreover, a 100 foot buffer decreases beach vulnerability by creating space for the shoreline to adapt with climate change.

Alternative B – Typical public benefit restoration. Alternative not evaluated or considered



CONCLUSION

The City once stated that “It is the intent of the [Restoration Planning] provisions above to end acceptance of landfill as the inevitable fate of Budd Inlet and to impose on any proposed landfill project the standards of "highest necessity.” POLICY 6.7(3). It is now time that the City follow that statement.

As shown above, the WBY project is inconsistent with the City’s Shoreline Master Program. It includes fill that, under the guise of enhancing the beach, actually moves the dividing line between uplands and tidelands – the Ordinary High Water Mark (OHWM) – approximately 50 feet further towards the water. This relocated OHWM underpins the WBY proposal by serving in the proposal to increase the allowable building footprint with respect to the existing OHWM. The 2016 West Bay Environmental Restoration Assessment does not allow the City to circumvent the prohibition against creating new uplands during restoration, and the requirement that restoration employ the minimum waterward fill necessary to accomplish the purposes of the project.

The WBY proposal also shows that City should make a determination of probable significant environmental impact during its SEPA review and require an EIS to examine the environmental impacts of WBY’s proposed restoration/creation of new uplands versus alternatives such as retaining the existing OHWM, or removing some of the historic fill and moving the OHMW landward, not waterward.



BRICKLIN & NEWMAN LLP
lawyers working for the environment

Reply to: Seattle Office

July 27, 2021

Nicole Floyd
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VIA E-mail to nfloyd@ci.olympia.wa.us

Re: West Bay Yards Application

Dear Ms. Floyd:

I am writing on behalf of the Olympia Coalition for Ecosystem Preservation regarding the West Bay Yards mixed-use project at 1210 West Bay Drive NW. On June 29, 2021, the City invited a first round of public comments, focused on site plan review and local code compliance. This comment is submitted in response to that invitation.

A. The West Bay Yards Project Unlawfully Creates New Uplands.

The Shoreline Master Program prohibits the creation of new uplands through fill. Even in the context of a restoration plan, creation of new upland is not allowed:

Restoration and enhancement projects shall not extend water-ward more than the minimum necessary to achieve the intended result **and shall not result in the creation of additional upland area.**

OMC 18.20.855.I (emphasis added).

In its shoreline narrative, the developer fundamentally misconstrues this requirement. The developer argues that the project will respect the 30-foot shoreline setback “from the **existing** OHWM” (emphasis in original). In the same paragraph, the developer announces that “the new OHWM may extend up to 50 feet waterward to maintain appropriate grades.”

Based on these statements, it appears the developer is creating new uplands, but is refraining from building on those uplands, and therefore believes the project to be in compliance. However, the code does not prohibit building on new upland areas, it prohibits *creating* new upland areas. The contours of the shoreline are to be left alone.

Public Comment: West Bay Yards

July 27, 2021

Page 2

The developer in several places invokes the City's 2016 West Bay Environmental Restoration Final Report and the City's 2012 Final Restoration Plan. However, as noted above, the prohibition on new upland areas in OMC 18.20.855.I applies even against "restoration and enhancement projects." Thus, regardless of whether the project is consistent with the 2016 or 2012 restoration plans, it may not create new uplands. The City should deny any application that does not maintain the existing shoreline.

B. The West Bay Yards Project Does Not Provide the Required Mitigation Oversight.

The SMP provides that:

Shoreline property owners that remove hard-armoring or otherwise restore the shoreline prior to development may apply such restoration toward any mitigation required at the time of development provided that:

1. The applicant/property owner can provide conclusive evidence of the pre- and post- restoration conditions using photographs, reports, plans, affidavits, or similar evidence;
2. The City can confirm via site inspection, photographs, affidavits or other evidence that the restoration actions have improved shoreline conditions;
3. The work has occurred on the same site within five years of the proposed development; and
4. The applicant/property owner provides assurances that the restoration area will be preserved in perpetuity. Such assurance can be in the form of a notice on title, conservation easement, or similar mechanism.

OMC 18.20.855.C.

Several of these provisions have not been met here. The developer has not submitted a pre-restoration condition report nor provided a notice on title or conservation easement for the restoration area to be protected in perpetuity.

The developer is not only failing to remove the existing shoreline armoring but is also planning to install massive new armoring in the form of a rock groin at the south end of the project, as depicted in its JARPA diagram. The groin will extend much further seaward than the existing armoring.

The developer's response is that compliance with this section is not necessary because "the voluntary shoreline restoration action is being conducted as part of the development agreement between the developer and the City and is not being conducted as mitigation for developing the upland project site." This argument is a bit of sophistry the City should reject. The development agreement itself contemplates both upland development and shoreline restoration. *See Dev.*

Public Comment: West Bay Yards

July 27, 2021

Page 3

Agmnt. § 1 (“The Project will re-develop the former Brownfield industrial property consisting of approximately seven upland acres ... and will also complete shoreline restoration along the Property boundary consistent with the recommendations identified in the City of Olympia West Bay Environmental Restoration Assessment Final Report ... and the City of Olympia Shoreline Master Program”).

Thus, it is not the case that the developer is performing shoreline mitigation in exchange for a development agreement; rather, the developer is performing shoreline mitigation in exchange for upland development. The development agreement merely memorializes the development and mitigation to be performed. Nothing in the code (or the text of the development agreement) allows a developer to perform upland development in exchange for mitigation *without* complying with OMC 18.20.855.C. On the contrary, the development agreement requires the SMP to be followed.

Nor is the development agreement any kind of practical substitute for compliance with OMC 18.20.855.C. The SMP requires shoreline mitigation to be preserved “in perpetuity.” The development agreement, by contrast, has a term of fifteen years and the possibility of revocation earlier than fifteen years.

The City should require the developer to conduct pre-development environmental review and enter a conservation easement or other perpetual instrument to protect the shoreline mitigation.

C. The West Bay Yards Project Unlawfully Obstructs Views.

In its Shoreline Narrative, the developer acknowledges that multiple provisions of the Olympia Municipal Code apply regarding the issue of views. However, the developer fails to protect views in accordance with these provisions. The developer’s fundamental error is it assumed only the views from adjacent private properties need to be protected. In reality, while preservation of views from private property is an important requirement of the code, the code places even greater importance on protecting views from public property. The developer fails to do so.

View protection arises from three sections of the code:

- OMC 18.20.504 to -.507 (shoreline master program view protection regulations);
- OMC 18.06.100 (commercial districts’ development standards);
- OMC 18.110.060 (basic commercial design criteria)

The developer correctly notes, in its Shoreline Narrative, that each of these is a separate provision with its own criteria.

1. Shoreline master program view protection regulations (OMC 18.20.504 *et seq.*).

In relevant part, the SMP view protection regulations require:

Public Comment: West Bay Yards

July 27, 2021

Page 4

- No permit shall be issued pursuant to this chapter for any new or expanded building or structure of more than thirty-five (35) feet above average grade level that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where Olympia's Shoreline Program does not prohibit the same and then only when overriding considerations of the public interest will be served.
- Public shoreline views shall be protected by the use of measures, including but not limited to, maintaining open space between buildings, clustering buildings to allow for broader view corridors, and minimizing building height and total lot coverage
- Buildings shall incorporate architectural features that reduce scale such as increased setbacks, building modulation (vertical and horizontal), pitched roofs, angled facades, and reduced massing.

The West Bay Yards project violates each of these requirements. First, the project has five buildings with a maximum height of 65 feet, so it is subject to the requirement not to "obstruct the view of a substantial number of residences." The developer's own materials confirm that many parcels west of the project have "easterly views that could potentially be affected by the project."

The developer claims that only properties lying below 91 feet elevation will suffer view easterly blockages. Further, the developer claims that, due to spacing between buildings, "only 55% of the views from those properties would be affected, leaving 45% open views." The developer's claim rests on multiple faulty assumptions.

First, it is not the case that only parcels due west of the project (looking due east toward the project) will be blocked. On the contrary, parcels to the northwest (looking southeast) and to the southwest (looking northeast) will also be blocked. The developer's assumption that the only views that matter are those that look due east has no support in the SMP. Because the project will obstruct a substantial number of residential views (not only those that look due east), it should not be allowed.

In addition, the developer only considered the views from properties that are currently developed. But the properties near the project site, including those abutting the site, and including those that look due east toward the property, are zoned residential or professional office/residential. In assessing whether the project will block views from residences, the developer should have considered the likelihood that these properties will be developed not only with commercial uses (as several are today) or left undeveloped (as several others are) but also with future residences. Because the project will obstruct future residential views, it should not be allowed.

Also, the developer's view analysis never specifies what view is being preserved. The SMP protects not only views of elevated scenic features such as mountains and the Capitol dome, but also low-lying scenic features such as Budd Inlet itself. To the extent some of the properties near the project will still be able to glimpse the mountains above the project, that does not mean their

Public Comment: West Bay Yards

July 27, 2021

Page 5

views of Budd Inlet have been preserved. Because the project will obstruct water views, it should not be allowed even if it preserves mountain or Capitol views.

The developer fails to meet, or even address, the requirement that view obstruction is only allowed “only when overriding considerations of the public interest will be served.” Here, the additional height above 35 feet does not serve any overriding consideration of the public interest. (Indeed, the developer’s materials do not even attempt to claim that it does.) Regardless of the merits of the project’s shoreline modifications (which we will discuss below), the height increase of the project will serve only private interests—residential and commercial. It is not the case that any publicly accessible portion of the facility will be higher than 35 feet. Therefore, the height increase does not serve any “overriding public interest,” and the application should be denied.

The developer argues that “public shoreline views” will be protected through the use of open space between the buildings and the provision of a public esplanade along the project’s waterfront. These measures are inadequate to protect public views. Currently, the public has an unobstructed view of the waterfront while driving down West Bay Drive. After the project is built, the only views from West Bay Drive will be intermittent glimpses between the buildings. The project does not use clustering to “allow for broader view corridors;” on the contrary, the view corridors here are narrow. The substitution of a pedestrian esplanade (which does have views) for West Bay Drive (where views will now be blocked) does not restore views, because there are likely to be fewer pedestrians on the esplanade than there are drivers on West Bay Drive. Thus, while a handful of members of the public will enjoy views as pedestrians, the majority of the public will experience obstructed views.

Finally, the project does not employ “reduced massing” or “minimize[ed] building height and lot coverage,” as required by the SMP. On the contrary, the project seeks to increase height limits and maximize lot coverage and massing, even seeking to invoke height bonuses to do so. The SMP contemplates buildings along the shoreline that are *less* obtrusive than the code otherwise allows, but the developer has proposed buildings that are *more* obtrusive.

For all the foregoing reasons, the City should conclude that the project is not consistent with the SMP’s view preservation requirements.

2. Commercial districts’ development standards (OMC 18.06.100).

The developer invokes two height bonuses from the commercial district development standards: OMC 18.06.100(A)(2)(c)(iv)(a) (waterfront trail) and (A)(2)(c)(iv)(b) (expanded waterfront trail corridor facility). Where both exceptions are invoked, a project may block a maximum horizontal view of (70%) of its length and may have buildings up to 65 feet tall along that length. *Id.* (A)(2)(c)(iii). Projects invoking these exceptions are required to design the trail or trail corridor facility “consistent with City standards and requirements, or as otherwise approved by the Olympia Parks, Arts, and Recreation Department.” *Id.* Further, neither of these provisions negate the SMP’s provisions on view blockage.

Public Comment: West Bay Yards

July 27, 2021

Page 6

The City's engineering and design standards for pedestrian walkways require a 22-foot wide minimum corridor width for commuter multi-use trails. EDDS, 4E.010, Table 13. The developer's materials indicate the esplanade will be "approximately 22 feet in width." Thus, the esplanade appears to meet the definition of a trail. However, to meet the definition of an expanded waterfront trail corridor facility, the developer must add additional features, including "additional right-of-way for the expanded trail, landscaping, habitat enhancement, benches, lighting, parking, restrooms, garbage receptacles, telephones, interpretive signs and other park facilities." OMC 18.06.100(A)(2)(c)(iv)(b)(2). The developer proposes to add beach access and vegetation planting along the beach in an effort to qualify the trail as an expanded waterfront trail corridor.

However, the additional beach access and vegetation features will lie atop the developer's proposed infill of the shoreline. Thus, the infilled shoreline will constitute a portion of the expanded waterfront trail corridor. This is confirmed in the City's JARPA application, which states that "[a]llowable building height and view blockage increases have been achieved per OMC 18.06.100 by providing the restoration of the shoreline and the construction of a 22-foot-wide publicly accessible esplanade trail ..."

As the City and developer are well aware, the tidelands at the project site are heavily polluted; thus, the infilled shorelines will overlay the polluted sediments. That being the case, the commercial district standards for expanded waterfront trail corridors require:

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.

OMC 18.06.100(A)(2)(c)(iv)(b)(3).

Here, the developer has failed to provide the required environmental impact analysis of the hazardous waste risks associated with using shoreline infill atop polluted tidelands to provide a trail corridor. Until such analysis has been provided, the project cannot be approved.

3. Basic commercial design criteria (OMC 18.110.060).

The commercial design criteria require view protection, too:

In order to protect the existing outstanding scenic views which significant numbers of the general public have from public rights-of-way, applicants for development must consider the impact their proposal will have on views of Mt. Rainier, the Olympic Mountains, Budd Inlet, the Black Hills, the Capitol Building, and Capitol Lake or its surrounding hillsides. All development must reserve a reasonable portion of such territorial and immediate views of these features for significant numbers of people.

OMC 18.110.060.A.

Public Comment: West Bay Yards

July 27, 2021

Page 7

As discussed above, the views to be protected are not only the views from adjacent private property (which are not protected) but also from West Bay Drive. Substituting a pedestrian esplanade for the views currently available from West Bay Drive is not consistent with this requirement.

D. The Tideland Infill May Not Be Necessary for Restoration.

In multiple parts of the code, the City provides that infill of tidelands should be a last resort, not a first resort. *See, e.g.*, OMC 18.20.833 (“Fill shall be the minimum necessary to accommodate the proposed use or development ...”); 18.20.837 (“Fill shall be the minimum necessary for the intended use or activity”); 18.20.955(I) (“Restoration and enhancement projects shall not extend water-ward more than the minimum necessary to achieve the intended result”); SMP Appendix A 2012 Restoration Plan (allowing filling only when “[t]he size of the proposed area to be filled is the minimum possible to accomplish the project ... [and] The benefits of filling cannot reasonably be achieved by other alternatives”).

Here, nothing in the 2016 or 2012 Restorations Plans nor any other document has explored the possibility of achieving the restoration plan’s objectives without the need for filling in the tidelands and changing the shoreline. None of the plans have contemplated such proposals as planting intertidal native growth or replacing or capping polluted tideland sediments (without creating new uplands). Instead, the City has always proceeded as if the only possible restoration action was filling in the tidelands.

The closest the City or developer have ever come to analyzing whether the tidelands infill is necessary is this statement from the 2016 Restoration Plan:

Assuming that the existing uplands are to remain intact, restoration opportunities are limited to creation of intertidal beach and marsh areas through substrate placement, riparian plantings along the backshore, and removal and restoration of intertidal structures areas.

This statement represents the entirety of the “alternatives analysis” for the West Bay Yards project, yet it is obviously not an alternatives analysis. The only alternatives it offers are:

- Infill (or, in the developer’s preferred phrasing, “creation of intertidal beach and marsh areas through substrate placement”);
- Upland vegetation planting (“riparian plantings along the backshore”); or
- Removal and restoration of intertidal structures areas (meaning removing shoreline armoring).

This analysis is incomplete. It is not the case that the only restoration work that could possibly be performed in the tidelands is to fill them in and remove shoreline armoring. Indeed, there are many examples of projects that mitigated polluted tidelands without filling them in, such as the Duwamish Waterway restoration. Filling of tidelands should be a last resort, yet the City has treated it as a first (and only) resort.

Public Comment: West Bay Yards

July 27, 2021

Page 8

The City cannot say whether the filling proposed here is the minimum necessary, because the City has never evaluated other alternatives involving native growth plantings or dredging and capping polluted sediments. Until the City has examined a range of alternatives, this project cannot be approved.

E. The Developer Has Not Submitted a Habitat Management Plan.

Under the critical areas ordinance, a developer must provide a habitat management plan when a project lies within an important habitats or species location. OMC 18.32.330:

Important habitats and species are habitats or species known to occur within Thurston County and which may be found within the City of Olympia and which are not receiving habitat protection by another critical area category (e.g., Streams, Wetlands, or Landslide Hazard Areas) in this Chapter and ... Are state priority species identified on the Washington Department of Fish and Wildlife (WDFW) Priority Habitats and Species (PHS) List and their habitats of primary association.

OMC 18.32.305(B).

WDFW has mapped the tidelands of West Bay as PHS, including at the West Bay Yards project site, due to the presence of estuarine and marine wetland. The developer's critical areas report acknowledges the presence of the tidelands PHS but does not provide a habitat management plan for it.

Because the project proposes filling in some of the PHS tidelands, the project "lies within an important habitats or species location." Therefore, under OMC 18.32.330, the developer must provide a habitat management plan. None has been provided.

F. The Traffic Analysis Is Based on a Previous Traffic Analysis that Has Been Invalidated.

According to the developer's traffic impact analysis, "Vehicle trip generation was estimated using the trip generation rates contained in the City of Olympia's Transportation Impact Fee Update dated November 2016 and the Missing Middle Trip Generation memo dated December 6, 2018." However, the Growth Management Hearings Board invalidated the Missing Middle ordinance in the case *Olympians for Smart Development and Livable Neighborhoods, et al. v. City of Olympia*, GMHB No. 19-2-0002c, Final Decision and Order (July 10, 2019). The Board held that the City's environmental analysis failed to analyze how much additional parking would be required as a result of the Missing Middle ordinance. *Id.* at 19–20. Because the West Bay Yards traffic impact analysis is based on the invalidated Missing Middle analysis, the City should reject the West Bay Yards analysis.

Public Comment: West Bay Yards

July 27, 2021

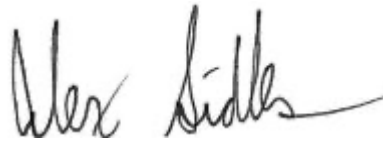
Page 9

G. Conclusion.

In sum, for the reasons stated above, approving the permits now would violate various provisions of the municipal code. The City should deny the permit applications until the project can be redesigned to show compliance with each of the above-cited requirements. Thank you for consideration of our input on this important issue.

Very truly yours,

BRICKLIN & NEWMAN, LLP

A handwritten signature in black ink that reads "Alex Sidles". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Alex Sidles
sidles@bnd-law.com
(206) 264-8600

Date: July 27, 2021
To: Nicole Floyd
City of Olympia: Community Planning & Development
P.O. Box 1967, Olympia, WA 98507-1967

Ms Floyd,

I support residential/mixed development on West Bay Drive, provided that there is an Environmental Impact Assessment, it is in compliance with the City's Shoreline Master Program, it is properly sized to fit into the existing neighborhood, and all impacts are addressed.

I do not believe the West Bay Yards (WBY) project meets any of these qualifiers. My main concerns are violation of the Olympia Shoreline Master Program and impacts of traffic.

Code

The WBY project shoreline restoration proposal to file tidelands to create additional upland is inconsistent with the Olympia Shoreline Master Program. The Olympia SMP prohibits filling tidelands that creates additional uplands. The project only seems viable by moving the OHWM to make a bigger building site. While it may provide some benefits, the biggest benefit is to the developer.

Size

A 478-unit complex is too big for the area. The design is completely out of character and very uninviting looking. Assuming an average of two people per unit, that is 956 more people. Given most people have their own car, that makes 956 more cars plus all of the visitors who are drawn to its proposed "amenities". I saw that there will be a total of 853 parking spaces.

Traffic

The traffic analysis does not appear to be realistic or thorough. It does not appear that any travel north to Elliot Street to access Division Street was investigated. As West Bay Drive gets clogged already, drivers will find other routes through the neighborhoods to get in and out. That is a glaring omission.

West Bay Drive had improvement done many years ago, and I don't believe any addition lanes or widening could be done. It already is very busy at certain times of the day.

If the traffic volumes for the study intersections were taken during the height of Covid when the roads were significantly less traveled that will provide erroneous information.

The area south of the proposed WBY is a high use recreation area, with people walking through the Garfield Trail and crossing West Bay Drive to access Rotary Park, and the Woodard Bay Trail also intersects West Bay Dr.

Because of the compliance issues with the SMA, the City should make a determination of probable significant environmental impact during its SEPA review and require an EIS. An EIS needs to be conducted to more thoroughly evaluate the impacts and alternatives to modification of the shoreline.

Patricia Jatczak
Olympia, WA

From: Sasha Henry <jhenry.oly@gmail.com>
Sent: Tuesday, July 27, 2021 4:47 PM
To: Nicole Floyd
Subject: West Bay Yards comments

External Email Alert!

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Dear Mx. Floyd,

I attended the recent virtual Neighborhood Meeting on July 7th regarding the proposed West Bay Yards development and wanted to submit my comments to the review process. I am very concerned about the project's impact on my neighborhood, its massive scale, its effect on the shoreline, and the fact that it decreases the percentage of home ownership in the neighborhood by being entirely rental units and no condos.

My primary concern is about traffic on West Bay Drive. Due to the unique geography of the neighborhood, there are few alternatives to West Bay Drive for drivers heading downtown or to freeway entrances downtown. We can either go west to Division then down Harrison or 5th, or go east to West Bay Drive. Going south on one of the streets like Foote or Rogers and turning east on Harrison is not a viable option during normal traffic loads, as the gaps that develop between cars are insufficient for safe crossing.

During morning rush hour, pre-pandemic traffic regularly backed up a quarter mile or more on West Bay Drive north of the Harrison/West Bay Drive roundabout. At the Neighborhood Meeting, the Olympia traffic planner suggested that the roundabout could handle the additional traffic load of the West Bay Yards project and that the issue with a roundabout was balance. I understand this to mean that he thinks the roundabout will not experience additional backups as long as the flow through the various entrances and exits of the roundabout is roughly equal. While I'm sure this is true in theory, traffic during rush hour is *not* balanced. Adding 478 apartments' worth of cars will increase the imbalance. This is not just an issue of convenience; emergency vehicles also get caught in backups of this kind.

West Bay Drive is also extremely dangerous for cyclists. The last mile before the intersection with Olympic Drive/Harrison is an uphill climb for cyclists heading south. There is no shoulder, and it is unsafe for drivers to pass due to limited visibility from the hill. I know there are plans for a trail that would provide an alternate route for cyclists, but the fact is that trail has been planned for over 40 years. Even if it existed, trails are often not viable alternatives for commuting cyclists. I have witnessed many near misses between bikes and cars on West Bay Drive and heard of injuries and even deaths. The West Bay Yards planner implied that the bike lane in front of the project would alleviate the issue, but the worst part of the problem is not in front of the proposed project but further south where the cyclists slow down to climb the hill, and the additional traffic caused by 478 apartments will make this situation even worse.

I understand that the traffic analysis submitted by West Bay Yards was done during the pandemic on pandemic-level traffic loads. This is frankly shocking. Any data gathered during such an analysis would be misleading in the extreme.

Thank you for considering my comments and I hope this project will not be approved. I am in favor of sensible development, and I don't think this project fits into that category at all.

-- Joslyn Henry
1205 Woodard Ave NW
Olympia WA 98502

From: Esther Grace Kronenberg <wekron@gmail.com>
Sent: Monday, August 02, 2021 11:07 AM
To: Nicole Floyd
Subject: West Bay Yards
Attachments: D Leahy onScheibmeir Final 7-13 -.docx; Disqualify letter 32521.docx

External Email Alert!

This email originated from a source outside of the City's network. Use caution before clicking on links or opening attachments.

Dear Nicole,
Thank you for accepting my comments on the West Bay Yards Project.

I noted in your email that a decision on this would be made by the Hearings Examiner. I'm sorry, but it appears you did not receive correspondence from myself and from Dan Leahy regarding the inappropriateness of the current Hearings Examiner to hear this case.

It is clear that Mr. Scheibmeier has violated the Code of Judicial Conduct by not disclosing his own personal interests in a decision he made on the Wellington Heights subdivision as explained in Mr. Leahy's letter. He also has violated the Appearance of Fairness Act, RCW 42.36, and Olympia Municipal Code 18.82.080 which prohibit conflicts of interests and improper influence because of his membership in the Chamber of Commerce, a decidedly pro-development organization, and in his role as registered agent and Governor for real estate investment firms.

I attach my and Mr. Leahy's letters below. Please include them in the public records for this project.

Thank you.
Esther Kronenberg

March 25, 2021

Dear City Council, Cari, Tim Jay Burney green cove list, growth list envirotalk list cc to governor3/26

We write to ask the City to remove Mark Scheibmeir as the Hearing Examiner for the Green Cove Park Project per the Appearance of Fairness doctrine of common law, the Appearance of Fairness Act, RCW 42.36, Article 2, Section 30 of the Washington State Constitution, and the Olympia Municipal 18.82.080 - Improper influence, conflict of interest and appearance of fairness, which reads as follows:

“The Hearing Examiner shall conduct all proceedings in a manner to avoid conflicts of interest or other misconduct and to avoid violations of the Appearance of Fairness Doctrine...”

Also, Olympia’s Hearing Examiner Rules, Section 5: Conflicts of interest and appearance of fairness, states:

“(2)The Hearing Examiner shall **perform the duties of office without bias or prejudice.**

(3)Disqualification of Hearing Examiner. The Hearing Examiner should disqualify himself in any proceeding in which his impartiality might reasonably be questioned, including, but not limited to, instances in which:

(a) the Examiner has a **personal bias or prejudice** concerning a party or a proceeding;

(5) Other practice of law. The Hearing Examiner is not a City employee. The Examiner may practice law apart from his or her work as a Hearing Examiner, **as long as the practice does not impair the Examiner's capacity to decide issues impartially.**”

A public search of the Washington State Secretary of State’s website (<https://ccfs.sos.wa.gov/#/BusinessSearch>) reveals that Mark Scheibmeir is the registered agent in 14 corporate entities and the Governor of Wenmark, LLC, a real estate investment corporation which owns property in Chehalis.

Besides being a partner in the law firm Hillier, Scheibmeir, Kelly & Satterfield, P.S., which is represented on the Board of Directors of the Centralia-Chehalis Chamber of Commerce, he is also the registered agent for:

WOC Properties, LLC,
WOC-PEDS, LLC,
WOC-ONC, LLC,
SSRE Investments, LLC,
SSRE2 Investments, LLC,
Shelton Opportunities, LLC,
Chehalis Properties, LLC,
Blue Rock, LLC and
LCRE Investments, LLC.

All of these LLC's are real estate or real estate investment companies. He is also the registered agent for WBS Equine Holdings, which owns property in Washington.

Further, his law partner, Brian Kelly, is a registered agent for two real estate investment corporations, Kimmie Street, LLC, and Queen Ann Properties, LLC which is headquartered in Houston.

Five of the real estate investment corporations for which Mr. Scheibmeir is the registered agent list Heidi and/or Heidi and Robert Pehl as principals. Ms. Pehl recently retired as the Executive Director of the Port of Chehalis and acquired a controlling interest in Uhlmann Holding Company which runs auto dealerships along the I-5 corridor. In fact, several other corporations for which Mr. Scheibmeir serves as the registered agent are auto dealerships. These include LC Auto, Inc., I-5 Auto Group, Inc., and South Sound Auto Group, LLC which is located on Cooper Point Rd. SW in Olympia. In addition, he is the registered agent for Deuce's 45, a gun store in Chehalis.

It is clear that Mr. Scheibmeir and his law firm are engaged in the business of real estate development. His representation of the former Executive Director of the Port of Chehalis, of real estate investment corporations and of automobile dealerships leave no doubt that in any land use decision, Mr. Scheibmeir cannot be impartial, as his legal expertise is devoted to real estate development and the increased use of vehicles which would benefit his automotive sales clients. Further, Mr. Scheibmeir's professional experience illustrates a stunning lack of any training or knowledge in environmental law.

We believe this openly available public information is enough to substantiate our request that Mr. Scheibmeir cannot hear any land use decisions regarding development, especially those that concern complex issues of environmental impacts and remediation that require the involvement of multiple state and federal agencies.

His participation in any of these land use decisions clearly passes the test for an Appearance of Fairness violation, namely "would a disinterested person, having been apprised of the decision-maker's interest in a matter being acted upon, be reasonably justified in thinking that partiality may exist?" *Swift v. Island Cnty.*, 87 Wn.2d 348, 361, 552 P.2d 175, 183 (1976) His continued employment on decisions of this kind threaten the public's confidence in the independence and integrity of the City's judicial processes and erode the basic trust in government that we rely on our local elected officials to uphold. As noted in *Chrobuck v. Snohomish County*, 78 Wn.2d 858, "It is important not only that justice be done but that it also appear to be done."

Further, as we have noted previously, Mr. Scheibmeir's and his clients' membership in the Chamber of Commerce, including dealerships at the Olympia AutoMall at 2107 Cooper Point Rd. SW, creates a further conflict of interest with the project on Cooper Point Rd. NW, as well as the project on West Bay Drive. *Buell v. Bremerton* 80 Wn.2d 518 finds that "it is necessary only to show an interest which might have influenced a member of the (planning) commission

and not that it actually so affected him.” How much more so for the Hearing Examiner, the sole decision maker in these cases.

Additionally, Heather Burgess, the attorney for both the developers of the Green Cove Park Project and West Bay Yards is also the attorney for the Port of Olympia and President of the Economic Development Council. She is also attorney for the public policy team of the Chamber of Commerce since 2013 when the City signed a contract for the Shared Legislative Agenda Partnership with other jurisdictions in the area with which the Chamber improperly influences government staff and officials through lobbying of the State legislature, despite not being registered as a lobbyist.

The Chamber has several other contracts with the City of Olympia, such as Thurston Thrives, Thurston Strong and the Leadership Training Program which improperly influence City staff and officials making decisions on actions which affect the commercial interests of the Chamber’s members, including the awarding of City contracts to Chamber members and the hiring and firing of staff so as to support the Chamber and its members’ interests. Consequently, we believe one of the improper decisions that was influenced by the Chamber of Commerce was the hiring of Mr. Scheibmeir without a background check, including a criminal background check.

Further, we note that in at least one public hearing on the Parkside project that was held in 2016, Mr. Scheibmeir failed to disclose his biases when asked directly by Mr. Jerry Dierker pursuant to Article II Section 30 of the Washington State Constitution and the Appearance of Fairness doctrine. Any decision he made before and after refusing to disclose the conflicts of interest noted here are void on their face, as noted by the decision in *Save a Valuable Environment vs. Bothell*. The decision was ultra vires, without any legal authority, as Mr. Scheibmeir could not act impartially with even one such conflict of interest, let alone more than the dozen identified here with just a few hours of research. Therefore, when he was hired by the City without due diligence to vet this candidate to determine his qualifications, and without Mr. Scheibmeir disclosing these conflicts, he could never have been granted authority because of these conflicts of interest and therefore, any decision he made is null and void on its face because the City could not delegate their authority to this Hearing Examiner, as they claim they have done, since he was and is not qualified for this position.

During this same Hearing, Mr. Scheibmeir also made abundantly clear in an offensive manner to the almost 200 neighbors present who would be most impacted by the Parkside Project that he was not interested in their testimony, exhibiting a complete disregard for the voices of the weak and granting special privileges and immunities to the Applicant and the City staff, a pattern that he has followed in other proceedings. We refer to *Chrobuck v. Snohomish County* 78 Wn.2d 858 where it is required that any hearing “be capable of hearing the weak voices as well as the strong.”

Further, we note that since his employment in 2013, Mr. Scheibmeir has never ruled against the City in any of the development proposals it supported, another indication of clear prejudice and bias.

We asked the City in a public records request in January 2020 for Mr. Scheibmeir's employment application to learn if he had disclosed any conflicts of interest or biases to the City at that time. Unfortunately, the City refused to share that information citing employee confidentiality.

If Mr. Scheibmeir did not disclose this information, we believe he should be terminated for not disclosing the biases he would have in the land use decisions over which he was appointed to preside.

Regardless of his lack of transparency, we believe the City did not perform due diligence in investigating the qualifications and conflicts of interest of this candidate, as this information is readily available with a couple of hours of research to anyone with an internet connection. We wonder how many biased and prejudiced people have been hired by the City of Olympia based upon the influence of the Chamber of Commerce, developers and the attorneys who work for them through these various contracts and partnerships?

We regret having to bring this problem to your attention yet again, but it appears that no one has listened to our complaints on this very serious lack of good governance over the last several years, a problem that could potentially cost the City millions of dollars in law suits for the decisions made by this Hearing Examiner who was hired by the City Councilmembers themselves who delegated their authority to him. This is a major liability problem.

We attach a paper by the Pacifica Law Group for your edification entitled "Quasi-Judicial, but not Quasi-Ethical: Conflicts of Interest and Appearance of Fairness for Hearing Examiners."

We urge the City to take appropriate action to correct this problem in a timely manner. Please contact us at your earliest convenience. Thank you.

Jerry Dierker (360) 866-5287
Esther Kronenberg - wekrone@gmail.com
Roger Robinson - 14rdr14@gmail.com
on behalf of the Green Cove Defense Committee

From the Code of Judicial Conduct

A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule 1.2 - Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Canon 2: A judge should perform the duties of judicial office impartially, competently, and diligently.

o **Rule 2.2 - Impartiality and Fairness**

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Rule 2.3 - Bias, Prejudice, and Harassment

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment

Rule 2.4 - External Influences on Judicial Conduct

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

Rule 2.6 - Ensuring the Right to Be Heard

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

Rule 2.8 - Decorum, Demeanor, and Communication with Jurors

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

Rule 3.1 - Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law* or this Code. However, when engaging in extrajudicial activities, a judge shall not:

(C) participate in activities that would undermine the judge's independence,* integrity,* or impartiality;*

The judicially created “appearance of fairness doctrine” also applies to quasi-judicial proceedings and in many respects mirrors the canons and rules of the CJC. In particular, CJC Rule 1.2, 2.2, 2.3 and 2.4 set standards for judicial conduct that are directly analogous to the standards imposed by courts in applying the appearance of fairness doctrine. The doctrine is intended to protect against actual bias, improper influence, prejudice or favoritism. It is also aimed at curbing conditions that create an appearance of these conditions, or could undermine the integrity of the proceedings by causing suspicion, misinterpretation, prejudgment, partiality, and conflicts of interest. If an action is subject to the appearance of fairness doctrine, then all legally required public hearings, as well as the participating public officials, will be scrutinized for apparent fairness. See *Chrobuck v. Snohomish Co.*, 78 Wn.2d 858, 480 P.2d 489 (1971). Notably, the test for finding a violation of the appearance of fairness is the same in the judicial and quasi-judicial context. That inquiry is: would a disinterested person, having been apprised of the decision-maker's interest in a matter being acted upon, be reasonably justified in thinking that partiality may exist? *Swift v. Island Cnty.*, 87 Wn.2d 348, 361, 552 P.2d 175, 183 (1976); see also *In re Disciplinary Proceeding Against Sanders*, 159 Wn.2d 517, 524-25, 145 P.3d 1208, 1212 (2006). If the answer is yes, then the decision must be voided.

The Washington Supreme Court has identified prejudgment of issues and partiality as grounds for the disqualification of quasi-judicial decision makers or subsequent invalidation of their decisions. The courts have ruled that violations include hearing matters in which their “personal interest” is implicated, even when the official does not actually stand to gain but only appears to be personally interested. Associational ties and relationships between a decision-maker and parties to a hearing should be disclosed and made part of the record. In *Save a Valuable Environment (SAVE) vs. City of Bothell*, 89 Wn.2d.862,576 P.2d 401(1978) the Court found a violation of the Appearance of Fairness doctrine when it was found a member of the planning commission's membership in the Chamber of Commerce appeared to influence her decision. The court commented that the rule “does not prohibit membership in community organizations; it prohibits participation in at least quasi-judicial proceedings when such membership demonstrates the existence of an interest which might substantially influence the individual's judgment.”

We also challenge Mr. Scheibmeir for “partiality evidencing a personal bias or personal prejudice signifying an attitude for or against a party as distinguished from issues of law or policy...” *Buell v. City of Bremerton*, 80 Wn.2d 518, 524, 495 P.2d 1358 (1972) . This case recognized the importance of the appearance of fairness by ruling “that it is necessary only to show an interest that might have influenced a member of the commission and not that it actually so affected him.”

From: Pam Pride <pam@pampride.com>
Sent: Monday, August 02, 2021 3:10 PM
To: Nicole Floyd
Subject: West Bay Yards

External Email Alert!

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I understand the period for comments has passed. Nonetheless, I want to weigh in on two critical issues: The traffic impact analysis (TIA) submitted by WBY and the Shoreline Master Plan.

You already know the TIA is woefully inadequate because it was done during the height of the pandemic. It must be redone. I also want to say that I am a senior from Florida now living in west Olympia near the roundabouts. FL had to remove their roundabouts in areas with an aging population because of the explosive accident rate among seniors. Roundabouts are near impossible for seniors to navigate; yet there is no way to avoid them when traveling to downtown Olympia from the west side. Were the WBY plan to go forward, at minimum, stop lights would have to be installed at all roundabout intersections.

I won't repeat other feedback you have surely already received. The WBY plan is inconsistent with the Shoreline Master Plan.

Thank you,

Pam Pride
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