

April 25, 2024

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RE: West Bay Yards Mixed Use Development – Partial Response to November 2023 Review
Project No. 21-2854

This response addresses the primary issues identified in both the Applicant’s February 15, 2024 and March 25, 2024 response letters to the City of Olympia. The City and the Applicant are in agreement that the touchstones for resolving those issues are the Development Agreement between the City and the Applicant, the *City of Olympia West Bay Environmental Restoration Assessment Final Report* (“Assessment Report”), which is the basis for the shoreline restoration component of the Development Agreement, and the City’s Shoreline Master Program (SMP) regulations, particularly those provisions of the code applicable to fill, OMC 18.20.830 - .837, and the provision applicable to shoreline restoration and enhancement, section .855. The City and the Applicant share the goal of completion of a shoreline restoration as recommended by the Assessment Report and consistent with the SMP regulations.

I. The Development Agreement, Assessment Report, and Applicable SMP regulations:

As you of course know, the Development Agreement between the City and the Developer provides that the Developer will “complete shoreline restoration along the Property boundary consistent with the recommendation identified in the City of Olympia West Bay Environmental Restoration Assessment Final Report.” (Emphasis added). That Assessment Report assumes “that the existing upland are to remain intact,” and so reflects that “restoration opportunities are limited to creation of intertidal beach and marsh areas through the substrate placement, riparian plantings along the backshore, and removal and restoration of intertidal structures areas (sic).” Based on that assumption and that limitation, the Assessment Report includes “one restoration alternative . . . for this reach,” and that alternative “essentially maintains the existing uplands and shoreline plan form, but creates fronting intertidal beach and marsh areas primarily through placing beach substrates offshore of the existing revetment.”

In short, the Development Agreement dictates that the Developer will complete the shoreline restoration recommended in the Assessment Report, and, per the recommendation in the Assessment Report, that shoreline restoration will primarily consist of essentially maintaining the existing uplands/shoreline plan form (so the existing uplands and shoreline form will be located more-or-less where it is now) and placing beach substrate offshore of the existing revetment. Of course, the Assessment Report is a high-level planning document, conceptual in nature, which included illustrative schematics, not concrete plans to construct to. And the recommendation called for *essentially* maintaining the existing uplands/shoreline plan form, further suggesting some level of flexibility in the recommendation. Given the conceptual nature of the Assessment Report and the flexibility inherent in

the recommendation, there is some room to tailor the shoreline restoration to meet both conservation and development goals, while “essentially” maintaining the existing uplands/shoreline plan form.

Because the shoreline restoration recommended in the Assessment Report consists primarily of placing beach substrate (i.e. fill) offshore of the existing revetment those provisions of the SMP regulations that govern fill and shoreline restoration projects are applicable. Also applicable are the City’s shoreline regulation policies.

- OMC 18.20.837 governs fill water-ward of the Ordinary High Water Mark and permits fill only for limited, enumerated purposes, including “[e]cological restoration or enhancement such as beach nourishment, habitat creation, or mitigation when consistent with an approved restoration or mitigation plan.” However, under subsection B of that section, “[f]ill shall be the minimum necessary for the intended use or activity.”
- OMC 18.20.855 governs shoreline restoration and enhancement. That section provides that restoration and enhancement projects “shall be carried out in accordance with an approved shoreline restoration plan and in accordance with the policies and regulations of Olympia’s Shoreline Program,” and further provides that “[r]estoration 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” beyond the minimum necessary.¹
- The City’s Comprehensive Plan, section PN12.32, which states the City’s policy on fill, provides at subpart A that “[t]he quantity and extent of fill should be the minimum necessary to accommodate a permitted shoreline use or development.”

Taken together, these provisions require that the extent and scope of shoreline restoration activities, especially waterward of the Ordinary High Water Mark, and particularly the placement of fill and creation of new upland area, must be the “minimum necessary” to achieve the intended result. So, the question the City must answer in reviewing the Applicant’s proposed shoreline restoration proposal is whether it meets these requirements. As the City has indicated in previous review comments, it requires additional information and analysis to determine whether the Applicant’s proposal reflects the “minimum necessary” to complete the shoreline restoration recommended in the Assessment Report, in particular as to the placement of fill waterward of the existing revetment. Previous review comments provided to the Applicant by the City reflect that the City is concerned that the extent of restoration activities, particularly the placement of fill waterward of the existing revetment, may go beyond the “minimum necessary” to achieve the recommended shoreline restoration.

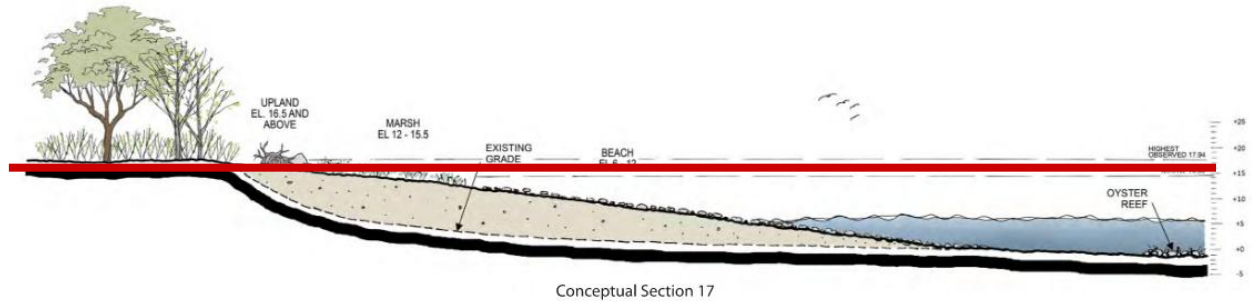
II. Shoreline Restoration as Recommended in the Assessment Report:

¹ The City had earlier indicted that OMC 18.20.855 I prohibited the creation of *any* additional upland area (i.e. any upland area in addition to existing conditions). The City agrees with the applicant that that interpretation is not correct. The City now reads OMC 18.20.855 I to prohibit the creation of any upland in addition to that necessary minimum necessary to achieve the intended result. In other words, the creation of upland area must be the minimum necessary.

As noted above, the Assessment Report recommended a shoreline restoration that essentially (1) maintains the existing uplands and places beach substrate (i.e. fill) offshore of the existing revetment. The City understands that this placement of fill offshore of the existing revetment is part of the strategy identified in the Assessment Report to “reconnect[] riparian and intertidal habitats . . . [through] placement of natural beach substrates at appropriate slopes and elevations.” Assessment Report 3.1 at p. 16. The offshore fill called for in the Assessment Report is for the purpose of creating a more natural beach environment, with a gradual slope and elevation consistent with such a natural beach environment, as compared to the very unnatural, steep slope and hard-armoring of the existing revetment. Put succinctly, recommended fill is to create a gradual slope between the existing uplands (which are to be maintained, per the recommendation in the Assessment Report) and intertidal habitat.

The City reads the Assessment Report as contemplating the uplands and the shoreline plan form will be essentially maintained (i.e. not converted to aquatic lands) and that the fill to create the gradually sloped beach would begin generally at the existing line between upland and aquatic environment, sloping down directly from there to the intertidal area (with possible minor variation across the property as particularly site conditions dictate, which could include some cutting into and removal of the existing upland). However, the Applicant proposes placement of offshore fill that is, arguably, in addition to this. The Applicant’s plans include placement of fill offshore of the existing uplands to create a 30-foot area of additional uplands long the entire shoreline of the seven-acre site. Under the Applicant’s proposal, the gradually sloped beach called for in the Assessment Report would begin generally at the water-ward edge of this new, additional upland area, rather than at the edge of the existing uplands.

In previous communications with the City, the Applicant has argued that this additional upland is consistent with the Assessment Report. However, as the City reads the Assessment Report, particularly the call for essentially maintaining the existing uplands and shoreline plan form, it does not contemplate conversion of intertidal area to new upland area as the Applicant proposes. In arguing it does, the Applicant relies on the schematic identified as “Conceptual Section 17.” That schematic shows fill waterward of the existing grade to illustrate how fill could be used to create a more naturally sloped and functional beach. The City believes that the applicant is mis-reading this schematic and placing undue reliance on it based on this mis-reading. Importantly, this schematic lacks critical information, which requires the reader to make certain assumptions. For example, the document identifies “upland” at 16.5 feet elevation, but does not identify where the Ordinary High Water Mark is located. The image shows a Mean Higher High Water Line (MHHW) at 14.5 feet (bottom dashed line), which is similar to the OHWM, but these two measurements are not identical. The Ordinary High Water Mark is shown on the applicant’s proposed plan set but must be converted from NAVD88 to MLLW Datum to correlate to this document. By doing this, one can see that the Ordinary High Water Mark is at about 15.5 feet on this image (11.5 in NAVD88). A red line has been added below to show the approximate location of this point:



The red line in the image above could not have been determined without additional information, from other sources. With the additional information, it is easier to see that a waterward shift of the upland area is not called for by this schematic.

In any event, The City believes this schematic was not intended to be used as the Applicant is using it. This schematic, like others in the Assessment Report, was intended to be conceptual in nature, and to show that the existing uplands/shoreline plan form could be maintained more-or-less as they are, and that fill could be placed at or below the existing Ordinary High Water Mark to achieve the intended restorative effect. It is important to note that the Assessment Report repeatedly reiterates that the projects recommended are conceptual in nature and that any restoration project would be expected to be reviewed for compliance against the City's SMP regulations at the point that a detailed project plan was prepared.

III. Whether Creation of the Additional 30-foot Upland Area Meets the "Minimum Necessary" Standard:

The Applicant's proposal indicates the purpose for the creation of the additional 30-foot upland area waterward of the Ordinary High Water Mark is for beach restoration, consistent with the shoreline restoration recommended in the Assessment Report, and that the waterward shift is not tied to the desired scope/scale of the upland mixed use development proposal. However, the required vegetation conservation area (VCA) buffer, which per SMP regulations must be the closest 30 feet upland of the Ordinary High Water Mark, is proposed on the newly created upland area. Thus, the addition of this new 30-foot upland area would have the effect of allowing all currently-existing uplands to be developed, because the location of the VCA has been shifted precisely 30 feet waterward.

Analysis submitted by the Applicant in response to requests by the City has thus far avoided consideration of shoreline restoration design options that would have the effect of reducing the developable area of the existing uplands; this is inconsistent with the requirements of the SMP regulations and needs to be corrected. For example, the Technical Memo dated February 13, 2024 from Farallon Consulting/Grette Associates Environmental indicates that "option 3" would result in a reduced waterward shift (i.e. less creation of additional upland area through placement of shoreward fill) but is not desirable, in part because it would result in a 13.6 percent reduced riparian corridor as compared to "option 2". Analysis does not indicate the reason for the reduced riparian corridor. Again, the Restoration Assessment calls for "essentially maintaining existing uplands" and does not call for reduction or re-location of the VCA. When comparing various options, placement of the full VCA on

currently existing uplands must be included. Similarly, the Applicant argues that the addition of 30-foot of new upland area is “incidental,” but does not consider a 30-foot reduction in the developable area of the currently existing uplands to be “incidental.”

The restoration approach of placing beach substrate offshore of the existing revetment is clearly called for in the Restoration Assessment; however the water-ward shift of the project design remains at issue. Discussion within the Applicant’s proposal and the supplemental information provided thus far heavily rely on unfounded assumptions related to retention of all existing upland areas. All parties agree that restoration would be an improvement to existing conditions; what remains outstanding is evaluation of alternatives that avoid the significant creation of new upland area and the corresponding waterward shift of the proposed development project. These alternatives cannot be ruled out simply because the restoration work and associated VCA might utilize upland areas that are slated for development in the Applicant’s proposal. Ultimately, the City seeks information and analysis that will allow it to consider whether an alternative shoreline restoration proposal without addition of new upland area would provide improved ecological function from current conditions and reduced waterward extension of upland area. If so, this alternative could meet code requirements, particular the “minimum necessary” requirement even if the net gain in ecological benefit was not as great as the Applicant’s preferred alternative. Examples of alternatives to evaluate have previously been provided by various agencies and can be discussed further if requested.

IV. Restoration Plan and SMP requirements:

In previous communications with the Applicant, the City has reiterated that the Restoration Assessment is not, itself, a “restoration plan” as required in the SMP regulations. As noted above, the applicable OMC provisions require an approved restoration plan for water-ward fill and for shoreline restoration activities. OMC 18.20.387 A 3 permits fill as part of restoration “when consistent with an “approved restoration or mitigation plan.” OMC 18.20.855 F says that shoreline “[r]estoration shall be carried out in accordance with an approved shoreline restoration plan.” Thus, the Applicant will need an approved restoration plan.

In order for the City to approve a restoration plan, the City must determine that the restoration project is consistent with an existing Comprehensive Restoration Plan or that the project meets all applicable sections of the Shoreline Master Program. See OMC 18.20.855 A. Currently, there is not a Comprehensive Restoration Plan for this area that includes this proposed project’s scope; therefore a stand-alone plan for this proposed the project, that meets all applicable requirements, will need to be approved before the project can move forward. The restoration plan that accompanies this project must be designed to show compliance with all applicable sections of the SMP, including the minimum necessary requirements (discussed above) and mitigation sequencing requirements. Please review the 3rd Round Comment Matrix for further details on what is needed to address data gaps and sequencing analysis.

IV. Closing:

The City supports the applicants efforts to complete a shoreline restoration that is consistent with the Development Agreement, the Assessment Report, and the City’s Shoreline Master Program regulations. Please know that our team is committed to assisting you as you work towards resolving the issues

outlined in the 3rd round of review comments sent to you in November of 2023. We are available to meet and discuss as needed to help get this project to code compliance so that it can progress in the permitting process.

A handwritten signature in blue ink, appearing to read "Nicole Floyd". The signature is fluid and cursive, with the first name "Nicole" written in a larger, more prominent script than the last name "Floyd".

Nicole Floyd, AICP
Principal Planner
City of Olympia