

**From:** [northbeachcomm@cs.com](mailto:northbeachcomm@cs.com)  
**To:** [Nicole Floyd](#)  
**Subject:** "NICOLE....."NO" to West Bay Yards development; City of Olympia  
**Date:** Friday, February 14, 2025 5:56:42 AM

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Dear Nicole;  
Thank you for a nice email, below.  
We appreciate you and your work.  
That said, because of my constant study of this environmental issue,  
I still stand by my words;

"The City of Olympia Planning needs a full blown ENVIRONMENTAL IMPACT STATEMENT (EIS) for this project. NOTHING ELSE WILL DO! A SEPA will not do!

Please also send this email to the parties that you listed below.

We the citizens of Olympia LOVE OUR CITY.  
We love our Budd Inlet, Puget Sound.  
We need an EIS!

fyi,  
Lisa R.  
2103 Harrison Ave.  
OLY., WA  
d98502

On Thursday, February 13, 2025 at 02:07:49 PM PST, Nicole Floyd <nfloyd@ci.olympia.wa.us> wrote:

Lisa,

I will add your letter to the record and forward to the appropriate Site Plan Review Committee members. I recently responded to a fellow community member who asked some questions. The answers might be relevant to you:

1. Is the City doing environmental Review? Yes, we are reviewing a robust set of environmental documents submitted by the applicant (available to you online) against codes and regulations.  
SEPA is typically used in this capacity to address issues that exceed what is covered by code. We will not issue a SEPA determination until we have determined what gaps (if any) exist. The code review will shape the SEPA Determination.
  
2. Does the proposal need to comply with State and Federal regulation? Yes. The U.S. Army Corp of Engineers will require a permit for the restoration work

proposed and the City is in coordination with them regarding this project. The State also has permit requirements related to toxic clean up. The Department of Ecology is reviewing these permit documents as well as conducting their own permit process.

3. Does the City review for Shoreline Master Program and Shoreline Management Act compliance? Yes. We are currently reviewing for compliance and would not recommend approval unless we could determine the project meets all applicable regulations. Plans have been routed to outside agencies for concurrent review as well including WDFW, affected Tribes, Department of Ecology etc.

Your concerns about the environment and desire to protect it are understood and appreciated. Please know the members of the Site Plan Review Committee take environmental review seriously and are on the 4<sup>th</sup> round of review primarily because of our need for increased environmental study on the proposed restoration portion of the project. We would not make a recommendation of approval until we are sure all requirements are able to be met. Similar, we will not make a SEPA determination until we are clear on what gaps exist between the code requirements and anticipated impacts. Please let me know if you have any follow up questions,

Nicole Floyd, AICP

Principal Planner|City of Olympia

601 4<sup>th</sup> Ave E.|Olympia, WA 98501

Ph: 360.570.3768|Fax: 360.753.8087

Web: [olympiawa.gov](http://olympiawa.gov)

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**From:** northbeachcomm@cs.com <northbeachcomm@cs.com>

**Sent:** Thursday, February 13, 2025 10:39 AM

**To:** Jay Burney <jburney@ci.olympia.wa.us>; Councilmembers <Councilmembers@ci.olympia.wa.us>; Nicole Floyd <nfloyd@ci.olympia.wa.us>; Tim Smith <tsmith@ci.olympia.wa.us>; Robert Vanderpool <rvanderp@ci.olympia.wa.us>

**Subject:** "NO" to West Bay Yards development; City of Olympia

FEB 12

Hello Olympia City Council;

I am against the West Bay Yards project. I have worked and lived in Olympia most of my life.

It will destroy Budd Inlet with stormwater issues, toxic ground water issues, destroy the oxygen levels in Budd Inlet.

This project is currently having a 4th round of review and comments.

The City of Olympia should not allow the West Bay Yards (over 450 apts) project to fill in tidelands for the reason that " it's necessary to do so to clean up the contamination on site. "

This is absurd.

That is not the intent of the Model Toxics Control Act. We must be a nation of laws, of rules.

You are violating this rule.

This project requires an EIS! We need an Environmental Impact Statement for this project! It will destroy Budd Inlet!

The City has more than enough information to show the project will have significant impacts on state and federal lands.

This project requires a SEPA/NEPA Environmental Impact statement. It should be done now.

"NO" to the Multi-Family Tax Exemption for this apt. project. Stop making taxpayers pay for rich developers to get richer!

Please see our comments, below, for more details on the proposal.

Thanks,

Lee Riner

#### More Background

As you may recall, this is the proposal from 2021 to build 5 large residential buildings with parking and commercial space on the contaminated Hardel plywood industrial site on West Bay drive, just at the bottom of the Schneider creek hill and abutting the Schneider creek estuary. The City allowed the project to move forward using a development agreement, and the Hearing Examiner rejected Olyecosystems' appeal.

<https://olywip.org/citizens-an-environmental-review-should-precede-a-binding-contract-for-west-bay-yards/>

<https://olywip.org/a-development-agreement-without-a-development/>

The project proposes filling in tidelands to create a buildable footprint for this market rate housing. The developer tried to justify filling in the tidelands, something expressly forbidden in the Shoreline Management Act and Olympia's Shoreline Master Plan, by saying it was for restoration. That didn't work because it violates Olympia's municipal code.

Now, he is planning to use the fact that the site is also listed as a contaminated site under the Model Toxic Control Act (MTCA) and requires considerable cleanup as a reason why fill should be allowed to create uplands. This does not make sense!

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BRICKLIN & NEWMAN LLP  
lawyers working for the environment

Reply to: Seattle Office

February 13, 2025

City of Olympia  
Community Planning and Development Department  
Attn: Nicole Floyd  
601 4<sup>th</sup> Ave E  
Olympia, Washington 98501

**Re: West Bay Yards Project – Fourth Round Submittal Comment Period – Conditional Use  
– Review – Timing – Prohibition Against Uplands**

Dear Ms. Floyd,

I am writing on behalf of our client, Olympia Ecosystems. This letter addresses three issues. One, the city must require a conditional use permit for the entire project, not just the segment of the project that occurs within 100 feet of the shoreline. Two, the developer (WBLY) cannot use fill to create new uplands; the city’s code prohibits such destruction of aquatic habitat. Three, the city should wait until the Department of Ecology issues an Agreed Order defining MTCA remediation actions before completing review of the proposal for compliance with city codes.

First, Olympia’s Shoreline Master Program requires a conditional use permit for any project that includes mixed-use development within 100 feet of the Ordinary High-Water Mark (OHWM). When a project includes mixed use development that occurs wholly or partially within 100 feet of the OHWM, the *entire* project must be consistent with the shoreline conditional use criteria, not just the *segment* that is within 100 feet of the OHWM. The entirety of the West Bay Yards project must be scrutinized for conditional use consistency.

The version of the SMP to which the project is vested (“2016 SMP”) states, “A Shoreline Conditional Use Permit is required if wholly *or partially* located within 100 feet of the OHWM; uses and activities located more than 100 feet from the OHWM are permitted.” OMC 18.20.620 (Table 6.1 heading) (Emphasis supplied.) That same table is unambiguous that mixed-uses, like the West Bay Yards project, must obtain a shoreline conditional use permit. The table’s use of the word “partially” makes it clear that even when a segment of a mixed-use occurs within 100 feet of the shoreline, a conditional use permit is required for the entire mixed use.

The applicant cannot circumvent shoreline conditional use requirements by isolating a segment of the project (*i.e.*, Building 2). The city must apply the correct legal standard and require a conditional use permit for the entire project.

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Community Planning and Development Department  
February 13, 2025  
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Second, the SMP prohibits fill that creates additional upland area. “Restoration and enhancement projects shall not extend waterward 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). The two regulatory requirements here are clear: (1) minimum necessary extension waterward; and (2) a prohibition on anything that results in the creation of additional upland area.

The applicant proposes to convert aquatic habitat to uplands, thereby shifting the OHWM waterward. This is prohibited. (This issue is covered in more detail in a February 13, 2025, comment submitted by Olympia Ecosystems and Jay Geck, a member. This issue is also addressed in a July 27, 2021, comment submitted by Bricklin and Newman on behalf of Olympia Ecosystems. We adopt and incorporate by reference those comments in this letter.)

Third, the development’s waterward extent will be determined in large part by Ecology’s MTCA decision. The city would be wasting precious staff resources by evaluating the current proposal, which has not been approved by Ecology. To provide for a coordinated agency response and to ensure that the city is reviewing a plan that includes the minimum amount of fill necessary to meet MTCA requirements, the city should defer completing its review until after an Agreed Order is issued. Only then will the city know whether fill is necessary for MTCA compliance (and if so, how much), and only then will the city have a final understanding of project modifications required by MTCA.

Please contact our firm with any questions. We look forward to being a resource in the city’s review of this project.

Very truly yours,

BRICKLIN & NEWMAN, LLP



David A. Bricklin



BRICKLIN & NEWMAN LLP  
lawyers working for the environment

Reply to: Seattle Office

May 27, 2025

Nicole Floyd  
Principal Planner  
City of Olympia  
Community Planning and Development  
601 4th Ave E  
Olympia, WA 98501

**VIA EMAIL TO:** nfloyd@ci.olympia.wa.us

Re: West Bay Yards (#21-2854): prohibition on creating additional uplands.

Dear Ms. Floyd,

The Olympia code prohibits filling tidelands to create uplands. The West Bay Yards developer (“West Bay”) proposes filling tidelands to create uplands despite this prohibition. Originally, you concurred that the code prohibits creating uplands as part of an ecological restoration project. But then you changed your view. With all due respect, you had it right the first time.

The Shoreline Master Program<sup>1</sup> specifically states that ecological restoration activities “shall not result in the creation of additional upland area.”<sup>2</sup> No exceptions are provided. Neither courts nor agency personnel may “rewrite unambiguous statutory language under the guise of interpretation, or add words where the legislature has chosen not to include them.”<sup>3</sup>

**A. The SMP Absolutely Prohibits the Use of Intertidal Fill that Creates Uplands as Part of an Ecological Restoration Project.**

Fill waterward of the ordinary highwater mark<sup>4</sup> (aka “tidelands” or the “intertidal” area) is generally prohibited by the SMP. The SMP identifies just seven situations in which fill waterward of the OHWM may be allowed.<sup>5</sup> One of the exceptions to the general prohibition is for

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<sup>1</sup> “SMP.”

<sup>2</sup> OMC 18.20.855.

<sup>3</sup> *Nelson v. Dep't of Labor & Indus.*, 198 Wn. App. 101, 110 (2017) (internal quotations and citations omitted); *see also, Ass'n of Washington Bus. v. Washington State Dep't of Ecology*, 195 Wn.2d 1 (2020) (reversing Ecology rule on grounds Ecology ignored statutory language that limited the rule’s applicability to specific emitters).

<sup>4</sup> “OHWM.”

<sup>5</sup> OMC 18.20.337.A.

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“[e]cological restoration or enhancement such as beach nourishment, habitat creation, or mitigation when consistent with an approved restoration or mitigation plan.”<sup>6</sup>

The conditions for use of the exception for ecological restoration are provided in OMC 18.20.855. One of those conditions unambiguously prohibits using fill to create uplands:

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.<sup>7</sup>

Note that this provision includes two restrictions. The fill must be “the minimum necessary.” Also, the fill “shall not result in the creation of additional upland area.” These two conditions are joined by the word “and” meaning that both conditions must be applied.<sup>8</sup>

There is no conflict between these two conditions. Fill cannot create uplands and, to the extent that fill is allowed without creating uplands, the fill must be the minimum necessary. The two conditions can be harmoniously applied.<sup>9</sup>

In your revised analysis of the code, you have effectively deleted the word “and” from OMC 18.20.885.I. In your revised analysis, quoted below, you have merged the two clauses into a single clause -- deleting the conjunction “and” in the process:

OMC 18.20.855 . . . provides that “[r]estoration [sic] 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.<sup>10</sup>

When construing a code, *every* word is to be given effect.<sup>11</sup> Your mashup of the two separate clauses into a single clause omits the word “and.” By omitting that crucial word, you have fundamentally changed the meaning of the code. Whereas the City Council adopted a section that has two constraints (minimum necessary “and” no creation of uplands), you have proposed a clause

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<sup>6</sup> OMC 18.20.337.A.3.

<sup>7</sup> OMC 18.20.885.I (emphasis supplied).

<sup>8</sup> “Statutory phrases separated by the word ‘and’ generally should be construed in the conjunctive. See 1A Norman J. Singer, *Statutes and Statutory Construction* § 21:14, at 179–81 (6th ed.2002).” *HJS Dev., Inc. v. Pierce Cnty. ex rel. Dep’t of Planning & Land Servs.*, 148 Wn.2d 451, 474 (2003).

<sup>9</sup> “In interpreting a statute, we are obliged to construe the enactment as a whole, and to give effect to *all* language used. Every provision must be viewed in relation to other provisions and harmonized if at all possible.” *Omega Nat. Ins. Co. v. Marquardt*, 115 Wn.2d 416, 425 (1990) (footnotes omitted).

<sup>10</sup> Letter from Floyd to Burgess (Apr. 25, 2024).

<sup>11</sup> “[I]n construing statutes or ordinances, effect must be given, if possible, to every word, clause and sentence.” *Platt Elec. Supply, Inc. v. City of Seattle, Div. of Purchasing*, 16 Wn. App. 265, 273 (1976).

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with a fundamentally different meaning: some creation of uplands is allowed, as long as it is the minimum necessary.

In essence, by deleting the word “and,” you have deleted the prohibition on creating uplands. As you have construed it, instead of a prohibition on creating uplands, the code merely imposes the constraint of “minimum necessary.” Your reading of the code effectively eliminates not just the word “and,” but the entire clause prohibiting the creation of uplands.

Staff has no authority to re-write the code under the guise of construing it.<sup>12</sup> If you or the applicant believes the code should not unconditionally prohibit the creation of uplands as part of an ecological restoration project, and instead be held only to a “minimum necessary” requirement, then you or the applicant should request the City Council to delete the word “and” from OMC 18.20.855. But until and unless the Council decides to amend the code and deletes the word “and,” you must give effect to the word “and” and enforce the unconditional prohibition on creating new uplands.

We request that you return to your original assessment—that the creation of uplands is prohibited as part of an ecological restoration project—and direct the applicant to submit an application that conforms to that unambiguous mandate.

**B. West Bay’s Argument in Support of Destroying Aquatic Habitat and Replacing it with Uplands is Without Merit.**

West Bay’s attorney submitted two memoranda in support of the proposition that the code allows the creation of additional uplands waterward of the OHWM in conjunction with an ecological restoration project. The first memo was submitted on February 15, 2024. The second memo was submitted on March 25, 2024. In those memos, West Bay argues that the creation of additional uplands may be permitted so long as it is incidental to restoration activities that are the minimum necessary to achieve the restoration objective.

You issued a response to both memos on April 25, 2024. In that response, you state that while you previously interpreted the code to prohibit the creation of additional upland, you have changed your mind and now agree that the SMP does allow restoration activities to fill marine habitat to create uplands.

While your April 25, 2024 letter provides your new reading of the code, the letter does not provide much explanation for the change. Assuming you shifted your position based on some or all of the rationale(s) offered by the applicant’s lawyer in her two letters, we address those rationales here. Those letters provide a hodgepodge of justifications for reading the word “and” out of OMC 18.20.855. But no amount of legal gymnastics offered by West Bay’s counsel can hurdle the barrier

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<sup>12</sup> *Nelson*, 198 Wn. App. at 110 (internal quotations and citations omitted).

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May 27, 2025  
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presented by that section’s use of the word “and” -- which connects the two conditions in that section (minimum necessary “and” no creation of uplands).

1. West Bay’s Arguments Based on the 2016 Environmental Restoration Assessment<sup>13</sup>

West Bay’s argument is based primarily on the 2016 environmental restoration assessment. West Bay emphasizes that shoreline restoration projects are subject to multiple conditions in OMC 18.20.855 and one of those (Condition F) requires the project to be consistent with an approved shoreline restoration plan. West Bay argues that its project is “consistent with” the 2016 restoration assessment and, therefore, satisfies Condition F. This claim suffers several fatal defects.

First, Condition F (consistency with an approved restoration plan) and Condition I (prohibiting creation of uplands) both apply. Satisfying one does not negate applicability of the other. OMC 18.20.855 lists 11 conditions (A – K) that must be satisfied. Those conditions are not stated in the disjunctive. Satisfying one condition does not excuse the applicant from satisfying the others. While West Bay argues that satisfying Condition F should allow it to bypass the prohibition in Condition I, there is no language in the SMP that supports that.

That all the conditions must be satisfied is evident not just from the structure of that section listing eleven distinct conditions, but from the words of Condition F itself:

F. Restoration 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.<sup>14</sup>

Staff has no authority to ignore the second half of Condition F, which requires compliance with the SMP’s regulations, even for a proposal that is in accord with an approved restoration plan. Again, staff may not add to or ignore words in the code under the guise of construing it.<sup>15</sup>

West Bay contends, also, that “[b]ecause nothing in the Code prohibits fill that is consistent with ‘best available science and management practices,’<sup>16</sup> the Code does not prohibit restoration-oriented fill water of the OHWM that incidentally creates uplands.”<sup>17</sup> This contention suffers twin flaws. First, the claim that “nothing in the Code prohibits fill . . . that . . . creates uplands” is obviously false. OMC 18.20.837.E. and OMC 18.20.855.I combine to prohibit fill waterward of the OHWM as part of an ecological restoration project if the fill creates new uplands. Second, the contention ignores that each of the conditions in OMC 18.20.855 must be satisfied. Simply because

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<sup>13</sup> *City of Olympia West Bay Environmental Restoration Assessment Final Report* (Coast & Harbor Engineering, 2016).  
<sup>14</sup> OMC 18.20.855.F. (emphasis supplied).  
<sup>15</sup> *Nelson, supra*, 198 Wn. App. at 110 (internal quotations and citations omitted).  
<sup>16</sup> *See* OMC 18.20.855.E.  
<sup>17</sup> Letter from Heather Burgess to Nicole Floyd (Mar. 25, 2024).

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a project might satisfy Condition E (best available science) does not exempt the project from satisfying Condition I (prohibiting creation of uplands).

West Bay’s reliance on the 2016 restoration plan suffers additional flaws. Notably, you rejected West Bay’s reliance on the 2016 restoration assessment citing some of these same defects. For instance, Condition F only applies to restoration plans “approved by the City and/or Department of Ecology, or the Administrator.”<sup>18</sup> The 2016 assessment has not been approved by the City, Ecology, or the administrator of the SMP.<sup>19</sup> It is not an “approved” restoration plan as that term is used in OMC 18.20.855.F. As you stated, “the City has reiterated that the Restoration Assessment is not, itself, a ‘restoration plan’ as required in the SMP regulations.”<sup>20</sup> West Bay’s over-reliance on that assessment is misguided; the 2016 assessment is not a “restoration plan” capable of dictating development standards.

West Bay seems to suggest that because the 2016 assessment is referenced in the development agreement, it should be treated as an “approved” plan. But there is no language in the development agreement “approving” the 2016 assessment. The development agreement merely states in Section 1 that the proposal is consistent with the 2016 assessment. There is no approval of the 2016 assessment stated in the development agreement.

Moreover, not just any “approval” will suffice. The approval must include a finding that the plan “provides an ecological benefit and **is consistent with Olympia’s Shoreline Program.**”<sup>21</sup> (emphasis supplied). Nowhere does the development agreement make such a finding as to the 2016 assessment. Nor could such an approval have been provided if the 2016 assessment required creating uplands in the intertidal area as that would have been inconsistent with the SMP’s Condition I prohibition of creating uplands even as part of a restoration project.

West Bay’s argument also is based on an erroneous reading of the 2016 assessment. West Bay asserts that the 2016 assessment’s conceptual drawings contemplate the creation of uplands by filling areas waterward of the OHWM. But the 2016 assessment does not include a depiction of fill below the OHWM that creates uplands. Instead, the 2016 assessment preserves the existing OHWM.<sup>22</sup> It also preserves the existing aquatic habitat and the existing uplands.<sup>23</sup> Thus, not only is the proposal in conflict with the substance of the SMP, it conflicts with the 2016 assessment’s conceptual drawings, too. Your April 25, 2024 letter reaches essentially the same conclusion: “[A]s the City reads the Assessment Report, particularly the call for essentially maintaining the

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<sup>18</sup> OMC 18.20.855.F.

<sup>19</sup> “Administrator” is defined to mean the administrator of the city’s SMP. OMC 18.20.120.C.

<sup>20</sup> Letter from Floyd to Burgess (April 25, 2024) at unnumbered page 5.

<sup>21</sup> OMC 18.20.855(A).

<sup>22</sup> *City of Olympia West Bay Environmental Restoration Assessment Final Report* (Coast & Harbor Engineering, 2016): App. A at 27 (Conceptual Section 17); *see also*, Letter from Nicole Floyd to Heather Burgess (Apr. 25, 2024) (explaining “a waterward shift of the upland area is not called for by this schematic [Conceptual Section 17]).

<sup>23</sup> *Id.*

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existing uplands and shoreline plan form, it does not contemplate conversion of intertidal area to new upland area as the Applicant proposes.”<sup>24</sup>

West Bay stresses that the 2016 assessment was “science-based.” That is irrelevant. Nothing in the SMP or the development agreement exempts projects from the SMP’s prohibition on creating uplands if based on a “science-based” assessment.

In sum, West Bay’s reliance on the 2016 assessment is riddled with flaws. We concur with your apparent conclusion that the 2016 assessment provides no basis for staff to ignore the Condition I prohibition on creating uplands as part of an ecological restoration project.

2. West Bay’s Other Arguments are Flawed, too.

West Bay offers a number of other justifications for reading the word “and” out of OMC 18.20.855.I. Your April 25, 2024 letter did not reference any of these as supporting your new position. Thus, we suspect that you did not modify your position because of any of these secondary justifications. In any event, none of them provide a basis for ignoring the word “and” in OMC 18.20.855.I.

For instance, West Bay argues that the SMP only precludes fill for the “sole purpose” of creating upland. But the “sole purpose” language is in the SMP section that addresses fill *above* the OHWM.<sup>25</sup> The fill at issue here would be waterward of the OHWM. The SMP includes two distinct provisions related to fill. OMC 18.20.033 addresses fill in “shorelands,” which are defined as land “landward” of the OHWM.<sup>26</sup> Separately, OMC 18.20.037 addresses fill “waterward” of the OHWM. OMC 18.20.037 (waterward of the OHWM) is the relevant provision. West Bay’s reliance on OMC 18.20.033 (landward of the OHWM) is sorely misplaced. Presumably, that is why you make no mention of that section in your April 25, 2024 letter.

West Bay also cites the definition of “upland” in OMC 18.02.180.U (“[t]he area above and landward of the ordinary high water mark”). That definition is consistent with the SMP’s definition of “shorelands” (“[l]ands extending landward for two hundred feet in all directions as measured on a horizontal plane from the Ordinary High Water Mark”).<sup>27</sup> Both refer to land above the OHWM. Using the code’s definition of “upland,” West Bay then states: “The question is whether this definition, when incorporated into OMC 18.20.855(I), prohibits the placement of fill waterward of the OHWM as part of the proposed voluntary shoreline restoration to avoid the creation of ‘upland area.’”<sup>28</sup> This answer obviously is “yes.” First, answering the question without

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<sup>24</sup> Letter from Floyd to Burgess (Apr. 25, 2024) at unnumbered page 3.  
<sup>25</sup> OMC 18.20.033.  
<sup>26</sup> OMC 18.20.110.C.  
<sup>27</sup> The distinction between the two is their extent *away from* the high water mark. The SMP definition extends only 200 feet landward in keeping with the SMA’s jurisdictional landward extent. The general code definition of “upland” extends indefinitely landward.  
<sup>28</sup> Letter from Heather Burgess to Nicole Floyd (Mar. 25, 2024) at 2.

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its concluding phrase, OMC 18.20.855.I unambiguously prohibits fill from creating uplands with no exceptions provided. To repeat:

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.<sup>29</sup>

The last phrase in West Bay’s question (“as part of...”) does not change the answer. OMC 18.20.855.I prohibits the creation of uplands as part of a restoration plan with no exceptions. The section does not state creating uplands is prohibited unless part of a restoration project. To the contrary, the section states that “restoration and enhancement projects” may not create uplands. What could be clearer?

Finally, West Bay tries to distinguish itself from previous developers who used fill to create additional uplands for private economic gain:

Interpreting OMC 18.20.855(I) to prohibit the incidental creation of uplands resulting from shoreline restoration effectively treats the historic sweeping creation of acres of buildable land through fill [for sawmills and other industrial activities] and the incidental creation of uplands resulting from shoreline restoration as substantively the same. The Code does not support that conclusion.

This is an interesting policy argument that West Bay may want to raise with the City Council and the Department of Ecology. Should the SMP’s current unconditional prohibition on creating uplands be modified by creating an exception for creating uplands if done as part of an ecological restoration project? Maybe yes; maybe no. But the current SMP addresses that issue directly and precludes such fill, absolutely. If West Bay seeks to change that policy, it needs to seek an SMP amendment, not ignore the SMP in the course of its project permitting.

In conclusion, the city cannot approve a proposal that uses fill waterward of the OHWM to create additional uplands. The city should require West Bay to submit design alternatives that comply with the SMP’s absolute prohibition. The city should not spend more of its limited resources reviewing project plans that are “dead on arrival.”

Very truly yours,

BRICKLIN & NEWMAN, LLP

*s/Michael Rea*  
Michael Rea

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<sup>29</sup>

OMC 18.20.855.I.

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David A. Bricklin

cc: Client



BRICKLIN & NEWMAN LLP  
lawyers working for the environment

Reply to: Seattle Office

February 13, 2025

City of Olympia  
Community Planning and Development Department  
Attn: Nicole Floyd  
601 4<sup>th</sup> Ave E  
Olympia, Washington 98501

**Re: West Bay Yards Project – Fourth Round Submittal Comment Period – Conditional Use  
– Review – Timing – Prohibition Against Uplands**

Dear Ms. Floyd,

I am writing on behalf of our client, Olympia Ecosystems. This letter addresses three issues. One, the city must require a conditional use permit for the entire project, not just the segment of the project that occurs within 100 feet of the shoreline. Two, the developer (WBLY) cannot use fill to create new uplands; the city’s code prohibits such destruction of aquatic habitat. Three, the city should wait until the Department of Ecology issues an Agreed Order defining MTCA remediation actions before completing review of the proposal for compliance with city codes.

First, Olympia’s Shoreline Master Program requires a conditional use permit for any project that includes mixed-use development within 100 feet of the Ordinary High-Water Mark (OHWM). When a project includes mixed use development that occurs wholly or partially within 100 feet of the OHWM, the *entire* project must be consistent with the shoreline conditional use criteria, not just the *segment* that is within 100 feet of the OHWM. The entirety of the West Bay Yards project must be scrutinized for conditional use consistency.

The version of the SMP to which the project is vested (“2016 SMP”) states, “A Shoreline Conditional Use Permit is required if wholly *or partially* located within 100 feet of the OHWM; uses and activities located more than 100 feet from the OHWM are permitted.” OMC 18.20.620 (Table 6.1 heading) (Emphasis supplied.) That same table is unambiguous that mixed-uses, like the West Bay Yards project, must obtain a shoreline conditional use permit. The table’s use of the word “partially” makes it clear that even when a segment of a mixed-use occurs within 100 feet of the shoreline, a conditional use permit is required for the entire mixed use.

The applicant cannot circumvent shoreline conditional use requirements by isolating a segment of the project (*i.e.*, Building 2). The city must apply the correct legal standard and require a conditional use permit for the entire project.

City of Olympia  
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Second, the SMP prohibits fill that creates additional upland area. “Restoration and enhancement projects shall not extend waterward 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). The two regulatory requirements here are clear: (1) minimum necessary extension waterward; and (2) a prohibition on anything that results in the creation of additional upland area.

The applicant proposes to convert aquatic habitat to uplands, thereby shifting the OHWM waterward. This is prohibited. (This issue is covered in more detail in a February 13, 2025, comment submitted by Olympia Ecosystems and Jay Geck, a member. This issue is also addressed in a July 27, 2021, comment submitted by Bricklin and Newman on behalf of Olympia Ecosystems. We adopt and incorporate by reference those comments in this letter.)

Third, the development’s waterward extent will be determined in large part by Ecology’s MTCA decision. The city would be wasting precious staff resources by evaluating the current proposal, which has not been approved by Ecology. To provide for a coordinated agency response and to ensure that the city is reviewing a plan that includes the minimum amount of fill necessary to meet MTCA requirements, the city should defer completing its review until after an Agreed Order is issued. Only then will the city know whether fill is necessary for MTCA compliance (and if so, how much), and only then will the city have a final understanding of project modifications required by MTCA.

Please contact our firm with any questions. We look forward to being a resource in the city’s review of this project.

Very truly yours,

BRICKLIN & NEWMAN, LLP



David A. Bricklin



**February 13, 2025**

**To: Nicole Floyd, City of Olympia**  
**From: Deschutes Estuary Restoration Team,**  
**Subject: Deschutes Estuary Restoration Team (DERT) comments on proposed West Bay Yards**

**Background**

The Deschutes Estuary Restoration Team (DERT) was formed in 2009, with the mission of removing the Fifth Avenue Dam (Dam) and restoring a free-flowing Deschutes River (River) and the Deschutes Estuary (Estuary). DERT's advocacy was based on well-established science that documented the necessity of dam removal in order to restore the health of the Estuary and the entire Budd Inlet, and to recognize and remediate the damage done by the Dam to the historic and cultural use of the River and Estuary by the Squaxin Tribe.

West Bay Yards (WBY) is a complex of five buildings that would include 478 market-rate rental housing units, 20,500 square feet of retail space, and 833 parking stalls. The proposed complex would require 0.77 acres of new upland to be created by placing ~40,000 cubic yards of fill into Budd Inlet, burying intertidal marine habitat. The proposed WBY will clearly have significant negative environmental impacts to Budd Inlet due to the dense capacity and uses onsite, the increased vehicle traffic at the site and along West Bay Drive, the reduction of salmon habitat, and the allowance for ongoing deposition of toxics from the site into Budd Inlet. These impacts are recognized, and not in dispute.

**(1) The proposed development is inconsistent with the restoration of the Deschutes River and Estuary, and the City of Olympia's commitments to those efforts:** In part due to the advocacy of DERT, the Legislature funded a complete Environmental Impact Statement (Dam EIS) to evaluate future alternatives for the Dam and Capitol Lake. That EIS was completed by the Washington Department of Enterprise Services (DES) in 2022. It concluded that removal of the Dam, and restoration of the Estuary, was the preferred alternative based on economic, environmental, and historic/cultural analyses. DES formally adopted the preferred alternative and created the Deschutes Estuary Restoration Project (DERP, or Project), with initial funding of \$7 million from the Legislature. That project is now at the 30% design phase and includes multiple elements to restore and improve habitat in the Estuary. DES has secured additional federal funding, and Governor Inslee included another \$25 million in his proposed budget for 2025-2027.

The City of Olympia, the Port of Olympia, the City of Tumwater, the Squaxin Tribe, Thurston County, and the State (via DES) entered into an Interlocal Agreement (ILA) in 2024 where all parties recognized and accepted the goals of the Project, agreed with specific responsibilities related to it, and obligated themselves to providing annual funding shares to the costs envisioned for the Project.

Moreover, the Department of Ecology (Ecology) recently finalized the WRIA 13 (Deschutes) Watershed Restoration and Enhancement Plan (WREP) that was to a large extent developed by a multi-party committee—including DERT, the City of Olympia, and the Squaxin Tribe—authorized by the Legislature in 2018 to address degraded habitat in multiple watersheds in the state—including the Deschutes. That committee (the Watershed Restoration and Enhancement Committee, or WREC) adopted a draft Plan in 2021, which was subsequently modified and completed by Ecology.

<https://apps.ecology.wa.gov/publications/documents/2211015.pdf> Under the 2018 legislation, Ecology is now obligated to begin rulemaking to implement the Plan, to be completed within two years.

The proposed WBY construction project, and its negative environmental impacts, is inconsistent with all the foregoing efforts to restore the Deschutes Watershed and Estuary, and with the commitments made by the City of Olympia within those efforts. For that reason alone, the WBY project should not be allowed.

**(2) A complete Environmental Impact Statement (EIS) should be completed before consideration of a land-use permit.** DERT has commented before on the need for an EIS to thoroughly identify and analyze the environmental impacts from the proposed project. An EIS would evaluate the impact of the proposed development and consider alternatives to the proposal. However, no EIS has been developed nor a SEPA determination made. The City and the developer of WBY are instead assuming that the City's existing land use requirements adequately and fully determine whether impacts are adequately mitigated and whether the proposal is lawful and aligns with City priorities. The City's website for WBY, and its table showing elements of the City's review, has no timeframe for completing an EIS, and simply says that the EIS will identify and address impacts that have not already been addressed and mitigated for in the City's consideration of the WBY proposal. That is putting the cart before the horse and undermining the intent of state law to evaluate alternatives in advance of considering a significant development project, such as WBY. It is, for instance, exactly what the Legislature required for evaluating alternatives for the future of Capitol Lake, and what drove the decision to remove the Fifth Avenue Dam. While the WBY project is not as large as the dam removal, it clearly is a major project with potential for significant impacts to the environment. A lack of an EIS in advance of the permit evaluation locks the City into the development, and forecloses the opportunity for Olympia to become a sustainable city and will negatively impact our recovering marine life for generations to come.

**(3) The proposed development does not adequately address legacy pollution and remediation of toxics at the site, nor propose any coordination with other remediation efforts underway by the**

**Port of Olympia.** The project site has a history of heavy industrial use dating back to 1924. Hardel plywood manufacturing was the most recent industry there. Hardel stopped operations at this site in 1996 and buildings were demolished in the late 1990s. Even though some remediation was undertaken by land owners, the site is still contaminated based on a 2020 study. Contaminants include diesel, gasoline, carcinogenic polycyclic aromatic hydrocarbons (PAHs), and arsenic, among others.

Both the City and the developer appear to be avoiding this issue, and ongoing nearby efforts by the Port to remediate contamination in Budd Inlet, instead entertaining the idea of intertidal fill to create upland as a way to cap the legacy soil pollution. The Port's efforts will be undermined if the proposed WBY does not address this issue and prevent future contamination of Budd Inlet from leakage off the development site.

**(4) The proposal does not adequately address future sources of contamination to Budd Inlet from the Project itself:** The applicant has recognized but minimized the extent and severity of future contamination of the Deschutes Estuary due to the stormwater runoff that this new site with 833 parking stalls would create. As one example, 6-PPD is an anti-degradant ubiquitous in tires, and 6-PPD quinone, derived from 6-PPD and found in stormwater from road runoff is toxic to aquatic organisms and thus contaminates water systems. More specifically, 6PPD-quinone is lethal to coho salmon.

**(5) The proposal is inconsistent with the State's and the City's efforts to address climate change:** The Project includes 478 new residential units, as well as 20,000 square feet of retail space. That will generate an enormous increase in automobile traffic along West Bay Drive, and increase greenhouse gas emissions from that traffic. The existing plan does not propose any mitigation, and it is not consistent with the City's effort to reduce vehicular traffic (and greenhouse gas emissions) in its future transportation planning. Moreover, the development, sitting on old fill in Budd Inlet, will be subject to negative impacts from existing and anticipated effects of climate change in Budd Inlet, notably sea level rise and more serious storm and rainfall events. Those climate change effects will likely degrade the site, and create both environmental consequences, as well as taxing the City's resources for public safety.

**Conclusion:** The MBY project would preclude an opportunity to restore the nearshore of this section of Budd Inlet, where this development project is proposed, is a critical nursery for juvenile salmonids from as far away as the Green River watershed (Seattle) and the Puyallup watershed (Tacoma). The area has been degraded due to past development and neglect. However, the people and governments in this region have already committed—through activities and projects identified above, as well as in other efforts, like the Puget Sound Partnership—to restoration of the entire Deschutes Watershed, including Budd Inlet, with an objective of recovery of fisheries and rectifying past injustices. That is the rationale behind DERP and the WREC plan. Instead, projects like WBY represent the kind of thinking that has created significant environmental issues in the past and will leave it to future generations in Olympia and Thurston County to fix the problems that this project would create. We should learn from the past and not leave our children with that kind of legacy and burden. Contact: Dave Monthie or Sue Patnude at [olydert@gmail.com](mailto:olydert@gmail.com).



# OlyEcosystems

Olympia Coalition for Ecosystems Preservation  
Protect Preserve Restore

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**To: Nicole Floyd, Principal Planner  
City of Olympia: Community Planning & Development  
P.O. Box 1967  
Olympia, WA 98507-1967**

**Date: June 10, 2022**

**From: Olympia Coalition for Ecosystem Protection**

Re: West Bay Yards—Inconsistency with Olympia Shoreline Master Program

Dear Ms. Floyd:

The Olympia Coalition for Ecosystem Protection (OCEP) offers the following comments addressing how the West Bay Yards (WBV) development does not comply with the Olympia Shoreline Master Program (SMP). Without waiving any objections to the WBV project, these comments are intended to help the City focus on how the WBV project as currently proposed would violate the Olympia SMP prohibition on restoration that fills tidelands to create new uplands. In light of this violation, the WBV proposal cannot obtain a shoreline permit to fill the tidelands and move the Ordinary High Water Mark (OHWM) water-ward. It is to the benefit of WBV and the City to realize this early.

WBV made two submissions in response to the City's comment that the ordinary high water mark ("OHWM") should be measured based on its existing location, rather than the location of the OHWM upon completion of the proposed shoreline restoration. First, WBV submitted a "Response to Legal Issues" paper Burgess Letter dated February 25, 2022. Second, WBV provides a "Shoreline Narrative" that attempts to show that the proposed restoration and fill can be permitted notwithstanding Olympia's stringent prohibition on placing fill to create new uplands. Neither submission demonstrates that the proposed filling of tidelands and creation of new uplands can lawfully be permitted.

**1. WBV's Response to Legal Issues Does Not Demonstrate that Olympia's SMP Permits Filling the Tidelands and Moving the OHWM Water-ward to Create New Uplands.**

The WBV "Response to Legal Issues" paper does not address whether filling can be permitted as proposed to create new uplands. Instead, it merely recites statutes and cases establishing that the OHWM, hypothetically, can be altered as a result of development pursuant

to permits lawfully issued by local government and the Department of Ecology. But that was never in dispute. The issue is whether the WBY filling can be permitted under the Olympia SMP, and the Response to Legal Issues fails to address how the creation of new uplands can be permitted.

OCEP does not suggest that the Olympia master program should be applied like *Stephanus v. City of Seattle*, SHB No. 83-49, 1984 WL 264535 (Apr. 27, 1984). There, Seattle permitted shoreline construction but imposed a condition on the residential construction requiring that the OHWM be determined by the prior shoreline, not the new mark resulting from the structure. This is the type of case that illustrates why it would be a poor precedent to permit WBY to proceed with its proposed fill, because this case confirms that such filling in the guise of restoration would be interpreted to create new uplands out of existing aquatic lands. If WBY's view is accepted, other bulkhead owners will be tempted to restore a sloped beach on top of their historic bulkhead to expand uplands.

The "Response to Legal Issues" also claims "location of the anticipated new OHWM following completion of the proposed shoreline restoration project [] *is required by the Development Agreement* between the City and the Applicant." Burgess Letter 2/25/22 at 4 (emphasis added). The Development Agreement does not compel permitting the proposed filling. In parallel litigation regarding applicability of SEPA to the Development Agreement, both WBY and the City have both vigorously argued that the Development Agreement does not compel issuance of any permits. WBY and the City are surely estopped by those legal positions. The Development Agreement, at most, vested WBY's right *to apply* under existing development regulations; no permits were promised.

OCEP appreciates WBY's concession that conditions are needed here because of "uncertainty regarding the final location of the OHWM at this point in the review process." Since the SMP does not authorize the requested filling and creation of new uplands, such conditions could minimize wasting resources reviewing or permitting development that depends on setbacks on uplands that cannot be created under the Olympia SMP.

## **2. The Shoreline Narrative Submitted by WBY Does Not Show That the Olympia SMP Allows Tideland Fill Creating New Upland.**

WBY agrees its fill, if permitted, would create new uplands. Shoreline Narrative at 1, 15. But WBY is mistaken that its "restoration alternative" is allowed by the Olympia SMP. OCEP showed in its July 27, 2021 detailed submission addressing SMP compliance that filling of tidelands and creation of new uplands cannot be permitted here. The City must therefore plan on denying shoreline permits for filling that would create new uplands and WBY should reform its project to avoid creating new uplands.

The Olympia SMP 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." OMC 18.20.855(I). This provision is unambiguous. "**Restoration and enhancement projects ... shall not result in the creation of additional upland area.**" The WBY Shoreline Narrative concedes that the restoration project creates new upland and thus would violate the Olympia SMP. Shoreline Narrative, at 15 ("The proposed project will result in approximately 0.77 acres of degraded aquatic area being converted to upland.")

WBY ignores the prohibition and instead proceeds as if there is only a requirement that its fill be the minimum necessary. For example, the Shoreline Narrative at 18 states: restoration “will achieve the minimum slope necessary” and “will result in the minimum fill necessary being placed water-ward of the existing OHWM of the site in order to achieve the restoration goals.” But the Olympia SMP requires two things: (1) the minimum fill necessary; **and** (2) no creation of new uplands. OMC 18.20.855(I). WBY proposal violates the second requirement. Whether it has minimized fill is immaterial if it is creating new uplands.

Moreover, WBY’s Shoreline Narrative does not show that the filling as proposed is the minimum necessary for doing restoration of the site. Obviously, the restoration could be done by removing historic fill so that the OHWM stays in its existing location. This point is easily illustrated because the City can take note of other projects in Washington State that have removed legacy fill and restored aquatic habitats<sup>1</sup>. There is no proven necessity to retain all or part of the historic fill at this site. Rather, WBY did not consider restoration that retained the existing OHWM, presumably because it is financially more advantageous to manufacture new uplands that will increase the buildable area.

WBY also indicates that the proposed overfilling meets various other interests (most especially their own), but none of these points allow WBY to avoid the express prohibition against creating new uplands. For example, WBY points to its private interests, such as its interest in preserving existing rip rap as a cheaper means of stabilizing the historic fill, or its admission that it wants to expand its total buildable area by creating upland setback areas out of former tidelands. Such private interests are no basis for allowing fill contrary to the prohibition. Similarly, the Shoreline Narrative discusses how filling might comply with various other provisions of the Olympia SMP by enhancing degraded habitats or being properly engineered to avoid future erosion or failure. Again, compliance with those other provisions does not excuse violation of the prohibition against creating new uplands.

Similarly misdirected, the WBY Shoreline Narrative claims its restoration proposal fits the general definition of restoration and enhancement in OMC 18.20.850 because it addresses “impaired ecological shoreline processes or functions” or it will “intentionally increase or augment one or more functions or values of the existing area”. Again, meeting the definition of restoration or enhancement is no basis for ignoring the prohibition on using restoration to create new uplands. If accepted, the WBY argument would leave that the express prohibition on creating new uplands in the Olympia SMP without any meaning, a result that violates common sense and principles for interpreting regulations.

Next, the Shoreline Narrative claims the current restoration proposal is “consistent” with a 2016 West Bay Environmental Restoration Assessment (CHE 2016). But, as OCEP showed in

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<sup>1</sup> For examples, see near shore restoration in Port Townsend <https://www.jeffersonmrc.org/projects/fort-townsend-nearshore-restoration/>; Dockton Bulkhead removal project on Maury Island. <https://kingcounty.gov/services/environment/animals-and-plants/restoration-projects/projects/dockton-shoreline.aspx>; Lowman Beach seawall removal. <https://www.seattle.gov/parks/about-us/projects/lowman-beach-park-seawall>.

its July 27, 2021 submittal at 7-9, that 2016 summary assessment did not modify the SMP. It is not a regulation, nor was it even produced using public processes akin to adoption of regulation. Drilling deeper, the provision of the 2016 assessment for this parcel does not border on a meaningful restoration plan, it is a mere statement of an idea. The 2016 paper stated that for this parcel the landowner was not interested in doing the types of robust restoration projects examined elsewhere, such as removing of historic fill. Accordingly, restoration here might have to examine options that retain historic fill at this site. This passing statement in the 2016 assessment does not purport to approve the creation of new uplands that are the heart of WBY's version of restoring the site. In short, the brief inventory of restoration ideas in the 2016 paper does not justify violating the express Olympia SMP prohibition against using restoration to create new uplands.

Finally, OCEP also notes that WBY's restoration is not as consistent with Olympia restoration regulations as claimed by WBY. First, OMC 18.20.855 (A) provides that restoration "plans shall be designed, constructed and maintained in accordance with the policies *and regulations* of Olympia's Shoreline Program." (Emphasis added). This plan does not comply with the regulations because it seeks to add fill that creates new uplands. Second, the same section points out that "Restoration and enhancement projects restore the natural character and ecological functions of the shoreline[.]" While some degraded aquatic lands would be restored by WBY project, it is not restoring the natural character or ecological function to the former tidelands covered by its rip rap and fill. No, it seeks to expand the area of permanently lost habitat and gain almost an acre of new uplands to be used increase the size of what would already be one of the densest waterfront developments in South Puget Sound.

Moreover, this section of the western West Bay Shoreline does not live in isolation. The water quality characteristics and hydrodynamics of this section of the shoreline depend intimately on proposed future interventions with respect to the 5th Avenue dam and the shoreline south of the WBY property. This estuarine environment is complex and warrants an analysis that is adequately sophisticated.

### **3. Conclusion.**

After reviewing the inconsistency of the WBY proposal with the Olympia SMP, one must might reasonably ask why the WBY project shouldn't examine removing historic rip rap and fill, rather than expanding on it? If part of the historic fill were genuinely restored, WBY could avoid moving the OHWM to create the beach contour and enhanced aquatic lands it proposes as amenities for its site. Plus, OMC 18.20.855 (C) provides that by removing hard-armoring prior to development may be considered mitigation for other impacts.

In the end, it is not OCEP's place to redesign the WBY project to comply with the Olympia SMP. It is, however, vital to OCEP that the City of Olympia apply the important limitations in its shoreline master program to avoid creation of new uplands from the limited marine habitats. Whatever positive benefits flow from the restoration, those same benefits can be achieved if WBY redesigns the restoration so that it does not alter the existing OHWM.

In closing, evaluation of the WBY proposal must consider why the SMP has a prohibition against creating new uplands. The SMP codifies a best available science approach to protecting near-shore function. It recognizes that piecemeal analysis leads to environmental degradation, and so it sets limits. Aquatic habitats are affected by adjacent conditions, whether these include mechanical effects such as current or sedimentation or biochemical effects such as water quality metrics. The SMP recognizes that the view of a dozen years is not enough. Tides and currents shape land masses over centuries. Species persist given the right conditions - or they don't.

Olympia and the entire Puget Sound region is at a crossroads: do we make irreversible, and we believe illegal, land-use decisions based on incomplete analyses of how the project would affect the our waters? Short circuiting the existing prohibition on turning tidelands into uplands is the type of piecemeal decision that forecloses the revitalization of Puget Sound envisioned in our comprehensive plans – revitalization that is critical for our salmon and our future?

Leadership is many things, but first and foremost it is a look into the future. As climate change advances upon our region, we must look into the future and act upon the interconnectedness of our natural and human ecosystems, asking the right questions of ourselves and our constituents such that our great grandchildren inherit a sustainable and livable future.

At this stage, OCEP calls for the City to deny a land-use permit that violates its own SMP. More generally, OCEP calls for an EIS for the West Bay Yards project to investigate the impact of the proposed development and alternatives on the wholistic function of the Deschutes Estuary.

Sincerely,

A handwritten signature in black ink, appearing to read 'Daniel Einstein', with a stylized flourish at the end.

Daniel Einstein, Ph.D.  
President of the Board  
Olympia Coalition for Ecosystems Preservation  
[Daniel@olyecosystems.org](mailto:Daniel@olyecosystems.org)  
(360) 870-7689



**To: Nicole Floyd, Principal Planner  
City of Olympia: Community Planning & Development  
P.O. Box 1967  
Olympia, WA 98507-1967**

**From: Olympia Ecosystems**

**Re: West Bay Yards Restoration Proposal**

**February 13, 2025**

Dear Ms. Floyd,

These comments are submitted on behalf of Olympia Ecosystems, a community-based conservation nonprofit that works to protect, preserve and restore key ecosystems in and around the Olympia area. Restoration of the Deschutes River and its estuary are a key focus in our 2024-2030 Strategic Plan.

The West Bay Yards (WBV) restoration proposal, which still seeks to create new uplands, is inconsistent with the Olympia Shoreline Master Program. We therefore rebut the applicant's submission dated February 15, 2024.

We appreciate the work the City has done seeking restoration and development plans from WBV that avoid moving the line of ordinary high-water line. We are disappointed that WBV has doubled down on trying to use restoration to add new upland, and that it has not embraced the City's request to evaluate retaining the existing ordinary high water mark during restoration.

**West Bay Yards ignores the prohibition on creating new upland based on a misreading of the 2016 Report on Restoration Opportunities**

For your convenience, we attach our memo dated June 10, 2022, wherein we demonstrated that the Olympia SMP prohibits restoration projects that would result in the creation of new upland. There is no ambiguity in the SMP. "Restoration and enhancement projects shall not extend waterward 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). Two requirements are clear: (1) minimum necessary extension waterward; and (2) and no creation of additional upland area.

To avoid this, the applicant overstates the Development Agreement. But that agreement merely referenced a conceptual restoration project consistent with the City of Olympia West Bay Environmental Restoration Assessment Final Report (Coast & Harbor Engineering, 2016) (the "2016 Report"). WBV then overstates the 2016 Report, which generally refers to "retain[ing] existing uplands" by claiming that there can be no "cutting back" into the existing fill.

The WBY view of the 2016 Report is flawed. First, if restoration retains the ordinary high-water line, it also retains the existing upland. The concept in the 2016 Report is met by general retention of their upland parcel.

Second, WBY's mischaracterization of the 2016 Report is contradicted in the Report itself. On page 12, the 2016 Report provides a general assumption for restoration:

#### 2.5.2 Assumptions

- Private Property: Private lands located within the project area will be considered for typical restoration treatments (such as beach nourishment seaward of revetments, or balanced cut fill) that may be implemented as these parcels are redeveloped and that minimize loss of existing upland areas. [Emphasis added]

This assumption contradicts WBY's claim that retaining the upland parcel means that every rock and every cubic foot of existing earth would be retained, inviolate. Rather, restoration contemplates "minimiz[ing] loss of existing upland areas" and "balanced cut fill."

Moreover, on page 21 the 2016 Report addresses this site:

"The Hardel Plywood reach is composed primarily of upland fill and steep riprap armored shorelines that abruptly transition to mudflats and deeper subtidal areas. ... 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. The Shoreline Restoration Plan (City of Olympia 2012) identifies West Bay Project No. 27 in this reach for potential removal of nearshore fill.

One restoration alternative was developed for this reach that 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. Riparian plantings could be installed above the beach. Sea level rise adaptation could be included in this alternative."

Nothing in this section of the 2016 Report shows an expectation of increasing upland. There is merely the assumption that the upland parcel would be retained. In addition, the "alternative" refers to restoration waterward of the existing revetment, which does not create new upland. There is simply nothing that suggests that restoration must preserve every rock, piling, log, and cubic yard of sediment as inviolate.

In short, the 2016 Report expected genuine restoration to the existing upland parcels, while generally retaining the parcel. That approach allows the very beach contour and vegetation zones that WBY proposes, but by retaining the ordinary high-water lines it also reduces fill.

#### **RESPONSE TO SPECIFIC WBY ARGUMENTS:**

1. At page 2, WBY argues that "The Development Agreement incorporated the concept section for the beach restoration for Reach 5 from the 2016 Report as an illustrative exhibit." At page 3, WBY argues that "the City's Shoreline Master Program both references and 'encourages' the use of the habitat restoration approaches identified in the 2016 Report.

This argument ignores the SMP prohibition on creating new upland. Restoration that retains the existing ordinary high-water line is 100% consistent with the concept that property owners

would want to retain existing uplands. If the upland parcel boundary remains approximately the same, the concept in the 2016 Report is met. In contrast, no concepts in the Report support creating additional uplands or treating every existing piling, rock revetment, or cubic yard of historic fill as inviolate.

2. Next, WBY at page 3 complains that despite “the specific assumption underlying that concept design that ‘the existing uplands are to remain intact’ – the City directed the Applicant to evaluate alternatives to the agreed upon 2016 Report design, including cutting back into the uplands to reduce fill waterward of the OHWM.”

First, as shown above, this point reflects a flawed approach to the SMP and the 2016 Report. Most importantly, it ignores the fact that retaining the existing ordinary high-water mark retains the upland parcel.

Second, WBY’s implication that the Agreement secures a right to a permit is contrary to WBY’s position during litigation. When the lack of an EIS was challenged, WBY conceded that a Development Agreement does not pre-decide permits and merely vests rights to seek permits under the laws in existence.

Third, the Agreement was entered into with full knowledge of the SMP, which placed WBY on notice of the rule that restoration cannot result in creation of new upland.

3. On page 3, WBY concedes that the project they are advocating is for restoration. (“To be clear, the purpose of the proposed fill waterward of the OHWM is for restoration”). This concession defeats the WBY arguments. The SMP precludes creation of new uplands.
4. On page 4, WBY relies on consistency with Ecology Shoreline Management Act Guidelines. (“Consistent with Ecology SMP Guidelines, OMC 18.20.837 authorizes fill waterward of the OHWM only for a narrow set of purposes, including ‘[e]cological restoration or enhancement such as beach nourishment, habitat creation, or mitigation when consistent with an approved restoration or mitigation plan.’”)

Ecology guidelines concern development of master programs regulations. While guidelines might help interpret the resulting master program, they do not create any back door to the express prohibition on creation of new upland.

5. On page 5, the applicant argues “it defies reason to think the Applicant should have had to assume that the restoration project the City requested and which was shown in the City’s own 2016 Report – with retention of the uplands – could not in fact be legally permitted.”

WBY’s hyperbolic statement dissolves when examined. Their land creation approach is not what was shown in the 2016 Report. Instead, “retention of existing uplands” occurs only if restoration *does not* move the ordinary high-water mark. To use WBY’s phrase, it “defies reason” to think that the 2016 Report authors anticipated restoration to create new uplands when the Olympia SMP did not allow it.

6. On page 4, WBY claims that OMC 18.20.837(B) should be read in light of the Development Agreement and “the standard for City review should be whether or not the amount of proposed fill waterward of the OHWM is the ‘minimum necessary’” to comply with the restoration concept in the 2016 Report. WBY offers two reasons for this mistaken conclusion.

First, WBY claims that “in the Development Agreement, the Applicant agreed to complete shoreline restoration consistent with the recommendations for Reach 5 – Hardel in the 2016 Report.” As shown above, the 2016 Report talks about generally retaining the existing upland parcel (as opposed to removing it) while restoring intertidal beach and marsh along that shoreline. The Report does not preclude “cutting back” into existing rip rap or historic fill. Nor would it, because that approach best retains the existing upland parcel, allows an intertidal beach and marsh along the shoreline, and better minimizes fill.

Second, WBY reasons that its proposed restoration is voluntary. That point does not support the misinterpretation of the 2016 Report or Development Agreement. Similarly, the assertion that the WBY approach (adding new uplands) allows more revegetation and avoids “loss of approximately 14,653 SF of private property” shows nothing. If WBY retains the ordinary high-water mark, they lose no property. At most, their property above the ordinary high-water mark would simply accommodate the restoration work, setbacks, and planting.

7. At page 5, WBY claims its submittals show that “the proposed fill is the ‘minimum necessary’ to accomplish the restoration for Reach 5 – Hardel Plywood in the 2016 Report without cutback.” (Emphasis added.)

Unless restoration complies with the SMP and retains the existing high-water line, it will not be the minimum necessary. And, as discussed above, nothing supports the WBY gloss that there can be no “cutback.” Finally, regardless of whether WBY thinks it offers the minimum necessary fill, that argument is moot because the SMP also prohibits restoration that results in additional uplands.

### **CONCLUSION**

The City should reject WBY’s arguments advocating restoration that results in creation of new uplands. That result is not contemplated by the 2016 Report and would violate the Olympia SMP. The City should also consider these comments when responding to Ecology in the context of an agreed cleanup order for the property, because these are relevant regulations that a cleanup should seek to follow under MTCA.

We hope these comments will be of assistance to the City.

Sincerely,

Daniel R. Einstein, Ph.D., Land Conservation Director



Jay D. Geck, Member



A Washington State Chapter of the National Audubon Society  
P.O. Box 2524, Olympia, WA 98507  
(360) 352-7299 [www.blackhills-audubon.org](http://www.blackhills-audubon.org)

*Black Hills Audubon Society is a volunteer, non-profit organization of more than 1,300 members in Thurston, Mason, and Lewis Counties whose goals are to promote environmental education and protect our ecosystems for future generations.*

February 15, 2025

Nicole Floyd, Principal Planner  
601 4<sup>th</sup> Ave E.  
Olympia, WA 98501  
[nfloyd@ci.olympia.wa.us](mailto:nfloyd@ci.olympia.wa.us)

**Re: Comments on West Bay Yards - 4th round of project review**

BHAS would prefer that this development not be built to prevent further degradation of Budd Inlet.

However, regarding the latest design proposal for West Bay Yards, we are concerned about the potential for these new buildings to adversely impact both resident and migratory birds. We also are concerned that some easy habitat enhancements for birds have not been proposed.

First, it appears that buildings will have balconies with glass panels around them. While all buildings with glass present a hazard for birds, these glass panels exacerbate the risk of collision by increasing the amount of glass that birds could directly fly into (birds see reflections and do not recognize that glass cannot be flown through).

The location of the West Bay Yards development makes this especially relevant since birds, especially flocks, are known to follow geographic contours (such as hillsides and shorelines) when flying. This likely makes the north and south sides of Buildings 1 and 5 particularly subject to bird strikes, as well as any glass balconies (and windows) that face these directions that are not shielded by other buildings. Since there is a significant amount of forest cover on the west side of West Bay Drive, there is also potential for bird movement from the east and west through the proposed development.

The glass panels around the balconies can readily be replaced by other materials and designs that meet safety codes to protect people, while still allowing views from indoors yet eliminate the potential for bird collisions.

To reduce the potential for collisions of birds with the new shoreline buildings featuring a significant amount of glass, we request the City of Olympia require a design change to replace all glass panels serving as railing on balconies to non-glass alternatives. In addition, the long panels of glass shown in building designs should either be eliminated or altered or replaced with any alternative known to be effective in avoiding bird strikes.

For further information on bird collisions with glass, please see:  
<https://abcbirds.org/glass-collisions/>. Additional information can be found at  
<https://www.audubon.org/our-work/cities-and-towns/bird-friendly-buildings>.

Second, while we agree with the proposal's characterization of the project area as low quality/degraded habitat for all the reasons contained in the proposal/consultant's report, a major feature of the site that is not accounted for is the open space it currently provides as a place where a variety of wildlife go for rest from disturbance and for movement between other habitats. Occasional foraging and even nesting have occurred on the site.

While there will be a functional lift of habitat value based on the metrics and methodology used for such an evaluation, there will be little to no replacement of certain habitat functions related to: the current openness of the site, the low use of the site by people and their activities, and the concomitant use of existing structures for landing, resting, and feeding by birds (including ducks, geese, mergansers, herons, gulls, martins, robins, sparrows, and shorebirds).

We are requesting the installation of perch poles (various birds), a nesting platform (osprey), and nest boxes (swallows, purple martins). These would not only provide habitat values, but could be educational, attractive, and of interest to the public and residents of the development. As well, these habitat features might draw birds away from using or trying to use buildings (use which is generally not desired) and may help to reduce unwanted insects (swallows and martins feed on mosquitoes).

Thank you for your consideration of these important conservation recommendations. Our organization is available to lend support to any design work needed to incorporate these suggestions.

Sincerely,

Elizabeth Rodrick  
BHAs Conservation Committee

Bonnie Blessing to City of Olympia. 19Feb 2025

A SEPA checklist was prepared December 2024 for West Bay Yards Development.

I comment on some environmental elements.

### 1. Earth.

1.e. According to the statement here, shoreline restoration above OHWM involves placement of topsoil, removal of riprap (2455 cy) above the OHWM. Below the OHWM, up to 23193 cy of mixed sand and gravel and 6625 cy of washed gravel. The addition of materials may be inconsistent with city shoreline code. The removal of riprap is inconsistent with language in 7:

The removal of riprap mentioned in 1.e conflicts with the statement in Section 7 below (which recommends against riprap removal). And the proposed gravel size is larger than that used by forage fish like surf smelt. And there is no sill. I believe I saw sills while walking beaches nearby formed of buried wood pilings or mussels. The dam may play a role. A USGS simulation of deposition from Capitol Lake, should the dam be removed, indicated most sediment would deposit in West Bay area.

page 9 of: <https://apps.ecology.wa.gov/publications/documents/1609101.pdf>. This same report describes flows of water in cm/second in the west bay area which may inform how sediment moves, if at all.

Scour and erosion of shorelines is a somewhat natural process that can nourish a beach that may need sediment.

Sand that comes down from streams can help nourish a beach. The habitat reports should acknowledge this.

It remains unclear whether this addition of sand and gravels is a habitat enhancement or a sediment capping exercise. Something here I believe conflicts with Olympia codes. It remains unclear if the lack of a sill structure would still allow accumulation of appropriate sediments for forage fish. And it is unclear whether, if the dam was not there, whether the natural shoreline would actually be waterward of the existing shoreline due to more sediment. But think about the 35000 what not extra cubic yards of sediment coming down the Deschutes to Cap lake. Some % of that sediment in Cap lake would be out in Budd if it was not dredged and if the dam was not there. We visited the estuary of Elwha river. Its cool surfing and you can tell the shoreline (Where elwha dumps into the marine water) has moved waterward after the Elwha dam was taken out. Birds love it. Surfers love it. We hope salmon do.

If sediment capping is chosen, bioturbation happens. Echiurus worms, which may bioturbate 80 centimeters are in Puget sound apparently. I'd think to 'cap' one would then need to make it much deeper than 80 cm.

Finally, othre reports also describe removal of 179 pilings, concrete structures metal grates. I saw herons on the pilings. Can you replace the pilings if they are covered with creosote.

3. Water. a.1 and 2. Yes It is right next to Budd Inlet. And alot of activiites are occurring in or near the water.

Prevent contaminant entry into Budd Inlet. Ensure road and tire runoff from th ~ 3200 tires is properly treated so tire runoff does not enter Budd Inlet waters.

### 3.6 Water.

The SEPA says Contractors will not discharge waste materials to surface waters and will limit any sediment that may reach surface waters. I believe this is a mistake to say this. It is more reasonable to say that some discharge may reach surface waters. Because of 3' wave height, working adjoining or below surface waters, wood and mystery waste buried under the water level, proximity to marine waters, it is reasonable that some discharge of sediment, contaminants, waste materials would enter Budd Inlet.

The 2021 stormwater site plan for West Bay describes post-construction measures. What the property owners will do. Pretty general stuff. The SWPPP from 2021 is mostly cookbook stuff from the standard menu. But or this project its like they're exhuming contaminated sediments or debris near former storage tanks with mystery ingredients. Please tell me there's something more than these.

I would thus presume that a city would require upfront conditions to ensure the contractor could avoid any revocation of coverage later on if there was a determination that the activity endangers human health or the environment (G5.E. of the 2020 Construction General Stormwater Permit).

And the applicant says they'll use the CSWGP. and city codes to protect water or whatever.

But basing the SEPA approval on a general permit (that is appropriate for most sites) is so inappropriate. Here. At this site. Where Murphy lurks in those mystery storage containers. Where someone will get the Darwin Award. The general permit is not written for this sort of site.

The Construction general permit speaks with forked tongue. It first says that Ecology may require a discharger to get a individual permit for construction if something about site conditions means that water quality standards just

can't be met. Sounds golden!. But the problem is: I believe that Ecology uses this odd 'traditional approach' to stormwater. Those general permits are programmatic permits . They offer a menu of BMPs. That the applicant can sort of choose from. The application form for these CSWGP ask the applicant to apply by noting where the discharges go, SEPA compliance and that the developer will develop a SWPPP. Then Ecology sends the ok go for it letter. This general permit does not seem applicable. Here.

Why? This site is special. this site is a site-specific site.

Ecology analyzes impacts of construction projects AT THE TIME the permit is issued. So then Joe comes along and has a project sometime after the programmatic CSWGP was issued. And then, Ecology 'presumes' that WQ will be met if Joe follows the manual and says SEPA compliance and they'll get around to a SWPPP that they may follow.

But the Permit readily says that (the 2020 CSWGP) says that the general permit is like, not totally applicable absolutely EVERYWHERE. In Most places, yes. Not everywhere. And the permit itself says there are situations where the standard conditions of the CSWGP could not provide adequate protection or there is a reasonable chance of violation of WQ standards (Special Condition S1.E on page 5 of the 2020-2024 CSWGP).

Sounds nice but:

The *Fact sheet* for the CSWGP says that Ecology will **not** perform site-specific analysis of each 'New or expanded' action proposed for coverage under the Construction General Stormwater Permit (page 14 of the Fact sheet of the 2020 CSWGP).

And this site is such a 'new and expanded action' THAT SHOULD HAVE SITE-SPECIFIC ANALYSIS.

And its a MTCA site. I do not believe the stormwater manual 2024 is really set up to ensure WQ objectives are met at a MTCA site.

The Dept of Ecology said that the presumptive approach may be more cost effective for typical projects. This is not a typical project by any means.

The project discharges to Budd Inlet. I has some sort of toxins in sediments nearby. Whoever is doing this project should be asked to document that the practices they select will result in compliance with the water quality protection requirements of the permit, local, State and Federal water quality conditions. (See page 75 to 6 of 2024 manual). Thats the demonstrative approach. Please protect the water, salmon, surf smelt, people

### 3.6.b. Water. Groundwater.

The applicant says the project does not propose to discharge to groundwater. I believe this is a mistake: Many of the reports says the groundwater is too high to do infiltration and they have to exhume wood from the depths for construction purposes.

3.6.c Water runoff. An additional 800 plus cars will generate 3200 more tires worth of 6ppdq. Please treat adequately to prevent harm to listed salmon juveniles next to the project.

5. Animals. Item b. There was a mistake here. The applicant didn't note that there are other species out there as well. Federally listed Fall Chinook and Steelhead are in Budd Inlet. You're all working in the water where they are. They are susceptible to stormwater runoff and 6ppdq. They consume forage fish. So do the many herons on that shoreline. Habitat 'quality is reportedly 'low'. Yet, herons and waterfowl are attracted to and rest on the vertical yes creosote covered probably pilings and feed in shallow water. Sometimes old pilings are not covered with toxins. If not, can you leave some for the birds and mussels and sediment. Other people just encase them in concrete without bothering trying to exhume them from sediments possibly releasing nasty stuff into water column.. Please consider this as an alternative to exhuming existing pilings.

### 7. Environmental health.

Please see the following 3 statements.

Statement 1. The applicant says 'there are no risks associated with this proposal'.

Statement 2. Evidence of Statement 1 is:

"there's contamination in the soil next to a marine area, increase risks to human and environment. Capping may be required. There may be liquefaction and lateral spreading. Its a former MTCA

site that isn't working out well at all' contaminated sediments may get resuspended' hazardous chemicals and conditions include 'miscellaneous MTCA cleanup levels from PAH, methane releases. The applicant then states that it will be ok because no special emergency services are anticipated to be required. And, while it is premature to determine the final MTCA fix for this site, it will be ok because some bloke will excavate soil near a suspected former storage tank, try adding sediment cap on top of all this mystery wood and contaminants, install vapor mitigation for future residents and maybe someone will handle potentially hazardous substances in accordance with state and federal law. contamination in soil behind the riprap revetment is not prudent because removal would increase transport of contaminants in soil and groundwater to West Bay surface water and sediment increasing risks to humans and the environment etc. removing the riprap revetment would be hazardous according to the 4<sup>th</sup> paragraph of 7.a.1

Statement 3: I think there was a mistake here. Statement 2 doesn't support statement 1. And removal of riprap, recommended for shoreline restoration in 1.e.clearly increases risk of bad things for environmental health

10. Aesthetics. This is a huge change of appearance.

Recreation: I used to appreciate the old infrastructures and wildness of the beaches there. Great Blue herons, waterfowl can be seen on the shoreline and pilings. Small fish in the near. Its quiet. Mussels. I recall seeing alot of dead white clams on those west bay beaches. And asians harvesting mussels. No one should eat shellfish outa this bay

The City should not presume there will be no SEPA impacts because the evidence offered to support that is thin.

Thank you for protecting Budd Inlet while trying to ensure future housing needs are met.



# Electronic Copy

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY  
Southwest Region Office**

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

March 16, 2023

Brandon Smith  
West Bay Development Group, LLC  
P.O. Box 1376  
Sumner, WA 98390  
[brandon@themilestoncompanies.com](mailto:brandon@themilestoncompanies.com)

**Re: Preliminary Determination of Liability for Release of Hazardous Substances at the following Contaminated Site:**

- **Site Name:** Hardel Mutual Plywood
- **Site Address:** 1210 W Bay Dr NW, Olympia, Thurston County, WA 98502
- **Cleanup Site ID:** 3704
- **Facility/Site ID:** 75128579
- **County Assessor's Parcel Number(s):** 72600200100 and 91013100000

Dear Brandon Smith:

Based on credible evidence, the Department of Ecology (Ecology) is proposing to find West Bay Development Group, LLC liable under the Model Toxics Control Act (MTCA), Chapter 70A.305 RCW, for the release of hazardous substances at the Hardel Mutual Plywood facility (Site). Any person whom Ecology finds, based on credible evidence, to be liable is known under MTCA as a "potentially liable person" or "PLP."

This letter identifies the basis for Ecology's proposed finding and your opportunity to respond to that finding. This letter also describes the scope of your potential liability and next steps in the cleanup process at the Site.

### **Proposed Finding of Liability**

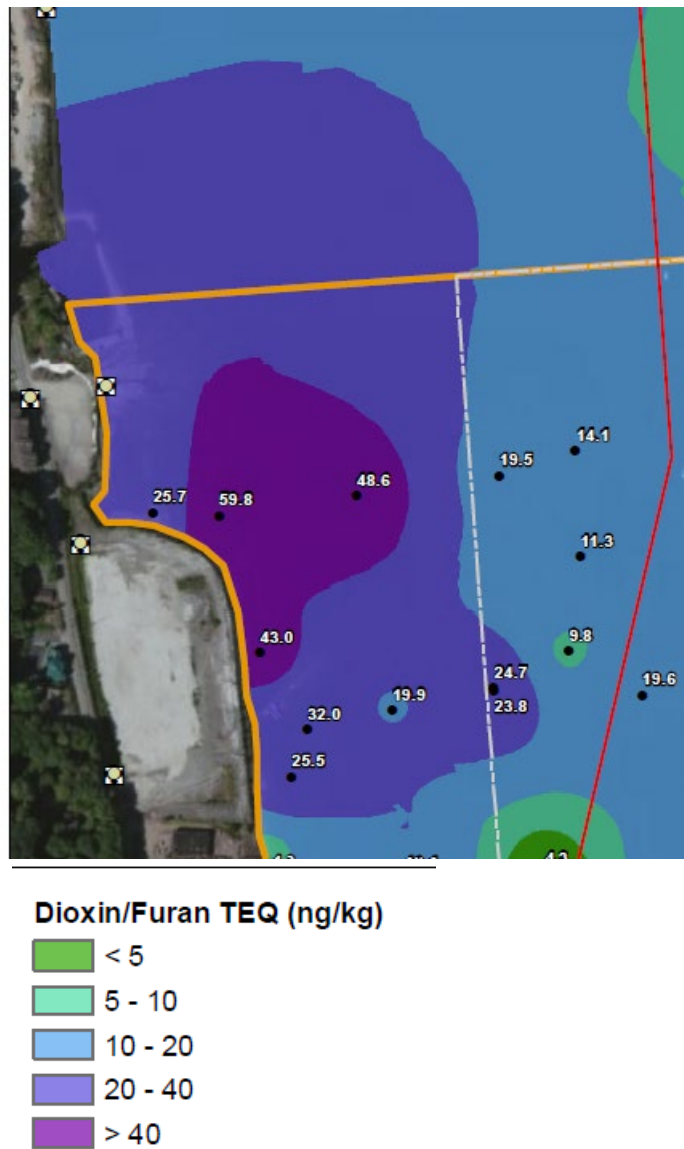
Ecology is proposing to find West Bay Development Group, LLC liable under RCW 70A.305.040 for the release of hazardous substances at the Site. This proposed finding is based on the following evidence:

1. West Bay Development Group, LLC is the current owner of the site.
2. According to our information, past operations at the site resulted in the contamination of soil, sediment, groundwater, and/or air at levels that exceed the Model Toxics Control Act (MTCA) cleanup standards or other screening levels for total petroleum hydrocarbons (gasoline, diesel, and heavy oil ranges), volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), carcinogenic polycyclic aromatic hydrocarbons (cPAHs), metals, and dioxins/furans. The following reports supports the conclusion that hazardous substances have been released at the site:
  - a. Pioneer Technologies Corporation, RI Data Gaps Investigation Work Plan, Hardel Mutual Plywood Corporation, 1210 West Bay Drive NW, Olympia, Washington, March 2021.
  - b. Pioneer Technologies Corporation, Remedial Investigation Data Gap Report, Hardel Mutual Plywood Corporation, 1210 West Bay Drive NW, Olympia, Washington, August 2021.
  - c. Pioneer Technologies Corporation, Memo: Addressing Ecology's RI Data Gaps, Hardel Mutual Plywood Corporation Site, 1210 West Bay Drive NW, Olympia, Washington, October 25, 2022.
3. Several studies since 2012 show dioxin/furan and cPAH sediment contamination near and emanating outward in a decreasing concentration gradient from the Site. For example, Figures 5.1 and 5.2 from Anchor (2016) show interpolated surface sediment dioxin/furan and cPAH concentrations, respectively.<sup>1</sup> Figure 5.1 shows an area of higher dioxin/furan concentration near the Site, decreasing with distance from the Site (Figure 1, below). This observed concentration (59.8 nanograms per kilogram, ng/kg or parts per trillion, ppt) is the highest concentration of dioxins/furans in the West Bay of Budd Inlet.<sup>2</sup>

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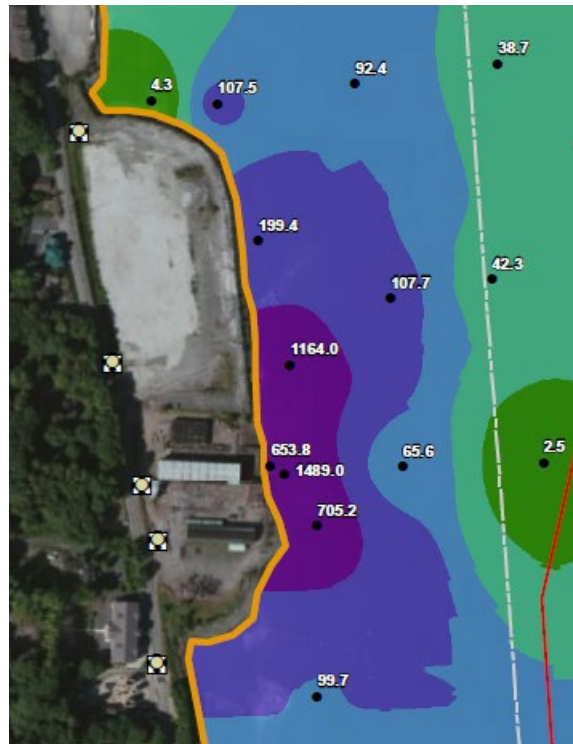
<sup>1</sup> Anchor QEA, LLC (Anchor), Final Investigation Report Port of Olympia Budd Inlet Sediment Site, Port of Olympia, August 2016.

<sup>2</sup> Anchor, Draft Investigation Report, Port of Olympia Budd Inlet Sediment Site, December 2013.



**Figure 1 – Portion of Figure 5.1 from Anchor (2016).**

Figure 5.2 shows an area of higher cPAH concentrations near the Site and the Reliable Steel site immediately to the south with decreasing concentrations with distance from the sites (see Figure 2, below). These concentration gradients indicate a likely historic or ongoing release from the Hardel Site.



**Total cPAH TEQ ( $\mu\text{g}/\text{kg}$ )**



**Figure 2 – Portion of Figure 5.2 from Anchor (2016).**

### **Opportunity to Respond to Proposed Finding of Liability**

In response to Ecology's proposed finding of liability, you may either:

1. Accept your status as a PLP without admitting liability and expedite the process through a voluntary waiver of your right to comment. This may be accomplished by signing and returning the enclosed form or by sending a letter containing similar information to Ecology; or
2. Challenge your status as a PLP by submitting written comments to Ecology within thirty (30) calendar days of the date you receive this letter; or
3. Choose not to comment on your status as a PLP.

Please submit your waiver or written comments to the following address:

Steve Teel  
SWRO Toxics Cleanup Program  
Department of Ecology  
PO Box 47775  
Olympia, WA 98504-7775

After reviewing any comments submitted, or after 30 days if no response has been received, Ecology will make a final determination regarding your status as a PLP and provide you with written notice of that determination.

### **Identification of Other Potentially Liable Persons**

Ecology has previously notified the following additional persons that they are potentially liable for the release of hazardous substances at the Site:

1. Hardel Mutual Plywood, Inc.

If you are aware of any other persons who may be liable for the release of hazardous substances at the Site, Ecology encourages you to provide us with their identities and the reason you believe they are liable. Ecology also suggests you contact these other persons to discuss how you can jointly work together to clean up the Site most efficiently.

## **Responsibility and Scope of Potential Liability**

Ecology may either conduct or require PLPs to conduct remedial actions to investigate and clean up the release of hazardous substances at a site. PLPs are encouraged to initiate discussions and negotiations with Ecology and the Office of the Attorney General that may lead to an agreement on the remedial action to be conducted.

Each liable person is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the release of hazardous substances at a site. If Ecology incurs remedial action costs in connection with the investigation or cleanup of real property and those costs are not reimbursed, then Ecology has the authority under RCW 70A.305.060 to file a lien against that real property to recover those costs.

## **Next Steps in Cleanup Process**

In response to the release of hazardous substances at the Site, Ecology intends to conduct the following actions under MTCA:

1. Initiate discussions which may result in an Agreed Order. An Agreed Order is a legally binding contract for the cleanup of the site. WAC 173-340-530(5) states that Agreed Order discussions shall not exceed 60 days unless an extension is in the public interest.
2. Ecology may withdraw from Agreed Order discussions and pursue other enforcement strategies if it determines that:
  - a. Reasonable progress is not being made.
  - b. The Agreed Order is inappropriate based on new information or changed circumstances.

For a description of the process for cleaning up a contaminated site under MTCA, please refer to the enclosed fact sheet.

Ecology's policy is to work cooperatively with PLPs to accomplish the prompt and effective cleanup of contaminated sites. Please note that your cooperation in planning or conducting remedial actions at the Site is not an admission of guilt or liability.

## Contact Information

If you have any questions regarding this letter or if you would like additional information regarding the cleanup of contaminated sites, please contact me at 360-890-0059 or [steve.teel@ecy.wa.gov](mailto:steve.teel@ecy.wa.gov). Thank you for your cooperation.

Sincerely,



Steve Teel, LHG  
Cleanup Project Manager  
Toxics Cleanup Program  
Southwest Region Office

Enclosures (2):   A - PLP Waiver Form Template  
                      B - Focus: Model Toxics Control Act Cleanup Regulation: Process for  
                                  Cleanup of Hazardous Waste Sites (#94-129)

By certified mail: 9489 0090 0027 6066 5603 31

cc:     Kim Seely, Coastline Law Group PLLC, [kseely@coastlinelaw.com](mailto:kseely@coastlinelaw.com)  
       Troy Bussey Jr., Pioneer Technologies Corporation, [bussyt@uspioneer.com](mailto:bussyt@uspioneer.com)  
       Rebecca S. Lawson, Ecology, [rebecca.lawson@ecy.wa.gov](mailto:rebecca.lawson@ecy.wa.gov)  
       Jerome Lambiotte, Ecology, [jerome.lambiotte@ecy.wa.gov](mailto:jerome.lambiotte@ecy.wa.gov)  
       Ivy Anderson, Office of the Attorney General, [ivy.anderson@atg.wa.gov](mailto:ivy.anderson@atg.wa.gov)  
       Ecology Site File

**Early Potentially Liable Person Notice Letter**  
**Thirty-Day Comment Period Waiver Form**

West Bay Development Group, LLC  
P.O. Box 1376  
Sumner, WA 98390

Pursuant to WAC 173-340-500 and WAC 173-340-520(1)(b)(i), I \_\_\_\_\_, a duly authorized representative of West Bay Development Group, LLC, do hereby waive the right to the thirty- (30) day notice and comment period described in WAC 173-340-500(3) and accept status of West Bay Development Group, LLC as a Potentially Liable Person at the following site:

- **Site Name:** Hardel Mutual Plywood
- **Site Address:** 1210 W Bay Dr NW, Olympia, Thurston County, WA 98502
- **Cleanup Site ID:** 3704
- **Facility/Site ID:** 75128579
- **County Assessor's Parcel Number(s):** 72600200100 and 91013100000

This waiver is solely for the purpose of cooperating with Ecology to conduct the additional investigation and remedial action necessary at the site. By waiving this right, West Bay Development Group, LLC makes no admission of liability.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



# Focus

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## Model Toxics Control Act Cleanup Regulation: Process for Cleanup of Hazardous Waste Sites

In March of 1989, an innovative, citizen-mandated toxic waste cleanup law went into effect in Washington, changing the way hazardous waste sites in this state are cleaned up. Passed by voters as Initiative 97, this law is known as the Model Toxics Control Act, chapter 70.105D RCW. This fact sheet provides a brief overview of the process for the cleanup of contaminated sites under the rules Ecology adopted to implement that Act (chapter 173-340 WAC).

### How the Law Works

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The cleanup of hazardous waste sites is complex and expensive. In an effort to avoid the confusion and delays associated with the federal Superfund program, the Model Toxics Control Act is designed to be as streamlined as possible. It sets strict cleanup standards to ensure that the quality of cleanup and protection of human health and the environment are not compromised. At the same time, the rules that guide cleanup under the Act have built-in flexibility to allow cleanups to be addressed on a site-specific basis.

The Model Toxics Control Act funds hazardous waste cleanup through a tax on the wholesale value of hazardous substances. The tax is imposed on the first in-state possessor of hazardous substances at the rate of 0.7 percent, or \$7 per \$1,000. Since its passage in 1988, the Act has guided the cleanup of thousands of hazardous waste sites that dot the Washington landscape. The Washington State Department of Ecology's Toxic Cleanup Program ensures that these sites are investigated and cleaned up.

### What Constitutes a Hazardous Waste Site?

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Any owner or operator who has information that a hazardous substance has been released to the environment at the owner or operator's facility and may be a threat to human health or the environment must report this information to the Department of Ecology (Ecology). If an "initial investigation" by Ecology confirms further action (such as testing or cleanup) may be necessary, the facility is entered onto either Ecology's "Integrated Site Information System" database or "Leaking Underground Storage Tank" database. These are computerized databases used to track progress on all confirmed or suspected contaminated sites in Washington State. All confirmed sites that have not been already voluntarily cleaned up are ranked and placed on the state "Hazardous Sites List." Owners, operators, and other persons known to be potentially liable for the cleanup of the site will receive an "Early Notice Letter" from Ecology notifying them that their site is suspected of needing cleanup, and that it is Ecology's policy to work cooperatively with them to accomplish prompt and effective cleanup.

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## Who is Responsible for Cleanup?

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Any past or present relationship with a contaminated site may result in liability. Under the Model Toxics Control Act a potentially liable person can be:

- A current or past facility owner or operator.
- Anyone who arranged for disposal or treatment of hazardous substances at the site.
- Anyone who transported hazardous substances for disposal or treatment at a contaminated site, unless the facility could legally receive the hazardous materials at the time of transport.
- Anyone who sells a hazardous substance with written instructions for its use, and abiding by the instructions results in contamination.

In situations where there is more than one potentially liable person, each person is jointly and severally liable for cleanup at the site. That means each person can be held liable for the entire cost of cleanup. In cases where there is more than one potentially liable person at a site, Ecology encourages these persons to get together to negotiate how the cost of cleanup will be shared among all potentially liable persons.

Ecology must notify anyone it knows may be a “potentially liable person” and allow an opportunity for comment before making any further determination on that person’s liability. The comment period may be waived at the potentially liable person’s request or if Ecology has to conduct emergency cleanup at the site.

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## Achieving Cleanups through Cooperation

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Although Ecology has the legal authority to order a liable party to clean up, the department prefers to achieve cleanups cooperatively. Ecology believes that a non-adversarial relationship with potentially liable persons improves the prospect for prompt and efficient cleanup. The rules implementing the Model Toxics Control Act, which were developed by Ecology in consultation with the Science Advisory Board (created by the Act), and representatives from citizen, environmental and business groups, and government agencies, are designed to:

- Encourage independent cleanups initiated by potentially liable persons, thus providing for quicker cleanups with less legal complexity.
- Encourage an open process for the public, local government and liable parties to discuss cleanup options and community concerns.
- Facilitate cooperative cleanup agreements rather than Ecology-initiated orders. *Ecology can, and does, however use enforcement tools in emergencies or with recalcitrant potentially liable persons.*

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## What is the Potentially Liable Person’s Role in Cleanup?

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The Model Toxics Control Act requires potentially liable persons to assume responsibility for cleaning up contaminated sites. For this reason, Ecology does not usually conduct the actual cleanup when a potentially liable person can be identified. Rather, Ecology oversees the cleanup of sites to ensure that investigations, public involvement and actual cleanup and monitoring are done appropriately. Ecology’s costs of this oversight are required to be paid by the liable party.

When contamination is confirmed at the site, the owner or operator may decide to proceed with cleanup without Ecology assistance or approval. Such “independent cleanups” are

allowed under the Model Toxics Control Act under most circumstances, but must be reported to Ecology, and are done at the owner's or operator's own risk. Ecology may require additional cleanup work at these sites to bring them into compliance with the state cleanup standards. Most cleanups in Washington are done independently.

Other than local governments, potentially liable persons conducting independent cleanups do not have access to financial assistance from Ecology. Those who plan to seek contributions from other persons to help pay for cleanup costs need to be sure their cleanup is "the substantial equivalent of a department-conducted or department-supervised remedial action." Ecology has provided guidance on how to meet this requirement in WAC 173-340-545. Persons interested in pursuing a private contribution action on an independent cleanup should carefully review this guidance prior to conducting site work.

### **Working with Ecology to Achieve Cleanup**

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Ecology and potentially liable persons often work cooperatively to reach cleanup solutions. Options for working with Ecology include formal agreements such as consent decrees and agreed orders, and seeking technical assistance through the Voluntary Cleanup Program. These mechanisms allow Ecology to take an active role in cleanup, providing help to potentially liable persons and minimizing costs by ensuring the job meets state standards the first time. This also minimizes the possibility that additional cleanup will be required in the future – providing significant assurances to investors and lenders.

Here is a summary of the most common mechanisms used by Ecology:

- **Voluntary Cleanup Program:** Many property owners choose to cleanup their sites independent of Ecology oversight. This allows many smaller or less complex sites to be cleaned up quickly without having to go through a formal process. A disadvantage to property owners is that Ecology does not approve the cleanup. This can present a problem to property owners who need state approval of the cleanup to satisfy a buyer or lender.  
  
One option to the property owner wanting to conduct an independent cleanup yet still receive some feedback from Ecology is to request a technical consultation through Ecology's Voluntary Cleanup Program. Under this voluntary program, the property owner submits a cleanup report with a fee to cover Ecology's review costs. Based on the review, Ecology either issues a letter stating that the site needs "No Further Action" or identifies what additional work is needed. Since Ecology is not directly involved in the site cleanup work, the level of certainty in Ecology's response is less than in a consent decree or agreed order. However, many persons have found a "No Further Action" letter to be sufficient for their needs, making the Voluntary Cleanup Program a popular option.
- **Consent Decrees:** A consent decree is a formal legal agreement filed in court. The work requirements in the decree and the terms under which it must be done are negotiated and agreed to by the potentially liable person, Ecology and the state Attorney General's office. Before consent decrees can become final, they must undergo a public review and comment period that typically includes a public hearing. Consent decrees protect the potentially liable person from being sued for "contribution" by other persons that incur cleanup expenses at the site while facilitating any contribution claims against the other persons when they are responsible for part of the cleanup costs. Sites cleaned up under a consent decree are also exempt from having to obtain certain state and local permits that could delay the cleanup.

- **De Minimus Consent Decree:** Landowners whose contribution to site contamination is “insignificant in amount and toxicity” may be eligible for a de minimus consent decree. In these decrees, landowner typically settle their liability by paying for some of the cleanup instead of actually conducting the cleanup work. Ecology usually accepts a de minimus settlement proposal only if the landowner is affiliated with a larger site cleanup that Ecology is currently working on.
- **Prospective Purchaser Consent Decree:** A consent decree may also be available for a “prospective purchaser” of contaminated property. In this situation, a person who is not already liable for cleanup and wishes to purchase a cleanup site for redevelopment or reuse may apply to negotiate a prospective purchaser consent decree. The applicant must show, among other things, that they will contribute substantial new resources towards the cleanup. Cleanups that also have a substantial public benefit will receive a higher priority for prospective purchaser agreements. If the application is accepted, the requirements for cleanup are negotiated and specified in a consent decree so that the purchaser can better estimate the cost of cleanup before buying the land.
- **Agreed Orders:** Unlike a consent decree, an agreed order is not filed in court and is not a settlement. Rather, it is a legally binding administrative order issued by Ecology and agreed to by the potentially liable person. Agreed orders are available for remedial investigations, feasibility studies, and final cleanups. An agreed order describes the site activities that must occur for Ecology to agree not to take enforcement action for that phase of work. As with consent decrees, agreed orders are subject to public review and offer the advantage of facilitating contribution claims against other persons and exempting cleanup work from obtaining certain state and local permits.

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## Ecology-Initiated Cleanup Orders

Administrative orders requiring cleanup activities without an agreement with a potentially liable person are known as **enforcement orders**. These orders are usually issued to a potentially liable person when Ecology believes a cleanup solution cannot be achieved expeditiously through negotiation or if an emergency exists. If the responsible party fails to comply with an enforcement order, Ecology can clean up the site and later recover costs from the responsible person(s) at up to three times the amount spent. The state Attorney General’s Office may also seek a fine of up to \$25,000 a day for violating an order. Enforcement orders are subject to public notification.

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## Financial Assistance

Each year, Ecology provides millions of dollars in grants to local governments to help pay for the cost of site cleanup. In general, such grants are available only for sites where the cleanup work is being done under an order or decree. Ecology can also provide grants to local governments to help defray the cost of replacing a public water supply well contaminated by a hazardous waste site. Grants are also available for local citizen groups and neighborhoods affected by contaminated sites to facilitate public review of the cleanup. See Chapter 173-322 WAC for additional information on grants to local governments and Chapter 173-321 WAC for additional information on public participation grants.

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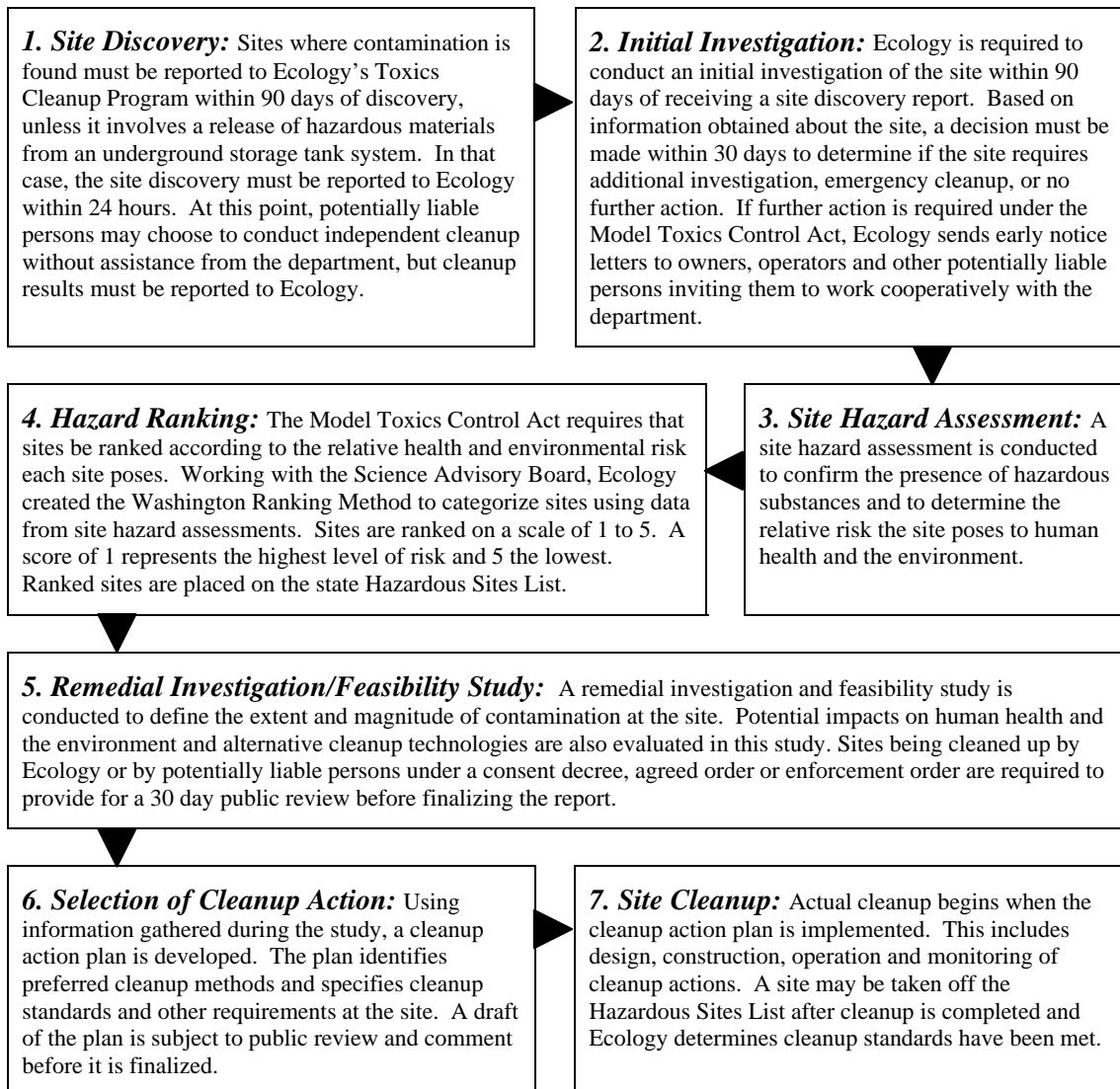
## Public Involvement

Public notices are required on all agreed orders, consent decrees, and enforcement orders. Public notification is also required for all Ecology-conducted remedial actions.

Ecology's Site Register is a widely used means of providing information about cleanup efforts to the public and is one way of assisting community involvement. The Site Register is published every two weeks to inform citizens of public meetings and comment periods, discussions or negotiations of legal agreements, and other cleanup activities. The Site Register can be accessed on the Internet at: [www.ecy.wa.gov/programs/tcp/pub\\_inv/pub\\_inv2.html](http://www.ecy.wa.gov/programs/tcp/pub_inv/pub_inv2.html).

## How Sites are Cleaned Up

The rules describing the cleanup process at a hazardous waste site are in chapter 173-340 WAC. The following is a general description of the steps taken during the cleanup of an average hazardous waste site. Consult the rules for the specific requirements for each step in the cleanup process.



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## For More Information / Special Accommodation Needs

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If you would like more information about the state Model Toxics Control Act, please call us toll-free at **1-800-826-7716**, or contact your regional Washington State Department of Ecology office listed below. Information about site cleanup, including a listing of ranked hazardous waste sites, is also accessible through our Internet address:

<http://www.ecy.wa.gov/programs/tcp/cleanup.html>

- **Northwest Regional Office**                                 **425/649-7000**  
(Island, King, Kitsap, San Juan, Skagit, Snohomish, Whatcom Counties)
- **Southwest Regional Office**                               **360/407-6300**  
(Southwestern Washington, Olympic Peninsula, Pierce, Thurston and Mason Counties)
- **Central Regional Office**                                   **509/575-2490**  
(Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, Yakima Counties)
- **Eastern Regional Office**                                   **509/329-3400**  
(Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman Counties)

*If you need this publication in an alternative format, please contact the Toxics Cleanup Program at (360) 407-7170. Persons with a hearing loss can call 711 for the Washington Relay Service. Persons with a speech disability can call 877-833-6341.*

**Disclaimer Notice:** This fact sheet is intended to help the user understand the Model Toxics Control Act Cleanup Regulation, chapter 173-340 WAC. It does not establish or modify regulatory requirements.

**From:** [Kathryn Walton-Elliott](#)  
**To:** [Nicole Floyd](#)  
**Subject:** Comment on proposed WBY Development  
**Date:** Wednesday, February 12, 2025 10:13:27 PM

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Hello, Ms. Floyd,

I am writing as a city resident to comment on the proposed West Bay Yards (WBY) Development. I am very concerned about this proposal and the potential environmental impacts to the Deschutes Estuary and Budd Inlet ecosystems. I hope the city staff will not grant this permit. However, if they do move forward in considering it, I urge the city to obtain a complete Environmental Impact Statement (EIS) before any consideration of a land-use permit.

The harmful impacts that seem likely include the spread of contaminants from building on this historically industrial site, adding ~40,000 cubic yards of fill into Budd Bay, and introducing increased 6-PPD quinone into stormwater runoff from the use of 820 new parking stalls. At a time when sea levels are rising, building on the shoreline strikes me as both foolish and unnecessary. There are plenty of other, more appropriate sites in the area for development.

Finally, the proposed development is for market-rate rental housing and retail spaces. There is plenty of unused retail space downtown and we need an increase in affordable housing, not market-rate units.

Again, I urge the city to reject this proposal. If it is not rejected, it must not move forward without a complete EIS.

Thank you for your time and consideration,  
Kathryn Walton-Elliott  
1814 Bethel St. NE  
Olympia, WA 98506  
[kmwaltelli@gmail.com](mailto:kmwaltelli@gmail.com)

**From:** [Colleen Graney](#)  
**To:** [Jay Burney](#); [Councilmembers](#); [Nicole Floyd](#); [Tim Smith](#); [Robert Vanderpool](#)  
**Cc:** [Colleen Graney](#)  
**Subject:** comments for West Bay Yards project  
**Date:** Thursday, February 13, 2025 1:11:39 PM

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Dear City Council Members and Manager:

I live on the west side of Olympia, close to West Bay Drive where the proposed West Bay Yards project is located. Over the 35 years we have lived here I have seen the population of Herons, their rookery facing West Bay Drive, the other shore birds, seals, and of course the run of salmon that make its way to Capitol Lake. Two years ago I counted more than 21 herons at the same time feeding on this shoreline. When I learned of a proposed development site right on the water with the potential of having more than 400 apartments I was shocked. Surely given the extent of wild life on the shoreline and in the bay that would not be possible. Because when they conduct the environmental study prior to construction no large development would be allowed to move forward.

This construction would require piles driven into the shore, a long and very noisy enterprise that would certainly have long lasting effects for bird habitat, the fish in the bay, and the residents who live along the road and outlying areas. There is also a place where the seals gather further down the shore from the restaurant of TugBoat Annies that I observed while on a canoe ride.

The other impact will be the traffic and road expansion. Clearly the current width of the two lane road of West Bay Drive would not suffice for a development of this size. It would have to be enlarged, expanded, which again would cause more noise, environmental impacts on all who live there. I use this road to go downtown since going down Harrison Avenue to downtown takes longer and is much more congested. The locals would no longer be able to use West Bay Drive to go downtown because with 400 apartments, (i.e.) 400 more cars, would make it impossible to use for a short cut any longer.

In short, no development should move forward, especially on the water, without an (EIS) environmental impact statement. The community looks to local government to protect us and do due diligence for Olympia residents.

**I cannot support this development: I vote no on moving forward**

Reason: harmful impact on the natural environment, huge increase on congestion, noise, and barrier of accessibility to downtown travel.

Sincerely,

Colleen Graney

1831 Elliott Ave NW, Olympia, WA

**From:** [hwbranch@aol.com](mailto:hwbranch@aol.com)  
**To:** [Nicole Floyd](#)  
**Subject:** comments  
**Date:** Friday, February 14, 2025 8:44:00 AM

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City of Olympia  
Community Planning and Development Department  
Attn: Nicole Floyd

Re: West Bay Yards Project – Fourth Round Submittal Comment Period

1. The idea of using fill to create a new nearshore is not a restoration. Will the area of the littoral zone be reduced? What will happen to the existing benthic community? Is the neighboring shore a source of contamination? Would piling soil in front of the site impede a cleanup if one is necessary?

Oceanography is the study of physical, chemical and biological parameters. Chemical and biological parameters are largely influenced by physical parameters, the shape and structure of beach and benthic soils and the flow of currents. These interrelationships evolve over thousands or even millions of years. If we think we can create a beach a wetland or some other hydrologically determined geologic feature in a location where one didn't exist, there's a likelihood that over time it will return to what it was. There's a long list of failed mitigation sites.

The term *restoration* has a very specific definition: "bring back (a previous right, practice, custom, or situation); reinstate. Return (someone or something) to a former condition, place, or position". Building something new that looks like something old is not restoration. Let's call it what it is.

A 30-foot setback from the high tide mark is across the board and arbitrary. Will such removal impact sediment transport? The removal of derelict debris and pilings is probably a benefit though maybe not. Will the activity activate chemicals used in piling treatment? Some restorations leave them in place. The Palo Alto Yacht Club, where I learned to sail many ears ago, is now salt marsh with some old pilings still visible here and there.

2. This project should be considered in light of cumulative impacts including neighboring developments. Combined with West Bayview Landing we're looking at eight large buildings. Schneider Creek crosses the site in a large concrete culvert. Being intertidal in this location the stream is marine waters and subject to rules governing marine waters.

3. Budd Inlet is critical habitat for endangered marine species. Critical habitat is habitat that contains features or areas essential for the conservation and recovery of Endangered Species, such as a stream estuary. We are required to address critical habitat based on the best available science and there has been little relevant science here.

Critical Habitat

Critical habitat for Bocaccio, all of puget sound

[https://media.fisheries.noaa.gov/2022-05/ch\\_2021mapseries\\_Bocaccio\\_PugetSoundGeorgiaBasinDPS.jpg](https://media.fisheries.noaa.gov/2022-05/ch_2021mapseries_Bocaccio_PugetSoundGeorgiaBasinDPS.jpg)

Chinook salmon, all of Puget Sound

[https://media.fisheries.noaa.gov/2022-05/ch\\_2021mapseries\\_SalmonChinook\\_PugetSoundESU.jpg](https://media.fisheries.noaa.gov/2022-05/ch_2021mapseries_SalmonChinook_PugetSoundESU.jpg)

Southern Resident Orca Whale, all of Puget Sound

[https://media.fisheries.noaa.gov/2022-05/ch\\_2021mapseries\\_WhaleKiller\\_SouthernResidentDPS.jpg](https://media.fisheries.noaa.gov/2022-05/ch_2021mapseries_WhaleKiller_SouthernResidentDPS.jpg)

Harry Branch

**From:** [PATRICIA JATCZAK](#)  
**To:** [Nicole Floyd](#)  
**Subject:** EIS for West Bay Yards  
**Date:** Saturday, February 15, 2025 4:10:32 PM

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Dear Nicole Floyd,

I am writing to request that a full Environmental Impact Statement be completed for the proposed West Bay Yards Development Project. I am a city of Olympia Resident and have concerns about environmental and human impacts of this massive proposed development on our city.

Patricia Jatzak

**From:** [Debra Walter](#)  
**To:** [Nicole Floyd](#)  
**Subject:** Environmental Impact Statement  
**Date:** Tuesday, February 11, 2025 6:09:18 AM

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Dear city of Olympia, or to whom it may concern,  
I am a concerned citizen of Olympia and I am very concerned about the proposed development on West Bay known as "West Bay Yards". I urge the city to provide an environmental impact statement to this very sensitive area.

Regards,  
Debra Walter

Sent from my iPhone

**From:** [Tim Smith](#)  
**To:** [Jackson Ewing](#)  
**Cc:** [Nicole Floyd](#)  
**Subject:** FW: "No!" to the "West Bay Yards"; 247 APTS ON West Bay DR! OLYMPIA, WA  
**Date:** Thursday, June 20, 2024 1:58:28 PM  
**Attachments:** [Image.jpeg](#)

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fYI

**Tim Smith, AICP | Interim Director**

City of Olympia Community Planning & Development Department  
P.O. Box 1967 | 601 4th Avenue E | Olympia, WA 98507-1967  
(360) 570-3915  
[tsmith@ci.olympia.wa.us](mailto:tsmith@ci.olympia.wa.us)

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**From:** Robert Vanderpool  
**Sent:** Thursday, June 20, 2024 1:57 PM  
**To:** Tim Smith  
**Subject:** Fwd: "No!" to the "West Bay Yards"; 247 APTS ON West Bay DR! OLYMPIA, WA

FYI for CPD

Have a good weekend,  
Robert Vanderpool, MPA  
Council Member Position 6  
Olympia City Council  
Olympia, WA 98501

[rvanderp@ci.olympia.wa.us](mailto:rvanderp@ci.olympia.wa.us)

signatureImage



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**From:** [northbeachcomm@cs.com](mailto:northbeachcomm@cs.com) <[northbeachcomm@cs.com](mailto:northbeachcomm@cs.com)>  
**Sent:** Thursday, June 20, 2024 12:35 PM  
**To:** Councilmembers <[Councilmembers@ci.olympia.wa.us](mailto:Councilmembers@ci.olympia.wa.us)>  
**Cc:** Jay Burney <[jburney@ci.olympia.wa.us](mailto:jburney@ci.olympia.wa.us)>; Cari Hornbein <[chornbei@ci.olympia.wa.us](mailto:chornbei@ci.olympia.wa.us)>  
**Subject:** "No!" to the "West Bay Yards"; 247 APTS ON West Bay DR! OLYMPIA, WA

***June 19, 2024***

**Dear Olympia City Council;  
Schneider Creek exists near West Bay Dr,  
Olympia.**

**Schneider Creek has fish bearing waters.**

**According to the Critical Areas section of the  
Olympia Municipal Code, Schneider Creek, even  
within a culvert, qualifies as a naturally occurring  
stream:**

**18.32.405 Streams and Priority Riparian Areas –  
Applicability and Definition**

*A. "Streams" means an area where surface waters flow sufficiently to produce a defined channel or bed, i.e., an area which demonstrates clear evidence of the passage of water including but not limited to bedrock channels, gravel beds, sand and silt beds and defined-channel swales. The channel or bed need not contain water year-round. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff devices or other entirely artificial watercourses **unless they are used to convey streams naturally occurring prior to construction.***

**Yet the current "West Bay Yards" proposed development for "Senior Apts" has a SEPA checklist for the proposed development. It asks and answers questions that do not acknowledge the fact that buildings and infrastructure would be erected directly on top of Schneider Creek and its required riparian buffers:**

ACCORDING TO THE SEPA DOCUMENT:

*1. Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.*

***The shoreline of the Puget Sound occurs along the eastern boundary of the subject property. Schneider Creek outflows through a pipe from the City of Olympia into Budd Inlet, part of the Puget Sound, in the southernmost part of the subject property. Schneider Creek is identified by DNR as a Type F fish-bearing stream.***

*2. Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans. Work within 200 feet of the described waters includes construction of buildings, parking lots, paved public paths, and buffer enhancement areas to be replanted with native vegetation.*

***No work will occur directly in the described waters. The proposed project is consistent with the setbacks established by the Shoreline Master Program (SMP)***

**The architectural rendering of the proposed project shows buildings but no evidence of Schneider Creek on or off shore. THIS IS WRONG!**

**This SEPA error, made by the City, must be**

recognized, it must be re-written by the Planning Dept. Schneider Creek goes into Budd Inlet, a degraded water body, with current low oxygen levels. Low oxygen levels are awful for fish, seals, birds, we must preserve Puget Sound, Budd Inlet! Hundreds of neighbors on this West side of Olympia, do not support this "West Bay Yards" , 247 apartment development proposal on West Bay Dr., for many reasons!

Written above, is just some of the many reasons!

Thanks;

L. Riner

2103 Harrison

Olympia, WA 98502

**From:** [Susan Tuzzolino](#)  
**To:** [Nicole Floyd](#)  
**Subject:** Fwd: WBY and our Environment  
**Date:** Friday, February 7, 2025 12:32:24 PM

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----- Forwarded message -----

**From:** Susan Tuzzolino <[immagardenqueen@gmail.com](mailto:immagardenqueen@gmail.com)>  
**Date:** Fri, Feb 7, 2025 at 12:29 PM  
**Subject:** WBY and our Environment  
**To:** <[nfloyd@ci.olympia](mailto:nfloyd@ci.olympia)>  
**Cc:** <[citycouncil@ci.olympia.wa.us](mailto:citycouncil@ci.olympia.wa.us)>

Greetings Nicole,

I am writing to you to request that a **full** Environmental Impact Statement be completed for the proposed West Bay Yards Development Project. I am a city of Olympia Resident (I have lived on the West Side since 1986) and have major concerns about the environmental and human impacts of this massive proposed development on our city.

Please do not count on developers to speak truth to the impacts this project would have on our beloved community/nature and our well being; we need the study!

I understand growth and density, and I also know there can be devastating effects without the proper studies necessary to ensure our environment is healthy for all living things.

With regard for our whole community,  
Susan Tuzzolino  
1524 Giles Ave NW  
Oly WA 98502

**From:** [Kathleen Byrd](#)  
**To:** [Nicole Floyd](#)  
**Cc:** [Dontae Payne](#); [CityCouncil](#)  
**Subject:** Proposed West Bay Yards Development, public comment  
**Date:** Friday, February 7, 2025 10:13:48 AM

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Dear Nicole Floyd, Mayor Payne, and city council members,

I am writing to request that the city required a full Environmental Impact Statement for the proposed West Bay Yards Development.

I am a long-time resident of the City of Olympia and place great value on the natural habitat of our region. The proposed development is massive in scale and will surely have great impacts on the natural environment, with particular impacts on shoreline species and salmon. The area of the proposed development offers the city an opportunity to restore habitat and design for the future for humans and all species to thrive. Please do not be short-sighted and bypass the important Environmental Impact Statement for this area, and considering working with community members and organizations as well as developers to make the best possible plan for the site.

Thank you,

Kathleen Byrd

**From:** [Paris McClusky](#)  
**To:** [Nicole Floyd](#)  
**Subject:** Public comment regarding The West Bay Yards project  
**Date:** Thursday, February 13, 2025 5:56:05 PM

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Principal Planner Nicole Floyd,

The developer of West Bay Yards tried to justify filling in the tidelands, something expressly forbidden in the Shoreline Management Act and Olympia's Shoreline Master Plan, by saying it was for restoration. That didn't work because it violates Olympia's municipal code.

Now, he is planning to use the fact that the site is also listed as a contaminated site under the Model Toxic Control Act (MTCA) and requires considerable cleanup as a reason why fill should be allowed to create uplands.

1. The City of Olympia should not allow the West Bay Yards project to fill in tidelands for the reason that it's necessary to do so to clean up the contamination on site. That is not the intent of the Model Toxics Control Act.
2. The City has more than enough information to show the project will have significant impacts on state and federal lands, and therefore it requires a SEPA/NEPA Environmental Impact statement. It should be done now and include all the projects along Budd Inlet, e.g. the Deschutes Estuary, the dredging of the navigational channel and the cleanup of Budd Inlet.
3. With the Trump administration cutting federal funds to blue states and cities, Olympia must be extra vigilant that it is following all federal laws to avoid losing funds for cause. The case can be made that it is not doing so.

Thank you for reviewing my comments on this matter.

Paris McClusky, MES (*He/Him*)

**From:** [hwbranch@aol.com](mailto:hwbranch@aol.com)  
**To:** [Pamela Braff](#); [Clark Gilman](#); [Robert Vanderpool](#); [Dontae Payne](#); [Yến Huỳnh](#); [Jim Cooper](#); [Dani Madrone](#); [Jackson Ewing](#); [Bob Iyall](#); [Amy Evans](#); [Sarah Tonge](#); [Jasmine Vasavada](#); [Maggie Sanders](#); [Shawn Gilbertson](#); [Jonathon Wolf](#); [alexs@portolympia.com](mailto:alexs@portolympia.com); [Nicole Floyd](#)  
**Subject:** Re: capitol lake budd inlet and science  
**Date:** Wednesday, February 19, 2025 3:24:32 PM

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Greetings Nicole,

Seems to me that, for the reasons stated below, if both projects are moving through the system the one that succeeds will become the template for the other and the cumulative impacts of either need to be considered for both.

Harry

On Wednesday, February 19, 2025 at 01:22:25 PM PST, Nicole Floyd <[nfloyd@ci.olympia.wa.us](mailto:nfloyd@ci.olympia.wa.us)> wrote:

Harry,

Thank you for your continued interest in both of these projects and your support of the environment in Budd Inlet. We will add your comments to both project files. In terms of the difference between the two projects please note that:

1. West Bay Yards Apartments:

- a. This project is required to provide a 30' Vegetation Conservation Area adjacent to and upland of the Ordinary High Water Mark. The project is not required to do restoration of the shoreline beyond that, but they are proposing a significant restoration project that includes creating a more natural beach contour which includes the nearly 40,000 cy of fill as you outline below.
- b. Schneider Creek is more than 300' away from the closest property boundary of the site and is currently in a pipe.
- c. We are working on reviewing the multitude of environmental documents submitted by the applicant regarding their proposal against adopted codes and regulations. This review includes review of the voluntary restoration project the applicant has proposed. The restoration approach has been one of the core issues that has caused the project to be in their 4<sup>th</sup> round of review. Most projects include only 1 or 2 rounds. Your concerns about the benthic community, cumulative impacts, critical habitats for endangered species, and impacts related to littoral drift are all being evaluated as part of this review. Your comments related to the adequacy of the applicants reports are appreciated and will be considered.

2. West Bay View Landing (Senior Housing - just north of West Bay Yards):

- a. This project is required to provide a 30' Vegetation Conservation Area, which they intend on providing. This project does not include any restoration in the aquatic environment (below the Ordinary High Water Mark), nor would that type of restoration be required by code.
- b. Schneider Creek is currently in a pipe that crosses this property. No change is proposed by the applicant.
- c. This project received 1<sup>st</sup> round review comments. The City is waiting for the applicant to resubmit plans, but when they do we will check for code compliance against all applicable regulations.

Although the West Bay Yards project applied first, that does not mean they will gain approval first. The need for additional scientific analysis and study related to the voluntary restoration work has slowed that project down considerably. It is possible the other project (West Bay View Landing) would get through the process faster. Regardless, both will be required to comply with codes. The difference between the two projects in terms of design / restoration is mostly the difference between the applicant's preferred approach where one is proposing restoration work that is not required by code while the other is not. Neither project's design are approved and its is unclear at this point what the final designs will look like, but we will keep you in the loop as designs progress and project review continues.

I hope this clarifies the differences between the two projects. Please let me know if you have further questions or want to discuss.

Nicole Floyd, AICP

Principal Planner|City of Olympia

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**From:** [hwbranch@aol.com](mailto:hwbranch@aol.com) <[hwbranch@aol.com](mailto:hwbranch@aol.com)>

**Sent:** Wednesday, February 19, 2025 11:01 AM

**To:** Pamela Braff <[pbraff@ci.olympia.wa.us](mailto:pbraff@ci.olympia.wa.us)>; Clark Gilman <[cgilman@ci.olympia.wa.us](mailto:cgilman@ci.olympia.wa.us)>; Robert Vanderpool <[rvanderp@ci.olympia.wa.us](mailto:rvanderp@ci.olympia.wa.us)>; Dontae Payne <[dpayne@ci.olympia.wa.us](mailto:dpayne@ci.olympia.wa.us)>; Y n Hu nh <[yhuynh@ci.olympia.wa.us](mailto:yhuynh@ci.olympia.wa.us)>; Jim Cooper <[jcooper@ci.olympia.wa.us](mailto:jcooper@ci.olympia.wa.us)>; Dani Madrone <[dmadrone@ci.olympia.wa.us](mailto:dmadrone@ci.olympia.wa.us)>; Jackson Ewing <[jewing@ci.olympia.wa.us](mailto:jewing@ci.olympia.wa.us)>;

hwbranch@aol.com; Bob Iyall <bobi@portolympia.com>; Amy Evans <amy@portolympia.com>; Sarah Tonge <saraht@portolympia.com>; Jasmine Vasavada <jasminev@portolympia.com>; Maggie Sanders <maggies@portolympia.com>; Shawn Gilbertson <shawng@portolympia.com>; Jonathon Wolf <jonathonw@portolympia.com>; Nicole Floyd <nfloyd@ci.olympia.wa.us>; alexs@portolympia.com

**Subject:** Re: capitol lake budd inlet and science

Dear All,

Whatever gets permitted at West Bay Yards will serve as a template for neighboring developments. We can't allow something in one location and not the location next door unless there are profound differences between the two and in this case there aren't. We must consider the cumulative combined impacts of West Bay Yards and the proposed West Bayview Landing, together.

The "restoration proposal" has been designed to be consistent with the intent and objectives within the City's 2016 West Bay Environmental Restoration Final Report, written by Coast & Harbor Engineering. **The Schneider Creek estuary runs through the middle of the area of development. The report states that the creek "was beyond the scope of the Plan". How can we declare the most important feature beyond the scope of the Plan? This is critical habitat for endangered speccies.**

Construction of the "shoreline restoration" would entail the placement of approximately 39,530 cubic yards of fill over approximately 165,000 square feet of aquatic substrate below the OHWM (ordinary high water mark). Most of this is gravel. Including cumulative impacts we could easily triple these numbers, burying existing benthic communities and significantly modifying the historic shape and structure of the bay.

A VCA (vegetation conservation area) would extend 30 feet landward from the OHWM. The claim is that the VCA would consist of "native coniferous and deciduous trees and shrubs and would screen the shoreline from the upland uses, while also providing enhanced terrestrial habitat functions." Tidal influences, runoff and other unforeseen influences will impact this area of transition. How is such a narrow buffer up next to an enormous building going to supply all these

services?

We can't permit one property owner the right to do something and deny the neighbor the same right. What happens here will determine the future of **Budd Inlet**. In point of fact, the cumulative impacts of East Bay, Capitol Lake and West Bay should be considered together. It's all part of the Deschutes River estuary. There would be many advantages for everyone in doing this.

We'll be talking about this tomorrow on KAOS radio 89.3 FM at noon.

Harry Branch

On Wednesday, February 12, 2025 at 05:52:05 AM PST, [hwbranch@aol.com](mailto:hwbranch@aol.com) <[hwbranch@aol.com](mailto:hwbranch@aol.com)> wrote:

Dear All,

I spoke at last night's City Council meeting. Following is a summary of what I said followed by previous messages on the subject:

My name is Harry Branch. When I moved to Olympia in the mid 1970s, Budd Inlet was a rich, productive ecosystem. As an avid sailor, I can tell you things haven't gone well. A lot of this is due to the loss of nearshore habitat.

We could fix some of this. We could restore nearshore habitat. Unfortunately that's not the current plan. The current plan is to plop eight enormous buildings along West Bay in what once was nearshore habitat. This may be a poor idea for a number of reasons. A science based innovative plan would qualify for a lot of outside funding. We'd have something to be proud of when we're done. Such a plan can only be initiated at a local level. The ball is in our court. Let's not ignore ecological potential.

What could we do at this late stage? The State of Washington grants Cities the authority to adopt a

moratorium on developments under RCW 36.70A.390.

One example... five years ago the Fircrest City Council passed an ordinance placing a 6-month moratorium on mixed use developments in certain areas.

According to a landmark global assessment, biodiversity, the variety of life on earth, is declining faster than at any time in human history. Nature supports our economy, our health and well-being. What happens begins and ends at a local level.

Many questions remain unanswered. Let's take our time here.

(Fircrest specifics: Ordinance No. 1644 adopting a 6-month moratorium on new development applications for certain types of properties in certain locations. The moratorium was passed as an ordinance though a resolution might have worked too. Resolutions are official or formal statements of determination, decision, or opinion passed by a council, commission, or board on matters before that body. Ordinances typically are considered "permanent," although they can be amended. Resolutions often cover matters of a more limited duration.)

In this regard it would it be wise for us to not ignore ecological potential? What do we mean by ecological potential?

1. Let's say we want to build a building near a stream that's confined to a concrete pipe. We have two choices.
2. We can ignore the stream. Being in a pipe in Olympia it doesn't exist.
3. Or we can incorporate the stream into our design. The building might mimic overhanging vegetation or a large boulder. We might incorporate light wells and enhanced eelgrass beds or tide pools.
- 4 We'd want something that would look like Tolmie State Park with buildings plopped here and there as opposed to something that looks like urban intensity with livings things plopped here and there.
5. We have to include this idea from the beginning.

On Thursday, January 2, 2025 at 10:50:11 AM PST, [hwbranch@aol.com](mailto:hwbranch@aol.com) <[hwbranch@aol.com](mailto:hwbranch@aol.com)> wrote:

**Famous orca mom carries another dead calf around Puget Sound**

Dear All,

"By New Years Eve, one of the calves was dead - and being carried around on it's mother's nose".

"That same orca mom, dubbed J35 by scientists and Tahlequah by the Whale Museum in Friday Harbor, made global headlines in 2018 when she carried her baby on her nose for 17 days and 1,000 miles".

It appears that local governing bodies are convinced that their actions have no bearing on this ongoing tragedy and/or that given the Growth Management Act and other laws and acts Federal Agencies have relinquished control to state and local bodies. This is not true.

"The National Environmental Policy Act (NEPA) (42 U.S.C. §4321 et seq.) commits Federal agencies to considering, documenting, and publicly disclosing the environmental effects of their actions. NEPA-required documents must provide detailed information on the proposed action and alternatives, environmental effects of the alternatives, mitigation measures, and any adverse environmental effects that cannot be avoided if the proposal is implemented. Agencies must demonstrate that decision makers have considered these factors prior to undertaking actions."

"Executive Order 11990 entitled Protection of Wetlands, dated May 24, 1977, requires Federal agencies to avoid adversely affecting wetlands wherever possible, to minimize wetlands destruction and to preserve the values of wetlands."

We're told that removing the dam and restoring the estuary are synonymous. Once again, not true. Coastal lagoons are a natural feature. If we're considering the Deschutes River estuary, we have to consider everything out to the salt wedge, i.e. all of South Budd Inlet. Current plans for the shores of East and West Bay are an ecological abomination. Will the costs of removing the dam preclude other work restoring most of the estuary which lies outside the dam in East and West Bay?

The Washington State Department of Enterprise Services (DES) is asking these local governments to sign an Interlocal Agreement (ILA) that financially binds the taxpayers for millions of dollars annually over 24 years. Little public outreach has occurred regarding the costs to the taxpayer. The initial cost of removing the dam is estimated to be between \$137 million and \$350 million. The ongoing costs to local taxpayers of Thurston County, the cities of Tumwater, Olympia, LOTT and the Port of Olympia are predicted to also be significant.

The long term funding mechanism for ongoing dredging and maintenance, if we want to maintain business as usual at the Port, will be paid by Washington State, Thurston County, City of Tumwater, City of Olympia, Port of Olympia, and LOTT in the binding ILA at a cost of \$66,374,000 (includes a 4.5% per year escalation rate). Under the ILA each was assigned a percentage. Olympia 23.1% or \$11,508,000 and the others 15.4% or \$7,673,000 through 2050. Each jurisdiction will extract funds from different sources within their organizations. Some taxpayers would be double or triple taxed (e.g., everyone pays Port of Olympia taxes, we all live in Thurston County or one of the cities and some are LOTT fee payers).

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, requires each Federal agency to “identify and assess environmental risks and safety risks that may disproportionately affect children” and ensure that its “policies, programs, activities, and standards address disproportionate risks to children that result from environmental health risks or safety risks.” How is locating and expanding a hands on children's museum into an area of known dioxin contamination not placing them at a disproportionate risk?

Harry Branch

On Friday, December 27, 2024 at 08:42:23 AM PST, [hwbranch@aol.com](mailto:hwbranch@aol.com) <[hwbranch@aol.com](mailto:hwbranch@aol.com)> wrote:

Dear All,

We really shouldn't ignore ecological potential. What values can we protect, restore and enhance? What guidelines might we follow? Even if all we care about is money, restoration can increase economic value and should be included in any cost/benefit analysis.

The nearshore zone is the narrow area at the interface of freshwater, and marine ecosystem types that rings Puget Sound. The nearshore zone is comprised of beaches, embayments and deltas that are shaped by the interaction of coastal geomorphology and local environmental conditions. The nearshore zone provides important ecological services that have been severely impacted by human activity. It's a strategic focus for Puget Sound recovery.

The Puget Sound Nearshore Ecosystem Restoration Project was a coordinated effort by the U.S. Army Corps of Engineers and the Washington Department of Fish and Wildlife (WDFW) to evaluate "problems and potential solutions to ecosystem degradation and habitat loss in Puget Sound". Completed in 2016, The Puget Sound Nearshore Study proposes a tiered implementation approach. Of the 36 sites identified, three are recommended for immediate

authorization: Duckabush River Estuary, Nooksack River Delta and North Fork Skagit River Delta. Other projects have come to the forefront since including the Deschutes River estuary.

But this is only three or four locations. More than 2,500 miles of beaches, estuaries and river deltas make up Puget Sound's nearshore zone. 35% of historical coastal embayments have been lost. 74% of tidal wetlands surrounding the shores of Puget Sound have been lost. Many shorelines are experiencing multiple stressors and cumulative impacts.

Activities are frequently planned in sensitive areas for reasons other than restoration, activities such as business and real estate development. Work must comply with rules that don't include restoration. We theoretically can't damage a site. We can however allow a site to remain in a damaged state.

Restoration typically involves actions supporting or restoring the dynamic processes that generate and sustain desirable outcomes. In most cases, this includes removing or modifying human-built structures that have interfered with essential ecosystem processes. Process-based restoration is distinguished from species-based restoration, which aims to improve habitat conditions for a single species or group of species. Nearshore Study objectives seek to benefit the entire ecosystem, with associated improvements in the delivery of broader ecosystem functions and qualities.

"The need for the proposed action comes from recognizing that valuable natural resources in Puget Sound have declined to a point that the ecosystem may no longer be self-sustaining without immediate intervention to curtail significant ecological degradation. Impairment of nearshore processes and degradation of ecosystem functions are critical factors in the declining health of Puget Sound. Anthropogenic stressors causing this impairment and degradation include the direct effects of physical alterations to the landscape that have eliminated large expanses of habitat and have disrupted the major ecological processes that create and sustain habitats. The degradation and loss of nearshore ecosystems is of critical importance because the nearshore zone serves as the connection between terrestrial, freshwater, and marine ecosystems. This means that the nearshore zone vitality, resilience, and productivity influence the productivity of the entire Puget Sound Basin. The alterations to the physiographic processes of the nearshore zone directly affect the ecosystem functions upon which humans depend such as fisheries, aquaculture, and recreation."

The Puget Sound Nearshore Study states: "Embayments are significant landscape features that contribute to the complexity and heterogeneity of the Puget Sound shoreline". These include barrier lagoons, "tidal inlets, largely isolated by barrier beaches and with significant inputs of freshwater from streams or upland drainage".

"Wetlands are present in the shallows of many landforms in Puget Sound including barrier estuaries, barrier lagoons, closed marshes and lagoons, and large river deltas. Many of these wetlands have severely declined or been lost due to anthropogenic stressors. Wetlands provide foraging and rearing habitat to a variety of organisms in Puget Sound. Some species use coastal wetlands year-round, and others use the habitat during their transition from freshwater to saltwater. Along the fringes of lagoons (which are typically high salinity marine water), pickleweed (*Salicornia virginica*) and jaumea (*Jaumea canosa*) typically dominate the

vegetation communities. Where freshwater is present, as in barrier estuaries, closed marshes, and large river deltas, three types of vegetated wetland classes are present: estuarine mixing, oligohaline transition, and tidal freshwater. These classes transition from more saline to freshwater as one moves upstream. In the estuarine mixing and oligohaline transition wetlands, salt marsh vegetation such as saltgrasses (*Distichlis spicata*) and pickleweed dominate."

Will the costs of removing the dam preclude other work restoring most of the estuary which lies outside the dam in East and West Bay?

The initial cost of removing the dam is estimated to be between \$137 million and \$350 million. The ongoing costs to local taxpayers of Thurston County, the cities of Tumwater, Olympia, LOTT and the Port of Olympia are predicted to also be significant.

The Washington State Department of Enterprise Services (DES) is asking these local governments to sign an Interlocal Agreement (ILA) that financially binds the taxpayers for millions of dollars annually over 24 years. Little public outreach has occurred regarding the costs to the taxpayer.

The long term funding mechanism for ongoing dredging and maintenance, if we want to maintain business as usual at the Port, will be paid by Washington State, Thurston County, City of Tumwater, City of Olympia, Port of Olympia, and LOTT in the binding ILA at a cost of \$66,374,000 (includes a 4.5% per year escalation rate). Under the ILA each was assigned a percentage. Olympia 23.1% or \$11,508,000 and the others 15.4% or \$7,673,000 through 2050. Each jurisdiction will extract funds from different sources within their organizations. Some taxpayers would be double or triple taxed (e.g., everyone pays Port of Olympia taxes, we all live in Thurston County or one of the cities and some are LOTT fee payers).

If we're considering the Deschutes River estuary, we have to consider everything out to the salt wedge, i.e. all of South Budd Inlet. Current plans for the shores of East and West Bay are an ecological abomination. The City Council and the Port could turn this ship around. Begin with a moratorium on nearshore development.

<https://www.nws.usace.army.mil/Missions/Civil-Works/Programs-and-Projects/Projects/Puget-Sound-Nearshore-Ecosystem-Restoration/>

[https://wdfw.wa.gov/sites/default/files/2019-06/Puget%20Sound%20Nearshore\\_Final-Feasibility-Report-EIS\\_2016\\_0.pdf](https://wdfw.wa.gov/sites/default/files/2019-06/Puget%20Sound%20Nearshore_Final-Feasibility-Report-EIS_2016_0.pdf)

[Puget Sound Nearshore Ecosystem Restoration Project](#)

[Puget Sound recovery](#)

Harry Branch

On Thursday, December 12, 2024 at 04:55:26 PM PST, [hwbranch@aol.com](mailto:hwbranch@aol.com) <[hwbranch@aol.com](mailto:hwbranch@aol.com)> wrote:

The Department of Enterprise Services (DES) website ( <https://deschutesestuaryproject.org/> ) contains plenty of information. The Capitol Lake Environmental Impact Statement (EIS) as well. There's the Port's 2050 Plan, the Destination Waterfront Plan, the County's Habitat Conservation Plan and other Plans, each containing hundreds of pages of documentation and color graphics.

Meanwhile, actual scientific inquiry is hard to find. How are physical parameters like shape, structure and circulation impacting chemical parameters like dissolved oxygen and biological parameters like species composition? Where's the process of observation>hypothesis>test>conclusion? Plants in the lake currently digest nutrients and create free oxygen through photosynthesis prior to the water entering the bay. How, specifically, is getting rid of photosynthesis in the lake going to improve dissolved oxygen levels in the bay?

We're told that dioxin pollution comes in many forms. Current sources are outfalls of culverts, implicating old cone burners, paper manufacturers and the city. The problem is that in Budd Inlet dioxin is mobilized by virtue of being contained in pentachlorophenol (PCP) from wood treatment at Cascade Pole. Dioxin in paper bleaching or the burning of saltwater soaked wood is not mobilized. The chemical can be successfully capped in place. Mobilized contamination, like that from Cascade Pole, needs to be contained or removed. If surface samples in the bay are contaminated, there are Cascade Pole sources. These might be locations outside the slurry wall, leaking through the slurry wall or dredge spoils used as fill.

Surface samples in the bay would be taken with a Van Veen shovel. Why are we taking core samples in the bay? Locating sources on land would require core samples. Why are we not taking core samples on land? 1200 core samples taken in the bay is an excessive number, the Gish Gallup fallacy, introducing too much information (TMI) to dilute and confuse. Taking shovel samples on land and core samples in the bay is backwards.


If sources are not controlled removing the dam and allowing sediments to mix with what's in the bay will create a greater volume of contaminated sediments. Dealing with lake sediments which are clean and bay sediments separately is easier and more affordable.

Various studies tout broad participation by local citizens and organizations, local governments, state agencies, and the Squaxin Tribe. We're informed that removing the dam will improve ecological conditions, restore recreational water access and fishing, provide productive habitat for shellfish and salmon, restore migratory fisheries, advance Orca recovery, improve dissolved oxygen conditions and increase climate resiliency, though exactly how remains a mystery. We're concerned about yard waste, septic tanks, fertilizers and the Capitol Lake dam. There's discussion of stormwater, wastewater permits, best management practices, TMDL allocations, land cover, resources, outreach and tracking. There are numerous graphs in the EIS and no clear explanation of what most of the graphs represent. East Bay has the poorest water quality in Budd Inlet and yet East Bay was omitted from the EIS study area.

What's really afoot here? Perhaps this process is an attempt to divert attention away from planned developments on the West Bay waterfront at West Bay Yards and West Bayview Landing and in East Bay at the proposed Marine Center building and Hands on Children's museum expansion. Another explanation might have something to do with the Port's marine terminal. We're "restoring the estuary". What more do you want?

Of greater concern is that in so many ways we as a society are turning away from science. In the service of our corporate masters we've abandoned the quest for truth.

Read more at: [Garden Bay](#)



**Garden Bay**  
Harry Branch writes about urban estuaries.

Harry Branch

360-890-2949

**From:** [tinaeteric@aol.com](mailto:tinaeteric@aol.com)  
**To:** [Nicole Floyd](#)  
**Cc:** [Sea Level Rise](#); [Susan McCleary](#)  
**Subject:** Re: WBY developer was fined for multiple water quality violations  
**Date:** Saturday, March 8, 2025 2:24:16 PM  
**Attachments:** [1741472451376blob.jpg](#)

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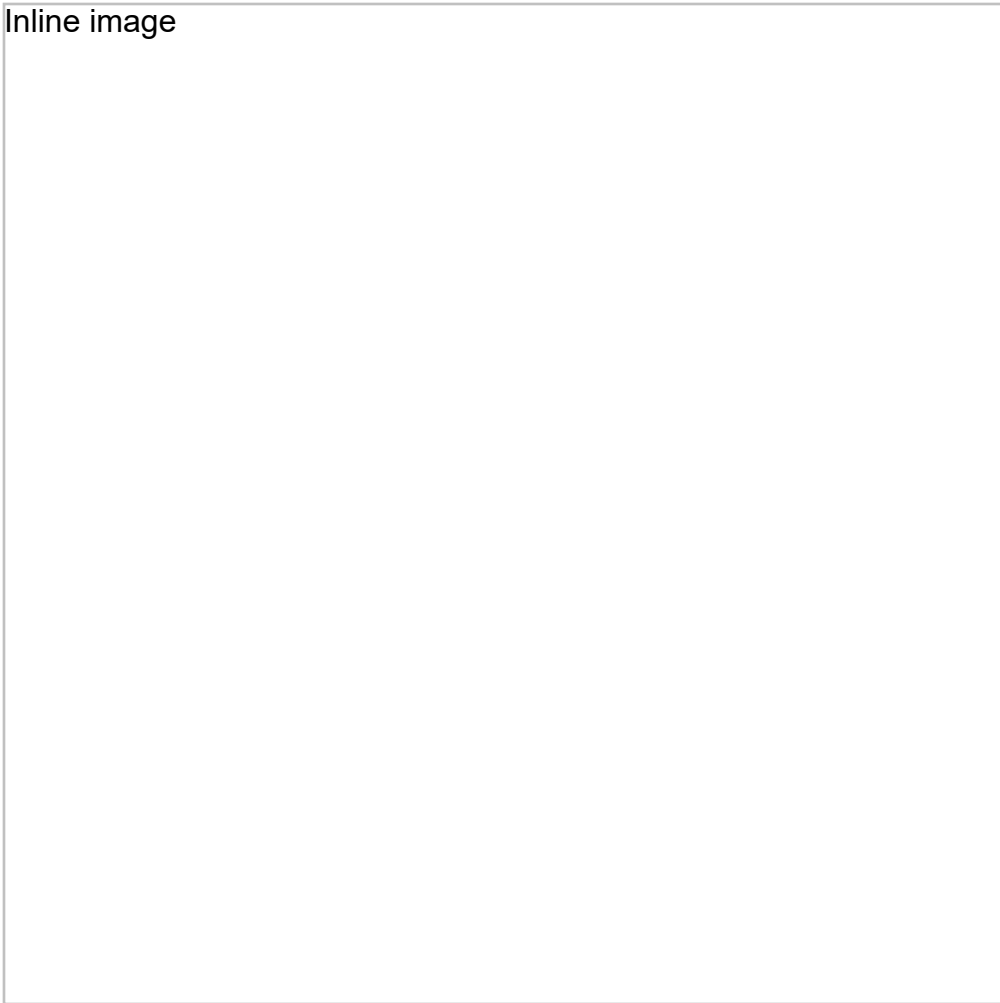
I'd like to share this additional input regarding the second proposed development on West Bay road.

An EIS for the second development is needed to evaluate the development's impact on Schneider Creek as part of the Budd Inlet Shoreline ecological functions and processes. This Salmon Recovery Project link describes the functions and processes of Schneider Creek as part of Budd Inlet shoreline for riparian/salmon ecology. See excerpt below <https://srp.rco.wa.gov/project/150/16801>

"The long history of development along this urban creek has impaired the natural processes that influence instream structure and overall stream health. Stormwater inputs increase the winter storm event flows causing excessive spawning gravel scour and fill. Good groundwater flow in the summer helps to maintain year-round flows, which help rearing conditions. Seasonally high instream flows also contribute to bank erosion and fine sediment input. Although the wide riparian areas provide good shade, low LWD recruitment has created low pool habitat for juvenile rearing. The moderate biotic health as measured by macroinvertebrate diversity is reflective of the stream hydrology and water quality conditions. Two culverts that restrict adult passage at the mouth and one under Bowman road is the only barrier in the creek system. The estuary at the mouth where the culvert discharges into Budd Inlet has been greatly degraded by filling and past industrial activities.

The level of existing development in Schneider Creek warrants enhancement and protection actions rather than restoration and protection[1].

Inline image



On Wednesday, March 5, 2025 at 04:41:35 PM PST, tinaeteric@aol.com <tinaeteric@aol.com> wrote:

Nicole,

Thank you for sharing your knowledge and valuable information. Here are some further thoughts and questions for you.

Concerning EIS and updates needed in assessing Climate Change risks:  
An EIS at this juncture would use state of the art and updated scientific data which the Urban Waterfront plan may not have addressed. Since the early 2000's when the Urban Waterfront planning was done, environmental scientists have warned of more rapid global warming than previously forecast, with unanticipated risks from storms, floods, fires, as well as temperature extremes and fluctuations that affect shoreline, wildlife, and estuary health. Is the Urban Waterfront plan adequately addressing this? Did the 2016 West Bay Restoration Assessment adequately include Sea Level Rise risks and other Climate Change factors that have accelerated since 2016? The West Bay Yards EIS should incorporate data from the EIS of the Deschutes Estuary Restoration Project to evaluate whether the development could negatively impact the intended restorative impact of the DER, as shoreline

developments along the Inlet shoreline and tidal exchange scenarios could spread contaminants from shoreline building materials, disturbed sediment and traffic runoff.

This is also relevant to the second development project on the shoreline, with flooding risk and vehicles that could be submerged resulting further Inlet pollution. Nearby to the second proposed development, Schneider Creek watershed, an environmentally sensitive area, has already suffered damage from the Smyth Landing development design that the City approved and which failed to anticipate creek flow down into the development, resulting in parking lot asphalt collapse and extensive remediation needed. The second development would further cut off the waterway from the inlet and reduce shoreline "violating Olympia's Shoreline Master Program, which has a policy "[t]o ensure, at a minimum, no net loss of shoreline ecological functions and processes." Assessment of impacts of increased traffic of both of the developments and risks to Shoreline runoff, asphalt degradation and collapse, and accidents should be part of assessment and regulation of an updated Urban Waterfront plan. During construction, traffic and degradation of asphalt with heavy vehicles carrying polluting building materials are an additional risk.

Concerning the developer:

I appreciate that you are aware of the developer's past violations which shows their repeated lack of faith by breaching the requirements that were clearly delineated by the State and City of Lacey. The developer's lack of faith in not adhering to agreements with public officials and environmental laws creates risks and harms that could be grounds for a civil suit against involved parties. Would it be possible for you to confer with the legal counsel of the City to determine whether the developer's multiple violations could be a disqualification for approval? I believe that public communications about this project should share this background information about the developer for transparency. Full disclosure of the potential risks and benefits of the development should be available to citizens, including that the developer has egregiously disobeyed agreements in the recent past. Given this pattern of the developer's behavior there is no indication that violations could be prevented in the future. Watching them carefully is clearly not enough to prevent harm. This information is important in order for the public to give informed input, opinions and feedback on the plan.

Thank you for your efforts to engage with citizens during the process to encourage dialogue and information sharing.

Kristina Gryboski, PhD  
Olympia

Kristina,

Thank you for taking the time to write. I will add you as a party of record for this project so that you can stay up to date on the project as it progresses through the application process. Your concerns about this developers track record regarding stormwater permit violations are understood. The City is legally obligated to review the permit application submitted to determine if it meets code. We received the permit application in 2021 and are currently in the 4<sup>th</sup> round of review. In each previous round the City has asked for additional environmental study and reports. The City would not recommend approval unless full code compliance could be determined. We are reviewing a robust set of environmental documents submitted by the applicant that address requirements related to Sea Level Rise, Shoreline Master Program, Critical Area Regulations. The applicant was required to submit a stormwater management plan that must address how stormwater from the project will be treated.

The State Environmental Policy Act (SEPA) is being used as a tool to evaluate environmental impacts that exceed the regulations already in place. We do not typically issue a determination until we have determined if there are any gaps with the requirements already addressed by code. An EIS is one possible outcome from that review. We would issue an EIS if we found the project exceeded the growth strategy of the City (Comprehensive Plan), was not addressed by the zoning code or was in some way outside the scope of development anticipated by the City. This area is designated "Urban Waterfront" and is an area designated for significant commercial and residential growth. It has been designated this way since the early 2000's by the Comprehensive Plan, Zoning Code, and Shoreline Master Plan. The restoration work proposed along the shoreline is intended to be consistent with the 2016 West Bay Restoration Assessment. The documents submitted by the applicant provide quite a bit of analysis related to what their proposal intends to do for habitat function, sea level rise, and existing onsite contamination issues. Additionally, The Department of Ecology is currently engaged with the property owner working on a clean up plan for the site as it relates to contaminated soil.

Your concerns about the proposed project being inconsistent with the Deschutes Estuary Restoration Project are of particular interest to me. I am wondering if you can give some specifics on why you have come to that conclusion. Is there something in the reports they submitted that you find to be in conflict with the estuary restoration project? Based on your comments I suspect you are saying that this particular developer might have plans that show adequate restoration, but you are concerned that they will not follow through on their plans. Is this accurate?

In terms of process, the current application is a land use type of application. This means if they are granted approval they would not be allowed to construct anything,

but instead would gain a document saying their plan is appropriate for the site. This approval would not be granted by the City, but instead the Hearing Examiner would make a decision based on the record provided by the City. The Examiner is obligated to approve the project if it is shown to meet code and deny if shown unable to meet code. If the Examiner approves, it would move to review by the Department of Ecology who will have the final authority for approval. If that is granted, the applicant would then need:

1. US Army Corp of Engineers Permits
2. Department of Archaeology and Historic Preservation Permits
3. Ecology – Model Toxic Control Act approvals – site clean up.
4. Department of Fish and Wildlife Hydraulic Permit Approval
5. City of Olympia building and engineering construction plan approval.

Some of these approvals are only required because of the voluntary restoration project they are proposing (not required to do). The adjacent property (north) is also in for land use type permits to construct several senior living apartment buildings. Their proposal does not include any restoration work beyond re-vegetating the 30' Vegetation Conservation Area (buffer) between the buildings and the shoreline. It is possible this project will gain approvals faster because they are not attempting to perform any in-water restoration work. These two projects often get confused with each other so I wanted to bring this to your attention. If you have comments on that project, I can forward them to the planner working on it. If either of these projects gains approvals through the City and various other agencies there would be regularly occurring inspections that are intended to ensure compliance with the plans submitted. I hear you saying that this developer has failed at compliance in other jurisdictions and we are aware of these violations. If / when we get to the point of inspections on the work performed we would want to pay careful attention to this.

I will add your letter to the group of letters going to the Hearing Examiner and keep you posted on how the project progresses. If you want to provide further input, please send them to me so I can get them into the record.

Nicole Floyd, AICP

Principal Planner|City of Olympia

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**From:** tinaeteric@aol.com <tinaeteric@aol.com>  
**Sent:** Saturday, February 22, 2025 8:02 AM  
**To:** Nicole Floyd <nfloyd@ci.olympia.wa.us>  
**Cc:** Sea Level Rise <searise@ci.olympia.wa.us>; Susan McCleary <smccleary@ci.olympia.wa.us>  
**Subject:** WBY developer was fined for multiple water quality violations

Dear Nicole,

I'm writing to oppose the WBY development for commercial and residential use. An EIS is urgently needed. The City is aware of the Sea Level Rise risks, which further creates risks in shoreline development. Furthermore, the developer has a prior record of flagrant environmental violations despite warnings by officials. According to The Olympian, Brandon Smith, the same developer in the proposed project was fined for multiple water quality violations. **"State officials say that on at least 12 occasions between September 2020 and October 2021 polluted stormwater was discharged from the development site, despite warnings and technical assistance provided by Ecology and the City of Lacey.** (see full article below).

The risks to the environment outweigh the revenue that would be gained for the City. The City of Olympia could be accountable and held liable for lack of due diligence in civil suits for failure to protect human health, and failure to comply with the Shoreline Management Act in cases of future pollution through increased traffic and untreated storm water runoff. The risk of flooding in the parking structures and increased traffic would increase the pollution of Budd Inlet rather than protect it. The development also will undermine the positive environmental impact of the Deschutes Estuary Resoration Project supported by the State. Budd Inlet tidal and sea level changes may create shoreline impacts that disturb the proposed infill and expose wildlife and people to further pollution and past Hardel pollution. There are other more environmentally responsible development areas to alleviate the housing need.

Sincerely,

Kristina Gryboski, PhD

Olympia WA

**The Olympian** Wednesday, January 26, 2022

A Lacey development that initially drew the ire of neighbors has now crossed the line with the state.

The state Department of Ecology announced Tuesday that it has fined Milestone Companies \$72,000 for multiple water quality violations during a year of construction at the Woodbrook Townhomes project in Lacey.

The 124-unit project is on 37th Avenue Southeast, west of College Street Southeast.

Brandon Smith, a managing member of the east Pierce County-based Milestone, declined to comment Tuesday. Milestone has 30 days to appeal the fine to the state Pollution Control Hearings Board, according to Ecology.

- State officials say that on at least 12 occasions between September 2020 and
- October 2021 polluted stormwater was discharged from the development site, despite warnings and technical assistance provided by Ecology and the City of Lacey.

In addition, the company failed to report the violations, or follow best management practices required under its construction stormwater permit, according to the state.

The polluted stormwater included some that was mixed with paint and concrete. Other violations included failing to notify Ecology of high sediment discharges, unprotected inlets, unmaintained silt fences, destabilized soils and discharge of unpermitted septic waste to groundwater.

**From:** [rbh25@comcast.net](mailto:rbh25@comcast.net)  
**To:** [Sophie Stimson](#)  
**Cc:** [Tim Smith](#); [Mark Russell](#); [CityCouncil](#); [Nicole Floyd](#); [Jackson Ewing](#); [Councilmembers](#); [Jay Burney](#); [Debbie Sullivan](#); [Stacey Ray](#); [Kellie Braseth](#); [David Smith](#)  
**Subject:** RE: West Bay Drive Corridor Study  
**Date:** Wednesday, August 21, 2024 4:02:09 PM

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Thank you for your reply.

Patricia C Harper

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**From:** Sophie Stimson  
**Sent:** Wednesday, August 21, 2024 3:54 PM  
**To:** [rbh25@comcast.net](mailto:rbh25@comcast.net)  
**Cc:** Tim Smith ; Mark Russell ; CityCouncil ; Nicole Floyd ; Jackson Ewing ; Councilmembers ; Jay Burney ; Debbie Sullivan ; Stacey Ray ; Kellie Braseth ; David Smith  
**Subject:** FW: West Bay Drive Corridor Study

Hello Patricia,

Your email was forwarded to me and I worked with a member of the Public Works Transportation team, Dave Smith, Project Engineer, to develop this response. I hope it answers your questions. Both the West Bay Yards and West Bayview Landing Senior Living projects have completed a Traffic Impact Analysis (TIA) that documents existing and projected future conditions with each project. These two TIAs supersede and validate the assumptions that were planned in the 2005 West Bay Corridor Study. Improvements along each project frontage will include a combination of bike lanes, planter strips and sidewalks consistent with the City's Engineering Design and Development Standards (EDDS). Beyond what was envisioned in the 2005 West Bay Corridor Study, additional "traffic calming" safety projects will be included with the frontage improvements built by these projects. West Bay Yards will construct raised intersections at new project access points and the West Bayview Landing Senior Living project will construct a compact roundabout at the intersection of West Bay Drive and Schneider Hill to help maintain a new 25 mph speed limit. The City of Olympia Comprehensive Plan defines West Bay Drive as a major collector with a total daily threshold volume of 14,000 vehicles. This was also assumed in the 2005 West Bay Drive Corridor Study. Since the Covid-19 pandemic, traffic volumes on West Bay Drive have decreased by approximately 25 percent to approximately 6,000 daily vehicles. With the addition of these two projects, it is estimated that by 2026 traffic volumes on West Bay Drive will be no greater than 9,100 vehicles and well below the acceptable major collector threshold volume of 14,000 vehicles. Traffic modeling indicates future volumes will also remain below the 14,000 threshold. The TIAs also document that all the intersections on the West Bay Drive corridor will operate at appropriate levels (acceptable levels of congestion and delay).

If you would like a copy of the TIA documents, we can forward them to you. Please feel free to contact me if you have any additional questions. Thank you, Sophie

Sophie Stimson

Transportation Director

Public Works

City of Olympia

360-753-8497

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**From:** [rbh25@comcast.net](mailto:rbh25@comcast.net) <[rbh25@comcast.net](mailto:rbh25@comcast.net)>  
**Sent:** Sunday, August 18, 2024 8:29 PM

**To:** Tim Smith <[tsmith@ci.olympia.wa.us](mailto:tsmith@ci.olympia.wa.us)>; CityCouncil <[citycouncil@ci.olympia.wa.us](mailto:citycouncil@ci.olympia.wa.us)>; [nfloyd@ci.tumwater.wa.us](mailto:nfloyd@ci.tumwater.wa.us); Jackson Ewing <[jewing@ci.olympia.wa.us](mailto:jewing@ci.olympia.wa.us)>

**Cc:** Councilmembers <[Councilmembers@ci.olympia.wa.us](mailto:Councilmembers@ci.olympia.wa.us)>; Jay Burney <[jburney@ci.olympia.wa.us](mailto:jburney@ci.olympia.wa.us)>; Debbie Sullivan <[dsulliva@ci.olympia.wa.us](mailto:dsulliva@ci.olympia.wa.us)>; Stacey Ray <[sray@ci.olympia.wa.us](mailto:sray@ci.olympia.wa.us)>; Kellie Braseth <[kbraseth@ci.olympia.wa.us](mailto:kbraseth@ci.olympia.wa.us)>; Mark Russell <[mrussell@ci.olympia.wa.us](mailto:mrussell@ci.olympia.wa.us)>; Nicole Floyd <[nfloyd@ci.olympia.wa.us](mailto:nfloyd@ci.olympia.wa.us)>; Jackson Ewing <[jewing@ci.olympia.wa.us](mailto:jewing@ci.olympia.wa.us)>

**Subject:** RE: West Bay Drive Corridor Study

But the traffic review they were talking about at the Zoom meeting on the SHAG/Wet Bayview Landing is 20 years old and I think growth on the Olympia's Westside makes this report out of date.

Patricia C Harper

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**From:** Tim Smith <[tsmith@ci.olympia.wa.us](mailto:tsmith@ci.olympia.wa.us)>

**Sent:** Friday, August 16, 2024 4:00 PM

**To:** CityCouncil <[citycouncil@ci.olympia.wa.us](mailto:citycouncil@ci.olympia.wa.us)>; [rbh25@comcast.net](mailto:rbh25@comcast.net)

**Cc:** Councilmembers <[Councilmembers@ci.olympia.wa.us](mailto:Councilmembers@ci.olympia.wa.us)>; Jay Burney <[jburney@ci.olympia.wa.us](mailto:jburney@ci.olympia.wa.us)>; Debbie Sullivan <[dsulliva@ci.olympia.wa.us](mailto:dsulliva@ci.olympia.wa.us)>; Stacey Ray <[sray@ci.olympia.wa.us](mailto:sray@ci.olympia.wa.us)>; Kellie Braseth <[kbraseth@ci.olympia.wa.us](mailto:kbraseth@ci.olympia.wa.us)>; Mark Russell <[mrussell@ci.olympia.wa.us](mailto:mrussell@ci.olympia.wa.us)>; Nicole Floyd <[nfloyd@ci.olympia.wa.us](mailto:nfloyd@ci.olympia.wa.us)>; Jackson Ewing <[jewing@ci.olympia.wa.us](mailto:jewing@ci.olympia.wa.us)>

**Subject:** RE: West Bay Drive Corridor Study

Hello Patricia,

Thank you for your comments. Comments have been forwarded to the City's permit review team as they review the projects for compliance with City codes. Both the West Bay Yards and West Bayview Landing/SHAG projects have Traffic Impact Analysis reports submitted to the City for review by the City's Transportation Engineering Team. If you have further questions, please contact the staff project review coordinators below.

West Bay Yards: Principal Planner Nicole Floyd; [nfloyd@ci.tumwater.wa.us](mailto:nfloyd@ci.tumwater.wa.us). 360.570.3768

West Bayview Landing Senior Living: Associate Planner Jackson Ewing; [jewing@ci.olympia.wa.us](mailto:jewing@ci.olympia.wa.us). 360.570.3776

Regards,

**Tim Smith, AICP | Interim Director**

City of Olympia Community Planning & Development Department

P.O. Box 1967 | 601 4th Avenue E | Olympia, WA 98507-1967

(360) 570-3915

[tsmith@ci.olympia.wa.us](mailto:tsmith@ci.olympia.wa.us)

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**From:** CityCouncil <[citycouncil@ci.olympia.wa.us](mailto:citycouncil@ci.olympia.wa.us)>

**Sent:** Friday, August 16, 2024 2:20 PM

**To:** [rbh25@comcast.net](mailto:rbh25@comcast.net)

**Cc:** Councilmembers <[Councilmembers@ci.olympia.wa.us](mailto:Councilmembers@ci.olympia.wa.us)>; Jay Burney <[jburney@ci.olympia.wa.us](mailto:jburney@ci.olympia.wa.us)>; Debbie Sullivan <[dsulliva@ci.olympia.wa.us](mailto:dsulliva@ci.olympia.wa.us)>; Stacey Ray <[sray@ci.olympia.wa.us](mailto:sray@ci.olympia.wa.us)>; Kellie Braseth <[kbraseth@ci.olympia.wa.us](mailto:kbraseth@ci.olympia.wa.us)>; Mark Russell <[mrussell@ci.olympia.wa.us](mailto:mrussell@ci.olympia.wa.us)>; Tim Smith <[tsmith@ci.olympia.wa.us](mailto:tsmith@ci.olympia.wa.us)>

**Subject:** RE: West Bay Drive Corridor Study

On behalf of the Olympia City Council, thank you for your comments. I will forward them on to all

Councilmembers and appropriate staff. By way of copy I will ask staff to respond to your concerns.

Susan Grisham (*she/her*)

Assistant to the City Manager

Legislative Liaison

City of Olympia | P.O. Box 1967 | Olympia WA 98507

360-753-8244 | [sgrisham@ci.olympia.wa.us](mailto:sgrisham@ci.olympia.wa.us)

[Sign Up for a City Newsletter](#)

**Please note all correspondence is subject to public disclosure.**

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**From:** [rbh25@comcast.net](mailto:rbh25@comcast.net) <[rbh25@comcast.net](mailto:rbh25@comcast.net)>

**Sent:** Thursday, August 15, 2024 1:40 PM

**To:** publicworks <[publicworks@ci.olympia.wa.us](mailto:publicworks@ci.olympia.wa.us)>

**Cc:** CityCouncil <[citycouncil@ci.olympia.wa.us](mailto:citycouncil@ci.olympia.wa.us)>; cpdinfo <[cpdinfo@ci.olympia.wa.us](mailto:cpdinfo@ci.olympia.wa.us)>

**Subject:** West Bay Drive Corridor Study

To Whom it May Concern:

My name is Patricia C Harper and I use West Bay Drive almost daily to travel to downtown Olympia from my home on Cooper Point. I have been following the latest plans for developing properties on West Bay Drive. My concern is the added traffic such large projects as SHAG and West Bay Yards will bring to the area. Since the last study was done in 2005 there has been significant growth on Olympia's westside.

The arterial into town consisting of Elliott Street, Crestline, Raft Hill, Schnider Hill and West Bay Drive has become much busier in recent years and with the traffic circles on Harrison Avenue, backups occur daily. I believe the plans to improve West Bay Drive in conjunction with these projects are inadequate considering the impact of nearly 600 more housing units in an already busy traffic corridor.

Please consider doing a new traffic study on the West Bay Drive Corridor before any developments are approved.

Thank you for all you do for the city of Olympia.

Sincerely,

Patricia Carol Harper

2418 Dublin Drive NW

Olympia, WA 98502

[rbh25@comcast.net](mailto:rbh25@comcast.net)

360-866-1106

**From:** [Nicole Floyd](#)  
**To:** [Krag Unsoeld](#)  
**Subject:** RE: West Bay Yards 4th round public comment  
**Date:** Thursday, February 13, 2025 4:38:00 PM

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Craig,

It looks like you have not previously commented on this project. I have added your letter to the project file, and made you a party of record. This means you will receive email updates as the project moves through the permit process. Here are some responses I have given to specific questions today that you might find relevant:

1. Is housing allowed? Yes, the Comprehensive Plan designates this area as Urban Waterfront which is specifically intended for downtown and West Bay and encourages a variety of high intensity land uses including housing. The Urban Waterfront Zone requirements are being used to review for compliance. The Shoreline Master Program designates this area as Urban Intensity which specifically states residential and commercial development is permitted.
2. Is the City doing environmental Review? Yes, we are reviewing a robust set of environmental documents submitted by the applicant (available to you online) against codes and regulations. SEPA is typically used in this capacity to address issues that exceed what is covered by code. We will not issue a SEPA determination until we have determined what gaps (if any) exist. The code review will shape the SEPA Determination.
3. Does the proposal need to comply with State and Federal regulation? Yes. The U.S. Army Corp of Engineers will require a permit for the restoration work proposed and the City is in coordination with them regarding this project. The State also has permit requirements related to toxic clean up. The Department of Ecology is reviewing these permit documents as well as conducting their own permit process.
4. Does the City review for Shoreline Master Program and Shoreline Management Act compliance? Yes. We are currently reviewing for compliance and would not recommend approval unless we could determine the project meets all applicable regulations. Plans have been routed to outside agencies for concurrent review as well including WDFW, affected Tribes, Department of Ecology etc.
5. Environmental Impacts: We have the Shoreline Management Act, Shoreline Master Plan, and City's restoration plan for West Bay that we are using for consideration of this project. One thing to keep in mind is that putting clean fill over contaminated soils is a scientifically supported approach to restoration. In this application they are proposing

to add fill that will change the slope of the beach to a more natural one. This would include a substantial amount of new aquatic plants etc. We are reviewing this approach against Best Available Science and adopted regulations. The applicant's reports and plans have also been routed to other agencies with expertise like Washington Department of Fish and Wildlife, Department of Ecology and the affected tribes. The project is required to clean up toxics onsite and has applied for permits through the toxics division of Ecology. Ecology and the City are in coordination with this review and we are taking this seriously.

6. Traffic: The project is being reviewed by the City's traffic engineer for compliance with regulations. One thing I found interesting over the course of review is that quite a bit of study was done on how much growth/traffic was appropriate after the big fire in 1997. In the early 2000's the city embarked on a major study of this road and evaluated anticipated growth along the road. This study shaped the comprehensive plan strategy for the area, zoning code, and created specific road standards for West Bay Drive. There is no doubt – there will be more cars. What I found interesting is that this level of development / cars that were expected to be added to this road with the scale of development anticipated. I cannot recall the exact number, but it was quite a lot. That scale of development has not yet occurred, this is one of the first projects proposed in this area. I can get you a copy of that report if you are interested. Our review will be focused on ensuring the appropriate street improvements are included in plans and that the project complies with the multi-modal approaches called for.
7. Do the submittals address wave action? Yes.
8. Who pays for Staff time to review plans? The applicant pays for the City Staff review of plans through their permit fees.
9. You asked about sea level rise – the city has regulations that require applicants to build 2' above base flood elevation. To achieve this, the applicant proposes to add 2-3' of fill to the entire site raising it up. Then, the ground floor is proposed to be parking – not habitable space.

Please let me know if you would like more information about the project, the review process, or the documents available for review.

*Nicole Floyd, AICP*

Principal Planner | City of Olympia

601 4<sup>th</sup> Ave E. | Olympia, WA 98501  
Ph: 360.570.3768 | Fax: 360.753.8087  
Web: olympiawa.gov

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**From:** Krag Unsoeld <krag.unsoeld@gmail.com>  
**Sent:** Thursday, February 13, 2025 3:08 PM  
**To:** Nicole Floyd <nfloyd@ci.olympia.wa.us>  
**Subject:** West Bay Yards 4th round public comment

City of Olympia  
Community Planning and Development Department  
Attn: Nicole Floyd  
601 4th Ave E  
Olympia, Washington 98501

Dear Ms. Floyd:

I am writing this email to object to the West Bay Yards development plan.

I completely agree with the comments recently submitted by the Green Cove Defense Committee, Olympia Ecosystems (OE), and OE's lawyer, David Bricklin. They make it very clear that the city needs to apply a conditional use permit to the entire project, the developer cannot use fill to create new uplands, and any review of the proposal for compliance with city codes needs to wait until an Agreed Order defining remediation under the Model Toxics Control Act has been issued by the Department of Ecology. Only if these steps are taken will the public interest be insured and will the project be proceeding in compliance with federal, state and local development codes and standards.

One of my biggest concerns is having the city rezone a contaminated industrial site as fit for residential development. Unfortunately, this is not the first time the city has done this. It needs to stop now. There needs to be both a state and national environmental policy act (SEPA/NEPA) review of this project before any more money and staff time is wasted.

One of the main issues with this project comes down to an identity crisis. Just as the Port of Olympia continues to lose money hand over fist by subsidizing Weyerhaeuser log exports through as it pretends to be a deepwater port, the city of Olympia wants to allow waterfront developments that require the infrastructure and services that can be found in Seattle or Tacoma. West Bay Drive in Olympia is not ready for the traffic associated with a development of this magnitude.

Finally, what types of provisions are being considered to prepare for sea level rise?

Sincerely,

Krag Unsoeld  
2211 Walnut Rd NW

Olympia, WA 98502

**From:** [Davenport Moore](#)  
**To:** [Nicole Floyd](#)  
**Subject:** Re: westbay yards  
**Date:** Saturday, March 1, 2025 7:38:09 AM

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Thank you for your thoughtful, detailed response. I am now better informed about how to provide input. I hope the City Site Plan Review Committee allows public comment. I have read the Comprehensive Plan and the Transportation Plan and I know that both are works in progress and can be influenced by public action over time.

I want to clarify that I am totally in favor of density and multi use building. My favorite example of this is in Juanita, North east Seattle where there is a huge several block multi use development that is aesthetically pleasing to the eye, is four stories and has pleasant landscaped walkways throughout the ground floor businesses. It looks like a neighborhood with some units having views of Lake Washington. There are some parts of Dupont as a planned city that could have been better designed with more housing created over the businesses.

Given the housing crisis in Olympia I believe this should be foremost in the mind of planners when considering the target population for the development to include workforce housing. I was further concerned that the architect couched his response about public access to parking for the shoreline with a comment "we'll have to see what the 'performance' is" by public users. A clear indicator of exclusive use intent - not true public access. I was concerned that questions about possible rental or purchase of units was answered with "we'll have to see what market conditions are." rather than clear responses about existing market conditions and target population for residents. .

Thank you for the offer to speak to a planner - I don't feel the need for that and am well aware that my expertise is not in the technical language needed to craft a legally persuasive argument for my opinions and observations. What I have is the voice of a concerned citizen and planners can take it seriously, or dismiss it as they see fit. I will depend on the legal actions being taken already that align with my views.

Susan

On Fri, Feb 28, 2025 at 1:38 PM Nicole Floyd <[nfloyd@ci.olympia.wa.us](mailto:nfloyd@ci.olympia.wa.us)> wrote:

Susan,

Your interest and passion is meaningful and I want to make sure you have all the necessary information to help you implement change where it can occur. A few things you may want to know include:

1. Design Review Board Role: The scope of the Design Review Board is limited to the building design and the specific design standards that apply. They could have taken a more authoritative role, but the scope of their review is limited. They do not have any authority over if this project gets approved or not, nor the bulk of topics you are concerned about.

2. Requirements: The city cannot require things outside code. There is no requirement to provide housing at specific rates. There are incentives, but they either do not apply in this area or they are not being pursued by the applicant. There is no tax deferral deal – this area is outside of the Multi Family Tax Exemption Area.
  
3. Code Compliance: The project will be reviewed for code compliance by the City’s Site Plan Review Committee. This is an 18 person team of subject matter experts that all review for specific code requirements. This includes topics like traffic, views, building height, height bonuses, sea level rise, shoreline regulations, landscaping, etc. The City would be legally obligated to recommend approval if it meets all applicable codes and ordinances and deny if not. I am a member of the Site Plan Review Committee. Our role is to review the plans submitted by the applicant to ensure they meet the law.

In part, it sounds like you would like to see changes to the City’s growth strategy. It sounds like you are not particularly supportive of the idea of dense mixed use buildings in this area. If so, the best approach would be to request a change to the Comprehensive Plan. The Comprehensive Plan sets the growth strategy and currently calls for this type of development in this location. We are currently doing a periodic update of the Comprehensive Plan. The growth strategy for West Bay Drive and other adjacent areas like Downtown are not proposed to be changed but discussion with a long range planner about the future growth strategy might be helpful. I can connect you to one if you would like.

Please let me know if you would like more information about any of the topics identified. Your frustration is not unreasonable, I will do what I can to assist you.

Nicole

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**From:** Davenport Moore <[sdavenportmoore@gmail.com](mailto:sdavenportmoore@gmail.com)>  
**Sent:** Friday, February 28, 2025 7:07 AM  
**To:** Nicole Floyd <[nfloyd@ci.olympia.wa.us](mailto:nfloyd@ci.olympia.wa.us)>  
**Subject:** westbay yards

Ms Floyd,

After seeing the ineffective examination process conducted by the review board of the Westbay Yard project I am lending support to Olympia Ecosystems in the suit to demand an environmental review process. The next detailed design review needs to be more assertive to

demand a percentage of affordable workforce housing with no tax deferral "deal". Allowing the impacts on the neighborhoods and businesses adjacent would be compensation enough to the developers.

Additional concerns continue to be:

-traffic impact with no real land/property for widening West Bay drive and the poor visibility merge/entry from Elliot n

-view theft of drivers on Westbay, existing homes and business unfortunately positioned behind the behemoth development

-lack of questioning 6 story option rather than demanding justification for the additional height.

-"phasing" approach to construction that assumes neighbors and businesses will be inconvenienced for several years.

-King tides that have already flooded downtown Olympia - shortsightedness for underground parking and first floor of the buildings. Has the planning department not considered Climate change sea level rise impact on a project at or below the shoreline?

-fill on the shoreline and no mention of material to be used or use of native plants for "landscaping" the woefully inadequate 30' green line

-unattractive use of "industrial" design - that creates what looks like a business complex - not a residential neighborhood

- I second the few comments added by the review including reworking the huge elevator boxes, adding color for interest, the potential for back up on the drivearound if any businesses create wait lines, no proposed affordable units, although all of these assume this project is moving forward.

I don't need a response. Thank you for considering my comments.

Sincerely,

Susan Davenport

115 Sherman St.NW

Olympia 98502

360-970-6302

|

**From:** [tinaeteric@aol.com](mailto:tinaeteric@aol.com)  
**To:** [Nicole Floyd](#)  
**Cc:** [Sea Level Rise](#); [Susan McCleary](#)  
**Subject:** WBY developer was fined for multiple water quality violations  
**Date:** Saturday, February 22, 2025 8:01:49 AM

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Dear Nicole,

I'm writing to oppose the WBY development for commercial and residential use. An EIS is urgently needed. The City is aware of the Sea Level Rise risks, which further creates risks in shoreline development. Furthermore, the developer has a prior record of flagrant environmental violations despite warnings by officials. According to The Olympian, Brandon Smith, the same developer in the proposed project was fined for multiple water quality violations. **"State officials say that on at least 12 occasions between September 2020 and October 2021 polluted stormwater was discharged from the development site, despite warnings and technical assistance provided by Ecology and the City of Lacey.** (see full article below).

The risks to the environment outweigh the revenue that would be gained for the City. The City of Olympia could be accountable and held liable for lack of due diligence in civil suits for failure to protect human health, and failure to comply with the Shoreline Management Act in cases of future pollution through increased traffic and untreated storm water runoff. The risk of flooding in the parking structures and increased traffic would increase the pollution of Budd Inlet rather than protect it. The development also will undermine the positive environmental impact of the Deschutes Estuary Resoration Project supported by the State. Budd Inlet tidal and sea level changes may create shoreline impacts that disturb the proposed infill and expose wildlife and people to further pollution and past Hardel pollution. There are other more environmentally responsible development areas to alleviate the housing need.

Sincerely,

Kristina Gryboski, PhD

Olympia WA

**The Olympian** Wednesday, January 26, 2022

A Lacey development that initially drew the ire of neighbors has now crossed the line with the state.

The state Department of Ecology announced Tuesday that it has fined Milestone Companies \$72,000 for multiple water quality violations during a year of construction at the Woodbrook Townhomes project in Lacey.

The 124-unit project is on 37th Avenue Southeast, west of College Street Southeast.

Brandon Smith, a managing member of the east Pierce County-based Milestone, declined to comment Tuesday. Milestone has 30 days to appeal the fine to the state Pollution Control Hearings Board, according to Ecology.

State officials say that on at least 12 occasions between September 2020 and October 2021 polluted stormwater was discharged from the development site, despite warnings and technical assistance provided by Ecology and the City of Lacey.

In addition, the company failed to report the violations, or follow best management practices required under its construction stormwater permit, according to the state.

The polluted stormwater included some that was mixed with paint and concrete. Other violations included failing to notify Ecology of high sediment discharges, unprotected inlets, unmaintained silt fences, destabilized soils and discharge of unpermitted septic waste to groundwater.

**From:** [Kate Benkert](#)  
**To:** [Nicole Floyd](#)  
**Subject:** West Bay Yards - a couple questions  
**Date:** Wednesday, February 26, 2025 11:57:48 AM

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Hello,

I have a couple West Bay Yards design questions and also a couple questions which are for the City.

I have looked at the materials provided in the early February email about the 4th round of review but wasn't able to read the design figures that well on-screen.

My design questions are:

1) Is there public parking designated for those wanting to access the shoreline and trail? If not, where is parking available?

2) Does the project design have methods to reduce bird strikes against the many windows? This is a concern as many birds fly along the bay and a well-lighted set of structures will be confusing at night, while the daytime window glare will cause birds to fly at windows thinking they can fly through that space.

For the City, a couple questions, one (#3) of which I brought up on a prior zoom a couple years ago early in the process.

3) I'm still wanting to understand how the City will handle the increased traffic on West Bay Drive and continue to insure easy access for westside neighborhoods that use Garfield and Brawne Avenues to reach West Bay Drive, especially during morning and evening commutes. Will stop signs be added so there is a break in traffic such that we can safely drive onto West Bay drive? Speed bumps? Lowered speed limit (too much speeding on West Bay now!)?

4) Construction noise: although this is in the future, is there an estimate from the plans as to how many months are needed to complete the pile driving for the first phase of development (I read where total build-out is 15 years)? During what hours is pile driving allowed per City regulations?

5) There will be a large increase in traffic on West Bay during construction to transport the large amount of fill needed to bring the project up 14+ feet to grade. Is there an estimate of the expected truck traffic increase/daylight hour? What is the expected duration of hauling fill to the project (6 months? 2 months?)?

6) Is the the repair/repaving of West Bay Drive post-construction part of the City planning for this development? Is there a time-frame for when it would occur?

My final comment: I remain dismayed that the property tax exemption for West Bay Arms will increase my property taxes again. Being on a fixed income, this is not a trivial concern. For the increased taxes I will get to be impacted by short-term by pile driving noise, increased

traffic, etc; long-term by increased West Bay traffic and undersized roads, making it difficult to exit the neighborhood. I seriously recommend that the City consider a property tax increase exemption for the next 8 years for those neighbors in the impact zone of the development. I think this would be a good way to balance urban development tax breaks with the impacts to the surrounding neighborhoods.

Can you add my email to the list to receive updates on West Bay Yards? I have requested in the past and received updates for a short while and then seemingly dropped off the list. Thank you.

I appreciate you taking the time to answer my questions. I also apologize if some of this information and answers are in the documents and I have missed it.

Sincerely,

Kate Benkert  
333 Sherman St NW  
Olympia, WA 98502  
360-970-6064

**From:** [PG Coon](#)  
**To:** [Nicole Floyd](#)  
**Subject:** West Bay Yards & West Bayview Landing  
**Date:** Thursday, June 20, 2024 10:58:36 AM

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Dear Nicole,

I live and commute on the west side of Olympia.

I am fairly well informed. However, I didn't see all the information regarding the development of the 'mixed-use' buildings planned for West Bay Yards and West Bayview Landing.

I do not understand how a small city like Olympia would even consider approving any kind of building along the water's edge.

Traffic issues alone have already increased with all the cul-de-sacs up on the hill.

Please don't let the building continue. Save us all from the depressing influx of ugly buildings that will block the view, devastate nature and consider RESTORING the shoreline.

The possibility of increased tidal flow from the removal of the 5th Ave dam will also impact that entire area.

Please try to understand how building up will negatively impact the future wetlands that could prosper.

Thank you for adding me to the email list for future details.

Patricia G. Coon

**From:** [Esther Grace Kronenberg](#)  
**To:** [Nicole Floyd](#)  
**Cc:** [CityCouncil](#)  
**Subject:** West Bay Yards 4th review comments  
**Date:** Wednesday, February 12, 2025 7:07:00 PM

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The Green Cove Defense Committee submits the following comments on the 4th round review of the West Bay Yards project.

We believe this project was flawed from its inception because it has not followed proper legal processes. Instead of evaluating if this was an appropriate site for people to live on, it was first determined there would be housing regardless of the sensitive extremely precarious nature of the site, its contaminated past or the impacts on the impaired ecosystem of south Budd Inlet.

WBY proposes to build on a former heavy industrial site with legacy toxins on the shoreline of federally protected waters with endangered species reviewed by portions of the federal government. Budd Inlet is currently under a cleanup order by the Department of Ecology. The Deschutes Estuary Restoration is in process. Federal navigation channels border this site. The Schneider creek estuary abuts it. This estuarine ecosystem is complex and deserves a complete environmental review. Yet there still has not been consultation with federal agencies and there appears to be no indication that the City is planning to do an EIS. That, unfortunately, is not surprising, as the City has not done an EIS for any project in at least the last 25 years according to the City's response to a public records request by this commenter. The City's change in zoning of the site from industrial to residential in itself required an EIS, especially since the zoning change was before the site was listed under the Model Toxics Control Act. Is it acceptable to zone a toxic industrial site as suitable for housing without a thorough environmental review? The City would have us think so.

The failure of the city to require an EIS is another example of how the cleanup of Budd Inlet has been piecemealed, a practice specifically prohibited under SEPA.

The project also appears to violate federal law by proposing to fill in tidelands that are federal property. Under what authority does the City claim jurisdiction to zone federal land, the proposed fill, for housing? Similarly, under what authority does the City claim to change the OHWM which is a federal designation? WBY relocates the OHWM using fill, and in so doing moves the proposed building footprints into the navigable waters of Budd Inlet, which could be regarded as theft of federal property by fraud since this property is under the legal jurisdiction of the Army Corps of Engineers as a navigable water of the United States.

Our state depends on federal monies to implement federal laws. SEPA was a state law to implement the provisions of NEPA, the National Environmental Policy Act, for the state of Washington, and the Department of Ecology, according to its SEPA coordinator, is under federal contracts to administer SEPA, the Clean Water Act and NEPA among other federal laws in this state. Violations of federal contracts and

delegations of authority expose the State to losing federal monies. **Especially under the current Trump federal administration which is only too happy to cut funds to blue states and their cities, and which has refused to give federal funding to states in direct violation of a federal judge's order, the City should be extra vigilant that it is following all applicable federal law. It clearly is not in this case in a number of different ways which could result in the loss of the City's federal funding for cause.**

In fact, the City has allowed this project to go forward without ANY SEPA review. At this point, the developer has spent hundreds of thousands of dollars, the City has wasted hundreds of hours of staff time and the project has been allowed to "snowball" forward, again contrary to established SEPA law.

Further, building on the shoreline here is a flagrant violation of the City's Shoreline Master Plan and the State Shoreline Management Act. You cannot fill tidelands to create new uplands, not for restoration, not to clean up contamination that exists on the site and not for housing. If this project sets such a precedent, how will the city deny other shoreline owners from claiming the same privilege when they want to "restore" or clean up waste by extending a beach?

Filling in tidelands also buries existing nearshore aquatic habitat of forage fish which require small gravel sands washed down from streams. The project does not appear to consider from where sediments necessary for forage fish habitat will come from after the initial sand is washed away. The law requires no net loss of habitat. Does the project guarantee this?

Also, the potential for wetland restoration is destroyed and the extra impervious surfaces will further limit the recharge of groundwater, which is found just 4 feet below the surface.

The 11/24 geotechnical report by Sage outlines serious problems with building anything on this site, let alone five massive buildings. As we know from the collapse of the 4th Ave bridge in the last earthquake, this site is subject to liquefaction, to tidal influence and is situated above a fault line. During the construction of the 4th Ave bridge after the 1949 quake, engineers drilled down through more than 900' of unconsolidated soils, and the replacement bridge had similar problems. The geotechnical analysis here reports more of what is unknown than known.

- "1) The extent of the existing rip rap revetment is unknown.
- 2) A significant portion of the revetment height becomes submerged during tidal cycles, resulting in the need for dewatering to remove the revetment.
- 3) The extent of wood and other obstructions or deleterious materials is unknown."

What is known is that "the site is underlain by liquefiable soil, soft soil, and wood debris" that makes it a highly precarious and risky site to put multi-story buildings on, even with extensive site-wide ground improvement and foundation piles.

The geotechnical report states:

-Seismically induced soil liquefaction could cause 5 to 10 feet (ft) of lateral spreading. This degree of ground displacement is more than shallow or deep foundations, alone, typically can withstand. Without mitigation, lateral spreading could result in structural collapse.

-Wood debris in site soils could lead to continued long-term settlement, which could cause rigid site features to crack or tilt. Site-wide GI could mitigate this risk.

-Without GI or pile support, wood debris and soft soil are likely to cause significant static settlement of heavily loaded shallow foundations.

Further, has the City considered the impact of wave action from the large ships coming into the Port on the stability of the proposed highly saturated fill without a cofferdam to hold it in? How will the fill proposed for this project resist these waves?

Compounding the obvious unsuitability for massive buildings on such unstable soil is the fact that these soils are contaminated enough to be on Ecology's MTCA contaminated site list despite previous claims cleanup was complete, and will be under an agreed order with the Department. Plans to cap deadly toxins on a site subject to tides, waves, flooding and earthquakes are as uncertain and perilous as building a massive development there, and cannot be guaranteed to protect the people who will be living on top of these contaminated soils.

WBY's intent to cite OMC 18.20.837, where fill waterward of the OHW mark is allowed for "clean up of contaminated sites" for the "intended use or activity" should not be interpreted by the City to allow the filling in of federal waters to build a project which risks the public health and the health of South Puget Sound. MTCA was not intended to be used as a ploy for building on land protected by the SMA and under the jurisdiction of federal agencies without any consultation or NEPA review. This is merely another attempt by this developer and his allies in the City to bypass laws intended to protect the environment on which we all depend.

As the Green Cove Defense Committee, we have seen similar actions by the City regarding the Green Cove Park Project in West Olympia. The City supported the developer in his plans to build housing from the time the area was annexed into the City in 2006 until even after it was placed on the MTCA list in 2020 knowing that the Green Cove site was an unregulated toxic dump and contaminated industrial site underlain with unstable fill of dubious origin. Years later, those housing plans are no closer to implementation than they were nearly 20 years ago, and the hazardous and unstable nature of the site will make any housing there unlikely for years to come.

The City has spent considerable public funds and resources to advocate and advance WBY and Green Cove in the name of providing housing. Yet, neither of these projects would provide the affordable housing that the City actually needs, and neither of them could even be guaranteed to provide housing that is safe or sustainable.

We ask again that the City fulfill its legal obligations and call for an EIS for the West Bay Yards project and all other projects that are connected actions with cumulative impacts that have been proposed around south Budd Inlet, including the Deschutes Estuary Project, the dredging of the navigable channel in Budd Inlet and the cleanup

of all the industrial sites around Budd Inlet, etc.

Jerry Dierker and Esther Kronenberg  
The Green Cove Defense Committee

**From:** [David Calvert](#)  
**To:** [Nicole Floyd](#)  
**Subject:** West Bay Yards  
**Date:** Monday, February 10, 2025 10:10:34 AM

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Wanted to contact with regard to the West Bay Yards.

Way too much for the area and access-egress.

Putting a 500 unit complex or anything close to it in the proposed location is mind boggling. Being right on the shore is incredibly risky given lack environmental impact studies.

Now let's talk traffic on an aged two-lane road with no real ability in this location to mitigate at any cost. As you know at higher traffic times of day the traffic awaiting egress off Westbay to Harrison Ave at the roundabout is usually backed up. This is basically one way in and one way out. If you add another 500-1000 vehicles using this road 2-3 times a day or more. It will be a nightmare.

For emergency vehicles I would think the added potential emergency responses needed on such a congested area would make response times of question especially when trying to get a patient off Westbay to Harrison. The vehicles would literally have nowhere to go to make room for the emergency vehicles. Adding precious time to help.

Given just the concerns this project presents, mitigations that would be needed that can't really be done in any quality way. And in a way going forward that would protect a jewel in our community. Because despite what a new apartment complex looks like day one most don't remain that way unfortunately

I understand our community needs affordable housing. Unfortunately, my strong feeling is that these particular units on West Bay will not be low or even most middle-income folks price range.

Thus, not helping in any way with housing shortage in our community for those who truly need it

Every one of those units will put extra stress on public services from Schools to City services. And ultimately further negatively impacting the area's ability secure truly affordable housing to those that need it.

Given the negatives of this project that are involved I am very concerned with the overall negative impact to our area of this project.

Thank You for Your time

David Calvert  
West Olympia

**From:** [Judith Mason](#)  
**To:** [Nicole Floyd](#)  
**Subject:** West Bay Yards Design Review Board Public Comments for 2/27/2025 Mtg  
**Date:** Thursday, February 27, 2025 10:18:07 AM

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To Whom It May Concern:

The proposed West Bay Yards design is merely a series of rectangular boxes and certainly does NOT constitute high quality design. The plan is unimaginative and certainly does NOT reinforce the unique street scapes provided by other structures that abut the Budd Bay side of downtown Olympia. Furthermore, this structural plan does NOT preserve any aspect of the downtown's historical character. The view corridors are a complete farce. These structures will block the view from buildings on the West side of West Bay Drive as well as what can be seen by pedestrians and those who drive by. The most notable feature of the West Bay Yards design appears to be that it successfully attempts to cram the most housing units into this limited space all for the purpose of lining the pockets of the owner and the City coffers. I oppose approval of the present West Bay Yards design. The project should be of a smaller scale and lower to meet with the the OMC18.110 Design Criteria.

Judith D. Mason  
2538 Crestline Drive NW  
Olympia, WA 98502  
Home Phone: 360-866-6026

**From:** [majimar \(null\)](#)  
**To:** [Nicole Floyd](#)  
**Subject:** West Bay Yards Development  
**Date:** Saturday, February 8, 2025 11:32:22 AM

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I am writing to you to request that a full Environmental Impact Statement be completed for the proposed West Bay Yards Development Project. I am a city of Olympia Resident and have concerns about environmental and human impacts of this massive proposed development on our city, on our estuary, and the recovery of salmon. I demand a complete environmental impact study, prior to signing off on any West Bay Yards Developmental Project.

Best Marian Gonzales  
360-753-4361

**From:** [hwbranch@aol.com](mailto:hwbranch@aol.com)  
**To:** [Nicole Floyd](#); [Jackson Ewing](#)  
**Subject:** west bay yards  
**Date:** Thursday, February 13, 2025 4:12:34 PM

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City of Olympia  
Community Planning and Development Department  
Attn: Nicole Floyd

Re: West Bay Yards Project – Fourth Round Submittal Comment Period

1. The idea of using fill to create a new nearshore is ludicrous. Will the area of the littoral zone be reduced? What will happen to the existing benthic community? Is the neighboring shore a source of contamination? Would piling soil in front of the site impede a cleanup if one is necessary? Fill in an area of tidal flux and flow will likely be washed away.
2. Schneider Creek crosses the site in a large concrete culvert. Being intertidal in this location the stream is marine waters and we have legal standing in marine waters.
3. Budd Inlet is critical habitat for endangered marine species. Critical habitat is habitat that contains features or areas essential for the conservation and recovery of Endangered Species, such as a stream estuary. We are required to address critical habitat based on the best available science and there has been no science here.

#### [Critical Habitat](#)

Critical habitat for Bocaccio, all of puget sound

[https://media.fisheries.noaa.gov/2022-05/ch\\_2021mapseries\\_Bocaccio\\_PugetSoundGeorgiaBasinDPS.jpg](https://media.fisheries.noaa.gov/2022-05/ch_2021mapseries_Bocaccio_PugetSoundGeorgiaBasinDPS.jpg)

Chinook salmon, all of Puget Sound

[https://media.fisheries.noaa.gov/2022-05/ch\\_2021mapseries\\_SalmonChinook\\_PugetSoundESU.jpg](https://media.fisheries.noaa.gov/2022-05/ch_2021mapseries_SalmonChinook_PugetSoundESU.jpg)

Southern Resident Orca Whale, all of Puget Sound

[https://media.fisheries.noaa.gov/2022-05/ch\\_2021mapseries\\_WhaleKiller\\_SouthernResidentDPS.jpg](https://media.fisheries.noaa.gov/2022-05/ch_2021mapseries_WhaleKiller_SouthernResidentDPS.jpg)

Harry Branch

**From:** [Jim Becker](#)  
**To:** [Nicole Floyd](#)  
**Subject:** West Bay Yards  
**Date:** Thursday, August 29, 2024 9:53:24 PM

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Hello,

It's unclear from the website where this project is at but as a resident of the Westside (1620 Woodard Ave NW) I think it is truly insane to add that amount of traffic to a 2-lane road feeding into two traffic circles and think it won't be a problem. At busy times there is already a backup of 8-10 cars trying to get into the traffic circle, and if there's a logging truck or a timid driver it can get much worse. Our quality of life would be very negatively affected by this project and I haven't heard of any improvements that would do anything to ameliorate the additional traffic this project will create.

Thanks for considering this.

Jim Becker

**From:** [Joel Carlson](#)  
**To:** [Nicole Floyd](#)  
**Subject:** West Bay Yards must be rejected!  
**Date:** Friday, February 21, 2025 11:38:45 AM

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See <https://deschutesestuary.org/west-bay-yards-development>

Put me on the contact list. Thanks, Joel Carlson

**From:** [David Eilers](#)  
**To:** [Nicole Floyd](#)  
**Subject:** West Bay Yards proposed development comment  
**Date:** Friday, February 7, 2025 10:22:30 AM

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As a local resident I'm excited about the potential for the new housing to keep house prices lower.

My concerns would be:

1. That the toxic waste previously introduced by industry be completely abated as a part of the development.
2. That a full Environmental Impact Study be done to ensure impact to the habitat in and around the site is minimally affected.
3. The possibility of including some housing designed for affordability as well.

Thank you.

**From:** [Valerie Anderson](#)  
**To:** [Nicole Floyd](#)  
**Subject:** West Bay Yards  
**Date:** Saturday, February 8, 2025 3:52:18 PM

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To Nicole Floyd,

I am writing to express my concerns about the proposed West Bay Yards development. I have lived in the Olympia Area (just barely outside of city limits in the Urban Growth Management Area) since 1988.

My primary concern is the environmental impact such a development would have on Budd Inlet and the Deschutes Estuary. It is my understanding that there has not been a complete Environmental Impact Statement. The proposal includes adding approximately 40,000 cubic yards of fill into Budd Inlet to create new upland. This would destroy intertidal marine habitat, which is contrary to any efforts of habitat and estuary restoration. Restoration and preservation of aquatic habitat is essential for salmon and other marine animals dependent on healthy ecosystems.

In addition, the land itself remains heavily contaminated from the previous industrial use, according to a 2020 study. Also a development of the scale proposed would create stormwater runoff, further contaminating the waterways.

It is critical that an Environmental Impact Statement be completed and the developer must be in compliance with the Model Toxics Control Act cleanup standards, the City of Olympia's Shoreline Master Program, and the City of Olympia's shoreline restoration goals.

My other concern about this proposal is the huge traffic impact it would have on West Bay Drive. I live in NW Olympia and drive or ride my bicycle on West Bay Drive almost daily. The addition of the proposed residential units (478) and large retail and restaurant businesses would greatly worsen the traffic on West Bay Drive, which is a two lane road with no bike path and minimal side walks. A development of this scale is completely inappropriate for the location.

Thank you very much for your time and attention.

Valerie Anderson  
2202 28th Ave., NW  
Olympia, WA 98502  
(360) 970-7102

**From:** [Bonnie Blessing](#)  
**To:** [Nicole Floyd](#)  
**Subject:** WestBay  
**Date:** Thursday, February 20, 2025 12:16:36 AM  
**Attachments:** [WestBayBB.pdf](#)

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Hello;

Please take these on as comments on West Bay.. 2 pages. A few typos.

Wow. Good luck..I see how the SEPA determination may depend on future other permits. The weird thing I find is that some of those 'other permits' may not be as protective as one may hope...So I mentioned construction permit weirdness.

Good luck.

Bonnie

**From:** [John Pryor](#)  
**To:** [Nicole Floyd](#)  
**Subject:** Westbay Yards 4th round review  
**Date:** Monday, February 10, 2025 10:26:48 AM

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8 Updated SEPA Checklist - 11.26.24, Item 9. a. response

This avoided answering the question.

Based on website <https://www.whitneylumsdenrealtor.com/best-waterfront>, the market rate of waterfront apartments is \$950K. The \$250K donation amounts to ~0.06% of the total unit sales.

Based on the website "<https://www.rentable.co/olympia-wa/luxury-apartments-for-rent>". The \$250K donation amounts to 2.56% of 1 year rent and 0.13% of rents over 20 years.

The \$250K donation is insignificant compared to the profit or rents these units will bring in. The developer did not answer the question about whether these units would be high, medium or low priced, but rather used an ambiguous term of 'market rate' to avoid this answer.

If the developer had not made this donation, what percentage of the housing would have been required to be affordable?