

**From:** John P <jstephenpruka@gmail.com>  
**Sent:** Saturday, May 28, 2022 3:19 PM  
**To:** Nicole Floyd

West Bay Yards

My full support for the WBY project. More housing supply is needed, the site is an eyesore like Asarco in Tacoma before redevelopment.

Proceed with all haste, and I would like the Port log yard to follow. That money loser could be a jewel, like Views on 5th, and provide more housing and taxes to address our common needs.

Thanks

John Stephen Pruka

**From:** barbmcoly@comcast.net  
**Sent:** Saturday, June 11, 2022 8:25 PM  
**To:** Nicole Floyd  
**Subject:** West Bay Yards 2nd round review comment

Hello Nicole,

I submitted a comment on the 1<sup>st</sup> round review on the West Bay Yards (WBY) proposal, and this time my comment is regarding only one aspect—creating new uplands. The Olympia Shoreline Master Plan (SMP), which is a legally binding document, prohibits creating new uplands. The WBY proposal flagrantly ignores this rule and proposes violating it. The rule was adopted through a rigorous process to protect the fragile marine ecosystem that is getting more vulnerable every year as the climate changes.

By turning a blind eye to this critical provision of the SMP, the public (like me) loses trust that government and wealthy developers follow the laws that less influential people must follow. This is no small issue. Precedents set in this case will reverberate throughout Puget Sound and beyond.

For more details on the legal requirements regarding the prohibition of creating new uplands, please see comments from Olympia Coalition for Ecosystems Preservation, 2<sup>nd</sup> round review comments. It is a huge waste of community resources (taxes, time, energy) to continue reviewing and considering a proposal that has so such a flagrant violation of the SMP not to mention all the other issues identified by hundreds of people in the 1<sup>st</sup> round review. I urge you to deny a land-use permit for WBY, because it simply violates your legal mandate.

Barbara Carey  
2706 Hampton Ct SE  
Olympia, WA 98501

**From:** Diane Sonntag <diane\_sonntag@yahoo.com>  
**Sent:** Saturday, June 11, 2022 1:48 PM  
**To:** Nicole Floyd  
**Subject:** Preserving Our Shorelines By Adhering to the Shoreline Management Act

Greeting Ms. Floyd,

I want to express support for the analysis provided by the Olympia Coalition for Ecosystems Preservation in their letter dated June 10, 2022. Our top priority should be preservation of our shoreline environment, upholding the existing laws that protect it, and looking at the sustainability of this project's future through the lens of climate change. Not only is the current proposal inconsistent with our existing SMP, it violates the cities obligations under the Shoreline Management Act which must be enforced regardless of our adopted SMP.

I am giving the Council the benefit of the doubt, and trust that educating yourselves further will result in the Council NOT promoting this project. We hold the keys to the future of the Puget Sound Shorelines NOW, and unfortunately once they are ruined through irresponsible development and short term financial benefit to a few, they cannot be restored with out millions of dollars of expenditures of our money.

I would request that the council study this issue further, and read some of the analysis by the Olympia Coalition for Ecosystem Preservation. The future of multiple species, our shoreline habitat, and our tax payers dollars are in your hands.

Diane Sonntag  
1620 Woodard Ave NW, UNIT C-2  
Olympia, WA 98502

**From:** Joann Terranova <annjo@mac.com>  
**Sent:** Friday, June 10, 2022 8:32 PM  
**To:** Nicole Floyd  
**Subject:** Concern about west bay yards

Ms. Floyd,

I continue to be concerned about the environmental impact of the West Bay Yards project. I am supportive of the analysis provided by Olympia Coalition for Ecosystems Preservation in their letter dated June 10, 2022. Not only is the proposal inconsistent with our existing SMP, it violates the cities obligations under the Shoreline Management Act which must hold regardless of our adopted SMP.

As a concerned resident of The Westside of Olympia, I ask you not to approve this project.

Sincerely,  
Joann Terranova

Sent from my iPad

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**From:** Maurice Major <culturallandscapes@gmail.com>  
**Sent:** Friday, June 10, 2022 5:10 PM  
**To:** Nicole Floyd  
**Cc:** Marygrace Goddu  
**Subject:** West Bay Yards Second Round Comments

Dear Nicole,

I am writing to comment on the West Bay Yards project, and in particular the cultural resource issues there.

During the comment period for the Development Agreement, I noted that the SEPA contained false information, that the characterization of the project area as having low archaeological potential was in error, and advising the City to require an archaeological inventory survey that would address City Code and state law.

The project SEPA checklist is somewhat of an improvement, having acknowledged the presence of recorded sites, but fails to provide a realistic assessment of archaeological potential. The consultant's report compounds this weakness and sets the project up to damage archaeological materials, create costly delays once construction begins, and expose the City and project proponents to legal action.

Two problems plague the consideration of cultural resources on this project, and we have seen ample evidence in the past 5 years that these problems represent a systematic failure of the City to follow its code or treat cultural resources with the respect they deserve.

**First, the SEPA and consultant report mistakenly state that there is little or no potential for significant archaeological resources.** In project after project, the City has underestimated the potential for archaeology in downtown and shoreline areas. Both documents here conclude--against all available evidence--that old shorelines that have been previously developed have low potential for archaeology. It has been demonstrated time and again that the pattern of development from the dawn of Olympia until at least the 1950s began with introducing fill, upon which foundations and buildings arose. Whatever was on the old shoreline (early historic sites, ancient tribal sites, midden, longhouse remains, and human burials) generally remains in place, capped and preserved by the fill. There is nothing to suggest this is not the case at West Bay Yards.

**The SEPA checklist and consultant report also mistakenly assert that since sediment remediation would have destroyed any archaeology that is present.** Even on the report maps, it is clear that substantial areas were not disturbed. Again, this leads to the conclusion that there is a high risk of buried, preserved, archaeological layers beneath the fill. The same firm that did the report conducted inventory testing at the Jefferson and Legion property now being developed, but having read that report, it is clear that the "disturbed" site they considered not significant was based on faulty sampling that avoided the buried shoreline and did not adequately test the site to make that conclusion. This resulted in the unsupported conclusion that the site there was completely disturbed, rather than recommending work needed to make such a conclusion.

**Second, the recommendation to us an "MIDP" is troubling, since City-permitted developers have rarely if ever implemented the plans, and the entire concept is flawed and legally indefensible.** The 123 4th project never reported an inadvertent discovery. Market flats did not do so either. Same for Les Schwab redevelopment, State and Water, and same for Jefferson & Legion. In all but the 123 4th project, Inadvertent Discoveries were observed and reported by private citizens, leading to costly delays after construction had started. City officials and developers have repeatedly apologized and said they would do better, but all evidence thus far indicates that the MIDP is a piece of paper used for cover, but never implemented as required by City of Olympia Code.

The concept of Monitoring and Inadvertent Discovery Plan runs counter to professional archaeological practice and ethics, as well as municipal and state law. "Monitoring" means having a professional archaeologist present who watches all ground disturbance, identifies finds, and has the authority to stop ground disturbance. However, the City has repeatedly failed to require monitoring. Most recently, at Jefferson & Legion, the consultant report recommended Monitoring, but instead construction proceeded without one, using the same company that has failed to report inadvertent discoveries. Again, no discoveries were reported, despite the presence of a known site, as if the archaeologists had magically found every single artifact. Monitoring can be appropriate in some cases where the project area is covered with concrete, but it is not to be conflated with inadvertent discovery.

I strongly recommend that the City require archaeological inventory survey prior to construction, and that that survey carefully consider location of the old shoreline and depth in designating the scope of work for that inventory. We know there is a high potential for ancient and early historic archaeological sites in the project area, and dealing with them ahead of time will save us all time and stress.

Please, please, do the right thing and avoid the temptation to turn a blind eye to irreplaceable traces of our early history and of the tribes who were here for millennia before us.

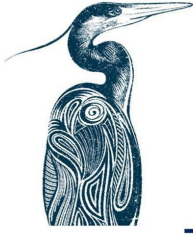
Thank You,  
Maurice Major  
Olympia Archaeological Society.

Maurice Major, Principal Investigator

**Cultural Landscapes**

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# 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,

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

**From:** Paul Cereghino <livestake@gmail.com>  
**Sent:** Friday, June 10, 2022 6:52 PM  
**To:** Nicole Floyd  
**Subject:** Inconsistency of West Bay Yards proposal with SMP

Hello Ms. Floyd,

I would like to express my support for analysis provided by the Olympia Coalition for Ecosystems Preservation in their letter dated June 10, 2022. Not only is the proposal inconsistent with our existing SMP, it violates the cities obligations under the Shoreline Management Act which must hold regardless of our adopted SMP.

As a restoration planner, I am deeply troubled by the Council's lack of stewardship in promoting this project, and regret that you have been put in this position. I will do what I can to support the restoration of Puget Sound shorelines.

Paul Cereghino  
1620 Woodard Ave NW, Olympia, WA 98502

**From:** A Z <digranesjl@gmail.com>  
**Sent:** Wednesday, June 15, 2022 8:21 AM  
**To:** Nicole Floyd  
**Subject:** Proposed West Bay Yard Development

I'm somewhat astounded [but not surprised] that the City council is even considering such a project adjacent to the waterfront!

Why am I astounded?

1. Rising sea levels.
2. Toxic site
3. Traffic

Why am I not surprised?

1. History of tax subsidies for developers.

ABSURD! TOTALLY ABSURD!

**From:** Jude da Silva <jude22d@gmail.com>  
**Sent:** Saturday, June 18, 2022 11:12 AM  
**To:** Nicole Floyd  
**Subject:** We support the Olympia Coalition for Ecosystems Preservation analysis and opinion

Hi Ms. Floyd,

We support the Olympia Coalition for Ecosystems Preservation's analysis and opinion about The West Bay Yards proposal.

Please stop this destructive project that will only benefit the wealthy and will violate our own Shoreline Master Program.

If the issue is more housing, this project will not help those who truly need it.

Thank you,

Judith da Silva and Joe Sandson

**From:** Rachel da Silva <dasilva.rachel@gmail.com>  
**Sent:** Saturday, June 18, 2022 9:33 AM  
**To:** Nicole Floyd  
**Subject:** West Bay Yards public comment

Dear Ms Floyd-

I support the West Bay Yards development analysis by the Olympia Coalition for Ecosystems Preservation submitted by letter from Daniel Einstein to your office on June 10. I urge the city to do everything in its power to fully investigate all of the ramifications of the WBY project—not just for current economic development but for future generations and the future health of the Budd Bay estuarine ecosystem—before allowing this huge development.

I have lived in West Olympia for the past 20 years, for most of that time on Crestline Drive, overlooking Budd Bay. I know from extensive personal experience that West Bay Drive cannot handle the volume of traffic that will plague it if this development is permitted as currently envisioned. Additionally, the hillside above the development contains a heron rookery and other protected lands which would be significantly impacted by a project of this size.

Finally, because of its location on the waterfront I am guessing that WBY is not going to be providing the city with any low or middle income housing. It will likely drive up the cost of housing in the Olympia area, which is already exorbitant.

I look forward to seeing the city council take action in line with Dr. Einstein's recommendations.

Thank you.

Rachel da Silva  
2936 29th Ave NW  
Olympia, WA 98502