



# OlyEcosystems

Olympia Coalition for Ecosystems Preservation  
Protect Preserve Restore

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On Tuesday December 1<sup>st</sup>, The Olympia Coalition for Ecosystems Preservation (OCEP), appealed the SEPA determination of non-significance (DNS) for a Development Agreement between the City of Olympia, the West Bay Development Group, LLC, and Hardel Mutual Plywood Corporation. In this public letter, we explain our reasoning.

The proposed *West Bay Yards Development Agreement* was an agreement between the City and the proponent that seeks to lock-in for up to 15 years development standards for future development on the West Bay shoreline.

## What was being asked of the City Council?

Under state law and the Olympia Municipal Code, development agreements between cities and developers are optional. Neither the city nor a developer is required to secure one. But the purposes of such agreements are clear. In exchange for greater certainty in the rules and standards that a developer must work under, and longer and agreed upon lead times for phasing of development improvements, developers promise to provide a public benefit of some kind that they would not otherwise be required to provide. There is a *quid pro quo* – greater certainty in exchange for greater public benefit.

OCEP sees no problem conceptually with this tradeoff. It is in the specifics of the West Bay Yards Development Agreement proposal that there was and continues to be much concern. As proposed, there were no clear public benefits derived that could not otherwise be required by the City, and there was insufficient data upon which to identify the application of existing City policies and regulations to the future development project.

More specifically, the proposed development agreement appeared to posit the restoration of the Hardel shoreline in accordance with the recommendations of the *West Bay Environmental Assessment*, a joint study conducted by the City, the Squaxin Island Tribe and the Port of Olympia, as the public good it could not otherwise secure. However, this is factually incorrect. The City could require the nearshore restoration as a condition of development under its existing authority. Thus, if the City Council were to sign the proposed Development Agreement, it would be giving away something of great value – its right to change the development standards applicable to future phases of the West Bay Yards development for 15 years, through 2035 – but receive nothing in exchange that it could not already require. In short, there was a *quid* but no *pro quo*.

OCEP asked the City to reject the proposed West Bay Yards Development Agreement based on inadequate environmental analysis, non-existent public benefit, and inconsistency with City policy. That request was denied. As a result, we appealed the decision. Here's why:

1. The Development Agreement was being processed by staff as a “non-project action” under SEPA, even though the scale and scope of the development were very much

outlined in the agreement. As a “non-project action”, the completed environmental checklist did not provide sufficient information to understand substantively what development regulations would be applied to the project. Thus, a prime purpose of Development Agreements – increased certainty – was not being fulfilled.

2. The DNS for the Development Agreement improperly segmented environmental review under SEPA. SEPA requires that the impacts of the project be considered in total rather than in piecemeal fashion. OCEP believes that the City should undertake SEPA analysis of the whole project so that its full environmental impacts can be assessed.
3. The goal of the Shoreline Master Program (SMP) is “[t]o ensure, at a minimum, no net loss of shoreline ecological functions and processes and to plan for restoring shorelines that have been impaired or degraded by adopting and fostering the policy contained in RCW 90.58.020”. Yet, the proposal contemplated the creation of an additional 1-1.5 acres of upland by adding new fill into the tidelands to achieve the density that the developer desires. This appears to be a violation of the City’s own Shoreline Master Program. Section 3.70 18.20.855(I) of the SMP states that “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.**” (Emphasis added.) Restoration should not result in moving the current ordinary high-water mark (OHWM) and creating additional uplands. It should occur without altering the existing OHWM and the development set-backs applied to that existing OHWM. Similarly, public access should occur above that existing line, not by having “restoration” move the OHWN 50 or more feet waterward.
4. The scale of the proposal is massive, and inconsistent with the surrounding neighborhood in particular and the city in general. The density and intensity of the proposed development would, without question, have numerous impacts on our environment and on our community.
5. While the *West Bay Yards Development Agreement* is an agreement for phased construction, it is our view that the environmental impacts implied in the development proposal require that the City consider those impacts in total and before entering into a development agreement. Due to the scale of the project, and the sensitivities of both the neighboring shoreline and upland properties, the appropriate mechanism for evaluating these impacts is an Environmental Impact Statement (EIS). Failing to understand the project’s full impacts, including cumulative impacts, from developments of the same scale and type along West Bay Drive, is a violation of SEPA’s intent, and ignores the law’s substantive authority to condition major projects that change the nature of the city’s urban form.

OCEP seeks to replace the proposed Development Agreement with a public SEPA scoping meeting for an EIS, initiating a thorough environmental analysis of this project. Existing environmental analysis by the City of this area is limited and based on documents that are in some cases nearly 30 years old. No such analysis has contemplated a development on the scale proposed for West Bay Yards. Furthermore, no analysis – typically required in an environmental review of projects of unusual size and scope – has investigated alternatives.

Some of the issues to be addressed are:

### Traffic and Transportation

Commuters along West Bay Drive and those who travel through the roundabouts on Olympic Drive at the bottom of Harrison Avenue already know that there can be long backups during peak times. The proposed development has the potential to generate thousands of new vehicle trips per day at these intersections, increasing wait times. This will impact those who use West Bay Drive and all who transit the rotaries in this area. This not only lengthens commutes but also will without question increase response times for emergency vehicles. A detailed traffic analysis is needed upfront to understand the extent of such impacts, and also take into consideration cumulative impacts from other developments at similar scale on the corridor.

Enlarging the full length of West Bay Drive is simply not feasible. A recognition of that reality should inform land-use decisions on the entirety of West Bay Drive. This kind of analysis is why SEPA exists: to understand more fully cumulative effects and apply logic and equity to specific developments with that knowledge.

### Housing

OCEP is well aware of the crisis the City faces with homelessness and the lack of affordable housing. However, the massively dense housing proposed in this project contains no provisions at all for low- or moderate-income housing. Quite the contrary, this project will cater solely to higher income households. And with no public transit serving the site and limited access by emergency vehicles, West Bay Drive in general is not the right location for massive scale development. With development intensity as proposed, this would be the densest developed neighborhood in Thurston County.

Again, an EIS is the correct mechanism to study these direct and cumulative impacts and to investigate alternatives.

### Water Flow, Contamination and Habitat

Additional fill below the current ordinary high-water mark under the guise of “restoration” (which serves primarily to add upland and increase the scale of the project) will negatively impact to an unknown extent Budd Inlet’s delicate tidelands. This is not a restoration as envisioned in the *West Bay Environmental Assessment*.

Current regulations stipulate no maximum residential density and would allow the development to release an unlimited volume of runoff into Budd Inlet. The city is relying on environmental performance standards to constrain development. Since Budd Inlet is one of the most compromised waterways in all of Puget Sound in terms of low dissolved oxygen, our concerns about water quality are significant.

Olympia’s native Coho run has been declared functionally extinct by the Washington State Department of Fish and Wildlife, and shorebird populations have declined in Budd Inlet by an astounding 95% over the past twenty years. These declines are indicators and the indications are alarming.

A project with impacts as potentially massive as the one proposed, on a contaminated shoreline of a waterway that does not meet water quality standards mandated under the Federal Clean Water Act, cries out for a comprehensive environmental analysis. That is why OCEP is asking the City to prepare an Environmental Impact Statement (EIS) to determine impacts of this development and to consider alternatives.

The Hardel site has been contaminated from decades of industrial use. A partial cleanup was conducted about ten years ago, but many identified areas of contamination were not remediated. No effort has been made to remediate dioxins/furans or phthalates, even though they are present in sediments at the site at concentrations exceeding state cleanup levels. Furthermore, excavation of sediments in the previous remediation efforts followed parcel boundaries, raise a significant concern of recontamination from neighboring parcels.

Both the Hardel site upland, made of fill, and its degraded intertidal area, need significant restoration to function again as a place that native animals and plants – and humans - can thrive. It may not be possible with any urban development to achieve all restoration objectives. But the scale of this proposed development provides no space for movement of clean water into Budd Inlet and regional wildlife habitat.

Some improvements that OCEP and the community would like to see that an EIS can best evaluate are whether improvements to the site should:

- provide for one quarter of a mile of continuous forested shoreline approximating the pre-colonial shoreline to help meet water temperature standards.
- clean up hazardous materials such that contamination will not impact water quality Budd Inlet in perpetuity, even as the water table rises with sea-level rise.
- treat onsite stormwater and bring it up to water quality standards as measured by metrics including but not limited to total Kjeldahl nitrogen, inorganic nitrogen, total phosphorus, soluble phosphorus, biochemical oxygen demand, fecal coliform bacteria, copper, lead, and zinc.
- provide additional protections for habitat that re-create ecological links between shoreline and nearby forested areas such that full ecological/cultural values can be achieved.

Finally, and most significantly, it appears that the developers are proposing to implement shoreline restoration through shoreline fill. Essentially, they propose to take the existing degraded shoreline and fill out from it at a more natural grade. This is inconsistent with the purposes, intent, and plain language of the City's Shoreline Master Program.

### Climate Change

With every passing year, forecasts for sea-level rise in Budd Inlet continue to trend upward. With six feet of sea-level rise, all of the Hardel parcel will be under water. While the development proposal does appear to address the potential of sea-level rise, it achieves this by adding substantial fill and concrete and a reinforced, armored shoreline – an anathema to near-shore restoration. Locking in 15 years of development with today's understanding of sea-level rise is shortsighted.

Concomitant with sea-level rise will be a rise in the water table at sea-level. The effect on the mobility of non-aqueous contamination at the Hardel site, even with ten feet of soil and concrete on top of it, needs analysis. It also likely needs mitigation. In addition, average rainfall is forecast to increase, increasing ground and surface water flows.

Lastly, with climate change will come increased air and water temperatures. The Deschutes estuary already suffers from elevated water temperatures and the stress of high water temperatures on salmon is well known. We cannot assess the climate-driven impacts of the proposed development without an EIS.

### **Conclusion**

As a community, 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. By asking the City staff to withdraw its DNS for the Development Agreement and by calling for an EIS for the West Bay Yards project, OCEP requests that our representative local government ask the right questions before it commits to any agreement with the proponent.

An EIS is the correct mechanism to get at these questions and that process must consider alternatives. An obvious alternative is significantly reduced density that would create an opportunity for more profound environmental restoration. Reduced density would avoid unnecessary, unlawful and environmentally damaging fill; it would ameliorate the significant impacts this proposal would have on traffic along West Bay Drive. Another obvious mitigation tool would be to look more broadly at redevelopment in the West Bay corridor, so that a clearer understanding of cumulative impacts can provide the City with the information it needs to maximize public benefit. For such is precisely the purpose of Development Agreements under state law and local ordinance.

**The Development Agreement is the only aspect of this proposal that the City Council would have an opportunity to directly review and approve. OCEP asks City staff to reconsider its DNS and proposed Development Agreement, prior to putting the issue to the Council. Otherwise, staff would be recommending that the Council lock in existing development standards for the next 15 years for a project that will create more than an acre of upland fill, over-burden West Bay Drive with traffic, and lead to the other adverse impacts discussed above, without creating any public benefit beyond what the City already has authority to require. We do not believe that is actually good for the community.**