



**To: Nicole Floyd, Principal Planner  
City of Olympia: Community Planning & Development  
P.O. Box 1967  
Olympia, WA 58507-1967**

**From: Olympia Ecosystems**

**February 10, 2026**

Dear Ms. Floyd,

Olympia Ecosystems is 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. We manage and are actively restoring over 500 acres of degraded land within this system and have both a clear interest and clear legal standing in what happens at West Bay.

The West Bay Yards project (WBV), located within the Deschutes Estuary, consists of the construction of 478 market rate housing units, and an additional 20,500 square feet of commercial space on 1,500 feet of highly contaminated shoreline. The project entails the importation of a staggering volume of fill, a repositioning of the ordinary high-water mark, the creation of new uplands in violation of the Shoreline Master Plan, and a total remaking of the West Bay shoreline, with all that that implies.

Converting aquatic habitat to new upland habitat is a significant impact. We all agree that the West Bay nearshore and tidelands are significantly degraded. It is possible that this project, once complete, will result in improved ecological conditions. But to get there, the applicant proposes the conversion of aquatic habitat to uplands. This conversion is significant – both in terms of its context and intensity. The “context” is aquatic foraging habitat for priority species, including salmonids, within close proximity to the delta of Schneider Creek. Foraging habitat, even degraded, is in short supply in Budd Inlet due to the inlet’s historical use for logging and other industrial processes; every forage site counts. In terms of “intensity,” this aquatic habitat is not coming back once converted. It is gone. The organisms that depend on this aquatic habitat are displaced (which, again, includes priority species), forever. This is a significant impact, regardless of the ecological benefits of the project once complete.

The State Environmental Policy Act (SEPA) precludes the City of Olympia (City) from engaging in a “balancing” exercise, wherein the city rationalizes away significant impacts from a project because the end-result from the project is intended to be a net ecological gain. Not only is this balancing exercise outright prohibited under SEPA regulations, but it also thwarts the policies that underpin SEPA, including informed disclosure and public comment. Undeniably, the impacts from converting aquatic habitat to upland, positive, negative or unknown will be significant.

The proposed restoration elements of the project are not voluntary, nor are they mitigation for potential negative impacts. Rather, they are the result of a legally binding agreement between the City and WBV, in which WBV gained a right to unchanged development regulations until 2036. That immunity from

evolving regulations with evolving policy and evolving scientific understanding has a value to WBY – it is a benefit for which WBY negotiated. The cost of that benefit to WBY is a restoration of the shoreline that is consistent with the City’s 2016 restoration assessment, and consistent with the development regulations as they existed at the time the project vested.<sup>1</sup>

The impacts that flow from this project, even if they flow from the applicant’s obligation under the development agreement, must still be considered under SEPA. If those impacts cannot be mitigated such that they are insignificant, a determination of significance is required. In other words, any negative impacts that flow from this project still need to be mitigated.

Mitigation opportunities in the surrounding area abound. Take, for example, Schnieder Creek, a fish-bearing creek where a botched culvert has resulted in a total barrier to salmonid migration and the destruction of a potentially valuable pocket estuary. The correction of past mistakes at Schneider Creek would make for an obvious mitigation project for the impacts of WBY. Remediation and restoration of the Reliable Steel site is another obvious potential mitigation project for WBY.

Yet, the City of Olympia has issued a determination of non-significance (DNS) for the WBY project - not even a determination of mitigated non-significance (MDNS) – as though the negative impacts of this proposal, both short-term and long-term merit no public discussion nor any mitigation whatsoever. They do. And this despite repeated assurances during oral arguments in front of the Hearings Examiner and Superior Court that an EIS was not required for the Development Agreement but rather would come at the project stage.

Granted, we live in undemocratic times. Still, the City of Olympia purports to be better than that.

The City’s stated rationale for issuing a DNS for WBY is that though there will be impacts, those impacts are within the scope of the City’s regulations. We disagree. But anyway, that is not the threshold for SEPA determination. Any project has impacts on the environment. The threshold for SEPA is triggered if those impacts are likely to be significant. The impacts of this project are plainly both significant and wholly unmitigated.

Furthermore, it appears the City’s (current) position is that no conditions are required under SEPA because the applicable regulations provide adequate analysis of and mitigation for some or all of the specific adverse environmental impacts from the project. The controlling authority on this issue is WAC 197-11-158 and RCW 43.21C.240. Under those authorities, if the City has opted to rely on regulations to comply with SEPA, certain steps must be followed. For instance, the City must include a declaration in its DNS which states:

The lead agency has determined that the requirements for environmental analysis, protection, and mitigation measures have been adequately addressed in the development regulations and comprehensive plan adopted under chapter [36.70A](#) RCW, and in other applicable local, state, or federal laws or rules, as provided by RCW [43.21C.240](#) and WAC 197-11-158. Our agency will not require any additional mitigation measures under SEPA.<sup>2</sup>

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<sup>1</sup> *City of Olympia West Bay Environmental Restoration Assessment Final Report* (Coast & Harbor Engineering, 2016)

<sup>2</sup> WAC 197-11-158(2)(d).

This statement is missing from the DNS. Moreover, under these same authorities, the City must identify the specific impacts, first, and then show how those impacts are adequately addressed by the existing regulations. Any impacts that are unaddressed must be considered under SEPA per its “gap-filler” function.

Olympia Ecosystems and the City of Olympia have worked collaboratively in the past to advance ecosystem preservation and restoration. However, we cannot agree that a DNS is appropriate for a project that will result in the permanent loss of aquatic habitat, even degraded habitat – in particular when many species up the trophic chain dependent on this type of habitat are already in decline. This project forecloses the possibility that this foraging habitat could ever be restored. Even if this proposal comes to fruition and a net ecological lift is achieved, there will still be less habitat than there was before. This will be a significant loss, despite any gained benefit. The SEPA DNS of the project should be reversed with an order to prepare an environmental impact statement.

At the very least, the city must recognize that this project involves unresolved conflicts about how to manage Budd Inlet. Therefore, an alternatives analysis is required. The guiding case on this requirement is *Wild Fish Conservancy v. Washington Dep't of Fish & Wildlife*, 198 Wn.2d 846, 502 P.3d 359 (2022). In that case, the court concluded that under RCW 43.21C.030(2)(e), a lead agency “may be required to assess alternatives to a proposal that is not likely to result in significant adverse environmental impacts.” *Id.*, at 862. The court further concluded that “an alternatives analysis is appropriate when a proposal involves a competition over the use of a resource whereby selecting one manner of using the resource will preclude all other uses.” *Id.*, at 864-5. That is precisely the case at hand – this is an “either/or” situation wherein approving a proposal that converts aquatic habitat to uplands precludes all other uses of that aquatic habitat – it is gone. It is either uplands or it is aquatic.

In its reply brief (Court of Appeals, Case No. 56314-2-II), attorneys for the proponent asserted that an EIS was not warranted for the Development Agreement because it did not follow that “completing an EIS for the development agreement would lead to modification of the underlying project.” In contrast, there is no dispute that completing an EIS at the project stage could very well lead to modifications of the project. Done correctly, an EIS would lead to a better project that is in balance with the environment and the community.

Indeed, the proponent’s attorneys conceded that “under the terms of the development agreement, the City could still require an EIS for development of the project, including the proposed shoreline restoration. *See, e.g.*, CP 17 (“The Project will require review under [applicable land use regulations].”).”

The City has chosen not only to not require an EIS for a development that by any measure is the largest development in the history of the city, but also to not require *any* mitigation for a development proposal in the most sensitive and degraded environment within city limits. This is deliberate. By not requiring an EIS, nor even any public discussion of mitigation, the City has effectively shut the public out of any role in the wholesale remaking of our shoreline. That flies in the face of SEPA and it flies in the face of democracy.

It has not always been this way. Take the example of the Deschutes Estuary Restoration project. Decades of science suggested that the removal of the 5<sup>th</sup> Avenue Dam would lead to significantly better outcomes for the environment. The City lagged in its understanding of this. As few as ten years ago, City engineers were still maintaining that the removal of the 5<sup>th</sup> Avenue dam would lead to increased flooding in the city’s downtown. There were those who advocated for the removal of the 5<sup>th</sup> Avenue Dam, there were those who advocated against. Yet an EIS was executed and was supported by the City of Olympia because the environmental impacts were clearly significant and the scale of the project demanded public

involvement. The EIS ended up revealing that removal of the 5<sup>th</sup> Avenue Dam would decrease flooding within the downtown, and the plan to remove the 5<sup>th</sup> Avenue Dam was approved.

The West Bay Yards project is similar. In some respects, the environment will improve, in other respects the environment will be further degraded. The sheer scale of the project demands the real participation of the public, which is only achieved by a real alternatives analysis, with full public participation. As is clear in the example of the Deschutes Estuary Restoration, our collective ability to make an informed decision increases with an EIS. The City should not adopt the position that only it and the developer know what is best. History does not support that.

In conclusion, we assert that the filling of tidelands to create 0.44 acres of upland still violates the SMP. The SMP clearly states that filling is allowed only in those cases where the fill is the minimum practicable *and* no new uplands are created. We also assert that the potential impacts of this development are significant and wholly unmitigated, despite clear opportunities for mitigation in the proximity. We, therefore, request that the SEPA DNS of the project be reversed with an order to prepare an environmental impact statement.

Sincerely,

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

Daniel R. Einstein, Ph. D.  
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