

## **Olympia Ecosystems**

Notice of Appeal – SEPA threshold determination for project 21-2854 (West Bay Yards project)

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### **1. Appellant’s name, address, and phone number, and email address;**

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### **2. Appellant’s statement describing the Appellant’s standing, as a party of record, to appeal;**

Olympia Ecosystems (OlyEcosystems) and its members have submitted comments throughout the planning process, including during the “official” comment period which closed on February 10, 2026. OlyEcosystems is a party of record.

The purpose of OlyEcosystems is to protect and restore natural habitats and resources in and around Olympia and specifically within the Deschutes River watershed, including Budd Inlet. To that end, OlyEcosystems has acquired property in the Budd Inlet watershed to help protect Budd Inlet’s animals, plants, water quality and related ecosystems resources and values. The proposal poses a direct threat to OlyEcosystems’ corporate purposes and to the ecosystem values it seeks to maintain and enhance by its ownership and conservation-management of property in the watershed.

One of the properties purchased by OlyEcosystems is 1515 West Bay Drive NW, directly across the street from the proposal site. This parcel is one of several parcels that comprise the nature preserve created by OlyEcosystems – the West Bay Woods. OlyEcosystems began purchasing parcels for the West Bay Woods in 2014, has worked diligently to restore the native habitat on those parcels, and has established the West Bay Woods across those parcels as a publicly accessible nature preserve. The upland ecosystem of West Bay Woods and the shoreline/aquatic ecosystem on and near the project site depend on one another for important ecosystem functions, such as shorebirds bringing fish, shellfish, and carrion into the forest and nutrient-rich plant debris reaching the shoreline. The proposal will adversely impact these functions and, therefore, the conservation value of the West

Bay Woods. The proposal severs the already-degraded interchange between the West Bay Woods and the shoreline by introducing high-density retail and residential development. If this project comes to fruition, West Bay Woods will be further functionally isolated. Moreover, the proposal forecloses the possibility that this interchange could be restored, so that improved functions of the upland and shoreline interchange could be better realized.

OlyEcosystems also has standing on behalf of its members and contributors. Many of OlyEcosystems' members and contributors reside near the proposed project site. Those member/contributors will be adversely impacted by increased traffic, noise, obstructed views of the sound and mountains, and by general degradation of the values within the West Bay Woods.

OlyEcosystems' members and contributors' use and enjoyment of environmental resources on or near the project site are also adversely impacted by the proposal. Those members and contributors use the aquatic habitat proposed by the applicant for conversion to uplands for multiple protected uses, including kayaking, fishing, paddleboarding, bird watching, scientific investigations, and marine harvesting. Those uses and enjoyment will be adversely impacted by the construction-phase impacts, as well as the post-construction phase impacts. Furthermore, Budd Inlet, including the proposal site, serves as a nursery for juvenile salmonids from as far away as the Green River and Puyallup watersheds. OlyEcosystems has standing on behalf of its members and contributors that live in South and Central Puget Sound whose interests will be adversely impacted by the degradation of marine rearing habitat for salmonids, as well as spawning habitat for forage fish life on which the salmonids rely.

The interests of OlyEcosystems were among those that the city were required to consider for purposes of SEPA. The policy underlying SEPA is to "encourage productive and enjoyable harmony" between humans and the environment, and to "promote efforts which will prevent or eliminate damage to the environment..." RCW 43.21C.010. Further, under SEPA, the state has recognized the "profound impact of human being's activity on . . . the natural environment." RCW 43.21C.020(1). The state has also recognized that each person has "a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment." RCW 43.21C.020(3). OlyEcosystems' purpose as an organization is to promote efforts which will prevent or eliminate damage to Budd Inlet and the Deschutes Estuary. Further, OlyEcosystems' members and contributors are the citizens that will most acutely feel the impacts from this proposal given their use of the property and ownership of the adjacent property. They use and enjoy the environment that this project will impact and

that SEPA requires the responsible official to consider and address as part of individual project review.

The interests of OlyEcosystems were among those that the city were required to consider for purposes of the Shoreline Management Act and the Master Program. The city's Master Program requires that shoreline substantial development permits only be issued if consistent with the policies and procedures of RCW 90.58 and the provisions of WAC 173-27-150. Chapter 90.58 RCW requires, generally, that the public interest and adjacent properties not be adversely impacted by development. OlyEcosystems includes members of the public whose protected interests will suffer. Moreover, Master Programs are required to have a use element that considers the appropriateness of certain uses in the context of adjacent properties. OlyEcosystems are adjacent property owners.

The interests of OlyEcosystems were among those the city were required to consider for purposes of the underlying shoreline conditional use permit. Under the Master Program, a proposed conditional use must not interfere with the normal public use of the shoreline. OMC 18.20.230(B)(2). OlyEcosystems' members and contributors are normal public users of the shoreline (and that use will be interfered with). Further, a proposed use must be "compatible with other authorized uses within the area." OMC 18.20.230(B)(3).

OlyEcosystems owns a nature preserve across the street. The city is required to ensure that the proposal is compatible with this other authorized use.

A ruling in favor of OlyEcosystems would substantially eliminate or redress the prejudice discussed. A decision vacating the DNS and requiring preparation of an EIS and requiring that further SEPA review await decisions to be made in the MTCA process would provide the increased scrutiny and analysis that OlyEcosystems seeks and the law requires. This would ensure the public and city decisionmakers are fully apprised of the project's impacts and that full consideration is given to reasonable alternatives that could meet the applicant's objectives, including restoration objectives, with reduced environmental impact.

### **3. Identification of the application that is the subject of the appeal;**

Per the SEPA checklist, the name of proposed project is the "West Bay Yards Development." Per the Olympia Washington Community Planning and Economic Development permit portal (available here - [City of Olympia Public Portal](https://ci-olympia-wa.smartgovcommunity.com/PermittingPublic/PermitLandingPagePublic/Index/acaff699-f208-4537-bb2c-ad3d017711e7?_conv=1)<sup>1</sup>), the West Bay

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<sup>1</sup> [https://ci-olympia-wa.smartgovcommunity.com/PermittingPublic/PermitLandingPagePublic/Index/acaff699-f208-4537-bb2c-ad3d017711e7?\\_conv=1](https://ci-olympia-wa.smartgovcommunity.com/PermittingPublic/PermitLandingPagePublic/Index/acaff699-f208-4537-bb2c-ad3d017711e7?_conv=1)

Yards project is identified as city record number 21-2854. A copy of the SEPA Checklist and Determination of Nonsignificance is attached hereto.

**4. How the appellant is or is likely to be harmed or prejudiced by the decision appealed from;**

We hereby incorporate the response to question 2 (standing) in our response to this question.

The proposal will permanently remove aquatic habitat that is adjacent to OlyEcosystems' West Bay Woods nature preserve. The proposal forecloses the possibility of connecting the West Bay Woods preserve with the shoreline and diminishes the existing conservation value of the preserve by installing a high-density, retail/residential development on the adjacent parcel. The proposal also forecloses the possibility that the existing aquatic habitat to be converted could ever be restored to high quality habitat. These types of restoration projects are precisely why OlyEcosystems was founded.

The proposal's construction phase will create water quality and water quantity and other impacts across a large, disturbed area. During this time, OlyEcosystems' members will be unable to use this area, including areas of Budd Inlet, for protected interests, such as recreation. Further, during the post-construction phase, the proposal will permanently remove aquatic habitat. Thus, the wildlife viewing and recreation opportunities that previously existed in Budd Inlet for OlyEcosystems' members will be fundamentally altered. The wildlife that OlyEcosystems' members enjoy will also be displaced.

The proposal's post-construction phase will obstruct views from historic feeder bluffs in the West Bay Woods. The West Bay Woods property, owned by OlyEcosystems, contains a publicly accessible viewpoint. That viewpoint is the only publicly accessible viewpoint from which the public (and OlyEcosystems' members) can enjoy the sweeping view the includes all of Budd Inlet, the Olympic mountains, Mount Rainier, and our state capitol building.

**5. How or in what particular respect the administrative official erred;**

Issue One

The city<sup>2</sup> violated SEPA's requirements for integration with the Model Toxics Control Act. When remediation pursuant to MTCA is part of a proposal, SEPA and MTCA are interlinked. First, the city must wait to issue its threshold determination until the environmental impacts from the remedial action are identifiable. The city, in this case, failed to wait. With the remedial action component unresolved, it is too early for a threshold decision. Second,

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<sup>2</sup> For purposes of this notice of appeal, the terms "city" and "SEPA responsible official" are used interchangeably unless otherwise specified.

the city has failed to integrate the comment periods required under both authorities for the proposal.

The threshold decision should be vacated.

#### Issue Two

Under SEPA, the threshold determination shall be made at the point at which adequate information is available about the environmental impacts of the remedial action. The city must base its threshold determination on information reasonably sufficient to determine the impacts from the proposal. In this case, the remedial action has not been selected. (An Agreed Order has been issued, but it amounts to a “plan to make a plan” for a remedial action.) Because the remedial action has not been selected, the city lacks information about the reasonably foreseeable impacts associated with that remedial action, including the intensity of those impacts.

#### Issue Three

The city lacked adequate information on which to base its threshold determination about impacts to fish life. During the construction phase, the proposal will create water quality and water quantity and other impacts that will disrupt the aquatic habitat on and near the project site. Additionally, the use of fill waterward of the OHWM will suffocate the plants and animals that live in the substrate and form the basis of Budd Inlet’s food web. This disruption of aquatic habitat will displace fish life and force them to seek appropriate habitat elsewhere. Budd Inlet is already degraded in terms of aquatic habitat. The city has incomplete information as to whether any alternative foraging sites will be available during the construction phase, the city also has incomplete information about the capacity of those alternative sites to accommodate the influx in use. Thus, its threshold determination was not based on reasonably sufficient information.

During the post construction phase, the project will create water quality impacts associated with runoff containing sediment, organics, nutrients, toxins, and/or contaminants causing additional damage to the plants and animals on or near the project site. Further, once the project is completed, the amount of available aquatic habitat in Budd Inlet is permanently reduced commensurate with the scope of upland creation. The city adopts the falsehood that animals and plants displaced by this permanent loss can move elsewhere. But “elsewhere” already has its own communities of animals and plants. Permanently removing a critical habitat is an adverse impact. The city has incomplete information about the post-construction impacts and, thus, its threshold determination was not based on reasonably sufficient information.

The city lacked adequate information about the impacts of this project on the functions and values of the adjacent nature preserve, West Bay Woods. The proposal will further functionally isolate this preserve, thereby diminishing its conservation value.

OlyEcosystems hereby incorporates its responses above to questions 2 and 4 and re-alleges that statements contained therein as issues on appeal.

The city lacked adequate information about the cumulative impacts of this proposal and other proposals in or near Budd Inlet. A dam removal project and other major infrastructure projects are proposed in or near Budd Inlet. SEPA requires the lead agency to consider the cumulative impacts from such projects.

The city lacked adequate information about impacts to traffic, views, public access, recreation, and upland flora and fauna. The information provided on these issues was not reasonably sufficient to base a threshold determination.

#### Issue Four

The city lacked adequate information about whether the proposal complies with all applicable codes. The city has incomplete information about whether the project complies with the Shoreline Management Act, Olympia city code, the state hydraulic code, and/or any other applicable authorities because the city opted to issue its DNS before the other approvals had been issued. To the extent the city relied on code compliance to reach its threshold determination, that reliance was in error because compliance cannot be assured given the lack of adequate information.

The city lacked adequate information about the feasibility of alternative remedial actions that involve no conversion of aquatic habitat. If restoration objectives can be achieved while preserving the existing OHWM and aquatic habitat, those alternatives must be pursued instead of the applicant's desired cleanup action that results in the permanent loss of aquatic habitat.

#### Issue Five

The city's DNS is inconsistent with its exercise of the option in WAC 197-11-158. The city cannot assert that the proposal's impacts will be mitigated and addressed by compliance with applicable development regulations when the type and intensity of impacts associated from the not-yet-selected remedial action are unknown. Further, the city cannot exercise this option when additional approvals from the city or from other state or local agencies and/or departments are required because compliance is not, in fact, assured when no approval has yet been granted. Mitigation via code compliance cannot be assured when analysis has not occurred.

### Issue Six

The city's reliance on code compliance pursuant to WAC 197-11-158 is unjustified. The proposal is not consistent with applicable codes. The proposal is not consistent with provisions of the Shoreline Master Program, in particular, codes that prohibit the creation of additional uplands, codes that allow only the minimum necessary fill waterward of the OHWM, codes related to upland fill, and no-net-loss/mitigation sequencing codes. Further, a shoreline conditional use permit is required for the entire Mixed Use proposal; the proposal is inconsistent with the Critical Areas Ordinance; and the proposal is inconsistent with the state hydraulic code. Also, the proposal is not consistent with codes that implicate the use of fill, traffic, views, public access, recreation, shoreline stabilization, and upland flora and fauna.

Because the proposal is not consistent with the applicable codes and regulations, the city erred in exercising and relying upon WAC 197-11-158.

### Issue Seven

The city violated the procedures and substance of WAC 197-11-158. Procedurally, if an agency opts to exercise the option in WAC 197-11-158 and relies on existing regulations, then the agency must identify the specific probable adverse environmental impacts of the project, identify the ordinances that address each impact, and determine that each impact is addressed by an adopted ordinance. If the city did not go through that process, then it cannot rely on WAC 197-11-158. The record does not demonstrate that the responsible official conducted that analysis before concluding that there were no gaps in the existing regulations and that each and every impact would be adequately addressed by existing regulations.

Substantively, the city violated WAC 197-11-158 because, if the city's responsible official did conduct the required analysis, they reached the wrong conclusion. Existing development regulations do not fully address all of the proposal's threatened impacts. The proposal includes impacts to the aquatic habitat, such as the permanent alteration in forage fish/salmonid/fish life habitat – among other impacts, that are not addressed by existing development regulations or other authorities. The proposal will also further functionally isolate the West Bay Woods nature preserve, an impact which is not addressed by codes. The city was required under SEPA to “fill the gaps” left by the development regulations and consider these reasonably foreseeable impacts.

The existing development regulations and/or other authorities include other “gaps” wherein reasonably foreseeable impacts under SEPA manifest and require review by the city. The

gaps in the existing regulations which the city failed to review implicate impacts to fill, traffic, views, public access, recreation, shoreline stabilization, and upland flora and fauna.

#### Issue Eight

The city violated SEPA's requirement to assess alternatives when a proposal involves unresolved conflicts concerning alternative uses of available resources. Per RCW 43.21C.030(2)(e) and *Wild Fish Conservancy v. Washington Dept. of Fish & Wildlife*, 198 Wn. 2d. 846 (2022), an alternatives analysis is necessary when a proposal involves a competition over the use of a resource, e.g., where selecting one manner of using the resource would preclude all other uses. This analysis requirement is independent of the alternatives analysis requirement in the EIS process.

The proposal involves filling tidelands that provide critically important aquatic habitat. The fill would create uplands with no aquatic value. All aquatic related uses of that habitat would be precluded forever. Foraging, recreation, diving, kayaking, and a whole suite of other activities would be precluded by the conversion of this habitat to uplands. This is the precise type of "either/or" situation that requires an alternative analysis before the available resources of this aquatic habitat are forever removed.

#### Issue Nine

The proposal may cause significant, unmitigated adverse impacts. Therefore, the city was required to issue a DS. The proposal involves the permanent conversion of aquatic habitat to uplands. The functions and values of that habitat, regardless of their current condition, are lost forever. The amount of available foraging/fish-rearing/aquatic habitat in Budd Inlet is extremely limited. Losing another site where that habitat exists and can be enhanced would be a permanent, significant, unmitigable loss. The proposal also includes water quality and water quantity impacts that may be significant and are unmitigated. The proposal also includes impacts to traffic, views, public access, recreation, and upland flora and fauna that may be significant and are unmitigated. The proposal also includes impacts to the adjacent nature preserve, West Bay Woods, that may be significant and are unmitigated.

#### Issue Ten

The city violated SEPA's prohibition of balancing the beneficial aspects of a proposal against the proposal's adverse impacts. A threshold determination shall not balance whether the beneficial aspects of a proposal outweigh its adverse impacts, but rather, shall consider whether a proposal has any probable significant adverse environmental impacts.

The city erroneously concluded that the benefits of filling the aquatic habitat (e.g., burying toxic waste beneath the fill) would outweigh the harms caused by filling the habitat (loss of precious, irreplaceable aquatic habitat forever) But basing a threshold determination of this kind of “net result” analysis is prohibited. If the adverse impacts are significant, an EIS is required, regardless of claims that the action would also create some environmental benefits.

**6. What relief or ruling is sought and how such ruling would eliminate or reduce harm to the appellant; and**

Appellant requests the hearing examiner vacate the DNS and require the responsible official to make a new threshold determination consistent with the timing requirements of SEPA and MTCA, *i.e.*, after the impacts from the remedial action are reasonably identifiable.


Appellant also requests that the hearing examiner vacate the DNS and require an alternatives analysis per RCW 43.21C.030(2)(e).

Alternatively, the appellant requests that the examiner determine that the project’s impacts are significant and require preparation of an EIS.

The examiner also should require the responsible official to conduct the analysis required by WAC 197-11-158<sup>3</sup> before concluding that all of the project’s impacts are adequately addressed by existing regulations. In the alternative, the examiner should conclude that the project’s impacts will not all be adequately addressed by existing regulations and require an EIS to address those significant, unmitigated impacts.

**7. The appellant has read the appeal and believes the contents to be true, followed by the appellant’s signature.**

The undersign attests that the contents of this notice are true and accurate to the best of their knowledge.

Signature \_\_\_\_\_ 

Name Daniel R. Einstein, Land Conservation Director

Date 02/17/2026

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<sup>3</sup> See also RCW 43.21C.240.