

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE HEARING EXAMINER FOR
THE CITY OF OLYMPIA

In re: Eastbay Flats & Townhomes (aka
Westman Mill),

No. 17-2795

DECLARATION OF HARRY BRANCH
REGARDING STANDING

Appeal of DNS and Land Use
Approval.

1. I, HARRY BRANCH, am over the age of 18 and competent to testify to the following facts. These statements are based on my personal knowledge and are made under penalty of perjury.

2. I have lived in the City of Olympia since 1977. I have had a keen interest in salt water, shorelines, tide pools, bays, estuaries, streams and other elements of the natural environment as long as I can recall. I grew up in Santa Cruz, California on Monterey Bay. I received a Bachelor's Degree from San Francisco State University in 1976 with a major in Film and a minor in Biology. In 1994, I received a Master of Environmental Studies with a focus in Marine Ecology from The Evergreen State College in Olympia.

3. I have captained and crewed aboard several types of vessels since 1970. I have skippered sail boats for delivery throughout the North Pacific between Alaska, Hawaii and Mexico. I

1 crewed on boats fishing California Rockfish and Albacore Tuna in the 1970's. In 1990, I
2 skippered a boat conducting surveys of Geoduck Clam beds.

3 4. In 1995, I met with employees of the newly formed Olympic Coast National Marine
4 Sanctuary for extended planning sessions. During summers, between 1996 and 1998, acting
5 as a private contractor, I skippered a NOAA vessel conducting various research projects from
6 Cape Flattery to Destruction Island. The research included bioassay surveys of benthic plants
7 and animals, an analysis of nearshore primary production, bird counts, tag and release sea otter
8 studies, and an archeological survey of shipwrecks.

9 5. Between 1986 and 1994, I served as vessel captain and instructor for The Evergreen State
10 College. My duties included planning and executing trips for chemistry, biology, and marine
11 studies classes throughout Western Washington and British Columbia. In 1991-92 I helped
12 plan and supervise the collection of 241 benthic samples at 41 sites throughout South Puget
13 Sound, looking for pollutants such as lead, cadmium, copper and residual organic compounds.

14 6. I have published several articles on topics related to marine life, oceanography, and the
15 environment including *The Caribbean Spiny Lobster*, *Panulirus argus*, *Enhancement of the*
16 *Fishery with Oceanographic Tools and Spatial Division of Fishing Grounds Between*
17 *Cooperatives and Sancuaries*, The Evergreen State College Essay of Distinction (1994); and
18 *The Geoduck Clam*, *Panope Generosa*, *The Potential Benefits of a Co-Managed Fishery*,
19 *Proceedings of the Puget Sound Research '95 Conference*, 1995.

20 7. During the last several decades, I have regularly traveled throughout East Budd Bay on
21 various vessels including an Annapolis 44 and a 12-ton cutter belonging to Evergreen, a 37
22 foot Ericson and several smaller vessels belonging to myself and numerous other vessels. I
23 enjoy watching the fish, birds and wildlife from the nearly microscopic to Orcas and I study,
24
25
26
27
28

1 photograph, and film wildlife. I believe that the local ecosystem provides a wonderful
2 opportunity to educate the next generations and I frequently write articles about stream and
3 estuary ecology including the ecology of Moxlie Creek.

4
5 8. Frequently I walk throughout the accessible portions of the Moxlie/Indian Creek watershed
6 including the paths around East Budd Bay and the trails of Watershed Park. I frequently
7 photograph items of ecological interest to me during my visits. I am interested in protecting
8 and preserving the water quality in this watershed so that I can continue to enjoy the remaining
9 habitat and hopefully see it improve. I am even more interested in protecting this resource for
10 my daughters and grandchildren, and other community members now and in the future. I
11 believe that the proposed development, if approved, will effectively foreclose our last realistic
12 opportunity to protect and restore water quality in Moxlie Creek or protect and restore
13 degraded estuarine tidelands in this watershed. In large part, I believe such ecological damage
14 contributes to the decline of species throughout the food chain from the phytoplankton and
15 zooplankton up to and including the Orca.

16
17
18 9. In about 2014, I learned of several other people with a shared interest in the Moxlie Creek
19 watershed and potential habitat restoration projects. We discussed our ideas and concerns.
20 Eventually Zena Hartung and I made a presentation to the Olympia City Council about the
21 benefits of supporting funding requests for a Moxlie Creek habitat restoration project, which
22 some people refer to a “daylighting.” A copy of the video can be viewed here:

23 https://www.youtube.com/watch?v=7_Q-0xj7-dk.

24
25 10. Over the last several years, I have written letters to the City Manager, the Department of
26 Ecology, the Port of Olympia and others to promote the idea of a Moxlie Creek restoration
27

1 project to help the City meet its Clean Water Act obligations. I have also spoken personally
2 on numerous occasions to City, DOE and Port staff about these topics.

3 11. In 2017, I wrote a series of articles about Moxlie Creek, which were published in the
4 South Sound Green Pages at <http://www.ssgreenpages.online/?s=Moxlie>. I also wrote a letter
5 to the editor of the Olympian, which was published; a copy can be viewed here:
6 <http://www.theolympian.com/opinion/letters-to-the-editor/article183554601.html>.
7

8 12. When I first learned of this development proposal, I was shocked by the size and scale
9 and the designer's complete disregard for its effect on ecological functions in the area such as
10 those associated with an existing wetland, Moxlie Creek, and East Budd Bay. I was also
11 concerned about its impacts on the historic estuary and concerned about whether it would
12 foreclose estuarine restoration projects such as those contemplated by various City planning
13 documents such as the 1993 Indian/Moxlie Creek Drainage Basin Plan and the Storm and
14 Surface Water Plans.
15

16 13. In addition to the letter that the League wrote to the City in September 2017 for the
17 application file, I personally have written several letters to the City regarding the proposal.
18 Generally speaking, my comments have focused on the ecological impacts of this proposal,
19 the damage it will cause to our ability to protect and restore water quality within the fresh
20 water drainage basin and East Budd Bay. I have asked the City for a candid, public discussion
21 of the environmental effects of this project upon the water shed. I have encouraged the City
22 to engage in a science based discussion of the environmental impacts. I feel it is very important
23 to have such candid public discussions so that the public and decision makers can understand
24 the real environmental consequences of our governmental decisions.
25
26
27
28

1 14. The Port's response to my correspondence and entreaties was to minimize that
2 government's ownership share of Moxlie Creek and to profess confusion as to why I should
3 direct my concerns to them. I know that several other citizens had similar experiences. City
4 staff responded to my concerns about Moxlie Creek and East Bay with the suggestion to get
5 more involved with restoration projects in other watersheds. They believe that the impact of
6 this project is not worth examining because the restoration projects identified in their plans are
7 too hard, too expensive, and that the Moxlie Creek watershed should be written off.
8

9 15. I have attended all of the public meetings on the proposal including the neighborhood
10 meeting on August 29, 2017, the concept design review board meeting on September 28, 2017
11 and the detailed design review board meeting on January 25, 2018. In my view, as illustrated
12 by the Port's response to my environmental concerns, there has been a conscious effort by the
13 governments involved with this application to limit a full and candid discussion of the effects
14 of this project on larger scale environmental functions. As shown in our appeal brief, the
15 design review board chair declared Moxlie Creek and watershed concerns off-limits during
16 those public meetings.
17

18 16. One of the techniques used by the City and Port to obscure the basin-wide impacts of the
19 project is to describe it as the site as a vacant lot and its relationship to East Budd Bay and
20 Moxlie Creek by listing the horizontal distance to the ordinary high-water level and the Moxlie
21 Creek culvert. That description does not allow anyone to evaluate the effects of this proposal
22 on the remaining ecological functions associated with the historic, buried tidelands or allow
23 them to evaluate the effects of this proposal on habitat restoration projects identified in
24 previous City planning documents. They also studiously avoid all discussion of or reference
25
26
27
28

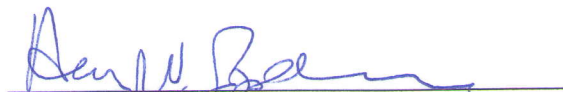
1 to the Moxlie Creek restoration projects identified in the planning documents, which help to
2 put the impacts I am concerned about into the proper context.

3 17. I and a group of likeminded citizens formed the Olympia Urban Waters League (League)
4 in 2017 after the land use application was filed. We formed a Washington non-profit
5 corporation on October 1, 2017. I am the President of the corporation and Zena Hartung is the
6 Vice President. This is the League's website: <https://urban-waters.com/>. Generally speaking
7 our goal is to protect and restore the quality of urban waters and related habitat in the Olympia
8 area.
9

10 18. The mission statement from our website is: Olympia Urban Waters League (OUWL) is
11 dedicated to restoring the creeks and streams that are presently polluted pipe-bound drains.
12 Daylight is necessary to cleanse surface water. Our goal: clean water for Olympia – The
13 Venice of the Northwest. In just a short time, we have obtained 588 followers to our blog,
14 which we think indicates the public interest in this topic. Our interests as a corporation include
15 using science and advocacy to the appropriate government agencies, public outreach, and
16 multimedia publications to raise awareness about the multifaceted significance and value of
17 our community's water bodies, and about the need to protect and restore urban waters in the
18 Olympia area. Our interests also include ensuring that relevant government regulators follow
19 appropriate procedures in making land use decisions with an effect on urban waters, engaging
20 in scientific, recreational, artistic, and literary activities that promote the appreciation of our
21 local water bodies. The League as an organization, and its individual members including
22 myself, derive pleasure, knowledge, and use value from the presence of healthy habitat,
23 wildlife, and water bodies located in our community.
24
25
26
27
28

1 19. The League as an organization and its individual members will suffer a substantial loss if
2 the City's Determination of Non-Significance in this case is allowed to stand. First, the City's
3 approval fails to take account of various impacts on the environment present at and around the
4 site of the proposed development which the League believes should be subject to examination
5 through an Environmental Impact Statement—which has not been completed to date. The
6 degraded water quality in Moxlie/Indian Creeks and in East Bay are interconnected issues that
7 we believe are exacerbated by both the present development and the ultimate build-out of the
8 Port's adjoining property of which this is merely the first step. These land development plans
9 will likely render any environmentally worthwhile restoration of the Creeks to open air
10 impossible. Additionally, the Creeks may be restored to open air by running them through a
11 more natural course other than the middle of Chestnut Street, and it is likely that the present
12 development lies within a short distance (under 250 feet) of preferable locations for the
13 daylighted creek to run, and/or the natural location of Indian and Moxlie Creeks and the
14 estuary mouth at high tide. Finally, we believe allowing the City's Determination of Non-
15 Significance to stand without a hearing on the merits violates the League's interest in ensuring
16 the proper environmental review process is followed for development that is likely to impact
17 urban waters in the Olympia community.
18
19
20
21

22
23 Dated this 11th day of April 2018
24

25
26 
27 Harry Branch
28