

**ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED COMPREHENSIVE UPDATE TO THE CITY OF GIG HARBOR
SHORELINE MASTER PROGRAM**

SMP Submittal accepted February 7, 2013, Resolution No. 921
Prepared by Kim Van Zwalenburg on August 19, 2013, Revised September 10, 2013

Brief Description of Proposed Amendment: The City of Gig Harbor has submitted a comprehensive update to their Shoreline Master Program (SMP) for review and approval by the Department of Ecology (Ecology). The updated master program will regulate about 3 miles of shoreline within the City. It contains locally tailored shoreline management policies, regulations, environment designation maps, administrative provisions and critical area regulations which have been embedded in Chapter 6 of the SMP. In addition, the City is pre-designating approximately 3 ½ miles of shoreline within the Urban Growth Areas (UGA) located along the east side of Gig Harbor Bay, Colvos Passage and the Tacoma Narrows. The City has chosen to not pre-designate the UGA along Henderson Bay and Burley Lagoon. Additional reports, and supporting information and analyses are included in the submittal and noted below.

FINDINGS OF FACT

Need for amendment. The proposed amendment would replace the City's existing SMP in its entirety. The amendment is needed to comply with the statutory deadline for a comprehensive update of the City's local Shoreline Master Program pursuant to RCW 90.58.080 and 100. This amendment is also needed for compliance with the planning and procedural requirements of the SMP Guidelines contained in WAC 173-26 (State master program approval/amendment procedures and master program guidelines) and WAC 173-27 (Shoreline management permit and enforcement procedures). The original Gig Harbor SMP was approved by Ecology in 1975 and was last amended in 1994.

Ecology finds that the City has documented the need to adopt an updated shoreline master program.

Documentation of current conditions: The Gig Harbor SMP will regulate activities along marine shorelines within the City, including Gig Harbor Bay, the Tacoma Narrows and a small segment along Henderson Bay. The Inventory and Characterization report analyzed the shoreline in six segments: Colvos Passage and Gig Harbor Spit, East Gig Harbor, Downtown Gig Harbor, Tacoma Narrows, Henderson Bay and Burley Lagoon¹.

Gig Harbor Bay: The bay, commonly referred to as the harbor, is a protected embayment with a spit located at the mouth. The banks are low to moderate in height with limited riparian vegetation. Much of the shoreline is armored, limiting sediment movement within the bay. There are mud flats and fringing tidal marsh, particularly in the vicinity of the mouths of Crescent and Donkey creeks. Crescent Creek is documented to have chum, coho, steelhead and sea run cutthroat trout. Donkey Creek is documented to support chum and coho salmon and steelhead trout. In addition, over the past 30 years or more, the Commercial Fishermen's Civic Club has been raising and releasing chum on an annual basis. At the time the Inventory was completed, the lower end of Donkey Creek flowed

¹ Late in the local adoption process, the City removed the Henderson Bay/Burley Lagoon Urban Growth Area (UGA) from the SMP and is no longer pre-planning for this UGA. The SMP will still apply to the recently annexed segment of Henderson Bay shoreline including the mouth of McCormick Creek.

through a 300-foot long culvert below North Harborview Drive. This year, the City began work on day-lighting the creek.

The City's historic downtown is located along the western side of the harbor. This area has been heavily modified over time and has the highest impervious surface (estimated at 63%). Development along the downtown waterfront consists of a mix of commercial and residential uses and much of the shoreline has been bulkheaded limiting sediment movement. There are numerous overwater structures including piers, docks and marinas and historic net sheds. Crescent and Donkey² creeks outlet into the bay and there is evidence of historic filling in and around these estuaries. Aside from the areas near the two creek mouths, there is little riparian vegetation. This area of the harbor has the largest concentration of public parks (including viewing areas).

The east side of the harbor is currently located within the City's UGA. It is characterized by large residential lots and numerous private docks most of which are located to the south of the Randall Street public boat launch. The shoreline north of the boat launch the shoreline up to Crescent Creek is more lightly developed. There are two known smelt spawning areas on this side of the bay.

The open water of the harbor has numerous mooring buoys. During the writing of the Inventory & Characterization, it was estimated there were 70 docks and piers along the perimeter of Gig Harbor Bay. There are a number of other overwater structures including 17 historic net sheds (see discussion below specific to these structures).

Tacoma Narrows/Colvos Passage: Colvos Passage and the Gig Harbor spit are located to the north of the harbor entrance. These areas are located within the City's UGA. The spit is largely undeveloped except for the lighthouse (which still operates). Further north, the land transitions to a moderately high bluff with a fairly broad riparian band and armoring at the toe. Recent slides are evident, overtopping the armoring and dropping material onto the beach. There are at least two structures extending waterward of the OHWM.

The Tacoma Narrows segment of shoreline is located south of the harbor entrance and contains properties within the city and UGA. Most of the area is developed with single-family residences. Just outside the harbor entrance, and within city limits, is a historic community of approximately 18 overwater homes called Nesika Beach. Most are used as summer cabins and are accessible only by walking along the beach from the Old Ferry Landing/Harborview Drive street end. Much of the segment is characterized by medium to high bluff which is well vegetated except in the area of slide activity and the beach has large wood debris. South of the Nesika Beach community, there is little shoreline armoring and the beach is mapped as potential forage fish habitat. Other than the cabins, there are no overwater structures along this shoreline.

Henderson Bay: The Inventory & Characterization looked at the entire UGA along Henderson Bay, but the City ultimately decided to only address a short segment (approximately 6 waterfront parcels), including the mouth of McCormick Creek, located within City limits. The area is characterized by single-family homes and much of the shoreline is bulkheaded with little riparian vegetation. Eelgrass is present and there is potential forage fish habitat. There are no overwater structures. McCormick Creek has significant fish runs, particularly coho.

² The City began work on restoration and daylighting of Donkey Creek in the spring of 2013. The project includes removal of fill and an existing culvert and placement of a bridge on North Harborview Drive.

Shoreline Use Analysis: In support of the Inventory & Characterization, the City completed an inventory of net sheds (Appendix C), an Existing Conditions Summary of the marinas and moorage facilities located in the City (Appendix D) and a Shoreline Characterization by Parcel (Appendix E).

Most properties in the City are at least partially developed, with about 50% of the shoreline in residential uses within Gig Harbor Bay, much of it along the east side of Gig Harbor Bay in the UGA. The city’s downtown shoreline reflects the largest diversity of uses and has historically been a mix of water-dependent uses (such as commercial fishing and logging mills), and business services including a general store and post office. Today’s downtown includes commercial and private marinas, commercial fishing facilities, and commercial activities that support the adjacent residential areas as well as those which support a significant tourist economy. Outside the harbor, the Puget Sound shoreline is nearly all residentially developed.

The following table summarizes the parcel characterization (Appendix E), which focused on downtown Gig Harbor (Harborview Drive), North Gig Harbor (North Harborview Drive) and the Purdy Commercial Area (no longer included in the proposed SMP) and shows 70% of parcels are water-oriented and 30% are non-water-oriented.

Table 3-1. Summary of Water-oriented and Non-water-oriented Uses Surveyed

Use Type	Downtown Gig Harbor (number of parcels)	North Gig Harbor (number of parcels)	Henderson Bay and Burley Lagoon (number of parcels)	Total for Each Use
Water-dependent	20	0	1	21
Water-related	6	4	2	12
Water-enjoyment	16	5	5	26
Total water-oriented	42	9	8	59
Non-water-oriented	12	7	6	25
Total non-water-oriented	12	7	6	25
Total Number of Parcels Surveyed	54	16	14	84

(I & C, April 2011, page 7)

Water-dependent uses are primarily related to commercial fishing and recreational boating. Historically, most overwater development supported the commercial fishing industry. While this industry has changed (and declined in Puget Sound), demand for recreational marinas has increased driven by continued growth in boat registrations (a trend showing in Pierce County as well as throughout Puget Sound). Growth in hand-powered vessels has also been significant.³

The City conducted a marina survey as part of the update and determined there are 29 commercial marinas, commercial fishing moorages and moorage associated with upland condominiums. There are 722 boat slips in the bay with most marinas operating at or near capacity. Most of these marinas are

³ Regional data comes from the Tacoma Waterfront Lands Analysis , November 2008 (BST Associates)

fully built-out and have no expansion plans, in part because they can't extend beyond the Outer Harbor Line.

A separate analysis of Pierce County Assessor data was done to determine current uses of waterfront parcels in those areas of the City where zoning would allow marinas or related commercial services. A qualitative evaluation of available water surface for over-water facilities (e.g. piers and docks) was also conducted. Based on a number of factors, it was concluded that space for additional marinas is limited.⁴

Finally, the City has an extensive collection of historic net sheds. These date back to the heyday of the commercial fishing industry. Of the 17 net sheds still in existence, fifteen are in use, with seven solely supporting commercial fishing, two used for both fishing and other uses and six solely for other purposes. Two are listed as vacant. The conversion of net sheds to other uses is a concern for those still engaged in the commercial fishing industry and the SMP makes clear that water dependent and water-related uses are the priority for these structures. The conversion allowance is meant as an incentive to get these structures on the Historic Register and to help ensure their continued existence.

Since most of the shoreline has been built out, use conflicts are largely between recreational boating and commercial fishing interests. This includes navigational conflicts within the harbor. Along with potential navigational constraints between moorage facilities, there have been concerns relating to the proliferation of mooring buoys throughout the bay, particularly on the Pierce County side of the bay. There is no identified navigational channel and maneuverability has been compromised at times.

Ecology finds that Gig Harbor has adequately considered supply and demand for SMA preferred uses and the potential for use conflicts consistent with WAC 173-26-201(3)(d)(ii) and WAC 173-26-201(2)(d).

SMP provisions to be changed by the amendment as proposed: This comprehensive SMP update is intended to entirely replace the City's existing SMP. The updated SMP includes new shoreline area (6 parcels) annexed in April 2009 which extended the city limits out to Henderson Bay. The SMP will regulate approximately 3 miles of marine shorelines (approximately 6.7 miles when including the UGA). The City is pre-designating the Urban Growth Areas (UGA) located along the Tacoma Narrows, Colvos Passage and the east side of Gig Harbor Bay. The City has chosen to not include the UGA along Henderson Bay and Burley Lagoon. All UGAs will continue to be regulated by the Pierce County SMP until annexed into the City.

Shoreline Jurisdiction: The City proposes to use the minimum jurisdiction allowed including the water areas and bedlands of all shoreline waterbodies, shorelands located within 200 feet of the Ordinary High Water Mark (OHWM) and all associated wetlands. The City is not extending jurisdiction to include land necessary for buffers for critical areas. (Gig Harbor SMP Sections 1.7 and 1.8)

⁴ The Inventory & Characterization documented two proposed marina developments that were going through permitting at the time. Since the report was written, the City has purchased both properties: the former Stutz fuel site is now the location of the Maritime Pier (2012 completion) and the Ancich waterfront property (purchased August 2012) is undergoing a visioning process.

Ecology finds that the Gig Harbor SMP, contingent on acceptance of a technical change outlined in Attachment B – Required Changes, has appropriately defined shoreline jurisdiction consistent with RCW 90.58.030(2).

Shorelines of Statewide Significance (SSWS): RCW 90.58.020 specifically calls out SSWS for special consideration declaring the “the interest of all of the people shall be paramount in the management” of these shorelines. In Gig Harbor, the only SSWS are those portions of Puget Sound (including Gig Harbor) lying seaward from the line of extreme low tide. (GHSMP, Chapter 4)

Ecology finds that the SMP has appropriately identified SSWS within the City’s jurisdiction and has included policies for management of these areas (Chapter 4). The policies are consistent with RCW 90.58.020 and WAC 173-26-251.

Shoreline Master Program Goals and Policies: The SMP addresses the elements outlined in RCW 90.58.100(2) and the policies of RCW 90.58.020 and WAC 173-26-176 General policy goals of the act and guidelines for shorelines of the state. Policies are found in Chapter 5, Shoreline Environment Designations, Chapter 6 General Goals, Policies and Regulations and Chapter 7 Shoreline Use and Modification – Policies and Regulations.

Ecology finds that the City has addressed the requirement to establish policies per RCW 90.58.100(2) and WAC 173-26-201(2)(a).

Shoreline Environment Designations: Assignment of shoreline environment designations is a fundamental aspect of the SMP update. Gig Harbor’s existing SMP uses two (2) environment designations: Urban and Urban Residential.

The locally adopted SMP identifies six (6) proposed designations: City Waterfront, Historic Working Waterfront, Low Intensity (similar to Shoreline Residential), Natural, Urban Conservancy and Marine Deepwater. Each environment designation has a purpose statement, designation criteria and management policies. Three of the designations (Natural, Urban Conservancy and Low Intensity) follow the recommended classification system set forth in WAC 173-26-211(4)(b).

For the other three designations, Gig Harbor opted to use alternative designations as allowed in WAC 173-26-211(4)(c).

- City Waterfront is assigned to portions of the historic downtown commercial area of Gig Harbor which “together with those commercial areas in the view basin...serve as the traditional and emotional center of the city” (GHSMP, p. 5-19). As the SMP further states: “The purpose of the City Waterfront designation is to accommodate and foster the unique mix of uses and activities that characterize the Gig Harbor Bay waterfront” (p. 5-19).
- Historic Working Waterfront is assigned to 14 parcels along the northwest section of the waterfront on Gig Harbor Bay, an area that contains a significant concentration of historic uses and structures including a concentration of net sheds and commercial fishing vessel moorage facilities. The purpose “is to recognize and preserve two of Gig Harbor’s most notable historic industries: commercial fishing and boatbuilding.” (p. 5-23)
- Marine Deepwater is assigned to all marine waters and underlying submerged lands **waterward of extreme low tide**. This designation is coincident with those areas designated

SSWS and was originally conceived by Pierce County in an early draft SMP. The City decided to utilize the designation (rather than Aquatic) in an attempt to be consistent with the county⁵. “The purpose is to protect, restore, and manage the unique characteristics and resources of the marine waters in Gig Harbor.” (GHSMP p. 5-27)

Because of the decision to use the Marine Deepwater designation, all of the City’s designations have a different geographic scope than is recommended in WAC 173-26-211, with the five upland designations extending out to extreme low tide. In order to ensure consistency with the purposes and policies of WAC 173-26-211(4)(c)(i) and WAC 173-26-211(5), the Aquatic policies have been incorporated into those of the Marine Deepwater designation, and in all the upland designations to address those portions waterward of the OHWM. In addition, Table 7-2 – Shoreline Use Matrix and the regulations within Chapter 7 clarify those activities allowed waterward of the OHWM.

Ecology finds that the process of evaluation used to assign shoreline designations was appropriately conducted. Ecology also finds, contingent on acceptance of one technical correction in Attachment B – Required Changes, that each shoreline designation in the SMP has a clearly stated purpose, designation criteria and policies and is adequately mapped on the Shoreline Environment Designations Map (GHSMP Figure 5-1 Shoreline Map, and Figures 5-2 through 5-8). The designations provide a framework for implementing shoreline policies and regulations. The allowed uses and regulations for each shoreline designation (Tables 7-1, 7-2 and 7-3) have been developed that account for different shoreline conditions, while helping assure implementation of the purpose of each environment designation and the policy goals of the SMA including protection of existing shoreline ecological functions.

General Master Program Provisions: Chapter 6 provides those policies and regulations that apply to all shoreline development, modifications and uses in all shoreline environments. Included are policies and regulations that address preferred shoreline uses; marine shorelines, vegetation conservation and critical areas protection (addressed separately below); historic, cultural, scientific and educational resources; and public access among others.

The more significant changes proposed in the SMP include the provision for marine setbacks for commercial and residential structures and the vegetation conservation strip. Under the current SMP, setbacks are measured from the rear property line, which in many cases is located waterward of the OHWM, resulting in little to no setback off the OHWM. The locally adopted SMP applies setbacks by environment designation ranging from 25’ in the City Waterfront and Historic Working Waterfront, which are at the heart of the City’s downtown, to 150’ in the Natural designation. Provisions for protecting and/or enhancing vegetation in the vegetation conservation strip apply within these setbacks.

The other key addition to the SMP addresses the collection of historic net sheds in the community (discussed further below).

Ecology finds that the City has included all the required general provisions in the proposed SMP consistent with WAC 173-26-221.

Shoreline Modifications: WAC 173-26-231(1) distinguishes shoreline modifications from shoreline uses by describing them as those actions “undertaken in support of or in preparation for a shoreline

⁵ Pierce County has since decided not to utilize the Marine Deepwater designation.

use”. The SMP addresses shoreline modifications in Chapter 7 and in Table 7-1 Shoreline Modification Matrix including clearing and grading, dredging, fill and excavation and shoreline stabilization.

Ecology finds that the City has considered and addressed shoreline modifications as required in WAC 173-26-231.

Shoreline Uses: WAC 173-26-241 outlines specific common uses and types of development that can occur within shoreline jurisdiction. The SMP addresses applicable shoreline uses in Chapter 7 and Table 7-2 Shoreline Use Matrix.

The locally adopted SMP is unique in how it addresses uses within the heart of the City’s downtown and the historic net sheds.

Historic Net Sheds: Net sheds in Gig Harbor date back to the early 1900’s. They were constructed by families who settled in the area and established commercial fishing operations. These net sheds were often associated with a single family residence, and were used to store and repair fishing nets. Over the years, the net sheds have been slowly disappearing as the working waterfront has converted to a recreationally focused waterfront, but seventeen of these structures still remain. Seven are still solely used for commercial fishing with two others partially related to fishing. The remaining sheds have been converted to other uses or are vacant (two of these are now owned by the city). In 2008, this unique collection of net sheds (the last remaining such collection in Puget Sound) was listed by the Washington Trust for Historic Preservation on their Most Endangered Structures list.

City Waterfront and Historic Working Waterfront: The city’s early history focused on the shoreline along the western side of Gig Harbor Bay. In addition to an early sawmill and commercial fishing activities, the downtown area hosted a wide variety of uses including a ferry landing, boat yards, grocery stores, a pharmacy, dental office, hotel and restaurants (to name a few). This diversity of uses continue in some fashion today with many retail and business establishments supporting the adjoining residential neighborhoods along with others (including museums, gift shops and antique stores) that help support the City’s significant tourist industry. Much of the moorage has transitioned from commercial fishing to recreational boating marinas.

In the course of the SMP update, the Planning Commission and City Council felt strongly that these important historical trends and uses be recognized in the master program. The City has been actively pursuing ways to help preserve the net sheds and the SMP contains incentives that would allow for adaptive re-use of these structures but only if listed on the City’s Register of Historic Places. The preference is for water-oriented uses to occupy these structures, with a water-dependent use being the highest priority. However, the commercial fishing industry has significantly reduced over the years, properties have changed hands and these sheds are expensive to maintain. The City hopes by allowing for some level of adaptive re-use (with a conditional use permit if non-water oriented), they will be able to preserve some of these iconic structures.

Recognizing its working waterfront heritage, the City also acknowledges the diversity of uses that historically and still today occur along the downtown waterfront. The master program has been designed to allow for a continuation of this diversity, while still favoring water-oriented uses above all.

Ecology finds that the Gig Harbor SMP adequately identifies uses common along the City's shoreline, establishes a clear preference for water-oriented uses and public access, and clearly shows by shoreline designation, where certain uses are allowed, conditionally allowed and prohibited. Ecology also finds that the City has documented the historic nature of its downtown and the unique collection of net sheds.

Critical Area Provisions: Gig Harbor has chosen to embed these regulations in Section 6.2.5 of the SMP. These provisions address wetlands, streams, critical fish and wildlife habitat areas, aquifer recharge areas, hillsides, ravine, sidewalls and bluffs, landslide and erosion hazard areas, seismic hazard areas and flood hazard areas. All provisions are identical to the existing CAO except for those addressing wetlands which were revised and updated in response to comments from Ecology during the local process.

Ecology finds that the City has adequately defined and protected critical areas, as required in WAC 173-26-221(2), and that no net loss of shoreline ecological functions should be assured (RCW 36.70A.480(4)).

Administrative Provisions and Definitions: Chapter 2 contains the applicable definitions and Chapter 8 addresses administrative procedures including roles and responsibilities, permit review criteria and nonconforming uses and structures, among others.

Contingent on the City's acceptance of required changes set forth in Attachment B, Ecology finds that the SMP adequately addresses these topics consistent with WAC 173-26-020 and 173-26-191(2)(a)(iii).

Cumulative Impacts Analysis (CIA): Draft reports (November 2009; November 2010; March 2011 w/addendum dated May 2011) evaluating the cumulative impacts of reasonably foreseeable future development, were produced on draft versions of the SMP. A final CIA was issued in May 2012.

As a requirement of the grant, a No Net Loss Summary memorandum (ESA, May 2011) was also issued.⁶

Ecology finds that Gig Harbor has evaluated the cumulative impacts of reasonably foreseeable future development over the next 20 years. The potential for net loss of shoreline ecological functions is low as identified in the CIA. The locally adopted SMP appears to fairly allocate the burden of addressing cumulative impacts among development opportunities. Ecology finds that the City's SMP and supporting Cumulative Impact Analysis is consistent with the SMP Guidelines governing principle (WAC 173-26-186(8)) as well as the legislative intent of the Shoreline Management Act under RCW 90.58.

Restoration Plan: Gig Harbor developed a restoration plan based on the information in the Inventory and Characterization. The plan (ESA, April 2011) identifies site specific and programmatic restoration opportunities and actions for the City. The programmatic opportunities focus on education and incentives, the marine nearshore, infrastructure and planning and coordination. More specific opportunities are identified by planning segment (consistent with those originally identified in the Inventory). The City's SMP (Section 6.8) includes an overall goal, and policies and regulations that

⁶ Unlike the Cumulative Impacts Analysis, there is no requirement in the Guidelines to provide an updated No Net Loss report with submittal of the locally adopted SMP.

permit and promote restoration efforts along all City shorelines and explicitly link restoration actions to the Restoration Plan.

Ecology finds that the Shoreline Restoration Plan is based on appropriate technical information available to the City during the SMP update and can serve as a tool for the City and others to restore shoreline conditions over time. Such restoration efforts are understood to help achieve the no-net-loss standard of the SMP Guidelines (WAC 173-26-186; WAC 173-26-201)).

Amendment History and Review Process: The record shows Gig Harbor began the comprehensive update to their SMP on their own initiative in January 2008, hiring a consultant (*ESA Adolfson*) and developing a draft Inventory and Characterization report. Beginning in July 2009, work began consistent with a scope of work described in *SMA Grant No. G1000028*. The grant provided \$93,000.

Public Participation: The Public Participation Plan documented how the City proposed to inform and engage the public. An informal technical advisory committee was formed (review of documents was done electronically). The City established a webpage and formed a Stakeholder committee in late 2008 which met over 11 months and was informed by an open house held November 19, 2008. The committee provided early input and policy direction on development of a working draft SMP, memorialized in a September 2009 memorandum titled *Stakeholder Committee Policy Direction* (*ESA Adolfson*).

Local Review Process: The Planning Commission began work on the SMP in January 2010. They held two open houses (January 21, 2010 and March 31, 2011) and numerous work-study sessions (all open to the public) over a 15 month period. Public hearings before the Planning Commission were held on November 18, 2010 and March 31, 2011. Documents provided by the City indicate notice of the second hearing was published on March 16, 2011 in *The Peninsula Gateway*. In April 2011, Planning Commission forwarded a recommended draft SMP to City Council.

The record shows that City Council held a joint work-study session with the Planning Commission on May 21, 2011 and a public hearing was held on June 11, 2012. Council held an additional work-study session in October 2012 to consider proposed revisions to the draft SMP based on comments received during the hearing.

With passage of Resolution No. 921, on December 17, 2012, the City Council authorized staff to forward the proposed updated SMP to Ecology for approval.

Consistency with SEPA Requirements: The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP on February 29, 2012. Notice of the SEPA determination was published in *The Peninsula Gateway* on February 29, 2012. The City allowed for a 60-day comment period which closed on April 30, 2012. Ecology did not comment on the DNS. An appeal of the DNS was filed and a hearing on the matter was held before City Council on May 29, 2012. The appeal was denied by Resolution No. 902, dated June 11, 2012.

Ecology finds the record submitted adequately documents compliance with WAC 173-26-100 and 110.

State Review Process: The proposed SMP was received by Ecology for state review and verified as complete on February 7, 2013. Notice of the state comment period was distributed to state task force

members and interested parties identified by the City on March 11, 2013⁷ by mail and March 13, 2014 by email, in compliance with the requirements of WAC 173-26-120. The state comment period began on March 21, 2013 and continued through April 22, 2013. Notice was posted on the Ecology website for shoreline master programs:

<http://www.ecy.wa.gov/programs/sea/shorelines/smp/mycomments/gigharbor.html> and on Ecology’s Public Involvement Calendar and a news release was issued. Ecology staff determined a public hearing was not necessary.

A total of 3 individuals or organizations submitted comments on the proposed amendments. Ecology sent all written comments received to the City on April 24, 2013 and provided a comment summary to the City on May 9, 2013. The City requested two extensions (6/17 and 7/11/2013) in order to respond to all comments. On August 13, 2013, the City submitted its responses to issues raised during the state comment period to Ecology.

Ecology staff met with City staff twice (June 12th and 19th) to discuss proposed changes to the locally adopted SMP.

Consistency with Chapter 90.58 RCW: The proposed SMP has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5).

Consistency with “applicable guidelines” (Chapter 173-26 WAC, Part III): The proposed SMP has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions – see discussion above on pages 4 - 8). This included review of a SMP Submittal Checklist, which was completed by the City and provided with the submittal of the locally adopted SMP.

Other Studies or Analyses supporting the SMP update: Ecology also reviewed the following reports, studies, map portfolios and data prepared for the City in support of the SMP amendment:

- Public Participation Plan (June 2008)
- Shoreline Inventory and Characterization (April 2011 w/Errata #1(March 26, 2012) and Errata #2 (December 17, 2012) including map folio
 - Appendix C – Net Shed Inventory Matrix and Recommendations
 - Appendix D – Gig Harbor Marinas and Moorage Facilities
 - Appendix E – Shoreline Characterization by Parcel
- Revised Cumulative Impacts Analysis (May 31, 2012 w/December 17, 2012 errata)
- No Net Loss Report (May 3, 2011)
- Shoreline Restoration Plan Element (April 2011)

Additional References:

- City of Gig Harbor Parks, Recreation and Open Space Plan (June 26, 2010)
- City of Gig Harbor, Historic Net Shed Sites in Gig Harbor, developed by Lita Dawn Stanton, (November 2006)
- Gig Harbor SMP Update – Stakeholder Committee Policy Direction memorandum, ESA Adolfson, (September 21, 2009)
- Tacoma Waterfront Lands Analysis, prepared for the City of Tacoma (2008)

⁷ A corrected postcard (there was a typographical error) was sent out on March 14, 2013.

- Washington State National Maritime Heritage Area Feasibility Study, Prepared for Washington State Department of Archaeology and Historic Preservation, Parametrix and Berk & Associates (March 2010)
- 2009 Downtown Inventory, Historical Overview (History of Gig Harbor) (Gig Harbor website: <http://www.cityofgigharbor.net/page.php?id=684>)

Summary of Issues Raised During the Ecology Public Review Process: The comments received generally focused on the following topics:

- **Aquaculture:** Any expansion of aquaculture on Henderson Bay is opposed.

Ecology response: Comment noted. There are approximately 6 parcels adjacent to McCormick Creek that are located within the City. Aquaculture is a water-dependent activity and thus a preferred use under the Shoreline Management Act. Jurisdictions are required to ensure preferred uses are adequately accommodated in their SMP. The City's SMP appropriately includes policies and regulations related to this activity. Most of Henderson Bay will be regulated by the Pierce County SMP. (Please note: The City has chosen not to pre-designate the Urban Growth Area along Henderson Bay and Burley Lagoon. Should the City annex this area in the future, a Shoreline Master Program amendment will be required.)

- **Process/procedure:** A number of comments focused on issues related to local and state process and procedure including a request to return the SMP to the City for additional information and public review and demonstration that a new SMP is needed due to changed local circumstances. It was also requested that Ecology extend the public comment period and hold a public hearing. Other comments requested documentation of coordination with other regulatory agencies and a request that a regulatory taking analysis be performed.

Ecology response: As noted above, Ecology has determined that the City has met all procedural requirements necessary for amending or updating their SMP. Gig Harbor is required by statute (RCW 90.58.080) to update their SMP consistent with the new Shoreline Guidelines adopted in 2003. New requirements include meeting the new standard of ensuring no net loss of ecological functions, more stringent shoreline stabilization standards, along with requirements to address vegetation conservation and critical areas. The existing SMP addresses none of these issues.

Ecology does not believe it is necessary to extend the public comment period nor hold a hearing once the City provides information related to which marine shorelines are critical areas. The City's Critical Area Ordinance (CAO) has been incorporated into the SMP as required by RCW 36.70A.480. Designation of "critical areas" is the responsibility of local government (RCW 36.70A.060(2) and RCW 36.70A.170). Incorporation of the CAO into the SMP does not change the designation of critical areas.

- **Consistency with the Growth Management Act (GMA) and the City's Comprehensive Plan:** Concerns were raised that the proposed SMP is inconsistent with statutory changes regarding critical areas and how critical area regulations are integrated into the SMP; that the SMP is inconsistent with Comprehensive Plan goals related to urban development and infill, redevelopment of existing structures; land management policies which favor the use of performance (over prescriptive) standards and the designation of critical areas in marine waters.

Ecology response: As stated above, the Department finds that the SMP is consistent with the statutory requirements for incorporation of the CAO into the SMP. Ecology notes that Section 6.2.5.3 allows for public access and water-dependent activities or development within CAO buffers, however all proposed shoreline development must follow the mitigation sequence set forth in Section 6.2.2 and any remaining impacts must be mitigated to ensure no net loss of shoreline ecological functions.

Consistency with the Comprehensive Plan is the responsibility of the local government (WAC 173-26-191(1)(e)).

- **Public Access:** Comments raised concerns with public access provisions that mandate views and access unrelated to the actual impact of a development. Comments expressed a belief that some of the requirements for view corridors and/or access are illegal and should be addressed case by case.

Ecology response: While not a model of clarity in the Guidelines, Ecology understands public access provisions applied to private property must always meet the tests of “nexus” and “proportionality” as set forth in the Nollan and Dolan decisions by the U.S. Supreme Court. The SMP sets the standard for when public access may be required and what that access should look like. However, the requirement for accommodating public access on private property only occurs when it has been shown that there is either impact to existing public access or increased demand for public access and the required access must be commensurate with the impacts. This analysis occurs during the permit approval process. The City has proposed clarifying language, set forth in Attachment C – Recommended Changes (Item 12).

- **Critical Area provisions:** Numerous concerns are expressed regarding the designation (or not) of all marine areas as critical areas, how the buffers apply to existing development, creation of nonconforming structures and uses (by the imposition of buffers), and the need for clarity regarding how these regulations apply to water dependent uses.

Ecology response: The designation of critical areas is the responsibility of local government (RCW 36.70A.060(2) and RCW 36.70A.170). Incorporation of the CAO into the SMP does not change the designation of critical areas, nor does it change how buffers apply to existing development. Critical area buffers already exist and already apply to property in Gig Harbor. Consistent with the allowance in RCW 90.58.620, the City has included a provision that declares legally established principle residences that do not meet current standards for setbacks, buffers or other dimensional standards (and are located landward of the Ordinary High Water Mark) to be conforming (Subsection 8.11.8.d). The City has proposed language, set forth in Attachment C – Recommended Changes (Item 8), to clarify that water dependent uses and public access can encroach within critical area buffers.

- **Single family residential development:** Comments generally focus on the impact to this type of use (which is a preferred use in the SMA) resulting from the imposition of buffers and setbacks.

Ecology response: Single-family residential uses are a priority use of the state’s shorelines, but only when consistent with control of pollution and prevention of damage to the natural environment (RCW 90.58.020). It is appropriate, within the limits of the Constitution, to ensure

residential development, like other shoreline uses, minimizes “impacts to the land and its vegetation and wildlife, and the waters of the state and their aquatic life”. This is consistent with the legislative finding that “unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest.” Buffers and setbacks are just one mechanism for ensuring impacts to the natural environment are minimized. They also serve to minimize the potential for impacts to structures from natural causes, such as storm-driven waves and flood events. Finally, master programs are required to include policies and regulations that ensure that exempt development in the aggregate will not cause a net loss of shoreline ecological functions and that “fairly allocate the burden of addressing cumulative impacts among development opportunities.” (WAC 173-26-186(8))

- **Existing development/built environment:** Concern was expressed that the SMP does not take into account the developed nature of the Gig Harbor shoreline, and instead applies requirements for vegetation conservation areas and critical area buffers everywhere making all existing structures nonconforming.

Ecology response: The existing developed nature of the Gig Harbor shoreline was recognized and acknowledged throughout the process, beginning with the Inventory & Characterization, the application of proposed environment designations, the location for allowed uses (Table 7-2) and the variation in dimensional standards set forth in Table 6-1 Vegetation Conservation Strip Setbacks for Marine Shorelines and Table 7-3 Bulk Dimensional Standards Matrix. See above responses regarding critical areas.

- **Vegetation conservation strip provisions:** Comments ask for clarity with regard to water dependent uses and the vegetation conservation strip, and also state that conservation strips should not be required in the highly built environment (City Waterfront). Other comments state that application of these regulations to the built environment precludes use of portions of property and constitutes a regulatory taking.

Ecology response: The designation of vegetation conservation strips is Gig Harbor’s approach to the requirement for shoreline vegetation conservation (WAC 173-26-221(5)). The Guidelines make clear that these “provisions apply even to those shoreline uses and developments that are exempt from the requirement to obtain a permit.” The Guidelines further clarify that “vegetation conservation standards do not apply retroactively to existing uses and structures”. However, vegetation conservation provisions are triggered by new development or redevelopment and to new proposed uses. It is appropriate to apply these requirements, even along fully developed shorelines to improve visual and aesthetic qualities of the shoreline, and to ensure impacts to the shoreline are minimized and mitigated. The City has proposed language, set forth in Attachment C – Recommended Changes (Item 8), to clarify that water dependent uses and public access can encroach within critical area buffers and the vegetation conservation strip.

The complete record of the City’s response to the comments received is found in Attachment D.

Summary of Issues Identified by Ecology as Relevant To Its Decision: Based on review of the locally adopted SMP, supporting documents and consideration of comments provided during Ecology’s comment period, the following issues remain relevant to Ecology’s decision: None

Ecology finds that the proposed SMP as approved by the City under Resolution #921 is not consistent with the applicable SMP Guideline requirements, as specifically identified within Attachment B (Required Changes). However, Ecology also finds that the SMP can be revised to ensure compliance with the SMP Guidelines through the City's acceptance of "Required Changes" listed within Attachment B together with supporting rationale. Pursuant to WAC 173-26-120, Ecology has also identified "Recommended Changes" (Attachment C) to the SMP, for consideration by the City.

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the City's proposed comprehensive SMP update, subject to and including Ecology's required changes (itemized in Attachment B), is consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions). This includes a conclusion that approval of the proposed SMP, subject to required changes, contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions will result from implementation of the new updated master program (WAC 173-26-201(2)(c)).

Ecology also concludes that a separate set of recommended changes to the submittal (identified during the review process and itemized in Attachment C) would be consistent with SMA policy and the guidelines and would be beneficial to SMP implementation. These changes are not required, but can, if accepted by the City, be included in Ecology's approved SMP amendments.

Consistent with RCW 90.58.090(4), Ecology concludes that those SMP segments relating to critical areas within Shoreline Management Act jurisdiction provide a level of protection at least equal to that provided by the City's existing critical areas ordinance.

Consistent with RCW 36.70A.480(4), Ecology concludes that those SMP provisions relating to critical areas within Shoreline Management Act jurisdiction assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources.

Ecology concludes that those SMP segments relating to shorelines of statewide significance provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090(5)).

Ecology concludes that the City has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the City has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 regarding public and agency involvement in the SMP update and amendment process.

Ecology concludes that the City has complied with the purpose and intent of the local amendment process requirements contained in WAC 173-26-100, including conducting open houses and public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the City has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the City's comprehensive SMP update submittal to Ecology was complete pursuant to the requirements of WAC 173-26-110 and WAC 173-26-201(3)(a) and (h) requiring a SMP Submittal Checklist.

Ecology concludes that it has complied with the procedural requirements for state review and approval of shoreline master program amendments as set forth in RCW 90.58.090 and WAC 173-26-120.

Ecology concludes that the City has chosen not to exercise its option pursuant to RCW 90.58.030(2)(d)(ii) to increase shoreline jurisdiction to include buffer areas of critical areas within shorelines of the state. Therefore, as required by RCW 36.70A.480(6), for those designated critical areas with buffers that extend beyond SMA jurisdiction, the critical area and its associated buffer shall continue to be regulated by the City's critical areas ordinance. In such cases, the updated SMP shall also continue to apply to the designated critical area, but not the portion of the buffer area that lies outside of SMA jurisdiction. All remaining designated critical areas (with buffers NOT extending beyond SMA jurisdiction) and their buffer areas shall be regulated solely by the SMP

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments comprehensively updating the Gig Harbor Shoreline Master Program are consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules, once required changes set forth in **Attachment B** are approved by the City. The Department will take final action after receiving written notice that the City has agreed to the required changes. Approval of the updated SMP with required changes is effective fourteen (14) days from Ecology's final action approving the amendment.

As provided in RCW 90.58.090(2)(e)(ii) the City may choose to submit an alternative to the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology's original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final action on the amendment. Approval of the updated SMP and proposed alternative/s is effective fourteen (14) days from Ecology's final action approving the alternative/s.