

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

SMP Submittal accepted June 18, 2021, Ordinance No. 1462  
Prepared by Department of Ecology on June 23, 2021

### Brief Description of Proposed Amendment

Gig Harbor has submitted a locally initiated amendment to the City's Shoreline Master Program (SMP) to Ecology for approval. This amendment would allow the placement of public art along City shorelines. As part of this review, the City chose to utilize the joint review process set forth in WAC 173-26-104. As part of this process, on March 19, 2021, per WAC 173-26-104(3)(b), Ecology provided the City with an initial determination of consistency with the policy of the Shoreline Management Act (SMA) and applicable rules. The City's final adopted ordinance incorporated all Ecology's recommended changes provided as part of the initial determination.

## FINDINGS OF FACT

### Need for amendment

Gig Harbor comprehensively updated their master program in December 2013. The City has yet to complete their Periodic Review, which was due June 30, 2019<sup>1</sup>. The need to clarify an allowance for public art rose out of a proposal to place artwork on the shoreline near the original village of a band of the Puyallup Tribe of Indians, to honor the historic connection of the City's shorelines with the first residents of Gig Harbor Bay. While this specific project is a high priority for the City and its partners, the City would like to broadly address this topic in the SMP.

### SMP provisions to be changed by the amendment as proposed

The SMP is a standalone document which includes policies, regulations and a shoreline environment designation map. Critical area regulations are embedded in Chapter 6. The SMP regulates shoreline uses and activities within city limits along the western and northerly shorelines of Gig Harbor Bay and segments of the Tacoma Narrows and Henderson Bay.

The following specific SMP sections are proposed to be amended:

#### *Shoreline Master Program*

##### A. Chapter 2 Definitions

1. The following term is added: public art

##### B. Chapter 6 General Goals Policies and Regulations

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<sup>1</sup> The periodic review work has been slowed by the City's interest in achieving Door 2 status with FEMA under the Puget Sound Biological Opinion. This has proven to be a challenging task, but it appears a resolution is near and the City expects it will complete this work in the latter part of 2021.

1. 6.2.4 Regulations – Vegetation Conservation Strip. Revisions add a new provision allowing for the placement of public art within the vegetation conservation strip or critical area buffer. [6.2.4.9]
2. 6.2.5.3 Critical Area Buffer Activity Allowance – A new provision is added allowing for the placement of public art within the vegetation conservation strip and critical area buffer provided the mitigation sequence has been followed and all impacts are mitigated. [6.2.5.3.2]
3. 6.2.5.13 Wetlands – Permitted Uses in Buffer Areas. A new provision is added allowing for the placement of public art within the wetland buffer, provided functions and values are not degraded and impacts are mitigated. Placement in buffers for Category 1 wetlands is limited to the outer 25% of the buffer. [6.2.5.13.2]

#### C. Chapter 7 Shoreline Use and Modification – Policies and Regulations

1. Table 2. Shoreline Use Matrix. Public Art is added to the table as a permitted use in all shoreline environment designations except Natural and Marine Deepwater where it is prohibited. A related footnote (7) limits art to publicly owned lots or public right-of ways.
2. 7.22 Public Art – A new section is added.
  - a. 7.22.1 – Six policies are added addressing visual obstruction, location, no net loss, materials, coordination, and consistency with other plans.
  - b. 7.22.2 Five regulations are added which:
    - i. limit the amount of impervious surface;
    - ii. require a landscape plan when clearing, grading or impervious surface are part of the proposal;
    - iii. require measures to ensure impacts on adjoining land uses are minimized;
    - iv. allow for associated amenities such as paths and benches; and require the project meet no net loss standards of the master program.

#### Amendment History, Review Process

Gig Harbor has initiated this SMP amendment, in response to a proposal by the Public Works Department in January 2021, to accommodate public art along the City's shorelines. The City established a [website](#)<sup>2</sup> to post meeting information and draft documents. Due to the COVID-19 Pandemic, the City held public meetings in a virtual format using Zoom, including the Planning Commission meetings addressing this topic, beginning March 18, 2021 and continuing through April 29, 2021.

Department of Commerce was notified of the City's intent to adopt on March 24, 2021. The record indicates the City completed a SEPA checklist and issued a Determination of Non-Significance (DNS) on April 13, 2021 for the proposed amendments to the SMP.

The City and Ecology held a joint local/state comment period on the proposed amendments following procedures outlined in WAC 173-26-104. The comment period began on April 6, 2021 and continued through May 6, 2021. A joint public hearing before the Planning Commission was held virtually via Zoom on May 6, 2021. Ecology staff was in attendance.

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<sup>2</sup> <https://www.cityofgigharbor.net/738/SMP-Public-Art-Regulation>

The City provided notice to local parties. Ecology distributed notice of the joint comment period to state interested parties on April 2, 2021<sup>3</sup> including separate notice, and an invitation for consultation, to the Muckleshoot Indian Tribe, Puyallup Tribe of Indians, Nisqually Indian Tribe and the Steilacoom Tribe.

The City accepted comments on the proposed SMP amendment during the 30-day comment period. Written and oral comments were received from six organizations/individuals.

Four comments were submitted in support of the amendment, particularly as it relates to a proposed project to place the “Our Fisherman Our Guardian” welcoming figure. Two comments, from the Puyallup Historic Preservation Department and the Squaxin Cultural Resource Department, noted the high probability for cultural resources along Gig Harbor shorelines and requested any ground disturbance be monitored to ensure cultural resources are protected. City staff responded to these two comments during the hearing, indicating that an Inadvertent Discovery Plan is required if there are known cultural sites. No revisions to the SMP were proposed in response to comments.

#### *Initial Determination of Consistency and Final Submittal*

The proposed SMP amendments were received by Ecology on May 10, 2021 for initial state review and verified as complete on May 11, 2021. This began Ecology’s review and initial determination.

A written statement of initial concurrence was sent to the City on May 24, 2021. Ecology considered the comments received, and the City’s responses to these comments, and concluded the proposal is consistent with applicable laws and rules.

Ecology also identified two recommended changes. These changes were identified as not required for consistency with the SMA or SMP Guidelines, but suggested to improve clarity in the SMP. The changes were discussed with City staff, and the City’s locally adopted SMP incorporates both recommended changes.

With passage of Ordinance No. 1462, on June 14, 2021, the City Council authorized staff to forward the proposed amendment to Ecology for formal review. The City’s final submittal of the SMP amendment was received on June 16, 2021. The submittal was determined complete on June 18, 2021.

#### *Other Studies or Analyses supporting the SMP amendments*

Ecology reviewed supporting documents prepared by or for the City in support of the SMP amendments. These documents include the staff report, memos to the Planning Commission, and a map of publicly owned properties in shoreline jurisdiction.

## Consistency Review

### *Consistency with Chapter 90.58 RCW*

The proposed amendments have 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). The City has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090(1) and (2).

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<sup>3</sup> A second notice, sent to all parties on April 5, corrected the time of the Public Hearing.

*Consistency with applicable guidelines (Chapter 173-26 WAC, Part III)*

The proposed amendment 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). This included review of an SMP Checklist, which was completed by the City.

*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) April 13, 2021 for the proposed SMP amendments. The record indicates notice of the DNS was published in *The News Tribune* on April 14, 2021.

## CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the City proposed amendment 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).

Ecology concludes that the proposed amendment satisfies the criteria for approval of amendments found in WAC 173-26-201(1)(c). This includes the conclusion that approval of the SMP amendment will not foster uncoordinated and piecemeal development of the state's shorelines (WAC 173-26-201(2)(c)(i) and will assure no net loss of shoreline ecological functions will result from implementation of the amended master program (WAC 173-26-201(2)(c)(iv)).

Ecology concludes that the City has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 and WAC 173-26-104 regarding public and agency involvement in the SMP review and amendment process, 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 those SMP segments relating to shorelines of statewide significance continue to provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090(5)).

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

Ecology concludes that the City SMP submittal to Ecology was complete pursuant to the requirements of WAC 173-26-090, WAC 173-26-104, and WAC 173-26-110.

Ecology concludes that it has complied with the procedural requirements for review and approval of shoreline master program amendments as set forth in RCW 90.58.090 and WAC 173-26-104, WAC 173-26-110, and WAC 173-26-120.

## DECISION AND EFFECTIVE DATE

After review by Ecology of the complete record submitted and all comments received, Ecology has determined that the City's proposed amendments are consistent with the Shoreline Management Act policy and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions) and implementing rules. With this approval, Ecology affirms the City has completed the requirement for a periodic review under RCW 90.58.080(4). Ecology approval of the proposed amendment is effective 14 days from Ecology's final action approving the amendment.