

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

SMP Submittal accepted November 22, 2021, Ordinance No. 1472
Prepared by Department of Ecology on January 6, 2022

Brief Description of Proposed Amendment

The City of Gig Harbor (City) is undergoing a statutorily required periodic review of their Shoreline Master Program (SMP) and has submitted an amendment to Ecology for approval. 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 October 7, 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 is located in Pierce County at the southern end of Puget Sound. Gig Harbor has approximately 8.1 miles of Puget Sound shorelines in its city limits and UGA. The City's SMP regulates shoreline uses and activities within city limits along Gig Harbor Bay and the Gig Harbor Spit, portions of Colvos Passage, the Tacoma Narrows and Henderson Bay. Gig Harbor comprehensively updated their master program in December 2013 and recently completed a locally initiated amendment¹ to address the placement of public art on publicly owned property within shoreline jurisdiction.

The proposed periodic review amendment is needed to comply with the statutory deadline for a periodic review of the SMP pursuant to RCW 90.58.080(4). The City has also proposed revisions to address changed local circumstances, new information and improved data. The City prepared a checklist and an analysis documenting the proposed amendment.

SMP provisions to be changed by the amendment as proposed

Gig Harbor's SMP is a standalone document containing goals, policies and regulations along with embedded critical area regulations. SMP policies are an element of the City's Comprehensive Plan. The SMP regulates shoreline uses and activities along shorelines within city limits including Gig Harbor Bay and segments of the Tacoma Narrows and Henderson Bay.

In addition to general edits to correct and update syntax, formatting and citations, the following specific SMP sections² are proposed to be amended:

Chapter 1 Introduction

Revisions to 1.6 Applicability lists those actions and activities to which the SMP does not apply, consistent with WAC 173-27-044 and 173-27-045.

¹ Ecology approved this amendment in July 2021.

² All references are to section numbering in the revised draft SMP amendment submitted for Ecology review.

Chapter 2 Definitions

Definitions for the following terms are added: biological opinion; harbor area; likely to adversely affect; may affect, not likely to adversely affect; navigational aids; no effect; riparian buffer zone; special flood hazard area. Revisions are made to the following definitions: administrator, development, floodplain hazard permit; floodway; substantial development; utilities; date of filing; effective date of permit; and in-stream structures.

Chapter 5 Shoreline Environment Designations

Revisions throughout the section to shoreline maps, language and parcel numbers reflect the removal of the east Gig Harbor Bay area and a segment along Colvos Passage from the City's Urban Growth Area³. City Waterfront management policy #6 revisions allow for decks waterward of the OHWM when appurtenant to an upland water-oriented use. [5.2.5.D(6)]

Chapter 6 General Goals Policies and Regulations

- *6.2.3 Regulations – Marine Shorelines* –clarifies that maintenance of the vegetation conservation strip is required for all non-water dependent uses and structures. [6.2.3.2(2)]
- *6.2.5 Regulations – Critical Areas* – Notice and Title language, relocated [6.2.5.1]
- *6.2.5.7 Wetlands – Delineation Guidelines/Ratings* – updates Wetland rating categories to Ecology's 2014 Rating System changes. [6.2.5.7(3)(a)]
- *6.2.5.11 Wetlands – Analysis Report* – clarifies the requirement for flood elevations. [6.2.5.11(2)]
- *6.2.5.12 Wetlands – Buffer Areas* – updates habitat point scales throughout the section consistent with Ecology's 2014 Wetlands Rating System.
- *6.2.5.21 Streams – Critical Areas Report* –clarifies stream analysis report requirements. [6.2.5.21(2)]
- *6.2.5.22 Streams – Performance Standards – General* – A new provision requires consistency with the City's Flood Hazard Construction Standards if a stream crossing is located within a special flood hazard area [6.2.5.22(3)(h)], and a new provision addressing streambank stabilization is added [6.2.5.22(7)].
- *6.2.5.24 Critical Fish and Wildlife Habitat Areas* – Requirements for the Habitat Assessment and Management Plan (HAMP) are revised, particularly related to potential effects critical fish and wildlife habitat including endangered species. [6.2.5.24(4) and (5)]. A buffer reduction allowance is removed [6.2.5.24 (6)]. Language is added requiring any fill or structure proposed within a special flood hazard area to comply with the City's Flood Hazard Construction Standards [6.2.5.24(9)(d)].

Chapter 7 Shoreline Use and Modification – Policies and Regulations

Table 7-2 Shoreline Use Matrix

- Commercial water-related and water-enjoyment uses on overwater deck structures in the City Waterfront SED are allowed with a conditional use permit.
- Parking as a principal use in the City Waterfront SED is allowed with a conditional use permit.
- A revision to Utilities in response to a comment from Puget Sound Energy. Improves consistency with the broader scope of Section 7.21 which addresses utilities of all sorts and not just primary treatment or generation facilities.

³ The City, by Resolution #1124, adopted July 2018, requested Pierce County remove the East Bay UGA from the Urban Growth Area. This request was included in the County's 2019 Comprehensive Plan Amendment and adopted by Ordinance No. 2019-15s on April 30, 2019.

7.12 Commercial Uses –clarifies the use of appurtenant overwater deck structures. [7.12.2.4 and 5]

7.18 Residential –clarifies allowances for live-aboard vessels within marinas. [7.18.2.1]

7.20 Transportation Facilities – revises policy and regulations allowing parking as a principal use when separated from the shoreline by an arterial street within limited circumstances. [7.20.2.A, 7.20.4.1]

7.21 Utilities – adds reference to the City’s stormwater manual for conveyance facilities. [7.21.2.8.d]
Additional language added in response to a comment from PSE. [7.21.2]

Table 7-3 Bulk Dimensional Standards Matrix – Deleted all lines referring to Gig Harbor Bay (UGA) and Colvos Passage for internal consistency with the City’s revisions to the SED maps.

Chapter 8 Administrative Procedures

Exemptions from the Shoreline Substantial Development Permit process

- The monetary threshold for substantial development is updated to \$7,047, and a new footnote directs the reader to the city’s website for current dollar threshold information. [8.2.1.A, 8.2.2.a]
- The monetary threshold for freshwater docks is updated. [8.2.2.h]
- An exemption allowing for Americans with Disabilities Act retrofits is added. [8.2.2.q]

A reference to WAC 173-27-180 is added to clarify a complete permit application. The requirement for submittal to Ecology via return receipt mail is added. Clarifying edits reference to RCW 90.58.580 and WAC 173-27-215.

Amendment History, Review Process

The City began this project in 2018 and prepared a public participation program in accordance with WAC 173-26-090(3)(a) to inform, involve and encourage participation of interested persons and private entities, tribes, and applicable agencies having interests and responsibilities relating to shorelines. An important element of the public participation plan is the City’s SMP Periodic Review project [website](#)⁴. The Planning Commission discussed the proposed SMP Periodic Review during numerous study sessions between November 2018 and December 2019.

The project slowed due to workload and staffing changes at the City, along with the City’s desire to obtain Federal Emergency Management Agency (FEMA) concurrence that the City’s local ordinances, regulations and written policies comply with the performance standards of the Puget Sound Biological Opinion (BiOp) issued by the National Marine Fisheries Service. The City worked with FEMA through a lengthy technical assistance process⁵ to evaluate the City’s BiOp compliance package including the draft SMP. Ultimately, the FEMA review process identified no additional changes necessary for BiOp compliance. The City restarted their work on the SMP periodic review with the Planning Commission early in 2021. 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 August 2021.

The City used Ecology’s Periodic Review checklist of legislative and rule amendments to review amendments to chapter 90.58 RCW and department guidelines, that have occurred since the master program was last amended, and determine if local amendments were needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i). The City also reviewed changes to the comprehensive plan

⁴ <http://www.cityofgigharbor.net/656/SMP-Periodic-Review---Public-Participati>

⁵ This process stretched from 2019 to mid-2021, delayed in part by the Covid-19 Pandemic.

and development regulations to determine if the shoreline master program policies and regulations remain consistent with them in accordance with WAC 173-26-090(3)(b)(ii). The City considered whether to incorporate any amendments needed to reflect changed circumstances, new information or improved data in accordance with WAC 173-26-090(3)(b)(iii). The City consulted with Ecology and solicited comments throughout the review process including opportunities to comment on draft materials.

Department of Commerce was notified of the City's intent to adopt on August 25, 2021. The record indicates the City completed a SEPA checklist and issued a Determination of Non-Significance (DNS) on August 24, 2021 for the proposed amendments to the SMP.

Joint Local/State comment period under WAC 173-26-104

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 August 18, 2021 and continued through September 17, 2021. A joint public hearing before the Planning Commission took place via Zoom on September 16, 2021. Ecology staff attended the meeting.

The City provided notice to local parties, including a statement that the hearing was intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii). The City's record indicates notice of the hearing was published on August 8, 2021 in the *Tacoma News Tribune*.

Ecology distributed notice of the joint comment period to state interested parties on August 17, 2021. Separate notice, and an invitation to consult, was sent August 17, 2021, to the Muckleshoot Indian Tribe, Puyallup Tribe of Indians, Nisqually Indian Tribe and the Steilacoom Tribe.

The City record includes all comments received on the proposed SMP amendment during the 30-day public comment period and hearing. The City prepared a comment summary and response matrix. Comments were submitted by two organizations/individuals including Puget Sound Energy (PSE). One commenter suggested changes related to residential remodels, suggesting the SMP address revegetation along the shoreline as a condition of remodels, along with ensuring exterior lighting impacts are minimized by including outdoor lighting standards. The other comment, from PSE, focused on suggested revisions to various utility use provisions in the SMP.

Initial Determination of Consistency

As part of this review, the City chose to utilize the joint review process set forth in WAC 173-26-104. After the joint local-state comment period and hearing, and consideration of the comments received, the City submitted the proposed amendment to Ecology for initial review. Ecology is required under WAC 173-26-104(3)(b) to provide the City with an initial determination of consistency with the policy of the Shoreline Management Act (SMA) and applicable rules.

The proposed SMP amendments were received by Ecology for initial state review and was verified as complete on September 22, 2021. This began Ecology's review and initial determination.

Consideration of public comments

Ecology reviewed all the comments received during the joint review process along with the City's responses. Discussion on the issues raised during the comment period is provided below:

Vegetation Conservation Area revegetation A comment suggested the City consider requiring some degree of revegetation along the shoreline as part of the approval for a proposed residential remodel. The

commenter noted many residential properties are poorly vegetated along the shoreline and this could be a mechanism for improving shoreline vegetation.

The City considered the comment and concluded no changes to the SMP were necessary. The City indicated a remodel may not trigger the requirement for enhancement of the vegetation conservation area if there is no impact to shoreline ecological functions. Ecology notes every project in shoreline jurisdiction, exempt from permit requirements or not, must meet the mitigation sequence in 6.2.2(3). Avoidance of impacts is the top priority. Remodels may often fall in this category –impacts to ecological functions are avoided and thus there is no compensatory mitigation requirement.

Outdoor lighting A comment suggested the City include a reference in the SMP to city lighting requirements in the municipal code and ensure this is part of the permit review.

The City considered the comment and concluded no changes to the SMP were necessary. The City indicated the City’s Design Manual already addresses exterior (outdoor) lighting standards and this review will occur prior to construction permit approval, but not necessarily as part of the Shoreline permit. The City found and Ecology agrees that no additional SMP provisions are needed to address this comment.

Utility uses PSE commented on and provided suggested SMP language changes related to utility uses, definitions, and the shoreline use matrix and utility-specific regulations. Their stated intent was to add clarity to the regulation of utilities under the SMP.

Related to this comment, Ecology found that the existing SMP remains consistent with the SMA and guideline requirements related to utility uses and associated development. SMP critical area regulations are embedded in Chapter 6 of the SMP and contain no direct reference to or incorporation of the City’s municipal code (GHMC 18.08.186) related to critical fish and wildlife habitat is necessary. However, we did provide some recommended changes as part of the formal initial determination that were intended to provide clarity and address some of PSE’s concerns.

City’s responses are consistent with the statutory obligations for conducting periodic reviews. The City considered whether to incorporate any amendments to reflect changed circumstances, new information, or improved data, as provided or raised during the comment period. Ecology concurs, that no additional amendments are warranted at this time based upon the significance of this information and the existing SMP provisions⁶.

We provided the City a formal written statement documenting our initial determination. Ecology considered the record, including comments received and the City’s responses to these comments, and concluded the proposal was consistent with applicable laws and rules. Ecology prepared an initial determination that the amendment is consistent with the policy of the SMA and applicable guidelines. A written statement of initial concurrence was sent to the City of May 7, 2021. We identified seven (7) recommended changes to the SMP for consideration by the City. These changes were intended to:

- improve the clarity of three definitions,
- address some of the concerns identified by PSE regarding utilities,
- update the threshold values for freshwater docks, and
- remove references to Gig Harbor Bay (UGA) and Colvos Passage.

⁶ WAC 173-26-090(3)(b)(iii)

These recommended changes were not required for consistency with the SMA or applicable guidelines, but were proposed for internal consistency and to improve implementation. Based upon this determination, Ecology advised the City to consider the recommended changes and then to proceed with local adoption of the proposed SMP amendment.

Final Submittal

With passage of Ordinance No. 1472 on November 8, 2021, the City Council authorized staff to forward the proposed amendment to Ecology for formal review. The City's final adopted ordinance incorporated all seven (7) of Ecology's recommended changes provided as part of the initial determination.

The City's final submittal of the SMP amendment was received on November 19, 2021. The submittal was determined complete on November 22, 2021. This began our formal review and decision making process per WAC 173-26-120.

At the conclusion of our formal review, Ecology's Director must decide to approve the program as submitted, approve it with required and/or recommended changes, or deny approval.

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).

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 Periodic Review 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) August 24, 2021 for the proposed SMP amendments. The record indicates notice of the DNS was published in *The Tacoma News Tribune* on August 26, 2021.

CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the City proposed amendments are 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 amendments satisfy the criteria for approval of amendments found in WAC 173-26-201(1)(c). This includes the conclusion that approval of the SMP amendments 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 a public hearing, 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 we have complied with the state's 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.

Ecology concludes that with this action the City has completed the required process for periodic review in accordance with RCW 90.58.080(4) and applicable state guidelines (WAC 173-26).

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 amendment is 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 amendments is effective 14 days from Ecology's final action approving the amendments.