

October 4, 2021

Walt and Norma Smith
P.O. Box 1272
Gig Harbor, WA 98335

RE: PL-REZ-21-0001
THE WALT SMITH REZONE

Dear Mr. and Mrs. Smith:

Transmitted herewith is the Report and Decision of the City of Gig Harbor Hearing Examiner regarding your request for the above-entitled matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stephen R. Shelton", with a stylized flourish at the end.

STEPHEN R. SHELTON
Deputy Hearing Examiner

SRS/jjp
cc: Parties of Record

OFFICE OF THE HEARING EXAMINER

CITY OF GIG HARBOR

REPORT AND DECISION

CASE NO.: PL-REZ-21-0001
THE WALT SMITH REZONE

**OWNERS/
APPLICANTS:** Walt and Norma Smith
P.O. Box 1272
Gig Harbor, WA 98335

AGENT: Carl E. Halsan
P.O. Box 1447
Gig Harbor, WA 98335

PLANNER: Carl de Simas, Senior Planner

SUMMARY OF REQUEST:

The proposal is a non-project action to rezone three parcels from the subject site's current Employment District (ED) and Single-Family Residential (R-1) zoning districts to the Medium-density Residential (R-2) zoning district. The subject site's Land Use Designation is Residential Medium (RM) and the R-2 Zoning District is an implementing zone of the RM Land Use Designation, consistent with Gig Harbor Municipal Code (GHMC) 17.12.015. The site is located at 6302-112 Street and 11302 Burnham Drive on both sides of 112th Street at the intersection of 112th Street and 63rd Avenue N.W. Sec 25, Tw 22, R 01 Qtr 34. APNs 0122253072, 0122253074, and 0122254092

SUMMARY OF DECISION: Approved with Conditions

DATE OF DECISION: October 4, 2021

PUBLIC HEARING:

After reviewing the Planning Department Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on August 19, 2021, at 9:30 a.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

- EXHIBIT A - Planning Department Staff Report**
- EXHIBIT B - Applicant's Rezone Written Analysis of GHMC 17.100.035**
- EXHIBIT C - Traffic Impact Analysis – March 2021**
- EXHIBIT D - Determination of Nonsignificance**
- EXHIBIT E - Resolution No. 1056**
- EXHIBIT F - Ordinance No. 1350**
- EXHIBIT G - Washington Department of Natural Resources, Surface Mining Reclamation Permit #70-010117**
- EXHIBIT H - Public comments in response to the NOA**
- EXHIBIT I - Public comments in response to the DNS**
- EXHIBIT J - Public comments in response to the NOPH**
- EXHIBIT K - Declarations, NOPH**
- EXHIBIT L - Declarations, NOA**
- EXHIBIT M - Development Agreement**
- EXHIBIT N - Traffic Impact Analysis – April 2021; Planning Division Memorandum**

The Minutes of the Public Hearing set forth below are not the official record and are provided for the convenience of the parties. The official record is the recording of the hearing that can be transcribed for purposes of appeal.

CARL DE SIMAS, Senior Planner, appeared and presented the Staff Report by testifying that the proposal is a non-project action to rezone three parcels from the subject site's current Employment District (ED) and Single-Family Residential (R-1) zoning districts to the Medium-Density Residential (R-2) zoning district. The subject site's Land Use Designation is Residential Medium (RM) and the R-2 Zoning District is an implementing zone of the RM Land Use Designation, consistent with Gig Harbor Municipal Code (GHMC) 17.12.015. The site location is in Gig Harbor at 6302-112 Street and 11302 Burnham Drive, on both sides of 112th Street at the intersection of 112th Street and 63rd Avenue N.W. The 16.71-acre site is currently vacant, is accessed from 112th Street and has water service by the Washington Water Service Company and sewer by the City of Gig Harbor. The site was the subject of a Comprehensive Plan Amendment ("Amendment") that amended the land-use designation from Employment Center (EC)/Residential Low (RL)/Commercial Business (CB) to Residential Medium (RM). During review of this land-use amendment, the City analyzed environmental impacts through the SEPA process which resulted in the issuance of a Determination of Non-significance (DNS). The proposed amendment is supported by an approved development agreement authorizing the property owner to apply for a rezone of the subject site to R2 within five years of the effective date of the associated Comprehensive Plan Amendment. The City issued a Determination of Non-Significance (DNS) for the proposed non-project action. The legal notice and posting of the proposed

action and scheduled hearing were published and comments received are included in Exhibit J and generally concern traffic. Staff noted traffic impacts were analyzed when the site's land-use designation was amended in 2016 and the associated development agreement limiting future development relative to density and design. The Applicant's traffic analysis in Exhibit C is not germane to the rezone herein and a traffic impact study will be required and analyzed when a development application is filed. Staff has recommended Condition 2 to address these concerns. Staff has reviewed the rezone request and found it generally consistent with the applicable provisions of the Gig Harbor Code. He requested the Staff Report and attached exhibits be admitted into the record noting that Exhibit D listed in the Staff Report should be amended from January 2018 to March 20, 2021.

CARL E. HALSAN, Agent, appeared and testified that he has been working with Mr. Smith on numerous projects on the subject site and the current request is a non-project straight rezone. In 2016 the City Council approved a Comprehensive Plan amendment to rezone the site from Employment Center to Residential Medium to be the same as the surrounding properties. GHMC 17.12.015 provides that Comprehensive Plan Residential Medium designation only be implemented with RB-1 and R-2 zones. The site's current zoning is inconsistent with the Comprehensive Plan designation. Examiner approval will implement the 2016 City Council action, bring the zoning into compliance with the Comprehensive Plan and fulfill the terms of the associated development agreement. He has no comments or objections to the Staff conditions of approval. Since the majority of the citizen comments concerned traffic, he stated the April 2021 Traffic Impact Analysis by Heath & Associates found under the current zoning that 152 vehicle trips were generated between the peak 4:00 p.m. to 6:00 p.m. and under the requested zoning after full development the peak hours would have 84 vehicle trips.

MR. DE SIMAS reappeared and noted the TIA by Health & Associates in Exhibit C is dated March 2021.

With the concurrence of the Applicant and the City, the Examiner left the record open until close of business on August 24, 2021, for the City to compare the two TIA's and report back to their findings to the Examiner.

PAUL BEATTY, a citizen, appeared and testified that he will be affected by whatever development occurs on the subject site because he lives above the subject site in the Henderson Bay Estates and he had a couple procedural questions. To his question if the Examiner is the ultimate decisionmaker of the request, the Examiner indicated that he was and then explained motions for reconsideration appeals are available. To his second question, the Examiner said he did conduct site visits on occasion and would in this matter. To his third question, Mr. Halsan stated there is currently no plan for development and Mr. De Simas stated the 2016 amendment included a development agreement that would cap the number of dwelling units at 85.

PAUL BEATTY then commented that the cap of 85 was in 2016 but the current rezone could result in a lot more dwellings which could be duplexes, single residents to which Mr. De Simas stated the request is for a rezone and no development is being planned at this time. To this observation that he had recently seen surveyors on the site; neither Mr. Halsan nor Mr. De Simas had any information.

The Examiner left the record open until close of business on August 27, 2021, for Staff to review and compare the two TIA's and for the Examiner to conduct a site visit.

No one spoke further in this matter and the Hearing Examiner took the matter under advisement. The hearing was concluded at 10:40 a.m.

NOTE: A complete record of this hearing is available in the office of the City of Gig Harbor Planning Department.

FINDINGS, CONCLUSIONS, AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, viewed the property, and taken this matter under advisement.
2. The proposal is a non-project action to rezone three parcels from the subject site's current Employment District (ED) and Single-Family Residential (R-1) zoning districts to the Medium-density Residential (R-2) zoning district. The subject site's Land Use Designation is Residential Medium (RM) and the R-2 Zoning District is an implementing zone of the RM Land Use Designation, consistent with Gig Harbor Municipal Code (GHMC) 17.12.015.
3. The City issued a Determination of Non-Significance (DNS) for the proposed non-project action on July 28, 2021 (Exhibit D). Comments were received in response to the DNS. (Exhibit I) The comment and appeal period ended on August 17, 2021. No appeals were filed.
4. The legal notice of the proposed action and scheduled hearing (Notice of Public Hearing, "NOPH") was published in The Tacoma News Tribune, posted on the subject site and mailed to all property owners within 300 feet of the subject site on August 4, 2021. Comments received in response to this public notice are collectively included as Exhibit J. The Declarations of Mailing, Publishing, and Posting for the public hearing are attached as Exhibit K. A Notice of Application (NOA) was published in the Tacoma News Tribune and mailed to owners of property within 300 feet of the site on April 15, 2021. The NOA was posted on the subject site on April 12, 2021. Declarations related to the NOA are included in Exhibit L. Comments received in response to the NOA are included in Exhibit H.

5. The subject site is located at 6302-112th Street and 11302 Burnham Drive, Gig Harbor, on both sides of 112th Street at the intersection of 112th Street and 63rd Avenue N.W., Sec 25, Tw 22, R 01 Qtr 34. APNs 0122253072, 0122253074, and 0122254092.
6. The Applicants have a possessory interest in the vacant 16.71-acre property that is the site of a former surface mine regulated by the State Department of Natural Resources (DNR) and previously located in unincorporated Pierce County. Due to the years of surface mining, the site has extreme slopes on the western and southwestern boundaries but otherwise is largely flat with slight hills and is vegetated with grasses, shrubs, and evergreen and deciduous trees. DNR issued a Surface Mine Reclamation Permit to the Applicant on July 19, 2021, which will include some work on the subject site but primarily will be on property to the east of the subject property. (Exhibit G) Water in this area is serviced by the Washington Water Service Company. Sewer is serviced by the City of Gig Harbor
7. The subject site was annexed into the City of Gig Harbor in 2009 by Ordinance 1156 which incorporated the site's existing pre-annexation zoning designations. The City Comprehensive Plan designated the subject property as Employment Center/Commercial Business and Residential Low.
8. The City Zoning Plan designates the property as Employment District (ED) and Single-Family Residential (R-1). Adjacent zoning and current use are as follows: to north is Single-Family Residential (R-1) - single-family subdivision; to the east, General Business District (B-2) - former surface mine/contractor's yard and Single-Family Residential (R-1) - Vacant; to the south, Single-Family Residential (R-1) - Single-Family subdivision, Pierce County - Single-Family subdivision; and to the west, Single-Family Residential (R-1) - Single-family subdivision.
9. In 2016 the Applicant applied for an amendment to the City Comprehensive known as the "Smith Comprehensive Plan Land Use Map Amendment," to change the land use designation from Employment Center (ED)/Commercial Business (CB) and Residential Low (RL) to Residential Medium (RM).
10. The Gig Harbor Planning Commission (Commission) held a public hearings on July 1, 2016, and on September 15, 2016, at which time the Commission recommended approval of the rezone subject to a twenty (20) year Associated Development Agreement between the Applicant and the City which, in relevant part, limited any future rezone proposal to Residential High (R-3), authorized the Applicants to submit an application for a rezone to R-2 within five (5) years, required no more than 100 total dwelling units, limited entry to the property to a single point entry onto 112th Street and total development could not exceed 102 p.m. peak hour vehicle trips. (Exhibit M)

11. On October 24, 2016, the Gig Harbor City Council (Council) held a public hearing to consider the Commission's recommendation and made a recommendation to change the future land use designation to Residential Medium (RM) and to implement zoning district Medium Density Residential (R-2), additionally allowing single-family dwellings and to reduce the future dwelling units from 100 to 85.
12. On November 14, 2016, with an effective date of December 6, 2016, the Council held a public hearing and approved Ordinance 1350 amending the Comprehensive Plan by amending the land-use designation of the Applicants' property from Employment Center (EC)/Commercial Business (CB)/ Residential Low (RL) to Residential Medium (RM) (Exhibit F). During review of this land-use amendment, the City analyzed environmental impacts through the SEPA process which resulted in the issuance of a Determination of Non-significance (DNS).
13. The RM zone is identified in the City Land Use Map in the Comprehensive Plan as providing for medium density single and duplex residential and serves as a buffer between high intensity commercial or higher density residential and lower intensity residential. The RM may include certain specified business, personal and professional services or businesses which would not significantly impact the character of residential neighborhoods. The intensity of the non-residential use should be compatible with the adjacent residential area.
14. During the October 24, 2016, and November 14, 2016, hearing the Council also reviewed and approved Resolution 1056 effective November 28, 2016, authorizing the associated revised Development Agreement between the Applicant and the City wherein, in relevant part, the Applicant was authorized to file an application for a rezone to R-2 within five (5) years and could at the same time submit a project application for development of the property. The Council entered, in relevant part, the following conditions on any development: include no more than 85 dwelling units; single point of entry at 112th Street; and the total development could not exceed 102 p.m. peak hour trips. (Exhibit M)
15. GHMC 17.20.010 provides:

An R-2 district is intended to allow for a moderate density of land use that is greater than is permitted in an R-1 district but less than is permitted in an R-3 district, where suitable facilities such as streets, water, sewer and storm drainage are available. An R-2 district provides a transition between a higher density residential district in order to preserve the primarily residential character of existing lower density residential areas.
16. Gig Harbor Municipal Code (GHMC)17.12.015 provides a table listing the Gig Harbor Comprehensive Plan land use map designations with corresponding GHMC Title 17 implementing zoning districts. The table identified the following

implementing zoning districts which are found as consistent with the subject site's RM land use designation: Residential and Business District (RB-1) and Medium-density Residential (R-2). The Applicants' proposed site-specific rezone application requests to change the site's current ED//R1 zoning designation to R-2, an implementing zoning district of the RM Comprehensive Plan designation.

17. Prior to and during the public hearing, herein, City Staff had reviewed traffic impacts analyzed by Heath & Associates entitled "Smith Property Rezone Trip Generation Analysis" dated March 25, 2021, which concluded, in relevant part, that "The results show that the land parcel developed with 100 multi-family units will generate 56 trips during the PM peak hour. This is 94 less trips during the PM peak hour compared to the previous zoning." (Exhibit C) During the public hearing, the Applicants' agent, Mr. Halsan, referred to an April 5, 2021, traffic impact analysis by Heath & Associates under the same title that under the requested R-2 zoning after full development during the peak 4:00 pm to 6:00 p.m. hours there would be 85 vehicle trips. (Exhibit N) With the concurrence of the Applicants and the City, the Examiner left the record open until close of business on August 24, 2021, for the City to compare the two TIA's and report back their findings to the Examiner.
18. In a Planning Division Memorandum dated August 27, 2021, Staff reviewed the two Traffic Impact Analysis's (TIA) and noted the March 05, 2021, TIA included different data than the April 25, 2021, TIA. The March TIA assumed 100 multi-family dwelling units and analyzed the project trip generation under the R-2 zoning using a code for low rise apartments while the April TIA assumed 84 single-family dwelling units using the land use code for single-family detached housing. As noted above, the approved Development Agreement between the Applicant and the City capped the number of dwelling units at 85. Therefore, the Planning Staff found "that while the April 2021 TIA is more consistent with the approved development agreement for the site, it does not change the recommended condition of approval number 2 provided in the staff report that directly relates to the issue" and "recommends that the April 2021 TIA, as well as this memo, be included as supplemental exhibits". (Exhibit N)
19. Citizen comments (Exhibits. H, I, and J) primarily address nearby neighbors' well placed concerns that any development on the Applicants' property would generally negatively impact the area and themselves individually as homeowners. The primary concern is traffic impacts. As noted above, in 2016 the Gig Harbor City Council entered into a Development Agreement with the Applicant that authorized the Applicant to file an application for a rezone to R-2 zoning within five (5) years which the Applicant complied with by filing the rezone application on April 1, 2021. In the Agreement, the Applicant could also submit development applications for the subject property. The Applicants' proposed site-specific zoning map amendment does not include any development, land improvements, or activity upon the subject site, but only intends to change the site's current zoning designation in a manner

consistent with the site's RM land use designation and the approved Agreement. Therefore, if a development proposal is submitted for the Applicants' property, the City will require a TIA with the application and will analyze all the impacts at that time. To this end, as noted above, the City has recommended condition of approval number 2.

20. GHMC 17.100.035 entitled "General criteria for zoning district map amendment" requires that applications for amendments to the zoning district map (which include, but are not limited to, site specific rezones) may only be approved if all of the following criteria are satisfied: The Applicants have submitted a written narrative regarding the criteria for zoning district map amendment approval. (Exhibit B)

- A. The application for the zoning district map amendment must be consistent with and further the goals, policies and objectives of the comprehensive plan and GHMC 17.12.015;

In 2016 the Council amended the City Comprehensive Plan land use designation of the Applicants' three subject parcels from ED/CB/RL) to RM. Pursuant to GHMC 17.12.015, the RM designation may only be implemented through either the Residential Business 1 (RB-1) or Residential-2 (R-2) zoning districts.

An RB-1 zone is intended to provide a mix of residential uses with certain specified business, personal and professional services. It is also intended to serve as a buffer between high intensity commercial and lower density residential uses. The regulations and restrictions in an RB-1 district are intended to protect and preserve residential uses while permitting business uses characterized principally by professional and consulting services or executive and administrative offices, compatible with single-family residential development. To this extent, nonresidential structures should be limited in total gross floor area per lot in order to minimize the impact of bulk and scale to residential neighborhoods

A R-2 zone is intended to allow for a moderate density of land use that is greater than is permitted in an R-1 district but less than is permitted in an R-3 district, where suitable facilities such as streets, water, sewer and storm drainage are available. An R-2 district provides a transition between a higher density residential district in order to preserve the primarily residential character of existing lower density residential areas.

The current zoning designation of the Applicants' property is inconsistent with the Municipal Code as none of the three parcels are zoned RB-1 or R-2. Therefore, the approval of the requested rezone will bring the Comprehensive Plan designation and implementing zoning into conformity, thus furthering the goals, policies, and objectives of the current Comprehensive Plan. In addition, the proposed R-2 zoning designation would further implement the RM designation by expanding the types of

residential uses allowed on the subject site while limiting the intensity of commercial uses unlike the RB-1 zoning. While the site-specific rezone application does not propose development of the site, approval of the site's proposed R-2 zoning designation creates the potential for permissible future use of land that is consistent with and furthers the goals of Chapter 2, Land Use, set forth in the Comprehensive Plan.

- B. The proposal to rezone this property from ED and R-1 to R-2 is generally consistent with and furthers the goals and policies of the city's Comprehensive Plan. The application for the zoning district amendment must further or bear a substantial relationship to the public health, safety and general welfare.

The Applicants' request for a non-project rezone for the three subject parcels will bring the property into compliance with the Comprehensive Plan which will generally further the general welfare. The rezone will have no impact on the public health or safety which will be addressed at the time a development is proposed pursuant to the City's development review, design review and environmental review under SEPA. The City regulations related to sanitary and storm sewer, traffic and water concurrency will be reviewed for consistency with regulatory provisions as well as the impact on the general welfare of the community. As to the specific request, the City Engineer has reviewed the Applicants' two (2) TIA's associated with the proposed change in zoning designation and has recommended Condition 2 be incorporated in the Hearing Examiner's decision.

- C. No substantial detrimental effect will be caused by the granting of the application for the amendment;

The Applicants' request is a non-project rezone which will not have any substantial detrimental effect or, frankly, any effect, as it only amends the zoning of the Applicants' site to be consistent with the Comprehensive Plan and Zoning Code and is in compliance with the associated Development Agreement. Any potential substantial detrimental effects would be addressed during the review of any future development proposals on the subject site

- D. The proponents of the application have the burden of proof in demonstrating that conditions have changed since the original zoning or original designation for the property on the zoning district map.

The Applicants' property considered herein comprised of three parcels was the site of a former surface mine and appropriately designated Employment Center (EC), Commercial Business (CB) and Residential Low (RL) in the Comprehensive Plan. Effective December 6, 2016, pursuant to Ordinance 1350, the City Council amended the Comprehensive Plan designation of the Applicants' property to Residential Medium which was appropriate given the status of the surface mine.

The zoning of the property remained Employment Center (ED) and Residential Low (R-1). Effective November 28th, 2016, pursuant to Resolution 1056, the Council approved a Development Agreement under AFN 201612060071 recorded with the Pierce County Auditor's Office authorizing the Applicant to submit a rezone application within five years. The Applicants' current rezone application requesting rezone of the subject site to R-2 was considered complete on April 7, 2021. The request to rezone the subject site from ED/R-1 to R-2 is consistent with the approved and recorded Development Agreement and proposes to amend the site's zoning to a zone that implements the underlying land use and the intent of the City's Comprehensive Plan. Therefore, the change of circumstances and conditions since the original zoning is two-fold: (1) the Comprehensive Plan designation of the property has changed; and (2) the use of the property has changed since it is no longer the site of a surface mine and is now the subject property of an approved DNR surface mine reclamation permit.

21. The City Public Works Department has reviewed the subject request and has found the request to be generally consistent with the applicable provisions of the Code, subject to the following condition of approval:

"At the time of staff's review of land use entitlement or development permits subsequent to the decision of PL-REZ-21-0001, the applicant shall provide the City with project specific concurrency submittals to analyze impacts on the City's infrastructure and address any necessary mitigation of impacts, as needed, to the satisfaction of the City."

22. The Building Official has reviewed the subject request and has found the request to be generally consistent with the applicable provisions of the Code.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.
2. The Applicants have shown that the request for a Rezone satisfies all criteria set forth in the Gig Harbor Municipal Code and should therefore be approved subject to the following conditions
 1. The Applicant shall obtain all necessary land use, civil, and building permits from the City prior to commencing any future use or development of the site.
 2. At the time of City of Gig Harbor Staff review of land use entitlement or development permits, subsequent to the decision on PL-REZ-21-0001, regarding the subject parcels addressed in PL-REZ-21-0001, the applicant seeking approval of such land use entitlement or development permits shall

provide the City with project specific concurrency submittals to analyze impacts on the City's infrastructure and address any necessary mitigation of impacts, as needed, to the satisfaction of the City.

DECISION: Approved with conditions.

ORDERED this 4th day of October, 2021.



STEPHEN R. SHELTON
Deputy Hearing Examiner

TRANSMITTED this 4th day of October, 2021, to the following:

OWNERS/ Walt and Norma Smith
APPLICANTS: P.O. Box 1272
Gig Harbor, WA 98335

AGENT: Carl E. Halsan
P.O. Box 1447
Gig Harbor, WA 98335

OTHERS:

Sue Horii
10907-65th Avenue N.W.
Gig Harbor, WA 98332

Barrie McDougall
10810-65th Avenue N.W.
Gig Harbor, WA 98332

Scott Nielson
Paul Beatty
Michael Sovitsky
Lorraine Ralston
Stephen and Katherine Haferkamp
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CITY OF GIG HARBOR

CASE NO.: PL-REZ-21-0001
THE WALT SMITH REZONE

Administrative Appeal: This decision may be administratively appealed to City Council. Administrative appeals shall be filed pursuant to Chapter 19.06 GHMC.

Property Tax Valuation: Affected property owners may request a change in property tax valuation notwithstanding any program of revaluation by contacting the Pierce County Assessor-Treasurer.

Permit Documents: The complete project permit file, including official decision, findings, conclusions and conditions of approval, if any, is available for review at the City of Gig Harbor Planning Department, 3510 Grandview Street, Gig Harbor, WA 98335. Additional permit information can also be found at permitportal.cityofgigharbor.net by entering the above permit numbers. Questions regarding the above stated decision should be made to Carl de Simas, Senior Planner at cdesimas@gigharborwa.gov or 253-851-6170.

September 21, 2021

City of Gig Harbor Public Works Department
c/o Jeff Langhelm
3510 Grandview Street
Gig Harbor, WA 98335

RE: AUSTIN ESTUARY PARK HONORING PROJECT
PL-SDP-21-0004, PL-SPA-21-0008, PL-DR-21-0172, PL-ALP-21-0002,
PL-FLOOD-21-0002

Dear Applicant:

Transmitted herewith is the Report and Decision of the City of Gig Harbor Hearing Examiner regarding your request for the above-entitled matter.

Very truly yours,



STEPHEN R. SHELTON
Deputy Hearing Examiner

SRS/jjp

cc: Parties of Record

OFFICE OF THE HEARING EXAMINER

CITY OF GIG HARBOR

REPORT AND DECISION

CASE NO.: AUSTIN ESTUARY PARK HONORING PROJECT
PL-SDP-21-0004, PL-SPA-21-0008, PL-DR-21-0172,
PL-ALP-21-0002, PL-FLOOD-21-0002

OWNER/APPLICANT: City of Gig Harbor Public Works Department
Attn: Jeff Langhelm
3510 Grandview Street
Gig Harbor, WA 98335

PROJECT PLANNER: Kim Mahoney

SUMMARY OF REQUEST:

The proposal is to install a public art project honoring the first peoples at this location. The piece is titled "Our fisherman, Our guardian". The artwork, which is proposed to be mounted to a concrete base, will consist of a carved house post not exceeding 18-feet in combined height. The concrete base will be cast-in-place, 4-feet wide, and may contain up to four (4) placards or signs attached to the base. The structure will be located in the upland area approximately 15-feet from the high tide line of Gig Harbor Bay. The structure will not be illuminated and will be carved of wood with a muted palette. The artwork will have a neutral and natural appearance, with a finish to protect it from the elements. A 5-foot-wide gravel path will surround the public art piece to facilitate the public's access to the carving. Areas temporarily disturbed for structure installation will be revegetated after installation is complete.

The Applicant proposes mitigation and monitoring measures to ensure no net loss of ecological function associated with Gig Harbor Bay and the two (2) Category II estuarine wetlands whose buffers the piece is proposed to be installed within. This request is encompassed in shoreline substantial development permit (PL-SDP-21-0004), site plan amendment (PL-SPA-21-0008), design review permit (PL-DR-21-0172), and alternative landscape plan permit (PL-ALP-21-0002). The Applicant has also submitted a floodplain development permit application (PL-FLOOD-21-0002), which will be reviewed administratively subsequent to approval of the related and aforementioned project application permits by the Hearing Examiner. The proposed site improvements are exhibited in the Applicant's site plan, which is included as Exhibit B. A rendering of the sculpture proposed for installation at the subject site is included as Exhibit C.

The parcel is located at 4009 Harborview Drive, the subject site is located on the northeastern (waterward) side of Harborview Drive, approximately 400 feet southeast of the intersection with North Harborview Drive. Section 06 Township 21 Range 02 Quarter 41. Assessor's Parcel Nos: 0221064039 (uplands) and 0221064043 (tidelands).

SUMMARY OF DECISION: Requests granted, subject to conditions.

DATE OF DECISION: September 21, 2021

PUBLIC HEARING:

After reviewing the Planning Department Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on August 19, 2021, at 9:00 a.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

- EXHIBIT A - Planning Department Staff Report and Addendum**
- EXHIBIT B - Site Plans**
- EXHIBIT C - Artist Rendering; "Our Fisherman, Our Guardian"**
- EXHIBIT D - Shoreline Master Program Compliance Documentation**
- EXHIBIT E - Ordinance 1462, City of Gig Harbor, Effective June 30, 2021**
- EXHIBIT F - Typical Pedestrian Bench Detail**
- EXHIBIT G - Design Manual Checklist Staff Worksheet**
- EXHIBIT H - Mailing, Posting, and Publishing Declarations; Hearing**
- EXHIBIT I - Request for Agency Comments**
- EXHIBIT J - Public Comments (Revised)**
- EXHIBIT K - Mailing, Posting, and Publishing Declarations; Application**
- EXHIBIT L - Justification for Alternative Landscape Plan**
- EXHIBIT M - Hearing Examiner Decision and Staff Report; No. CUP-08-0004**
- EXHIBIT N - 'No Net Loss' of Shoreline Ecological Functions Evaluation Form**
- EXHIBIT O - Correspondence; SeaFin Ship'n Shore Sealer Product Safety**
- EXHIBIT P - Minimally Disturbed Area Evaluation; Meadow Renovation
Memorandum**
- EXHIBIT Q - Endangered Species Act Review**
- EXHIBIT R - Memorandum; Austin Estuary Park Wetlands and Sculpture
Installation Site Mitigation Plan**
- EXHIBIT S - Memorandum; Fish & Wildlife/Natural Resources Departments**

The Minutes of the Public Hearing set forth below are not the official record and are provided for the convenience of the parties. The official record is the recording of the hearing that can be transcribed for purposes of appeal.

KIM MAHONEY, Associate Planner, appeared, presented the City of Gig Harbor Community Development Staff Report and testified that the proposal is for the City to install a public art project honoring the first peoples. The Austin Estuary is located at 4009 Harborview Drive, on the northeastern (waterward) side of Harborview Drive, approximately 400 feet southeast of the intersection with North Harborview Drive. The art piece titled "Our fisherman, Our guardian" will be a carved house post not exceeding 18-feet in height mounted on a 4-feet wide concrete base and may contain up to four (4) placards attached to the base. The structure will not be illuminated and will be carved of wood with a muted palette sealed for protection and preservation by a product called "SeaFin Ship'n Shore Sealer" which has been reviewed and approved by the State Department of Ecology to be used in the sensitive area environment adjacent to the Gig Harbor Bay. A 5-foot wide gravel path will surround the public art to facilitate the public's access to the carving. The sites' uplands are vegetated with evergreen and deciduous trees and native shrubbery and grasses with the normal amount of invasive species. The site fronts Gig Harbor Bay a critical fish and wildlife habitat area and two (2) documented Category II estuarine wetlands which have associated 110-foot buffers which encumber nearly the entirety of the site. The site is also regulated by the City Flood Hazard Construction Ordinance and by the Special Flood Hazard Area. The installation will disturb approximately 200-square feet. An Endangered Species Act (ESA) review concluded that the project would have "no effect" on ESA listed species and associated buffer.

MS. MAHONEY then stated the site has a long history as being the ancestral home of a band of the Puyallup Tribe of Indians. The Department of Archeological and Historic Preservation (DAHP) identified the site as a known archeological site and noted concerns about the groundwork activity associated with the proposed installation of the public art. The Staff is recommending that the Applicant enlist the services of an archeological consultant to conduct an archeological survey and to monitor all ground disturbing activities at the site with the requirement to notify the Puyallup Tribe prior to ground disturbing in order for the Tribe to also monitor the construction. If cultural resources are discovered, all work will be halted and the Tribe and DAHP notified.

MS. MAHONEY noted the site is designated Commercial/Business (CB) by the City's Comprehensive Plan and zone C-1 Commercial district and is also located in the Historic District and the "Urban Conservancy" Shoreline Environmental Designation. The application complies with all relevant codes and regulations except for landscaping and the Applicant is proposing an Alternative Landscape Plan (ALP) to install landscaping within the perimeter of the entire site. After reviewing the ALP, Staff finds it consistent with the required criteria. The site of the proposed project is an established public park in the site's C-1 zoning district and the proposal is generally consistent with the C-1 zoning. The proposal is consistent with the definition of "public art."

MS. MAHONEY advised that in addition to the comments included in Exhibit J, several were received after the Staff Report was written and prior to the hearing are being included in a revised Exhibit J including a comment letter from The DOE which recommended an additional condition of approval regarding grading the site. An Addendum dated August 18, 2021, to the Staff Report is requested to be made a part of the hearing record regarding the comments. In addition, the City is requesting the record to be kept open until August 28, 2021, to accommodate the 45-day comment period which expires on that date for the State Departments of Fish & Wildlife and Natural Resources' responses to the Applicant's Habitat Assessment Review and Habitat Management Plan.

MS. MAHONEY requested the Examiner approve the proposal for the public art project at the Austin Estuary to honor the first peoples at that location by granting the Applicant's requests for the shoreline substantial development permit, the site plan review permit, the design review permit and the alternate landscape plan and imposing certain special conditions of approval and the SEPA mitigation measures.

JEFF LANGHELM, City Public Works Director/Applicant, appeared and testified that he has reviewed the City Staff Report, has no requested revisions and concurs with the Conditions of Approval recommended by the City.

No one spoke further in this matter. The public record was kept open until August 28, 2021, for the Habitat Assessment and Plan comment period to expire. The Hearing Examiner took the matter under advisement.

The public hearing was concluded at 9:30 a.m.

NOTE: A complete record of this hearing is available in the office of the City of Gig Harbor Planning Department.

FINDINGS, CONCLUSIONS, AND DECISION:

FINDINGS:

1. The Hearing Examiner had admitted documentary evidence into the record which included an Addendum to the City Staff Report, additional comments included in Exhibit J and a new Exhibit S, heard testimony and had taken the matter under advisement.
2. The City of Gig Harbor Public Works Department proposes to install a public art project honoring the first peoples at the Austin Estuary. The art piece titled "Our fisherman, Our guardian" will be a carved house post not exceeding 18-feet in height mounted on a 4-feet wide concrete base and may contain up to four (4) placards attached to the base. The structure will not be illuminated and will be carved of wood with a muted palette sealed for protection and preservation by a product called "SeaFin Ship'n Shore Sealer" which has been reviewed and

approved by the State Department of Ecology to be used in the sensitive area environment adjacent to the Gig Harbor Bay.

3. The site is located on the parcel at 4009 Harborview Drive, on the northeastern (waterward) side of Harborview Drive, approximately 400 feet southeast of the intersection with North Harborview Drive within Section 06 Township 21 Range 02 Quarter 41. Assessor's Parcel Nos: 0221064039 (uplands) and 0221064043 (tidelands).
4. To install the public art, the Applicant must obtain the following approvals: shoreline substantial development permit (PL-SDP-21-0004), site plan amendment (PL-SPA-21- 0008), design review permit (PL-DR-21-0172), and alternative landscape plan permit (PL-ALP-21-0002). The Applicant has also submitted a floodplain development permit application (PL-FLOOD-21-0002), which will be reviewed administratively subsequent to approval of the related and aforementioned project application permits by the Hearing Examiner. The Applicant formally submitted applications for the permits on June 29th, 2021.
5. The proposal is categorically exempt from the State Environmental Policy Act (SEPA) threshold determination pursuant to Washington Administrative Code (WAC) 197-11-800(1)(b)(v).
6. Legal notice of the proposed action and scheduled hearing (NOPH) was published in The News Tribune publication, posted on the subject site, and mailed to all property owners within 300 feet of the site on August 4, 2021. The Declarations of Mailing, publishing and Posting for the NOPH are included in Exhibit H. Two comments were received one of which expressed appreciation for the project with some historical reference and the other was from the Washington State Department of Ecology requesting a requirement regarding grading the proposed site be included in the Conditions of Approval. (Exhibit J, revised; Exhibit A, Addendum)

Notice of Application (NOA) for the proposed action was published in The News Tribune, posted on the site, and mailed to all property owners within 300 feet of the subject site on July 19, 2021. The Declarations of Mailing, publishing and Posting for the NOA are included in Exhibit K. Four comments were received, three of which were general comments or questions and one was from Department of Archeological and Historic Preservation (DALP) (Exhibit J, revised).

Pursuant to Gig Harbor Shoreline Master Program (SMP) 6.2.5.23(4)(b), the Applicant's Habitat Assessment Review and Habitat Management Plan was transmitted to the State Departments of Fish & Wildlife and Natural Resources. No comments were received during the 45-day comment period.

7. The uplands of the subject site is approximately 1.39-acres and relatively flat and is vegetated with evergreen and deciduous trees, native shrubbery and grasses with the normal amount of invasive species. The lowlands on the frontage of Gig Harbor Bay, a critical fish and wildlife habitat area, are in natural condition with no riprapping or vertical bulkheads interfering with natural process. The site also fronts on two (2) documented Category II estuarine wetlands which have associated 110-foot buffers which encumber nearly the entirety of the site. The site is also regulated by the City Flood Hazard Construction Ordinance and by the Special Flood Hazard Area. The parcel is accessed from Harborview Drive, a public road, and is serviced by City of Gig Harbor water.
8. The subject parcel is located within the "Commercial/business (CB)" designation of the City of Gig Harbor Comprehensive Plan. Chapter 2, entitled "Land Use Element", Section (f)2.2.3 entitled "Generalized Land Use Categories" states in relevant part:

"Commercial/Business provides primarily retail and wholesale facilities, including service and sales. . . Commercial-business activities consist of the following: 1) Retail sales and services 2) Business and professional offices 3) Mini-warehousing.
9. On October 14, 2008, the City of Gig Harbor Hearing Examiner approved a Conditional Use Permit (PL-CUP-08-0004) and a Shoreline Substantial Development Permit (PL-SDP-08-0001) to establish the site as a city park and to allow restoration of the site's uplands. This decision also held that the park was to be considered primarily a pedestrian-oriented amenity that provided access to the shoreline, waters and views of the mountains. (Exhibit M)
10. The proposed use of the site herein is consistent with the applicable goals and policies of the Comprehensive Plan as analyzed and set forth in the Staff Report. The Examiner hereby accepts Staff's analysis as his own and incorporates by reference all of Staff's analysis of applicable Comprehensive Plan goal and policies as if set forth in full herein. (Exhibit A).
11. The parcel is zoned Commercial District (C-1)(Historic). Adjacent parcels have the following zoning and use: to the north, C -1 - business services; to the east, Gig Harbor Bay - no zoning, Waterfront Commercial (WC) - Murphy's Landing marina; to the south, Low Density Residential (R-1) - vacant; and to the west, General Business (B-2) - retail.

12. The Gig Harbor Municipal Code (GHMC) 17.40.010 states:

The C-1 district is intended to provide for uses that, though not necessarily hazardous or offensive, are different from direct sales and services to customers or residential developments. These uses include light manufacturing, sales, storage, maintenance and processing. The regulations for a C-1 district are intended to allow the efficient use of the land while making the district attractive and compatible with a variety of uses within the district and in surrounding districts.

The proposed project is generally consistent with the intent of the zone. Per the 2008 Examiner's decision, the site is a public park which provides a variety of uses and the project will make improvements to the park which will make the district more attractive and compatible with the other uses in the area.

13. GHMC 17.40.110 Parking and loading facilities requires parking and loading on private property in a C-1 district to be provided in connection with any permitted or conditional use. However, the 2008 Examiner's decision found that no formal off-street parking was required as Austin Park is considered a pedestrian oriented amenity and that the city's off-street parking requirements in GHMC 17.72 do not specifically identify a parking requirement for parks. (Exhibit M)
14. GHMC 17.40.060 Site plans requires that the site plan review process established under GHMC 17.96 shall apply to all uses and development within the C-1 district. GHMC 17.96.035 Criteria for site plan approval provides that the director shall approve applications for minor and major site plan review only if all of the following criteria are met:
- A. The site plan is compatible with the surrounding uses. The proposed project is surrounded by a wide range of uses that include business services, retail, condominiums, marinas and Austin Park itself, which is recreational amenity and provides access to the shoreline.; and
 - B. The site plan is compliant with all relevant statutory codes, regulations and ordinance as it will be properly conditioned to ensure such compliance in addition to the approval process for the site plan review permit.
15. The only applicable performance standards in a C-1 district provided in GHMC 17.40.120 Performance standards are regarding lighting and landscaping.

Section D: Outdoor Lighting. The art project complies with the Outdoor Lighting, because it will not be illuminated.

Section B: Landscaping: The Applicant is not proposing a landscape plan consistent GHMC 17.78; specifically, GHMC 17.78.70A entitled "Perimeter landscaping requirements for nonresidential and mixed use development" that requires the "perimeter areas shall be landscaped with trees, shrubs, and groundcover".

16. The Applicant has requested authorization under GHMC 17.78.100 for an Alternative Landscape Plan" (ALP) that would not have plantings within the perimeter of the entire site. The Applicant proposes to proceed in compliance with Sections C and D as stated in the Applicant's narrative. (Exhibit L)

- GHMC 17.78.100(C) allows the Community Development Director to authorize a modification to the landscape requirements provided an alternative landscape plan incorporates unique, historic, or architectural features such as fountains, sculptures, structures and the like. This Project is proposing to install an art sculpture that displays historical artwork and native tribal heritage in an area that was once inhabited by a band of the Puyallup Tribe. If the Project were to plant a vegetated conservation strip along the shoreline in accordance with city code, the vegetation would eventually reduce visibility of, or completely block the view of, the art sculpture. Therefore, allowing the existing low-lying native plantings to remain as-is will provide a perpetual view of the sculpture, which provides a history of pre-European settlement;
- GHMC 17.78.100(D) allows the Community Development Director to authorize a modification to the landscape requirements provided an alternative landscape plan provides additional water view opportunities in a waterfront commercial zone. Located on Harborview Drive, Austin Park currently provides views and access to Gig Harbor Bay for visitors to the Park. If the Project were to plant a vegetated conservation strip along the shoreline in accordance with city code, the vegetation would eventually reduce visibility of, or completely block the view of the water. Therefore, allowing the exiting low-lying native plantings to remain as-is will provide a perpetual view of the water.

The proposal is consistent with the criteria required to support the application for the ALP.

17. GHMC 17.98 sets forth the City Design Review process. Pursuant to GHMC 17.98.050 Administrative Approval, the Applicant has requested administrative processing of a design review application or portions thereof if it conforms to the specific requirements of Chapter 17.99 GHMC. Staff have reviewed the site design with the applicable criteria set forth in GHMC 19.99 Design Manual, and determined, that properly conditioned, the proposed plans for the public art

project are generally consistent with the specific requirements of the Manual. The Examiner hereby accepts Staff's analysis as his own and incorporates by reference all of Staff's analysis of applicable Comprehensive Plan goal and policies as if set forth in full herein (Exhibit G).

18. Pursuant to the Gig Harbor Shoreline Master Program (SMP) which was developed consistent with state guidelines of the State Shoreline Management Act (SMA), the proposed site is located within the Shoreline Environmental Designation "Urban Conservancy." SMP 5.2.3 states the purpose of this environment is to protect and restore ecological functions of open space, floodplain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.

SMP 5.2.3(D)(2) provides that standards should be established for shoreline stabilization measures, vegetation conservation, water quality and shoreline modifications within the urban conservancy designation. These standards shall ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values. Subsection

5.2.3(3) states, Low intensity public access should be provided whenever feasible and significant ecological impacts can be avoided or mitigated.

The proposed installation of the public art is a compatible use that will protect and restore ecological functions of the floodplain existing in an urban and developed area which does not result in a net loss of shoreline ecological functions. The Applicant provided an analysis of the proposal's impact on regulated critical areas, as well as Endangered Species Act (ESA) listed species and habitat within regulated proximity of the subject site, and demonstrated that the ecological functions crucial to these habitats are protected, enhanced, or restored as a result of the subject proposal (Exhibits D, N, and Q). The carved house post is a permitted use as it is consistent with the definition of "Public Art" in SMP Chapter 2 and is in compliance with the standards stated in SMP 7.22 by encouraging public enjoyment and education of memorialized historic, cultural and archeological significance to Gig Harbor's heritage on City owned property. Also, it will comply with the bulk standards required in SMP 7.22.2(1), the landscape plan required in SMP 7.22.2(2)(2) which includes native, self-sustaining vegetation and SMP 7.22.2(4) by the public pedestrian path that will encircle the sculpture, and the bench and interpretive signs.

19. SMP 6.2 entitled "Marine Shorelines, Vegetation Conservation and Critical Areas Protection" lists goals which include protecting ecological processes and functions existing in the shoreline and nearshore area and protecting and restoring shoreline vegetation.

The proposal is consistent with the goals of the District. The Applicant has submitted analysis of its efforts to ensure no net loss of ecological function (Exhibits D and N). The proposed project will disturb approximately 200 square feet of existing gravel and lawn area within the regulated wetland buffers; however, the Applicant proposes to mitigate this impact by removing invasive vegetation and planting native vegetation in an approximately 400 square foot area of the wetland buffer that largely encompasses the site. (Exhibits R) The Applicant has also provided a conceptual and detailed wetland mitigation plan which demonstrates consistency with SMP Section 6.2.5.15, Wetland Mitigation Plan Submittal Requirements. (Exhibit D, Sec 4) Adherence to this mitigation plan will ensure no net loss of shoreline ecologic function and will sufficiently compensate for impacts to the wetland buffer. The proposed installation of public art has been designed consistent with SMP 6.2.5.13(2) (Exhibit E) and is permissible in its location within the regulated critical area buffers.

20. SMP 6.4 Historic, Cultural, Scientific and Educational Resources states:

It is the goal of the City of Gig Harbor to preserve and prevent the destruction of or damage to any site having historic, cultural, scientific, or educational value as identified by the City, affected Native American Tribes, the State Department of Archaeology and Historic Preservation (DAHP), and other appropriate authorities.

Subsection 6.4.3 states:

Upon receipt of an application for a shoreline permit or request for a statement of exemption for development on properties known to contain an historic, cultural or archaeological resource(s), the City shall require a site inspection, evaluation, and written report by a professional archaeologist or historic preservation professional, as applicable, to determine the presence of cultural, historic or archaeological resource(s).

The subject parcel is known to have been utilized by native cultures for gathering and fishing. The proposed installation of the public art sculpture will require ground disturbance which will only occur after an archaeological consultant conducts a survey of the project specific area and determines that no cultural resources are located within the surveyed area. In the event

cultural resources are located within the surveyed area, ground disturbance can only occur once the appropriate permitting is acquired and mitigation installed, as needed, to the satisfaction of DAHP and affected tribes.

21. The Washington Administrative Code Chapter 173-27-150 entitled "Review criteria for substantial development permits" provides:

- (1) A substantial development permit shall be granted only when the development proposed is consistent with:
 - (a) The policies and procedures of the Shoreline Management Act;
 - (b) The provisions of the regulations promulgated thereof;
 - (c) The applicable master program adopted or approved for the area and
- (2) All local government conditions necessary for consistency with the SMA.

The Applicant's request is consistent WAC 173-27-150 as it complies with the goals and regulations of the State Shoreline Management Act, RCW 90.58, that promote the public use of shorelines, while protecting against adverse effects to the public health, land, vegetation, wildlife and the waters of the state and their aquatic life. The proposal is also consistent with the applicable requirements of the SMP as the improvements to the site would enhance public access to the shoreline and, if properly conditioned, would not adversely impact the site's ecological functions and processes. In addition, the proposal is consistent with the applicable requirements of the City as reviewed by the City Engineer and the City /Building Official who found the proposal to be generally consistent with the applicable provisions of the GHMC, if properly conditioned.

CONCLUSIONS:

- 1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.
- 2. The Applicant has demonstrated that the proposal will be consistent with all applicable codes; therefore, the requests for the Shoreline Substantial Development permit (PL-SDP-21-0004), the Site Plan Amendment (PL-SPA-21-0008), the Design Review permit (PL-DR-21-0172), and Alternate Landscape Plan permit (PL-ALP-21-0002) should be approved subject to the following special conditions of approval:

1. The Applicant shall obtain civil and building permits from the City prior to commencing construction on the proposed improvements, as needed.
2. Prior to any ground activities associated with the proposed project, the Applicant shall enlist the services of an archeological consultant to conduct an archeological survey specific to the installation area of the proposed sculpture. The results of the survey shall be transmitted to the Department of Archeology and Historic Preservation (DAHP). Ground disturbing activities on the subject site shall not commence until DAHP agrees that the results of the survey can allow for the installation of the sculpture without the need for further permitting from their agency. Should the survey result in the discovery of cultural resources, all work shall be immediately halted and local, tribal, and DAHP officials notified of the find. Work shall not proceed until all necessary authorizations have been obtained from the appropriate agencies.
3. The Applicant shall enlist the services of an archeologist to monitor all ground disturbing activities at the site associated with the proposed project. The Applicant shall also notify the Puyallup Tribe Cultural Resource Specialist at 253-573-7986 or by e-mail at: Brandon.Reynon@PuyallupTribe-nsn.gov, prior to commencing ground disturbing activities at the site in order for the Tribe to also monitor such activities. Should cultural resources be discovered during ground disturbing or other activities, all work shall be immediately halted and local, tribal, and State of Washington Department of Archeology and Historic Preservation (DAHP) officials notified of the find. Work shall not proceed until all necessary authorizations have been obtained from the appropriate agencies.
4. The Applicant shall strictly adhere to all applicable recommendations set forth in the geotechnical report prepared by Materials Testing & Consulting, Inc., dated March 12, 2020 (Exhibit D).
5. The site is to be developed in a manner consistent with the plan set (Exhibit B).
6. The Applicant shall adhere to the comments provided by the Department of Ecology, as applicable. (Exhibit J)
7. Critical area mitigation shall be installed, maintained, and monitored consistent with Exhibit R to this staff report. Should contingency measures become necessary, contingency shall be installed consistent with the mitigation plan. (Exhibit R).

8. The Applicant may apply Daly's Wood Finishes "SeaFin Ship'n Shore Sealer" product to the sculpture for its protection and preservation. Should the Applicant desire to use an alternate product, the applicant shall use a product similar to the "SeaFin" product, or a water-based sealant, as recommended by the Department of Ecology Toxics Reduction Program (Exhibit O).
9. As applicable, the Applicant shall secure an approved sign permit from the Gig Harbor Community Development Department Planning Division for any regulated sign, as required pursuant to Gig Harbor Municipal Code (GHMC) Chapter 17.80.
10. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition precedent to the approvals granted and is a continuing requirement of such approvals. By accepting these approvals, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the applicant agrees to promptly bring such development or activities into compliance, and acknowledges that bringing such development or activities into compliance may require new permit applications to be considered by staff or the Hearing Examiner.

DECISION:

The requests for a Shoreline Substantial Development Permit, a Site Plan Amendment, a Design Review Permit and an Alternative Landscape Plan Permit for the Austin Estuary Park Honoring Project at 4009 Harborview Drive, Gig Harbor, WA 98332 are hereby granted subject to the conditions contained in the conclusions.

ORDERED this 21st day of September, 2021.



STEPHEN R. SHELTON
Deputy Hearing Examiner

TRANSMITTED this 21st day of September, 2021, to the following:

OWNER/APPLICANT: City of Gig Harbor Public Works Department
Attn: Jeff Langhelm
3510 Grandview Street
Gig Harbor, WA 98335

OTHERS:

Mark Hoppen hoppenm@gmail.com
Gary Williamson williamsongary51@gmail.com

CITY OF GIG HARBOR

**CASE NO.: AUSTIN ESTUARY PARK HONORING PROJECT
PL-SDP-21-0004, PL-SPA-21-0008, PL-DR-21-0172,
PL-ALP-21-0002, PL-FLOOD-21-0002**

Duration of Permits: The Shoreline Substantial Development addressed herein shall expire two (2) years from its effective date, unless construction activities commence or, if no construction is proposed, the use or activity is commenced. If substantial progress is made within two years, the permit shall remain valid for five (5) years. If construction is not completed within 5 years, the administrator may grant an extension of time up to but not exceeding one (1) year for substantial progress and for completion of the project pursuant to section 4.08.E of the Gig Harbor Shoreline Master Program and WAC 173-27-090.

The site plan review, design review permit, and alternative landscape plan addressed by this decision, shall expire three (3) years from the date of decision unless a complete application for subsequent building permit or civil permit has been submitted and remained active, pursuant to GHMC 19.02.008. Upon written request by the property owner, prior to the date of land use permit expiration, the director may grant an extension of time up to but not exceeding one (1) year pursuant to GHMC 19.02.008(F). See GHMC 19.02.008 for complete regulations on the duration of permit approvals and expiration of permits.

Administrative Appeal: There is no administrative appeal for this decision. Any appeal of this decision shall be in accordance with RCW 36.70C and RCW 90.58.140.

Property Tax Valuation: Affected property owners may request a change in property tax valuation notwithstanding any program of revaluation by contacting the Pierce County Assessor-Treasurer.

Availability of Complete Project Permit File for Review: The complete project permit file, including findings, conclusions and conditions of approval, if any, is available for review at the city of Gig Harbor Planning Department, 3510 Grandview Street, Gig Harbor, WA 98335. Please contact Kim Mahoney, Senior Planner at 253-851-6170 should you desire to review the file.

Concerning Further Review

There is no administrative appeal of the hearing examiner's decision. A request for reconsideration may be filed according to the procedures set forth in Ordinance No. 1073. If a request for reconsideration is filed, this may affect the deadline for filing judicial appeal (Chapter 36.70c RCW) (see Ord. 1073, Ch. 36.70C RCW and RCW 90.58.180). Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.