

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF GIG HARBOR**

In the Matter of the Application of	)	Nos. PL-SDP-21-0001 & PL-DR-21-0233
	)	
Dominick Tarabochia	)	Tarabochia Net Shed Proposal
	)	
	)	
For Approval of Design Review and a	)	FINDINGS, CONCLUSIONS,
<u>Shoreline Substantial Development Permit</u>	)	AND DECISION

SUMMARY OF DECISION

The request for a shoreline substantial development permit and design review approval to allow for the extension of utility lines—to provide a sanitary sewer connection and potable water—enabling the continued operation of an existing historic net shed, located overwater of the Tacoma Narrows, approximately 250 feet eastward and downslope of the Soundview Lane cul-de-sac, is **APPROVED**. Conditions are necessary to mitigate specific impacts of the proposal.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on March 21, 2023.

Testimony:

The following individuals presented testimony under oath at the open record appeal hearing:

Robin Bolster-Grant, City Principal Planner
Stephanie Seibel, City Public Works Associate Engineer
Stephen Bridgeport, Applicant Representative

Exhibits:

The following exhibits were admitted into the record:

- A. Staff Report, dated March 14, 2023
- B. Site Plan (4 Sheets), received July 7, 2022
- C. Joint Aquatic Resources Permit Application (JARPA) Form, dated January 29, 2021
- D. No Net Loss Shoreline Ecological Functions Evaluation Form, received February 12, 2021
- E. Non-Wetland, Shoreline, and Fish and Wildlife Habitat Assessment and Habitat Management Plan, Soundview Consultants, LLC, revised September 27, 2021
- F. Third-Party Review of Habitat Assessment and Management Plan, Grette Associates, dated May 18, 2021
- G. Tree Assessment, Sound Urban Forestry, LLC, dated September 6, 2021

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- H. Geotechnical Engineering Report, GeoResources, LLC, dated October 6, 2006
- I. Revised Geotechnical Consultation Letter, GeoResources, LLC, revised September 29, 2021
- J. Draft Utility Easement Agreement, received September 30, 2021
- K. Inadvertent Discovery Plan, received September 30, 2021
- L. Notice of Application Materials:
 - 1. Transmittal Form, dated April 1, 2021
 - 2. Declaration of Mailing, dated April 1, 2021
 - 3. Mailing List
 - 4. Vicinity Map
 - 5. Declaration of Posting, dated March 31, 2021
 - 6. Transmittal Form, dated March 30, 2021
 - 7. Declaration of Publishing, dated March 30, 2021, with Order Confirmation and Ad copy, for publication in *The New Tribune* on April 1, 2021
 - 8. Notice of Application, dated April 1, 2021
- M. Comments on Notice of Application:
 - 1. Comments from the Puyallup Tribe of Indians, dated April 1, 2021
 - 2. Comments from the Squaxin Island Tribe, dated April 5, 2021
 - 3. Comments from the WA State Department of Ecology, dated April 30, 2021
- N. Notice of Hearing Materials:
 - 1. Transmittal Form, dated February 28, 2023
 - 2. Affidavit of Publication, dated March 10, 2023, with ad copy, for publication in *The New Tribune* on March 7, 2023
 - 3. Declaration of Publishing, dated February 28, 2023
- O. SEPA Materials:
 - 1. Determination of Nonsignificance, dated February 27, 2023
 - 2. SEPA Environmental Checklist, dated February 9, 2021
- P. Comments on Determination of Nonsignificance:
 - 1. Comments from the Nisqually Indian Tribe, dated February 18, 2023
 - 2. Comments from the Squaxin Island Tribe, dated March 8, 2023
 - 3. Comments from the Puyallup Tribe of Indians, dated March 7, 2023

The Hearing Examiner enters the following findings and conclusions based upon the admitted testimony and exhibits:

FINDINGS

Application and Notice

- 1. Dominick Tarabochia (Applicant) requests a shoreline substantial development permit (SSDP) and design review approval to allow for the extension of water and sewer lines to

an existing historic net shed¹ overwater of the Tacoma Narrows, thereby allowing for the installation of toilet facilities at the existing structure. The utility lines would be extended eastward from the Soundview Lane cul-de-sac and installation/construction would involve in-ground placement/trenching of approximately 120 linear feet of water and sewer service lines through an upslope area of property directly east of the cul-de-sac (property at 2854 Soundview Lane); then the anchoring of another approximately 160 lineal feet of the utility lines on-grade (i.e., above ground) downslope through the same property, to avoid impacts to the slope or existing vegetation; and, finally, the utility lines terminating—essentially at “water level” of Puget Sound—at the “net shed” property, owned by the Applicant. As explained in detail below, the new utilities serving the net shed will be sited, in significant part, within a renegotiated easement that the Applicant and servient property owner (the property owner of 2854 Soundview Lane) are finalizing.

The proposed service/utility lines would be sleeved and insulated to ensure that no leakages occur and, also, to ensure that seawater does not impact the lines themselves. Sewage from the new toilet facilities would be pumped back upslope to the City of Gig Harbor sewer system using a grinder pump system that would be installed within the net shed. Access to the property containing the net shed is provided by Soundview Lane to the west or a foot trail adjacent to the shoreline at the termination of Harborview Drive. The approximately 0.14-acre property where the net shed is located is addressed as 2788 Harborview Drive.² *Exhibit A, Staff Report, pages 1 and 2; Exhibit B; Exhibit J.*

2. The City of Gig Harbor (City) determined that the application was complete on March 4, 2021. On March 31, 2021, the Applicant posted notice of the application on-site. On April 1, 2021, the City provided notice of the application by publishing notice in *The News Tribune* and by mailing or emailing notice to property owners within 300 feet of the subject property and to reviewing departments and agencies, with a written comment deadline of May 1, 2021. On March 7, 2023, the City provided notice of the open record hearing associated with the application by publishing notice in *The News Tribune*, posting notice on-site, and by mailing or emailing notice to property owners within 300 feet of the site and to interested parties. *Exhibit A, Staff Report, pages 5 and 6; Exhibit L; Exhibit N.*

¹ The Gig Harbor Municipal Code (GHMC) defines an *historic net shed* as “an existing building constructed over or near the water for the purpose of storing, mending and maintaining fishing nets and other fishing gear” and notes that such buildings “were generally constructed over 50 years ago.” *GHMC 17.04.615.*

² The property is identified by Pierce County Assessor No. 0221081064. A legal description of the property is provided in the Civil Plan Set. *Exhibit B.* As detailed in this decision, the utility extension would require an easement across the approximately 1.03-acre property located at 2854 Soundview Lane, which is identified by Pierce County Assessor No. 0221085024. *Exhibit A, Staff Report, page 2.*

3. The City did not receive any comments on the proposal from members of the public in response to its notice materials. Three comments on the proposal, however, were received by reviewing agencies and departments. The Puyallup Tribe of Indians requested that an inadvertent discovery plan be on file for the proposed development and explained that net sheds in the City are significant remnants of the community's cultural heritage. The Squaxin Island Tribe noted that it did not have any specific cultural resource concerns about the project but requested to be notified if any archaeological or cultural resources are uncovered during implementation. The Washington State Department of Ecology (DOE) submitted a comment noting that the proposed development would be located in an area that may have been contaminated with heavy metals from the Asarco smelter in north Tacoma. DOE recommended that the proposal include conditions of approval that would require the Applicant to sample the soil and analyze it for presence of arsenic and lead, and, if lead and arsenic are found at concentrations above the Model Toxic Control Act (MTCA) cleanup levels, develop a soil remediation plan and enter into the Voluntary Cleanup Program with DOE. *Exhibit M.*

State Environmental Policy Act

4. The City acted as lead agency and analyzed the environmental impact of the proposal as required by the State Environmental Policy Act (SEPA), Chapter 43.21C RCW. The City reviewed the Applicant's Environment Checklist and other information on file and determined that the proposal would not have a probable significant adverse impact on the environment. Accordingly, the City issued a Determination of Nonsignificance (DNS) on February 27, 2023, with a comment deadline of March 13, 2023, and appeal deadline of March 20, 2023. The City provided notice of the DNS by sending notice to applicable agencies and tribal entities, interested parties, and property owners within 300 feet of the subject property and publishing notice in *The News Times*. The City did not receive comments from any members of the public in response to its notice materials. The City received two comments from reviewing tribal entities. The Nisqually Indian Tribe submitted a comment noting that it did not have any specific concerns related to the proposal and requesting to be informed about any inadvertent discoveries of archaeological resources or human burials.

The Squaxin Island Tribe submitted a comment noting that the project area has a known historic era net shed (presumably the very net shed at issue) and recommended that a cultural resources survey or archaeological monitoring and report be completed for the proposed development. The comment, however, did not explain how or why the Tribe had altered the recommendation it provided in response to the notice of application (i.e., recommending implementation of an inadvertent discovery plan). The Puyallup Tribe also commented on the SEPA determination and, like the Squaxin Island Tribe, requested that a cultural resources survey take place. That said, despite the Puyallup Tribe providing detailed information about the site in response to the notice of application and,

also, expressing no significant concerns at that time (in 2021), its SEPA comment conveyed the impression that further review would be appropriate because it had never been notified of the project (contrary to the information detailed in Exhibit M). Ultimately, the City's SEPA determination was not appealed. *Exhibit A, Staff Report, page 5; Exhibit M; Exhibit O; Exhibit P.*

Comprehensive Plan and Zoning

5. The property is designated "Residential Medium" under the City Comprehensive Plan. The Residential Medium designation:

Provides for medium density single and duplex residential. Serves as a buffer between high intensity commercial or higher density residential and lower intensity residential. 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.

Comprehensive Plan, page 2-7.

City staff determined that the proposal would be consistent with the Comprehensive Plan goals and policies promoting the retention of a mixed-use waterfront, including fishing, boating, tourist and residential uses, and promoting the development and enhancement of recreation, tourism, and marine industries along the waterfront as an economic asset in a manner that will enhance the public enjoyment of, and public access to, the bay. *Exhibit A, Staff Report, page 6.*

6. The property is zoned "Medium-Density Residential" (R-2). Properties to the south and west are also zoned R-2. The property to the north is zoned Single-Family Residential (R-1). The Tacoma Narrows is located east of the subject property. The intent of the R-2 zone is 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.

Gig Harbor Municipal Code (GHMC) 17.20.010.

City staff noted that, while the net shed continues to function as a commercial support operation for the fishing industry and not as a residential feature, historic net sheds have cultural significance to the City and the extension of utility service to the net shed would allow the structure to continue to function by providing sanitary service. Net sheds are not identified as a permissible use within the R-2 zoning district. The Tarabochia net

shed, however, has substantially existed in its current location for more than 100 years—and, accordingly, constitutes a legally nonconforming structure—and the utility extension would not constitute enlargement or expansion of the net shed itself. *Exhibit A, Staff Report, page 7.*

Existing Site and Surrounding Uses

7. The rectangular, servient (easement) property slopes steeply downward from the end of the Soundview Lane cul-de-sac, approximately 116 feet to the east of the marine shoreline of Puget Sound where the existing net shed is located. The original net shed was constructed in 1907 with additions constructed in 1943 and 1961. Upland vegetation at the top of the slope consists of fescue and narrowleaf plantain. The slope is mainly vegetated with big leaf maple, bitter cherry saplings, red elderberry, western sword fern, trailing blackberry, and non-native invasive Himalayan blackberry. Properties to the north and west are developed with single-family residences. The property to the south is developed with a duplex. As noted above, the Tacoma Narrows is located east of the property. *Exhibit A, Staff Report, pages 3 through 5.*
8. GeoResources, Inc., provided a geotechnical engineering report on October 26, 2006. The geotechnical report identified slopes of up to 75 percent on the property. GeoResources, Inc., provided a revised geotechnical letter on behalf of the Applicant on September 29, 2021. The geotechnical letter stated that the proposed development would have minimal impacts to the slope and is feasible from a geotechnical standpoint. *Exhibit H; Exhibit I.*

Design Review

9. Chapter 17.98 and Chapter 17.99 (Design Manual) of the GHMC are intended to implement the goals and policies established in the “Design Element” of the City’s Comprehensive Plan by providing design standards and procedures for the review of projects. *GHMC 17.98.010.A.* Specifically, the design standards of Chapter 17.99 GHMC are intended to:
 - A. Encourage building design and site planning to:
 - Complement the existing character of specific neighborhoods or geographic areas of the city in which the proposed building or site improvements are located.
 - Relate visually and physically to surrounding development.
 - Promote pedestrian usage.
 - B. Provide options that allow for diversity and creativity in project design.
 - C. Facilitate a dialogue between project proponents and the city’s design review board in a public meeting setting.
 - D. Increase public awareness of design issues and design options.
 - E. Provide an objective basis for decisions which affect both individual projects and the city of Gig Harbor as a whole.

- F. Ensure that the intent of the goals and objectives contained within the city of Gig Harbor's comprehensive plan are met.

GHMC 17.99.020.

10. Chapter 17.99 GHMC applies to all outdoor proposals that require a building permit, clearing and grading permit, or which are part of a project or development requiring a site plan. *GHMC 17.98.030.* City staff reviewed the proposal for compliance with the design manual and determined that the proposal would comply with Chapter 17.99 GHMC, noting that the proposed development would not require any significant changes to the existing structure. GHMC 17.99.240 requires site development to be designed to reflect the natural conditions of the site, including topography and existing vegetation. The proposed development includes trenching for a portion of the utility extension but the proposed earthwork is not anticipated to exceed 100 cubic yards. A condition of approval would require the Applicant to reseed all disturbed areas by hand and replant any trees removed at a 2:1 ratio. Sound Urban Forestry, LLC, prepared a tree assessment on behalf of the Applicant on September 9, 2021. The report identified one significant tree on the property and determined that the proposed utility extension would not impact that tree and tree protection would not be required. *Exhibit A, Staff Report, pages 5 and 7; Exhibit G.*

Shoreline Management Act and City Shoreline Master Program

11. A portion of the proposed improvements would be located within 200 feet of the Tacoma Narrows ordinary high water mark (OHWM), which is part of Puget Sound. The State Shoreline Management Act (SMA) and the City Shoreline Master Program govern work within 200 feet of the Puget Sound OHWM. *RCW 90.58.030(2)(e) and (g); City Shoreline Master Program, page 1-6.* Any "substantial development" within the shoreline jurisdiction requires approval of an SSDP. *Substantial development* is any development for which the total cost or fair market value exceeds \$7,047, or any development that materially interferes with the normal public use of the water or shorelines of the state. The cost of the subject proposal would exceed the threshold noted above, thereby requiring an SSDP. *RCW 90.58.030(3)(e); City Shoreline Master Program, page 8-5. Exhibit A, Staff Report, pages 4, 7 through 9.*
12. The primary goal of the SMA is to protect the public interest in the state's shorelines through a coordinated development process. The SMA contemplates protecting against adverse effects to the public health, the land, the vegetation, the wildlife, and the waters, and preserving the public's opportunity to enjoy the physical and aesthetic qualities of the natural shoreline to the greatest extent feasible. Permitted uses in the shorelines must be designed and conducted in a manner to minimize damage to the ecology and environment of the shoreline area and any interference with the public's use of the water. *RCW 90.58.020.*

13. The purpose of the City Shoreline Master Program (SMP) is to guide the future development of the shorelines in the City in a manner consistent with the Shoreline Management Act; promote the public health, safety, and general welfare of the community by providing long range, comprehensive policies and effective, reasonable regulations for development and use of the City's shorelines; and ensure a no net loss of shoreline ecological functions and processes and to plan for restoring shorelines of the state that have been impaired or degraded. *City SMP, page 1-1*. The SMP establishes seven shoreline environment designations "to provide a systematic, rational, and equitable basis upon which to guide and regulate development within specific shoreline areas." *City SMP, page 5-1*. The proposed utility extension would be located within the "Low Intensity" environment. The purpose of the Low Intensity environment is to "accommodate residential development in areas that are already developed with or planned primarily for residential uses." *City SMP, page 5-14*. The Low Intensity environment designation may also include water-oriented commercial and recreation uses and public access. *City SMP, page 5-14*. Water-oriented and non-water oriented commercial uses are permitted within the Low Intensity environment designation. *City SMP, page 7-8*. The City SMP gives preference to "water-dependent commercial uses, then to water-related and water-enjoyment commercial uses in shoreline locations." *City SMP, page 7-55*. The City SMP also provides that "net sheds represent one of Gig Harbor's most notable and colorful industries: commercial fishing" and that "as an iconic form of development along the city's shoreline, the continued use of historic net sheds in support of commercial fishing should be the top priority for such structures." *City SMP, page 7-63*. *Exhibit A, Staff Report, pages 7 and 8*.

Shoreline Substantial Development Permit

14. Soundview Consultants, LLC submitted a Non-Wetland, Shoreline, and Fish and Wildlife Habitat Assessment and Habitat Management Plan (HMP) on behalf of the Applicant on January 7, 2021. The report identifies the subject property as being within the 200 feet of Puget Sound. The report determined that the proposed development includes minor vegetation disturbance along the slope on the northern portion of the property to the marine shoreline area to accommodate the installation of water and sanitary sewer utility lines that connect to the existing net shed. No in-water work is proposed. The utility lines would be located above ground using flexible piping anchored with stakes to avoid ground disturbance and removal of trees where situated along the slope adjacent to the shoreline. The report indicates that all project activities involving vegetation disturbance area would be landward of the ordinary high water mark (OHWM) and that disturbed areas would be replanted with native plants. The report states that the proposed development would require approximately 627 square feet of native and non-native shrubs along the slope to be pruned or removed to accommodate installation of the utility lines. As noted above, the proposed development would not impact any significant trees on the property. The report also indicates that the proposed development would not have

any impacts on critical fish and wildlife habitat in the area. The report also determines that the proposed development would result in no net loss of critical area functions.

Grette Associates, LLC completed a third-party review of the Applicant's HMP on May 18, 2021. The review determined that the Applicant's HMP is largely compliant with the requirements of the City SMP, and any additional requirements have been recommended as conditions of further project approval. The third-party review concurs that the proposed development would result in no net loss of critical area functions. Soundview Consultants, LLC provided a revised HMP on September 27, 2021. The revised report indicates that less than ten linear feet of the utility lines would be mounted on the existing overwater boardwalk, consistent with requests made during the review process. The report also states that the proposed utility extension could not be located within an existing utility corridor that parallels the northern parcel line because of City requirements for landscaping. *Exhibit A, Staff Report, pages 8 and 9; Exhibits D through F.*

Testimony

15. City Principal Planner Robin Bolster-Grant testified generally about the proposal and about how, with conditions, it would comply with applicable provisions of the municipal code and the City's SMP, and would meet the specific criteria for a shoreline substantial development permit and design review approval. She stated that the subject property is located within 200 feet of the ordinary highwater mark (OHWM) of the Tacoma Narrows. She explained that the proposed development would consist of the trenching of approximately 120 feet of in-ground utility lines and installation of approximately 180 feet of on-grade utility lines because of the steepness of the on-site slope leading eastward from the Soundview Lane cul-de-sac to the shoreline where the existing net shed is located. Planner Bolster-Grant explained that the proposed utility lines would travel through an easement located at 2854 Soundview Lane. She noted that the easement agreement for the utility extension included in the record is a draft agreement, but the parties would finalize the agreement prior to construction. She noted that the proposed utility extension would be accessory to the existing net shed, which is a water-dependent commercial use supporting the fishing industry. She noted that the proposed development does not include any additional overwater development or changes to the exterior of the net shed. Planner Bolster-Grant stated that the third-party reviewer of the Applicant's habitat management plan concurred that the proposed development would result in no net loss of critical areas function. She noted that any vegetation removal caused by trenching activity would be required to be replanted. Ms. Bolster-Grant stressed that the City received comments from two tribes in the area who expressed concerns about cultural resources in the area, so City staff has recommended that an inadvertent discovery plan be prepared and, in addition, that a cultural resources expert or archeological monitor be on-site during ground disturbing activities. Finally, she noted that the DNS was not appealed. *Testimony of Ms. Bolster-Grant*

16. City Public Works Associate Engineer Stephanie Seibel testified that the City wants to ensure that the utility lines are watertight because, apart from obvious concerns over effluent leaking from the lines, the City also does not want sea water entering the sewer system, noting that the net shed area and downtown area have been known to flood. *Testimony of Ms. Seibel.*
17. Applicant Representative Stephen Bridgeport testified that the Applicant has been trying to extend sewer and water facilities to the net shed for some time. He explained that the project wetland biologist and geotechnical engineer determined that a combination of in-ground and on-grade utilities would be the best way to accommodate this given site features. He explained that the Applicant has a replanting plan to address impacts to vegetation from installation of the utility lines. He noted that the slope has been mowed during recent years and that the utility lines would have no impact on existing views from neighboring properties. Mr. Bridgeport explained that there are currently two separate easements on the Soundview Lane property (servient property), but that they were not well thought out, so the Applicant would be relinquishing those easements to create a new, single easement accommodating both the water and sewer lines serving the net shed property (dominant property). He explained that the Soundview Lane property has already been fairly disturbed over the course of many years so archaeological monitoring would not be necessary. *Testimony of Mr. Bridgeport*

Staff Recommendation

18. Ms. Bolster-Grant testified that City staff recommends approval of the shoreline substantial development permit and design review approval, with conditions. *Testimony of Ms. Bolster-Grant; Testimony of Ms. Nichols; Exhibit G, Staff Report, page 8.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted authority to hear and decide applications for a shoreline substantial development permit and design review approval. *City Shoreline Master Program, Section 8.2.1.E, page 8-6; GHMC 2.25.070.* Although design review of this type of proposal (GHMC 17.98.045) would normally involve administrative review, an application that involves two or more procedures may be processed collectively under the highest numbered procedure required for any part of the application. *GHMC 19.01.002.B.* Accordingly, the Hearing Examiner has jurisdiction to decide both permits associated with the application.

Criteria for Review

Shoreline Substantial Development Permit

The Department of Ecology shoreline regulations are located in Chapters 173-26 and 173-27 of the Washington Administrative Code (WAC). Chapter 173-26 WAC sets forth procedures and guidelines for local adoption of shoreline master programs that are not applicable to the

Applicant's permit request. Chapter 173-27 WAC sets forth permitting procedures and permit criteria. The Hearing Examiner reviews the Shoreline Substantial Development Permit (SSDP) application under the following criteria:

- (1) A substantial development permit shall be granted only when the development proposed is consistent with:
 - (a) The policies and procedures of the act;
 - (b) The provisions of this regulation; and
 - (c) The applicable master program adopted or approved for the area.
Provided, that where no master program has been approved for an area, the development shall be reviewed for consistency with the provisions of chapter 173-26 WAC, and to the extent feasible, any draft or approved master program which can be reasonably ascertained as representing the policy of the local government.
- (2) Local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the local master program.

WAC 173-27-150.

Thus, the Hearing Examiner must review the SSDP application against the City SMP policies and regulations. A Shoreline Substantial Development Permit shall be granted by the Hearing Examiner only when the development is consistent with the following, which is identical to the language in WAC 173- 27-150:

- (1) The policies and procedures of the act;
- (2) The provisions of this regulation; and
- (3) The applicable master program adopted or approved for the area;
provided, that where no master program has been approved for that area, the development shall be reviewed for consistency with the provisions of chapter 173-26 WAC, and to the extent feasible, any draft or approved master program which can be reasonably ascertained as representing the policy of the local government.

Local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the local master program.

City of Gig Harbor Shoreline Master Program, Section 8.2.1.E, page 8-6.

Design Review

Chapter 17.99 GHMC, the City's Design Manual, applies to all outdoor proposals that require a building permit or a clearing and grading permit or that are part of a project or development requiring a site plan. *GHMC 17.98.030*. All sections of Chapters 17.98 or 17.99 that provide criteria for design review shall be considered criteria for design review approval. *GHMC 17.98.035*.

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The criteria for review adopted by the Gig Harbor City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with County development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040*.

Conclusions Based on Findings

- 1. With conditions, the proposed use would be consistent with the criteria for a Shoreline Substantial Development Permit under WAC 173-27-150 and the City's SMP.** Applicable policies of the Shoreline Management Act (SMA) include those to foster all reasonable and appropriate uses and to protect against adverse effects to the public health, the land, vegetation, and wildlife. Permitted shoreline uses must be designed to "minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water." *RCW 90.58.020*. The proposed utility extension would be consistent with the SMA because it would not adversely impact public access to the shoreline or critical area functions.

The proposed utility extension would be located within the "Low Intensity" environment of the City's Shoreline Master Program (SMP). The purpose of the Low Intensity environment is to "accommodate residential development in areas that are already developed with or planned primarily for residential uses." *City SMP, page 5-14*. Water-oriented and non-water oriented commercial uses are permitted within the Low Intensity environment designation. *City SMP, page 7-8*. The City SMP gives preference to "water-dependent commercial uses, then to water-related and water-enjoyment commercial uses in shoreline locations." *City SMP, page 7-55*. The City SMP also provides that nets shed are "an iconic form of development along the city's shoreline" and "the continued use of historic net sheds in support of commercial fishing should be the top priority for such structures." *City SMP, page 7-63*. The proposed development would support an existing historic net shed, a water-dependent commercial use supporting the fishing industry.

The City reviewed the Applicant's environmental checklist, determined that the project would not have a probable significant adverse impact on the environment, and issued a DNS. The DNS was not appealed. The City provided reasonable notice and opportunity to comment on the proposal. The City received a comment from the Washington State Department of Ecology, whose recommendations were added as conditions of approval for the application. The City also received comments from the Puyallup Tribe of Indians and the Squaxin Island Tribe, both of which noted that the area is known to contain cultural resources. The Applicant provided an inadvertent discovery plan. Moreover, per the conditions of approval, either tribal entity may provide a cultural resources or

archaeological monitor (at their own expense) during ground-disturbing activities should concern over the inadequacy of an inadvertent discovery plan persist.

The proposed development does not include any in-water work and the exterior of the existing net shed would not be altered as a result of the proposed development. The Applicant provided a habitat management plan, which was reviewed and approved by a third-party reviewer, that demonstrated that the proposed development would result in no net loss of critical area functions. The proposed utility extension would be partially in-ground and partially on-grade in order to accommodate the site's steep slope. The Applicant would replant the area disturbed by utility installation by replanting the area with native vegetation. The Applicant also provided a tree report that demonstrated that the proposed development would not impact any significant trees on-site. Conditions, as detailed below, are necessary to ensure the proposal complies with all requirements of the City's SMP, as well as all requirements of other local, state, and federal permits.

Findings 1 – 18.

2. **With conditions, the proposal would be consistent with the applicable specific requirements of the City's Design Manual.** City staff reviewed the proposal, assessing compliance with all applicable requirements of the City's Design Manual, including ensuring that the intent of the goals and objectives contained within the City's Comprehensive Plan are met. The Hearing Examiner concurs with the City staff's analysis. *Findings 1, 9, and 10.*

DECISION

Based on the preceding findings and conclusions, the request for a shoreline substantial development permit and design review approval to allow for the extension of utility lines—to provide a sanitary sewer connection and potable water—enabling the continued operation of an existing historic net shed, located overwater of the Tacoma Narrows, approximately 250 feet eastward and downslope of the Soundview Lane cul-de-sac, is **APPROVED**, with the following conditions:

1. The Applicant shall obtain all necessary business licenses and land use, civil, and building permits from the City prior to commencing construction on the site.
2. The Applicant shall record applicable utility easements with the Pierce County auditor prior to approval of civil permits., generally consistent with the Draft Utility Easement Agreement submitted with the subject proposal, as reviewed by City staff most recently prior to the commencement of this hearing.
3. The Applicant shall comply with the comments, as applicable, provided in response to the Notice of Application and/or Notice of Determination of Nonsignificance by the Department of Ecology.

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4. An archaeological monitor or cultural resources expert shall be *allowed to be present* during all trenching activity to protect against impacts to culturally significant artifacts or human remains *if so desired by applicable tribal entities*. Specifically, the Puyallup Tribe and the Squaxin Island Tribe expressed some concerns about the potential for cultural resources to be encountered during implementation of this proposal. Given the limited scope of the project and, further, the lack of specificity of the concerns (especially between the time comments were first received by both entities in 2021 and, later, in relation to this hearing), the Applicant need not contract for any such monitor/expert to be present. That said, the Applicant shall notify tribal entities at least one week in advance of anticipated trenching and make reasonable accommodations for any experts sent by such entities to monitor said work.
5. The Applicant shall implement Best Management Practices to ensure that the project's ecological impacts are consistent with all representations set forth in the Non-Wetland, Shoreline and Fish and Wildlife Habitat Assessment and Habitat Management Plan (Exhibit E). Such practices shall include hand seeding any disturbed areas with native seed mix, and replacement of any trees inadvertently removed within 25 feet of the ordinary high water mark at a 2:1 ratio.
6. Any future permits or approvals required, or amendments of those existing, for the primary project or mitigation site shall be provided to the City of Gig Harbor for consistent record keeping.
7. 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.
8. The Applicant shall strictly adhere to all applicable recommendations set forth in the geotechnical report prepared by GeoResources, dated March 18, 2019, revised September 29, 2021.
9. The Applicant shall protect pumps or other mechanical equipment associated with the sewer and/or water lines against damage in the event of a flood event.

10. The Applicant shall maintain any required replacement trees on the subject site, consistent with municipal code requirements.
11. The Applicant shall adhere to all measures required by the Public Works Department, identified during the review of this proposal prior to issuance of this decision.

DECIDED this 15th day of May 2023.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center