

**Work Study Session
Gig Harbor Planning Commission
March 18, 2010
Community Rooms A & B
4:00 pm**

PRESENT:

Commission members: Jim Pasin, Joyce Ninen, Jill Guernsey, Michael Fisher and Harris Atkins. Bill Coughlin was absent.

Staff Present: Pete Katich, Diane Gagnon, Tom Dolan and Kim Van Zwalenburg from the Department of Ecology.

APPROVAL OF MINUTES

Commissioner Atkins asked that where consensus was reached that bold or underlining be added.

Motion: Motion to approve the minutes of March 4, 2010. Pasin/Guernsey – Motion carried.

Ms. Ninen confirmed that everyone had received the revised schedule. She handed out a sheet with definitions regarding language from the master program.

Mr. Fisher began by giving an update to the commission on a seminar he went to. He emphasized the importance of having a standard and referenced the minimum damage rule and establishing regulations in the least restrictive means. He stated that while the shoreline master program gives us some guidance he didn't feel that it was effective where we need to protect property rights. Mr. Fisher then went over case law where the concept of least restrictive means was introduced. He noted that there had been some recent lawsuits regarding stormwater regulations and their infringement on property rights.

Senior Planner Pete Katich stated that the Commission had asked for a copy of the Department of Ecology memo of September 3rd and he had provided a copy of that memo to them and noted that some changes had been made to the matrix to reflect the comments in the memo. Ms. Ninen suggested that they go through these comments as they reach that point in their review rather than go over all of them now.

Mr. Katich then stated that they had asked about dredging at the entrance to the harbor and whether that may be needed. He had asked the consultant about this who in turn asked a sub consultant about the possible need for dredging at the mouth of the harbor and it was their opinion that the sedimentation at the head of the bay did not have the potential to impact the mouth of harbor. He went on to say that the mouth of the harbor is more impacted by feeder bluffs nearby but not enough to impact the mouth: however, the marine deep water zone allows for dredging so it is permitted there

already. He noted that he had provided a larger color map of the environmental designations as they had requested. He stated that if the commission desired they could add dredging as a conditional use in the other zones if they felt it was necessary. Mr. Pasin said that given the implied restrictions he felt it was important to allow for dredging. Mr. Fisher asked Mr. Katich if in fact there were so many conditions on dredging that it didn't matter if we allowed it. Mr. Katich said that if it is conditional there are more restrictions and more public involvement. Mr. Dolan suggested that they could add a footnote in natural and low intensity designations stating "dredging permitted for immediate harbor entrance" or footnote back to the actual development standards to assure that it can occur. **Consensus was reached on clarifying the ability to dredge at the mouth of the harbor.**

Mr. Katich then addressed dune modifications and other conditions that we don't have in Gig Harbor. He stated he had discussed this with the consultant and they had stated that in their discussions with Ecology that DOE would like to see all categories that are listed in the WAC reflected in the jurisdictions master program whether the modification exists or not. Ms. Van Zwalenburg said that it is preferred that the modification is listed and then state that it does not apply. She said that she would double check if they could just put N/A in the table. Mr. Pasin said that they could also indicate that a particular area is not classified as a dune. Mr. Dolan said they could have a statement in the document that there are no dunes in the city.

Mr. Katich also discussed the alphabetization of the elements and the change to the heading and he noted that that will be done when the other changes are made. Ms. Ninen asked about when those changes will be made. She noted that the commission will have changes and ecology has changes and she was concerned that those changes would not be made prior to the public hearing. She felt that the public should see a document with the changes already proposed; otherwise the public will be commenting on a document that they have already revised. Mr. Dolan said that staff will meet and try to come up with a way to make the revisions prior to the public hearing. Mr. Atkins agreed that it would be less confusing if the changes were shown prior to the public hearing. Ms. Ninen suggested that perhaps an addendum could be published with the changes if the document itself can't be modified.

Mr. Katich then discussed the bigger better maps that had been passed out. He noted that commissioner Coughlin had met with him earlier in the week and he had found it difficult going back and forth between the matrix and the associated policies and explained that he had added the policy and regulatory review of chapter 7 after chapter 6 in order to get us in a more organized order. He asked the commission if it would be more helpful to conduct the review of chapter 7 along with the matrix. Ms. Ninen said that it was cumbersome and the organization was a little confusing and she thought that DOE had mentioned it. Mr. Atkins said that the policies are in alphabetical order and the matrix is not but he agreed you have to read the policies to understand the matrix. Ms. Guernsey agreed that they should look at them together.

Mr. Atkins noted that in the introduction to the permitted use table where it says “This table is intended for reference purposes only” and “If information in the table conflicts with provisions in other parts of the SMP, the provisions contained in text section of the SMP shall apply”. Mr. Atkins didn’t agree with that statement as the matrix should be correct and have meaning otherwise why is it here.

Ms. Ninen said that Mr. Dolan had suggested a new title similar to the use matrix. Mr. Dolan said that yes, they will be changing that along with the column headings. Mr. Katich stated that shoreline use and modification matrix was the term Mr. Dolan had suggested. **Consensus was reached on the title.**

Ms. Guernsey wanted to clarify that everyone agreed that the statement Mr. Atkins pointed out would be deleted and it was agreed that it should be deleted.

Mr. Katich noted that he had not done the marina survey yet and noted that there had been a concern from the public about the imbalance of uses on the waterfront. He explained that the issue was should there be a cap on additional marina development in the harbor in order to assure the growth of the fishing industry. Mr. Fisher said that he thought they should consider the percent of business and perhaps it was a matter of demand and that there is usually a reason for an imbalance that is market driven. Mr. Dolan noted that they will hear comments from the public on this issue and Mr. Katich agreed that yes of course when the value of the property is so high it becomes more of a priority on other uses. Mr. Dolan also noted that perhaps the comp plan needs to reflect a new balance.

Mr. Pasin said that he felt they needed to be careful that this would not have some implication that the city will develop those facilities. Mr. Dolan noted this issue in the holding pen for discussion later along with uses and when Mr. Katich has completed a survey.

Mr. Katich said that the next category was individual moorage facilities. Ms. Ninen said she thought this item had been moved to uses and perhaps should be discussed then. Mr. Fisher said that he spent a lot of time going through the policies and the way they are laid out, they are all over the place and he suggested that they stop looking at the matrix and move to the policies because they will be more able to discuss specifics and they will be better able to make informed decisions about the matrix.

Consensus was reached to start on page 7-8. Mr. Katich asked if they are proposing to look at 7-12 since that is where they are. Mr. Dolan said he thought they were going to cease their review of the table and then go back to the table after a review of the policies and everyone agreed.

7.2 Prohibited and Allowed Modifications and Uses. Mr. Katich read the prohibited modifications and uses. Ms. Ninen said that there is also a private boat launch that is prohibited but is not captured here in this section. Mr. Atkins said that agriculture is not listed in the definitions but agricultural activities are listed and it includes roadside

stands. He asked did that mean we can no longer have a farmers market in Skansie Park. Mr. Katich said that it is a very broad definition. Mr. Dolan noted that of course it is understood that it is the commissions intent to allow the farmers market and Mr. Pasin noted that yes; however, we don't want it limited to just the farmers market there are other similar things done in that area. Kim Van Zwalenburg noted that the definitions come right out of the state statute. Mr. Katich noted that in the historic waterfront the entire range of uses are allowed there so there just needed to be a minor tweak to the definition. Mr. Katich said that also they may recategorize commercial fishing activities into a commercial type of use category rather than industrial.

Ms. Ninen noted that private boat launch ramps are prohibited in any shoreline environment. Mr. Fisher noted that it also stated that boat launch ramps are preferred over marinas. He asked what a rail system is and is that the same as a ramp. Mr. Katich explained what a rail system was and their difference from a ramp. Mr. Pasin noted that when you look around the shoreline here there are a lot of homes here that have a boathouse with a small area for putting their small boat in the water rather than the large concrete structure you see with a public boat launch. Mr. Katich agreed that that is the case sometimes and perhaps there should be a creation of a definition that helps focus on the right type of boat launch ramp. Ms. Guernsey asked Ms. Van Zwalenburg if there were some definitions that already existed and she said that there are all kinds of definitions; however she didn't think the guidelines had one. Mr. Atkins asked what the intent was in not allowing private boat launch facilities when they are permitted in the four of the five categories with no mention of private or public. Mr. Katich said that he understood that it was drafted to allow public boat launch ramps in certain designations based on the belief that too many private boat launch ramps adversely affects the habitat. Ms. Guernsey said that it could be taken to the extreme and not allow kayaks being launched in front of their house. **Ms. Guernsey suggested that boat launch ramps be put in the holding pen. Everyone agreed.**

Mr. Dolan asked if they had any other issues about the prohibited items and asked should the items that we don't have (i.e. dunes) be removed. It was agreed they should be removed. Ms. Van Zwalenburg will bring an answer back to Mr. Katich if a separate section should be created for items that are not applicable.

Mr. Katich then read from the allowed modifications and uses. Ms. Ninen noted that ecology had commented that on the end of page 7-9 "this chapter should also reference chapter 6". She asked if we had to reference it or is it automatically related and Mr. Katich said that it does have to be referenced. Mr. Pasin said that in 7.2.2 it ends with "and adjoining properties" and he wasn't sure what that meant. Mr. Katich said that he felt it was the shoreline environment and the adjoining uplands which are within the scope of this document, but it could be clarified better.

Mr. Pasin noted that in one place it says shoreline uses or development or activities, and then on the next page it says development and he felt that they should use consistent language. Mr. Katich stated that development needs to be used because it is defined in the act. Ms. Guernsey said that she had noted that there was inconsistency

within the document in the use of those terms. Mr. Katich said that was a good suggestion and consistency in terms was very important.

7.3 Aquaculture

Mr. Atkins asked where the salmon hatchery is located and Mr. Katich said that it is in the area between N Harborview, Austin St and Harborview. He noted that Dick Allen has a long history with this hatchery and he asked Mr. Allen to give a brief history. Mr. Allen said that they got chum salmon eggs from the Hoodspout hatchery and had tried different approaches and he noted that chum salmon will go directly to salt water when hatched and there is natural spawning that occurs there as well. Mr. Katich asked what was the largest average run, he said in about 1975 when they come out of the incubating box they captured them and put them in the pond and fed them for about six weeks and from that we had the biggest run around 4-5000 fish. Mr. Allen noted that it used to peak around Thanksgiving but now peaks around Christmas. Mr. Katich went over the history of the types of fish in this stream. Mr. Pasin noted the section that said that new upland developments will be screened. Mr. Katich said that if some group proposed to place another hatchery in the stream this development standard should apply, we should decide if this still applies. Mr. Pasin said that in our community they would be of such a scale that we would like to see them. Mr. Katich said that is good to know because then perhaps it should be removed. Mr. Fisher said that these appear to be boiler plate kinds of things that could be in here but didn't really matter here. Mr. Atkins said also that some of these kinds of regulations would fall under the land use code. Mr. Dolan asked if they should take out 3, 4 and 5. Ms. Guernsey said that it includes more things than just a fish hatchery. She noted the first policy where it talks about the definition and suggested that they should consider the UGA and over by the Purdy spit there may be shellfish. Ms. Guernsey continued by saying that there are issues regarding wild vs. farmed and these issues are separate and distinct from fish hatcheries. Ms. Ninen noted that there are people harvesting along Henderson Bay and there are permits for some geoduck and shellfish harvesting along Henderson Bay. Mr. Dolan noted that the city and county had put the annexation line in a very bad spot splitting some parcels and they had met with Sean Gaffney and have come up with a way to resolve that to conform with the parcels in the water to bring those parcels in the water into the city. Ms. Ninen suggested that perhaps there should be some footnotes added. Ms. Guernsey said that the county is addressing it and it is a very contentious issue and if you start prohibiting it you are going to get some heat. Mr. Dolan asked how about if we change it to aquaculture uses in Henderson Bay as allowed by Pierce County and Mr. Katich asked should our regulations match Pierce County's. Mr. Katich said that he would check with the county and get back to the commission at the next meeting on the county regulations. Ms. Van Zwalenburg said they have severe staffing issues and the county is still working on their master program very slowly. Mr. Katich said he has been following this issue and it is a real battle between small recreational uses and the growers. Mr. Dolan said that they will do some research into the county regs and then the commission can decide if they want to mirror the county regulations. Ms. Van Zwalenburg said that wildstock harvest is a fishery and DOE has agreed with

DNR on that topic. Mr. Dolan added aquaculture in Henderson Bay to the holding pen. It was decided that it should be Henderson Bay and Burley Lagoon.

7.3.2 Regulations. **Mr. Atkins felt that number one was really two different thoughts and should be broken up. Everyone agreed. It was decided to come back to 3, 4 and 5 because it related to aquaculture.** Ms. Ninen asked if the waste disposal standards applied to the activity occurring at Donkey Creek. Mr. Katich said that the decay of spawning salmon is an important component that adds nutrients back to the stream. Mr. Dolan said that he believed the regulation applied to “trash” as a result of aquaculture. **He suggesting adding a phrase that it doesn’t apply to spawning salmon, everyone agreed.**

7.4 Boating and Marinas: Piers, Docks and Moorage. Mr. Katich noted the placeholder. Mr. Atkins asked why covered moorage was a problem. Mr. Katich explained that shading decreases the growth of epibenthic organisms in the inter and shallow sub-tidal zones and tends to divert small fish from following the edge and directs them into deeper water where there are more predators and noted that State Fish and Wildlife strictly regulates any over water structure.

Ms. Guernsey pointed out the use of the word facilities vs. ramps in item H and noted the inconsistency in terminology.

D. Water dependent uses. Mr. Fisher asked what adversely impacted means and would this translate into some numeric standard to determine this. Ms. Guernsey said that the term is commonly used because there may be situations that no one has thought of before and you need evidence to back up each conclusion of something being adversely impacted. Mr. Katich said that the zoning code doesn’t require setbacks for marinas, but they are addressed by the current SMP. Mr. Katich noted that all moorages boats and vessels shall be located no closer than 12’ from the property line” (read from the current master program). He stated when DNR leases their land they will include provisions that provide for a larger setback than what we provide in order to ensure there is proper ingress/egress. He thought that the new SMP had a similar regulation. Mr. Dolan pointed out the footnotes at the bottom of the page where it denotes which are from the old SMP and which are from state regulation. Mr. Fisher said he was concerned that someone could say they want to build something and could argue that they were not adversely impacting someone and the city say they are. Ms. Guernsey said that it could put the burden on a developer to establish something that isn’t required. Mr. Katich said that he believed it was intended to reduce the impact of boating facilities on other types of water dependent uses. He then said that you could not distinguish between boating facilities and other water dependent uses. Mr. Dolan said that you have to look at it from the standpoint of the person who wants to protect their existing use. Ms. Guernsey said that she felt that the policy should state that water dependent uses are favored over non water dependent uses. Mr. Dolan said that the issue is more about compatibility. Mr. Katich pointed out that the definition of boating facilities is pretty broad. Mr. Pasin said that he was concerned with the word “operate” and asked if we are trying to tell someone how to operate their business and Mr. Katich

said that in some respects yes, we are. Mr. Fisher said that for example someone selling yachts could double stack boats and impact someone's ingress or egress into their marina. It was asked if the statement was needed when the regulations are where this gets implemented. Ms. Ninen said perhaps it should say the uses should complement each other, this is an adversarial statement. Mr. Dolan pointed out that the heading says something different than the policy. Mr. Dolan asked if Mr. Atkins could draft a statement. Ms. Guernsey suggested removing the word appropriate and replacing it with lawfully existing.

Mr. Fisher then spoke about G. Residential uses. He stated that he didn't understand why the last statement was in there. Mr. Katich said there is a regulation that limits the number of residential moorage facilities. Mr. Fisher said that he disagreed with this, if there is moorage available in Tacoma then you can't have your own. Ms. Van Zwalenburg clarified that there are certain standards from the guidelines she felt that the first part was but not the second part. She continued by saying that there is a preference for reducing the number of moorage facilities, ramps and she noted that it applied to new development, it's not retroactive. Mr. Fisher requested that where Ms. Van Zwalenburg pointed out that the second part of the sentence is not from DOE that it be removed. Mr. Pasin suggested ending it after mixed use development and remove when public access is provided.

Ms. Van Zwalenburg said that on page 77 of the guidelines under piers and docks is where the language came from. Mr. Katich then read the section where it encourages the joint use of docks and agreed the statement needs to be reworded. Mr. Fisher said if there are houses and a dock is a permitted use today and tomorrow it could be arbitrary and the standard uses would say if there is moorage available then do you have to rent moorage when it's permitted at your residence. Mr. Dolan said they would reword the language and still make it consistent with the state language and Mr. Katich said he would also ask the consultant about why it was written this way. Mr. Atkins said that it does seem like a good idea to provide incentives for people to have shared moorage. Ms. Van Zwalenburg explained that any dock proposal whether for a new house or an existing house will have to comply with the new master program.

I. Location of buoys – Ms. Guernsey asked about the reasoning for this. Mr. Katich said that the stakeholders had noted that there is a proliferation of vessels in the harbor and using it as a storage area for boats with no regulations, some have been derelict and sunk in the bay on the county side. He also noted that mooring buoys are regulated under the shoreline management act and can become a navigational hazard. He noted that they are working on a program in Bainbridge to allow mooring buoys for private property owners. The stakeholders felt that it was important to maintain a navigational channel within the harbor. Mr. Fisher asked did it make sense to identify some area within the harbor where buoys are permitted. Mr. Katich said it may be more efficient to identify the navigational channel and then allow buoys outside of that. Mr. Katich said that he would check with the coast guard to see what the process is. Ms. Guernsey said that the policy should say that you need a permit for a buoy, especially when the regulations have so many issues. Mr. Katich said that sometimes it takes many

regulations to implement one policy. Mr. Pasin said that it should say that buoys should be located on your own property not interfere with navigation and have a permit. Mr. Pasin pointed out that the real problem is that we don't have enforcement in the county.

Mr. Pasin said that he had a problem where there are boaters who pay fees to have public boat launch facilities and the need is not being met by the government.

Mr. Fisher asked if launch facilities included rails and Mr. Katich said that boating facilities includes rails and that we don't have a definition of launch facilities and it goes back to Ms. Guernsey's comment about consistency of terms. Discussion continued on the difference between the terms and was H. only referring to launching ramps. Mr. Katich said that he would ask the consultant. Ms. Guernsey said that she felt that it was just about ramps. It was noted that it should say boat launching ramps in the title and the last sentence should say public boat launching ramps are preferred over private boat launch ramps and that they had put the fact that it says private boat launch ramps are prohibited in the holding pen. Mr. Pasin asked if public meant owned by the government and Mr. Dolan said that he didn't believe that it had to be.

J. Mr. Pasin said he had a concern with the statement "restricting the size to meet the needs of the proposed use". If you want to build a marina how do you determine the needs of the proposed use? Mr. Katich said that it is about piers and docks only and noted the location where it is addressed in the guidelines. Mr. Fisher felt that that could be easily argued. Ms. Guernsey said that we don't define moorage facilities. Mr. Katich said that maybe it meant boating facilities. Ms. Guernsey asked if this policy meant to address boating facilities. Mr. Pasin asked how you would determine what the size should be. Mr. Dolan said that what this is trying to restrict is the width of the dock. Ms. Guernsey said that this is piers and docks; we are just talking about the size. She cautioned that we needed to be careful about using the right term, why don't we call it size of piers and docks rather than moorage facilities. Mr. Dolan asked if we change terminology will this be a big issue with DOE, Ms. Van Zwalenburg said no and noted that moorage facilities is not a term used in the guidelines. **It was decided to change the term moorage facilities to piers and docks within all of J.** Ms. Ninen asked if they should remove "to minimize adverse effects on nearshore resources", **it was decided to change nearshore resources to ecological functions.**

Ms. Ninen stated that more discussion was needed on item K than they had time for now and suggested stopping at this point on page 7-14 and start with K next time.

Mr. Katich voiced his appreciation for the discussion.

Next meeting is on April 1st at 4pm.

MOTION: Motion to adjourn at 7:12 Atkins/Pasin, motion carried.

Summary of 3/18/10 Meeting Outcomes:

1. Revise matrix/associated regulations in Chapter 7 of draft SMP to allow dredging as a “permitted” use in low intensity and natural environment designations at the mouth of Gig Harbor Bay to maintain the navigational channel.
2. Per Commissioner Guernsey’s request, boat launch ramp use category set forth in Modification and Use Matrix, Chapter 7, added to the “holding pen.”
3. Remove “prohibited” modifications and uses from Chapter 7, subsection 7.2.1 that are not applicable to city of Gig Harbor shoreline planning area. Only address those modifications and uses that exist or could exist.
4. Revise regulation #1, Chapter 7, subsection 7.3.2 to reflect two separate regulations; note that the current, proposed prohibition on commercial shellfish aquaculture in all shoreline environments could change based on further review of the issue.
5. Revise regulation #5, Chapter 7, subsection 7.3.2 to indicate that it doesn’t apply to spawned-out salmon carcasses.
6. Revise policy J, Chapter 7, subsection 7.4.1 to address “piers and docks” and revise the last sentence of the policy to state, “minimize adverse effects on “ecological functions” rather than nearshore resources.

Holding Pen Status:

1. Shoreline Stabilization-Modification/Use Matrix, Chapter 7, Pg. 7-3 (3/4/10 meeting)
2. Moorage-Chapter 7 (3/18/10 meeting)
3. Private/Public Boat Launch Ramps (3/18/10 meeting)
4. Aquaculture in Henderson Bay/Burley Lagoon, Modification/Use Matrix, Chapter 7, & subsection 7.3.2, regulations 3, 4 & 5 (3/18/10 meeting)