



PLANNING COMMISSION

SPECIAL HYBRID MEETING AGENDA

Wednesday, June 7, 2023 at 6:00 PM

PLANNING COMMISSIONERS

Chair: Daniel Hubbell

Vice Chair: Michael Murphy

Commissioners: Kate Akyuz, Carolyn Boatsman

Michael Curry, Victor Raisys, and Adam Ragheb

LOCATION

Mercer Island Community & Event Center and Zoom

Luther Burbank Meeting Room 104

8236 SE 24th Street | Mercer Island, WA 98040

(206) 275-7706 | www.mercerisland.gov

We strive to create an inclusive and accessible experience. Those requiring accommodation for Planning Commission meetings should notify the Deputy City Clerk's Office 3 days prior to the meeting at (206) 275-7791 or by emailing deborah.estrada@mercerisland.gov.

Registering to Speak: Individuals wishing to speak live during appearances, must register with the Deputy City Clerk by 4pm on the day of the Planning Commission meeting. Register at (206) 275-7791 or email deborah.estrada@mercerisland.gov. Each speaker will be allowed three (3) minutes to speak.

If providing comments using Zoom, staff will permit temporary video access when it is your turn to speak. Please activate the video option on your phone or computer, ensure your room is well lit, and kindly ensure that your background is appropriate for all audience ages. Screen sharing will not be permitted, but documents may be emailed to planning.commission@mercergov.org.

Join by Telephone at 6:00 pm: Call **253.215.8782** and enter **Webinar ID 882 0421 1200**.

Join by Internet at 6:00 pm:

- 1) Click this [Link](#)
- 2) If the Zoom app is not installed on your computer, you will be prompted to download it.
- 3) If prompted for Meeting ID, enter **882 0421 1200**

Join in person at 6:00 pm: Mercer Island Community & Event Center – 8236 SE 24th Street, Mercer Island, Rm 104

CALL TO ORDER & ROLL CALL, 6 PM

PUBLIC APPEARANCES

This is the opportunity for anyone to speak to the Commission about issues of concern.

SPECIAL BUSINESS - AMENDED

1. **Public Hearing: Shoreline Master Program Amendment (ZTR23-001)**
2. ZTR23-001: Draft Marina Regulations (Second Review)

OTHER BUSINESS

3. Deputy Director's Report
4. Planned Absences for Future Meetings

ADJOURNMENT

**CITY OF MERCER ISLAND AND DEPARTMENT OF ECOLOGY
NOTICE OF PUBLIC HEARING – June 7, 2023
Shoreline Master Program Amendment: Public Comment Period and Public Hearing**

Notice is hereby given that the City of Mercer Island and Washington Dept. of Ecology are accepting comments on amendments to the City of Mercer Island’s shoreline master program (SMP) under WAC 173-26-090(1). The City has prepared draft SMP amendments to provide consistency with state law, specifically Chapter 173-27 WAC for Shoreline Management Permit and Enforcement Procedures, and to add “marinas” as a new use to MICC 19.13.040 Table B and establish development standards for “marinas” in MICC 19.13.050. The proposed SMP amendments are available for review at <https://mieplan.mercergov.org/public/ZTR23-001> and in person by request at the Mercer Island Community and Event Center.

A joint local/state hybrid public hearing is set for 6 PM on June 7, 2023, in person at Mercer Island Community and Event Center, 8236 SE 24th Street, and virtually using Zoom. The public will have the opportunity to comment during the public hearing by attending in person, calling in, or logging onto the meeting as a Zoom attendee. Written comments on the proposal may be submitted between May 3 and June 7, 2023 to the City of Mercer Island by email to molly.mcguire@mercerisland.gov or by mail and in person to Molly McGuire at Mercer Island City Hall, 9611 SE 36th St, Mercer Island, WA 98040 until such time that the public hearing is adjourned.

Detailed instructions on how to attend the public hearing and/or comment live during the public hearing will be available online on or before June 2, 2023, at <https://www.mercerisland.gov/bc-pc>

The City of Mercer Island strives to create an inclusive and accessible experience. Those requiring accommodation for Planning Commission meetings should notify the Deputy City Clerk’s Office 3 days prior to the meeting at 206.275.7791 or by emailing deborah.estrada@mercerisland.gov.

NOTICE:

- Website May 1, 2023
- Date Published in Newspaper May 3, 2023
- Weekly Bulletin Notice May 1, 2023
- Date of Open Record Public Hearing: June 7, 2023

CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT

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PLANNING COMMISSION

TO: Planning Commission

FROM: Molly McGuire, Planner

DATE: May 26, 2023

SUBJECT: ZTR23-001

ATTACHMENTS:

- A. Draft Marina Regulations (Second Review)
- B. Mercer Island Beach Club Comment Letter, dated April 23, 2023
- C. Department of Ecology Letter, dated April 19, 2023

PURPOSE

This memo provides the Planning Commission with the staff recommended draft of marina regulations (Attachment A). At the June 7 meeting, the Planning Commission will hold a public hearing and can make a recommendation regarding the proposed marina regulations.

BACKGROUND

An amendment of the Shoreline Master Program (SMP) to allow expanded boating facilities to serve clubs and organizations was docketed in 2022. The docket request was submitted by the Mercer Island Beach Club (MIBC) to allow them to replace and improve their existing facility. Background on the original docket proposal submitted by MIBC and associated docketing procedures can be found in the previous [Staff Memo dated February 15, 2023](#).

The Planning Commission first considered proposed amendments at their [meeting on February 22, 2023](#). The Planning Commission then held a public hearing regarding the initial proposed amendments on [March 22, 2023](#). More information on the initial proposed amendments can be found in the [Staff Memo dated March 15, 2023](#). Following the public hearing, the Planning Commission asked staff to draft more specific regulations for marinas for the Planning Commission to consider at its April 26 meeting. The first draft of marina regulations was provided to the Planning Commission with a memo dated [April 19, 2023](#) (see [Attachment A](#) of that memo for the draft regulations). The Planning Commission provided comments on the first draft comments on April 26.

PLANNING COMMISSION INPUT

During the April 26 public meeting, the Planning Commission provided input on the draft marina regulations, which has been incorporated into the second draft of marina regulations (Attachment A) and is summarized below.

The Planning Commission requested revisions to 11 items in the draft regulations proposed during the April 26 public meeting.

1. **Shoreline Substantial Development Permit (SSDP) versus Shoreline Conditional Use Permit (SCUP).** The Planning Commission requested that staff look into a tiered approach for permitting the construction of new and redevelopment of existing marinas. The Planning Commission suggested the idea of allowing existing facilities to modestly expand under a SSDP but requiring a SCUP for new marinas. Staff explored many options to incorporate a tiered approach, but ultimately determined this approach is not viable. The WAC (and the MICC) already provide for a process for maintenance/repair/replacement of existing facilities through exemptions to SSDPs. In discussions with staff, the WA Department of Ecology did not support creating another “tier” in the permit requirements for more substantial rebuilding/reconfiguring of existing facilities. The Planning Commission must now decide whether both new and existing marinas would be subject to either an SSDP or SCUP.

SSDPs and SCUPs were discussed in detail in previous staff memos for the March 22, 2023 public hearing and the April 26, 2023 public meeting. Briefly, SSDPs require the development to be consistent with applicable standards in the SMP, and the decision would be made by staff. SCUPs would require the applicant to demonstrate consistency with WAC 173-27-160, applicable standards in the SMP, and the Hearing Examiner would make a recommendation to the Dept of Ecology for the final decision.

The SCUP process would allow for a greater opportunity for neighbors of proposed development sites to participate in the public hearing process and conditions can be placed on the decision to mitigate unforeseen impacts on neighboring properties at the discretion of the Hearing Examiner. The SSDP process only allows for a 30-day public comment period before a decision is issued, without the opportunity of a public hearing.

Another important consideration is that if the City would like to amend the SMP to permit a new use via SSDP, the City would first need to conduct a citywide cumulative impacts analysis for the use. This cumulative impacts analysis is a substantial work item that was not anticipated in the City’s work plan or budget and we are not certain when this work could proceed. It is safe to assume that it would cause a significant delay in adopting this code amendment.

Staff recommends that a marina be subject to a SCUP, consistent with the recommendation from Ecology dated April 19, 2023 included as Attachment C.

2. **Public access.** One of the proposed criteria that the applicant could use to show significant public access to the shoreline and be eligible to construct a marina is that the property is owned or operated by a public agency. The Planning Commission requested that this be changed to a property owned or operated by the City of Mercer Island. This change is reflected in Attachment A, section L(2)(a).
3. **Demand analysis.** The Planning Commission requested the demand analysis only require the applicant to provide the number of commercial moorage slips in the City of Mercer Island within one mile radius of the proposed facility. This direction was addressed by limiting the commercial moorage spaces to only those located in the City of Mercer Island within one mile of the proposed facility. See proposed regulations section L(3)(b)(ii).
4. **Best management practices (BMPs).** The Planning Commission requested that L(4)(a) be amended to replace “including” with “such as” to ensure the list of BMPs was flexible enough to account for

the variation in proposals. This change was proposed to avoid limiting the practices to only those listed and exclude other practices that might be necessary to implement in the design and operation of the facility. The regulations in section L(4)(a) of the attached draft have been updated to reflect this input.

5. **Clarifying piers, docks, and floats.** The Planning Commission requested clarification on what would be considered a “float” for the purposes of implementation of several proposed standards. Clarification was requested to differentiate floats that support overwater structures and docks from other floating components such as buoys. In response, staff has changed the term “piers, docks, and floats” to “overwater structures” throughout the proposed draft. This will clarify the difference between supporting floats and other floating components.
6. **Pumpout facilities.** The first draft of marina regulations proposed a requirement that a public sewage pumpout facility be provided at new marinas. The Planning Commission asked to remove this requirement due to safety and capacity concerns of the anticipated facilities that would be permitted on the island. This requirement was removed from the proposed standards.
7. **Public restrooms.** The Planning Commission requested removal of the word “public” from the draft regulations section L(4)(g). This would amend the regulations to require provision of at least one restroom, that can be access-restricted, upland of the OHWM.
8. **Bank vegetation.** The Planning Commission requested amendment of the requirement in subsection L(4)(l) that applicants plant herbaceous vegetation within 48 hours of the completion of construction. This requirement was amended so that herbaceous planting is required prior to the final building permit inspection. Planting prior to final building permit inspection will give applicants leeway in achieving planting on a more realistic timeline and will also provide city inspectors the opportunity to ensure the plantings have been completed.
9. **Pile spacing.** The Planning Commission suggested removing the minimum pile spacing to allow piles to be spaced based on structural engineering requirements or environmental considerations. Staff has determined that the alternate spacing allowed by code official approval as proposed in section L(5)(c) would allow the alternate spacing and address this concern sufficiently. Overall, a minimum pile spacing should be enforced based on state guidance for marinas, see the April 19 staff memo for more information about the guidance.
10. **Length.** The Planning Commission proposed removing the maximum length of 150 ft waterward of the OHWM. The draft regulations have been updated with this change. The amended length requirement in section L(6)(b)(i) will tie the proposed length of the marina back to the required demand analysis or master plan requiring the applicant to justify the proposed length of the development based on a determined need, such as the number, size and type of vessels to be moored.
11. **Definition to include swim facilities.** Staff amended the proposed definition of marinas to include “swim facilities” as an incidental use to a marina based on feedback from the Mercer Island Beach Club and the Planning Commission.

Response to MIBC Question

The MIBC provided written comments on the first draft of marina regulations provided to the Planning Commission on April 26 (Attachment B). The Planning Commission asked for clarification from staff on one of the comments in that letter pertaining to grating of overwater structures. The MIBC comment stated:

MIBC believes this section has oversimplified the complicated regulation found at WAC 220-660-140(3)(c)(iv)(A) – (F) into a design standard that cannot be met. The regulation should be clear on how to design appropriate grating, including how grating percentage is measured. Alternatively, the City should consider simply cross-referencing the state regulation so as to avoid creating regulatory ambiguity and confusion.

The state requires grating on all piers, docks, and floats by WAC 220-660-140(3)(c)(iv). Per those standards, grating may be required on the entire surface of the pier or dock in water bodies with a high density of piers and docks. Additionally, WAC 220-660-140(3)(c)(iv)(E) states that a dock or float wider than six feet must have at least fifty percent of the dock surface covered in functional grating with the grating material's open area being at least sixty percent. The WAC also allows the department to require that grating cover the entire surface of the pier or dock per WAC 220-660-140(3)(c)(iv)(C). Provided that the minimum dock surface area covered in functional grating is exceeded, the department may allow the grating material's open area to be reduced to 40 percent.

The City currently requires piers, docks, and platform lifts to be fully grated per MICC 19.13.050(F)(ii), which states, "Piers, docks, and platform lifts must be fully grated with materials that allow a minimum of 40 percent light transmittance." Current City regulations do not allow for piers, docks and platforms that exceed 6 feet in width.

In the proposed marina regulations, overwater structure exceeding 6 feet in width are allowed. Staff initially proposed that all piers and docks within a marina must be fully grated with the grating material's open area being at least 60 percent. In response to the MIBC's comment, staff reworked the grating requirement for overwater structures less than six feet in width. In the amended draft regulations, staff revised the grating requirement for overwater structures that are less than 6 feet in width, which is reflected in the draft under the proposed MICC 19.13.050(L)(6)(a)(iv). The amended standard would now require overwater structures less than six feet in width to be grated with materials that provide forty percent light transmittance.

Docks that are 6 feet in width or greater must still be fully grated with the grating material's open area being at least 60 percent, shown in L(6)(a)(v). The amended standard in section L(6)(a)(iv) and (v) would be consistent with standards currently in the SMP and the guidance from the state in WAC 220-660-140(3).

The state provides clear guidance on how functional grating light transmittance can be designed and measured. "Functional grating" means the percent open area of the grating that is not covered or blocked by any objects such as structural components, framing wood, flotation tubs, or objects placed on the surface of the grating (WAC 220-660-030(64)). To calculate functional grating on an overwater structure, the applicant must take the difference of the gross grated area to the gross framed area to find the total functional grated area. Then they can divide the total functional grated area by the total overwater structure area to get the total percentage of grating. The Washington Department of Fish and Wildlife has additional guidance on [Calculating and Documenting Functional Grating](#).

STAFF RECOMMENDATION

Staff recommend adoption of the draft regulations as provided in Attachment A.

The draft regulations provided in Attachment A will ensure that marina development occurs consistent with the City's adopted SMP. The proposed regulations would allow marina development pursuant to a Shoreline Conditional Use Permit (SCUP). The SCUP process is recommended by the WA Department of Ecology (Attachment C). The SCUP process includes a public hearing before the Hearing Examiner prior to the final decision on the permit. Including the public hearing will increase the public process required prior to the permit decision which will provide neighboring property owners with the opportunity to provide comments on a proposal. Given the scope and intensity of marina development, neighboring property owners will likely value the chance to provide comments to the Hearing Examiner during the public hearing to identify and potentially mitigate potential impacts prior to the permit decision. In addition, the SCUP process will allow the impacts of any proposed marina development to be evaluated on a case-by-case basis and will avoid the need for the City to conduct a cumulative impacts analysis as would be required if marinas were permitted via a SSDP. This will enable the SMP amendment to be adopted more quickly.

The proposed regulations will help to reduce impacts to the environment by including provisions to minimize nearshore shading, avoid excessive disturbance of the lakebed, and require a no net loss plan be submitted with an application.

A State Environmental Policy Act (SEPA) determination of nonsignificance (DNS) for the proposed amendments will be published to the SEPA Register on June 7, 2023. The City published a notice of proposed amendment and completed SEPA checklist on February 13, 2023. The SEPA determination will be assigned a SEPA Register number when it is posted on June 7. The comment period on the notice and SEPA determination will be open from June 7 to June 21.

Consistency with the Code Amendment Criteria in MICC 19.15.250(D)

Decision criteria for amending the development code are established in MICC 19.15.250(D). The proposed amendments in Attachment A are consistent with those criteria as follows.

MICC 19.15.250(D)(1)

MICC 19.15.250(D)(1) states that a code amendment may only be approved if, "The amendment is consistent with the comprehensive plan". The City's SMP goals and policies are established in [Comprehensive Plan Element 7 Shoreline Master Program Policies](#). The proposed amendment would be consistent with the SMP policies in Element 7.

Urban Residential Shoreline Environment Management Policies

The proposal would allow marinas by SCUP in the Urban Residential Shoreline Environment. Marinas would be prohibited in the Urban Park Shoreline Environment under the proposed regulations. The management policies for the Urban Residential Shoreline Environment relate to development in this shoreline environment. These policies are:

- (1) Standards for density or minimum frontage width, setbacks, lot coverage limitations, buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality should be set to assure no net loss of shoreline ecological functions, taking into account the environmental limitations and sensitivity of the shoreline area, the level

of infrastructure and services available, and other comprehensive planning considerations.

- (2) Development of multifamily, recreational and residential subdivisions of five or more lots should provide public access and joint use for community recreational facilities, except when there are constitutional or other legal constraints.
- (3) Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.
- (4) Non-commercial recreational areas should be allowed.

Under the proposed regulations, marinas would be subject to many of the same frontage width, setback, shoreline stabilization, and vegetation conservation standards that apply to other developments in the Urban Residential environment. Furthermore, all applications for marinas would require a no net loss plan to ensure that the proposed development will meet the no net loss standards established in the SMP, which includes critical area protection. As detailed below, the standards as proposed will ensure public access by requiring that marinas serve larger community organizations or the general public.

Public Access Policies

Public Access policies are established in Section III of the SMP Element. The public access policies are:

- (1) Public access to and along the water's edge should be consistent with the public safety, private property rights, and conservation of unique or fragile areas.
- (2) Public access to and along the water's edge should be available in publicly owned shoreline areas.
- (3) When substantial modifications or additions are proposed to substantial developments, the developer should be encouraged to provide for public access to and along the water's edge if physically feasible provided that no private property be taken involuntarily without due compensation.
- (4) In new developments on the shoreline, the water's edge should be kept free of buildings.
- (5) Where publicly owned shoreline areas are available for public pedestrian pathways, these should be developed as close to the water's edge as reasonable.
- (6) Views of the shoreline and water from shoreline and upland areas should be preserved and enhanced.
- (7) Rights-of-way on the shoreline should be made available for public access where appropriate.
- (8) Access onto shoreline public street ends should be enhanced.
- (9) Consideration should be given to the handicapped, disabled, and elderly when developing public access to shoreline areas.

The proposed regulations will address the public access policies with some specific provisions. In proposed section L(4)(j) and (k) prohibit covered moorages and floating homes to help keep the water's edge free of buildings. Proposed section L(2) ensures that privately developed marinas will provide larger portions of the public with access to the shoreline by establishing a minimum number of people that must be served by the proposed facility. Allowing flexible overwater structure width as proposed in section L(6)(a) will allow developers to design facilities in consideration of handicapped, disabled, and elderly users. Other proposed regulations regarding the maximum bulk and scale of marinas will help to minimize the impact to visual access of the shoreline from the water. In subsection L(4)(c), the proposed regulations would require a demand analysis to ensure that the facility is sized appropriately to provide access for its intended users and not be larger than necessary to preserve visual access to the shoreline. Taken together, the proposed regulations would be consistent with the public access policies in the Comprehensive Plan.

Piers and Moorages Policies

Policies for piers and moorages are established in Section IV of the SMP Element. The piers and moorages policies are:

- (1) New piers and docks should be allowed only for water-dependent uses or public access. Piers and docks associated with single family residences are considered a water-dependent use.
- (2) New piers and docks should be designed and constructed to avoid or, if that is not possible, to minimize and mitigate the impacts to ecological functions.
- (3) The repair, renovation, and replacement of existing piers and docks should be allowed.
- (4) Property owners who repair, renovate, or replace existing piers and docks should be provided information on the best materials and methods for environmental enhancement.

The proposed regulations are consistent with the piers and moorages policies in the Comprehensive Plan. As proposed, piers and docks would be allowed for marinas, a water dependent use, consistent with the first policy. The staff recommended regulations would only allow piers and docks for marinas if a proposed facility provides significant public access, further implementing the first policy. Per proposed section L(3)(a), applications for marinas must include a no net loss plan to minimize and mitigate impacts to ecological functions; consistent with the second policy. As proposed, the marina regulations would be consistent with the first two piers and moorages policies in the Comprehensive Plan.

The final two piers and moorage policies address repair, renovation, and replacement of existing piers and moorages. The SMP currently contains provisions for repair and replacement of existing piers and docks. The proposed regulations would allow property owners to replace piers and moorages that serve marinas consistent with the standards that would be established. As part of the implementation of the proposed regulations, information on the best materials and methods for environmental enhancement related to marina development can be made available to property owners; addressing piers and moorages policy four. The staff recommended draft of marina regulations is consistent with the policies for piers and moorages.

Boating Facilities Policy

The SMP Element of the Comprehensive Plan establishes a boating facilities policy in Section V. The boating facilities policy states:

- (1) New boating facilities should be designed to meet health, safety, and welfare requirements; mitigate aesthetic impacts; minimize impacts to neighboring uses; provide public access; assure no net loss of ecological functions and prevent other significant adverse impacts; and protect the rights of navigation and access to recreational areas.

The proposed regulations are consistent with the boating facilities policy. The proposed regulations will require new development to meet health, safety, and welfare requirements. This includes:

- Protection of water quality and use of best management practices (Section L(4)(a));
- Required marking of the facility with reflectors to increase visibility for navigational safety (Section L(4)(d));
- Restrooms serving the facility must be provided (Section L(4)(g));
- A covered and secure waste receptacle must be provided (Section L(4)(h));
- A proposed marina would also have to comply with the other health and life safety requirements required by the building code in order to obtain a building permit for construction of the facility.

The staff recommended regulations would mitigate aesthetic impacts through the application of bulk, scale, and height limitations. The proposed draft would also prohibit covered moorage, floating homes, and live aboard vessels in marinas as a means to mitigate aesthetic impacts.

There are several components of the proposed regulations that would help to minimize impacts to neighboring uses. First, the regulations would establish setbacks, bulk, height, scale, and dimensional standards to help reduce the visual and physical impacts of facilities on neighboring shoreline uses. Second, requirements to maintain navigability of the waterway can help to ensure that a proposed facility would not unduly impact neighboring properties' access to the shoreline, waterway, and water dependent uses. Finally, and most importantly, the proposed regulations would require a Shoreline Conditional Use Permit (SCUP) for marinas. The SCUP process includes a public hearing that would give the neighboring property owners the opportunity to identify other impacts that might result from a proposed facility prior to permit approval. This is one of the key methods for addressing potential impacts to neighboring uses because it incorporates a public process into permit review and approval.

To assure no net loss of ecological functions and prevent other significant adverse environmental impacts, the proposed regulations require a no net loss plan be submitted with an application for marinas. To demonstrate that the proposed marina will not interfere with navigability of the waterway, the proposed regulations require a demand analysis and approval by state and federal authorities prior to final approval.

Recreational Development Policies

Marinas are a commercial use that provides recreation opportunities by giving users access to boating and other water-enjoyment uses. The SMP Element of the Comprehensive Plan establishes policies for recreational development in Section V, those policies state:

- (1) Provide additional public water-oriented recreation opportunities.
- (2) Locate public recreational uses in shoreline areas that can support those uses without risks to human health, safety, and/or security, while minimizing effects on shoreline functions, private property rights, and/or neighboring uses.

(3) Priority should be given to recreational development for access to and use of the water.

The proposed regulations are consistent with the recreational development policies as follows. The proposed regulations are consistent with the first policy by allowing marinas to be developed. Marinas give their users recreation opportunities by providing boating facilities and other accessory uses such as swim docks. The second policy addresses public recreational uses. The proposed regulations would allow the development of public marinas that would give greater access to water-related recreation. Consistent with the second recreational development policy, the staff recommended regulations would require marinas to avoid risks to health, safety, and security while at the same time minimizing impacts to neighboring uses and the environment. More discussion of how the regulations address health, safety, security, and impacts is provided earlier in this memo. The proposed regulations would allow marina development, which would provide access to and use of the water, consistent with the third policy. As proposed, the regulations would be consistent with the recreational development policies in the Comprehensive Plan.

Required SCUP

The proposed regulations would require an SCUP for the development of a marina. The SCUP process would ensure that a proposed marina would be consistent with the Comprehensive Plan in two important ways. First, the SCUP requires an applicant to demonstrate how a proposed marina be consistent with the Comprehensive Plan, a criterion for approval for SCUPs established in WAC 173-26-160(1)(a). As highlighted in the analysis of the boating facilities policy, the SCUP process is also integral to identifying and addressing potential impacts to neighboring uses as required by the Comprehensive Plan. By incorporating a public hearing into the permit review process, requiring an SCUP would give neighboring property owners the opportunity to comment on the potential impacts of a proposed facility prior to a decision on the proposal. Requiring an SCUP as proposed in the staff recommended regulations would help ensure that all development would occur consistent with the Comprehensive Plan.

MICC 19.15.250(D)(2)

The second criterion for approval of a development code amendment is established in MICC 19.15.250(D)(2), which states, “The amendment bears a substantial relation to the public health, safety, or welfare”. The proposed amendments in the staff recommended draft would relate the public welfare by striking a balance between allowing for development of marinas and the need to address the potential impacts marinas may have. The recommended regulations would give the public improved access to water oriented recreational activities through the requirement in provision L(2), which would ensure that these facilities operated by a membership organization like the MIBC, as a public facility, or as marinas open to the public. The draft includes regulations to protect the nearshore environment from adverse impacts by requiring a no net loss plan. Permitting marinas through the SCUP process will ensure that potential impacts are identified and addressed by giving the public the opportunity to participate to the fullest extent in the permitting process. By requiring public access and including a public process, the recommended draft regulations relate to public welfare.

MICC 19.15.250(D)(3)

The third and final criterion for approval of a development code amendments is established in MICC 19.15.250(D)(3), which states, “The amendment is in the best interest of the community as a whole.” The staff recommended draft would serve the community interest by allowing a shoreline use that would give members of the public access to the shoreline. Access to the shoreline is one of the benefits of living in an island community like Mercer Island. Provision L(2) in the recommended regulations would require that

any marina provide some degree of public access. Allowing marinas with a requirement that they provide public access will increase opportunities for the public to enjoy the lakefront.

In addition to requiring public access, the interest of the community is also served by provisions in the recommended regulations that would protect the environment from net loss of shoreline ecological functions and values. Provision L(3)(a) would require submittal of a no net loss plan with any application for developing a marina. The no net loss plan will identify possible environmental impacts and include mitigation measures to address those impacts. Beyond satisfying the regulatory requirements of the Shoreline Management Act, addressing potential environmental impacts serves the public interest by protecting the shoreline so it can be enjoyed by future generations.

Finally, the recommended marina regulations will serve the community interest by establishing a process by which marinas can be constructed and modified. The recommended draft regulations would require marinas to be permitted through the SCUP process. This process will give marina operators a clear path for constructing, modifying, or expanding their facilities. The SCUP process also provides a public process through which neighboring property owners can participate in the permit review to help identify potential impacts that can be address through permit conditions. Allowing the development of marinas through a process that includes public participation balances the needs of marina operators with the needs of potentially affected community members, serving the public interest.

MICC 19.16.010 – Definitions.

[...]

Marina: A private or public moorage facility providing the purchase, lease, and/or use of a slip for storing, berthing, and securing watercraft, including both long-term and transient moorage. Marinas may include accessory facilities for providing incidental services to users of the marina, such as swim facilities, waste collection, boat sales, or rental activities, and retail establishments providing fuel service, repair, or service of watercraft. Marinas do not include moorage facilities serving four or fewer single-family residences.

[...]

MICC 19.13.010 – Authority and purpose.

[...]

E. *Relationship with other federal and state law.* The provisions of this chapter shall not relieve any responsibility to comply with other federal and state laws or permits. The shoreline management permit and enforcement procedures contained within Chapter 173-27 WAC as presently constituted or hereinafter amended, are adopted by reference. All work at or waterward of the OHWM may require permits from one or all of the following: U.S. Army Corps of Engineers, Washington Department of Fish and Wildlife, Washington Department of Natural Resources or Washington Department of Ecology.

[...]

MICC 19.13.040 – Use regulations.

[...]

Table B — Shoreland Uses Waterward of the Ordinary High Water Mark		
SHORELAND USE WATERWARD OF THE OHWM	Urban Residential Environment	Urban Park Environment
Moorage facilities and covered moorages 600 square feet or less	P	P
Covered moorage larger than 600 square feet	SCUP	SCUP
Floating platforms	P	P
Mooring piles, diving boards and diving platforms	P	P
Boat ramp	P	P

Table B — Shoreland Uses Waterward of the Ordinary High Water Mark		
SHORELAND USE WATERWARD OF THE OHWM	Urban Residential Environment	Urban Park Environment
Boat houses	NP	NP
Floating homes	NP	NP
Public access pier, dock, or boardwalk	P	P
<u>Marinas</u>	<u>SCUP</u>	<u>NP</u>
Utilities	P	P
Public transportation facilities including roads, bridges, and transit	P	P
Transit facilities including light rail transit facilities	P	NP
Dredging and dredge material disposal	P	P
Breakwaters, jetties, and groins (except those for restoration of ecological functions)	NP	NP
Restoration of ecological functions including shoreline habitat and natural systems enhancement	P	P
<p>Notes:</p> <p>A use not listed in this table is not permitted within shorelands.</p> <p>A use permitted by this table shall meet all other applicable regulations, including, but not limited to, being an allowed use in the applicable zone.</p>		

MICC 19.13.050 – Shorelands development standards.

[...]

- F. *Moorage facilities.* All permits for new and expanded moorage facility, other than marinas and public access piers or boardwalks, shall meet the following standards unless otherwise exempted. Moorage facilities have the option of meeting either the development standards prescribed in subsection (F)(1) or (F)(2) of this section, or the "alternative development standards" in subsection (F)(3) of this section.

[...]

L. *Marinas.* Marinas must comply with the following standards.

1. With the exception of the requirements for moorage facilities related to width and length, marinas shall comply with design standards required for moorage facilities listed in Table D, Requirements for Moorage Facilities and Development Located Waterward from OHWM.
2. Marinas are only allowed if they provide significant public access to the shoreline. A proposed marina provides significant public access by meeting one of the following conditions.
 - a. The marina is owned or operated by the City of Mercer Island;
 - b. The marina is owned or operated by an organization or corporation serving at least fifty (50) people; or
 - c. The marina is open to the general public and access is not limited to membership in an organization.
3. *Application Requirements.* Applications for marinas must include the following.
 - a. A no net loss plan, consistent with MICC 19.13.020(C), which demonstrates that the proposed project will not create a net loss in ecological function of the shorelands.
 - b. A demand analysis or master plan that projects future needs for pier or dock space during the life of the development.
 - i. The total amount of moorage spaces proposed;
 - ii. The total number of commercial moorage spaces in the City of Mercer Island within a one-mile radius of the proposed facility; and
 - iii. The expected population and vessel characteristics of the potential users of the facility and how these characteristics relate to specific facility design elements including slip sizes, pier and dock length, and necessary water depth.
4. *General Requirements.* The following standards apply to all marinas.
 - a. Marinas shall be designed and operated consistent with federal and state water quality laws and established best management practices (BMPs) for marina operators, such as BMPs for bilge water discharge, hazardous waste, waste oil and spills, sewer management, and spill prevention and response. Rules for spill prevention and response, including reporting requirements, shall be posted on site.

- b. Marinas shall be designed and sited to prevent the need for maintenance dredging during the life of the development. Moorage must be designed to avoid vessels resting on the lakebed.
- c. Marinas must not be larger than necessary to accommodate the expected need as determined by the required demand analysis, this includes:
 - i. Overwater structures must not be wider or longer than necessary to accommodate the expected need;
 - ii. The number of slips provided must not exceed the expected need; and
 - iii. The slip dimensions must not be larger than necessary to moor the expected vessels moored.
- d. Marinas shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night. All other exterior finishes above the waterline must be nonreflective.
- e. Marinas must not include materials treated with pentachlorophenol, creosote, chromated copper arsenate, or comparably toxic compounds. Any paint, stain or preservative applied to components of the marina must be leach resistant and completely dried or cured prior to installation.
- f. Marinas must not interfere with the public use and enjoyment of the water or create a hazard to navigation.
- g. At least one (1) restroom must be provided upland of the OHWM.
- h. At least one (1) covered and secured waste receptacle must be provided upland of the OHWM.
- i. Utility and service lines located waterward of the OHWM must be affixed below the pier deck and above the water. Utility and service lines located upland of the OHWM shall be underground, where feasible.
- j. Covered moorage is prohibited in marinas.
- k. Floating homes and live aboard vessels are prohibited.
- l. Disturbance of bank vegetation shall be limited to the minimum amount necessary to accomplish the project. Disturbed bank vegetation shall be replaced with native, locally adapted herbaceous and/or woody vegetation. Herbaceous plantings must occur prior to final approval of the building permit. Woody vegetation components shall be planted in the fall or early winter, whichever occurs first. The applicant shall take appropriate measures to ensure revegetation success.

m. Exterior lighting mounted on piers, docks or other overwater components of a marina shall be at ground or dock level, be directed away from adjacent properties and the water, and designed and located to prevent light from spilling onto the lake water. The following development activities are exempt from this requirement:

i. Emergency lighting required for public safety;

ii. Lighting required by state or federal regulations;

iii. Lighting for public rights-of-way;

iv. Outdoor lighting for temporary or periodic events (e.g., community events at public parks); and

v. Seasonal decorative lighting.

n. The applicant must provide documentation of approval of the marina by both the U.S. Army Corps of Engineers and the Washington Department of Fish and Wildlife.

o. Vessels shall be restricted from extended mooring on waters of the state, except as allowed by applicable state regulations and unless a lease or permission is obtained from the state and impacts to navigation and public access are mitigated.

5. Piles. Piles associated with a marina must comply with the following requirements.

a. Piles shall be placed at least eighteen (18) feet from the OHWM.

b. Piles shall not be treated with pentachlorophenol, creosote, chromated copper arsenate or comparably toxic compounds.

c. Piles must be spaced at least eighteen (18) feet apart. The code official may authorize alternate spacing of piles provided the applicant demonstrates that the alternate spacing reduces the total number of piles needed for the project.

d. Piles must not exceed twelve (12) inches in diameter. The code official may authorize larger piles provided the applicant demonstrates that the larger piles reduce the total number of piles needed for the project.

e. Piles must be fitted with devices to prevent perching by fish-eating birds.

6. Overwater structures. Overwater structures associated with a marina must comply with the following requirements.

a. Overwater structures must be designed to minimize the lakebed shading to the greatest degree feasible.

- i. Overwater structures within thirty (30) feet of the OHWM must not exceed six feet in width.
 - ii. Overwater structures more than thirty (30) feet from the OHWM may be wider than six (6) feet provided:
 - A. Overwater structures wider than six (6) feet must be approved by the Army Corps of Engineers and/or Washington Department of Fish and Wildlife;
 - B. Potential environmental impacts of overwater structures with a width greater than six (6) feet must addressed in the required no net loss plan; and
 - C. The code official may condition approval to require mitigation for any overwater structure exceeding six (6) feet in width.
 - iv. Overwater structures less than 6 feet in width must be fully grated. The grating material's open area must be at least forty (40) percent.
 - v. Overwater structures 6 feet in width or greater must be fully grated. The grating material's open area must be at least sixty (60) percent.
- b. Length. Overwater structures that compose a marina must be designed to avoid adversely affecting navigability of waterways.
- i. Overwater structures associated with the marina shall not exceed the minimum length necessary to accommodate facility needs as demonstrated in the required demand analysis or master plan.
 - ii. The code official may condition approval to reduce the maximum length to reduce the effects of overwater structures on navigability of the waterway.
- c. Floats. Floats must comply with the following requirements.
- i. All floats shall be designed to prevent the bottom of the float from resting on the lakebed.
 - ii. All floats must be fully enclosed and contained in a shell, tub, or wrap. The shell, tub, or wrap must prevent breakup or loss of the flotation material into the water. The shell or wrap must not be readily subject to damage by ultraviolet radiation and abrasion.

April 23,2023

To: **Chair:** Daniel Hubbell
 Vice Chair: Michael Murphy
 Commissioners: Kate Akyuz, Carolyn Boatsman, Michael Curry, Victor Raisys, and Adam Ragheb
 Deputy CPD Director: Alison Van Gorp
 Senior Planner: Adam Zach
 Planner: Molly McGuire

RE: ZTR23-001 First reading of Marina Regulations

Dear Chair Hubbell, Vice Chair Murphy, Commissioners and City Staff,

On behalf of MIBC we want to Thank City Staff for putting together new language to authorize new and redeveloped marinas on the Island. MIBC has reviewed, and also asked our project biologist to review the draft. We ask that Staff be directed to continue to work with us on the following matters.

1. The discussion of Environmental Considerations includes references that apply to saltwater, not to Lake Washington. For example, protecting habitat for forage fish for juvenile salmonids is not an issue in the Lake, this is a salt water issue.
2. The discussion of Marina Regulation Resources includes a good whitepaper from 2001 about the environmental effects of over water structures. In addition, MIBC's biologist recommends to the City a review of the later adopted State standards for building freshwater marinas adopted in 2014, as WAC 220-660-140, as well as the State's Final Programmatic Environmental Impact Statement for that new code (and many related sections), found here: [wdfw01660.pdf \(wa.gov\)](#). For example, there are allowances for floating structures/breakwaters to protect shoreline features, because they do not alter currents and they allow for free movement of fish, unlike fixed breakwaters, such as jetties, that extend from the lakebed to above the water surface. MIBC does not plan a breakwater, but we do believe flexibility for similar floating structures should be allowed.
3. The draft code calls for a SCUP for any new private marina, as well as for redevelopment of any of the three existing marinas on the Island (the Beach Club, the Mercerwood Shore Club, and Covenant Shores). MIBC asks the City to consider allowing redevelopment of an existing marina using just an SSDP, and requiring any new marina to also obtain a SCUP.
4. The draft City regulations include a broad definition of marinas. We ask that the definition be revised to include accessory recreational facilities like swim docks, and similar facilities. MIBC's project plans for safety reason to include redeveloping both moorage for boats, and the swim facilities largely used by member children. We want to ensure that the City's newly adopted code can be used to permit both the moorage and the swim dock.
5. MIBC asks that proposed section L.4.g be revised so that a pump out facility for use by the general public is not required at a privately owned marina that is not open to the general public. MIBC does not currently provide any pump out service and we do not plan to do so in the future.

Most of the boats that moor at MIBC do not even have a head/waste storage capacity. In addition, MIBC is a private club. Requiring a private club to provide a public pump out service increases the cost and liability risks for the club. As described in Attachment B to the Staff Report, requiring pump out facilities is a “local choice” regulation. This means the City is not required by State law to force MIBC and other private clubs to provide this service.

6. MIBC asks that proposed section L.4.h. be revised so that no public restroom is required to at a privately owned marina that is not open to the general public. MIBC does not currently provide restroom access to the general public, and we do not plan to do so in the future. In addition, MIBC is a private club. Requiring a private club to provide public access to a restroom increases the cost and liability risks for the club. As described in Attachment B to the Staff Report, requiring public restrooms is a “local choice” regulation. This means the City is not required by State law to force MIBC and other private clubs to provide this service.

7. MIBC asks that proposed section L.5.c. be revised to also allow alternate spacing for piles, including tighter spacing, if an engineer demonstrates that tighter spacing is necessary. Our biologist has seen circumstances that call for tighter spacing and recommends this revision. MIBC does not plan to need to tighter spacing.

8. MIBC asks that proposed section L.6.a.iv be revised. Our designers believe this section has oversimplified the complicated regulations found at WAC 220-660-140(3)(c)(iv)(A) – (F) into a design standard that cannot be met. The regulation should be clear on how to design appropriate grating, including how grating percentage is measured. A cross reference to WAC 220-660-140(3)(c)(iv)(A) – (F) may work better.

9. MIBC asks that proposed section L.6.b.i. be revised. First, it is unclear how the 150 foot measurement is made when the edge of an outer dock will necessarily be a straight line, but the shoreline is not straight. Second, MIBC’s project designs intentionally extend the revised marina as far into the water as possible so as to maximize protection of the nearshore habitat. We believe there are areas of our design that extend to 152 feet. We ask that section L.6.b.i. be revised to allow greater flexibility to set 150 feet as the goal, but to allow up to 10 percent more length if doing so better protects the nearshore habitat and does not interfere with navigation.

10. In regards to overwater coverage, If an existing marina is proposing to reconstruct their marina under the most up to date codes and regulations, then assessment of current square foot coverage on the lake has no bearing or relevance when assessing the proposed new design. As long as the new design meets all new codes and regulations while using all lake front property within its rights and applicable under the most updated codes, the current structure’s lake coverage has no relevance when assessing a new design.

We are ready to continue the discussions and the hard work to make sure that we create the best code for the existing clubs, the City, for the environment and our community at large.

Thank you,

Gardner Morelli



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Region Office
PO Box 330316, Shoreline, WA 98133-9716 • 206-594-0000

April 19, 2023

Molly McGuire, Planner
Community Planning & Development
City of Mercer Island
9611 SE 36th Street
Mercer island, WA 98040

RE: City of Mercer Island Shoreline Master Program (SMP) Amendment—Draft Marina Regulations

Dear Molly McGuire,

Thank you for sharing the City of Mercer Island’s (City) draft marina regulations with the Department of Ecology (Ecology) on April 6, 2023.

The draft regulations list marinas as a permitted use within the Urban Residential Shoreline Environment designation, which would result in the City reviewing any new marinas proposed under a Shoreline Substantial Development Permit (SSDP). Ecology recommends that the City reconsider this approach and instead require a Shoreline Conditional Use Permit (SCUP) for this use for the following reasons:

- Variation in Size/Intensity of Use: The draft regulations do not specify a standard size or intensity of marina, but rather includes criteria obligating a proponent of a new marina to consider the type of moorage demand in designing and proposing a facility. Based on this approach, it is expected that future proposed marinas will vary in size, scale, and intensity. Therefore, the CUP criteria should be utilized in review of these proposals to ensure consistency with state and local Shoreline Management policies.
- Cumulative Impact: The City’s existing SMP does not include marinas as a shoreland use waterward of the ordinary high water mark, and includes a note stating, “A use not listed in this table is not permitted within shorelands.” In the last City SMP periodic review, the cumulative impact of marinas was not analyzed or considered and therefore the potential for cumulative impact from allowing such facilities within Urban Residential Environment which covers the majority of Mercer Island’s shoreline is unknown. If the City wishes to list this use as “permitted,” then the cumulative impact of this change needs to be analyzed as part of the SMP amendment process. Alternatively, if this use were to require a SCUP, it would provide the City with an opportunity to evaluate cumulative impact for each project on a case-by-case basis.


- Siting: Per Chapter 173-26-231(3)(c)(i) WAC, boating facilities are restricted to suitable locations. The City can either make a determination at this stage (SMP amendment) about suitable locations for marinas within its jurisdiction or, through the SCUP process, evaluations can be made on a project level.
- Public input: Going from a use that is outright prohibited to permitted through an SSDP along a significant area of shoreline within a jurisdiction is a substantial change. While there is an opportunity for public comment through the SMP amendment process, people may be focused on the current proposal and not the siting, construction, and operations of individual, future marinas in terms of:
 - a. Upland infrastructure (e.g., road access, traffic, parking, associated buildings),
 - b. Public access (Chapter 173-26-241(3)(c)(iv) WAC),
 - c. Aesthetic impacts (e.g., views, sound, hours of operation; Chapter 173-26-241(3)(c)(iii) WAC),
 - d. Navigation rights (Chapter 173-26-141(3)(c)(vii) WAC), and
 - e. No net loss of ecological functions (Chapter 173-26-241(3)(c)(vi) WAC).

As you are aware, a SCUP simply outlines a process under which the City could review this new use and authorize if the proposal meets Chapter 173-27-160 WAC and City requirements. It also provides the City with the opportunity to review proposals on a case-by-case basis, solicit public input, and add site-specific conditions when necessary. Additionally, Ecology's review helps ensure that a proposal not only meets the City's SMP but also the Shoreline Management Act and Guidelines. At a later date, if the City were to decide to make marinas a permitted use, this could be accomplished through a separate amendment process with the addition of supporting analysis characterizing appropriate size and intensity standards for future marinas to satisfy.

Ultimately, it is up to the City of Mercer Island to determine the permitting pathway that is most appropriate within its jurisdiction, and Ecology will support the City in its decision and continue to provide input to staff.

If you have any questions about this letter, please call me at (425) 365-6571.

Sincerely,



Rebekah R. Padgett, Regional Shoreline Planner
Shorelands and Environmental Assistance Program

Molly McGuire, Planner
April 19, 2023
Page 3 of 3

Item 2.

Sent by electronic mail: molly.mcguire@mercerisland.gov

E-cc: Alison Van Gorp, City of Mercer Island
Adam Zack, City of Mercer Island

