
CITY OF MERCER ISLAND

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PLANNING COMMISSION

TO: Planning Commission
FROM: Molly McGuire, Planner
DATE: April 19, 2023
SUBJECT: ZTR23-001
ATTACHMENTS:
A. Marina Regulations (First Draft)
B. Required and Local Choice Marina Regulations
C. Department of Ecology Letter, dated April 19, 2023

PURPOSE

This memo provides the Planning Commission (Commission) with the first draft of marina regulations (Attachment A). At the April 26 meeting, the Commission will provide initial input on the draft 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 Commission first considered proposed amendments at its [February 22, 2023](#) meeting. It 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 Commission asked staff to draft more specific regulations for marinas for consideration at its April meeting.

What is a marina?

A marina is an overwater structure that provides either short- or long-term moorage for vessels. Typically, marinas are commercial operations where slips are either rented by individual boat owners or provide moorage for members of an organization like a yacht club. Marinas are typically larger than private residential docks that provide moorage for single-family residences or homeowner associations. Marinas can come in a wide range of sizes, from a large facility like Shilshole Bay Marina in Seattle with 1,400 slips to smaller facilities with just a few slips. Because they vary in size and are a more intense use of the shoreline, there are specific topics that need to be considered when drafting regulations for marinas.

Environmental Considerations

The nearshore environment can be affected by the construction and operation of a marina. Overwater structures can shade the lakebed, influencing underwater vegetation and the wildlife that rely on it. Marinas can impact the transport of sediment in the nearshore environment from erosion, accretion, and water circulation. Sediment transport is an important environmental function for many plant and animal species that inhabit the nearshore environment, particularly juvenile salmon, and the forage fish they eat. Marinas can sometimes require dredging to maintain the necessary depth for the vessels they serve, which can impact species in the nearshore environment. The need for dredging can be exacerbated by the reduction of sediment transport caused by wave attenuation, shoreline armoring, and other aspects of marinas. The concentration of boating activities in a marina can adversely influence water quality if wastewater and chemicals such as fuel are not handled correctly. As the size and intensity of marinas increase, these effects can become more pronounced. For further reading, a link to a white paper on the environmental effects of overwater structures on freshwater habitat is provided in the resources section of this memo.

The Washington Shoreline Management Act (SMA) requires cities to establish an SMP that “Establish use regulations designed to assure no net loss of ecological functions associated with the shoreline” ([WAC 173-26-241\(2\)\(a\)\(iv\)](#)). Given that marinas are a shoreline use that can impact the nearshore environment in many ways, special care is needed to ensure that the SMP will adequately regulate that use to achieve the no net loss of ecological functions standard. The aspects of marinas that might have environmental impacts should be controlled by regulations to reduce those potential effects. Further, requiring a no net loss plan to be submitted with an application for a marina can help to ensure the environmental impacts have been considered and, if necessary, will be mitigated.

Public Access

One of the goals of the SMA is to maintain public access to the shorelines and waters of the state. [WAC 173-26-221\(4\)\(a\)](#) explains this concept further: “Public access includes the ability of the general public to reach, touch, and enjoy the water’s edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations. [...]” The concept of public access under the SMA is complicated but can be broken into three components:

- Esthetic and visual access to the shoreline both from the land and the water;
- Maintaining navigability of the waters of the state so the public can use these waters; and
- Physical access to the shoreline on publicly owned lands.

Marinas interact with public access in several ways. First, because they are overwater structures, marinas can have effects on navigability of waterways if they are allowed to extend too far into navigable waterways. Depending on their size and the services to be provided, marinas can interrupt visual access to the shorelines. Regulations to control the scope, scale, intensity, and bulk of marinas can help to reduce the impacts to navigability and visual access. On the other hand, marinas can increase public access because they provide opportunities for their customers or members to access the water and enjoy water-dependent uses like boating.

SMA and Marinas

Chapter 173-26 WAC contains state master program approval/amendment procedures and master program guidelines for local jurisdictions to utilize. Part III, Guidelines authorize local governments to adopt such rules as are necessary and appropriate to carry out the provisions of the SMA. The guidelines are guiding parameters, standards, and review criteria for local master programs. Within these guidelines are provisions for shoreline modifications, which are generally related to construction of a physical element,

and shoreline uses. Shoreline modifications are usually undertaken in support of or in preparation for a shoreline use.

The shoreline modification guidance for piers and docks in WAC 173-26-231(3)(b) states that new piers and docks shall be allowed only for water-dependent or public access for which the need for the proposed design, size, and construction must be demonstrated through a demand analysis and approved by the local jurisdiction. The draft regulations in Attachment A contain conditions for demonstrating public access, and requirements for the demand analysis.

WAC 173-26-241(3)(c) contains guidance for boating facilities which exclude docks serving four or fewer families:

Where applicable, shoreline master programs should, at a minimum, contain:

- (i) Provisions to ensure that boating facilities are located only at sites with suitable environmental conditions, shoreline configuration, access, and neighboring uses.
- (ii) Provisions that assure that facilities meet health, safety, and welfare requirements. Master programs may reference other regulations to accomplish this requirement.
- (iii) Regulations to avoid, or if that is not possible, to mitigate aesthetic impacts.
- (iv) Provisions for public access in new marinas, particularly where water-enjoyment uses are associated with the marina, in accordance with WAC [173-26-221](#)(4).
- (v) Regulations to limit the impacts to shoreline resources from boaters living in their vessels (live-aboard).
- (vi) Regulations that assure that the development of boating facilities, and associated and accessory uses, will not result in a net loss of shoreline ecological functions or other significant adverse impacts.
- (vii) Regulations to protect the rights of navigation.
- (viii) Regulations restricting vessels 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.

The draft regulations in Attachment A include requirements for demonstrating no net loss of ecological function and regulations that require the boating facility to meet the minimum necessary guidance in the WAC.

Washington Department of Fish and Wildlife (WDFW)

Washington State law (RCW 77.55) requires people planning hydraulic projects in or near state waters to get a Hydraulic Project Approval (HPA) from WDFW. An HPA ensures that construction is done in a manner that protects fish and their aquatic habitats. Any proposed marina would need to obtain an HPA from WDFW.

The proposed subsection (L) in MICC 19.13.050 would require an applicant to get an HPA prior to approval of a building permit. In addition to this requirement, the draft regulations in Attachment A include several provisions from Chapter 220-660 WAC Hydraulic Code Rules which minimize project-specific and cumulative impacts to fish life. These provisions reflect the current and best science, technology, and construction practices related to the protection of fish life. The draft regulations include, specifically, provisions from WAC 220-660-160 Marinas and terminals in freshwater areas, which address marina design, breakwater design, piling design, and construction and maintenance guidance.

U.S. Army Corps of Engineers (USACE)

USACE regulates activities that could obstruct or alter navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899. Lake Washington is listed as a navigable waterway under this act with 20 miles of navigable length. If Endangered Species Act (ESA)-listed species or critical habitat may be affected by or occur in the vicinity of the proposed project, USACE may consult with other federal agencies before making a permit decision, in which case a Biological Evaluation would be required describing the impact of the proposal on ESA-listed species and critical areas. The shoreline of Mercer Island contains ESA-listed species critical habitat areas, such as Chinook Salmon.

Project applicants would need to obtain a [Standard Individual Permit or Letter of Permission](#) through USACE for a new marina. The typical permit process includes a 15-to-30-day public comment period, review by USACE and others including the public, special interest groups, and local, state, and federal agencies, and a decision would be issued by the District Engineer. The estimated processing time for a Standard Individual Permit through USACE is 120 days. The maintenance or modification of an existing marina may be reviewed under a Nationwide Permit (NWP) if the project meets the National and Regional General Conditions in [NWP 28](#) or [NWP 3](#).

Nonconforming Uses and Structures

The SMP regulates nonconforming uses and structures under MICC 19.13.020, General regulations. A legal nonconforming structure or use is defined as a structure or use that lawfully existed prior to September 26, 1960, or conformed to the applicable code requirements that were in effect at the time it was constructed or commenced but no longer conforms to the current regulations of the zone in which it is situated due to subsequent changes in code requirements. Overwater uses and structures, and uses and structures 25 feet landward from the OHWM, which were legally created may be maintained, repaired, renovated, remodeled and completely replaced to the extent that the nonconformance with the standards and regulations of the SMP is not increased.

MARINA REGULATION RESOURCES

Staff reviewed many resources when preparing the attached draft marina regulations (Attachment A). The resources reviewed include guidance for drafting regulations provided by the WA Department of Ecology (Ecology) in the SMP Handbook, marina pollution prevention guidelines and best management practices (BMPs), research into the effect of overwater structures on freshwater shorelines, the requirements established in the state law, and marina regulations in other jurisdictions. Links to these resources are provided below.

Ecology SMP Handbook

<https://apps.ecology.wa.gov/publications/SummaryPages/1106010.html>

Pollution Prevention for WA State Marinas [BMPs published by University of Washington]

<https://wsg.washington.edu/wordpress/wp-content/uploads/marina-handbook.pdf>

Overwater Structures: Freshwater Issues [White Paper detailing the environmental effects of overwater structures on the freshwater environment]

<https://wdfw.wa.gov/publications/00052>

WAC 173-26-231 Shoreline modifications. [Ecology SMP regulatory guidance]

<https://app.leg.wa.gov/wac/default.aspx?cite=173-26-231>

WAC 173-26-241 Shoreline uses. [Ecology SMP regulatory guidance]

<https://app.leg.wa.gov/wac/default.aspx?cite=173-26-241>

WAC 220-660-140 Residential and public recreational docks, piers, ramps, floats, watercraft lifts, and buoys in freshwater areas. [WA Department of Fish and Wildlife (WDFW) freshwater dock regulations]

<https://app.leg.wa.gov/WAC/default.aspx?cite=220-660-140>

WAC 332-30-139 Marinas and moorages. [WA Department of Natural Resources (DNR) Marina Regulations]

<https://app.leg.wa.gov/WAC/default.aspx?cite=332-30-139>

Kirkland Zoning Code (KZC) 83.290 Marinas and Moorage Facilities Associated with Commercial Uses and Public Parks

<https://www.codepublishing.com/WA/Kirkland/?KirklandZ83/KirklandZ83.html#83.290>

Bothell Municipal Code (BMC) 13.11.300 Boating Facilities

<https://bothell.municipal.codes/BMC/13.11.030>

Kenmore Municipal Code (KMC) 16.50.050 Boating Facilities

<https://www.codepublishing.com/WA/Kenmore/#!/Kenmore16/Kenmore1650.html#16.50.050>

San Juan County Code (SJCC) 18.50.280 – Marinas

<https://www.codepublishing.com/WA/SanJuanCounty/#!/SanJuanCounty18/SanJuanCounty1850.html#18.50.280>

DRAFT MARINA REGULATIONS AND PLANNING COMMISSION FEEDBACK

Staff prepared the draft regulations in Attachment A after reviewing the relevant guidance, state level requirements, and similar regulations from neighboring jurisdictions. Staff would like the Planning Commission’s input on the following topics on April 26.

Local Choices

The draft marina regulations in Attachment A are comprised of two types of regulations, local choices in which the City has some flexibility, and state requirements that must be included in the SMP for new boating facilities regulations. The table in Attachment B gives a summary of these regulations and indicates whether the regulation is a local choice or a state requirement. The Planning Commission discussion on April 26 will focus on those proposed regulations identified as local choices in Attachment B.

Substantial Development Permit or Shoreline Conditional Use Permit

The new draft regulations add “Marinas” as a new use in MICC 19.13.050 Table B, Shoreland Uses Waterward of the Ordinary High Water Mark. There are two choices for allowing “Marinas” in Table B: (1) Shoreline Substantial Development Permit (SSDP) or (2) Shoreline Conditional Use Permit (SCUP). An SSDP is an administrative shoreline permit that is typically reserved for uses and developments that require some exercise of discretion about nontechnical issues but do not require a public hearing because they are less likely to generate broad public interest. An application for an SSDP would require a notice of application with mailing and posting on the property, a 30-day public comment period, and a decision would be issued by the code official. The proposal would need to demonstrate compliance with all applicable standards in the SMP, including the new marina standards in Attachment A.

On the other hand, SCUPs are a review type that requires some exercise of discretion and also are likely to be projects of broad public interest because of their complexity and potential impacts. The SCUP process includes a public hearing before the Hearing Examiner which gives the public more opportunity to provide input on proposals that are more complex. The expanded process under the SCUP is designed to account for developments that are likely to vary from proposal to proposal.

During the March 22 joint public hearing, the Planning Commission proposed allowing marinas as a Permitted (P) use in the Urban Residential Environment shoreline designation, and Not Permitted (NP) in the Urban Park Environment shoreline designation. Allowing marinas as a permitted use would require the applicant to apply for an SSDP. **After consulting with Ecology, staff recommends allowing “Marinas” by SCUP** (Attachment C).

Marinas are a higher intensity shoreline use with a great degree of variability. The SCUP permitting process has the highest level of review among shoreline permits, giving the City the largest window to identify and address potential impacts from each proposal. Every SCUP requires a public hearing prior to the City issuing a decision, allowing the public, including neighboring property owners, an opportunity to weigh in on proposals and identify potential impacts which the permit conditions of approval can address. The SCUP process is the one most used by neighboring jurisdictions. For these reasons, the SCUP process for permitting marinas is the staff recommended approach.

Under the SMA, the cumulative impacts of allowing a given use must be considered ([WAC 173-26-201\(3\)\(d\)\(iii\)](#)). The City’s most recent periodic review of the SMP did not consider marinas as an allowed use; therefore, the cumulative impacts of allowing marinas were not considered. The SMA allows cities to use the permitting process to evaluate the cumulative impacts of a given use if it might have unanticipated or uncommon impacts that cannot be reasonably identified at the time of master program development. Marinas are highly variable in size, scale, and intensity of use. Requiring the SCUP process for marinas will provide an adequate review process to evaluate and address the potential cumulative impacts. This would give the City the opportunity to evaluate individual proposals and add site specific conditions as necessary to address the likely impacts of the proposal.

Every SCUP requires a 30-day comment period and public hearing prior to the City issuing a decision. The combination of comment period and public hearing gives the public time to review the proposal and make comments. Given the impact that an intense use like marinas could potentially have on neighboring property owners, the additional public review as part of the SCUP process would grant neighbors additional opportunities to weigh in on proposals prior to a decision. This will give the City additional information about potential impacts and allow staff to develop permit conditions to address those expected impacts. The comment period and public hearing should be required for marinas because they are higher-intensity shoreline uses that neighboring property owners should be able to comment on prior to the City issuing a decision.

A SCUP is required in most jurisdictions for higher intensity uses like marinas. In researching marina standards, all jurisdictions reviewed require a SCUP for uses similar or identical to a marina. This is likely due to the factors listed above: variability of proposals, differing impacts, and public input. The combination of most jurisdictions taking this approach, the recommendation from Ecology (Attachment C), the increased public input for SCUPs, and the ability to account for cumulative impacts are the reasons staff recommends requiring a SCUP for marinas.