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# CITY OF MERCER ISLAND

## COMMUNITY PLANNING & DEVELOPMENT

9611 SE 36TH STREET | MERCER ISLAND, WA 98040

PHONE: 206.275.7605 | [www.mercerisland.gov](http://www.mercerisland.gov)



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## PLANNING COMMISSION

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**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.

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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

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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.

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## 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.