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Skagit County Planning Commission
1800 Continental Place
Mount Vernon, WA 98273

Re: Shoreline Master Program Update

Dear Planning Commissioners:

On behalf of the Lake Cavanaugh Improvement Association, I write to propose modifications to the draft Shoreline Master Program to address two circumstances unique to the lake: building setbacks and dock dimensions.

Background

Lake Cavanaugh is an 830 acre lake, located roughly 25 miles east of Mt Vernon at an elevation of about 1,000 feet. The lake is stream fed and holds near drinkable quality water. Although the lake drains to Pilchuck Creek to the west, a barrier constructed under the supervision of the state Department of Fish and Wildlife prevents the upstream migration of fish into the lake, so it is not an anadromous fish lake. Among other species, the lake supports large mouth bass, sculpins, kokanee, coastal cutthroat and rainbow trout, which are fished by residents and visitors alike. See http://wdfw.wa.gov/fishing/washington/20/.

As a result of platting in the 1940's most of the lake's shores have been subdivided into 60 foot wide lots. Access is provided by the shore roads, which encircle the lake. For the most part, these roads have produced longer or deeper upland lots on steep slopes that surround the lake and shorter or shallower waterfront lots. The attached map and aerial photograph of a portion along South Shore Drive show the shorter depth of waterfront lots.

With breaks for areas where the land was too steep to plat, the lake has about 500 lots. Of these, about 10% remain undeveloped; of the built-on lots, about 40% are underdeveloped in the sense that they hold older, smaller cabins which are steadily being replaced with more contemporary houses. The lands above the platted lake lots are largely timber resource lands held by the State Department of Natural Resources

and actively logged. Logging trucks regularly use the shore roads for access to timber lands.

In the early decades following platting, the lots were developed with small summer cottages, often drawing lake water for household use and using outhouses or small drainfields for septic disposal. In more recent times, the summer cottages have been replaced with homes and many of the vacant lots have been developed with more contemporary houses. Summer weekend use has given way to both full-summer residency and full-time residency.

The lake has generally benefited from more contemporary building, as it has produced higher quality construction and upgrades to septic systems. Even though the shore land is largely built out, the water quality remains excellent. For example, the water column has visibility to over 20 feet in depth and subsurface temperatures remain cool, which is good for fish. A copy of the Water Quality Report for Lake Cavanaugh taken in September 2015 is attached to this letter.

As its name suggests, the Lake Cavanaugh Improvement Association (LCIA) is an active association of Lake Cavanaugh homeowners. It monitors lake levels and water quality, it carries out lake improvement projects, and it represents lot owners on issues of concern, such as provisions within the Draft Shoreline Master Program.

Building Buffers and Setbacks

The Draft SMP designates most of the Lake Cavanaugh shoreline as Shoreline Residential. The remaining portions are designated Shoreline Conservancy, a designation that appears to be reserved for the steep, unplatted shorelands around the lake. At table 14.26.310-1 the draft SMP proposes a minimum 100 foot buffer from the lake's line of ordinary high water. Since the term is not defined in the draft SMP and the SMP is intended to consolidate critical areas and shoreline regulations for the shorelines, LCIA construes "buffer" to be a building setback requirement. If this is not correct, and a buffer means something other than a building setback, please clarify this point. In either event, the imposition of a 100 foot building setback would create an impractical and unnecessary restriction on the development and redevelopment of lake lots.

A large number of lake lots do not have sufficient distance between the shore road and the water to accommodate 100 foot buffers. The lots were platted, and many of the lots initially were built upon, prior to modern laws, such as, the current subdivision act, the Shoreline Management Act, the State Environmental Policy Act and the Growth Management Act. Subsequent to the passage of those laws, old cottages have been reconstructed into larger homes and new homes have been built on vacant lots in the pattern of prior construction, often using the shallower waterfront portions of the lots for

homes and the upland portions for other improvements, such as garages, outbuildings and septic drain fields.

By establishing building setbacks (or shoreline buffers) at 100 feet, the Draft SMP would impose unfair and unnecessary regulatory burdens on lot owners seeking to rebuild existing cottages or to build on vacant lots in built-out areas. Already, existing building setback requirements have forced many to go through lengthy and expensive variance procedures to reconstruct existing cottages or to simply continue the pattern established by their neighbors.

It would be unfair to require increased building setbacks, because it would subject those who would build after adoption of increased setbacks to different standards than neighbors who had built beforehand. In many cases, it would force new builders to construct homes on the upland side of the shore road, when their neighbors were allowed to build on the shore side. And in many cases, the upland portion of the lots is unbuildable on account of the steepness of slopes.

The increased setback is unwarranted, because the objective sought by the increased setbacks cannot be realized at the lake. Presumably, a building setback of 100 feet would serve to provide greater protection for the near shore environment. If the lake were currently sparsely developed, a goal of 100 foot setbacks around the lake possibly could be realized. But the reality is quite the opposite: nearly all of the 500 lots have been built on with houses far closer than 100 feet from the shoreline. At this late stage in the history of Lake Cavanaugh, the imposition of an increased setback would provide only a small marginal change to the development pattern around the lake.

The additional setback requirement would be unnecessarily burdensome. Faced with the inability to build on the shore side portion of their lots like their neighbors and the inability to build on upland portions on account of steep slopes, lot owners would be forced to seek variances from the buffer or setback requirements, obliging them to incur the delay and expense of simply re-proving what their neighbors have already proven: the shore side portion cannot satisfy the 100 foot setback; the upland portion is too steep; they could build without impacting lake water quality (as shown by existing reports); their construction would not impact protected species; and they would otherwise be denied the same benefits accorded to other property owners in the area.

To remedy the problems created by increased building setbacks and buffers, LCIA proposes that the SMP allow outright the following exceptions to the 100 foot setbacks in the Shoreline Residential district on Lake Cavanaugh (without the need for a shoreline or critical areas variance):

- Where an existing residential structure is to be rebuilt, remodeled or reconstructed; the building setback would be the existing setback for that structure;

- Where adjacent or near adjacent lots (within 300 feet) have been developed, the building setback for an undeveloped lot would be the average of adjacent lots;

LCIA would be available to help develop regulatory language to implement these proposed changes.

Dock area limitations

The proposed standards for docks are unclear. For example, Table 14.26.420-1 sets a maximum height of 3 feet from the surface of the water, presumably for fixed piers. But It is unclear whether height is to be measured from pier decking or the bottom of the pier structure and if measurement would be taken from winter high water or some other elevation. During the year the surface elevation of Lake Cavanaugh fluctuates around four to five feet. However the measurements are taken, they must allow piers to be constructed so they are higher than the floats they would access.

The maximum dimensions for floats also are unclear. The same table (14.26.420-1) imposes a width of eight feet for floating sections. Since the length of the entire pier/ramp/float structure is addressed elsewhere, it is assumed that the floating section is not subject to a separate length requirement. Again, the large fluctuation of the lake encourages the use of floating docks. If the eight foot dimension also applied to the length of floats, it would not allow for the safe moorage of all but the smallest row boats, skiffs and sailboats.

The proposed widths for piers and ramps are inadequate. On account of the need to provide sufficient clearance above high water and on account of the fluctuation of the water level, the pier and ramp top could easily be six feet above the beach area during late summer months. The maximum six foot width for piers and four foot width for ramps are simply insufficient to allow safe use, especially by children.

As for total length of the pier/ramp/float structure, an additional consideration should be given to allow moorage without creating the potential for prop wash. The gradient of the shoreline varies around the lake. In most cases, allowing dock length to meet the average of lengths within 300 feet should be sufficient. But where taking the average of dock length would not allow for sufficient depth to prevent prop wash or grounding, water depth should be considered.

For restrictions relating to docks as well, LCIA would welcome the opportunity to work toward regulations that would be more specifically tailored to the special circumstances of Lake Cavanaugh. A special shoreline district for Lake Cavanaugh may be the most efficient vehicle for addressing the lake's unique conditions.

Thank you for your consideration of these proposals.

Sincerely yours

Aramburu & Eustis, LLP

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Cc: Lake Cavanaugh Improvement Association