

**BEFORE the HEARING EXAMINER for the  
CITY of SAMMAMISH**

**DECISION**

FILE NUMBER: SSDP2021-00010

APPLICANTS: Daniel Ogren & Maria Isabel Preciado  
23047 NE 19<sup>th</sup> Drive  
Sammamish, WA 98074

TYPE OF CASE: Shoreline Substantial Development Permit to construct a 480 square foot, fully grated, private dock with an associated free-standing boat lift in Lake Sammamish

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: June 17, 2021

**INTRODUCTION**<sup>1</sup>

Daniel Ogren (“Ogren”) & Maria Isabel Preciado (collectively “Ogren/Preciado”) seek approval of a Shoreline Management Act (“SMA”) Substantial Development Permit (“SSDP”) to construct a 480 square foot, fully grated, private dock with an associated free-standing boat lift in Lake Sammamish.<sup>2</sup>

Ogren/Preciado filed a Shoreline Substantial Development Land Use Application on January 5, 2021. (Exhibits 1; 2<sup>3</sup>) The Sammamish Department of Community Development (“Department”) deemed the application to be complete when filed. (Exhibit 10) The Department issued a Notice of Application on March 15, 2021. (Exhibit 14)

The subject property is located at 3197 East Lake Sammamish Parkway NE along the east shoreline of Lake Sammamish.<sup>4</sup>

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<sup>1</sup> Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

<sup>2</sup> “‘Dock’ means a fixed or floating platform structure anchored in and/or floating upon a water body and connected to land to provide moorage or landing for waterborne vessels and/or water-dependent recreation uses.” [SMC 25.02.010(29)]

<sup>3</sup> Exhibit citations are provided for the reader’s benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. Citations to exhibits that are available electronically in PDF use PDF page numbers, not source document page numbers. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner’s Decision is based upon all documents in the record.

<sup>4</sup> The Examiner routinely uses a directional convention which holds that East Lake Sammamish Parkway NE (“Parkway”), the East Lake Sammamish Trail (“ELST”), and the shoreline of Lake Sammamish in the City run north-south. The Examiner will follow that convention in this Decision.

The subject property is located in Section 20, Township 25 N, Range 06 E, Willamette Meridian and is further identified as King County Assessor's Parcel 2025069085 ("Parcel 9085").

The Sammamish Hearing Examiner ("Examiner") viewed the subject property on March 2, 2017, while preparing for that day's open record hearing on Ogren applications ZONV2015-00208 and SVAR2015-00209.

The Examiner held an open record hearing on June 9, 2021. The hearing was conducted remotely using the "GoToMeeting" platform due to assembly restrictions attendant to the current COVID-19 pandemic. The Department gave notice of the hearing as required by the Sammamish Municipal Code ("SMC"). (Exhibit 18)

Subsection 20.05.100(1) SMC requires that decisions on SSDPs be issued within 120 net review days after the application is found to be complete. The open record hearing was held beyond the 120<sup>th</sup> net review day. (Exhibit 1, PDF 3) The SMC provides two potential remedies for an untimely decision: A time extension mutually agreed upon by the City and the applicant [SMC 20.05.100(2)] or written notice from the Department explaining why the deadline was not met [SMC 20.05.100(4)]. Ogren/Preciado chose to extend the deadline. (Testimony)

The following exhibits were entered into the hearing record during the hearing:

Exhibits 1 - 19: As enumerated in Exhibit 1, the Departmental Staff Report

The copy of Exhibit 16 that was available to the participants at the time of the hearing was incomplete. The Examiner held the record open through June 11, 2021, to allow the author of that exhibit to submit the missing pages and through June 16, 2021, to allow other participants to comment on the complete exhibit. The corrected exhibit was timely submitted; it retains its original exhibit number and will be referred to as Replacement Exhibit 16.<sup>5</sup> One timely comment is herewith entered into the record as follows:

Exhibit 20: E-mail, Alex Capron to City, June 15, 2021, at 1:05 p.m. (Declining to comment)

The hearing record closed on June 16, 2021.

The Hearing Examiner Clerk has the record copy of all exhibits.

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

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<sup>5</sup> Original Exhibit 16 was available for review electronically as three pages of the Department's on-line HighTail exhibit disclosure (Pages 135 – 137). Replacement Exhibit 16 consists of 14 pages. In order to avoid page number confusion with the Exhibits that followed Exhibit 16 in the HighTail file, Replacement Exhibit 16 will be catalogued separately.

## FINDINGS OF FACT

1. Parcel 9085 backs up to the east shore of Lake Sammamish and fronts on the west side of the ELST right-of-way, which in turn abuts the west side of the Parkway right-of-way. In 2015 Ogren submitted plans to construct a single-family residence on Parcel 9085. Ogren also wanted to construct a dock for the residence, but omitted it from that application because a structure in the lake triggers state and federal agency review/requirements which would have lengthened the process and delayed start of the residence construction. Because Ogren's proposed site plans did not comply with the 50-foot building setback from Lake Sammamish's ordinary high water mark<sup>6</sup> ("OHWM"), did not meet the tree replacement ratio required under the City's adopted Shoreline Master Program ("SMP") regulations, and did not comply with the front yard (east façade) setback required under the City zoning regulations, Ogren made application for a variance from each regulation. Those applications came on for a consolidated hearing before the undersigned on March 2, 2017, and were approved, with conditions, on March 13, 2017. Shoreline Variance ("SVAR") SVAR2015-00209 reduced the OHWM setback for the residence from 50 to 20 feet minimum. Building permit BLD2018-03263 for the residence and attached garage was issued by the Department on December 13, 2019. The residence is currently under construction. (Exhibits 1, PDF 2 - 4; Replacement Exhibit 16; testimony; official notice)
2. Ogren/Preciado now propose to construct a private dock in Lake Sammamish in front of Parcel 9085. The submitted plans depict a dock that will have an area of 480 square feet ("SF"), extend into the lake approximately 87 feet beyond the ordinary high water mark ("OHWM"), and be built with ACZA treated timbers on 16 galvanized steel piles. The depicted dock will be 4 feet wide with a 6-foot wide ell at the outer end of the dock. The ell will be 26 feet long. The dock surface will be fully grated (40% open space), and the dock is intended to maintain not less than a 15 foot setback from the north and south property lines (extended). One free-standing, approximately 10-foot by 15-foot grated platform boat lift is proposed to be located adjacent to the north side of the dock at its outer end; the boat lift is intended to maintain not less than a 5 foot setback from the north property line (extended). The application does not request approval for a covered boat lift. All construction will be performed from an in-water barge. (Exhibits 5, PDF 25; 11; and testimony)
3. Lake Sammamish and shorelands<sup>7</sup> within 200 feet of the lake's OHWM are within the jurisdictional area of the SMA. [SMC 25.02.010(77) and (80)] Lake Sammamish is a designated Shoreline of

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<sup>6</sup> "Ordinary high water mark (OHWM)' means the mark on all lakes and streams that will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual and so long continued in all ordinary years as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation, as that condition existed on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the Department of Ecology; provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining fresh water shall be the line of mean high water (RCW 90.58.030(2)(b))." [SMC 25.02.010(61)]

<sup>7</sup> "Shorelands,' also referred to as 'shoreland areas,' means those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the OHWM; floodways and contiguous floodplain areas landward 200 feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters that are subject to

Statewide Significance under the SMA. [SMC 25.05.030] The City's SMP designates the subject property an Urban Conservancy Environment. [SMC 25.05.020(3), Appendix A] Uses that are proposed waterward of the OHWM are "governed by the regulations pertaining to the adjoining shoreland area and all such uses shall be considered accessory to the primary use." [SMC 25.05.010(2)] Private docks, floats, and mooring buoys are permitted uses in all SMA jurisdictional areas within the City. [SMC 25.07.010, Table 25.07.010-1] An SSDP is required because the estimated cost of the proposed dock and boat lift exceeds the established dollar threshold requiring a permit. (Exhibits 1, PDF 5; 5, PDF 25)

4. The lots in the vicinity of Parcel 9085 which lie between Lake Sammamish and the ELST are, generally speaking, shallow (east to west) and served by private roads which cross the ELST at various points and then extend north – south within the ELST right-of-way to reach the individual lots. [Official notice: SVAR 2015-00209 Decision, Finding of Fact 4, slightly modified]

Such is the case with Parcel 9085. An ELST crossing is located immediately east of Parcel 9085 which becomes a gravel road which breaks to the north and south immediately after crossing the trail. That road extends south to serve 3123 Parkway/Glover, immediately south of Parcel 9085, and north to serve Parcel 9085, 3201 Parkway/Baerwald, immediately north of Parcel 9085, and 3229 Parkway/Eagle Shores, immediately north of Baerwald. (Exhibit 1, PDF 1, Figure 1 (House numbers shown on that figure.); Official notice: SVAR 2015-00209 Decision, Finding of Fact 4, slightly modified)

5. SVAR2015-00209 authorized Ogren to observe a 20-foot setback from the OHWM when constructing the residence and garage. Extensive mitigation plantings were required. The calculation of required mitigation plantings included an allowance for future construction of a dock. The approved plan showed that the immediate shoreline area of the parcel will be restored to ensure no net loss of shoreline ecological functions. The approved mitigation plan proposes 2,277 SF of shoreline enhancement. A dilapidated shelter, fire pit, and all invasive species will be removed. Native species will be planted throughout the area between the residence and the shoreline; there will be no usable lawn. Preliminary plans indicated that 12 trees, 144 shrubs, and 539 groundcover plants would be planted. Ogren committed to not use herbicides or pesticides on the property. Boulders and woody debris will be placed along the shoreline to enhance habitat opportunities. The end result is intended to be a better shoreline habitat than existed in 2017. [Official notice: SVAR 2015-00209 Decision, Finding of Fact 13.C, slightly modified]
6. The SMP contains extensive design and location standards for docks and associated facilities. [SMC 25.07.010, Table 25.07.010-2; SMC 25.07.050] Section 25.07.050 SMC is divided into three subsections: (1) contains requirements for all docks and associated facilities; (2) contains additional requirements for docks and associated facilities in Lake Sammamish; and (3) contains additional requirements for docks and associated facilities in Pine and Beaver Lakes.

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the provisions of this program; the same to be designated as to location by the Department of Ecology (RCW 90.58.030)." [SMC 25.02.010(77)]

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7. The proposed dock and boat lift are intended to comply with those standards which are applicable to the proposal. (Testimony) The proposed plan gives the length of the dock, measured from the OHWM, as 87 feet. <sup>8</sup> (Exhibit 11) According to SMC 25.07.050(2)(1) the maximum length of a private dock in Lake Sammamish is “no longer than 80 feet or the length needed to reach a depth of eight feet (measured from ordinary high water), whichever is greater.” The record contains no substantiated water depth information.
8. The SMP requires establishment of a Vegetation Enhancement Area (“VEA”) along a property’s shoreline whenever a project will disturb uplands within the established SMA setback area. [SMC 25.06.020(10) {Lake Sammamish} and (13) {Beaver and Pine lakes}] No construction is proposed above the OHWM for the proposed dock; all construction work will occur from a barge in the lake. Therefore, no VEA is required for the dock *per se*. (Exhibits 1; 5, PDF 25); and testimony) The mitigation plan approved for the residence under SVAR2015-00209 included a VEA. [Official notice: SVAR 2015-00209 Decision]
9. Sammamish’s State Environmental Policy Act (“SEPA”) Responsible Official issued a threshold Determination of Nonsignificance (“DNS”) for the Ogren/Preciado dock project on May 12, 2021. (Exhibit 17) The DNS was not appealed. (Testimony)
10. The Department Staff Report (Exhibit 1) contains a thorough analysis of the project’s compliance with SMA and SMP requirements. The Department recommends approval of the SSDP subject to six conditions. (Exhibit 1, PDF 8)
11. Ogren/Preciado have no objection to the Department Staff Report or its recommended conditions. (Testimony)
12. Aurora Merchant (“Merchant”) opposes approval of the requested SSDP at the present time. Merchant is one of the owners of Eagle Shores, located north of the Baerwald lot. Merchant believes that no permit should be issued for dock construction until the residence has been completed, mitigation/enhancement plantings installed, and no net adverse effect on the shoreline has been proven. (Replacement Exhibit 16)

Merchant submitted two e-mails, an Excel spreadsheet presentation of data about several approved SVARs in the area, and four pages of photographs (Replacement Exhibit 16); Merchant also testified at the hearing. The first e-mail (April 14, 2021) objected to the prior approval of SVARs for Ogren and Baerwald; asserted that Ogren and Baerwald had removed docks from their original applications “to avoid the SEPA requirements;” asserted that “massive concrete structures” on Ogren/Preciado’s and Baerwald’s lots were ruining the ecological quality of the area; and asserted that the SVAR

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<sup>8</sup> The Department’s Staff report states that the dock will extend into the lake 56 feet from the OHWM. (Exhibit 1, PDF 5, Project Description, ¶ 1) Staff testified that it used a computer measuring aid which may have been incorrectly calibrated. The 56-foot dimension is simply not credible given original source documents in the record. The Examiner will discount all dock dimension and area figures contained in Exhibit 1 and will rely instead on the submitted plan set, Exhibit 11.

approvals had been done by planners who ignored previous planners' rejections. (Replacement Exhibit 16)

The second e-mail (June 9, 2021) discussed photographs of shoreline flooding allegedly caused by the Ogren/Preciado and Baerwald foundations. The accompanying pictures show that the “massive concrete structures” are the foundations for the Ogren/Preciado and Baerwald residences and that neither is located close to the OHWM; both structures appear to be maintaining the 20-foot setback authorized by their respective SVARs. The photographs depict no shoreline stabilization structures; no bulkheads or shoreline armoring have been installed. Some of the photographs depict shoreline flooding in the Eagle Shores area. (The Eagle Shores dock is visible in the upper right picture on the Baerwald photograph sheet with the lake water level at or just below the dock’s deck.) Merchant objects to residential construction within the Urban Conservancy Environment. Much of the second e-mail is spent arguing against approval of shoreline variances. (Replacement Exhibit 16) (There is no SVAR involved in this case. The variances to which she is objecting were approved years ago.)

13. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

### **LEGAL FRAMEWORK <sup>9</sup>**

The Examiner is legally required to decide this case within the framework created by the following principles:

#### Authority

An SSDP is a Type 4 procedure. A Type 4 land use application requires an open record hearing before the Examiner. The Examiner makes a final decision on Type IV applications which is subject to the right of reconsideration and appeal to the State Shorelines Hearings Board. [SMC 20.05.020, 20.10.240, 20.10.260, and 25.35.080(1)]

The Examiner’s decision may be to grant or deny the application or appeal, or the examiner may grant the application or appeal with such conditions, modifications, and restrictions as the Examiner finds necessary to make the application or appeal compatible with the environment and carry out applicable state laws and regulations, including Chapter 43.21C RCW and the regulations, policies, objectives, and goals of the interim comprehensive plan or neighborhood plans, the development code, the subdivision code, and other official laws, policies and objectives of the City of Sammamish.

[SMC 20.10.070(2)]

#### Review Criteria

Section 20.10.200 SMC sets forth requirements applicable to all Examiner Decisions:

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<sup>9</sup> Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

When the examiner renders a decision . . . , he or she shall make and enter findings of fact and conclusions from the record that support the decision, said findings and conclusions shall set forth and demonstrate the manner in which the decision . . . is consistent with, carries out, and helps implement applicable state laws and regulations and the regulations, policies, objectives, and goals of the interim comprehensive plan, the development code, and other official laws, policies, and objectives of the City of Sammamish, and that the recommendation or decision will not be unreasonably incompatible with or detrimental to affected properties and the general public.

Subsection 25.08.020(2) SMC requires that a proposed Substantial Development be “consistent with the policies and procedures of Chapter 90.58 RCW, the provisions of Chapter 173-27 WAC, and [the City of Sammamish Shoreline Master Program].”

#### Vested Rights

Sammamish has enacted a vested rights provision.

Applications for Type 1, 2, 3 and 4 land use decisions, except those that seek variance from or exception to land use regulations and substantive and procedural SEPA decisions shall be considered under the zoning and other land use control ordinances in effect on the date a complete application is filed meeting all the requirements of this chapter. The department’s issuance of a notice of complete application as provided in this chapter, or the failure of the department to provide such a notice as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

[SMC 20.05.070(1)] Therefore, this application is vested to the development regulations as they existed on January 5, 2021.

#### Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [SMC 25.08.050(4) and City of Sammamish Hearing Examiner Rule of Procedure 316(a)]

#### Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

### **CONCLUSIONS OF LAW**

1. Merchant conflates the previously approved SVARs with the current dock SSDP and also misunderstands the OHWM concept. First, the SVARs which she catalogues and discusses at length in Replacement Exhibit 16 were heard and decided several years ago. None of those SVARs are

currently before the Examiner. Thus, arguments about them <sup>10</sup> are untimely and irrelevant to the current Ogren/Preciado SSDP private dock application. They will not be further addressed.

Second, the “massive concrete structures” about which Merchant is objecting are the foundations for the Ogren/Preciado and Baerwald residences, both of which were allowed under the terms of their approved SVARs, and neither of which is next to the OHWM. Ogren’s SVAR allowed the foundation to be not closer than 20 feet from the OHWM. (Specifics of the Baerwald SVAR allowance are not in this record, but the Examiner notes that they require a 20-foot building setback for the residence and a 22-foot setback for the garage from the OHWM.) Neither Ogren nor Baerwald were allowed to build up to the OHWM or armor the lake shoreline. No evidence in the record, including Merchant’s photographs, suggests that either one has violated those restrictions imposed by their SVARs.

Neither foundation, set back at least 20 feet from the OHWM, has changed the location of the OHWM. The location of the OHWM does not change because an owner alters vegetation and grades a portion of a lot away from the edge of the lake. The OHWM is fundamentally a vegetation-based feature: <sup>11</sup> If one doesn’t change the vegetation along the shoreline or alter the grade at the shoreline, one is not going to change the location of the OHWM.

None of the required mitigation work had been done when Merchant’s photographs were taken. That is not surprising as both sites were in the early stages of house construction at that time. Mitigation planting typically doesn’t occur until after most, if not all, exterior construction work has been completed. No legally defensible justification exists to delay approval of Ogren/Preciado’s dock until the mitigation for the Baerwald and Ogren/Preciado residences has been completed. Under the SMC, compliance with the dock development standards results in a self-mitigated dock: No additional mitigation is required so long as no work is performed above the OHWM. If Baerwald or Ogren/Preciado were to fall short in implementation of the mitigation required for their residences under the permits for those residences, the City has all the authority it needs to require compliance with those permits. This dock permit is not the enforcement vehicle for Ogren’s (or Baerwald’s) residence SVARs.

In her June 9, 2021, e-mail (part of Replacement Exhibit 16) Merchant seems to suggest an improper motive in Ogren’s decision to submit separate applications for his residence and dock. Ogren/Preciado’s agent testified about that decision in this hearing: Construction activities in the lake require state and federal approvals which take longer to obtain; Ogren wanted to get started on construction of his new residence as soon as possible; the residence *per se* did not involve any in-lake construction; so the residence-only permitting process was used because it would be shorter. There is no evidence in this record of any nefarious purpose in separating the dock and residence SMA permits. Further, the SVAR hearing record indicated that a dock application would be

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<sup>10</sup> Including the assertion that those residences have caused flooding of Eagle Shores and the totally mistaken assertion that they were approved by different planners after being rejected by earlier staff.

<sup>11</sup> See the OHWM definition in Footnote 6, above.

forthcoming; the SVAR mitigation plan discussed and included a future private dock in its analysis.  
[Official notice]

Merchant's objection to construction of residences in the SMP Urban Conservancy Environment is misplaced.<sup>12</sup> In the first place, this permit is not about a residence, it is about a dock. In the second place, the SMP specifically allows residences and private docks in the Urban Conservancy Environment. Merchant's objection to residences and docks in the Urban Conservancy Environment is an objection to a legislative decision made by the City Council and approved by the State Department of Ecology. This is the wrong forum and the wrong time in which to argue for a different policy. [RCW 36.70B.030]

Finally, Merchant argued that the surface area of the boat lift platform should be included in the allowed dock surface area total. The SMC contains no such requirement. The SMC treats a dock and a boat lift as separate items; each has a separate definition [SMC 25.02.010(15) and (29), respectively] and separate regulations. Each is listed separately as an allowed use in Lake Sammamish: "Each individual residential lot or private beach park lot on Lake Sammamish shall be allowed one residential dock, one float, two boat lifts, and two personal watercraft lifts." [SMC 25.07.050(2)(a)] The 480 SF surface limit in the Urban Conservancy Environment includes dock and float area, but not boat lift area. Two code provisions make this clear: "No new float shall cover more than 150 square feet of the lake. The area of the float shall be counted as part of the overall dock area." [SMC 25.07.050(1)(c), emphasis added]; and "Maximum overwater area coverage for private docks accessory to residential use on Lake Sammamish in the Urban Conservancy Environment, including any float coverage but excluding canopy coverage, shall not exceed 480 square feet." [SMC 25.07.050(2)(f), emphasis added] The SMC does not regulate the size of boat lifts; it regulates placement of boat lifts but not their size: "No boat lift shall be located closer than five feet from the side property line extended. New boat lifts installed between five and 15 feet of the side property line extended must be installed perpendicular to the shoreline." [SMC 25.07.050(2)(m)]

2. The proposed dock and boat lift are consistent with the policies and procedures of Chapter 90.58 RCW, the provisions of Chapter 173-27 WAC, and the SMP.

Chapter 90.58 RCW is the SMA. The SMP, by definition, is consistent with the policies of the SMA. Therefore, a project which is consistent with the SMP is also consistent with the SMA.

Chapter 173-27 WAC contains procedural requirements for implementation of the SMA. The City's procedures were approved by the State when its SMP was approved. Therefore, its procedures are consistent with the WAC requirements.

The proposal complies with or can be conditioned to comply with the SMP's requirements for docks and boat lifts. (See Findings of Fact 2 and 7, above.) Two aspects of standards compliance require

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<sup>12</sup> The Examiner recalls that Merchant (then known as Aurora Purcell) made the same argument in previous cases in the Urban Conservancy Environment.

comment. First, dock length. The plans show a dock length of 87 feet from OHWM. Absent evidence to document water depth as required by the SMC, that is seven (7) feet longer than allowed. Approval of Exhibit 11 as the SSDP plan set must be conditioned on compliance with the dock length standard.

Second, dock and boat lift setback from the north property line (extended). The plans (Exhibit 11) do not contain a specific call-out for the setbacks from the north property line (extended). Ogren/Preciado's agent testified that the intent was to meet the SMC standards. The Department says each setback is one (1) or more feet short of the standard. (Exhibit 1, PDF 7) But that information is apparently based on the Department's admittedly suspect computer scaling from the plans. There is plenty of space to the south to allow the dock and boat lift to be shifted a few feet in that direction if necessary to comply with the setback standards. Approval of Exhibit 11 as the SSDP plan set must be conditioned on compliance with the dock and boat lift setback standards.

The proposed dock thus is consistent with or can easily be conditioned to be consistent with the SMP.

3. The recommended conditions of approval as set forth in Exhibit 1 are reasonable, supported by the evidence, and capable of accomplishment except as noted below.
  - A. Section 173-27-190 WAC contains certain content and format requirements for any SSDP which is issued:

(1) Each permit for a substantial development, conditional use or variance, issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140(5)(a) and (b).

(2) Permits for substantial development, conditional use, or variance may be in any form prescribed and used by local government including a combined permit application form. Such forms will be supplied by local government.

(3) A permit data sheet shall be submitted to the department with each shoreline permit. The permit data sheet form shall be as provided in Appendix A of this regulation.

Subsection (2) allows this Decision to serve as the SSDP. Subsection (1) requires that an additional condition be added. The data sheet required by Subsection (3) will be prepared by the Department when it transmits the SSDP and supporting exhibits to the state as required by Chapter 90.58 RCW.

- B. An SSDP involves approval of a specific development plan for a specific parcel. The SSDP should clearly and prominently identify the exhibit which represents the approved plan. While the Department's recommended conditions indirectly identify the approved exhibit, direct identification is preferred. Therefore, the Examiner will insert a new Condition 1 which will specify that Exhibit 11 is the approved development plan for this SSDP, subject to the qualifiers discussed in Conclusion of Law 2, above.
4. There is no justification based upon this SSDP to require any mitigation plantings. If other agencies have requirements that include mitigation for a dock, then such agencies may impose mitigation for the dock under their authority. But the City should not and cannot do it for them.
5. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

### DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, and the testimony and evidence submitted at the open record hearing, the Examiner **GRANTS** the requested Shoreline Substantial Development Permit to construct a 480 square foot, fully grated, private dock with an associated free-standing boat lift **SUBJECT TO THE ATTACHED CONDITIONS**.

Decision issued June 17, 2021.

*\s\ John E. Galt*

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John E. Galt  
Hearing Examiner

### HEARING PARTICIPANTS <sup>13</sup>

Daniel Ogren  
Mark Newman

Alex Capron  
Aurora Merchant

### NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Examiner (in care of the City of Sammamish, ATTN: Cynthia Schaff, Hearing Examiner Clerk, 801 228<sup>th</sup> Avenue SE, Sammamish, WA 98075) a written request for reconsideration within 10 calendar days following the issuance of this Decision in accordance with the procedures of SMC 20.10.260 and Hearing Examiner Rule of Procedure 504. Any request for reconsideration shall specify the error which forms the basis of the request. See SMC 20.10.260

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<sup>13</sup> The official Parties of Record register is maintained by the City's Hearing Clerk.

and Hearing Examiner Rule of Procedure 504 for additional information and requirements regarding reconsideration.

A request for reconsideration is not a prerequisite to judicial review of this Decision. [SMC 20.10.260(3)]

### NOTICE of RIGHT of APPEAL

This Decision is final and conclusive subject to the right of review before the State Shorelines Hearings Board in accordance with the procedures of Chapter 90.58 RCW, the Shoreline Management Act of 1971. See SMC 20.35.080, Chapter 90.58 RCW, and Washington Administrative Code regulations adopted pursuant thereto for further guidance regarding Hearings Board appeal procedures.

The following statement is provided pursuant to RCW 36.70B.130: “Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.”

### CONDITIONS OF APPROVAL DANIEL OGREN and MARIA ISABEL PRECIADO DOCK SSDP2021-0010

This Shoreline Substantial Development Permit is subject to compliance with all applicable provisions, requirements, and standards of the Sammamish Municipal Code, standards adopted pursuant thereto, and the following **SPECIAL CONDITIONS**:

1. **Approved Plans. Exhibit 11** is the approved project plan set for this SSDP; PROVIDED that: a) Dock length shall not exceed 80 feet measured from the OHWM unless documentation is submitted to justify a longer length pursuant to SMC 25.07.050(2)(1); and b) Setbacks from the north property line (extended) shall comply with the SMC standards of not less than 15 feet for the dock and not less than 5 feet for the boat lift. Revisions to approved SSDP plans are regulated under SMC 25.08.140.
2. **Approved Construction Materials.** New structures installed below OHWM or that regularly and frequently come in contact with water shall be constructed of Washington Department of Fish and Wildlife (“WDFW”)-approved materials.
3. **Compliance with Local and State Laws.** The Permittee shall comply with all City rules and regulations in effect on January 5, 2021, the vesting date of the subject application, including and necessary permits from applicable state or federal agencies.

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4. **Building Permit.** A building permit issued in accordance with Title 16 SMC must be approved prior to commencing project construction. Final construction plans showing the proposed dock shall be in substantial conformance with **Exhibit 11** (as conditioned above) and subject to applicable conditions of approval.
5. **Conformance to Plans.** Final construction plans, including staging plans, shall be prepared and submitted to the City for review with application for building permit. Site disturbance shall be the minimum necessary to accommodate the scope of work.
6. **Archeology.** Prior to building permit issuance, a note on the construction plans shall be added regarding compliance with SMC 25.06.010 and requiring notification the Washington State Department of Archaeology and Historic Preservation if artifacts are discovered.
7. **Permit Expiration.** Pursuant to WAC 173-27-090, construction shall be commenced on the proposed dock within two (2) years of the date that the SSDP is issued (or becomes final following any reconsideration or appeal periods, if applicable). Authorization to conduct development activities under the SSDP shall terminate five (5) years after the effective date of this permit. The City may authorize a single extension for a period not to exceed one (1) year based on a showing of good cause to the Director of reasonable factors, if a request for extension has been filed before the expiration date, and notice of the proposed extension is given to parties of record and the City.

EXCEPT AS PROVIDED IN RCW 90.58.140(5)(a) AND (b), CONSTRUCTION PURSUANT TO THIS PERMIT SHALL NOT BEGIN AND IS NOT AUTHORIZED UNTIL TWENTY-ONE DAYS FROM THE DATE THIS PERMIT IS FILED WITH THE WASHINGTON STATE DEPARTMENT OF ECOLOGY AND ATTORNEY GENERAL AS REQUIRED BY RCW 90.58.140(6) AND WAC 173-27-130, OR UNTIL ALL REVIEW PROCEEDINGS INITIATED WITHIN TWENTY-ONE DAYS FROM THE DATE OF SUCH FILING HAVE BEEN TERMINATED.