



MEMORANDUM

To: City Council
Kurt Triplett, City Manager

From: Eric Shields, Planning Director
Teresa Swan, Senior Planner

Date: November 1, 2011

Subject: **Potala Village Mixed Use Development Proposal; File No. SHR11-00002 and SEP11-00004**

The purpose of this memorandum is to provide the City Council with:

- A. An update on the permit process for the Potala Village project;
- B. A history of the Comprehensive Plan and zoning provisions pertaining to the Potala Village site;
- C. A discussion of the current Comprehensive Plan for the site; and
- D. Responses to various public comments on the project.

This memorandum is not intended to address every comment that has been raised on the Potala Village project.

Staff provided an earlier memorandum on the project to the City Council dated July 29, 2011.

A. Update on the Permit Process

The application has been under review by the City for eight months. Below is a timeline and update on the permit process for Potala Village:

- December 9, 2009: 1st pre-submittal meeting on application;
- December 14, 2010: 2nd pre-submittal meeting on application;
- February 23, 2011: Shoreline Substantial Development Permit (SDP) application and State Environmental Policy Act (SEPA) documents submitted. SDP is on hold while the SEPA process is completed with preparation of an Environmental Impact Statement (EIS);
- May 11, 2011: SDP application determined to be complete and vested under Chapter 83 Kirkland Zoning Code (KZC) for the shoreline regulations effective as of that date;
- June 15, 2011: issued a SEPA Mitigated Determination of Non-Significance (MDNS);
- August 4, 2011: withdrew the SEPA MDNS and issued a Determination of Significance (DS) requiring an EIS. The EIS will take 5-6 months to prepare;

- October 4, 2011: new Notice of Road Concurrency Test Decision in conjunction with issuance of the SEPA DS;
- October 11, 2011: nine appeals were submitted by the appeal deadline on road concurrency;
- November 17, 2011: Hearing Examiner will hold the road concurrency hearing;
- As of the date of this memorandum, a building permit application has not been submitted and the project has not vested under existing zoning regulations.

B. History of Comprehensive Plan and Zoning for the Potala Village Site

The City has received several emails questioning the zoning, residential density in the Comprehensive Plan and the shoreline designation for the subject property. Summarized below are documents that set forth the history of the zoning, Comprehensive Plan and shoreline designation of the three parcels that make up the project site (see map below).



The items shown in bold font indicate the date when changes were made to the policies or regulations for the property:

- 1973 Zoning Map (Ordinance 2183, August 6, 1973): The 1973 map shows the western half of the site zoned as BN (Neighborhood Business) and eastern half as Residential (RS 8.5) with a minimum lot size of 8,500 square feet.
- 1973 Shoreline Master Program (SMP): **In 1973, the first SMP was adopted for the City with the property being designated as Urban Residential-1 (UR-1)** permitting residential uses at one dwelling unit per 1,800 square feet of land area (RM-1800), and restaurant or tavern uses. This was a continuation of the UR-1 designation for the land area to the west between Lake Washington and Lake Street South. Up to 53' of the western part of the site is located within 200 feet of the lake and that portion is subject to the SMP.
- 1977 Zoning Code (Ordinance 2437, May 16, 1977): The Neighborhood Business zoning regulations for residential units in the 1977 Zoning code read as follows: "above ground floor

and conform to the RM-2400 zone if the total square footage does not exceed 10% of the commercial use floor area or one dwelling unit." This is a density of one unit per 2400 square feet of land area.

- 1982 Zoning Map: The 1982 map shows the western half of the site still zoned as BN and eastern half as RS 8.5.
- 1983 Zoning Code (Ordinance 2740, February 22, 1983): In 1983 a new Zoning Code was adopted. **The new code changed the residential density for the BN zone from one unit per 2400 square feet of land area to no limit.** This was consistent with changes to other commercial zones throughout the City.
- 1987 Central Neighborhood Plan (Ordinance 3016, May 18, 1987, File IV-85-20): **In 1987 the Central Neighborhood Plan (now Moss Bay) was amended. The Central Neighborhood Map, Figure C-1, showed the entire Potala Village site, including the eastern portion, as Commercial.**
- 1995 Comprehensive Plan (Ordinance 3481, July 11, 1995): In 1995, the City substantially revised the Comprehensive Plan to comply with the Growth Management Act. The 1995 Land Use Map, Figure LU-1, shows the eastern and western half of the site designated as Commercial.

The new Comprehensive Plan added a map (Figure LU-2) to the Land Use Element which designates commercial areas throughout the City. **The subject property was designated as a "residential market." Also added to the Plan was text that provides a description of each type of commercial area, including residential markets (see discussion on page 7).**

- 1996 Zoning Map (Ordinance 3538, May 21, 1996): In 1996, the City rezoned 976 parcels to bring the zoning into conformity with the Comprehensive Plan as required by the Growth Management Act. **At that time, the zoning on the eastern half of the site was changed from RS 8.5 to BN.** File IV-95-100 contains a spreadsheet of the 976 rezoned parcels which lists Parcel #9354900240 (northeastern parcel) and Parcel #0825059233 (eastern half of south parcel) zoned from RS 8.5 to BN.

As stated in the April 10, 1996 staff memorandum to the City Council, "the legislative rezones would result in streamlining the development process by eliminating the majority of quasi-judicial rezones that would otherwise need to be processed in order to attain the maximum theoretical development potential for a parcel of land." Prior to that time, it was common practice for the City to rezone properties only when a property owner applied for a project-related rezone.

- 2010 Shoreline Master Program (Ordinance 4251, August 3, 2010, File ZON06-00016): The City was required to prepare a new SMP that meets the State's new standards in WAC 173-26-176 for shorelines. Included in the State standards are: 1) new shoreline environment designations and 2) the purpose of each designation and the criteria to determine what designation is appropriate for each area in the City. **As part of the newly adopted 2010 SMP, the property containing the Potala Village site was designated as Urban Mixed environment.**

In accordance with WAC 173-26-176 and as stated in the City's shoreline regulations in KZC 83.140, the purpose of the Urban Mixed environment is "to provide for high-intensity land uses, including residential, commercial, recreational, transportation and mixed-use developments." The criteria for the Urban Mixed environment are that the environment is located in the urban growth area and that areas "currently support high-intensity uses related to commerce, transportation or navigation; or are suitable and planned for high-intensity water-oriented uses." The purpose and criteria most closely reflect the allowed uses in the BN Zone. The only other option would have been the Medium to High Residential environment which is not appropriate because the designation only permits water-oriented commercial uses and not mixed use, general retail or office as allowed in the BN Zone. The Department of Ecology found the designation of the property consistent with WAC 173-26-176 when it approved the City's Shoreline Environment Designations Map.

Under WAC 173-26-130, an SMP may be appealed to the Shoreline Hearings Board within 60 days of the Department of Ecology's written notice that the SMP has been approved. The Department of Ecology approved the City's SMP on July 26, 2010. No timely appeal was filed.

- 2011 SMP amendments (Ordinance 4302, Attachment C, June 7, 2011, File ZON06-00016): **As part of the amendments to the SMP, the residential density for the Mixed Use Environment (KZC 83.180) was corrected to match the residential density in the use zone chart for the BN Zone (KZC 40.10.100).** In the 2010 SMP regulations, the minimum lot size for the BN shoreline area was listed at 1,800 square feet per unit. The density should have been listed as "none" (no density limit) to match the existing BN zoning regulations in KZC 40.10.100. Throughout the 2010 SMP process, the City decided and disclosed that residential densities in the shoreline regulations for each property would be the same as those in the use zone charts of the Zoning Code. The City did not consider shoreline densities different than those established in the Zoning Code.

Nonetheless, the Potala Village shoreline permit application vests with the 2010 SMP and not with the 2011 SMP as amended since the application was considered complete before the Department of Ecology approved the amendments on May 25, 2011. The plans submitted for the shoreline permit application show that on the portion of the property located within shoreline jurisdiction, the residential unit count meets the minimum lot size density of one unit per 1,800 square feet of land area consistent with the 2010 SMP. If the applicant were to reapply for the shoreline Substantial Development Permit, the project would vest with the 2011 SMP as amended.

Staff Conclusions

The existing BN zoning on the Potala Village site was legally established. The western half of the property has been zoned BN since at least 1973. There have been no residential density restrictions since a new Zoning Code was adopted in 1983. The eastern half of the property was designated commercial as part of a neighborhood plan in 1987 and was affirmed in the 1995 Comprehensive Plan update. BN zoning was extended to the eastern half of the site in 1996 along with other City-wide rezones intended to bring the zoning into conformance with the Comprehensive Plan.

C. Current Comprehensive Plan for the Potala Village Site

Several emails to the City Council have stated that the Potala Village property is designated in the Comprehensive Plan at a residential density of 12 units per acre and that the BN zoning of no density limit is inconsistent with the Plan. Comments also, maintain that the regulations for the BN Zone are not consistent with the "Residential Market" policies in the Comprehensive and that the City did not follow up with the implementation strategy found in Chapter XIV of the Plan (page XIV-5). Project opponents ask that the City have the zoning regulations revised to reflect the Comprehensive Plan.

1. Residential Density

Below is an analysis of the City's Land Use Map, Moss Bay Neighborhood Map and the text discussing the medium density residential area near the Potala Village commercial site:

- Figure LU-1, Comprehensive Plan Land Use Map designates a land use category (i.e., commercial, residential, office, industrial, institutional) and, if applicable, a maximum residential density per acre for each property. Maximum density is reflected by a number (i.e., 5, 9, 12, 24) placed on the map for a defined area enclosed by a solid black line. All residential and office/residential land categories contain maximum density numbers. Commercial, office, institutional and all but one industrial land category do not contain maximum density numbers. For example, the "medium density residential" area immediately north of the subject property is shaded light brown with a designation of "MDR 12." The subject property is shaded red with a designation of "C." See the citywide Land Use Map at <http://kirknet/mapbook/PDF/StandardMaps/2011CityLandUseMap.pdf>
- Figure MB-2, Moss Bay Neighborhood Land Use Map (see map on next page) designates a variety of land use categories. The residential and office/residential areas, and one industrial area (PLA 6G-2) contain a maximum density number labeled on the map. These residential density numbers match Figure LU-1 (see link above to map).

As with Figure LU-1, the commercial and industrial areas shown on Figure MB-2, with the exception of PLA 6G-2, do not have maximum density numbers labeled on the Figure MB-2 map.

Text on page XV.D-23 in the Moss Bay Neighborhood Plan contains a discussion about the medium density residential area along Lake Washington Blvd as designated on Figure MB-2. In the text, the area south of 7th Ave South along Lake Washington Blvd/Lake Street South is described at 12 units per acre without indicating the southern boundary. However, the text reference is made to the density designation on Figure MB-2 that shows the boundary of the medium density area along Lake Washington Blvd/Lake Street South ending at 10th Ave South. Figure MB-2 does not show a maximum residential density number on the commercial area south of 10th Ave South (site of the proposed Potala Village).

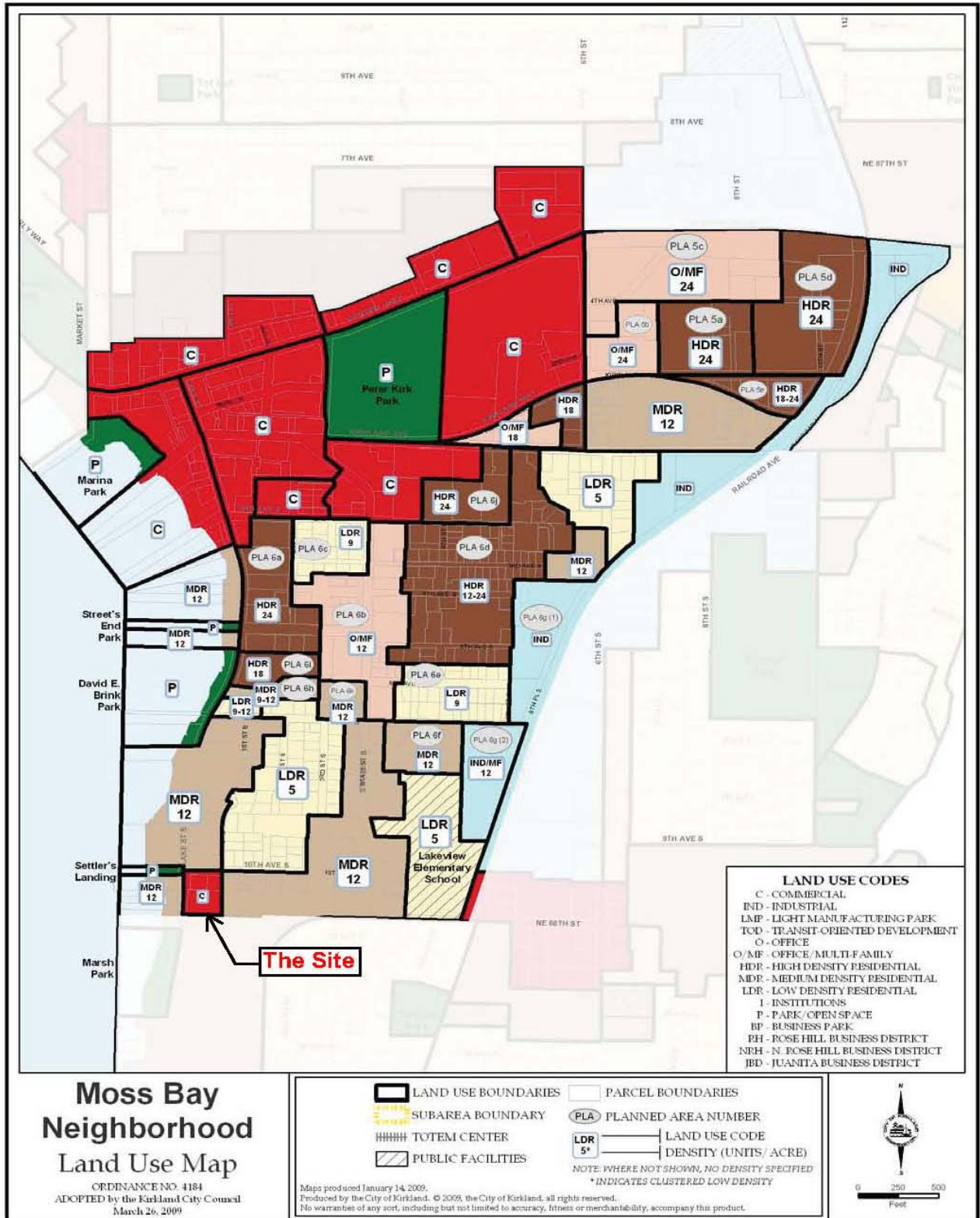


Figure MB-2: Moss Bay Area Land Use

- Text on page XV.D-24 in the Moss Bay Neighborhood Plan contains specific text on the Potala Village property. The text reads as follows:

The southeast quadrant of the 10th Street South and Lake Street intersection, however, is developed with a market which serves as a convenience to surrounding residences. Limited commercial use of this location, therefore, should be allowed to remain.

The text is silent on residential use as is the case for other commercially designated areas in the City.

- The Land Use Element contains Policy LU-3.2 (page VI-12) that states: "*Encourage residential development within commercial areas.*" The discussion for the policy says that residential development within commercial areas should be compatible with and complementary to business activity.
- The Economic Development Element contains Policy ED-3.5 (page VIII-10) that states: "*Encourage mixed-use development within commercial areas.*" The discussion for the policy says "mixed-use residential and commercial development provides the opportunity for residents to live, shop and work in commercial areas...Mixed use development, when combined with multi-story structures, promotes a more compact and sustainable land use pattern and encourages walking and transit use to reduce dependence on automobiles."

Staff Conclusions

- The Citywide and Moss Bay Neighborhood land use maps are clear in distinguishing the residential area designated for 12 dwelling units per acre from the commercial area (Potala Village site) that has no density designation. Although the text of the plan does not indicate a southern boundary for the area limited to 12 units per acre, it is clear that it is referring to the land use map.

Further evidence of how maximum density is denoted in the Comprehensive Plan is seen with the industrial area of PLA 6Gg-2 that has "MF 12" noted on Figure MB-2.

- The text specific to the Potala Village site on page XV. D-24 of the Plan describes limitations on commercial uses, but does not place a limitation on residential density. The text is consistent with the BN zoning which limits the size and types of retail uses, but does not limit the number of residential units.
- Both Policy LU-3.2 and Policy ED-3.5 described above encourage residential uses in commercial zones.

2. Residential Markets

The Comprehensive Plan describes the Potala Village site as a "Residential Market." Below are sections of the Plan pertaining to Residential Markets:

- Figure LU 2 in the Land Use Element (page VI-15) designates commercial areas throughout the City. The Potala Village site is designated as a "Residential Market. (See the map on the following page.)
- The Land Use Element contains a section on Commercial Land Uses with a list of commercial terms (page VI-14). The term "Residential Market" is described as:

An individual store or very small mixed-use building/center focused on local pedestrian traffic. Residential scale and design are critical to integrate these uses into the residential area. Uses may include corner grocery stores, small service businesses (social service outlets, daycares), Laundromats, and small coffee shops or community gathering places.

- The Land Use Element of the Plan contains Policy LU-5.9 (page VI-19) that states:

Allow residential markets, subject to the following development and design standards:

- *Locate small-scale neighborhood retail and personal services where local economic demand and local citizen acceptance are demonstrated.*
- *Provide the minimum amount of off-street parking necessary to serve market customers.*
- *Ensure that building design is compatible with the neighborhood in size, scale and character.*

- Implementation Strategy LU.6. (page XIV-5) states:

Amend the Zoning Code as appropriate to establish standards for residential markets.

Staff Conclusions

- It is understandable that some people do not think the BN zoning reflects the description of Residential Markets in the Comprehensive Plan. However, the 1996 rezone of the eastern half of the site from RS 8.5 to BN suggests that the BN zoning was regarded at that time as an appropriate implementation of the Comprehensive Plan. The EIS for Potala Village will further analyze whether the project complies with the Residential Market description and if not how changes could be made to bring it into greater conformance.
- Amendments to the Comprehensive Plan and/or Zoning Code would help make policies and regulations more consistent with each other.

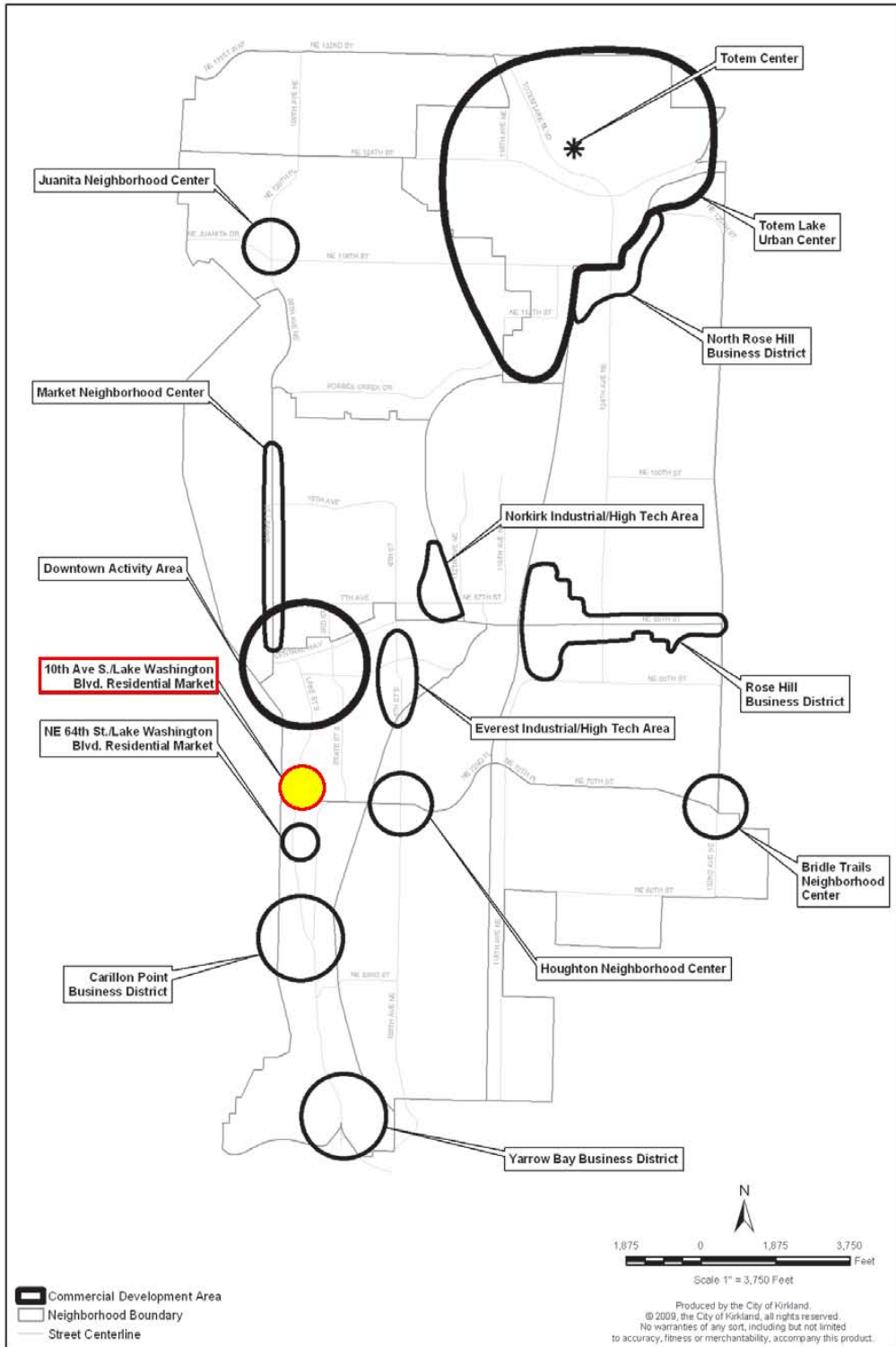


Figure LU-2: Commercial Areas

D. Staff Response to Public Comments:

The City Council has received several emails on various issues pertaining to the Potala Village proposal. Below are responses to these emails:

- One comment suggested that inadequate notice was provided for the 2010 SMP.

WAC 173-26-191(3)(b) states that RCW 90.58.130 must be met for the participation process of an SMP update. This includes making reasonable efforts to inform the people of the state about the SMP program and encouraging participation by all persons, private groups and entities showing an interest in the SMP as well as federal, state and local governments. The City was required to document its method of participation to ensure that all interested parties have a meaningful opportunity to participate. In addition, the provisions in WAC 173-26-100 applied which require at a minimum one public hearing and a published notice in the local newspaper.

Extensive public outreach was provided over the 5-year SMP process. Several notices were mailed to property owners within 200 feet of the lake, including the kick-off meeting, the property owner workshop and the public hearings. Two notices were mailed to property owners within 500 feet of the lake. Notices were provided to environmental groups, neighborhood and business associations and other interested groups. In addition, notices were updated regularly on the public notice signs installed in the City waterfront parks. An extensive SMP web page was created and maintained with links to the draft regulations and maps, and a large listserv group developed over time. A boat tour, several open houses, a property owner's workshop, and numerous public meetings provided ample opportunity to participate.

Federal, state local governments and affected Indian tribes were notified of the City's SMP process and draft regulations. A detailed public participation log was maintained over the entire SMP process and submitted to the Department of Ecology with the draft SMP. Both the City Council and the Department of Ecology approved the public outreach program in advance of preparation of the draft SMP regulations.

- One comment said the change in shoreline designation for the site from Urban Residential 1 to Urban Mixed environment was a spot zone and the Potala Village site should have been designated as Residential environment.

The shoreline designations for all of the properties within 200 feet of the shoreline and those containing associated wetlands were changed with the 2010 SMP. These changes were mandated by the Department of Ecology. Six areas along the shoreline are designated as Mixed Use, including the Potala Village site. The six areas either contained commercial uses or urban shoreline parks where a variety of future accessory park uses are contemplated. Thus, the designation change was not a spot zone.

The Medium to High Residential environment is not appropriate for the subject property because the designation only permits water-oriented commercial uses and not mixed use,

general retail or office as allowed in the BN zone. No site containing commercial uses is designated as Residential environment.

- One comment said that the correction to the residential density for the BN shoreline regulations in the SMP amendments approved on June 7, 2011 was not highlighted in the staff memorandum to the City Council.

In 2011, the City adopted amendments to the 2010 SMP to reflect the newly annexed area. In addition, the SMP amendments included several corrections to the 2010 SMP. All of the changes were underlined in the adopting ordinance. The staff memorandum of May 4, 2011 only highlighted new issues with policy implications staff thought the City Council might want to discuss. For the reasons noted above, staff considered the change to the SMP density regulation for the BN Zone to be a correction and not a change with a policy implication. All of the density standards in the shoreline regulations are supposed to match the associated density standards in the use zone charts of the Zoning Code. In the case of the BN Zone, the shoreline density standard did not match the density standard in the use zone charts for the BN Zone and the correction made them consistent.

- One email raised concerns about the staff comments in the pre-submittal meeting on December 3, 2009, (PRE09-00072). The email addressed the following issues:
 - The email stated that Planning staff had highlighted the 12 units per acre in the Moss Bay Neighborhood Plan text and thus the density applied to the site.

The pre-submittal analysis document prepared by staff included the Moss Bay Neighborhood Plan as background information with several highlighted sections, including the 12 units per acre discussion. In the Potential Issues/Code Requirement section of the pre-submittal document, staff did not state that the number of units proposed needed to be reduced to 12 units per acre. The document stated that the regulations in the BN Zone, which includes density standards, and other regulations in the Zoning Code must be met

- The email noted that Planning staff said that 2.2 parking stalls were required per residential unit (1.7 per unit plus 0.5 for guest parking), but that less was proposed.

The KZC 105.105 requires 1.7 parking stalls per residential unit and up to 0.5 stalls per unit for guest parking. The number of required guest parking stalls is determined by the City on a case by case basis depending on several factors. For this project, 43 guest residential parking stalls are proposed which is a ratio of 0.30 per unit in addition to use of the commercial parking in the evenings. Guest parking will be evaluated in the EIS and will be addressed with the building permit and not the shoreline application.

- Parking shown on the plans made up much of the 75% of the required ground floor retail in the proposal submitted for the meeting and parking should not be included in the 75% ground floor area calculation.

Parking is part of a use and is included in the gross floor area when it is located in a building. When a regulation says that 75% of the ground floor must be retail, this includes the parking area. Similar retail ground floor regulations are required for other commercial zones and the

City has consistently included parking in meeting the required ground floor area for approved development projects.

If you have any questions on the project, please contact Teresa Swan at 425-587-3258, or at tswan@kirklandwa.gov.

cc: Robin Jenkinson, City Attorney