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SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

In Re the Matter of City of Kirkland Shoreline  
Development Permit File No. SHR11-00002

NO.

PETITION FOR REVIEW

GMA ADVOCATES AGAINST  
UNPLANNED, UNCOORDINATED,  
INCOMPATIBLE PIECEMEAL  
DEVELOPMENT, an unincorporated  
association

Petitioner,

v.

POTALA VILLAGE KIRKLAND, LLC, a  
Washington limited liability company;  
LOBSANG DARGEY and TAMARA  
AGASSI DARGEY, a married couple;  
THE CITY OF KIRKLAND

Defendants.

**1. Petitioner:**

GMA Advocates Against Unplanned, Uncoordinated, Incompatible Piecemeal Development,  
an unincorporated association ("GMA Advocates").

Name of Representative: Atis Freimanis

Mailing Address: 10108 NE 68<sup>th</sup> St. #4, Kirkland, WA 98033

Telephone No. (425) 985-0238

Email Address: [freimanis@sbcglobal.net](mailto:freimanis@sbcglobal.net)

PETITION FOR REVIEW

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Socius Law Group, PLLC

ATTORNEYS

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1 Petitioner, which is a group of property owners in the vicinity of the project, is seeking  
2 review of the City of Kirkland Planning Examiner's approval of Shoreline Substantial  
3 Development Permit City File No. SHR11-00002 ("SDP").

4 **2. Applicant:** The applicant listed in the decision is Lobsang Dargey. Since other  
5 actions, including lawsuits initiated by this developer with regard to this project, have  
6 included his wife, Tamara Agassi Dargey and the company Potala Village Kirkland, LLC,  
7 they have been included as respondents as well.<sup>1</sup>

9 **3. Decision Reviewed.** Petitioner is requesting review of the granting of the Shoreline  
10 Development Permit, City File No. SHR11-0002 by the City of Kirkland, dated January 17,  
11 2012 and received by the Department of Ecology on January 23, 2013. A copy of the  
12 Decision and is attached hereto as Exhibit A. The attachments referenced therein are  
13 included on the flash drive accompanying this Petition. The SDP Application is not  
14 included in the SDP's list of attachments and has changed over time. Attached as Exhibits  
15 B1-B2 are two versions of the application of which petitioners are aware.

17 **4. Reasons for Review.** Petitioner believes the agency decision is unjust and unlawful  
18 for the following reasons:

19 A. The SDP application was not complete at the time of review and to  
20 petitioner's knowledge is not yet complete. Kirkland Municipal Code ("KMC") 141.60 (1)  
21 indicates "Who May Apply - Any person may, personally or through an agent, apply for a  
22 decision regarding property that he/she owns." It does not say "owns or leases." This is  
23 consistent with KMC 20.12.200 which defines a complete application to include: "A verified  
24

25 <sup>1</sup> Potala Village Kirkland, LLC v. City of Kirkland, King County Case No. 12-2-18714-2 and Potala Village  
26 Kirkland LLC v. City of Kirkland, King County Case No. 13-2-01716-4 SEA. Potala Village Kirkland, LLC  
owns 2 of the three tax parcels. Luella O'Conner owns the third.

1 statement by the applicant that the property affected by the application is in the exclusive  
2 ownership of the applicant or that the applicant has submitted the application with the  
3 consent of all owners of the affected property.” [Emphasis added.] One of the subject parcels  
4 is owned by Luella O’Conner. The SDP application was not signed by Ms. O’Conner, nor  
5 was there any indication from Ms. O’Conner, as required on the Application Form, that  
6 Lobsang Dargey is her designated agent. See page 3 of application entitled as follows:

7  
8 Application Form: Substantial Development  
9 Conditional Use or Variance Permit

10 Statement of Ownership/Designation of Agent

11 No agent is designated and Luella O’Conner is not listed as a property owner, nor is  
12 her signature included. The application is therefore not complete and should not be  
13 considered or granted until it is complete. WAC 173-27-180 may set forth the minimum  
14 required for a complete application, but the Kirkland code requires more. Not just a  
15 “proponent” but an owner or their designated agent, neither of which is present here.

16  
17 B. The SDP fails to address and provide a condition with respect to the  
18 potentially hazardous interface between the parking garage traffic ingress/egress and  
19 pedestrian and bicycle traffic moving along Lake St. S. SMP Policy SA-2.5(a) recognizes  
20 that in the Urban Mixed zone, priority should be given to water-dependent, water-related or  
21 water-enjoyment uses. The bicycle lanes and sidewalks along Lake St. S. are a perfect  
22 example of a water-enjoyment use with bicyclists and pedestrians able to travel to the various  
23 parks along Lake Washington Blvd./Lake St. S. or to just enjoy the lake views as they pass  
24 by. That enjoyment is diminished greatly if the bicyclists and pedestrians are dodging cars  
25 entering and exiting private driveways. This potential conflict would be mitigated by  
26

1 requiring that the parking access for the project be located on 10<sup>th</sup> Ave. S. Analysis of SMP  
2 Policy SA-22.2 was not included in the SDP. This policy recognizes that limitations on the  
3 number of new curb cuts and consolidation of driveways, where possible would assist in this  
4 policy, which is aimed at improving the function of Lake Washington Blvd./Lake St. S. for  
5 scenic views and recreational activities as well as for local access and as a commuting route.  
6 As proposed the driveway will create conflict with neighboring driveways, both on adjacent  
7 properties and across the street.  
8

9 C. The SDP fails to consider Policy SA-7.5, which emphasizes that limited  
10 commercial uses should be located in the area that includes the project and that such uses  
11 should be "limited and designed to assure that they do not adversely impact the natural  
12 environment and interfere with nearby uses." As proposed, the project greatly exceeds the  
13 bulk, scale, and density of nearby uses, has a greater intensity of use and creates potential  
14 traffic conflicts.  
15

16 D. The SDP fails to incorporate FEIS mitigation measures regarding land use  
17 (Section 1.6.1), plans and policies (Section 1.6.2), aesthetics (Section 1.6.3), transportation  
18 (Section 1.6.4) as conditions even though some of these mitigation measures directly pertain  
19 to portions of the project within the shoreline and are supported by SMP policies including  
20 SA-2.5(c).  
21

22 E. SDP condition 2(d) fails to properly condition onsite parking, which will  
23 likely result in overflow parking for both upland and shoreland uses overflowing as street  
24 parking onto Lake St. S., which is located within the shoreline, and which is contrary to SA-  
25 3.5.  
26

1 F. SDP Condition 3(d) with respect to remediation of onsite contaminated soils,  
2 fails to adequately address the timing of the issuance and receipt of the No Further Action  
3 Letter with respect to construction. In order to adequately protect Lake Washington from  
4 contamination, the condition should require that the NFA be obtained prior to issuance of the  
5 building permit or any land surface modification permit that is not related to the remediation.  
6

7 G. The SDP fails to condition the permit upon a Lot Consolidation Restrictive  
8 Covenant, which must be signed by all owners and allows the properties to be treated as a  
9 single lot. Without such a covenant, each lot under separate ownership should be treated  
10 separately and include its own side yard setbacks, landscaping buffers and other requirements  
11 that would be necessary if the lots were developed separately. A copy of the City's Lot  
12 Consolidation Covenant is attached as Exhibit C.  
13

14 H. The SDP is inconsistent in its use of mandatory language. Conditions of  
15 Approval contained in Section I. use the word "shall", whereas later conclusions for the  
16 corresponding issue use the word "should", which could be interpreted as something less  
17 than mandatory. For example, Condition 3 dealing with remediation of contaminated soils  
18 indicates that the applicant "shall hire a consulting firm. . .", whereas the corresponding  
19 Conclusion No. 4(a) indicates that the applicant "should" hire a consulting firm.  
20

21 **5. Relevent Facts.** The Petition is based upon the following pertinent facts:

22 A. The subject property consists of three tax parcels: 935490-0220, 935490-  
23 0240 and 082505-9233. Parcels 935490-0220 and 935490-0240 are owned by Potala Village  
24 Kirkland, LLC. Parcel 082505-9233 is owned by Luella O'Conner. The portion of the SDP  
25 Application for the purpose of designating an agent was blank and has not been signed by  
26 Ms. O'Conner.

1           B.     The property is zoned Urban Mixed for shoreline purposes. It is an isolated  
2 island of property zoned Urban Mixed, chiefly due to existing and prior neighborhood  
3 oriented commercial uses, such as a restaurant, drycleaner and service station, in an area  
4 otherwise designated for Residential-Medium to High and Urban Conservancy uses. The  
5 proposed project seeks to significantly increase the intensity of the use at this location and is  
6 of a bulk and scale that is inconsistent with the surrounding properties. The size and design  
7 of the project have corresponding impacts on traffic safety, reductions in landscaping, and  
8 potential policing impacts, all with the shoreline area.

9           C.     The property is located on the east side of Lake St. S and slopes away from  
10 that street. The property is on the corner of 10<sup>th</sup> Avenue S., a street which goes up slope  
11 from Lake St. S. to reach residential uses located on the hillside.

12           D.     Lake St. S., onto which the proposed project's driveway exits, is a major  
13 arterial. It contains bicycle lanes and sidewalks on both sides and is a major commute route.  
14 The project driveway would interrupt the flow of both pedestrians and bicycles and is  
15 potentially hazardous for both. The driveway also has the potential to disrupt traffic flow.  
16 The Kirkland Comprehensive Plan and Public Works Policies have recognized that ingress  
17 and egress out of this area are problematic.

18           E.     Petitioner and other citizens have consistently objected to the density, height,  
19 bulk and scale of the proposed project as being inconsistent with the Residential Market  
20 designation within the Kirkland Comprehensive Plan, as well as out of scale in size and  
21 massing and of much higher density and more intense use than the surrounding  
22 neighborhood.

23           F.     The EIS identifies several mitigation measures to address those issues, but  
24 notes that there may be significant unavoidable adverse impacts due to the projects  
25 inconsistency with the adjacent residential uses.  
26

1 **6. Request for Relief.** Petitioner seeks the following relief:

2 A. Denial of the SDP because the application is not yet complete.

3 B. In the event, the SDP is not denied, then modification of the SDP to include  
4 additional conditions to address the issues raised herein and to make the language  
5 consistently mandatory as to those conditions.

6 **7. Service of the Petition.** Copies of this Petition were served upon the Respondents,  
7 the Department of Ecology and the Attorney General by mailing copies thereof on February  
8 12, 2013. A Declaration of Mailing accompanies this Petition.

9  
10 DATED this 12<sup>th</sup> day of February, 2013.

11 SOCIUS LAW GROUP, PLLC

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13  
14 By Denise M. Hamel  
15 Brian E. Lawler, WSBA #8149  
16 Denise M. Hamel, WSBA #20996  
17 Attorneys for Petitioner  
18  
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CERTIFICATE OF MAILING

The undersigned declares under penalty of perjury under the laws of the State of Washington that on February 12, 2013, a copy of the attached Petition for Review was deposited in the United States Mail with proper first class postage attached, addressed to the following individuals/entities:

State Department of Ecology  
300 Desmond Drive  
PO Box 47600  
Olympia, WA 98504-7600

State Attorney General  
Ecology Division  
2425 Bristol Court SW 2nd Floor.  
PO Box 40117  
Olympia, WA 98504-0117

City of Kirkland  
Planning & Community Development Dept.  
123 5th Avenue  
Kirkland, WA 98033

Potala Village Kirkland, LLC  
Lobsang Dargey, Registered Agent  
PO Box 13261  
Everett, WA 98201

Lobsang Dargey & Tamara Agassi Dargey  
10453 NE 28th Place  
Bellevue, WA 98004

DATED this 12th day of February, 2013.



Minna Schiller