SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

GMA ADVOCATES AGAINST UNPLANNED, UNCOORDINATED, INCOMPATIBLE PIECEMEAL DEVELOPMENT, an unincorporated association, Appellant, v. POTALA VILLAGE KIRKLAND, LLC a Washington limited liability company; LOBSANG DARGEY and TAMARA DARGEY, a married couple, and THE CITY OF KIRKLAND, Respondents.	SHB No. 13-002 ORDER ON MOTIONS

INTRODUCTION

GMA Advocates Against Unplanned, Uncoordinated, Incompatible Piecemeal Development (GMA Advocates) filed a petition with the Shorelines Hearings Board (Board) for review of a City of Kirkland (Kirkland) decision approving a shoreline substantial development permit requested by Potala Village Kirkland, LLC and Lobsang Dargey (Potala Village). Kirkland and Potala Village filed separate motions to dismiss. GMA Advocates filed a motion for partial summary judgment.

The Board hearing this matter was comprised of Joan M. Marchioro, Presiding, and Board Members Pamela Krueger and Jennifer Gregerson.[1] The Board reviewed the following materials in deliberating on the motions:

1. City of Kirkland's Motion to Dismiss;
2. Declaration of Teresa Swan In Support Of City's Motion To Dismiss, with Exhibits A-N;
3. Potala Village and Dargey Dispositive Motion To Dismiss;
4. Petitioner's Motion For Partial Summary Judgment;
5. Declaration of Brian E. Lawler In Support Of Petitioner's Motion For Partial Summary Judgment, with Attachments A-D;
6. City of Kirkland's Response To GMA Advocates Motion For Partial Summary Judgment;
7. Supplemental Declaration of Teresa Swan In Response To GMA Advocates' Motion For Partial Summary Judgment, with Exhibits 1-3;
8. Potala Village and Dargey Response To GMA Advocates' Motion For Partial Summary Judgment;
9. Declaration of Duana T. Koloušková In Support Of Response To GMA Advocates' Motion For Partial Summary Judgment, with Exhibit A;
10. Petitioner's Response To City Of Kirkland's Motion To Dismiss, with Attachment 1;
11. Declaration of Thomas H. Grimm In Support Of Petitioner's Response In Opposition To Dargey/PVK's Motion To Dismiss, with attachment;
12. Declaration of Artemis Freimanis In Support Of Petitioner's Response In Opposition To Dargey/PVK's Motion To Dismiss;

[1] A three-member panel is hearing this case pursuant to RCW 90.58.185.

13. Declaration of Karen Levenson In Support Of Petitioner's Response In Opposition To Dargey/PVK's Motion To Dismiss;

14. Declaration of Denise Hamel, with attachment;

15. Petitioner's Response To Dargey/PVK Motion To Dismiss;

16. City of Kirkland's Reply In Support Of Motion To Dismiss;

17. Second Supplemental Declaration of Teresa Swan In Support Of The City's Motion to Dismiss, with Exhibit A.1;

18. Petitioner's Reply To City's and Dargey/PVK's Responses To Petitioner's Motion For Summary Judgment, with Exhibits A-C.

The following issues, which were submitted by the parties and set out in the Pre-Hearing Order, are the subject of the parties' motions:

1. Is the SDP application incomplete and therefore the Decision invalid because the subject property is owned by more than one individual and the applicant has failed to provide required authority to act on behalf of the other owner as required by Kirkland Municipal Code (KMC) Chapter 141.60(1) and the City of Kirkland substantial development application form and WAC 173-27-130 and 180.

3. Does the Shorelines Hearings Board have jurisdiction to determine the proper location of the site access driveway for the proposed project?

4. Is the Director's Notice of Decision (Decision) inconsistent with Kirkland's Shoreline Master Program (SMP) and the Shoreline Management Act (SMA) where the Decision allows ingress and egress from parking directly onto Lake St. S., creating potential conflict hazards for bicycles and pedestrians within the shoreline area?

5. Is the Decision inconsistent with Kirkland's SMP and the SMA, when the Decision fails to include analysis of SMP Policy SA-22.2, which recognizes that limitations on the number of new curb cuts and consolidation of driveways where possible should be done to improve the function of Lake Washington Blvd./Lake St. S. for scenic views and recreational activities and for local access and as a commuting route?

6. Should the Decision be modified to include those FEIS mitigation measures regarding land use, places and policies, aesthetics, and transportation as conditions when those mitigation measures directly pertain to portions of the project within the shoreline jurisdiction and are supported by SMP policies?

7. Is parking condition 2(d) of the Decision inconsistent with SMP SA-3.5 and SA-22.2?

8. Should the Decision be modified to include consideration of SMP Policy SA-7.5 which emphasizes that limited commercial uses should be located in the area that includes the project and that such uses should be "limited and designated to assure that they do not adversely impact the natural environment and interfere with nearby uses."

9. Should the Decision be modified to include consideration of the Kirkland Comprehensive Plan's Residential Market – Commercial designation, which anticipated very limited commercial development at this location, when the Kirkland Municipal Code Shoreline Management provision KMC 83.70(2) requires that in the event the provisions of the Shoreline Management Act or Chapter 83 conflict with other applicable City policies and regulations, "the more restrictive shall prevail."

Based on the record and evidence before the Board on the motions for partial summary judgment, the Board enters the following decision:

FACTS

Potala Village proposes to construct a mixed-use development with 143 apartments, approximately 6,200 square feet of general and medical office use, and underground parking at the southeast corner of 10th Avenue South and Lake Street South in Kirkland, Washington. Swan Decl. at ¶¶ 5-6, Ex. A. Because a portion of the project is within Kirkland's shoreland area, Potala Village was required to obtain a shoreline substantial development permit (SSDP) from Kirkland. Swan Decl. at ¶ 4. On February 23, 2011, Potala Village submitted its application to Kirkland for an SSDP along with a checklist for environmental review of the

entire project under the state environmental policy act (SEPA). Swan Decl. at ¶ 4, Ex. A. On May 11, 2011, Kirkland notified Potala Village that its application was deemed complete. Swan Decl., Ex. B.

Reviewing the project under SEPA, Kirkland initially issued a Determination of Nonsignificance (DNS). Swan Decl., Ex. C. Kirkland subsequently withdrew the DNS and required Potala Village to prepare an environmental impact statement (EIS). Swan Decl., Ex. D. A draft EIS was issued on July 12, 2012. Swan Decl. at ¶ 9. A 43-day public comment period was provided and a public hearing on the project was held on August 24, 2012. *Id.* The final EIS was issued on November 2, 2012. *Id.* at ¶ 13. On January 17, 2013, Kirkland issued its Notice of Decision on Potala Village's SSDP. *Id.* at ¶ 16. GMA Advocates filed a timely petition with the Board requesting review of the SSDP. GMA Advocates' appeal did not include a challenge to the final EIS.

ANALYSIS

A. Potala Village's Motion To Dismiss For Lack Of Standing

The SMA allows any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 to seek review from the Shorelines Hearings Board. RCW 90.58.180(1). The term "person aggrieved" has been interpreted to include anyone with standing to sue under existing law. *Anderson v. Pierce County*, 86 Wn. App. 290, 299, 936 P.2d 432 (1997).

Here, the Petitioner is an organization, not an individual. To establish that an organization has representational standing, the organization must show that (1) the members of

the organization would otherwise have standing to sue in their own right; and (2) that the interests that the organization seeks to protect are germane to its purpose. *International Ass'n of Firefighters, Local 1789 v. Spokane Airports*, 146 Wn.2d 207, 213-214, 45 P.3d 186 (2002).[2]

To establish that a member of GMA Advocates would have standing to sue in their own right, GMA Advocates must show that a member is a "person aggrieved" within the meaning of RCW 90.58.180. This requires the Friends to show that a member(s) has suffered an injury in fact within the zone of interests protected by the statute and that the Board has authority to redress the injury suffered. *CORE v. Olympia*, 33 Wn. App. 677, 657 P.2d 790 (1983); *Alexander v. City of Port Angeles*, SHB Nos. 02-027 & 02-028 (Summary Judgment, March 13, 2003).

"To show an injury in fact, the plaintiff must allege specific and perceptible harm." *Suquamish Indian Tribe v. Kitsap County*, 92 Wn. App. 816, 829, 965 P.2d 636 (1998). The "injury in fact" test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself (or herself) among the injured. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 563, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). A party asserting general enforcement of a statute does not have standing unless he or she is "perceptibly affected by the unlawful action in question." *Id.* at 566. Moreover, standing is not conferred to a party alleging a conjectural or hypothetical injury. *Snohomish County Property Rights Alliance v. Snohomish County*, 76 Wash. App. 44, 53, 882 P.2d 807 (1994).

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[2] A third element of the test, that neither claim asserted nor relief requested requires the participation of the organization's individual members, is not typically applied by the Board. *See Spokane Rock Products Inc. v. Spokane County Air Pollution Control Authority,* PCHB No. 05-127 (Order Dismissing Spokane Rock Products, Inc., November 16, 2005)(COL 3).

The party asserting standing bears the burden of establishing each of these elements. *Center for Environmental Law & Policy v. Department of Ecology,* PCHB No. 96-165 (Order on Department of Natural Resources Motion to Dismiss, Jan. 7, 1997)(COL 4, citing *Lujan* at 561).

Potala Village argues that GMA Advocates failed to establish standing because it had not established that its members would have standing to sue in their own right or that the interests the organization seeks to protect are germane to its purpose. Potala Village Motion to Dismiss at 3-7. In response, GMA Advocates stated that it is comprised of neighbors directly impacted by the project and who have participated in the public process for this project specifically and land use issues impacting the neighborhood generally. GMA Advocates Response at 3-4. GMA Advocates also submitted the declarations of three of its members setting forth their concerns with the project and its anticipated impact on their recreational use and enjoyment of the shoreline. Freimanis Decl., Levenson Decl., Grimm Decl. The alleged shoreline impacts included increased traffic, parking concerns, conflicts between vehicles and pedestrians/bicycles, the loss of trees and vegetation, and increased stormwater runoff into Lake Washington, all of which would cause a general loss of enjoyment of the shoreline. *Id.* Potala Village did not file a reply.

The objectives of the SMA are broad and the types of interests protected are diverse. The policies of the SMA contemplate "protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto." RCW 90.58.020. The recreational and environmental claims the members of GMA Advocates raised in their

declarations are issues of concern under the SMA. *See Dierker v. City of Olympia*, SHB No. 08-020 (Order Granting Summary Judgment, Dec. 8, 2008)(holding that injury to the appellants recreational use of the shoreline from the proposed project constituted personal and concrete injury within the scope of interests protected under the SMA). GMA Advocates successfully demonstrated an injury in fact falling within the zone of interests of the SMA. The Board concludes that GMA Advocates has standing to appeal the SSDP and, accordingly, Potala Village's motion to dismiss based on the petitioners' lack of standing is denied.

B. Summary Judgment Standard

Summary judgment is a procedure available to avoid unnecessary trials where formal issues cannot be factually supported and cannot lead to, or result in, a favorable outcome to the opposing party. *Jacobsen v. State*, 89 Wn.2d 104, 108, 569 P.2d 1152 (1977). The summary judgment procedure is designed to eliminate trial if only questions of law remain for resolution. Summary judgment is appropriate when the only controversy involves the meaning of statutes, and neither party contests the facts relevant to a legal determination. *Rainier Nat'l Bank v. Security State Bank*, 59 Wn. App. 161, 164, 796 P.2d 443 (1990), *review denied,* 117 Wn.2d 1004 (1991).

The party moving for summary judgment must show there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Magula v. Benton Franklin Title Co., Inc.*, 131 Wn.2d 171, 182, 930 P.2d 307 (1997). A material fact in a summary judgment proceeding is one affecting the outcome under the governing law. *Eriks v. Denver*, 118 Wn.2d 451, 456, 824 P.2d 1207 (1992). If the moving party satisfies its burden,

then the non-moving party must present evidence demonstrating that material facts are in dispute. *Atherton Condo Ass'n v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990), reconsideration denied (1991). In a summary judgment proceeding, all facts and reasonable inferences must be construed in favor of the non-moving party. *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068 (2002). However, the non-moving party cannot rely on argumentative assertions, speculative statements or conclusory allegations to defeat summary judgment. *Traeger v. City of Spokane*, SHB No. 07-010 (Order Granting Summary Judgment, September 25, 2007). The board will enter summary judgment for a non-moving party under appropriate circumstances. *Impecoven v. Department of Revenue*, 120 Wn.2d 357, 365, 842 P.2d 470 (1992).

C. GMA Advocates Motion for Partial Summary Judgment

The location of the proposed project is three parcels on Lake Street South. Swan Decl., Ex. A. Two of the parcels are owned by Potala Village. The third parcel is owned by Luella O'Connor. Lawler Decl., Att. A. The SSDP application was submitted by Potala Village and signed by Mr. Dargey as applicant and Property Owner # 1. Swan Decl., Ex. A. GMA Advocates asserts that, because the application was not also signed by Ms. O'Connor, it was incomplete as it failed to meet the requirements of Kirkland Zoning Code (KZC) 141.60(1), the Kirkland SSDP application form, and WAC 173-27-180. GMA Advocates argues that the lack of this information results in an application that is fundamentally flawed and one that fails to meet the minimum standards of state and local regulations. GMA Advocates Mot. at 5-7.

In response, Kirkland stated that, at the time the SSDP was submitted, it evaluated the question of whether Ms. O'Connor's signature on the SSDP application was necessary. Suppl. Swan Decl. at ¶ 4. Kirkland subsequently obtained a copy of the ground lease between Ms. O'Connor and Potala Village. *Id.*, Ex. 1. Under the terms of the lease, Potala Village was required within 90 days of execution to begin the process to obtain all permits and approvals necessary for construction of the project. Suppl. Swan Decl., Ex. 1 at 10. Based on the materials obtained, Kirkland determined that Mr. Dargey was the primary proponent of the project and subsequently deemed the application complete. Suppl. Swan Decl. at ¶ 6. Potala Village's response to the motion echoed the arguments put forward by Kirkland.

Under RCW 90.58.180, the Board has jurisdiction over the granting, denying, or rescinding of a permit issued under the SMA. This includes a determination of whether an application for a shoreline substantial development permit is complete. *See Friends of Seaview v. Pacific County*, SHB No. 05-017 (Order Granting Summary Judgment, Oct. 19, 2005); *Laccinole v. City of Bellevue*, SHB No. 03-025 (2004). For a shoreline substantial development permit to be deemed complete it must "contain sufficient detail to enable the local government and the Board to determine consistency" with the policies of the SMA and its implementing regulations. *Hayes v. Yount*, 87 Wn.2d 280, 295-96, 552 P.2d 1038 (1976); *North Park Neighbors v. City of Long Beach*, SHB No. 05-030 (Findings of Fact, Conclusions of Law and Order, Sept. 28, 2006). Determination of whether an application meets applicable statutory requirements is based on the record developed below and before the Board. *Eklund v. San Juan*

County, SHB No. 99-029 (2000). The Board uses a harmless error standard in reviewing the completeness of a shoreline development application. *North Park* at 11 (COL VI).

Issue 1 questions whether the application met regulatory requirements for completeness when it did not include the name, address and signature of Ms. O'Connor, one of the property owners. The Board agrees with Kirkland and Potala Village that the SSDP application was complete under WAC 173-27-180 and KZC 141.60(1). The identity of Ms. O'Connor was known and the lease agreement between her and Potala Village was obtained and made part of the SSDP file. Suppl. Swan Decl. at ¶ 4. The record establishes that the information gathered by Kirkland staff during its initial review of the application through final decision contained sufficient detail to enable the local government and the Board to determine consistency with the SMA and Kirkland's SMP. The Board grants summary judgment to Kirkland and Potala Village on Issue 1.

D. Kirkland's Motion to Dismiss

Kirkland moved to dismiss Issues 3-9, supporting its motion with declarations. If, on a motion to dismiss, "matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56." CR 12(b) and (c). Accordingly, because the Board has considered declarations and other materials outside the pleadings, the analysis will proceed in a manner similar to a motion for summary judgment. As discussed below, the Board concludes that there are material facts in dispute on Issues 3-8 and, therefore, those issues will proceed to hearing. The Board further concludes that summary judgment is appropriate on Issue 9.

1. Disputed material issues of fact preclude summary judgment on Issues 3-8.

Issues 3-8 raise questions over the interpretation and application of provisions of Kirkland's SMP to aspects of the property, including location of the site access driveway, parking, applicable mitigation measures and appropriateness of commercial uses at this site. Kirkland moved to dismiss these issues, arguing that its interpretation of the SMP support its decision granting the SSDP. Kirkland's Mot. at 4-12. GMA Advocates asserts that the motion should be denied because Kirkland is misinterpreting and misapplying the provisions of its SMP. GMA Advocates Resp. at 3-11. Cases before the Board are de novo. WAC 461-08-500(1). While much of the evidence from the proceedings below may ultimately be admitted in the record of the Board, Kirkland cannot simply rely on the evidence from the proceedings and arguments made below to prevail before the Board now. Although GMA Advocates will have the burden of proof at the hearing, Respondents must still submit evidence to the Board that supports a de novo decision and addresses the merits of the GMA Advocates' claims.

Having considered the materials submitted and the arguments of the parties, the Board concludes that there are material issues of fact in dispute with regard to Issues 3-8. The record before the Board at this stage of the litigation is not sufficiently developed to permit the granting of summary judgment on any of those issues. Therefore, the Board denies Kirkland's motion to dismiss Issues 3-8 and those issues are forwarded to the hearing on the merits.

2. Comprehensive Plan provision not incorporated into SMP and is, therefore, not applicable to SSDP (Issue 9).

Issue 9 raises the question of the project's compliance with Kirkland Comprehensive Plan's Residential Market – Commercial designation. Kirkland seeks dismissal of this issue, arguing that the policies of the Land Use Element of the Comprehensive Plan do not apply as they have not been incorporated into its SMP. Kirkland Mot. at 12-15. According to Kirkland, there is no clear language in the SMP incorporating the Land Use Element or other elements of the Comprehensive Plan, nor is there evidence that the Department of Ecology (Ecology) reviewed and approved those provisions. *Id.* at 14-15. While acknowledging that the Land Use Element of the Comprehensive Plan has not been incorporated into Kirkland's SMP, GMA Advocates argues that the Comprehensive Plan can be used as a tool to evaluate and condition the project under Kirkland's SEPA policies, Kirkland Municipal Code 24.04.038(b). GMA Advocates Resp. at 12-14.

The Board concludes that the Residential Market – Commercial designation provision of the Kirkland's Comprehensive Plan have not been incorporated into its SMP nor approved of by Ecology. The Board has consistently ruled that it only has jurisdiction over local ordinances that are expressly incorporated into a local SMP and which have also been reviewed and approved by Ecology. *See, e.g., Pacific Builders Development, Inc. v. Chelan County*, SHB No. 11-022 and 11-025. The evidence presented does not support the conclusion that Kirkland incorporated those policy provisions of its Comprehensive Plan into its SMP. The Board grants summary judgment to Kirkland on Issue 9 and that issue is dismissed from the case.

ORDER

In accordance with the analysis above, Potala Village's motion to dismiss is DENIED; summary judgment is GRANTED to Kirkland and Potala Village on Issues 1 and 9; and Kirkland's motion to dismiss as to Issues 3-8 is DENIED and those issues will proceed to the hearing on the merits.

SO ORDERED this 8th day of August, 2013.

SHORELINES HEARINGS BOARD

JOAN M. MARCHIORO, PRESIDING

PAMELA KRUEGER, MEMBER

JENNIFER GREGERSON, MEMBER

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SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

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

Appellant,

v.

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

Respondents.

SHB No. 13-002

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This matter came on for hearing before the Shorelines Hearings Board (Board) on June 19 and 20, 2013, in Kirkland, Washington. The Petitioner, GMA Advocates Against Unplanned, Uncoordinated, Incompatible Piecemeal Development (GMA Advocates), appealed a shoreline permit approval issued by the City of Kirkland (Kirkland) for construction of a mixed-use development by Respondents Potala Village Kirkland, LLC and Lobsang and Tamara Dargey (Potala Village).

The Board hearing this case was comprised of Joan M. Marchioro, Presiding, Pamela Krueger and Jennifer Gregerson.[1] Attorney Brian E. Lawler represented GMA Advocates. City Attorney Robin S. Jenkinson represented Kirkland. Attorney Duana T. Koloušková represented

[1] A three-member panel is hearing this case pursuant to RCW 90.58.185.

Potala Village. Bibiana Van Dyk of Olympia Court Reporters of Olympia, Washington provided court reporting services.

The Board received the sworn testimony of witnesses, exhibits, and argument on behalf of the parties. The Board also viewed the site of the proposed development. Having fully considered this record, the Board enters the following:

FINDINGS OF FACT

1.

Potala Village proposes to construct a mixed-use development at the southeast corner of 10th Avenue South and Lake Street South in Kirkland, Washington. Ex. R-13. A portion of the site is located within the shoreline of Lake Washington. Swan Testimony; Ex. R-9. Under the Kirkland Shoreline Master Program (SMP), which was approved by the Department of Ecology (Ecology) on July 26, 2010, the shoreline environment designation for the site was Urban Mixed. Swan Testimony; Ex. R-9. Pursuant to the Kirkland Zoning Code (KZC), the purpose of the Urban Mixed designation is "[t]o provide for high-intensity uses, including residential, commercial, recreational, transportation and mixed-use developments." KZC 83.140. The designation of the site as Urban Mixed in the SMP was not appealed. Swan Testimony.

2.

The proposed mixed-use development will include 143 apartments, approximately 6,200 square feet of general and medical office use, and underground parking. Ex. R-13. Because a portion of the project is within Kirkland's shoreland area, Potala Village was required to obtain a shoreline substantial development permit (SSDP) from Kirkland. Swan Testimony. On

February 23, 2011, Potala Village submitted its application to Kirkland for an SSDP. Swan Testimony; Ex. R-13. Potala Village submitted a checklist for environmental review of the entire project under the State Environmental Policy Act (SEPA) to Kirkland on April 26, 2011. Ex. R-16. After requesting and obtaining additional information from the applicant, on May 11, 2011, Kirkland notified Potala Village that its application was deemed complete. Swan Testimony; Ex. R-1 (Attachment 26).

3.

On June 15, 2011, Kirkland issued a SEPA Determination of Nonsignificance (DNS) for the project. Ex. R-14. Kirkland received a number of written comments on the SSDP application and DNS throughout the public comment period. Swan Testimony; Ex. R-1 (Attachments 27-56). Three appeals of the DNS were filed. Swan Testimony. The appeals did not move forward because, on August 4, 2011, Kirkland withdrew the DNS and issued a Determination of Significance and Request for Comments on Scope of an Environmental Impact Statement (EIS). Swan Testimony; Ex. R-15.

4.

On July 12, 2012, Kirkland issued a Draft EIS for the project. Ex. R-6. Numerous written public comments were submitted to Kirkland on the Draft EIS and on the application for the SSDP. Exs. R-1 (Attachments 27-56), R-7 (Chapter 4). A public hearing was held on the Draft EIS. Ex. R-7 (Chapter 4.4). The public comments identified several concerns with the project including (a) the density/scale of the building as compared to neighboring properties, (b) stormwater runoff to Lake Washington, (c) loss of vegetation and habitat, (d) potential

contamination at the project site from prior businesses, (e) impacts to traffic along Lake Street and in the neighborhood from additional cars accessing the project, (f) impacts to availability of on-street parking, and (g) safety of pedestrians and bicyclists in light of the additional vehicle traffic at the site. Exs. R-1 (Attachments 27-56), R-7 (Chapter 4). A Final EIS was issued on November 2, 2012. Ex. R-6. Chapter 4 of the Final EIS sets forth Kirkland's responses to the public comments received in writing and at the public hearing. *Id.* (Chapter 4).

5.

On January 17, 2013, Kirkland issued a Notice of Decision approving the SSDP for the project with conditions. Ex. R-1. The SSDP was subsequently appealed by GMA Advocates to the Board. The Final EIS was not appealed.

6.

At the hearing on the appeal, GMA Advocates presented the testimony of several of its members who are residents of Kirkland and neighbors of the project site. Levenson Testimony, Freimanis Testimony, Taylor Testimony, Pilcher Testimony, Lamb Testimony, Grimm Testimony. The residents testified of their use and enjoyment of the shoreline. The uses included walking, running and bicycling along Lake Street, kayaking in Lake Washington, and observing birds and nature. *Id.* See also Exs. P-12, P-30, P-31 (photographs illustrating recreational uses of shoreline of Lake Washington). The testimony and evidence presented detailed the residents' concerns with the project, which mirrored those discussed in the public comments submitted on the SSDP application and Draft EIS described above. Levenson

Testimony, Freimanis Testimony, Taylor Testimony, Pilcher Testimony, Lamb Testimony, Grimm Testimony; Exs. P-13, P-14, P-19, P-28, P-29, P-34.

7.

Of particular concern to the neighbors is the increase in traffic on Lake Street and the potential for conflict between pedestrians/bicyclists and vehicles entering and exiting the building. Levenson Testimony, Freimanis Testimony, Taylor Testimony, Pilcher Testimony, Lamb Testimony, Grimm Testimony. These concerns are heightened by the possibility that the building access driveway will be on Lake Street. If the driveway is placed at that location, the neighbors testified that it will interfere with pedestrians walking along the eastside of Lake Street, potentially conflict with bicyclists in the bicycle lane, and will cause further slowing of traffic on Lake Street during commute hours. *Id.* GMA Advocates stated that, under Kirkland's Driveway Policy, the Public Works Director could deny access onto an arterial street such as Lake Street. Levenson Testimony; Ex. P-18. According to GMA Advocates, the site access driveway should be moved to 10th Street. Levenson Testimony, Fremanis Testimony.

8.

The buildings in the vicinity of the project site include single family residences, condominiums and apartments. Levenson Testimony; Exs. P-34, R-6 at 3.1-1 – 3.1-11. The nearby condominium and apartment buildings are smaller in size than Potala Village. Levenson Testimony; Ex. R-6 at 3.1-1 – 3.1-11. The neighbors testified that they are quite concerned with the scale of the project as it is physically much larger and provides more density than other

multi-family buildings in the neighborhood and, as such, is not compatible with its surroundings. Levenson Testimony; Grimm Testimony.

9.

Kirkland presented the testimony of Senior Planner Teresa Swan, who was assigned to review the SSDP application for the project. Swan Testimony. Ms. Swan testified regarding process for reviewing the application, which included the SEPA analysis, responding to comments received on the SSDP application and Draft EIS, and issuance of the Final EIS. *Id.* The analysis involved a review of numerous documents, as well as a determination of the applicability and consistency with Kirkland's shoreline goals, policies and regulations. *Id.* Addressing concerns raised about the project's size and fit in the neighborhood, Ms. Swan testified that Kirkland does not have shoreline policies or regulations governing compatibility with adjacent residential uses or the bulk/mass of a structure. *Id.* With respect to the location of the site access driveway, Ms. Swan testified that the SSDP does not establish where the driveway will be located. *Id.*; Nguyen Testimony. Kirkland's Driveway Policy (Ex. P-18) is not part of Kirkland's SMP. Nguyen Testimony. Because of various limitations associated with locating the access driveway on 10th Street (e.g., setback from intersection), Kirkland staff directed Potala Village to locate the driveway on Lake Street. NguyenTestimony, Stewart Testimony. A final decision on the location of the site access driveway will be addressed by other permits. Swan Testimony, Nguyen Testimony.

10.

The impact of increased vehicle traffic created by the project was analyzed in the EIS process. Exs. R-6, R-7. Traffic counts were gathered during the week of May 12, 2012. Barnes Testimony; Ex. R-6 at 3.4-4. Applying the standards established by Kirkland, the project met the level of service and site distance standards. Barnes Testimony; Ex. R-6 at 3.4-12 – 3.4-49. Kirkland also performed a parking demand analysis and determined that sufficient parking was provided by the project. *Id.* The Final EIS identified measures to mitigate for impacts related to transportation, which included frontage improvements to enhance the non-motorized facilities at the site and parking management strategies to minimize on-street parking by project residents and visitors. Barnes Testimony; Ex. R-7 at 1-14. Based on its analysis, Kirkland concluded that the project was consistent with the policies of its SMP and implementing regulations in the KZC. *Id.*; Ex. R-1 at 6-15.

11.

A portion of the project site is currently occupied by a single family residence and a commercial building containing a dry cleaner and restaurant. Ex. R-6 at 3.2-10, D-2 at 7-9. The remainder of the site is a vacant lot that was the former location of a service station that had at least three underground storage tanks. *Id.* Concerns have been raised about potential contamination of the site by the current and former tenants. Exs. R-1, R-7. Potala Village is participating in Ecology's Voluntary Cleanup Program. Stewart Testimony. A consultant for Potala Village prepared a Phase I Environmental Site Assessment. Ex. D-2. At this time the property is not a mandatory compliance property under the state Model Toxics Control Act

(MTCA). Stewart Testimony. Justin Stewart, Project Manager for Potala Village, testified that the developer intended to continue to pursue a voluntary cleanup of the site but he did not have sufficient knowledge of the MTCA process to know whether a No-Further Action letter would be required. *Id.* Through the SSDP, Kirkland imposed conditions on Potala Village to ensure that site remediation met the requirements of MTCA. Ex. R-1 at 4.

12.

The EISs analyzed a no action alternative as well as a proposed action alternative. Exs. R-6, R-7. In addition to those alternatives, the EISs considered alternative development scenarios and/or development thresholds to address potential impacts. Exs. R-6 (Sections 3.3, 3.4), R-7 (Sections 2.6, 3.2, 3.5). The Final EIS also proposes measures to mitigate for project impacts. Munkberg Testimony; Ex. R-7 (Section 1.6). Discussing application of the policies of Kirkland's Comprehensive Plan to the project, the Final EIS states that even if the proposed mitigation is required, local residents may not accept the project, resulting in continued inconsistency with the Residential Market Designation of the Comprehensive Plan. Ex. R-7 at 3-19. The Final EIS concluded that with mitigation, the project will not have significant adverse impacts as to land use, aesthetics, transportation and construction. Munkberg Testimony; Ex. R-7 at 1-18 – 1-19.

13.

The SSDP includes mitigation measures from the Final EIS that are encompassed in Kirkland's SMP. Swan Testimony. Other mitigation measures identified in the Final EIS can be required through other permits, such as the building permit. Swan Testimony, Munkberg

Testimony. Mr. Stewart testified that Potala Village is incorporating mitigation measures into its plan sheets for the building permit application. Stewart Testimony.

14.

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

Based upon the foregoing Findings of Fact, the Board enters the following:

CONCLUSIONS OF LAW

1.

The Board has jurisdiction over the parties and the subject matter of this case pursuant to RCW 90.58.180. GMA Advocates, as the appealing party, has the burden of proving the permit approval was inconsistent with the requirements of the Shoreline Management Act (SMA) and the City of Kirkland Shoreline Master Program (SMP). RCW 90.58.140(7). The Board considers the case *de novo*. WAC 461-08-500(1).

2.

The Pre-Hearing Order identified eleven legal issues for resolution in the case. The Board previously determined that Potala Village's application for the SDP was complete (Issue 1) and that the policies of the Land Use Element of Kirkland's Comprehensive Plan (Residential Market – Commercial designation) do not apply as they have not been incorporated into Kirkland's SMP (Issue 9). *See GMA Advocates v. Potala Village*, SHB No. 13-002 (Order On Motions, Aug. 8, 2013). The Board also ruled that GMA Advocates has standing to pursue this appeal. *Id.*

3.

The remaining legal issues identified in the Pre-Hearing Order (Issues 2, 3, 4, 5, 6, 7, 8, 10 and 11) were the subject of the hearing. Pursuant to RCW 90.58.140(2) and WAC 173-27-150(1), an SSDP shall be granted only when it is consistent with:

(a) The policies and procedures of the act;

(b) The provisions of this regulation; and

(c) The applicable master program adopted or approved for the area.

As detailed below, the Board concludes that the SSDP issued by Kirkland to Potala Village is consistent with the SMA, its implementing regulations and Kirkland's SMP.

Issue 2 – Completeness of Application

4.

In Issue 2, GMA Advocates questioned whether sufficient information was developed during the application process to make a determination of consistency with the SMA and Kirkland's SMP.[2] For a shoreline substantial development permit to be deemed complete it must "contain sufficient detail to enable the local government and the Board to determine consistency" with the policies of the SMA and its implementing regulations. *Hayes v. Yount*, 87 Wn.2d 280, 295-96, 552 P.2d 1038 (1976); *North Park Neighbors v. City of Long Beach*, SHB No. 05-030 (Findings of Fact, Conclusions of Law and Order, Sept. 28, 2006). Determination of whether an application meets applicable statutory requirements is based on the record developed

[2] Issue 2 states: "Whether sufficient information was developed during the permit process to provide an adequate basis for determining consistency with Shoreline Management Act (SMA) and Kirkland Shoreline Master Program (SMP)?"

below and before the Board. *Eklund v. San Juan County*, SHB No. 99-029 (2000). The Board uses a harmless error standard in reviewing the completeness of a shoreline development application. *North Park* at 11 (COL VI).

5.

The Board previously granted summary judgment to Kirkland and Potala Village on Issue 1, which questioned the completeness of the application. *GMA Advocates v. Potala Village*, SHB No. 13-002 (Order On Motions, Aug. 8, 2013). As a result of evidence submitted at the hearing, the Board further concludes that the evidence presented supports the Board's ruling on summary judgment that the permit application was complete and that Kirkland had sufficient information to determine whether the project complied with the applicable provisions of the SMA and Kirkland's SMP. Moreover, the evidence submitted to the Board at the hearing contained sufficient detail to enable the Board to determine consistency with the policies of the SMA and its implementing regulations. *Hayes*, 87 Wn.2d at 295-96. GMA Advocates failed to carry its burden of proof on this issue.

Issues 3, 4 and 5 – Location of Site Access Driveway

6.

The project currently proposes to locate the site access driveway on Lake Street. GMA Advocates opposed the driveway location, arguing that it will exacerbate existing traffic congestion on Lake Street and raise the potential for conflicts between pedestrians/bicyclists and vehicles. Levenson Testimony, Freimanis Testimony, Taylor Testimony, Pilcher Testimony, Lamb Testimony, Grimm Testimony. GMA Advocates asserted that Kirkland should require

Potala Village to relocate the site access driveway to 10th Street. Levenson Testimony, Freimanis Testimony.

7.

Kirkland presented evidence that the project's impact on traffic on Lake Street was analyzed in the EIS process. Barnes Testimony; Ex. R-6 (Section 3.4). The traffic analysis conducted for the EIS determined that the project met the level of service and site distance standards. Barnes Testimony; Ex. R-6 at 3.4-12 – 3.4-49. GMA Advocates did not present evidence demonstrating that the traffic analysis was incorrectly performed or that its conclusions were inaccurate.

8.

Issues 3, 4, and 5 address the site access driveway, questioning the Board's jurisdiction to determine its location, as well as asking the Board to determine whether that location is consistent with the SMA and Kirkland's SMP.[3] The Board has jurisdiction to hear a petition for review of a shoreline permitting decision and to determine if the decision is consistent with the SMA and applicable SMP. RCW 90.58.180. The SSDP at issue in this case approves the construction of a mixed-use building within the shoreline of Lake Washington that is designated

[3] Issues 3, 4, and 5 state:

3. Does the Shorelines Hearings Board have jurisdiction to determine the proper location of the site access driveway for the proposed project?

4. Is the Director's Notice of Decision (Decision) inconsistent with Kirkland's Shoreline Master Program (SMP) and the Shoreline Management Act (SMA) where the Decision allows ingress and egress from parking directly onto Lake St. S., creating potential conflict hazards for bicycles and pedestrians within the shoreline area?

5. Is the Decision inconsistent with Kirkland's SMP and the SMA, when the Decision fails to include analysis of SMP Policy SA-22.2, which recognizes that limitations on the number of new curb cuts and consolidation of driveways where possible should be done to improve the function of Lake Washington Blvd./Lake St. S. for scenic views and recreational activities and for local access and as a commuting route?

Urban Mixed under Kirkland's SMP. Exs. R-1, R-8. The building includes a driveway that provides access to underground parking for tenants and visitors. Ex. R-1. As the proposed use of the site is allowed by the SMA (WAC 173-26-241) and Kirkland's SMP (KZC 83.170), the Board has jurisdiction to review the location of the site access driveway.

9.

The SSDP does not prescribe the location of the site access driveway. Ex. R-1. Neither the SMA nor Kirkland's SMP precludes the location of the site access driveway as is presently proposed. Kirkland's Driveway Policy is not part of the City's SMP. Nguyen Testimony. Absent express incorporation into the SMP and approval by Ecology, the Board does not have jurisdiction over local ordinances or development policies. *See, e.g., Pacific Builders Development, Inc. v. Chelan County*, SHB No. 11-022 and 11-025. Kirkland staff testified that the final location of the site access driveway will be determined by other permits. Swan Testimony, Nguyen Testimony. The Board concludes that neither the SMA nor the City's SMP required the SSDP to prescribe a specific location for the site access driveway. As written, the SSDP is consistent with the SMA and Kirkland's SMP on this issue even though the final location of the site access driveway remains for later determination.

10.

GMA Advocates asserted that by allowing the site access driveway to be located on Lake Street, the project did not comply with Policy SA-2.5(b) or SA-22.2 of Kirkland's SMP. Policy SA-2.5 discusses the types of properties to designate as Urban Mixed and identifies management policies to guide development in those areas. Ex. R-9. Under Policy SA-2.5(b), "[c]ontinuous

public access along the shoreline should be provided, preserved or enhanced." *Id.* Kirkland staff testified that it interpreted this policy as applying to properties on the west side of Lake Washington Boulevard/Lake Street. Swan Testimony. Kirkland's shoreline regulations support this interpretation. See KZC 83.140 (view corridors are to be provided on developments located between principal arterials and Lake Washington); KZC 83.420 (pedestrian access to be provided along water's edge and from water's edge to right-of-way). Even if the Board were to adopt a different interpretation of Policy SA-2.5(b), the Board concludes that the Policy is not being violated in this case. The project will upgrade the existing sidewalk and pedestrians will be free to travel along Lake Street in front of the site, as will bicyclists using the bicycle lane. Vehicles currently access the site, crossing over the existing sidewalk and bicycle lane. The fact that additional vehicles may access the site in the future does not eliminate the existing, continuous public access along the eastside of Lake Street. The SSDP is not contrary to Kirkland SMP Policy SA-2.5(b).

11.

GMA Advocates also asserted that the SSDP was inconsistent with Policy SA-22.2 of Kirkland's SMP, which addresses enhancing Lake Washington Boulevard and Lake Street to improve their function for scenic views, recreational activities, for local access and as a commute route. Ex. R-9. After discussing the impacts from the increase in traffic on Lake Street and Lake Washington Boulevard over time, Policy SA-22.2 identifies improvements that "would be desirable", including "[l]imitations on the number of new curb cuts and consolidation of driveways, where possible." *Id.* Although the final location of the site access driveway has not

been determined, the project as proposed involves the consolidation of four driveways into one. Swan Testimony. No additional curb cuts will be made and one on 10th Street will be eliminated. Stewart Testimony. The Board concludes that the elimination of three (3) existing curb cuts provides support that the project is consistent with Policy SA-22.2 because it will not involve any new curb cuts and consolidates existing driveways into a single driveway.

12.

Through its arguments on these issues, GMA Advocates appeared to be challenging the adequacy of the Final EIS and its determination that the project will not cause significant adverse impacts to Lake Street. However, the Final EIS was not appealed. The Board concludes that Kirkland properly relied upon the unchallenged EIS in rendering its decision on Potala Village's SSDP application.

Issue 6 – Final EIS Mitigation Measures

13.

The Final EIS evaluated the entire project and included various mitigation measures to address its impacts. Ex. R-7 (Section 1.6). Through Issue 6, GMA Advocates questioned whether the SSDP should have imposed as conditions of approval mitigation measures from the Final EIS for land use, plans and policies, aesthetics and transportation.[4] The SSDP imposed mitigation measures relevant to the SMA and Kirkland's SMP. Ex. R-1 at 3-4. GMA Advocates did not cite controlling authority under which the Board could impose mitigation related to

[4] Issue 6 states: "Should the Decision be modified to include those FEIS mitigation measures regarding land use, places and policies, aesthetics, and transportation as conditions when those mitigation measures directly pertain to portions of the project within the shoreline jurisdiction and are supported by SMP policies?"

aspects of the project that are outside of the shoreline area or are not encompassed by the SMA or Kirkland's SMP. The Board finds that GMA Advocates did not carry its burden on Issue 6. However, that conclusion does not foreclose the imposition of mitigation measures from the Final EIS through other permits required for the project.

Issue 7 - Parking

14.

Parking at the project will be provided in an underground parking garage that is two and one-half parking levels. Ex. R-6 at 1-1. Both the Draft and Final EISs analyzed the parking needs of the project and the quantity provided by the parking garage. Exs. R-6 at 3.4-41 – 3.4-43; R-7 at 3-1– 3-18. The project initially proposed 316 parking spaces. Ex. R-7 at 3-18. Based on the results of the parking analysis, the Final EIS included as a mitigation measure that the project provide a minimum of 244 parking spaces to meet typical peak parking demand. Ex. R-7 at 3-13 – 3-18. Pursuant to Condition 2(d) of the SSDP, Potala Village is required to include in its building permit application a parking plan that is consistent with the Final EIS's parking mitigation measure. Ex. R-1 at 3.

15.

Issue 7 asks whether SSDP Condition 2(d) is consistent with Policies SA-3.5 and SA-22.2 of Kirkland's SMP.[5] GMA Advocates argued that the project violates this policy because the parking provided is insufficient to accommodate the tenants and visitors, resulting in increased on-street parking that will deprive other shoreline users of parking space. Levenson

[5] Issue 7 states: "Is parking condition 2(d) of the Decision inconsistent with SMP SA-3.5 and SA-22.2?"

Testimony. Kirkland provided testimony regarding the parking analysis performed for the EIS process. According to that analysis, the parking provided by the project exceeds demand resulting in a small chance of overflow parking. Barnes Testimony. Mitigation measures can be implemented to address the potential for on-street parking by building tenants, such as bundling parking with leases and reserving spaces for visitors. *Id.*

16.

Under Kirkland's SMP, subsurface parking is allowed in the shoreline. KZC 83.440. Policy SA-3.5 provides that parking in the shoreline should be limited. Analysis of parking needs for the project was conducted during the EIS process, with the Final EIS concluding that the number of parking spaces originally proposed should be reduced. GMA Advocates did not challenge the parking analysis in the Final EIS or provide any evidence that the analysis was flawed. The project satisfies Kirkland SMP Policy SA-3.5 to reduce parking in the shoreline.

17.

With respect to the Policy SA-22.2, no evidence or argument was presented establishing that this policy applied to parking. As discussed above, Policy SA-22.2 discusses measures to enhance Lake Washington Boulevard and Lake Street. Neither the policy statement nor the supporting text mentions parking. The Board concludes that Policy SA-22.2 does not apply to SSDP Condition 2(d).

Issue 8 – Applicability of Policy SA-7.5

18.

Issue 8 asks whether the Notice of Decision should be modified to include consideration of Policy SA-7.5, in particular its provision stating that commercial uses in the area that includes the project should be "limited and designed to assure that they do not adversely impact the natural environment and interfere with nearby uses."[6] GMA Advocates argued that the Notice of Decision should have included an analysis of this policy and requested that the Board vacate the SSDP and require a new proposal which addresses its concerns about proposed uses, lack of landscaping, density, bulk, scale and impacts to Lake Street South and public access. Levenson Testimony.

19.

Kirkland responded that Policy SA-7.5 does not apply to areas designated Urban Mixed because that designation does not limit commercial uses. Swan Testimony. Rather, the policy applies to the Residential-Medium/High shoreline environment designation, which only allows limited commercial uses so long as public access to and use of the shoreline is enhanced. *Id.*; KZC 83.130. Additionally, Kirkland asserted that, similar to Policy SA-2.5(b), Policy SA-7.5 only applies to properties on the west side of Lake Street South. Swan Testimony.

20.

Policy SA-7.5 of Kirkland's SMP provides:

[6] Issue 8 states: "Should the Decision be modified to include consideration of SMP Policy SA-7.5 which emphasizes that limited commercial uses should be located in the area that includes the project and that such uses should be 'limited and designated to assure that they do not adversely impact the natural environment and interfere with nearby uses.'"

> ***Allow limited commercial uses in the area located between the Central Business District and Planned Area 15 if public access to and use of the shoreline is enhanced.***
>
> Commercial uses which are open to and will attract the general public to the shoreline, such as restaurants, are appropriate within the urban area located between Downtown Kirkland and Carillon Point. These uses will enhance the opportunity for public access to this segment of the shoreline, and will complement neighboring shoreline parks and, as a result, should be encouraged. To assure that these uses enhance the opportunity for the public to take advantage of the shoreline, these uses should include amenities where the public can view and enjoy the shoreline. These uses should also be limited and designed to assure that they do not adversely impact the natural environment and interfere with nearby uses.

While not specifically excluding properties on the eastside of Lake Street South, the language of Policy SA-7.5 can be read to be limited to those properties that are along the actual shoreline of Lake Washington. Furthermore, when read in conjunction with the definitions of the shoreline environment designation in Kirkland's Zoning Code, the Board finds that Kirkland's interpretation of Policy SA-7.5 is not unreasonable. The Board concludes that Policy SA-7.5 does not apply to the project. Furthermore, even if this policy were to apply, the proposal does provide for continuous public access in the shoreline area through sidewalks and bicycle lanes that are a part of the proposal.

Issue 10 – Receipt of No Further Action Letter

21.

Public comments received during the shoreline permitting and EIS process expressed concern that the project site may have been contaminated by its current and/or former tenants. Exs. R-1 (Attachments 27-56), R-7 (Chapter 4). Both the Draft and Final EISs addressed

cleanup requirements in the event that the property is found to be contaminated and for removal of the underground storage tanks at the site. Exs. R-6 3.2-10 – 3.2-18; R-7 at 1-18. Condition 3 of the SSDP details actions that Potala Village must take to ensure compliance with the SMP's requirement to protect ground and surface water quality. Ex. R-1 at 4. Under Condition 3, Potala Village is required to provide Kirkland with a No Further Action (NFA) letter from Ecology as soon as it is issued. *Id.*

22.

Issue 10 raises the issuance of the NFA and whether the SSDP should be revised to require its receipt prior to the issuance of a building permit.[7] While arguing that the NFA letter should be obtained prior to issuance of the building permit, GMA Advocates provided no evidence or legal authority supporting a revision of Condition 3 on this point. As noted by the parties, cleanup of contaminated sites is the purview of Ecology. Ecology's oversight of any cleanup action and decision of when or if to issue an NFA letter is proper. The Board concludes that the requirements of Condition 3, which mandate the cleanup of any contamination and the implementation of Best Management Practices during any such cleanup, are consistent with the SMA and Kirkland's SMP.

[7] Issue 10 states: "Should Decision Condition 3(d) require that a No Further Action letter be obtained from the Department of Ecology prior to the issuance of any land surface modification permit or building permit that is not related to the remediation in order to protect Lake Washington from contamination?"

Issue 11 – Mandatory Condition Language

23.

Issue 11 asks whether language in certain SSDP conditions should be revised to make those conditions mandatory. At the hearing on the merits, the parties indicated that they had reached an agreement with respect to the wording of some of those conditions but not all. Pursuant to the Board's instructions, the parties submitted a written statement outlining their agreement. According to that document, the parties agreed to the following changes the SSDP:

Page 6, II Site and Neighborhood Context, B. Conclusions:

> With the building permit application, the applicant ~~should~~ *must* indicate the property size noted on the survey for the final plans.

Page 10 & 11, IV. Shoreline Policies, B. Conclusions:

> 3. Plans ~~should~~ *must* be submitted with the associated building permit . . .
> 4. Plans ~~should~~ *must* be submitted showing final building materials . . .

Page 14 V. Development Regulations, B. Conclusions

> 3. With the building permit, the applicant ~~should~~ *must* show a reduction in the number of on-site parking . . . [Note: By noting this inconsistency, Petitioner is not intending to waive the substance of this issue which is currently contested.]

24.

The parties could not reach agreement on changes to language related to the cleanup of the site contained in Section IV.B.5 and V.B.4 of the SSDP. As with the requirements of Condition 3, GMA Advocates failed to provide the Board with evidence that changes to those

provisions were necessary in order to render the SSDP consistent with the SMA and Kirkland's SMP. Consistent with its conclusion regarding the requirements of Condition 3, the Board concludes that the language contained in those portions of the SSDP related to site cleanup are consistent with the requirements of the SMA and Kirkland's SMP.

25.

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

Having so found and concluded, the Board enters the following

ORDER

The Board AFFIRMS Kirkland's SSDP issued to Potala Village. The Board also orders Kirkland to make revisions to the Notice of Decision per the stipulation of the parties entered into on July 26, 2013.

SO ORDERED this 8th day of August, 2013.

SHORELINES HEARINGS BOARD

JOAN M. MARCHIORO, PRESIDING

PAMELA KRUEGER, MEMBER

JENNIFER GREGERSON, MEMBER