



## CITY OF KIRKLAND

Planning and Community Development Department  
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**REVISED PURSUANT TO SHORELINES HEARINGS BOARD ORDER  
FOR SHB NO.13-002 APPEAL DATED AUGUST 8, 2013,  
AND STIPULATION REGARDING LEGAL ISSUE NO. 11**  
(Revisions shown in ~~strike-outs~~ and *italics*)

**CITY OF KIRKLAND  
NOTICE OF DECISION  
SHORLINE SUBSTANTIAL DEVELOPMENT PERMIT**

- Permit Application:** City File SHR11-00002 – Potala Village Mixed Use Development
- Location:** 1006 and 1020 Lake Street South and 21-10<sup>th</sup> Ave South (Parcel Nos. 9354900220, 9354900240 and 0825059233) within the Urban Mixed Shoreline Environment Designation.
- Applicant:** Lobsang Dargey
- Project Description:** Mixed use development containing 6,000 square feet of commercial space on the ground floor and 143 residential units on the upper floors with parking underground and behind the ground floor commercial space at a building height of 30 feet above average building elevation. Approximately 53 feet of the western portion of the site is within 200 feet of the ordinary high water mark of the Lake Washington. The site does not abut the Lake and is separated from the Lake by a major arterial and existing residential development. Five residential units, a portion of commercial space, up to 25 feet of the building, a sidewalk and landscaping would be located in the shoreland area. The site contains contaminated soil and underground storage tanks, possibly within the shoreland area, from the existing dry cleaners and a prior gas station.
- Review Process:** Process I, Planning Director decision
- Project Planner:** Teresa Swan, [tswan@kirklandwa.gov](mailto:tswan@kirklandwa.gov), 425-587-3258
- SEPA Determination:** A Determination of Non-Significance (DNS) was issued on 06/15/2011. The DNS was withdrawn and a Determination of Significance was issued on 08/04/2011. The project was placed on hold for six months until the applicant decided to move forward with preparation of a Draft Environmental Impact Statement (EIS). A Draft EIS was issued on 07/12/12, and a Final EIS was issued on 11/02/12.

**Department Decision: Approval with Conditions**



Eric Shields, Director  
Department of Planning and Community Development

Decision Date:	January 17, 2013	<i>Revised Date: August 12, 2013</i>
Appeal Deadline:	21 days after Department of Ecology receives this decision (date of filing)	

Pursuant to RCW 36.70B.130, affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

**Shoreline Permit and Relationship to Other Codes and Ordinances and to EIS**

A Shoreline Substantial Development Permit (SDP) is issued under the authority of the Shoreline Management Act (SMA) of Chapter 90.58 RCW and Chapter 173-26 WAC. A SDP must be consistent with the Shoreline Management Act (SMA) as implemented in the City's Shoreline Master Program (SMP). The City's SMP consists of the following documents:

- Shoreline Area Chapter of the Kirkland Comprehensive Plan
- Chapters 83 and 141 of the Kirkland Zoning Code (KZC)
- Kirkland Restoration Plan

A SDP must be found to be consistent with these three documents, where applicable. The Restoration Plan does not apply since the proposal does not abut the Lake. Other development regulations, construction codes and chapters of the Comprehensive Plan are not under the authority of the SMA and local SMP so a decision on a SDP does not include a review of those for consistency or compliance. Any future building permit application associated with an approved SDP is subject to all applicable regulations in the KZC and Kirkland Municipal Code (KMC). Pursuant to RCW 19.27.095(1), the building permit application will be subject to the zoning and land use control ordinances in effect on the date that a fully complete application is submitted.

As stated in Chapter 90.58.RCW and KZC 83.20, the SMA and the City's SMP applies only to those lands or portions of land extending landward 200 feet from the ordinary high water mark of Lake Washington and those lands within wetlands that drain into the Lake called "associated wetlands." The City does not have the authority to apply its SMP to those portions of a property that are outside of the shoreland area, except in the following limited circumstances:

- (1) Temporary erosion control measures, storm water detention, water quality treatment and storm water conveyance facilities apply to the entire site;
- (2) Pursuant to KZC 83.190.1.b, density within the shoreland area may be based on the total square footage of the units within the shoreland area using the average unit size in the development;
- (3) Pursuant to KZC 83.190.4.a.2., the portion of the building with the shoreland area must meet the maximum allowable height regulation in KZC 83.180 based on calculating the average building elevation for the entire site;
- (4) Pursuant to KZC 83.190.3.a.3., the lot coverage calculation may be based on the entire site or only the portion of the land within the shoreland area; and
- (5) Parking stalls required for the uses within the shoreland area may be located within the development that is outside of the shoreland area.

The Potala Village EIS was issued under Title 24 KMC and the State Environmental Policy Act (SEPA) Chapter 43.21C RCW. The Final EIS identified many mitigating measures. Only those mitigating measures that address issues under the authority of the City's SMP, however, can be a condition of the SDP permit and addressed in this decision. The SEPA Responsible Official may impose any of the mitigating measures identified in the Final EIS on any future building permit associated with the SDP.

## Appeals

Appeals of the City's decision may be filed with the State Shorelines Hearings Board as set forth in RCW 90.58.180. A 21-day appeal period begins on the date that the Department of Ecology receives the City's decision, referred to as the "filing date." In the event of an appeal, the Department of Ecology will notify the City and the applicant of the appeal. Construction pursuant to a permit shall not begin or be authorized until 21 days from the date of filing as defined in RCW 90.58.140 or until appeal proceedings are terminated if there is an appeal.

### **I. CONDITIONS OF APPROVAL**

1. This application is subject to the applicable requirements contained in the shoreline regulations of KZC Chapters 83 and 141. In addition, for the building permit associated with the SDP, the applicant is also subject to the applicable requirements of the Municipal Code, the building and construction codes, including the fire code, and the Zoning Code. Attachment 24, Development Regulations, is provided in this report to familiarize the applicant with some of the shoreline regulations. It is the responsibility of the applicant to ensure compliance with all applicable provisions contained in KZC Chapter 83. When a condition of approval conflicts with a development regulation in Attachment 24, the condition of approval shall be followed.
2. With the building permit submittal, the applicant shall provide the following:
  - a. Final plans that reflect the lot size shown on the survey (see Conclusion II. B below).
  - b. Final calculations for meeting the maximum allowable density within the shoreland area, lot coverage and building height as regulated under KZC 83.180 (see Conclusion V.B.2. below).
  - c. Final building material details with no reflective or mirrored materials for any portion of the building within the shoreland area as regulated under KZC 83.390.3 (see Conclusions IV.B.4. and V.B.1. below).
  - d. Parking plan that shows a reduction in the number of on-site parking stalls to the minimum required for the proposed uses pursuant to KZC 105.45 and/or 105.103 and based on the parking analysis in Section 3.4 of the Final EIS. A reduction in the number of parking stalls is identified as a mitigating measure in the Final EIS, Section 1.6 in Attachment 25 (see Conclusion V.B.3).
  - e. Screening plans for any outdoor storage and garbage and recycling receptacles to be located within the shoreland area and which would be visible from any street or public area defined in KZC 83.80.94, or public park as regulated under KZC 83.450 (see Conclusions IV.B.4. and V.B.1. below).
  - f. Screening plan for roof top mechanical equipment located within the shoreland area and visible from Lake Washington or a public use area defined in KZC 83.80.94 and as regulated under KZC 83.450 (see Conclusions IV.B.4. and V.B.1. below).

- g. Lighting plan and photometric site plan for all exterior lights located within the shoreland area as regulated under KZC 83.470. The plan shall show the lighting directed downward and have "fully shielded cut off" fixtures as defined by the Illuminating Engineering Society of North America or other appropriate measures. Exterior illumination of building façade within the shoreland area to enhance architectural features is not permitted (see Conclusions IV.B.4. and V.B.1. below).
  - h. Temporary lighting plan for the construction phase meeting KZC 83.470 to reduce glare on adjacent properties and as identified as a mitigating measure in the Final EIS, Section 1.6 in Attachment 25 (see Conclusions IV.B.4. and V.B.1. below).
  - i. Final storm water plan with provisions for temporary erosion control measures, storm water detention, water quality treatment and storm water conveyance facilities as regulated under KZC 83.480 and in accordance with the City's adopted Surface Water Design Manual (see Conclusions IV.B.3. and V.B.1. below).
3. The applicant shall take the following actions to ensure that site remediation meets the Washington Department of Ecology's Model Toxics Control Act (MTCA) rules and underground storage tanks removal regulations (see Conclusions IV.B.5. and V.B.4. below, and Draft EIS, pages 3.2-10 through 3.2-13 and Final EIS, Section 1.6 in Attachment 25).
- a. The applicant shall hire a consulting firm qualified in site remediation pursuant to WAC 173-340 and certified by the State to remove underground storage tanks pursuant to WAC 173-360 to develop the cleanup action plan, perform the site cleanup work and prepare the compliance documentation under the Department of Ecology's Voluntary Compliance Program.
  - b. Prior to issuance of the land surface modification permit for site remediation, the applicant shall:
    - 1) Enter into a three-party contract with the City and the City's designated consultant to pay for the consultant's charges to perform a peer review of the clean-up action plan, compliance reports and other documentation prepared by the applicant's consulting firm to confirm that site remediation is in compliance with the Department of Ecology's rules.
    - 2) Submit the cleanup action plan prepared by the applicant's consulting firm for City approval. The City may require changes to the clean-up action plan if the City determines that the plan is not in compliance with the Department of Ecology's rules on remediation.
  - c. Prior to issuance of the building permit, but excluding a shoring permit for site remediation, the applicant shall provide the City with the compliance report and other documentation affirmatively demonstrating that the cleanup complies with the Department of Ecology's rules for remediation and removal of underground storage tanks. The City may require additional site remediation and/or changes to the documentation if it determines that the work and/or documentation do not meet the Department of Ecology's rules for remediation and removal of underground storage.
  - d. A copy of the No Further Action opinion from the Department of Ecology shall be provided to the City as soon as it has been issued.
  - e. The Best Management Practices listed in Section 1.6 of the Final EIS shall be reflected in the site cleanup plan and implemented in the site remediation work. See Attachment 25.