



CITY OF KIRKLAND

Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033 - (425) 587-3225
www.kirklandwa.gov

**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 th 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 , 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 The DNS was withdrawn and a Determination of Significance was issued on 08/04/2011.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.

II. SITE AND NEIGHBORHOOD CONTEXT

A. Facts:

The following is a summary of the site and neighborhood context:

Shoreline Designation	Urban Mixed Shoreline Environment Designation
Location (abuts Lake or not)	Does not abut Lake Washington
Property Size	54,509 SF based on survey and 52,601 SF based on project plan sheet A1.1
Current Upland Land Use and Improvements	Pavement and part of a covered parking area are located within the shoreland area. The remainder of the site contains a single-family residence, restaurant and dry cleaners.
Current In-Water Structures	N/A
Shoreline Condition (bulkhead, natural or other)	N/A
Terrain	Slopes down to the west towards Lake Street South approximately 14 feet along the south boundary and 22 feet along the north boundary. About 10 feet of this grade change is contained within a steep slope that roughly bisects the site into east and west portions.
Vegetation in Shoreline Setback	N/A
Neighboring Shoreline Designation and Development	See below. Many of the pre-existing developments exceed the allowable residential density and thus are nonconforming.
<ul style="list-style-type: none"> • North 	Residential – Medium to High Shoreline Environment Designation. Developed with multifamily structures at three stories in height. Residential density standard is 3600 SF of land area per unit/12 units per acre.
<ul style="list-style-type: none"> • South 	Residential – Medium to High Shoreline Environment Designation. Developed with multifamily structures at three stories in height. Residential density standard is 3600 SF of land area per unit/12 units per acre.
<ul style="list-style-type: none"> • East 	Outside of shoreland area. Developed with multifamily and single family structures at heights varying from one to three stories. Residential density standard is 3600 SF of land area per unit/12 units per acre for multifamily area and 8500 SF for single family area.
<ul style="list-style-type: none"> • West 	Residential – Medium to High, Urban Conservancy (parks) and Aquatic (lake) Shoreline Environment Designations. Developed with multifamily and single family structures, and Marsh Park and Settler’s Landing Park. Lake Washington is west of these developments. Residential height varies from one to three stories. Residential density standard is 3600 SF of land area per unit/12 units per acre.

B. **Conclusions:**

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

III. CRITERIA FOR APPROVAL OF SUBSTANTIAL DEVELOPMENT PERMIT

- A. **Fact:** KZC 141.70 states that Shoreline Substantial Development permits must meet WAC 173-27-140 and WAC 173-27-150. The approval criteria are discussed below:
1. **WAC 173-27-140** establishes the following general review criteria that must be met:
 - a. No authorization to undertake use or development on shorelines of the state shall be granted by the local government unless upon review the use or development is consistent with the policy and provisions of the Shoreline Management Act and the master program.
 - b. No permit shall be issued for any new or expanded building or structure of more than thirty-five feet above average grade level on the shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines, except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.
 2. In its approval of the City's Shoreline Master Program (SMP) on July 26, 2010, the Department of Ecology determined that the City's SMP, including the shoreline regulations in Chapter KZC 83, implement the goals and policies of the State Shoreline Management Act (SMA) established in Chapter 90.58 RCW and implemented in WAC 173-26-176. Developments that meet or can be conditioned to meet the City's shoreline regulations and are consistent with the City's shoreline policies are then found to be consistent with the SMA.
 3. The proposed building height is 30 feet above building elevation (see Attachment 5). The term "average grade" under WAC 173-27-140 is equivalent to the City's measurement for average building elevation as regulated under KZC 83.190.4.a.2.
 4. **WAC 173-27-150** establishes that a substantial development permit may only be granted when the proposed development is consistent with all of the following:
 - a. The policies and procedures of the Shoreline Management Act (WAC 173-26-176) that outline the general goals that must be reflected in the local master plan.
 - b. The provisions of WAC 173-27 that outline the permit review process for Shoreline Development Permits.
 - c. Chapter 83 Kirkland Zoning Code (KZC).
 5. **WAC 173-27-110**, Notice Required, states that notice of application shall be given within 14 days of when the application is considered complete and a 30-day public comment period shall be provided. WAC 173-27-110 references RCW 36.70B.070, Determination of Completeness and Notice to Applicant, which states that an application is complete if it meets the procedural submission requirements of the local government and is sufficient for continued processing even though additional information may be required.

The application was submitted on February 23, 2011. The City mailed a letter to the applicant requesting corrected and additional information was mailed on March 18, 2011, and then again on April 13, 2011. The applicant provided the information and the application was deemed to be complete on May 11, 2011 (see Attachment 26).

A notice of application with a 30-day comment period was provided from May 19, 2011, through June 20, 2011.

6. Concerns were raised after the end of the comment period that the application should not have been determined to be complete because Mr. Dargey has a 100-year lease on the southern property (Parcel No. 0825059233) and the property owner did not sign the SDP application. Pursuant to WAC 173-27-180, Application Requirements for Substantial Development Permits, Subsection (1) states that "the applicant should be the owner of the property or primary proponent of the project."

The City determined that Mr. Dargey is a primary proponent of the southern property since he has a 100-year lease agreement.

7. Concerns were raised after the end of the comment period that the application should not have been determined to be complete because the application did not provide information about uses adjacent to the property. Pursuant to WAC 173-27-180, Application Requirements for Substantial Development Permits, Subsection (8) states that "a general description of the vicinity of the proposed project including identification of the adjacent uses, structures and improvements, intensity of development and physical characteristics" is to be included in the application.

The application materials include a close-up aerial map extending 200 feet surrounding the site showing the adjacent structures and improvements, intensity of development and physical characteristics. Based on the aerial map, staff noted on the application that the adjacent uses are single and multifamily residential and parks.

B. Conclusions:

1. As discussed further below, the project is consistent with WAC 173-27-140 and WAC 173-27-150. The project is consistent with the applicable policies of the City's SMP found in the Shoreline Area Chapter of the Comprehensive Plan and is consistent with the shoreline regulations in Chapter 83 KZC or can be made consistent through conditions placed on the SDP as discussed below in Sections V and VI.
2. The City determined that the information provided in the application materials was sufficient to make a determination of completeness and to continue with processing of the application. The application form is complete with the applicant signing as the proponent for the southern property and property owner of the northern two properties. The applicant provided information on the adjacent structures and intensity of the surrounding area.
3. The City met the requirements for processing of the application to date and providing public notice consistent with WAC 173-27-110, WAC 173-27-180 and RCW 36.70B.070. WAC 173-27-110 does not provide for a second comment period following completion of the requirements for SEPA or if an application is placed on hold.

IV. Shoreline Policies

Below is an analysis of the shoreline policies applicable to a mixed use development in an Urban Mixed Environment across the street from the Lake. WAC 173-27-140 requires that a proposal be consistent with the local shoreline master program which includes these policies.

A. **Fact:**

1. The following are the City shoreline policies found in the Shoreline Area Chapter of the Comprehensive Plan that are applicable to the project:
 - ***Policy SA-2.5:*** *Designate properties as Urban Mixed to provide for high-intensity land uses, including residential, commercial, recreational, transportation and mixed use developments.*
 - a. *Manage development so that it enhances and maintains the shorelines for a variety of urban uses, with priority given to water-dependent, water-related and water-enjoyment uses. Nonwater-oriented uses should not be allowed except as part of mixed-use developments, or in limited situations where they do not conflict with or limit opportunities for water-oriented uses, or on sites where there is no direct access to the shoreline.*
 - b. *Visual and physical access should be implemented whenever feasible and adverse ecological impacts can be avoided. Continuous public access along the shoreline should be provided, preserved or enhanced.*
 - c. *Aesthetic objectives should be implemented by means such as sign control regulations, appropriate development siting, screening and architectural standards and maintenance of natural vegetative buffers.*

Staff comments: Concerning Subsection a., the project may have nonwater-oriented uses since the property has no direct access to the Lake.

Subsection b. does not apply to the application since it does not have direct access to the Lake and is separated from the Lake by existing developments and a major arterial.

Concerning Subsection c., the shoreline regulations of Chapter 83 KZC contain regulations on prohibition of reflective or mirrored materials and the screening of garbage receptacles, roof top mechanical equipment and storage areas that should be met for any portion of the site within the shoreland area. The regulations on development siting and signage do not apply to the application since the project is upland of the Lake and does not have a required shoreline setback.

- ***Policy SA-3.4:*** *Incorporate low-impact development practices, where feasible, to reduce the amount of impervious surface area.*

See Shoreline Area Chapter in the Comprehensive Plan for supporting text, on Page XVI-12 in the Plan.

Staff comments: The project will be required to meet the 2009 King County Surface Water Design Manual, Section 5.2.1.3, if feasible, as determined by the City Public Works Department.

- **Policy SA-3.5:** *Limit parking within the shoreline area.*

Facilities providing public parking are permitted within the shoreline area as needed to support adjoining water-oriented uses. Private parking facilities should be allowed only as necessary to support an authorized use. All parking facilities, wherever possible, should be located out of the shoreline area.

Staff comments: Proposed parking is either outside of the shoreland area or underground. The project has no surface parking.

- **Policy SA-3.6:** *Minimize the aesthetic impacts of parking facilities.*

Parking areas should be placed, screened, and buffered to mitigate impacts through use of design techniques, such as location, lidding, landscaping or other similar design features to minimize the aesthetic impacts of parking facilities....

Staff comments: The parking for the project is fully enclosed within a structure. There is no surface parking.

- **Policy SA-3.7:** *Limit outdoor lighting levels in the shoreline to the minimum necessary for safe and effective use.*

See Shoreline Area Chapter of the Comprehensive Plan for supporting text, on Page XVI-12 in the Plan.

Staff comments: The shoreline regulations contain lighting standards to minimize impacts on neighboring developments and these regulations should be met for those portions of the project within the shoreland area. Some of the regulations will not apply to the project because they address lighting that affects the Lake or the shoreline pedestrian access easement. The project does not abut the Lake and is not required to have a pedestrian access easement.

- **Policy SA-7.7:** *Nonwater-oriented commercial development may be allowed if the site is physically separated from the shoreline by another property or right-of-way.*

There are several commercial properties which do not have direct frontage on Lake Washington, either because they are separated by right-of-way (Lake Washington Boulevard NE, Lake Street, and 98th Avenue NE) or by another property. These properties should be allowed a greater flexibility of uses, given the physical separation from the waterfront area.

Staff comments: The project may contain nonwater-oriented commercial uses, such as office, since the property is separated from the shoreline by other properties and the Lake Street South/Lake Washington Blvd right-of-way.

- **Policy SA-15.1:** *Manage storm water quantity to ensure protection of natural hydrology patterns and avoid or minimize impacts to streams.*

See Shoreline Area Chapter of the Comprehensive Plan for supporting text, on pages XVI-27 and -28.

Staff comments: Chapter 83 KZC contains regulations on stormwater that should be met to reduce impacts to the Lake and other properties in the shoreland area. These regulations are reflected in the 2009 King County Surface Water Design Manual that the applicant will be required to meet.

- **Policy SA-15.2:** *Prevent impacts to water quality.*

The degradation of water quality adversely impacts wildlife habitat and public health. This is particularly relevant to the shoreline since all of the regulated surface waters, both natural and piped, are discharged ultimately to Lake Washington. The water quality impact of storm water inputs is also significant. Storm water runoff carries pesticides, herbicides and fertilizers applied to lawns and sports fields; hydrocarbons and metals from vehicles; and sediments from construction sites, among other things. All of these things can harm fish and wildlife, their habitats, and humans.

Staff comments: The shoreline regulations in Chapter 83 KZC contain provisions on water quality and nonpoint pollution that should be met to reduce impacts to the Lake and other properties in the shoreland area.

The site contains contaminated soils and underground storage tanks that may be located within the shoreland area. The applicant will hire a consulting firm to perform the site cleanup following the Department of Ecology's Voluntary Cleanup Program.

The City does not have a staff person knowledgeable in site remediation. Therefore, the applicant should be required to pay for a consultant selected and hired by the City to do peer review of the work done by the applicant's consulting firm who will perform the site clean-up to ensure compliance with the Department of Ecology's rules for remediation and underground storage tank removal. This is an identified mitigating measure in the Final Environmental Impact Statement, Section 1.6 of Chapter 1. See Attachment 25.

Section 1.6 of the Final EIS identifies standards for Best Management Practices that should be followed for site remediation. See Attachment 25.

B. **Conclusions:**

1. The proposed uses are allowed within the Urban Mixed Shoreline Designation.
2. The proposed parking location and design meet the City's shoreline policies for parking in the shoreland area.
3. Plans ~~should~~ *must* be submitted with the associated building permit that show compliance with the City's adopted Surface Water Design Manual. This will result in consistency with the City's shoreline policies for water quality, storm water and nonpoint pollution.
4. Plans ~~should~~ *must* be submitted showing final building materials, screening of any storage services areas, roof top mechanical equipment and garbage and recycling receptacles, and exterior lighting fixtures for both the permanent

lighting and temporary construction lighting that meet KZC 83.390.3, 83.450 and 83.470 for those portions within the shoreland area.

5. To ensure that (a) the project does not degrade the water quality of the Lake, (b) site remediation is completed and (c) the underground storage tanks are removed in compliance with the Department of Ecology's rules, the applicant should:
 - a. Hire a consulting firm for the site cleanup that is qualified in site remediation and is certified by the State to remove underground storage tanks. This consulting firm should prepare a cleanup action plan prior to clean-up of the site, followed by a compliance report and any other documents once the remediation is completed. A building permit should not be issued, excluding a shoring permit related to site remediation, until the applicant has provided these documents to the City.
 - b. Sign a three party contract with the City and the City's designated consultant to pay the charges of that consultant to do peer review of the cleanup action plan and follow-up documents prepared by the applicant's consulting firm to ensure compliance.
 - c. Provide the City with a 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 tank prior to issuance of the building permit, but excluding a shoring permit for site remediation.
 - d. Make changes to the cleanup action plan and/or to the follow-up documentation after the clean-up work is completed if the City determines that they failed to show full compliance with the Department of Ecology's rules.
 - e. Reflect the Best Management Practices identified in Chapter 1 of the Potala Village Final EIS in the site cleanup plan and the remediation work. See Attachment 25.
 - f. Provide the City with a copy of the No Further Action opinion issued under the Voluntary Cleanup Program by the Department of Ecology once site cleanup is completed to confirm that the State requirements have been met.

V. DEVELOPMENT REGULATIONS

A. Facts:

The following is a review, in a checklist format, of compliance with the requirements in Chapter 83 KZC for mixed use developments in the Urban Mixed shoreline designation area.

Many of the regulations in Chapter 83 KZC do not apply since the project site is separated from the Lake by existing development and a major arterial, including but not limited to the requirements for a shoreline setback (KZC 83.180), shoreline vegetation (KZC 83.400), view corridor (KZC 83.410), public access (KZC 83.420) and signage (KZC 83.460).

Not Applicable	Complies as proposed	Complies as conditioned	Code Sections
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p><input checked="" type="checkbox"/> Permitted Uses: Commercial and Stacked Dwelling unit uses require a SDP in Urban Mixed shoreline environment (KZC 83.170). Office is permitted if located on the east side of Lake Washington Blvd/Lake Street South or abutting the Lake in a mixed use development with a water-dependent use (KZC 83.170, Footnote 10). <i>Applicant has applied for SDP.</i></p> <p><input checked="" type="checkbox"/> Maximum Allowable Density is 1,800 square feet land area per unit for portion within 200 feet of shoreline (KZC 83.180 and 83.190). <i>Application is subject to the City's SMP approved on July 26, 2010, and not under the SMP as amended approved on May 25, 2011, which changed the density standard from 1,800 square feet to no density limit. The site has 10,368 square feet of land area in the shoreland area. At 1,800 SF per unit, 5.76 units (can round up to six units) are allowed. Five units are currently proposed, but six may be shown on the building permit. See Attachment 19.</i></p> <p><input checked="" type="checkbox"/> Maximum Allowable Lot Coverage (total impervious areas) is 80% (KZC 83.180). <i>Plan currently shows lot coverage at 80% for the entire site. See Attachment 19.</i></p> <p><input checked="" type="checkbox"/> Maximum Allowable Height of Structure is 41 feet above average building elevation (KZC 83.180). <i>Plan currently shows a building height of 30 feet above average building elevation. (Note: The associated building permit must meet both the shoreline regulations of Chapter 83 KZC and applicable regulations in other chapters of the KZC, including, Chapter 40 for the Neighborhood Business zone which has a height limit of 30 feet above average building elevation). See Attachment 5.</i></p>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p>General Development Standards apply to the portion of the site within shorelines jurisdiction :</p> <p><input checked="" type="checkbox"/> Site and Building Design Standards: Building shall not incorporate materials that are reflective or mirrored (KZC 83.390.3). <i>The applicant has provided building elevation showing the proposed exterior building design. The materials do not appear to be reflective or mirrored. See Attachments 6 through 8.</i></p>

		<p><input checked="" type="checkbox"/> Parking (KZC 83.440.1 and 2.). Allows commercial parking lots but parking may not be primary use. Number of parking stalls shall meet Chapters 40 KZC (BNA zone) and Chapter 105 KZC (Parking Areas). <i>The applicant has provided a parking plan and parking calculations for each use. The Final EIS identifies a mitigating measure in Section 1.6 to reduce the number of on-site parking stalls to the minimum required in KZC 105.45 and/or 105.103. See Attachments 5, 9-11 and 25.</i></p> <p><input checked="" type="checkbox"/> Screening of Storage and Service Areas, Mechanical Equipment and Garbage Receptacles (KZC 83.450). This section contains standards for screening of storage areas, mechanical equipment and garbage receptacles from adjacent uses. <i>Garbage receptacles are shown to be located outside of the shoreland area and within the building. Roof top mechanical equipment has not been identified on the plans at this time. No storage or service area is shown on the plans within the shoreland area. See Attachments 11 and 13.</i></p> <p><input checked="" type="checkbox"/> Lighting (KZC 83.470). Standards for direction and shielding, light levels, height of light fixture and other standards are provided to minimize glare onto adjacent properties. <i>The SDP application does not require that an exterior lighting plan be submitted, but a plan will be required with the building permit submittal. The Final EIS, Section 1.6, identifies a mitigating measure of reducing light and glare impacts on adjacent uses during construction. See Attachment 25.</i></p> <p><input checked="" type="checkbox"/> Water Quality, Stormwater and Nonpoint Pollution (KZC 83.480). This section contains provisions for prevention, control and treatment to protect and maintain surface and/or ground water quantity and quality. <i>The applicant has provided a preliminary Stormwater Prevention and Pollution Plan and drainage and water quality report. See Attachments 22 and 23. The Final EIS has identified a mitigating measure in Section 1.6 requiring the hiring of a consultant to oversee compliance with the Department of Ecology's MTCA rules for remediation of contaminated soils and groundwater and following the Best Management Practices for remediation. See Attachment 25.</i></p>
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B. Conclusions:

1. The City's SDP application does not require details on lighting fixtures, building materials or screening of certain elements, or a final storm water plan. Therefore, with the building permit submittal, the applicant must show compliance with the following SMP requirements:
 - Exterior lighting fixtures for both the permanent fixtures and temporary construction lighting that minimizes glare onto adjacent properties for any portion of the development within the shoreland area
 - Building materials with no reflective or mirrored elements for any portion of the development within the shoreland area

- Roof-top mechanical equipment, garbage and recycling receptacles, and service storage areas, if any, screened from adjacent properties and the street for any portion of the development within the shoreland area
 - Storm water plan for the entire site with provisions for temporary erosion control measures, storm water detention, water quality treatment and storm water conveyance facilities for the entire development in accordance with the City's adopted Surface Water Design Manual
2. The SDP plans show compliance with the provisions in Chapter 83 KZC for maximum residential density, lot coverage and building height. With the building permit, the applicant must show the final calculations on the plans for:
 - Maximum allowable density of 1800 square feet of land area per unit within the shoreland area
 - Lot coverage for either the portion within the shoreland area or the entire development not exceeding 80%
 - Building height not exceeding 30 feet above average building elevation within the shoreland area
 3. With the building permit, the applicant ~~should~~ *must* show 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 based on the parking analysis in the Final EIS, Section 3.4, pages 3-11 through 3-18. See Attachment 25.
 4. To ensure compliance with the SMP's requirement to protect surface and ground water quality, the applicant should:
 - a. Hire a consulting firm for the site cleanup that is qualified in site remediation and is certified by the State to remove underground storage tanks. This consulting firm should prepare a cleanup action plan prior to clean-up of the site, followed by a compliance report and any other documents once the remediation is completed. A building permit should not be issued, excluding a shoring permit related to site remediation, until the applicant has provided these documents to the City.
 - b. Sign a three party contract with the City and the City's designated consultant to pay the charges of that consultant to do peer review of the cleanup action plan and follow-up documents prepared by the applicant's consulting firm to ensure compliance.
 - c. Provide the City with a 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 tank prior to issuance of the building permit, but excluding a shoring permit for site remediation.
 - d. Make changes to the cleanup action plan and/or to the follow-up documentation after the clean-up work is completed if the City determines that they failed to show compliance with the Department of Ecology's rules.
 - e. Reflect the Best Management Practices identified in Chapter 1 of the Potala Village Final EIS in the site cleanup plan and the remediation work. See Attachment 25.

- f. Provide the City with a copy of the No Further Action opinion issued under the Voluntary Cleanup Program by the Department of Ecology once site cleanup is completed to confirm that the State requirements have been met.

VI. PUBLIC NOTICE AND COMMENT

- A. The public comment period for this application was held from May 19, 2011, through June 20, 2011. The SDP decision is based on the same proposal that was on file when the comment period was held.
- B. Written comments were received before and during the comment period (see Attachments 27 through 56). Below is a summary of the comments that pertain to the Shoreline Substantial Development Permit. Also, following this summary, are some comments regarding issues and concerns that are not under the jurisdiction of the City's Shoreline Master Program and the State Shoreline Management Act.

1. Comments within the Scope of the SDP Application:

- a. *There was a lack of notice specific to this property during the City's SMP Update process for changing the property's shoreline designation from Urban Residential 1 to Urban Mixed.*

Staff response: The opportunity to comment on or appeal the shoreline designation for the property has passed.

The Department of Ecology approved the City's SMP Update on July 26, 2010. The appeal period for challenging the City's SMP Update ended on October 7, 2010. The Department of Ecology approved the City's public outreach and participation program for the SMP Update in the early phase of the update process. The public notice and outreach included three mailed notices of the update to all property owners within shoreland area and one mailed notice to property owners located within 200 feet from the boundary of the shoreland area, posted notices for all meetings over a five-year period on large public notice sign boards located in all of the City shoreline parks facing the adjacent street, notices to neighborhood associations, boat tour of the shoreline, a shoreline property owner's workshop, public open houses, meetings with individual property owners, study sessions and public hearings before the Planning Commission and Houghton Community Council, and study sessions and a final meeting before the City Council. The Department of Ecology held a public hearing after the City forwarded the draft SMP Update to the Department. Those that provided comments received a copy of the hearing notice.

- b. *The change in the shoreline environment designation for the property during the City's SMP Update process should have followed the City's Citizen Initiated Request process in Chapter 140 KZC. The change was a "spot zoning."*

Staff response: The opportunity to comment on or appeal the shoreline designation for the property has passed.

The update to the City's Shoreline Master Program was an area-wide City initiated change and not a citizen initiated request (also known as the City's Private Amendment Request process). The State mandated that the City change the shoreline environment designation for all shoreline properties to be consistent with the new State Guidelines of WAC 173-26-176. The change to this property was not a "spot zoning." Numerous properties within five areas in the City are designated as Urban Mixed.

- c. *The shoreline designation of Urban Mixed is not correct for the property.*

Staff response: The opportunity to comment on or appeal the shoreline designation for the property has passed.

The Department of Ecology approved the City's Shoreline Environment Designation Map based on a required summary document explaining how the City's draft SMP update meets the State Guidelines, the City's Shoreline Use Analysis and the City's 2006 Shoreline Analysis Report.

The City determined that the site was appropriate for an Urban Mixed designation because the site contains commercial uses, is zoned Neighborhood Business and is designated in the Kirkland Comprehensive Plan as Commercial. Thus, the long range "planning" for the property is either a mixed use development or a commercial development. Given the existing uses and potential redevelopment options for commercial or mixed use, a shoreline designation of Residential – Medium/High is not appropriate for the property.

- d. *Staff did not highlight the designation change for this property during the City Council's review of the City's SMP Update.*

Staff response: The opportunity to comment on or appeal the shoreline designation for the property has passed.

The City Council held several study sessions and a final adoption meeting on the SMP update. Each City Council member was provided a copy of the draft Shoreline Environment Designation Map and the proposed regulations, including a description of the Urban Mixed designation, during these meetings. The staff memos to the City Council highlighted key policy issues and provided general information on the update. The Urban Mixed shoreline designation reflected the existing commercial uses, zoning and Comprehensive Plan designation for this property so staff concluded that it did not rise to the level of a key policy issue to be discussed in detail in the staff memos. The designation meets KZC 83.140 for both the purpose of and designation criteria for the Urban Mixed designation.

- e. *The entire project should be subject to the Shoreline Substantial Development Permit.*

Staff response: Jurisdiction of the Shoreline Management Act (SMA) is within 200 feet of the ordinary high water mark of Lake Washington and wetlands associated with the Lake which are wetlands that drain into or have a biological connection with the Lake. Lands outside of this area do not fall under the SMA.

- f. *There has been no opportunity for public input on this project and the SDP permit has already been issued.*

Staff response:

Following public notice, a 30-day comment period was provided from May 19, 2011, through June 20, 2011. The SDP application was placed on hold on October 20, 2011, waiting for the applicant to sign the EIS contract and submit the funds for the contract budget. It is incorrect to state that the permit has already been issued. A decision was not made on the SDP previously. The City's decision to issue the shoreline Substantial Development Permit is contained in this document.

- g. *The project will impact private and public views and the view corridor to Lake Washington.*

Staff response: Protection of private or public views is not applicable to this property. KZC 83.410 requires that a public view corridor be provided from Lake Washington Blvd/Lake Street South to the Lake. This property is east of the right-of-way. RCW 90.58.320 requires consideration of view blockage of a substantial number of residences for structures over 35 feet in height above average building elevation. The proposed building will only be 30 feet above average building elevation.

- h. *There is insufficient on-site parking for the proposal.*

Staff response: The proposed development provides the number of parking stalls required under Chapter 40 KZC, Neighborhood Business zone, for the proposed commercial and residential uses along with guest parking. However, the parking analysis in the Final EIS (Section 3.4, pages 3-13 through 3-18) concludes that the proposal has more parking than is needed based on the proposed uses, type of mixed use development and location of the site. The Final EIS identifies a mitigating measure in Section 1.6 of reducing the number of proposed parking stalls to the minimum required to serve the uses. See Attachment 25.

- i. *Removal of vegetation will cause various impacts.*

Staff response: Chapter 83 KZC regulates trees and tree removal within the required shoreline setback, but not trees or other vegetation outside of the shoreline setback. This property does not have a required shoreline setback since it does not abut the Lake and the depth of the intervening land between the property and the Lake is greater than 80 feet. With the building permit, the project will be required to include landscaped buffers and street trees under the regulations of Chapters 95 and 110 KZC.

- j. *Glare from lights will impact the surrounding residential uses.*

Staff response: For the portion of the building within 200 feet of the ordinary high water mark of the Lake, the lighting standards in KZC 83.470 will apply. These provisions will result in the reduction of glare on adjacent properties. The Final EIS identifies a mitigating measure to reduce glare on adjacent properties during construction. This lighting mitigation is a condition of this SDP decision. In addition, with the building permit, the project will be required to meet the lighting standards in the regulations of KZC 115.85.

- k. *Unfiltered water will go into Lake Washington. Contamination from the soil on the property will impact the Lake.*

Staff response: The project will be required to meet KZC 83.480 for water quality, stormwater and nonpoint pollution. The site is separated from the Lake by a major arterial and existing development so runoff from the project will not go directly into the Lake. All runoff from the underground parking lot will drain into the sanitary sewer and be treated. Runoff from the roof will be tight lined to the storm drains and runoff from the rest of the site will be filtered through on-site landscaping before going into the storm drains. The contaminated soil and underground storage tanks will be removed under the Department of Ecology's MTCA rules for remediation.

- l. *There should be increased setbacks from a nearby stream and a native growth protection area.*

Staff response: The nearest mapped streams are approximately 302 feet to the north and approximately 1,353 feet to the south. Neither of these streams drains directly into Lake Washington. KZC 83.510 concerning streams in shoreland areas does not apply to this property.

2. Issues not within the Scope of SDP Review

The issues contained in the summary of comments below are not within the scope of the SDP so they are not addressed further in this decision. However, these issues are addressed in the Environmental Checklist, the Potala Village Draft and Final Environmental Impact Statements or are regulated in the City's Zoning Code or Municipal Code:

- Validity of the residential density for the Neighborhood Business (BN) zone
- Consistency with Comprehensive Plan policies not in Shoreline Area Chapter, including the "Residential Market" designation
- Traffic, speeding and pedestrian and bicycle safety, width of sidewalk and project impacts on 10th Ave South and Lake Street South
- Parking layout, access into parking garage, residents using on-street parking, and charging for on-site parking
- Bulk, mass, size, scale and design of the building, lack of a requirement to meet the City's design guidelines under Chapter 142 KZC, building setbacks, visual impact of building from the street or adjacent properties
- Small size of the residential units that will result in low rent apartments which will lead to party noise, crime, reduced property values and other impacts
- Change in character of neighborhood and quality of life
- Incompatibility of the project with the surrounding neighborhood
- Proposed commercial uses that are not neighborhood-oriented
- Width of and improvements in landscaped buffers
- Hard surfaces that may impact natural water flow on property
- Pooling of water on east property line from the proposed retaining wall
- Blocking westerly daylight to the properties east of the site
- Impact of eagles who sit in trees near the site
- Having part of the site owned and part of the site leased
- Construction impacts of noise, dust, runoff, and damage to roads

VII. SUBSEQUENT MODIFICATIONS

WAC 173-27-100 establishes the procedures and criteria under which the City may approve a revision to a permit issued under the Shoreline Management Act and the City's Shoreline Master Program.

VIII. LAPSE OF APPROVAL

As established under WAC 173-27-090, construction or activity must commence within two (2) years from the date that the Department of Ecology receives the City's decision on the permit (referred to as the date of filing). The City may grant a one (1) year extension based on reasonable facts if a request for the extension has been filed before the expiration date and notice of the proposed extension is given to parties of record on the SDP and the Department of Ecology.

IX. ATTACHMENTS

Attachments 1 through 26 are the project documents. The Transpo Group Transportation Analysis and the proposed landscape plan are not included as they are not subject to the SDP, but they are available in the Potala Village Official City File.

1. Vicinity Map
2. Aerial map of adjacent structures and intensities and physical characteristics
3. Survey - topographical and existing condition
4. Existing site features
5. Proposed site plan
6. Lake Street South building elevation
7. 10th Ave South building elevation
8. East building elevation
9. Basement Parking #1 Level Plan
10. Basement Parking #2 Level Plan
11. Commercial Ground Floor Plan
12. Residential 2nd Floor Plan
13. Residential 3rd Floor Plan
14. Residential 4th Floor Plan
15. Residential 5th Floor Plan
16. Cross Sections AA and BB
17. Cross Sections CC and DD
18. Cross Sections EE and FF
19. Shoreland density and lot coverage
20. Soil and groundwater assessment, dated October 15, 2010
21. Soil and groundwater sampling, dated February 27, 2008
22. Drainage and water quality report, dated November 15, 2010
23. Stormwater prevention and pollution plan, dated November 29, 2010
24. Shoreline Development Standards
25. Applicable Excerpts from the Potala Village Draft EIS, pp. 3.2-10 through 3.2-13, dated July 12, 2012, and Final EIS, dated November 2, 2012, (complete document is available in the City Official File and on the City's web page)
26. Letter of Completeness, dated May 11, 2011

Attachments 27 through 56 are written public comments received through the end of the comment period on June 20, 2011.

27. Atis Freimanis comments, dated 6/17/11 and 6/20/11
28. Brian Tucker comments, dated 3/23/11
29. Casey and Sam Silbert comments, dated 4/18/11
30. Chantelle Phillips comments dated 6/17/11
31. Charles Loomis comments, dated 3/24/11
32. Charlie and Shawn Greene comments, dated 6/17/11
33. Darlene Falk, comments, dated 4/10/11
34. Ginnie DeForest comments, dated 4/4/11 and 06/10/11
35. Hugh Levenson comments, dated 6/20/11
36. Jack Danforth comments, dated 4/13/11
37. Janelle and Nathan Brooling comments, dated 6/20/11
38. Judith and Steve Beto comments, dated 6/20/11
39. Karen Levenson comments, dated 4/10/11, 4/19/11, 4/22/11, 5/17/11, 6/2/11 and 6/20/11
40. Kirk Mathewson comments, dated 6/20/11
41. Laura and Charles Loomis comments, dated 6/16/11
42. Laura Loomis comments, dated 3/22/11, 3/24/11, 3/31/11 and 4/8/11
43. Lillo Way and Bill McNeill comments, dated 6/20/11

44. Maureen Kelly comments, dated 3/16/11 and 4/14/11
45. Michael Phillips comments, date 6/9/11
46. Michelle Sailor comments, dated 3/23/11
47. Mitka Gupta and Amit Fulay comments, dated 6/20/11
48. Neil Anderson comments, dated 6/20/11
49. Per Billgreen comments, dated 6/15/11
50. Randall Cohen comments, dated 6/20/11
51. Richard Satre comments, dated 3/24/11
52. Robin Herberger comments, dated 6/17/11
53. Sharon and Arlyn Nelson comments, dated 4/20/11 and 6/20/11
54. Stephen Cullen comments, dated 6/20/11
55. Thomas Grinn comments, dated 5/20/11
56. Web case comments from Charles Pilcher dated 6/16 and 6/18, 2011, Kathleen Dier dated 6/6/11 and 6/17/11, Larry Saltz dated 6/17/11

X. PARTIES OF RECORD

Applicant: Lobsang Dargey, Dargey Enterprises, PO Box 13261, Everett, WA 98201
Atis Freimanis
Brian Tucker
Casey and Sam Silbert
Chantelle Phillips
Charles Loomis
Charlie and Shawn Greene
Chuck Pilcher
Darlene Falk
Ginnie DeForest
Hugh Levenson
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City Department of Planning and Community Development
City Department of Public Works
City Department of Building and Fire Services

Department of Ecology and Muckleshoot Tribe