

**FINDINGS AND DECISION  
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE**

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In the Matter of the Appeal of

**PEGGY GOLMAN and  
KEITH MARTENSEN, et al.**

Hearing Examiner File  
**MUP-90-078(W,P)  
MUP-90-080(W,P)**

from a decision of the Director,  
Department of Construction and  
Land Use on a master use permit  
application

DCLU Application:  
**9000448**

**Introduction**

Appellants appeal the decision of the Director of the Department of Construction and Land Use (DCLU) to approve with conditions a short plat application (one parcels into two) for property addressed as 2647 Perkins Lane W.

Appellants exercise the right to appeal pursuant to the Master Use Permit Ordinance, Chapter 23.76, Seattle Municipal Code.

As is required by Seattle Municipal Code Section 23.88.020E.3, this appeal was consolidated for hearing with the appeals regarding the interpretation (DCLU Interpretation 90-013/013A) related to the master use permit application. The Hearing Examiner's decision on the Interpretation appeal is issued separately (Hearing Examiner File S-90-012).

A prehearing conference with party representatives was held with the Hearing Examiner on January 15, 1991. Procedural matters and the timing for submittal of motions were discussed.

The hearing began on February 4, 1991. On February 5, 1991, the Director withdrew the MUP decision in order to gather and review additional information necessary to clarify the application. This withdrawal included the express intent that a new or revised decision would be issued in future. Testimony focusing upon the issues related to the appeal of the interpretation continued on February 5, 1991. The record was left open in order for the Hearing Examiner to retain jurisdiction pending revision and reissuance of the MUP decision by the Director. The hearing resumed on July 18, 1991, following the reissuance of the Director's decision and reassertion of the appeal by appellants.

Present at the hearing were: the appellants by attorneys Judy Runstad and John Beighle;

applicant, James Parks by his attorney Ross Radley; and the Director, Department of Construction and Land Use by Andy McKim and Faith Lumsden, senior land use specialists.

After due consideration of the evidence elicited during the public hearing and as a result of the personal inspection of the subject property and surrounding area by the Hearing Examiner, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

### **Findings of Fact**

1. The subject property is legally described as Lot 11, Block 40, and Lot 11, Block 41, Ladd's Addition to the City of Seattle, together with that portion of vacated alley between them, and Lot 1, Block 80, Seattle tidelands. The property abuts the right-of-way of Perkins Lane West and is addressed as 2647 Perkins Lane West, in the Carleton Park portion of the Magnolia neighborhood.
2. The subject property and the surrounding area is zoned Single Family 7200 (SF 7200). The site slopes downhill from east to west and has an environmentally sensitive area designation due to its slope. The existing parcel is a long, narrow, roughly rectangular-shaped parcel 50 ft. wide and over 490 ft. long, with a total area of over 24,500 sq. ft. On the order of approximately 14,200 sq. ft. of the total square footage is within the tidelands area.
3. Surrounding uses are residential. The majority of the lots in the immediate vicinity have 50 ft. wide frontages with depths approximately 500-600 ft. (with about 300 ft. extending into the tidelands) on the west side of Perkins Lane W., and 107 ft. depths along the east side.
4. Under MUP application 9000448, the applicant proposes to divide the property into two "panhandle" shaped parcels. Parcel "A" would include in the "pan" portion of the parcel the existing house located close to the water and most of the tidelands, with the "handle" part of the parcel extending to the Perkins Lane edge of the property. Proposed Parcel "B" would be a mirror image (although substantially smaller in total area) with the "pan" part of the parcel abutting Perkins Lane and the "handle" extending to the western edge of the property. As originally proposed, there were to be approximately 17,388 sq. ft. in Parcel "A" and 7,209.0 sq. ft. in Parcel "B." (Exhibit 5)
5. After the original Analysis and Decision was withdrawn by the Director, the applicant was required to submit a survey as a part of DCLU's consideration of additional information. This survey, signed by Thomas D. Reisdorff, Registered Land Surveyor, Certificate No. 17679, indicates 17,172.6 sq. ft. in Parcel "A" and 7,413.8 sq. ft. in Parcel "B." (Exhibit 64) Both the proposed parcels would have access to Elliot Bay and would include submerged lands. The upland portion of proposed Parcel

"A" would be 5,300 sq. ft. and Parcel "B" would have 5,085 sq. ft. in the upland area.

6. Information provided by Steven A. Hitchings, a licensed surveyor whose firm surveyed the two properties adjacent to the north and south of the subject property, indicates that the Reisdorff survey may have inaccuracies that benefit proposed Parcel "B" by approximately 491 sq. ft.

7. SMC 23.24.040 lists the criteria for approval of a short plat to be:

1. Conformance to the applicable Land Use Policies and Zoning Code or Land Use provisions;
2. Adequacy of access for vehicles, utilities and fire protection as provided in Section 23.54.010;
3. Adequate drainage, water supply and sanitary sewage disposal;
4. Whether the public use and interest are served by permitting the proposed division of land.

8. The reissued Director's Analysis and Decision, dated June 3, 1991, approved the requested short subdivision with conditions and determined that the subdivision of one parcel into two would not have a significant adverse impact on the environment. The environmental determination of non-significance (i.e., no significant adverse impact; EIS not required) also included conditions. (Exhibit 70)

9. In the decision regarding the short subdivision, DCLU found the following.

Conformance to Land Use Code and Policies:

The proposed lots meet the minimum lot size requirement of 7,200 sq. ft. The application is vested prior to the Interim Critical Areas Ordinance and as such, the tidelands portion of the property can be counted toward meeting the minimum lot size requirement. Final recording documents to be prepared by a licensed land surveyor, are required as conditions of the approval of the short subdivision.

With the five foot easement provided in the panhandle portion of Parcel "B", Parcel "A" would have the required side yard setback. Easements for side yard, parking, and access are required as conditions of the approval.

Any future construction will be required to comply with Land Use Code provisions for single family residences. As a condition of the approval, a master use permit is required to establish the use of proposed Parcel "B" for single family residence and for the construction necessary to increase the parking area for Parcel "A". (In the alternative, the garage/guest quarters on proposed Parcel "B" would be demolished.)

**Adequacy of Access:**

Both parcels would have access to Perkins Lane W. and two parking spaces would be provided for each parcel. No objections were filed by the Fire Department regarding emergency access and utilities are available. A joint use and maintenance agreement for the easement is required as a condition of the approval.

**Adequacy of Drainage, Water, and Sewer:**

Water and sewer are available to serve the property and a drainage control plan will be required for future building permits.

**Public Use and Interest:**

The division of the property would serve the public use and interest by providing additional affordable housing opportunities and maintaining the character of the neighborhood.

**10. The DCLU environmental analysis indicated.**

Short term impacts associated with the potential for future construction: Impacts include increased noise; possible damage to street and tracking mud due to construction vehicles; increased dust and other construction-related emissions; and, increased parking demand from construction workers. DCLU found these impacts, although adverse, not to be significant because they would be mitigated by existing codes and ordinances (i.e., Noise Ordinance, Street Use Ordinance) or because the impacts would be minor and/or temporary.

Earth and drainage impacts: A soils report in the form of a letter was submitted by the applicant. A comprehensive soils report will be required with any application for future construction. DCLU found that soil stability concerns and the potential for erosion would be addressed through compliance with the Drainage and Grading Control Ordinance and with Director's Rule 2-87 (regulating development in slide areas), including monitoring by a licensed geotechnical engineer. All future development will have to comply with drainage requirements and a soils report and a minimal risk statement prepared by a licensed geotechnical engineer are required to be submitted with application(s) for construction.

Parking and traffic impacts: Development of an additional residence on the proposed second lot would be expected to generate ten vehicle trips per day. These trips would be added to the current traffic on Perkins Lane. DCLU found no additional street improvements necessary due to the light volumes of existing traffic and the relatively small size of the increase. Parking area for two vehicles for each proposed lot will be required.

Height, bulk and scale: Density would be increased with the future development of a residence on proposed Parcel "B" but this structure would have to conform to the development standards of the Land Use Code which will maintain consistency with the height, bulk and scale of existing development in the neighborhood.

11. Appellants object to the approval of the short plat and ask that the Director's approval be reversed on the following grounds:

- (1) The application was incomplete and therefore did not vest prior to the passage of the Interim Critical Areas Ordinance which disallows inclusion of submerged lands in calculating minimum lot size requirements.
- (2) The Director failed to make specific findings regarding the public health, safety and welfare.
- (3) The environmental (SEPA) checklist submitted by the applicant is incorrect and misleading.
- (4) There is insufficient mitigation and/or requirement for subsequent environmental review related to soil stability, parking, and traffic.
- (5) The Determination of Non-Significance was not sent to the Department of Ecology.
- (6) A Shoreline Substantial Development Permit was not required.
- (7) The proposed parking cannot be accommodated without grading and filling which will interfere with the property rights of neighboring property owners.
- (8) Access to the property is insufficient.
- (9) The survey relied upon by the Director is inaccurate and Parcel "B" does not have 7,200 sq. ft.
- (10) The public use and interest would not be served.
- (11) There is insufficient fire protection access.
- (12) The yard requirements are not met on proposed Parcel "B".

#### Completeness of Application

12. SMC 23.76.026B provides that an application for approval of a short subdivision is

vested to land use code and other land use control ordinances in effect "when a fully completed master use permit application for such approval which satisfies the requirements of ... Sections 23.24.020 and 23.24.030... is submitted to the Director."

13. State law provides as follows:

**RCW 58.17.033.**

(1) *A proposed division of land...shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application for ... short plat approval of the short subdivision, has been submitted to the appropriate county, city, or town official.*

(2) *The requirements for a fully completed application shall be defined by local ordinance.*

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**RCW 58.17.060.**

(1) *The legislative body of a city, town, or county shall adopt regulations and procedures, and appoint administrative personnel for the summary approval of short plats and short subdivisions...An ordinance requiring a survey shall require that the survey be completed and filed with the application for approval of the short subdivision.*

14. SMC 23.24.020 requires that applications for approval of a short subdivision include: a plat of the proposed short subdivision containing standard survey data; a vicinity map with the subject property indicated; a plot, plan showing locations and dimensions of existing buildings; legal description of the property; name and address of owner(s); location of existing roadways, sanitary sewers, storm drains, watermain, and proposed street improvements.

15. The Land Use Code requires at SMC 23.44.010B. that

*A survey of each proposed short subdivision and preparation of the short plat for it shall be made by or under the supervision of a registered land surveyor who shall certify on a short plat that it is a true and correct representation of the lands actually surveyed.*

16. An application for a "Short Subdivision Master Use Permit" (Application Number 9000448) was submitted to DCLU on January 16, 1990, signed by the applicant's agent Kevin Weare. "James Parks 2647 Perkins Lane West Seattle" is indicated in the space provided for the "Name and Address of Owner(s) of this Tract." A plat map, showing: the dimensions and locations of structures; some natural features (including tidelands); the Perkins Lane right-of-way; easement roadway; water and sewer lines; north arrow; lot and block numbers, plat book and page number of recorded plat;

property address, location of monuments (stakes, tags, and rebar); distances and bearings; and the existing and proposed lot lines and areas, is attached to the application on a form provided by DCLU. There is a place on the plat map for a surveyor's certification; it is not filled in or signed. The application also includes a legal description and a drawing as to how parking access for a second space for Parcel "A" would be accommodated. (Exhibit 5)

17. Prior to January 1991, DCLU routinely required the signed, sealed survey to be included as part of the final recording of a short plat, not as a part of the application submittal. At the end of January 1991, DCLU changed its practice so as to require a survey by a licensed surveyor to accompany short subdivision applications (Exhibit 63).

18. DCLU did not require that the plat map submitted with this application be prepared and certified by a licensed surveyor. The requirement for survey by a licensed surveyor was included as a the conditions of the Director' approval of the short plat with the survey to be completed prior to recording the plat (Exhibit 2).

19. Section 23.24.050 provides that when the Director *"has determined that: (1) the short plat contains the certificates, dedication instruments and statements of approval required by state law and this chapter, (2) the short plat and all legal descriptions are legally correct, and (3) the review procedures pursuant to Chapter 23.76 have been concluded, the short plat shall be filed for the record with the King County Director of Records and Elections. Except for purposes of appeal, no short plat or short subdivision granted approval by the Director shall be deemed to have final approval until filed."*

20. At the time application for the subdivision was filed, Mr. Parks was married, although he and his wife, Priscilla C. Hinckley, had been separated since 1987. Ms. Hinckley was not listed on the application for short subdivision approval as an owner. Mr. Parks claims that he had the authority to deal with all matters relating to this property through a special power of attorney given by Ms. Hinckley. Two documents came in at hearing (Exhibit 62). One, presented by Mr. Parks appears to be a copy of a a special power of attorney from Ms. Hinckley to Mr. Parks signed in August 1988, appointing Mr. Parks "to sign all papers for me in association with the property located at 2647 Perkins Lane W., Seattle, WA." Appellant presented a copy of a power of attorney from Ms. Hinckley to Mr. Parks which is in all respects appears to identical to the document presented by applicant excepted the phrase "purchase of the" is at the end of a line between "to sign all papers for me in association with" and "the property located at 2647 Perkins Lane W., Seattle, WA." This power of attorney had been recorded and bears the number 8808191249.

21. Through affidavit, Ms. Hinckley indicates to have never been interested in the property at 2647 Perkins Lane West and claims to have signed two special powers of attorney regarding this property and that it was her understanding that the words "for purchase" had been added to the document to be recorded to satisfy the sellers of the

property. Mr. Parks testified at hearing that Ms. Hinckley had signed but one signature page but that two powers of attorney had been prepared, one with the addition of the words "with the purchase of". As of January 1991, Ms. Hinckley has quit claimed her interest in the property to Mr. Parks.

#### Specific Findings

22. The Director's Analysis and Decision addresses the factors listed in SMC 23.24.040 as required for approval of a short subdivision. RCW 58.17.060 does not have a requirement for "specific findings" and RCW 58.17.110 applies to full subdivisions, rather than short subdivisions.

#### SEPA Checklist

23. The SEPA checklist (Exhibit 4) includes annotations by DCLU staff at several places (e.g., correcting the reference to slope instability; noting "slope instability in vicinity"; correcting that a water body - Elliot Bay - is in the vicinity; adding that oil from driveways and fertilizer from landscaped areas could enter Elliot Bay; noting that a parking easement would be required; and correcting that the estimated number of new vehicle trips would be 10 rather than 6 as indicated on the checklist.)

#### Impact Mitigation (soil stability, parking, traffic)

24. The conditions of the Director's Decision include a requirement that application for construction permits include "a soils report prepared by a Washington State Licensed civil engineer with geotechnical experience. The soils report shall meet the requirements of Director's Rule 2-87." A minimal risk statement from a geotechnical engineer is also required.

25. The Perkins Lane area has a history of slides and soil instability. Serious property damage has occurred in the past.

26. Two parking spaces are proposed to be provided for each of the proposed lots.

27. The residence to the south of the subject property has space for 10 to 12 vehicles to park and space for eight vehicles are available on the property to the north.

28. Parking along Perkins Lane W. causes problems because the street has a relatively narrow paved surface. (There is a 60 ft. wide right-of-way but the paved surface is less than 20 ft. There are no curbs, gutters, or sidewalks.) When cars park along the street, there is not enough room for two cars to pass.

29. DCLU found the potential for the addition of 10 vehicle trips per day associated with future development of residence on the second parcel, would not be significant and required no mitigation.



## Department of Ecology

30. SMC 25.05.508 requires that under certain circumstances, environmental documents be sent to the Department of Ecology (DOE) for publication in its SEPA Register. Those documents to be sent to DOE are related to projects involving: another agency with jurisdiction, non-exempt demolition or grading, a Mitigated Determination of Non-Significance (MDNS) or a withdrawn Determination of Significance (DS).

## Shoreline Permit

31. A Shoreline Permit is required for physical changes ("i.e., "development") which cost over \$2,500 ("substantial development").

## Access

32. The legal description for the subject property indicates a 15 ft. easement "for ingress, egress and utilities" across the neighboring property to the south. There is a gravel driveway/road to and across the subject property used for vehicle access to the subject property and to the property north.

33. The driveway/road runs parallel to Perkins Lane W. and has been used for many years (one witness testified to it being used for at least 60 years) to provide vehicle access to the subject lot and to the lots both north and south of it.

34. The conditions of the Director's Decision include a requirement for a joint use and maintenance agreement for access.

35. For a residential use, SMC 23.53.005 (formerly 23.54.010) requires that at least ten feet (10') of a lot line abut on a street. The subject lot abuts Perkins Lane right-of-way along its eastern property line (50 ft.). DCLU found that abutting the right-of-way, with the driveway/easement, sufficient to meet the access requirement. That is, because it abuts the street, DCLU looks to the driveway standard of 10 ft. (SMC 23.54.030D) rather than the easement standard.

## Survey

36. The appellant raised questions about the accuracy of the survey prepared by the applicant's licensed surveyor. If the appellant is correct, Parcel "B" as it is currently proposed, would be approximately 490 sq. ft. less than the required 7,200 sq. ft. Sufficient area is in the tidelands, over 14,000 sq. ft., so that the proposed plat could be redrawn to have more tidelands as part of Parcel "B" to compensate for the alleged deficit.

## Public Use and Interest

37. Policies for single family residential areas are contained in SMC 23.16.002. This section includes in part, the following policy language:

*The purpose of these policies is to preserve and maintain the physical character of single family residential areas in a way that encourages rehabilitation and provides housing opportunities throughout the city for all residents...*

38. The Director's Decision finds the proposed short subdivision would serve the public use and interest "in terms of providing more affordable housing inside the City and maintaining the character of the neighborhood."

39. Appellants point to potential adverse impacts related to soils stability, parking along the street, traffic, and changes in the pattern of development as contrary to the public use and interest.

#### Fire Protection Access

40. The Fire Department has no objection to the proposed short subdivision.

41. There was an occasion during an emergency when a large fire engine could not reach the shoreline at this location.

#### Yard Requirements

42. The DCLU decision requires a reference to be recorded on the plat to the required side yard easement.

### Conclusions

1. The Hearing Examiner has jurisdiction of this appeal pursuant to Chapter 23.76, Seattle Municipal Code.

2. The Hearing Examiner must give "substantial weight" to the DCLU Director's decision. (Section 23.76.022C.7) The burden is on an appellant to overcome this weight by proving that the decision is "clearly erroneous". Brown v. Tacoma, 30 Wn App. 762, 637 P.2d 1005 (1981). Under the required standard of review, decisions of the Director can be overcome only when the reviewer is left with the definite and firm conviction that a mistake has been made. Cougar Mt. Associates v. King County, 111 Wn.2d 742, 747, 765 P.2d 264 (1988).

3. The argument that the application is not complete because it lacked Ms. Hinckley's name and address, is not persuasive. The identification of all owners would appear to be a protection for the owners rather than some element required to protect a public

interest. Given that her signature would have to have been present in order to record the plat, and that her subsequent quit claim has mooted the issue, the Director has not been shown to have been clearly erroneous to have considered the application without Ms. Hinckley's name and address.

4. Director's Rule 2-87 does not require a geotechnical report to be submitted with every application for short subdivision in potential slide areas. The Director is requiring that any application for new construction on the subject property be accompanied by a soils report meeting the standards of 2-87.

5. Until recently, DCLU interpreted the Code requirement for short subdivisions to have a signed stamped survey and plat, to mean that they must be included in the final recording, not at time of application. DCLU did not require this applicant to submit a signed stamped survey and plat with the application for short subdivision approval. While technically incorrect, DCLU's former practice was not unreasonable and has not been shown to have caused results inconsistent with meeting the criteria of short subdivisions or with land use policies.

6. The applicant's agent submitted a detailed plat, on forms provided by DCLU, showing the existing and proposed lot lines and major features. The level of detail and clarity is comparable to that of the plat prepared by the licensed surveyor. To conclude that the application was incomplete because DCLU did not require a survey at the time of submittal, requires a hypertechnical approach with a draconian result. The applicant should not be penalized for submitting an application consistent with the practice of the reviewing agency.

7. There was no evidence presented to support the objection regarding the absence of specific findings and such findings do not appear necessary for a short subdivision.

8. The conditions required by the Director for applications for construction permits associated with building on the property, have not been shown to be inadequate to address soil stability concerns and the short subdivision itself has no construction element that could affect soil stability. The Director's approach of requiring information when there is potential for physical impact, has not been shown to have been an error.

9. Overflow parking and ten additional vehicle trips per day on Perkins Lane W. will adversely affect traffic conditions. However, the appellants have not met the burden here to show that the type and level of impact would be such as to convince the undersigned that the Director erred in not requiring additional mitigation. Credible testimony supports the contention that parking along the street and some additional trips would be an inconvenience to neighbors in the vicinity, but no evidence was presented that gives cause to believe that the Director made a mistake in concluding the level of impact would not require additional mitigation.

10. The proposed short subdivision does not involve any of the circumstances for which it is required that DOE be notified. The Director's Determination of Non-Significance in this instance is not required to be sent to DOE for publication in the SEPA Register.

11. A Shoreline Substantial Development Permit is not required for the proposed short subdivision. (See Hearing Examiner decision regarding file S-90-012.)

12. In the Director's view, although the subject property abuts the public right-of-way, it has vehicle access provided via a gravel driveway over a 15 ft. easement across a neighboring property. The appellants have not shown this view to be in error.

13. The potential that the survey has inaccuracies is troublesome, but it is not fatal to the proposed short subdivision. The Land Use Code clearly anticipates (SMC 23.24.050) that corrections and modifications will be made to the plat prior to recording, and that the approval granted by the Director is not "final" until the plat is recorded. Rather than serving as a basis for denial, any discrepancy or other problem with the survey will have to be resolved to the Director's satisfaction before the plat is recorded. Deficiencies in the size of proposed Parcel "B" as now shown on the plat, can be resolved by including more tidelands.

14. Given the likely cost of any new residence built on the property, the conclusion that the public interest is served because "affordable housing" opportunities will be provided, overstates the case. The proposal would facilitate the provision of an additional housing opportunity and in doing so is consistent with SMC 23.16.002.

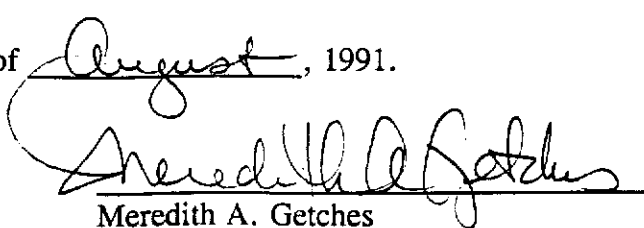
15. The absence of objection from the Fire Department gave the Director reasonable basis to conclude that fire protection access would be sufficient.

16. Appellants failed to support the contention that yard requirements could not be met.

### Decision

The Director's decision is AFFIRMED.

Entered this 12<sup>th</sup> day of August, 1991.

  
Meredith A. Getches  
Hearing Examiner

## CONCERNING FURTHER REVIEW

### Short Subdivision:

The decision of the Hearing Examiner in this case is final and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any party's request for judicial review of the decision must be by application to King County Superior Court for a writ of review within fifteen (15) calendar days of the date of this decision. Seattle Municipal Code Section 23.76.22.C.12.c.

### SEPA Conditioning:

Pursuant to Seattle Municipal Code Section 23.76.024, a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fifteenth day after the date of the decision appealed from is filed with the SEPA Public Information Center, 5th Floor Municipal Building, 684-8322. The appeal statement must be filed with the City Clerk on the first floor of the Municipal Building. The City Council's review on appeal shall be limited to the issue of compliance with section 25.05.660. The City Council Land Use Committee should be consulted regarding further appeal specifics.

If an appeal is taken pursuant to Section 23.76.024, the time for filing a request for judicial review of the underlying governmental action and/or other SEPA issues is stayed until the City Council renders a final decision on this City Council appeal

If no appeal is taken to the City Council, the decision of the Hearing Examiner in this case is final and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review of the decision on the underlying governmental action must be filed with the King County Superior Court within fifteen days of the date of this Hearing Examiner decision. Seattle Municipal Code Section 23.76.022(c)(12)(c). Judicial review under SEPA shall without exception be of the decision on the underlying governmental action together with its accompanying environmental determinations. SEPA issues may be added to the request for review within 30 days after the date of this decision if a notice of intent to seek judicial review of SEPA issues is filed with the Director of the Department of Construction and Land Use, 400 Seattle Municipal Building, Seattle, Washington 98104 within fifteen days of the date of this decision. See Chapter 43.21C, RCW and Chapter 25.05. Seattle Municipal Code.